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## **RJO Update: Environmental Law**

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### **California State Water Resources Control Board Adopts Regulations to Speed up Review of Petitions Challenging Regional Water Board Actions**

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Regulations recently adopted by the State Water Resource Control Board will finally give the regulated community in California a realistic chance of having challenges to actions taken by California's 9 Regional Water Quality Control Boards resolved on their merits – either by the State Water Board or a by a Superior Court judge.

The Regional Water Boards are part of the California Environmental Protection Agency, and have a broad portfolio, including overseeing cleanup of contaminated sites and issuing permits to discharge waste to California waters. A Regional Water Board's action can be challenged by filing a petition with the State Water Board. (23 CCR § 2050 *et seq.*) But all too often those petitions go into a regulatory black hole. Under current law the State Water Board is required to rule on a petition within 270 to 330 days after it issues a notice advising the Regional Water Board and other "interested parties" that they have 30 days to respond to the petition. (23 CCR § 2050.5(b).) The problem is, there is no deadline for service of the notice to interested parties, and thus most petitions end up in regulatory limbo – with no realistic hope for a resolution on the merits.

The State Water Board has now taken a big step to change that. Under regulations just approved (and that are likely to go into effect in January) the State Water Board *must* act on a petition (by sending out the notice or dismissing it outright) within 90 days after receipt. (23 CCR § 2050.5(e) [pending].) If the State Water Board takes no action, the petition is dismissed, and the petitioning party can then go to Superior Court to seek judicial review of the agency action.

The State Water Board also adopted regulations to address the huge backlog of pending petitions. During the State Water Board's hearing, the Staff Counsel reported that there are approximately 200 petitions in line to be reviewed. Under the new regulations, the State Water Board is required to act on these pending petitions within specified periods of time, or they too will be dismissed, allowing a petitioner to seek judicial review. (23 CCR §§ 2050.5(f), (g) [pending].) The first round of petitions (those filed before January 1, 2011) must be acted on within 120 days of the effective date. Those received after January 1, 2011, and before December 31, 2012, must be acted on within 240 days. And those received between January 1, 2013, and the effective date must be acted on within one year of the

effective date. Various stakeholders sought changes in the regulation – in particular speeding up the review of pending petitions – although the State Water Board did not make these changes.

The regulations are currently pending before the State Office of Administrative Law, which must formally approve the regulations. Approval is expected by the end of November and, if approved, the regulations are expected to go into effect January 1, 2015. Once the new regulations go into effect, parties challenging a Regional Water Board action will need to keep a close eye on the calendar. They will have only 30 days after the State Water Board's dismissal or denial of a petition to seek judicial review. (23 CCR §§ 2050.5(e), (g) [pending].)

If you have questions on how these new regulations will affect you, or need assistance with any other environmental matter, please contact [Robert C. Goodman](#), [D. Kevin Shipp](#) and [Ann M. Blessing](#) or another member of the Environmental Law Practice Group (all of whom are listed at <http://www.rjo.com/environmental.html>).

*The content of this article is intended to provide a general guide to the subject matter, and is not a substitute for legal advice in specific circumstances.*