

MEMORANDUM

TO: CVSALTS Executive Committee

FROM: Bobbi Larson

SUBJECT: Regulatory Review to Assess Water and Salt Management Requirements and Responsibilities and Potential Conflicts

DATE: February 8, 2021

Background

On January 14, 2021, the Central Valley Salinity Coalition (CVSC) Board of Directors approved the final Prioritization and Optimization Study (P&O Study) Workplan. The final workplan was transmitted to the Central Valley Regional Water Quality Control Board Executive Officer for review and approval.

The regional board has been closely tracking the development of the workplan, and we anticipate a relatively quick turnaround on the approval. Once the workplan is approved, CVSC will move forward to engage consultants and develop detailed task specific workplans for the near term (1 to 3 year) technical tasks. In order to keep things moving forward in the interim, we plan to tee up specific issues and policies for discussion by the Committee that will inform the conduct of the study. The first of these, scheduled for our February 11, 2021 meeting, focuses on existing regulations and policies that have the potential to significantly affect the management of water and salt in the Central Valley.

Central Valley Region Water and Salt Management Requirements and Responsibilities

Numerous federal, state and local statutes, regulations, ordinances, policies, guidance, and procedures affect the management of water and salt in the Central Valley Region. Individually, these requirements and responsibilities often derive from a focused statutory mandate or were developed to address a particular concern. Given the significant number of these rules and policies and the multiple agencies involved in establishing requirements, it is possible—perhaps likely—that these regulatory schemes may conflict. For example, measures to increase water conservation may help to ensure a reliable water supply, but these activities can increase the concentration of salt in surface waters and groundwater.

Task 3.4 of the workplan involves a comprehensive review of existing water and salt management requirements in the Region to identify significant existing or potential conflicts that may impact implementation of the Salt Control Program in Phases II and III. Where such significant conflicts are identified, recommendations will be developed to resolve or otherwise address any conflict.

In collaboration with stakeholders, the Contractor will develop an inventory and evaluation of existing local, state and federal statutes, regulations, ordinances, policies, guidance, and procedures that have the potential to significantly affect the management of water and salt in the Central Valley Region. Areas to be evaluated include requirements related to, but not limited to: water quality and beneficial use protection (including MUN, AGR, IND, PRO and aquatic life uses), including potential impacts to the Bay Delta; NPDES permits and WDRs; water rights/water transfers; groundwater sustainability; land use zoning/planning; minimum instream flow protections; recycled water use; stormwater recharge; water conservation; farming and industrial practices; air quality and waste disposal regulations; and climate change mitigation and adaptation requirements.

Discussion Questions

Given the breadth of expertise, experience and knowledge represented, the Executive Committee is positioned to provide helpful insight and information to aid in completion of this task. Please give some thought to the questions below in advance of our February 11 discussion. To help spur your thinking, attached is a listing of a number of the regulations and policies that may affect salinity management in the Central Valley. Drawing from that list, please develop short answers to the following questions:

- What do you believe are the biggest obstacles/challenges to achieving salt balance/management in the Central Valley?
- What are the existing and future conflicts between different requirements affecting salinity management? Do they exist on the face of the rules/policies or in their interpretation and implementation?
- What are the overlapping or conflicting agency responsibilities for regulating and managing water and salinity?
- Are there any existing regulatory tools or options that can assist in salt management that are currently under-utilized?
- Are there future regulatory changes/reforms that would help to resolve conflicts and facilitate long term salt management solutions?

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Please feel free to provide your input on the questions and the attached list in advance of the meeting to me blarson@somachlaw.com

Laws and Regulations Relevant to Salt Management (Preliminary List)

Federal Laws & Regulations

- Water Quality Standards
 - Designated uses
 - Criteria
 - Section 303(d) (Impaired waters listing/TMDLS)
- NPDES Program
 - POTWs
 - Industry
 - Stormwater
 - CAFOs
- Nonpoint Source Program
- Dredge and fill/wetlands
- Antidegradation Policy
- Antibacksliding provisions

Safe Drinking Water Act 42 USC § 300f et seq.

- MCLs
- Source water protection

Endangered Species Act 16 USC § 1531 et seq

- Section 7 Consultation
- Section 9 Take
- Section 10 Habitat Conservation Plans

National Environmental Policy Act (NEPA) 42 USC § 4321 et seq.

- Environmental review for federally funded/permitted projects (SRF, WIFIA, etc.)

State Laws, Policy & Regulations

- California Environmental Quality Act
 - Environmental review of projects
- Coastal Act
 - Implementation—brine line permitting
 - Climate adaptation
- Porter Cologne Act
 - Water Quality Control Plans
 - Basin Plans – Central Valley, SF Bay, Central Coast
 - Inland Surface Waters Plan— priority pollutants, toxicity, state wetlands definition and procedures for dredge and fill
 - Bay Delta Plan – salinity standards, flow standards
 - Ocean Plan (brine disposal/outfall)
 - Water Quality Objectives – Beneficial Uses

WDRS/Waivers/Prohibitions
401 certification

Water Quality Policies
Non Degradation Policy—Resolution 68-16
Sources of Drinking Water Policy 88-63
Compliance Schedule Policy (NPDES)

Recycled Water
Recycled Water Policy
Reclamation Policy (Resolution 77-1)
General Order for non-potable uses
Title 22 regulations
Groundwater recharge
Non-potable uses (irrigation, etc.)
Reservoir augmentation
Potable reuse (pending)

Water Conservation (rulemaking in progress at SWRCB)

Water Rights
Water contracts, SWP/CVP agreements, Biological Opinions, etc.
Water Transfers
Water Code Section 1211—Petitions for Change in place of use
Instream flow standards/requirements

Sustainable Groundwater Management Act (SGMA)

Delta Plan

Composting regulations

Climate Change
Organics diversion—SB 1383

Air quality regulations

Local rules/regulations

Land Use/Zoning
Sewer Use Ordinances
Stormwater Ordinances