Regional Water Quality Control Board, Central Valley Region

Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin to Add Policies for Variances from Surface Water Quality Standards for Point Source Dischargers, Variance Program for Salinity, and Exception from Implementation of Water Quality Objectives for Salinity

Response to Comments

The Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) provided draft amendments and a staff report dated March 2014 for public comment from 3 March 2014 to 21 April 2014. The following entities submitted written comments during the public comment period:

1. Stephen A. Hogg, Assistant Director, Department of Public Utilities, City of Fresno (Comment No. 1)

2. Larry Bright, Valley Water Management Company (Comment Nos. 2 to 24)

3. P. Anthony Thomas, Director of Government Affairs, California Independent Petroleum Association (Comment Nos. 25 to 27)

4. Steven G. Bayley, Project Specialist, Public Works Department, City of Tracy (Comment No. 28)

5. Debbie Webster, Executive Officer, Central Valley Clean Water Association (Comment No. 29)

6. Stan Gryczko, WWTP Superintendent, Public Works Department, City of Davis (Comment No. 30)

7. Phil Govea, P.E., Deputy Director of Public Works – Engineering, City of Manteca (Comment No. 31)

Following is a summary of the comments and the responses to the comments:

<u>Stephen A. Hogg, Assistant Director, Department of Public Utilities, City of Fresno</u>

1. **Comment**.
   The City of Fresno supports the proposed amendments to the Basin Plan. The City is an active member and supporter of CV-SALTS. The City concurs with the Regional Board statement in that "the need exists to set current permit limitations as a level that protects water quality but does not compel the irretrievable commitment of major resources in advance of completion of the SNMPs." The

City also concurs with the Regional Board's recommendation to adopt Alternatives 2 and 3 for cities under the Salinity Exception Program.

Response.
The Central Valley Water Board thanks the City of Fresno for providing comments and for its participation in CV-SALTS.

Larry Bright, Valley Water Management Company

2. **Comment.**
The Salinity Variance and Exception is unnecessarily limited to electrical conductivity (EC), total dissolved solids (TDS), chloride, sulfate, and sodium. The proposed policy needs to recognize that the universe of salinity is broader than these 5 constituents. The Merriam Webster dictionary includes within the definition of salt "any of various compounds that result from the replacement of part or all of the acid hydrogen of an acid by a metal or a group acting like a metal: an ionic crystalline compound." Thus, the policy needs to expand the list to specifically or at least potentially include other salinity components, including but not limited to boron, potassium, and manganese, to the extent that these constituents present compliance concerns for Central Valley dischargers.

Response.
The primary reason for these two programs was to provide a specific procedure for permitting flexibility with respect to salinity constituents. As discussed in Section 4.5.2.A. of the Staff Report, these five salinity constituents share similar characteristics. Other constituents were also evaluated and staff determined that there was insufficient information to analyze the treatment technologies that are available for the other constituents. In the future, if information becomes available that demonstrates a need for programs addressing other constituents, amendments can be proposed to the basin plans. At this time, staff does not recommend expanding the *Salinity Variance Program* or *Salinity Exception Program* beyond EC, TDS, chloride, sulfate and sodium. Section 4.5.2.A. of the Staff Report has been revised to clarify that staff evaluated other constituents but did not have sufficient information to include these constituents in the programs.

3. **Comment.**
Alternatively, the general Variance policy for non-priority pollutants needs to also include an Exception for non-priority pollutants. Dischargers under WDRs or waivers should have the same ability to get an exception for non-priority pollutants as NPDES dischargers.

Response.
The Regional Board already has much more flexibility in prescribing compliance schedules in WDRs relative to NPDES Permits, which is why there is more discussion on NPDES Permits. As discussed in Sections 4.3 and 4.5.1 of the

Staff Report, WDRs may include time schedules but WDRs that serve as NPDES permits may only include compliance schedules if the conditions specified in the Compliance Schedule Policy and 40 Code of Federal Regulations section 122.47 are met. For some dischargers, including a time schedule in the NPDES permit is no longer possible; although, there may be justification to grant additional time. Without a compliance schedule for achieving effluent limitations in the NPDES permit, dischargers are subject to third party lawsuits and mandatory minimum penalties. This is not the situation for dischargers subject to WDRs or conditional waivers. Dischargers regulated under WDRs or conditional waivers are not subject to third party lawsuits and mandatory minimum penalties. In addition, the Central Valley Water Board does not have the same restrictions to including time schedules in WDRs as including compliance schedules in NPDES permits. In developing the proposed Basin Plan Amendments, staff did not have information on the regulatory issues or ability to treat constituents other than EC, TDS, chloride, sulfate and sodium. In the future, if information becomes available that demonstrates a need for programs addressing other constituents, amendments can be proposed to the basin plans. At this time, staff does not recommend expanding the exception program beyond EC, TDS, chloride, sulfate and sodium.

4. Comment.

The proposed policy appears to be largely focused on Publicly Owned Treatment Works (POTWs), even though there are many other dischargers that would need access to the temporary regulatory relief being offered. Many other discharges, including food processing and produced water discharges, have high salinity levels or high levels of other non-priority pollutants that need to utilize the proposed policy. Additional clarity is needed to emphasize that this policy is for all discharges despite the POTW focus of the Technical Report, case studies, and other analyses.

Response.

The proposed Basin Plan Amendments consist of three parts. The first part is the *Variance Policy* that is available to all dischargers that are subject to NPDES permits, not just POTWs. This part is necessary to allow the Central Valley Water Board to delay implementation of effluent limitations in NPDES permits similar to the authority to include time schedules in WDRs. Variances approved by the Central Valley Water Board must still be approved by the US Environmental Protection Agency (USEPA) before becoming effective.

The second part of the proposed Basin Plan Amendments is the *Salinity Variance Program*, which provides a streamlined approval process by including the variance application information in the program. Only POTW information was available to provide the required information; therefore, only POTWs are eligible to apply for a variance under the *Salinity Variance Program*. Should information be available in the future for other discharger types, additional variance programs for these other dischargers can be developed and added to the Basin Plans.

While developing the *Salinity Variance Program*, it was apparent that a similar program would be useful for dischargers that are not subject to NPDES permits. So, the third part of the proposed amendment, the *Salinity Exception Program*, was modeled after the *Salinity Variance Program*. The goal for the *Salinity Exception Program* is to provide similar requirements as the *Salinity Variance Program*. Like the *Variance Policy*, which is applicable to all dischargers subject to NPDES permits, the *Salinity Exception Program* is available for all dischargers that are not subject to NPDES permits.

The proposed Basin Plan Amendments do not specify discharger type except under the *Variance Program for Salinity Water Quality Standards*, which specifies in Section III.A. that the *Salinity Variance Program* is for municipal and domestic wastewater dischargers. There is no need to specifically state that all dischargers may apply for a variance under the *Variance Policy* or for an exception.

Staff does not recommend any revisions to the proposed Basin Plan Amendment or the Staff Report.

5. Comment.
The proposed policy should recognize at the end of section 1.1 that the Exception Program can be implemented more quickly than variances since there is no need for U.S. EPA review and approval.

Response.
While modeled after the *Salinity Variance Program*, the *Salinity Exception Program* is for dischargers that are not subject to NPDES permits. Including the recommended statement would add confusion by implying that dischargers can choose whether to apply for an exception or a variance. Dischargers subject to NPDES permits do not qualify for exceptions and may only apply for variances. Dischargers that are not subject to NPDES permits do not qualify for variances and must apply for exceptions. Staff has revised Section 4.5.3 of the Staff Report to clarify that dischargers that are not subject to NPDES permits do not quality for variances.

6. Comment.
The conclusion in Section 1.3 that "because re-evaluation of water quality standards that underlie effluent limitations is not an action leading to compliance with the limitations, compliance schedules are not an appropriate regulatory mechanism when the water quality standards may be revised so that the more stringent permit limitations are no longer applicable" seems to be inconsistent with State Water Board holdings. In the Vacaville order, No. 2002-0015 at page 76, the State Water Board stated: "7. Where a Regional Board has evidence that a use does not exist and likely is not feasibly attainable, the Regional Board should avoid enforcing permit limits to protect the use at least until the Regional

Board either amends the basin plan to dedesignate the use, or determines that the use cannot legally be dedesignated." (Emphasis added.) Providing a compliance schedule would be one method to "avoid enforcing permit limits" and is certainly allowed under state law. See Water Code sections 13050(j); 13242(b), and 13263(c).

Response.
Staff agrees that the State Water Board directed the Central Valley Water Board in Order WQO 2002-0015 (SWRCB. 2002.) to avoid enforcing permit limits to protect a beneficial use that the Regional Board believes is inappropriate. In Section II.A.2.b. of the same order, the State Water Board identifies possible avenues for interim permit relief that include "compliance schedules and interim limits in the permit, where authorized, case-by-case exceptions under the Toxics Policy for priority pollutant effluent limitations, and, as a last resort, a compliance schedule with interim limits in a separate enforcement order, especially an enforcement order meeting the criteria in Water Code section 13385(j)(3)." In 2000, when the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)*, referred to above as the "Toxics Policy," the Policy included authorization for compliances schedules to take into account the development of Total Maximum Daily Loads (TMDLs) for Clean Water Act section 303(d) impaired waters. In 2006, USEPA disapproved this compliance schedule provision because it was inconsistent with the definition of compliance schedules in section 502(17) of the Clean Water Act. (Strauss. 2006.) Specifically, USEPA concluded that a compliance schedule must contain an enforceable series of actions by the permittee that will result in compliance with a water quality-based effluent limitation; it is not appropriate to defer establishment of a water quality-based effluent limitation until a TMDL has been developed; and compliance schedules must provide for achievement of water quality-based effluent limitations as soon as possible.

In 2008, the State Water Board adopted the *Compliance Schedule Policy* in Resolution 2008-0025, which does not include the authority to issue compliance schedules to take into account re-evaluation of water quality standards that underlie effluent limitations. As discussed in Section 4.5 of the Staff Report, the State Water Board directed the Central Valley Water Board in Order WQ 2009-003 (SWRCB. 2009.) to consider various planning options if there are no feasible ways for the discharger to reduce the level of EC to meet the water quality objective. The State Water Board did not direct the Central Valley Water Board to consider compliance schedules. Staff evaluated the various planning options in Appendix B of the Staff Report.

Compliance schedules are not an appropriate regulatory mechanism when the water quality standards may be revised so that the more stringent permit

limitations are no longer applicable. Staff does not recommend revising the Staff Report.

7. Comment.

Because the water quality objectives for salinity are mostly interpretations of a narrative objective, or are incorporated by reference Maximum Contaminant Levels (MCLs) to protect a municipal drinking water (MUN) use, the Regional Board should utilize flexibility in interpreting those objectives to lessen the need for a variance or exemption. For instance, the MCLs should be applied as annual averages as they are in the drinking water program. Where MCLs are set forth in a range of numbers as they are for TDS and EC, the Regional Board should not automatically set limits based on the lowest number in the range. State law requires reasonable protection, not full protection of all uses. Water Code §13000. In addition, compliance could be determined at the point of use of the water, not as an end-of-pipe effluent limitation, to allow for dilution and mixing in the receiving surface water or aquifer since none of the MCLs are set to protect aquatic life or recreational (fishable/swimmable) uses.

Response.

Exactly how a narrative objective is interpreted, or which of the three secondary MCLs for salinity (recommended, upper limit, or short term) is applied is dependent upon the specific circumstances at the discharge site. In general salinity objectives to protect MUN use are applied as longer-term averages (generally as annual average to match how they are applied by CDPH for drinking water systems), and the most stringent possible concentration is not always chosen.

The Salt and Nitrate Management Plans (SNMPs) for the Central Valley that are currently under development through CV-SALTS, will include recommendations to establish regulatory structure, and policies to support basin-wide salt and nitrate management. These SNMPs will be the basis of future basin plan amendments. CV-SALTS is currently evaluating the appropriate application of secondary MCLs as part of the development of SNMPs. At this time, CV-SALTS is the appropriate venue to explore flexibility in interpreting the use of the MCLs. In the meantime, a variance is an appropriate regulatory mechanism to provide permitting flexibility. Staff recommends no revisions to the proposed Basin Plan Amendments or the Staff Report in response to this comment.

8. Comment.

The policy should specify that not all dischargers have the ability to do pollution prevention plans. This concept may work well for POTWs, but many industrial dischargers have no ability to modify the waste streams they treat or dispose of. Similarly, there may not be many ways to create or implement a salinity reduction program for some discharges. For these reasons, there needs to be flexibility incorporated into the requirements associated with these plans and programs.

Response.
There are almost always ways for a POTW or industry to reduce effluent salinity, but the discharger may not away have the authority to implement those reductions (in the case of a POTW), or the reductions may be economically or technologically infeasible. If the Board is going to allow the discharger to continue discharge, then the discharger needs to implement feasible measures to reduce the discharge of the pollutant and the pollution prevent plan is a mechanism already included in Water Code section 13263.3 for this purpose.. Under the general variance authority, it is appropriate for the Central Valley Water Board to require preparation and implementation of a pollution prevention plan pursuant to Water Code section 13263.3. The pollution prevention plans specified in Water Code section 13263.3 apply to all dischargers. Water Code section 13262.3(d)(2) provides requirements specifically for dischargers other than POTWs. The Salinity Reduction Study Work Plan is a pollution prevention plan that is specific to salinity constituents. Both the pollution prevention plan and the Salinity Reduction Study Work Plan are mechanisms to evaluate the pollutants of concern and to identify and implement feasible measures to reduce the discharge of the pollutants of concern. Since a variance from water quality standards allows continuation of the discharge of a pollutant that exceeds the water quality based effluent limitations, a pollution prevention plan is an appropriate regulatory mechanism to reduce the discharge of the pollutant of concern. Staff recommends no revisions to the proposed Basin Plan Amendments or the Staff Report in response to this comment.

9. Comment.
Section 4.2.2. must recognize the differences between state and federal law and recognize that both allow for a consideration of economics and/or attainability. Under state law, both Water Code section 13241 and 13263 require that certain factors, including economic considerations, be considered when adopting water quality objectives and waste discharge requirements. In addition, the Clean Water Act and federal regulations discuss the concept of "when attainable" — and certain objectives and effluent limits set to meet those objectives may be unattainable based on economic considerations. While EPA 304(a) criteria guidance are set without consideration of costs, water quality standards must take into account "use and value" and economic considerations under state law when adopted. Water Code section 13241; 40 C.F.R. 131.6(e). EPA has an obligation to ensure that standards are adopted in accordance with state law (which in California includes a consideration of economics). 40 C.F.R. §131.5(a)(3). In addition, where NPDES permit limits are more stringent than required by federal law to protect uses not mandated by the CWA (e.g., fishable/swimmable uses) and protect additional uses under state law (e.g., MUN, Groundwater Recharge), then economics can be considered in setting effluent limitations. See City of Burbank v. SWRCB, 35 Cal. 4th 613, 618, 628 (2005).

Response.
Section 4.2.2 of the Staff Report provides background on the actions the Central Valley Water Board has taken to regulate salinity in permits. Section 4.2.2 of the Staff Report explains that a variance will allow the Central Valley Water Board the ability to consider economics to establish an interim effluent limitation(s). Sections 2.1 and 3.1 of the Staff Report summarize the laws and regulations for designating beneficial uses and establishing water quality objectives, which along with the antidegradation policy, make up the water quality standards required under section 303(c) of the Clean Water Act. Under federal laws and regulations, economic factors may be considered when designated beneficial uses (Section 2.1.2 of the Staff Report), and under state law, economic factors are considered when establishing water quality objectives (Section 3.1.1 of the Staff Report). Staff believes that the discussions on economics are adequate and recommends no changes to Section 4.2.2 of the Staff Report in response to this comment.

Moreover, the proposed amendments do not include water quality objectives but are a program of implementation and thus not subject to Water Code section 13241 (see, e.g., *San Joaquin Exchange Contractors v. State Water Resources Control Board* (2010) 183 Cal. App.4th 1110, 1119).

In short, the proposed amendments do not include water quality objectives, do not implement an agricultural water quality control program, nor require any additional treatment as a reasonably foreseeable method of compliance.

10. Comment.
Section 4.5.1. should be titled "General Variance/Exemption Authority for Non-Priority Pollutants" and expanded to include WDRs/waivers in the ability to get exemptions for these additional constituents. The legal authority in this section should also be expanded to include the following: "Water quality objectives and WDRs may contain a time schedule. (Wat. Code §§ 13242, 13263.)".

Response.
See Responses to Comment Nos. 2 and 3. Staff agrees that Water Code section 13242 specifies that time schedules be included in Basin Plan implementation programs to achieve the water quality objectives. Section 4.5.1 of the Staff Report has been revised.

11. Comment.
In the discussion on page 26 of "End-of-pipe treatment," there is another alternative to source control, source water replacement and end-of-pipe treatment and that is blending the discharge with low-salt water to dilute the salinity levels. However, while this might be available for some small discharges, this is likely not a reasonable beneficial use of potable water for large dischargers or in a drought situation.

Response.
In California, the waste or unreasonable use of water should be prevented (Wat. Code, § 100). Therefore, it would not be appropriate to promote the use of water for the purpose of diluting wastewater. Appropriate avenues to take into account dilution are through mixing zones or by co-discharging waste streams. Dischargers may apply for a mixing zone or dilution credits if there is assimilative capacity in the receiving water. The request for a mixing zone is part of the permitting process so the assumption is that any available mixing zone would have been incorporated into the water quality based effluent limitation that the discharger is unable to achieve prior to the application for a variance. One other possibility for diluting a waste stream is by blending two or more effluents in which at least one of the effluents has low salinity. While technically viable, this situation is very uncommon and no information is available to describe this option in the Staff Report. Staff recommends no changes to the Staff Report.

12. Comment.
On page 29 at the end of the page, it is not clear why the report concludes "[i]f the general variance authority is not adopted, then a Salinity Variance Program is not recommended." The two seem to be able to be adopted separately or together.

Response.
See Response to Comment No. 2. While the *Salinity Variance Program* can be adopted on its own, it has limited usefulness since it is only applicability to POTWs that are consistent with the case studies described in the Staff Report. Therefore, staff does not recommend that the *Salinity Variance Program* be adopted without the *Variance Policy*. Staff recommends no changes to the Staff Report.

13. Comment.
On page 40 and potentially elsewhere, it states that variances should be limited to "a time as short as possible." As short as possible could mean no time schedule at all. Thus, the word "possible" should be changed to "feasible," which is defined as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. 14 C.C.R. §15364.

Response.
Staff agrees that the variance should be limited to a time as short as feasible and not as short as possible. The intent of the variance is to provide time to identify and implement feasible actions to reduce or eliminate the discharge of constituents subject to the variance or exception. The use of the term feasible is not meant to be defined consistent with 14 CCR 15364 but is meant to be consistent with federal usage under 40 CFR 131.10(g). The proposed Basin Plan

Amendment language has been revised to specify that a variance or a renewal should be for a time as short as feasible.

14. Comment.

A large problem with this policy is the stated requirement on page 40, page 52, and elsewhere that the variance or exemption applicant must prepare documents in compliance with the California Environmental Quality Act (CEQA). Requiring each applicant to perform a CEQA analysis for each variance/exemption would cost an enormous amount of time and money and is wholly unnecessary. On page A-16, the Regional Board has performed its environmental checklist to evaluate this program and has determined that the policy will not and could not have any significant effect on the environment. This is because the variance/exemption maintains the status quo of the discharge instead of requiring extraordinary upgrades that might be needed to meet effluent limitations based on the current interpretations of the applicable water quality objectives. For this reason, the policy should state that there are several categorical exemptions that would apply to avoid the need to perform a CEQA analysis on every variance/exemption request, namely under 14 C.C.R. section 15301, which includes permitting of existing facilities involving negligible or no expansion of use, and potentially sections 15307/15308 for the protection of the environment/natural resources since there is no relaxation of standards allowing for degradation, only permitting flexibility on how and when those standards must be met, assuming they are not modified during the CV-SALTS process. Moreover, when a variance/exemption is granted as part of a permit modification/issuance, then that action is exempt from CEQA under Water Code section 13389. These exemptions recognized in 14 C.C.R. 15061(b)(1) and (2), along with the common sense "seen with certainty" exception in 14 C.C.R. 15061 (b)(3), weigh against the need for each applicant to provide a duplicate environmental analysis under CEQA.

Response.

The proposed Basin Plan Amendments provide for a short-term exceedance of the water quality standards, water quality objectives and effluent limitations specified in the Basin Plans. Exceedance of water quality standards and Basin Plan effluent limitations is not included in the exemption described in Water Code section 13389. Similarly, the exemptions under the CEQA guidelines are for modification of existing facilities that involve negligible or no expansion of existing use. The baseline condition is that the Central Valley Water Board will compel dischargers to reduce pollutant discharges such that the water quality standards are achieved. The environmental analysis performed for the policy assumes that the interim effluent limitations that will be imposed during the term of the variance or exception will be current level of the constituent in the effluent. The impact analysis was based on the flows of the POTWs used as case studies. There was no available information on other discharger types, so staff could not evaluate the environmental impacts resulting from granting exceptions or general variances

for these other discharger types as part of the proposed Basin Plan Amendments. However, the *Variance Policy* and the *Salinity Exception Program* is not restricted to POTWs and allow the Board to consider granting an interim effluent limitation that is higher than the current level if the applicant demonstrates the needs for the higher limitation due to drought, water conservation, and/or water recycling efforts. As discussed in Section IX of the Environmental Checklist in Appendix A of the Staff Report, any additional discussion on the potential impacts from allowing an interim effluent limitation that is higher than performance-based would be speculative at this time. To address this issue, the proposed Basin Plan Amendments specify that individual variances under the *Variance Policy* and individual exceptions under the *Salinity Exception Program* are subject to CEQA requirements and anti-degradation analysis at the time they are considered. In considering these variances and exceptions, the Central Valley Water Board is not prohibited from determining that an exemption applies to the action. Staff does not recommend any changes to the proposed Basin Plan Amendment or the Staff Report.

15. Comment.

On page 41 in section C.(1), it seems to presume that a variance will only be for a single constituent, which may not be the case. An (s) should be added to constituent and water quality standard here and in other sections that seem to only reference a single pollutant or standard.

Response.

Staff agrees with the comment. The proposed Basin Plan Amendments have been revised to be consistent with the comment.

16. Comment.

Any required pollution prevention plan (e.g., page 43, section G.(2)), or salinity reduction plan (e.g., page 46, section C.(5)) should be limited to addressing the constituent(s) for which the variance or exemption is granted.

Response.

Staff agrees that the pollution prevention plan should be required to address only the constituents for which a variance is sought. However, staff does not agree that the Salinity Reduction Study Work Plan should be limited to the specific constituent(s) for which the variance or exemption is being sought because of the similarities between the five constituents included in the *Salinity Variance Program* and the *Salinity Exception Program*. Staff has revised the proposed Basin Plan Amendments at Section II.G.2. to specify that the pollution prevention plan is for the constituents for which a variance is sought. Staff does not recommend changes to the requirements for the Salinity Reduction Study Work Plan.

17. Comment.

The definition of "person" in footnote 5 on page 50 seems focused on local, state, and federal entities and should be expanded to include the definition in 40 C.F.R. §122.2, which defines "person" as "an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof."

Response.
The section referenced in the comment is for the *Salinity Exception Program* which is applicable to dischargers subject to WDRs or conditional waivers that are not NPDES permits. These dischargers are "persons" as defined in Water Code section 13050(c). "Person" as defined in Title 40 Code of Federal Regulations section 122.2 is appropriate for dischargers subject to NPDES permits. Staff does not recommend any changes to the proposed Basin Plan Amendments.

18. Comment.
No explanation is provided for the prohibition on new or renewed salinity exceptions after June 30, 2019. There may be new issues in the future that are currently unanticipated that could benefit from the continued use of this policy. Other state policies have been in existence and are still utilized decades later (Res. No. 68-16). Thus, this sunset provision should be removed.

Response.
As discussed in Section 1.3.2 of the Staff Report, there is a need for permit flexibility during the development of SNMPs and the review of the southern Delta salinity objectives. As explained in Section III.A. (*Variance Program for Salinity Water Quality Standards*) and the preamble to the *Limited-Term Exceptions from Basin Plan Provisions and Water Quality Objectives for Groundwater and for non-NPDES Dischargers to Surface Waters* in the proposed Basin Plan Amendments, there is a need for these variances and exceptions to support the development and implementation of the SNMPs under development by CV-SALTS. The Recycled Water Policy requires that the SNMPs be submitted to the Central Valley Water Board by May 2016 and that the SNMPs become the basis for basin plan amendments to be considered by the Regional Water Board by May 2017. After the SNMP amendments are fully approved and in effect, the justification for the *Salinity Variance Program* and *Salinity Exception Program* will no longer be applicable. Staff expects the SNMP amendments will be in full effect and implemented by June 2019.

It should be noted that the eventual SNMP amendments may include variances and exceptions to support the implementation of actions under the SNMPs, including salinity programs similar to the programs in the proposed Basin Plan Amendments. Should sufficient information be available during development of the SNMPs and the SNMP amendments, the SNMP amendments could also

authorize variances and exceptions for discharger types or salinity constituents other than the ones authorized in the proposed Basin Plan Amendments.

Staff does not recommend revising the proposed Basin Plan Amendments or the Staff Report.

19. Comment.

The Tulare Lake Basin plan excerpts on pages 54-56 contain numeric discharge limitations for EC, chloride and boron that may not have current applicability and are one of the reasons that the variance/exception policy is needed. Presumably these will be the subject of review and possible modification through the CV-SALTS process. The Regional Board should also look to remove language, such as "whichever is more stringent" since that type of language removes flexibility and the ability to regulate on a site-specific basis.

Response.

Staff agrees that the CV-SALTS process is the appropriate venue to evaluate the water quality objectives and effluent limitations for salinity constituents that are in the Tulare Lake Basin Plan. This comment will be forwarded to CV-SALTS for its consideration.

Staff does not recommend any revisions to the proposed Basin Plan Amendment or the Staff Report.

20. Comment.

Concerns exist that these variances/exceptions will not be granted even though incorporated into the Basin Plan and needed by dischargers. As seen on pages 55 and 56, there are already exceptions for industrial sources, food processing industries, and oil field wastewater in the Basin Plan, but there have not been many (if any) exceptions granted previously under this language. In fact, Valley Water asked for a public hearing under the oil field wastewater exception in 1996 and has never been granted a hearing to make the requisite demonstration. There needs to be a commitment by the Regional Board to actually grant these variances/exemptions and perhaps the approval could become a ministerial decision (like the issuance of a building permit) if certain criteria are met. This would help with issues related to CEQA as well if this were not a discretionary determination.

Response.

It is the intent of the Board to review and, where appropriate, grant variance requests. Submission of a request does not, however, automatically result in a hearing before the Regional Water Board. The request must be supported by appropriate technical data and be in accordance with the variance policy before a hearing for Board consideration would be scheduled. The Board always has

discretion to choose the more environmentally protective option and not grant the variance. The goal of the Amendments is not to compel the Board to act.

21. Comment.

The current language on page 60 draws too much between differences before and after a variance/exemption. In most cases, a variance/exemption is needed because the effluent limitations are unattainable. Therefore, the language of the third full paragraph should be changed as follows: "There ~~is~~ may be a difference in water quality between allowing a variance and not allowing a variance. The difference ~~is~~ would be the incremental improvement in ambient water quality if there were no variance and the discharger was required to and could feasibly meet water quality based effluent limitations. . ."

Response.

Section 4.5.2.B of the Staff Report summarizes control strategies for removing salt from wastewater including end-of-pipe treatment. Implementation of these treatment technologies could achieve water quality based effluent limitations; although, it is widely acknowledged that end-of-pipe treatment is very expensive. Staff analyzed the economic impact of implementing reverse osmosis, which is the treatment technology that is generally recommended as the least costly of the end-of-pipe treatment technologies and the most proven to remove salt from wastewater. Implementation of reverse osmosis treatment was expected to have a moderate economic impact to the affected communities. A moderate impact is normally considered to be feasible. In this case (Section 4.5.2.C of the Staff Report), staff recommends that the Central Valley Water Board consider salt treatment technology to be infeasible because of its moderate economic impact to the affected communities, the economic impact due to the proximity of the affected communities to each other, the social impact from the energy consumption and greenhouse gas emission, the lack of water quality improvement in the receiving waters, and the technical difficulties of brine disposal. In addition due to the efforts to develop SNMPs under CV-SALTS and the review of the southern Delta salinity objectives, staff believes that the Board should consider the need to set permit limits at a level that protects water quality but does not compel the irretrievable commitment of major resources before the completion of these planning processes. The discussion on Page 60 (Section 6.1.2 of the Staff Report) is appropriate since the adoption of the proposed Basin Plan Amendments is when the Board determines that imposing treatment requirement, such as reverse osmosis technology, is infeasible. Staff does not recommend revising the Staff Report.

22. Comment.

The language at the end of the page on page 63 seems to indicate that "reverse osmosis is the most appropriate end-of-pipe treatment for POTWs," yet this should contain a caveat that this technology may be infeasible due to cost, brine production, and greenhouse gas and energy concerns. The current wording

might be misunderstood to support the implementation of reverse osmosis as the "most appropriate" option.

Response.
See Response to Comment No. 21.

23. Comment.
Instead of requiring a salinity reduction plan or pollution prevention plan for discharges where the ability to reduce salinity is limited, the discharger should be given the option to instead participate in the creation and implementation of a local salt management plan that would address the constituent of concern, but may not reduce or prevent salt disposal so long as the current activities are demonstrated to be protective of actual local uses or not utilizing all local assimilative capacity.

Response.
Compliance with salinity requirements by the control of salts at the discharge source is the preferred alternative to compliance as it reduces the actual amount of salt released to the environment. Source control is not always feasible, however, but it should be evaluated before alternatives are considered. The *Salinity Variance Program* and the *Salinity Exception Program* require both the development and implementation of a Salinity Reduction Study Work Plan (Sections III.C.5. and III.F.2 of the *Variance Program for Salinity Water Quality Standards* and Item 5 of the *Limited-Term Exceptions from Basin Plan Provisions and Water Quality Objectives for Groundwater and for non-NPDES Dischargers to Surface Waters*) and participation in CV-SALTS by contributing to the development and implementation of the SNMPs (Sections III.C.10. and III.F.3 of the *Variance Program for Salinity Water Quality Standards* and Items 3, 6 and 8.e. of the *Limited-Term Exceptions from Basin Plan Provisions and Water Quality Objectives for Groundwater and for non-NPDES Dischargers to Surface Waters)*.

The above requirements satisfy Resolution R5-2010-0024, in which the Central Valley Water Board directs parties developing salinity and nutrient management plans to conduct the work in conjunction with the CV-SALTS initiative. The development and implementation of local Salinity Reduction Study Work Plans must be coordinated with CV-SALTS and may be the manner that a discharger participates in CV-SALTS. Staff does not recommend any revisions to the proposed Basin Plan Amendments or Staff Report, which already provides the requested flexibility.

24. Comment.
In closing, Valley Water hopes the requested changes can be made to the policy prior to adoption so that the policy can be workable for all dischargers that need to utilize variances and/or exceptions from currently applicable water quality

objectives or beneficial uses that may be modified as a result of the CV-SALTS and further Basin Planning processes.

Response.
The Central Valley Water Board thanks the Valley Water Management Company for providing comments.

P. Anthony Thomas, Director of Government Affairs, California Independent Petroleum Association

25. Comment.
While CIPA is generally supportive, our members have concerns regarding the proposal including, but not limited to, its current limitation to provide exemptions only for total dissolved solids (TDS), chloride, sulfate, sodium and electrical conductivity. Kern County represents over 75% of our member's production and the Regional Board's proposal may negatively impact the vast majority of our member companies if the exemption is not broadened. In reviewing the proposal, we also question whether the policy adequately encompasses all discharges as opposed to a focus on Publicly Owned Treatment Works (POTWs). For these reasons, we recommend an expansion of the policy to reflect a wider range of dischargers and of salinity components that may include boron, manganese and potassium.

Response.
See Responses to Comment Nos. 2, 3 and 4.

26. Comment.
Water quality objectives for salinity are interpreted via a narrow objective or incorporated by reference Maximum Contaminant Levels (MCLs) to protect municipal drinking water. Given this reality, the Regional Board should exercise flexibility in interpreting those objectives to reduce the need for a variance or exemption. Then, when applicable, the policy should be specific and not indict all dischargers who may not have the capability of putting together an extensive pollution prevention plan. Many industrial dischargers do not have the ability to modify waste streams nor are there a host of options to create or implement a salinity reduction program for many dischargers. The discharger should be given alternative options to participate in CV-SALTS, in another local group focused on reducing regional salinity loading, or in the creation of a local salt management plan that will address the Regional Boards concerns.

Response.
See Responses to Comment Nos. 7, 8 and 23.

27. Comment.

Any proposed policy should include flexibility in its request for the optimum outcome of the policy's implementation goals and the Water Quality Objectives for Salinity should not be relieved of this responsibility. It is in the best interest of those who will mandate companies to follow the proposed regulation to exercise caution in adopting any policy; our request is for the Regional Board to institute workable changes so that all dischargers may utilize variances or exceptions for a better basic planning process.

Response.
The Central Valley Water Board thanks the California Independent Petroleum Association for providing comments and agrees with the need for flexibility when developing requirements for dischargers. As discussed in the Response to Comment No. 18, these proposed Basin Plan Amendments were developed in response to the need for permit flexibility. In addition, CV-SALTS is currently developing comprehensive salt and nitrate management plans that could include recommendations for regulatory structures and policies that may provide additional flexibility through future basin plan amendments. Interested entities are encouraged to participate in CV-SALTS.

Steven G. Bayley, Project Specialist, Public Works Department, City of Tracy

28. Comment.
The Variance Program for Salinity as proposed by the Regional Board would be beneficial in the management of salinity. The changes in salinity in Tracy's wastewater effluent are dependent upon, to a great degree, the source of potable water supply. During drought years increased volumes of highly saline native groundwater from wells are anticipated to be pumped to provide municipal water supply, resulting in increased levels of salinity in the wastewater effluent. Tracy is utilizing aquifer storage and recovery to minimize the use of the native groundwater, but during droughts native groundwater will need to be utilized to meet the community water demand. The Variance Program would provide a tool to address this type of temporary condition, as well as other potential temporary excursions above salinity standards. Tracy supports the work performed by the Regional Board in addressing the Central Valley salinity issue, through CV-SALTS, the process for re-evaluation of the Delta salinity standards and this proposed Variance Program for Salinity. Tracy recommends the Regional Board adopt the amendments to the Basin Plans as described in the Draft Staff Report dated March 2014.

Response.
The Central Valley Water Board thanks the City of Tracy for providing comments and for its participation in CV-SALTS.

Debbie Webster, Executive Officer, Central Valley Clean Water Association

29. Comment.

CVCWA writes to support the amendments to the Basin Plans and encourage the Central Valley Regional Water Quality Control Board (Regional Board) to adopt the Variance Policy, the Salinity Variance Program, and the Salinity Exception Program.

With respect to the Salinity Variance Program and Salinity Exception Program, CVCWA and many of its members have been active participants in the Central Valley Salinity Alternative for Long-Term Sustainability (CV-SALTS), the Regional Board's planning process for salinity and nutrient management and regulation. While CV-SALTS continues to develop a long-term plan that addresses salinity comprehensively, in the interim period, CVCWA's members must comply with effluent limitations and other permit requirements based on the existing water quality objectives for salinity. These effluent limits may not be attainable, except with significant and expensive facility upgrades. Furthermore, the water quality objectives upon which the effluent limits are based are likely to be revised as a result of CV-SALTS or the State Water Resources Control Board's review of the salinity standards in the Bay-Delta Plan.

The Salinity Variance Program and the Salinity Exception Program provide the Regional Board with a necessary regulatory tool to use in cases where the current objectives require an outcome that is likely to be inconsistent with the future salinity management plan in the Central Valley. CVCWA also believes that the Variance Policy in general helps to provide the Regional Board with an important regulatory tool that does not currently exist in the Basin Plans.

Accordingly, CVCWA encourages the Regional Board to adopt the amendments to the Basin Plans as they are set forth in the March 2014 Draft Staff Report.

Response.

The Central Valley Water Board thanks the Central Valley Clean Water Association for providing comments and for its participation in CV-SALTS.

<u>Stan Gryczko, WWTP Superintendent, Public Works Department, City of Davis</u>

30. Comment.

The City has provided support for this process and encourages the Central Valley Regional Water Quality Control Board to adopt the Variance Policy, the Salinity Variance Program, and the Salinity Exception Program.

With respect to the Salinity Variance Program and Salinity Exception Program the City has worked with the Central Valley Clean Water Association and the Central Valley Salinity Alternative for Long-Term Sustainability, the Regional Board's planning process for salinity and nutrient management and regulation. We are working cooperatively with CV-SALTS as they work to develop a long-

term plan that addresses salinity comprehensively. At this time the City is working to reduce salinity through the Woodland Davis Clean Water Agency project in order to meet final salinity effluent limits. However, the water quality objectives upon which the effluent limits are based are likely to be revised as a result of CV-SALTS or the State Water Resources Control Board's review of the salinity standards in the Bay-Delta Plan.

The Salinity Variance Program and the Salinity Exception Program provide the Regional Board with a necessary regulatory tool to use in cases where the current objectives require an outcome that is likely to be inconsistent with the future salinity management plan in the Central Valley. The City also believes that the Variance Policy in general helps to provide the Regional Board with an important regulatory tool that does not currently exist in the Basin Plans.

Accordingly, the City encourages the Regional Board to adopt the amendments to the Basin Plan as they are set forth in the March 2014 Draft Staff Report.

Response.
The Central Valley Water Board thanks the City of Davis for providing comments and for its participation in CV-SALTS.

Phil Govea, P.E., Deputy Director of Public Works – Engineering, City of Manteca

31. Comment.
The City would like to express our support for the amendments to the Basin Plans and to encourage the Central Valley Regional Water Quality Control Board (Regional Board) to adopt the Variance Policy, the Salinity Variance Program, and the Salinity Exception Program.

With respect to the Salinity Variance Program and Salinity Exception Program, the City has been active participants in the Central Valley Salinity Alternative for Long-Term Sustainability (CV-SALTS), the Regional Board's planning process for salinity and nutrient management and regulations. While CV-SALTS continues to develop a long-term plan that addresses salinity comprehensively, in the interim period, the City is concerned that the Manteca Wastewater Quality Control Facility (WQCF) would have to comply with permit requirements based on the existing water quality objectives for salinity.

The Manteca WQCF discharges high-quality, tertiary-treated effluent to the San Joaquin River in the South Delta region. Prior to mid-2005, the City used groundwater as its sole potable water source. Beginning in July and August 2005, the City began substituting a portion of its potable water supply from groundwater to surface water from the South San Joaquin Irrigation District's South County Surface Water Supply Project. Subsequently, EC levels in the

WQCF's effluent decreased significantly. In fact, in recent years we have observed a 25% improvement in EC levels over those seen in 2004-2005. However, despite these significant improvements, the WQCF cannot comply with the current summertime EC water quality objective of 700 µmhos/cm. The WQCF currently averages 763 µmhos/cm during the summer months.

In addition, analysis has shown that the WQCF's current flows have an insignificant impact on salinity levels in the downstream receiving waters, and further improvements in effluent salinity would have no measurable environmental benefit. Specifically, the Technical Supporting Document for the Variance Policy shows that the WQCF's current effluent EC levels result in receiving water EC levels of 431 µmhos/cm. And, if the WQCF were to lower its effluent EC levels by 63 µmhos/cm to comply with the 700 µmhos/cm objective, the receiving water EC level would drop to an estimated 430 µmhos/cm, an improvement of 1 µmhos/cm . This insignificant improvement in receiving water quality would not justify the treatment facilities needed to lower EC levels nor the financial burden such facilities would place on our community. However, using the new Salinity Variance Policy and allowing the WQCF to discharge at current water quality levels is a reasonable regulatory approach that would not negatively impact the quality of the receiving water.

Furthermore, the water quality objectives upon which the 700 µmhos/cm summertime effluent limits are based are likely to be revised as a result of CV-SALTS or the State Water Resources Control Board's review of the salinity standards in the Bay-Delta Plan. We support the Salinity Variance Program and the Salinity Exception Program because it would provide the Regional Board with a necessary regulatory tool to use in the interim where current objectives may be made irrelevant by other regulatory and planning processes under development.

The City has recently applied for a renewal of its NPDES permit, and we are hopeful that the adoption of the Variance Policy will assist the Regional Water Board in issuing a reasonable permit, one that will be protective of beneficial uses without imposing unnecessary economic hardship on our community. Accordingly, the City encourages the Regional Board to adopt the amendments to the Basin Plans as they are set forth in the March 2014 Draft Staff Report.

Response.
The Central Valley Water Board thanks the City of Manteca for providing comments and for its participation in CV-SALTS.

REFERENCES

State Water Resources Control Board (SWRCB). 2002. Order WQ 2002-0015. In the Matter of the Review on Own Motion of Waste Discharge Requirements Order No. 5-01-044 For Vacaville's Easterly Wastewater Treatment Plant. Issued by the California Regional Water Quality Control Board, Central Valley Region. SWRCB/OCC File A-1375. Available at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2002/wqo/wqo2002-0015.doc

Strauss, A. 2006. Letter from Alexis Strauss (Director of Water Division, United State Environmental Protection Agency, Region IX) to Celeste Cantu (Executive Director, State Water Resources Control Board) dated 23 October 2006, regarding California SIP, Compliance Schedule Provisions.