

Proposed Modifications to the Basin Plans' Exceptions Policy

CHAPTER 4 IMPLEMENTATION

The following paragraphs include proposed modifications and additions to the Sacramento River and San Joaquin River Basin Plan's *Chapter 4 Implementation* in the sections indicated below. Note that these changes are also proposed for the Tulare Lake Basin Plan.

Control Action Considerations of the Central Valley Regional Water Board

Policies and Plans

Limited-Term Exceptions from Basin Plan Provisions and Water Quality Objectives for Groundwater and for Non-NPDES Dischargers to Surface Waters

Pursuant to Water Code sections 13050 and 13240 et seq., the Regional Water Board has adopted beneficial use designations and water quality objectives that apply to surface and ground waters in the basins covered by this Basin Plan as well as programs of implementation. The Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) is a stakeholder effort ~~to that developed a comprehensive salt and nitrate management plans (SNMPs) by May 2016 that is expected to result in basin plan amendments that will be considered by the Regional Water Board by May 2017. CV-SALTS is undertaking technical work to analyze that documents~~ salt and nitrate conditions in surface and ground water in the Central Valley; identify and identifies implementation measures; and develop monitoring strategies to ensure environmental and economic sustainability. The technical work under development includes developing the models for loading and transport of salt, development and evaluation of effective management practices, and implementing activities to ensure beneficial uses are protected. Participation by all stakeholders is necessary to ensure that the work is scientifically justified, supported by broad stakeholder representation, and completed in a timely fashion. The Regional Water Board has indicated its support for the comprehensive effort through CV-SALTS in Resolutions R5-2006-0024, R5-2010-0024, and R5-2013-0149 and the March 2010 Memorandum of Agreement between the Regional Water Board, the Central Valley Salinity Coalition and the State Water Board. The SNMP identifies the need for a prioritized, long-term management strategy to address the need for providing safe drinking water while moving toward balanced loading and managed restoration where reasonable, practicable and feasible. The Regional Water Board finds that it is reasonable to grant exceptions to the discharge requirements related to the implementation of water quality objectives for salinity, nitrate and boron for non-NPDES dischargers to surface water, and for discharges to groundwater in order to allow for development and implementation of the SNMPs if the permittee is actively participating in the implementation of the long-term Salt and Nitrate Control Programs and it is infeasible, impracticable or unreasonable to prohibit the discharge or it is preferable to have a discharger and/or area specific and time-limited exception rather than a more lasting water quality standard revision.

Exception to Discharge Requirements Related to the Implementation of Water Quality Objectives for Salinity

- (1)- Any person¹ subject to waste discharge requirements and/or conditional waivers issued pursuant to Water Code 13269 that are not also NPDES permits may apply to the Regional Water Board for an exception to discharge requirements from the implementation of water quality objectives for salinity, nitrate and/or boron. Recognized third party groups may apply on behalf of its members or for multiple dischargers under a management zone. The exception may apply to the issuance of effluent limitations and/or groundwater limitations that implement water quality objectives for salinity, nitrate and/or boron in groundwater, or to effluent limitations and/or surface water limitations that implement water quality objectives for salinity, nitrate and/or boron in surface water. For the purposes of this Program, salinity and its constituents include, and are limited to, the following: electrical conductivity, total dissolved solids, chloride, sulfate and sodium. Nitrate includes total inorganic nitrogen (TIN) and total kjeldhal nitrogen (TKN). The application for such an exception(s) shall be submitted in accordance with the requirements specified in corresponding sections for salinity/boron and nitrate below (see sections #### and ####, respectively) paragraph (8), below.
- (2)- An exception to discharge requirements from the implementation of water quality objectives for salinity, nitrate and/or boron imposed as limitations in either waste discharge requirements and/or conditional waivers that are not also NPDES permits shall be set for a term not to exceed ~~ten~~ 50 years. Terms for exceptions shall generally not exceed 10 years, however, the Regional Water board shall have the discretion to adopt an exception for longer than 10 years if the applicant(s) can demonstrate that it is necessary to further the management goals of the Salt or Nitrate Control Programs. The Regional Water Board has the authority to reauthorize (renew) an exception for one or more additional terms, the length of which shall be determined by the Regional Water Board but shall not exceed 50 years. The authorization of an exception, or any reauthorization, shall require approval of the Central Valley Water Board, after public notice and hearing. For exception terms greater than five years, the Regional Water Board will review the exception five years after approval to confirm that the exception should proceed for the full term. The Regional Water Board review will be conducted during a public hearing. An exception may be renewed beyond the initial term if the SNMPs are still under development, and if a renewal application is submitted in accordance with the requirements specified in paragraph (8), below. A renewal must be considered during a public hearing held in accordance with paragraph 10, below.
- (3)- The Regional Board will require those discharger(s) with authorized exceptions, to prepare a status report every 5 years summarizing compliance with the terms and conditions of the exception. The status reports may be presented individually for individual exceptions or collectively for multiple exceptions granted to multiple

¹ The term "person" includes, but is not limited to, "any city, county, district, the state, and the United States, to the extent authorized by federal law." (Wat. Code, § 13050, subd. (c).)

dischargers. The Regional Board will conduct its review of exceptions in a public hearing. The Regional Board may terminate an exception when the applicant(s) are not complying with the terms and conditions that are part of the exception. Any rescission of an exception may only occur after notice and hearing. For exception terms greater than five years, the Regional Water Board will review the exception five years after approval to confirm that the exception should proceed for the full term. The Regional Water Board review will be conducted during a public hearing. An exception may be renewed beyond the initial term if the SNMPs are still under development, and if a renewal application is submitted in accordance with the requirements specified in paragraph (8), below. A renewal must be considered during a public hearing held in accordance with paragraph 10, below. The Regional Water Board will consider granting an exception to the implementation of water quality objectives for salinity under this Program if the applicant is actively participating in CV-SALTS as indicated by the letter required under paragraph (8)(c), below.

- (4-) Exceptions are intended to facilitate long-term attainment of water quality standards under the Salt and/or Nitrate Control Program or to provide the time needed to revise an inappropriate water quality standard. The Regional Water Board will consider granting an exception to the implementation of water quality objectives for salinity, nitrate, or boron under this Program if the applicant is actively participating in the Salt and/or Nitrate Control Programs as indicated by the letter required under #####, below and meets the specific requirements for boron indicated in #####. When granting an exception to the implementation of water quality objectives for salinity under this Program, the Regional Water Board shall consider including an interim performance-based effluent limitation and/or groundwater limitation that provides reasonable protection of the groundwater or the receiving water, where appropriate. When establishing such a limitation, the Regional Water Board shall take into consideration increases in salinity concentrations due to drought, water conservation, and/or water recycling efforts that may occur during the term of the exception granted.
- (5-) The Regional Board will set interim performance-based requirements when the exception is authorized.
- (6) Requirements associated with seeking and approving an exception shall include, but are not limited to: eligibility criteria, mitigation responsibilities, monitoring/reporting obligations, and expectations relevant to implementing the SNMP Management Goals
- (7) As a condition for reauthorizing/renewing an exception, the Regional Board will require those discharger(s) with authorized exceptions terms greater than ten years to prepare and submit a report every ten years that reassesses Best Management Practices (BMPs) and surveys available treatment technologies to determine if feasible, practicable and reasonable compliance options have become available. The Regional Board will include review of BMPs and available treatment technologies when conducting the public hearing to review compliance as described in paragraph 3 above. Following review of the BMPs and available treatment technologies, the Regional Board may revise requirements under the authorized exception.

- (8) Where exceptions are sought in order to provide time to develop and approve a more appropriate water quality standard (uses and/or objectives), there must be a well-defined work plan (including a schedule of milestones) and a commitment by dischargers to provide the resources needed to complete the proposed process.
- (9) Where existing water quality standards are unlikely to change, dischargers must explain how the proposed exception facilitates the larger long-term salt and/or nitrate strategy designed to ultimately attain those standards while in the interim allocating available resources to address more urgent water quality priorities such as provision of safe drinking water, where applicable.
- (10) Upon receipt of an application for an exception to the implementation of water quality objectives for ~~any constituents~~ salinity under this Program, the Regional Water Board shall determine that the exception application is complete, or specify in writing any additional relevant information, which is deemed necessary to make a determination on the exception request. Failure of an applicant to submit any additional relevant information requested by the Regional Water Board Executive Officer within the applicable time period may result in the denial of the exception application.
- (11) Within a reasonable time period after determining that the exception application is complete, the Regional Water Board shall provide notice, request comment, and schedule and hold a public hearing on the application within a timely manner. The notice and hearing requirements shall comply with those set forth in Water Code section 13167.5. The Board will approve an exception ~~by shall be issued through a resolution or special order that~~ amending applicable waste discharge requirements and/or conditional waiver requirements.

Exception Application Requirements Specific to Salinity

- (1) When granting an exception to the implementation of water quality objectives for salinity or boron under this Program, the Regional Water Board shall consider including an interim performance-based effluent limitation and/or groundwater limitation that provides reasonable protection of the groundwater or the receiving water, where appropriate. When establishing such a limitation, the Regional Water Board shall take into consideration increases in salinity concentrations due to drought, water conservation, and/or water recycling efforts that may occur during the term of the exception granted.
- (2) When granting an exception to the implementation of water quality objectives for salinity under this Program, the Regional Water Board shall require the discharger to demonstrate active participation the Alternative Salinity Permitting Approach as specified under the Salinity Control Program.

- (3) A person seeking consideration of drought, water conservation, and water recycling as part of an exception to the implementation of water quality objectives for salinity under this Program must include the following in the application to the Regional Board:
- (a) A description of any drought impacts, irrigation, water conservation and/or water recycling efforts that may be causing or cause the concentration of salinity to increase in effluent, discharges to receiving waters, or in receiving waters.

Exception Application Requirements Specific to Nitrate

- (1) Exceptions for nitrate will not be considered unless an adequate supply of clean, safe, reliable and affordable drinking water is available for those who have been adversely affected by the non-compliant discharge(s).
- (2) An applicant seeking an exception to the implementation of water quality objectives for nitrate under this Program must submit an application to the Regional Water Board. The applicant's request shall include the following:
- (a) An explanation/justification as to why the exception is necessary, and why the discharger is unable to ensure consistent compliance with existing effluent and/or groundwater/surface water limitations associated with nitrate at this time;
- (b) A description of the alternative compliance project(s), Early Action Plan (EAP) or other implementation measures that the applicant will implement or participate in, consistent with the Nitrate Permitting Strategy of this Basin Plan for individual or collective groups of dischargers.
- (c) Copies of any documents prepared and certified by another state or local agency pursuant to Public Resources Code section 21080 et seq.; or, such documents as are necessary for the Regional Water Board to make its decision in compliance with Public Resources Code section 21080 et seq.
- (d) A work plan to provide an interim and permanent water supply for any person living in the area adversely affected by the discharge under the requested nitrate exception. The water supply work plan shall include a schedule of milestones and a description of financial commitments to assure completion of the interim and permanent water supply. Performance bonds may be required to assure timely implementation.
- (e) Documentation of the applicant's active participation in CV-SALTS as indicated by a letter of support from CV-SALTS.
- (f) A detailed plan of how the applicant will continue to participate in CV-SALTS and how the proposed implementation measures will further the management goals of the SNMPs.

Exception Application Provisions Specific to Boron

- (1) When granting an exception to the implementation of water quality objectives for boron salinity under this Program, the Regional Water Board shall require the discharger to prepare and implement a Boron Salinity Reduction Study Work Plan, or a

~~boronsalinity~~-based watershed management plan. A ~~BoronSalinity~~ Reduction Study Work Plan shall at a minimum include the following:

- (a-) Data on current influent and effluent ~~boronsalinity~~ concentrations;
- (b-) Identification of known ~~boronsalinity~~ sources;
- (c-) Description of current plans to reduce/eliminate known ~~boronsalinity~~ sources;
- (d-) Preliminary identification of other potential sources;
- (e-) A proposed schedule for evaluating sources; and
- (f-) A proposed schedule for identifying and evaluating potential reduction, elimination, and prevention methods.

A ~~boronsalinity~~-based watershed management plan shall at a minimum include the following:

- (a-) A discussion of the physical conditions that affect surface water or groundwater in the management plan area, including land use maps, identification of potential sources of ~~boronsalinity~~, baseline inventory of identified existing management practices in use, and a summary of available surface and/or groundwater quality data;
 - (b-) A management plan strategy that includes a description of current management practices being used to reduce or control known ~~boronsalinity~~ sources;
 - (c-) Monitoring methods;
 - (d-) Data evaluation; and,
 - (e-) A schedule for reporting management plan progress.
- (26-) When granting an exception to the implementation of water quality objectives under this Program, the Regional Water Board will include a requirement to participate in CV-SALTS and contribute to the development and implementation of the SNMPs in accordance with the plan submitted under paragraph (8)-(f), below.
- (37-) The granting of an exception to the implementation of water quality objectives for ~~boronsalinity~~ under this Program by the Regional Water Board is a discretionary action subject to the requirements of the California Environmental Quality Act. As such, the Regional Water Board may require the applicant for the exception to prepare such documents as are necessary so that the Regional Water Board can ensure that its action complies with the requirements set forth in the California Environmental Quality Act or the Regional Water Board may use any such documents that have been prepared and certified by another state or local agency that address the potential environmental impacts associated with the project and the granting of an exception from implementation of water quality objectives for ~~boronsalinity~~ in groundwater and/or surface water.
- (48-) A person seeking an exception to the implementation of water quality objectives for ~~boronsalinity~~ under this Program must submit an application to the Regional Water Board. The person's request shall include the following:

- (a-) An explanation/justification as to why the exception is necessary, and why the discharger is unable to ensure consistent compliance with existing effluent and/or groundwater/surface water limitations associated with boronsalinity constituents at this time;
- (b-) A description of boronsalinity reduction/elimination measures that the discharger has undertaken as of the date of application, or a description of a salinity-based watershed management plan and progress of its implementation;
- (c-) A description of any drought impacts, irrigation, water conservation and/or water recycling efforts that may be causing or cause the concentration of boronsalinity to increase in the effluent, discharges to receiving waters, or in receiving waters;
- (d-) Copies of any documents prepared and certified by another state or local agency pursuant to Public Resources Code section 21080 et seq.; or, such documents as are necessary for the Regional Water Board to make its decision in compliance with Public Resources Code section 21080 et seq.
- (e-) Documentation of the applicant's active participation in the long-term salinity management strategy CV-SALTS as indicated by a letter of support from CV-SALTS.
- (f-) A detailed plan of how the applicant will continue to participate in CV-SALTS and how the applicant will contribute to the development and implementation of the SNMPs.

~~(11.) There will be no new salinity exceptions and salinity exceptions will not be renewed after 30 June 2019.~~