



## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: February 1, 2021

RE: Update on Water Policy/Resources Activities

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### BACKGROUND

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations (“ROC on LTO”), (2) State Water Resources Control Board Action, including the Bay-Delta Water Quality Control Plan update, (3) San Joaquin River Restoration Program, (4) Delta Conveyance, (5) Delta Stewardship Council, and (6) Water Blueprint for the San Joaquin Valley.

### POLICY ITEMS

#### [Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project](#)

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions

were reached for several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, with a fact sheet<sup>1</sup> attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review. It’s unclear what this agency review will analyze, but staff will be engaged.

#### Reclamation Directives and Standards

Documents out for Comment

There are currently no draft documents out for review.

#### State Water Resources Control Board (State Water Board) Activity

Documents out for Comment

*State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State”*

#### 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 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”

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

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.

#### [Submission of Comments](#)

The State Water Board will accept both written and oral comments on only the proposed resolution (attached, "Exhibit A") 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.

### *Recommendations for an Effective Water Rights Response to Climate Change*

On February 4, 2021, the Division of Water Rights (Division) released a report on climate change. The report outlines staff recommendations to make water availability analysis more robust, and actions to support an effective water rights response to climate change within the existing water rights framework in California. The report and related material are available on the Division's climate change webpage<sup>2</sup>

State Board staff is identifying data needs and recommendations to incorporate climate change into water rights permitting policies, procedures, and methodologies. The report makes several recommendations, some of which may introduce uncertainty into the water permitting process. Staff is working with other water users to draft and submit a comment letter and will coordinate with member agencies on the effort.

### *Submission of Comments*

The Division invites the public and other stakeholders to provide input on the report by March 10, 2021. Please email questions and comments to Jelena Hartman at [jelena.hartman@waterboards.ca.gov](mailto:jelena.hartman@waterboards.ca.gov).

### *Bay Delta Water Quality Control Plan Update*

The State Water Board is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay Delta Plan”) in two phases (Plan amendments). The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity (“Phase I” or “San Joaquin River Flows and Southern Delta Salinity Plan Amendment”). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows (“Phase II” or “Sacramento/Delta Plan Amendment”).

During the December 12, 2018 Water Board Meeting, the Department of Water Resources (“DWR”) and Department of Fish and Wildlife presented proposed “Voluntary Settlement Agreements” (“VSAs”) on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.<sup>3</sup> The State Water Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

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<sup>2</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/climate\\_change/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/climate_change/)

<sup>3</sup> Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.

**Phase 1 Status:** The State Water Board adopted a resolution<sup>4</sup> to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

**Phase 2 Status:** In the State Water Board’s resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019. As the State Water Board further refines this update, there will be opportunity for public comment.

The effort has made significant progress since an initial framework was presented to the State Water Board on December 12, 2018.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents<sup>5</sup> to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, significant work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach “adequacy”, as defined by the State team.

Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board’s update to the Bay-Delta Water Quality Control Plan.

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<sup>4</sup>Available at

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2018/rs2018\\_0059.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf).

<sup>5</sup> Available at [http://resources.ca.gov/docs/voluntary-agreements/2019/Complete\\_March\\_1\\_VA\\_Submission\\_to\\_SWRCB.pdf](http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf)

### California Water Commission Activity

The California Water Commission is accepting screening information for water storage projects that provide [Proposition 1, Chapter 8](#) public benefits in the [Water Storage Investment Program](#). This process does not involve any immediate funding. If the Commission finds a project is feasible, the project would be included in a pool of projects for the Commission's consideration if funding becomes available. The Commission would also need to decide to proceed with a rulemaking process and another solicitation in the future before a full project application could be submitted and reviewed.

Any project submitted through the screening process needs a finding of feasibility by the Commission no later than the December 2021 regularly scheduled Commission meeting. It is recommended and encouraged that project proponents submit screening proposals to Commission staff no later than October 22, 2021.

Information needed for the screening process includes, at a minimum, the statutory requirements found in Water Code 79757:

- Completed feasibility studies and draft environmental documentation made available for public review;
- Information that describes how the project will advance the long-term objectives of restoring ecological health and improve water management for beneficial uses of the Delta; and
- Commitments for at least 75% of the nonpublic benefit cost share of the project.

Additional information about the project and how it aligns with the Program's regulations may be submitted. If a project proponent wishes to understand the feasibility components of the Program, the [Regulations](#) and the [Technical Reference](#) are instructive.

If the Commission moves forward with additional regulations and a second solicitation, only projects successful in the screening process would be eligible to apply.

### Delta Conveyance

The purpose of the Delta conveyance project is to make the State Water Project more reliable by enabling it to operate in a more fish-friendly way with the added point of diversion, but also over the long-term, to protect the State Water Project against earthquakes, sea level rise, and the extreme storm events that are anticipated with climate change.

### Scoping Summary Report Addendum Published

DWR recently published an addendum to the Scoping Summary Report for the Delta Conveyance Project, originally published in July 2020. It provides a summary of comments received after the official close of the California Environmental Quality Act (CEQA) scoping period on April 17, 2020 through December 14, 2020. Consistent with the contents of the original Scoping Summary Report, the Addendum includes the comments DWR continued to receive after scoping that

pertain to the alternatives considered and the scope of analysis in the Environmental Impact Report (EIR). The Scoping Summary Report Addendum can be accessed on the Delta Conveyance Environmental Planning page on DWR's website.

#### [DWR Approves Modifications to Soil Investigations Project](#)

Consistent with the need to evaluate the alternatives in the Delta Conveyance Project EIR, DWR has approved modifications to the soil investigations that were originally approved in July of 2020. Before considering the approval of the modifications, DWR prepared an addendum to the Final Initial Study/Mitigated Negative Declaration (IS/MND) for the soil investigations in the Sacramento-San Joaquin Delta (Delta). DWR considered both the Final IS/MND that was adopted in July 2020 and the Addendum prior to approving the project modifications. The approved modified soil investigation activities, as evaluated in the Addendum, include the removal and replacement of geotechnical investigation sites not previously evaluated in the Final IS/MND. DWR has determined and documented that these changes will not result in any new potentially significant impacts and no subsequent EIR or negative declaration is required. To access a copy of the Addendum and associated Notice of Determination, visit the Delta Conveyance Environmental Planning page on DWR's website.

# EXHIBIT A

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2021-

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

### WHEREAS:

1. On April 2, 2019, the State Water Resources Control Board (State Water Board) adopted [Resolution No. 2019-0015](#) adopting the “State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State” and approving and adopting the accompanying Substitute Environmental Document, which was prepared in accordance with the regulatory provisions applicable to the State Water Board’s California Environmental Quality Act certified regulatory programs, California Code of Regulations, title 23, sections 3775 through 3781.
2. On May 1, 2019, the San Joaquin Tributaries Authority (SJTA) filed a petition for writ of mandate in Sacramento superior court. On May 20, 2019, SJTA filed an amended petition. One of SJTA’s claims was that “[t]o the extent the Procedures regulate waters of the state not covered by the Clean Water Act (i.e., waters of the state that are not waters of the United States) through a statewide water quality control plan, the Board has exceeded its authority under Water Code section 13170 because these waters are not waters for which water quality standards are required under the Clean Water Act.” (Amended Pet., ¶ 56.)
3. 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’ [(“Procedures”)] 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 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.

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4. 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 the ISWEBE Plan. The court found inclusion in the California Ocean Plan separately authorized under Water Code section 13170.2.
5. 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. The purpose of this Resolution is for the State Water Board to provide clarification regarding Resolution No. 2019-0015 by confirming 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 state policy for water quality control. In the alternative, this Resolution is for the State Water Board to adopt the Procedures as state policy for water quality control.

## **The State Water Board's Authority to Adopt State Policies for Water Quality Control under Water Code section 13140**

6. The State Water Board is authorized to adopt state policy for water quality control. (Water Code § 13140.) The components of state policy for water quality control include all or any of the following: (1) water quality principles and guidelines for long-range resource planning, including ground water and surface water management programs and control and use of recycled water, (2) water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities, and (3) other principles and guidelines deemed essential by the State Water Board for water quality control. (Wat. Code, § 13142.)
7. State policy for water quality control may supersede conflicting provisions in regional water quality control plans where the State Water Board determines it is appropriate. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1460.)
8. The permissible contents of water quality control plans pursuant to Water Code section 13170 overlap with the permissible contents of policies for water quality control pursuant to Water Code section 13140. In some cases, the State Water Board acts under the authority of both Water Code sections 13170 and 13140.

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9. Pursuant to Water Code, section 13146, “State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.” This section applies to the Regional Water Boards. (*Cf. State Water Resources Control Bd. Cases* (2006) 136 Cal. App. 4th 674, 730 [interpreting analogous language in Water Code section 13247 as applying to the State Water Board].)

## **The State Water Board’s April 2, 2019 Adoption of the Procedures**

10. In 2008, the State Water Board resolved that, “The State Water Board will take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy to protect wetlands and riparian areas (Policy) that is watershed-based.” ([Resolution No. 2008-0026](#))
11. An informal, preliminary draft entitled “Water Quality Control Policy for Wetland Area Protection and Dredge and Fill Permitting” was released in March 2012.
12. The Procedures were first released for public comment and a Board hearing in 2016. The notice described “Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Formerly Known as the Wetlands Policy).”
13. The staff report stated, “the decision was made to convert the policy into a plan amendment to both the existing Water Quality Control Plan for Ocean Waters and forthcoming Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries of California. . . . In addition, by adopting the Procedures as amendments to water quality control plans, they will automatically supersede any conflicting provisions in the Regional Water Quality Control Boards’ (Regional Water Boards) water quality control plans and will apply to the State and Regional Water Boards (collectively, Water Boards).” (Staff Report, p.1.) [citations omitted]
14. The State Water Board did not receive any comments specifically regarding the scope of the Water Board’s authority under Water Code section 13170 or 13140 or whether the Procedures would continue to be a freestanding policy.
15. The Procedures were released for a second public comment period and Board hearing in 2017. The 2017 draft of the Procedures also stated that the Procedures would be included in the Ocean Plan and the ISWEBE. Again, the State Water Board did not receive any comments specifically regarding the scope of the Water Board’s authority under Water Code section 13170 or 13140 or whether the Procedures would continue to be a freestanding policy.

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16. In developing, considering, and adopting the Procedures, the State Water Board complied with the applicable procedural requirements applicable to actions taken under both Water Code sections 13140 and 13170 and provided additional public participation opportunities to afford the public with a reasonable opportunity to participate in the consideration of the Procedures. The State Water Board held hearings on July 19, 2016 and September 6, 2017 after appropriate notice. (Wat. Code, § 13147.)
17. During the formulation of the Procedures, the State Water Board consulted with concerned federal, state, and local agencies. (Wat. Code, § 13144.)
18. The State Water Board notified all the affected Regional Water Boards and afforded them an opportunity to submit recommendations. (Wat. Code, § 13147.)
19. The State Water Board intended for the Procedures to apply to all waters of the state, including waters of the state that are not also waters of the United States. For example, the introduction states an intent to bring uniformity to Water Boards' regulation of discharges of dredged or fill material to all waters of the state. (Procedures, page 1, lines 30-31.) The jurisdictional framework also refers to the broad scope of waters of the state as including all waters of the United States. (*Id.* at page 2, line 40.) The application procedures also apply to "all applications of discharges of dredged or fill material to waters of the state." (*Id.* at page 4, lines 105-107.) The desire to apply the same regulatory process to federal and non-federal waters is well-documented in the accompanying staff report.
20. The staff report analyzed the potential environmental impacts of applying the Procedures to all waters of the state.
21. In the response to comments submitted on the July 21, 2017 draft, the State Water Board stated "The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California." (Response to 2017 comments, pp. 24, 54, 361.)
22. On April 2, 2019, the State Water Board adopted Resolution 2019-0015 adopting the "State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" and approving and adopting the accompanying Substitute Environmental Document, which was prepared in accordance with the Provisions applicable to the State Water Board's certified exempt regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779. Resolution 2019-0015 stated that "The State Water Board is authorized to adopt a state policy for water quality control. (Water Code § 13140.)"

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23. Although a specific citation was inadvertently omitted from Resolution 2019-0015, the State Water Board was authorized by Water Code section 13170.2 to incorporate the Procedures into the water quality control plan for Ocean Waters.
24. Footnote 1 of the Procedures states that “These Procedures will be incorporated into the Water Quality Control Plans for (1) Inland Surface Waters Enclosed Bays and Estuaries and (2) Ocean Waters of California. Because the Procedures will already have been adopted, future incorporation of the Procedures, as adopted, into the water quality control plans will be considered non-substantive amendments.”
25. The Office of Administrative Law (OAL) approved the Procedures on August 28, 2019. The Procedures went into effect nine months afterward, on May 28, 2020.
26. The State Water Resources Control Board issued a Notice of Decision on August 30, 2019.

## **The Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California**

27. On December 1, 2020, the State Water Board established the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan) as a single planning document to contain all the water quality control plan provisions adopted by the State Water Board relating to inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state, including waters of the United States and all other surface waters of the state. The State Water Board’s resolution stated an intention for the ISWEBE Plan to also be used by the State Water Board in the future on a case-by-case basis to include state policies for water quality control.
28. As a result of the judgment and writ issued on January 26, 2021 described in Finding 3, the 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.

## **Notice of and Comment on Adoption of this Resolution**

29. The adoption of this resolution is not subject to CEQA because there is no effect on the environment. The regulations applicable to the State Water Board’s certified exempt regulatory programs set forth in California Code of Regulations, title 23, Chapter 27 are not applicable because Chapter 27 “does not apply if the board determines that the activity is not subject to CEQA.” (Cal. Code of Regs., tit. 23, § 3720(b).)

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30. Even if this action is subject to CEQA, the State Water Board has already complied with the regulations applicable to its certified exempt regulatory programs. The State Water Board approved the Substitute Environmental Document in Resolution No. 2019-0015. In the Substitute Environmental Document, which was prepared in accordance with the Provisions applicable to the State Water Board's CEQA certified regulatory programs, California Code of Regulations, title 23, sections 3775 through 3781, that accompanied the Procedures, the State Water Board considered the effects to the environment that would result from applying the Procedures to all waters of the state.
31. In developing, considering, and adopting this resolution, the State Water Board complied with the applicable procedural requirements applicable to actions taken under Water Code section 13140.
32. The State Water Board held a written comment period regarding adoption of this resolution from February 5, 2021, through March 8, 2021.
33. The State Water Board noticed an April 6, 2021 hearing regarding adoption of this resolution in accordance with Water Code, section 13147. The State Water Board received oral comments at the April 6, 2021 hearing.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Confirms that because its April 2, 2019 action relied, in part, on Water Code section 13140, the Procedures were also intended to act as state policy for water quality control for all waters of the state. Accordingly, the Procedures should continue to be applied to non-federal waters as state policy for water quality control, but not via the ISWEBE.
2. Finds that, if a court determines that the State Water Board's April 2, 2019 action was not sufficient to adopt state policy for water quality control for all waters of the state, this resolution expressly adopts the Procedures as state policy for water quality control for all waters of the state, and accordingly the Procedures operate as state policy for water quality control for all waters of the state from at least the date of this resolution.
3. Determines that it is appropriate for the Procedures, as state policy for water quality control, to supersede any conflicting provisions in regional water quality control plans because one of the primary objectives of the Procedures was to establish procedures for regulation of discharges of dredged or fill material to all waters of the state, including those outside of federal jurisdiction. Superseding is also necessary to establish a uniform regulatory approach for all waters of the state and to strengthen regulatory effectiveness and improve consistency across all Water Boards. Because Water Code, section 13146 requires State offices, departments, and boards, which

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includes Regional Water Boards, to comply with state policy for water quality control, superseding any conflicting provisions in regional water quality control plans will improve clarity regarding the Procedures' applicability.

4. Determines that any statements regarding inclusion of the Procedures in a water quality control plan in the Procedures, staff report, and response to comments do not preclude the Procedures from also acting as state policy for water quality control.
5. Approves and adopts the following revisions to the documents adopted on April 2, 2019 and authorizes the Executive Director or designee to revise the documents adopted on April 2, 2019 accordingly:
  - a. Revise the cover page of the Procedures to state, "State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" and "[For Inclusion in the Water Quality Control Plan for Ocean Waters of California and the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries for Waters of the United States]."
  - b. Revise footnote 1 of the Procedures to state, "NOTE: These Procedures will be incorporated into the Water Quality Control Plans for (1) Inland Surface Waters Enclosed Bays and Estuaries **for waters for which water quality standards are required by the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto** and (2) Ocean Waters of California. ~~Because the Procedures will already have been adopted, f~~uture incorporation of the Procedures, as adopted, into the water quality control plans will be considered non-substantive amendments. At that time, formatting and other organizational edits necessary for incorporation into the water quality control plans will be addressed.]"
  - c. Revise the brackets on page 1, lines 31-21 of the Procedures to reflect that the effective date of the Procedures was May 28, 2020.
  - d. Revise page 2 of the Staff Report, from "the decision was made to convert the policy into a plan amendment" to state, "the decision was made to also adopt the Procedures as a plan amendment."
  - e. Revise all references in the Procedures and Staff Report to the incorporation of the Procedures into the ISWEBE Plan to limit the incorporation to waters of the United States, and add that "and the Procedures are also adopted as state policy for water quality control."
6. Authorizes the Executive Director or designee to submit this resolution, the Procedures and Staff Report as revised in accordance with paragraph 5, and the administrative record to OAL for review and approval of inclusion in

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California Code of Regulations, tit. 23, Division 3, Chapter 22 and to U.S. EPA for informational purposes.

7. Authorizes the Executive Director or designee to make minor, non-substantive modifications to the language of the Procedures and the supporting documentation if State Water Board staff or OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board of any such changes.
8. Directs staff to propose any appropriate incorporation of the Procedures into the ISWEBE Plan to regulate waters of the United States at a future meeting of the State Water Board.

## **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 April 6, 2021.

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Jeanine Townsend  
Clerk to the Board