

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2002-0151

AMENDING THE WATER QUALITY CONTROL PLAN
FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS
TO CLARIFY THE PROCESS OF CHANGING THE BENEFICIAL USES
AND UPDATING THE LANGUAGE

WHEREAS, in 1975 the California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Board) adopted the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan), which has been amended occasionally; and

WHEREAS, the Federal Clean Water Act (CWA) Section 303 requires the Regional Board to develop water quality objectives which are sufficient to protect beneficial uses designated for each water body found within its region; and

WHEREAS, the CWA Section 303 requires the Regional Board to review the Basin Plan at least every three years and where appropriate modify water quality objectives or beneficial uses in the Basin Plan; and

WHEREAS, on 26 May 2000, the U.S. Environmental Protection Agency (USEPA) took action on Basin Plan amendments and revisions adopted by the Regional Board from 1989 through 1995 and disapproved three sections; and

WHEREAS, the USEPA disapproved the description of how beneficial uses are assigned because it did not clearly establish which beneficial uses applied to which water bodies and implied that the Regional Board could designate beneficial uses in the permitting process rather than the basin planning process; and

WHEREAS, the USEPA disapproved the rearrangement of the paragraphs of the dissolved oxygen objective that implied water bodies within the Delta were not subject to the general dissolved oxygen objectives; and

WHEREAS, the USEPA found that the description of the federal antidegradation policy was incomplete and misleading; and

WHEREAS, the Regional Board has decided dissolved oxygen objectives for Delta waters require further study and will be addressed at a later date; and

WHEREAS, the Regional Board has prepared draft amendments which address the USEPA disapprovals, revises outdated portions of the Basin Plan, and corrects language in the Basin Plan for consistency with the California Water Code and the remainder of the Basin Plan; and

WHEREAS, the proposed amendment will revise Chapter II “Beneficial Uses” of the Basin Plan to further describe the process of designating beneficial uses; Chapter IV “Implementation” to remove the inaccurate description of the federal antidegradation policy, update the water quality limited segments section, include new State Water Resource Control Board (State Board) policies; and all chapters to update outdated references to regulations; and

WHEREAS, the proposed amendment is consistent with State Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*), the State’s “Antidegradation Policy,” in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Antidegradation Policy (Title 40 Code of Federal Regulations (40 CFR) Section 131.12); and

WHEREAS, the regulatory action proposed meets the “Necessity” standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b); and

WHEREAS, the basin planning process has been certified as “functionally equivalent” to the California Environmental Quality Act requirements for preparing environmental documents as specified in Title 23 California Code of Regulations (23 CCR) Section 3782 and is, therefore, exempt from those requirements (Public Resources Code, Section 21000 et seq.); and

WHEREAS, Regional Board staff has prepared a draft amendment and a staff report dated May 2002; and

WHEREAS, the Notice of Filing and environmental checklist indicates that the amendment results in no potential for adverse effect, either individually or cumulatively, on wildlife; and

WHEREAS, the draft amendment, staff report, Notice of Filing, and environmental checklist have been prepared, noticed and circulated to interested individuals and public agencies for review and comment in accordance with state and federal environmental regulations (23 CCR Section 3775, 40 CFR 25, and 40 CFR 131); and

WHEREAS, the Regional Board held a public hearing on 19 July 2002, for the purpose of receiving testimony on the draft Basin Plan amendment. Notice of the public hearing was sent to all interested persons and published in accordance with California Water Code, section 13244; and

WHEREAS, the Regional Board determined that additional time was needed for Board member review of the comments and proposed response to comments, so the

hearing was closed to further testimony and the item was continued to 6 September 2002;
and

WHEREAS, a Basin Plan amendment must be approved by the State Board,
Office of Administrative Law (OAL), and USEPA before becoming effective; and

WHEREAS, the Regional Board finds that the proposed amendment to the Basin
Plan was developed in accordance with California Water Code Section 13240, et seq.:

THEREFORE BE IT RESOLVED, pursuant to Section 13240, et seq. of the
California Water Code, the Regional Board, after considering the entire record, including
oral testimony at the hearing, hereby approves the staff report and adopts the amendment
to the Basin Plan as set forth in Attachment 1; and be it further

RESOLVED, that the Executive Officer is directed to forward copies of the Basin
Plan amendment to the State Board in accordance with the requirements of Section 13245
of the California Water Code; and be it further

RESOLVED, that the Regional Board requests that the State Board approve the
Basin Plan amendment in accordance with the requirements of Sections 13245 and 13246
of the California Water Code and forward it to OAL and the USEPA; and be it further

RESOLVED, if during its approval process the State Board or OAL determines
that minor, non-substantive corrections to the language of the amendment are needed for
clarity or consistency, the Executive Officer may make such changes, and shall inform
the Regional Board of any such changes; and be it further

RESOLVED, the Executive Officer is authorized to sign a Certificate of Fee
Exemption and following approval of the Basin Plan amendment by the USEPA submit
this Certificate in lieu of payment of the Department of Fish and Game filing fee to the
Secretary for Resources; and be it further

RESOLVED, the environmental documents prepared by Regional Board staff
pursuant to Public Resources Code Section 21080.5 are hereby certified and, following
approval of the Basin Plan amendment by the State Board, the Executive Officer shall
file a Notice of Decision with the State Clearinghouse.

I, THOMAS R. PINKOS, Acting Executive Officer, do hereby certify the foregoing is a
full, true, and correct copy of a Resolution adopted by the California Regional Water
Quality Control Board, Central Valley Region, on 6 September 2002.

/s/
THOMAS R. PINKOS, Acting Executive Officer

ATTACHMENT 1
RESOLUTION NO. R5-2002-0151
AMENDMENT TO BASIN PLAN
TO CLARIFY THE PROCESS OF CHANGING BENEFICIAL USES
AND UPDATING THE LANGUAGE

Revise Basin Plan sections as follows:

CHAPTER II – PRESENT AND POTENTIAL BENEFICIAL USES

Add the following sentence to the end of the “Surface Waters” section on Page II-2.00:

The judgment of the Regional Board on beneficial use evaluations and designations, particularly to change the above designated and assigned beneficial uses, will be conducted in accordance with California Water Code Sections 13240 through 13247 and 40 CFR Part 131 which relate to the adoption and approval of water quality control plans and water quality standards.

CHAPTER III – WATER QUALITY OBJECTIVES

Revise Page III-1.00, second paragraph of the “first point”, first sentence, as follows:

Changes to the objectives can also occur because of new scientific information on the effects of specific constituents ~~water contaminants~~.

CHAPTER IV – IMPLEMENTATION

Revise Page IV-4.00, “Mineral Exploration and Extraction” section, last sentence of third paragraph as follows:

... Mining waste management facilities and associated mining operations are regulated through the issuance of waste discharger requirements under the State and Regional Water Boards’ ~~Discharges of Waste to Land~~ hazardous and solid waste regulatory program (Title 23, California Code of Regulations (CCR), Division 3, Chapter 15/Title 27 CCR).

Revise Page IV-5.00, first paragraph under the “Hazardous and Non-Hazardous Waste Disposal” section as follows:

... If the concentrations of ~~pollutants~~ constituents in the land-discharged waste are sufficiently high to prevent the waste from being classified as "inert waste" under ~~23 CCR, Section 252427 CCR, Section 20230,~~ discharges of such wastes to waste management units require long term containment or active treatment following the discharge in order to prevent waste or waste constituents from migrating to and impairing the beneficial uses of waters of the State.

Revise Page IV-5.00, third paragraph under the “Hazardous and Non-Hazardous Waste Disposal” section as follows:

... Recent monitoring efforts under the State and Regional Water Boards' Title 23, CCR Division 3, Chapter 15/Title 27 CCR and SWAT programs have revealed that discharges of municipal solid wastes to unlined and single clay lined landfills have resulted in ground water degradation and pollution by volatile organic constituents (VOCs) and other waste constituents.

Revise Page IV-6.00, last paragraph of the “Hazardous and Non-Hazardous Waste Disposal” section as follows:

... ~~The State Water Board is in the process of developing revised regulations under 23 CCR, Division 3, Chapter 15, Discharges of Waste to Land, to fully implement water quality related portions of the RCRA Subtitle D federal regulations.~~

Revise the “Water Bodies with Special Water Quality Problems” section on Page IV-6.00 as follows:

Water quality management may require the identification and ranking of water bodies with regard to certain quality parameters. Water Quality Limited Segments (WQLSs) are one example of expressing water quality problems by water bodies. WQLSs are those sections of lakes, streams, rivers or other fresh water bodies where water quality does not meet (or is not expected to meet) water quality standards even after the application of appropriate effluent limitations for point sources (40 CFR 130, et seq.).

Additional treatment beyond minimum federal requirements will be imposed on dischargers to WQLSs. Dischargers will be assigned or allocated a maximum allowable load of critical pollutants so that water quality objectives can be met in the segment.

The Regional Water Board's ~~current~~ list of WQLSs is Appendix Item 38, updated biennially as required by Clean Water Act Section 303(d). The current list may be obtained by contacting the Regional Water Board office.

Revise Item 2 under “Control Action Considerations of the State Water Board” on Page IV-8.00 as follows:

2. State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Water in California.

The State Water Board adopted this policy on 28 October 1968. The policy generally restricts the Regional Water Board and dischargers from reducing the water quality of surface or ground waters even though such a reduction in water quality might still allow

the protection of the beneficial uses associated with the water prior to the quality reduction. The goal of the policy is to maintain high quality waters.

Changes in water quality are allowed only if the change is consistent with maximum benefit to the people of the State; does not unreasonably affect present and anticipated beneficial uses; and, does not result in water quality less than that prescribed in water quality control plans or policies.

USEPA water quality standards regulations require each state to adopt an “antidegradation” policy and specify the minimum requirements for the policy (40 CFR 131.12). ~~Resolution No. 68-16 preceded the federal policy and applies to both ground and surface waters.~~ The State Water Board has interpreted State Water Board Resolution No. 68-16 to incorporate the federal antidegradation policy. The Regional Water Board implements Resolution No. 68-16 consistent with the federal antidegradation policy. Resolution No. 68-16 applies to both ground and surface waters of the state. Therefore, the federal antidegradation policy must be followed where it is applicable. The federal antidegradation policy applies if a discharge or other activity, which began after 28 November 1975, will lower surface water quality. Application of the federal policy may be triggered by water quality impacts or mass loading impacts to receiving waters. Resolution No. 68-16 is Appendix Item 2; the federal policy is Appendix Item 39.

Add the following to the “Control Action Considerations of the State Water Board” section on Page IV-10.00:

15. Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (a.k.a. State Implementation Plan or SIP)

In March 2000, the State Water Board adopted the SIP in Resolution No. 2000-015. This Policy establishes:

- (1) Implementation provisions for priority pollutant criteria promulgated by the U.S. Environmental Protection Agency (U.S. EPA) through the National Toxics Rule (40 CFR 131.36) (promulgated on 22 December 1992 and amended on 4 May 1995) and through the California Toxics Rule (40 CFR 131.38) (promulgated on 18 May 2000 and amended on 13 February 2001), and for priority pollutant objectives established by Regional Water Boards in their basin plans;
- (2) Monitoring requirements for 2,3,7,8-TCDD equivalents; and
- (3) Chronic toxicity control provisions. In addition, this Policy includes special provisions for certain types of discharges and factors that could affect the application of other provisions in this Policy.

Revise Page IV-10.00, first item under the “Programs” section as follows:

1. Discharges of Hazardous Waste to Land, California Code of Regulations Title 23, Division 3, Chapter 15 and Consolidated Regulations for Treatment, Storage, Processing or Disposal of Solid Waste, California Code of Regulations Title 27, Division 2, Subdivision 1

Title 23, CCR, Division 3 Chapter 15 and Title 27 CCR includes regulations governing discharges of hazardous and solid waste to land for treatment, storage, or disposal.

Revise Page IV-18.00, first paragraph under Item 9 as follows:

The Regional Water Board's strategy for managing contaminated sites is guided by several important principles, which are based on Water Code Sections 13000 and 13304, the Title 23, CCR, Division 3, Chapter 15/Title 27 CCR regulations and State Water Board Resolution Nos. 68-16 and 92-49:

Revise Page IV-18.00, first paragraph under Item 9a as follows:

The Regional Water Board will require conformance with the provisions of State Water Board Resolution No. 68-16 in all cases and will require conformance with applicable or relevant provisions of 23 CCR, Division 3, Chapter 15 and 27 CCR, Division 2, Subdivision 1 to the extent feasible.

Revise Page IV-21.00, first paragraph under Item 9l as follows:

Where leachable/mobile concentrations of constituents of concern remain on-site in concentrations which threaten water quality, the Regional Water Board will require implementation of applicable provisions of Title 23, CCR, Division 3 Chapter 15/Title 27 CCR. Relevant provisions of Title 23, CCR, Division 3 Chapter 15/Title 27 CCR which may not be directly applicable, but which address situations similar to those addressed at the cleanup site will be implemented to the extent feasible, in conformance with Title 23, CCR, Section 2511(d)/27 CCR, Section 20090(d). This may include, but is not limited to, surface or subsurface barriers or other containment systems, ~~pollutant~~ waste immobilization, toxicity reduction, and financial assurances.

APPENDIX

Remove Appendix 38.