

Los Angeles Regional Water Quality Control Board

January 15, 2016

VIA EMAIL ONLY

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PETITION OF NATURAL RESOURCES DEFENSE COUNCIL, HEAL THE BAY, AND LOS ANGELES WATERKEEPER FOR REVIEW OF APPROVAL OF WATERSHED MANAGEMENT PROGRAMS PURSUANT TO THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD ORDER R4-2012-0175: LOS ANGELES WATER BOARD REQUEST FOR STATE WATER BOARD TO TAKE OFFICIAL NOTICE OF OR TO ACCEPT AS SUPPLEMENTAL EVIDENCE EXHIBITS A THROUGH D
SWRCB/OCC FILE A-2386

Dear Mr. Mallory-Jones:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) hereby requests the State Water Resources Control Board (State Water Board) to take official notice of or to accept as supplemental evidence the documents identified in the index below, copies of which are contemporaneously submitted as Exhibits A through D. This request is made pursuant to California Government Code section 11515 and California Code of Regulations, title 23, sections 648.2 and 2050.6. The request is made in connection with the Los Angeles Water Board's response to the above-referenced petition challenging the Los Angeles Water Board's approval of nine watershed management programs (WMPs).

Exhibit	Description
A	Los Angeles Water Board's Meeting Minutes for September 10, 2015
B	Resolution No. R14-005, "Delegation of Authority to the Executive Officer"
C	Chapter 6 (Procedures for Review and Revision of Water Quality Standards) of the United States Environmental Protection Agency's Water Quality Standards Handbook
D	Letter, dated July 7, 2015, from Thomas Howard, Executive Director of the State Water Board, to Ron Milligan, U.S. Bureau of Reclamation, approving, with conditions, the June 25, 2015 Temperature Plan

California Government Code section 11515 states that official notice may be taken "of any facts which may be judicially noticed by the courts of this State." California Evidence Code section 452(c) permits courts to take judicial notice of "[o]fficial acts of the legislative, executive, and

judicial departments of the United States and of any state of the United States. The term 'official acts' has been interpreted to include 'records, reports, and orders of administrative agencies.'"¹

Exhibit A:

Exhibit A is the Los Angeles Water Board's Meeting Minutes for September 10, 2015. Pursuant to Cal. Code Regs., tit. 23, § 647.5, the Los Angeles Water Board is required to keep minutes of its meetings, which shall be the official record of actions taken at any meeting. The meeting minutes for September 10, 2015 were inadvertently omitted from the Administrative Record provided to the State Water Board on December 16, 2015. The meeting minutes are the official record of the Los Angeles Water Board's actions taken on September 10, 2015, at which time the Los Angeles Water Board considered the petition filed on May 28, 2015 by the Natural Resources Defense Council, Heal the Bay, and Los Angeles Waterkeeper (collectively, Petitioners) and ratified its Executive Officer's action to approve, with conditions, nine WMPs. The meeting minutes are an official act of the Los Angeles Water Board, and therefore may be the subject of official notice by the State Water Board.

Exhibit B:

Exhibit B is Los Angeles Water Board Resolution No. R14-005, "Delegation of Authority to the Executive Officer." This resolution was inadvertently omitted from the Administrative Record provided to the State Water Board on December 16, 2015. This document was cited by Los Angeles Water Board staff in its response to the Los Angeles Water Board for its consideration of the petition on September 10, 2015.² This document is relevant to the contentions raised by the Petitioners in their May 28, 2015 petition regarding the Los Angeles Water Board Executive Officer's authority to approve, with conditions, the nine WMPs. Resolution No. R14-005 is an official act of the Los Angeles Water Board, and therefore may be the subject of official notice by the State Water Board.

Exhibit C:

Exhibit C is Chapter 6 (Procedures for Review and Revision of Water Quality Standards) of the United States Environmental Protection Agency's (USEPA) Water Quality Standards Handbook. This document was inadvertently omitted from the Administrative Record provided to the State Water Board on December 16, 2015. This document was cited by Los Angeles Water Board staff in its response to the Los Angeles Water Board for its consideration of the petition on September 10, 2015, indicating that USEPA also utilizes conditional approvals under the Clean Water Act.³ This document is an official act by USEPA, of which the State Water Board may take official notice.

¹ *Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 912 n.8 (quoting *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518).

² See Section 32, RB-AR18214.

³ See Section 32, RB-AR18217.

Exhibit D:

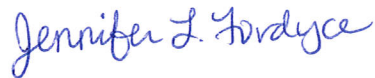
Exhibit D is a letter, dated July 7, 2015, from Thomas Howard, Executive Director of the State Water Board, to Ron Milligan, U.S. Bureau of Reclamation, approving, with conditions, the June 25, 2015 Temperature Plan. This document is relevant to the contentions raised by the Petitioners in their May 28, 2015 petition regarding the Los Angeles Water Board Executive Officer's authority to approve, with conditions, the nine WMPs. This document is an example that the State Water Board has also recently provided conditional approval of a plan. This document is an official act by the State Water Board, of which the State Water Board may take official notice.

Request to the State Water Board:

The Los Angeles Water Board respectfully requests that the State Water Board approve this request to take official notice of or to accept as supplemental evidence Exhibits A through D. True and correct copies of Exhibits A through D are attached to this request.

If you have any questions, please contact me at Jennifer.Fordyce@waterboards.ca.gov.

Sincerely,



Jennifer L. Fordyce
Attorney III

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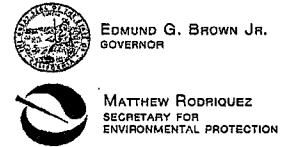
(Continued)

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EXHIBIT A



Los Angeles Regional Water Quality Control Board

**Los Angeles Water Board Meeting Minutes
September 10, 2015**

The Metropolitan Water District of Southern California
(Board Room)
700 North Alameda Street
Los Angeles, California

The meeting was called to Order by Chair Charles Stringer at 9:09 a.m.

1. Roll Call.

Board Members Present: Fran Diamond, Maria Camacho, Madelyn Glickfeld, Maria Mehranian, Irma Muñoz, Charles Stringer, and Lawrence Yee

Board Members Absent: None.

Staff Present: Samuel Unger, Deborah Smith, Paula Rasmussen, Jennifer Fordyce, David Coupe, Ronji Moffett, Gerardo Rabelo, Susana Lagudis, Ivar Ridgeway, Chris Lopez, Dr. C.P. Lai, Dr. Rebecca Chou, Renee Purdy, Theresa Rodgers, Dr. Yue Rong, Dr. Arthur Heath, Cassandra Owens, Rosario Aston, Elizabeth Erickson, Hugh Marley, Cris Morris, Steven Webb, Michael Lyons, David Hung, Thomas Siebels, Ching To

Individuals whose Names Appear on the Sign-In Sheet and/or Speaker Cards

Ms. Tracy Egoscue, Egoscue Law Group	Ms. Uzi Daniel, West Basin MWD
Ms. Angela George, L.A. County Flood Control	Ms. Lisa Kay, Alta
Ms. Katherine Rubin, L.A. Department of Water & Power	Mr. Chris Sanders, Ellison, Schneider & Harris/AES Alamitos
Ms. Rita Kampalath, Heal the Bay	Ms. Jacqueline McMillan, Alta
Mr. Richard Watson, Richard Watson Associates	Ms. Linda Lee Miller, Los Angeles County Department of Public Works
Ms. Elaine Jeng, City of El Monte	Mr. James Alamillo, Heal the Bay
Mr. Richard Nagel, West Basin Municipal Water District	Mr. Anthony Arevalo, Los Cerritos Channel Watershed Group
Mr. Ryan Thiha, City of Los Angeles	Mr. Frank Wu, L.A. County Public Works
Ms. Becky Hyat, National Resources Defense Council (NRDC)	Mr. Daniel Cooper, Los Angeles Waterkeeper
Mr. Steve Carter, Consultant	Ms. Joyce Dillard, Representing self

2. Order of Agenda.

Executive Officer (EO) requested item 18 to be heard before item 16.

3. Approval of draft meeting Minutes for the July 9, 2015 Board meeting.

MOTION: Board member Fran Diamond to approve the July 9, 2015 draft Board meeting minutes.

Seconded by: Board vice Chair Irma Muñoz
Motion Carried: Approved by roll call vote

Maria Camacho – Abstained (due to absence at July 9 meeting.)
Francine Diamond – Yea
Madelyn Glickfeld – Absent at time of vote
Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Abstained (due to absence at July 9 meeting.)
Lawrence Yee – Yea

4. Board Member Communications.

Board member Fran Diamond reported on her and Board member Maria Camacho's meeting of the Los Angeles County MS4 Permit subcommittee.

Uncontested Items Calendar.

EO stated the Uncontested Calendar as: Items 5, 6, 7, 8, 9, and 10.

MOTION: Board member Lawrence Yee moved to approve the Uncontested items calendar as items 5, 6, 7, 8, 9, and 10.

Seconded by: Board vice Chair Irma Muñoz.
Motion Carried: Approved unanimously by roll call vote

Maria Camacho – Yea
Francine Diamond – Yea
Madelyn Glickfeld – Absent at time of vote
Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Yea
Lawrence Yee – Yea

11. Executive Officer's Report. *(Presented by Executive Officer, Samuel Unger)*

Report and Addendum Report was given to the Board. The Report was posted on the Board's website:

<http://www.waterboards.ca.gov/losangeles>

**Board member Madelyn Glickfeld arrived at the meeting at 9:19 am.*

During this meeting, a Sustained Superior Accomplishment award was presented to staff member Angelica Castenada by Dr. Arthur Heath, Chief of the Remediation section.

12. Update from State Board was presented by Ms. Fran Spivy-Weber, State Board member and liaison.
13. Public Forum.

There were no speakers during the Public Forum for this meeting.

(Items 14 and 15 were heard as a joint presentation, but voted on separately)

14. Consideration of tentative Resolution approving the City of Los Angeles Hyperion Treatment Plant's temporary 6-week bypass of disinfected secondary treated wastewater to the 1-mile outfall from the 5-mile outfall with conditions; NPDES No. CA0109991.
15. Consideration of tentative Resolution approving West Basin Municipal Water District's (MWD) temporary 6-week bypass of brine to the Hyperion Treatment Plant 1-mile outfall from the Edward C. Little Water Recycling Plant with conditions; NPDES No. CA0063401.

Staff report was made by Ms. Cris Morris, Municipal Permitting Unit Chief.

Speakers:

- Mr. Moss Dojiri, City of Los Angeles representing Hyperion (in support)
- Mr. James Alamillo, Heal the Bay (in support)
- Mr. Richard Nagel, West Basin Municipal; Water District (in support)

MOTION: Board member Fran Diamond moved to approve item 14 tentative Resolution approving City of Los Angeles Hyperion 6-week bypass with changes as proposed in discussion.

Seconded by: Board member Maria Mehranian
Motion Carried: Approved unanimously by roll call vote

Maria Camacho – Yea
Francine Diamond – Yea
Madelyn Glickfeld – Yea
Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Yea
Lawrence Yee – Yea

MOTION: Board member Lawrence Yee moved to approve item 15 tentative Resolution approving West Basin MWD 6-week bypass of brine to Hyperion Treatment Plant.

Seconded by: Board member Irma Muñoz
Motion Carried: Approved unanimously by roll call vote

Maria Camacho – Yea
Francine Diamond – Yea

Madelyn Glickfeld – Yea
Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Yea
Lawrence Yee – Yea

17. Consideration of tentative Waste Discharge Requirements for NRG California South LP, Ormond Beach Generating Station, Oxnard.

Executive Officer, Samuel Unger stated that there were no speaker requests for this matter, and that the discharger was not opposed to the conditions of the permit and asked the Board to adopt this item on consent.

MOTION: Board member Lawrence Yee moved to approve item 17, tentative Waste Discharge Requirements for NRG California South LP, Ormond Beach.

Seconded by: Board member Maria Mehranian
Motion Carried: Approved unanimously by roll call vote

Maria Camacho – Yea
Francine Diamond – Yea
Madelyn Glickfeld – Yea
Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Yea
Lawrence Yee – Yea

18. Consideration of tentative Waste Discharge Requirements and Time Schedule Order for AES Alamitos, LLC.

Introductory remarks were made by Mr. David Hung, Watershed Regulatory Section Chief. Staff presentation was made by Ms. Cassandra Owens, Industrial Permitting unit Chief.

Speakers:

- Mr. Chris Sanders, AES Alamitos, LLC (opposed)
- Ms. Rita Kampalath, Heal the Bay (opposed)

(The Board adjourned to Closed Session at 12:50 pm. Counsel announced that the Board would discuss items 19.4 and 19.15(c). The Board reconvened at 1:49 pm and resumed item 18.)

MOTION: Board member Fran Diamond moved to approve items 18.1 (tentative WDRs) and 18.2 (Times Schedule Order), with a change sheet for items 18.1 and 18.2, and changes as proposed during discussion for item 18.2 only.

Seconded by: Board member Lawrence Yee
Motion Carried: Approved unanimously by roll call vote

Maria Camacho – Absent at time of vote
Francine Diamond – Yea
Madelyn Glickfeld – Yea

Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Yea
Lawrence Yee – Yea

16. Consideration of Petition for Review of the Executive Officer's Action to Approve, with Conditions, Nine Watershed Management Programs (WMPs) Pursuant to the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit, Order No. R4-2012-0175.

Ms. Jennifer Fordyce, Board attorney, introduced the item to provide the Board with background and context of the item, summarize the contentions that were raised in the petition, and explain what the Board's options are in its consideration.

The Petitioners made a joint presentation on the petition. Speakers included:

- Ms. Becky Hayat, National Resources Defense Council
- Mr. Derek Booth, Ph.D., University of California at Santa Barbara
- Ms. Rita Kampalath, Heal the Bay
- Mr. Daniel Cooper, L.A. Waterkeeper

Board staff provided responses to the petition:

- Ms. Jennifer Fordyce responded to the legal contentions in the petition (contentions #1 and #2) that were raised concerning the Executive Officer's authority.
- Mr. Sam Unger, Executive Officer, made introductory remarks and gave an overview to responses to contention #3.
- Ms. Renee Purdy, Regional Programs Section Chief, provided an overview of the WMP review and approval process and responses to the technical contentions concerning the WMPs in contention #3.

Los Angeles County MS4 Permittees responded to the petition. Speakers included:

- Ms. Angela George and Mr. Steve Carter, Los Angeles County and Los Angeles County Flood Control District (opposed to petition)
- Ms. Gina Nila (City of Commerce) and Dr. Gerald Greene, representing the Los Angeles River Upper Reach 2 Watershed Management Group (WMG) (opposed to petition)
- Mr. Norman Dupont and Mr. John Hunter, representing the Lower Los Angeles River WMG and Lower San Gabriel River WMG (joint presentation) (opposed to petition)
- Mr. Anthony Arevalo (City of Long Beach) and Mr. Richard Watson, representing the Los Cerritos Channel WMG (opposed to petition)
- Mr. Andre Monette, representing the City of Claremont (opposed to petition)
- Mr. Ryan Thiha, City of Los Angeles (opposed to petition)
- Ms. Elaine Jeng, City of El Monte (opposed to petition)

Other speakers:

- Ms. Joyce Dillard, Representing self (expressed no position with regards to the petition)

Mr. Derek Booth spoke for the Petitioners' rebuttal.

Board members asked questions, made statements, and deliberated on the information presented concerning both the legal contentions and the technical contentions raised in the petition.

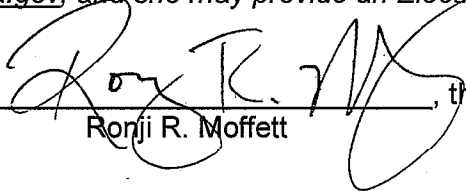
MOTION: Board member Lawrence Yee moved to ratify the Executive Officer's approvals, with conditions, of all nine WMPs.

Seconded by: Board member Maria Camacho
Motion Carried: Approved by roll call vote

Maria Camacho – Yea
Francine Diamond – Yea
Madelyn Glickfeld – Abstained
Maria Mehranian – Yea
Irma Muñoz – Yea
Charles Stringer – Yea
Lawrence Yee – Yea

The meeting adjourned at 6:07 pm. (For more detailed information on any matter at our meetings, you may contact Ronji Moffett at (213) 576-6612 or email at: ronji.moffett@waterboards.ca.gov, and she may provide an Electronic copy of the transcript or audio, if available.)

Written and submitted by:



Ronji R. Moffett

, then finalized on

10/08/15,

EXHIBIT B

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

RESOLUTION NO. R14-005

amending

RESOLUTION NO. R10-009

DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds:

1. The Executive Officer is the Regional Board's confidential employee appointed pursuant to Water Code section 13220, subdivision (c).
2. Water Code section 13223, subdivision (a), authorizes the Regional Board to delegate to the Executive Officer any of its powers and duties vested in it by the Porter-Cologne Water Quality Control Act, excepting: (1) the promulgation of any regulation, (2) the issuance, modification or revocation of any water quality control plan, water quality objectives or waste discharge requirements, (3) the issuance, modification or revocation of any cease and desist order, (4) the holding of any hearing on water quality control plans, and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in Water Code sections 13002, subdivision (c), 13304 and 13340.
3. Water Code section 7 generally authorizes the Executive Officer to delegate any of the Executive Officer's powers, including those powers delegated by the Regional Board to the extent allowed by the Regional Board.
4. Orderly and efficient operation of the Regional Board requires the Executive Officer to be able to carry out the Regional Board's day-to-day powers and duties to the maximum extent authorized by Water Code section 13223.
5. The Regional Board's obligations to the citizens of California and the Los Angeles Region require the Regional Board to retain the power and duty to act on any item within its jurisdiction, even if the Executive Officer would typically carry out that power or have that duty pursuant to this delegation, or has already carried out that power or exercised that duty pursuant to this delegation.
6. While the Regional Board has previously delegated to the Executive Officer its powers and duties to the maximum extent allowed by Water Code section 13223, it is nonetheless appropriate to update the delegation to reaffirm the Regional Board's intent to allow the Executive Officer to carry out the Regional Board's

day-to-day responsibilities and to clarify the circumstances under which authority conveyed by this delegation may be further delegated.

7. Nothing in this delegation is intended to diminish the force, effect or validity of any action the Executive Officer has previously taken in the name of the Regional Board.

NOW, THEREFORE, IT IS HEREBY RESOLVED pursuant to sections 7 and 13223 of the Water Code that:

1. The Regional Board delegates to its Executive Officer all powers and duties to conduct and to supervise the activities of the Regional Board.
2. Such activities include, but are not limited to, noticing Regional Board meetings and hearings, managing the staff, meeting with other agency officials, implementing the policies and regulations of the Regional Board and the State Water Resources Control Board and exercising any powers and duties of the Regional Board.
3. Except as otherwise provided in section 4 below, the Executive Officer is specifically precluded from taking the following actions:
 - 3.1 Promulgating regulations;
 - 3.2 Issuing, modifying, or revoking any water quality control plan;
 - 3.3 Issuing, modifying, or revoking any water quality objectives;
 - 3.4 Issuing, modifying, or revoking any waste discharge requirements;
 - 3.5 Issuing, modifying, or revoking any cease and desist order;
 - 3.6 Holding any hearing on water quality control plans; or
 - 3.7 Applying to the Attorney General for judicial enforcement unless there has been an explicit delegation in a cease and desist order that authorizes the application for judicial enforcement, or unless the judicial enforcement involves a request to the Attorney General to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance or unless the judicial enforcement involves Water Code sections 13304 or 13340.
4. The Executive Officer may set aside a Regional Board action, in whole or in part, as commanded by a peremptory writ of mandate issued to the Regional Board.

5. The Executive Officer may settle an Administrative Civil Liability (ACL) Complaint, and/or issue a stipulated ACL Order, where no hearing is required, in any manner in which the liability sought in the complaint is less than fifty-thousand dollars (\$50,000) and in which the potential maximum liability is less than one-hundred-thousand dollars (\$100,000). In matters involving liability or potential liability in excess of those amounts, the Executive Officer may exercise the authority described above if after consultation with the Board Chair, the Executive Officer determines that the proposed settlement or order is not controversial, and would not be likely to generate significant debate among the full Board.
6. The Executive Officer may hold evidentiary hearings to consider allegations in ACL Complaints and may issue final ACL Orders where the ACL Complaint alleges violations subject to a mandatory minimum penalty pursuant to Water Code sections 13385, 13385.1, and/or 13399.33. The Executive Officer shall consult with the Board Chair prior to holding evidentiary hearings on ACL Complaints that are, or could be, highly controversial to determine if the matter should be heard by the Board. The Executive Officer shall not hold evidentiary hearings on ACL Complaints that seek to impose discretionary liability in any amount and may not further delegate the authority granted herein.
7. The Executive Officer may further delegate in writing or via electronic mail such of his or her duties as the Executive Officer deems appropriate. However, the Executive Officer may not delegate, nor may a delegatee further delegate, to anyone other than the Chief Deputy Executive Officer, an Assistant Executive Officer or a Section Chief the power to issue an order or directive that may be directly petitioned to the State Water Resources Control Board, including but not limited to:
 - 7.1 Water quality certifications;
 - 7.2 Technical report and investigation orders under Water Code sections 13225 and 13267;
 - 7.3 Time schedule orders under Water Code sections 13300 and 13308; and
 - 7.4 Administrative civil liability complaints under Water Code section 13323.
8. In exercising the authority herein delegated, the Regional Board directs the Executive Officer, without restricting the authority specified, to bring the following matters to the attention of the members of the Regional Board at a board meeting or by other appropriate communication:
 - 8.1 Matters of a unique or unusual nature;
 - 8.2 Matters that appear to depart from the policies of the Regional Board;

- 8.3 Matters involving significant policy questions;
 - 8.4 Highly controversial matters;
 - 8.5 Matters that involve a substantial risk of litigation;
 - 8.6 Any matter that a Regional Board Member requests to be brought to the attention of the Regional Board; and
 - 8.7 Any matter that, in the judgment of the Executive Officer, should be brought to the attention of the Regional Board.
9. The Regional Board may revoke in whole or in part any specific or implied delegation to the Executive Officer.
 10. The Regional Board's delegation of authority pursuant to this Resolution does not diminish or alter the Regional Board's own power to act in the first instance, regardless of the reason.
 11. All actions previously taken by the Executive Officer or a delegatee of the Executive Officer pursuant to the authority of Water Code sections 7 and 13223 are hereby ratified.
 12. All prior resolutions of the Regional Board delegating authority to the Executive Officer are hereby revoked.

CERTIFICATION

I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on March 6, 2014.

Samuel Unger
Samuel Unger
Executive Officer

4-11-2014
Date

EXHIBIT C

Water Quality Standards Handbook

Chapter 6: Procedures for Review and Revision of Water Quality Standards

Water Quality Standards Handbook

Chapter 6: Procedures for Review and Revision of Water Quality Standards

[\(40 CFR Part 131-Subpart C\)](#)

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Introduction

The [Clean Water Act \(CWA\)](#) requires states and authorized tribes to periodically review and, as appropriate, adopt new or revised water quality standards (WQS) to meet the requirements of the CWA.¹ States and tribes must submit any new or revised WQS resulting from such a review to the EPA for review and approval or disapproval action under CWA Section 303(c). This chapter provides an overview of these state, tribal, and federal processes. In particular, Section 6.1 of this chapter discusses state and tribal processes for review and revision of WQS and provides information on the regulatory requirements to which states and tribes must adhere during their WQS review, adoption, and submittal processes. Section 6.2 discusses the EPA review and approval or disapproval procedures of new or revised WQS. Section 6.3 discusses procedures for EPA promulgation of federal WQS and circumstances under which the EPA would withdraw federally promulgated WQS.

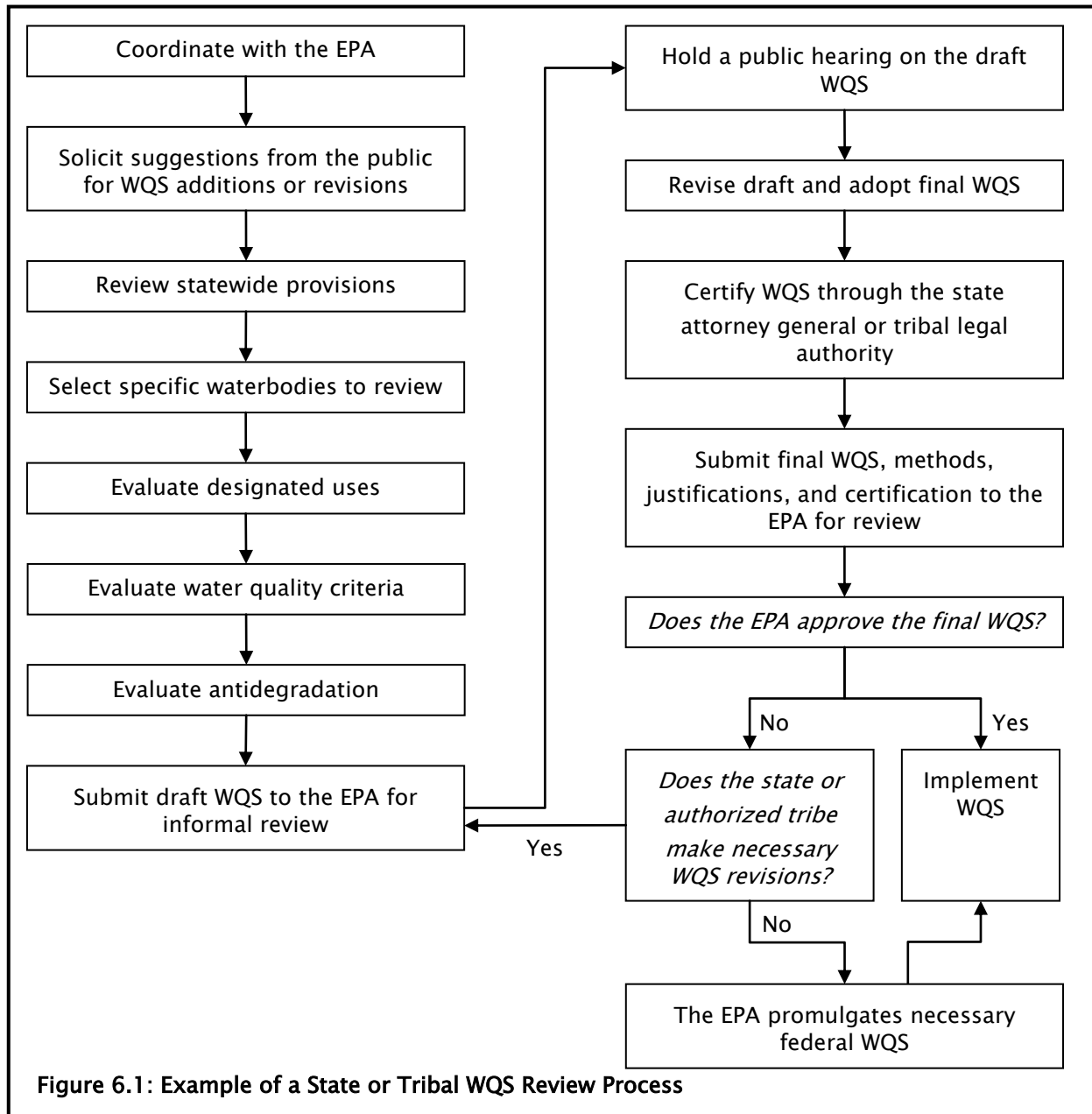
6.1 State and Tribal Processes for Review and Revision of Water Quality Standards

Section 303(c)(1) of the [CWA](#) and the EPA's implementing regulations at [40 CFR 131.20](#) require that states and authorized tribes, from time to time, but at least once every three years, hold public hearings to review applicable WQS and, as appropriate, modify and adopt WQS. In each WQS review cycle, states and tribes, with input from the public, review their existing WQS to identify additions and/or revisions that are necessary or appropriate to ensure that their WQS meet the requirements of the CWA and the needs of the state or tribe. States and tribes may revise their WQS in a variety of ways including additions of and revisions to designated uses, water quality criteria, antidegradation policies and adopted implementation procedures, or other general policies. The following are examples of items that states and tribes should consider when reviewing their WQS:

- New federal, state, or tribal statutes, regulations, or guidance.
- Legal decisions involving WQS.
- New or updated scientific information (e.g., new or updated Section 304(a) national criteria recommendations).
- Input from members of the public.
- Section 305(b) reports and newly available water quality monitoring data.
- Results of previous WQS triennial reviews.
- Changes in circumstances that affect the attainability of applicable WQS.
- Other necessary or appropriate clarifications or revisions.

¹ Throughout this document, the term “states” means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term “authorized tribe” or “tribe” means an Indian tribe authorized for treatment in a manner similar to a state under [CWA](#) Section 518 for purposes of Section 303(c) WQS.

Figure 6.1 displays an example of a state or tribal WQS review process.



6.1.1 Coordinate with the EPA

The EPA recommends that states and authorized tribes coordinate with the EPA when they begin the triennial review process as well as before beginning activities to adopt new or revised WQS, long before the state or tribe formally submits the WQS for EPA review. Reasons for early coordination with the EPA include the following:

- Early identification of potential areas of scientific or programmatic concern that require resolution between the EPA and the state or tribe.
- Discussion and resolution of any such concerns before the EPA receives a formal review request from the state or tribe.
- Increased likelihood that state or tribal WQS meet the requirements of the [CWA](#) and [40 CFR Part 131](#) at the time of submission to the EPA.

While not a regulatory requirement, states and tribes may send draft WQS to the EPA for early feedback. The EPA will then provide comments on the proposed revisions to assist the state or tribe in developing WQS that are approvable by the EPA. Coordination between the state or tribe and the EPA throughout the review process is key to the EPA's timely review of state and tribal WQS.

6.1.2 Involve the Public

An important component of both the WQS triennial review process and any WQS revisions that result from such a process is meaningful involvement of the public and intergovernmental coordination with local, state, federal, and tribal entities with an interest in water quality issues. The EPA urges states and authorized tribes to involve the public actively in the WQS review process by soliciting suggestions for additions and revisions to WQS. At a minimum, Section 303(c) of the [CWA](#) and [40 CFR 131.20](#) require states and tribes to hold a public hearing in reviewing and revising WQS and to submit the results to the EPA. The regulation at [40 CFR Part 25](#) also describes additional requirements for public involvement. State and tribal regulations may require more than one hearing. The EPA also encourages states and tribes to solicit input from the public through other means such as webinars and web postings using social media.

Engaging citizens, municipalities, industries, environmentalists, universities, other tribes, other states, and other entities in collecting and evaluating information for the decision-making process may assist the state or tribe in improving the scientific basis of and building support for WQS decisions. These partnerships ensure that ideas, data, and information are shared, which will increase the effectiveness of the water quality management process. Open discussion of the scientific evidence and analysis supporting proposed revisions to the WQS can assist the state or tribe in making its WQS decisions.

6.1.3 Review Provisions that are Applicable across the State or Reservation

Part of the state or tribal WQS review process includes reviewing the general policies and other provisions that are applicable across the state or reservation to determine if additions or revisions are necessary. Such policies and provisions may include, but are not limited to, the following:

- WQS coverage for all waters of the United States.
- Appropriate use designations including downstream protection provisions.
- Water quality criteria review and development.
- Antidegradation policies and implementation procedures.
- Mixing zone policies.

- Compliance schedule authorizing provisions.
- Low-flow provisions.
- Variance provisions.
- Definitions.

Under the [CWA](#), states and authorized tribes must adopt WQS for all of their intrastate and interstate navigable waters, i.e., for all "waters of the United States," within their jurisdiction. The term "waters of the United States" is defined at [40 CFR 230.3\(s\)](#) and [33 CFR Part 328](#), and other terms relevant to WQS are defined at [40 CFR 131.3](#). State and tribal WQS should contain these or equivalent definitions that are at least as inclusive of waters as the federal definitions.

6.1.4 Select Specific Waterbodies to Review

Consistent with [40 CFR 131.20\(a\)](#), states and authorized tribes should use any procedures they have incorporated into their Continuing Planning Process for identifying and reviewing WQS on specific waterbodies (see also [40 CFR 130.5](#)). Every three years, states and tribes must reexamine any waterbodies for which the WQS do not include the goal uses specified in Section 101(a)(2) of the [CWA](#) and, if new information indicates that such uses are attainable, revise their WQS to reflect such uses. In addition to such waterbodies, the EPA recommends that states and tribes consider conducting a detailed WQS review for waterbodies where one or more of the following occur:

- The state or tribe has identified toxic or other pollutants, such as nutrients, that may be precluding attainment of a designated use or posing an unreasonable risk to human health.
- Pollutants could have potential adverse impacts on threatened or endangered species.
- National Pollutant Discharge Elimination System permits containing water quality-based effluent limits are scheduled to be issued or reissued.
- Funding decisions for combined sewer overflows are pending.
- The public has expressed interested in having the state review the WQS that are applicable to a particular waterbody.

States and tribes may find it useful to identify such waters by examining reports and listings developed under Sections 303(d), 304(l), 305(b), and 319 as well as unclassified waters, construction grants priority lists, and expired major permits. States and tribes may have other reasons for deciding to examine a waterbody in detail such as human health problems, court orders, public input, or the economic and social impacts of implementing the existing WQS.

6.1.5 Evaluate Designated Uses

Once the state or authorized tribe has selected priority waterbodies for review, the state or tribe must evaluate the designated uses. An integral part of the WQS review and revision process is considering whether a selected waterbody is able to attain its designated use and, if such waters had not included the uses specified in [CWA](#) Section 101(a)(2), whether such uses are now attainable, as required by [40 CFR 131.20\(a\)](#). This consideration may involve some level of data collection up to and including a full waterbody survey and assessment; however, an intensive survey of the waterbody is

not necessary if adequate data are already available. The data and information collected from the waterbody survey should provide a firm basis for evaluating whether the waterbody can attain its designated use or a designated use closer to the uses specified in Section 101(a)(2) in light of the factors precluding attainment described at 40 CFR 131.10(g). The purpose of the evaluation is to characterize present uses, attainable/unattainable designated uses, and the reasons why uses are unattainable. Information generated in the survey also can be used to establish the basis for seasonal uses and subcategories of uses.

Where designated uses that include the uses specified in Section 101(a)(2) are not feasible to attain, states and tribes should determine the designated use that is feasible to attain in light of the factors precluding attainment and any other data that were used to evaluate attainability. To that end, the state or tribe may conduct a use attainability analysis (UAA) to demonstrate that attaining the use is not feasible based on one of the factors at 40 CFR 131.10(g) and then designate the use(s) that can be attained given the physical, chemical, and biological limitations of the waterbody.

In designating uses and the water quality criteria necessary to protect the uses, it is important to emphasize that each state and tribe must “ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters,” as required by 40 CFR 131.10(b). The EPA recommends that states and tribes consider the interaction between both point- and nonpoint- source discharges and downstream impacts as well as the fact that the downstream uses may not be affected by the same physical or other limitations as the upstream uses. For additional information on protecting downstream waters, see [Protection of Downstream Waters in Water Quality Standards: Frequently Asked Questions \(2014\)](#).

Please refer to [Chapter 2](#) of this Handbook for a detailed discussion of designated uses.

6.1.6 Evaluate Water Quality Criteria

The regulation at [40 CFR 131.11](#) provides that states and authorized tribes “must adopt those water quality criteria that protect the designated use.” If a state or tribe revises a designated use or adopts a new designated use, the state or tribe must ensure that it has adopted criteria to protect the new or revised designated use. If the state or tribe removes a designated use, the state or tribe may delete the criteria to protect the designated use as long as there are still criteria to protect the remaining uses.

The regulation at 40 CFR 131.11 and Section 303(c)(2)(B) of the [CWA](#) further require states and tribes to adopt numeric criteria (or narrative criteria with numeric translators) for Section 307(a) toxic pollutants, as necessary, to support state and tribal designated uses where the discharge or presence of such pollutants in the affected waters could reasonably be expected to interfere with those designated uses adopted by the state or tribe. (See [Guidance for State Implementation of Water Quality Standards for CWA Section 303\(c\)\(2\)\(B\) \(1988\)](#).) For regulatory purposes, the EPA has translated the 65 compounds and families of compounds listed under Section 307(a) into 126 specific toxic substances, which the EPA refers to as “priority pollutants,” and has published national criteria recommendations for most of these pollutants consistent with the authority provided in

Section 304(a). Section 304(a)(1) requires the EPA to develop recommended criteria that accurately reflect the latest scientific knowledge, and these recommended criteria are based solely on data and scientific judgments on pollutant concentrations and environmental or human health effects.

In addition to the required criteria discussed above, the EPA recommends that all state and tribal WQS contain narrative "free from" criteria as well as numeric criteria for other water quality parameters such as temperature, dissolved oxygen, pH, and bacteria, which are typically included in state and tribal WQS. The EPA has also recognized the importance of having numeric criteria for both phosphorus and nitrogen and has urged states and tribes to prioritize waters for development of numeric nutrient criteria (see the 2011 memorandum [*Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions*](#)).

As previously discussed, Section 303(c)(1) and the EPA's implementing regulation at 40 CFR 131.20(a) require states and tribes to hold a public hearing for the purpose of reviewing their applicable WQS at least once each three-year period. When reviewing these applicable WQS, in addition to reviewing all applicable criteria, states and tribes must ensure that they have adopted criteria for toxic pollutants as required by Section 303(c)(2)(B). It is important to note that, although a state or tribe may have fully complied with the requirements of Section 303(c)(2)(B) previously, states and tribes may be required to adopt new toxic criteria in the following situations:

- The EPA publishes new Section 304(a) national criteria recommendations for a priority pollutant.
- New information on existing water quality and pollution sources indicates that a toxic pollutant for which a state or tribe had not previously adopted criteria could now be reasonably expected to interfere with the designated uses adopted by the state or tribe.

Please refer to [Chapter 3](#) of this Handbook to find a detailed discussion of criteria.

6.1.7 Evaluate Antidegradation

The EPA's regulations at [40 CFR 131.12](#) require states and authorized tribes to include antidegradation requirements and methods for implementing those requirements as part of their WQS program. Because they are parts of WQS, antidegradation policies and adopted implementation procedures are subject to review and revision as part of the WQS triennial review. Each state and tribe must develop, adopt, and retain an antidegradation policy that applies across the state or reservation and establish procedures for its implementation through the water quality management process. The state or tribal antidegradation policy and implementation procedures must be consistent with the components detailed in 40 CFR 131.12. State or tribal WQS regulations must specifically reference the policy if it is not included in its entirety so that the functional relationship between the policy and the other WQS is clear. Regardless of the location of the policy, it must be legally binding and meet all applicable requirements described in 40 CFR 131.12. Antidegradation implementation procedures should specify how the state or tribe would determine on a case-by-case basis whether, and to what extent, the permitting authority might authorize a lowering of high

water quality. As a result, antidegradation implementation is an integral component of a comprehensive approach to enhancing and protecting high water quality.

Please refer to [Chapter 4](#) of this Handbook to find a more detailed discussion of antidegradation.

6.1.8 Submit the Water Quality Standards to the EPA

Consistent with [40 CFR 131.20\(c\)](#), states and authorized tribes must submit their new or revised WQS to the EPA for review and approval or disapproval within 30 days of their final administrative action. Final administrative action is the last action a state or tribe must take (e.g., signature, a review by a legislative committee or state board, a delay mandated by a state administrative procedures act) before its revision becomes a rule under state or tribal law. After such action, the state or tribe can officially transmit the newly adopted WQS to the EPA for review. If no revisions are made, states and tribes must submit the results of their review within 30 days of completion of the review. The state or tribal WQS submission of new or revised WQS must include, at a minimum, the six key elements described in 40 CFR 131.6:

- Waterbody use designations that are consistent with [CWA](#) Sections 101(a)(2) and 303(c)(2).
- Methods and analyses used to support the WQS.
- Water quality criteria sufficient to protect designated uses.
- An antidegradation policy and accompanying implementation procedures consistent with 40 CFR 131.12.
- Certification by the state attorney general or appropriate tribal legal authority that the WQS were duly adopted according to state or tribal law.
- General information that will help the EPA determine whether the scientific basis is adequate for WQS that do not include the uses specified in Section 101(a)(2), including UAs as appropriate, as well as information on state or tribal policies that generally affect the application and implementation of the WQS (e.g., mixing zone and variance policies).

6.2 EPA Review and Approval or Disapproval of New or Revised Water Quality Standards

When states and authorized tribes adopt new or revised WQS, they are required under [CWA](#) Section 303(c) to submit such WQS to the EPA for review and approval or disapproval action. The EPA [regional offices](#) review state and tribal WQS submissions and serve as the primary point of contact with the states and tribes. EPA regional administrators are responsible for approving or disapproving WQS. Therefore, states and tribes should submit their new or revised WQS to the appropriate EPA regional office.

Please refer to [Chapter 1](#) of this Handbook for a discussion of the types of provisions that constitute new or revised WQS that require EPA review under Section 303(c).

Under Section 303(c)(3) and [40 CFR 131.21](#), the EPA must approve within 60 days or disapprove within 90 days any new or revised WQS adopted by a state or tribe. The EPA reviews the state or tribal WQS following the requirements of Section 303(c) and 40 CFR Part 131 to ensure that the use designations, water quality criteria, antidegradation policy and adopted implementation procedures, and general policies (e.g., WQS variances and mixing zone policies) meet the minimum requirements.² In doing so, the EPA ensures that WQS are scientifically defensible and that they adhere to all regulatory and statutory requirements. In reviewing new or revised WQS, the EPA will consider the adequacy of the analyses and the public comments received during the public hearing process. As discussed in Section 6.1.1 of this chapter, states and tribes are encouraged to provide early drafts to the EPA so that any issues can be resolved prior to the state or tribe formally proposing or adopting new or revised WQS.

The EPA only reviews state and tribal WQS provisions that are new or revised. The EPA's review of such WQS generally includes, but is not limited to, those elements listed below that are applicable to the specific new or revised WQS. It is important to note that, because each state or tribal WQS submission is unique, the EPA documents the basis for its actions including how the new or revised WQS are consistent with the CWA and 40 CFR Part 131:

Uses and Criteria:

- The EPA determines whether states and tribes have adopted designated uses that include the uses specified in CWA Section 101(a)(2) for all waters of the United States. For waters where Section 101(a)(2) uses have not been adopted, the EPA determines whether the designated uses were adopted consistent with the requirements at 40 CFR 131.10 and whether the bases for the use designations (e.g., UAAs) have been reviewed every three years, as required by 40 CFR 131.20(a).
- The EPA determines whether the state and tribal criteria are sufficient to protect the designated uses by ensuring that all numeric criteria are based on Section 304(a) guidance, Section 304(a) guidance modified to reflect site-specific conditions, or other scientifically defensible methods. The EPA's decision to approve or disapprove criteria based on site-specific calculations or alternative scientific methods is based on whether the resulting criteria are sufficient to protect the designated use and whether the supporting scientific methods and assumptions are valid and adequate. The EPA's decision to approve or disapprove such criteria is not based on whether the resulting criteria are more or less stringent than the EPA's Section 304(a) national recommended criteria.
- The EPA determines whether narrative "free from" criteria are included in state and tribal WQS and protect all waters at all flows. The EPA also evaluates whether the WQS include a method for implementing any narrative "free from" criteria for toxic pollutants for situations in which the EPA has not issued Section 304(a) guidance for a particular toxicant or where the toxicant causing the problem is unknown.

² Under Section 510 of the [CWA](#), state and tribal WQS may be more stringent than the EPA's minimum requirements.

- The EPA determines whether the state or tribe has included criteria for Section 307(a) "priority pollutants" sufficient to satisfy the requirements of Section 303(c)(2)(B).
- The EPA determines whether designated uses and criteria apply throughout the entire waterbody.
- The EPA determines whether the information and analyses provided in support of the new or revised WQS indicate that instream designated uses and criteria will provide for the attainment and maintenance of downstream WQS.

Antidegradation and General Policies:

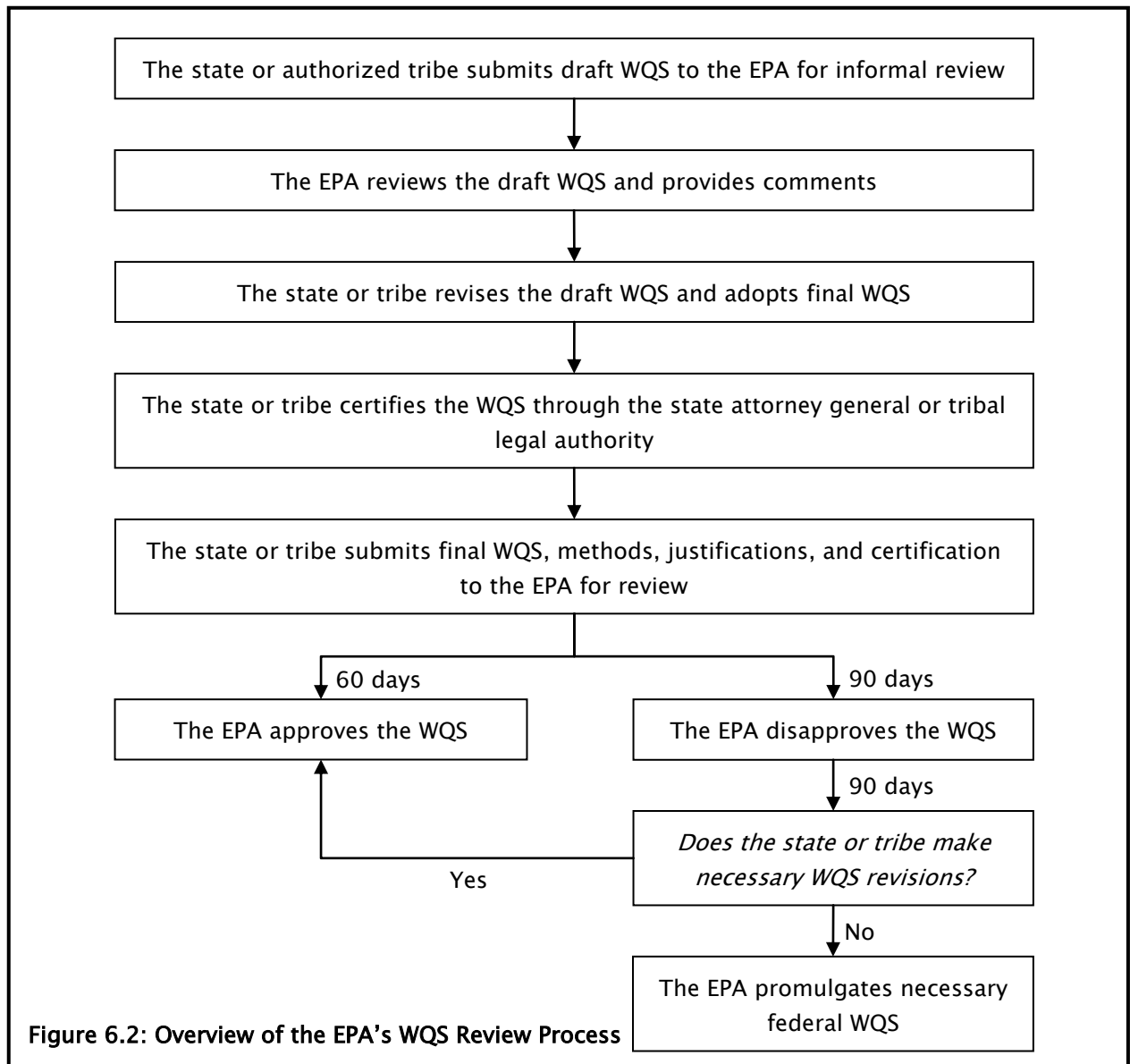
- The EPA determines whether state and tribal antidegradation policies meet the requirements of 40 CFR 131.12.
- The EPA determines whether the state or tribe has provided or referenced procedures for implementing the antidegradation policy.
- Where general policies (e.g., mixing zone, variance, and low-flow policies) are included in the state or tribal WQS, the EPA determines whether the policies are consistent with the CWA and 40 CFR Part 131.

Procedural:

- The EPA determines whether the state or tribe has met the minimum applicable requirements for a WQS submission contained in 40 CFR 131.6.
- The EPA determines whether the state or tribe has complied with the procedural requirements contained in 40 CFR 131.20 (e.g., public participation) for conducting WQS reviews.
- The EPA determines whether the new or revised WQS are consistent with the CWA and 40 CFR Part 131.
- The EPA reviews comments and suggestions that the public submitted on proposed state and tribal WQS to determine if any comments indicate that the WQS are not consistent with the CWA and 40 CFR Part 131.

After reviewing the new or revised state or tribal WQS, the EPA approves or disapproves such new or revised WQS.

Figure 6.2 provides an overview of the EPA's WQS review process.



6.2.1 Policies and Procedures Related to EPA Approvals

On March 30, 2000, the EPA revised its regulation at [40 CFR 131.21](#) that specifies when new or revised state and tribal WQS become effective for [CWA](#) purposes. Commonly called “the [Alaska rule](#)” (40 CFR 131.21(c)(2), 65 FR 24641, April 27, 2000), this regulation mandates that new or revised WQS adopted by states or authorized tribes and submitted to the EPA after May 30, 2000, must be approved by the EPA before they become applicable WQS for actions under the CWA (e.g., establishment of water quality-based effluent limitations under Section 301(b)(1)(C) or development of total maximum daily loads under Section 303(d)(1)(C)). The Alaska rule also provides that WQS already submitted to the EPA prior to May 30, 2000, are in effect for CWA purposes regardless of

whether they were approved by the EPA unless and until the EPA has either promulgated a more stringent WQS for the state or tribe or approved a change, deletion, or addition to the specific WQS.

Consistent with 40 CFR 131.21(a)(1) and Section 303(c)(3), if the EPA determines that new or revised WQS adopted by a state or tribe meet the requirements of the CWA and 40 CFR Part 131, the EPA must notify the state or tribe within 60 days that the WQS are approved. If particular events (e.g., state implementation decisions, pending federal legislation pertaining to WQS requirements) could result in a failure of the approved WQS to continue to meet the requirements of the CWA, the EPA should identify these events in the approval letter and the administrative record for the action in order to guide future state and tribal review and revision activities.

When only a portion of the adopted state or tribal WQS submission meets the requirements of the CWA and 40 CFR Part 131, the EPA may approve only that portion.

The EPA could also issue a conditional approval. Conditional approvals should only be used as the exception, not the rule, and in limited circumstances. For additional information on conditional approvals, see [Guidance for the Use of Conditional Approvals for State Water Quality Standards \(1989\)](#).

The EPA notes that requests for clarification or additional information from the state or tribe regarding their new or revised WQS are not EPA approval or disapproval actions under Section 303(c).

The EPA has compiled state and tribal WQS that are currently in effect for CWA purposes (i.e., those approved by the EPA for CWA purposes or are otherwise in effect). Commonly referred to as the "[WQS Repository](#)," this webpage includes a clickable map that is useful for finding currently effective state and tribal WQS.

6.2.2 Policies and Procedures Related to EPA Disapprovals

Consistent with [40 CFR 131.21\(a\)\(2\)](#) and Section 303(c)(3) of the [CWA](#), if the EPA determines that the new or revised state or tribal WQS do not meet the requirements of the CWA and 40 CFR Part 131, the EPA must disapprove such WQS and notify the state or authorized tribe within 90 days. In the event of a disapproval action, the EPA must also specify the revisions that the state or tribe must adopt to meet CWA requirements. If the EPA disapproves a new or revised WQS, that WQS is not in effect for CWA purposes. In such a case, the state or tribe would continue to implement the previous EPA-approved WQS until the state or tribe remedies the disapproval action and the EPA approves such remedy or until the EPA promulgates a new or revised WQS.

6.3 EPA Promulgation of Federal Water Quality Standards

6.3.1 When the EPA Might Promulgate Federal Water Quality Standards

As a matter of policy, the EPA prefers that states and authorized tribes adopt their own WQS. However, under Section 303(c)(4) of the [CWA](#) and [40 CFR 131.22](#), the EPA must promptly propose and promulgate federal WQS if either of the following conditions occur:

- The EPA determines that a new or revised WQS submitted by a state or tribe is not consistent with CWA requirements and 40 CFR Part 131, and the state or tribe does not adopt acceptable replacement WQS within 90 days.
- In any case where the EPA Administrator makes an “Administrator determination” that a new or revised WQS is necessary to meet CWA requirements and 40 CFR Part 131.

As described in Section 6.2.2, if the EPA determines, under Section 303(c)(4)(A) and 40 CFR 131.22(a), that new or revised WQS adopted by a state or tribe are not consistent with (i.e., do not meet the requirements of) the CWA and 40 CFR Part 131, the EPA must disapprove such WQS within 90 days, specifying the changes necessary to meet CWA requirements. However, under the CWA, the EPA must promptly propose federal WQS if the state or tribe fails to adopt and submit the necessary revisions within 90 days after notification of the disapproval.

If the EPA Administrator makes an “Administrator’s determination,” under Section 303(c)(4)(B) and 40 CFR 131.22(b), that a new or revised WQS is necessary to meet the requirements of the CWA, the EPA must promptly propose such WQS and then promulgate such WQS no later than 90 days after publication of the EPA’s proposed WQS. However, the EPA is not required to promulgate a new or revised WQS if, prior to the EPA’s promulgation, the state or tribe adopts and submits a new or revised WQS that the EPA determines to be consistent with the CWA.

The EPA has compiled a list of [federally promulgated WQS](#).

6.3.2 When the EPA Would Withdraw Federally Promulgated Water Quality Standards

Where the EPA has promulgated WQS for a state or tribe, the EPA withdraws its federally promulgated WQS after the EPA determines that revised state or tribal WQS meet the requirements of the [CWA](#) and [40 CFR Part 131](#) and approves such WQS.

EXHIBIT D

State Water Resources Control Board

JUL 07 2015

Mr. Ron Milligan
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Milligan:

APPROVAL OF THE JUNE 25, 2015 SACRAMENTO RIVER TEMPERATURE MANAGEMENT PLAN

This letter is in regard to your submittal of the June 25, 2015 Sacramento River Temperature Management Plan (Temperature Plan) pursuant to State Water Resources Control Board (State Water Board) Order 90-5 and condition 6 of the Order I issued on April 6, 2015, acting on a Temporary Urgency Change Petition (TUCP) submitted by the U.S. Bureau of Reclamation (Reclamation) and the Department of Water Resources (DWR). Condition 6 of the April 6 Order required Reclamation to submit a Temperature Plan to the Sacramento River Temperature Task Group (SRTTG) and to me. The Temperature Plan is posted at:

(http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/2015/junetempplan.pdf). This letter approves the June 25, 2015 Temperature Plan, provided that Reclamation complies with the conditions listed on pages 3, 4 and 5 of this letter.

The revised Temperature Plan does not achieve a temperature of 56 degrees F as required by Order 90-5, but it should provide for stable, but higher, temperatures throughout the temperature control season, ranging from 56 to 58 degrees F. The June 25 Temperature Plan is expected to be more protective than targeting 56 degrees F now and running out of cold water before the temperature control season is complete. However, there are still concerns with maintaining temperature control throughout the egg incubation period with the revised plan that will need to be managed very closely due to the very low cold water storage levels, expected heat waves, and inaccuracies of the temperature model that was used to develop the revised plan. The June 25 Temperature Plan targets lower Shasta/Keswick Reservoir releases than the previous plan (submitted on May 4, 2015) to help conserve cold water storage.

Background

Pursuant to State Water Board Order 90-5 and condition 6 of the April 6 TUCP Order, Reclamation was required to develop and implement a Temperature Management Plan for the Sacramento River to ensure that CVP operations will provide reasonable protection for winter-run Chinook salmon and other salmonids. In the planning process, the TUCP Order required that Reclamation address temperature control issues that occurred last year that led to the mortality of nearly all of the 2014 brood year of juvenile winter-run Chinook salmon. Specifically, despite modeling that indicated that Reclamation could achieve temperatures last year to protect winter-run, they were unable to do so. Reclamation attributed this circumstance to the inability to access cold water out of the side gates of the Shasta Dam Temperature Control Device as expected under the temperature modeling.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Reclamation submitted a draft temperature management plan for the Sacramento River in mid-April, and an updated plan on May 4, 2015 to the Executive Director of the State Water Board and the National Marine Fisheries Service, Department of Fish and Wildlife and the U.S. Fish and Wildlife Service (collectively fisheries agencies). The temperature modeling that Reclamation provided indicated that temperatures suitable for winter-run Chinook salmon of 56 degrees Fahrenheit (F) could be maintained throughout the temperature control season at the proposed Clear Creek compliance location with the proposed operations.

Based on information indicating that Reclamation's draft plan would meet the 56 degree F temperature target at Clear Creek throughout the temperature control season, on May 14, 2015, the Executive Director provisionally approved the temperature management plan. In that approval the Executive Director indicated that the plan was required to be updated as necessary to ensure temperature compliance throughout the temperature control season and that Reclamation was required to prepare a final plan by June 1 for approval. In addition, the Executive Director also directed Reclamation to notify him immediately if there were any indications that the plan would not achieve temperature compliance throughout the temperature control season.

On May 29, 2015, the Executive Director met with staff from Reclamation, DWR and the fisheries agencies to discuss: (1) updated temperature profile measurements taken at Shasta Lake indicating that the reservoir was warmer than expected; and (2) associated temperature modeling information showing that it was very unlikely that Reclamation would be able to meet the 56 degree F temperature target with the operations provisionally approved two weeks earlier. Following the May 29 meeting, the Executive Director sent Reclamation a letter temporarily suspending the provisional approval of the draft temperature management plan and directing Reclamation to maintain releases from Keswick Reservoir below Shasta Lake at no more than 7,500 cubic-feet per second (cfs) through June 10, and lower if possible, to conserve additional cold water supplies. In addition, the Executive Director directed Reclamation to work with the fisheries agencies and State Water Board staff to develop a revised plan. On June 24, 2015 the State Water Board held a public workshop to discuss summer and fall drought-related State Water Project and Central Valley Project operations in the Bay-Delta Watershed. As stated above, Reclamation submitted the revised Temperature Plan on June 25, 2015.

NMFS July 1, 2015 Concurrence Letter

On July 1, 2015 the National Marine Fisheries Service (NMFS) submitted a concurrence letter to Reclamation and DWR on the Contingency Plan for Water Year 2015 Pursuant to Reasonable and Prudent Alternative Action I.2.3.C of the 2009 Coordinated Long-term Operation of the CVP and SWP biological Opinion, Including a revised Temperature Plan. In its concurrence letter, NMFS stated that it concurs with the Temperature Plan, as proposed for the CVP in Reclamation's June 25, 2015, letter, and its associated Updated Biological Information. NMFS acknowledges that "storage in Shasta Reservoir at the beginning of the temperature management season in June, and the quantity and quality of the cold water pool, will not provide for suitable winter-run habitat needs throughout their egg and alevin incubation and fry rearing periods." NMFS goes on to say that "the base operations plan, including the Keswick release schedule, delayed use of full side gates, and real-time monitoring and decision-making based on winter-run run timing, location of redds, air and surface water temperature modeling, and projected versus actual cold water storage conditions and downstream water temperatures, represents the best that can be done with a really bad set of conditions." NMFS also notes "that these conditions could have been largely prevented through upgrades in monitoring and modeling, and reduced Keswick releases in April and May" and concludes: "Based on extensive

analyses of alternative scenarios (6,000 to 8,000 cfs Keswick releases), the plan provides a reasonable possibility that there will be some juvenile winter-run survival this year.”

July 3, 2015 TUCP Order Temperature-Related Conditions

To ensure that the changes approved in the July 3, 2015 Temporary Urgency Change Petition Order will not have unreasonable impacts on fish and wildlife, the Condition 6 of the Order includes the following provisions related to temperature:

- Reclamation shall implement the Sacramento River Temperature Management Plan with any changes required by the Executive Director. Key elements of the Plan from the Shasta Temperature Management Plan-Key Concepts include:
 - i. Base Keswick releases of 7,250 cfs in June and July.
 - ii. Base Keswick releases of 7,250 cfs in August, 6,500 cfs in September, and 5,000 cfs in October, subject to change in accordance with the realtime monitoring and decision making process described below based on the performance of the plan in June and July.
 - iii. Actual operations will be decided using a real-time monitoring and decision making process that includes representatives from the relevant federal and State agencies. This decision making process may yield adjustments to base operations depending on real-time conditions on the ground.
 - iv. Reclamation will convene the real-time monitoring and decision making group at least weekly, and more frequently if necessary to inform decisions about temperature operations.
 - v. Decisions regarding real-time adjustment to base operations will be made using the principles identified in the Shasta Temperature Management Plan-Key Components.

- Reclamation shall immediately update the Sacramento River Temperature Management Plan as conditions change or upon the request of the fisheries agencies or Executive Director or his designee. The plan shall provide reasonable protection for winter-run Chinook salmon during the 2015 spawning and rearing period and consider other fisheries needs, including spring-and fallrun Chinook salmon. Reclamation shall conduct all necessary modeling, monitoring and reporting to inform temperature operations. Specifically, Reclamation shall submit to the fisheries agencies and State Water Board staff:
 - i. Updated reservoir temperature profile measurements no less than weekly for Shasta and every two weeks for Trinity and Whiskeytown reservoirs in digital format, unless otherwise approved;
 - ii. Immediately upon any change in conditions or upon the request of the fisheries agencies or State Water Board staff, updated annotated temperature modeling including the following information:
 1. Identification of the model run date;
 2. Input and output files;
 3. Keswick flow release level (if static), or time series, as appropriate;
 4. The meteorological assumptions used for the run;
 5. Titles or notes that explain the temperature target of the run, and at what location; and

6. Other notes that describe if the run was done to target a specific temperature based on the other run assumptions or if the meteorological conditions were simply imposed on another run.
 - iii. With the exception of weekends and holidays, daily updates of average daily river temperature conditions, including the Shasta temperature control device weighted average, Spring Creek Power House weighted average, and Sacramento River miles 302, 298 and 293 temperatures; 10-day forecasted Redding high and low air temperatures; and
 - iv. Actual and forecasted CVP and SWP monthly operations immediately upon any significant change in conditions, including input assumptions for major system inflows and outflows, including accretion and depletion assumptions.
- For the remainder of the drought, Reclamation shall meet no less than weekly with the Sacramento River Temperature Task Group (SRTTG) to discuss operations and options for reducing or avoiding redd dewatering, stranding and temperature impacts to winter-run Chinook salmon. Reclamation shall immediately notify the SRTTG of any significant changes to environmental or operational conditions that may affect temperatures and shall convene a meeting with the SRTTG to discuss unless the SRTTG members indicate a meeting is not needed. Reclamation shall provide notes from the meetings to the SRTTG within 5 days following the meeting for review and approval and shall post the approved notes and handouts from the meetings on its website immediately upon approval. Reclamation shall confer on recommendations from the SRTTG during the consultation process and other applicable CVP and SWP operational decision-making meetings. Reclamation shall immediately make available technical information requested by the Executive Director or his designee through the consultation process. Reclamation shall report monthly to the State Water Board during its Board meeting on actions that have been or will be taken to reduce impacts to winter-run Chinook salmon, through the remainder of the drought.
- Reclamation shall meet with State Water Board and fisheries agency staff before August 7, 2015, to develop a plan for providing information and tools needed to independently run the Sacramento River Temperature model.
- In consultation with the fisheries agencies and State Water Board staff, perform a review and evaluation of the water year 2015 temperature control season to evaluate the effectiveness of temperature control operations this year, as well as necessary actions to improve temperature control operations in the future, beginning in the next water year. Reclamation shall perform any necessary analyses to identify the source of any significant discrepancies between projected and observed temperatures. All analyses associated with this evaluation shall be submitted with the evaluation. The evaluation shall be submitted to the State Water Board and SRTTG by January 15, 2016.

I recognize that changes in Shasta Reservoir operations from what Reclamation proposed in its May 4 Temperature management plan will affect system-wide Central Valley Project and State Water Project operations and water supplies, and that the current plan relies more heavily on the already limited storage available in Folsom and Oroville. I also recognize that the 120,000 acre-feet end of September Folsom storage forecasted in the June 25 Plan represents the minimum acceptable storage to meet community water supply needs, and that other changes in system-wide operation would be necessary if this minimum storage cannot be achieved. This approval is therefore conditioned upon USBR operating the CVP in a manner that results in end

of September storage no less than 120,000 acre-feet. The July 3, 2015 TUCP Order also includes the following condition:

- Upon request of the Executive Director, Reclamation and DWR will propose adjusted operations to ensure that critical water supplies are available for municipal and industrial use, including to cities served by Folsom Lake, and to provide cooling water needed to maintain grid reliability.

I continue to encourage Reclamation and DWR to work with State Water Board staff and the potentially affected parties to both minimize and equitably distribute the water supply effects of the adjusted operations, and to ensure that critical water supply, and health and safety needs are met.

If you have any questions, please contact Diane Riddle at diane.riddle@waterboards.ca.gov or (916) 341-5927.

Sincerely,



Thomas Howard
Executive Director

cc: See next page.

cc: John Leahigh
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