



CVCWA

CENTRAL VALLEY CLEAN WATER ASSOCIATION

Formerly the Central Valley Wastewater Manager's Association

Representing Over Forty Wastewater Agencies

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Via Electronic and U.S. Mail

December 17, 2004

Karen Larsen
Environmental Scientist
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

SUBJECT: COMMENTS REGARDING DRAFT CENTRAL VALLEY DRINKING WATER POLICY BASIN PLAN IMPLEMENTATION CHAPTER: OPTIONS REPORT

Dear Ms. Larsen:

The Central Valley Clean Water Association (CVCWA) is pleased to provide comments regarding the draft Central Valley Drinking Water Policy Basin Plan Implementation Chapter: Options Report. Our comments are in accordance with outline structure of the draft report. The Central Valley Clean Water Association was incorporated last year as a non-profit association. CVCWA consists of 45 local public agencies located within the Central Valley Region that provide wastewater collection, treatment and water recycling services to millions of Central Valley residents and businesses. CVCWA supported the adoption of the Resolution in Support of Developing a Drinking Water Policy for the Sacramento-San Joaquin Delta and Upstream Tributaries.

II. Introduction:

The development of an approach to protection of drinking water sources is of significant interest to many stakeholders. In light of the level of interest in this issue, we believe the report should include a statement of the Regional Board's approach to developing and implementing the alternatives set forth in the report. The draft report states that the process and evidentiary requirements for establishing prohibitions is somewhat unclear. There is no question, however, that the Regional Board's actions are guided by the Porter-Cologne Water Quality Control Act. (Water Code section 13000 et seq.)

DRINKING WATER POLICY COMMENTS
PAGE 2
December 17, 2004

We recommend that a new subsection be added to the Introduction section as follows:

C. Approach to Implementation

The Water Code requires that activities and factors which may affect the quality of the waters of the State be regulated to attain the highest water quality that is reasonable, considering all demands to be made on those waters, and the total values involved, including economic and social considerations. (Water Code § 13000.) Considering the language of section 13000 and the Legislature's intent when the Porter-Cologne Act was adopted, any implementation approach selected by the Regional Board must consider the needs and constraints of various stakeholders and evaluate the environmental benefits to be achieved as well as the economic impacts on dischargers, water purveyors and other interests.

III. Prohibitions

B. Potential Discharge Prohibitions

1. Effluent Dominated Waterbodies

We do not believe that prohibiting discharges to effluent dominated waterbodies would yield any drinking water protections. By definition, EDWs are "impaired" as drinking water sources pursuant to Department of Health Services (DHS) criteria because wastewater is the predominant source of water, regardless of the degree of wastewater treatment. Prohibiting discharges would simply reduce flows in these ephemeral streams, in some cases to zero. Where the primary remaining sources of water in the stream are stormwater runoff and agricultural drainage, we disagree that removal of these discharges would "improve water quality for local users."

In addition, we do not believe it is accurate to refer to Management Memo No. 4 as representing "existing" Basin Plan policy, as this policy has never been implemented. DHS no longer uses the 20:1 guidance cited in that memorandum which is superseded by the Surface Water Treatment Rule.

Our most significant concern with this section, however, is the Regional Board's persistence in viewing EDWs as drinking water sources despite DHS' very clear position that such waters will never be approved for drinking water. Dischargers to such waters must ensure that downstream uses, such as drinking water, are fully protected. This should be the Regional Board's focus, as discussed further below. We recommend that this option be eliminated from the report.

DRINKING WATER POLICY COMMENTS

PAGE 3

December 17, 2004

2. Conditional Prohibition of NPDES Permitted Discharges

This option proposes to prohibit all point source discharges that are not treated to a tertiary level. We agree with the observation that the potential for water quality improvement for drinking water is unknown, given the multiple other pathways for pollutants to enter surface water bodies. For this reason, we question whether in all cases this option would “improve surface water quality basin-wide for all beneficial uses.” We also agree that the costs of tertiary treatment at wastewater treatment plants may be higher than the costs of drinking water treatment to attain the same or greater benefit. In addition, we question whether this option is really within the Regional Board’s legal authority. Water Code section 13360(a) precludes the Regional Board from dictating the manner of compliance with waste discharge requirements. The Regional Board could require discharges to meet certain numeric requirements that may require tertiary treatment, but this would require amendment of the Basin Plan to establish these requirements as water quality objectives. Thus, we do not see this option as a viable alternative to the development of new water quality objectives.

3. Prohibition of Discharge Near Drinking Water Intakes

Though we have some concerns with the manner in which this option is drafted, we think the concept of protecting drinking water sources within some defined distance around the intake is a potentially viable alternative. We have some concern about expressing this as a no discharge zone defined unilaterally by the water purveyor, and we oppose the approach of involving U.S. EPA in making these determinations. We believe the Regional Board and DHS, working together, can develop an appropriate implementation option that protects drinking water at some specified distance from the intake.

We urge the Regional Board to view this alternative as a point of compliance approach, focusing on the point at which water quality requirements must be satisfied to protect municipal drinking water rather than the point at which discharges is allowed. This approach makes considerations for fate and transport of constituents and for dilution and complete mixing in the waterbody. The point of compliance approach has been implemented in a number of other states, including Ohio, which requires that human health criteria for fish consumption and drinking water apply within 500 yards of a potable water intake. Colorado has adopted a similar method.

4. Prohibition of Discharge Exceeding Concentration Limits

This option appears to be a mechanism for avoiding the procedural and substantive requirements of the NPDES permitting process. It is difficult to see how this type of prohibition, relying on concentration-based limits, would differ from a typical discharge permit. While this was done in the rice pesticide implementation program, this was prior to the implementation of the current conditional waiver program, which requires receiving

DRINKING WATER POLICY COMMENTS
PAGE 4
December 17, 2004

water monitoring. We are very concerned about this option and would need a great deal more information about how it would be implemented in the context of the existing NPDES permit program.

IV. Actions by Other Entities

We support the effort to identify actions and authorities of other agencies that have an effect on water quality, and to coordinate Regional Board activities with these other entities.

In addition to those included in the draft, we recommend that the following bullet points be added:

- DHS and the SWRCB and Regional Boards should develop a common methodology or criteria for designating water bodies as municipal drinking water sources.
- The water quality impacts of the operation of the State and Federal water projects should be examined.

V. MUN Beneficial Use Designation

We agree that revisions to the manner in which the MUN use is applied are critical to resolution of challenges faced by EDW dischargers. Establishment of subcategories of uses, along the lines suggested, is one potentially viable approach. The potential criteria identified in the report for distinguishing the drinking water use from a domestic water supply use are promising and worthy of further development. Another option that should be included, and that is being explored within the SWRCB's EDW Workgroup, is to distinguish between waters where drinking water supply is an actual use and those where the drinking water use is potential. Again, this approach has been implemented in other states, including Colorado and Texas. It is important to note that any of the options that rely on refining the MUN use category will only be successful if the criteria required to protect the uses are distinct. For example, some Regional Boards have chosen to apply the same criteria to protect REC-1 as apply to MUN, including those criteria that were developed assuming consumption of two liters per day for seventy years.

DRINKING WATER POLICY COMMENTS
PAGE 5
December 17, 2004

Another method would be for the Regional Board to allow permit revisions for outfall relocations to downstream receiving water where dilution exists in accordance with DHS recommendations for drinking water use. This would protect upstream MUN beneficial use.

In addition, we recommend the following revisions to the text of this section:

Dischargers to effluent dominated water bodies (EDWs) face challenges in meeting effluent limits in permits because of the limited dilution capacity. In addition, because many EDWs are not identified in the Basin Plan, they are assigned the same beneficial uses as the water body to which they are tributary (via the tributary rule¹). As such, though many point source dischargers to EDWs cannot meet effluent limits based on primary maximum contaminant levels for drinking water constituents, they are not able to meet certain California Toxics Rule human health criteria at the end of pipe.

The MUN beneficial use could be split to make a distinction between drinking water and other domestic uses of water (i.e., riparian users that divert raw water and use it to bathe and wash vegetables, etc. but do not actually drink it). Each designation would have its own requirements. Changes to beneficial use designation is not strictly an implementation activity, however, the concept is included here because of the timeliness of the topic.

VI. Emerging Pollutants

While we understand the concerns of drinking water purveyors about emerging contaminants, we recommend that the Regional Board proceed cautiously with regard to requiring significant additional monitoring of these constituents. The universe of compounds that may be considered to be “emerging contaminants” includes thousands of substances ranging from pharmaceuticals to personal care products to caffeine. The impacts of these compounds in the environment and on human health are not well understood. Equally importantly, reliable analytical methods for detecting and quantifying these compounds in wastewater have not been developed. The Regional Board should be careful to let the science determine the regulatory requirements.

¹ The Basin Plan states: “The beneficial uses of any specifically identified water body generally apply to its tributary streams. In some cases a beneficial use may not be applicable to the entire body of water. In these cases the Regional Water Board’s judgment will be applied. It should be noted that it is impractical to list every surface water body in the Region. For unidentified water bodies, the beneficial uses will be evaluated on a case-by-case basis.”

DRINKING WATER POLICY COMMENTS
PAGE 6
December 17, 2004

We recommend the following revisions to the text of this section:

At the 9 July 2004 Board meeting, the Regional Board was concerned about how the drinking water policy would account for emerging pollutants (i.e., endocrine disruptors, virus, etc.). CWC §13267 authorizes the Regional Board to request dischargers to monitor for potential problem pollutants. The data collected is then used to determine whether water quality objectives for these pollutants must be developed, whether if-effluent limitations need to be included in NPDES permits and if so, what the effluent limitations should be.

For pesticides, the Basin Plan states that pesticide levels in discharges should not exceed the lowest levels technically and economically achievable. This concept could be expanded to other parameters such as those drinking water constituents of concern for which reliable analytical methods have been developed. If these requirements were to be enforceable limits, rather than goals, they would have to be adopted as water quality objectives. There is also a concern with these types of requirements, because the water quality objective is always a moving target, changing as the detection and quantification levels improve. The Regional Board could then ask for reports to document this requirement. The request could include reporting guidelines so dischargers would know what kind of information and detail is required. The Regional Board could use this information in the staff report to justify what is included in the drinking water policy recommendation. This expanded database of information would help determine the appropriate balance between wastewater and drinking water treatment costs and who pays.

Thank you for the opportunity to provide our initial comments regarding the draft Central Valley Drinking Water Policy Basin Plan Implementation Chapter: Options Report. CVCWA looks forward to working with the Regional Board to refine the report further. If you have any questions regarding our comments, please contact CVCWA's representative to the Drinking Water Policy Work Group, Jacqueline McCall, at (707) 469-6416.

Sincerely,

Warren Tellefson
Executive Officer

Cc: Jacqueline McCall

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