

APPENDIX H

Guidelines for Proposing an Acceptable Alternative Compliance Project

When an individual or group of dischargers is unable to demonstrate that their discharge is not causing nitrate degradation above the triggers identified in the Nitrate Control Program, they have an opportunity to request either allocation of available assimilative capacity on a volume-weighted basis, above trigger levels, or request an exception. The request for the granting of assimilative capacity or an exception in these circumstances is considered to be Alternative Compliance, and must be accompanied by sufficient documentation to verify that the proposed approach is reasonable, feasible, and practicable and meets the goals of the Central Valley Nitrate Control Program. To authorize Alternative Compliance, the Regional Water Board will evaluate whether the request is supported with an Alternative Compliance Project (ACP). An ACP may be proposed by an individual discharger (which includes a third party group subject to a general order) or dischargers working collaboratively as part of a management zone. Under Path B of the Nitrate Control Program, the preparation of a Management Zone Implementation Plan is considered the equivalent of an ACP. While the Regional Water Board has the discretion to deny such a request, any proposed Alternative Compliance Project(s) must contain the following components in order to be considered.

(a) As needed: updates to Initial Assessments and Preliminary Management Zone Proposals that include:

- Anticipated area of contribution of the individual discharger (or third party group subject to a general order), or group of dischargers under a management zone, over a 20-year planning horizon;
- Stakeholders that may be affected within the area of contribution over a 20-year planning horizon;
- Identification of stakeholders within the area of contribution who are not included within the ACP boundaries and why;
- Identification of areas within the area of contribution that overlap with other management areas/activities and the process to ensure coordination;
- Identifications of geologic and hydrologic features that limit or promote groundwater movement.
- Further assessment of water quality conditions based on additional data and information.
- Process to identify affected residents and the outreach utilized to ensure that stakeholders are informed of and given the opportunity to participate in the development of any ACP proposal;
- Any constituents of concern the individual discharger/group of dischargers intends to address besides nitrate (not required but is an optional available); and
- Identification of current best efforts/Best Practicable Treatment and Control (BPTC) and need for assimilative capacity or an approved exception from meeting the nitrate water quality standard.

(b) Components of a Proposed Alternative Compliance Project(s)

- Be consistent with the management goals of the Nitrate Control Program, including addressing short- term and long-term drinking water needs affected by nitrates (Management Goal 1), plan for achieving balanced nitrate loadings within the proposed boundaries of the project, where reasonable and feasible (Management Goal 2), and a plan for establishing a managed aquifer restoration program to restore nitrate levels to concentrations at or below the water quality objectives to the extent reasonable, practicable and feasible (Management Goal 3).
- Include a process to ensure that drinking water that meets drinking water standards is available to all drinking water users utilizing groundwater within the area of contribution. This component may be met through the development and implementation of an Early Action Plan, as may be required by the Nitrate Control Program, payment into a mitigation fund, and/or other mechanisms geared toward providing emergency, interim and permanent solutions.
- Describe the outreach that has occurred and that will continue to occur to ensure that stakeholders or affected communities within the zone of influence are informed of, and given opportunity to participate in, the development of any ACP proposal as well as ongoing activities designed to resolve their drinking water concerns.
- For a management zone, contain a governance framework that, at a minimum, establishes the following: (a) roles and responsibilities of all participants; (b) involvement of an entity with authority to manage water use within the zone of influence including any identified SGMA¹ management agency, if applicable or as necessary; (c) involvement of representative(s) of stakeholders and/or communities within the zone of influence that utilize the groundwater as a drinking water supply; (d) funding or cost-share agreements to implement the ACP, and short and long-term nitrate management projects/activities; and (e) a mechanism to resolve disputes among participating dischargers.
- Identify how nitrate conditions will be characterized for use as the basis for demonstrating how nitrate will be managed over short and long-term periods to meet the nitrate management goals established in the Central Valley Region SNMP.
- Identify short (≤ 20 years) and long-term (> 20 years) projects and/or planning activities that will be implemented as part of the ACP to make progress towards attaining each of the water quality- related management goals established by the Central Valley SNMP within the zone of influence. Projects/planning activities must first prioritize provision of safe drinking water but individual activities may be further prioritized to better allocate resources. Over time, as water quality improves in prioritized areas, updates to the ACP may shift the priorities.
- Identify mechanism(s) to support achievement of the overall Central Valley SNMP's long-term strategy to achieve balanced nitrate loadings and managed aquifer restoration, where reasonable and feasible. Mechanisms may include, but not be limited to:
 - Implementation of management practices that will reduce current nitrate loading to groundwater;
 - Use of offsets to help mitigate potential localized impacts, while improving overall basin or sub-basin-wide water quality (see Offsets Policy);

¹ Sustainable Groundwater Management Agency

- Managed groundwater recharge;
- Pump and utilize and/or treat and distribute; and
- Payment into a mitigation fund established to meet development and implementation of long term drinking water solutions, balance and restoration.
- Include a short and long-term schedule for implementation of nitrate management activities with interim milestones and performance measures to assess progress every 5 years during the first 20 year planning horizon and every 10 years thereafter.
- Identification of alternative procedures or measures to be implemented if the interim milestones or performance measures are not met.
- A water quality surveillance and monitoring program that is adequate to ensure that the ACP when implemented is achieving the expected progress towards attainment of water quality- related management goals (coordination with the SNMP's surveillance and monitoring program may be considered as part of efforts to comply with this element).

The ACP may be modified periodically to incorporate changes that will benefit water quality. Any modifications to an ACP that impact or change timelines, milestones or deliverables identified must be approved by the Central Valley Water Board through a public process.

The ACP shall identify the responsibilities of each regulated discharger, or groups of regulated dischargers if participating in a management zone, to manage nitrate within the zone. The Central Valley Water Board shall incorporate the responsibilities of each discharger, or groups of dischargers if within a management zone, into their respective Individual or General WDRs.

Prior to modifying any WDRs to incorporate the use of assimilative capacity on a management zone basis or adopting an exception to meeting a water quality standard for a discharger or dischargers participating in the management zone, Board staff will review the Management Zone Proposal and ACP to determine whether the Proposal and ACP meet all applicable criteria. Should the Board's review determine that the Management Zone Proposal and ACP meet all applicable criteria, the Executive Officer will issue a letter deeming the Proposal and ACP complete and will calendar the matter for the Board's consideration. The Board may then establish the management zone and its ACP after providing public notice and opportunity to comment consistent with laws and regulations applicable to the adoption or modification of WDRs. The triggers for determining the need for an ACP are identified in the Nitrate Permitting Strategy and based in part on the nitrate concentration in the effluent, the concentration in the receiving water, and the rate of degradation.

Progress on the milestones and performance measures of the ACP must be provided to the Central Valley Water Board at a minimum of every five years during the first 20-year planning horizon and every 10-years thereafter.

Notes:

- (a) In determining available assimilative capacity, the Regional Water Board shall consider the quality of the discharge as it enters the receiving water, accounting for reductions in nitrate

mass or concentration as the discharge percolates to groundwater through the soil. To make this determination, the Regional Water Board may consider information provided by the discharger that demonstrates that the level of nitrate entering shallow groundwater is different than the level of nitrate in the discharge due to naturally occurring groundwater recharge, nitrogen transformation and losses, and nitrogen uptake by plants.

- (b) In determining if the discharge will cause an exceedance of the nitrate water quality objective or the trigger levels, the Regional Water Board shall consider the impact over a 20-year planning horizon.

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