

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
- ★ Just 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



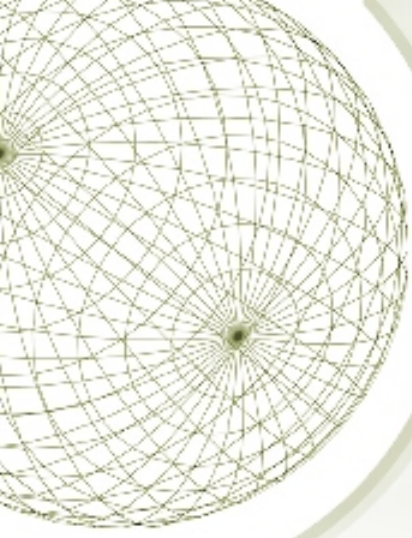
Levels of Analysis

- ★ 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

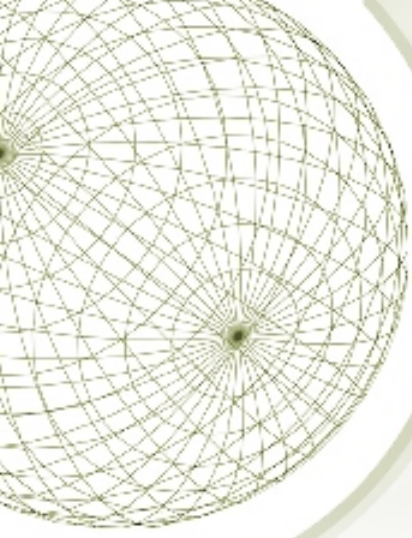
- ★ “Normal” CEQA

- ★ 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



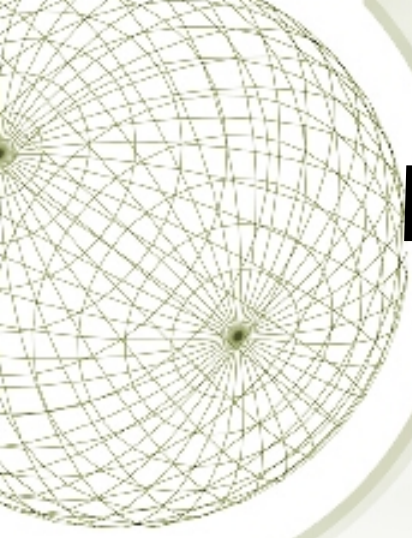
303(D) LIST

- ★ 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”



TMDLs

- ★ 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



Water Quality Planning and CEQA

- ★ 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

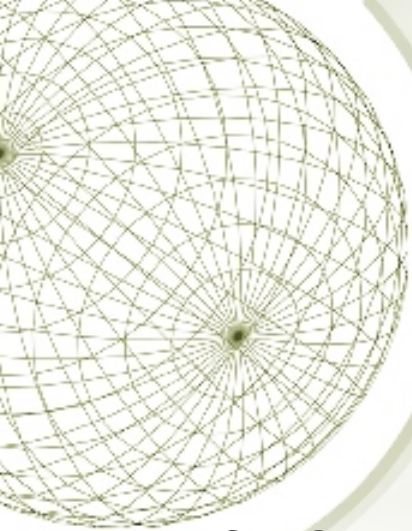
- ★ Project documents constitute “substitute environmental documentation” (SED)
 - ★ Draft Basin Plan Amendment or Policy
 - ★ Checklist/environmental analysis
 - ★ Must document all decisions regarding impacts (significant vs. insignificant)
 - ★ Supporting Staff Report
 - ★ Analysis of Alternative 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

Case Study - L.A. River Trash TMDL

- ★ L.A. River carries a surprising amount of trash to the Port of Long Beach



Trash

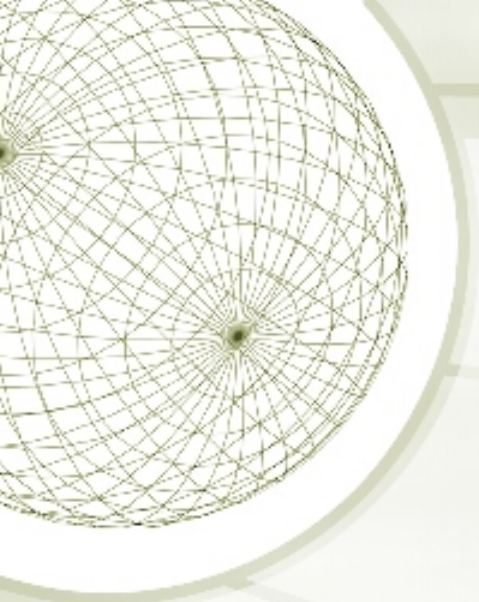
- ★ Trash violates basin plan because it significantly impairs many beneficial uses





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