



## **Alternative Compliance Programs/Projects (ACPs)**

- 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 of a water quality objective if either 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 meet Basin Plan objectives even if the quality of the discharge itself does not comply. 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 to 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 in State standards or unreasonably affect beneficial uses in the receiving water.
- 4) Pollutant concentrations are rarely uniform horizontally or vertically throughout a groundwater basin. 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. In order to demonstrate that the discharge will not "unreasonably affect beneficial uses," it is necessary to show that there will be no significant negative localized negative impacts within the area affected by the discharge. This can be accomplished by performing a fate and transport analysis (based on modeling or monitoring) to confirm the absence of any significant adverse effect downgradient from the discharge. Or, for wells that may be adversely affected by the discharge, and especially those located in areas already impaired by poor water quality, by protecting water users through other means (e.g. alternate water supply or on-site treatment). This latter option is an Alternative Compliance Program/Project (ACP).

- 5) 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, faster than is likely to occur if the proposed allocation of assimilative capacity was disallowed. In addition to ensuring that beneficial uses will not be adversely affected, it also provides "maximum benefit to the people of the State" by alleviating localized negative impacts caused by existing poor groundwater quality.
- 6) Where there is no assimilative capacity available, the Regional Board also has the discretion to authorize a non-compliant discharge using a conditional exception. An ACP may be proposed/required as a condition for granting such an exception.
- 7) ACPs are voluntarily proposed by one or more dischargers and, if accepted and approved by the Regional Board, will become binding obligations by being made enforceable provisions of the WDRs. The Regional Board will require that this authorization be periodically reviewed and renewed. The exact term may vary but will be specified in the WDRs at the time of adoption
- 8) 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, from the permitted discharges, in that groundwater supply.
- 9) 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 so that it can now be served to the public are believed to provide the highest water quality benefit.
- 9) In general, dischargers seeking approval of an ACP should demonstrate how the proposed program supports the Regional Board's goals for long-term sustainability and managed restoration.
- 10) The Regional Board also supports the creation of regional "Mitigation Banks" to facilitate faster and more cost-effective project implementation. Sponsoring water quality improvement projects, including projects designed to provide alternate drinking water supplies to economically disadvantaged communities, is one approach to making the "maximum benefit" demonstration required to comply with California's Antidegradation Policy or otherwise showing that the ACP is in the best interests of the people of the state.



## **Key Elements for a Proposed Alternate Compliance Program/Project (ACP)**

- I. Rationale and Justification
  - A) Proof that it is infeasible, impracticable or unreasonable:
    - (1) For the discharge to comply with the applicable water quality objective
    - (2) To prohibit the discharge
  - B) Proof that the proposed ACP is in the best interests of the people of the State and provides a higher level of USER protection than would result if:
    - (1) The discharge were prohibited
    - (2) The discharge could actually comply with the water quality objective
  
- II. Water Quality Analysis
  - A) Characterize existing water quality in the receiving water
  - B) Prepare a fate and transport analysis of the proposed discharge
  - C) Characterize projected changes to water quality in the receiving water:
    - (1) With the proposed ACP (including "best efforts" to control pollutants)
    - (2) If the discharge were prohibited
  
- III. Best Efforts Analysis
  - A) Description of what constitutes "Best Efforts" for the regulated discharge
  - B) Summary of implementation status for Best Efforts
    - (1) Implementation schedule showing completed and planned activities
    - (2) Methods and procedures used to confirm BE implementation
  
- IV. Alternative Compliance Program/Project
  - A) Detailed description of proposed ACP
  - B) Identify specific discharge(s) to be covered by the proposed ACP
  - C) Budget and funding commitments for design, permitting, construction, O&M
  - D) ACP implementation schedule with major milestones
  - E) Linkage analysis to long-term sustainability and managed restoration goals
  - F) Recommended monitoring and reporting requirements
  - G) Proposed authorization period and renewal requirements
  - H) CEQA documentation
  
- V. Other Legal Considerations
  - A) Authorization mechanism?
    - (1) Allocation of assimilative capacity
    - (2) Conditional exception
    - (3) Pollutant offset or trading program
    - (4) Long-term compliance schedule
  - B) Provisions to Address Non-performance
    - (1) Reversion to original WDRs
    - 2) Stipulated penalties



## **Key Elements of a Local Salt and Nitrate Management Plan (LSNMP)**

### 1) Management Zone Delineation

- a) GIS description and map of the proposed Management Zone.
- b) Detailed description of all surface and land discharges in the Management Zone.
- c) Inventory of all community and domestic drinking water supply wells in the MZ.
- d) Characterization of sub-surface flow gradient in the Management Zone.

### 2) Water Quality Analysis

- a) Best estimate of existing water quality (TDS & Nitrate) in the Management Zone.
- b) Best estimate of assimilative capacity for TDS & Nitrate in the Management Zone.
- c) Best estimate of water quality trends in the Management Zone (w/ 20-yr. projection).

### 3) Program of Implementation

- a) Detailed description of Alternate Compliance Projects (ACP) including O&M plan.
- b) Best Efforts Analysis
- c) Detailed Implementation Schedule for BMPs and ACP (near-term).
- d) Proposed term (incl. schedule for periodic review and reauthorization).
- e) Long-term Nitrate Management and Remediation Strategy w/ major milestones.
- f) Long-term Salt Management and Remediation Strategy w/ major milestones.
- g) Monitoring and reporting plan.

### 4) Governance Framework

- a) Detailed budget and funding commitments (short term and long-term).
- b) Governance structure (w/ list of participants and non-participants)
- c) Credit accounting system to support Offset and Trading Program (if proposed).
- d) Summary of local controls (ordinances) needed to support LSNMP implementation.
- e) Public Communication, Outreach and Participation program.
- f) Mechanism for resolving disputes.

### 5) Comprehensive Antidegradation Analysis (in and downgradient of the Mngt. Zone)

### 6) CEQA Documentation (as necessary)

- a) CEQA Checklist & Substitute Environmental Document (SED)
- b) Alternatives Analysis
- c) Economic Impact Analysis