



Environmental ADVISORY ■

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California State Water Resources Control Proposes Amendments to Rules Governing Petitions for Review of Actions by Regional Boards

The State Water Resources Control Board (“State Board”) has proposed amendments to the regulations governing review of administrative petitions challenging an action or failure to act by a regional water quality control board (“regional boards”) that will finally provide a measure of certainty to aggrieved parties and establish a definitive timeframe for such parties to either obtain relief or exhaust the administrative review process. The Notice of Proposed Rulemaking announcing proposed amendments to the California Code of Regulations (“C.C.R.”), title 23, division 3, chapter 6, along with the Initial Statement of Reasons and full text of the proposed amendments, are available at http://www.swrcb.ca.gov/laws_regulations/. Written comments to the State Board are due on April 30, 2014, at 5 p.m., and we urge interested persons to express support of the proposed amendments.

Water Code section 13320 provides that within 30 days of a regional board’s action or failure to act, an aggrieved party may petition the State Board to review that action or failure to act. Pursuant to 23 C.C.R. § 2050.5(b), the State Board is required to review and act on a petition within 270 days of mailing a notification that responses to the petition may be filed—or the petition will be deemed dismissed by operation of law. However, neither the Water Code nor State Board regulations prescribe how long the State Board has to decide whether to mail a notification *in the first place*. As a practical matter, this has resulted in a huge backlog of pending petitions of review with the State Board and tremendous uncertainty for aggrieved parties in the position of having to evaluate the pros and cons of seeking administrative review (or, thereafter, judicial review after exhausting its administrative remedy) in the face of potential civil penalties for failure to comply with pending regional board directives or orders. Indeed, many parties have opted to forego filing a petition for review based on the unavailability of timely or certain relief.

The proposed amendments would largely rectify this longstanding dilemma by specifying the State Board must mail the notification *within 90 days of receipt* of a petition for review or it will be deemed dismissed by operation of law. As a result, petitioners that file a petition with the State Board will have the certainty of knowing *within 360 days*—including any briefing and hearing schedule established by the State Board—whether the State Board will dismiss their petition or adopt an order upholding, setting aside, modifying or remanding the regional board’s underlying decision (or failure to act). This, in turn, will allow petitioners to decide whether to seek judicial review under Water Code section 13330, which authorizes filing a writ of mandamus action within 30 days of the State Board’s decision.

Finally, the proposed amendments also propose to resolve its backlog of existing petitions by establishing the following timeframes for mailing its notification: (i) for petitions received before January 1, 2011, within 120 days of the effective

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date of the amendments; and (ii) for petitions received from January 1, 2011, to December 31, 2012, within 240 days of the effective date of the amendments; and (iii) for petitions received from January 1, 2013, to the day before the effective date of the amendments, within one year of the effective date. While we intend to urge the State Board to further expedite these deadlines, they too at least provide a measure of certainty for parties with pending petitions.

In conclusion, it is our view that the State Board has proposed a clear and practical solution to a problem that has long vexed parties subject to controversial regional board orders or directives: whether filing a petition for review provides a timely opportunity for relief. Under these proposed amendments, petitioners will finally have a measure of certainty with respect to the administrative review timeline and opportunity for timely judicial review, thereby enhancing their ability to make strategic decisions. We intend to submit written comments expressing general support for the proposed amendments and urge other interested persons to do the same.

For any further information concerning these matters, please feel free to contact Pete Nyquist or Ward Benshoof, partners in Alston & Bird's Environment, Land Use & Natural Resources Group in Los Angeles, California.

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