

Attachment 8. Appendix K – No Peer Review Justification

APPENDIX K – NO PEER REVIEW JUSTIFICATION

Introduction

Staff of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) have developed a region-wide process for ~~reassessing-de/re-designating~~ Municipal and Domestic Supply (MUN) beneficial use designations in agriculturally dominated (Ag dominated) surface water bodies. Board staff propose that the Board amend both the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin (Basin Plans) to incorporate this process, thereby standardizing the way in which the Board will reassess and potentially ~~de/re~~-designate the MUN beneficial use in certain Ag dominated surface waters. Board staff also propose that the Board amend the Basin Plans to establish a Limited Municipal and Domestic Supply (LMUN) beneficial use that would apply to certain Ag dominated water bodies that do not meet the exception criteria in the Sources of Drinking Water Policy for de-designating the MUN beneficial use in those water bodies. (The two regulatory proposals will hereafter be referred to as the “proposed Basin Plan Amendments”)

Background

When the Central Valley Water Board incorporated State Water Board Resolution No. 88-63, the Sources of Drinking Water Policy (Sources of Drinking Water Policy) into the Basin Plans, the Board made a blanket designation that all surface waters, including Ag dominated surface waters, support the MUN beneficial use by default. The Board may only exempt water bodies from MUN beneficial use designations by amending the Basin Plans.

Recognizing that not all water bodies are suitable for MUN uses, the Sources of Drinking Water Policy also identifies exception criteria that the Board may use to de-designate the MUN beneficial use from water bodies that were subject to the blanket MUN designation. These criteria include an exception that applies to water bodies that have been designed or modified for the primary purpose to convey or hold agricultural drainage waters (“Exception 2b”). The Board may exempt water bodies using Exception 2b only if the discharges from such systems are monitored to ensure compliance with all relevant water quality objectives. The proposed Basin Plan Amendments would add a standardized region-wide process to the Basin Plans that will guide the Central Valley Water Board’s ~~re~~assessment of existing MUN beneficial use designations in Ag dominated surface water bodies.

Board staff also recognize that many Ag dominated surface water bodies have inherent limiting conditions that prevent them from being used as a source of municipal or domestic supply, such as low or intermittent flows and/or elevated natural background constituent concentrations. However, though these water bodies ~~would may~~ not be considered a source water for municipal or domestic supply, they may not ~~necessarily~~ meet Exception 2b in the Sources of Drinking Water Policy. Board staff therefore propose that the Board amend the Basin Plans to establish a LMUN beneficial use designation that could apply to these water bodies in lieu of the MUN beneficial use designation. Under the proposed Basin Plan Amendments, the Board would use the same process to evaluate Ag dominated water bodies for re-designation from MUN to LMUN as it would for de-designation of the MUN beneficial use pursuant to Exception 2b.

Commented [A1]: Comments are provided below from the Sacramento River Source Water Protection Program (SRSWPP).

Commented [A2]: Please add if there will continue to be other options available for changes to beneficial uses and water quality objectives.

Commented [A3]: This explanation should be expanded to be consistent with the information provided in the other related materials, to provide the full picture of the purpose of the new beneficial use. As presented here, LMUN appears to be a beneficial use just developed to allow removal of the MUN beneficial use rather than a new beneficial use to support future potential use.

Commented [A4]: Please include discussion of Table II-1 in the Basin Plan, “Surface Water Bodies and Beneficial Uses”

Commented [A5]: Flows and background concentrations of the managed ag system are not inherent limiting conditions. They are characteristics that are influenced by operations. Some of our earlier comments expound on this.

Commented [A6]: This statement is concerning, as the stakeholder process included the ability for LMUN waters to be potentially used for drinking water source water in the future, understanding that additional treatment may be needed. This appendix should be consistent with the history of the process and other documents in the review package. It is very important that LMUN water bodies be protected for both potential future potable water use after treatment, as well as protecting downstream MUN use.

Commented [A7]: It is unclear which water types are included in the proposed LMUN, and we recommend that at minimum something brief is added here.

Commented [A8]: Please clarify the intent of using the same evaluation process for the de-designation and re-designation.

Legal Basis for Peer Review

Certain water quality policies adopted pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) are subject to the peer review requirements of Health and Safety Code section 57004. (Health & Saf. Code, § 57004, subd. (a)(1)(B).) Historically, the State Water Resources Control Board (State Water Board), which must approve all revisions to water quality control plans, has construed Section 57004 to cover Basin Plan amendments. Health and Safety Code section 57004 requires the scientific portion of Basin Plan amendments to undergo external scientific peer review before the Regional Board takes final action on the amendment. (*Id.*, § 57004, subd. (d).) “Scientific portions of the Basin Plan amendments” mean those parts of the proposed Basin Plan Amendments that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions and that establish a regulatory level, standard, or other requirement for the protection of public health or the environment. (*Id.*, § 57004.)

Commented [A9]: Considering the importance and potential for water quality impacts from the BPA, it is recommended that a peer review be provided for the entire scientific portion of the BPA.

Commented [A10]: Please consider and include this language throughout this appendix, as these apply to the process. The process clearly establishes a new Beneficial Use, standard (LMUN water quality objective) and potentially other requirements (e.g., monitoring for gaps if identified) which should necessitate a peer review.

No Peer Review is required for the Proposed Basin Plan Amendments

The portions of the proposed Basin Plan Amendments that will incorporate the proposed process for assessing and potentially de-designating the MUN beneficial use from Ag dominated surface water bodies do not rely upon any empirical data, scientific findings, conclusions, or assumptions to establish a new regulatory level, standard, or other requirement. Thus, these portions of the proposed Basin Plan Amendments do not require peer review pursuant to Health and Safety Code section 57004.

The only portions of the proposed Basin Plan Amendments that could be considered to “establish a new standard” are those that will create the LMUN beneficial use designation and the water quality objective that will apply to LMUN-designated water bodies. However, these portions of the proposed Basin Plan Amendments do not rely upon empirical data or other scientific findings, conclusions, or assumptions to establish the new regulatory standards. Instead, the Board will require that water bodies designated as supporting the LMUN beneficial use comply with a narrative water quality objective that will solely reference the existing State Water Board Resolution 68-16, the Statement of Policy with Respect to Maintaining High Quality of Waters in California. No other new regulatory levels, standards, or other requirements will be established by the new water quality objective.

Commented [A11]: We request reconsideration of the conclusion that no peer review is needed on creating a new LMUN beneficial use. The new beneficial use is a complex issue, including consideration of potential future use of the LMUN water bodies for potable water supply after treatment. It involves drinking water treatment technology, protecting water supply, and public health and welfare protection. We recommend that the Division of Drinking Water (DDW) and Office of Environmental Health Hazard Assessment be included in the peer review.

Re-designation involves the removal of numerical water quality objectives, replaced by a narrative and therefore establishes a new regulatory standard.

The portions of the proposed Basin Plan Amendments that will implement the new LMUN designation will also not require peer review. Under the proposed process, the Board’s review of an Ag dominated water body that may result in the de-designation of the MUN beneficial use or the re-designation from the MUN beneficial use to the LMUN beneficial would be initiated by a submittal that will describe the characteristics of the surface water body. If the evidence indicates that the water body is a water body that has been constructed or modified to hold or convey agricultural drainage, the Board could de-designate the MUN beneficial use designation consistent with Exception 2b. By relying on the language within the existing Sources of Drinking Water Policy for MUN de-designations, the proposed Basin Plan Amendments do not establish a new regulatory level, standard, or other requirement.

Commented [A12]: Water quality is listed as a key inherent limiting characteristic. The implementation is predicated on Regional Board staff review of water quality data to characterize water bodies which then lead to beneficial use assignment and application of water quality objectives. Moreover, there is little to no description in Section 10 or 11 and Appendix J on how staff will review the data and determine sufficiency. Peer review should provide helpful scientific insights and information.

Commented [A13]: Please see comments on the proposed LMUN definition in specific comments on other portions of the Basin Plan Amendment staff report and appendices. We recommend that the definition be revised to provide better protection of a new LMUN use and downstream MUN use.

On the other hand, if the Board receives evidence indicating that the surface waterbody is either a water body that has been constructed to provide agricultural supply water, a water body that has been modified to convey agricultural supply water, a natural water body that primarily conveys agricultural drainage waters, or a natural water body that primarily supplies agricultural supply waters and/or drains agricultural drainage waters, the Board may re-designate the water body as LMUN rather than MUN. The rationale underlying this decision will be entirely based on

Commented [A14]: The process also includes water quality review and consideration of whether there are identified water quality problems in the water bodies.

Commented [A15]: We disagree with this statement. The process includes review of water quality data and consideration of any identified water quality problems.

a policy determination by the Board that it is inappropriate to subject such water bodies to the regulatory standards that water providers must meet when they provide water directly to consumers (such standards are applicable to water bodies that are designated as supporting the MUN beneficial use but not to water bodies that are designated as supporting the LMUN use). No empirical data, scientific findings, conclusions, or assumptions underlie this policy determination. Therefore, these portions of the proposed Basin Plan Amendment do not need to undergo scientific peer review.

Lastly, the proposed Basin Plan Amendments also propose to de-designate the MUN beneficial use from 231 water bodies within the jurisdiction of the San Luis Canal Company. These de-designations are based solely on a determination that these 231 water bodies meet Exception 2b criteria. No new regulatory level, standard, or other requirement is being established by the de-designation of these 231 water bodies because this de-designation is entirely consistent with the existing Sources of Drinking Water Policy.

Conclusion

The proposed Basin Plan Amendments do not establish new regulatory levels, standards, or other requirements for the protection of public health or the environment that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions. Therefore, the proposed Basin Plan does not require peer review.

Commented [A16]: This statement supports our concerns about whether the Regional Board is intending to prevent water quality degradation in LMUN water bodies. This is inherently important for the water bodies with the new Beneficial use, as well as protection of downstream MUN use. As stated in this same Appendix, the Regional Board is planning to use the same process for de- and re-designation considerations, which includes review of available monitoring data and consideration of existing water quality problems.

Commented [A17]: It is unclear to us whether all of the types of LMUN water bodies are addressed by Regional Board programs. We wonder if there could potentially be new requirements based on the LMUN designation, and request that this be further considered.

Commented [A18]: Similar to above, creation of the new LMUN is predicated on water quality, which is empirical data interpretation.

Commented [A19]: Some of the water bodies are identified as water supply and drainage. There is no explanation or justification provided that shows that these meet the SDWP Exception 2b. We are providing this as a constructive comment to support a clear process for future evaluations, as we are not a stakeholder in the San Luis Canal Company area.

Commented [A20]: We disagree with this related to the new LMUN redesignation.

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