



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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21 December 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor [95814]
P.O. Box 100
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VIA: Electronic Submission
Hardcopy if Requested

RE: Comment Letter – Central Valley Variances and Exceptions

Dear Ms Townsend and Members of the Board:

The California Sportfishing Protection Alliance (CSPA) appreciates the opportunity to provide comments to the State Water Resources Control Board (State Board) on the Proposed Approval of Amendments to 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 to Add Policies for Variances from Surface Water Quality Standards for Point Source Dischargers, Variance Program for Salinity, and Exception from Implementation of Water Quality Objectives for Salinity.

CSPA was, unfortunately, unable to provide timely comments to the Central Valley Regional Water Quality Control Board (Central Valley Water Board) because our limited staff and resources were consumed in addressing the myriad critical issues, timelines and constraints related to the drought and Bay Delta Conservation Plan (BDCP). It should be noted that, because of numerous concurrent issues, no environmental or public interest organization provided comments on the proposed amendments. These amendments are too important and the potential consequences too significant for the State Board to approve them without consideration of input and the concerns from the environmental and fishing community. Consequently, CSPA respectfully requests that these specific comments be included in the record and considered by the State Board.

On 6 June 2014 the Central Valley Water Board adopted amendments to 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 Plan amendments) to add policies for variances from surface water quality standards for point source dischargers, a variance program for salinity, and exceptions from implementation of water quality objectives for salinity. The variance policy will allow the Central Valley Water Board the authority to grant "short term"

exceptions from meeting water quality based effluent limitations to dischargers subject to National Pollutant Discharge Elimination System (NPDES) permits. The policy will only apply to “non-priority pollutants”. The variance program for salinity and the exception for salinity establish the procedures for dischargers to obtain an exception from meeting water quality based salinity requirements in NPDES permits and waste discharge requirements.

Throughout its documents the Regional Board describes salinity constituents as being “non-priority pollutants”. This statement is true however appears to be used to lead the reader to the conclusion that since salinity constituents are not priority pollutants they are not a major concern. Other “non-priority pollutants” include chlorine and ammonia two of the most prevent pollutants found in domestic wastewater. The only impact of a pollutant being “non-priority” is that the State’s *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) is not applicable. Salts have been shown to be problematic to agriculture and civilizations throughout history. The Regional Board has sparsely regulated salt constituents in the Central Valley resulting in surface and groundwater sources that exceed sustainable levels. Now, the Regional Board has adopted a Resolution that allows for another ten years of non-regulation. In the regulatory world many consultants sell delay as a product; time is money. The Regional Board has in many cases has already exhausted allowable compliance time schedules for discharger’s with elevated salinity levels and has adopted their Resolution to go beyond that. The Basin Plan, page IV-17.00, allows the Regional Board to establish compliance schedules if water quality objectives cannot be immediately achieved. The Basin Plan requires that time schedules be included for completion of specific actions that demonstrate reasonable progress toward the attainment of objectives or criteria. Compliance schedules are required to be as short as practicable to achieve compliance and in no event may a schedule exceed ten years. How many decades constitutes “as short as practicable” for salinity pollutants in the Central Valley?

1. US EPA has interpreted Federal Regulations to prohibit studies in lieu of Effluent Limitations. The Regional Board’s Basin Plan Amendment allows studies in place of Effluent Limitations contrary to Federal Regulation.

Federal Regulations, 40 CFR 122.44(d), requires that limits must be included in permits where pollutants will cause, have reasonable potential to cause, or contribute to an exceedance of the State’s water quality standards. US EPA has interpreted 40 CFR 122.44(d) in *Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program* (Factsheets and Outreach Materials, 08/16/2002) that although States will likely have unique implementation policies there are certain tenets that may not be waived by State procedures. These tenets include that “where calculations indicate reasonable potential, a specific numeric limit MUST be included in the permit. Additional “studies” or data collection efforts may not be substituted for enforceable permit limits where “reasonable potential” has been determined.”

The Regional Board’s Amendment to the Basin Plan(s) eliminates Effluent Limitations in permits pending the outcome of a ten-year study. While US EPA’s Central Tenets address NPDES permits and not Basin planning, the results are the same; permit limitations for pollutants are eliminated pending studies. The Basin Plan amendment is contrary to Federal Regulation 40 CFR 122.44.

2. The Regional Board’s Amendment to the Basin Plans violates both the Federal Antidegradation Regulation, 40 CFR 131.12, and the State Antidegradation Policy, Resolution 69-16.

The **State’s Antidegradation Policy** (Resolution 68-16), which is also incorporated into the Regional Board’s Basin Plan, requires that:

Existing high quality water will be maintained until it has been demonstrated that any change will be with the maximum benefit to the people of the State.

The change will not unreasonably affect present and anticipated beneficial uses.
The change will not result in water quality less than prescribed in the policies.

Any activity which produces a waste or increased volume or concentration will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that a pollution or nuisance will not occur and the highest water quality with maximum benefit to the people of the state will be maintained.

40 CFR §131.12 **Federal Antidegradation Regulation** requires that:

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

CWC Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy. The State Board has adopted the Antidegradation Policy (Resolution 68-16), which the Regional Board has incorporated into its Basin Plan. The Regional Board is required by the CWC to comply with the Antidegradation Policy.

Section 101(a) of the Clean Water Act (CWA), the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the CWA carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations (40 CFR § 131.12(a)) describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures.

California’s antidegradation policy is composed of both the federal antidegradation policy and the State Board’s Resolution 68-16 (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) (“Order 86-17”); Memorandum from Chief Counsel William Attwater, SWRCB to Regional Board Executive Officers, “federal Antidegradation Policy,” pp. 2, 18 (Oct. 7, 1987) (“State Antidegradation Guidance”). As a state policy, with inclusion in the Water Quality Control Plan (Basin Plan), the antidegradation policy is binding on all of the Regional Boards (Water Quality Order 86-17, pp. 17-18).

Implementation of the state’s antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU 90-004”) and USEPA Region IX, “Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12” (3 June 1987) (“Region IX Guidance”), as well as Water Quality Order 86-17.

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1). Application of the policy does not depend on whether the action will actually impair beneficial uses (State Antidegradation Guidance, p. 6). Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3). Both the state and federal policies apply to point and nonpoint source pollution (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4).

The State Board’s APU 90-004 specifies guidance to the Regional Boards for implementing the state and federal antidegradation policies and guidance. The guidance establishes a two-tiered

process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources; 7) an assessment of the significance of changes in ambient water quality and 8) whether the waterbody was a ONRW. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses.

The Regional Board's Antidegradation Analysis is included in the Variance Final Staff Report, Section 6.1.1, dated June 2014, beginning on page 57 and continuing through page 61. Our comments regarding the adequacy of the Antidegradation Analysis are as follows:

- a. The Antidegradation Analysis fails to identify the water bodies that may be impacted by the Basin Plan Amendment.
- b. The Antidegradation Analysis fails to assess the current water quality in the water bodies that may be impacted by the Basin Plan Amendment.
- c. The Antidegradation Analysis fails to identify the beneficial uses of the water bodies that may be impacted by the Basin Plan Amendment.
- d. The Antidegradation Analysis fails to assess the current condition of the designated beneficial uses of the water bodies that may be impacted by the Basin Plan Amendment.
- e. The Antidegradation Analysis fails to assess the potential impacts to the designated beneficial uses of the water bodies that may be impacted by the Basin Plan Amendment.
- f. The Antidegradation Analysis fails to assess the current quality of the wastewater discharges that may be impacted by the Basin Plan Amendment.
- g. The Antidegradation Analysis fails to assess the potential water quality of the wastewater discharges if they are granted coverage under the Basin Plan Amendment.
- h. The Regional Board's Final Staff Report, pages 59 and 61, state that: "*Salinity Reduction Study Work Plans and salinity-based watershed management plan in NPDES permits, WDRs, and conditional waivers. These plans are considered to be best practicable*

treatment and control for salinity constituents since they include consideration of all measures short of end-of-pipe treatment.” The Antidegradation Analysis does not assess best practicable treatment and control at existing wastewater treatment facilities and fails to discuss land disposal.

- i. The State’s Antidegradation Policy requires that: “*Any activity which produces a waste or increased volume or concentration will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that a pollution or nuisance will not occur and the highest water quality with maximum benefit to the people of the state will be maintained.*” Pollution is defined in the California Water Code as: “*Pollution*” means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) the waters for beneficial uses. (B) Facilities which serve these beneficial uses. (2) “*Pollution*” may include “*contamination.*”” The Regional Board’s Basin Plan Amendment allows for wastewater dischargers to pollute (exceed water quality standards and criteria which have been shown to be necessary to protect the beneficial uses of surface and/or ground water) water of the state for ten years.
- j. The Regional Board’s Basin Plan Amendment, including supporting documents such as the Final Staff Report, relies on the findings of a memorandum, dated 6 December 2006, by Larry Walker Associates, *Technical Evaluation of a Variance Policy and Interim Salinity Program for the Central Valley Region* (Larry Walker Report). The Larry Walker Report assessed the conditions at three wastewater treatment plants with regard to salinity based on meeting a discharge limitation of 700 umhos/cm (A limitation based on protecting irrigated agricultural beneficial uses). Based on the Larry Walker Report the Regional Board concludes that incremental improvements on instream water quality would be minimal.

However, a *Biological Significance* document sent to the Regional Board regarding the Musco Olive facility, dated November 1st 2006, James M. Harrington, Staff Water Quality Biologist with the California Department of Fish and Game, citing McKee and Wolf (1971 Water Quality Criteria, State Water Resources Control Board) wrote that: “*Surveys of inland fresh waters indicates that good mixes of fish fauna are found where conductivity values range between 150 and 500 umhos/cm. Even in the most alkaline waters, the upper tolerance limit for aquatic life is approximately 2000 umhos/cm.*”

Industrial beneficial uses can require salinity levels far below the 700 umhos/cm level. McKee and Wolf (1971 Water Quality Criteria, State Water Resources Control Board) and recent literature also lists numerous industries where the water supply requirements are below 700 umhos/cm, such as boiler and cooling tower feed water, confectionary, ice manufacture, breweries, plastics (clear) manufacture. “*Conductivity* — measure of electrical conductivity (dissolved salt) in a sample of water. It is measured in micro siemens/cm (uS/cm, the same as micromhos/cm), and has a close approximate relationship with TDS (multiply conductivity by 0.67 to get approximate TDS value). Make-up water typically has a conductivity in the range 100-550 whereas cooling water can range from 500 to 2,750 depending on the conductivity of the make-up water.” (Emphasis added) *WG-2 Cooling Tower Guideline PWCM December 2009*, <http://www.qwc.qld.gov.au/business/pdf/wg-2-cooling-tower-guideline-pwcm-final.pdf> .

For most cooling towers using Seattle supplied water, conductivity readings between 500 and 750 microsiemens is considered relatively efficient. Lower settings waste water and may also increase corrosion potential. You may also wish to track pH. (Emphasis added) *Water Smart Technology, Incentives and Assistance For Commercial Custom*, http://www.savingwater.org/docs/coolingtower_savemoney.pdf

The Regional Board's assessment of levels of salinity and the impacts to beneficial uses based on a lowest conductivity level of 700 umhos/cm is not protective of the Freshwater Aquatic Life and Industrial beneficial uses of the receiving streams in the Central Valley. Assessing protection of all beneficial uses would change the "small incremental increase" conclusions reached by the Regional Board and their consultant's Report. The Antidegradation Analysis fails to assess protection of all of the designated beneficial uses of the applicable receiving streams.

- k. The Regional Board and their consultant's Report conclude that assessing protection of all beneficial uses would only result in a "small incremental increase" in pollutants. This conclusion is the mantra of the regulated community and some of their consultants. However, federal regulations and State policy states the opposite, 40 CFR 122.44 (d) clearly states that whenever a pollutant has a reasonable potential to exceed a water quality standard an Effluent limitation must be included in a permit. Also, 40 CFR 122.44(d)(1)(ii) requires a statistical variability analysis be conducted to project the maximum possible pollutant concentration in analyzing whether a reasonable potential exists to exceed a water quality standard. The State's SIP, Section 1.3, simply requires an effluent limitation be developed if a pollutant concentration exceeds a water quality standard.

The Regional Board and their cited Report did not statistically project the maximum possible pollutant concentrations when assessing the receiving stream would only realize a "small incremental increase" in pollutants and under the State and Federal regulations any exceedance of standards and objectives is significant and worthy of establishing limitations.

The Regional Board's analysis is limited and flawed. For example, Regional Board Order No. R5-2007-0116, for Bell Carter Olive Company and the City of Corning, allows 79,800 pounds per day of total dissolved solids (TDS), based on a flow rate of 1 mgd and a concentration of 9,560 mg/l of TDS to be discharged into the Sacramento River as a daily maximum. Obviously, the incremental increase in salinity levels as compared to water quality standards is much more than a "small incremental increase". The Regional Board's assessment of impacts to the entire Basin, based on a 3 municipalities, is misleading and incomplete.

- l. The Regional Board concludes that allowing a ten year exemption from salinity standards is in the best interest of the people of California based on their analysis that reverse osmosis (RO) is expensive and the resulting sewer fees are unwarranted and unreasonable. The Regional Board did not assess the costs to all Californians if salinity standards are allowed to be exceeded:

- a. Saline waters have been shown to be toxic to crops and reduce crop yields (Irrigation With Reclaimed Municipal Wastewater, A Guidance Manual, SWRCB Report No. 84-1) Table 3-6, Table 3-7 and Figure 3-1). Crop yield reductions for sensitive crops is observed when irrigation waters exceed 700 umhos/cm (*Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Agriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985)*) and crop yields for moderate and salt tolerant crops decrease as salinity increases. The State Water Resources Control Board's *Irrigation with Reclaimed Municipal Waste (July 1984)* and *McKee and Wolf (1971 Water Quality Criteria)*, state that waters with TDS above 2,100 mg/l are unsuitable for any irrigation under most conditions.

Obviously, salinity levels in some wastewater dischargers and receiving stream exceed 700 umhos/cm conductivity levels. The Antidegradation Analysis fails to assess the existing crop yield losses due to salts. What is the cost to farmers and the California public from crop reductions due to salts? What level of crop reductions will be observed due to allowing increased salinity levels under the Regional Board's Basin Plan amendment and what are the associated costs?

- b. RO systems are currently in common industrial use due to high salinity levels in water supply systems:

“Industrial Applications: Reverse osmosis systems can be used to treat boiler feed water, industrial wastewater, process water and more. A few of the major uses are: Boiler Feed Water Treatment: RO is used to reduce the solids content of waters prior to feeding into boilers for the power generation and other industries. Pharmaceutical: Reverse osmosis is an approved treatment process for the production of United States Pharmacopeia (USP) grade water for pharmaceutical applications.

Food & Beverage: Water used to process food products and to produce beverages is often treated by a reverse osmosis system.

Semiconductor: Reverse osmosis is an accepted component of a treatment process to produce ultrapure water in the semiconductor industry.

Metal Finishing: RO systems have been successfully applied to a variety of metal finishing operations including several types of copper, nickel and zinc electroplating; nickel acetate seal; and black dye.”

<http://www.wateronline.com/doc/use-of-reverse-osmosis-increasing-in-industri-0001>

While the Regional Board has a knee jerk response to any mention to the use of RO at domestic wastewater treatment plants, they have turned a blind eye to common RO usage in local industry due to a high salinity water supply. The Regional Board fails to assess the costs to industry for the existing salinity levels and failure to protect the Industrial Beneficial use of receiving waters resulting in the necessity to install RO prior to using the water. What are the costs to Californians for products produced by industry when RO systems must be installed in order to use the water to produce their products? How will the costs to industry and consumers increase as salinity levels increase under the Regional Board's Basin Plan amendment?

- c. In a *Biological Significance* document sent to the Regional Board regarding the Musco Olive facility, dated November 1st 2006, James M. Harrington, Staff Water Quality Biologist with the California Department of Fish and Game, citing McKee and Wolf (1971 Water Quality Criteria, State Water Resources Control Board) wrote that: “Surveys of inland fresh waters indicates that good mixes of fish fauna are found where conductivity values range between 150 and 500 umhos/cm. Even in the most alkaline waters, the upper tolerance limit for aquatic life is approximately 2000 umhos/cm.” The Regional Board failed to assess the costs associated with the loss and/or of fisheries to commercial fisheries and the public.
It is doubtful the Californians would agree that it is in their best interest that individual communities benefit by reduced sewer rates while food prices and the prices for other goods and services increase due to the failure to adequately regulate salt levels in wastewater discharges. Californians have routinely voted for bonds and tax measure that support clean water: the Regional Board’s conclusions that all of California would support dirty water in favor of lower sewer rates in a few communities in the Central Valley. The Regional Board has failed to assess the true costs associated with their Basin Plan amendment.
- m. In additions to increased sewer rates, the increased production of greenhouse gasses associated with the increased power usage from RO units is the only other reason cited why the Basin Plan amendment would be in the best interest of the people of California. It is interesting that the Regional Board should cite increased power use and the corresponding greenhouse gas emissions as their reason for allowing degraded water quality. We could not find a single example of the Regional Board denying an expansion of any wastewater systems due to greenhouse gas production. The Regional Board, in allowing increased and expanded wastewater treatment systems often defends their decision to allow such increases based on jobs and has not mentioned greenhouse gasses. The Regional Board also fails to assess the current and increased greenhouse gas production due to industrial uses of RO due to high salinity levels. The Regional Board does not assess the impacts of degraded water quality as compared to the production of greenhouse gasses and also fails to look at alternative energy sources for the RO units such as solar power. The Regional Board has routinely required the use of ultraviolet (UV) light in place of chlorine for the disinfection of wastewater; UV disinfection uses significantly more power than using chemical disinfection, yet the Regional Board has failed to discuss greenhouse gas production when requiring UV disinfection.
- n. The Regional Board’s Antidegradation analysis fails to discuss groundwater discharges and the fact the lining wastewater disposal ponds, rather than RO, is likely BPTC. While the Basin Plan Amendment also exempts lad disposal systems, the discussions and analysis appears to be solely based on surface waters.
- o. The Regional Board states that the surface water conditions are largely due to sources other than municipalities and industrial wastewater discharges. The Regional Board’s argument seems to be that they have failed to adequately regulate agricultural discharges

and therefore assimilative capacity for municipalities does not exist. This would not eliminate the need to properly regulate municipal and industrial wastewater discharges.

- p. The Regional Board has not determined whether the quality of the surface waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. There is no such discussion in the Antidegradation Analysis. As is cited above: James M. Harrington, Staff Water Quality Biologist with the California Department of Fish and Game, citing McKee and Wolf (1971 Water Quality Criteria, State Water Resources Control Board) wrote that: “Surveys of inland fresh waters indicates that good mixes of fish fauna are found where conductivity values range between 150 and 500 umhos/cm. Even in the most alkaline waters, the upper tolerance limit for aquatic life is approximately 2000 umhos/cm.”

The State’s Antidegradation Policy requires that changes in water quality will not result in water quality less than prescribed in the policies. Drinking water standards are included in the Basin Plan under the Chemical Constituents Objective and agricultural water quality objectives are included under the narrative toxicity Objective. Certainly, a water quality objective that is protective of freshwater aquatic life could be assessed under the narrative toxicity objective and based on recommendations from Fish and Game as cited above. Water quality objectives for the protection of the Industrial beneficial use could be similarly developed. The Regional Board’s Antidegradation Analysis fails to address the impacts of their Basin Plan amendment on the beneficial uses of receiving waters.

- q. The Regional Board’s documents state that increases in salinity levels from existing levels will not be allowed under the Basin Plan amendment. However, the Regional Board’s Basin Plan amendment states that: “*The proposed amendments allow setting an interim effluent limitation at a level higher than the current level of the constituent in the effluent to account for drought, water conservation or water recycling efforts.*” This provides a loophole for virtually every wastewater discharger yet is not discussed in the Antidegradation Analysis. The volume of salts discharged to surface and ground waters will be allowed to increase under the Basin Plan amendment contrary to the Antidegradation analysis findings.
- r. The Basin Plan amendment covers California’s Central Valley. The Antidegradation Analysis fails to assess where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance. In such areas water quality is required to be maintained and protected. The Antidegradation Analysis is silent on this issue.

3. **The Regional Board has failed to develop water quality objectives that are protective of the Industrial and Freshwater Aquatic Life beneficial uses in accordance with California Water Code 13241.**

CWC 13241: Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial

uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: (a) Past, present, and probable future beneficial uses of water. (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. (d) Economic considerations. (e) The need for developing housing within the region. (f) The need to develop and use recycled water.

The Regional Board has failed to develop water quality objectives for salinity that are protective of the Industrial and freshwater aquatic life beneficial uses.

4. The Regional Board’s Basin Plan amendment fails to comply with the requirements of California Water Code Section 13242.

CWC 13242: *“The program of implementation for achieving water quality objectives shall include, but not be limited to: (a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private. (b) A time schedule for the actions to be taken. (c) A description of surveillance to be undertaken to determine compliance with objectives.”* The Regional Board’s Basin Plan amendment exempts wastewater dischargers from achieving water quality objectives, from taking any action to achieve compliance with water quality objectives and generally ignores the requirements of CWC 13242.

5. The Regional Board’s Basin Plan Amendment fails to comply with the requirements of federal regulations 40 CFR 131.10 by failing to protect the freshwater aquatic life, irrigated agriculture, drinking water and industrial beneficial uses of surface waters by imposing effluent limitations.

40 CFR §131.10 Designation of uses.

“(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(c) States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.

(d) At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.

(h) States may not remove designated uses if:

(1) They are existing uses, as defined in §131.3, unless a use requiring more stringent criteria is added; or

(2) Such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

The designated beneficial uses of Municipal and Domestic Supply, Industrial, Irrigated Agriculture and Freshwater Aquatic Life can be protected by the imposition of effluent limitations. California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

Thank you for considering these comments. If you have questions, please don't hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance