

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF ENFORCEMENT
FEBRUARY 7, 2017**

ITEM 5

SUBJECT

CONSIDERATION OF PROPOSED AMENDMENTS TO THE STATEWIDE 2010 WATER QUALITY ENFORCEMENT POLICY.

DISCUSSION

The proposed amendments would clarify certain principles that are central to the Water Boards' duties under the Porter-Cologne Water Quality Control Act as they relate to the State Water Board's Enforcement Policy, and will help ensure more consistent and transparent application of the Enforcement Policy. The proposed amendments would further the Water Boards' goals of preserving, enhancing, and restoring the quality of California's water resources and drinking water for the protection of the environment and public health, and advancing environmental justice in enforcement. The proposed amendments are intended to bring greater transparency to the Water Boards' enforcement process and penalty methodology application.

POLICY ISSUE

The Enforcement Policy provides guidance for the application of the Porter-Cologne Water Quality Control Act's enforcement provisions in a fair, firm, consistent and transparent manner. The proposed amendments are focused on updating the Enforcement Policy to reflect recently-adopted Legislation and Water Board policies addressing environmental justice and the Human Right to Water, describing the discretionary enforcement prioritization process with more transparency and fine-tuning some of the provisions of the penalty calculation methodology. The Enforcement Policy governs implementation of enforcement with respect to Water Quality by the Regional Water Quality Control Boards and the State Board.

FISCAL IMPACT

The proposed amendments will have no fiscal impact.

REGIONAL BOARD IMPACT

The Enforcement Policy governs the Regional Boards' application of Porter-Cologne's water quality enforcement provisions. The amendments require the Regional Boards to consider environmental justice and the Human Right to Water more expressly in prioritizing discretionary enforcement and determining appropriate remedies. The amendments with respect to discretionary enforcement prioritization more accurately reflect existing Regional Board practices. The Regional Boards have successfully used the penalty calculation methodology in hundreds of enforcement cases over the last five years and should have no difficulty adjusting to the proposed revisions to how they evaluate the various statutory factors.

STAFF RECOMMENDATION

State Water Board action on this item will be consistent with the directive when it adopted the 2010 Enforcement Policy to review and propose revisions to the Enforcement Policy after five years. It also furthers the State Water and Regional Water Boards' commitment to environmental justice and the State Water Board's Resolution supporting the Human Right to Water.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

ADOPTION OF THE WATER QUALITY ENFORCEMENT POLICY

WHEREAS:

1. California Water Code (WC) section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards are required to conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC section 13000) and to coordinate their respective agencies so as to achieve a unified and effective water quality control program in the state;
2. WC section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC section 13142(c) provides that State Policy for Water Quality Control shall consist of principles and guidelines deemed essential by the State Water Board for water quality control;
4. WC section 13240 provides that Water Quality Control Plans (Basin Plans) shall conform to any State Policy for Water Quality Control;
5. The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act;
6. The Water Quality Enforcement Policy intends that it be reviewed and revised, as appropriate, not later than every five years;
7. The State Water Resources Control Board (State Water Board) solicited comments from the Regional Boards and evaluated comments and provided input for the proposed Policy revisions;
8. The State Water Board published a public notice of the proposed policy on August 4, 2016 and on November 28, 2016, and accepted written comments until December 28, 2016. After consideration of the comments received, the proposed policy was revised;
9. Adoption of this policy is categorically exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15321.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Rescinds [Resolution No. 2009-0083](#) adopting the May 20, 2010, Water Quality Enforcement Policy;
2. Adopts the 2017 [Water Quality Enforcement Policy \(WQEP\)](#);
3. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the Policy are needed for clarity or consistency, the Executive Director or designee is directed to make such changes and inform the State Water Board of any such changes.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 7, 2017.

Jeanine Townsend
Clerk to the Board