What Are "Alternative Compliance" Programs/Projects?

1) Water quality objectives are developed and adopted to protect beneficial uses (e.g. drinking water supply, agricultural irrigation, etc.). And, waste discharge requirements (WDRs) are imposed to ensure that discharges do not cause or contribute to an exceedance of those objectives.

2) In general, a discharge is not causing or contributing to an exceedance if <u>either</u> one of the following two conditions occurs…

   a) The discharge meets the applicable water quality objective at the designated point-of-compliance. This may be because pollutant concentrations in the discharge are quite low or because other factors reduce pollutant concentrations to acceptable levels between the point of discharge and the receiving water.

   b) Water quality in the receiving water will continue to comply with the objective even if the quality of the discharge itself does not itself meet the objective. In such cases, the discharge may consume some of the available assimilative capacity and, therefore must be authorized in accordance with the state antidegradation policy.

3) The Regional Board has discretion authorize a discharge that degrades existing water quality, by allocating a portion of the documented available assimilative capacity, provided that doing so will not result in water quality worse than that prescribed by the State or unreasonably affect beneficial uses in the receiving water.

4) Pollutant concentrations are rarely uniform throughout a receiving water body. This is a common occurrence in groundwater where pollutant concentrations in shallower areas of the aquifer may exceed water quality objectives but water quality is exceptionally good in deeper areas of the same aquifer. Collectively, there may be assimilative capacity because the volume weighted average pollutant concentration in the groundwater basin is lower than the applicable objective but water quality at particular well locations may not meet standards.

5) In order to demonstrate that the discharge will not "unreasonably affect beneficial uses," it is necessary to show that there will be no "localized negative impacts" within the discharge's Zone of Influence. This can be accomplished by performing a fate and transport analysis (based on modeling or monitoring) to confirm the absence of adverse effect within the discharge's zone-of-influence. Or, for wells within the zone-of-influence, and especially those located in areas already impaired by poor water quality, by guaranteeing to protect the beneficial use through other means (e.g. alternate water supply or on-site treatment). This latter option is an Alternative Compliance Program/Project (ACP).

6) ACPs are voluntarily proposed by one or more dischargers and, if accepted and approved by the Regional Board, will become binding obligations for all those who elect to participate and rely on the project to provide an alternative demonstration of compliance with the WDR.

7) An ACP may be proposed for areas outside the discharger's immediate Zone of Influence where wells within that Zone will continue to meet applicable water quality objectives and where doing so would be consistent with the providing "maximum benefit to the people of California." The Regional Board also supports the creation of regional "Mitigation Banks" to facilitate faster and more cost-effective project implementation. These Mitigation Banks should be designed to make best use of state and federal grant programs established to promote similar efforts.

8) An ACP is designed to comply with both the letter and the spirit of the State antidegradation policy by providing a higher level of beneficial use protection, and better quality water to end-users, than is likely to result if the proposed allocation of assimilative capacity was disallowed.

9) In addition to ensuring that beneficial uses will not be adversely affected by authorizing a discharge to achieve compliance through an allocation of assimilative capacity, it also provides "maximum benefit to the people of the State" by alleviating localized negative impacts caused by existing poor quality in the receiving water.

10) "Management Zones" are used to define the discharger's zone-of-influence, the sub-basin with available assimilative capacity, and the persons and places where direct protection of beneficial uses will be assured, and those discharger's eligible to demonstrate compliance by implementing an ACP. See sister document entitled: “Organization and Development of Management Zones”.

11) The existence of a Management Zone or an ACP does not obligate all dischargers located within that zone to participate in either. Any discharger may elect to show that their discharge meets the applicable water quality objective at the designated point-of-compliance, or to demonstrate no adverse effects on beneficial uses within their unique zone-of-influence, or to propose a different ACP when seeking an allocation of assimilative capacity.

12) Where a discharger relies on and has received an allocation of assimilative capacity in order to comply with WDRs, the Regional Board will require that this authorization be reviewed and renewed at regular intervals of not less than 5 years and not greater than 10 years.

13) Although the Regional Board retains full discretion to approve any ACP it deems acceptable, ACPs that include projects that are designed to provide permanent long-term solutions to ameliorate existing, localized water quality impairments are more likely to meet the "maximum benefit" test than those that provide only temporary relief. Similarly, ACPs that pump-and-treat poor quality groundwater provide the highest level of public benefit.

14) The Regional Board does not expect dischargers to provide "free" water to those people that the ACP is intended to benefit. Beneficiaries are expected to bear all of the routine costs for pumping and delivering water that would normally occur if the existing groundwater supply source met drinking water standards. The ACP is intended to reduce only the end-user's economic burden associated with excess pollutants in that supply.