



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 08 2016

Ms. Pamela C. Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, California 95670

Dear Ms. Creedon:

The U.S. Environmental Protection Agency (EPA) has reviewed the California State Water Resources Control Board Resolution Number 2015-0010; *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*. EPA hereby approves the water quality standards within this amendment per Section 303(c) of the Clean Water Act (CWA).

The Central Valley Regional Water Quality Control Board (Regional Board) adopted the amendments on June 6, 2014 under Resolution No. R5-2014-0074. The State Water Resources Control Board adopted the amendments on March 17, 2015 as Resolution No. 2015-0010. The amendments were certified by the California Office of Administrative Law (OAL) on June 19, 2015. EPA received notice of the OAL certification on June 30, 2015.

Section 303(c) of the CWA and 40 CFR Part 131 require the EPA to approve or disapprove new or revised state-adopted water quality standards. The following paragraphs outline the scope and basis of EPA's approval of the revised standards. The State regulatory provisions which are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and certain provisions addressing implementation of water quality standards for surface waters.

The amendment makes revisions to the Basin Plan in Chapter 2 (Beneficial Uses) and Chapter 4 (Implementation). EPA has determined that the revision in Chapter 2 as well as the "Variance Policy for Surface Water" are subject to EPA's 303(c) approval authority and are consistent with the requirements of the CWA and its implementing regulations at 40 CFR Part 131.5 and 131.6.¹ The revisions also comply with 40 CFR 131.10(g) which includes requirements for removing a designated use which is not an existing use.

¹ The regulations governing water quality standards were revised in a Final Rule signed August 5, 2015. See 80 FR 51019 ("Final Rule"). This revised rule is effective October 20, 2015, and includes a transition period. For that reason, the State's revisions are evaluated using the regulations as they existed before the Final Rule in accordance with the grandfathering of revisions in process before the effective date. See 80 FR 51022.

The “Variance Program for Salinity Water Quality Standards” (the Variance Program) in Chapter 4 is also subject to EPA’s 303(c) approval authority. The Variance Program is a multiple discharger variance. The amendment defines salinity water quality standards as including the following constituents: electrical conductivity, total dissolved solids, chloride, sulfate, and sodium. The amendment does not allow any approvals of a salinity variance by the Regional Board after June 30, 2019. The Regional Board presented three case studies in support of a multiple discharger variance based on 40 CFR Part 131.10(g)(3) and 40 CFR Part 131.10(g)(6). The three case studies involve cities that could potentially incur substantial and widespread economic impacts from effluent limitations derived from salinity water quality standards based on protection of agricultural uses. EPA finds that the case studies for the three cities are consistent with the requirements under 40 CFR Part 131.10(g)(6), and hereby approves the multiple discharger variance program for applicants that demonstrate its situation is similar to or comparable with the case study cities. EPA is limiting its approval for variance applicants under the multiple discharger program to those that have effluent limitations derived from salinity water quality standards based primarily on protection of agricultural uses. EPA believes applicants with effluent limitations derived from salinity water quality standards based primarily on the protection of other uses are not similar to nor comparable with the case study cities, and must apply for an individual variance that would require EPA review and approval.

Public Participation

Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject amendment, the public review procedures followed by the State in the development of State Board Resolution No. 2015-0010 and the Regional Board Resolution R5-2014-0074 are consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

Endangered Species Act Consultation

Section 7(a) of the Endangered Species Act (ESA) states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species (listed species) or result in the destruction or adverse modification of critical habitat. EPA has determined that today’s action will have no effect on any federally listed, threatened, or endangered species or critical habitat. The “Variance Policy for Surface Water” is a general authorizing policy and thus has no effect on listed species or critical habitat.

The Variance Program is available only to future applicants who are seeking a variance for salinity water quality standards derived for protection of agricultural uses. The case studies included with the Regional Board’s submission on the multiple discharger variance suggests that the implementation of the variance would result in only negligible changes to the salinity regime in the applicable waters (Technical Evaluation of a Variance Policy and Interim Salinity Program, Larry Walker Associates (2012), pp. 23-34). This finding is consistent with the Regional Board’s explanation that the factors controlling salinity are upstream reservoir operations and diversion rather than discharges from publicly owned treatment works (Final Staff Report, Central Valley Regional Water Quality Control Board (June 2014), pp.27-28). For these reasons, EPA has concluded that the implementation of the multiple discharger variance as outlined above would have no effect on threatened or endangered species or adversely affect critical habitat.

EPA looks forward to working in partnership with the Regional Board to protect and enhance the quality of California's waters. If EPA can be of further assistance, please call me at (415) 972-3337 or have your staff contact Matthew Mitchell at (415) 972-3508.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'T' followed by a horizontal line and a small flourish.

Tomás Torres
Director, Water Division

7/8/2016

cc: Rik Rasmussen, State Water Resources Control Board

