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File No. 82231.00003

July 15, 2014



Jeanine Townsend (Email: commentletters@waterboards.ca.gov)  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**Re: Comment Letter - Tulare Lake Basin Plan Amendments**

Dear Ms. Townsend:

On behalf of the Southern San Joaquin Valley Water Quality Coalition, we submit these comments relative to the proposed amendments to the Tulare Lake Basin, Basin Plan.

The Central Valley Regional Board circulated (December 11, 2013) an extensive set of proposed amendments to the Tulare Lake Basin Plan (27 pages). The cover notice of the proffered amendments dramatically “undersold” the significance of the amendments. The cover notice signed by Assistant Executive Officer Clay Rodgers stated that these amendments largely correct errors and update the Basin Plan and clarify some outstanding boundary issues. Beyond those minor components, the proposal states that the amendments only clarify policies and makes typographical corrections in updating the Basin Plan. In truth, however, the proffered amendments go far beyond this notice, give rise to significant concerns, and improperly sidestep the Basin Plan Amendment process.

We had pointed out to the Regional Board our concerns as to the amendments (2.13, 2.14, 2.15, 2.16, 2.17, 2.18, 2.20), where they advance the extraordinary step of “authorizing” any future amendment which would totally circumvent the basin plan amendment process; however, our comments/concerns were dismissed without consideration.

Amendments 2.1 (the basin boundary) and Amendment 2.2 (the beneficial use designation) do not raise concerns.



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Amendment 2.3. This amendment references that certain functions were transferred to the California Department of Public Health. It seems unusual to make this particular amendment at this time as it is widely understood that much of the authority to address drinking water, and which is presently in the Department of Public Health, is being shifted from that agency to the State Board. Consequently, further changes will be subsequently necessary to this basin plan amendment.

Amendment 2.13. This section deals with investigative orders and cleanup and abatement discharge orders pursuant to Water Code section 13304. It references State Water Board Resolution 92-49, which in turn makes reference to the SWRCB Antidegradation Policy 68-16 (Antidegradation Policy). These amendments would incorporate these new sections in our regulatory basin plan. It seems improper for the Regional Board to deal with this topic in the Tulare Lake Basin, Basin Plan at a time when the State Board is presently reviewing the applicability of ADP relative to groundwater.

It is further troubling that the Board is attempting to empower themselves relative to automatically embracing any future changes. Many of the policies of the State Board are not self-enforcing until they have been specifically amended into the basin plans, which appropriately constitutes the regulatory authorizing document. This amendment (as well as other amendments addressed below) states that the Basin Plan would automatically include and incorporate into the Basin Plan any future revisions to these policies. This is a regulatory shortcut to make any policy change immediately enforceable by saying the Basin Plan already contains or reflects such amendments which may subsequently occur, and therefore makes them immediately enforceable through the Basin Plan. This is Board staff attempting to improperly self-authorize that they have this new authority before the proper Basin Plan amendment procedures are engaged.

Amendment 2.14. The Antidegradation Policy and the Nonpoint Source Policy of the State Board are very important. We are presently working with the State Board in an effort to properly craft how these policies should apply to groundwater so that they do not debilitate agriculture's ability to irrigate and farm, yet reasonably protect groundwater. It is distressing to see the Regional Board staff prematurely attempt to implement and enforce these policies into the Tulare Lake Basin, Basin Plan. It is further distressing that once again, the language suggests that any future revisions to this policy will be deemed to be immediately and directly enforceable through the Basin Plan, notwithstanding that they will not be properly amended into the Basin Plan. This is improper and diminishes the importance of the basin plan process.



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Amendment 2.15. This section deals with the implementation of the policy addressing toxic standards for inland surface water. It once again indicates that this plan, including all future revisions to the Plan, will be immediately and directly deemed included in the Basin Plan for enforcement purposes.

Amendment 2.16. The State has adopted a very aggressive enforcement policy. This stringent enforcement policy and escalating fine schedule has been being applied on a case by case basis. This new policy once again references that any future amendments that are made to those enforcement policies will be deemed immediately included in our Basin Plan and able to be executed.

Amendment 2.17. This section deals with the State Board's 303d list of impaired water bodies, and it once again indicates that any future amendments to the 303d listing policy or the lists will be deemed included into our Basin Plan as this new language references that it shall include, "Any future revisions." This fundamentally amends the existing system of adopting and enforcing 303d/TMDL limits.

Amendment 2.18 deals with listing 303d impaired water bodies and once again uses the language that once those are listed they would automatically be considered enforceable under the Basin Plan. This would make it so that dischargers would be responsible for all new or amended listings once they were made without any specific reference or amendment into our Basin Plan. This is unprecedented and improper.

Amendment 2.20 deals with the policy for recycled water. This section also embraces all future amendments, and also references Resolution 68-16, the Antidegradation Policy, for addressing constituents of "emerging concern." Each presents problems as set forth above. This section also makes reference to the ongoing CV-SALTS Program. Any CV-SALTS nitrate and salt standards, which may be deemed necessary in the CV-SALTS process, will subsequently need to be amended into our Basin Plan.

Conclusion: Notwithstanding the staff document asserting that these amendments just correct mistakes, and reference existing policies, it is very apparent that these would fundamentally change the character of the Tulare Lake Basin, Basin Plan, and the Basin Plan process altogether. Adopting these amendments would reduce the importance of Basin Plan amendments, because such amendments will be rendered unnecessary for regulatory enforcement. Further, any such amendments to the basin plan would embrace an array of various policies and actions without any meaningful notice or review.

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The Regional Board did not even consider these fundamental issues, and it is now squarely before the State Board. Because these “future amendment” references are improper and violate by avoidance the proper Basin Plan Amendment process, therefore it is quite proper for the State Water Board merely strike those “include future amendment” provisions when otherwise approving the Basin Plan Amendments. Alternatively, remand these Amendments back to the Region with directions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Thomas', with a long horizontal line extending to the right.

William J. Thomas  
for BEST BEST & KRIEGER LLP

WJT:lmg