

Regional Water Quality Control Board, Central Valley Region

Amendments to the Water Quality Control Plan for
the Tulare Lake Basin
to Edit and Update Language

Response to Comments

The Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) provided draft amendments and a staff report dated December 2013 for public comment from 20 December 2013 to 15 February 2014, comments were accepted until 5pm on 18 February 2014 which was the first business day following the due date. The following entities submitted written comments during the public comment period:

1. Elwood "Cliff" Raley, Forest Hydrologist, United States Forest Service, Sierra National Forest
2. Tera Chumley, Senior Management Consultant, Stanislaus County Environmental Review Committee
3. Kimberly Brown, Resource Manager, Paramount Farming
4. William J. Thomas, on behalf of Southern San Joaquin Valley Water Quality Coalition
5. Debbie Webster, Executive Officer, Central Valley Clean Water Association

Following is a summary of the comments and the responses to the comments:

Elwood "Cliff" Raley, Forest Hydrologist, United States Forest Service, Sierra National Forest

1. Comment.

Since references to electrical conductivity are being updated, it may be a good time to update the footnotes to Table III-2, TULARE LAKE BASIN MAXIMUM ELECTRICAL CONDUCTIVITY LEVELS.

Response.

The Central Valley Water Board thanks Mr. Raley for providing comments. The Staff Report has been edited as suggested.

Tera Chumley, Senior Management Consultant, Stanislaus County Environmental Review Committee

2. Comment.

The Stanislaus County Environmental Review Committee has no comments at this time.

Response.

The Central Valley Water Board thanks the Stanislaus County Environmental Review Committee for reviewing the proposed amendment.

Kimberly Brown, Resource Manager, Paramount Farming

3. Comment.

Although the Draft 2013 TLB WQCP Amendments states the purpose of the document and associated amendments are “to correct errors and update language in the Basin Plan,” it in fact, reaches far beyond corrections and changes the character of the Basin Plan and improperly limits public comment and participation on future changes and amendments. If adopted by the Regional Board, Draft 2013 TLB WQCP Amendments will reduce the importance of future amendments and reviews, incorrectly incorporate future State Board policies without a proper review and generally deny stakeholders a meaningful public comment and input process on several critical components of the Basin Plan.

Response.

In this case, the proposed edits and updates to the Tulare Lake Basin plan are non-regulatory corrections to the language of the Basin Plan and updates to the Basin Plan to reflect State Water Board adopted plans and policies that are already in effect. The State Water Board conducted an environmental analysis of these plans and policies when it considered these plans and policies. The proposed amendments incorporate these plans and policies by reference so there are no additional potential significant effects on the environment that will need to be analyzed as part of these amendments. These proposed edits and updates to the Basin Plan do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the proposed amendments are not a “project” for purposes of CEQA compliance, and are therefore legally exempt from CEQA requirements. Likewise, the proposed amendments are exempt from the State Water Board’s certified regulatory program requirements because those requirements do not apply if the Board determines that the activity is exempt from CEQA. Despite the exemption from certified regulatory program requirements, Board staff has implemented the remaining regulatory procedures used in the Basin Planning process.

4. Comment.

Notwithstanding the characterization of the Draft 2013 WQCP Amendments as corrective and incidental, many amendments, such as Amendments 2.13 and 2.15, state that critical and impactful State Board policies and procedures, such as the Resolution No. 68-16 (“Anti-Degradation Policy”) and Non-Point Source Policy, “including future revisions, are specifically incorporated into this Basin Plan.”

As the regulatory document, the Basin Plan must be amended to include new or changed policy at the State Board and Regional Board level. Current language providing for automatic updates to the Basin Plan wrongfully eliminates the required, and proper, Basin Plan amendment process, including the public comment and stakeholder process for key policies.

Basin Plan language should not provide for automatic updates, but should follow the intent of the amendment process to properly include stakeholder comments and provide stakeholders with an opportunity to comment on proposed amendments and changes. Members of the public should be afforded the ability to comment on all proposed changes, especially on such foundational document as the Basin Plan, the Anti-Degradation Policy and the Nonpoint Source Implementation and Enforcement Policy. Paramount respectfully request the Regional Board to reject all language in the Draft 2013 WQCP Amendments which suggests automatic incorporation of changes into the Basin Plan. The Draft 2013 TLB WQCP Amendments reach far beyond the documents stated purpose, “to correct errors and update language in the Basin Plan,” changing the intent of future Basin Plan amendment processes and denying the public and stakeholders a meaningful public comment and input process on future, critical components of the Basin Plan.

Response.

Amendments 2.13 and 2.15 are proposals to incorporate the State Water Board’s Policy for cleanup and abatement of discharges under Water Code section 13304 and the incorporation of the Policy for Implementation of the Toxics Standards for Inland Surface Waters, more commonly known as the SIP. The State Water Board Anti-degradation Policy (State Water Board Resolution 68-16) was incorporated into the Basin Plan in 1975. Regional Water Board Basin Plans are required to conform to State Water Board policies. (Wat. Code, § 13240)

The State Water Board process for considering plans and policies includes technical reviews, environmental reviews and public reviews which is similar to the reviews conducted by Regional Water Boards when considering basin plan amendments. The most appropriate venue for reviewing and commenting on State Water Board plans and policies is during the State Water Board deliberations when the impacts can be considered across geographic boundaries such as regional water board boundaries. Certainly, when the Regional Water Board considers incorporation of State Water Board plans and policies and

amends basin plans to conform to those policies, any additional impacts should be disclosed for public review and comment. For the State Water Board policies that are currently being proposed for incorporation into the Basin Plan, the State Water Board conducted an environmental analysis of these plans and policies when it considered these plans and policies. The proposed amendments incorporate these plans and policies by reference so there are no additional potential significant effects on the environment that will need to be analyzed as part of these amendments. These proposed edits and updates to the Basin Plan do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

When the State Water Board revises policies, then the revisions undergo technical, environmental and public review, as appropriate, prior to State Water Board consideration. Since the Basin Plan must conform to State Water Board policies and the State Water Board also reviews and adopts its policies with a public process similar to the Regional Water Board's process to adopt basin plan amendments, it is appropriate to include a prospective incorporation by reference so that stakeholders will know that the policies are applicable in the Central Valley.

William J. Thomas, on behalf of Southern San Joaquin Valley Water Quality Coalition

5. Comment.

Amendment 2.1 does not appear to present a problem.

Response.

The Central Valley Water Board thanks Mr. Thomas for reviewing the proposed amendment.

6. Comment.

Amendment 2.2 does not appear to raise any concern.

Response.

The Central Valley Water Board thanks Mr. Thomas for reviewing the proposed amendment.

7. Comment.

Amendment 2.3. This amendment references that certain functions were transferred to the California Department of Public Health. It seems unusual to make this amendment at this time as it is widely accepted that much of the authority to address drinking water, and which is presently in the Department of Public Health, is going to be shifted from that agency during the next legislative session. Consequently, further fundamental changes will be necessary at that

time, so should not this basin plan amendment await such specific legislative direction?

Response.

The proposed change is to revise references to the Department of Health Services (which is no longer in existence) to the California Department of Public Health. Any fundamental changes which may occur in future legislative sessions will be reflected in future updates to the Water Quality Control Plan for the Tulare Lake Basin.

8. Comment.

Amendment 2.13. This section deals with investigative orders and cleanup and abatement discharge orders pursuant to Water Code section 13304. It references State Water Board Resolution 92-49, which in turns makes reference to the State Water Board Antidegradation Policy 68-16. These amendments would incorporate these new sections in our regulatory basin plan.

Response.

The sections referenced in your comments are already a part of the Basin Plan, see Appendix 8. No new sections are being incorporated into the Basin Plan.

9. Comment.

It is improper for the Regional Board to deal with this in the Tulare Lake Basin, Basin Plan at a time when the State Board is presently reviewing the applicability of the Antidegradation Policy relative to groundwater.

Response.

The Antidegradation policy applies to both surface and ground waters. The State Water Board has formed a technical committee to provide guidance to staff on how antidegradation is evaluated in groundwater. If any State Water Board policies result from this effort, the State Water Board will consider the policy after any appropriate technical, environmental and public review.

10. Comment.

Amendment 2.14. The Antidegradation Policy and the Nonpoint Source Policy of the State Board are very important. We are presently working with the State Board in an effort to properly craft how these policies should apply to groundwater so that they do not debilitate agriculture's ability to irrigate and farm, yet reasonably protect groundwater. It is distressing to see the Regional Board staff prematurely attempt to implement and enforce these policies into our Basin Plan. It is further distressing that once again, the language suggests that any future revisions to this policy will be deemed to be immediately and directly enforceable through the Basin Plan. This is improper and diminishes the importance of the basin plan process.

Response.

See Response to Comment #3 above.

11. Comment.

Amendment 2.15, and Amendment 2.16 comments identified concern that future amendments to State Board Policies would be incorporated into the Basin Plan.

Response.

See Response to Comment #3 above.

12. Comment.

Amendment 2.17. This section deals with the State Board's 303d list of impaired water bodies, and it once again indicates that future amendments to the 303d listing policy or the lists will be deemed included into our Basin Plan as this new language references that it shall include, "Any future revisions."

Response.

The revision to the Tulare Lake Basin Plan that is proposed in Amendment 2.17 is strictly to incorporate the State Water Board's 303d listing policy into the Basin Plan. There is no reference to incorporation of the current or future 303d lists.

13. Comment.

Amendment 2.18 deals with listing 303d impaired water bodies and once again uses the language that once those are listed they would automatically be considered enforceable under the Basin Plan. This would make it so dischargers would be responsible for all new or amend listings once they were made without specific reference or amendment into our Basin Plan. This is unprecedented and improper.

Response.

The revision to the Tulare Lake Basin Plan that is proposed in Amendment 2.18 is to incorporate the State Water Board's Impaired Waters Policy which explains the Regional Water Boards options to address waters that are listed as impaired under Clean Water Act 303(d). The proposed amendment will not incorporate the list of impaired waters into the Basin Plan nor will it automatically incorporate any control programs into the Basin Plan. If the Board determines that a Basin Plan control program is the appropriate action to address an impaired water body, then the Board will develop a basin plan amendment that will go through the appropriate technical, environmental and public review prior to Board consideration.

14. Comment.

Amendment 2.20 deals with the policy for recycled water. This section also embraces all future amendments, and also references Resolution 68-16, the Antidegradation Policy, for addressing constituents of "emerging concern." Each presents problems as set forth above. This section also makes reference to the

ongoing CV-SALTS Program. Any CV-SALTS nitrate and salt standards, which may be deemed necessary in the CV-SALTS process, will subsequently need to be amended into our Basin Plan.

Response.

As discussed in response to comment #3 above the proposed edits and updates to the Tulare Lake Basin plan are non-regulatory corrections to the language of the Basin Plan and updates to the Basin Plan to reflect State Water Board adopted plans and policies that are already in effect. Incorporation of updates in the future will only be for revisions to these adopted State Water Board plans and policies.

Staff agrees that following the development of any Salt and Nitrate Management Plan (SNMP) for the Central Valley, a basin plan amendment will be proposed to incorporate implementation of the SNMP into the Basin Plan required by the Recycled Water Policy and as identified in the CV-SALTS Workplan posted at: http://www.cvsalinity.org/index.php/component/docman/doc_download/1092-cv-salts-approved-workplan-final.html?Itemid=289

Debbie Webster, Executive Officer, Central Valley Clean Water Association

15. Comment.

The draft amendment language proposed for pages III-2.00 and IV-16.00 state that “The Regional Water Board will establish compliance schedules consistent with the provisions of the State Water Board’s Compliance Schedule Policy (Resolution 2008-0025).” For the sake of clarity, we recommend that this sentence be revised to state as follows: “The Regional Water Board will establish compliance schedules in NPDES permits consistent with the provisions of the State Water Board’s Compliance Schedule Policy (Resolution 2008-0025).” Although the paragraphs where this sentence appears are specific to NPDES permits, the paragraphs appear in context with a broader policy that applies to actions not solely related to NPDES permits. Accordingly, it is important to provide clarity on this issue.

Response.

The Central Valley Water Board thanks Ms. Webster for providing comments. The proposed amendment has been edited as suggested.

16. Comment.

The Regional Board should consider including language that clarifies that the Regional Board, through Water Code section 13263, also maintains discretion to adopt compliance schedules in waste discharge requirements. The Basin Plan currently makes no reference to this discretion for non-NPDES permits.

Response.

An additional sentence has been added to the proposed amendment to reference Water Code section 13263 for establishing time schedules in waste discharge requirements.