

## Attachment D-3

# Summary of Significant Stakeholder Alternatives/ Options to SNMP Recommended Policies

The Final SNMP for Central Valley Water Consideration was developed over the second half of 2016, with several opportunities for comments to be submitted by Executive Policy Committee members (Attachment D-2, CV-SALT Stakeholder Process). Attempts were made to address all comments received, but disagreements remain with respect to some key aspects of the SNMP recommended policies. As such, to acknowledge and recognize the significant different options, this Attachment summarizes several of the proposals from some of the stakeholders. The options presented here have been included in the Environmental Document as well as the Antidegradation Analysis (SNMP Attachments C-1 and C-3, respectively). As such, the Central Valley Water Board may, at its discretion, consider the options described without necessarily triggering the need for additional environmental and antidegradation analysis.<sup>1</sup> The options described here are presented in order of the Recommended Policies as contained in the Final SNMP for Central Valley Water Consideration.

### **GROUNDWATER MANAGEMENT ZONE POLICY**

#### **Summary of Recommended Policy (Attachment A-1)**

The recommended Groundwater Management Zone Policy would in general allow collective groups of dischargers to comply with the nitrate components of the SNMP through a management zone. This would include allowing dischargers to apply for an exception to meeting nitrate water quality objectives as a collective group, and would allow the Central Valley Water Board to allocate assimilative capacity for a management zone using the volume-weighted average of the upper zone to determine if assimilative capacity is available. In general, the Groundwater Management Zone Policy recommends that the Central Valley Water Board *not* allocate assimilative capacity based on the volume weighted average in the upper zone if such allocation would result in groundwater exceeding a trigger level of 75% of the objective (i.e., 7.5 mg/L) over a 20-year time frame, unless the Central Valley Water Board can find that allocation of assimilative capacity above the trigger will not result in pollution or nuisance over the longer term. A key element of obtaining an exception or being allocated assimilative capacity on a management zone basis is an agreement to address nitrate related drinking water issues within the management zone, and in areas down-gradient of the management zone that are impacted by dischargers within the management zone.

#### **Option**

Rather than allowing a groundwater management zone to be used for complying with the nitrate requirements of the SNMP (i.e., allowing dischargers on a collective basis over an identified

---

<sup>1</sup> The summary of options here is being provided as a courtesy, and is not intended to suggest that stakeholders that support these options are otherwise in agreement or in support of the SNMP.

geographic area), the Community Water Center, Leadership Council for Justice & Accountability, and Clean Water Fund (collectively referred to hereafter as “Environmental Justice Stakeholders”) propose that management zones be used to serve a more limited purpose. Specifically, the Environmental Justice Stakeholders recommend that the scope of management zone functions be narrowed to provide basin-scale information about nitrogen loading trends and basin restoration needs, but not for determining compliance with the nitrate requirements of the SNMP.

The Environmental Justice Stakeholders are concerned that the discussion of how management zone boundaries would be established is not very detailed and are concerned that boundaries could be drawn to exclude impacted communities from a management zone’s jurisdiction. Additionally, the relatively large size of a management zone could also affect the number of communities suffering disproportionate impacts, due to the ability to average over both high and low quality groundwater. The Environmental Justice Stakeholders have suggested a number of different criteria for developing management zones which include;

- Boundaries based on geologic and hydrologic features that limit or promote groundwater movement and reduce the chance of gerrymandering which can leave out impacted communities;
- A process to regularly identify and include additional communities impacted by nitrates contamination, including identifying potentially impacted communities most at risk of future nitrate contamination;
- All impacted or potentially impacted communities, including those dependent on private wells, must be notified of the development of a management zone and allowed to provide meaningful input into its development.

The Environmental Justice Stakeholders recommend against using management zones for the development and implementation of drinking water projects. Rather, they propose that drinking water projects be handled, at a minimum, on a regional basis, and that the best means for developing and sustaining drinking water solutions is through a mitigation fund in which all dischargers contribute to fund both short and long-term drinking water solutions. Drinking water project development should be led by impacted communities and drinking water providers, with support from technical assistance providers, the State Board’s Division of Drinking Water and other relevant partners, rather than developed by discharger-led and designed management zones.

## **NITRATE PERMITTING STRATEGY**

### **Summary of Recommended Policy (Attachment A-2)**

The Nitrate Permitting Strategy provides dischargers of nitrate two different pathways for complying with the nitrate provisions of the SNMP. Path A is more akin to the current traditional approach and relies on the current issuance of waste discharge requirements/conditional waivers to dischargers on an individual basis, or through a General Order. Path B, on the other hand, allows compliance through participation in a groundwater management zone (see above). Path A differs from the current existing approach in that, among other things, it clarifies what is

considered the receiving water by defining shallow groundwater as compared to the current referenced term of first encountered groundwater. It also establishes five categories for discharges following path A, and identifies what requirements will be required to comply with the SNMP based on the categorization of the discharge. Path A also establishes trigger levels to limit use of available assimilative capacity above a certain level, unless demonstrations can be made that the use of available assimilative capacity will not result in the groundwater exceeding the applicable water quality objective within a 20-year planning horizon.

### **Option**

The Environmental Justice Stakeholders propose using only three categories rather than the five proposed categories. The Environmental Justice Stakeholders are concerned that the five proposed categories create leniency for the Central Valley Water Board to allow discharges that would degrade water quality and fail to provide for a buffer between the proposed discharge and the water quality objective. The Environmental Justice Stakeholders are concerned that without the inclusion of a buffer, water quality objectives will be exceeded. The three alternative categories would categorize discharges as (1) meeting water quality objectives and not degrading highest water quality as measured at first encountered groundwater; (2) degrading water quality up to 75% of the water quality objective (i.e., 7.5 mg/L); and, (3) degrading water quality at or above 75% of the water quality objective (i.e., 7.5 mg/L) that thus causes or contributes to pollution. For dischargers in Category 1, the Central Valley Water Board may authorize their discharge and may require offsets and/or mitigation programs if appropriate, and discharger must monitor to assure that degradation of groundwater is not occurring. For dischargers in Category 2, the Central Valley Water Board may authorize the discharge subject to an anti-degradation analysis, may require offsets and mitigation programs if appropriate, require monitoring and reporting of nitrate application and water quality necessary to assure compliance with permit conditions. For Category 3 dischargers, the Central Valley Water Board may authorize the discharge subject to granting an exception that meets the Exception Policy, shall require mitigation programs, and shall require monitoring and reporting of nitrate application and water quality necessary to assure permit compliance.

## **REVISION OF THE EXCEPTIONS POLICY FOR WASTE DISCHARGES TO GROUNDWATER**

### **Summary of Recommended Policy (Attachment A-4)**

There currently exists in the Central Valley Water Board's Basin Plans a policy that allows the Central Valley Water Board to adopt exceptions to meeting salinity water quality objectives for certain specified salinity parameters. To obtain such an exception, dischargers must apply for one from the Central Valley Water Board, and a requirement for granting such an exception includes preparation of a Salinity Reduction Study Work Plan, or a salinity-based watershed management plan. Minimum requirements for both are specified in the existing policy. The recommended policy looks to recommend revisions to the existing policy. The current policy contains a sunset provision, and limits the term of an exception to ten years. The recommended policy suggests that the exceptions policy should be revised, in part, as follows: (1) remove the sunset provision; (2) delete the provision that limits exceptions to a term of ten years and provide the Central Valley Water Board with authority to grant an exception for a longer period if certain demonstrations can be made; and, (3) include nitrates as a parameter for which an exception can be granted. To

receive an exception for nitrate, the recommended policy would provide that a new provision needs to be added that requires dischargers to assure availability of an adequate supply of safe, reliable and affordable drinking water as a condition of authorization of an exception for nitrates.

### **Option**

The Environmental Justice Stakeholders do not oppose the use of exceptions for dischargers that cannot meet water quality objectives. However, the Environmental Justice Stakeholders have commented that the existing policy, and the recommended revisions to the existing policy, fall short in that there are insufficient conditions and required findings that require the granting of an exception to lead to long-term restoration of the aquifer in question. The Environmental Justice Stakeholders are concerned that as proposed, the revisions may effectively result in removal of municipal and domestic drinking water (MUN) beneficial use from groundwater basins where exceptions are granted.

To address this concern, the Environmental Justice Stakeholders recommend that to grant an exception, the application for an exception must include the following components: (1) mechanism to assure payment into a mitigation fund to provide short term drinking water and that develops and implements long term drinking water solutions, or otherwise implements plans to fully mitigate impacts to drinking water; (2) mechanism to assure payment into a mitigation fund that is designed to restore the aquifer to meet water quality objectives, or otherwise implements plans to fully mitigate the impacts to aquifers; (3) long-term management plan to show how water quality trends will improve over a 10-year and 20-year planning horizon; (4) long-term management plan to show salt/nitrate balance in as short as time as practicable but not to exceed 50 years; and long-term management plan to show restoration of the aquifer to meet water quality objectives in as short as time as practicable but not to exceed 50 years. Exceptions would be limited for a term of ten years, but subject to renewal. And for any renewal of an exception to be granted, the discharger would need to make a number of identified demonstrations, including but not limited to, showing compliance with targets for optimum nitrogen application, implementation of best practicable treatment or control (BPTC) and movement towards compliance with the goals of the long term plans for balance and restoration.

## **OFFSETS POLICY**

### **Summary of Recommended Policy (Attachment A-7)**

The recommended Offsets Policy would provide a regulatory alternative for allowing a discharge, and is considered to be an Alternative Compliance Project. In general terms, an offset would be an alternative means of achieving compliance with Waste Discharge Requirements (WDRs), either alone or in combination with other actions, for a given pollutant or pollutants. Under the recommended policy, specific implementation requirements are established, which include in part, that the offset must result in a net improvement in existing water quality if there is not assimilative capacity, offsets must be for substantially the same pollutant, an offset cannot result in unmitigated localized impairments sensitive areas or have disproportionate impact on disadvantaged communities, must be approved by the Central Valley Water Board, and would apply to a specific discharge for a defined period of time.

## Option

The Environmental Justice Stakeholders have expressed concern that the recommended offsets policy is not consistent with the traditional use of offsets and that it confuses offsets with mitigation and managed restoration projects (which within certain parameters can also be useful tools). Rather, Environmental Justice Stakeholders prefer an alternative that limits offsets to being projects that reduce the overall contaminant loading into the aquifer from another source to make up for the degradation caused by the discharger seeking the offset. Accordingly, Environmental Justice Stakeholders recommend that the Offsets Policy be revised to only authorize offsets to be used as a means for compliance with water quality objectives such that the discharge plus the offset allows the discharger to demonstrate no degradation, or degradation only up to 75% of the water quality objective (i.e., 7.5 mg/L). Further, to approve an offset, the Central Valley Water Board must find that the offset will not create or allow for any negative localized impacts that would not have occurred but for the offset.

## GUIDANCE TO IMPLEMENT SECONDARY MAXIMUM CONTAMINANT LEVELS

### Summary of Recommended Policy (Attachment A-9)

The Basin Plans include secondary maximum contaminant levels (SMCLs) as water quality objectives for protection of the MUN beneficial use through incorporation by reference to Tables 64449-A and 64449-B contained in Title 22 of the California Code of Regulations. The incorporation by reference to Table 64449-B has led to some confusion with respect to application of the SMCLs because it does not include reference to other provisions of Title 22 that further explain implementation of the SMCLs in Table 64449-B. Because of this confusion, the recommended policy would apply for the purpose of interpreting and implementing the SMCLs. It would not propose to change any of the numeric values specifically adopted as SMCLs. Specifically, for salt parameters such as total dissolved solids (TDS) and electrical conductivity (EC), the recommended policy would add in contextual information that is contained in Title 22 but not in the Basin Plan. For example, the Basin Plans would be amended to clarify that the Central Valley Water Board may consider the “upper” level for TDS and EC as specified in Table 64449-B if it is neither reasonable nor feasible to provide more suitable waters, i.e., waters that meet the “Recommended” values in Table 64440-B. The recommended policy further proposes to add language to the implementation chapters of the Basin Plans, including language that would state that compliance with SMCLs should be determined from an annual average of sample results, and, for certain constituents, be based on a filtered water sample.

## Option

The California Urban Water Agencies (CUWA) and Sacramento River Source Water Protection Program (SRSWPP) stakeholders have expressed concerns with respect to proposed changes to the implementation provisions of the Basin Plans. Specifically, these stakeholders have requested that reference to compliance with SMCL water quality objectives at the nearest downstream intakes for community water systems is inconsistent with the protection of the MUN beneficial use throughout the receiving water body. CUWA and SRSWPP believe that compliance with SMCL water quality objectives should be measured at the edge of a mixing zone, if a mixing zone is allowed by the Central Valley Water Board. These stakeholders also oppose the use of filtered samples for determining compliance with some constituents. Rather, the stakeholders propose that non-filtered samples be used to determine compliance with SMCL water quality objectives

contained in Table 64449-A because it is CUWA and SRSWPP's view that Title 22 requires compliance based on unfiltered samples and filtration that occurs in a water treatment plant is vastly different from laboratory filtration. These stakeholders have also stated that it is inappropriate to include the non-salinity SMCLs in Table 64449-A in a salt and nitrate management plan.

CUWA has expressed concern that in its view the information needed to support the application of the SMCL Policy to surface waters has not been developed. Specifically, CUWA argues there is no information on the number of surface water dischargers who require the changes proposed in the policy to be in compliance with salinity and metals water quality objectives and no information on the need to change compliance from total metals to dissolved metals.

CUWA has also expressed concern that implementation of the SNMP may result in increased salt loads to the Delta with resulting impacts at CUWA members' water treatment plant intakes and Delta export locations.

CUWA has requested that the CV-SALTS Executive Committee conduct an analysis of existing monitoring programs, and develop a monitoring program that is adequate to establish natural background concentrations and existing conditions for surface water bodies. CUWA feels that this request was rejected by the Executive Committee.