



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



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CERTIFICATION BY THE EXECUTIVE OFFICER OF THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD THAT THE MANAGEMENT GUIDANCE FOR SALINITY IN WASTE DISCHARGE REQUIREMENTS HAS BEEN WITHDRAWN

The California Sportfishing Protection Alliance (CSPA) filed a petition with the Office of Administrative Law (OAL) dated May 26, 2009 alleging that the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Management Guidance for Salinity in Waste Discharge Requirements (Salinity Guidance) is an underground regulation.

The Salinity Guidance does not establish permitting requirements. Central Valley Water Board management developed the Salinity Guidance to outline options for staff's consideration in regulating salinity. The intent was to promote consistency with existing law and regulations and provide a compilation of some available information to staff. However, the Salinity Guidance states that permitting decisions are case-specific and does not establish any rules of general applicability. The Central Valley Water Board therefore disagrees that the Salinity Guidance is an underground regulation.

However, I have withdrawn the Salinity Guidance for the following reasons: First, withdrawal of the Salinity Guidance will eliminate any confusion on the part of CSPA or other members of the public about the effect of the Guidance on permitting decisions. Disagreement about the intent or effect of the Salinity Guidance creates an unnecessary distraction for the Central Valley Water Board's programs. Second, certain aspects of the Salinity Guidance are inconsistent with subsequent decisions of the State Water Resources Control Board (State Water Board), including Order WQ 2009-0003 (*City of Tracy*), Order WQ 2008-0006 (*Berry Petroleum*), Order WQ 2009-0005 (*City of Lodi*) and Resolution 2008-0025, the *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits* (Compliance Schedule Policy). The cited water quality orders are precedential orders of the State Water Board. The Compliance Schedule Policy was approved by the Office of Administrative Law pursuant to the Administrative Procedure Act. Due to time constraints caused by furloughs and other workload issues, it has not been possible to complete a comprehensive review and update of the Salinity Guidance. Third, the State and Central Valley Water Boards are engaged in a comprehensive salinity planning effort known as Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS). CV-SALTS will lead to policy setting and, where appropriate, basin planning actions.

OAL regulations state that "[a]ny action of OAL or an agency pursuant to this chapter in connection with a petition shall be suspended if OAL receives a certification from the agency that it will not issue, use, enforce, or attempt to enforce the alleged underground regulation along with proof that the certification has been served on the petitioner. This certification shall be made by the head of the agency or a person with a written delegation of authority from the head of the agency." (Cal. Code of Regs., tit. 2, § 280.)

California Environmental Protection Agency

In Resolution R5-2007-0009, the Central Valley Water Board delegated to me all of its delegable powers and duties.

The Salinity Guidance was never intended to be enforceable and therefore the Central Valley Water Board does not intend to enforce it. I hereby certify that the Central Valley Water Board will not issue, use, enforce, or attempt to enforce the alleged underground regulation, as stated in the attached memorandum to Central Valley Water Board Program Managers dated September 25, 2009

Sincerely,

A handwritten signature in cursive script that reads "Pamela C. Creedon". The signature is written in black ink and is positioned above a horizontal line.

Pamela C. Creedon, Executive Officer

Enc: Memo to Program Managers
Proof of Service