

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – CENTRAL VALLEY WATER BOARD
Comment Summary and Responses
Comment Deadline: November 13, 2017

AMENDMENTS TO THE WATER QUALITY CONTROL PLANS FOR THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS AND THE TULARE LAKE BASIN TO ESTABLISH A REGION-WIDE MUNICIPAL AND DOMESTIC SUPPLY (MUN) BENEFICIAL USE EVALUATION PROCESS IN AGRICULTURALLY DOMINATED SURFACE WATER BODIES AND TO REMOVE THE MUN BENEFICIAL USE FROM 231 CONSTRUCTED OR MODIFIED AGRICULTURAL DRAINS IN THE SAN LUIS CANAL COMPANY DISTRICT

On August 11, 2017, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Resolution R5-2017-0088 amending the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin (Basin Plans) to Establish a Region-wide Municipal and Domestic Supply (MUN) beneficial use evaluation process in Agriculturally (Ag) Dominated Surface Water Bodies and to Remove the MUN Beneficial Use from 231 Constructed or Modified Ag Drains in the San Luis Canal Company District.

The State Water Resources Control Board provided interested parties the opportunity to submit written comments on the proposed approval of the Basin Plan Amendment. This document contains responses to written comments submitted to State Water Resources Control Board staff during the September 28-November 13, 2017 comment period.

Written comments were received by:

Comment Reference	Organization	Representative
1	Kern River Watershed Coalition Authority (KRWCA)	Nicole Bell
2	Minasian, Meith, Soares, Sexton & Cooper, LLP	Jackson A. Minasian
3	Alameda County Flood Control & Water Conservation District, Zone 7 Contra Costa Water District (CCWD)	Jarnail Chahal Leah Orloff
4	Saxton & Associates Environmental Law Foundation Environmental Justice Coalition for Water California Sportfishing Protection Alliance Pesticide Action Network – North America Pacific Coast Federation of Fisherman’s Associations Institute for Fishery Resources Environmental Working Group Community Water Center Leadership Counsel for Justice and Accountability Clean Water Fund	Lynne Saxton Nathaniel Kane Colin Bailey Bill Jennings Medha Chandra Glen Spain Bill Allayaud Deborah Ores Michael K. Claiborne Jennifer Clary

1. KERN RIVER WATERSHED COALITION AUTHORITY (KRWCA)

Comment letter was received by the State Water Resources Control Board on November 13, 2017, expressing support for the Basin Plan Amendment.

RESPONSE: Support noted.

KRWCA No. 1: Asked for staff resources to be allocated in the future to properly evaluate aquatic life beneficial uses.

RESPONSE: Comment noted. Although not previously raised as part of this Basin Plan Amendment, the issue is currently identified in the 2018 Triennial Review of the Water Quality Control Plans for the Central Valley as a potential future project. Prioritization and resource allocations for all potential projects will be discussed at a public hearing on the 2018 – 2021 Triennial Workplan in mid-2018. More information on the process is available at:

https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/triennialreviews.html

2. MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP

Comment letter was received by the State Water Resources Control Board on November 13, 2017.

Minasian, et al. No. 1: Expressed support for the removal of San Luis Canal Company facilities and canals.

RESPONSE: Support noted.

Minasian, et al. No. 2: The proposed Ag drain MUN designation process is unlawful. Agricultural drains were expressly exempted from the MUN water standards in the SWRCB Resolution 88-63. There is no authority authorizing the proposed de-designation process.

RESPONSE: The Central Valley Water Board incorporated the *Sources of Drinking Water Policy* with its exceptions into the Basin Plans. The Basin Plans further state that where the Board finds that one of the exception applies, it may remove the MUN beneficial use designation for the particular body of water through a formal Basin Plan Amendment and a public hearing.

The proposed Basin Plan Amendment will streamline the MUN evaluation and Basin Plan Amendment process and is consistent with application of exceptions in the *Sources of Drinking Water Policy* as implemented in the Basin Plan.

Minasian, et al. No. 3: The proposed Ag drain MUN designation is illogical and Ag drains should be treated exempt until proven otherwise. The Basin Plan should be amended to include a process that honors the law and self-executing nature of Resolution's 88-63 Ag drain exemption.

RESPONSE: To utilize exception 2b of the *Sources of Drinking Water Policy*, water bodies must be identified as being constructed or modified for the primary purpose of conveying agricultural drainage and monitoring must assure compliance with relevant water quality objectives. The Basin Plan amendments propose a water body categorization framework

that the Board could utilize to determine the appropriate application of, and level of protection for, the MUN beneficial use in different types of Ag dominated surface water bodies including removal of MUN in constructed or modified agricultural drains. The framework includes an application process where the Applicant identifies and categorizes every water body in the area under consideration. Staff verifies all information provided by the Applicant to determine if the water bodies in question meet the exceptions of the *Sources of Drinking Water Policy* including the requirement to assure compliance with all relevant water quality objectives. The process formalizes the designation through a Basin Plan Amendment.

Minasian, et al. No. 4: A drain-by-drain MUN de-designation process is not feasible due to the number of Ag drains in California.

RESPONSE: The Basin Plan amendments proposes to implement the evaluation process on an “as needed basis” which means that water bodies that are not listed in the Basin Plans would maintain their MUN designation until such a time that an applicant or the Board request the evaluation. The categorization process follows a similar process utilized during the 1992 Ag dominated water body review conducted within the Central Valley to satisfy requirements of the Water Quality Control Plan for Inland Surface Waters. Using the categorization process, over 340 water agencies provided information covering approximated 90% of the Region’s irrigated area and identified over 3,800 constructed and 100 modified agricultural drains, in addition to over 140 ag dominated natural water bodies and over 2,300 constructed supply canals (Central Valley Water Board, 1992).

The amendments also proposes to include a document outside of the Basin Plan to store evaluated water bodies that would allow interim permit limits. This process significantly speeds up the process for a more timely application of appropriate permit limits and streamline basin plan amendment process since multiple requests may be bundled together in one amendment packet.

Minasian, et al. No. 5: The MUN standards are uneconomical and will discourage water recycling while encouraging groundwater pumping.

RESPONSE: Comment noted.

3. ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT, ZONE 7 (ZONE 7) & CONTRA COSTA WATER DISTRICT (CCWD)

Comment letter was received by the State Water Resources Control Board on November 6, 2017.

ZONE 7, et al. Comment No. 1: Zone 7 and CCWD have relied on California Urban Water Agencies (CUWA) to participate in Central Valley – Salinity Alternatives for Long-Term Sustainability (CV-SALTS). Through the stakeholder process, CUWA has provided a comment letter to Central Valley Regional Board for the proposed Basin Plan Amendment on March 23, 2017 (attached). Although some of our previous comments were considered, our substantive comments on source water protection remain unaddressed.

RESPONSE: The California Urban Water Users (CUWA) provided comments to the Central Valley Water Board on March 23, 2017 (March Comment Letter). The Central Valley Water Board responded to these comments. The March Comment Letter was

appended to these commenters' November 6, 2017 letter to the State Water Board, but the commenters did not offer a clear explanation why the Central Valley Water Board's prior responses to their substantive comments were inadequate. Nevertheless, in the interest of providing clarity, the Central Valley Water Board's responses to the issues raised in the March Comment Letter are reproduced or summarized below with the notation "**CUWA MARCH COMMENT LETTER Comment No. #**".

ZONE 7, et al. Comment No. 2: The fact that dischargers have traditionally operated as if Exception 2b in the *Sources of Drinking Water Policy* was self-implementing should not be a reason for the proposed MUN evaluation process to be implemented without cumulative impacts analysis and adequate monitoring.

RESPONSE: The Central Valley Water Board has previously responded to this comment. The commenter did not explain why the Central Valley Water Board's response was inadequate.

Nevertheless, staff finds that part of the Central Valley Water Board's response to these concerns was an expansion of the Cumulative Impact Analysis (Staff Report Section 13.1.4) discussion and additional discussion on potential economic impacts was added as section 13.2.3.4 (Water Purveyors). In addition, the Environmental Checklist (Appendix L) was expanded to include further discussion of the less-than significant impacts to biological resources, water quality, and utilities and services.

Chapter 13.1.4 reviews, in detail, the three resource categories (Water Quality, Biological Resources, and Utilities and Services) of the Environmental Checklist that had a "less than significant impact" finding (the other resource categories had a "no significant impact" finding). The analysis contains a detailed review of the potential cumulative impacts from agricultural, stormwater, and NPDES permitted discharges. These discharger categories form the vast majority of regulated entities whose permits may be affected by permit revisions that would potentially occur following the adoption of the proposed Basin Plan Amendments.

Monitoring is an important component of the implementation program for both de-designated and LMUN water bodies to ensure there are no unreasonable impacts to downstream MUN designated water bodies. The monitoring assessments for each application will consider activities within and downstream of the area under consideration. The case-by-case monitoring assessments, as described in Section 10 of the Staff Report, provide information to assure compliance with relevant water quality objectives.

ZONE 7, et al. Comment No. 3: Delaying antidegradation analysis to the implementation process (when waste discharge requirements and NPDES permits are issued) has the potential to create regulatory loopholes and to cause water quality degradation.

RESPONSE: Section 12.1 of the Staff Report describes how these proposed Basin Plan Amendments are consistent with state and federal antidegradation policies. Since the proposed Basin Plan Amendments do not themselves authorize the degradation of high-quality waters and instead propose a structured process for evaluating and potentially de-designating or refining the MUN beneficial use in Ag dominated water bodies, antidegradation analyses are appropriately conducted prior to any new or revised waste discharge permits receiving approval by the Central Valley Water Board. It is not clear how this process creates regulatory loopholes that will result in water quality degradation, as

existing discharges must meet existing permitted water quality standards and no change can occur to these requirements without an antidegradation analysis and the subsequent approval by the Board.

CUWA MARCH COMMENT LETTER Comment No. 1: The proposed amendment to utilize the exception 2b of the *Sources of Drinking Water Policy* to de-designate the MUN beneficial use in water bodies that are characterized as Constructed Ag Drainage/Combo (C1) and Modified Ag Drainage/Combo (M1) is inconsistent with the policy. We request that a better definition of the Combo water bodies be included to ensure that they are indeed designed or modified for the primary purpose of conveying or holding agricultural drainage waters.

RESPONSE: Clarification was added to the categorization flowchart and in the report template on the need to determine primary purpose in the determination of C1 and M1 water bodies.

CUWA MARCH COMMENT LETTER Comment No. 2: CUWA requests that language be added to state the evaluation will consist of reviewing information on the specific water bodies that are under consideration for de-designation to determine if existing monitoring conducted on the discharge from those water bodies is adequate.

RESPONSE: Staff's review and verification process includes a monitoring and surveillance assessment as described under Section 10.2.2.2.1 and 10.2.2.2.2 of the staff report. The proposed amendments do not require water quality information on each of the water bodies that may be considered or on the discharge from each individual water body. Based on the categorization of Central Valley water bodies in 1992 (ISWP, 1992), over 6,000 water bodies may be evaluated under this process, and the majority of the water bodies are tributary to each other. Monitoring evaluation will focus on reasonable assurance that relevant water quality objectives will be met should a de-designation move forward. The San Luis Canal Company case study focused on representative monitoring needed to consider potential impacts from a system of 231 water bodies rather than individual monitoring points for each of the 231 water bodies. Staff will review information on any water quality monitoring identified by the Applicant. In addition, staff will evaluate water quality monitoring information in and downstream of the water bodies or system. This review includes evaluating monitoring conducted by Central Valley Water Board's regulatory programs as well as outside agencies and entities. Staff will address a series of questions related to water quality and monitoring as part of each review. One of these questions is whether additional monitoring is necessary to fill data gaps in existing monitoring. As part of the staff recommendations, staff will identify any data gaps in existing monitoring and/or control program efforts to track and assess potential constituents of concern within or downstream of the water body or system being evaluated. This information will guide staff's recommendation as to whether existing monitoring and surveillance efforts are adequate or whether changes and/or additions are needed to evaluate protection of relevant water quality objectives when refining and/or de-designating MUN in water bodies identified consistent with the *Sources of Drinking Water Policy*. Impacts from new or changes to discharges in the future will be evaluated as part of the Board's permitting processes.

CUWA MARCH COMMENT LETTER Comment No. 3: CUWA requests that existing water quality conditions be documented in water bodies that are proposed to be de-designated to establish baseline conditions and that monitoring of discharge from those water bodies are

required. We request that the Central Valley Water Board conduct a cumulative impact analysis with each request to de-designate water bodies.

RESPONSE: For each report and/or application, the proposed amendments would require staff review and verification of water quality constituents of concern within and downstream of the water body or system identified by the Applicant. In addition, staff would review documents such as the California Integrated 303(d) and 305(b) report, ILRP's Management Plans, NPDES self-monitoring reports, DDW's Watershed Sanitary Surveys and other outside data sources. This assessment provides staff with water quality information representative of conditions in and downstream of the water body or system under consideration. It is not reasonable or consistent with the overall intent of the Sources of the Drinking Water Policy to conduct individual baseline water quality assessments and cumulative impact analyses for every water body that goes through the process (potentially over 6000 water bodies). The cumulative impact analysis for this process is part of the CEQA requirements for this project and has been conducted utilizing information that is representative of the overall impact as is addressed in the Staff Report.

CUWA MARCH COMMENT LETTER Comment No. 4: CUWA requests that the Central Valley Water Board conduct a review of existing water quality data for MUN-designated water bodies and for the San Joaquin River at Vernalis and prepare an existing conditions report that would establish the basis for judging whether water quality is degraded as a result of implementing these Basin Plan Amendments.

RESPONSE: An assessment was completed for the Lower San Joaquin River, downstream of the San Luis Canal Company to the first MUN intake for the City of Stockton in the Delta. See Appendices D and E of the Staff Report. These assessments would be conducted concurrently with basin plan amendments to de-designate and/or refine the MUN use. As such, they would provide an ongoing water quality record to evaluate degradation.

CUWA MARCH COMMENT LETTER Comment No. 5: CUWA request that the Basin Plan Amendment require periodic assessment of data collected and preparation of a report analyzing trends in water quality.

RESPONSE: For each Applicant, staff will go through the review and verification process of the report and/or application that is submitted. During this process, staff reviews and verifies the most up to date documents or reports regarding constituents of concern and monitoring programs. Should there be a change to water quality conditions or monitoring, these documents or reports will be able to indicate such changes. In addition to the review and verification process that occurs to establish recommendations for interim designations, monitoring assessments will be updated prior to the bundled adoption of water bodies into the Basin Plan. In addition, as resources permit, Central Valley Water Board staff will work with other agencies and regional monitoring programs to monitor chemical constituents, pesticides, and radionuclides contained in the Title 22 of the California Code of Regulations approximately every 3 to 5 years in major water bodies identified with existing or potential MUN use to support the Integrated Report process and the Watershed Sanitary Surveys.

CUWA MARCH COMMENT LETTER Comment No. 6: CUWA requests that the section of the Staff Report that describes the Drinking Water Policy be modified to clarify that the implementation action triggered by monitoring at a public water system are specific to

Cryptosporidium and Giardia and do not apply to any of the other constituents evaluated in the Drinking Water Policy development process.

RESPONSE: Clarification has been added to the Staff Report as requested.

4. ENVIRONMENTAL LAW FOUNDATION (ELF), SAXTON & ASSOCIATES, ENVIRONMENTAL JUSTICE COALITION FOR WATER, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, PESTICIDE ACTION NETWORK—NORTH AMERICA, PACIFIC COAST FEDERATION OF FISHERMAN'S ASSOCIATION INSTITUTE FOR FISHERY RESOURCES, ENVIRONMENTAL WORKING GROUP, COMMUNITY WATER CENTER, LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY, AND CLEAN WATER FUND

Comment letter was received by the State Water Resources Control Board on November 6, 2017. Though many of the comments are new comments¹ which were not specifically raised during the Central Valley Water Board's public comment period, in the interest of providing clarity, all comments submitted in the November 6, 2017 letter are addressed herein. *Note - Attachment A to this Response to Comments document defines the sections in the letter submitted by ELF, et al. that are addressed in the responses below.*

ELF, ET AL. Comment No. 1: The Basin Plan Amendments exceed the scope of the dedesignation that would be allowed pursuant to the *Sources of Drinking Water Policy* because the proposed Amendment would allow for the de-designation of the MUN beneficial use from agricultural drainage and supply channels, and because the Board's definition of "modified for the primary purpose" is overbroad.

RESPONSE: Exception 2b from the state's *Sources of Drinking Water Policy* applies to systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters. Exception 2b does not require that *only* Ag drainage be conveyed or held in these systems – rather, the *Sources of Drinking Water Policy* requires that the *primary purpose* of construction and/or modification is to convey agricultural drainage. In formulating an implementation strategy, the Central Valley Water Board established criteria to determine which water bodies should be considered water bodies "modified for the primary purpose of conveying or holding agricultural drainage."

The Board's criteria are informed by commonly-employed agricultural practices. For example, in an effort to recycle, blend and/or conserve water, Ag operators have modified many systems to convey a combination of Ag drainage and supply water. The amount of each type of water source may fluctuate from day to day and from year to year, depending on water availability and crop needs. However, if the water body was designed (constructed) for the primary purpose of holding or conveying agricultural drainage, or a modification was made to the water body for the primary purpose of holding or conveying

¹ Though ELF, et al. state that most of its comments were raised in front of the Central Valley Water Board, the comments before the Central Valley Water Board were general comments, whereas the subsequent comments to the State Water Board are highly specific comments that are not, in fact, reflected in the comments made before the Central Valley Water Board. Further, ELF, et al. claim that certain additional comments, "are legal issues implicated by many deficiencies with the Basin Plan Amendments ... As such, it is not required that they be raised by name in comments to the Regional Board." The Central Valley Water Board disagrees that alleged "deficiencies" allow new comments to be raised during the State Water Board's review, but responses are provided nonetheless.

agricultural drainage, it is the Board's position that the water body is eligible to meet Exception 2b.

The Staff Report also provides specific definitions that differentiate between natural and modified water bodies. Modified water bodies are historically natural water bodies which have been modified for the use as an Ag drain or supply canal, and are now operated as such. These water bodies include any or a combination of the following:

- The natural head waters have been diverted;
- The water body contains dams, diversions or other types of hydrologic modifications that make it infeasible to restore the water body to its original condition;
- The channel has been physically altered such as deepened, straightened and/or graded;
- Portions of water body are concrete lined and/or rip-rapped;
- Portions of water body have been piped

On the other hand, "natural water bodies" are defined as those with greater than 50 percent of flow dependent on water used for or resulting from agricultural production for greater than 50 percent of the irrigation season and for which the following apply: have not been significantly modified (except by dams or other diversions); have or could have a natural riparian zone; generally follow in a natural course; and have or could have in-stream characteristics suitable to allow aquatic life to thrive (e.g., appropriate substrate, pools and riffles, etc.). Further, inclusion of "modified" water bodies that qualify for de-designation of MUN under the Sources of Drinking Water Policy Exception 2b is appropriate since the policy itself includes modified water bodies as stated: "The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters..."

Though the commenter may not agree with the way the Central Valley Water Board defined certain criteria to evaluate whether a water body is eligible for Exception 2b, the criteria established by the proposed Basin Plan Amendments are a reasonable interpretation of the language in the *Sources of Drinking Water Policy*.

ELF, ET AL. Comment No. 2: The Basin Plan Amendments "clearly intend the MUN dedesignation to benefit POTWs and storm water dischargers, as well as irrigated agriculture" which "underscores the deviation from the narrow category established under Exception 2b." A separate process should be developed that will properly assess wastewater discharges and stormwater discharges.

RESPONSE: While this basin plan amendment project was specifically scoped for Ag dominated surface water bodies, it was recognized that some of these water bodies may also include discharges from POTWs and storm water. Though the Central Valley Water Board considered including a review of other exceptions in the *Sources of Drinking Water Policy* during the initial stakeholder meetings, incorporating additional exception evaluations add unnecessary complexity to the overall process, since only one exception needs to be met to remove the MUN use.

The fact that the proposed Basin Plan Amendments might provide ancillary benefits to POTWs and storm water dischargers does not render the proposed Basin Plan Amendments unlawful. Further, as explained in response to Comment No. 1, the Central

Valley Water Board disagrees that the scope of Exception 2b is as limited as the interpretation proposed by ELF, et al.

ELF, ET AL. Comment No. 3: The Central Valley Water Board failed to comply with applicable federal regulations (specifically, 40 C.F.R. § 131.10). The Board failed to provide either a use and value analysis or a use attainability analysis. Furthermore, the Board failed to adequately respond to a March 2017 USEPA comment letter that suggested that the Board clarify whether it was conducting a use attainability analysis or a use and value determination for the water bodies where the MUN beneficial use could be refined or removed.

RESPONSE: ELF, et al. seems to suggest that the USEPA letter should be interpreted to mean that a use attainability analysis should be conducted when removing or refining the MUN beneficial use. This is incorrect; since the MUN beneficial use is not a “fishable/swimmable use,” a use attainability analysis is not required. As stated in the Staff Report:

In 2015, USEPA revised the regulations that govern the designation of beneficial uses in waters of the US to clarify that, when 40 CFR section 131.10, subdivision (g) and 40 CFR section 131.10, subdivision (j) are read together, the six [subdivision (g)] circumstances under which a state can remove a designated use ... are only applicable to situations where the state is removing a *fishable/swimmable* use. If the Board is going to establish, designate, or remove beneficial uses *that are not considered “fishable/swimmable” uses, such as the MUN or LMUN beneficial uses*, it must [instead] demonstrate that it has considered the “use and value” of the water for those uses. *(Italics added.)*

The Staff Report provides considerations that must be made as part of a “use and value” determination (Section 3.2.1) and explains how this analysis overlaps with existing state requirements (Section 3.8.1). The Staff Report also has a discussion of the six subdivision (g) circumstances under which a state can remove a fishable/swimmable designated use to illustrate how robust the existing state considerations are, even when a non-fishable/swimmable designated use is being considered.

Before a water body could be subject to the process established by the proposed Basin Plan Amendments, applicants will be required to submit a water body categorization report that details information on the characteristics of each water body under consideration and potential impacts to downstream water bodies. This information, as well as further mandatory reviews conducted by staff as part of the validation process, provides sufficient information to satisfy both the considerations required by Water Code section 13241 and the analysis required of a use and value evaluation.

ELF, ET AL. Comment No. 4: The proposed Basin Plan Amendments undermine several of the Central Valley Water Board’s core regulatory programs, including the ILRP, CV-SALTS, SWAMP, NPDES Programs, and the stormwater program. The proposed Basin Plan Amendments, “will thwart those programs’ objective of improving water quality in the region.”

RESPONSE: The proposed Basin Plan Amendments, and the information and reports that undergird the proposed Basin Plan Amendments, were developed in coordination with the CV-SALTS stakeholder effort. The proposed Basin Plan Amendments are consistent with ongoing efforts, and will help the Central Valley Water Board prioritize ongoing regulatory efforts to protect water quality. The Board disagrees with the unsubstantiated implication

that the proposed Basin Plan Amendments are not consistent with either CV-SALTS or other existing regulatory programs.

ELF, ET AL. Comment No. 5: The Board failed to apply the appropriate federal standard in de-designating the MUN beneficial use from the 231 waters in the SLCC district and for future water bodies. Specifically, the Board did not demonstrate that the MUN use was not an existing use nor was the water of sufficient quality to support the MUN use since 1975, and that water quality sufficient to support the beneficial use is not attainable by implementing cost-effective and reasonable best management practices.

RESPONSE: According to USEPA guidance, “When determining an existing use, EPA provides substantial flexibility to states and authorized tribes to evaluate the strength of the available data and information where data may be limited, inconclusive, or insufficient regarding whether the use has occurred and the water quality necessary to support the use has been attained.” SLCC submitted a Water Body categorization report and staff’s review process, as documented in the Staff Report that provides necessary information to support the conclusion that the MUN use is not an existing use, historic water quality was not necessarily sufficient quality to support the MUN use, and water quality sufficient to support the beneficial use is not attainable by implementing cost-effective and reasonable best management practices. The Board disagrees that an inappropriate standard was used to evaluate the proposed de-designations.

ELF, ET AL. Comment No. 6: The proposed Basin Plan Amendments would strip all beneficial uses from water bodies, which is impermissible. The Board should have conducted a more thorough analysis of the other beneficial uses in the water bodies potentially affected by the proposed Basin Plan Amendments, consistent with the Board’s “tributary rule.”

RESPONSE: This comment suggests that the Board, where it has not specifically designated beneficial uses to protect aquatic life, must use the MUN beneficial use as a proxy for aquatic life protections. This is an incorrect reading of *California Ass’n of Sanitation Agencies v. State Water Resources Control Bd.* (2012) 208 Cal.App.4th 1438. This case explained that the tributary rule was, “a reasonable means of protecting the beneficial uses of the waters of the region” until the Regional Board has investigated each individual stream. (*Id* at 1458) It did not mandate the use of inappropriate beneficial use designations until investigations pertinent to other beneficial uses were conducted.

Rather than use the MUN beneficial use as a proxy for aquatic life protections, the Central Valley Water Board has committed to work to evaluate and establish beneficial use protections befitting the aquatic life that persists in agricultural drains. For example, in the Board’s [2014 Triennial Review](#), the Board recognized that although “many of these waterways lack habitat and physical flow characteristics to sustain the full range of aquatic life and other beneficial uses,” the Board should nonetheless review beneficial use designations to ensure the appropriate protection of beneficial uses in ag-dominated waterways. This would include reviewing and potentially establishing beneficial uses to protect the aquatic life that still inhabits these waterways.

ELF, ET AL. Comment No. 7: Irrigation ditches provide important habitat. If a beneficial use to protect this habitat has not been defined, the removal of the MUN beneficial use requires a use attainability analysis.

RESPONSE: The Central Valley Water Board agrees that ag dominated waterways provide important habitat. However, the MUN use should not be used as a proxy for the protection of aquatic life in these waterways, and removal of the MUN use (which is not a fishable/swimmable use) should not be subject to a use attainability analysis. Rather, efforts should be focused on studying and developing beneficial use definitions and associated water quality objectives for ag dominated waterways, which is a priority for the Board, as explained above.

ELF, ET AL. Comment No. 8: Because the Board established a process that does not assess other beneficial uses that could apply to the waterbodies, the Board “strayed from the purposes of the Clean Water and the Porter-Cologne Acts, which is to *improve* water quality.”

RESPONSE: As mentioned above, the Board has previously made it a priority to investigate the appropriate protections for aquatic life in ag dominated waterways. The fact that the Board has elected to pursue an evaluation of the MUN beneficial use first should not be interpreted to mean that the Board has abandoned other efforts pertaining to aquatic life.

ELF, ET AL. Comment No. 9: The LMUN beneficial use violates federal and state law because it is, “essentially the same [] as MUN dedesignation, but without the respective protections that are afforded such waters, such as assurance that at least fishable/swimmable protections are provided ... and requisite monitoring under Exception 2b...” The Board should not allow water bodies that are designated as supporting the MUN beneficial use to have that use changed to the LMUN beneficial use, since the LMUN beneficial use is merely a “backdoor exemption to MUN designation without justification.”

RESPONSE: There is no suggestion in the federal regulations or in state law that a MUN beneficial use designation provides “assurance that at least fishable/swimmable protections are provided.” Aquatic life beneficial uses serve that purpose. Instead, the MUN beneficial use has been established to protect waterways that could reasonably be expected to provide a reliable source of drinking water. The proposed Basin Plan Amendments essentially define which ag-dominated water bodies *shouldn't* be expected to provide a reliable source of drinking water, consistent with the *Sources of Drinking Water Policy*.

Those include water bodies that may be designated with the LMUN beneficial use designation, which have limited utility as sources of drinking water. Although it is widely acknowledged that these water bodies are not an ideal source of drinking water, the LMUN designation is intended to preserve what little utility these water bodies might serve, acknowledging that many communities may seek to utilize sub-optimal drinking water sources where advanced treatment (reverse osmosis) could potentially augment tight drinking water supplies in times of need.

Furthermore, the LMUN designation is *not* a designation for “waste transport or waste assimilation.” LMUN waterbodies will be protected because the Board will continue to limit degradation in these waterways as long as there is a downstream water body that has beneficial use designations; the Board will make sure that discharges into the LMUN-designated water body won't affect those beneficial uses, consistent with the *State Antidegradation Policy*. If the Board were to truly adopt waste transport or waste assimilation as a beneficial use, it would ignore downstream water quality effects, which is not the case here.

ELF, ET AL. Comment No. 10: The State Water Board is considering a variance policy. “A variance procedure may be a more appropriate vehicle to address the issues that the Board is attempting to shoehorn into the LMUN designation.”

RESPONSE: It is unclear why the commenter suggests the use of a variance where an existing beneficial use designation inadequately describes the appropriate level of protection for a waterbody. Variances are time-limited and are intended to be in place while a discharger undertakes certain measures to protect the designated beneficial use. As thoroughly described in the staff report, the Board’s concerns have to do with the underlying use designations themselves, which is why the LMUN beneficial use designation was developed.

ELF, ET AL. Comment No. 11: If the water body does not meet an exception in the *Sources of Drinking Water Policy*, the MUN designation should not be changed at all. “The Regional Board should not lower water quality standards for a significant number of water bodies, particularly for water bodies that are clearly attributing to the overall degradation of water quality in the Central Valley.” Adoption of the proposed Basin Plan Amendments would have a, “significant effect on overall water quality in the Central Valley.”

RESPONSE: These amendments aim to streamline the MUN beneficial use evaluation by creating a process that will guide the Central Valley Water Board on the appropriate protection of Ag dominated surface water bodies. As described in the Staff Report Section 12, these amendments are consistent with all relevant laws and policies, including the Clean Water Act and Porter-Cologne. Furthermore, the proposed Basin Plan Amendments will allow the Board to focus its attention on the protection of beneficial uses where such uses are actually existing and are imperiled. This is a priority over protecting beneficial uses in waterbodies where use designations were assigned in a blanket manner with little consideration given as to the ability of the water bodies to actually support those uses.

ELF, ET AL. Comment No. 12: The water quality objective associated with the LMUN beneficial use is “circular and unlawful” because it does not include a standard upon which water quality can be compared. It is circular logic to rely on the *Antidegradation Policy* as a water quality objective.

RESPONSE: The difference between the commenter’s conceptualization of the LMUN beneficial use designation and the LMUN designation as it would be implemented under the proposed Basin Plan Amendments is that the commenter ignores the fact that, under the proposed Basin Plan Amendments, the Board will still be evaluating degradation and potential impacts to beneficial uses in water bodies *downstream* of the LMUN-designated waterbody. This still provides substantive protections for water quality for both the receiving water and downstream waters.

ELF, ET AL. Comment No. 13: The Board has failed to demonstrate how the LMUN beneficial use protects the potential for water bodies so designated to be utilized as a source of drinking water in the future.

RESPONSE: The LMUN beneficial use applies to water bodies that do not meet exceptions in the Sources of Drinking Water Policy and may only provide limited potential as a source of MUN due to inherent characteristics such as intermittent flows and/or naturally elevated background constituent concentrations. The new water quality objective for LMUN emphasizes that “water quality and downstream beneficial uses” must be

protected consistent with the *State Antidegradation Policy*. This will require the Central Valley Water Board, when issuing permits to dischargers that discharge into LMUN water bodies that are considered high-quality waters, to consider whether dischargers have implemented best practicable treatment or control (BPTC) and whether the degradation will be consistent with the maximum benefit to the people of the state.

For example, if a discharge to a LMUN water body that is upstream of a MUN water body is causing a slight amount of degradation in downstream water quality in a waterbody that is considered high quality for the constituent at issue, the Board will not necessarily require the discharger to comply with primary or secondary MCLs within the LMUN water body. However, the discharger is not given a free pass to completely disregard water quality, since surface water quality (both in the receiving water and downstream) must be protected consistent with the State Antidegradation Policy. Before the discharge could be permitted, the Board would need to find that the discharger is using best practicable treatment or control, that the discharge is not causing an exceedance of the MCLs in the downstream MUN water body, and that any degradation is consistent with the maximum benefit to the people of the State.

ELF, ET AL. Comment No. 14: The Board's monitoring focus on whether the change from a MUN use designation to a dedesignation of the MUN beneficial use, or the change from a MUN use designation to a LMUN use designation, is inappropriate. The Board should instead, "focus on whether downstream waters comply with water quality objectives and whether discharges from the dedesignated system are causing or contributing to those exceedances."

RESPONSE: Even after the adoption of the proposed Basin Plan Amendments, when the Board regulates dischargers that discharge into a water body that has been subject to the process established by the proposed Basin Plan Amendments, the Board will continue to focus on, "whether downstream waters comply with water quality objectives and whether discharges from the dedesignated system are causing or contributing to those exceedances," as suggested by the commenter. However, when the Board is making a change from one beneficial use to another or is proposing to de-designate of a beneficial use pursuant to the process established by the proposed Basin Plan Amendments, it is appropriate to constrain the Board's evaluation to whether that regulatory change will have adverse effects on downstream water quality. That is what will be required under the proposed Basin Plan Amendments.

ELF, ET AL. Comment No. 15: The Board's monitoring plan is inadequate. The "highly analogous" court decision in AGUA found that discretionary monitoring of dairy discharges without "mandatory standards" was inadequate.

RESPONSE: Monitoring is an important component of the proposed implementation program for both de-designated and LMUN water bodies to ensure there are no unreasonable impacts to downstream MUN- designated water bodies. To fulfill these monitoring objectives, the proposed monitoring assessments for each application will consider activities within and downstream of the area under consideration. These case-by-case monitoring assessments, described in Section 10 of the Staff Report, ensure that relevant water quality objectives will be monitored to prevent potentially unreasonable water quality impacts. The proposed Basin Plan amendments lay out a process to determine whether new data is needed to complete the assessments. Staff developed Comprehensive Monitoring Guides to assist with the implementation of the monitoring assessment process included in the proposed amendments.

In addition to considering the relevant monitoring applicable to each area under consideration, the draft Staff Report lays out a process for Board staff to evaluate water quality constituents of concern and to identify data gaps. At a minimum, staff will review the California Integrated 303(d) and 305(b) Report and may also review documents such as the ILRP's Management Plans, NPDES self-monitoring reports, DDW's Watershed Sanitary Surveys and, as applicable, other outside data sources. Based on their review, Board staff may either determine that current monitoring is sufficient, or that additional monitoring requirements are needed to ensure no unreasonable impacts to downstream water quality.

Water quality results for any existing or additional monitoring added as a condition of interim designations will be evaluated as part of the Basin Plan Amendment process for final beneficial use designation. The proposed Basin Plan Amendments specify that where additional monitoring is required to demonstrate that any change in a MUN designation will not result in unreasonable impacts to water quality in downstream water bodies, such monitoring efforts will remain in effect at least until such a demonstration is made. The monitoring requirements may be altered or reduced consistent with applicable regulatory requirements. Dischargers who initiate new discharges or who make changes in the character, location or volume of their discharge will be responsible for ensuring that the new discharge or the change to the existing discharge does not result in unreasonable impacts to water quality downstream.

The proposed Basin Plan Amendment language also specifies that, as resources permit, the Central Valley Water Board staff will work with other agencies and regional monitoring programs to conduct Title 22 source water monitoring in key MUN-designated watersheds such as the Sacramento, San Joaquin and Feather Rivers every 3-5 years to support the Integrated Report process and the Watershed Sanitary Surveys. Lastly, the citation to the proposed East San Joaquin stating that "[monitoring] is not 'of sufficient density (spatially and temporally) to identify general locations of possible pollution'" is not an accurate representation of the findings of WQO-2018-0002. Monitoring in the ILRP General Orders is sufficient to identify pollutant sources, but all monitoring systems could be improved after evaluation, which is what was ultimately required by the State Water Board.

ELF, ET AL. Comment No. 16: The Board's monitoring plan is inadequate for the 231 water bodies in the SLCC where the MUN use will be dedesignated, in part because the ILRP monitoring program is insufficient to support the removal of the MUN beneficial use because there are numerous water quality constituents that are not included in the suite of constituents monitored at the ILRP monitoring sites.

RESPONSE: There is monitoring being conducted by SLCC within their district and ILRP representative monitoring at Salt Slough. SLCC's main outfall is Salt Slough and Salt Slough is listed in the Sacramento and San Joaquin River Basin Plan with no MUN beneficial use designation. There is also extensive monitoring in the San Joaquin River. Many of the constituents of concern (constituents with exceedances) mentioned by the commenter are already being addressed with a TMDL control program. Staff's review of SLCC's district water body categorization report (Staff Report Appendix E) demonstrates that current monitoring programs are sufficient to ensure protection of MUN and LMUN source water.

Staff did not find any significant data gaps in the monitoring conducted and the monitoring review demonstrates that there is extensive monitoring of the San Joaquin River to the

Delta, which includes 15 monitoring efforts that assess a wide variety of water quality constituents at approximately 65 different monitoring sites. The review also demonstrates that these monitoring programs are sufficient to ensure protection of MUN and LMUN source water.

ELF, ET AL. Comment No. 17: The Basin Plan Amendments give the Regional Board authority to order additional monitoring if it determines that existing data is insufficient. But this is not enough to save the monitoring program. The State Board must direct the Regional Board to order sufficient monitoring, based on the appropriate evidentiary support, at the time any MUN use is designated in order to ensure that downstream uses will be protected, as required.

RESPONSE: See response to **ELF, ET AL. Comment No. 14.**

ELF, ET AL. Comment No. 18: The proposed Basin Plan Amendments' monitoring elements that will be imposed for the LMUN use designation are unlawful because there are no mandatory monitoring requirements. The process that would be established by the proposed Basin Plan Amendments "does not provide sufficient monitoring (*sic*) to ensure that downstream waters meet water quality objectives."

RESPONSE: In order to utilize the *Sources of Drinking Water Policy* Exception 2b to de-designate MUN from systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, discharge from such water bodies is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards. The *Sources of Drinking Water Policy* does not provide specific requirements for monitoring program such as the three requirements listed by the commenter. The proposed monitoring and surveillance program is consistent with all federal and state policies, including the *Sources of Drinking Water Policy*.

The Central Valley Water Board is required to review and enforce exceedances in waters that undergo the MUN evaluation process as specified in each individual discharge permit or waste discharge requirement. The proposed amendments state that the collection and review of additional monitoring data will be conducted approximately every 3 to 5 years in major water bodies identified with existing or potential MUN use as resources permit.

ELF, ET AL. Comment No. 19: The Staff Report fails to analyze impacts on groundwater quality, despite a "direct and demonstrable connection between agricultural dominated waterways and groundwater." As support for this "direct and demonstrable connection," ELF, et al. cite studies in the Midwest, in Tamil Nadu (India), and Utah. The failure to analyze potential impacts to groundwater as a result of the adoption of the proposed Basin Plan Amendments renders the SED inadequate as a CEQA document and renders the antidegradation analysis insufficient.

RESPONSE: With little or no change anticipated in surface water quality due to the Basin Plan Amendments, there will be little or no change anticipated in groundwater quality. This is why the proposed Staff Report does not contain a lengthy discussion of potential impacts to groundwater quality.

ELF, ET AL. Comment No. 20: The Staff Report, "fails to discuss the fact that [groundwater impacts] are likely to be disproportionately borne by disadvantaged communities." This violates, "our State's commitment to equality and freedom from discrimination," and, "threatens California's Fair Employment and Housing Act..."

RESPONSE: As explained in response to **Comment No. 19**, effects on groundwater as a result of the adoption of the proposed Basin Plan Amendments are expected to be minimal. In addition, no groundwater beneficial uses will be de-designated because of the adoption of the proposed Basin Plan Amendment. Therefore, all groundwater protections remain in place. If discharges into ag dominated water bodies are causing impacts to underlying groundwater, the Board has full authority to address those impacts.

ELF, ET AL. Comment No. 21: The proposed Basin Plan Amendments require peer review before the Board adopts them. ELF, et al. states, "... clearly the Basin Plan Amendments involve, or should involve, findings based on scientific evidence."

RESPONSE: ELF, et al. misreads the applicable legal requirement. Though the proposed Basin Plan Amendments place a heavy reliance on good science, that science is not new. Only "new science" needs to be peer reviewed under Health and Safety Code section 57004. (See Appendix K of the Staff Report.)

The establishment of the LMUN beneficial use designation and its water quality objective does not establish a health-based standard that relies upon empirical data or other scientific findings, conclusions, or assumptions. 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 Antidegradation Policy. No other new regulatory levels, standards, or other requirements will be established by the new water quality objective.

In addition, the proposed amendments establish monitoring requirements that rely on readily available monitoring data such as site information, constituent, and frequency from existing monitoring programs (compiled into Comprehensive Monitoring Guides) to conduct an evaluation of current monitoring and surveillance activities, such as those implemented through ILRP, SWAMP, and NPDES programs. These individual programs regularly evaluate water quality data to determine compliance with program objectives, including protection of beneficial uses. As part of Section 303(d) and Section 305(b) of the federal Clean Water Act, water quality information is also periodically compiled as part of the California Integrated Report to assess overall surface water quality.

ELF, ET AL. Comment No. 22: The Basin Plan Amendments improperly delegate discretionary decisions, specifically the ability to make interim beneficial use designations, to staff. "The de-designations are changes to water quality objectives and cannot be implemented until the Regional Board, the State Board, and EPA have approved them."

RESPONSE: The process established by the proposed Basin Plan Amendments will include a "Reference Document" that will contain a list of proposed beneficial use revisions. Beneficial use revisions will only be placed on that Reference Document after a transparent public review and comment period. Once a water body's beneficial use designation change is placed on the Reference Document, the Executive Officer may approve interim designations. Permit limits established based on these interim designations may not to exceed 5 years (with an additional allowance of 3 years). The interim beneficial use changes will not become a part of the Basin Plan until these revisions are formally adopted by the Board. This process is entirely consistent with federal and state laws, and is not an inappropriate delegation of the Board's regulatory authority.

ELF, ET AL. Comment No. 23: The SED contains an inadequate discussion of potential impacts to biological resources because, “the Environmental Review fails to identify which, if any, water proposed for de- or redesignation are currently listed for the wildlife supporting uses ... for waters which are not listed [], it is reasonable to expect the Regional Board to revise permits to allow for degradation of water quality.”

RESPONSE: The MUN evaluation process is conducted on an as-needed basis and, with over 6,000 Ag dominated water bodies identified in the 1992 Inland Surface Water Plan, it would be impractical to identify all of the wildlife supported uses for each of the Ag dominated water bodies that could potentially go through the process. The Board has thoroughly analyzed all potential impacts due to the adoption of the proposed Basin Plan Amendments, which do not include changes to any aquatic life beneficial uses. As described in prior comment responses, the Board envisions conducting an analysis of appropriate aquatic life beneficial use designations in ag dominated waterbodies at some point in the future; the type of analysis requested by the commenter would be more appropriately conducted in the context of that regulatory evaluation.

ELF, ET AL. Comment No. 24: The SED contains an inadequate discussion of potential impacts to water quality because it fails to address impacts to groundwater. The potential for increased reuse due to the dedesignation, “could result in greater agricultural water efficiency but also higher concentrations of pollutants in dedesignated water bodies.”

RESPONSE: First, the Central Valley Water Board anticipates that water quality after utilization of the categorization process will largely mirror the existing water quality within the agricultural network today. Any incremental additional pollutant loading that could occur as permits are revised to account for the changes in beneficial use designations is expected to be quite limited. Second, groundwater beneficial uses will remain wholly intact after the adoption of the proposed Basin Plan Amendments; the Board will retain all authority to address any impacts to beneficial uses in groundwater as before.

As acknowledged by the commenter, an indirect result of the proposed Basin Plan Amendments may be the ability for agricultural users to increase recycling and reuse of water. This could in turn reduce demand on groundwater supplies, which generally benefits groundwater sustainability. However, because the Board’s regulatory authority over groundwater remains unchanged and because impacts to surface water are expected to be minimal, potential impacts to water quality as compared to baseline conditions are also expected to be less than significant.

ELF, ET AL. Comment No. 25: The SED contains an inadequate discussion of potential social impacts because it does not describe potential impacts to groundwater.

RESPONSE: See response to **ELF, ET AL. Comment No. 24.**

ELF, ET AL. Comment No. 26: The SED contains an inadequate discussion of cumulative impacts because, “[u]p to 6,000 water bodies are potentially eligible to lose MUN protection under the proposed Basin Plan Amendments. While the Staff Report analyzes several case studies, it does not provide analysis of what the changes to statewide water quality would be with such a large-scale change,” and because the Regional Board has not considered the possibility that other planning efforts in the Central Valley (such as CV-SALTS and the impending revisions to the ILRP General Orders) will cause cumulative impacts.

RESPONSE: As explained in detail above and in the Staff Report, large-scale changes relative to background conditions are not reasonably foreseeable. The analysis in the SED contains a detailed review of the potential cumulative impacts from agricultural, stormwater, and NPDES-permitted discharges. These discharger categories form the vast majority of regulated entities whose permits may be affected by permit revisions that would potentially occur following the adoption of the proposed Basin Plan Amendments.

ELF, ET AL. Comment No. 27: The proposed Basin Plan Amendments do not comply with the Human Right to Water because the amendments fail to discuss impacts to groundwater.

RESPONSE: See response to **ELF, ET AL. Comment No. 24.**

ELF, ET AL. Comment No. 28: The proposed Basin Plan Amendments are inconsistent with the Reasonable Use and Public Trust doctrines.

RESPONSE: There is nothing in the proposed Basin Plan Amendments that would infringe upon any existing or future right to use groundwater or surface waters or that in any way affects the applicability of the doctrine of reasonable and beneficial use. Further, there is nothing in the proposed Basin Plan Amendments that would constrain the State Water Board's exercise of its water rights authority to protect public trust values. The proposed Basin Plan Amendments are consistent with the Reasonable Use and Public Trust doctrines.

References

Central Valley Water Board. (1992). *Inland Surface Water Plan Staff Report*.

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United States Environmental Protection Agency. (5 September 2008). *Letter to the State of Oklahoma Water Resources Board from the office of the Standards and Health Protection Division*. Washington D.C.