



# Fact Sheet

## SUMMARY OF CALIFORNIA’S PROCESS FOR ADOPTING NEW AND REVISED WATER QUALITY OBJECTIVES AND BENEFICIAL USES

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### I. Overview

The State Water Resources Control Board (State Water Board) and the nine California regional water quality control boards (regional water boards) (collectively, the Water Boards or individually, a Water Board) work together protect the quality of California’s water resources for human health, the environment, and all beneficial uses of water. Public outreach and engagement are essential to the Water Boards’ adoption and revision of water quality objectives and beneficial uses in state water quality control plans and state policies for water quality control (state plans and policies) and regional



water quality control plans (basin plans). This document provides a general summary of the Water Boards' state law process for the development and adoption of new and revised water quality objectives and beneficial uses to assist members of the public who would like to participate in these processes. This document is not intended as a comprehensive discussion, and it does not create any binding obligations.

A complex state and federal regulatory scheme under the California Porter-Cologne Water Quality Control Act (Porter-Cologne Act) and the federal Clean Water Act governs protection of California's water quality. The goal of the Porter-Cologne Act, which was enacted in 1969 prior to the Clean Water Act, is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, § 13000.) One of the primary ways that the Water Boards work to achieve this goal is the development, revision, and implementation of state plans and policies. (Wat. Code, §§ 13140, 13240, 13170.) The State Water Board's plans and policies contain water quality objectives that are designed to ensure that the beneficial uses of California's waters are protected statewide. The State Water Board may also adopt plans and policies to ensure a coordinated approach across regional water board boundaries or where implementation requires integration with the board's water right authorities. Similarly, the regional water boards protect the water quality of the waters within their regions through the development, revision, and implementation of basin plans that designate the beneficial uses of California's waters within their region and contain water quality objectives that apply in their region. Basin plan amendments adopted by the regional water boards are not effective unless and until approved by the State Water Board. (Wat. Code, § 13245.) If the beneficial uses and water quality objectives apply to waters of the United States, they also serve as "water quality standards" under Section 303 of the federal Clean Water Act if they are approved by the United States Environmental Protection Agency (U.S. EPA). The Water Boards amend the state plans and policies and basin plans through formal rulemakings.

California's water quality issues are diverse and complex. For example, water quality issues can occur statewide or locally, thus requiring either comprehensive, regional, or targeted local solutions. They can be caused or exacerbated by natural processes or human actions, which influence the availability of treatment or prevention options. In considering water quality problems and developing priorities for the development of new or revised water quality objectives and beneficial uses, the Water Boards must evaluate many factors, including the effects on beneficial uses of water (for example, effects on human health and aquatic ecosystems), availability of water quality data, the state of the science supporting potential regulation, the availability and appropriateness of regulatory tools to address the issues, and agency resource capacity.

## **II. Preliminary Rulemaking Processes**

Water quality rulemakings are often complex and controversial. The Water Boards' decision to initiate a rulemaking may be based on various sources of information, including periodic reviews of state plans and policies and basin plans, other prioritization efforts by the Water Boards, watershed initiatives, public input, and changes in other state or federal laws or regulations. These sources of information, however, do not necessarily provide the detailed information necessary to draft and support a potential water quality objective or beneficial use or to comply with other state laws that also may apply in the rulemaking process. For example, U.S. EPA develops Clean Water Act section 304(a) recommended criteria for the states for specific pollutants, but the Water Boards must comply with all applicable state laws in determining whether and how to adopt or revise water quality objectives for those pollutants.

Accordingly, once a Water Board determines that a water quality objective or beneficial use should be adopted or revised, it engages in preliminary planning, information gathering, scientific study, data gathering and analyses, and public outreach to consider in the initial drafting of potential alternatives for the water quality objective or beneficial use. These steps can be informal or formal, and may include written correspondence with the public, staff workshops, coordination of scientific studies or data analyses, and engagement with watershed, technical, expert, or public advisory groups. Depending on the complexity of the subject, available scientific information, and level of public engagement, this stage can take anywhere from months to several years.

## **III. Porter-Cologne Act Requirements for Adopting Water Quality Objectives and Beneficial Uses**

In adopting or revising water quality objectives to protect beneficial uses, the Water Boards are guided by the legislative mandate that "the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state." (Wat. Code, § 13000.) Nevertheless, the Porter-Cologne Act recognizes that "it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." (Wat. Code, § 13241.)

In formulating appropriate water quality objectives, the Water Boards must consider a list of six factors enumerated in Water Code section 13241: (1) past, present, and probable future beneficial uses of water; (2) environmental characteristics of the hydrographic unit under consideration, including the quality of water available; (3) water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area; (4) economic considerations; (5) the need for developing housing within the region; and (6) the need to develop and use recycled water. (Wat. Code, § 13241.)

With respect to the economic considerations, a formal cost-benefit analysis is not required. At a minimum, however, the Water Boards should evaluate whether the

proposed water quality objective is currently being attained and, if not, what methods are available to achieve compliance with the proposed water quality objective, and the general costs of those methods. If the potential economic impact of adopting the proposed water quality objective appears significant, then the staff report should explain why adoption of the proposed water quality objective is appropriate to assure the reasonable protection of beneficial uses of state waters, despite the potential adverse economic consequences.

When establishing water quality objectives, the Water Boards must also consider whether additional revisions to the water quality control plan are needed to identify new programs to implement the water quality objectives. (Wat. Code, § 13242.) The development and evaluation of the possible implementation actions can add a significant amount of complexity and time to the proceeding.

To protect existing high quality waters, the Water Boards must consider the state antidegradation policy when modifying beneficial uses or relaxing water quality objectives. (State Water Board Res. No. 68-16.) When modifying beneficial uses or water quality objectives that are intended to also serve as water quality standards, the Water Boards must also comply with the federal antidegradation policy. (40 C.F.R. § 131.12.) The Water Boards conduct analyses consistent with the principles contained in state and, as applicable, federal antidegradation policies, which may be based on available water quality data, modeling, and other analyses.

Prior to the adoption of new or revised water quality objectives or beneficial uses, the Water Boards conduct extensive public outreach and engagement, as described further below. In addition, the Water Boards must hold a public hearing. (Wat. Code, §§ 13147, 13170, 13244.) The Water Boards prepare a written response to all significant written comments that were received during the written comment period, and provide oral or written responses to comments received at the public hearing. When adopting a water quality objective or beneficial use that is intended to also serve as a water quality standard under the Clean Water Act, the Water Boards must also comply with the applicable federal public participation requirements in 40 C.F.R. Part 25, which include provisions governing notice periods for public meetings and hearings, the conduct of hearings, and preparation of responsiveness summaries that address the public's views, significant comments, criticisms, and suggestions.

#### **IV. Tribal and Disadvantaged Community Outreach**

The Water Boards have committed to engaging in meaningful outreach, deepening discourse, obtaining input, and collaborating with all Californians. This section discusses applicable state law and State Water Board policies fostering engagement with tribes and disadvantaged communities.

##### **A. Equitable and Culturally Relevant Outreach**

Effective January 1, 2023, Water Code section 189.7 requires the Water Boards to conduct equitable, culturally relevant outreach during the water quality planning, policy,

and permitting processes to identify environmental justice issues related to proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged communities or tribal communities. Also effective in 2023, Water Code section 13149.2 requires the Water Boards to make findings on anticipated water quality impacts in disadvantaged or tribal communities. These requirements apply to the Water Boards' adoption of water quality objectives and beneficial uses.

## **B. State Consultation Policies and Commitment to Racial Equity**

State policy encourages and directs meaningful engagement with tribes when the Water Boards adopt or revise water quality objectives or beneficial uses. Additionally, the Water Boards have acknowledged racial inequity and taken steps to address racial inequity as part of the programs that the Water Boards carry out for the communities they serve.

In 2019, the State Water Board adopted a Tribal Consultation Policy that affirms the Water Boards' continued commitment to strengthening and sustaining government-to-government relationships with both federally and non-federally recognized tribes. The policy identifies consultation best practices and broad principles covering engagement with tribes, timing of consultation, consultation, and consultation dispute resolution.

In 2021, the State Water Board adopted a resolution "Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism." (State Water Board Res. No. 2021-0050.) The resolution reaffirms the Water Boards' commitment to upholding California's human right to water law and "to the protection of health and beneficial uses of waterbodies in all communities, and particularly Black, Indigenous, and people of color communities disproportionately burdened by environmental pollution . . ." (State Water Board Res. No. 2021-0050, p. 7, ¶ 5.) It also directs staff to develop strategies for meaningful engagement with these communities and for improving communication and co-management practices with tribes. Implementation of the Water Boards' regulatory programs, including adopting or revising state plans or policies, proceeds consistent with these state policies and commitments.

## **V. Human Right to Water**

The Water Boards consider the state policy establishing a human right to water when revising, adopting, or establishing policies, regulations, and grant criteria that are pertinent to uses of water. (Wat. Code, §106.3.) The human right to water policy recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Wat. Code, 106.3, subd. (a).) In 2016, the State Water Board adopted Resolution No. 2016-0010, identifying the human right to water as a top priority and core value of the Water Boards. The State Water Board committed to considering how the Water Boards' activities impact and advance the human right to safe, clean, affordable, and accessible water to support basic human needs in all activities that could affect existing or potential sources of drinking water, including through adopting or revising state plans and

polices. (See also, State Water Board Res. No. 2021-0050 [reaffirming commitment to upholding California’s human right to water policy].) Therefore, the Water Boards consider the human right to water when adopting relevant new or revised water quality objectives or beneficial uses.

## **VI. External Scientific Peer Review**

Health and Safety Code section 57004 requires all California Environmental Protection Agency boards, departments, and offices to submit for external scientific peer review the “scientific basis” and “scientific portions” of proposed rules. The purpose of the peer review is to help ensure that the proposed rule is based on sound scientific knowledge, methods, and practices. The “scientific basis” and “scientific portions” are those “foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.” (Health & Saf. Code, § 57004, subd. (a)(2).) The Water Boards must submit the scientific portions of proposed water quality objectives and beneficial uses to scientific experts prior to adoption by the Water Boards. After receiving the peer reviewers’ written report and findings, a Water Board may revise the proposed water quality objective or beneficial use to address the peer reviewers’ findings or explain why it believes that no revisions are necessary.

## **VII. Compliance with the California Environmental Quality Act**

The Water Boards must comply with the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.) when adopting or revising state plans or policies and basin plans, including adopting or revising water quality objectives and beneficial uses. CEQA applies to discretionary projects that have the potential to result in direct physical changes, or reasonably foreseeable indirect physical changes, in the environment. It is intended to inform governmental decisionmakers and the public about the potential significant environmental effects of proposed activities and to prevent or reduce significant, avoidable environmental damage. CEQA’s requirements include public participation and the evaluation of a project’s significant environmental effects.

The Water Boards’ water quality control planning program, including the adoption of new or revised state plans or policies and basin plans, is a certified regulatory program under CEQA. (Pub. Resources Code, § 21080.5; Cal. Code Regs., tit. 14, § 15251, subd. (g).) Certified regulatory programs are exempt from CEQA’s requirements for preparing an environmental impact report (EIR), a negative declaration, or an initial study if certain conditions are met. The Water Board’s certified regulatory program, however, remains “subject to the broad policy goals and substantive standards of CEQA.” (*City of Arcadia v. State Water Res. Control Bd.* (2006) 135 Cal.App.4th 1392, 1422 [internal citation omitted].) In addition, CEQA imposes special requirements on the Water Boards when adopting rules or regulations that require the installation of pollution control equipment, or a performance standard or treatment requirement, or similar

measures. (Pub. Resources Code, § 21159, subd. (a).) The Water Boards must then prepare an environmental analysis of the reasonably foreseeable methods of compliance that takes into account a range of factors, including economics.

The State Water Board has adopted CEQA regulations applicable to the Water Boards' certified regulatory programs that require preparation of a Substitute Environment Document (SED) in lieu of an EIR. (Cal. Code Regs., tit. 23, §§ 3720–3781.) The State Water Board's regulations provide the exclusive procedural requirements for the Water Boards' certified regulatory programs, including the contents of the SED and the procedures for receiving and responding to comments. (Cal. Code Regs., tit. 23, § 3720, subd. (c)(2); see also §§ 3775-1781 [requirements for exempt regulatory programs].) The SED may cite the State CEQA Guidelines where appropriate and relevant to help guide or inform the CEQA analysis consistent with CEQA's goals and standards. The SED may be comprised of a single document or a compilation of documents.

### **A. Early Public Engagement**

The Water Boards consult early in the CEQA process with the public, public agencies, and California Native American tribes. (Cal. Code Regs., tit. 23, § 3775.5, subd. (a); Pub. Resources Code, § 21080.3.1.) Early public involvement through scoping assists Water Board staff in obtaining input “on the range of project actions, alternatives, reasonably foreseeable methods of compliance, significant impacts to be analyzed, cumulative impacts if any, and mitigation measures that will reduce impacts to a less than significant level; and to eliminate from detailed study issues found not to be important.” (Cal. Code Regs., tit. 23, § 3775.5, subd. (b).) It may also help to resolve concerns of affected persons, tribes, and agencies.

### **B. Contents of the Substitute Environmental Documentation (SED)**

The Water Boards must prepare an SED for any state plan or policy proposed for adoption. (Cal. Code Regs., tit. 23, § 3777, subd. (a).) The SED is a written report or a compilation of documents that analyzes the environmental impacts of the Water Boards' action. The Water Boards first prepare a draft SED that includes the following: a brief description of the proposed project; the identification of any significant or potentially significant adverse environmental impacts of the proposed project; an analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts; and an environmental analysis of the reasonably foreseeable methods of compliance. (Cal. Code Reg., tit. 23, § 3777, subd. (b)(1)-(4).)

The environmental analysis shall include, at a minimum, all of the following: an identification of the reasonably foreseeable methods of compliance with the project; an analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance; an analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse

environmental impacts; and analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance. (Cal. Code Regs., tit. 23, § 3777, subd. (b)(4)(A)-(D).)

If the SED identifies significant or potentially significant adverse environmental impacts, reasonably foreseeable significant adverse environmental impacts associated with the methods of compliance, or if the Water Board determines that there is no fair argument that the project or reasonably foreseeable methods of compliance with the project could result in reasonably foreseeable significant adverse environmental impacts, the SED must include specific findings required by CEQA. (Cal. Code Regs., tit. 23, § 3777, subd. (d)-(f).)

### **C. Agency Consultation and Public Comment**

Upon completion of a draft SED, the Water Boards must consult with other public agencies that have jurisdiction with respect to the proposed project or that exercise authority over resources that may be affected by the project. The Water Boards may also consult with persons having special expertise with regard to any potential environmental effects. (Cal. Code Regs., tit. 23, § 3778.)

The Water Boards also solicit public input through oral and written comments. The Water Boards post a Notice of Filing to inform the public of the opportunity to submit written comments and to provide oral comments at a public hearing. (Cal. Code Regs., tit. 23, § 3779.) With certain exceptions, the written comment period must be at least 45 days, but the Water Boards often provide longer comment periods for complex and controversial projects. (Cal. Code Regs., tit. 23, § 3779, subd. (b).)

The Water Boards must prepare written responses to the significant environmental issues raised by the written and oral comments before adopting the state plan or policy. (Cal. Code Regs., tit. 23, § 3779, subd. (d).) The responses must be available for public review prior to a Water Board's approval of the SED and must be provided to commenting agencies at least 10 days prior to the board's approval. The number and complexity of the comments that the Water Boards may receive is unpredictable and can be highly variable.

### **D. Adoption of the Final SED and Project**

Prior to adopting or approving the new or revised water quality objectives or beneficial uses, the Water Boards must consider the materials developed through the CEQA process and approve the SED. On adoption of the resolution adopting the project, the SED becomes final. (Cal. Code Regs., tit. 23, § 3779.5, subd. (a).) The State Water Board's CEQA regulations identify the contents of the final SED and the findings that the boards must adopt in compliance with CEQA. (Cal. Code Regs., tit. 23, § 3779.5, subds. (b)-(c).) The Water Boards cannot adopt or approve a project, such as adopting or revising water quality objectives and beneficial uses, which would "cause significant adverse impacts if there are feasible alternatives or feasible mitigation measures



available that would substantially lessen any significant adverse impact that the project may have on the environment.” (Cal. Code Regs., tit. 23, § 3780.)

### **VIII. The California Administrative Procedure Act**

The Water Boards must obtain the Office of Administrative Law’s (OAL) approval of the regulatory provisions of state plans and policies and basin plans before they take effect. (Gov. Code, § 11353, subd. (b)(1), (5).) Chapter 3.5 of the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) establishes rulemaking procedures and standards for state agencies in California. OAL, the office responsible for reviewing and approving regulations proposed by state agencies, has adopted regulations for state rulemakings. (See Cal. Code Regs., tit. 1, §§ 1-280.)

The Water Boards’ adoption of regulatory provisions, including water quality objectives and beneficial uses in state plans or policies and basin plans is not subject to regular rulemaking requirements, but instead is subject to a review and approval process unique to the boards’ water quality program. (Gov. Code, § 11353, subd. (a)-(b).) OAL evaluates the Water Boards’ rulemaking submittal for with compliance with six standards set forth in the APA: necessity, authority, clarity, consistency, reference, and nonduplication. (Gov. Code, § 11353, subd. (b)(4).) It also reviews the responses to public comments prepared by the Water Boards to determine compliance with the public participation requirements of the Clean Water Act when the boards adopt beneficial uses or water quality objectives that are also intended to serve as water quality standards. OAL must approve or disapprove the regulatory provisions of a state plan or policy or basin plan within 30 working days of submittal, otherwise it will be deemed approved. (Gov. Code, § 11349.3, subd. (a).)

### **IX. Submission to U.S. EPA for Review and Approval**

After the Water Boards receive approval from OAL, the Water Boards submit any water quality objectives and beneficial uses that are intended to also serve as water quality standards to U.S. EPA, Region 9. Water quality standards, as defined in the Clean Water Act, must be approved by U.S. EPA before they take effect as the applicable water quality standards under federal law.

*(This Fact Sheet was last updated on January 14, 2025.)*