

Assembly Bill No. 2446

CHAPTER 523

An act to amend Section 116700 of the Health and Safety Code, and to amend Sections 13321, 13330, and 13361 of the Water Code, relating to the State Water Resources Control Board.

[Approved by Governor September 23, 2016. Filed with Secretary of State September 23, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2446, Gordon. State Water Resources Control Board: judicial review.

(1) Existing law, the Porter-Cologne Water Quality Control Act, within 30 days of any action or failure to act by a California regional water quality control board under specified law, authorizes an aggrieved person to petition the State Water Resources Control Board to review that action or failure to act. Existing law authorizes the state board, in the case of such a review, upon notice and hearing, if a hearing is requested, to stay in whole or in part the effect of the decision and order of a regional board or of the state board.

This bill would expand that provision to authorize the state board to issue a stay in the case of review by the state board of a decision or order issued under authority delegated to an officer or employee of the state board where the state board by regulation has authorized a petition for reconsideration by the state board. The bill would generally require the state board to issue or deny the stay within 90 days of receipt of a request for stay, as specified, and would deem the request for stay denied if the state board fails to issue or deny the stay within the prescribed applicable period. The bill would authorize any aggrieved party, within 30 days of any order of the state board issuing or denying a stay or within 30 days of a stay being deemed denied, to file with the superior court a petition for writ of mandate and would specify the law that governs those proceedings.

The act authorizes an aggrieved party to file with the superior court a petition for writ of mandate for review of a decision or order issued by the state board or a regional board, and requires those proceedings to be governed by specified law. Existing law, except as specified, requires the court to exercise its independent judgment on the evidence in cases involving the judicial review of a decision or order of the state board, or a decision or order of a regional board for which the state board denies review under the act.

This bill would require the state board to order or deny reconsideration on a petition not later than 90 days from the date the state board adopts the decision or order. The bill, except as specified, would prohibit any legal or equitable process from issuing in any proceeding in any court against the state board, a regional board, or any officer or employee of the state board

or a regional board to review, prevent, or enjoin any adjudicative proceeding under the act, or a decision or order by the state board, a regional board, or any officer or employee of the state board or a regional board before a decision or order is issued and the procedures for administrative review of that decision or order have been exhausted.

(2) Existing law, the California Safe Drinking Water Act, requires the state board to administer provisions relating to the regulation of drinking water to protect public health. The state board's duties include, but are not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, and adopting and enforcing regulations. Existing law requires the state board to appoint a deputy director to oversee the issuance and enforcement of public water system permits and delegates certain authorities of the state board to the deputy director. The act authorizes the deputy director to issue an order directing certain actions whenever the deputy director determines that a person has violated or is violating the act, or any permit, regulation, or standard issued or adopted pursuant to the act. The act authorizes an aggrieved party 30 days after service of a copy of the order or decision to file with the superior court a petition for a writ of mandate for review of the order or decision. The act requires that the evidence before the court consist of all relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the act and requires, in every case, the court to exercise its independent judgment on the evidence. The act prohibits a failure to file an action from precluding a party from challenging the reasonableness and validity of the decision or order in specified judicial proceedings.

This bill would provide that a decision or order of the state board is not subject to review by any court if no aggrieved party petitions for a writ of mandate within 30 days after service of a copy of an order or decision issued by the state board. The bill would eliminate the requirement that the evidence before the court consist of all relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the act.

The people of the State of California do enact as follows:

SECTION 1. Section 116700 of the Health and Safety Code is amended to read:

116700. (a) Within 30 days after service of a copy of an order issued by the state board, an aggrieved party may file with the superior court a petition for a writ of mandate for review of the order.

(b) In every case, the court shall exercise its independent judgment on the evidence.

(c) Except as otherwise provided in this section, subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

(d) If no aggrieved party petitions for a writ of mandate within the time provided by this section, the decision or order of the state board is not subject to review by any court.

SEC. 2. Section 13321 of the Water Code is amended to read:

13321. (a) (1) In the case of a review by the state board under Section 13320 or review by the state board of a decision or order issued under authority delegated to an officer or employee of the state board where the state board by regulation has authorized a petition for reconsideration, the state board, upon notice and hearing, if a hearing is requested, may stay in whole or in part the effect of the decision or order of a regional board or of the state board. Except as provided in paragraph (2), the state board shall issue or deny the stay within 90 days of receipt of a request for stay that complies with the applicable regulations for requesting a stay. The party requesting the stay may extend the 90-day period.

(2) (A) If the request for stay relates to either of the following, the state board shall issue or deny the stay within 45 days of receipt of a request for stay that complies with the applicable regulations for requesting the stay:

(i) A water quality certification issued under Section 13160 authority delegated to an officer or employee of the state board for a discharge for a proposed activity associated with a hydroelectric facility and the proposed activity requires a license or an amendment to a license issued by the Federal Energy Regulatory Commission.

(ii) A cleanup and abatement order issued under Section 13304 authority delegated to an officer or employee of the state board or a regional board that requires the provision of alternate water supplies within 120 days of the date of the order.

(B) The party requesting a stay may extend the 45-day period described in subparagraph (A).

(3) If the state board fails to issue or deny the stay within the applicable period specified in paragraph (1) or (2), the request for stay shall be deemed denied on the first day following the applicable period.

(b) (1) Within 30 days of any order of the state board issuing or denying a stay or within 30 days of a stay being deemed denied pursuant to paragraph (3) of subdivision (a), any aggrieved party may file with the superior court a petition for writ of mandate for review of the state board's order issuing or denying a stay or failure to issue or deny a stay.

(2) (A) Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed under this section.

(B) If the superior court finds that the state board failed to follow the procedures specified in subdivision (a) or otherwise prejudicially abused its discretion, the superior court may set aside the state board's order issuing or denying the stay and may stay, in whole or in part, the effect of the decision or order of a regional board or of the state board pending review by the state board.

(C) Notwithstanding subparagraph (A) or (B), if a request for stay is subject to paragraph (2) of subdivision (a), the superior court may proceed

without a certified administrative record and may stay, in whole or in part, the effect of the order or decision issued under delegated authority pending the state board's review of the order or decision, however, no such stay shall be imposed if the court is satisfied that it is against the public interest.

(3) In an action under this section or Section 13330 involving a water quality certification issued pursuant to Section 13160, the court shall not issue a stay or other order that enjoins or has the effect of preventing the state board from taking action necessary to avoid a waiver of water quality certification for failure to act within the period provided under federal law. In determining whether there is a risk of waiver, the court shall consider the applicable regulations or policies of the federal agency issuing the permit or license subject to the water quality certification.

(c) If the state board or the superior court grants a stay under this section, the stay may be made effective as of the effective date of the regional board or state board decision or order.

(d) If a petition is filed with the superior court under Section 13330, any stay in effect at the time of the filing of the petition shall remain in effect by operation of law for a period of 20 days from the date of the filing of that petition.

SEC. 3. Section 13330 of the Water Code is amended to read:

13330. (a) Not later than 30 days from the date of service of a copy of a decision or order issued by the state board under this division, other than a decision or order issued pursuant to Article 7 (commencing with Section 13550) of Chapter 7, any aggrieved party may file with the superior court a petition for writ of mandate for review of the decision or order. An aggrieved party must file a petition for reconsideration with the state board to exhaust that party's administrative remedies only if the initial decision or order is issued under authority delegated to an officer or employee of the state board and the state board by regulation has authorized a petition for reconsideration. The state board shall order or deny reconsideration on a petition therefor not later than 90 days from the date the state board adopts the decision or order.

(b) A party aggrieved by a final decision or order of a regional board subject to review under Section 13320 may obtain review of the decision or order of the regional board in the superior court by filing in the court a petition for writ of mandate not later than 30 days from the date on which the state board denies review.

(c) The time for filing an action or proceeding subject to Section 21167 of the Public Resources Code for a person who seeks review of the regional board's decision or order under Section 13320, or who seeks reconsideration under a state board regulation authorizing a petition for reconsideration, shall commence upon the state board's completion of that review or reconsideration.

(d) If no aggrieved party petitions for writ of mandate within the time provided by this section, a decision or order of the state board or a regional board shall not be subject to review by any court.

(e) Except as provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a decision or order of the state board issued under Section 13320, or a decision or order of a regional board for which the state board denies review under Section 13320, other than a decision or order issued under Section 13323.

(f) Except as provided in this section, no legal or equitable process shall issue in any proceeding in any court against the state board, a regional board, or any officer of the state board or a regional board to review, prevent, or enjoin any adjudicative proceeding under this division. Except as provided in this section and Section 13321, no legal or equitable process shall issue in any proceeding in any court against the state board, a regional board, or any officer or employee of the state board or a regional board to review, prevent, or enjoin a decision or order by the state board, a regional board, or any officer or employee of the state board or a regional board before a decision or order is issued and the procedures for administrative review of that decision or order have been exhausted.

(g) A party aggrieved by a decision or order issued by the state board under Article 7 (commencing with Section 13550) of Chapter 7 may petition for reconsideration or judicial review in accordance with Chapter 4 (commencing with Section 1120) of Part 1 of Division 2.

(h) For purposes of this section, a decision or order includes a final action in an adjudicative proceeding and an action subject to Section 11352 of the Government Code, but does not include an action subject to Section 11353 of the Government Code or the adoption, amendment, or repeal of a regulation under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 13361 of the Water Code is amended to read:

13361. (a) Every civil action brought under the provisions of this division at the request of a regional board or the state board shall be brought by the Attorney General in the name of the people of the State of California and any of those actions relating to the same discharge may be joined or consolidated.

(b) Any civil action brought pursuant to this division shall be brought in a county in which the discharge is made, or proposed to be made. However, any action by or against a city, city and county, county, or other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city or public agency is located.

(c) In any civil action brought pursuant to this division in which a regional board or the state board seeks a temporary restraining order, preliminary injunction, or permanent injunction, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate, and the

temporary restraining order, preliminary injunction, or permanent injunction shall issue without those allegations and proof.

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