

TO: Anne Walters, Central Valley Water Board
FROM: Tess Dunham
SUBJECT: Basin Plan Amendment Revisions – Discussion Topics
DATE: May 11, 2020

Thank you for providing the discussions topics regarding potential revisions to the Basin Plan to address the direction provided by the State Water Resources Control Board (State Board) in Resolution No. 2019-0057. Based on my review, I provide the following comments.

Topic 1 – Clarification of the use of “assimilative capacity” in Path A

The response provided is consistent with the State Water Board’s resolution as well as the relevant provisions as adopted into the Basin Plan. One clarification should be made with respect to the last sentence. The allocation of assimilative capacity by the Central Valley Water Board to a discharger may trigger the need for an alternative compliance project. This should be clarified.

Topic 2 – Request by EJ stakeholders for additional language

The State Board’s Resolution directed the Central Valley Water Board to include new language in the Basin Plan that specifies that the management zone must consider future impacts to public water systems, and that the Management Zone needs to consult with the Central Valley Water Board and the Division of Drinking Water. The Basin Plan also needs to specify that Management Zone Implementation Plans need to address the impact that potential solutions may have on operation and maintenance costs, particularly for disadvantaged communities. Beyond this direction, the Basin Plan should not be further revised to include specific language.

Each Management Zone Implementation Plan will be different, and will need to address unique, local circumstances relevant to its area. Some management zones may need to address operation and maintenance costs, while for others it may not be applicable. Clearly, management zones will need to address drinking water needs for those affected by nitrate within the zone, including operation and maintenance costs as applicable. Determining eligibility for subsidized operations and maintenance costs, and considerations associated therewith, will ultimately need to be considered on a management zone by management zone basis. Such language is not necessary for the Basin Plan Amendment here, and in fact, complicates the proposed amendments. While we recognize that further discussion will ensure regarding some of these considerations, we do not believe that the Basin Plan is the appropriate mechanism to bring in new requirements regarding eligibility for subsidizing operation and maintenance. The suggested language should be not be included as part of the Basin Plan amendments.

Topic 3 – Process for Central Valley Water Board Modification of Management Zones

To address this issue, the Central Valley Water Board has proposed a default management zone boundary equivalent to the DWR basin as delineated in Figure N-1 of the nitrate control program if a boundary is inappropriate. While we appreciate the simplicity of this approach, we are concerned that it may create unintended problems. For example, what if there are two or more management zones

within the delineated sub-basin and only one of the three proposed boundary areas is deemed inappropriate. Do all the different zones then get combined into one management zone even though others have appropriately identified boundaries?

Rather than setting a default boundary, it would be more appropriate for the Central Valley Water Board to propose back to the management zone the boundary that the Central Valley Water Board believes to be appropriate. At that point, the management zone could accept the alternative boundary, or request review of the boundary lines before a sub-committee of the Central Valley Water Board or the Central Valley Water Board as a whole. Any such review would need to be expeditious, and the use of the process needs to be discouraged as a delay tactic. Further, we recommend that Early Action Plan implementation be required to proceed for those areas in the zone where there are not disagreements.

Topic 4 – Process for Late Participation in a Management Zone

We agree that there should be a provision that allows for a permittee to join a management zone even after the Notice of Intent due date has passed. Ultimately, the inclusion of everyone is more important than the timeliness of selecting the management zone option. However, like with the Salt Control Program provision, the permittee will need to obtain approval from the management zone itself, and will need to be subject to the management zone's requirements for late entrance, including providing the appropriate level of financial support as identified by the management zone.