

# Proposed Modifications to the Basin Plans to Incorporate an Offsets Policy

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## CHAPTER 4 IMPLEMENTATION

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The following paragraphs are proposed for addition to *Chapter 4 Implementation* of the Sacramento River and San Joaquin River and Tulare Lake Basin Plans within the proposed Salt and Nitrate Control Program at a location in the chapter to be determined.

### Offsets Policy for Salt and/or Nitrate Discharges to Groundwater

An offset is an alternative means of achieving compliance with Waste Discharge Requirements (WDRs), either alone or in combination with other actions, for a given pollutant or pollutants that may be authorized by the Regional Board. An offset allows for the management of sources and loads of the constituent of concern (not directly associated with the regulated discharge) so that the combined net effect on receiving water quality from the discharge and the offset is functionally-equivalent to or better than that which would have occurred by requiring the discharger to comply with its WDR at the point-of-discharge. An offset project proposed for nitrate or salt discharges should be located within the same groundwater basin/subbasin or management zone as the regulated discharge and is applicable to groundwater only. Application for an offset may be submitted by individual dischargers, or collective dischargers within a management zone, by a third party group on behalf of its members, or other forms of collective groups of dischargers recognized by the Central Valley Water Board. The decision to pursue an offset is voluntary. Offsets must be:

- (1) Proposed by the discharger<sup>1</sup> as an Alternative Compliance Project (ACP)<sup>2</sup>
- (2) Approved by the Central Valley Water Board; and
- (3) Enforceable through a WDR or other orders issued by the Board.

#### The following requirements apply to all offsets:

- (1) Where an offset project is being considered for implementation, it should be consistent with any local implementation plans established to manage salinity or nitrate concentrations in the same area. And, in general, it is desirable to encourage offsets in the same groundwater basin/subbasin where the discharge occurs. However, offsets may also be used to incentivize implementation of some large-scale projects such as a regional regulated brine line or establish a mitigation fund to provide safe drinking water.
- (2) When there is no assimilative capacity available in the receiving water, the offset shall result in a net improvement in existing water quality (e.g., the offset ratio must be > 1:1)

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<sup>1</sup> Throughout this document the term "discharger" can connote either an individual discharger or a coalition of dischargers regulated under a common set of categorical WDRs or watershed/groundwater basin/subbasin permit or order, or dischargers working collaboratively within a management zone.

<sup>2</sup> See Attachment A-10 of the SNMP for guidance on development of an ACP project.

compared to baseline regulatory requirements. (Offset ratios < 1:1 may be authorized only in accordance with the state's antidegradation policy unless an exception is granted or Time Schedule Order or Compliance Schedule Order allows a less stringent interim ratio to apply.)

- (3) Offsets shall be for substantially the same pollutant. (Cross-pollutant trading (e.g., total dissolved solids (TDS) for nitrate, nitrate for arsenic, etc.) should not be construed as true “offsets.” Such a cross pollutant offset may be more appropriate for a short-term effort with long-term efforts focused on the original pollutant of concern.)
- (4) The proposed package (discharge + offset project) cannot result in unmitigated localized impairments (e.g., “hotspots”) to sensitive areas (especially drinking water supply wells) or have a disproportionate impact on a disadvantaged community in the sub-basin. Downgradient well owners shall be notified and encouraged to participate in the offset approval process.
- (5) Offsets shall be approved by the Central Valley Water Board. The Board may elect to pre-approve specific offset projects (a 1-step process) or authorize the general use of offsets within a given order and then approve individual offset projects in subsequent Board actions (e.g., a 2-step procedure). All terms and conditions governing implementation of the proposed Offsets Policy shall be enforceable through a WDR, Conditional Waiver or other enforcement order. Failure to comply with the terms and conditions of an offset approved by the Central Valley Water Board could constitute a violation of the underlying permit or enforcement order.
- (6) Offsets shall apply to a specific discharge for a defined period. Offsets may be renewed but must be periodically reviewed and reauthorized by the Central Valley Water Board. The length of that period will be specified by the Central Valley Water Board when the offset is approved.
- (7) The terms and conditions governing an approved offset shall specify the remedial actions that must be undertaken by the discharger, and the metric(s) used to trigger such obligations, in the event that the offset project fails for some reason.
- (8) The offset project shall include a monitoring and reporting program sufficient to verify that the pollution reduction credits are actually being generated as projected and that these credits are adequate to offset the discharge loads in the ratio approved by the Central Valley Water Board. Pollutant removal, reduction, neutralization, transformation, dilution through recharge and support of a mitigation fund may all be acceptable means of generating offset credits (subject to appropriate verification).

**When authorizing an offset, the Central Valley Water Board shall consider the following conditions:**

- (1) When it is not feasible, practicable or reasonable for the discharge to comply directly with applicable WDRs.

- (2) When it is not feasible, practicable or reasonable to prohibit a discharge that is unable to comply with applicable WDRs.
- (3) When there is no assimilative capacity available in the receiving water or as a condition for allocating any available assimilative capacity in order to authorize a discharge.
- (4) When the net effect of authorizing the discharge, including the proposed offset project, would result in better water quality in the groundwater basin/subbasin or better support beneficial use attainment than is likely to occur if the discharge was required to comply with the applicable WDRs at the point-of-discharge.
- (5) When the proposed offset project will provide substantially greater and more immediate public health protection (e.g., real risk reduction) than is expected to result if the discharger was required to comply with the applicable WDRs at the point-of-discharge or the non-compliant discharge was prohibited completely.
- (6) When the proposed offset project is an integral part of and facilitates a larger strategic plan or project designed to ultimately achieve attainment of water quality standards or restoration of a water body.
- (7) Other factors such as the: relative location of the discharge and offset project and potential impacts on downgradient waters, reliability of the recharge, the extent that a groundwater recharge project puts more 'clean' water in the aquifer than what would occur without the project, impacts on the vadose zone over time, mixing assumptions, brine disposal, and whether the offset is proposed as a temporary or permanent alternate compliance strategy.

Within a reasonable time period after determining that the proposed offset 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 offset shall be issued through a resolution or special order that amends applicable waste discharge requirements and/or conditional waiver requirements.