

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

RESOLUTION NO. R7-2011-0004

Amending the Water Quality Control Plan for the Colorado River Basin Region to Prohibit Septic Tank Discharges in the Town of Yucca Valley, San Bernardino County

WHEREAS, the California Regional Water Quality Control Board, Colorado River Basin Region (hereinafter Regional Water Board), finds that:

1. An updated Water Quality Control Plan for the Colorado River Basin (Basin Plan) was adopted by the Regional Water Board on November 17, 1993, approved by the State Water Resources Control Board (State Water Board) on February 17, 1994, and approved by the Office of Administrative Law (OAL) on August 3, 1994. This Basin Plan has been updated to include amendments adopted by the Regional Water Board through December 2008.
2. The Basin Plan may be amended in accordance with the California Water Code (CWC) Section 13240 et seq.
3. The Basin Plan has narrative groundwater quality objectives, which state in relevant part: "The Regional Board's objective is to minimize the quantities of contaminants reaching any groundwater basin. This could be achieved by establishing management practices for major discharges to land. Until the Regional Board can complete investigations for the establishment of management practices, the objective will be to maintain the existing water quality where feasible." (Basin Plan, Chapter 3, Section IV.)
4. Water Code Section 13243 authorizes the Regional Water Board to specify certain conditions or areas where discharges of specific types of waste will not be permitted.
5. Water Code Section 13280 requires that a determination that discharge of waste from existing or new individual disposal systems or from community collection and disposal systems, which utilize subsurface disposal, should not be permitted shall be supported by substantial evidence in the record. Such evidence shall demonstrate that the discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state.
6. The Town of Yucca Valley is in the southwestern area of the Mojave Desert, approximately 25 miles north of Palm Springs and 100 miles east of Los Angeles, in San Bernardino County. This southwestern part of the Mojave Desert is bordered to the north by the San Bernardino Mountains and to the south by the Little San Bernardino Mountains. The Town of Yucca Valley is the main population center in this area, and the current population is estimated at 24,000.

7. The Town of Yucca Valley (Town) is in the southwest corner of the Morongo Groundwater Basin. The Warren Valley Groundwater Subbasin (Warren Subbasin) is part of the Morongo Groundwater Basin, and it includes water-bearing sediments beneath the Town and the surrounding area. The Subbasin is bounded to the north by the Pinto Mountain fault, to the south by the Little San Bernardino Mountains, to the east by a bedrock constriction called the "Yucca Barrier", and to the west by a bedrock constriction/topographic divide that separates Warren Valley from Morongo Valley. Water-bearing deposits in the Warren Subbasin cover about 5.5 square miles (mi²) of the 19 mi² Subbasin area.
8. The Morongo Groundwater Basin and Warren Subbasin are within the Joshua Tree Hydrologic Unit. The Basin Plan specifies the following beneficial uses for the Joshua Tree Hydrologic Unit:
 - i. Municipal and domestic supply (MUN)
 - ii. Industrial Process Supply (IND)
9. State Water Board Resolution No. 68-16 ("Policy with Respect to Maintaining High Quality Waters of the State," hereinafter Resolution No. 68-16) requires a regional board, when regulating a discharge of waste, to maintain high quality waters of the state (i.e., background water quality) until it is demonstrated that any change in quality is consistent with:
 - i. the maximum benefit to the people of the state,
 - ii. will not unreasonably affect present and anticipated beneficial uses of waters, and
 - iii. will not result in water quality less than that prescribed in policies (e.g., violation of any Water Quality Objective (WQO)).
10. The Hi-Desert Water District (HDWD) is the water purveyor for the Town. It was also designated as the Water Master for the basin when the basin was adjudicated by the San Bernardino County Superior Court in 1977.
11. As the Town's population increased, ground water levels declined. From 1940 to 1994, ground water levels had declined about 300 feet in some areas of the Warren Subbasin. In 1995, HDWD initiated an artificial ground water recharge program to reverse the decline in ground water levels. As a result of the recharge effort, groundwater levels have recovered as much as 250 feet and nitrate concentrations have increased above the USEPA drinking water maximum contaminant level of 45 mg/L.
12. In a U.S. Geological Survey (USGS) 2003 report titled "Evaluation of the Source and Transport of High Nitrate Concentrations in Groundwater, Warren Subbasin, California" Water-Resources Investigations Report 03-4009 (USGS Report), the USGS concluded that "septage from septic tanks was the primary source of nitrate (NO₃) to the ground-water system". (USGS Report, p. 1.)
13. High nitrate concentrations in water used for domestic supply may cause methemoglobinemia ("blue baby syndrome") in infants six months or younger that consume water with nitrate levels that exceed the maximum contaminant level (MCL). These infants may become seriously ill and die, if untreated.

14. Concentrations of nitrates in the Warren Subbasin have violated the Basin Plan's water quality objectives for groundwater.
15. The Town currently has no municipal sanitary sewer or wastewater treatment systems.
16. The proposed Basin Plan Amendment is contained in Attachment A, incorporated herein and made part of this resolution. The amendment modifies Chapter 4 of the Basin Plan: Section II.H, Septic Systems.
17. The proposed amendment enacts a prohibition on discharges of wastewater from septic systems in areas of the Town of Yucca Valley scheduled for sewer installation in the three phases defined in HDWD's Sewer Master Plan (see Attachment B) according to the following schedule:
 - Phase 1 by May 19, 2016
 - Phase 2 by May 19, 2019
 - Phase 3 by May 19, 2022
18. Regional Water Board staff prepared a report titled "Staff Report In Support Of A Basin Plan Amendment To Prohibit The Discharge of Wastewater Into The Ground from Septic Systems In The Town of Yucca Valley" (hereinafter referred to as Staff Report), dated December 2010.
19. The Staff Report has undergone scientific peer review as required by California Health and Safety Code Section 57004. The peer review panel concluded that the proposed amendment to the Basin Plan is needed and scientifically warranted, particularly in the high density areas of the Town of Yucca Valley.
20. Findings in the Staff Report indicate that the discharges of wastes from septic systems in the Town have adversely impacted groundwater quality. Accordingly, staff has concluded that the continued discharge of wastes from the septic systems will result in further degradation of water quality and conditions of pollution, contrary to Resolution No. 68-16 and in violation of Basin Plan water quality standards for the Warren Subbasin.
21. The Regional Water Board has considered and responded to all comments submitted by the peer review panel.
22. The Regional Water Board considered factors in CWC Section 13241, including economic considerations, to develop the proposed amendment. The cost of implementing the amendment is reasonable given the beneficial uses of groundwater that are being threatened and impacted. This proposed Amendment of the Basin Plan will also result in improved groundwater quality.
23. The Staff Report describes the proposed amendment, evaluates a range of reasonable alternatives to comply with the Amendment, provides a cost estimate for the proposed implementation program, and identifies potential sources of financing, as required by CWC Section 13141.
24. The regulatory action proposed meets the "necessity" standard of the Administrative Procedure Act, Government Code Section 11353, subdivision (b).

25. The basin planning process is certified by the Secretary for Natural Resources as a regulatory program exempt from the requirements to prepare an Environmental Impact Report, Negative Declaration, and Initial Study (Title 14, California Code of Regulations (CCR), Section 15241(g)). However, a certified program is subject to other provisions in the California Environmental Quality Act (CEQA), such as the requirement to avoid significant adverse effects to the environment where feasible (Pub. Resources Code, Section 21000 et seq). Regional Water Board staff prepared the required documentation to adopt the amendment, including an environmental checklist and written report (23 CCR Section 3777).
26. Regional Water Board staff held a CEQA scoping meeting on December 18, 2007, to receive comments on the draft amendment and to identify significant issues to consider.
27. Regional Water Board staff completed an environmental checklist indicating no significant adverse effects, individually or cumulatively, to the environment from implementing the Amendment.
28. In accordance with state and federal regulations (23 CCR Section 3775, 40 CFR 25, and 40 CFR 131), Regional Water Board staff circulated for review and comment a Notice of Public Hearing, a Notice of Filing, the Staff Report, the environmental checklist, and draft proposed amendment to interested individuals and public agencies, including persons with expertise identifying environmental impacts from implementing the amendment.
29. On March 17, 2011, the Regional Water Board held a public workshop in the Town of Yucca Valley and heard and considered comments pertaining to this Basin Plan amendment.
30. On May 19, 2011, the Regional Water Board held a public hearing and heard and considered all comments pertaining to the Basin Plan amendment.

NOW THEREFORE BE IT RESOLVED THAT:

1. Pursuant to CWC Section 13240 et seq., the Regional Water Board, after considering the entire record, including oral comments made at the hearing, hereby approves the Staff Report, and adopts the Basin Plan Amendment as set forth in Attachment B.
2. Pursuant to CWC Section 13245, the Executive Officer is hereby directed to forward the Basin Plan Amendment administrative record to the State Water Board for review and approval.
3. Pursuant to CWC Sections 13245 and 13246, the Regional Water Board hereby requests that the State Water Board approve the Basin Plan Amendment, then forward the amendment with supporting documents, to OAL for approval.
4. The Executive Officer is directed to transmit to the California Department of Fish and Game payment of its required CEQA filing fee for certified regulatory programs (currently set at \$965.50), which include this Basin Plan Amendment, as prescribed by California Fish and Game Code Section 711.4 and implementing regulations set forth at 14 CCR Section 753.5.

5. If during the review and approval process, Regional Water Board staff, the State Water Board, and/or OAL determine that minor, non-substantive changes to the language of the amendment are needed for clarity or consistency, the Executive Officer may authorize such change(s), and shall inform the Regional Water Board accordingly.
6. After OAL approval of the Basin Plan Amendment, the Executive Officer is directed to file a Notice of Decision (NOD) with the Secretary for Natural Resources in accordance with Public Resources Code Section 21080.5(d)(2)(E), and 23 CCR Section 3781, and to include with the NOD a copy of the CEQA filing fee paid to the California Department of Fish and Game.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on May 19, 2011.

ROBERT PERDUE
Executive Officer

DRAFT - April 18, 2011

ATTACHMENT A

An Amendment to the Water Quality Control Plan for the Colorado River Basin Region to Prohibit the Discharge of Wastewater Into the Ground From Septic Systems In The Town Of Yucca Valley in San Bernardino County.

AMENDMENT

Chapter 4, Section II.H (Septic Systems), add the following subsection entitled:

Town of Yucca Valley

Pursuant to Section 13280 of the California Water Code, the discharge of wastewater from new or existing individual disposal systems on parcels within Phase 1, Phase 2, and Phase 3 of the Hi-Desert Water District Sewer Master Plan (Final Report, January 2009) is prohibited with certain exceptions noted below.

A. Time Schedule for Implementation

The prohibition shall become effective for all parcels within Phase 1 of the Hi-Desert Water District Sewer Master Plan by May 19, 2016, or when a municipal sewage collection system becomes available, whichever occurs first.

The prohibition shall become effective on parcels within Phase 2 of the Hi-Desert Water Districts Sewer Master Plan by May 19, 2019, or when a municipal sewage collection system becomes available, whichever occurs first.

The prohibition shall become effective on parcels within Phase 3 of the Hi-Desert Water Districts Sewer Master Plan by May 19, 2022, or when a municipal sewage collection system becomes available, whichever occurs first.

A municipal sewage collection system is defined as “available” once the system is operational, and is located within 500 lineal feet of an existing or proposed new disposal system discharge.

B. Reporting

Pursuant to Section 13225 of the California Water Code, by January 1, 2012, the Hi-Desert Water District (HDWD) shall submit to the Regional Water Board a report describing an implementation plan to comply with the May 19, 2016, the May 19, 2019, and the May 19, 2022 prohibition dates.

Thereafter, HDWD shall submit bi-annual reports to the Regional Water Board by January 1st and July 1st of each year regarding any actions taken by HDWD or any other person or entity in order to achieve compliance by the above deadlines.

HDWD has contracted with USGS to study further the impact from septic system discharges in Phases 2 and 3. HDWD will be submitting the results of the study to the Regional Board for consideration of modification of the Prohibition.

C. Prohibition Exemptions

Exemptions to this Prohibition shall be considered and may be granted by the Executive Officer on a case-by-case basis pursuant to an application submitted to the Executive Officer by any person or entity that is subject to the Prohibition (Discharger). Such exemptions shall be based upon the weight of the evidence demonstrating the existence of unique conditions applicable to the Discharger, its discharge, and its property in question. These conditions include, but are not limited to, technical, environmental, or economic conditions that would make connection to the collection system or installation of an on-site advanced treatment and disposal system technically impracticable or economically excessively burdensome. To be considered for an exemption, the Discharger shall apply to the Executive Officer for relief in writing and document the conditions that would make connection to the collection system or installation of an advanced on-site treatment and disposal system technically impracticable or economically excessively burdensome. The application shall also include:

- a) Written quotes from three State licensed commercial contractors regarding the estimated cost to install, operate, and maintain the advanced on-site treatment and disposal system; and
- b) A financial statement regarding the applicant's average income for the last five years, and the applicant's most recent property value assessment.

The Executive Officer shall give substantial consideration to applications accompanied by a letter of support for the exemption from HDWD.

The Executive Officer shall have thirty (30) days from receipt of the application to notify the Discharger in writing whether the application is complete. Following receipt of a complete application, the Executive Officer shall notify the Discharger in writing whether the exemption is granted or denied. If the exemption is denied, the Executive Officer's notification shall include the bases for the denial.

The Executive Officer shall also provide an annual report to the Regional Water Board at its January Board meeting that describes the exemptions to the prohibition that were granted during the previous twelve months.

D. Compliance Assurance and Enforcement

It is the Regional Water Board's objective to work cooperatively with the Dischargers who are subject to this Prohibition to help them achieve compliance with the terms of the Prohibition. Consistent with this objective, the Executive Officer shall assist the Dischargers achieve compliance with the terms of this Basin Plan amendment. In this regard, the Executive Officer shall continue to assist the Town of Yucca Valley and HDWD obtain financial assistance and, within forty-five (45) days following approval of the amendment by the California Office of Administrative Law (OAL), shall notify in writing all Dischargers regarding:

- a) the key deadlines of this Prohibition,
- b) options available to comply with the amendment, and
- c) sources of potential financial and technical assistance.

The Regional Water Board recognizes that there may be circumstances where a Discharger is not responsive to staff compliance efforts. In these cases, the State Water Resources Control Board's Water Quality Enforcement Policy provides clear guidance on the options available to the Regional Water Board to bring the Discharger into compliance. In these circumstances, the Regional Water Board enforcement staff shall implement prompt, consistent, predictable, fair, and progressive enforcement to bring the Discharger into compliance at the earliest practicable date with the terms of this Prohibition. Towards this end, the Regional Water Board staff may take any combination of the following actions, as the circumstances of the case may warrant:

- Issue Notice of Non-Compliance letters;
- Issue an order pursuant to Section 13267 of the California Water Code to ensure that a Discharger submits, in a prompt and complete manner, a technical report to bring its discharge into compliance with this Prohibition;
- Issue a Cleanup and Abatement order pursuant to Section 13304 of the California Water Code against any Discharger who violates the Prohibition and/or threatens a condition of nuisance or pollution;
- Prepare for consideration of adoption by the Regional Water Board, a Cease and Desist order pursuant to Section 13301 of the California Water Code against any Discharger who violates the Prohibition;
- Issue Administrative Civil Liability Complaints, as provided for by the California Water Code, against any responsible party who fails to comply with Regional Water Board orders and/or the Prohibition.

