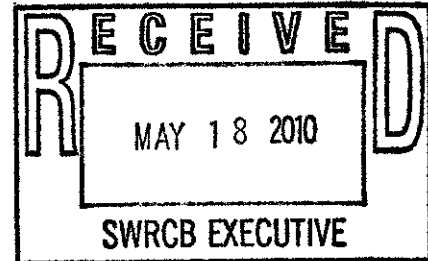


May 13, 2010

Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Dear Ms. Townsend,

RE: 2010 Integrated Report/Section 303(d) List

The Turlock Irrigation District (TID) appreciates the opportunity to provide comments on the recently circulated draft of the 2010 Integrated Report. This transmittal provides specific comments related to the proposed listings for the Harding Drain and the Highline Canal for four constituents due to supposed impairment of drinking water (MUN) beneficial uses.

Neither the Harding Drain nor the Highline Canal are natural waterways. Both are man-made, constructed agricultural facilities that have been modified over time to accommodate the conveyance of stormwater, and other flows. Both facilities are owned, operated and maintained by the TID. As such, any use of either facility would require TID's prior approval. These facilities have never been, nor will they ever be drinking water facilities.

The proposed listing of these facilities due to impairment of MUN uses is inappropriate as MUN beneficial uses do not exist and are not appropriate for these constructed agricultural facilities owned and operated by the TID. The SWRCB policy on Sources of Drinking Water (attached) provides exceptions to the general application of MUN to all waters within the State for this exact situation. The two exceptions of the established Policy (referred to as 2a and 2b), that are applicable to the above mentioned facilities, are as follows.

"2 Surface Waters Where:

- a. The water is in systems designed or modified to collect or treat municipal or industrial wastewaters, process waters, mining wastewaters, or storm water runoff, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Board; or

- b. The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards.” (*emphasis added*)

Exception 2a applies to both the Harding Drain and the Highline Canal. The Harding Drain collects and conveys treated municipal wastewater from the City of Turlock outfall as well as storm water runoff from urban areas (including the communities of Denair and Turlock), as well as agricultural lands and adjacent roadways. The Highline Canal was designed to carry irrigation water, but has become the primary conveyance for storm water flows from the Mustang Creek watershed, as well as agricultural lands situated adjacent to the facility. Exception 2b applies to the Harding Drain. Although the Harding Drain now conveys municipal wastewater and other flows (as described above), it also conveys agricultural drainage water.

Both of these locations undergo regular monitoring; the Harding Drain by the City of Turlock under its NPDES permit and the Highline Canal under the Irrigated Lands program. It is also important to note that none of the constituents proposed due to impairment of MUN beneficial uses for the Harding Drain or the Highline Canal have been identified as causing impairment to the waterways downstream of these facilities (i.e. the San Joaquin or Merced rivers).

Additionally, application of MUN designation to the Harding Drain and/or Highline Canal through use of the tributary rule is inappropriate. In an August 31, 2000 letter from the CRWQCB-CVR to the U.S. EPA (attached), Mr. Jerrold Burns discusses application of the tributary rule. Mr. Burns states at the bottom of page 1 that the tributary footnote was not meant to designate beneficial uses and it was not meant to be applied rigidly in a manner that ignores available information. Mr. Burns goes on to state that there are many obvious examples where tributaries do not have the same beneficial uses as the downstream receiving waters. One such example is agricultural drains draining to the San Joaquin River. The letter further goes on to agree with the notion that applying the MUN designation to all water ways listed on Table II-1 of the Basin Plan, or the unnamed tributaries, would be inappropriate.

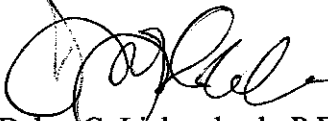
The Harding Drain and Highline Canal are not natural water ways. They are constructed agricultural facilities owned and operated by TID, not municipal drinking water sources. As noted above, blanket application of MUN beneficial uses to these constructed facilities is inappropriate and the SWRCB drinking water policy provides exceptions for this exact situation. None of the constituents are causing impairments to the downstream receiving waters that have MUN designations. The application of the tributary rule to apply MUN designations to these facilities is inappropriate and contrary to the intent of the rule. As a result, the following proposed listings should be removed:

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<u>Waterway</u>	<u>Constituent</u>
Highline Canal	<i>Simazine</i>
Harding Drain	<i>alpha-BHC (Benzenehexachloride)</i>
Harding Drain	<i>Hexachlorobenzene/HCB</i>
Harding Drain	<i>Lindane/gamma Hexachlorocyclohexane (gamma-HCH)</i>

The TID appreciates the serious consideration of these comments as the SWRCB and its staff prepare to finalize the 2010 Integrated Report/Section 303(d) List. Should you have any questions regarding the above comments, please do not hesitate to contact me at (209) 883-8428.

Sincerely,



Debra C. Liebersbach, P.E.
Water Planning Department Manager

Attachments

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 88-63

(as revised by Resolution No. 2006-0008)

ADOPTION OF POLICY ENTITLED
"SOURCES OF DRINKING WATER"

WHEREAS

1. California Water Code section 13140 provides that the State Board shall formulate and adopt State Policy for Water Quality Control; and,
2. California Water Code section 13240 provides that Water Quality Plans "shall conform" to any State Policy for Water Quality Control; and,
3. The Regional Boards can conform the Water Quality Control Plans to this policy by amending the plans to incorporate the policy; and,
4. The State Board must approve any conforming amendments pursuant to Water Code section 13245; and,
5. "Sources of drinking water" shall be defined in the Water Quality Control Plans as those water bodies with beneficial uses designated as suitable, or potentially suitable, for municipal or domestic water supply (MUN); and,
6. The Water Quality Control Plans do not provide sufficient detail in the description of water bodies designated MUN to judge clearly what is, or is not, a source of drinking water for various purposes.
7. On February 1, 2006, the State Board adopted Resolution No. 2006-0008, which amended this policy to establish a site-specific exception for Old Alamo Creek.

THEREFORE BE IT RESOLVED:

All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards¹ with the exception² of:

¹ This policy does not affect any determination of what is a potential source of drinking water for the limited purposes of maintaining a surface impoundment after June 30, 1988, pursuant to Section 25208.4 of the Health and Safety Code.

² This policy contains general categories for exceptions from the policy. On February 1, 2006, the State Board adopted Resolution No. 2006-0008, which established a site-specific exception from the policy for Old Alamo Creek. The rationale for the site-specific exception is contained in the resolution and in State Board Order WQO 2002-0015, II.A.2.d.

1. Surface and ground waters where:

- a. The total dissolved solids (TDS) exceed 3,000 mg/L (5,000 uS/cm, electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system, or
- b. There is contamination, either by natural processes or by human activity (unrelated to the specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices, or
- c. The water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day.

2. Surface Waters Where:

- a. The water is in systems designed or modified to collect or treat municipal or industrial wastewaters, process waters, mining wastewaters, or storm water runoff, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards; or,
- b. The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards.

3. Ground water where:

The aquifer is regulated as a geothermal energy producing source or has been exempted administratively pursuant to 40 Code of Federal Regulations, section 146.4 for the purpose of underground injection of fluids associated with the production of hydrocarbon or geothermal energy, provided that these fluids do not constitute a hazardous waste under 40 CFR, section 261.3.

4. Regional Board Authority to Amend Use Designations:

Any body of water which has a current specific designation previously assigned to it by a Regional Board in Water Quality Control Plans may retain that designation at the Regional Board's discretion. Where a body of water is not currently designated as MUN but, in the opinion of a Regional Board, is presently or potentially suitable for MUN, the Regional Board shall include MUN in the beneficial use designation.

The Regional Boards shall also assure that the beneficial uses of municipal and domestic supply are designated for protection wherever those uses are presently being attained, and assure that any changes in beneficial use designations for waters of the State are

consistent with all applicable regulations adopted by the Environmental Protection Agency.

The Regional Boards shall review and revise the Water Quality Control Plans to incorporate this policy.

CERTIFICATION

The undersigned, Acting Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a policy duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 19, 1988, and amended on February 1, 2006.

A handwritten signature in black ink, appearing to read "Selica Potter", written over a horizontal line.

Selica Potter
Acting Clerk to the Board



California Regional Water Quality Control Board

Central Valley Region

Steven T. Butler, Chair



Winston H. Hickox
Secretary for
Environmental
Protection

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Gray Davis
Governor

31 August 2000

Kathy Goforth
US Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 95812-0100

RESPONSE TO US EPA ACTIONS ON BASIN PLAN AMENDMENTS

We have reviewed the letter from US EPA to State Water Resources Control Board that takes action on Basin Plan amendments that were adopted by the Regional Board in 1989, 1990, 1994 and 1995. We may submit additional comments next week to further clarify some of our points. We are concerned that US EPA has taken so long to act on these amendments, especially since US EPA proposes to disapprove some elements even though no significant adverse comments were received from US EPA during the adoption process. Following are responses to US EPA determinations.

Attachment A Disapproved Provisions

1. Tributary Footnote

US EPA suggests that the footnote on Table II-1, adopted in 1975, actually designates beneficial uses for water bodies tributary to those listed on Table II-1. US EPA, therefore, proposes to disapprove the language added in 1994 to the Basin Plan because they view this as a change from what was stated in 1975.

We do not agree with the analysis and assumptions that are included in US EPA's proposed disapproval of the amendment. The footnote was included on Table II-1 to help the regulated community understand that, in the absence of information to the contrary, the Regional Board would assume that streams had the same beneficial uses as the named water bodies to which they are tributary. Dischargers or other interested parties had the opportunity to conduct studies and present information demonstrating what beneficial uses were appropriate. The Basin Plan could then be amended to reflect the beneficial uses that were appropriate for the water body in question. In a March 1978 letter from US EPA to State Board this issue is discussed and it is clear that the state position is that the Regional Board did not intend to apply the "general rule" to designate beneficial uses to all waters tributary to the listed waters. At the time US EPA did not agree with this interpretation, but the Regional Board did not make any agreements with US EPA that contradicted this position.

The tributary footnote was not meant to designate beneficial uses and it was not meant to be applied rigidly in a manner that ignored available information. There are so many obvious examples where tributaries do not have the same beneficial uses as the downstream named receiving water, that it is

California Environmental Protection Agency

inconceivable that the Regional Board, in adopting the footnote, intended it to be used in the manner US EPA suggests is appropriate. Following are a few examples of obvious cases where the footnote language just does not make sense if it is applied as US EPA suggests:

- The Sacramento River and Delta have navigation as a beneficial use. Navigation is defined as uses of water for shipping, travel, or other transportation by private, military, or commercial vessels. Virtually none of the tributaries could possibly have this beneficial use, but according to US EPA it is designated.
- The San Joaquin River has migration and spawning for cold water species as beneficial uses. Agricultural drains, such as Orestimba Creek, Del Puerto Creek, Ingram-Hospital Creek, and others could not possibly have these beneficial uses.

When the tributary footnote was included in the Basin Plan in 1975, the Regional Board knew that the beneficial uses that were listed for the named water bodies were not always appropriate for the tributaries. It was assumed that when information became available, it would be used to determine actual beneficial uses.

The language added in 1994 to the Basin Plan was meant to clarify how the Regional Board identifies which beneficial uses are appropriate in the tributaries. This language clarified the method that had been implemented since adoption of the Basin Plan in 1975. Therefore, it is unclear what affect US EPA disapproval of the 1994 language will have on the way the Regional Board determines beneficial uses. The Regional Board still intends to make site specific determinations and amend the Basin Plan to include them. Disapproval will remove the clarification and potentially be a disservice to readers of the Basin Plan.

2. Dissolved Oxygen

In the editing that was done as part of the 1994 Basin Plan amendment, some of the dissolved oxygen provisions were misplaced. No changes in the objectives were intended and during the next printing of the Basin Plan the wording will be restored to the way it was prior to the 1994 editing.

3. Federal Antidegradation

In the 1989 amendments to the Basin Plan, the Regional Board added a section to explain the federal antidegradation policy. Staff was intending to present a factual account of the policy for public information. No special interpretations or manipulations were intended. US EPA does not agree with the way staff explained the policy. Unfortunately, US EPA did not tell us this 10 years ago when it was adopted, so 10 years of bad information has been provided to the public. We will consider US EPA recommendations for appropriate wording during the next triennial review.

Attachment B Understandings

The understandings are acceptable with the exception of the following:

5. US EPA states that it is their understanding that the MUN beneficial use is designated for all water bodies in the Region. This would include the water bodies listed in Table II-1 that currently do not have the MUN beneficial use designated and all the unnamed tributaries.

We do not agree with this understanding. The Sources of Drinking Water Policy specified that all waters of the state should be considered suitable or potentially suitable for MUN with certain exceptions. One of these exceptions allowed the Regional Board discretion on whether or not to add the MUN designation for water bodies that already had designated uses that did not include MUN. In 1975, the Regional Board specifically designated beneficial uses for the water bodies listed in Table II-1. Some of the water bodies listed in Table II-1 were specifically not designated for the MUN beneficial use. The adoption of the Sources of Drinking Water Policy did not change these designations. However, we agree with US EPA that most of the water bodies listed in Table II-1 should be designated as MUN. We will commit to updating our MUN designations for water bodies listed in Table II-1 during the next Triennial Review.

We agree that the Sources of Drinking Water Policy would apply, in general, to the unnamed tributaries because these have never formally had beneficial uses designated for them. The Regional Board will implement the Sources of Drinking Water Policy when developing permits and determining permit limits for discharges to the unnamed tributaries. We do not agree that this policy designates beneficial uses as defined in the Clean Water Act.

6. We are not sure what US EPA's position is when agencies, acting under their respective state regulations, apply pesticides or herbicides for vector and weed control, pest eradication, or fishery management. The Regional Board does not intend to adopt basin plan amendments every time any of these proposed activities are proposed or implemented. The intent of the variance described in the Basin Plan for these types of applications is to allow quick implementation of emergency projects to control undesirable and dangerous species. Often these projects involve short-term toxicity within affected waters. Because of the urgent nature of these projects, the Regional Board has not prescribed waste discharge requirements nor re-evaluated the water quality objectives of the affected waters. The term, "variance", as used in our Basin Plan, was not intended to have the same meaning as the term does in the Clean Water Act (that relates to variances of water quality standards).

Attachment C Issues That Should Be Addressed in the Next Triennial Review

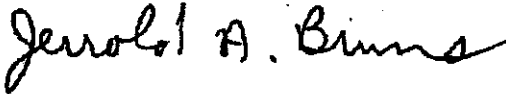
US EPA has identified 13 issues that they believe should be addressed in the next Triennial Review. The Regional Board will consider US EPA recommendations along with suggestions and recommendations from other stakeholders. Many of the issues that are identified would take significant staff resources to address. During the last Triennial Review, more than 70 issues were identified. The Regional Board has less than 1 py for basin planning work. Without budget augmentations, most of US EPA's issues will likely not be addressed. Following are comments on a few of US EPA's issues:

5. Appropriate portions of TMDLs will be incorporated into Basin Plans according to time schedules included in federal and state workplans.

8. Staff will propose language to be included in the Basin Plan to reflect "the Alaska Rule" when a new addition is published.

31 August 2000

If you have comments or questions regarding our responses, please call me at (916) 255-3093.



JERROLD A. BRUNS
Sacramento River Watershed Section