

Comments



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Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Blvd
So. Lake Tahoe, CA 96150
Attention: Don Jardine, Board Chair
Harold Singer, Executive Officer
Bruce Warden, Ph.D., Environmental Scientist

Re: *Comments on the Renewal of General Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the East Walker River Watershed*

The California Cattlemen's Association (CCA) and the California Farm Bureau Federation (CFBF) appreciate the opportunity to comment on the Lahontan Regional Water Quality Control Board's (Board) proposed amendments to the grazing waiver. As organizations that represent farmers and ranchers all over the state of California, we are concerned over the proposed changes to the grazing waiver as issued by the Board. Ranchers are stewards of the land, and work tirelessly to ensure that the land is healthy and productive for the people of California and future generations of ranchers. As such, CCA and CFBF find the Board's proposal to be an inappropriate overstep of reasonable regulations and hopes that reconsideration will be granted on this matter, as it will negatively affect not only ranching in the area, but the very water quality that the Board is trying to protect.

The proposed compliance with the Basin Plan water quality objective as it relates to fecal coliform is grossly inappropriate and unreasonable when applied to grazing within the East Walker River Watershed. When the Lahontan Regional Board was considering its initial grazing waiver (dated June 13, 2007), it was noted that the Lahontan Basin Plan contained a very unusual 20 cfu/100 mL fecal coliform objective. This objective was apparently originally adopted based on Lake Tahoe's unique purity. It was therefore argued that this standard should be amended or clarified so that in agricultural areas of the region the objective should be 200 cfu/100 mL to match all other areas of the state as well as the federal standard. Board members expressed an interest to do so; however, a suggestion was advanced to operate under an interim standard of 200 cfu/100 mL for 10 years during which it would be determined if 20 cfu/100 mL would be easily achieved and, if not, the interim standard of 200 cfu/100 mL would be made permanent.

In an attempt to follow the suggestions and requests made in the waiver, members of the Bridgeport Ranchers Organization (BRO) have been fully cooperating with Regional Board staff in an extensive water quality monitoring program, and have been implementing best management practices over the last six years. As was stated by the Board, the goal of this ten year period was to assess whether or not 20 cfu/100 mL was a reasonable and achievable goal. Despite countless hours and best management practices conducted by the BRO, testing data demonstrates that 20 cfu/100 mL is an unobtainable goal. Notwithstanding the results from this finding period, the Board has reversed its decision to reconsider a more achievable and universal standard of 200 cfu/100 mL, and has thusly issued amendments to the waiver which establish a time line for achieving the 20 cfu/100 mL level.

Response

CFBF-R1: The 1975 Water Quality Control Plan (Basin Plan) for the North Lahontan Basin applied the 20 fecal coliform per 100 mL water quality objective to ten water bodies, including the East Walker River which is in the Bridgeport Valley. The 20 fecal coliform per 100 mL water quality objective was extended to the rest of the Region in the 1995 Basin Plan update. Based on concerns about the applicability of the 20 fecal coliform per 100 mL water quality objective for areas with historic agricultural beneficial uses, such as the Bridgeport Valley, Water Board staff began conducting studies on both fecal coliform and E. coli covering a wide range of land use types in the region, including agriculture, to develop scientifically defensible standards that address these concerns. These efforts are given in more detail in Finding No. 5 of the proposed grazing waiver. The California Nonpoint Source Implementation and Enforcement Policy (see Finding 4 of the proposed waiver) requires that all sources of nonpoint source pollution be regulated through either Waste Discharge Requirements (WDRs), or waivers of WDRs, or prohibitions. Waivers are the "softest" regulatory approach available to the Water Board and require collaboration with the prospective enrollees. Water Board staff have been collaborating with BRO since 2006 to develop a waiver that is achievable for ranchers, and the timeline provided for compliance with Basin Plan water quality objectives is long and is intended to provide ranchers adequate time to budget management practice implementation in a manner that is affordable. Water Board staff have received no quantitative information on costs of management practice implementation from BRO members or any other organization or individual to substantiate the claim that ranchers will go out of business as a result of reasonable management practice implementation spread out over 16 years.

CFBF-R2: The proposed grazing waiver sets an interim target of 200 cfu/100 ml to be achieved by March 15, 2012, and sets a schedule for completing currently-funded water quality studies, conducting external peer review, and beginning the environmental documentation process to support a future Basin Plan amendment, if needed.

Comments

Not only does CCA and CFBF find this proposed change in the waiver gravely concerning, but we believe it to be a misinterpretation of the Porter-Cologne Water Quality Control Act (section 13241, *et seq.*), which demands that when a regional water board establishes a water quality objective, the objective must reflect "a reasonable protection of beneficial uses." It is neither reasonable nor necessary to apply the most prohibitive water quality objective in the state to the agricultural areas of the Lahontan region when the true intent of the objective is to protect Lake Tahoe waters.

The Water Code allows for some flexibility in establishing water quality objectives as it states that "it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." In guiding regional boards in the development of water quality objectives, the Water Code directs the regional board to consider if such standards "could reasonably be achieved," and in doing so to take into account "economic considerations." It is clear by the Board's newly proposed amendments that these factors have been neither considered nor analyzed, for if they had been, it is apparent that the resulting impacts from such an objective will effectively end ranching in the Bridgeport Valley. To impose this standard on the region would undoubtedly force ranchers and future generations to abandon their work on the land, despite years of data which prove that water leaving the ranch frequently is of higher quality than it was upon entering the property.

Not only would these standards devastate the local ranching community, but they would have additional, possibly unforeseen impacts. Within the Bridgeport Valley, there are several ranches which have been conserved by agricultural easements, legally ensuring the ability of cattle ranching to continue in perpetuity. The Centennial Ranches, for example, have entered into a binding easement with the State of California, and should ranching be made impossible by the onerous standards established by the Board, the state would simultaneously be prohibiting an activity it has previously valued and agreed to protect.

In addition to establishing an untenable standard, the Board has also proposed to amend the water monitoring requirements to a level which goes far beyond what might be deemed a reasonable request. The proposed language suggests that land owners monitor the water five times per month as opposed to once a month. On its face, the request may not be striking; however it must be taken into account that all water must be taken to a lab in Reno, Nevada immediately after sampling to avoid further contamination of the water. This sampling and transport generally takes at least 6 hours. To ask that a rancher perform this task five times each month is unreasonable.

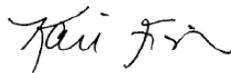
CCA and CFBF encourage the Board to give these comments, and those from landowners, serious thought and consideration. Ranchers in the Lahontan region are currently demonstrating levels of stewardship that should be applauded, and to enforce these restrictive standards would surely put an end to ranching in the area, thus eliminating the current protection of resources by ranchers and placing the full responsibility of maintaining and improving water quality on the Board. We encourage a collaborative partnership in the efforts to improve the natural resources of the state, and look forward to working with the Board on the development of attainable water quality objectives for grazing and agricultural areas.

Sincerely,



Margo Parks

Associate Director of Government Relations



Kari E. Fisher

Association Counsel

Response

CFBF-R3: The Water Board is concerned about the reasonableness of water quality objectives in geographic areas where the dominant beneficial use is agriculture, such as livestock grazing in the Bridgeport Valley. As a result, significant Water Board resources have been used towards assessment of and development of indicator bacteria water quality objectives. For a list of major actions taken, please see Finding No. 5 of the proposed waiver

CFBF-R4: The proposed grazing waiver, page 13, Finding 19, contains the California Water Code section 13263 analysis.

CFBF-R5: Water Board staff have been collaborating with BRO since 2006 to develop a waiver that is achievable for ranchers, and the timeline provided for compliance with Basin Plan water quality objectives is long and is intended to provide ranchers adequate time to budget management practice implementation in a manner that is affordable. Water Board staff have received no quantitative information on costs of management practice implementation from BRO members or any other organization or individual to substantiate the claim that ranchers will go out of business as a result of

CFBF-R6: The proposed Monitoring and Report Program Attachment D, section 3, does not require sampling five times per month. That section states:

The Lahontan Basin Plan suggests a sampling frequency of five times per 30-day period for fecal coliform, but allows for less frequent sampling. Therefore samples for fecal coliform will be collected at all sites at least once per month starting approximately one month before grazing and irrigation, then every month, at a minimum, during the irrigation and/or grazing season (Apr 15 through Oct). The Water Board encourages a sample frequency greater than once per month, as log-normalization of more than one value per month attenuates occasional high spikes in fecal coliform concentration common to this statistic, improving Discharger probability of compliance with target fecal coliform concentrations.

