



August 1, 2016

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c/o Central Valley Regional Water Quality
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Re: Comments CV Salts Policy documents

Dear Ms. Creedon and Mr. Cory,

Thank you for the opportunity to provide comments on the documents prepared as part of the CV-SALTS process. We agree with the current goal of the policies to (1) ensure short and long term reliable, safe and affordable drinking water to impacted residents, (2) achieve BPTC that achieve salt and nutrient balance, and (3) restore the aquifer to best water quality since 1968.

Our comments reflect our interest in providing greater specificity to this framework in order to ensure that these goals are in fact realized. In addition to the red-line copies of the policies, this letter provides an overview of our edits, which include an alternative, simpler framework for the SNMP that will ensure achievement of the three primary goals identified by CV SALTS as well as provide greater certainty to both the regulated community and consumers of groundwater.

Our comments reflect our belief that

- The Exceptions Policy provides needed flexibility for dischargers, although strict requirements are needed to protect other beneficial users and ensure restoration of water quality in the aquifer;
- Best Practicable Treatment and Control (BPTC) must be required of all dischargers;
- Management Zones can play a role in assessing water quality trends and ensuring BPTC throughout a region, but may not be an appropriate tool for determining compliance.
- Offset programs can help a discharger meet its obligations to achieve water quality objectives and avoid degradation of the receiving water;



- Mitigation programs are distinct from offsets and are intended to make whole those uses affected by degradation or pollution
- The most appropriate method of mitigation will be through payment into mitigation funds for drinking water access and aquifer restoration;
- Assimilative capacity should be applied on a geographically limited scale, i.e. the receiving water impacted by the underlying discharge
- Water quality targets should be set at a level that acknowledges the uncertainty of the data and provides a needed buffer between current water quality and water quality objectives that allow a public water systems to design treatment or find a new water source.

Assimilative Capacity

We are concerned that the use of assimilative capacity calculated across a management zone or subbasin runs counter to the goals of the program to protect users and restore water quality. Averaging water quality over such a large area creates the mistaken impression that water quality objectives are being met, when in fact degradation and pollution will almost certainly occur. If degradation and pollution are to be permitted under this program, this must only happen under specific and measurable conditions and locations under the Program's Exceptions Policy. Instead, we propose that the Regional Board consider only the assimilative capacity of the receiving water that will be directly impacted by the permitted discharge.

Like the authors of the policy documents, we also reviewed the State Water Board's Recycled Water Policy (RWP) for its use of assimilative capacity. The Recycled Water Policy's reliance on assimilative capacity was limited in scope, both substantively and temporally, in anticipation of a Salt and Nutrient Management Plan. Unlike that document, assimilative capacity as used in the SNMP guarantees negative impacts to the basin as it explicitly is used to allow discharges with nitrate concentrations above the current water quality of the management zone and allows degradation up to the water quality objective based on basin-level averaging.

While we support the use of assimilative capacity on a limited geographical basis, we understand that dischargers bear a larger responsibility for assessing the cumulative impacts of their discharges within a subbasin. For the purposes of understanding these cumulative impacts, a calculation of assimilative capacity of the subbasin within the upper zone is appropriate.

Assimilative Capacity, in both contexts, should not be considered based on the Water Quality Objective but, rather, should include a buffer of the WQO such that assimilative capacity is



deemed to exist if contaminant levels are better than 75% of the water quality objective. If assimilative capacity is granted up to the MCL, any accidental discharges of nitrates above what is permitted could cause serious impacts on public health and other beneficial users. Additionally, we do not agree with characterizing some discharges as *de minimus*. As discussed below, we recommend three categories of discharges: those that do not degrade, those that will cause degradation up to 75% of the MCL and those that cause or contribute to an exceedance of 75% of the WQOs.

Nitrate Permitting Policy

The Nitrate Permitting Policy promotes a preference for allowing discharges despite their impact to water quality. The SNMP recommends that the Central Valley Water Board be predisposed to allocate assimilative capacity where it is available and thus cause high quality waters to be degraded. The SNMP defends this predisposition by stating that in general allowing the discharges “assures a significantly better outcome for the people of California than would requiring strict compliance with WDRs.” This statement assumes that the case for degradation has already been made, while our understanding of that policy is that a full anti-degradation analysis must be conducted before such a conclusion can be reached. The notation in the Policy document that a regional guidance document will be developed explaining what maximum benefit to the people of the state will look like in these circumstances, it is premature to include such permissive language in the SNMP prior to its development.

The SNMP also includes references to assimilative capacity with which we have already expressed our disagreement.

The five categories for types of discharges seem both overly complicated and less than protective. First of all, any discharge which degrades water quality cannot be declared “*de minimus*,” particularly a single discharge that uses 10% of the assimilative capacity, the upper limit for a single discharger. We think that *all* discharges that have the potential to degrade water quality must be subject to anti-degradation analysis. Additionally, the categories as written fail to provide a buffer between permitted discharges and the water quality objective. Given the impact on public water systems and the uncertainty in water quality throughout the aquifer, such a buffer must be required.

Proposed: Nitrate Permitting Policy



We propose a simpler Nitrate permitting policy that expands Regional Board authority to require offsets and mitigation programs while also granting the Board the authority to authorize exceptions (discussed below) in limited circumstances. All dischargers, regardless of categories listed below, must employ BPTC, must participate in a trend monitoring program and must monitor and publicly report Nitrate application, with respect to both ration (A/R) and load (A-R).

We propose that there be 3, rather than 5 categories of discharges

1. Those which meet WQOs and do not degrade highest water quality at FEG (as defined by the state's Anti-Degradation Policy)
2. Those which degrade water quality at FEG up to 75 % of the MCL
3. Those which degrade water quality at FEG to 75% of the MCL or cause or contribute to pollution

For the first category, the Board may authorize the discharge and may require offsets and / or mitigation programs if appropriate (maybe this is wrong but still feels like they may as well have authority). Discharger must monitor to ensure that discharge will not degrade water quality

For the second category, Board may authorize the discharge, subject to an anti-deg analysis and may require offsets and mitigation programs if appropriate. The Board shall require monitoring and reporting of N application and water quality necessary to ensure compliance with permit conditions.

For the third category, the Board may authorize the discharge, subject to an exception. The Board shall require mitigation programs as appropriate. The Board shall require monitoring and reporting of N application and water quality necessary to ensure compliance with permit conditions.

Management Zone Policy

We have serious concerns about the scale, formation and governance of the management zones as described, and do not see how they offer an incentive to dischargers to participate.

First, the policy document does not contain any parameters on how the boundaries of management zones will be drawn nor is there a requirement that the boundaries are linked to hydrological conditions. This could lead to gerrymandering which will result in impacted communities being left out of a given zone's jurisdiction. This potential and probable result



undermines the SNMP goals of addressing all impacted residents and restoring groundwater quality.

Second, there is no discussion as to how to coordinate and incorporate all the necessary parties within the basin within the management zone framework. It is unclear why a discharger discharging below the water quality objective would participate in a management zone. As currently proposed, it is likely only dischargers discharging above the water quality objective would participate, thus making it difficult for the management zone to function as expected. We are also concerned about the lack of discussion around the inclusion of other stakeholders - i.e. impacted residents or other water providers. As the management zone would be required to draft an Early Action Plan which would aim to address the impacts of nitrate contamination, there is no place for those impacted by nitrates to have a say in the solution. Additionally, within the basin as a whole, the policy does not require coordination between management zones that have a hydrologic connection.

Finally, calculating assimilative capacity across a management zone appears to disincentivize aquifer restoration. Locally significant impacts will not be treated as pollution and nuisance, instead being approved as within limits due to the averaging of assimilative capacity. We prefer exceptions, which acknowledge that pollution and nuisance are occurring and provide limited and specific regulatory relief

Without adequate coordination and clear parameters on how zones are created, it is hard to see how this framework will achieve the goal of reducing impacts to nitrates and restoring the basin. Instead of the current proposal we propose that the scope of the management zones be narrowed and also developed with the hydrological conditions in mind to prevent unfair gerrymandering.

Management zones should not be used for the development and implementation of drinking water projects nor for the purposes of determining the extent to which, and under what conditions, a discharger may discharge into receiving water. Drinking water projects should be handled at a minimum on a regional basis rather than a much narrower management zone basis. The best means of developing and sustaining drinking water solutions is through a mitigation fund in which all dischargers contribute to which will fund both short and long-term drinking water solutions.

Proposed Use of Management Zones



Management zones will primarily be used to provide basin-scale information about nitrogen loading trends and basin restoration needs. Furthermore, these activities must be developed in coordination with all other management zones within the basin or subbasin.

Offsets Policy

The offsets policy as written confuses offsets with mitigation and managed restoration projects. The purpose of offsets is to reduce the total contaminant load upon the aquifer in order to comply with water quality objectives. While we support the development and implementation of mitigation projects which will bring safe drinking water to communities, and believe these projects should be required by the WDRs, these are not the same as offset projects.

Offsets must be projects which reduce the contaminant loading into the aquifer from another source to make up for the degradation or pollution for which the discharger in question is responsible. A discharger seeking to qualify a project as an offset must participate or fund a project which will reduce nitrate contamination at the same or greater amount as the original discharge, and must be located in the discrete area impacted by the underlying discharge. Merely mitigating the impacts of nitrate contamination on impacted beneficial users does not prevent the degradation of the aquifer. Neither can this be considered managed restoration, as its intent is to avoid pollution and degradation rather than restore water quality to the best available since 1968.

We are also concerned that the anti-degradation language used in this policy creates a slippery slope allowing for the assumption that all offset projects (which is a loosely used term in this policy paper) will result in a benefit to the people of the state when in fact not all projects are created equally and will result in the necessary benefits to impacted beneficial users.

Offsets proposal

Offsets shall only be authorized as a means to allow dischargers to comply with water quality objectives (including the buffer) such that the discharge plus the offset allows the discharger to demonstrate no degradation or degradation (if approved) up to 75% of the water quality objective (i.e. categories 1 and 2 for Nitrate discharges). Any other programs designed to address the impacts of Nitrate dischargers with respect to both aquifer restoration and drinking water availability, shall be considered mitigation programs or projects, not offsets. The Board must find that offsets do not create or allow for any negative localized impacts that would not have occurred but for the offset.



Exceptions Policy

While we understand the utility of exceptions for dischargers that cannot meet water quality objectives, the current policy proposal contains insufficient conditions and findings to show that exceptions will lead to long-term restoration of the aquifer. As currently proposed the exceptions policy will effectively result in de-designation of basins. An effective exceptions policy must require enforceable and measured steps toward restoration of aquifers for beneficial uses.

Proposed Exceptions Policy

We propose the following exceptions policy which includes conditions designed to demonstrate restoration of the basin and the access to safe drinking water for all end-users.

At the initial granting of the exception the following must be included in the exception proposal:

- Ensure that the discharger is mitigating for Nitrate Impacts to groundwater within the first year that the exception is in effect, by
 - Paying into a mitigation fund to provide short term drinking water and develop and implement long term drinking water solutions or otherwise implementing a plan to fully mitigate impacts to drinking water.
 - Paying into a mitigation fund designed to restore the aquifer to meet water quality objectives or otherwise implementing a plan to fully mitigate impacts to the aquifer.
- Long-term management plans show improved water quality trends over a 10 and 20 year horizon
- Long-term management plans show salt/nitrate balance in as short a time as practicable but not to exceed 50 years
- Long-term management plans show show restoration of aquifer to meet water quality objectives in as short a time as practicable but not to exceed 50 years
-

At the first renewal (if appropriate):

- Demonstration that short-term drinking water solutions were effectively implemented
- Demonstration that mitigation fund / alternative drinking water projects have been effective and identification of additional actions if needed.
- Demonstration that aquifer restoration/mitigation projects have been effective and identification of additional actions, if needed.



- Targets have been identified for optimum nitrogen application and integrated into WDRs for each crop.
- BPTC established for each discharger and integrated into WDR
- Long-term management plans show improved water quality trends over a 10 and 20 year horizon
- Long-term management plans show salt/nitrate balance in as short a time as practicable but not to exceed 40 years
- Long-term management plans show restoration of aquifer to meet water quality objectives in as short a time as practicable but not to exceed 40 years

At the second renewal (if appropriate):

- Demonstration that short-term drinking water solutions were effectively implemented
- Demonstration that mitigation fund / alternative drinking water projects have been effective and identification of additional actions if needed.
- Demonstration that aquifer restoration/mitigation projects have been effective and identification of additional actions, if needed.
- BPTC established for each discharger and integrated into WDR
- Long-term management plans show improved water quality trends over a 10 and 20 year horizon
- Long-term management plans show salt/nitrate balance in as short a time as practicable but not to exceed 30 years
- Long-term management plans show restoration of aquifer to meet water quality objectives in as short a time as practicable but not to exceed 30 years

At the third renewal (if appropriate):

- Demonstration that short-term drinking water solutions were effectively implemented
- Demonstration that mitigation fund / alternative drinking water projects have been effective and identification of additional actions if needed.
- Demonstration that aquifer restoration/mitigation projects have been effective and identification of additional actions, if needed.
- BPTC established for each discharger and integrated into WDR
- Long-term management plans show improved water quality trends over a 20 year horizon
- Long-term management plans show salt/nitrate balance in as short a time as practicable but not to exceed 20 years
- Long-term management plans show restoration of aquifer to meet water quality objectives in as short a time as practicable but not to exceed 20 years



At the fourth renewal (if appropriate):

- Demonstration that short-term drinking water solutions were effectively implemented
- Demonstration that mitigation fund / alternative drinking water projects have been effective and identification of additional actions if needed.
- Demonstration that aquifer restoration/mitigation projects have been effective and identification of additional actions, if needed.
- BPTC established for each discharger and integrated into WDR
- Long-term management plans show improved water quality trends over a 20 year horizon
- Long-term management plans show salt/nitrate balance in as short a time as practicable but not to exceed 10 years
- Long-term management plans show restoration of aquifer to meet water quality objectives in as short a time as practicable but not to exceed 10 years

*Mitigation fund / mitigation projects: The regional board shall establish two mitigation funds: one that will be capitalized at a level necessary to mitigate impacts of nitrate discharges on drinking water, and the other capitalized a level necessary to support aquifer restoration in as short a time frame as practicable, but not to exceed 50 years. When granting the exception, the Regional Board shall require payment into both mitigation fees unless a discharger can demonstrate that an alternative drinking water project or aquifer restoration project will have a more substantial impact, and will more effectively achieve the goals included in the exceptions policy, than paying into the mitigation fee.

Secondary MCL Policy

We strongly support the comments submitted by CUWA (California Urban Water Agencies). The requirements of CV Salts must reflect the regulatory framework under which public water systems operate, including the need for a buffer between the source water concentration and the drinking water objective. In addition, the apparent assumption in the policy document that secondary MCLs are “aesthetic” and don’t have a link to public health, is in error. We know from experience that residents who either don’t like the taste of their water or distrust the quality because of its color tend to purchase bottled water and soft drinks to avoid drinking it. This not only a financial burden, it also contributes to health issues related to consumption of sugary beverages.



Sincerely,

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Draft Policy No. X: Revision of the Exceptions Policy for Waste Discharges to Groundwater

1.0 Regulatory Basis for Revision of the Exceptions Policy for Waste Discharges to Groundwater

1.1 Background

As described in the Nitrate Permitting Strategy in the SNMP,¹ the Central Valley Regional Board is required to implement the Basin Plans when it authorizes discharges through the adoption of WDRs and Conditional Waivers. This includes incorporating into the WDRs/Conditional Waivers provisions that ensure beneficial uses are protected, and that receiving waters meet or are better than water quality objectives that are adopted to protect beneficial uses. When permitting discharges, the Central Valley Water Board traditionally looks to see if the discharge itself meets (or is better than) the applicable water quality objective, and if not, if assimilative capacity is available in the receiving water. In cases where there is assimilative capacity, the Central Valley Water Board then determines if it can make the necessary findings as required by Resolution No. 68-16² to authorize use of assimilative capacity.

In the Central Valley, there may be circumstances where the discharge is not better than the applicable water quality objective and no assimilative capacity is available, or the Central Valley Water Board is unable to make the necessary findings to authorize use of assimilative capacity even if it is available. Traditionally, in such circumstances, the State Water Board has directed that the Central Valley Water Board either prohibit the discharge, adopt a time schedule in the order that allows the discharger to come into compliance with needed WDR provisions, or revise the applicable water quality standard.

The Central Valley Water Board has recognized that with respect to salts, it may not be reasonable, feasible or practical to prohibit the discharge or issue a time schedule with the expectation that the discharge can meet applicable water quality objectives in a reasonable time period. Further, the Central Valley Water Board is hesitant to revise water quality standards, which would permanently remove the beneficial use. Accordingly, the Central Valley Water Board adopted a Policy for Exceptions from Implementing Water Quality Objectives for Salinity (Exceptions Policy) in Resolution No. R5-2014-0074, on June 6, 2014. The State Water Board approved that policy in Resolution No. 2015-0010, on March 17, 2015. The Policy amended the 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.”*³

¹ See SNMP **Section XX**

² State Water Board Resolution 68-16. Statement of Policy with Respect to Maintaining High Quality of Waters in California (Antidegradation Policy). 1968

³ Central Valley Water Board Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin To add Policies for Variances from Surface Water Quality Standards for Point Source Dischargers, Variance Program for Salinity, and Exception from Implementation of Water Quality Objectives for Salinity; Final Staff Report, June 2014, Final Staff Report (“Variance & Exceptions Policy”); page ES-3.

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With the Exceptions Policy, the Central Valley Water Board established a Salinity Exception Program that is *“in effect during the development and initial implementation of the Salt and Nitrate Management Plans”*⁴ that at the time were being prepared through the CV-SALTS process. The Salinity Exception Program (aka “Streamlined Policy”) applies only to electrical conductivity, total dissolved solids, chloride, sulfate and sodium.⁵ The current Exceptions Policy prohibits the Central Valley Water Board from authorizing new exceptions or reauthorizing previously approved exceptions after June 30, 2019. The sunset date was included because the Central Valley Water Board intended that any permanent, long-term exceptions policy should be developed through the CV-SALTS process and that stakeholders needed to make appropriate recommendations for such a policy in the SNMP.

In accordance with the Central Valley Water Board’s direction in developing the current Salinity Exceptions Program, this SNMP recommends that the current Exceptions Policy be revised.

1.2 Justification for Extending/Expanding the Current Exceptions Policy

The Central Valley Water Board’s original rationale for adopting the current Exceptions Policy was to provide temporary permitting flexibility while CV-SALTS was developing the SNMP, and to encourage dischargers throughout the region to actively participate in that process. If CV-SALTS stakeholders determined that a permanent Exceptions Policy is necessary to assure successful implementation, the Central Valley Water Board instructed the stakeholders to describe and justify their recommendations in the SNMP itself. This policy is intended to implement that recommendation.

The SNMP finds that there may be instances where it is infeasible, impracticable or unreasonable for dischargers to comply with certain WDRs even with a compliance schedule. Under such circumstances, and when there is little or no assimilative capacity available, the Central Valley Water Board presently has only two regulatory options available: (a) where appropriate, revise the applicable water quality standards and related WDRs, or (b) disallow the discharge.

Revising water quality standards (uses and or objectives) is a complex, timely process requiring considerable documentation and numerous opportunities for public comment as revisions can result in negative impacts to public health. Thus, in most cases, the Central Valley Water Board will be hesitant to or legally unable to revise the water quality standard and would prefer to adopt an exception that is time-limited, rather than permanently revise a water quality standard. Consequently, legally allowing for an exception to meeting the objective may be necessary to give the discharger additional time to come into compliance with water quality objectives, needed to provide time to complete the full regulatory review and approval process for revising the water quality standard. Or, in many cases, the Central Valley Water Board will be hesitant to revise the water quality standard and would prefer to adopt an exception that is time limited rather than permanently revise a water quality standard.

Prohibiting the discharge may also be infeasible, impracticable or unreasonable. If the Central Valley Water Board determines that a non-compliant discharge cannot or should not be prohibited, then some

⁴ Variance & Exceptions Policy; page ES-3.

⁵ Variance & Exceptions Policy; page 51.

Draft Exceptions Policy

form of exception is required. Examples of situations where the Central Valley Water Board may conclude that it is infeasible, impracticable or unreasonable to prohibit the non-compliant discharge include, but are not limited to:

- ~~1)~~ — ~~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).~~
- ~~2)1)~~ Situations where allowing the discharge is likely to result in nominal but insignificant changes in receiving water quality with no meaningful increase in public health risk, it is impractical, infeasible and unreasonable for the discharger to comply with the applicable WDR, and dischargers comply with any conditions deemed necessary.
- ~~3)2)~~ Situations where disallowing the discharge would likely result in widespread and substantial adverse social and economic impacts in the region.
- ~~4)3)~~ Situations where allowing the discharge is projected to improve existing or expected quality in the receiving water; or, where disallowing the discharge would be more harmful to water quality and/or the environment than allowing it to continue despite the failure to comply with the WDR for which the exception is sought.
- ~~5)4)~~ Situations where allowing the discharge to continue is necessary to preserve or sustain other beneficial uses, or 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, etc.).
- ~~5)~~ Situations where allowing the discharge to continue facilitates the Central Valley Water 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").

Regardless of the circumstances under which an exception is granted, the exception must include all conditions discussed in greater detail below, including use of BPTC, participation in a mitigation fund or other mitigation program that fully mitigates impacts to drinking water, and participation in a mitigation fund or other mitigation program that restores the quality of the aquifer to water quality objectives.

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2.0 Proposed Revisions to Exceptions Policy

2.1 Summary of Current Exception Policy

The current Exceptions Policy (adopted in June of 2014) restricts the Central Valley Water Board's authority solely to exceptions for salinity-related constituents. Presently, the definition of "salinity" includes only: electrical conductivity, total dissolved solids, chloride, sulfate and sodium. The current Policy does not provide the Central Valley Water Board with legal authority to approve exceptions for any other pollutants including nitrate.

Draft Exceptions Policy

Notably, the authority to approve an exception does not automatically grant an exception in any given instance. Exceptions must be authorized through a separate Board action. Also, 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."*⁶ That review must be conducted in a public hearing.

In general, the current Exceptions Policy allows dischargers to apply to the Central Valley Water Board for an exception to discharge requirements from the implementation of water quality objectives for salinity. The exception may apply to the issuance of effluent limitations and/or groundwater limitations (i.e., receiving water limitations) that implement water quality objectives for salinity in groundwater, or to effluent limitations and/or surface water limitations that implement water quality objectives for salinity in surface water. Under the current Exception Policy, a discharger's application must include the following:⁷

- An explanation/justification as to why the exception is necessary, and why the discharger is unable to ensure consistent compliance with existing effluent and/or groundwater/surface water limitations associated with salinity constituents at this time;
- A description of salinity reduction/elimination measures that the discharger has undertaken as of the date of application, or a description of a salinity-based watershed management plan and progress of its implementation;
- A description of any drought impacts, irrigation, water conservation and/or water recycling efforts that may be causing or cause the concentration of salinity to increase in the effluent, discharges to receiving waters, or in receiving waters;
- Copies of any documents prepared and certified by another state or local agency pursuant to Public Resources Code Section 21080 et seq.; or, such documents as are necessary for the Regional Water Board to make its decision in compliance with Public Resources Code Section 21080 et seq.;
- Documentation of the applicant's active participation in CV-SALTS as indicated by a letter of support from CV-SALTS; and,
- A detailed plan of how the applicant will continue to participate in CV-SALTS and how the applicant will contribute to the development and implementation of the SNMPs.

A key requirement for granting an exception, is the requirement that the discharger needs to prepare and implement a Salinity Reduction Study Work Plan, or a salinity-based watershed management plan. A Salinity Reduction Study Work Plan shall at a minimum include the following:⁸

⁶ Variance & Exceptions Policy; page 51.

⁷ Variance & Exceptions Policy; page 50.

⁸ Variance & Exceptions Policy; page 51.

Draft Exceptions Policy

- 1) Data on current influent and effluent salinity concentrations;
- 2) Identification of known salinity sources;
- 3) Description of current plans to reduce/eliminate known salinity sources;
- 4) Preliminary identification of other potential sources;
- 5) A proposed schedule for evaluating sources; and
- 6) A proposed schedule for identifying and evaluating potential reduction, elimination, and prevention methods.

A salinity-based watershed management plan shall at a minimum include the following:⁹

- 1) A discussion of the physical conditions that affect surface water or groundwater in the management plan area, including land use maps, identification of potential sources of salinity, baseline inventory of identified existing management practices in use, and a summary of available surface and/or groundwater quality data;
- 2) A management plan strategy that includes a description of current management practices being used to reduce or control known salinity sources;
- 3) Monitoring methods;
- 4) Data evaluation; and,
- 5) A schedule for reporting management plan progress.

After considering the dischargers' application, the Central Valley Water Board may adopt an exception for salinity constituents after public notice and hearing through a resolution, or by amending WDRs/Conditional Waivers.

2.2 Recommendations for Revising Current Exceptions Policy

The SNMP recommends that the current policy be amended in the following ways to provide the Central Valley Water Board with the necessary authority and flexibility to permit discharges in a manner that the Central Valley Water Board deems to be appropriate.

- 1) Delete the provision prohibiting the Central Valley Water Board from authorizing new exceptions or reauthorizing previously approved exceptions after June 30, 2019. Because the Central Valley Water Board can decide for itself whether to grant or not grant specific exceptions, there is no need for any sunset provision that restricts their overall authority to make such decisions.
- 2) The current provision limiting the term of an exception to no more than 10 years should be retained; however, a new provision should be added stating that exceptions may be reauthorized (renewed) for one or more additional 10-year periods with approval of the Central Valley Water

⁹ Variance & Exceptions Policy; page 52.

Draft Exceptions Policy

Board, after notice and hearing. Renewals of an exception must incorporate additional feasible measures for improving water quality in order to and ultimately meeting water quality objectives within as short a timeframe as possible, but not to exceed 50 years. In addition, the discharger(s), in conjunction with Central Valley Water Board staff, should prepare a status report for presentation to the Central Valley Water Board every 5 years summarizing compliance with the terms and conditions of the exception, measurable results achieved evidence of efforts to reduce contaminant load to the basin, and future efforts to reduce loading to the basin. The Central Valley Water Board staff maintains discretion to present such status reports to the Central Valley Water Board for individual exceptions, or collectively for multiple exceptions granted to multiple dischargers.

- 3) The current policy should be amended to add nitrate to the list of chemical constituents for which the Central Valley Water 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 (total inorganic nitrogen [TIN], total kjeldahl nitrogen [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 non-compliant discharge (or discharges). The “assurance” must include a credible and realistic framework to construct/install a permanent long-term solution and an immediate commitment to provide temporary replacement water in the interim, as well as accommodations to address the needs of un-identified current and future impacted residents as they are identified.
- 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: eligibility criteria, mitigation responsibilities, monitoring/reporting obligations, and expectations relevant to implementing the SNMP Management Goals. The Regional Guidance will be developed and submitted for approval as part of the larger Basin Plan Amendment package in 2017.
- 6) The current policy should be amended to make clear that exceptions are intended to facilitate long-term attainment of water quality standards and ensure BPTC such that salt and nutrient balance is achieved. or to provide the time needed to revise an inappropriate water quality standard. The Regional Board shall establish time frames by which long term attainment of water quality standards must be achieved and time frames by which salt and nutrient balance must be achieved. In no instance shall the timeframe exceed 50 years from the date the initial exemption is granted.
- 6)7) The Central Valley Water Board may renew and reauthorize exceptions but should not do so indefinitely if re-designation, de-designation and/or adoption of a site-specific water quality objective is the more appropriate regulatory approach.

Draft Exceptions Policy

~~7)8)~~ The current policy should be amended to revise the application requirements so that such requirements now reflect and implement the SNMP management goals. Further, the application requirements should be revised to distinguish what requirements are applicable when seeking an exception from a salinity-based water quality objective versus applicable requirements for seeking an exception from the nitrate water quality objective.

~~8)9)~~ ~~The current policy may also need to be amended to identify application requirements that apply to dischargers seeking an exception as part of a Management Zone rather than as an individual discharger. For more information on Management Zones, see Policy No. XX.~~

2.3 Authorization of Exceptions

The SNMP recommends that exceptions be authorized by the Central Valley Water Board 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 SNMP sets forth several important expectations governing the manner in which exceptions are likely to be considered by the Central Valley Water Board:

1) 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 non-compliant discharge(s). Said assurance must take the form of a detailed work plan, schedule of milestones, and financial commitments to provide interim and permanent alternate water supplies ~~as well as cover additional costs borne by users/residents due to having to treat contaminated water~~. Performance bonds may be required to assure timely implementation. Payment into a mitigation fund may constitute the default mitigation program for drinking water. Additionally, exceptions for nitrate dischargers must include:

a. Enforceable metrics and standards that will demonstrate reduced loading during the time in which the exception is in place including timeline to achieve those metrics and standards. Through such activities, the discharger shall demonstrate that it will achieve nutrient balance in as short a timeframe as possible - as determined by the Regional Board - but not to exceed 50 years.

~~1)b.~~ Enforceable metrics and standards that will demonstrate long term restoration of the aquifer and timeline to achieve those metrics and standards - as determined by the Regional Board - but not to exceed 50 years.

2) Dischargers shall employ best practicable treatment and control ~~are expected to continue to make reasonable "best efforts"~~ to comply with applicable WDRs. The specific nature of these efforts will be identified at the time the exception is proposed and authorized.

3) As a condition for reauthorizing/renewing an exception, dischargers will be required to

a. Periodically reassess Best Management Practices (BMPs) and survey available treatment technologies to determine if feasible, practicable and reasonable compliance options have become available.

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- b. Demonstrate that all parties impacted by nitrate contamination have a permanent solution to ensure safe, clean, affordable and reliable drinking water
- c. Demonstrate how practices are reducing loads and conforms with applicable timelines for compliance and will achieve nutrient balance within as short a timeframe as possible, not to exceed 50 years from the date the initial exception was granted.
- d. Demonstrate how practices will lead to long term restoration of the aquifer, including a timeline under which restoration will occur. Restoration of the aquifer should occur within as short a timeframe as possible, not to exceed 50 years from the date the initial exception was granted.

~~3) No more than 2 renewals will be granted~~

- 4) 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 work plan (including a schedule of milestones) and a commitment by dischargers to provide the resources needed to complete the proposed process.
- 5) Where existing water quality standards are unlikely to change, dischargers must explain how the proposed exception facilitates the larger long-term strategy designed to ultimately attain those standards (e.g., implementing Strategic Salt Accumulation Land and Transportation Study [SSALTS];¹⁰ Nitrate Implementation Measures Study [NIMS],¹¹ forming and participating in a groundwater Management Zone,¹² etc.) while, in the interim, allocating available resources to address more urgent water quality priorities (e.g., safe drinking water), where applicable.

Under the SNMP's recommendations, authorization for exceptions may be granted by the Central Valley Water Board for individual dischargers, or for multiple dischargers under a Management Zone. Terms and conditions associated with the granting of an exception will be incorporated into relevant WDRs, and failure to comply with such terms and conditions may result in the termination of the exception and/or an enforcement action.

3.0 Proposed Modifications to the Basin Plans to Support Policy Implementation

The following subsections summarize the key changes anticipated for each Basin Plan to support adoption of this policy.

Existing and Potential Beneficial Uses

¹⁰ *Strategic Salt Accumulation Land and Transportation Study (SSALTS), Final Phase 2 Report: Development of Potential Salt Management Strategies*. Report prepared by CDM Smith on behalf of CV-SALTS. October 1, 2014; *SSALTS, Final Phase 1 Report: Identification and Characterization of Existing Salt Accumulation Areas*. Report prepared by CDM Smith on behalf of CV-SALTS. December 13, 2013. Phase 3 Report in development.

¹¹ *Nitrate Implementation Measures Study Final Report*. Report prepared by CDM Smith on behalf of CV-SALTS, March 31, 2016.

¹² See Central Valley SNMP for Management Zone Policy.

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No modifications anticipated.

Water Quality Objectives

No modifications anticipated.

Implementation

Revise the existing Exceptions Policy in the Basin Plans as described above.