



Discussion Outline: Policy for Exceptions to Waste Discharge Requirements

I. Background

- 1) The Central Valley Regional Board adopted a Policy for Exceptions from Implementing Water Quality Objectives for Salinity as Res. No. R5-2014-0074 on June 6, 2014. The SWRCB approved that policy as Res. No. 2015-0010 on March 17, 2015. The Policy amended the two CV 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."
- 2) At the same time, the Central Valley Board established a Salinity Exception Program that is "in effect during the development and initial implementation of the Salt and Nitrate Management Plans" being prepared through the CV-SALTS process. The Salinity Exception Program applies only to electrical conductivity, total dissolved solids, chloride, sulfate and sodium.
- 3) The Salinity Exception Program expires on June 30, 2019. And, the Regional Board's authority to grant new exceptions or reauthorize existing exceptions also expires on the same date. The Regional Board intended that any long-term exceptions policy, should be developed through the CV-SALTS process and that stakeholders make appropriate recommendations for such a policy in the Salt and Nitrate Management Plan.
- 4) The Basin Plan amendment limits the Regional Board's authority solely to exceptions related to salinity. Salinity is defined to include and is limited to: electrical conductivity, total dissolved solids, chloride, sulfate and sodium. The new Policy did not provide the Regional Board with legal authority to approve exceptions for any other pollutants including nitrate. Another Basin Plan amendment would be required to alter the list of pollutants eligible for an exception.
- 5) The authority to grant an exception does not automatically grant such an exception in any given instance. Each exception must be authorized in a separate Board action.
- 6) 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." That review must be conducted in a public hearing.

II. Questions for CV-SALTS:

- 1) Should the SNMP recommend extending the Regional Board's authority to grant exceptions beyond June 20, 2019? If so, what is the rationale to justify that recommendation?
- 2) Should the SNMP recommend expanding or contracting the list of chemical constituents eligible for an exception? And, more specifically, should nitrate-nitrogen be eligible for an exception?
- 3) Assuming that CV-SALTS intends to recommend some sort of continuing authority to grant exceptions, what eligibility requirements should apply?
- 4) Assuming that a discharger (or group of dischargers) is eligible for an exception, what demonstrations must be made to the Regional Board to justify approval? And, what evidence is required to support those claims?
- 5) What should be the maximum term of an exception? What, if any, intermediate review requirements should apply during that term? Can a new exception be granted following expiration of a prior exception? If so, how would the requirements for reauthorization differ from the requirements imposed for the initial approval?
- 6) What special monitoring and reporting requirements should apply in order to see that the exception is implemented as intended?
- 7) What other interim performance obligations and mitigation requirements should be imposed as a condition for granting an exception?
- 8) What, if any, requirements related to implementing long-term sustainability programs (like those envisioned by SSALTS) should be linked to the long-term exceptions policy?
- 9) Does CV-SALTS want to recommend that a long-term streamlined Exceptions Program be developed for one or more of the chemical constituents eligible for such exceptions as part of the proposed Basin Plan amendment package scheduled for submission to the Regional Board in the spring of 2017? The streamline Exceptions Program would request that the Regional Board apply its extended/expanded authority by granting some specific exceptions.
- 10)

III. Rationale for Extending/Expanding the Regional Board's Authority to Grant Exceptions

- 1) Without the authority to grant exceptions, the Regional Board may only permit discharges that comply with water quality objectives...
 - A) By finding that pollutant concentrations meet the applicable objectives at the confluence with the receiving water, or...
 - B) By allocating any available assimilative capacity in accordance with the state antidegradation policy (Res. No. 68-16), or...
 - C) By imposing a compliance schedule through the WDRs, or through a separate Time Schedule Order, that provides to implement measures needed to comply.
- 2) If the discharger is unable to meet the applicable objectives, with or without a compliance schedule, and there is no assimilative capacity available, the Regional Board lacks authority to permit the discharge to continue. The discharge must be prohibited.
- 3) In some (perhaps many) places:
 - A) There is no feasible or practicable means of complying with the applicable water quality objectives, and...
 - B) There is little or no assimilative capacity available in the receiving groundwater basin, and...
 - C) Prohibiting the discharge may also be infeasible or impractical, and...
 - D) Prohibiting the discharge would be unreasonable, resulting in substantial and widespread adverse social and economic impact, and...
 - E) Prohibiting the discharge would not significantly improve water quality in the receiving groundwater basin for many years (perhaps decades).
- 4) In such cases:
 - A) A conditional exception is the only mechanism for authorizing a non-compliant discharges and avoiding the adverse effects caused by prohibiting the discharge, and...
 - B) A conditional exception can provide a more effective means of protecting water users than is likely to be achieved by requiring compliance with the objectives or by prohibiting the discharge (e.g. Alternate Compliance Programs/Projects).
 - C) A conditional exception must be approved on a case-by-case basis through an open and transparent public hearing process to review the rationale for and conditions of the proposed exception.

IV. Eligibility Requirements for a Conditional Exception from WDRs

- 1) The discharger submits an application for an exception from meeting specific Waste Discharge Requirements (WDRs).
- 2) It is infeasible or impracticable for the discharge to comply with the relevant WDRs with or without a compliance schedule.
- 3) There is no assimilative capacity available, or significant uncertainty regarding the availability assimilative capacity, for the relevant pollutant in the receiving groundwater basin.
- 4) It is unreasonable to prohibit the discharge as doing so would result in substantial and widespread economic and social impact or would cause more severe adverse environmental impact than would occur if the discharge was allowed to continue.
- 5) Prohibiting the discharge will not assure attainment of the applicable water quality standard in the receiving groundwater basin during the next 20 years.

V. Key Demonstrations to be made with the Application for a Conditional Exception

- 1) Reasoning and evidence addressing each of the eligibility requirements described above. Burden of proof is on the discharger(s).
- 2) An appropriate scientific and technical analysis estimating the net change in receiving water quality if the exception is granted.
- 3) Detailed description of current and proposed efforts to reduce the discharge of pollutants, for which an exception is being sought, to the maximum extent practicable. And, a schedule of implementation for all such efforts with clear metrics for determining compliance with that schedule.
- 4) Detailed description of any proposed mitigation project or other Alternate Compliance Program (ACP) offered to help justify approval of the Conditional Exception.
- 5) Any documentation that the Regional Board needs to meet its obligations under CEQA for authorizing the requested exception.
- 6) Copies of documents prepared and certified by another state or local agency, pursuant to Public Resources Code section 21080 et seq., or such documents as necessary for the Regional Water Board to make its decision in compliance with PRC §21080 et seq.