

Water Board Standards of Review

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Water Boards must comply with CEQA documentation and environmental analysis requirements when: 1) amending water quality control plans, aka Basin Plans, 2) promulgating or amending water quality control policies, 3) adopting regulations, or 4) adopting waste discharge requirements (WDRs) or waivers of waste discharge requirements. Where the WDRs or waivers are not project-specific, but, instead, general (as they are for most timber operations), CEQA is not applied when reviewing a specific proposed project.

Pursuant to the federal Clean Water Act and the State Porter-Cologne Water Quality Control Act, water quality control plans must set forth the State's water quality standards. The standards comprise three components: 1) designated beneficial uses of water (e.g., municipal, industrial, or agricultural water supply; spawning, aquatic habitat for T&E species), 2) the water quality objectives (narrative & numeric) needed to protect and maintain those beneficial uses of water, and 3) a non/anti-degradation policy. These standards are only enforceable through regulatory mechanisms (e.g., WDRs or waivers). Water quality control plans also set forth prohibitions against certain types of discharges. Prohibitions are directly enforceable, even in the absence of a WDR, waiver, etc.

Pursuant to federal Clean Water Act section 303(d), Water Boards must triennially identify water body segments in which water quality objectives are not being attained due to specific pollutants, and in which beneficial uses of water are therefore deemed to be impaired. USEPA can independently identify and list such water body segments. Once a water body segment has been 303(d)-listed, Water Boards (or USEPA) must determine the source(s) of the pollutant in question, what level or pollutant reduction is needed to again attain water quality objectives, and allocate pollutant reduction targets for the various sources of that pollutant. The results of this process are called total maximum daily loads (TMDLs). Water Boards (not USEPA) must then develop TMDL implementation plans, which are set forth in Basin Plans.

The Water Code mandates that State offices, departments and boards, in carrying out activities which affect water quality (including BOF promulgation of Forest Practice Rules and CalFire administration thereof), shall comply with water quality control plans and water quality control policies approved or adopted by the State Water Board unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying (WC, 13146, 13247).

Given this background, Water Boards standards of review for proposed projects differ from those in CEQA, and are based on achieving compliance with requirements set forth in water quality control plans and policies. They are usually more stringent than the CEQA standard of review. Water Board standards of review are threefold:

1. Pursuant to the required anti-degradation standard, where water quality is currently higher than that needed to fully support beneficial uses, that quality must be maintained unless a Water Board, based on public interest and other required findings, determines that such a reduction is justified. This determination is made pursuant to a water quality control policy, not CEQA, and it is not one that a CEQA lead agency is authorized to make.
2. Where a water body is at its capacity to assimilate a pollutant without causing violation of the applicable water quality objective and/or impairment of a beneficial use, even a Water Board cannot authorize any further increase in that pollutant. A water quality objective is a threshold below which no further decrease in water quality is allowed. This applies legally, even if a lead agency determines that such an increase would not be “significant” under CEQA.
3. Where a water body segment is already impaired, Water Boards are mandated to re-attain water quality objectives and/or restore the impaired beneficial uses of water. TMDL Implementation plans must incorporate a “margin of safety” to ensure that goal is met, and the approach changes from “best available technology/best management practice” to doing “whatever it takes” to achieve restoration. This is a frame of reference quite foreign to CEQA.