

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 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-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 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 to convey agricultural drainage (“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 reassessment 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 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.

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.)

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.

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.

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 designate the water body as LMUN rather than MUN. The rationale underlying this decision will be entirely based on

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.