



Principles to Guide Revision of the Exceptions Policy for Waste Discharges to Groundwater

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 (aks "Streamlined Policy") applies only to electrical conductivity, total dissolved solids, chloride, sulfate and sodium.
- 3) The current policy prohibits the Regional Board from authorizing new exceptions or reauthorizing previously approved exceptions after June 30, 2019. 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. Presently, the definition of "salinity" includes only: electrical conductivity, total dissolved solids, chloride, sulfate and sodium. The current Policy does not provide the Regional Board with legal authority to approve exceptions for any other pollutants including nitrate.
- 5) The authority to approve an exception does not automatically grant such an exception in any given instance. Exceptions must be authorized by a separate Board action.
- 6) 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."* That review must be conducted in a public hearing.

II. CV-SALTS Recommendations

- 1) The current policy should be amended to revise the provision prohibiting the Regional Board from authorizing new exceptions or reauthorizing previously approved exceptions after June 30, 2019.

Option 1: Extend the sunset date of the exceptions policy to June 30, 2039 and state that the date may be revised again by vote of the Regional Board and subject to approval of the State Water board.

Option 2: Delete the sunset date entirely; retain the current provision limiting the term of an exception to no more than 10 years and add a new provision stating that exceptions may be reauthorized (renewed) by vote of the Regional Board.

- 2) The current exceptions policy should be amended to add Boron to the list of chemical constituents included in the definition of "salinity."
- 3) The current policy should be amended to add nitrate to the list of chemical constituents for which the Regional 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 (TIN, 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 discharge.
- 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: the eligibility criteria, mitigation responsibilities, monitoring/reporting obligations, and any expectations to participate in a management zone, CV-SALTS, or the other long-term groundwater restoration program(s).
- 6) The current policy should be amended to make clear that exceptions are intended to facilitate long-term compliance with water quality standards or to provide the time needed to revise any inappropriate water quality standards. The Regional Board may renew and reauthorize exceptions but may not do so indefinitely and, in particular, where re-designation, de-designation and/or adoption of a site-specific water quality objective is the more appropriate long-term regulatory management strategy.

III. Justification for Extending/Expanding the Current Exceptions Policy

- 1) The Regional Board's original rationale for adopting the current exceptions policy was to provide temporary permitting flexibility while CV-SALTS was developing the Salt and Nitrate Management Plan (SNMP) and to encourage dischargers throughout the region to actively participate in that process. If CV-SALTS determined that a permanent exceptions policy is necessary to assure successful implementation, the Regional Board instructed the stakeholders to describe and justify their recommendations in the SNMP itself.
- 2) CV-SALTS has found that there may be many instances where it is infeasible, impracticable or unreasonable for dischargers to comply with certain WDRs (with or without a compliance schedule) and there is little or no assimilative capacity in the receiving groundwaters. At present, the Regional Board has only two permitting options available: (a) where appropriate, revise the applicable water quality standards and related WDRs, or (b) disallow the discharge.
- 3) Revising water quality standards (uses and or objectives) is a complex process requiring considerable documentation and numerous opportunities for public comment. Consequently, a temporary exceedance may be needed to provide time to complete the full regulatory review and approval process.
- 4) In some cases, it may be infeasible, impracticable or unreasonable to prohibit the discharge. If the Regional Board determines that such a discharge should not be required to comply with a normally applicable WDR, then a specific exception must be authorized. Examples of conditions where the Regional Board may conclude that it is infeasible, impracticable or unreasonable to prohibit the discharge include, but are not limited to:
 - A) Situations where allowing the discharge may actually improve existing or expected quality in the receiving water.
 - B) Situations where allowing the discharge is likely to result in nominal but imperceptible and insubstantial changes in receiving water quality and public health risk.
 - C) 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).
 - D) Situations where the discharger proposes an Alternate Compliance Project (ACP) that is likely to provide higher water quality, or greater protection of public health, or more environmental benefit than is expected to occur if the discharge were prohibited.

- E) Situations where allowing the discharge to continue is necessary 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, increased migratory bird habitat, etc.)
 - F) Situations where allowing the discharge to continue is part of the Regional 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").
 - G) Situations where disallowing the discharge would likely result in widespread and substantial adverse social and economic impacts in the region.
 - H) Situations where disallowing the discharge would be more harmful to water quality and/or the environmental than allowing it to continue despite the failure to comply with the WDR for which the exception is sought.
- 5) Exceptions can be authorized 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 Regional Board has set forth several important expectations governing the manner in which exceptions are likely to be applied:
- A) 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 discharge.
 - B) Dischargers are expected to continue to make reasonable best efforts to comply with applicable WDRs.
 - C) 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 as a condition for reauthorizing/renewing an exception.
 - D) 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 workplan/schedule and a commitment by dischargers to provide the resources needed to complete the proposed process.
 - E) Where existing water quality standards are unlikely to change, dischargers must demonstrate how the proposed exception is a necessary element of a larger long-term strategy designed to achieve compliance with those standards (e.g. implementing SSALTS/NIMS, forming and participating in groundwater management zones, etc.) while, in the interim, allocating available resources to address more urgent water quality priorities (e.g. safe drinking water).