SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

HRG DATE / TIME **JUDGE**	**December 4, 2020 / 10:00 A.M.** **James P. Arguelles**	**DEPT. NO.** **CLERK**	**17** **S. Slort**
SAN JOAQUIN TRIBUTARIES AUTHORITY, a Joint Powers Authority, **Petitioner and Plaintiff,** **v.** **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, and DOES 1 through 100, inclusive,** **Respondents and Defendants.**		**Case No.: 34-2019-80003133**	
Nature of Proceedings:	**Petition for Writ of Mandate/Complaint for Declaratory Relief; Demurrer to Petition/Complaint – Combined Final Ruling**		

The petition for writ of mandate is GRANTED in part and DENIED in part.

The complaint for declaratory relief is DISMISSED.

The demurrer is OVERRULED.

The parties' requests for judicial notice are GRANTED.

Background

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.) In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne). Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social,

tangible and intangible." (*Id.*, citing Water Code § 13000.[1]) The task of accomplishing this belongs to the State Board and the nine Regional Water Quality Control Boards (regional boards). (*City of Burbank*, p. 619.) Jurisdiction under Porter-Cologne extends to all "waters of the state," which denote "any surface water or groundwater, including saline water, within the boundaries of the state." (See § 13050(e).)

At the federal level, water quality is governed by the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* The Clean Water Act contemplates a "partnership" between the states and the federal government animated by a shared objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (*City of Burbank*, p. 620.) Jurisdiction under the Clean Water Act extends only to navigable waters of the United States. (See 33 U.S.C. § 1362(7).) Despite difficulties in tracing the precise differences between waters subject to Porter-Cologne and California waters subject to the Clean Water Act, it appears undisputed that the former are greater than the latter.

The Clean Water Act's discharge permitting system is the primary means for enforcing effluent limitations and water quality standards thereunder. (See *id.*, p. 621.) States with an approved water quality control program may issue such permits. (*Id.*) "In California, wastewater discharge requirements established by the regional boards are the equivalent of the [] permits required by federal law. (§ 13374.)" (*Id.*)

Beginning in the early 2000's, United States Supreme Court decisions withdrew protections for wetlands under the Clean Water Act. Given this, and given large historical losses to California's wetlands, the State Board in 2008 undertook to develop a policy that would protect wetlands under Porter-Cologne. (See § 13140 [State Board is charged with establishing statewide policy for water quality].) Since discharges of dredged and fill materials have contributed significantly to the loss of wetlands, the State Board sought a policy that would mitigate the effects of such discharges. By 2012, the State Board had released a draft document entitled Water Quality Policy for Wetland Area Protection and Dredge and Fill Permitting. A revised draft was released in 2013.

In 2016, the State Board decided to convert its policy document into amendments of (1) the existing Water Quality Control Plan for Ocean Waters and (2) a forthcoming Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries of California. Unlike water quality policies, water quality control plans (WQCPs) are primarily within the regional boards' jurisdiction. (See *United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 109.) The State Board must approve WQCPs adopted by regional boards, but the State Board adopts its own WQCPs only in enumerated circumstances discussed in more detail below.

In April 2019, the State Board adopted the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures). The Procedures

[1] Undesignated statutory references shall be to the California Water Code.

amend the WQCP for Ocean Waters and the WQCP for Inland Surface Waters and Enclosed Bays and Estuaries of California. The Procedures do two main things. First, they provide a statewide definition for "wetlands" that reaches all "waters of the state." Second, they establish application requirements for those seeking permits to discharge dredged or fill material into waters of the state, including wetlands.

Petitioner SJTA objects to the Procedures on substantive and procedural grounds. In the first cause of action in its amended petition and complaint (Petition), SJTA contends that the State Board lacks authority to apply the Procedures to waters other than federal waters under the Clean Water Act. In the second cause of action, it contends that the State Board's authority to regulate "waste" under Porter-Cologne does not extend to all dredged and fill materials. SJTA contends in its third cause of action that the State Board adopted the Procedures without complying with federal rulemaking procedures incorporated into state law. And in a fourth cause of action, it contends that the Procedures do not constitute any of the components of a WQCP and therefore could not have amended any WQCP. Based on these contentions, and pursuant to Code of Civil Procedure Section 1085, SJTA seeks a writ of mandate setting the Procedures aside. In a fifth cause of action, SJTA seeks a declaration of rights and duties with respect to the Procedures.

The State Board demurred to the Petition earlier in the litigation. In an order dated February 14, 2020, the court rejected the State Board's argument that SJTA had failed to allege standing to challenge the Procedures. The court otherwise continued the demurrer to be heard concurrently with the Petition's merits.

Legal Standards

A regulation may be challenged by way of traditional writ of mandate/prohibition or by declaratory relief action. (See Code of Civ. Proc. § 1085; Gov't Code § 11350; *Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist.* (2015) 235 Cal.App.4th 957, 963.) "[W]hen an implementing regulation is challenged on the ground that it is 'in conflict with the statute' [citation] or does not 'lay within the lawmaking authority delegated by the Legislature' [citation], the issue of statutory construction is a question of law on which the court exercises independent judgment." (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 415.) Depending on the circumstances, including the agency's application of expertise, the court may give great weight to the agency's interpretation of the statute. (See *id.*) Ultimately, though, statutory interpretation is the court's responsibility. (See *id.*) Where the regulation is consistent with statutory authority, judicial review is limited to "an examination of the proceedings before the officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support[.]" (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 17.) An agency's regulations come to court with a strong presumption of regularity, and it is the petitioner's burden to demonstrate any infirmity. (See *id.*, p. 11; *California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530, 544.)

Pursuant to Code of Civil Procedure Section 1060, a party may obtain a judicial declaration of rights and duties under the law. (See *Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 362.) "Declaratory relief generally operates prospectively to declare future rights, rather than to redress past wrongs. [Citations.] It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs. In short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them. [Citation.]" (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.) Where it would be redundant of other claims, declaratory relief may be denied. (*Id.*, pp. 909-910; see also Code Civ. Proc. § 1061.)

Discussion

SJTA argues first that the State Board exceeded its authority by purporting to amend two existing WQCPs. Specifically, SJTA argues that Porter-Cologne does not authorize the State Board to regulate wetlands and discharges of dredged or fill material for waters other than federal waters subject to the Clean Water Act.

As noted above, the regional boards are primarily responsible for establishing WQCPs. (See § 13240 ["Each regional board shall formulate and adopt water quality control plans for all areas within the region"].) The State Board's role is largely limited to granting its approval or returning the WQCP to the regional board that formulated it for further consideration. (See § 13245.)[2]

Porter-Cologne, however, does authorize the State Board to establish some WQCPs in the first instance. Pursuant to Section 13170, the State Board may adopt WQCPs "for waters for which water quality standards are required by the Federal [Clean Water] Act[.]" The State Board cited Section 13170 as authority for the Procedures. (See AR 26542.) As SJTA points out, Section 13170 only authorizes the State Board to formulate WQCPs for waters of the United States, not other waters subject to Porter-Cologne. Yet, the Procedures purport to apply their terms to all waters of the state.

The State Board does not argue in its opposition brief that Section 13170 provides authority to regulate waters other than federal waters. Instead, it tenders its policy-making authority under Section 13140 as a basis to promulgate WQCP amendments that extend to all waters of the state. SJTA counters that authority to establish "policy" under Section 13140 does not include authority to amend WQCPs. The court agrees with SJTA.

Section 13140 commands the State Board to "formulate and adopt state policy for water quality control." It makes no mention of WQCPs. Section 13142 then defines the components of state policy:

[2] The State Board also shapes regional boards' WQCPs by establishing water quality policies that the regional boards must consider. (See §§ 13146, 13240.)

> State policy for water quality control shall consist of all or any of the following:
> (a) Water quality principles and guidelines for long–range resource planning, including ground water and surface water management programs and control and use of recycled water.
> (b) Water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities.
> (c) Other principles and guidelines deemed essential by the state board for water quality control.

Again, there is no mention of WQCPs. Moreover, the "principles" and "guidelines" comprising state policy connote a level of generality that is higher than that associated with WQCPs.

Section 13240, which commands regional boards to formulate WQCPs, describes the relationship between the State Board's policies and WQCPs: "Such [WQCPs] shall conform to the policies set forth in Chapter 1 (commencing with Section 13000) of this division and any state policy for water quality control." This sentence's distinction between WQCPs, on the one hand, and state policies, on the other, undermines the notion that state policies serve as WQCPs. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117 ["Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning"].)

The difference between policies under Section 13140 and WQCPs is even clearer when considering the disparate elements comprising each. WQCPs consist of beneficial uses to be protected, water quality objectives that protect such uses, and a program of implementation. (See §§ 13050(j), 13241, 13242.) These elements are not part of a state policy adopted pursuant to Section 13140.[3] And as SJTA points out, the rulemaking procedures attending the adoption of a policy differ from those attending the adoption of a WQCP. (See Opening Brf. at 21:9-22 [comparing procedures in Sections 13144, 13147, 13170, 13240 and 13244.)

In short, it is clear from the statutory text that a policy established pursuant to Section 13140 may not serve as a WQCP. Because the text is clear, there is nothing to construe, and the court's inquiry comes to an end. (See *Raam Construction, Inc. v. Occupational Safety & Health Appeals Bd.* (2018) 28 Cal.App.5th 709, 715; *Howard Jarvis Taxpayers Assn. v. County of Orange* (2003) 110 Cal.App.4th 1375, 1381.)

In the first cause of action, SJTA alleges:

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[3] That both WQCPs and state water quality control policies include "water quality objectives" does not support a conclusion that state policies may serve as WQCPs. Unlike the water quality objectives included in water quality control policies, water quality objectives in a WQCP must be accompanied by a program of implementation. Any program of implementation includes a "description of the nature of actions which are necessary to achieve the objectives." (§ 13242(a).) A water quality control policy does not prescribe such necessary actions.

> To the extent the Procedures regulate waters of the state not covered by the Clean Water Act ... through a statewide water quality control plan, the [State] Board has exceeded its authority under Water Code section 13170 because these waters are not waters for which water quality standards are required under the Clean Water Act.

(Pet., ¶ 56.) These allegations accurately reflect the law. Under Section 13170, the State Board is authorized to "adopt water quality control plans ... for waters for which water quality standards are **required** by the Federal [Clean Water] Act." (Emphasis added.) Although such standards are required for intrastate waters that are navigable, (see *Tahoe-Sierra Preservation Council v. State Waters Recourse Control Bd.* (1989) 210 Cal.App.3d 1421, 1433-1434), they are not required for all waters subject to Porter-Cologne. (See *Rapanos v. United States* (2006) 547 U.S. 715, 726, 126 S. Ct. 2208 ["'[N]onnavigable, isolated, intrastate waters,'" were not "'waters of the United States'"]; 33 U.S.C. § 1313(c)(2)(A) [A state's "revised or new water quality standard shall consist of the designated uses of the **navigable** waters involved and the water quality criteria for **such** waters based upon such uses"], emphasis added.)

For reasons discussed above, Section 13140 did not authorize the State Board to establish or amend any statewide WQCP. Accordingly, the only authority to amend the WQCP for Inland Surface Waters and Enclosed Bays and Estuaries of California was Section 13170.[4] But the State Board purported to apply the Procedures to all waters of the state, not merely waters for which water quality standards are required by the Clean Water Act. Because the State Board was not authorized to apply the Procedures to waters other than those for which water quality standards are required by the Clean Water Act, it shall be enjoined from applying the Procedures to such other waters via the WQCP for Inland Surface Waters and Enclosed Bays and Estuaries of California.

The court reaches a different conclusion with respect to the WQCP for Ocean Waters. Section 13170.2 commands the State Board to adopt this WQCP. It also directs the State Board to review the WQCP for Ocean Waters at least every three years.[5] Because the parties did not address Section 13170.2 in their legal briefs, the court directed their counsel to be prepared to address it at oral argument. Neither side requested a continuance or leave to file supplemental briefing.

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[4] Amici characterize Sections 13140 and 13170 as "complementary" and argue the two sections collectively authorize the State Board to enact the Procedures. The court is satisfied that the sum of State Board's statutory authority is no greater than its parts.

[5] Section 13170.2 provides, in relevant part:
(a) The state board shall formulate and adopt a water quality control plan for ocean waters of the state which shall be known as the California Ocean Plan.
(b) The plan shall be reviewed at least every three years to guarantee that the current standards are adequate and are not allowing degradation to indigenous marine species or posing a threat to human health.

At the hearing, counsel for the State Board asserted that Section 13170.2 provided independent authority for the State Board to adopt the Procedures as amendments to the WQCP for Ocean Waters. He further asserted that the State Board's failure to cite Section 13170.2 during the rulemaking process was an oversight.

Counsel for SJTA did not deny that Section 13170.2 provided independent authority to adopt the Procedures as amendments to the WQCP for Ocean Waters. Nor did she assert that the failure to cite Section 13170.2 resulted in any prejudice. Her point was that Section 13170.2 authorizes a WQCP for "oceans," not other waters of the state. Because the Procedures target "waters of the state," she argued that Section 13170.2 did not fully authorize amendments to the WQCP for Ocean Waters.

Given that Section 13170.2 expressly authorized the State Board to adopt and review the WQCP for Ocean Waters, the State Board's authority to amend the WQCP for Ocean Waters was not limited to Section 13170. Accordingly, to the extent the Procedures amend the WQCP for Ocean Waters, the Procedures may be applied to waters of the state, not merely federal waters under the Clean Water Act.

SJTA's counsel's argument, that the Procedures exceed authority under Section 13170.2 by amending "waters of the state," is unconvincing. By its terms, the WQCP for Ocean Waters is limited to ocean waters. The fact that the Procedures apply to "waters of the state" does not mean that the Procedures' amendments to the WQCP for Ocean Waters may be applied to inland waters or other waters outside the scope of the WQCP. The court finds no excess of jurisdiction in this regard.

Next, SJTA argues further to its second cause action that the State Board exceeded its authority by regulating dredged and fill material as "waste" under Porter-Cologne.[6] Section 13050(d)[7] defines waste to include "sewage and any and **all other waste substances**, liquid, solid, gaseous, or radioactive, **associated with human habitation**[.]" (Emphasis added.) SJTA concedes that some dredged and fill material qualifies as "waste substance" that is "associated with human habitation." In *Lake Madrone Water District v. State Water Resources Control Board* (1989) 209 Cal.App.3d 163, 169, for example, the Court of Appeal held that silt and sediment released from a dam into a neighboring creek was "waste" because the dam was constructed to aid human habitation. SJTA nonetheless contends that only some dredged and fill material qualifies as waste, and that the State Board lacked authority to regulate <u>all</u> dredged or fill material pursuant to Porter-Cologne.

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[6] The federal permit system governing dredged and fill material does not preclude California from regulating such material under state law. (See 33 U.S.C. § 1344(t).)

[7] "'Waste' includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

Given SJTA's concession that the State Board may regulate some dredged and fill material as waste, the State Board argues that the dispute raised is not ripe. The State Board points out that whether a particular discharge of dredged or fill material qualifies as waste "associated with human habitation" depends on facts not currently before the court. The dispute raised in the second cause of action is whether the State Board may regulate dredged and fill material at all as waste under Porter-Cologne. (See Pet., ¶¶ 59-62.) Hence, the State Board cautions the court not to grant a writ directed at future, hypothetical discharges of dredged or fill material that might not qualify as waste associated with human habitation.

The State Board's position has merit. Rather than negate the State Board's authority to regulate dredged and fill material as waste, SJTA concedes that such authority exists, at least to the extent the material is associated with human habitation. Further, the circumstances in which a regional board could be required to deny an application on grounds that dredged or fill material was not associated with human habitation, or otherwise failed to qualify as waste, are hypothetical at this point. The court would be ill-advised to make a ruling without a specific factual record. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170-171 [distinguishing between a ripe facial challenge to administrative guidelines and a premature challenge to future applications].)

In its reply brief, SJTA suggests that the second cause of action is ripe because it raises a dispute over the State Board's regulatory authority under Sections 13170 and 13140, not over the definition of "waste" in Section 13050(d). Because this suggestion is at odds with the allegations in the second cause of action, the court rejects it. (See Pet., ¶ 62 ["[T]he Board has exceeded its authority under Porter-Cologne because dredge and fill material are not included in the Act's definition of waste"].) The Petition raises questions about Sections 13170 and 13140 elsewhere.

At oral argument, counsel for SJTA argued that the Procedures' dredged and fill provisions place dischargers in a conundrum of having to comply – even if the material to be discharged is not associated with human habitation – or risk adverse administrative action. She asserted that the Procedures improperly reach all discharges of dredged or fill material even though Porter-Cologne only authorizes regulation of material constituting "waste." The Procedures, however, do not tender "dredged or fill material" as an undefined, limitless term. Instead, the Procedures circumscribe dredged or fill material by incorporating federal definitions in 40 C.F.R. Section 232.2. Granted, those definitions of dredged material and fill material differ from Porter-Cologne's definition of "waste." But SJTA has not identified any particular provision in the federal definitions that it contends exceeds the scope of "waste" as defined in Porter-Cologne.[8] Nor has SJTA asked the court to fashion any remedy based on distinctions between

[8] As the State Board points out, when the Legislature adopted the definition of "waste" as it appears in Section 13050(d), it intended to incorporate all the definitions of "waste" as "earthen material" discussed in preexisting Attorney General opinions. (See Opp. at 28:18-29:5.) The State Board also points out that it has interpreted Porter-Cologne's definition of "waste" broadly to include "earthen materials." (See Opp. RJN, Exh. 2 [State Bd. Order No. WQ 77-5 (1976), p. 17 [earthen materials from

the definitions of "dredged" and "fill" material in the Procedures and the definition of "waste" in Porter-Cologne.

Having failed to establish that the Procedures' definitions of dredged and fill material exceed the definition of waste under state law, SJTA has not established any hardship requiring immediate parsing of definitional distinctions. (See *Pacific Legal Foundation*, p. 171 [ripeness entails "'both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration'"], italics omitted.) SJTA has not shown, for example, that its daily activities or planning, or those of members of the public, will be burdened absent immediate judicial action. (Compare *Abbott Labs. v. Gardner* (1967) 387 U.S. 136, 152, 87 S. Ct. 1507 ["These regulations purport to give an authoritative interpretation of a statutory provision that has a direct effect on the day-to-day business of all prescription drug companies"], superseded by statute on another point as stated in *Lubrizol Corp. v. Train* (6th Cir. 1976) 547 F.2d 310, 315, fn. 22.) The court grants no relief on the second cause of action.

In its third cause of action, SJTA argues that the State Board failed to comply with federal rulemaking procedures incorporated by reference into state law. Government Code Section 11353, which is part of California's Administrative Procedures Act, partly exempts WQCPs from its scope. Subdivisions (b)(1) and (b)(7).provide, respectively:

> Any policy, plan or guideline, or any revision thereof, that the State Water Resources Control Board has adopted ... after June 1, 1992 shall be submitted to the [O]ffice of Administrative Law].
>
> Any proceedings before the State Water Resources Control Board ... subject to this subdivision shall be conducted in accordance with the procedural requirements of Division 7 (commencing with Section 13000) of the Water Code, **together with any applicable requirements of the Federal [Clean] Water [] Act** ... . (Emphasis added.)

In SJTA's view, these subdivisions required the State Board to comply with rulemaking requirements in Title 40, Sections 25.1 *et seq.* of the Code of Federal Regulations before adopting the Procedures. The federal regulations in Title 40 extend to "State rulemaking under the Clean Water Act." (40 C.F.R. § 25.2(a).) SJTA faults the State Board for failing to comply with the notice provisions in Title 40, Section 25.4(c), which reads:

> Public notification. **Each agency shall notify interested and affected parties**, including appropriate portions of the list required by paragraph (b)(5) of this section, and the media **in advance of times at which major decisions not covered by notice requirements for public meetings or public hearings are being considered**. Generally,

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construction activities are "waste" under Porter-Cologne].) An agency's long-standing interpretation of its regulatory authority is entitled to respect. (See *City of Scotts Valley v. County of Santa Cruz* (2011) 200 Cal.App.4th 97, 140.)

> notices should include the timetable in which a decision will be reached, the issues under consideration, any alternative courses of action or tentative determinations which the agency has made, a brief listing of the applicable laws or regulations, the location where relevant documents may be reviewed or obtained, identification of any associated public participation opportunities such as workshops or meetings, the name of an individual to contact for additional information, and any other appropriate information. **All advance notifications under this paragraph must be provided far enough in advance of agency action to permit time for public response; generally this should not be less than 30 days**. (Emphasis added.)

The State Board did disseminate notices of public hearings and public meetings before adopting the Procedures. (See Opp., "Factual and Regulatory Background," Part IV.) SJTA, though, points to final revisions that the State Board incorporated into the Procedures. SJTA describes these revisions as exemptions for rice fields and prior converted crop land, as well as changes to climate change analysis requirements. The revisions reflected major policy concerns. (See AR 24772.) The State Board did not circulate the subject revisions in a final draft of the Procedures until March 22, 2019, eleven days before the Procedures were adopted. Accordingly, SJTA argues that the State Board failed to comply with "general" 30-day notice requirement in 40 C.F.R. Section 25.4(c).

To the extent the Procedures amended the WQCP for Ocean Waters, the State Board was not required to comply with 40 C.F.R. Section 25.4(c). The federal regulations only apply to rulemaking under the Clean Water Act. (See 40 C.F.R. § 25.2(a).) As explained above, the State Board was authorized to apply the Procedures to the WQCP for Ocean Waters under state law, namely Section 13170.2.

Moreover, even if the State Board was otherwise required to comply with 40 C.F.R. Section 25.4(c), it did not abuse its discretion by incorporating limited revisions into the Procedures fewer than 30 days from the Procedures' adoption. Granted, the State Board did not circulate a final draft of the Procedures until March 22, 2019, eleven days before the Procedures were adopted. The final draft incorporated policy-driven revisions described above. But the State Board had already published the policies in question, as well as proposed revisions in furtherance of these policies, on February 22, 2019 – 30 days earlier. (See Admin. Record (AR) 24835-24852.) A comparison of the proposed revisions published on February 22 and the Procedures adopted on April 2 reveals that several proposed revisions were inserted word-for-word into the adopted version. In addition, on February 15, 2019, the State Board indicated that public commentary about the information published on February 22 could be presented orally at a workshop on March 5. (AR 24771-24773.) Comments about the revisions could also be made at the April 2, 2019 meeting where the Procedures were considered for adoption. (AR 24772, 26538.)

Section 24.5(c) of the federal regulations "generally" require 30-days' notice 'to permit time for public response." Assuming the State Board did not conform to the letter of this requirement, the public notices it did provide sufficed because of the level of public participation they

facilitated and the overall advance notice they provided. In sum, the Procedures are not void for nonconformity with federal rulemaking requirements.

Turning to the fourth cause of action, SJTA contends that the Procedures may not serve as amendments to WQCPs because they neither constitute nor amend the statutory components of WQCPs. SJTA has failed to meet its burden.

WQCPs consist of beneficial uses to be protected, water quality objectives, and programs of implementation necessary to achieve the objectives. (See § 13050(j).) A program of implementation includes, but is not limited to:

> (a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.
> (b) A time schedule for the actions to be taken.
> (c) A description of surveillance to be undertaken to determine compliance with objectives.

(§ 13242.) In addition, a WQCP may "specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted." (§ 13243.) Given the several potential and compulsory components of a WQCP, and given that the Procedures amended two different WQCPs, it was incumbent upon SJTA in the first instance to rule out, not merely that provisions within the Procedures qualify as components of the two WQCPs at issue, but that the Procedures do nothing to amend such components already within the WQCPs. Rather than contain the requisite analysis, SJTA's opening brief includes a single paragraph in which SJTA concludes that the Procedures do not contain any elements of a WQCP. SJTA has not even attempted to parse out the components of the two WQCPs that the Procedures amend, and it is not apparent that those WQCPs are anywhere in the voluminous materials before the court.

Furthermore, SJTA's only reply to the State Board's assertion that the Procedures are part of a program of implementation is that the State Board "has not identified any specific objectives in the two WQCPs that the Procedures would help achieve." (Reply at 11:13-14.) SJTA would ignore its burden to demonstrate any infirmity in the Procedures and would shoulder the State Board with a burden to demonstrate validity.

At oral argument, counsel for SJTA blamed the State Board for failing to include the two WQCPs at issue in the rulemaking record. In the current proceeding, however, SJTA bears the burden of establishing an abuse of discretion, and there is no apparent justification for failing to include the WQCPs in SJTA's request for judicial notice and then analyzing the WQCPs in legal memoranda. Because SJTA has not met its burden as the petitioning party, the court rejects its argument about the Procedures failing to constitute or amend any WQCPs.

The fifth cause of action for declaratory relief is dismissed as duplicative. (See Code Civ. Proc. § 1061.)

The balance of the State Board's demurrer is overruled.

Disposition

The petition is granted in part and denied in part. To the extent the Procedures amend the WQCP for Inland Surface Waters and Enclosed Bays and Estuaries of California, the State Board is enjoined from applying such amendments to waters other than those subject to the Clean Water Act.

The complaint for declaratory relief is dismissed as duplicative.

The balance of the demurrer is overruled.

Pursuant to Rule of Court 3.1312, counsel for SJTA shall lodge for the court's signature (1) a judgment to which this ruling is attached as an exhibit as well as (2) a writ of prohibition for the clerk's signature.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: December 17, 2020

Hon. James P. Arguelles
California Superior Court Judge,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING - ATTACHED

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled **Petition for Writ of Mandate/Complaint for Declaratory Relief; Demurrer to Petition/Complaint – Combined Final Ruling** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Tim O'Laughlin
Valerie C. Kincaid
Timothy J. Wasiewski
O'LAUGHLIN & PARIS LLP
2617 K Street, Suite 100
Sacramento, CA 95816

Matthew G. Bullock
Dylan K. Johnson
CALIFORNIA ATTORNEY GENERAL
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7020

Deborah A. Sivas
Matthew J. Sanders
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
Stanford, CA 94305-8610

Dated: December 17, 2020

Superior Court of California
County of Sacramento

By: S. Slort,
Deputy Clerk