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## State Water Resources Control Board

### NOTICE OF OPPORTUNITY TO COMMENT AND NOTICE OF PUBLIC HEARING AND CONSIDERATION OF ADOPTION

#### CONFIRMATION THAT THE “STATE WETLAND DEFINITION AND PROCEDURES FOR DISCHARGES OF DREDGED OR FILL MATERIAL TO WATERS OF THE STATE” ARE IN EFFECT AS STATE POLICY FOR WATER QUALITY CONTROL

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) will receive public comments regarding a proposed resolution to confirm that the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) are in effect as state policy for water quality control.

NOTICE IS ADDITIONALLY HEREBY GIVEN that the State Water Board will hold a public hearing to receive comments and consider adoption of the proposed resolution.

#### The public hearing will be held on:

**Tuesday, April 6, 2021 – 9:00 a.m.**

Video and Teleconference Meeting Only

No Physical Meeting Location

(Authorized and in furtherance of Executive Orders N-29-20 and N-33-20)

Video Broadcast: <https://video.calepa.ca.gov/>

Additional information about participating telephonically or via the remote meeting solution will be available at least 10 days before the hearing at the [Remote Hearing page](https://www.waterboards.ca.gov/board_info/remote_meeting/) ([https://www.waterboards.ca.gov/board\\_info/remote\\_meeting/](https://www.waterboards.ca.gov/board_info/remote_meeting/)).

#### BACKGROUND

On April 2, 2019, the State Water Board adopted the “State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State” (Procedures). On January 26, 2021, the Superior Court in *San Joaquin Tributaries Authority v. California State Water Resources Control Board* issued a judgment and writ “enjoining the State Water Board from applying, via the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays [and Estuaries], the ‘State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State’ adopted by the State Water Board on April 2, 2019, to waters other than those for which water quality standards are required by the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.)” The Superior Court’s decision upheld the adoption of the Procedures as

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part of the (1) California Ocean Plan and (2) Inland Surface Waters and Enclosed Bays and Estuaries Water Quality Control Plan (ISWEBE Plan) for “waters of the United States” as defined by the Clean Water Act. The Superior Court rejected the other challenges to the Procedures that were raised by the petitioner. In response to the Superior Court’s decision, State Water Board staff has ceased efforts to prepare an item for public notice and comment and Board consideration to incorporate the Procedures into the ISWEBE Plan for non-federal waters.

The Superior Court decision addresses only the scope of the State Water Board's authority to adopt water quality control plans under Water Code section 13170. It does not restrict the State Water Board’s authority to regulate the discharge of dredged or fill material to all waters of the state pursuant to the Board’s other regulatory tools, including its authority to adopt state policy for water quality control under Water Code section 13140. Accordingly, the Superior Court’s decision did not impair the Water Boards’ authority to regulate discharges of dredged or fill material to all waters of the state, including waters of the state that are not also waters of the United States, except to the extent that such regulation is via a water quality control plan.

In Resolution No. 2019-0015, which adopted the Procedures, the State Water Board referred to its authority to adopt state policies for water quality control pursuant to Water Code section 13140, in addition to its authority to adopt water quality control plans pursuant to Water Code section 13170. Therefore, State Water Board staff is preparing an item for public notice and comment for Board consideration at the April 6, 2021 meeting to confirm that its April 2, 2019 action relied, in part, on Water Code section 13140 and that the Procedures are therefore effective for all waters of the state as a state policy for water quality control. The State Water Board will also consider giving direction to staff as to how to appropriately incorporate the Procedures into the ISWEBE Plan to regulate waters of the United States. Because the substantive provisions of the Procedures were subject to two written comment periods and numerous opportunities for public participation, the State Water Board will not be reconsidering the substantive provisions of the Procedures. The State Water Board’s action will confirm whether the Procedures should continue to be applied to non-federal waters as a state policy for water quality control. Because the State Water Board referred to Water Code section 13140 when it adopted the Procedures, staff will continue to apply the Procedures as a state policy applicable to all waters of the state, but not via the ISWEBE Plan, pending State Water Board direction on April 6, 2021.

## **DOCUMENT AVAILABILITY**

The proposed resolution under consideration and related documents are available on the [State Water Board's Dredge or Fill Procedures Program page](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html) ([https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/wrapp.html](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html)). The hearing agenda will be available at least 10 days before the hearing at the [State Water Board Calendar page](https://www.waterboards.ca.gov/board_info/calendar/) ([https://www.waterboards.ca.gov/board\\_info/calendar/](https://www.waterboards.ca.gov/board_info/calendar/)).

## SUBMISSION OF COMMENTS

The State Water Board will accept both written and oral comments on only the proposed resolution and whether the Procedures are in effect as state policy for water quality control. Written comments or evidence that are unrelated to the proposed resolution, including comments regarding the substantive provisions of the Procedures, will not be accepted.

Written comments must be received no later than **12:00 p.m. (noon) on Monday, March 8, 2021**. The State Water Board will not accept any additional written comments after the written comment deadline.

Comments may be submitted electronically (e-mail), by facsimile, U.S. Mail, or courier as described below. Oral comments will be accepted at the April 6, 2021 hearing. For e-mailed comments, address the message to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). Please indicate in the subject line: "**Comment Letter – Dredge or Fill Procedures.**" Electronic submittals shall be in pdf text format (less than 15 megabytes in total size). If the file is greater than 15 megabytes in total size submit the comments by fax at (916) 341-5620; address the fax to "Clerk to the Board." U.S. Mail must be received (not postmarked) at the State Water Board offices by the close of the comment period.

Written public comments must be addressed to:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000 (mail)  
1001 I Street, 24th Floor, Sacramento, CA 95814 (hand delivery)

Note: Due to COVID-19, all persons hand delivering submittals must first schedule an appointment with staff by contacting [Elizabeth.Payne@waterboards.ca.gov](mailto:Elizabeth.Payne@waterboards.ca.gov). All hand delivered submittals must arrive and be date and time stamped prior to 12:00 p.m. (noon) on Monday, March 8, 2021.

## PROCEDURAL MATTERS

At the April 6, 2021 public hearing, there will be no sworn testimony or cross-examination of participants. However, the State Water Board and its staff may ask clarifying questions. At the hearing, participants will be given an opportunity to summarize and supplement their written materials with oral presentations. To ensure a productive and efficient hearing in which all participants have an opportunity to participate, oral presentations may be time limited. For other presentation recommendations, refer to the [State Water Board's Presentation Tips page](https://www.waterboards.ca.gov/board_info/meetings/board_presentations.html) ([https://www.waterboards.ca.gov/board\\_info/meetings/board\\_presentations.html](https://www.waterboards.ca.gov/board_info/meetings/board_presentations.html)).

## FUTURE NOTICES

The State Water Board public hearing will be at the time and place noted above. Any change in the date, time or place of the public hearing will be noticed on the Lyris email list as well as posted to the State Water Board Meeting webpage. Any person desiring to receive future notices regarding this issue must sign up for the Lyris email list. To sign up for the Lyris distribution email list, access the email List Subscription Form at the web address listed below, click the "Water Quality" tab, select the box for "Wetland and Riparian Area Protection Policy," provide the required information, and click "subscribe." The subscription form is located on the [State Water Board email subscription page](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html) ([https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)).


## ACCESSIBILITY

Telecommunications Device for the Deaf (TDD) users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922. A broadcast of the hearing will be available via internet and can be accessed at <https://video.calepa.ca.gov>.

## CONTACT INFORMATION

Questions regarding this notice may be directed to Beth Payne at [Elizabeth.Payne@waterboards.ca.gov](mailto:Elizabeth.Payne@waterboards.ca.gov).

February 3, 2021  
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Date

  
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Jeanine Townsend  
Clerk to the Board