

RESPONSE TO COMMENTS

Amending Waste Discharge Requirements General Orders for Growers within the Central Valley that are Members of a Third-Party Group:

Eastern San Joaquin Watershed R5-2012-0116-09

Tulare Lake Basin Area R5-2013-0120-08

Western Tulare Lake Basin Area R5-2014-0001-07

Western San Joaquin River Watershed R5-2014-0002-09

San Joaquin County And Delta Area R5-2014-0029-05

Sacramento River Watershed Area R5-2014-0030-07

Sacramento Valley Rice Growers R5-2014-0032-02

Grassland Drainage Area R5-2015-0095-04

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or “Board”) has provided an opportunity for the public to submit written comments on the proposed revisions to Waste Discharge Requirements General Orders for Growers that are Members of a Third-party Group (referred to as the “tentative revised Orders” or “Orders”) under one of the eight Orders listed above. The primary goal of the revisions is to implement the Salt and Nitrate Control Program, incorporated into the Central Valley Water Board’s *Water Quality Control Plans* for the Sacramento and San Joaquin River Basin Plan and Tulare Lake Basin Plan, in the eight Orders. This document contains responses to written comments that were timely received on the tentative revised Orders.

The tentative revised Orders were released for public review on 19 February 2021 with the 30-day comment period ending on 23 March 2021. The public notice stated that the Board would only consider adoption of the proposed changes and would not be re-considering other aspects of the Irrigated Lands Regulatory Program (ILRP) General Orders. Four comment letters received by the deadline were submitted by:

1. California Rice Commission
2. Clean Water Action, Community Water Center, and Leadership Counsel for Justice and Accountability
3. Contra Costa Water District
4. City of Sacramento Department of Utilities on behalf of the Sacramento River Source Water Protection Program

This response to comments includes itemized comments and responses from each letter.

Comment Letter 1 (California Rice Commission)

1-1 Identification of growers with a drinking water well on a rice parcel in GIS map submittal

Comment summary:

The California Rice Commission (CRC) objects to the addition of language requiring that their annual Geographical Information Systems (GIS) map submittal include the identification of growers that have indicated they have a drinking water well on a rice parcel in their most recent Farm Evaluation. The CRC is a statutory organization that cannot provide the names and addresses of its members. In addition, the drinking water supply well monitoring is a regulatory program between the growers and the Central Valley Water Board. The February 2019 amendment to Order R5-2014-0032, states that drinking water supply well monitoring data, including the APN where the well is located, will be submitted electronically by the testing laboratory to the State Water Resources Control Board's (State Water Board) GeoTracker Database. Additionally, during the comment process for the February 2019 amendment, the CRC recommended the addition of the following language to Order section IV.B.4 Requirements for Growers, to "...identify by County the number of domestic drinking water supply wells located where rice is also grown" as a part of their outreach participation.

Response:

The language proposed for addition to Order R5-2014-0032-02 section VIII.A, "The GIS map shall also identify growers that have indicated they have a drinking water well on a rice parcel in their most recent Farm Evaluation submittal" has been removed. Staff recognizes that the CRC cannot provide names and addresses of its members due to statutory limitations.

The grower requirement added to Order section IV.B.4 in the February 2019 amendment has been added to the requirements for the CRC in Order section IV.C.8. b) as follows "The annual summary must report the total number of Growers who participated in the outreach activities, ~~and describe how Growers could obtain copies of the materials presented during the outreach activity, and identify by County the number of domestic drinking water supply wells located where rice is also grown.~~" This requirement shall be satisfied through inclusion of the above required information in the summary of education and outreach activities required for submittal annually (see Attachment B to Order R5-2014-0032-02 section V.B.25).

1-2 Time schedule for compliance (Table 1)

Comment summary:

During the February 2019 revision, the Farm Evaluation and Nitrogen Management Plan were changed to a once in every five-year requirement with the five-year timeline beginning on 1 March 2018. This would result in a due date of 2023, based on the 2022 crop, for the next Farm Evaluation and Nitrogen Management Plan updates. The CRC requests that the start date of the five-year timeline to be confirmed as either the 1 March 2018 date included in the Order for Sacramento Valley Rice Growers or the February 2019 Order amendment date.

Response:

Staff has confirmed that, as stated in Table 1 of Order R5-2014-0032-02, the start date for the Farm Evaluation and Nitrogen Management Plan reporting timeline is 1 March 2018. The next update is due by 1 March 2023.

1-3 Time schedule for compliance (Table 2)

Comment summary:

Order R5-2014-0032-02 Table 2 includes a start date for the five-year timeline for the Farm Evaluation Update Summary as 31 December 2015. As a result, the CRC should have submitted this summary by 31 December 2020. The CRC asks, for consistency with the Farm Evaluation updates discussed above, would the next Farm Evaluation Management Practice Summary submittal follow the growers next Farm Evaluation update in 2023 or 2024?

Response:

Order R5-2014-0032-02 Table 2 has been updated to include a start date of 31 December 2018 for the Farm Evaluation Management Practice Summary timeline. This date is consistent with Order R5-2014-0032-02 Attachment B, which was previously updated to say that “the CRC shall aggregate and summarize information collected from Farm Evaluations once every five years beginning with the 2018 AMR”. The next Farm Evaluation Management Practice Summary is due 31 December 2023.

1-4 Summary of management practice information

Comment summary:

The CRC commented that the proposed revision to Order R5-2014-0032-02 Attachment B section V.A Report Component (23) is unnecessary because this Order is commodity specific with similar irrigation and cultural practices in the Sacramento Valley. The proposed revision adds the statement “The CRC shall aggregate and summarize information collected from Farm Evaluations once every five years beginning with the 2018 AMR.” and removes the statement that “In addition to summarizing and aggregating the data collected, the CRC will provide the individual data records used to develop this summary in an electronic format, compatible with ArcGIS, identified to at least the Township (TRS) level.” from the description of Report Component (23).

Response:

Staff removed the proposed revision and has restored the language previously adopted in the Order.

Comment Letter 2 (Clean Water Action, Community Water Center, and Leadership Counsel for Justice and Accountability)**2-1 Replacement of Groundwater Quality Management Plans with Management Zone Implementation Plans****Comment summary:**

The State Water Board Order WQ 2018-02 requires development of township-level Groundwater Quality Targets, which must be incorporated into the Groundwater Quality Management Plans (GQMPs). The draft revisions include a proposal to replace the GQMPs with Management Zone Implementation Plans. Management Zone Implementation Plans are implemented at the basin or subbasin level, so this substitution raises concern that the granular nature of Water Quality Targets, provided in exchange for aggregate reporting, will be lost.

Response:

The referenced language was removed. While Management Zone Implementation Plans share overlapping goals with GQMPs, the specific strategies for addressing ongoing nitrate loading have not yet been developed. Additionally, Management Zones may choose to utilize some of the strategies currently in place (e.g., Groundwater Protection Targets). As Management Zone Implementation Plans are submitted and approved, staff will evaluate them to determine the necessity of GQMPs within the Nitrate Control Program.

2-2 Quantified milestones should be required as a condition of extended time schedules granted by the Regional Board**Comment summary:**

The proposed revisions state that to extend time schedules up to thirty-five years for compliance with the nitrate water quality objective in groundwater, technical and economic justification for why the schedule is as short as practicable must be provided. However, these time schedules must also include quantifiable milestones to measure progress toward reaching the specified requirements.

Response:

The proposed revisions have been modified to clarify that extended time schedules allowed for compliance with the nitrate water quality objective to groundwater must include quantifiable milestones that measure progress toward meeting specified requirements.

2-3 Consistency with language in the Basin Plan Amendment is needed in the Information Sheets

Comment summary:

Language provided in the supporting Information Sheets is inconsistent with the Basin Plan Amendment. In this statement, “under the Nitrate Permitting Strategy, the Central Valley Water Board could authorize projects (including Alternative Compliance Projects) and implementation plans, provided they would ultimately result in nitrogen balance and aquifer restoration, where reasonable and feasible” the term “balance” should be replaced with “compliance with nitrate water quality objectives” and clarify that the “reasonable and feasible” qualifier applies only to restoration for consistency with the Basin Plan Amendment.

Response:

The requested changes have been made to the language in the supporting Information Sheets, with minor modifications for consistency with the Basin Plan.

2-4 The definition of “exception” should be revised

Comment summary:

The definition of “exception” should be revised for consistency with the CV-SALTS Basin Plan Amendments and the State Water Resource Control Board (SWRCB) resolution, which states “The State Water Board interprets the terms of compliance contained in the Exceptions Policy in the amendments to the Basin Plans to be equivalent to a ‘time schedule’ as authorized under Water Code sections 13242 and 13263.”

Response:

The definition of “exception” has been revised for consistency with the CV-SALTS Basin Plan Amendments and the SWRCB resolution.

2-5 Priority designations are subject to change by the Executive Officer

Comment summary:

The commenters request that the statement “for the purpose of implementing the Nitrate Control Program, the Basin Plan has established priority designations for select groundwater basins/subbasins. These priority designations will dictate timelines for certain requirements under this Order and associated Monitoring and Reporting Program Requirements” be revised to note that the priority designations are subject to change by the Executive Officer.

Response:

The identified language has been updated to provide the clarification requested, with minor modifications for consistency with the Basin Plan.

2-6 Specific enforceable and quantifiable deadlines for discharges to cease causing or contributing to exceedances of water quality objectives needed

Comment summary:

The Nonpoint Source Policy and SWRCB resolution approving the CV-SALTS Basin Plan Amendments require milestones and/or deadlines that measure progress toward achieving compliance with ambient groundwater quality objectives, or for discharges to cease causing or contributing to exceedances of water quality objectives in the receiving water. The proposed revisions do not include any specific enforceable and quantifiable interim or final deadlines, so do not comply with the Nonpoint Source Policy or the SWRCB resolution.

Response:

Key Element Three of the Nonpoint Source (NPS) Policy provides where it will take time to achieve water quality requirements, the time schedule and milestones may include: identification of measurable long term and interim water quality goals; a timeline for achieving these goals; identification and implementation of pollution control management practices; provision for maintenance of the implementation actions; and provision for additional actions if initial actions are inadequate. (Nonpoint Source Policy, p. 13.) The tentative revised Orders comply with the Nonpoint Source Policy in several ways.

The tentative revised Orders state that receiving water limitations are effective immediately except where Members are implementing an approved SQMP or GQMP. The Orders allow Members that are part of the SQMP or GQMP plan area up to ten years for compliance with the receiving water limitations. Based on this enforceable time schedule, the State Water Board found in the State Water Board Order WQ-2018-0002 (Petition Order), that the Eastern San Joaquin Agricultural General Order complied with the NPS Policy by setting ten years as the maximum time permitted for a time schedule and requiring the Third-Party to propose a schedule that is “as short as practicable” and is supported by technical or economic justification as to why it is practicable. (State Water Board Order WQ-2018-0002, p. 16.) Furthermore, the Orders require the SQMP and GQMPs to incorporate a specific schedule and milestones for the implementation of managements practices and tasks and measurable performance goals. Other elements in the General Orders that act as management practices include the Farm Evaluations, Irrigation and Nitrogen Management Plans, and Sediment and Erosion Control Plans.

As noted in the response to comment 2-1, the initially proposed automatic replacement of GQMPs upon approval of Management Zone Implementation Plans has been eliminated.

The requirements of the Nitrate Control Program also include detailed schedules and milestones where the Third Party chooses Path B and creates a Management Zone and

a Management Zone Implementation Plan. If the third party chooses Path A in the Nitrate Control Program then they must complete an Alternative Compliance Project which includes schedules for addressing nitrate-related drinking water issues and steps to meet the management goals of the Nitrate Control Program. Therefore, the Salt and Nitrate Control Program requirements also meet the requirements of the Nonpoint Source Policy.

2-7 Evaluation of available data regarding nitrate discharges to high quality groundwater and potential impacts and costs relative to drinking water needed

Comment summary:

The updated Antidegradation analysis does not include a maximum benefit finding made on a “case-by-case” basis and in consideration of data available to the Regional Board since it issued the 2012 East San Joaquin Order. In support of a maximum benefit finding for each of the proposed Orders, the Regional Board must evaluate available data regarding nitrate discharges to high quality groundwater within the coalition boundaries, whether and where there are likely to be resulting impacts to drinking water, and any costs associated with those impacts.

Response:

A complete antidegradation analysis was prepared when the Orders were initially issued. The Orders incorporated that antidegradation analysis through appropriate findings in Attachment A of the Orders. The State Water Board found that the Central Valley Water Board identified and complied with the Antidegradation Policy. (State Water Board Order WQ-2018-0002, p. 76.) As noted in the Petition Order, the traditional antidegradation analysis for a discrete point source is not applicable in the context of a general order regulating both surface water and groundwater discharges from irrigated agriculture operations across a large landscape. (*Id.* at p.77.) The fact that new data have been collected further assessing groundwater quality throughout the Central Valley does not alter the above finding that antidegradation analysis for irrigated agriculture should be conducted at a landscape or regional scale.

In developing the revisions to the tentative revised Orders, staff has considered new water quality data and information on water quality management practices. In this review, staff found that: 1) data do not indicate any new types of ILRP discharges or pollutants not contemplated and evaluated fully in the previous Order’s antidegradation analysis; 2) available water quality management practices have not changed; 3) the scope of irrigated lands discharges has not substantially changed; and 4) the potential for degradation has been reduced through implementation of best practical treatment or control (BPTC) (e.g., fertilizer minimization practices, irrigation practices). For these reasons, the antidegradation analysis conducted under the previous Order and upheld by the Petition Order is current and applicable for the revisions contemplated for the tentative revised Orders.

The Petition Order found that the Central Valley Water Board appropriately concluded that the degradation allowed by the General WDRs is consistent with the maximum benefit to the people of the state. (State Water Board Order WQ-2018-0002, p. 79.) For purposes of the maximum benefit findings, the relevant inquiry is whether some degradation of high-quality waters that may result from the permitted discharges is in the maximum benefit of the people. By its terms the antidegradation policy applies only to waters that are high quality, it supplements the Water Code requirements by adding additional antidegradation requirements that apply if the receiving waters are considered to be high quality. In other words, the antidegradation policy and the analysis to support it in these actions cannot and does not permit discharges from impairing access to safe and reliable drinking water by causing or contributing to exceedances of water quality objectives, which include maximum contaminant levels for drinking water.

The Petition Order found that the requirements for farm evaluations and the development of management plans, the implementation of practices found to be protective of groundwater through the Management Practice Evaluation Program, the multi-year nitrogen Applied/Removed (A/R), and the implementation of irrigation and nitrogen management plans satisfy BPTC. (State Water Board Order WQ-2018-0002, p. 79-80.) The Petition Order noted that “not only do these requirements represent the best approach in the view of our Expert Panel, we are not aware of any more protective requirements for large scale agriculture operations elsewhere.” (*Id.* at p. 80.) Staff has reviewed existing data and is not aware of any new information or practices that would alter the State Water Board or Central Valley Water Board’s findings of BPTC. For these reasons, there have been no changes to the BPTC analysis since the Petition Order was adopted.

The Central Valley Water Board did an antidegradation analysis for the Salt and Nitrate Control Program in the Basin Plan Amendments and reviewed all elements of the program for compliance with the State Antidegradation Policy. Specifically, the Nitrate Control Program is designed to address long term nitrate impacts and improve water quality over time while also providing interim replacement drinking water. The revised tentative Orders note that when the Central Valley Water Board reviews Alternative Compliance Projects and/or Management Zone Implementation Plans it will determine whether they are consistent with the Antidegradation Policy.

Finally, estimated costs associated with impaired drinking water were developed for the CV-SALTS Basin Plan Amendments, as a prioritization based on a thorough analysis of existing groundwater quality data sets. While there have been some new data collected, this data has not led to alteration of the Basin Plan Amendments’ prioritization or general knowledge of where shallow water is likely to be impaired for nitrate. Furthermore, this information has been considered in the development of the Orders requirements for Best Efforts (i.e., BPTC only for high quality waters) and the

requirements for providing safe interim drinking water and developing long-term solutions consistent with the Basin Plan Amendments.

Comment Letter 3 (Contra Costa Water District)

3-1 Surface water limits inconsistent with Salt Control Program

Comment summary:

The Salt Control Program requires the dischargers to “maintain current discharge concentrations for salt or mass loading levels – to the extent reasonable, feasible and practicable”. The proposed revisions are inconsistent with this requirement stating that dischargers electing the alternative salinity approach, participating in the Prioritization and Optimization (P&O) study, and who implement reasonable, feasible, and practicable efforts to control levels of salt in their discharge are in compliance with the water quality control program. This approach is insufficient to ensure that salt concentration or loading does not increase from current levels. The Central Valley Water Board must quantify, monitor, and enforce salt concentration and loading limits on discharges.

Response:

There are two occurrences in the Salt and Nitrate Control Program Basin Plan Amendments language that reference “maintenance of existing discharge concentration or loading levels of salinity to the extent reasonable, feasible, and practicable” (p.14 and p. 23 in Attachment A of Central Valley Water Board Resolution R5-2020-0057). However, those references are both tempered with the stipulation that the requirement for maintaining current salinity discharge is at the discretion of the Central Valley Water Board, to the extent the Board finds it appropriate and necessary.

The ILRP coalition members will be required to continue implementing reasonable, feasible, and practicable efforts to control salinity, and will continue to monitor and evaluate salinity trends over time for each region. As discussed in the Salt and Nitrate Control Program Substitute Environmental Document, there are no anticipated changes to ILRP practices or BPTC from Salt and Nitrate Control Program implementation. Salinity is difficult to control in agricultural discharges, and the ILRP dischargers are currently implementing all known reasonable, feasible, and practicable measures to control salinity. In the Petition Order, the State Water Board concurred that there were no additional BPTCs required for ILRP to implement. (State Water Board Order WQ-2018-0002, p. 80.)

As there are limited options for ILRP salinity control measures at this time, especially with the challenges of drought and water recycling, participation in the P&O study will be crucial to identifying large scale, regional solutions to reduce salt over the long-term. At this time, the Central Valley Water Board does not find it necessary or appropriate to adopt performance-based limits or action levels for ILRP salinity discharges.

One of the three primary management goals of the Salt Control Program is an overall reduction of the salt loading “so that ongoing discharges neither threaten to degrade high quality waters absent appropriate findings by the Central Valley Board nor cause or contribute to exceedances of water quality objectives”. While staff appreciates the desire to quickly reduce salt in the Central Valley and understands the Water District’s concern in protecting Delta water from high salinity discharges, the reduction of salt in the Central Valley will take time. The goal of salt reduction will be greatly facilitated by regional salinity management developed and implemented in Phases 1-3 of the P&O study, which is anticipated to conclude, at minimum, in 30 years.

3-2 Define current discharge and implement monitoring to maintain current levels

Comment summary:

Maintenance of current discharge levels is required by the Basin Plan. Maintaining current agricultural operations and management practices does not ensure discharge concentrations and flows are maintained. Current discharge concentrations and mass loading levels should be defined in discharge permits and monitoring implemented to meet this requirement.

Response:

Please see the response to Comment 3-above. ILRP coalitions will be required to monitor and evaluate salinity trends over time for each region. Data from the Salt and Nitrate Control Plan Surveillance and Monitoring Program will also be used in this evaluation. The results of this ongoing assessment will show whether salinity levels are being maintained, and the Central Valley Water Board will use its discretion to create limits or action levels as necessary and appropriate.

3-3 A Surface Water Quality Management Plan should always be required

Comment summary:

The proposed revisions provide conditions under which a Surface Water Quality Management Plan is not required. Best management practices are required for implementation through management plans. If a management plan is triggered, it is contrary to the purpose of the Basin Plan for the Executive Officer to waive the management plan requirement because it is determined that the exceedance is not likely to be remedied or addressed by a management plan. The Central Valley Water Board must protect downstream uses of water and should not enable specific dischargers to continue to degrade water quality at the sole discretion of the Executive Officer.

Response:

The proposed revision has been modified to state that a management plan may not be required if there is “sufficient evidence” that the exceedance is not likely to be remedied

or addressed by a management plan and after an “opportunity for public comment” is provided. This language was added to allow for flexibility in addressing surface water quality management plans for constituents such as pH and DO, which are not likely to be remedied or addressed solely by implementation of management practice on irrigated lands. For constituents such as pH and DO, the Central Valley Water Board may opt for a more holistic control effort, involving more than just the ILRP dischargers.

Comment Letter 4 (City of Sacramento Department of Utilities)

4-1 Executive Officer exemption from a management plan

Comment summary:

This comment, provided specific to the Sacramento River Watershed and Sacramento Valley Rice Growers Orders, is essentially the same as the comment described under 3-3 (above) regarding the Executive Officer’s ability to waive a management plan requirement. The commenters request that the proposed language adding “or the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan”, as a condition by which a management plan may not be required, be removed.

Response:

The proposed revision has been modified to state that a management plan may not be required if there is “sufficient evidence” that the exceedance is not likely to be remedied or addressed by a management plan and after an “opportunity for public comment” is provided. See response to comment 3-3 above.