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MAY 04 2012

DIVISION OF WATER QUALITY

**BOARD OF SUPERVISORS
COUNTY OF TUOLUMNE**

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Randy Harvelt, *Second District*

Evan Royce, *Third District*
Richard H. Pland, *Fifth District*

May, 1, 2012

OWTS Policy
State Water Resources Control Board
P.O. Box 2231
Sacramento, CA 95812

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Re: Letter of Comment on Proposed OWTS Policy

Honorable Members of the Water Resources Control Board:

Thank you for providing us with the opportunity to comment on the Final Draft Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (Final Draft Policy) to implement Assembly Bill (AB) 885. The County's Environmental Health Division and others in our community have reviewed the Final Draft Policy and have made comments to its Board of Supervisors. Although there appears to be some positive attributes in the Final Draft Policy, such as the five year time frame for implementation of the policy and the removal of Sullivan Creek from the Section 303 (d) of the Clean Water Act list of impaired waters, we still find the policy to be untenable for our County.

Your Board has set a timeline of June 19, 2012, to adopt the Final Draft Policy. This timeframe is premature and does not provide adequate opportunity for input from the local jurisdictions that are responsible for implementing this policy. There are many unknowns in this Final Draft Policy and the biggest unknown is how each Regional Water Quality Control Board will interpret the Final Draft Policy. Each Regional Board has the authority to impose more stringent requirements than the proposed Final Draft Policy, which could have a critical impact on this County and other counties as well. Approving a policy without divulging how each county of the State will be impacted is premature, untimely, and inappropriate. Until each Regional Board identifies how it will interpret the Final Draft Policy, the policy should not be adopted.

The Final Draft Policy establishes a five tier system for compliance. Tier 0 includes existing onsite wastewater treatment systems (OWTS) that are properly functioning and do not meet the conditions of failing systems or otherwise require corrective action. Tier 1 provides low risk siting and design requirements for new or replacement of OWTS. Tier 2 authorizes a Local Agency Management Program,

State Water Resources Control Board

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approved by the jurisdictional Regional Water Quality Control Board, to be utilized in-lieu of the Tier 1 requirements. The Local Agency Management Program will allow our County and others to address our unique geologic, soil and climatic conditions. Tier 3 establishes requirements for OWTS near impaired water bodies and Tier 4 requires corrective action for OWTS that are either presently failing or fail at any time.

The provisions in Section 7.8 of the Final Draft Policy limit the creation of new parcels to those with a density of less than one (1) dwelling unit per 2.5 acres under the Tier 1 rules. Although local jurisdictions can propose alternatives to Tier 1 regulations through a Local Agency Management Program, it does not appear that modifications to the 2.5 acre density limitation are allowed under the Tier 2 provisions. This density restriction is not acceptable to Tuolumne County where we currently allow onsite wastewater treatment systems to serve new residential parcels smaller than the proposed 2.5 acres. There has been no evidence of adverse impacts in allowing OWTS on smaller parcels in Tuolumne County; therefore, we request the Final Draft Policy be modified to clearly allow local agencies to establish density standards that are appropriate for their respective jurisdictions.

Sections 7.7 and 9.4.4 of the Final Draft Policy detail the regulations for OWTS based on natural slopes. Section 7.7 states that for a standard OWTS system, an effluent disposal area shall not be on a natural slope that exceeds 25% and Section 9.4.4 states that for slopes over 30%, a slope stability study must be prepared by a registered professional. The rationale for these slope requirements is not included in the Final Draft Policy. Tuolumne County is on the western slope of the Sierra Nevada and features steep terrain as well as rolling hills. As such, many existing parcels in our County have slopes that are in excess of 25%; therefore, a standard system could not be installed simply because the site exceeds the arbitrary slope limitation established in the Final Draft Policy. Many of the existing parcels in our County exceed 30%; consequently, property owners of these parcels will be required to bear the expense of a slope stability study even though the need for such a study has not been justified based on local conditions. Both of these slope requirements will impose financial hardships on the owners of property in our County.

In our earlier correspondence to you regarding this matter dated November 1, 2011, we questioned the designation by your Board of water bodies in Tuolumne County (Woods Creek and Sullivan Creek) as impaired under Section 303(d) of the Clean Water Act. We appreciate that in the Final Draft Policy, you have removed Sullivan Creek from the 303(d) listing. However, Woods Creek still remains on the list. We respectfully request that you remove Woods Creek from the list for the same reasons that Sullivan Creek was removed.

Lastly, the proposed Final Draft Policy still mandates that each jurisdiction with an approved Local Agency Management Program submit technical data to your Water Resources Control Board in an electronic format each year. **This reporting will not be funded by the State of California and puts an undue financial burden on local jurisdictions, such as our County. This requirement relies on each jurisdiction to absorb all costs. Conceivably, electronic reporting appears to be a fairly straight forward requirement but past experience demonstrates that this is not as simple as it may seem.** We would like to bring to your attention the electronic reporting mandate in the Certified Unified Program Agency (CUPA) Program. The California Environmental Reporting System (CERS) is intended to be a statewide web-based system to support California CUPA's in electronically collecting and reporting various hazmat related data.

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The State collected surcharges from each jurisdiction and remitted some money back to each jurisdiction so that the State and local databases can interface with one another. At this time, the State will not meet the deadline it established through the Health and Safety Code for implementing the CERS. Our point is that if a funded mandate will not meet the requirements established in code, how can an unfunded mandate of the same nature fare any better?

In closing, we acknowledge that the Final Draft Policy is an improvement from previous iterations of policies to implement AB 885; however, Tuolumne County believes that the Final Draft Policy fails to address issues that are imperative to the local jurisdictions that are responsible for implementing the policy and is, therefore, not ready for adoption. We respectfully ask that your Water Resources Control Board work with each Regional Board to develop regional plans for review by local jurisdictions prior to adoption of any policy to implement AB 885.

Sincerely,



Richard H. Pland, Chairman

cc: Senator Tom Berryhill, District 14
Assembly Member Kristin Olsen, District 25
California State Association of Counties (CSAC)
Regional Council of Rural Counties (RCRC)

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALICIA L. JAMAR
Clerk of the Board

By: 