

Study E-100

December 11, 1997

First Supplement to Memorandum 97-79**Environmental Law Consolidation:
Results of Request for Public Comment**

Peter H. Weiner, of Paul, Hastings, Janofsky & Walker, and Joel Reynolds, of the Natural Resources Defense Council have written to express their opposition to the proposed consolidation of environmental statutes. These letters are attached.

Mr. Weiner believes that consolidation is unnecessary, given the availability of commercially published compilations, and would substantially complicate legal research. Furthermore, he believes that consolidation of environmental laws “would generate enormous controversy because of the substantive changes in legal rights and obligations that would be entailed in dovetailing all of the various permitting, enforcement, reporting, and other provisions into one statute.” See Exhibit pp. 1-2.

Mr. Reynolds, citing his experience with the Unified Environmental Statute Commission, concludes that unification of environmental protection should be pursued first and predominately through administrative means, rather than through statutory consolidation. However, the Unified Environmental Statute Commission’s work related primarily to integration of environmental policies and programs. This is substantially different from the non-policy reorganization of environmental statutes that the Law Revision Commission is considering. See Exhibit pp. 3-4.

Respectfully submitted,

Brian Hebert
Staff Counsel

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OUR FILE NO.

Attention: Brian Hebert
 California Law Revision Commission
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 Palo Alto, CA 94303-4739

Re: Public Comment on Environmental Law Consolidation Proposal

Dear Sirs:

I understand that the Legislature has asked you to consider a reorganization of California's Environmental Quality and Natural Resource statutes. As proposed in your outline of this task, I must reluctantly conclude that this project would be a **waste of scarce government resources**, and would make life more difficult for attorneys practicing in the field. My specific comments on the questions posed in your previous publication on this subject are as follows.

1. The Project Is Not Desirable. As you note, a statutory consolidation would require substantial renumbering of essentially all existing environmental statutes. My experience with this type of consolidation is that it causes substantial difficulties over time in searching applicable case law, especially when cases have references to various ancillary statutes which themselves have been renumbered. Moreover, what is to be gained by such a consolidation? Two major publishers, at the very least, already publish a compilation of California environmental laws which make it easy for a practitioner to refer to most environmental laws in one volume. This project, to the extent it involves annotated codes, would result in several volumes, just as the current codification does. I see no use in a consolidation.

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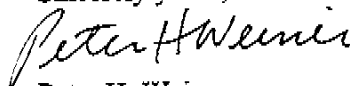
Attention: Brian Hebert
California Law Revision Commission
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2. The Concept of a Comprehensive Environmental Code Is Not Sound. I had the honor to serve for two years on the Unified Environmental Statute Commission convened by California EPA. That Commission proposed a comprehensive rewrite of all environmental statutes into one comprehensive statute, such that there would be one section of the code on permits, one on enforcement, etc. After considering drafts of parts of this code, we concluded early on that such a rewrite would generate enormous controversy because of the substantive changes in legal rights and obligations that would be entailed in dovetailing all of the various permitting, enforcement, reporting, and other provisions into one statute. We also concluded that a mere consolidation of the statutes in one place would be meaningless.

Because I practice full time in this area, I would of course be willing to review drafts and to participate in any further deliberations of the California Law Revision Commission. To the extent that the Commission proposes to "eliminate obsolete and duplicative statutes" or "suggest ways to resolve inconsistencies between statutes," I would be vitally interested in any proposals you may wish to make.

I regret my generally negative response to this project, but I spent two years looking at the issue. Because your work is vital to my work, I would appreciate the opportunity to participate further in any deliberations you may have, and to be consulted at an early time with regard to any drafts or meetings that you may have.

Sincerely yours,



Peter H. Weiner

for PAUL, HASTINGS, JANOFSKY & WALKER LLP



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Nathaniel Sterling
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Re: Comments Regarding Proposed Environmental Law Consolidation

Dear Mr. Sterling and Members of the Commission:

I understand that the Commission is meeting on December 12th to discuss the proposal for consolidation of California's environmental laws, which I have now had an opportunity to review. For the following reasons, the Natural Resources Defense Council ("NRDC") opposes the proposal at this time.

In January 1997, after several years of study, a broad-based United Environmental Statute Commission appointed by Governor Wilson -- a commission of which I was a member -- issued a report on precisely the issue proposed for consideration by the Law Revision Commission. Although the report and supporting documentation are voluminous, the introduction by former U.S. E.P.A. Administrator William K. Reilly and former Sierra Club Legal Defense Fund President Michael Traynor summarizes the Commission's view as follows:

Although a large majority of the Commission members believe that reform of California's environmental laws will eventually be necessary to achieve full potential for integrating environmental policies, the Commission decided to limit its recommendations to administrative and regulatory reforms which can be effected without statutory revision. Practically speaking, it makes sense first to exhaust the possibilities of current laws and achieve as much policy integration as possible before determining which provisions of law stand in the way of further progress toward unification. Also, reforming laws poses more formidable challenges to ensure that statutory amendments are not allowed to undermine the vigor and effectiveness of California's environmental protection.

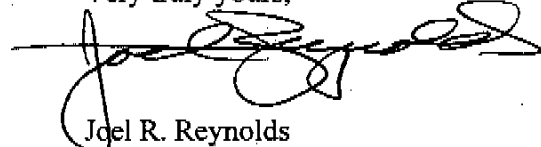
We support this finding of the Unified Statute Commission and believe that, for similar reasons, the consolidation project being considered by the Law Revision Commission is unnecessary and inappropriate at this time. I understand from Nicholas

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Yost and David Roe that a copy of the Unified Statute Commission's Executive Summary has been sent to the Commission for its consideration.

If you have any questions or need further information, please don't hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joel R. Reynolds", written over a horizontal line.

Joel R. Reynolds
Senior Attorney