

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

List of Commenters:

Comment Reference	Organization	Representative
1	Best Best & Kreiger Attorneys at Law (BBK)	William Thomas
2	Tule Basin Water Quality Coalition (TBWQC)*	R.L. Schafer
3	Paramount Farming (PF)	Kimberly Brown, Director

*** Comments raised by the Tule Basin Water Quality Coalition were not raised before the Central Valley Water Board nor was any explanation provided as to why these comments were not raised before the Central Valley Water Board. Similar comments were raised by Best Best & Kreiger Attorneys at Law. We will address these comments for the completeness of the record.**

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

Response to Comments:

No.	Author	Comment	Response
0.1	Multiple	<p>Almost all of the comments submitted in opposition to the State Water Resources Control Board's (State Water Board) approval of this amendment to the Water Quality Control Plan for the Tulare Lake Basin Plan (Basin Plan) to edit and update language were previously submitted to the Central Valley Regional Water Quality Control Board (Central Valley Water Board) and submitted verbatim to State Water Board because the Central Valley Water Board did not make the suggested changes.</p>	<p>The State Water Board's Notice of Opportunity to Comment concerning these Basin Plan amendments accurately informs interested persons of the procedural requirements used to implement the State Water Board's regulatory programs. According to the State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)):</p> <p><i>The state board, when considering approval of a regional board's adoption of an amendment to its water quality control plan or guideline, shall prescribe a comment period of not less than 30 days. The state board may refuse to accept any comments received after the noticed deadline. All comments submitted to the state board must be specifically related to the final amendment adopted by the regional board. If the regional board previously responded to the comment, the commenter must explain why it believes that the regional board's response was inadequate. The commenter must include either a statement that each of the comments was timely raised before the regional board, or an explanation of why the commenter was unable to raise the specific comment before the regional board. The state board may refuse to accept any comments that do not include such a statement. The state board is not required to consider any comment</i></p>

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

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			<p><i>that is not in compliance with this section.</i></p> <p>Several of the comments submitted to the State Water Board on this matter are identical to a comment submitted to the Central Valley Water Board at the time the draft version of this regulation was under Central Valley Water Board consideration. Where a commenter has merely repeated the comment submitted below, the comment does not comply with the above-quoted regulation. During its consideration, the Central Valley Water Board received and provided written responses to all significant comments. The Central Valley Water Board's responses either indicated that changes would be made to the amendments or related documentation in view of the comment (in which case corresponding changes were made), or the Central Valley Water Board's written responses indicated that changes would not be made, and the response indicated why not. For completeness of the record, we will address all the comments.</p>
0.2	Multiple	All commenters requested the State Water Board strike the term, "...including future revisions..." from the Central Valley Water Board's amendments to incorporate the State Water Board's policies that have been adopted or revised since the last time that the Central Valley Water Board amended the Basin Plan.	The commenters had timely requested the Central Valley Water Board to delete this phrase. The Central Valley Water Board's response was that the inclusion of future revisions is for State Water Board adopted plans and policies that are already in effect. The amendment acknowledges that these plans and policies are statewide plans

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

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		<p>Commenters were concerned that the inclusion of this language would allow the Central Valley Water Board to revise these policies without public notice, review or hearing.</p>	<p>and policies adopted by the State Water Board and, therefore, only the State Water Board can revise these plans and policies. The State Water Board process for considering plans and policies includes technical reviews, environmental reviews and public reviews which is similar to the reviews conducted by Regional Water Boards when considering basin plan amendments. The appropriate venue for review and comment on State Water Board plans and policies is when they are being considered by the State Water Board and not when the Central Valley Water Board is incorporating these plans and policies into the Basin Plan.</p> <p>State Water Board policies are effective regardless of Basin Plan provisions. Updating the Basin Plan provides the public and local agencies with more clear and consistent direction regarding these policies. Should the State Water Board revise the policy, which is done in accordance with any applicable state and federal laws and regulations, the revised policy would be in effect but the Basin Plan would be out of date. By including the phrase, "...including future revisions..." the Central Valley Water Board provides a simple explanation of this fact so that staff does not have to be immediately redirected to update the Basin Plan. This clarification is consistent with Priority 4 of the 2008-2012 Strategic Plan Update. The State Water Board</p>

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

No.	Author	Comment	Response
			supports the Central Valley Water Board's amendment and does not agree that the phrase should be deleted.
1.1	BBK (Thomas)	Amendments 2.1. (the basin boundary) and Amendment 2.2. (the beneficial use designation) do not raise concerns.	This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board acknowledged the comment.
1.2	BBK (Thomas)	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.	This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board responded to this comment as follows, "the proposed change is to revise references to the Department of Health Services (which is no longer in existence) to the California Department of Public Health. Any fundamental changes which may occur in future legislative sessions will be reflected in future updates to the Water Quality Control Plan for the Tulare Lake Basin." The State Water Board agrees with the Central Valley Water Board's response.
1.3	BBK (Thomas)	Amendments 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	This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board responded that both Resolutions 92-49 and 68-16 have already been incorporated into the Basin Plan. No new sections are being incorporated into the Basin Plan. The State Water Board agrees with the Central Valley Water Board's response.

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

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		<p>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.</p> <p>It is further troubling that the Board is attempting to empower themselves relative to automatically embracing any <u>future</u> 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.</p>	<p>Regarding the portion of the comment that refers to the future revisions, see response to comment 0.2.</p>
1.4	BBK (Thomas)	Amendment 2.14. The Antidegradation Policy and the Nonpoint Source Policy of the State	This comment was timely submitted to the Central Valley Water Board and the Central

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

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		<p>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.</p>	<p>Valley Water Board responded as follows, "the Antidegradation policy applies to both surface and ground waters. The State Water Board has formed a technical committee to provide guidance to staff on how antidegradation is evaluated in groundwater. If any State Water Board policies result from this effort, the State Water Board will consider the policy after any appropriate technical, environmental and public review." Until the State Water Board adopts or revises a plan or policy, the currently adopted plans and policies are in effect. Therefore, the State Water Board is in agreement with the Central Valley Water Board. In regards to the language, "any future revisions" see response to comment 0.2.</p>
1.5	BBK (Thomas)	<p>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.</p>	<p>See response to comment 0.2</p>
1.6	BBK (Thomas)	<p>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</p>	<p>See response to comment 0.2</p>

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

No.	Author	Comment	Response
		future amendments that are made to those enforcement policies will be deemed immediately included in our Basin Plan and able to be executed.	
1.7	BBK (Thomas)	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.	This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board responded as follows, "the revision to the Tulare Lake Basin Plan that is proposed in Amendment 2.17 is strictly to incorporate the State Water Board's 303d listing policy into the Basin Plan. There is no reference to incorporation of the current or future 303d lists." The State Water Board agrees with the Central Valley Water Board's response. In regards to the language, "any future revisions" see response to comment 0.2.
1.8	BBK (Thomas)	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.	This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board provided response as follows, "the revision to the Tulare Lake Basin Plan that is proposed in Amendment 2.18 is to incorporate the State Water Board's Impaired Waters Policy which explains the Regional Water Boards options to address waters that are listed as impaired under Clean Water Act 303(d). The proposed amendment will not incorporate the list of impaired waters into the Basin Plan nor will it automatically incorporate

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

No.	Author	Comment	Response
			any control programs into the Basin Plan. If the Board determines that a Basin Plan control program is the appropriate action to address an impaired water body, then the Board will develop a basin plan amendment that will go through the appropriate technical, environmental and public review prior to Board consideration.” The State Water Board agrees with the Central Valley Water Board’s response.
1.9	BBK (Thomas)	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.	This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board responded that the amendment incorporates the Statewide Recycled Water Policy and provides a correct description of the provisions of the Policy. The amendment does not refer to the CV-SALTS initiative. Central Valley Water Board response also stated “staff agrees that following the development of any Salt and Nitrate Management Plan (SNMP) for the Central Valley, a basin plan amendment will be proposed to incorporate implementation of the SNMP into the Basin Plan as required by the Recycled Water Policy.” The State Water Board agrees that the implementation plans are to be amended into the appropriate Basin Plans. Also see response to comment 0.2.
2.1	TBWQC (Schafer)	Amendments 2.1 through 2.14 are primarily	Comment noted.

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

No.	Author	Comment	Response
		clarification of the Basin Plan boundary, conformance with Department name changes, regulatory references and other minor modification that have no regulatory effect.	
2.2	TBWQC (Schafer)	<p>Amendment 2.15 Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP). The statement proposes to include the Amendment in the last sentence “The SIP <u>including future revisions</u> is incorporated into this Basin Plan and shall be implemented according to the policy’s provisions.”</p> <p>We interpret that sentence to mean that the Regional Board staff may revise the policies for implementation of Toxics Standards for Inland Surface Waters at will, without the normal process of notices, comments, hearings and approval of the Regional Board and State Board, which is unacceptable.</p>	See response to comment 0.2
2.3	TBWQC (Schafer)	Amendment 2.16 Water Quality Enforcement Policy and Supplemental Environmental Projects Policy. This amendment proposes to add Enforcement Policy and take actions that are not clear and proposes to allow the Regional Board staff to make future revisions without the normal process. This amendment needs clarification or exclusion.	See response to comment 0.2

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

No.	Author	Comment	Response
2.4	TBWQC (Schafer)	<p>Amendment 2.17 Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List. The proposed policy states "The 303(d) listing policy, <u>including future revisions</u>, is incorporated into this Basin Plan and shall be implemented in accordance with the Policy's provisions."</p> <p>The statement implies the policy for listing Section 303(d) water bodies can be changed by Regional Board staff without further evaluation by the public or the water body owners, which eliminated the normal process and is unacceptable.</p>	See response to comment 0.2
2.5	TBWQC (Schafer)	<p>Amendment 2.18 Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options. The last sentence of the proposed policy states: "The Impaired Waters Policy, <u>including future revisions</u>, is incorporated into this Basin Plan and shall be implemented in accordance with the Policy's provisions."</p> <p>Again, the statement appears to mean Regional Board staff can change the policy for addressing the listing of Section 303(d) water bodies and they "shall be implemented in accordance with the Policy's provisions" without the normal process of public notice, comments and hearings which is the current process, the statement "including future revisions" is unacceptable and</p>	See response to comment 0.2.

DRAFT

Comment Summary and Responses

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Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

No.	Author	Comment	Response
		needs to be excluded from the Amendment.	
2.6	TBWQC (Schafer)	<p>Amendment 2.19 Policy for Compliance Schedules in Pollutant Discharge Elimination System (NPDES) Permits. The proposed policy addition on compliance schedules states that “The Compliance Schedule Policy, <u>including future revisions</u>, is incorporated into the Basin Plan and shall be implemented in accordance with the Policy’s provisions.”</p> <p>The proposed Policy indicates the Regional Water Board staff can mandate a schedule for compliance with water quality objectives and water quality criteria, and the Policies may be revised in the future, without appropriate review, comment and hearing before the Regional Board and State Board. The proposed addition is not a non-regulatory correction of error or update of language of the Basin Plan, but a revision that would provide the Regional Board staff with the ability to set a schedule for compliance without the normal process for review and comment by the permittee. The proposed Policy change is dictatorial and needs clarification or deletion.</p>	<p>See response to comment 0.2.</p> <p>The Water Boards already have authority to include time schedules in waste discharge requirements per Water Code section 13263. The Central Valley Water Board’s amendment is to incorporate the State Compliance Schedule Policy into its Basin Plan which provides the procedures for the Water Boards to issue compliance schedules in NPDES permits. The Water Boards adopt and modify NPDES permits in a public process.</p>
2.7	TBWQC (Schafer)	Amendment 2.20 Policy for Water Quality Control for Recycled Water. The proposed Policy addition states in the last sentence: “The Recycled Water Policy, <u>including future revisions</u> , is incorporated into this Basin Plan and shall be	See response to comment 0.2

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

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		<p>implemented in accordance with the Policy's provisions."</p> <p>Again the statement establishes the authority of the Regional Board staff to revise the Policy's for Water Quality Control for Recycled Water without the normal process and such procedure is unacceptable. The statement "including future revisions" should be deleted.</p>	
2.8	TBWQC (Schafer)	<p>Amendment 3. Other Considerations.</p> <p>We take issue with the statement:</p> <p>"The proposed Basin Plan amendments are to correct errors and update language. In addition, incorporate adopted State Water Board policies that have already been adopted and implemented by the Water Boards."</p> <p>The repeated statement "including future revisions" goes beyond correction of errors, updating language and incorporating adopted State Water Board policies and would result in amendments of the Basin Plan by the Regional Board staff without the normal notice, comment, hearing and Water Boards action and is unacceptable. We request the State Board delete the statement "including future revisions" from all of the proposed amendments.</p>	See response to comment 0.2

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

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3.1	PF (Brown)	<p>The 2014 TLB Basin Plan Amendments, which were presented by the Central Valley Board as updates and corrections to the basin plan, we believe substantially alter the ability of interested parties to meaningfully participate in future basin plan amendment processes. Although others and Paramount submitted comments to this effect (please see attached comment letter from Paramount dated February 14, 2014) no changes to this language were made prior to the Central Valley Board's adoption of the 2014 TLB Basin Plan Amendments.</p>	<p>This comment was timely submitted to the Central Valley Water Board and the Central Valley Water Board provided a response that the amendments were, "non-regulatory corrections to the language of the Basin Plan and updates to the Basin Plan to reflect State Water Board adopted plans and policies that are already in effect." The comment letter does not explain why the Central Valley Water Board's response is inadequate. The State Water Board agrees with the Central Valley Water Board's characterization of these amendments as non-regulatory. Also, see response to comment 0.1.</p>
3.2	PF (Brown)	<p>Language included in the 2014 TLB Basin Plan Amendments appears to circumvent future public input processes by incorporating State Board policies "including future revisions" into the basin plan. Paramount feels this language reduces the importance of future basin plan amendments and denies stakeholders a meaningful public input process. As stated above, although these comments were shared in our February 14, 2014 comment letter, no changes to this language were made prior to the Central Valley Board's adoption of the 2014 TLB Basin Plan Amendments. We respectfully ask the State Board to remove language to "include future amendments" or to remand the 2014 TLB Basin Plan Amendments to the Central Valley Board with direction.</p>	<p>See response to comment 0.2</p>

DRAFT

Comment Summary and Responses

Comment Deadline: July 31, 2014

Amendments to the Water Quality Control Plan for the Tulare Lake Basin to Edit and Update Language

DRAFT