

## **Draft Policy No. X: Revision of the Exceptions Policy for Waste Discharges to Groundwater**

### **1.0 Regulatory Basis for Revision of the Exceptions Policy for Waste Discharges to Groundwater**

#### **1.1 Background**

As described in the Nitrate Permitting Strategy in the SNMP,<sup>1</sup> the Central Valley Regional Board is required to implement the Basin Plans when it authorizes discharges through the adoption of WDRs and Conditional Waivers. This includes incorporating into the WDRs/Conditional Waivers provisions that ensure beneficial uses are protected, and that receiving waters meet or are better than water quality objectives that are adopted to protect beneficial uses. When permitting discharges, the Central Valley Water Board traditionally looks to see if the discharge itself meets (or is better than) the applicable water quality objective, and if not, if assimilative capacity is available in the receiving water. In cases where there is assimilative capacity, the Central Valley Water Board then determines if it can make the necessary findings as required by Resolution No. 68-16<sup>2</sup> to authorize use of assimilative capacity.

In the Central Valley, there may be circumstances where the discharge is not better than the applicable water quality objective and no assimilative capacity is available, or the Central Valley Water Board is unable to make the necessary findings to authorize use of assimilative capacity even if it is available. Traditionally, in such circumstances, the State Water Board has directed that Central Valley Water Board either prohibit the discharge, adopt a time schedule in the order that allows the discharger to come into compliance with needed WDR provisions, or revise the applicable water quality standard.

The Central Valley Water Board has recognized that with respect to salts, it may not be reasonable, feasible or practical to prohibit the discharge or issue a time schedule with the expectation that the discharge can meet applicable water quality objectives in a reasonable time period. Further, the Central Valley Water Board is hesitant to revise water quality standards, which would permanently remove the beneficial use. Accordingly, the Central Valley Water Board adopted a Policy for Exceptions from Implementing Water Quality Objectives for Salinity (Exceptions Policy) in Resolution No. R5-2014-0074, on June 6, 2014. The State Water Board approved that policy in Resolution No. 2015-0010, on March 17, 2015. The Policy amended the Basin Plans and established *“procedures for dischargers that are subject to WDRs and conditional waivers to obtain a short-term exception from meeting effluent or groundwater limitations for salinity constituents.”*<sup>3</sup>

With the Exceptions Policy, the Central Valley Water Board established a Salinity Exception Program that is *“in effect during the development and initial implementation of the Salt and Nitrate Management*

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<sup>1</sup> See SNMP Section XX

<sup>2</sup> State Water Board Resolution 68-16. Statement of Policy with Respect to Maintaining High Quality of Waters in California (Antidegradation Policy). 1968

<sup>3</sup> Central Valley Water Board Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin To add Policies for Variances from Surface Water Quality Standards for Point Source Dischargers, Variance Program for Salinity, and Exception from Implementation of Water Quality Objectives for Salinity; Final Staff Report, June 2014, Final Staff Report (“Variance & Exceptions Policy”); page ES-3.

*Plans*<sup>4</sup> that at the time were being prepared through the CV-SALTS process. The Salinity Exception Program (aka “Streamlined Policy”) applies only to electrical conductivity, total dissolved solids, chloride, sulfate and sodium.<sup>5</sup> The current Exceptions Policy prohibits the Central Valley Water Board from authorizing new exceptions or reauthorizing previously approved exceptions after June 30, 2019. The sunset date was included because the Central Valley Water Board intended that any permanent, long-term exceptions policy should be developed through the CV-SALTS process and that stakeholders needed to make appropriate recommendations for such a policy in the SNMP.

In accordance with the Central Valley Water Board’s direction in developing the current Salinity Exceptions Program, this SNMP recommends that the current Exceptions Policy be revised.

## **1.2 Justification for Extending/Expanding the Current Exceptions Policy**

The Central Valley Water Board's original rationale for adopting the current Exceptions Policy was to provide temporary permitting flexibility while CV-SALTS was developing the SNMP, and to encourage dischargers throughout the region to actively participate in that process. If CV-SALTS stakeholders determined that a permanent Exceptions Policy is necessary to assure successful implementation, the Central Valley Water Board instructed the stakeholders to describe and justify their recommendations in the SNMP itself. This policy is intended to implement that recommendation.

The SNMP finds that there may be instances where it is infeasible, impracticable or unreasonable for dischargers to comply with certain WDRs even with a compliance schedule. Under such circumstances, and when there is little or no assimilative capacity available, the Central Valley Water Board presently has only two regulatory options available: (a) where appropriate, revise the applicable water quality standards and related WDRs, or (b) disallow the discharge.

Revising water quality standards (uses and or objectives) is a complex, timely process requiring considerable documentation and numerous opportunities for public comment. Consequently, legally allowing for an exception to meeting the objective may be needed to provide time to complete the full regulatory review and approval process for revising the water quality standard. Or, in many cases, the Central Valley Water Board will be hesitant to revise the water quality standard and would prefer to adopt an exception that is time-limited rather than permanently revise a water quality standard.

Prohibiting the discharge may also be infeasible, impracticable or unreasonable. If the Central Valley Water Board determines that a non-compliant discharge cannot or should not be prohibited, then some form of exception is required. Examples of situations where the Central Valley Water Board may conclude that it is infeasible, impracticable or unreasonable to prohibit the non-compliant discharge include, but are not limited to:

- 1) Situations where compelling the discharge to comply with the applicable WDR (and assuming it was possible to do so) would not significantly improve water quality or assure attainment of the related standards in the foreseeable future (≈20 years).
- 2) Situations where allowing the discharge is likely to result in nominal but insignificant changes in receiving water quality with no meaningful increase in public health risk.

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<sup>4</sup> Variance & Exceptions Policy; page ES-3.

<sup>5</sup> Variance & Exceptions Policy; page 51.

- 3) Situations where disallowing the discharge would likely result in widespread and substantial adverse social and economic impacts in the region.
- 4) Situations where allowing the discharge is projected to improve existing or expected quality in the receiving water; or, where disallowing the discharge would be more harmful to water quality and/or the environment than allowing it to continue despite the failure to comply with the WDR for which the exception is sought.
- 5) Situations where allowing the discharge to continue is necessary to preserve or sustain other beneficial uses, or to implement other important water resource management policies established by state authorities (e.g., increased water conservation, increased use of recycled water, increased groundwater recharge/storage, increased drought protection, etc.).
- 6) Situations where allowing the discharge to continue facilitates the Central Valley Water Board's larger and more comprehensive long-term program to achieve salt sustainability and, where feasible, attain water quality standards in the groundwater (aka "restoration").

## 2.0 Proposed Revisions to Exceptions Policy

### 2.1 Summary of Current Exception Policy

The current Exceptions Policy (adopted in June of 2014) restricts the Central Valley Water Board's authority solely to exceptions for salinity-related constituents. Presently, the definition of "salinity" includes only: electrical conductivity, total dissolved solids, chloride, sulfate and sodium. The current Policy does not provide the Central Valley Water Board with legal authority to approve exceptions for any other pollutants including nitrate.

Notably, the authority to approve an exception does not automatically grant an exception in any given instance. Exceptions must be authorized through a separate Board action. Also, under the current policy, exceptions must *"...be set for a term not to exceed ten years. For exception terms greater than five years, the Regional Board will review the exception five years after approval to confirm that the exception should proceed for the full term."*<sup>6</sup> That review must be conducted in a public hearing.

In general, the current Exceptions Policy allows dischargers to apply to the Central Valley Water Board for an exception to discharge requirements from the implementation of water quality objectives for salinity. The exception may apply to the issuance of effluent limitations and/or groundwater limitations (i.e., receiving water limitations) that implement water quality objectives for salinity in groundwater, or to effluent limitations and/or surface water limitations that implement water quality objectives for salinity in surface water. Under the current Exception Policy, a discharger's application must include the following:<sup>7</sup>

- 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 salinity constituents at this time;

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<sup>6</sup> Variance & Exceptions Policy; page 51.

<sup>7</sup> Variance & Exceptions Policy; page 50.

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- A description of salinity 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;
- 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 the effluent, discharges to receiving waters, or in receiving waters;
- 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.;
- Documentation of the applicant's active participation in CV-SALTS as indicated by a letter of support from CV-SALTS; and,
- 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.

A key requirement for granting an exception, is the requirement that the discharger needs to prepare and implement a Salinity Reduction Study Work Plan, or a salinity-based watershed management plan. A Salinity Reduction Study Work Plan shall at a minimum include the following:<sup>8</sup>

- 1) Data on current influent and effluent salinity concentrations;
- 2) Identification of known salinity sources;
- 3) Description of current plans to reduce/eliminate known salinity sources;
- 4) Preliminary identification of other potential sources;
- 5) A proposed schedule for evaluating sources; and
- 6) A proposed schedule for identifying and evaluating potential reduction, elimination, and prevention methods.

A salinity-based watershed management plan shall at a minimum include the following:<sup>9</sup>

- 1) 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 salinity, baseline inventory of identified existing management practices in use, and a summary of available surface and/or groundwater quality data;
- 2) A management plan strategy that includes a description of current management practices being used to reduce or control known salinity sources;
- 3) Monitoring methods;

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<sup>8</sup> Variance & Exceptions Policy; page 51.

<sup>9</sup> Variance & Exceptions Policy; page 52.

- 4) Data evaluation; and,
- 5) A schedule for reporting management plan progress.

After considering the dischargers' application, the Central Valley Water Board may adopt an exception for salinity constituents after public notice and hearing through a resolution, or by amending WDRs/Conditional Waivers.

## 2.2 Recommendations for Revising Current Exceptions Policy

The SNMP recommends that the current policy be amended in the following ways to provide the Central Valley Water Board with the necessary authority and flexibility to permit discharges in a manner that the Central Valley Water Board deems to be appropriate.

- 1) Delete the provision prohibiting the Central Valley Water Board from authorizing new exceptions or reauthorizing previously approved exceptions after June 30, 2019. Because the Central Valley Water Board can decide for itself whether to grant or not grant specific exceptions, there is no need for any sunset provision that restricts their overall authority to make such decisions.
- 2) The current provision limiting the term of an exception to no more than 10 years should be retained; however, a new provision should be added stating that exceptions may be reauthorized (renewed) for one or more additional 10-year periods with approval of the Central Valley Water Board, after notice and hearing. In addition, the discharger(s), in conjunction with Central Valley Water Board staff, should prepare a status report for presentation to the Central Valley Water Board every 5 years summarizing compliance with the terms and conditions of the exception. The Central Valley Water Board staff maintains discretion to present such status reports to the Central Valley Water Board for individual exceptions, or collectively for multiple exceptions granted to multiple dischargers.
- 3) The current policy should be amended to add nitrate to the list of chemical constituents for which the Central Valley Water Board may authorize an exception. In order to ensure this is implemented as intended, it may also be necessary to include total nitrogen and various forms of nitrogen (total inorganic nitrogen [TIN], total kjeldahl nitrogen [TKN], etc.) to the same list. It will also be necessary to harmonize text throughout the existing policy where such text currently focuses exclusively on exceptions for "salinity."
- 4) The current policy should be amended to add a new provision requiring dischargers to assure an adequate supply of safe, reliable and affordable drinking water, as a condition of authorizing an exception for nitrate, in those areas of the groundwater basin or sub-basin adversely affected by the non-compliant discharge (or discharges). The "assurance" must include a credible and realistic framework to construct/install a permanent long-term solution and an immediate commitment to provide temporary replacement water in the interim.
- 5) The current policy should be amended to add a new provision referencing the availability of regional guidance that describes the general requirements associated with seeking and approving an exception. These include, but are not limited to: eligibility criteria, mitigation responsibilities, monitoring/reporting obligations, and expectations relevant to implementing the SNMP

Management Goals. The Regional Guidance will be developed and submitted for approval as part of the larger Basin Plan Amendment package in 2017.

- 6) The current policy should be amended to make clear that exceptions are intended to facilitate long-term attainment of water quality standards or to provide the time needed to revise an inappropriate water quality standard. The Central Valley Water Board may renew and reauthorize exceptions but should not do so indefinitely if re-designation, de-designation and/or adoption of a site-specific water quality objective is the more appropriate regulatory approach.
- 7) The current policy should be amended to revise the application requirements so that such requirements now reflect and implement the SNMP management goals. Further, the application requirements should be revised to distinguish what requirements are applicable when seeking an exception from a salinity-based water quality objective versus applicable requirements for seeking an exception from the nitrate water quality objective.
- 8) The current policy may also need to be amended to identify application requirements that apply to dischargers seeking an exception as part of a Management Zone rather than as an individual discharger. For more information on Management Zones, see [Policy No. XX](#).

### 2.3 Authorization of Exceptions

The SNMP recommends that exceptions be authorized by the Central Valley Water Board subject to certain conditions and performance obligations on the discharger(s). This provides a mechanism to ensure that exceptions serve the greater good. To that end, the SNMP sets forth several important expectations governing the manner in which exceptions are likely to be considered by the Central Valley Water Board:

- 1) Exceptions for nitrate will not be considered unless an adequate supply of clean, safe, reliable and affordable drinking water is assured for those living in the area adversely affected by the non-compliant discharge(s). Said assurance must take the form of a detailed work plan, schedule of milestones, and financial commitments to provide interim and permanent alternate water supplies. Performance bonds may be required to assure timely implementation.
- 2) Dischargers are expected to continue to make reasonable “best efforts” to comply with applicable WDRs. The specific nature of these efforts will be identified at the time the exception is proposed and authorized.
- 3) As a condition for reauthorizing/renewing an exception, dischargers will be required to periodically reassess Best Management Practices (BMPs) and survey available treatment technologies to determine if feasible, practicable and reasonable compliance options have become available.
- 4) 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.

- 5) Where existing water quality standards are unlikely to change, dischargers must explain how the proposed exception facilitates the larger long-term strategy designed to ultimately attain those standards (e.g., implementing Strategic Salt Accumulation Land and Transportation Study [SSALTS];<sup>10</sup> Nitrate Implementation Measures Study [NIMS],<sup>11</sup> forming and participating in a groundwater Management Zone,<sup>12</sup> etc.) while, in the interim, allocating available resources to address more urgent water quality priorities (e.g., safe drinking water), where applicable.

Under the SNMP's recommendations, authorization for exceptions may be granted by the Central Valley Water Board for individual dischargers, or for multiple dischargers under a Management Zone. Terms and conditions associated with the granting of an exception will be incorporated into relevant WDRs, and failure to comply with such terms and conditions may result in the termination of the exception and/or an enforcement action.

### **3.0 Proposed Modifications to the Basin Plans to Support Policy Implementation**

The following subsections summarize the key changes anticipated for each Basin Plan to support adoption of this policy.

#### ***Existing and Potential Beneficial Uses***

No modifications anticipated.

#### ***Water Quality Objectives***

No modifications anticipated.

#### ***Implementation***

Revise the existing Exceptions Policy in the Basin Plans as described above.

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<sup>10</sup> *Strategic Salt Accumulation Land and Transportation Study (SSALTS), Final Phase 2 Report: Development of Potential Salt Management Strategies*. Report prepared by CDM Smith on behalf of CV-SALTS. October 1, 2014; *SSALTS, Final Phase 1 Report: Identification and Characterization of Existing Salt Accumulation Areas*. Report prepared by CDM Smith on behalf of CV-SALTS. December 13, 2013. Phase 3 Report in development.

<sup>11</sup> *Nitrate Implementation Measures Study Final Report*. Report prepared by CDM Smith on behalf of CV-SALTS, March 31, 2016.

<sup>12</sup> See Central Valley SNMP for Management Zone Policy.