



# San Joaquin River Group

Public Comment  
Anti-Degradation Policy  
Deadline: 12/17/08 by 12 noon

• Modesto Irrigation District  
• Turlock Irrigation District  
• South San Joaquin Irrigation District  
• San Joaquin River Exchange Contractors

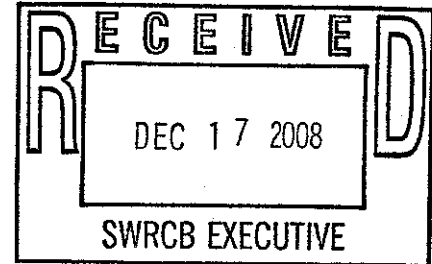
400 Capitol Mall, Suite 900  
Sacramento, CA 95814  
(916) 449-3957  
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• Merced Irrigation District  
• Oakdale Irrigation District  
• Friant Water Users Authority  
• City and County of San Francisco

VIA ELECTRONIC MAIL AND US MAIL

December 17, 2008

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



**Re: Comment Letter – Anti-degradation Policy (Resolution 68-16)**

Dear Board Members:

The State Water Resources Control Board (“SWRCB”) has requested comments on periodic review and potential revision of Resolution 68-16, the Policy with Respect to Maintaining High Quality of Waters in California (“Policy”). The SWRCB requested public comment on the following issues, for which the San Joaquin River Group Authority offers the following comments:

**Should the State’s Anti-degradation Policy be revised as it pertains to surface water? If so, how should it be revised?**

The Policy should remain unchanged. The present Policy is consistent with Water Code Section 13000 which states “Attain the highest water quality which is reasonable” and Water Code Section 13241 which states “Water quality can be changed to some degree without unreasonably affecting beneficial uses.”

The original Policy was preceded Porter-Cologne and the Clean Water Act. It has served the State well since. This is demonstrated by the simple fact that there have been no legal challenges to the policy after 40+ years. In addition, the SWRCB conducted a periodic review of the Policy in 1986 and concluded that *“It has been the cornerstone of this state’s successful water quality program for almost 20 years”* and *“We see no reason to amend that policy and we will continue to follow it and make it part of the regional plans.”* The ensuing 20+ years since that review has again shown that the policy is sound and continues to be the cornerstone of one of the most effective water quality regulatory programs in the nation.

Recently the SWRCB has received a petition by the Environmental Law Foundation (“ELF”) for review of the Anti-Degradation Policy. The basis for the ELF Petition is that water

quality has diminished as demonstrated by the number of listings on the State's 303(d) List. The ELF Petition should be denied.

First, the number of water body-pollutant combinations on the Clean Water Act §303(d) List ("§303(d) List") does not indicate whether statewide water quality has improved or worsened. Until 1996 the Water Boards paid little attention to the §303(d) List. Furthermore, until the SWRCB adopted the Water Quality Control Policy for Developing California's Clean Water Act §303(d) List ("Listing Policy") in 2004, there was no uniform or consistent methodology for developing the §303(d) List. Since then, water bodies have been removed from the §303(d) List, because the listings were erroneous and, in some cases, lacked any factual basis. Other factors unrelated to water quality, such as segmenting stream systems, can also result in additional listings. As a result, the number of §303(d) Listings is an unreliable indicator of whether statewide water quality has degraded or improved.

Furthermore, a change in water quality is consistent with the Policy, which permits degradation if consistent with the maximum benefit of the people of the State and if no pollution or nuisance will occur. Assuming any "degradation" has occurred and the Water Boards have made sufficient findings, the Policy has been properly applied and implemented. The ELF simply disagrees with the Water Boards' policy decisions and their notions of the maximum benefit of the people of the State. Such disagreement is insufficient basis to change the Policy.

Finally, to the degree the Policy may lack specificity and/or specific implementation details, the Porter-Cologne Water Quality Control Act, water quality control plans, and other statutes and policies enacted since its adoption provide significant additional measures of water quality control and protection. The Policy has served, and continues to serve, as a rudder guiding statewide water quality control and underlying subsequently adopted legislative and regulatory enactments.

**Should the implementation procedures as contained in APU 90-004 be revised? If so, how should they be revised?**

APU 90-004 and the two question and answer memorandums from the Chief Counsel's Office (dated Oct 1987 and February 1995) should be thoroughly reviewed and updated. A new Question and Answer document should be prepared. At the least, references to "potential" uses and beneficial uses of water should be changed to "probable" uses and beneficial uses of water for consistency with Porter-Cologne.

**Should the implementation procedures be formally adopted as guidance or regulations by the State Water Board?**

No. The procedures the SWRCB has been using at present are best as there are wide differences in the needs among regional water boards. What fits in the Central Coast region may not fit in the Central Valley. In addition, the SWRCB needs to leave the Regional Boards maximum flexibility in dealing with salts and other non-classical type pollutants that they will be dealing with in the future.

**Should the State's Anti-degradation Policy be revised as it applies to groundwater?**

No. The Policy already applies to groundwater and has been applied to groundwater successfully for over 40+ years.

Very truly yours,  
SAN JOAQUIN RIVER GROUP  
AUTHORITY

By:



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Allen Short