

# California Antidegradation Policy

Resolution No.

68-16

# Overview of Presentation

- What is the state policy?
- How does it differ from the federal policy?
- How is it implemented in California?

# State Antidegradation Policy

- "Statement of Policy with Respect to Maintaining High Quality Waters in California" (Resolution No. 68-16)
- Part of state policy for water quality control
- Incorporated into all regional water quality control plans

# State Antidegradation Policy

- Applies to high quality waters only
- Requires that existing high quality be maintained to the maximum extent possible
- Allows lowering if:
  - Change is consistent with maximum benefit to people of state, will not unreasonably affect present and potential beneficial uses, and will not result in water quality lower than applicable standards, and
  - Waste discharge requirements for proposed discharge will result in the best practicable treatment or control of the discharge necessary to assure:
    - No pollution or nuisance
    - Highest water quality consistent with maximum benefit to people of the State

# State Policy v. Federal Policy

- State policy differs from federal policy in that it applies to:
  - all waters, including surface waters and groundwater
  - water quality lowerings since 1968
  - all uses, both existing and potential uses, instream and offstream
  - only high quality (i.e. Tier 2) waters
- But, state policy incorporates the federal policy where applicable

# Activities subject to state policy

- Both state and federal policies apply to point and nonpoint activities that could lower surface water quality, e.g.
  - Permits, waste discharge requirements and waivers for surface water discharges
  - Basin planning and policies affecting surface waters
  - 401 certifications
  - Surface water cleanups

# Activities – Part 2

- Only state policy applies to activities that could lower groundwater quality, e.g.
  - Waste discharge requirements and waivers for discharges that could impact groundwater quality
  - Basin planning and cleanups related to groundwater

# Implementation Methods for State Policy

- State uses informal guidance to implement policy
  - NPDES permitting: APU 90-004; EPA's Questions & Answers on Antidegradation; 1987 legal memorandum, entitled "Federal Antidegradation Policy;" EPA Region 9 "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12"
  - State only activities: Memoranda on Resolution No. 68-16 and State Water Boards Orders, e.g. Order WQ 86-8

# Res. No. 68-16 as Applied to Groundwater/ Non-federal Waters

- Applies only to high quality waters
- Use pollutant-by-pollutant approach to determine if water is high quality
- If existing activity would lower existing high water quality, apply test in Res. No. 68-16
- Existing means the best quality since 1968 unless subsequent lowering was due to regulatory action consistent with Res. No. 68-16

# Res. No. 68-16 as Applied to Waters of the United States

- State uses pollutant-by-pollutant approach to determine whether water is in Tier 1 or Tier 2
- If Tier 1, must protect existing instream uses
  - Use 1975 or best quality since then as baseline
  - Example: Mono Lake Decision 1631

# Res. No. 68-16 as Applied to Waters of United States – Tier 2

- California uses qualitative approach to determine whether an activity will lower water quality
  - Focus on whether activity will result in significant increase in mass emissions, substantial relocation of outfall
  - Rigor of analysis tied to degree of water quality lowering
  - Complete analysis not required where water quality lowering is spatially localized, temporally limited, or minor

# Res. No. 68-16 as Applied to Waters of the United States –Tier 2

- If complete analysis required, must find that lowering is “necessary” for “important economic or social development”
- Must also make Res. No. 68-16 findings
- Discharger has the burden

# Res. No. 68-16 as Applied to Waters of the United States –Tier 3

- California has 2 ONRWs – Lake Tahoe and Mono Lake
- California treats ASBS, marine areas of special biological significance, similarly to ONRWs