CEQA for Water Quality Regulation and Planning

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California Environmental Quality Act

- Before CEQA - Environmental Impacts did not play a part in Public Decisions
- Signed into Law in 1972 by Gov. Ronald Reagan - believed CEQA was limited
- Came just after NEPA - contained significant improvements
- California Supreme Court very early interpreted CEQA to provide the Maximum Environmental Protection consistent with the Statutory Language
CEQA’s Intent

- Disclose potential environmental impacts of agency decisions to decision-makers and public
- Analyze and minimize environmental effects of projects before final approval
- Foster public involvement in governmental decision making
- Facilitate interagency coordination
- Identify and mitigate significant effects
- Improve decision-making
How CEQA Works

- A governmental process, not a permit
- Applies to public agency actions and approvals
- Requires avoidance or mitigation of impacts where “feasible”
- Assumes that all feasible environmental protection will result from strict adherence to procedures
  - Courts strictly enforce process
- Gives agencies no new authority
CEQA Fundamentals

- CEQA applies to:
  - Discretionary public agency actions that could result in a significant adverse change in the physical environment
  - California agencies
    - State and Local
    - (But not Federal)
  - Projects conducted by governmental agencies
  - Permits by agencies for Private Projects
  - California agencies acting on federal actions
- One project: one document
“Discretionary Actions”

- CEQA does not apply to Ministerial actions (Ministerial = Non-Discretionary)
- “Discretionary action” requires the exercise of judgement or deliberation when the public agency or body decides to approve or disapprove a particular activity.
- Mixed decisions are treated as discretionary (Guidelines § 15357)
What is a “Project?”

“Project” means:

- the “whole of an action” that may cause either a **direct physical change** in the environment, or a reasonably foreseeable **indirect physical change** in the environment (no “piecemeal” please)
- Public agency projects
- Public agency grants, financing, loans
- Issuance of permit, license, or entitlement
Lead and Responsible Agency

- Water Board may be Lead or Responsible Agency for a Project
  - Lead Agency
    - First through the process
    - In charge of drafting documents and managing public process
  - Responsible Agency
    - Takes its action after lead agency completes its CEQA process
    - Must accept documents of lead agency with a few exceptions
- Process for Determining lead agency -- CEQA Guidelines §§15050, 15051
  - Always the project proponent if government agency project
  - Generally City or County or general authority governmental agency
  - First to Act = De Facto Lead
Levels of Analysis

- **Categorical Exemption**
  - Project is presumed to have no significant Impacts

- **Negative Declaration**
  - Checklist with analysis = initial study
  - Initial study demonstrates that project will have no significant impacts

- **Environmental Impact Report ("EIR")**
EIR

- Required where “fair argument” demonstrates potential for one or more significant impacts
  - If project proponent agrees to changes that reduce all impacts to insignificance, then Mitigated Neg Dec applies
- For each significant impact, must analyze mitigation, alternatives, cumulative and growth-inducing impacts
  - for remaining significant impacts, must make findings and statement of overriding considerations
CEQA and Water Boards

- “Normal” CEQA
  - EIR, Negative Declaration or Categorical Exemption
    - Applies to Water Rights Actions, Permitting and Enforcement
- Planning
  - Certified Regulatory Program
State Water Resources Control Board

- Water Rights -- “Normal” CEQA
- Water Quality
  - Both Federal (Clean Water Act) and State (Porter-Cologne)
  - Regulation -- “Normal” CEQA
  - Planning -- CEQA for Certified Regulatory Program
- Grants and Loans -- “Normal” CEQA
Water Board “Projects”

Examples include:
- Waste Discharge Requirements (WDRs)
- Waivers of Waste Discharge Requirements
- General WDRs / NPDES Permits (NPDES Exempt from CEQA)
- 401 Certifications
- Cleanup and Abatement Orders
- Cease and Desist Orders
- Basin Plan amendment/TMDL (Certified Regulatory Program)
- Water Rights Permits
Water Quality Planning

- California is divided into nine hydrogeologic regions - each has a “Regional Board”; the Regional Boards are overseen by the “State Board”
  - Each region has a water quality control plan - known as a “Basin Plan”
  - Every ground and surface water basin has a set of listed beneficial uses that must be protected
    - Must protect both actual uses and potential uses
  - Basin Plans contain “water quality standards” that protect uses
    - Both numeric and narrative water quality objectives
    - Anti-degradation (maintenance of high-quality waters)
Planning Process

- Regional Board adopts plans and amendments
  - Lead Agency for CEQA
    - Scoping (public involvement), checklist, draft amendment and environmental documentation (staff report), public review (at least 45 days) and comments, responses to comments, and Board resolution
    - Process takes many months and sometimes as much as several years
  - State Board must Approve
  - Office of Administrative Law and USEPA must also approve portions
303(D) LIST

- Clean Water Act §303(d) requires the Boards and USEPA to compile a list of all waters that do not meet standards
  - Updated every two years
  - Contains water body/pollutant combinations
  - Requires a TMDL -- “Total Maximum Daily Load” -- for each listed water body
  - Must achieve standards in a “reasonable time”
For waters that do not meet standards, CWA §303(d) requires a TMDL -
- Board must analyze all sources of offending pollutant - both point and non-point sources
- Loads (and wasteloads) allocated among sources
- Reductions required to attain standards, including a margin of safety
- Generally incorporated into the applicable Basin Plan through an amendment (aka “Planning”)
- State Law requires implementation plan
Certified Regulatory Program
- Applies to Water Quality Planning
  - TMDLs, Basin Plans and Policies for Water Quality Control (e.g. Inland Surface Water Plan, Ocean Plan)
- CEQA Guidelines Section 15250, 15251(g)
- Exempt from Formal Documents (EIR or Neg Dec)
- Subject to all other CEQA Requirements
Substitute Environmental Documentation

- Originally believed this was “stripped-down” CEQA
- Courts have informed us otherwise
  - CDF -- e.g. Joy Road -- Recirculation & CEQA Process
  - City of Arcadia -- L.A. Trash TMDL
    - Economics (“Cost”)
    - “Neg Dec” vs EIR-level analysis
  - L.A. River Metals -- Alternatives Analysis
- What’s Next?
  - Cumulative Impacts?
  - Growth-Inducing Impacts?
  - Project Description/Baseline?
Substitute Environmental Documentation

- Project documents constitute “substitute environmental documentation” (SED)
  - Draft Basin Plan Amendment or Policy
  - Checklist/environmental analysis
    - Must document all decisions regarding impacts (significant vs. insignificant)
  - Supporting Staff Report
    - Analysis of Alternative methods of compliance and conclusions
  - Public Comments
  - Responses to Public Comments
  - Board Resolution adopting the BPA or Policy
    - Findings regarding impacts (CEQA Guidelines §15091)
    - Statement of overriding considerations for each unmitigated impact (CEQA Guidelines §15093)
Alternative Methods of Compliance

- Public Resources Code 21159
- Applies to agency actions that require pollution control equipment or set a performance standard or treatment requirement
- Requires agency to consider a reasonable range of foreseeable methods of compliance
- For each method, agency must consider impacts, mitigation, alternatives, costs and technical factors
Make CEQA Your Friend

- CEQA is a powerful tool
  - Helps regulators achieve their goals
  - Helps project proponents achieve their goals
  - Early consultation & planning -- lets everyone know as early in the process as possible about water quality requirements and impacts
  - Thorough Public Participation -- “Sunshine”
  - Full Disclosure of Impacts & Mitigation
  - Do It Right -- Do It Once -- or take the risk & pay the consequences
CEQA and NEPA

- Comparison of NEPA and CEQA-
  - CEQA is much more rigorous, mitigation based & has some substantive requirements -- NEPA is less rigorous, less enforceable, more idiosyncratic from agency to agency
  - CEQA requires several types of analysis not required by NEPA (e.g. Cumulative impacts, Growth-Inducing Impacts)
  - CEQA requires different circulation & review periods
  - CEQA arguably contains substantive requirement to mitigate adverse impacts unless infeasible
  - CEQA encourages joint CEQA/NEPA process
L.A. River carries a surprising amount of trash to the Port of Long Beach
Trash violates basin plan because it significantly impairs many beneficial uses.
Beneficial Uses Impaired by Trash

- The impairments due to trash have negative effects on Beneficial Uses including:
  - Contact and non-contact recreation
  - Habitat uses - wildlife habitat, warmwater habitat, estuarine and marine habitat
  - The area also supports rare, threatened or endangered species and spawning and early life development
Next Presentation

- L.A. River Trash TMDL