

Draft Policy No. X: Revision of the Exceptions Policy for Waste Discharges to Groundwater and Streamline Salinity Variance Program

1.0 Regulatory Basis for Revision of the Salinity Exceptions Policy for Waste Discharges to Groundwater and Salinity Variance Program to Surface Waters

1.1 Background

As described in the Nitrate Permitting Strategy in the SNMP,¹ the Central Valley Regional Water 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 Regional 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 Central Valley Regional 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 Regional 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 Regional Water Board ~~is~~ may be hesitant to revise water quality standards, which especially when it would permanently removes the a beneficial use. Accordingly, the Central Valley Regional Water Board adopted ~~a~~ Policies for Variances from Surface Water Quality Standards for Point Source Dischargers, Variance Program for Salinity (Salinity Variance), and 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.”*⁴

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 As of July 23, 2016, USEPA has vet to approve the variance policies.

⁴ 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

Commented [DW1]: These exceptions you are limiting for groundwater. The streamline variance for surface water also will expire. An extension for the surface water variance is also needed and needs to be justified.

Commented [DW2]: There has been a request by another stakeholder to add Boron to the list. CVCWA supports this request. During the initial adoption of the policy, we did not have a case study for Boron, so it was not included (see below). Additionally, I was under the impression that Boron was not going to be recommended as a separate constituent to regulate in addition to TDS or EC, based on earlier CV-SALTS work. This does not seem to be the case. I am not sure of how important or wide scale this issue may be to POTWs, but my understanding is that in some areas where Boron is high in your source water, meeting any Boron objective may be problematic. Those needing this relief should be able to provide the necessary justification.

From page 24 (elec p 34) of the staff report for the variance/exception policy: “Other salinity constituents, such as boron, iron and manganese, were also evaluated. There are treatment technologies that may reduce the levels of these constituents. While the treatment technologies may not reduce the levels of these constituents adequately to achieve effluent limitations, information was not readily available to analyze the effectiveness of treatment technologies. In the future, if sufficient documentation is developed, the Salinity Variance Program can be revised to include to include additional salinity constituents.”

Commented [DW3]: The two parts are not necessarily equivalent, especially where salinity is concerned. You can revise an objective, which is also a water quality standard and still maintain a use. Need to revise.

I am going to be making edits where it predisposes a “Water Board” position. Unless the RWB or SWB has formally adopted a policy that is compliant with the law, we should not predispose a position. We are constantly reminded that we cannot tie or obligate future board decisions. I think that these types of statements also fall under this category.

Commented [DW4]: Should be verified.

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With the [Salinity Variance & Exceptions Policy](#), the Central Valley Water Board established a Salinity Exception/[Variance](#) Program that is *"in effect during the development and initial implementation of the Salt and Nitrate Management Plans"*⁵ 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.⁶ 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~~ *was* necessary to assure successful implementation of the SNMP, 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. [Variances and Exceptions provide the appropriate regulatory vehicle to accomplish this, where other regulatory vehicles, such as compliance schedules are not appropriate or may not be available.](#) Consequently, legally allowing for an exception to meeting the objective may be needed to provide time to complete the full regulatory review and approval process for revising the water quality standard. Or, in many cases, ~~if~~ the Central Valley Water Board ~~will be~~ *is* hesitant to revise the water quality standard and would prefer to adopt an exception ~~or variance~~ 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 form of exception is required. Examples of situations where the Central Valley Water Board may

Commented [DW5]: We should recognize that we have not fully developed SNMPS nor have we tackled much of the surface water work that was promised. Additional efforts to determine appropriate local SNMPS

Commented [DW6]: Not sure if this is a true statement about the instruction to justify in the SNMP.

The need exists to set current permit limitations at a level that protects water quality but that does not compel the irretrievable commitment of major resources in advance of completion of the SNMPS. A variance from surface water quality standards for salinity is an appropriate option for addressing this situation where comprehensive region-wide salinity management plans are under development. Since a variance only applies for dischargers subject to NPDES permits, an exception is an appropriate option for dischargers subject to WDRs and conditional waivers.

Commented [DW7]: Tense issues.

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.

⁵ Variance & Exceptions Policy; page ES-3.

⁶ Variance & Exceptions Policy; page 51.

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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) 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.
- 3) Situations where disallowing the discharge would likely result in widespread and substantial adverse social and economic impacts in the region.
- 4) 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) 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.).
- 6) 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").

Commented [DW8]: If you are adding nitrate you may want to add here.

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.

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."*⁷ 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

⁷ Variance & Exceptions Policy; page 51.

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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:⁸

- 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 [under the current policy](#), 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:⁹

- 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:¹⁰

⁸ Variance & Exceptions Policy; page 50.

⁹ Variance & Exceptions Policy; page 51.

¹⁰ Variance & Exceptions Policy; page 52.

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- 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 Variance & 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 variances & 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 a variance or exception to no more than 10 years should be retained/removed. 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 Board, after notice and hearing. 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. 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 or waterbodies.
- 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

Commented [DW9]: I am not sure if this is new. I believe the policy stated that you just that you couldn't renew after a sunset in the original policy

Commented [DW10]: Keeping the 10-year limit is a huge issue for us and would eliminate this a regulatory option for many POTWs that discharge both to ground and surface water, forcing moving forward on what may be unreasonable, infeasible or impracticable and with little water quality benefit and not in a manner inconsistent with the goals of CV-SALTS.

There are many reasons for removing this limit. The 10-year limit was put in place in the current policy to mirror what was thought to be USEPA's recommended changes to the variance policy. Since then, USEPA's variance policy now has removed the time limit for a variance, but put in requirements for milestones, etc. that are in the spirit of the status reports.

10-years does not provide the regulatory certainty, especially for those that also have NPDES permits. The State's compliance schedule policy limits compliance schedules to the adoption of new WQOs or newly interpreted limits or TMDLS, and if meeting this criteria, the maximum time period under a compliance schedule is 10-years unless otherwise specified under a TMDL. To allow a compliance schedule after a variance, the SWB would need to modify its policy to include exceptions/variances. Although CV-SALTS is in some ways TMDL like, it will not qualify under the compliance schedule policy, nor will participation in a long term project. Compliance with both the salt and nitrate limits are costly and take significant funding. Most communities that have had to upgrade a treatment plant or seek an alternative water supply or disposal method to comply with salt and nitrate objectives in permits are taking at least 10-years, if not several decades. Given these circumstances and the uncertainty, and the restrictive manner in which a POTW is regulated, it is unlikely that a POTW would not need to pursue an individual project even if seeking an exception/variance, because if an extension is not given, the POTW would be in immediate non-compliance.

Commented [DW11]: Exceptions/Variations are also for waterbodies. Especially in a management zone scenario, a waterbody exception may be more reasonable since not all permitting (i.e. septic tanks) is done through the RWB.

Commented [DW12]: Something similar for Boron could be added here.

exception for nitrate, in those areas of the groundwater basin or sub-basin adversely affected by the non-compliant discharge (or discharges). For longer term exceptions, 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.

- 5) The current policy should ~~may~~ 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/~~variance~~. These ~~may~~ 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 through CV-SALTS and is anticipated to be submitted for approval as part of the larger Basin Plan Amendment package anticipated 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 or to provide the time needed to revise an inappropriate water quality standard or when meeting the standard is not reasonable or feasible or would result. 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 and action can be taken on the approach.
- 7) 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) 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 or as a waterbody exception. 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 Regional 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 long term 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). For longer term exceptions, the 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. Performance bonds may be required to assure timely implementation. Milestones to provide proof of such assurances may be incorporated as part of an exception.

Commented [DW13]: This is an area where we need to make sure we don't require someone to take something

Commented [DW14]: I have concerns with the way this is written and how the terms are might be construed by different parties now and in the future. For example, an in-home filter may not be construed as permanent long term solution. Additionally, this may not be a construct/install solution or a long term program. For areas where the problem is ongoing, yes. For other areas, impact could be short term while remediation is taking place.

Commented [DW15]: Broad, is this nitrate, salinity or both?

Commented [DW16]: Not all exceptions will need everything. We are predetermining a

Commented [DW17]: We should discuss this and the process. What is in the basin plan as part of an application and Will this be part of the Basin Plan, who gets to revise/approve, what is the process?

Commented [DW18]: Again this will need discussion. Cannot agree to something you don't know what it will be.

Commented [DW19]: With the understanding that this also means planning and evaluation. We also need to make sure that yes, we want to attain, but we may not have reasonable or feasible means to do so or understand how we can do so in that manner yet.

Commented [DW20]: This seems too limiting. Exceptions/variances should be able to be justified by any of the 10(g) factors, not just these two. Not quite sure how this aligns with the case where assimilative capacity exists but he RWB would rather not give it, or reasonable/feasible technology does not exist. The standard may be attained in the waterbody, but the discharge may not attain it.

Commented [DW21]: We have still not shown that these goals can be met.

Commented [DW22]: May not be possible to prepare in the timeframe. It assumes that permitting can wait and many times it can't. It also assumee

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- 2) Dischargers 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 periodically reassess Best Management Practices (BMPs) and survey available treatment technologies to determine if feasible, practicable and reasonable compliance options have become available.
- 4) Where exceptions are sought in order to provide time to develop and approve a more appropriate water quality standard (uses and/or objectives) [or planning activity](#), 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];¹¹ Nitrate Implementation Measures Study [NIMS],¹² forming and participating in a groundwater Management Zone,¹³ etc.) [or is consistent with other statewide policies and priorities \(recycled water, conservation, while, in the interim, allocating available resources to address more urgent water quality priorities \(e.g., safe drinking water\), where applicable, etc.\)](#).

Under the SNMP’s recommendations, authorization for exceptions [or variances](#) may be granted by the Central Valley Water Board for individual dischargers, or for multiple dischargers under a Management Zone, [or for a waterbody](#). Terms and conditions associated with the granting of an exception [or variances](#) will be incorporated into relevant WDRs [and NPDES permits](#), 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

No modifications anticipated.

Water Quality Objectives

No modifications anticipated.

Implementation

¹¹ *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.

¹² *Nitrate Implementation Measures Study Final Report*. Report prepared by CDM Smith on behalf of CV-SALTS, March 31, 2016.

¹³ See Central Valley SNMP for Management Zone Policy.

Commented [DW23]: Not sure why this is needed. Communities can get planning grants now that can cover this. The milestones can be part of the conditions of the exceptions. If funding is not complete, there is a violation.

Commented [DW24]: This isn't always going to be the case, especially when a salt exception is needed. This may be trying to combine too many ideas in a paragraph.

Additionally, it may be that the except

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Revise the existing [Streamline Variance and Exceptions Policy for salinity](#) in the Basin Plans as described above.