



May 4, 2018

Glenn Meeks
Central Valley Regional Water Quality Control Board
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Subject: Comments by Zone 7 and CCWD Regarding Proposed Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin (Basin Plans) to Incorporate a Central Valley-wide Salt and Nitrate Control Program

Dear Mr. Meeks:

Alameda County Flood Control & Water Conservation District, Zone 7 (Zone 7) and Contra Costa Water District (CCWD) appreciate the opportunity to comment on the proposed Basin Plan Amendments to incorporate a Central Valley-wide salt and nitrate control program. Zone 7 and CCWD serve drinking water to approximately 740,000 people and to a wide variety of residential, commercial, governmental agency, industrial and other water users in Alameda and Contra Costa Counties. Both Zone 7 and CCWD rely primarily on the Sacramento-San Joaquin Delta (Delta) for their water supplies. Zone 7 and CCWD, through the California Urban Water Agencies (CUWA), have participated in the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) process for many years. Throughout the stakeholder process, CUWA has provided comments on various drafts of CV-SALTS documents and related Basin Plan Amendments. Many of our substantive comments on downstream water quality and source water protection remain unaddressed.

The proposed Basin Plan Amendments (BPAs) include new policies and new regulatory tools and strategies to establish a Salt and Nitrate Control Program. The BPAs also include specific recommendations for the control and permitting of salt discharges to surface and groundwater, and of nitrate discharges to groundwater. While we support seeking a long-term solution to address the salt and nitrate water quality concerns in the Central Valley, the proposed Basin Plan Amendments are not protective of downstream water quality, and therefore create the possibility of further degradation of source water quality for downstream water users like Zone 7 and CCWD. We do not support these proposed amendments for the following reasons:

1. **The proposed BPAs are not consistent with Porter-Cologne.** The Porter-Cologne Water Quality Control Act (Cal. Water Code sec. 13000 et seq.; hereinafter referred to as Porter-Cologne) is rooted in the principles that (1) water quality should be protected; (2) responsibility for water quality problems and issues resulting from waste discharges, or from contamination, pollution, or nuisance, rests exclusively with the discharger. The first sentence of Porter-Cologne contains a powerful exhortation from the California Legislature: "...the quality of all the waters of the state shall be protected for use and

enjoyment by the people of the state.” (Cal. Water Code sec. 13000). Porter-Cologne also clearly states that no discharger’s conduct, whether or not it is regulated, “...shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.” (Cal. Water Code sec. 13263(g)).

2. **The recommendations to defer implementation to other agencies are inappropriate.** The proposed BPAs depart significantly from Porter-Cologne in their suggestion that other agencies should bear some of the cost of Central Valley water quality protection. All of the statute’s comprehensive provisions related to water quality control planning and regulation eventually lead back to the discharger. No matter how difficult, complex, or expensive, and no matter how long or for what reasons the discharge has been allowed to proceed, it is the discharger that the law ultimately requires to address, manage, and solve those problems. The cost of the water quality protection that discharges can cause should not be shifted to other parties. Such a shift would be inconsistent with a fundamental public policy objective of Porter-Cologne. Zone 7 and CCWD therefore recommend that the proposed language “Recommendations for Implementation to Other Agencies” (Draft Staff Report, Basin Plan Amendment Language, Page 80-82) be removed.
3. **Source water should be protected in all phases of the Salt Control Program.** Under the alternative salinity permitting approach proposed by the Salt Control Program, no numeric criteria were established to protect beneficial uses. Allowing downstream water quality to further degrade for decades, as contemplated by the implementation provisions of the proposed BPAs, is not consistent with the statutory policy imperative. The Draft Staff Report expressly acknowledged that water quality degradation would occur under the Salt Control Program and related policies (Draft Staff Report, Section 5.2.1). However, the Draft Staff Report failed to provide any evidence that this degradation, which would negatively impact the drinking water quality of 23 million Californians for decades, is consistent with the maximum benefit to the people of the state. Although the Draft Staff Report mentioned that management practices would be implemented by the permittee(s), the proposed BPAs did not include details of what practices would be enforced. Therefore, there is no guarantee that these practices would adequately offset the negative impacts of the proposed policies. Zone 7 and CCWD suggest that appropriate salinity objectives (between the “recommended” and “upper” salinity SMCLs) be established for both permitting approaches for all phases of the Salt Control Program, and that the Salinity Variance Program only be extended as long as necessary to determine how to meet water quality objectives.
4. **The proposed salinity objectives in the BPAs are not protective of downstream beneficial uses.** The Salt Control Program, Secondary Maximum Contaminant Levels (SMCLs) Policy, and the Drought and Conservation Program of the proposed BPAs will allow Central Valley dischargers to discharge water with higher salinity. This could result in water quality degradation in the Delta, affecting the drinking water quality for 23 million Californians, agricultural water uses for thousands of acres of farms, industrial water uses

for important sectors of the economy, and environmental water uses for a variety of threatened and endangered species. The Draft Staff Report has explained the difficulties in requiring dischargers to achieve the “recommended” salinity level in the near term. However, the “recommended” level should be at least achievable with the full implementation of the Salt Control Program, if not earlier. In addition, a long-term application of the “upper” and “short-term” salinity SMCLs as water quality objectives is not protective of downstream beneficial uses. As found by the State Water Board (State Water Board Order WQ 2012–0001¹, p.15), the application of “short-term” salinity SMCL as water quality objectives is not appropriate, and is inconsistent with Title 22 (Cal. Code Regs., tit. 22, § 64449). Overall, water quality objectives should be established to protect beneficial uses.

Table 1 Specific Comments on Salt Control Program and Related Policies

	BPA's Proposal	Concerns	Recommendations
Secondary maximum contaminant levels (SMCL) policy	Use the “upper” salinity SMCL (1600 EC) as the water quality objective	The “upper” level is acceptable if it is neither reasonable nor feasible to provide more suitable waters	Use the “recommended” salinity level (900 EC) as the water quality objective
Salt control program – alternative salinity permitting approach	Maintain existing discharge concentrations or mass loading levels	No numeric criteria were established to protect beneficial uses	Establish appropriate salinity objectives for all phases (between the “recommended” and “upper” salinity SMCLs, 900 to 1600 EC)
Drought and conservation policy	Use the “short-term” salinity SMCL (2200 EC) as the water quality objective	The “short-term” level should only be authorized on a temporary basis	Use the “upper” salinity SMCL (1600 EC) as the water quality objective

- 5. Salinity levels in the water supply source and growth increment should not be considerations for discharges with higher salinity.** Delta water is a substantial water supply to some water users in the Central Valley, and the Delta is also the downstream water body threatened by discharges in the Central Valley. If salinity levels in the water source for water users whose activities result in discharges were allowed to be used as a reason to allow higher salinity of discharged water, then water quality in and downstream of the Delta would be further degraded. As proposed, the BPAs would result in more difficulties for Central Valley dischargers in meeting discharge requirements and would

¹ https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2012/wqo2012_0001.pdf

require even higher discharge salinity to be allowed. This would also create an unsustainable vicious cycle that would continue to degrade Delta water quality. For the same reason, considering any growth increment in discharge requirements is not sustainable from the perspective of the protection of the quality of all waters of the state.

6. **The BPAs should be consistent with existing drainage agreements.** In February 2017 CUWA’s comment letter on the Salt and Nitrate Management Plan (SNMP), it was noted that the recommended policies of the SNMP have the potential to create regulatory loopholes to allow export of agricultural drainage out of the Central Valley. This is inconsistent with existing drainage agreements, including the 2009 Third Grassland Bypass Project Use Agreement, the September 2015 Settlement Agreement between Westlands Water District and the United States, the April 2017 Agreement between San Luis Water District and the United States², and a potential agreement among the Panoche Water District, Pacheco Water District and the United States. The proposed BPAs do not address this issue. We recommend the BPAs or Staff Report include specific section provisions discussing the discharge requirements of the CVP San Luis Drain Area, and requiring that implementation of the Salt Control Program be consistent with existing and future drainage agreements.

7. **The Central Valley Water Board’s previous response to CCWD’s comments on salinity objectives in Lower San Joaquin River³ did not adequately address the concerns on water quality degradation and responsibility shifting.** (1) Page 13, in response to CCWD comment #3: “The Proposed Amendments, by setting water quality objectives, a performance goal and an implementation program designed to ensure that salinity-reducing management projects undertaken by agricultural dischargers continue to be implemented, does exactly what the commenter suggests the Board do – require agricultural dischargers to share the burden of reducing salinity loads to the Delta.” As discussed above, it is the dischargers’ full responsibility to protect against the water quality degradation that discharges can cause, not just “to share the burden”. Relieving Central Valley dischargers from their full responsibility for at least some period of time, perhaps decades, is inconsistent with the fundamental policy concerning responsibility of dischargers expressed in Porter-Cologne. (2) Page 14, in response to CCWD comment #4: “the commenter is incorrect in stating that the EC objectives were established to allow an increase in salt loads; the proposed EC water quality objectives are set to levels that will ensure the protection of beneficial uses”. As discussed above, the “upper” and “short-term” salinity levels are not protective for MUN beneficial use. The proposed water quality

² Both the September 2015 Settlement Agreement between Westlands Water District and the United States and the April 2017 Agreement between San Luis Water District and the United States have been signed. However, the implementing legislations have yet been approved by the U.S. Congress.

³ Response to comments on amending the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) to establish salinity water quality objectives for the Lower San Joaquin River from the mouth of the Merced River to the Airport Way Bridge near Vernalis.

https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/upstream_salt_boron/lsjr_bpa_sb_rtc.pdf

objectives are inconsistent with the Board's response. There are no provisions in the proposed BPAs to prevent the usage of increased assimilative capacity that would result in water quality degradation.

8. **We may comment further based on the peer review of the technical studies once it is made available.** We concur with the need for peer review of the technical studies, but we are concerned that the results of those reviews and the responses to the peer review findings have not been made available as of 5/4/18. We are also concerned the Board's Staff Report was completed prior to that information becoming available, as it is not yet known whether the peer review findings may affect the staff recommendations. The late release of the materials also cut into the current review period for all documents.

Water quality objectives should be established to protect source water. Additional specific BPA language recommendations are provided in Attachment. If you have any questions, please do not hesitate to get in touch with us.

Sincerely,



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Attachment

Attachment

This Attachment provides additional specific recommendations to the proposed BPA language in the Draft Staff Report. The proposed changes to the BPA language are underlined. Text deletions to the existing Basin Plan are in ~~strike~~through.

1. Basin plan amendment language, last paragraph of Page 29

“In addition, for surface waters designated MUN the concentration of chemical constituents shall not exceed the “secondary maximum contaminant level” specified in Title 22, Table 64449-A or the ~~“Upper”~~“Recommended” level specified in Table 64449-B, unless otherwise authorized by the Regional Water Board in accordance with the provisions of Title 22, section 64449 et seq. Constituent concentrations ranging to the “Upper” level in Table 64449-B are acceptable if it is demonstrated that it is not reasonable or feasible to achieve lower levels, and/or consistent with the Drought and Conservation Policy (Section XX); in addition, constituents ranging to the “Short Term” level in Table 64449-B may be authorized on a temporary basis consistent with the provisions of section 64449(d)(3), pending construction of treatment facilities or development of new water sources, ~~and/or consistent with the Drought and Conservation Policy (Section XX).~~”

2. Basin plan amendment language, second last and last paragraphs of Page 43

~~“3. Maintain Current Discharge Concentrations for Salt or Mass Loading Levels as defined in current waste discharge permits – To~~ to the extent reasonable, feasible and practicable ~~(and while accounting for conservation and drought, salinity levels in the water supply source, and some appropriate increment of growth), the Regional Water Board may use its discretion to adopt performance-based limits or action levels to the extent the Regional Water Board finds it appropriate and necessary for salinity for permittees electing the Alternative Salinity Permitting Approach.~~

4. *Setting Permit Requirements* - In regulating discharges of salt in waste discharge requirements and conditional waivers, the Board shall require dischargers to fully participate in the P&O study (as documented by the lead entity overseeing the study), implement reasonable, feasible and practicable efforts to control salt, maintain current discharge concentrations, and meet any performance-based limits or action levels deemed appropriate and necessary by the Regional Water Board. ~~Compliance with these requirements shall constitute compliance with the water quality control plan and shall be deemed adequately protective of beneficial uses and the water~~ In the event that downstream water users discover water quality degradation due to certain discharge activities, permit requirements shall be re-evaluated and reset to protect beneficial uses.”

3. Basin plan amendment language, second last paragraph of Page 44
~~“4. Maintain Current Discharge Concentrations for Salt or Mass Loading Levels as defined in current waste discharge permits —To the extent reasonable, feasible and practicable (and while accounting for conservation and drought, salt levels in the water supply source, and some appropriate increment of growth), the Regional Water Board may use its discretion to prescribe performance-based limits or triggers to the extent the Regional Water Board finds such additional actions appropriate and necessary for salinity for permittees electing the Alternative Salinity Permitting Approach.”~~
4. Basin plan amendment language, second paragraph of Page 78
Add the following item to the list of “The portion of the Work Plan that addresses the surface water component will include at a minimum” in Chapter Surface Water Requirement of Surveillance and Monitoring Program Requirements
 - Identification of additional monitoring programs and/or locations necessary to achieve the goals of the Surveillance and Monitoring Program
5. Basin plan amendment language, first paragraph of Page 95
The State Water Board and the Regional Water Board recognize that salt is impacting beneficial uses in the Central Valley and management of salinity in surface and ground waters is a major challenge for dischargers. ~~No proven means exist at present that will allow ongoing human activity in the Basin and maintain groundwater salinity at current levels throughout the Basin.~~
6. Basin plan amendment language, last paragraph of Page 105
“Permittees (or third party group on behalf of collective permittees) shall receive interim effluent and/or groundwater/surface water limitations based on their historic salinity load ~~(with consideration given to reasonable increment of use or changes in source water salinity concentration)~~ and shall not exceed an EC concentration of 2,200~~1,600~~ $\mu\text{S}/\text{cm}$ as a 30-day running average.”
7. Basin plan amendment language, third paragraph of Page 106
“b) The remaining permittees (or third party group on behalf of collective permittees) shall receive interim effluent and/or groundwater/surface water limitations based on TDS loading consistent with their historic load ~~(with consideration given to reasonable increment of use or changes in source water salinity concentration)~~ and shall not exceed an EC concentration of 2,200~~1,600~~ $\mu\text{S}/\text{cm}$ as a 30-day running average. An EC to TDS ratio of 0.64 shall be used to convert the EC concentrations to TDS concentrations, unless a discharge-specific ratio can be demonstrated. The Regional Board has the discretion to adjust these limitations based on other considerations such as local beneficial uses and site-specific salinity objectives.”

8. Basin plan amendment language, third paragraph of Page 110. Recommendations to this paragraph are **only** valid if the “upper” salinity SMCL is adopted as the water quality objective.

~~“Secondary MCLs are identified in section 64449 (Table B) of Title 22 of the California Code of Regulations (Title 22) and were developed for consumer acceptance and public welfare. Constituent concentrations ranging to the “Upper” level in Table 64449-B are acceptable if it is demonstrated that it is neither reasonable nor feasible to achieve lower levels. In addition, constituents ranging to the “Short Term” level may be authorized on a temporary basis consistent with the provisions of section 64449(d)(3), pending construction of treatment facilities or development of new water sources, or with the Drought and Conservation Policy (Section ##). Lower concentrations of these chemical constituents are desirable for promoting greater consumer confidence and acceptance of water supplied by community water systems, and, where it is reasonable and feasible to do so, WDRs should consider the “Recommended” values in section 64449 (Table B) and the natural background concentrations, whichever are lower. These “Recommended” concentrations are not water quality objectives per se but should be considered water resource management goals similar to other public policy goals established by the Regional Water Board and State Water Board to encourage meeting the best possible water quality while allowing greater water conservation, increased use of recycled water, more stormwater harvesting, additional groundwater recharge and storage, better drought protection, and allowing agricultural and wastewater dischargers to continue to discharge to groundwater basins and surface water bodies. Higher concentrations than these “Recommended” values are not intended to be widely used as water quality objectives in WDRs. The application of water quality objectives higher than these “Recommended” values should be consistent with State Antidegradation Policy and should only be approved if impacts on downstream beneficial uses are demonstrated to be less than significant.”~~