

**RESOLUTION NO. 07-12**

**A RESOLUTION OF THE RUNNING SPRINGS WATER DISTRICT AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUB. RESOURCES CODE §§ 21000 ET SEQ.)**

**WHEREAS**, the California Legislature has amended the California Environmental Quality Act (“CEQA”) (Pub. Resources Code §§ 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15000 et seq.) and the California courts have interpreted specific provisions of CEQA;

**WHEREAS**, Section 21082 of CEQA requires all public agencies to adopt objectives, criteria and procedures for the evaluation of public and private projects undertaken or approved by such public agencies, and the preparation, if required, of environmental impact reports and negative declarations in connection with that evaluation; and

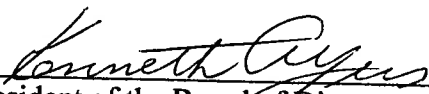
**WHEREAS**, the Running Springs Water District (“District”) must revise its local guidelines for implementing CEQA to make them consistent with the current provisions and interpretations of CEQA;

**NOW, THEREFORE**, the Running Springs Water District hereby resolves as follows:


**SECTION 1.** The District adopts “Local Guidelines for Implementing the California Environmental Quality Act (2012 Revision),” a copy of which is on file at the offices of the District and is available for inspection by the public.

**SECTION 2.** All prior actions of the District enacting earlier guidelines are hereby repealed.

**ADOPTED** this 21st day of March, 2012.

  
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President of the Board of Directors  
Running Springs Water District

ATTEST:

  
\_\_\_\_\_  
Secretary  
Running Springs Water District

## Memorandum

**TO:** Project 5 Clients  
**FROM:** Best Best & Krieger LLP  
**DATE:** February 10, 2012  
**RE:** 2012 Summary of Changes to Local CEQA Guidelines

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Important changes in the law have been incorporated into the 2012 Update to your Local Guidelines for Implementing the California Environmental Quality Act ("Local Guidelines"). For easy reproduction and access to these Local Guidelines, as well as the California Environmental Quality Act ("CEQA") forms your agency will need, and any other important legal alerts, please access the CEQA client portal at [www.bbklaw.net/CEQA](http://www.bbklaw.net/CEQA). For technical support please contact Gar House at [Gar.House@bbklaw.com](mailto:Gar.House@bbklaw.com).

Public agencies are required to adopt implementing procedures for administering their responsibilities under CEQA annually. These procedures include provisions on how the agency will process environmental documents and provide for adequate comment, time periods for review, and lists of permits that are ministerial actions and projects that are considered categorically exempt. Agency procedures should be updated within 120 days after the State CEQA Guidelines are revised.

This memorandum summarizes the substantive amendments to your Local Guidelines made in response to legislation and legal cases that changed or impacted certain aspects of CEQA between January 2011 and January 2012. Your Local Guidelines and this memorandum are designed to assist in assessing the environmental implications of a project prior to its approval, as mandated by CEQA. We still recommend, however, that you consult with an attorney when you have specific questions on major, controversial or unusual projects or activities.

### **Revisions to Local CEQA Guidelines.**

#### **1. SECTION 1.08 ELECTRONIC DELIVERY OF COMMENTS AND NOTICES.**

In response to Assembly Bill 209, this section was amended to add language regarding the provision of environmental documents in an electronic format.

As explained in this amendment to Section 1.08, AB 209 requires lead agencies to provide certain environmental documents, including Draft EIRs, Draft Negative Declarations and Draft Mitigated Negative Declarations, in electronic format. It is unclear how far this new requirement will extend, although it should not extend to reference materials and other background documents involved in the environmental process, nor should it require public agencies to reconstruct a record in electronic format. Additionally, the new legislation is silent regarding what method of electronic delivery is necessary or required. If the public agency has a

formal policy regarding the dissemination of information electronically, it should apply that policy to environmental documents as well.

AB 209 amends Section 21092 of the Public Resources Code to require lead agencies preparing an EIR, Negative Declaration or Mitigated Negative Declaration to also include a description in the Notice of Availability of "how the draft EIR or draft Negative Declaration can be provided in an electronic format."

**2. SECTION 1.09 THE DISTRICT MAY CHARGE REASONABLE FEES FOR REPRODUCING ENVIRONMENTAL DOCUMENTS.**

As explained above, AB 209 amended Section 21092 of the Public Resources Code to require public agencies to make environmental documents available electronically. Accordingly, this section was amended to state that if a member of the public or another public agency requests an electronic copy of a document, the public agency must provide it in electronic format, if possible. The public agency may charge a reasonable fee for providing the document electronically. For example, the public agency can charge for the actual cost of providing a CD-ROM of an Environmental Impact Report. In responding to a request for an electronic record made pursuant to the California Public Records Act, the public agency should comply with Government Code Section 6253.9.

**3. SECTION 3.05 NOTICE OF EXEMPTION.**

This section was amended in response to AB 320. CEQA previously required the plaintiff or petitioner in a CEQA lawsuit to name, as a real party in interest, any recipient of an approval that is the subject of the action or proceeding. Failure to name a "recipient of an approval" was grounds for dismissal. AB 320 clarified this requirement by requiring a public agency to identify in an NOE (should it choose to file one) those persons who receive an entitlement that falls under CEQA's definition of project as defined in Public Resources Code section 21065. (Note, that while recommended, filing an NOE is still optional in most cases.) This includes the person(s) undertaking an activity that receives financial assistance from a public agency or the person(s) receiving a lease, permit, license, certificate or other entitlement of use from the public agency.

**4. SECTION 3.05 NOTICE OF EXEMPTION.**

In addition to the amendment explained above, this section was also amended to clarify that the thirty (30) day county posting requirement for an NOE excludes the first day of posting and includes the last day of posting. On the 30th day, the NOE must be posted for the entire day. Case law (see e.g., *Latinos Unidos de Napa v. City of Napa* (June 27, 2011) 196 Cal.App.4th 1154) indicates that the removal of the NOE before the close of business on the 30th day deems the posting inadequate and thus, the shortened statute of limitations on legal challenges *does not* apply.

**5. SECTION 3.16 OTHER SPECIFIC EXEMPTIONS.**

This section was slightly modified to acknowledge that SB 226 created a new exemption for the installation of a "solar energy system" on the roof of an existing building or at an existing

parking lot. The full exemption can be found at Public Resources Code section 21080.35. "Solar energy system" includes solar electric (photovoltaic) and solar hot water projects, and associated equipment not located on the roof, including connections to the electric grid adjacent to the parcel, but excludes a substation. The exemption for Solar Energy Systems does not apply if:

(1) Installation requires an individual permit under the Clean Water Act, the Porter Cologne Water Quality Control Act, an individual take permit under the either the Federal or State Endangered Species Acts, or a streambed alteration permit under the Fish and Game Code;

(2) The associated equipment exceeds 500 square feet of ground surface or the site itself contains plants protected under the Native Plants Protection Act;

(3) The installation of a system involves either the removal of a tree required to be planted, maintained or protected under local, state, or federal requirements or removal of a native tree over 25 years old; or

(4) The activity includes a transmission or distribution facility or connection.

This new exemption is extremely narrow and only applies under very specific circumstances, accordingly, this section was briefly modified to include a brief reference to the new exemption.

#### **6. SECTION 3.17 CATEGORICAL EXEMPTIONS.**

This section was modified in response to SB 226's revisions to Section 21084 of the Public Resources Code, which clarified that a project's Greenhouse Gas ("GHG") emissions do not, in and of themselves, preclude a lead agency from proceeding under a categorical exemption if the action otherwise complies with regulations adopted to implement related statewide, regional, or local plans as provided in CEQA. Specifically, if an agency can demonstrate that the action is consistent with State CEQA Guidelines 15183.5 regarding GHG emissions, then the agency may be able to use a categorical exemption. Keep in mind that all of the limitations for using a categorical exemption also apply, regardless of the action's compliance with GHG plans.

#### **7. SECTION 5.15 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.**

This section was amended in response to SB 267 to state that Water Supply Assessments ("WSA") are not required for certain renewable energy projects. Under SB 267, a proposed photovoltaic or wind energy generation facility approved on or after October 8, 2011, that uses no more than 75 acre feet of water annually is excused from the requirement to prepare a WSA under SB 610 and 221, even if it occupies more than 40 acres. This new exclusion took effect immediately on October 8, 2011, but it only remains in place until January 1, 2017.

However, note that unless they are otherwise exempt, these renewable energy projects are still subject to CEQA review and must satisfy CEQA's separate and independent water supply sufficiency standards. Click here to read the entire text of [SB 267](#).

**8. SECTION 6.04 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.**

In response to AB 209's revisions to Public Resources Code section 21092, the list of information required in a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration was amended to add subsection (e), which states, "The Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall contain . . . [a] description of how the proposed Negative Declaration or Mitigated Negative Declaration can be obtained in electronic format." The remainder of the list was renumbered to accommodate the new addition.

**9. SECTION 6.13 ADOPTION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.**

To simplify the text, the words "but not before" have replaced the phrase "but in no event sooner than." This change does not substantively effect the meaning of this section.

**10. SECTION 6.17 NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.**

In response to AB 320, which amended Public Resources Code section 21108, this section was revised to state that, for private projects, the Notice of Determination must identify the person undertaking the project, including any person undertaking an activity that receives financial assistance from the public agency as part of the project or the person receiving a lease, permit, license, certificate, or other entitlement of use from the public agency as part of the project.

**11. SECTION 7.05 ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECT.**

This new section was added in response to AB 900, which created the "Jobs and Economic Improvement Through Environmental Leadership Act of 2011." The Act establishes expedited judicial review procedures for certain projects certified as "environmental leadership development projects." It is important to note that AB 900 does not exempt these projects from CEQA or in any way reduce or limit a lead agency's obligations under CEQA. AB 900 simply streamlines any litigation that is brought against a certified project claiming non-compliance with CEQA. The explanation in the 2012 Local CEQA Guidelines of this new streamlined review is brief because it will only apply to a very narrow type of project and the specific requirements are currently vague and will probably be subject to amendments and litigation this year. As the law settles regarding this new procedure, additional information will be added to the Local Guidelines. Please see Public Resources Code section 21178 for a complete description of the requirements for such projects. The remainder of the subsections in Chapter 7 were renumbered to reflect this addition.

**12. SECTION 7.07 CONSULTATION WITH OTHER AGENCIES AND PERSONS.**

Consistent with the authorization contained in SB 226, this section was amended to state that referral of a proposed action to adopt or substantially amend a general plan to an adjacent city or county can be conducted concurrently with the scoping meeting required by CEQA for a project of statewide, regional or area-wide significance. Additionally, this section now states

that a city or county can submit its comments on the proposed general plan action at the CEQA scoping meeting.

**13. SECTION 7.21 NOTICE OF COMPLETION OF DRAFT EIR; NOTICE OF AVAILABILITY OF DRAFT EIR.**

In response to AB 209's new requirements, this section was revised to state that the Notice of Completion and the Notice of Availability must state how the Draft EIR can be obtained in electronic format.

**14. SECTION 7.25 PUBLIC HEARING ON DRAFT EIR.**

Additional information was added to this section to address AB 1344's requirement that any legislative body or its presiding officer must post an agenda for each regular or special meeting on the local agency's Internet website, if the local agency has one, in addition to the other agenda notice requirements. Note that this requirement is not a CEQA requirement, but instead, reflects an amendment to the Brown Act.

**15. SECTION 7.36 NOTICE OF DETERMINATION.**

In response to AB 320, which amended Public Resources Code section 21108, this section was revised to state that, for private projects, the Notice of Determination must identify the person undertaking the project, including any person undertaking an activity that receives financial assistance from the public agency as part of the project or the person receiving a lease, permit, license, certificate, or other entitlement of use from the public agency as part of the project.

**16. SECTION 8.02 TIERING.**

A new paragraph was added to this section to address the procedure for tiering for certain specified infill projects. This new paragraph mirrors Section 21094.5 of the Public Resources Code which was added by AB 226. Section 21094.5 creates a new abbreviated CEQA review procedure for specified "infill projects," where only specific or more significant effects on the environment which were not addressed in a prior planning-level EIR need be addressed. An EIR for such a project need not consider alternative locations, densities, and building intensities or growth-inducing impacts.

Section 8.02 was also broken up into subparagraphs with new headings for easier reading.

**17. SECTION 9.03 ADMINISTRATIVE RECORD.**

A new subparagraph (C) was added to address Environmental Leadership Projects created by AB 900. As mentioned above, this section is brief because the requirements for these projects may change and there are some outstanding issues regarding the timing for litigation. However, AB 900 requires the Judicial Council to adopt rules implementing AB 900 by July 1, 2012. Once those rules are adopted, the Local CEQA Guidelines will be updated, as necessary.

18. CHAPTER 10 DEFINITION FOR WATER DEMAND PROJECT AT SECTION 10.74.

The definition for “Water Demand Project” was revised in response to SB 267 which amended Section 10912 of the Water Code to state that a proposed photovoltaic or wind energy generation facility approved on or after October 8, 2011, is not a Water Demand Project if the facility would demand no more than 75 acre-feet of water annually.

**Other Changes.**

Several other minor grammatical and/or formatting changes were made to the Local Guidelines to facilitate the reading and use of the Local Guidelines.

**2012 Form “F” Notice of Determination.** In response to AB 320, which amended Public Resources Code section 21108, Form “F” was revised to include a line for the public agency to identify the person undertaking the project, including any person undertaking an activity that receives financial assistance from the public agency as part of the project or the person receiving a lease, permit, license, certificate, or other entitlement of use from the public agency as part of the project. This requirement only applies to private projects.

**2012 Form “H” Notice of Completion.** In response to AB 209’s new requirements, this form was revised state how the Draft EIR can be obtained in electronic format.

**2012 Form “K” Notice of Availability.** In response to AB 209’s new requirements, this form was revised state how the Draft EIR can be obtained in electronic format.

**County Contact Chart.** The chart identifying county contacts and notice filing procedures has been updated for 2012. However, all agencies are encouraged to check with the applicable county prior to filing environmental notices to ensure that the appropriate policies are followed. Other changes to specific counties are identified in the memo attached to the new county contact chart.

**Conclusion.**

As always, CEQA remains complicated and difficult to apply. The only constant in this area of law is how quickly the rules change. Should you have any questions about any of the provisions discussed above, or about the environmental review of any of your agency’s projects, please contact a BB&K attorney for assistance.

**BEST BEST & KRIEGER LLP**