

May 27, 2014

To: Matt St. John, NCRWQCB E.O.

: Region VIII EPA Ad9/25/14 administrator

RWQCB HAS FAILED TO DEVELOP AND IMPLEMENT TMDLS FOR THE POLLUTANTS CAUSING THE IMPAIRMENT OF DOMESTIC USE SUPPLY, CHANNEL INFILL, AND FLOODING IN A TIMELY MANNER.

California's policies, as implemented by the North Coast Regional Water Quality Control Board agency, deny equal protection under the Clean Water Act to the class of persons reliant on "domestic use" of water in Elk River. This discrimination is well documented, and well supported with a two-decades long record. All "performance reviews" of the North Coast Regional Water Quality Control Board will reveal an abject failure to achieve its own performance objectives. RWQCB's performance does not implement the terms of the State Water Board Glossary. Instead, RWQCB persistently places the burden of the negative environmental impacts onto the same battered community that has been suffering for over twenty years. That is not a stated performance objective.

RWQCB has also failed to provide effective and rational Basin Plan Objectives. The Bacteria Objective does not include a margin of safety sufficient to provide protection for domestic supply use (the indicator is insufficient for other pathogens such as *Cryptosporidium parvum*) particularly where little or

inadequate monitoring is conducted. Furthermore, the Bacteria Objective is vague: it fails to incorporate the 40 CFR 131 anti-degradation policy, Health and Safety Code section 116995, or the controllable factors language of the Basin Plan. This discriminatory policy violates Executive Order 12898 and EO 12630; no federal funding should be used to carry out RWQCB's discriminatory policy. Therefore, we petition for an audit of all funding used to carry out NCRWQCB's regulation in Elk River.

The following quotes are illustrative of RWQCB's failure to provide protection for domestic supply uses; they source from a Winzler and Kelly Report. "Treatment in a septic tank is anaerobic, (without oxygen) and produces a fairly raw effluent that is still very high in bacteria and pathogens, dissolved solids and organics, ammonia and organic nitrogen.".... "the presence of high ground water has significantly reduced their performance. Once in the groundwater, pollutants can travel up to 100 times the distance in unsaturated soils, before achieving the same level of treatment." (Draft Water Resources Technical Report for: Humboldt County Community Development Division, 2007, Winzler and Kelly Consulting Engineers 443-8326, print out page 28)

"A current issue that faces RWQCB and Humboldt County is the protection of 'all' groundwater for potential reuse as drinking water. While protecting our drinking supply is essential, for a number of reasons including geology and water quality.... Currently, this concern is

driving the RWQCB to require removal of nitrogen such that advanced technologies are needed at considerable expense... . The State Health and Safety Code require an appropriate means of sewage disposal for all homes and businesses. It also prohibits discharge of sewage on the ground surface." Health and Safety Code 116995 requires that no person (Humboldt County and Water Board are persons) shall cause or permit livestock to pollute the drinking water supply (surface waters) of any inhabitant of this state.

RWQCB improperly refuses to carry its duty to implement the **mandatory** requirement of Section 116995 or 40 CFR 131.12 and instead has a policy stated by Rich Fadness in a 2010 report: **"There is a reasonable expectation that any water supply will be treated/filtered prior to use as drinking water."** RWQCB knows that Calf/cow pairs are dumping the equivalent raw sewage (additionally loaded with highly infectious to humans *Cryptosporidium parvum* cysts), year round, of 750 persons (according to the metrics of Winzler/Kelly, or 2,500-5,000 persons using the metrics of EPA [120lbs/day]) onto the surface of the ground immediately adjacent to domestic supply intakes. Both flooding and overland flows convey this sewage into the supply intakes. Human infections can occur via aerosol vectors due to the tiny size of the cysts, and infections have been documented to result from as low as two cysts.

So, the Elk WWDR and the proposed TMDL permit continued sediment discharge resulting in continued

channel infill, while RWQCB acts or inactions do not require CAOs to remedy the channel infill for the next 10 or 20 years and then only by voluntary efforts or grants. RWQCB is knowingly causing or permitting the pollution of existing domestic water supplies from intentionally inundated septic systems, cattle, and forestry workers by its actions or inactions.

"Once a water body has been deemed impaired, the State of California and or USEPA are required to develop a TMDL. A TMDL must be developed for each water body and each pollutant or group of pollutants that are causing the impairment to beneficial uses...."
.... "Beneficial uses are designated under the CWA Section 303 in accordance with regulations contained in 40 CFR 131. "

RWQCB knows that domestic supply intakes are polluted by both sediment and bacteria and cattle pathogens including C.parvum. Section 131 is a **mandatory** anti degradation policy which protects the existing riparian rights, domestic use, as well as health and safety and the public trust. RWQCB as trustee, does not have authority to harm, or waste, the public trust; and the people have declared that the priority use of water in this state is domestic use.

"California ranks TMDLs as low, medium, or high priority based on the number and severity of the impairments and the importance of the beneficial uses." According to Table 13-4. TMDL Listed Water Bodies in California: Elk River is listed as Priority High. (see

printed page 35) "The degradation due to sediment is so severe the watershed are no longer able to attain their intended beneficial uses." (see printed page 36)

Therefore, because RWQCB has failed to develop and implement TMDLs for the pollutants causing the impairment of domestic supply in a timely manner we have no alternative than to petition the USEPA to develop the TMDLs in a procedure consistent with environmental justice and equity.

To the extent that NCRWQCB intends to not exercise its CAO and Cease and Desist authority, and/or seeks to immunize or protect polluters from successor liability under Civil Code Section 3483 and/or 3334(b) (avoided costs of compliance), we also petition for sediment cap and trade approach to be implemented, in the stream reaches where nuisance flooding occurs, immediately pursuant to EPA's Water Quality Trading Policy for Nonpoint Source.

Sincerely,

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

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