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November 13, 2017

Via Email

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board

commentletters@waterboards.ca.gov

Re: MUN Comment Letter
Region-wide MUN Evaluation Process Basin Plan Amendment

Ms. Townsend:

1. Support for Removal of San Luis Canal Company (“SLCC”) Facilities.

Nothing in this letter shall be construed as objections or criticism to the proposed MUN de-designation of SLCC facilities and canals. The de-designation of SLCC facilities and canals is appropriate and is mandated by Resolution 88-63. The proposed action will end the fiction of treating SLCC waters and facilities as municipal and domestic water supplies. One can only wonder why SLCC was compelled to go through an extensive de-designation process in the first place when Resolution 88-63 confirmed that agricultural drains were not subject to the MUN standards.

2. The Proposed Ag-Drain MUN Designation Process is Unlawful. There is No Authority Authorizing the Proposed De-Designation Process.

Agricultural drainage waters were expressly exempted from the MUN water standards in the State Water Resources Control Board’s (“SWRCB”) Resolution 88-63. The Resolution states:

“All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards [footnote] with the exception of... The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters...” (SWRCB Resolution 88-63, pg. 1-2.)

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The SWRCB unequivocally exempted ag-drains from the MUN designation and standards in 1988. Why is the SWRCB insisting that the exemption only applies to an agricultural drain when the operator of an individual drain completes an expensive, extensive, and purposeless administrative process? There is no authority authorizing such a process. Drain operators shouldn't be required to jump through a chain of horrors to effectuate the ag-drain exemption. Nor is there any basis for compelling them to do so. The plain language of Resolution 88-63 exempted ag-drains from the MUN standards¹ without any requirement for a drain-by-drain de-designation process. Nor is there any requirement for a drain-by-drain process in California's Porter-Cologne Water Quality Control Act ("Porter-Cologne"). The Federal Clean Water Act ("CWA") also lacks any drain-by-drain evaluation mandate. After all, the 49 other states haven't undertaken a drain-by-drain exemption process to classify every drain in the United States. Any posturing by the Federal Environmental Protection Agency ("EPA") about requiring a drain-by-drain evaluation process should be met with invitations for the EPA to perform the drain-by-drain evaluation itself and with wishes of good luck in doing so.

3. The Proposed Ag-Drain MUN Designation Process is Illogical. Ag-Drains Should Be Treated as Exempt Until Proven Otherwise.

As the SWRCB has recognized, it is not possible to impose the MUN standards on ag-drains. The cost of doing so for just the City of Willows was estimated to be \$3-\$7 million. If enforcing the MUN standards on ag-drains is impossible, why pretend otherwise with a regulatory regime that continues to apply the MUN standards to each California ag-drain until an intrepid soul attempts to survive the proposed de-designation process? California ag-drain operators have been ignoring MUN designation fantasies for over two decades. They will continue to do so under the proposed process. The status quo is fiction. The proposed MUN evaluation process will perpetuate that fiction while needlessly employing lawyers and consultants and extracting fees.

Instead, the Basin Plan should be amended to include a process that honors the law and the self-executing nature of Resolution's 88-63's ag-drain exemption. Such an amendment would confirm that all ag-drains are exempt from the MUN standards in accordance with Resolution 88-63 and create a process for interested parties to petition- at their own cost- to have the exempt MUN status of individual ag-drains evaluated. The process could be similar to the proposed MUN evaluation process for ag-drains, albeit with all ag-drains exempt until designated otherwise. This approach would allow resources to be focused on the few ag-drains that actually do provide municipal and domestic water supplies while sparing the majority of ag-drain operators from an expensive and extensive administrative process.

¹ The legality of Resolution 88-63 was called into question in *California Assn. of Sanitation Agencies v. State Water Resources Control Bd.* (2012) 208 Cal.App.4th 1438.)

4. The Number of Ag-Drains Renders the Proposed MUN De-Designation Process is Impossible.

A drain-by-drain MUN de-designation process is not feasible. There are over 200 ag-drains in San Luis Canal Company alone, and the de-designation process took multiple years. It is not possible for government or for drain operators to perform a drain-by-drain analysis for each ag-drain in California. The State itself tried to classify ag-drains on a drain-by-drain basis through the Inland Surface Waters Plan (“ISWP”) in the early 90’s, but RWQCB’s staff gave up upon realizing that the magnitude of the task defied a drain-by-drain approach. (ISWP Staff Report, pg. 4.)

The SWRCB should confirm that all ag-drains are exempt from the MUN standards and then create a process in which interested parties can- at their own cost- request a review of individual ag-drains to determine if MUN standards should be applied. Such a process would recognize the reality that most ag-drains in California are in fact ag-drains and do not serve as a municipal or domestic water supply. The few ag-drains that arguably serve as a municipal or domestic water supply can be examined when interested parties request review.

5. The MUN Standards Are Uneconomical and Will Discourage Water Recycling While Encouraging Groundwater Pumping.

Application of the MUN standards to ag-drains will discourage efforts to repurpose ag-drain water for recycled water purposes. As the requirements of SGMA drive more urban water users to shift from groundwater to surface water, there will be greater interest in reusing ag-drain waters for municipal purposes. Yet by continuing to hang the MUN water quality standards over the heads of ag-drain operators, the SWRCB and RWQCB will drive drain operators to protest and obstruct downstream efforts to recycle and reuse ag-drain waters for municipal and domestic purposes out of fear of being liable for treatment costs. The City of Willows’ example in which it was estimated to cost \$3-\$7 million to treat ag-drain water to the MUN standards demonstrates the incentive for ag-drain operators to oppose the recycling of ag-drain waters if the SWRCB and RWQCB continue to pretend that the MUN standards apply to ag-drain waters. The end result will be the continuance of unsustainable groundwater pumping practices by municipalities while discouraging efforts to recycle and repurpose agricultural drain waters.

Conclusion

The proposed MUN de-designation evaluation process is a continuation of two fictions that have prevailed for decades: that ag-drains are subject to the MUN standards, and that imposing those standards on ag-drains is possible. The SWRCB should end those fantasies, and instead adopt a process in which interested parties can request an evaluation of ag-drains that

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actually do provide water for domestic or municipal purposes. Such a process will maximize water quality improvements while sparing citizens from a needless administrative process.

Very truly yours,

MINASIAN, MEITH,
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By: _____



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