

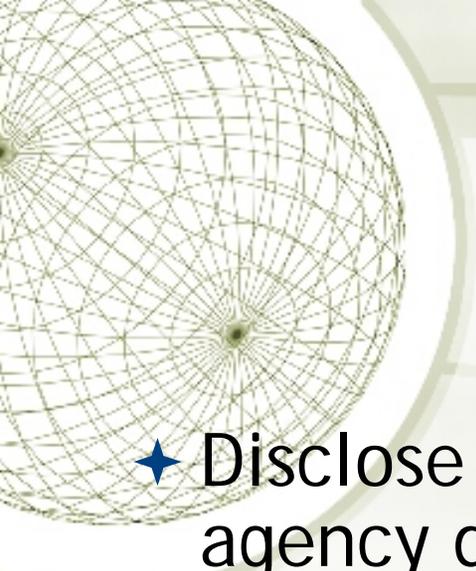
# *CEQA for Water Quality Regulation and Planning*

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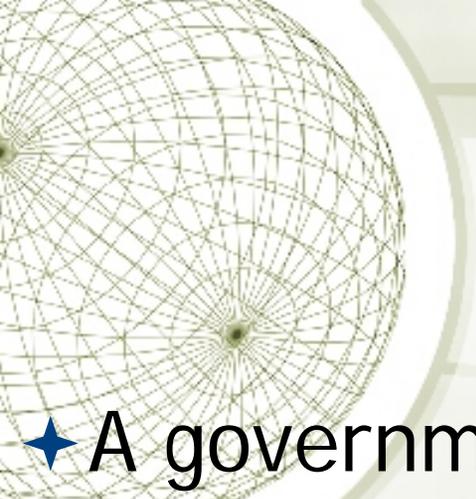
# *California Environmental Quality Act*

- ★ 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”*

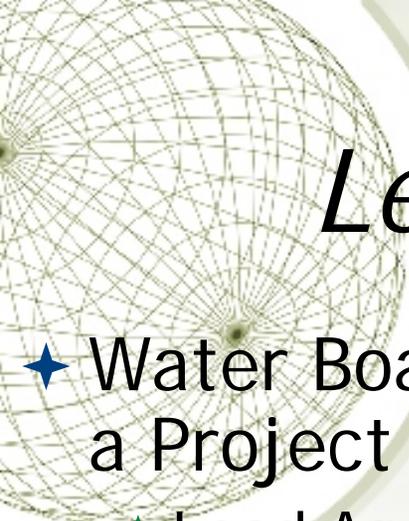
- ★ CEQA does not apply to Ministerial actions (Ministerial = Non-Discretionary)
- ★ “Discretionary action” requires the exercise of judgement or deliberation when the public agency or body decides to approve or disapprove a particular activity.
- ★ Mixed decisions are treated as discretionary (Guidelines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



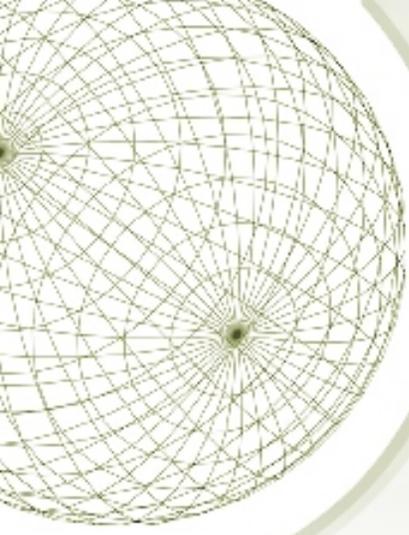
# *Levels of Analysis*

- ★ 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*

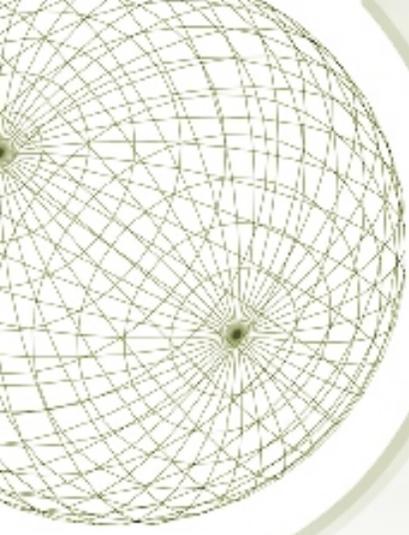
- ★ “Normal” CEQA

- ★ EIR, Negative Declaration or Categorical Exemption

- ★ Applies to Water Rights Actions, Permitting and Enforcement

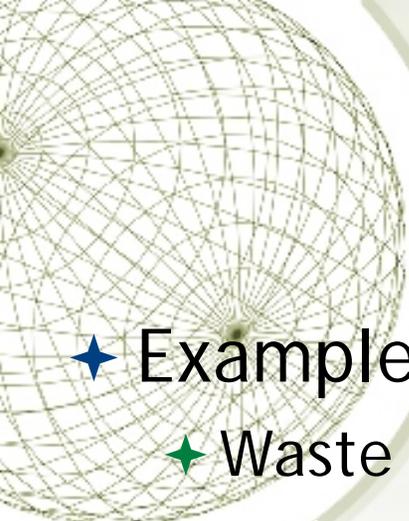
- ★ Planning

- ★ Certified Regulatory Program



# *State Water Resources Control Board*

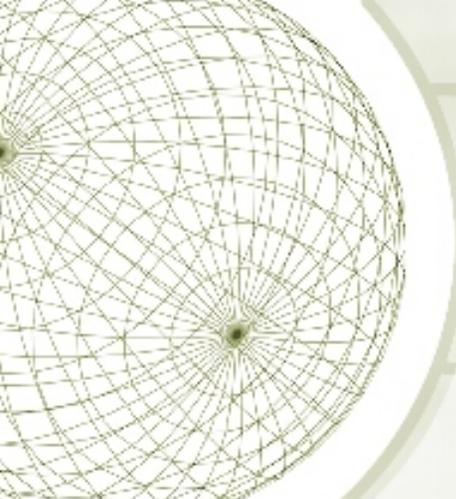
- ★ Water Rights -- “Normal” CEQA
- ★ Water Quality
  - ★ Both Federal (Clean Water Act) and State (Porter-Cologne)
  - ★ Regulation -- “Normal” CEQA
  - ★ Planning -- CEQA for Certified Regulatory Program
- ★ Grants and Loans -- “Normal” CEQA



# *Water Board "Projects"*

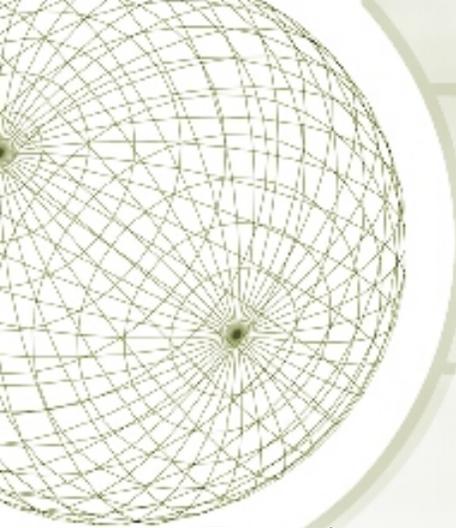
- ◆ Examples include:

- ◆ 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



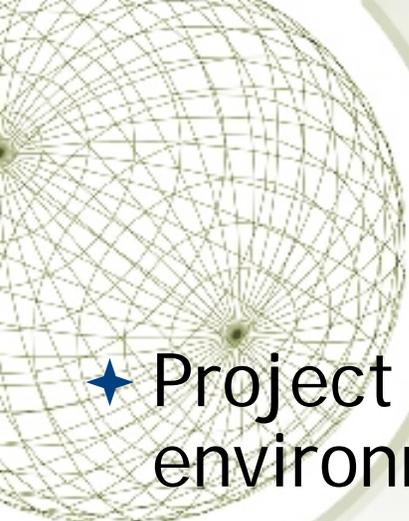
# *Water Quality Planning and CEQA*

- ★ 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



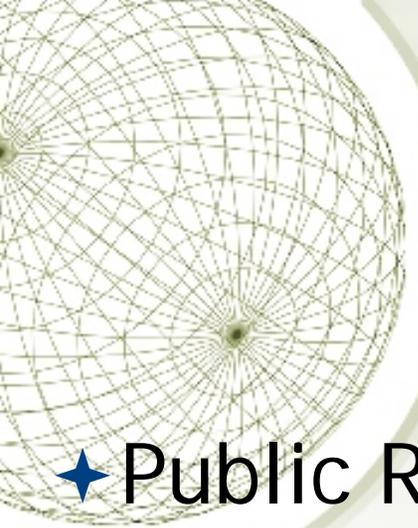
# *Substitute Environmental Documentation*

- ★ 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*

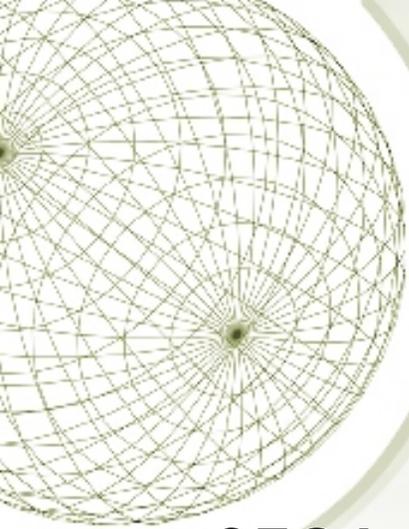
- ★ Project documents constitute “substitute environmental documentation” (SED)
  - ★ Draft Basin Plan Amendment or Policy
  - ★ Checklist/environmental analysis
    - ★ Must document all decisions regarding impacts (significant vs. insignificant)
  - ★ Supporting Staff Report
    - ★ Analysis of Alternative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

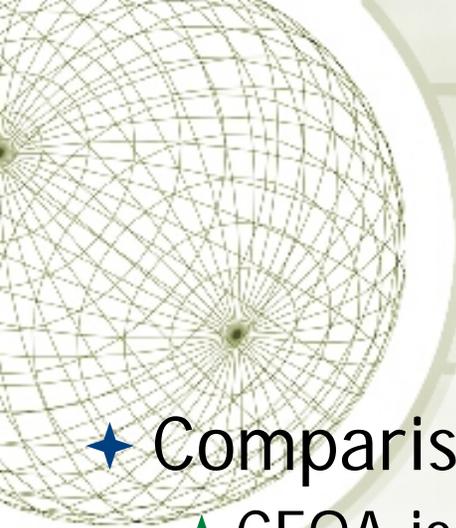
## ★ Public Resources Code 21159

- ★ 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*

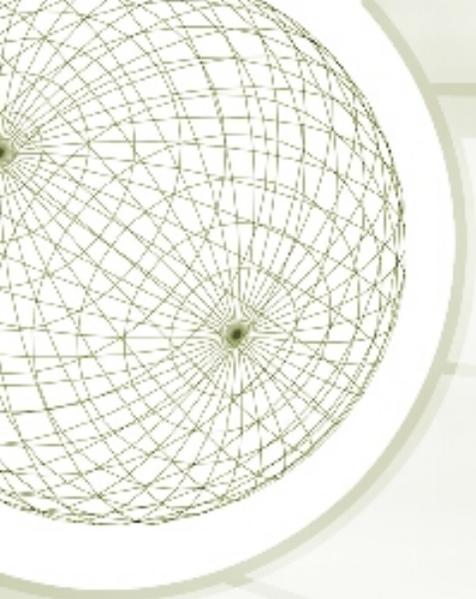
- ★ Trash violates basin plan because it significantly impairs many beneficial uses





# *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