

May 6, 2018

Karl E. Longley, Ph.S, Chair
Pamela Creedon, Executive Officer
California Regional Water Quality Control Board Central Valley Region
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SUBJECT: Central Valley Salinity Coalition Support for and Comments on *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 Chair Longley and Ms. Creedon:

The Central Valley Salinity Coalition (CVSC) wishes to congratulate you, your staff, and all stakeholders that have participated in Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) for successfully completing preparation of the comprehensive Central Valley-wide Salt and Nitrate Management Plan (SNMP), and for implementing the proposed strategies and policies contained in the SNMP in the Draft Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and Tulare Lake Basin to Incorporate a Central Valley-wide Salt and Nitrate Control Program (Draft Amendments).¹ The CVSC was formed in 2008 to assist in supporting the CV-SALTS stakeholder efforts. Since its formation, the CVSC has raised over \$3 million from its members² to support these stakeholder efforts. In addition, the CVSC's diverse group of stakeholders have collectively spent countless hours in attending Executive Policy and Administrative meetings as well as in other technical and public outreach meetings to provide informed input into the development of the SNMP and the Draft Amendments.

Overall, the CVSC believes that the Draft Amendments and the supporting Draft Staff Report are consistent with the recommendations contained in the SNMP, and the CVSC supports adoption of the Draft Amendments.

The CVSC has carefully reviewed the Draft Amendments and the supporting Draft Staff Report and its appendices. Based on this review, the CVSC provides the following comments and suggested edits to ensure that the Draft Amendments and Draft Staff Report are clear with respect to the intent

¹ Throughout the Draft Amendments and Draft Staff Report, the term Salt Control Program and Salinity Control Program appear to be used interchangeably. For clarity, the Central Valley Water Board should determine if the program is titled "Salt" or "Salinity" Control Program, and then make such revisions throughout the document accordingly.

² The CVSC's current membership includes the following organizations in Attachment 1.

and application of the SNMP's proposed policies contained therein. Our comments are provided in the order in which they appear in the March 2018 Draft Staff Report.

I. Executive Summary (ES)

The CVSC supports the inclusion of an Executive Summary (ES) considering the size and complexity of the Draft Amendments and Draft Staff Report. However, CVSC finds that some portions of the ES are inconsistent with the Draft Amendments, and other information contained in the Draft Staff Report. Our specific comments on the Executive Summary are as follows:

- (p. 6) – Under the environmental setting section, the ES states that the Salt and Nitrate Control Program applies to all surface and groundwater within the Central Valley Region. This broad statement is not accurate. Rather, the Salt portion of the Control Program applies to all surface and groundwater within the Central Valley Region, and the Nitrate portion of the Control Program applies to groundwater with a beneficial use designation for municipal and domestic uses (MUN).
- (p. 10) – Under the surface water quality section for the Sacramento River Region, there is a statement that suggests that high levels of salinity are transported from the Sacramento River Region to the Delta and other parts of the Central Valley. The CVSC believes that this statement is misleading. As the data and information indicate, salinity levels in surface waters in the Sacramento River Region are low, and water is of high quality. As such, the levels of salinity being conveyed from the Sacramento River Region to the Delta or the rest of the Central Valley are not significant. We recommend that this sentence be deleted.
- (p. 10) - The surface water quality section states that in the Tulare Lake Region, “water quality is extensively impacted by salinity in this region.” This statement is not supported by the text in the Draft Staff Report (see, e.g., page 149) or by the data provided. We recommend this sentence be deleted, or be clarified.
- (p. 11) – With respect to the discussion of salinity in groundwater, a sentence references the recommended and upper ranges of salinity as expressed in secondary maximum contaminant levels (SMCLs). This is a correct but incomplete statement with respect to SMCLs. Title 22 of the California Code of Regulations also includes a short-term value for salinity. To be completely accurate, this sentence should be revised to also reference the short-term value of 1,500 mg/L for TDS.

Further, to the extent that additional revisions are made in response to comments submitted, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will need to update the Executive Summary to reflect any revisions.

II. Amendment Language for the Sacramento River and San Joaquin River Basin Plan and Tulare Lake Basin Plan (Draft Amendments)

A. Comment on Introductory Language

The Draft Amendments include a general introduction to the Salt and Nitrate Control Program that is intended to provide explanation and context for the control program, and proposes to incorporate the over-arching SNMP management goals into the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and Tulare Lake Basin (Basin Plans). The Draft Amendments also state that the “long-term implementation of the Salinity and Nitrate Control Program is achieved primarily through Regional Water Board permitting actions (i.e., waste discharge requirements or conditional waivers).” (See page 31.) The CVSC generally agrees with the management goals and ultimately how they will be implemented, with an important clarification.

Under the Central Valley Water Board’s existing permitting authority, the Board is unable to directly require dischargers to provide replacement water or restore impaired water bodies. Rather, the Central Valley Water Board must rely on enforcement authority provided in Water Code section 13304 to require remediation (i.e., restoration) and/or replacement water. With the Draft Amendments, permittees essentially elect to have their permits include such provisions when they decide to pursue alternative compliance pathways. In other words, the Draft Amendments do not expand the Regional Water Board’s statutory authority but provide for an alternative compliance pathway for permittees to pursue. If permittees decide to select an alternative compliance pathway, then they are agreeing to address replacement water and restoration (where reasonable, feasible and practicable) as part of the alternative compliance pathway, and such requirements are then implemented through permit conditions. Thus, permittees that elect to rely on an Alternate Permitting pathway have voluntarily agreed to prepare a long-term plan to restore groundwater quality to meet applicable objectives where it is reasonable, feasible and practicable to do so. Permittees that elect to use the Conservative Permitting pathway are not required to prepare such a plan unless the Central Valley Water Board imposes such an obligation pursuant to a Cleanup and Abatement Order issued in accordance with Section 13304 of the California Water Code.

To ensure that this concept is clear, the CVSC recommends the following revision:

- (p. 31) – “For goals 2 and 3, the Salinity and Nitrate Control Program recognizes that in some circumstances meeting these goals may not be reasonable, feasible or practicable. Further, the Salinity and Nitrate Control Program does not expand the Regional Water Board’s existing statutory authorities. By selecting an alternative coordinated, multi-discharger management approach, permittees are agreeing to meet the management goals. Specifically, permittees that elect to rely on an Alternate Permitting pathway have voluntarily agreed to provide replacement water, and prepare a long-term plan to restore groundwater quality to meet applicable objectives

where it is reasonable, feasible and practicable to do so. Permittees that elect to use the Conservative Permitting pathway are not required to provide replacement water or prepare such a plan unless the Central Valley Water Board imposes such an obligation pursuant to a Cleanup and Abatement Order issued in accordance with Section 13304 of the Water Code. Determinations of reasonable, feasible and practicable are to be decided on a case-by-case basis.

The CVSC also recommends additional revisions to the Introductory section to ensure clarity with respect to implementation of the long-term Salt Control Program, as well as to better clarify that the Central Valley Water Board will review the program in its entirety at a specified interval.

- (p. 31) – The last sentence on page 31 states that, “[l]ong-term implementation of the Salinity and Nitrate Control Program is achieved primarily through Regional Water Board permitting actions (i.e., waste discharge requirements or conditional waivers). With respect to the long-term implementation of the Salt Control Program (i.e., Phases II and III), the CVSC believes that it will take much more than permitting actions to implement a long-term control program for salt in the Central Valley. It is very likely that the cost to implement the Salt Control Program will be extraordinarily high and that it will take major public dollars for capital infrastructure projects to implement. Thus, it is inappropriate to imply that the implementation of the long-term Salt Control Program will be achieved solely through permitting actions on permittees. Everyone in the state contributes to the Central Valley’s salinity issues, and thus everyone in the state will need to be part of the solution in some way.
- (p. 32) – At the end of the Introductory section, there should be an additional sentence or paragraph that states that the Central Valley Water Board shall review the entirety of the Salt and Nitrate Control Program at the end of Phase I of the Salt Control Program. Currently, the Draft Amendment is vague as to review of the entire program and further clarification is warranted.

B. Comment on Tulare Lake Basin Plan Language

On pages 51 through 52, the Draft Amendments identify specific revisions to the Tulare Lake Basin Plan for salinity limits. However, as currently proposed, these Draft Amendments do not address the issue of boron. The Tulare Lake Basin Plan boron limit of 1 mg/L is not a water quality objective and is not directly tied to protecting any specific beneficial use. Thus, retaining this limit of 1 mg/L lacks justification and purpose. To address this issue, the CVSC recommends that the limit of 1 mg/L be deleted throughout chapter 4 of the Tulare Lake Basin Plan. In its place, the CVSC recommends that reference be made to the applicable water quality objective for boron. This will provide the Central Valley Water Board with the discretion to properly interpret the applicable boron objective for the actual agricultural use without unduly limiting boron to 1 mg/L in waste discharges with no proper justification. Further, the

CVSC recommends that the boron objectives are applicable to the receiving water and not effluent. Our proposed edits are as follows:

- (p. 51) – Agricultural drainage may be discharged to surface waters provided it does not cause the receiving water to exceed an applicable water quality objective for boron.
- (p. 51) – Discharges shall not cause the receiving water to exceed an applicable water quality objective for boron content of 1.0 mg/L.
- (p. 51) – Discharges to areas that may recharge good quality groundwaters shall not cause the receiving water to exceed an applicable water quality objective for boron content of 1.0 mg/L.
- (p. 52) – ~~Maximum salinity boron~~ Limits for wastewaters in unlined sumps overlying groundwater with existing and future probable beneficial uses ~~are 1,000 μ mhos/cm EC, 200 mg/l chlorides, and 1 mg/l boron~~ shall not cause the receiving water to exceed an applicable water quality objective for boron, except in the White Wolf subarea where more or less restrictive limits apply. The limits for the White Wolf subarea are discussed in the “Discharges to Land” subsection of the “Municipal and Domestic Wastewater” section.
- (p. 52) - Discharges of oil field wastewater that exceed ~~the above maximum proposed boron salinity~~ limits may be permitted to unlined sumps, stream channels, or surface waters if the discharger successfully demonstrates to the Regional Water Board in a public hearing that the proposed discharge will not substantially affect water quality nor cause a violation of water quality objectives.

C. Comment on Modification to Management Zone Implementation Plan

- (p. 70.) – Modifications should be able to occur for the benefit of water quality, or for the benefit of user protection. Accordingly, the following sentence should be modified: “Any such modifications should generally be changes that will benefit water quality or user protection in the management zone.”

D. Comment on Requirements for Alternative Compliance Projects

- (p. 73) – In the SNMP, the Central Valley Water Board would retain its discretion to authorize degradation above a trigger level in unique and limited circumstances. This clarification has not been carried over to the Nitrate Control Program. For consistency, we recommend that a footnote be added after “a trigger level” that states as follows:
 - The Central Valley Water Board retains its discretion to authorize degradation above a trigger level without requiring an alternative compliance project in unique and limited circumstances.

E. Comment on Conditional Prohibition for Salt and Nitrate Control Program

- (pp. 74-76) - The Draft Amendments would limit the Central Valley Water Board's authority to amending only irrigated lands regulatory program (ILRP) general orders rather than providing additional flexibility to amend other general orders rather than having the conditional prohibition apply. The CVSC believes that this language is too limiting and should be revised to provide the Central Valley Water Board with some discretion to amend other general orders if determined appropriate for early implementation of the Salt and Nitrate Control Program.

F. Comment on Recommendations to Groundwater Sustainability Agencies (GSAs)

- (p. 82) – The CVSC agrees that GSA's should participate and support the Prioritization and Optimization (P&O) study. Further, the Draft Amendments should also be amended to state that GSAs in the Central Valley should also participate in nitrate management zones where appropriate and applicable.

G. Comment on Definitions and Terminology Specific to the Salinity and Nitrate Control Program

- (p. 84) – The definition of “contamination” should be deleted as it is defined in statute.
- (p. 84) – The definition of “de minimis” discharge should be deleted as it is only used in the Nitrate Control Program and is defined therein.
- (p. 84) – The definition of “domestic well” should be deleted, or other definitions in statute should be used.
- (p. 85) – The definition of “pollution” should be deleted as it is defined in statute.
- (p. 85) – The definition of “salinity” should be revised to include Fixed Dissolved Solids.
- (p. 86) – The definition of “trigger” should be revised to clarify that triggers are *not* water quality objectives.

III. Section 1 – Introduction

Comments on the introduction section are provided here in bullet format.

- (p. 136 and 139) - As noted previously (see comment re: page 6 of the ES), statements throughout the Draft Staff Report provide that the Salt and Nitrate Control Program is designed to address salt and nitrate accumulation issues in surface and groundwaters. The CVSC recommends that the Draft Staff Report be revised to clarify that the program addresses salt in surface and ground waters, and nitrate in groundwaters.

- (p. 137) – There is a sentence with respect to subsequent project-level analysis that will be required pursuant to the California Environmental Quality Act (CEQA) may in some instances need to be performed by the Regional Water Board. Accordingly, this sentence should be revised to correctly reflect that the Regional Water Board may also be the lead agency on occasion.

IV. Section 2 – Environmental & Regulatory Setting

Comments on the Environmental & Regulatory section are provided here in bullet format.

- (p. 148) – The surface water quality section includes a sentence that states in part that “secondary maximum contaminant levels ... [where] developed to protect drinking water supplied to consumers.” Although the term consumers is intended to reflect that SMCLs are based on consumer preferences, use of the term “protect” leaves the impression that SMCLs are public health standards. We recommend that this portion of the sentence be revised as follows: “... which was developed to ~~protect~~ reflect consumer preferences for drinking water ~~supplied to consumers.~~”
- (p. 149) – Table 2-3 summarizes EC conditions for the various basins. With respect to the Tulare Lake Basin, the table references the Main Drain Canal as having high electrical conductivity (EC) levels above 900 μ S/cm during irrigation events. This statement appears to be based on data that was collected prior to 2014 and does not reflect that the Main Drain no longer functions as an agricultural drain. Thus, reference to the Main Drain Canal should be deleted.
- (p. 150) – With respect to the Tulare Lake Basin, the statement regarding EC levels in irrigation and drainage should be removed. This statement appears to be based on data solely from the Main Drain Canal. Data from one drain cannot support such a broad statement. Further, many irrigation and drainage canals on the valley-floor in Tulare Lake Basin Plan are not designated as MUN.
- (p. 151-152) – The Draft Staff Report includes references to surface water nutrient listings. Such references are inappropriate because surface water nutrient issues are not part of the Draft Amendments at issue here. Thus, we recommend nutrient listings and issues be removed from the Draft Staff Report, or at the very least, the Draft Staff Report should explain that surface water nutrient issues are not at issue in these Draft Amendments.
- (pp. 171 – 174) – The title of this section is: “Policies Incorporated into the Basin Plans Related to Salt and Nitrate Management.” However, the narrative text that follows does not seem to fit within the description of Basin Plan policies. Rather, the text discusses permitting processes for some of the major categories of permittees that will be subject to the Salt and Nitrate Control Program. Further, the section is divided between surface and groundwater; however, some of the discussions are combined for some permittees. For

example, the Irrigated Agriculture paragraph under Surface Water discusses groundwater and nitrogen management plans. The intent and purpose of this section is unknown and should be revised for clarity.

- (p. 177-178) – The Draft Staff Report does not provide proper context and explanation for Table 2-12. We recommend that this table be deleted.
- (p. 182) – There is a sentence that references that permittees would be required to clean up the aquifer and mitigate any damage if found to have caused or contributed to nitrate pollution. This is a true statement regarding the Central Valley Water Board’s existing authorities under the Water Code. However, what is not clear from this sentence is that this authority resides within the regional water board’s enforcement authorities under Water Code section 13304 and not within its permitting authority. To ensure clarity, we recommend that this sentence be revised to specifically reference that the mechanism is enforcement authority under Water Code section 13304 – not permitting authority.
- (p. 183) - In discussion regarding interpreting narrative objective to protect AGR, the draft staff report fails to mention the State Board’s precedential Woodland Order (Order WQO 2004-0010). Considering the important impact that this State Board Order has on interpreting narrative water quality objectives for protecting AGR, we recommend that this Order be directly referenced in this section.

V. Section 3 – Laws, Regulations, and Policies Relevant to Basin Planning

In general, this section should be revised to carefully distinguish the portions of the Draft Amendments that will be subject to review by the United States Environmental Protection Agency (USEPA), and those that will not. Many of the Draft Amendments pertain solely to groundwaters and thus do not fall under the purview of the federal Clean Water Act and USEPA. Accordingly, this section should clearly distinguish between what is subject to USEPA review and what is subject only to state authority. One suggestion would be to include a table in this section that specifically identifies the various Draft Amendments, and in that table, identify whether the proposed provisions are subject to state and federal authority, or state authority only.

Additional, specific comments on Section 3 are provided here in bullet format.

- (p. 185) – The first sentence on this page uses the phrase “all waters of the United States.” This could be confusing for some as the term used when referencing waters subject to the Clean Water Act is “waters of the United States.” We recommend deleting the term “all” for clarity.
- (p. 185) - Footnote 33 should be revised to identify the guidance that is being referenced.

VI. Section 4 – Alternatives

Section 4 is a key component of the Draft Staff Report in that it identifies the various alternatives considered by Central Valley Water Board staff, and it contains recommended preferred alternatives along with any additional recommended revisions. Further, Section 4 includes explanatory language for the recommendations and assists in providing context for many of the Draft Amendments. Considering the importance of this section, the CVSC provides a number of suggested comments and revisions for this section. As with the other sections, CVSC provides these comments in bullet format in numerical order by page number.

- (p. 201) – On page 201, the Draft Staff Report brings forward the management goals from the SNMP. Similar to our comment above on the Introductory language of the Draft Amendments, the CVSC recommends that additional information be provided here to clarify the Central Valley Water Board’s authorities available for implementing the goals. Specifically, and as stated above, the Central Valley Water Board authority for requiring replacement water and restoration of groundwater basins is contained in enforcement authority under Water Code section 13304. With the Draft Amendments, the Central Valley Water Board’s statutory authorities are not being expanded; rather permittees are being given an option to elect alternative compliance pathways. When permittees elect alternative compliance, they are agreeing to provide replacement water and restoration (wherever reasonable, feasible and practicable) as part of a permit provision.
- (p. 201) – The first sentence after the management goals references that these goals are to be met wherever reasonable, feasible and practicable. This qualifier applies to management goals 2 and 3, but not goal 1. This sentence should be clarified. Further, determining if meeting goal 2 or 3 is reasonable, feasible and practicable should be decided on a case-by-case basis. Clarification should be added for this purpose.
- (p. 209) – For Salt Control Program implementation, there are two compliance pathways. On page 209, it states that the Conservative Approach applies to “all permitted dischargers.” First, this sentence should be revised to state that it applies to permitted dischargers of salt. Second, there is confusion as to the applicability of the conservative compliance pathway if the waterbody is not designated for MUN or AGR. The CVSC fully supports the need for permittees in areas where de-designations have occurred to be part of the P&O Study. (See, e.g., p. 45.) However, there is uncertainty with respect to the application of conservative permitting pathways to such areas if MUN and AGR have been de-designated. Clarification on this issue is recommended.
- (p. 209- 218) – In the discussion regarding implementation of the Salt Control Program, the alternatives section does not discuss or identify the Draft Amendments with respect to de-designated areas. This appears to be an oversight. Section 4 needs to be revised to include a discussion and explanation with respect to the Draft Amendments titled “Permitted Discharge to a Water Body Subject to De-designation of a Beneficial Use.”

- (p. 218) – At the top of page 218, there is a sentence that states, in part, that participation in the Alternative Salinity Permitting Approach includes providing the “minimum required level of financial support to the lead entity for the P&O Study.” As the lead entity, the CVSC believes it important to clarify that the lead entity is responsible for determining what constitutes an appropriate minimum required level of financial support. This may include some form of in lieu contribution, but such determinations are left to the lead entity – not the Central Valley Water Board. Accordingly, we recommend that a footnote be included that states as follows: The lead entity shall be responsible for determining the minimum required level of financial support. In some circumstances, and where appropriate, the lead entity may consider in lieu contributions to meet the minimum level of financial support. However, such determinations are at the discretion of the lead entity.
- (p. 220) – Consistent with our comments above regarding boron, the *Revisions Specific to the Tulare Lake Basin Plan* subsection needs to be revised to include the recommended changes to boron limits that currently exist in the Tulare Lake Basin Plan.
- (p. 220-221) – Subsection 4.2.1.2. discusses the limitations with respect to the current regulatory framework, and changes being made to better address alternative water supply needs and long-term managed restoration of our groundwater aquifers. As discussed previously above, the CVCS believes it is imperative to explain here that the Draft Amendments are not expanding the Central Valley Water Board’s existing permitting authorities to require replacement water and long-term managed restoration. Rather, when permittees elect an alternative compliance pathway, they are agreeing to implement the management goals as part of alternative compliance.
- (p. 220) – Revise the last sentence on page 220 as follows: Current enforcement authority pursuant to Water Code section 13304 authorizes ~~allows~~ the Central Valley Water Board to ~~require mitigation~~ order replacement water if a permitted discharge is causing or contributing to an exceedance that ~~would~~ impacts persons relying on groundwater as their source of drinking water.
- (p. 221) – There is a sentence that states, “[a]uthority is currently limited to clean-up activities on a permit-by-permit basis.” This statement is not accurate. Current regional water board authority is limited to clean-up activities through enforcement by issuing a Clean-up and Abatement Order per Water Code section 13304 – not directly through a permit action. Revise the last two sentences in the paragraph titled *Restore Degraded Groundwater* as follows: Authority is currently limited to clean-up activities pursuant to an enforcement order ~~on a permit-by-permit basis~~. The proposed alternative is phased to provide long-term, managed restoration where reasonable, feasible and practicable by incentivizing and encouraging alternative compliance for all permittees that discharge salt.
- (p. 220-222) – See discussion above under Draft Amendments regarding boron.
- (p. 222) – As part of Recommendation 4.2.1.3, Central Valley Water Board staff are recommending that consumption use guidelines be evaluated as part of the P&O Study. The CVSC is concerned with this recommendation. First, the Draft Amendments are appropriately removing such consumption use guidelines from

the Tulare Lake Basin Plan because their applicability to wastewater today is questionable. Second, the CVSC believes it is inappropriate as part of the P&O Study to evaluate such guidelines for compliance purposes. This could be an expensive, research type project that is inappropriate for the P&O Study. Further, the P&O study is to determine a long-term plan for salt management for the Central Valley, which will hopefully result in all waters of the state eventually meeting salinity standards. Evaluating consumption use guidelines would detract from this primary purpose. The CVSC recommends deleting this proposed staff recommendation.

- (p. 223) – The last sentence of the paragraph for the No Action Alternative needs to be revised to clarify that the Central Valley Water Board’s authority for requiring replacement water and restoration is through an enforcement order under Water Code section 13304 – not through its permitting authority.
- (p. 228) - 4.2.2.1.2.3 – Prioritized Approach – Under the current Draft Amendments, the Central Valley Water Board is to review the priorities as proposed for adoption into the Basin Plans no later than January 1, 2024. While such a review is appropriate, the CVSC is concerned that there may be basins or portions of some basins that may not need to be an early priority. Inclusion of such areas in this review could unintentionally take away limited resources from those areas of these basins that truly are a priority for nitrate contamination. Further, as permittees and management zone participants evaluate data and information for compliance with the Nitrate Control Program, they may find that the original nitrate data and information used for prioritization resulted in some basin or portion thereof being improperly prioritized. As currently proposed, there is no defined process for the Central Valley Water Board to review and consider requests for re-prioritization. The CVSC believes that it is in the interest of both the Central Valley Water Board as well as stakeholders to have such a defined process so that resources can be appropriately focused on those areas that truly have nitrate contamination issues.
- (p. 234) – The CVSC disagrees with the statement that allocation of assimilative capacity over 10% is considered a means of alternative compliance. Under the SNMP recommendations, alternative compliance may be triggered if a permittee selecting path A seeks assimilative capacity above the trigger level – not for seeking assimilative capacity over 10%.
- (p. 236) – With respect to the number of permittees, for clarification, the paragraph should be revised to note how irrigated agriculture and dairies are counted in the permit numbers since they are subject to General Orders. In other words, their permits were probably counted as 1 permittee, but in fact, the General Orders cover many individual operations and substantial acreage.
- (p. 236) – Many categories or types of dischargers in the Central Valley may not be captured under the Central Valley Water Board’s traditional permitting processes. For example, septic systems are subject to local agency management programs through the state’s onsite wastewater treatment system (OWTS) policy. The Draft Staff Report does not mention or discuss how the Salt and Nitrate Control Policy will apply to these untraditional dischargers. Considering the potential impact such discharges may have on groundwater quality, the CVSC recommends that

there be some plan to include them in implementation of the Salt and Nitrate Control Program.

- (p. 248) – The CVSC disagrees with the statement that “in most cases, the request for granting assimilative capacity” will trigger need for alternative compliance. This would imply that Category 3 dischargers trigger alternative compliance, which is not what has been discussed as part of the CV-SALTS Executive Policy discussions.
- (p. 248) – It is our understanding that the Guidelines are guidance. Accordingly, the word “must” needs to be changed to “should” to properly convey that the guidelines are guidance and not mandatory.
- (p. 255) – The paragraph titled, *Provide Alternate Water Supplies* needs to be revised to clarify that Central Valley Water Board authority for requiring replacement water is through enforcement authority pursuant to Water Code section 13304. With respect to the discussion for Alternative 2, further clarification needs to be provided that alternative compliance is a parallel pathway whereby permittees are electing to address replacement water through a permit action rather than an enforcement action due to other incentives associated with alternative compliance.
- (p. 256) – Similar to other comments, when referencing replacement water and permitting authorities, clarification should be provided. The following sentence should be revised accordingly: “Alternative 2 will likely result in the more immediate provision of replacement drinking water because permittees using alternative compliance ~~permitted~~ under Alternative 2 will have greater flexibility to deploy resources to provide drinking water due to potentially longer compliance schedules (i.e., these permittees would not be laboring under a goal to restore aquifers in 50 years) and because they would have greater ability to pool resources under the Management Zone option.”
- (p. 257) – The second sentence under *Restore Degraded Groundwater* needs to be revised for clarity. We recommend the following revision: “Authority is currently limited to cleanup ~~activities~~ orders on an ~~permit-by-permit~~ order-by-order basis.” Further, throughout this paragraph, references to “permit-by-permit” should be changed to “order-by-order.”
- (p. 259) – There is a recommendation that the Guidelines for Alternative Compliance Projects be expanded to include additional criteria. Unfortunately, however, it does not appear that these additional criteria are included in the Draft Staff Report. Thus, the CVSC is unable to comment on the proposed additional criteria.
- (p. 259) – The CVSC recommends that Alternative 2 be further modified to clarify that the Program for Implementation of the Nitrate Control Program will be reviewed periodically, and will be reviewed concurrently with review of the Program for Implementation of the Salt Control Program and the end of Phase 1 in 10 years.
- (p. 262) – Consistent with our comment above with respect to the Conditional Prohibition language, the CVSC comments here that the Central Valley Water

Board should have additional discretion to revise other general order for early implementation and not limit such action to only ILRP general orders.

- (p. 268) – Under subheading: “Monitoring and Surveillance Program Requirements,” the CVSC recommends deleting of paragraphs 2 and 3. These two paragraphs are not consistent with the Draft Amendments and will create confusion. Further, this text may create some confusion given the references to shallow and deep zones, which is terminology that predates efforts to establish Upper and Lower Zones.
- (p. 271) – First full paragraph, regarding last clause, “...and allowing flexibility during work plan development to determine appropriate sampling frequency by location.” On this same page in paragraph before 4.2.4.3, it appears the phrase “sampling frequency” is actually in reference to how data will be analyzed. Accordingly, it is recommended that this text be revised where it first appears to state: "...and allowing flexibility during work plan development to determine appropriate frequency for averaging data collected by existing monitoring and assessment programs to determine ambient concentrations and trends in surface waters." This will ensure consistency between the phrase and the narrative text.
- (p. 271) – For the paragraph before 4.2.4.3, we recommend revising italicized text to state: "Allowing flexibility during work plan development to determine appropriate data averaging periods by location to evaluate ambient concentrations and trends."
- (p. 272) – For the 2nd bullet from top of page, we suggest revising bullet to state: "For the surface water program, flexibility should be provided to identify appropriate data analysis/averaging procedures within the work plan."
- (p. 278) – Revise last paragraph before subsection 4.2.6.3 to clarify that water quality based effluent limitations are required where there is reasonable potential.
- (p. 317) – The CVSC supports the proposed alternative to allow use of filtered samples using a 0.45-micron filter in accordance with federal regulations for the next ten years, or until translator is developed. In other words, it is our understanding that for the next 10 years, the default practice is to allow use of dissolved samples for determining compliance. Further, it is expected that during this 10-year time period translators will be developed. We also understand that if such translators are not developed, then at the end of the 10-year period, the default will be to use total samples. Further, the CVSC also understands that the need for translators may extend beyond metals and may also be necessary for constituents such as color and turbidity. The current Draft Amendments are focused on metals, which is likely appropriate. However, the Draft Staff Report (and perhaps the Draft Amendments) should acknowledge the need for future changes that also consider the application of translators to other constituents besides metals.
- (p. 321) – In accordance with our comments above, please delete recommendation with respect to consumption use guidelines.

VII. Section 5 – Antidegradation

Comments on the Antidegradation section are provided here in bullet format.

- (p. 327) – The last sentence of section 5.2.1.1. states that the Salt Control Program is consistent with the State Antidegradation Policy. We believe that the intent of this statement is that it is consistent with both the State and Federal Antidegradation Policies and not just the state’s policy. This sentence should be revised accordingly.
- (p. 328) – In the first paragraph, there is a reference to the date of the adoption of the Salt Control Program. We believe that the correct terminology for this sentence should be “after the effective date” rather than adoption date.
- (p. 339) – Under section 5.3.2.1, the second paragraph, there is a reference to the fact that permittees participating in a management zone will need to develop Early Action Plans. For clarity, this paragraph or sentence should also note that individual permittees will also need to develop Initial Action Plans if they are causing nitrate in domestic or public supply wells to exceed the nitrate water quality objective.
- (p. 342) – With respect to the sentence for *Consistency with the Federal Antidegradation Policy*, it should clearly state that the Federal Antidegradation Policy does not apply because the Nitrate Control Program applies only to nitrate in groundwater.
- (p. 345) – The last sentence under section 5.5 appears to be incomplete.

VIII. Section 6 – Consistency with Laws, Plans & Policies

Comments on the Consistency with Laws, Plans & Policies section are provided here in bullet format.

- (p. 346) – The penultimate sentence on this page should be revised as follows: The proposed Basin Plan Amendments do not designate, remove or revise beneficial uses for surface waters.
- (p. 347) – Subsection 6.1.1.2 identifies the Variance Policy and SMCLs as being the only two Draft Amendments that may have any impact on NPDES permitting procedures. The Central Valley Water Board should consider if the Drought and Conservation Policy should also be considered as impacting NPDES permitting procedures.
- (p. 349) – Subsection 6.1.1.4 should note that future Basin Plan Amendments for Phases II and III of the Salt Control Program may have an impact to wetlands and any such impacts will be considered and evaluated in conjunction with the future amendments.
- (p. 353) – Under subsection 6.1.4, there is a general reference to multiple permittees working collectively in a management zone. It is important to recognize that the intent and purpose of management zones is not just for

permittees to work collectively but also for permittees to work with local agencies, GSAs, municipalities, and others with respect to management of nitrate.

- (p. 354) – Under section 6.1.5, there is a reference to the Drought and Conservation Policy. The CVSC believes that there may be other climate change benefits associated with alternative compliance for both the Salt and Nitrate Control Programs. Such benefits should be identified here. For example, under alternative compliance for Phase 1 of the Salt Control Program, permittees will avoid building energy-intensive treatment facilities while we determine the ultimate, valley-wide approach for controlling salinity. Similarly, the Nitrate Control Program will minimize the need for individual facility and farm nitrate treatment because we are looking to implement long-term managed restoration of our groundwater basins for nitrate.
- (pp. 358-359) – The Draft Staff Report properly evaluates the consistency of the Draft Amendments with the state’s Nonpoint Source Policy. However, the narrative text does not appear to consider the Exceptions Policy and how it works in conjunction with the Nonpoint Source Policy. The CVSC believes that the Exceptions Policy is consistent because it includes requirements for consistency with the 3 management goals, which includes long-term managed restoration of groundwater basins (where reasonable, feasible and practicable) to meeting water quality objectives. Thus, there is a “high likelihood” of achieving water quality objectives over the long-term, or in the alternative, if not reasonable, feasible and practicable, the beneficial uses will need to be reevaluated.
- (p. 358) – The third bullet on this page states in parenthesis that feedback mechanisms are “(defined by the Court as adequate monitoring of the effectiveness of management practices)...” If the Court reference here means the Sacramento Superior Court’s decision with respect to the Central Coast agricultural waiver program, then the CVSC disagrees with the appropriateness of this reference. The Sacramento Superior Court decision in question has been appealed to the Third District Court of Appeal. With this appeal, the Sacramento Superior Court has acknowledged in an order that the court’s decision is stayed pending this appeal. Thus, there is no applicable court definition with respect to what constitutes an appropriate feedback mechanism, and the statement in parenthesis should be omitted.
- (p. 361) – The last paragraph on this page mentions variances but fails to mention exceptions. There may be limited situations where non-NPDES discharges of salinity to an impaired surface water may need to obtain an exception. While this is unlikely to happen in Phase I of the Salt Control Program, it may occur in Phase II or Phase III. Thus, a reference to exceptions for non-NPDES discharges may be appropriate here.
- (p. 362) – In the discussion with respect to the OWTS policy, the Draft Staff Report should be amended to state that the Central Valley Water Board will consider compliance and consistency with the Salt and Nitrate Control Program in future Local Area Management Plan considerations.
- (pp. 364-365) – Similar to our comment above, non-NPDES dischargers may be subject to load allocations as expressed in total maximum daily loads.

Accordingly, the impact of these policies on such dischargers should be considered in this section as well.

IX. Section 7 – Environmental Analysis

- (p. 369) – Under section 7.1.5, there is a statement that the proposed Draft Amendments will have no direct impacts to aesthetics, and agricultural and forestry resources. However, this statement appears to conflict with the Environmental Checklist and the conclusion that the Draft Amendments would have a potentially significant impact on these resources. This conflict should be resolved.

X. Section 8 – Economic Analysis

The CVSC appreciates that developing an economic analysis for the long-term implementation of the Salt and Nitrate Control Program is difficult, and that the estimated cost impacts to agriculture beyond the first 10 years is highly speculative. Accordingly, as the program is implemented over time, it will be necessary for the Central Valley Water Board to update such cost estimates and the economic impacts of this program on the Central Valley. Thus, re-evaluation of costs should occur when the Basin Plan Amendments are reviewed by the Central Valley Water Board.

XI. Appendix C – Regulation of Waste Discharges in the Central Valley

Comments on Appendix C are provided here in bullet format.

- (p. C-1) – The second sentence states that discharges to surface waters are regulated under NPDES permits. This statement is only partially true. Discharges to waters of the United States from point sources are regulated under NPDES permits – nonpoint source discharges (which includes return flows from agriculture) are not. This statement needs to be revised for clarity.
- (p. C-1) – Similar to the comment immediately above, the first paragraph under the heading for surface water discussions general requirements and compliance with NPDES permits, and then references agricultural discharges to surface waters. This could be confusing as agricultural discharges are specifically exempt from NPDES permit requirements in the Clean Water Act. This clarification should be added.
- (p. C-14) – In its discussion regarding the East San Joaquin WDR, the Draft Staff Report states that this WDR is currently under review by the State Water Board. This section should be updated to reflect that the State Water Board has completed its review of the East San Joaquin WDR, and adopted an order on February 7, 2018.
- (p. C-15 – C-16) – This section pertaining to specific requirements regarding salinity, nitrate and secondary MCL Parameters should be updated to reflect the new, increased nitrate provisions from the State Water Board’s February 7, 2018 order that are being imposed on growers in the East San Joaquin watershed, and that will be imposed on other growers in the Central Valley.

XII. Appendix G – Considerations When Implementing SMCL Water Quality Objectives When Developing Waste Discharge Requirements

- (p. G-1) – Appendix G contains a list of considerations when implementing SMCLs. The introductory paragraph currently uses the word “shall,” which should be changed to “may.”

XIII. Appendix H – Guidelines for Proposing an Acceptable Alternative Compliance Project

- (p. H-1) – Appendix H contains guidelines for what constitutes an acceptable Alternative Compliance Project. Because these are guidelines, they are discretionary and not mandatory. As such, the word “must” in the last sentence of the introductory sentence needs to be changed to “should.”

XIV. Conclusion

In conclusion, the CVSC encourages the Central Valley Water Board to adopt the Draft Amendments with the suggested clarifications and modifications provided above. Please contact Daniel Cozad at (909) 747-5240 for questions on the above comments. Thank you for your consideration of this complex and comprehensive revision to the Basin Plans.

Sincerely,



Daniel B. Cozad
Executive Director



David Cory
Chairman

Appendix 1 - CVSC Members

Current Members of the Central Valley Salinity Coalition include:

- San Joaquin Valley Drainage Authority
- California Association of Sanitation Agencies
- California League of Food Producers
- The Wine Institute
- Dairy CARES
- City of Fresno
- Central Valley Clean Water Agencies
- South San Joaquin Water Quality Coalition
- Northern California Water Association
- City of Davis
- City of Tracy
- City of Stockton
- City of Vacaville
- Tulare Lake Drainage and Water Districts
- Stockton East Water District
- California Cotton Growers and Ginners Association
- California Rice Commission
- San Joaquin Tributary Authority
- Western Plant Health Association
- East San Joaquin Water Quality Coalition
- San Joaquin County & Delta Water Quality Coalition
- City of Manteca
- Pacific Water Quality Association
- City of Modesto
- Sacramento Regional County Sanitation District
- California Resources Corporation
- Westlands Water District
- Valley Water Management Company
- California Independent Producers Association