



ENVIRONMENTAL LAW FOUNDATION

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Sent Via Email [Anne.Walters@waterboards.ca.gov]

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Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
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Re: Draft CV-SALTS Revision Amendment Language For The Sacramento River And San Joaquin River Basin Plan And The Tulare Lake Basin Plan

Dear Ms. Walters:

Thank you for the opportunity to comment on the draft revised basin plan amendment language. We have reviewed the draft in conjunction with the State Water Resources Control Board's final resolution, and thank staff for addressing most of the requirements of the resolution in this draft. However, there are some provisions of the resolution that are either unaddressed or for which we request clarification.

First, Resolution Provision 1.e. requires that dischargers meaningfully consult with affected residents, affected water systems, representatives of environmental justice organizations and other stakeholders in developing and implementing EAPs and MZIPs. This requirement should be included in the revised BPAs.

Second, Resolution Provision 1.o. sets forth certain expectations for management zones. The first expectation — that management zone boundaries should be based primarily on hydrogeology — is addressed in the revised BPAs. However, the expectations set forth in Section 1.o. 2-5 do not appear to be addressed in the revised BPAs. Documentation of the conditions outside of the management zone's boundaries and coordination with neighboring management zones are critical to ensuring that there are no gaps in coverage that could result in significant adverse impacts to drinking water groundwater resources.

Third, Resolution Provision 4.a. requires the Regional Board to “[c]onvert the Nitrate Control Program's goal of balanced nitrate loading to an interim goal, with a new additional final goal of ceasing causing or contributing to exceedances of the applicable water quality objective in the receiving water.” This requirement is addressed in the draft revisions, but the goal of balanced nitrate loading is referred to as a “short-term” goal and the goal of ceasing causing or contributing to exceedances is described as a “long-term” goal. We ask that the Regional Board instead use the

terms “interim” and “final” to remain consistent with the Resolution, and to avoid expressing an expectation that coming into compliance will always be “long term.”

Fourth, we appreciate the removal of the qualifier “reasonable, feasible and practicable” with respect to goal 2. However, in at least two instances, there is some remaining ambiguity in the draft language regarding whether the qualifier applies to both goal 2 and 3, or only to goal 3 as intended. (See p. 8 [“Protect beneficial uses by maintaining water quality that meets applicable water quality objectives and pursuing long-term managed restoration where reasonable, feasible and practicable.”]; p. 67 [“identifies the need for a prioritized, long-term management strategy to address the need for providing safe drinking water while moving toward balanced salt and nitrate loading, compliance with water quality objectives in ongoing discharges, and managed restoration where reasonable, practicable and feasible.”].) We ask for revisions to clarify that the “reasonable, feasible, practicable” qualifier does not apply to goal 2.

Fifth, Resolution Provision 4.f. requires:

...when preparing a Management Zone Implementation Plan and evaluating long-term drinking water solutions, the management zone must consider future impacts on public water systems from nitrate contamination. When Preparing such plans, the management zone shall consult with the Central Valley Water Board and the Division of Drinking Water with respect to determining available solutions for addressing drinking water. The Management Zone Implementation Plans shall also address the impact that potential solutions may have on operation and maintenance costs, particularly for disadvantaged communities.

We acknowledge that the first and third sentences of 4f are included in their entirety on pages 38 and 39 of the draft revision. However, in emails to the SWRCB and certain stakeholders we suggested alternative language prior to the adoption hearing. This language was not included in the Resolution given that the parties lacked sufficient time to adequately discuss it. Given that we now have sufficient time, we ask for consideration of the following language, and a discussion at an upcoming meeting of the CV-SALTS executive committee:

Management Zone Implementation Plans must also address costs of providing drinking water, including costs for operations and maintenance, related to nitrate contamination. Eligibility for subsidized operations and maintenance costs related to nitrate contamination, and the amount of such subsidy, should be determined by considering the following nonexclusive factors:

- (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 that was more financially sustainable than the one chosen by the water system.

We also note with respect to the second sentence in 4.f., the Resolution requires consultation with the Division of Drinking Water for “available solutions for addressing drinking water” whereas the consultation requirement in the draft BPA revision is limited to “long-term drinking water solutions.” Dischargers and the RWB should be utilizing the expertise of DDW in crafting effective short and long-term drinking water solutions that will work for each impacted community.

Sixth, Resolution Provision 4.i. requires removal of “the option for management zones developed in accordance with the nitrate control program to use a volume-weighted average to allocate assimilative capacity as an alternative compliance pathway.” It appears that this option was removed in the draft BPA revisions, but there are at least three statements in the draft that may require revision and of which we request clarification: (a) the definition of Alternative Compliance Program includes allocation of assimilative capacity as a “non-traditional regulatory option”; (b) on p. 29 the draft states “Central Valley Water Board determinations regarding availability and allocation of assimilative capacity will be based on ambient water conditions in the Shallow Zone”; and (c) on p. 34 referring to support for a request for allocation of assimilative capacity.

Thank you again for the opportunity to provide comment, and please do not hesitate to contact us regarding any of these issues.

Respectfully submitted,



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