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Karl Phaler

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WATER QUALITY CONTROL IN CALIFORNIA: CITIZEN PARTICIPATION IN THE ADMINISTRATIVE PROCESS

Many of us are upset about pollution and concerned that environmental values too often take second place to monetary considerations, but too few of us take action to protect the values we think are important. In California, the field of water pollution control is open to the citizen who wants to get involved in making his government work better. This Comment attempts to explain, to the lawyer and layman alike, the California system of water pollution control and how the concerned citizen can act to improve water quality in his area.

The Porter-Cologne Water Quality Control Act, California’s new law for the regulation of water quality, is probably the most rational and effective scheme of water quality regulation yet devised in the United States. Four factors in particular support this assertion: one, an administrative structure divided into regions whose boundaries are determined by natural watersheds; two, a strong enforcement process with penalties providing tough sanctions; three, the inclusion of esthetic enjoyment of clean water as a beneficial use given statutory protection; and four, the opportunity for citizen participation at all levels of the administrative process and in judicial review of administrative proceedings.

The last three of these provisions are innovations in California law. The addition of adequate enforcement provisions to a basically

† The author wishes to gratefully acknowledge the patience, understanding and interest shown by Mr. William Attwater, attorney for the State Water Resources Control Board, without whose assistance this Comment would not have been possible.

2. In addition to being characterized as "the toughest water quality act in the nation," [Soap and Detergent Ass’n, Water in the News, Sept. 1969, at 3] the organizational concept of water quality control in California is "believed unique among the 50 states." FINAL REPORT OF THE STUDY PANEL TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, RECOMMENDED CHANGES IN WATER QUALITY CONTROL 7 (1969) [hereinafter cited as STUDY PANEL REPORT].
3. The Porter-Cologne Act follows the organization of the former water quality law, the Dickey Act, ch. 1549, § 1, [1949] Cal. Stat. 2782, but is otherwise a complete revision of that legislation. For discussions of the operation of the Dickey Act see Moskovitz, Quality Control and Re-use of Water in California, 45 CALIF. L. REV. 586 (1957); Comment, Legal Control of Water Pollution, 1 U.C. DAVIS L. REV. (1969); and Comment, California’s Water Pollution Problem, 3 STAN. L. REV. 649 (1951). The Study Panel Report [supra note 2] which was the basis of the Porter-Cologne Act, contains a complete breakdown of the changes made from the Dickey Act, as well as some discussion of the failings of the former law. For an excellent analysis of

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sound administrative structure represents a major improvement over the former legislation, the Dickey Act. Legislative protection of esthetic enjoyment is a significant victory for the proposition that considerations other than purely economic ones should determine public values. It is the last provision, however, which is most significant.

The principles of public participation in the administrative process and extensive judicial review of administrative decisions have large implications not only for other programs of environmental control but also for all concerned citizens. In an age when the great majority of public actions are the result of administrative decisions, the provisions of avenues for expression of public opinion and means to challenge determinations of nonelective officials is necessary for the infusion of participatory democracy into administrative political organization. While other areas of public administration allow little citizen participation, ordinary persons can and should play an important role in the decision-making processes involved in water quality control. But to act effectively, they must have a working knowledge of the administrative machinery, the relevant terms, and the procedures involved in the implementation of water quality control in California. The purpose of this Comment is to provide a guide to this important legislation for those who seriously wish to work toward the improvement of water quality in California.

4. The important concept of regional control of water quality, a valuable feature of the Dickey Act [see discussion in Study Panel Report, supra note 2, at 7] is retained under Porter-Cologne. The major failing of the Dickey Act was its enforcement provisions, characterized as "totally inadequate." Id. at 19.

5. Protection of esthetic enjoyment is "a major departure from most existing water quality regulatory schemes." Robie, supra note 3, at 9. The Dickey Act was largely biased toward consideration of economic uses to the exclusion of others. Id. at 9-12. For other recent recognition of esthetic considerations see the State Environmental Quality Act of 1970, ch. 1433, Cal. Stat. 2780, which includes "aesthetic" qualities among those enumerated as requiring protection.

6. There has been little effective representation of the public interest before regional boards to date. Some of the probable reasons for this include the lack of participation in administrative hearings by the Sierra Club or other organized environmental groups, and the fact that participating individuals often do not represent the "public" as a whole but their own interests or those of small groups. Such individual representations as have been attempted often fail to reach their objectives because of lack of facts, ignorance of appropriate procedures, and so forth. It is hoped that this Comment will assist persons in avoiding the latter problems.
I

ADMINISTRATIVE STRUCTURE

A. The State Water Resources Control Board

State policy for water quality control is formulated by the State Water Resources Control Board, composed of five full-time members serving four-year terms. They are appointed by the Governor, and represent the state at large rather than particular areas. Since the Board has responsibility for allocation of water rights as well as for protection of ground waters, its staff is organized into a Division of Water Rights and a Division of Water Quality. While the Board's powers and responsibilities in the water rights area are extremely important, discussion of water rights problems is outside the scope of this Comment, which will focus only on water quality control.

The Porter-Cologne Act designates the Board as the state water pollution control agency for purposes of the Federal Water Pollution Control Act and other federal legislation requiring various federal agencies to obtain statements or certificates from state water pollution control agencies before undertaking activities affecting water quality. This certification requirement can provide a major check on proposed activities either undertaken by or requiring a license from a federal agency.

In the area of water quality control, the responsibilities of the Board are many: recommendation of needed water quality research programs; administration of statewide programs of research into tech-

8. Id. §§ 175, 177.
9. Id. §§ 174, 2100.
10. Id. § 186. The Board is supported by a Legal Division, an Administrative Division, and a Division of Planning and Research. Id.
11. One example of this aspect of the Board's jurisdiction is the Sacramento-San Joaquin Delta water rights hearings, in progress for over a year, in which the interests of the California Department of Water Resources and the U.S. Bureau of Reclamation, diverters of large quantities of water from the Delta system for export southward for agricultural and municipal use, are being opposed by Contra Costa County and Delta interests seeking to retain greater amounts of water in the Delta system. The Board's resolution of this problem will have major consequences for the shrimp population in Suisun Bay in Contra Costa County, upon which the striped bass fishery may rely, and ground water quality in the Los Angeles basin, on which future development of Los Angeles may depend, as well as affecting a great number of other considerations.
15. Id. § 13161.
nical aspects of water quality control;\textsuperscript{16} coordination of water-quality related investigations conducted by other state agencies;\textsuperscript{17} supervision of the establishment of procedures by which water quality control plans are formulated and implemented by the regional boards;\textsuperscript{18} appellate jurisdiction over actions of the regional boards;\textsuperscript{19} and adoption of regulations governing the use of chemicals in cleaning up oil spills.\textsuperscript{20} But while the actions of the State Board are significant, the major responsibility for water quality control lies with the regional boards.

B. Regional Water Quality Control Boards

Nine regional water quality control boards,\textsuperscript{21} whose jurisdictional boundaries follow the divisions of major watersheds,\textsuperscript{22} are primarily responsible for the implementation of state policies. Each board is composed of nine members, six of whom must be associated with one of the following areas: water supply, conservation, and production; irrigated agriculture; industrial water use; municipal government; county government; and private associations concerned with recreation, fish or wildlife.\textsuperscript{23} Two of the remaining three members must have special competence in the area of water quality,\textsuperscript{24} and the last need possess no particular qualifications.\textsuperscript{25} The regional board members are compensated only for expenses actually incurred,\textsuperscript{26} and are required to meet six times a year at a minimum.\textsuperscript{27} Conflicts of interest are prohibited, and may subject a board member to removal from office.\textsuperscript{28}

The day-to-day work of each regional board is carried on by a technical and administrative staff, whose size varies from board to board, with assistance in legal matters from the legal section of the State Board.\textsuperscript{29} The staff is headed by an executive officer exempt from civil service, serving at the pleasure of the regional board.\textsuperscript{30} The regional

\textsuperscript{16} Id. § 13162.
\textsuperscript{17} Id. § 13163.
\textsuperscript{18} Id. § 13164.
\textsuperscript{19} Id. §§ 13320-21.
\textsuperscript{20} Id. § 13169.
\textsuperscript{21} Each known, so as to emphasize its character as a state agency rather than a local agency, as the "California Regional Water Quality Control Board, ___ Region." Id. § 13203. However, in this Comment the normal practice of referring to "the ___ Regional Board" will be followed instead.
\textsuperscript{22} Id. § 13200.
\textsuperscript{23} Id. §§ 13201(a)(1)-(6).
\textsuperscript{24} Id. § 13201(a)(7).
\textsuperscript{25} Id.
\textsuperscript{26} Id. § 13205.
\textsuperscript{27} Id. § 13204.
\textsuperscript{28} Id. § 13207.
\textsuperscript{29} Id. § 186.
\textsuperscript{30} Id. § 13220.
boards have the normal powers of an administrative agency, and may delegate a considerable portion of their functions to the executive officer.\textsuperscript{31}

The primary function of the regional boards is to ensure the reasonable protection of "beneficial uses" and the prevention of "nuisance" through establishment of appropriate "water quality objectives" in "water quality control plans" for all areas in a region.\textsuperscript{32} The boards protect the "waters of the state" from excessive discharges of "waste" through the establishment of "waste discharge requirements"\textsuperscript{33} which must be adhered to by persons discharging or proposing to discharge waste other than into a community sewer system.\textsuperscript{34} The boards also are directed to obtain coordinated action in the prevention and abatement of water pollution,\textsuperscript{35} and to report to the State Board and local health officers cases of contamination.\textsuperscript{36}

It is clear that the regional boards are the key element in water quality control in California. Without appropriate action by the regional boards, there can be no effective regulation of pollution. Fortunately, the converse is also true: vigorous and aggressive action by regional boards can prevent further degradation of California waters, help restore them to some degree of their former purity, and ensure the maintenance of a high standard of water quality for succeeding generations. Citizen participation can provide the stimulus necessary to attain these goals, but a clear understanding of the concepts involved and the mechanisms for their implementation is an absolute prerequisite for effective citizen participation in the water quality control process.

II

STATUTORY TERMS

A. Waters of the State

The waters of the state include "any water, surface or underground, including saline waters, within the boundaries of the state."\textsuperscript{37} The boundaries of the state extend three nautical miles into the Pacific,\textsuperscript{38} but regulation of discharges outside these boundaries may be attempted if these discharges will affect the waters of the state.\textsuperscript{39}

31. \textit{Id.} § 13223.
32. \textit{Id.} § 13241.
33. \textit{Id.} § 13240.
34. \textit{Id.} § 13260.
35. \textit{Id.} § 13225(a).
36. \textit{Id.} § 13225(f).
37. \textit{Id.} § 13050(e) (emphasis added).
38. \textit{Id.} § 13200.
39. \textit{Id.} § 13260(a). See text accompanying note 101 \textit{infra}. 

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**Note:** The text has been reformatted for clarity and readability, with indentation removed and some punctuation standardized. Citations have been corrected to match the format of the document. The content of the document discusses the role of regional boards in water quality control, emphasizing their primary functions and the statutory terms that define their authority in California. The text concludes with a broader perspective on the importance of citizen participation in maintaining high water quality standards.
The extent of the regional boards' authority under this seemingly all-inclusive definition is, as yet, undetermined. Although the question is open, a good working definition might be that waters withdrawn from a distribution system for consumptive use—waters that will not be returned as such to natural or artificial watercourses or to ground-water bodies—cease to be waters of the state, although they may become transformed into wastes whose discharge may be regulated. On the other hand, waters temporarily withdrawn for at least partially non-consumptive uses—agricultural application or industrial uses such as cooling—remain waters of the state subject to regulation. This approach is consistent with opinions of the California Attorney General holding that waters in the All-American Canal, a federal Bureau of Reclamation project, are subject to regulation, as well as waters in other artificial watercourses. Moreover, it avoids the impracticability of attempting to regulate internal usage of waters in a manufacturing process or in domestic use prior to the return of the effluent into the receiving waters.

B. Beneficial Uses

Beneficial uses for which waters of the state may be protected against quality degradation cover a broad spectrum, including the expected uses of domestic, municipal, agricultural, and industrial supply; power generation; recreation; and navigation. In addition to these, the "preservation and enhancement of fish, wildlife, and other aquatic resources and preserves" and esthetic enjoyment are included in the non-exclusive enumeration.

The protection given to fish, wildlife, and other aquatic resources and preserves contemplates more than the mere maintenance of a fishery as an economic unit, for example, since "preserves" will seldom be assessed in purely economic terms. In a similar vein, protection of esthetic enjoyment also recognizes noneconomic values which have heretofore received scant consideration. Enjoyment of the natural beauty of the lakes, rivers, streams, and estuaries is now given legal protection in California.

Conspicuous by its absence from the list of protected beneficial uses is the discharge of waste into the waters of the state. There is no right to discharge waste into state waters. Rather, the law now de-

42. Id.
43. Id.
44. See note 5 supra.
declares that "no discharge of waste into the waters of the state, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste into waters of the state are privileges, not rights." A manufacturer may thus assert a right to have the quality of the waters he withdraws protected against degradation rendering them unfit for his beneficial use, but he can no longer assert a right to use state waters for the assimilation of his effluent. What he retains is a privilege which may only be exercised upon such conditions as may be specified by a regional board.

C. Waste

The definition of waste in the Porter-Cologne Act replaces former definitions of "sewage" and "other waste." 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 of whatever nature." This broad definition encompasses any substance whose formation was caused by human activity or whose path through the ecosystem is controlled or affected by human agency. Acts of God and the excreta of wild animals are presumably excluded, but little else is.

Among the items defined as waste prior to the Porter-Cologne Act are drainages from abandoned mines, seepages or flows of debris from logging operations, earth eroded from tractor trails or other areas denuded by forest operations, seepage from refuse and solid wastes in dumps, agricultural drainage waters containing materials not present prior to use, liquids from one stratum of a well flowing into another stratum, discharges from hydroelectric plants, and materials used in agricultural operations which are not intentionally applied to waters, such as insecticides, herbicides, and other chemicals. Although these definitions evolved under the Dickey Act, the Study Panel Report, which contained extensive notes to assist in determining legis-

46. CAL. WATER CODE § 13263(g) (West Supp. 1971) (emphasis added).
47. See text accompanying notes 102-12 infra.
49. CAL. WATER CODE § 13050(d) (West Supp. 1971).
51. 27 OP. CAL. ATT'Y GEN. 182 (1956).
52. Id.
53. Id.
54. 43 OP. CAL. ATT'Y GEN. 302 (1964).
55. 27 OP. CAL. ATT'Y GEN. 182 (1956).
56. 43 OP. CAL. ATT'Y GEN. 302 (1964).
57. Id.
lative intent, stated that it was specifically intended that the prior constructions of waste be included within the new definition. The breadth of the resultant regulatory authority is illustrated by an opinion holding that the intentional application of an herbicide into the waters of a canal for the control of plant growth impeding water distribution constitutes a discharge of waste subject to regulation by the appropriate regional board.

Since the action subject to regulation is "discharge" of waste, it is significant that in addition to broadly defining waste, the opinions have construed "discharge" as not necessarily involving intentional transport of the material involved. Simply permitting natural processes of seepage and drainage to occur can also be a "discharge."

D. Pollution

Pollution is defined as the alteration of water quality by waste "to a degree which unreasonably affects: (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses. 'Pollution' may include 'contamination.'" The key word in this definition is unreasonably. Although the Porter-Cologne Act recognizes that water quality may be altered to some degree without unreasonably affecting beneficial uses, it does not require that a waste discharge be permitted merely because no immediate interference with other uses can be shown. The Dickey Act, by contrast, required both an adverse and an unreasonable effect. The requirement of an adverse effect was elimi-

58. Robie, supra note 3, at 4 n.10.
62. [T]here must be a present discharge, that is, a present flowing or issuing out, of harmful material from the site of the particular operation into the waters of the State. The operation which produced the harmful material need not, however, be currently conducted.
64. Id. § 13241.
65. Robie, supra note 3, at 7.
66. 'Pollution' means an impairment of the quality of the waters of the State by sewage or industrial waste to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic, industrial, agricultural, navigational, recreational or other beneficial use. . . . Ch. 1549, § 1, [1949] Cal. Stat. 2782, as amended, ch. 603, § 1, [1957] Cal. Stat. 1815.
nated so that regional boards might set a standard of water quality high enough to allow for future expansion and development of new uses, without having to show present harm or damage.\(^67\)

Thus, while sewage receiving secondary treatment\(^68\) may be a discharge not unreasonably affecting beneficial uses in many systems, in other instances even tertiary treatment might not render the effluent pure enough for discharge into a body of water such as Lake Tahoe.\(^69\) The determination of whether the effect of a discharge of waste is reasonable or not involves a case-by-case consideration of many factors. The economic benefit of the discharge, rather than the paramount consideration it formerly was,\(^70\) is now but one factor among several. A regional board's determination of the reasonableness of a waste discharge is subject to review by the State Board and, if necessary, to judicial determination.\(^71\)

\section*{E. Contamination}

Contamination, an impairment of water quality to a degree which threatens public health “through poisoning or through the spread of disease,”\(^72\) includes all waste disposal creating a health hazard whether or not the waters of the state are affected.\(^73\) The Dickey Act definition of contamination was restricted to an “actual hazard.”\(^74\) At the suggestion of the State Department of Public Health, the word \textit{actual} was deleted so that the state may act when a hazard is threatening but not extant.\(^75\) Thus, a discharge of untreated sewage containing a high fecal bacterial count would pose an actual hazard to public health, while a proposal to construct storm drains in such a manner that raw sewage would periodically be discharged would presumably be a hazard within

\begin{footnotes}
\item[67] Id.
\item[68] Secondary treatment is the highest degree of treatment normally given sewage, producing in many cases an effluent equal or superior in quality to the source waters for a system.
\item[69] Tertiary treatment was initiated at Tahoe in an attempt to remove from the effluent nitrogen and phosphorus which presented the greatest danger of accelerating the eutrophication of the lake. It gradually became clear that export of all sewage from the basin was necessary to protect the lake, a solution that obviously cannot be routinely employed. For an interesting look at the conflicts and viewpoints involved at one stage of the Tahoe problem, see \textsc{Federal Water Pollution Control Administration, U.S. Dep't of the Interior, Proceedings, Conference in the Matter of Pollution of the Interstate Waters of Lake Tahoe and Its Tributaries} (1966).
\item[70] \textsc{Cal. Water Code} §§ 13241, 13263 (West Supp. 1971).
\item[71] See text accompanying note 133 \textit{infra}.
\item[72] \textsc{Cal. Water Code} § 13050(k) (West Supp. 1971).
\item[73] Id.
\item[74] See Robie, \textit{supra} note 3, at 8; \textsc{Study Panel Report}, \textit{supra} note 3, App. A, at 29.
\item[75] Id.
\end{footnotes}
the current definition, although arguably not within the Dickey Act definition.

Moreover, since the definition of pollution was formerly restricted to conditions not creating an actual hazard to public health,\textsuperscript{76} the simultaneous existence of pollution and contamination was logically inconsistent. The Attorney General held, however, that pollution and contamination could exist at the same time, and were subject to concerted attack by the appropriate regulatory agencies.\textsuperscript{77} For this reason the restrictive language was dropped from the Porter-Cologne definition of pollution,\textsuperscript{78} and the Act now states that "'pollution' may include 'contamination.'"\textsuperscript{79}

F. Nuisance

The Porter-Cologne Act essentially adopts the classic definition of nuisance:\textsuperscript{80} anything affecting an entire community or a considerable number of persons which is "injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property."\textsuperscript{781} For purposes of water quality control, however, the nuisance must arise "during or as a result of the treatment or disposal of wastes."\textsuperscript{782}

The Dickey Act definition of nuisance required both damage to a community and unreasonable practices in the disposal of wastes.\textsuperscript{83} Under this definition the effluent from sewage treatment plants was probably not a nuisance while the disposal of sewage without treatment probably was.\textsuperscript{84} But the definition did not give any guidance where the problem arose from an inadequate treatment of sewage. Thus the definition remained "somewhat of a mystery"\textsuperscript{85} and "practically unenforceable."\textsuperscript{86} Since the present statutory language was adopted from the relevant sections of the Civil Code,\textsuperscript{87} it will hopefully result in the

\textsuperscript{76} Id.
\textsuperscript{78} Study Panel Report, supra note 2, App. A, at 29.
\textsuperscript{80} Cal. Civil Code §§ 3479 & 3480 (West 1957) formed the basis of the present definition.
\textsuperscript{81} Cal. Water Code § 13050(m) (West Supp. 1971). The normal case of nuisance arises from the malodorous nature of waste treatment or disposal. The word "senses" in the definition, however, presumably includes sight and hearing as well as smell. An unanswered question is whether regional boards can or should regulate unsightly or noisy treatment facilities as well as odorous ones.
\textsuperscript{82} Id.
\textsuperscript{83} Robie, supra note 3, at 8.
\textsuperscript{84} Id.
\textsuperscript{85} Comment, State Control of Water Pollution, 1 U.C. Davis L. Rev. 10 n.94 (1969).
\textsuperscript{86} See text accompanying note 83 supra.
\textsuperscript{87} See note 80 supra.
application of nuisance doctrine developed in other areas to water quality control, rather than reliance on arbitrary statutory distinctions.

G. Water Quality Objectives

Water quality objectives describe "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a given area." Although the section suggests that a regional board could elect either to protect beneficial uses or to prevent nuisance, other language in the Act states that "each regional board shall establish such water quality objectives . . . as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance . . . . " Since the Act's purpose is stricter regulation, the use of "or" in the first instance is probably inadvertent.

If it were determined that support of a fishery in a given stream was a beneficial use, a typical water quality objective for the protection of this use would be the maintenance of a level of dissolved oxygen in the stream in excess of five parts per million, the level commonly necessary for support of a fishery. In an area of heavy industrial use of water, protection of a fishery might not be considered reasonable, and a lower objective might be specified. Any water quality objective may thus be thought of as a goal which, once set is to be maintained until new goals, either higher or lower, are established. A regional board's determination of which beneficial uses should be protected may be made only after a public hearing in the affected locality, and its decision is subject to appeal.

H. Water Quality Control Plans

A water quality control plan adopted by a regional board for waters within a specified area consists of a determination of beneficial uses to be protected, water quality objectives necessary for the reasonable protection of these uses, and a program of implementation to attain the goals set. A water quality control plan thus contains a method

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88. CAL. WATER CODE § 13050(h) (West Supp. 1971).
89. Id. § 13241 (emphasis added).
90. See Study Panel Report, supra note 2, at 1-8.
91. Levels of dissolved oxygen between three and five parts per million (p.p.m.) are considered unfavorably low but tolerated by some species, and levels below 3 p.p.m. are too low for fish survival. J. JONES, FISH AND RIVER POLLUTION 16 (1964).
92. Specification of such a lower objective is unlikely, as requirements necessary to sustain naturally occurring in-channel uses can well be justified on the ground that protection of such natural uses is reasonable per se.
93. See note 100 infra.
94. CAL. WATER CODE § 13320 (West Supp. 1971) (discussed infra.)
95. Id. § 13050(j).
for reaching a given state of water quality, a description of the desired state in physical and biological parameters expressed as water quality objectives, and an enumeration of the criteria for establishing the desired state of water quality.

In formulating water quality control plans, regional boards must consider environmental characteristics of the particular hydrographic unit and possible future beneficial uses of the waters. Other important considerations include economic factors and the possibility of coordinated control of all conditions affecting water quality. The plan must include a time schedule for proposed actions and a description of surveillance to ensure compliance with stated objectives. A regional board has the power, in water quality control plans in waste discharge requirements, to specify certain conditions or areas in which the discharge of some or all wastes may be flatly prohibited.

I. Waste Discharge Requirements

Any person discharging or proposing to discharge waste into the waters of the state, except into a community sewer system, or any "citizen, domiciliary, or political agency or entity of this state" intending to discharge waste outside of the state in a manner which could affect the waters of the state must file a report of the discharge with the appropriate regional board. The report must contain any information required by the board, and its filing is mandatory unless waived by the board on the grounds that the waiver, which is conditional

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96. One example of such an environmental characteristic would be whether the system under consideration was a fast flowing river with high re-oxygenation or a sump system such as Lake Tahoe with an extremely long turnover time.
97. CAL. WATER CODE § 13241(a)-(b) (West Supp. 1971).
98. Id. § 13241(c)-(d).
99. Id. § 13242.
100. Id. § 13243. The public hearing at which protected beneficial uses, water quality objectives, and implementation will be discussed must be held, following notice by publication, in the affected counties prior to adoption of a water quality control plan. Id. § 13244. The plan becomes effective upon approval by the State Board, or, if State Board approval is withheld, after revision and resubmission of the plan to the State Board for approval. The State Board must act on an initial submission within 60 days, and upon a resubmitted plan within 90 days. Should the State Board again disapprove the plan on resubmission, it may, after another public hearing in the affected region, revise the plan itself and approve it. Id. §§ 13245-46.
101. Id. § 13260(a). It should be noted that the definition of "citizen or domiciliary" of the State of California includes foreign corporations either having substantial business contacts in the state or subject to service of process in the state. Id. § 13050(o). This is very important in view of the Boards' authority to regulate discharges outside the waters of the state which might affect state waters, lending substance to the extension of the regulatory reach.
102. Id. § 13260(a).
103. Id.
and subject to termination, is "not against the public interest." The regional board has wide discretion in its investigatory procedures, which range from formal hearings on large discharges to informal meetings with those proposing a relatively minor discharge. Following investigation and a hearing, if necessary, the board prescribes requirements concerning the nature of the proposed or present discharge or any material change in a present discharge. These requirements "shall implement relevant water quality control plans, if any have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." A discharge prior to issuance of waste discharge requirements is a misdemeanor unless there has been a waiver granted. This discourages the discharger from commencing operations prior to the issuance of discharge requirements and encourages the regional board to act promptly upon the report.

Of cardinal importance is the fact that in prescribing waste discharge requirements the regional board "need not authorize the utilization of the full waste assimilation capacities of the receiving waters." This provision allows regional boards to plan for additional future discharges or for a possible upgrading of water quality objectives.

III

PROCEDURES FOR IMPLEMENTATION OF WATER QUALITY CONTROLS

A. Enforcement Powers of the Regional Boards

When a regional board determines that a violation of discharge

104. Id. § 13269. Waivers are normally granted for such things as drainage waters from irrigation. Robie and Hume, supra note 3, at 205.
106. Comment, supra note 85, at 20. The procedures for setting discharge requirements are retained from the Dickey Act. Robie, supra note 3, at 17 n.77.
107. CAL. WATER CODE § 13263(a) (West Supp. 1971). Furthermore, the regional board may review and revise requirements upon the application of "any affected person" or on its own motion. Id. § 13263(e). This includes members of the public, as the setting of discharge requirements is a regional board action which may be reviewed by the State Board under section 13320. See text accompanying notes 133-44 infra.
108. Requirements must be issued within 120 days of filing of discharge report. Id. § 13264.
109. Id. § 13265.
110. Robie, supra note 3, at 17. The same requirements apply to any "material change or proposed change in the character, location, or volume of the discharge." CAL. WATER CODE § 13260(b) (West Supp. 1971).
111. CAL. WATER CODE § 13263(b) (West Supp. 1971).
112. See text accompanying note 67 supra.
requirements or discharge prohibitions\textsuperscript{118} is occurring or threatening to occur, the board may issue a cease and desist order requiring either immediate compliance, compliance in accordance with a schedule set by the board or, in the case of a threatened violation, "appropriate remedial or preventive action."\textsuperscript{114}

A public hearing with notice given to all affected persons must be held prior to issuance of a cease and desist order.\textsuperscript{115} The hearing may be conducted by the entire board or by a designated hearing panel consisting of three or more members of the board,\textsuperscript{116} a procedure which allows more expeditious response to violations where board members live in widely separated areas.\textsuperscript{117} If the latter alternative is chosen, the entire board must meet to consider the proposed decision of the hearing panel, and the full board may make an independent review of the record and receive additional evidence if necessary.\textsuperscript{118}

A cease and desist order, which may be issued by the full board after its own hearing or after review of the work of the hearing panel, is effective upon issuance by the board.\textsuperscript{119} Violation, either intentional or negligent, of a cease and desist order may subject the violator to a daily penalty of up to $6,000.\textsuperscript{120} The State Attorney General, at the request of the regional or state board, must petition the appropriate superior court for recovery of the fine.\textsuperscript{121} In adjudging liability, the court must consider "all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, taken by the discharger."\textsuperscript{122}

In some instances, a cease and desist order may provide the impetus necessary for an effective political response to the problems of water pollution. While a regional board cannot establish discharge requirements for waste discharge into a community sewer system,\textsuperscript{123} the effluent discharged from that system is a waste discharge on an equal footing with others. When a regional board finds an actual or threatened violation of the waste discharge requirements levied upon a sewer

\begin{itemize}
  \item \textsuperscript{113} See text accompanying note 100 \textit{supra}.
  \item \textsuperscript{114} \textit{Cal. Water Code} § 13301 (West Supp. 1971).
  \item \textsuperscript{115} \textit{id.} § 13302(b).
  \item \textsuperscript{116} \textit{id.} § 13302(a).
  \item \textsuperscript{117} Robie, \textit{supra} note 3, at 21.
  \item \textsuperscript{118} \textit{Cal. Water Code} § 13302(b) (West Supp. 1971).
  \item \textsuperscript{119} \textit{id.} § 13303. The order must be served upon the parties affected by registered mail. \textit{id.} Certified mail is also permissible where service by "registered mail" is required. \textit{Cal. Gov't. Code} § 8401 (West 1963).
  \item \textsuperscript{120} \textit{Cal. Water Code} § 13350(a) (West Supp. 1971).
  \item \textsuperscript{121} \textit{id.} § 13350(b).
  \item \textsuperscript{122} \textit{id.}
  \item \textsuperscript{123} See notes 34 & 101 and accompanying text \textit{supra}.
\end{itemize}
system, "cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to issuance of the cease and desist order." In other words, a regional board may prohibit additional connections to an overloaded system. Construction of new buildings cannot proceed without sewer connection permits, a necessary condition for obtaining building permits and financing. This use of the board's power to effectively halt construction is the "building ban" of recent fame in several localities, particularly in San Francisco. The urgency of the pollution problem presented by municipal discharges attests to the importance of this potent enforcement tool. While it may seem a drastic measure, it is probably no more than adequate to the task at hand.

In addition to its cease and desist power the board has the authority to require a person discharging waste in violation of a waste discharge requirement or other order of a regional board to clean up or abate the effects of the offending discharge. Upon the violator's failure to comply with a cleanup or abatement order, the regional board may request the State Attorney General to petition the appropriate superior court for an injunction requiring compliance with the board's mandate. Moreover, if any governmental agency undertakes the cleaning up or abatement of a discharge following issuance of an order by the regional board, the discharger is liable to the governmental agency for reasonable costs incurred in such action; the amount is re-

125. The prohibition on new sewer connections, or "building ban," has been used by several regional boards, including the Central Valley, Los Angeles, San Diego, and Central Coast boards. The San Francisco action received the most attention because of the magnitude of the interests involved, estimated at one point at $100 million annually. On March 14, 1970, the State Board ordered a halt to new sewer connections in southeast San Francisco, and on March 26 the San Francisco Regional Board ordered a similar "freeze" in north central San Francisco, thus restricting construction in more than two-thirds of the city. After a great deal of publicity, much of it focusing on Mayor Alioto, the San Francisco Regional Board removed the connection restrictions on April 2 after receiving a report from the city detailing emergency improvements, including the accelerated scheduling of bond issues for expansion of treatment facilities. At the general election on November 3, residents of San Francisco voted 78 percent in favor of a $65 million bond issue. S.F. Chronicle, Nov. 5, 1970, at 11, col. 2. In the June primary, six out of seven treatment bond issues in various localities passed, and the seventh failed by a single vote. See California State Water Resources Control Board, Water Rights & Quality: News & Views, July 1970. The "building ban," designed to provide strong incentive for communities to promptly construct necessary treatment facilities [Robie, supra note 3, at 21] seems to have fulfilled its purpose.
126. See, e.g., Robie, supra note 3, at 30 n.159.
127. Id. at 21 n.103.
128. CAL. WATER CODE § 13304(a) (West Supp. 1971).
129. Id.
coverable in a civil suit.\textsuperscript{130}

An interesting aspect of the regional boards’ enforcement powers is that the remedies prescribed are not exclusive. In 1963, the Attorney General brought an action to abate a public nuisance caused by the drainage of toxic mine wastes into the Mokelumne River, resulting in fish kills. The Court of Appeals for the Third District found that “the Legislature intended the Dickey Act to provide the exclusive means and procedure by which agencies of the state government, including the Attorney General, are to control water pollution and nuisance.”\textsuperscript{131} The Porter-Cologne Act clarifies the Legislature’s intention by an express declaration of the retained power of the Attorney General, upon request of a regional or the State Board or on his own motion, “to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.”\textsuperscript{132}

\textbf{B. Role of the State Board in Enforcement}

The primary responsibility of the State Water Resources Control Board in the area of water quality control is appellate review of regional board action or inaction. A review may be initiated by the State Board on its own motion, or “\textit{any aggrieved person}” may petition the state board to review “\textit{any action or failure to act by a regional board}.”\textsuperscript{133} The two italicized phrases are the keys to effective citizen participation in water quality control.

“\textit{Any aggrieved person}” has a broad meaning. The general provisions of the Water Code define person to include “\textit{any person, firm, association, organization, partnership, business trust, corporation, or company}.”\textsuperscript{134} The Porter-Cologne Act extends this definition to include “\textit{any city, county, district, the state or any department or agency thereof}. ‘Person’ includes the United States to the extent authorized by federal law.”\textsuperscript{135} Since the right to appeal is a protection afforded by the law, and states cannot deny a person the equal protection of the laws,\textsuperscript{136} the United States Supreme Court has held that “these provisions

\begin{table}[h]
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\textbf{130.} & \textit{Id.} \S 13304(b). \\
\textbf{132.} & \textit{CAL. WATER CODE} \S 13002 (West Supp. 1971). Such an action might be based on, for example, \textit{HARB. & NAV. CODE} \S 133, which prohibits the discharge of oil into the navigable waters of the state. \\
\textbf{133.} & \textit{CAL. WATER CODE} \S 13320(a) (West Supp. 1971) (emphasis added). \\
\textbf{134.} & “\textit{Aggrieved person}” is defined by the Water Code as “\textit{any person}” wishing to challenge an action or inaction of a regional board. \textit{Id.} \S 19. The expansive definition of “\textit{person}” is discussed in text accompanying notes 134-36 \textit{infra}. \\
\textbf{135.} & \textit{CAL. WATER CODE} \S 13050(c) (West Supp. 1971). \\
\textbf{136.} & \textit{U.S. CONST. amend. XIV}, \S 1. \\
\hline
\end{tabular}
\end{table}
are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, color, or of nationality. . . ."137 Hence, it would seem that residence in the state or county is not a requisite to initiating an appeal; in theory, Fidel Castro has a perfect right to challenge an action of the San Diego Regional Board, provided that he is "within the territorial jurisdiction" of the state.

Furthermore, the right to complain of administrative inaction is a novel concept.138 Prior to the Porter-Cologne Act, there had been no statutory right in California to challenge administrative failure to act, possibly because of traditional presumptions of the validity of official actions139—and by necessary implication, inactions—and possibly because of the fear of opening the floodgates of challenges to administrative action.140

On appeal, the State Board will review the record before a regional board and any other relevant evidence which in the judgment of the State Board should be considered in order to effectuate state policy for water quality control.141 Consequently, the action of the State Board should not be influenced by an incomplete or biased record of a proceeding before a regional board. If the state board finds the action or inaction under review improper, it may direct the regional board to take appropriate action, refer the matter to another state agency having jurisdiction, take appropriate action itself, or any combination of these.142 In cases of serious mistake on the part of a regional board, the possibility of adverse effects may be avoided during the time required for appeal since the State Board has the power, on notice and hearing, to stay in whole or part the order or decision of a regional board for which review is sought.143 The exercise of this power is especially important if the time factor is critical and the prospects of damage substantial.

Failure of the State Board to consider within a reasonable time a request for review made in accordance with the applicable section of

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138. The State Board had the right to correct a failure to act by a regional board under the Dickey Act, ch. 1549, § 1, [1949] Cal. Stat. 2782. The provision for the participation of ordinary "aggrieved persons" in the process is one of the major changes effected by Porter-Cologne. CAL. WATER CODE §§ 13000-951 (West Supp. 1971).
140. Similar fears have been expressed in any attempt to expand the notion of "standing to sue," with the usual judicial response to any proposed expansion of standing being expression of the fear of opening "the floodgates of litigation." See, e.g., Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).
141. CAL. WATER CODE § 13320(b) (West Supp. 1971).
142. Id. § 13320(c).
143. Id. § 13321.
the California Administrative Code should be deemed the equivalent of a formal order upholding the action or inaction of the regional board.

C. Extent of Judicial Review and Enforcement

Within thirty days after notice of a State Board decision on an appeal from a regional board action or inaction, "any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof." An "aggrieved party" is one who has made an appeal first to the State Board as an "aggrieved person." Availability of judicial review is thus restricted to those who have followed the administrative appeal procedure provided in the Act. This restriction is minimal in view of the retained right to sue for relief from pollution or contamination. On review, the evidence before the court consists of the record before the State Board and any other evidence which, in the judgment of the court, should be considered. Finally, "in every such case, the court shall exercise its independent judgment on the evidence."

144. Petition for Review by State Board. Any petition by an aggrieved person to the state board for review, under Water Code Section 13320(a), of an action or failure to act by a regional board shall be submitted in writing to the state board with a copy to the appropriate regional board and shall contain the following:

(a) The name and address of the petitioner.
(b) The specific action or inaction of the regional board which the state board is requested to review.
(c) The date on which the regional board acted or refused to act or on which the regional board was requested to act.
(d) The reasons the action or inaction was inappropriate or improper.
(e) The manner in which the petitioner is aggrieved.
(f) The specific action by the state or regional board which petitioner requests.

Notice of Petition. Promptly after receiving a petition the state board shall give such notice, or direct the petitioner to give such notice, to interested persons as appears appropriate.

Review by State Board. If the state board determines that sufficient doubt exists as to the appropriateness of the regional board action or failure to act to warrant a review, it will make such a review and may hold a hearing. If the board determines that sufficient doubt does not exist, the petition will be denied.

Notice of Review. When a review is undertaken, either on petition or on the state board's own motion, all affected persons known to the board shall be notified and given an opportunity to submit information and comments, subject to such conditions as the board may prescribe.


145. Although the point is nowhere dealt with, conversations with the legal staff of the State Board support the suggested position.

147. Id. § 13002.
148. Id. § 13330(b).
149. Id. Allowing the reception of additional evidence extends the scope of the court's "independent judgment" past that set forth in the leading case of Dare v. Board of Medical Examiners. 21 Cal. 2d 790, 136 P.2d 304 (1943). See, e.g., Deering,
Two other points concerning the judicial role in water quality control merit attention. Whenever a regional board finds that a discharge "is taking place or threatening to take place which does or will cause a condition of pollution or nuisance, constituting an emergency requiring immediate action to protect the public health, welfare, or safety," the Attorney General, at a regional board's request, must petition the superior court to enjoin the discharge. The court may grant "such prohibitory or mandatory injunctive relief as may be warranted." This procedure, known as summary judicial abatement, allows quick response to sudden problems, particularly since a regional board may delegate the power to seek summary abatement to its executive officer. This expeditious power has been employed against such disparate entities as a ready-mix concrete plant and the U.S. Navy.

Judicial enforcement is important in one other area. In waste discharge requirements or other orders, the regional and state boards cannot specify any particular equipment method which must be used to insure compliance with the requirements in question. Thus, the regional boards and the State Board, like agencies issuing building permits, set "performance standards," such as a limit on the amount of suspended solids contained in the effluent of a treatment plant, but not "construction standards" which might specify, for instance, a particular type of filtration process. This approach encourages innovative application of available technology to produce the most effective and economical solution to a given problem. In general, court orders issued in connection with water quality proceedings are similarly restricted. In a case, however, where enforcement of an injunction against a discharge would be impracticable, the court has the power "to issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order, or decree."

supra note 139, §§ 5.12-.72. Although the cases are confused and often unhelpful in this area, it would seem clear that the rights sought to be asserted in review here would normally suffice only to establish a much more limited scope of review than the one granted. Id. §§ 5.69-.72.

151. Id.
152. Id.
153. Id. § 13223(a). Summary judicial abatement is an alternative to a cease and desist order which requires a hearing. See text accompanying notes 115-19 supra.
156. Id.
157. Id.
IV
APPLICATION TO GOVERNMENTAL AGENCIES

A. Regulation of Activities of State Agencies

Prior to the Porter-Cologne Act, state agencies had been directed to "take cognizance" of water quality control policy.158 This vague direction made it both possible and commonplace for other agencies to ignore water quality considerations which interfered with their own activities. The Porter-Cologne Act, however, requires state agencies to "comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy."159 In contrast to this mandatory compliance with state water quality control policy by other agencies, the State Board is required only to take into consideration the effect of its actions on such major undertakings as the State Water Project.160

Although the state and regional boards have effectively employed their regulatory power against municipalities,161 it remains to be seen how strongly they will control the activities of other state agencies in the interest of water quality control. An important test of regulatory power under Porter-Cologne will come when regulation of the activities of the Division of Highways is attempted. A state agency unwilling to comply with water quality regulation must be able to demonstrate statutory authority for non-compliance.162 The Division has such a broad grant of power that it could probably meet this requirement. Other state agencies having less extraordinary autonomy, such as the Department of Water Resources,163 may be expected to be more amenable to regulation.

B. Regulation of Activities of Federal Agencies

Congress has declared that primary responsibility for water quality control resides in the states.164 Federal pronouncements, such as Exec-

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158. STUDY PANEL REPORT, supra note 2, at 11.
160. Id. § 13145.
161. See note 125 supra.
162. See, e.g., CAL. STS. & H'WAYS CODE §§ 71, 75, 75.5, 90, 92, 100.1, 101.5, 102, 103, 103.5 (West 1969).
163. From personal experience, the author can testify to a degree of concern with water quality in the Department of Water Resources that would surprise most conservationists. The conflicts arise when the all-important decisions concerning allocations of quantities of water involve an arguable detriment to water quality [as discussed in note 11 supra]; as the appropriation, transportation, and distribution of water is the very reason for the Department's existence.
utive Order No. 11288,\textsuperscript{165} direct that federal installations should lead the way in complying with state water quality regulation.\textsuperscript{166} It is uncertain, however, whether these intentions will be accompanied by performance, particularly in the case of the Department of Defense.\textsuperscript{167} The Central Coast Regional Board is attempting to restrict discharge of raw sewage from Ford Ord into Monterey Bay,\textsuperscript{168} and has also set waste discharge requirements for oil-drilling operations under federal leases in the Santa Barbara Channel.\textsuperscript{169} It is not known at this time whether the federal government will acquiesce to state regulation in this area. State regulation of federal activity is severely limited in scope.\textsuperscript{170} Moreover, the problems of federalism and the Supremacy Clause\textsuperscript{171} will make resolution of the questions involved difficult. One possible way to resolve the question of authority in favor of state regulation might be amendment of the National Environmental Policy Act of 1969\textsuperscript{172} to require compliance by any federal agency with state requirements which meet standards set by the Federal Water Pollution Control Administration (FWPCA). The transfer of FWPCA to the independent Environmental Protection Agency\textsuperscript{173} should facilitate state regulation of federal activities, particularly in the case of such agencies as the National Park Service, since intra-departmental pressures should no longer be present.

One argument in favor of state regulation rather than federal preemption is the nature of the problems involved in water quality con-

\begin{enumerate}
\item \textsuperscript{166} Subject to the large qualification of being "practicable and consistent with the interests of the United States and within available appropriations." Exec. Order No. 11288, 3 C.F.R. 127 (1966). While this document at least contemplated cooperation with state authority, Executive Order No. 11507 [35 Fed. Reg. 2573 (1970)] contemplates only federal compliance with federal standards.
\item \textsuperscript{168} California State Water Resources Control Board, \textit{supra} note 154.
\item \textsuperscript{169} Conversations with the State Board legal staff, June 1970.
\item \textsuperscript{170} Even where federal cooperation with state pollution concern is proclaimed, limiting language [see note 166 \textit{supra}] tends to reduce the available scope for state effort. The absence of asserted federal intent to cooperate with state regulation from Executive Order No. 11507 is grounds for pessimism concerning future state-federal regulatory arrangements.
\item \textsuperscript{171} U.S. CONST. art. VI, § 2. While the \textit{power} of the federal government to exempt its activities from state regulation is clear, \textit{see, e.g.,} Public Utilities Commission of California v. United States, 355 U.S. 534 (1958)] the degree to which the federal government will \textit{allow} state regulation is wholly uncertain.
\end{enumerate}
trol. A single national standard for hydrocarbon emissions from automobile exhausts is rational because there is a single relevant technology under consideration, hence federal pre-emption of that area is a valid exercise of power insofar as the federal regulation is vigorous. A single national standard for levels of dissolved oxygen in waters would be irrational because of differences in bodies of water and their uses; therefore, the stated policy of state regulation subject to certain minimum federal criteria is preferable to national control. The wisdom of this policy is reinforced by an examination of the federal water quality legislation, a monument exemplifying just how little can be achieved with such an elephantine struggle. The primary defect in the federal legislation is an enforcement process so time-consuming and complicated as to guarantee a degree of ineffectiveness perhaps unrivalled.

V

PROBLEMS AND POTENTIALS OF THE PORTER-COLOGNE ACT

While the Porter-Cologne Act is a great improvement over prior California legislation, it does not meet all the requirements involved in efficient and effective control of water quality. One outstanding need at present is to professionalize the regional boards. It is both unwise and unfair to place the main burden of the decision-making involved in the creation, implementation, and maintenance of effective water quality control policies on part-time, unsalaried, inadequately staffed personnel. Despite these deficiencies, however, in most cases the regional boards, in particular the San Francisco, Central Coast, and Los Angeles Boards, have taken a positive and aggressive approach to their vastly broadened responsibilities and powers.

Another problem concerns the dual role of the State Board, which is charged with the protection of water quality and the allocation of water rights. Given the language of the Act, one would hope that between considerations of water quality and quantity, quality would be

174. See text accompanying note 165 supra.
176. Only one lawsuit has ever been filed during the 22 years of experience with federal water pollution legislation, and that suit, filed in 1960, was still dragging on at last report. Comment, Federal Programs for Water Quality Control, 1 U.C. Davis L. Rev. 91 (1969).
paramount. The greatest obstacle to this ordering of priorities is that while citizen participation in water quality decisions under the Porter-Cologne Act is both practical and productive, the important water rights decisions are typically very lengthy affairs, involving great amounts of time, expert testimony, and expense. Effective independent representation of the public interest is not possible, and we must rely completely upon the State Board and its staff. While water quality decisions may now evolve from a three-sided dialogue among the dischargers, the public, and the regulatory agencies, water rights decisions remain primarily a debate between hopeful appropriators and allocators. Only the passage of time will indicate whether any adverse effects from decisions made in the relatively closed system of water rights allocations will affect water quality determinations.

A necessary adjunct to effective water quality control is regional land use planning to replace the present lack of control or crazy-quilt pattern of fragmented control of land development. Present land use practices often have a great impact on water quality. Widespread erosion and siltation resulting from clear-cutting and logging road construction in forest areas is the clearest example. Although the water quality in a swift-moving stream may be restored once revegetation has occurred, in a fragile mountain lake such as Lake Tahoe, with a "turnover time" of many hundreds of years, siltation resulting from careless land development practices may constitute the major water quality control problem, leading to vastly accelerated eutrophication if uncontrolled. Since the present hydrographic units for water quality administration coincide with soil units, there is an opportunity for a unique experiment in closely coordinated environmental planning within ecologically sound administrative units, which might result in maintenance of the quality of the water and the land.

Because of the important potential for coordinated water, land, and air quality control within the present regional boundaries and the assurance that residents of a region have a realistic opportunity to participate in decisions which affect their area, retention of the regional concept of organization is a matter of great importance. The opportunities for appeal and review afforded by Porter-Cologne should ensure that local pressures for lowered water quality will be unsuccessful so long as concerned citizens participate in the decision-making process. However, Assembly Bill 1282, introduced in the 1970 session of

178. See note 11 supra.
179. The same nutrients discussed supra in note 69 which made it necessary to export sewage are present in soils.
180. For another implementation of a regional concept see ch. 714, [1970] Cal. Stat. 1339 requiring eventual formation of air quality control mechanisms on an air-basin-wide basis rather than by counties, the normal mode or organization at present.
the legislature, would have abolished the Lahontan Regional Board, transferring its functions to the Central Valley and Colorado River Boards. The bill, which was sponsored by the State Water Resources Control Board, was referred to the Committee on Interim Study. If there is to be a move toward increasing centralization, we will have diminished to some degree the possibility for more extensive exploration of the potential inherent in coordinated regional environmental planning. A strong central organization with in-depth staff support is a valuable adjunct to regional board organization, but it should not be allowed to replace it.

VI

CITIZEN PARTICIPATION: WHAT YOU CAN DO

The Porter-Cologne Act and the policies of the state and regional boards are an open invitation for members of the public to participate in the water quality decision-making process. When I say public, I refer to you in the audience as Jaycees; or as members of the Sierra Club, or other conservation organizations; or as a citizen concerned about the environment of this community.

The first thing you can do is to write or pay a visit to your regional water quality control board office. Obtain information concerning existing water quality control plans, waste discharge requirements applicable to various operations, established water quality objectives, and any orders or other relevant material available.

Next, do your homework. If you don't understand what a biochemical oxygen demand is, find out. It's a good deal less formidable than it might seem, and interesting to boot. The choice is clear: either find an expert or become one. We all want clean water, but are we prepared to exert ourselves to attain it?

If you feel that a particular water quality objective or waste dis-

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182. Along with the virtue of familiarity with regional problems, the present method of selection of regional board members from among designated categories of persons within a region has the vice of allowing parochial attitudes and possible conflicts of interest to block effective regulatory action. One model which might resolve this problem would be regional offices staffed with personnel (including board members) from the State Board, but with the same semi-autonomous powers of the present regional boards. It is probably a good idea to change the method by which regional board members are selected to ensure that the decision-makers are professionals, and as free as possible from local special-interest influence. Whatever means is chosen to accomplish this, however, should ensure, for reasons stated in text accompanying notes 179-80 supra, that the principle of regional organization remains intact.

183. Ronald B. Robie, Member, State Water Resources Control Board in a speech presented at a seminar sponsored by Monterey Peninsula Jaycees, Monterey, California, Nov. 1, 1969.
charge requirement is inadequate, formally advise the regional board of your request that they review the requirement or plan in question, and your reasons for the request. Be both patient and persistent, and remember that the regional boards are only obligated to meet six times a year. Close communication with your board’s staff can assure you of a place on its agenda when it does meet.

When you receive a hearing on your request, or when you intend to participate in a hearing on a matter which concerns you although you did not initiate the proceedings, make sure that you have the facts. Nothing is less likely to convince a regional or the State Board than sentiments to the effect that “clean water sure is nice, so why can’t we have it?” The board is already in favor of clean water in the abstract, and your job is to justify the inevitable costs and effort involved in taking the steps you propose. Here is where the homework will pay off. Any oral testimony you give should be accompanied by written documentation of your position. As in any other adjudicatory proceeding, facts will outweigh opinions by a large margin.

Address yourself to areas given statutory protection. If a proposed use would provide a slight increase in recreational potential at the expense of fish resources and esthetic enjoyment, rather than cast aspersions on an architect’s conception, address both of the latter points. Esthetic enjoyment is protected, but beauty, after all, remains in the eye of the beholder.

Finally, be prepared to lose the first time out. If the regional board disagrees with your stand, and you haven’t been dissuaded of the validity of your position, appeal to the State Board. You may have the pleasant surprise of having despaired of making your point to the regional board only to have the State Board in full agreement with you.

There is also the opportunity of final resort to the courts when all else fails. Although this may be expensive and time-consuming, if the cause merits it you will probably find a large number of people willing to help share your burden, both within and without your community. The effectiveness of friendly local newspaper and television coverage cannot be overestimated. And, you may even win.

We have before us the first meaningful opportunity to participate as ordinary citizens in the control of environmental pollution. It is possible that the regional and state boards could do an effective job with no public input whatsoever. But it would be very reassuring to know that when matters affecting the public interest are debated, one view of

that interest will be asserted by the public. It could be your voice. Will it be? The choice is yours.\textsuperscript{185}

\textit{Karl Phaler}\textsuperscript{*}

\textsuperscript{185}. See Appendix for a map of the nine regions and the addresses of the regional boards.

* Student, University of California, School of Law, Davis, Class of 1971; B.A. 1963, Stanford.
Appendix

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

1. North Coast Region
   1739 Fourth Street (P. O. Box 1436)
   Santa Rosa, California 95404

2. San Francisco Bay Region
   364 14th Street
   Oakland, California 94612

3. Central Coast Region
   1108 Garden Street
   San Luis Obispo, California 93401

4. Los Angeles Region
   107 South Broadway, Suite 9026
   Los Angeles, California 90012

5. Central Valley Region
   2424 16th Street
   Sacramento, California 95818

6. Lahontan Region
   407 West Line Street
   Bishop, California 93514

7. Colorado River Basin Region
   81-713 Highway 111 (P. O. Drawer I)
   Indio, California 92201

8. Santa Ana Region
   6848 Magnolia Avenue, Suite 14
   Riverside, California 92506

9. San Diego Region
   1350 Front Street, Room 2038
   San Diego, California 92101