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28 November 2012

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Evaluation of the Municipal and Domestic Supply Beneficial Use (MUN) in Agriculturally Dominated Water Bodies Basin Plan Amendment – CEQA Scoping Comments

On October 24th, November 2nd and 7th, 2012, the Central Valley Regional Water Quality Control Board (Regional Water Board) staff held announced CEQA Scoping meetings for the preparation of a Basin Plan Amendment (BPA) to correctly designate the Municipal and Domestic Water Supply Beneficial Use (MUN) in agriculturally-dominated water bodies in the Central Valley. The San Joaquin River Group Authority (SJRG) offers the following comments.

Summary of SJRG Comments

The comments submitted here only reflect conditions in the San Joaquin River Basin and San Joaquin Valley and are not intended to encompass the Sacramento Valley conditions. The SJRG comments can be summarized as follows:

1. There is a need to clarify the definitions used in the CEQA Scoping documents and in future work to ensure that the staff intention is clear on where the proposed amendment will apply and not apply; the present use of the term “*agriculturally-dominated water bodies*” makes it difficult to determine where the amendment will apply;
2. The archetypes proposed for use in the BPA process may not reflect conditions in the San Joaquin River Basin or the San Joaquin Valley;
3. There is a need for consistent use of federal regulations as most do not apply to “*agriculturally-dominated water bodies*”;
4. None of the alternatives described is acceptable as a stand-alone alternative. The SJRG has proposed a four-step approach to correctly designate the MUN beneficial use in “*agriculturally-dominated water bodies*”; and
5. The potential environmental impacts from the designation of the MUN beneficial use can be very complicated if it is applied to constructed canals and drains on the valley floor of the San Joaquin River Basin as this may change district operations and/or maintenance practices as well as cause increase costs to agricultural farming operations.

Below is a more detailed explanation of each of these five points.

Need to Clarify Intent

The intent of the project is not clearly stated as the use of the term “*agriculturally-dominated water bodies*” is not clearly defined therefore it is impossible to determine where the proposed action would be applied. In all subsequent documents, the term needs to be defined. The lack of clarity in definitions is exactly why we are in the present situation. In Resolution 88-63, the Sources of Drinking Water Policy, the State Water Board expected that this would be applied to all water bodies but allowed exclusions for agricultural drains. At the time of the policy adoption, it was a common assumption that water bodies were all natural water bodies and constructed canals and drains were not considered. The reason that agricultural drains were specifically mentioned was that there are numerous natural water bodies, mostly ephemeral or previous flood channels, which have been converted to carry agricultural drainage water. Although not an exhaustive list, this included the Colusa Basin Drain, the Sutter Bypass Drain, the Natomas Main Drain, the Toe Drains in the Yolo Bypass and numerous others in the Sacramento Valley, Mud and Salt Sloughs and the wetland water supply channels in the San Joaquin Valley, the Coachella River in the Coachella Valley, the Palo Verde Main Drain in the Palo Verde Valley and the New and Alamo Rivers in the Imperial Valley. It was the State Water Board intention to be clear that these natural water bodies that had been converted to drainage uses, needed to be considered differently as none of these water bodies had MUN designations in their respective Basin Plans.

In the early 1990s, the Central Valley Regional Water Board in their zeal to have beneficial uses in the basin plan updated, made a blanket application of Resolution 88-63 to all water bodies within Region 5. At that time it was also generally assumed that the definition of a water body focused on streams, rivers, sloughs, lakes and other types of natural water bodies. If the Regional Water Board had intended the MUN designation to apply to Ag drains or to “*agriculturally-dominated water bodies*”, it likely would have considered more closely the exclusions presented by the State Water Board. Further evidence of this is found in the present Basin Plans which do not include the MUN designation for any of these main drain systems and it seems logical that they would not have placed that designation on the upstream feeder drains and canals that flow into these main drains.

Since the Board action, the definition of water body has been expanded under other programs and now includes everything, including Ag and effluent-dominated natural water bodies as well as constructed (both lined and unlined) canals and drains. Even though no basin planning action was taken, with time the MUN beneficial use is now designated for all canals and drains, including those which are constructed. It is unlikely that you would find anything in the Basin Plan Amendment record from the 1990s that specifically or in any way implies that the action being taken then was to be applied to canals and drains. There is also likely no CEQA work to support its application to canals and drains. It is this track record of misinterpretation that necessitates the use of clear definitions as to how and where the proposed BPA is to be applied in order to avoid similar misinterpretations and the dilemma the Board finds itself in with the four small communities in the Sacramento Valley.

Archetypes May Not Apply to the San Joaquin Valley

On page 5 of the Informational Document accompanying the CEQA Notice, the Regional Water Board staff describes case studies that can be used as templates for all Central Valley “*agriculturally-dominated water bodies*”. These include the project areas near Biggs, Colusa, Live Oak and Willows in the Sacramento Valley. While these examples may provide information on the specific area, it should not be assumed that conditions in the Sacramento Valley mirror those of the San Joaquin River Basin or the San Joaquin Valley. The reason for our comment is that many of the canals and drains in the Sacramento Valley

1. transport both agricultural drainage water and irrigation supply water in contrast to the systematically laid out (constructed) systems in the San Joaquin Valley which are mostly single use facilities;
2. have a near-year round flow associated with groundwater recession and storm water runoff in contrast to the San Joaquin Valley where these facilities go dry almost immediately upon cut off of the water supply, drainage, or storm water flows;
3. are the result of a rainfall-fed basin and are often flood channels that follow the contour of the landscape in contrast to the San Joaquin Valley which is primarily a snow-melt-event basin and has required extensive realignment of water distribution and drainage facilities to be efficient; and
4. are often modified flood channels in contrast to the canals and drains in the San Joaquin River Basin and San Joaquin Valley which are constructed and often realigned for efficiency of water movement and many are lined due to water shortages.

The SJRGA will work with the Regional Water Board staff to correctly identify the types of canals and drains in the San Joaquin Valley but such an effort must be based on completing the work prepared and submitted to the Board by water users under the Inland Surface Waters Plan and not starting a whole new effort based on these archetypes.

Need Consistent Use of Federal Regulations

On page 5 of the Informational Document it states that some of the “*Ag-dominated water bodies*” may fall under federal jurisdiction. It needs to be clear which ones and where this will apply. Federal Clean Water Act jurisdiction does not apply in any constructed Ag water supply canal or drain. Within the San Joaquin River Basin and the San Joaquin Valley there is a mixture of constructed, modified and natural water body types. Federal jurisdiction would likely apply only to the latter.

Under federal regulations, a Use Attainability Analysis (UAA) (a structured scientific assessment of the factors affecting the attainment of uses specified in Section 101(a)(2) of the Clean Water Act (the so called "fishable/swimmable" uses)) is needed if a change to a fishable or swimmable use is being proposed. In the case of this project, the focus is on establishing the correct designations for the MUN beneficial use in “*Ag-dominated water bodies*” therefore only the requirements of 40 CFR 131.10(g)(1)-(6) need to be taken into consideration. This does not require a full UAA.

Alternatives for Consideration

The CEQA scoping documents and presentation at the CEQA scoping meeting in Sacramento identified five alternatives the staff is considering to address the MUN beneficial use issue in “*agriculturally-dominated water bodies*”.

Alternative #1: No action or change to the current designations. This alternative is unacceptable as it continues the misconception that canals and drains should be preserved as municipal or domestic water supplies. Such an action could force changes in operations of water supply canals and drains serving both agricultural operations and wetland or wildlife areas. In addition it may require significant changes in the management of urban, wetland and agricultural storm water as well as impede water conservation and reuse efforts as mandated by the State.

Alternative #2: Develop site-specific water quality objectives. If this alternative is chosen and applied to canals and drains, the SJRGA cannot support this alternative. It would require development of water quality objectives for over 7,000 canals and drains region wide covering over 20,000 miles of mostly constructed facilities, many of which are in the San Joaquin Valley. All of this effort would likely be wasted as the California Department of Public Health has made it clear

that use of “*agriculturally-dominated water bodies*” and/or drains would not be allowed unless other water supplies were not available. If this alternative is considered, the CEQA analysis would need to evaluate the cost of such an action against the benefit derived including whether this action is in the best interest of the people of the State. The CEQA analysis would also need to evaluate the cost of the loss of ability to supply agricultural, wetland and wildlife areas with timely water supplies and provide for their drainage. In addition, if this alternative is chosen the CEQA analysis would need to evaluate the loss of ability to conserve and reuse water in agricultural and wildlife areas which is presently mandated by the State.

Alternative #3: Adopt a framework for categorically evaluating the MUN beneficial use.

Alternative #4: Apply the Tributary Rule for making a MUN designation.

Alternative #5: De-designate the MUN beneficial use in all “*ag-dominated water bodies*”.

Each alternative has parts that have merit but as a stand-alone alternative, each is likely to be challenged. We have expanded on these under a new alternative to be considered (described below).

New Alternative: Four-step process to correctly designate the MUN beneficial use in “*agriculturally-dominated water bodies*”.

The first step is to develop and agree to a definition of an “*Ag-dominated water body*” including a subdivision between natural water bodies converted to Ag uses both for water supply and drainage and constructed water supply and drainage facilities. This definition would then become part of the proposed basin plan amendment (BPA).

The second step would be for the Board to adopt a resolution that clarifies that the previous Board action in applying the sources of drinking water policy was only to apply it to those water bodies and their tributaries that are named specifically in Table II-1 of the Basin Plan and show an MUN designation. The resolution would further clarify that the exclusion of agricultural drains from the designation had already been considered in Table II-1 of the Basin Plan as none of the main drainage systems in the Central Valley had the MUN designation and it would be illogical to apply that designation to the upstream feeder drains and canals that flowed into these main drains. For those canals and drains that do not flow into one of these named main drainage systems, the Board policy has always been to evaluate the beneficial uses of those water bodies on a case-by-case basis, therefore the resolution should further clarify that the Board needs to consider whether there are other “*Ag-dominated water bodies*” where the MUN designation should be considered and direct staff to conduct, along with stakeholders, an assessment of “*Ag-dominated water bodies*” to determine if any of those need to be considered for designation. The basis for this action would be that the Board, in making a blanket application of the Sources of Drinking Water Policy in the Central Valley, did not intend for that action to be interpreted as applying the MUN beneficial use designation to “*Ag-dominated water bodies*” without further evaluation to determine if it was an appropriate designation. The justification for this action is that it is unlikely that you would find anything in the Basin Plan Amendment record that specifically or in any way implies that this was to be applied to canals and drains. Thus it is unclear to the Board and the regulated community whether the MUN designation is factual. There was also likely no CEQA work or mention of its application to canals and drains in the CEQA review process. It is also unlikely that the approval of the Board action for this portion of the amendment would have occurred had the approving agencies known it was to be applied to “*Ag-dominated water bodies*” and that there was no outreach to or opportunity for comment from those most affected. With the resolution, the Board also needs to set up a timetable for further evaluation of those water bodies affected by this action.

The third step would be to apply the concepts in the Tributary Rule and other policy statements described in the Basin Plan to assist in identifying those water bodies with the highest priority for

evaluating the potential for designation of the MUN beneficial use. The Central Valley Water Board Basin Plan for the San Joaquin River Basin (Basin Plan) makes a significant statement regarding the application of the tributary rule. It states that “*the beneficial uses of a specifically identified water body generally apply to its tributaries streams*” (Basin Plan at II-2.00). The key word in this policy statement is “*streams*”. The following are comments on the tributary rule and its application to “*Ag-dominated water bodies*” and/or “*streams*”.

1. Constructed agricultural canals and drains are not “*streams*”. They have never been considered streams under the water code thus the tributary rule does not apply;
2. The tributary rule does not apply to constructed agricultural supply canals as water flows from a point of diversion to a point of use. This water does not provide a tributary flow to a natural water body as the water flow is toward an endpoint of consumptive use;
3. Constructed drains do at times flow to a water body however the water in that drain is not a natural tributary water and in most cases is agricultural irrigation return flows therefore the tributary rule would not apply to constructed drains; and
4. During the preliminary discussions regarding the San Joaquin River Basin settlement process that is being conducted to determine future flow and quality in the San Joaquin River, Ken Landau, Assistant Executive Officer of the Central Valley Regional Water Board stated that the tributary rule did not apply to constructed canals and drains in the San Joaquin River Basin.

Each of these four key points should provide a starting point for the staff and stakeholders to further reevaluate the MUN designation in constructed canals and drains in the San Joaquin River Basin. Using this guidance would then allow the Regional Board staff to focus their limited resources on defining those “*Ag-dominated water bodies*” which do have the potential for a MUN beneficial use.

The fourth step would be to begin an evaluation “*on a case-by-case basis*” to define MUN in those priority water bodies that may support that beneficial use. The Basin Plan states that “*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*”. In addition it also states that “*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*”. This effort would be consistent with the Basin Plan policy direction and should focus on natural water bodies that are Ag-water supply dominated or Ag-drainage dominated to determine whether the MUN designation is appropriate.

This four step process should provide the framework for developing a priority system for the correct MUN designations for “*Ag-dominated water bodies*”. It needs to be recognized however that many of the “*Ag-dominated water bodies*” were developed for their present use decades ago and most over 75 - 100 years ago. It should not be the intent of this basin planning effort to change the use of these water bodies that was established under the water rights process or change the use for which the facility was constructed. If this is undertaken, the CEQA action and analysis will be very complicated and controversial. Firm direction needs to be defined at the start of this effort so all parties know what the project is intending to do. We do not want this effort to result in loss of farm land, changes in the ability of the water suppliers to supply critical water supply to farms, wetlands and wildlife areas.

Potential Environmental Impacts

The application of the MUN beneficial use to constructed water ways, including canals and drains in the San Joaquin River Basin and San Joaquin Valley has not been fully evaluated. Even under the blanket designation of the previous BPA, its impact on the water users and the communities they support was not evaluated. Continuing this approach could have a significant impact on water supply

availability and district operations as farmers attempt to comply with the Board's irrigated lands program. This would have a ripple effect on the farming industry and the local communities and their economies that depend upon this farming. Many of these communities have the highest unemployment rates in the country. In addition it may have a serious impact on the ability to deliver water supplies to wetland and wildlife management areas. In the future it could also limit or prohibit the planned reuse of water that the State has asked all water users to implement to increase water use efficiency statewide.

For any potential actions or any alternative under consideration that will result in changes to district operations or management of constructed water supply and drainage facilities as well as "Ag-dominated water bodies", the CEQA process should consider and fully evaluate as to whether that alternative would impact:

- Water supply deliveries for agricultural, municipal, wildlife and wetland uses and the consequences if either the amount delivered, the timing of the deliveries or the quality of that water supply is changed;
- Water rights and the subsequent water delivery capability of the various water right holders;
- Repayment capacity for reservoir and downstream infrastructure debt and how these would change downstream operations and water supply delivery capabilities;
- Loss of agricultural crop production and/or fallowing of agricultural lands during various water-year types;
- Loss of wetland habitat if either the amount delivered, the timing of the deliveries or the quality of that water supply is changed;
- Flood control needs and changes in storm water management requirements and the resulting impacts on local communities;
- Consequences of likely increased groundwater use, including, but not limited to, overdraft to replace the lost agricultural and wetland/wildlife water supplies caused by the need to curtail the use of certain facilities due to the inability to meet MUN water quality objectives with current operations;
- Changes in groundwater quality likely to occur with increased overdraft to replace lost agricultural and wetland water supplies;
- Loss of domestic-use groundwater supplies in rural areas due to the resulting overdraft to replace lost water supplies;
- Increased power needs associated with increased groundwater pumping to replace lost or delayed water supplies;
- Loss of summer-time hydro-power energy production due to re-operation of canal deliveries or lost canal deliveries;
- Changes in crop production and production costs resulting from decreased water supplies now available with drainage water reuse;
- Increased costs and regulatory requirements due to the inability to recycle water caused by the need to curtail the use of certain facilities due to the inability to meet MUN water quality objectives with current operations;
- Increases in carbon emissions caused by increased power consumption during the summers months for groundwater pumping to replace lost water supplies;

- The long-term sustainability and costs of converting to groundwater pumping;
- Increased costs for municipal storm water management due to the inability to utilize canals and drains due to the MUN beneficial use designation; and
- Increased costs for agricultural return flow and storm water management under the Irrigated Lands Program due to the inability to utilize canals and drains designated for the MUN beneficial use.

We appreciate the opportunity to comment on the proposed CEQA Scoping. If you have any questions, please do not hesitate to contact us.

A handwritten signature in black ink that reads "Dennis Westcot". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Dennis Westcot
Project Administrator

cc: SJRGA Managers
Parry Klassen, East San Joaquin Water Quality Coalition
Tess Dunham, Somach, Simmons & Dunn
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