

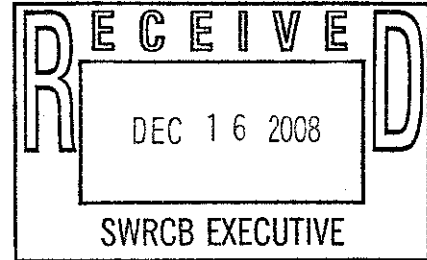


Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Michaeleen Mason
Director, Statewide Regulatory Issues

December 17, 2008

Jeanine Townsend
Acting Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



**Re: Comment Letter – Antidegradation Policy (Resolution 68-16)
Comments of Western States Petroleum Association**

Dear Ms. Townsend:

This letter contains the comments of the Western States Petroleum Association ("WSPA") in response to the October 16, 2008 Notice issued by the State Water Resources Control Board ("State Board"). The notice requested comments regarding the scope of actions to be considered in reviewing State Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California* ("Antidegradation Policy" or "Policy").

WSPA is a non-profit trade organization representing companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other energy products in California and five other western states. We appreciate the opportunity to submit our comments on the Notice and the Antidegradation Policy.

1. The State Board should not reopen the Antidegradation Policy. WSPA believes there is no need to reopen the Antidegradation Policy for revision or modification. Our member companies conduct operations throughout California that are subject to and must comply with a variety of water quality regulations and requirements, including those pertaining to waste discharge requirements, Total Maximum Daily Loads ("TMDLs"), cleanup and abatement orders, and the Antidegradation Policy.

Regional Water Quality Control Boards ("Regional Boards") and the regulated community have considerable experience with the Policy, which is among the many requirements that Regional Boards apply when developing permit conditions, waste discharge requirements and corrective action orders. While the Policy itself is brief, it is supplemented by comprehensive interpretive guidance, in particular the State Board's May 1990

Administrative Procedures Update 90-004 ("APU 90-004") and February 1995 "Questions and Answers on State Water Resources Control Board Resolution No. 68-16" ("1995 Q&A"), and an extensive history of situational interpretations based on that guidance.

In addition, with regard to surface waters, the State Board has incorporated into the state Policy the federal antidegradation policy adopted by the U.S. Environmental Protection Agency (USEPA), at 40 C.F.R. section 131.12.; see Memorandum from William Attwater, State Board Chief Counsel, to Regional Board executive officers, "Federal Antidegradation Policy", October 7, 1987 ("Attwater Memo"). As applied to surface waters, therefore, USEPA guidance supplements the state's guidance, in particular USEPA Region 9's June 1987 "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12" (1987 EPA Guidance).

In light of this existing and complex regulatory regime, there is no justification at this time for reopening and revising the Policy.

However, if the State Board determines that some supplement to the existing guidance may be necessary, we agree with the suggestion of other stakeholders that, at most, a Questions and Answers document to supplement the 1995 Q&A might be appropriate. For surface waters (which are subject to both the state and federal policies), there is no evidence that even a supplemental Q&A would be necessary.

2. Under the Antidegradation Policy, Tier 1 waters are addressed under existing regulatory programs. We understand that some have objected to the Antidegradation Policy's focus on high quality waters and suggested that it does not do enough to address those waters designated in Tier 1, including impaired water bodies identified pursuant to Clean Water Act section 303(d). It is important to recognize the reason for the Policy's focus, which is reflected in the title of Resolution 68-16: "Statement of Policy with Respect to Maintaining High Quality Waters in California."

The procedural provisions of APU 90-004, the 1987 EPA Guidance and the Attwater Memo are primarily intended to address the determination of when the balance of public interests may justify allowing some reduction in the quality of high quality waters (Tier 2), as well as the requirements for protection of outstanding natural resource waters (Tier 3). However, these aspects of the Policy, of necessity, do not apply to Tier 1 waters that are not of high quality. For these waters, the 1987 EPA Guidance (p. 2) explains:

40 C.F.R. 131.12(a)(1) prohibits any action which would lower water quality below that necessary to maintain and protect existing uses. In cases where water quality is just adequate to support the propagation of fish, shellfish and wildlife and recreation in and on the water, such water quality must be maintained and protected. In cases where water quality is lower than necessary to support these uses, the requirements in Section 303(d) of the [Clean Water] Act, 40 CFR 131.10 and other pertinent regulations must be satisfied. Guidance concerning actions affecting these waters has been published elsewhere and will not be repeated here.

In other words, the means of addressing impaired surface waters under the Antidegradation Policy is already provided through existing regulations, in particular under Clean Water Act section 303(d) and the TMDL program. Accordingly, there is no basis for the State Board to reopen the Policy in order to add duplicative and potentially conflicting provisions with respect to waters that do not qualify as high quality waters.

3. The State Board should consider supplemental guidance addressing groundwater antidegradation.

While WSPA does not believe that any reconsideration of the Antidegradation Policy with respect to surface waters is appropriate or necessary, we agree with the statements by State Board staff and several stakeholders at the November 17, 2008 workshop that there have been issues with the application of the Antidegradation Policy to groundwater. A basic tenet of the Policy is that reduction in water quality of high quality waters, including groundwater, is *not* flatly prohibited.

On the contrary, some reduction may be justified when public interests are balanced against the costs associated with a reduction in water quality. However, in some instances, the Policy as applied to groundwater has resulted in outcomes that were not supported by the scientific evidence, with significant costs that were not justified by commensurate risks.

These issues warrant further evaluation and may justify the issuance of supplemental guidance, to clarify and bring consistency to the practices of the Regional Boards. WSPA encourages the State Board to conduct more outreach on groundwater issues related to the Policy, and to further identify stakeholders, potential issues and actions addressing those issues.

In summary, WSPA believes the State Board should recognize that the Policy itself does not need to be revisited, either for surface water or for groundwater. If the State Board does determine that updated guidance for groundwater is necessary, we suggest that the issue be addressed based on sound science and with the full participation of stakeholders.

In the latter case, WSPA is an interested stakeholder. We look forward to participating with the State Board in any efforts to evaluate and potentially revise the guidance on implementing the Policy for groundwater.

Thank you for considering WSPA's comments. Please contact me at 916-498-7753 if you have any questions or wish to discuss our comments. We look forward to further discussions of these issues with the State Board.

Sincerely,



Michaelaileen Mason
Director, Statewide Regulatory Issues

Jeanine Townsend
Page 4

cc: Cathy Reheis-Boyd, COO, WSPA
Tam Doduc, Chair, SWRCB
Gary Wolff, Vice-Chair, SWRCB
Arthur G. Bagget, Member, SWRCB
Charles Hoppin, Member, SWRCB
Frances Spivey-Weber, Member, SWRCB
Dorothy Rice, Executive Officer, SWRCB
Jonathan Bishop, Chief Deputy Officer, SWRCB