

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

SUPPLEMENTAL SHEET FOR REGULAR MEETING OF JULY 10, 2009

Prepared June 30, 2009

ITEM NUMBER: 13

SUBJECT: Public Comments from Grower Shipper Association of Santa Barbara and San Luis Obispo Counties

The following items are meant to provide additional information to the Central Coast Water Board. Staff does not recommend changes to the recommendation.

Staff received additional comments regarding the 2009 Triennial Review of the Water Quality Control Plan for the Central Coast Basin (Basin Plan), after the close of the public comment period on May 26, 2009:

Richard S. Quandt, President of the Grower Shipper Association of Santa Barbara and San Luis Obispo Counties (Grower Shipper Association), provided comments in a letter dated on June 12, 2009 (Attachment 1). In this comment letter, the Grower Shipper Association expanded on their discussion of issues identified in their previous comment letter sent to staff on May 26, 2009. Below is a summary of the comments and staff responses:

Comments and Responses – Grower Shipper Association Letter dated June 12, 2009

Comment 1 - Biostimulatory Substances Objective Issue (ranked as Triennial Review Priority List Issue 2)

“In our May 26, 2009 letter, the Association indicated that it opposes the Regional Water Board’s efforts to establish numeric biostimulatory objectives for nutrients in the Basin Plan. Our position on this issue remains the same. However, to the extent that the Regional Water Board intends to apply numeric criteria for nutrients for the protection of aquatic life beneficial uses, we further comment that the Regional Water Board must properly adopt any such criteria as water quality objectives pursuant to all applicable provisions of the Porter-Cologne Water Quality Control Act (Porter-Cologne).

Any water quality program that will impact agriculture, or require actions from agriculture must include an estimate of the total cost of such program as it applies to agriculture, and identify potential sources of financing to pay for such a program. (Wat. Code, § 13141.)”

Response to Comment 1

Comment noted. The Triennial Review Priority List is not a Basin Plan amendment. The Priority List establishes direction for staff efforts to pursue future Basin Plan amendments. All Basin Plan amendments must follow the procedures set forth in the California Water Code, including a consideration of factors in CWC sec 13241. In addition, Basin Plan amendments

require an environmental analysis under the California Environmental Quality Act (CEQA, Public Resources Code sections 21000 et seq.) and require approval by the Regional Water Board, the State Water Board, the Office of Administrative Law (California Government Code sec 11353). Amendments having a scientific basis must undergo an external scientific peer review (Health and Safety Code sec. 57004). Finally, amendments of surface water quality standards require final approval by the United State Environmental Protection Agency. Staff intends to follow the procedures described above for any Basin Plan amendment.

Promulgation of water quality objectives in the Basin Plan does not constitute the institution of an agricultural water quality program; thus Water Code sec. 13141 is not applicable.

Comment 2 - Tributary Rule Issue (ranked Triennial Review Priority List Issue #13)

“As expressed in our May 26, 2009 comments, the Association is opposed to any Basin Plan amendment that would designate beneficial uses to upstream waterbodies through a tributary provision in the Basin Plan. Such an action would be inconsistent with Porter-Cologne and the Federal Clean Water Act (CWA).”

Response to Comment 2

Comment noted. The Basin Plan currently designates upstream beneficial uses in Table 2-1. Those water bodies not listed in Table 2-1 are designated beneficial uses for municipal and domestic water supply and the protection of both recreation and aquatic life. For this Triennial Review issue, staff would consider adding Basin Plan language to clarify the existing beneficial uses in tributary streams. Such language would be entirely consistent with the Porter-Cologne portion of the California Water Code and with the Clean Water Act. The Clean Water Act requires that certain beneficial uses must be protected in waters of the United States; these include the “protection and propagation of fish, shellfish, and wildlife,” and “recreation in and on the water” (CWA sec. 101(a)(2)). Similarly, the California Water Code requires Regional Water Boards to ensure the reasonable protection of beneficial uses and the prevention of nuisance (CWC sec. 13241). Waters of the United States are defined to include tributaries (40 CFR 122.2). Furthermore, USEPA regulations at 40 CFR 131.10(a) require states to “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.” Several Regional Water Boards have included a “tributary rule” in their Basin Plans, including Regions 2, 4, 5, 8, and 9.

Comment 3 - Aquatic Habitat Protection / Riparian Buffer Zone Protection Issue (ranked as Triennial Review Priority List Issue 6) and Aquatic Life Protection Issue (ranked as Triennial Review Priority List Issue 3)

“The adoption of any new or revised water quality objective must be for the reasonable protection of beneficial uses, consider all enumerated statutory considerations, include an implementation plan and estimate all agricultural cost impacts.”

Response to Comment 3

Comment noted. See response to Comment 1 above.

Comment 4 - Revision Groundwater Objectives Issue (ranked as Triennial Review Priority List Issue 7)

“The expansion of the application of numeric objectives must also comply with all applicable provisions of Porter-Cologne. Thus, if the Regional Water Board decides to move forward with a Basin Plan amendment to expand groundwater objectives, the proposed amendment must include full analyses and consideration of the application of such objectives to groundwaters not identified in Table 3-8.”

Response to Comment 4

Comment noted. See response to Comment 1 above.

Comment 5 - Basin Plan Editorial Revisions Issue (ranked as Triennial Review Priority List Issue 8)

“In general, the Association does not oppose editorial revisions to the Basin Plan. However, any and all such revisions must occur through a formal Basin Plan amendment process to ensure that all recommended changes are truly editorial in nature. Too often an agency makes an “editorial” change that later has substantive legal implications. To avoid any unintended consequences, the Association recommends that all proposed editorial changes be noticed and be subject to public review and comment.”

Response to Comment 5

Comment noted. See response to Comment 1 above. All Basin Plan amendments, including editorial or non-substantive changes, must undergo the Basin Plan amendment process.

Comment 6 - Groundwater Recharge Area Protection Issue (ranked as Triennial Review Priority List Issue 5)

“The Association is concerned with the proposed development of land use guidelines and/or prohibitions for the protection of groundwater recharge areas. As indicated in our May 26, 2009 comments, all land use authority, guidelines and principles are properly implemented by local governments that have the police power authority to do so. It is inappropriate for the Regional Water Board to otherwise interfere with such authority. We recommend that issue 15 be deleted from the list of prioritized issues for the 2009 Triennial Review process.”

Response to Comment 6

Comment noted. The Regional Water Board has the authority and a statutory mandate to “exercise its full power and jurisdiction to protect the quality of water in the state from degradation” (CWC sec. 13000). Protection of groundwater through a Basin Plan amendment will supplement, not interfere, with the authority of local land use agencies.

ATTACHMENT

1. Letter from the Grower Shipper Association of Santa Barbara and San Luis Obispo Counties dated June 12, 2009