

STATE WATER BOARD
RESOLUTION NO. 2005-0050

ADOPTION OF THE WATER QUALITY CONTROL
POLICY FOR ADDRESSING IMPAIRED WATERS:
REGULATORY STRUCTURE AND OPTIONS (POLICY)

WHEREAS:

1. Section 303(d) of the federal Clean Water Act (CWA) requires states to identify waters that do not meet applicable water quality standards and prioritize such waters for the purposes of developing Total Maximum Daily Loads (TMDLs) [40 Code of Federal Regulations 130.7(b)(6)(1)].
2. Section 13191.3(a) of the California Water Code (CWC) requires the State Water Resources Control Board (SWRCB) to prepare guidelines to be used by SWRCB and the Regional Water Quality Control Boards (RWQCBs) in listing, delisting, developing, and implementing TMDLs pursuant to section 303(d) of the federal CWA [33 United States Code (USC) section 1313(d)].
3. The California Assembly Bill 982 Public Advisory Group (PAG) was established in 2000 to assist in the evaluation of SWRCB's water quality programs' structure and effectiveness as it relates to the implementation of section 303(d) of CWA [33 USC section 1313(d)] and applicable federal regulations.
4. CWC section 13191.3(b) also requires SWRCB to consider the consensus recommendations adopted by PAG when preparing the guidelines.
5. SWRCB issued the draft Policy (Attachment 1) and draft Guidance for Addressing Impaired Waters in California (Guidance Document) (Attachment 2) for public comment in December 2003 and issued revised documents for public comment in November 2004.
6. SWRCB, in compliance with CWC section 13147, held a public hearing in Sacramento, California on February 2, 2005 on the Policy and carefully considered all testimony and comments received. A "Preface" was added to the document to further clarify the SWRCB's intent as well as several clarifications. The changes are minor and non-substantive.
7. SWRCB finds that adoption of the Policy and the Guidance Document is not subject to the California Environmental Quality Act (CEQA) because it is not a "project" as defined in section 15378 of title 14 of the California Code of Regulations (CCR). Furthermore, even if it was a project, section 15308 of title 14 of the CCR categorically exempts from CEQA actions taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment "where the regulatory process involves procedures for protection of the environment." Adoption of the Policy and the Guidance Document has no potential to result in a foreseeable direct or indirect change on the environment. The drafts merely document and formalize existing procedures to implement TMDLs, based upon existing law, regulations, and practice. While the application of the Policy or the Guidance

Document in any specific instance may well constitute a "project," formally documenting the procedures to be employed does not.

8. The regulatory provisions of the Policy do not become effective until they are approved by the Office of Administrative Law.

THEREFORE BE IT RESOLVED THAT:

The SWRCB:

1. Approves the final Guidance Document;
2. Adopts the Policy; and
3. Authorizes the Executive Director to submit the Policy to the Office of Administrative Law for approval.

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 Board held on June 16, 2005.


Debbie Irvin
Clerk to the Board