



October 19, 2020

**Sent Via Email [jennifer.fuller@waterboards.ca.gov]**

Jennifer Fuller  
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**Re: Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin to Incorporate Revisions to the Salt and Nitrate Control Program**

Dear Ms. Fuller:

Thank you for the opportunity to comment on the above-referenced draft amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin (the “draft Amendments”). These comments supplement comments provided by several of the undersigned in a March 4, 2020 letter, which is attached for convenience.

First, we appreciate the draft Amendments appear to be consistent with requirements of State Board Resolution 2019-0057. We do note that it appears that the term “balance” has been eliminated from Goal 2 of the salt and nitrate control program in favor of a requirement to “Reduce salt and nitrate loading so that ongoing discharges neither threaten to degrade high quality waters absent appropriate findings by the Central Valley Board nor cause or contribute to exceedances of water quality objectives.” (See Redline Draft, p. 7.) While this language differs from Resolution 2019-0057, which required the revisions to convert “balance” to an interim goal, we do not object to the change. We do, however, ask that the draft remain consistent on this point and that the language in the Program Overview be changed from “balanced nitrate loadings” to conform to the description of Goal 2 on page 7 of the redline draft. (See Redline Draft p. 31.)

Additionally, we are disappointed that the Regional Board has not yet taken advantage of the opportunity to further refine when water systems impacted by nitrate pollution are eligible for short and long-term drinking water solutions. Prior to adoption of Resolution 2019-0057, and again in our March 4, 2020 letter, we proposed a non-exhaustive list of factors that could be used to determine eligibility for assistance as well as the amount of the subsidy, as follows:

- a. Any relevant affordability thresholds adopted by the State Water Board;
- b. The size and financial capacity of the water system;
- c. Whether, and the extent to which, the water system serves a disadvantaged community or disadvantaged communities;
- d. The extent to which the portion of the increased costs related to nitrate contamination can be quantified; and
- e. Whether there was an available and implementable solution to nitrate contamination.

While there was at least one discussion regarding these factors at a CV-SALTS Executive Committee Meeting, the draft Amendments do not identify any factors that would inform eligibility for financial support or the amount of such support. Water systems which have encountered nitrate exceedances in the past, and have since implemented solutions that ensure the provision of safe drinking water for their customers must be considered for assistance under the BPA. This is particularly true for small water systems where the solution(s) implemented has resulted in significantly higher or unaffordable water rates. To treat such systems otherwise creates a disincentive for systems today to address a nitrate exceedance proactively, and instead wait for dischargers regulated under the BPAs to implement a solution. We look forward to continuing this discussion with the regulated community and the Regional Board.

Finally, we again note our position that authorizing thirty-five year exceptions to the requirement to cease causing or contributing to the nitrate water quality objective is unreasonable and excessive. In implementing the nitrate control program, we expect the Regional Board to thoroughly and critically review requests for thirty-five year exceptions, and to strictly apply the requirement that time schedules must be as short as practicable for each discharger or category of dischargers.

Thank you again for the opportunity to comment, and please do not hesitate to contact us to discuss these comments.

Sincerely,



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Leadership Counsel for Justice & Accountability



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