



Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control
Board
11020 Sun Center Dr. #200,
Rancho Cordova, CA 95670

David Cory, Chair
Central Valley Salinity Coalition
c/o Central Valley Regional Water Quality
Control Board
11020 Sun Center Dr. #200,
Rancho Cordova, CA 95670

Re: Comments on Revised CV-SALTS Policy documents

Dear Ms. Creedon and Mr. Cory,

We are writing to express our continued concerns regarding both the inadequacy of the path forward the policy documents provide, as well as the overarching process of creating this SNMP. We participated for many years in the CV-SALTS stakeholder meetings with the goal of developing a collaborative SNMP and Basin Plan amendment framework that would meet the shared goals of guaranteeing safe drinking water for all users, achieving a nitrate balance and ensuring long-term restoration of our aquifers, all while supporting a pathway to compliance for agriculture and other nitrate dischargers. Unfortunately, the policies as written will not achieve these goals. Accordingly, we submit these comments in addition to the comments we've submitted previously, to highlight components of the policies that undermine the stated goals of the SNMP. We will continue to provide comments and engage as necessary in our continued commitment to the overall goals of the program despite our growing concern that the current process will not yield the results necessary to protect groundwater and beneficial uses.

We incorporate the comments we submitted on several of the policy documents on August 1 and want add additional comments in response to the revised Policy Documents recently released to CV Salts stakeholders. We will provide further comments on Draft Policies, including the Draft Policy on Maximum Benefit Analysis and Alternative Compliance Projects.

Nitrates Permitting Policy

- **10 mg/L as a trigger limit:** The use of 10 mg/L, which is the water quality objective, as the trigger limit for how much assimilative capacity may be granted is not appropriate if the goals of this SNMP is to actually ensure adequate management of nitrates so as to prevent negative impacts to residents of the Central Valley now and the future. The Drinking Water regulatory program has stated that using 7.5 mg/L is an appropriate buffer to prevent exceedances and

thus setting CV-SALTS trigger limit at 7.5 mg/L would be consistent with the agency. Allocating assimilative capacity up to the water quality objective does not allow any room for error or accidental discharge. Nitrates are an acute contaminant, which means even a single instance of consuming nitrate-laden water can result in serious health concerns especially for vulnerable populations such as pregnant women and infants. Additionally, public water systems have to treat water once it reaches 10 mg/L, thus allowing assimilative capacity to 10 mg/L will result in additional costs to water systems providing drinking water. Furthermore, many communities throughout the Central Valley depend upon private wells which do not require any sort of testing, thus creating large potentially vulnerable populations. Many WDRs set trigger limits below the MCL in order to account for such concerns.¹

- **Relevant groundwater for determining assimilative capacity:**
 - **Consistency of vertical measurement:** The document is extremely inconsistent and unclear as to how assimilative capacity will be determined. There are several potential levels of the groundwater to which a discharger can pick and choose from in determining whether there is assimilative capacity. This is unacceptable. Such inconsistency allows for gamesmanship and will result in localized impacts and incompatible management of the groundwater. Dischargers will choose the level that is most advantageous to their interests, regardless of whether or not it is the best characterization of water quality in the level used by other beneficial users.
 - **What is “shallow groundwater”:** It is unclear what “shallow groundwater” actually looks like. What are the upper and lower limits of the shallow groundwater? Does this include shallow domestic wells?
 - **The use of the production zone is not appropriate:** We reiterate that the use of the production zone for the purposes of assessing assimilative capacity is not appropriate. The weighted average of the water quality across the production zone by definition weighs toward the deeper water, thus increasing isolation and vulnerability of shallow area (since it's weighted based on the amount of water, and the amount of water is greater in the lower zone).
 - **Horizontal determination:** We continue to stand firm that determining assimilative capacity across an entire management zone (which can be as large as an entire basin!) is inappropriate because it will lead to localized hot spots and is inconsistent with the goals of CV-SALTS. It is most appropriate to determine assimilative capacity within the relevant groundwater near the discharge. Assimilative capacity should thus be determined by looking at the groundwater quality within a mile and a half radius of impacted wells. This is consistent with the definition of zone of influence found within the UC Davis Nitrate Report.

¹ Santa Ana Region Basin Plan, http://waterboards.ca.gov/santaana/water_issues/programs/basin_plan/docs/2016/Chapter_4_Feb_2016.pdf (p. 4-54). Within nearly all of the management zones within the Santa ana Region, the water quality objective is set far below the MCL. To allow a discharge greater than that zone’s objective, there must be a finding of maximum benefit and thus antidegradation policies apply.

Management Zones

- **Scope & size:** Management zones should not be able to span the size of a basin or subbasin. Allowing these zones to be that large may be too unwieldy to manage. Furthermore, since management zones are proposed for everything from determining assimilative capacity to locating mitigation projects, this wide of a geographic scope is likely to lead to localized hot spots, regardless of other efforts to prevent them.
- **Inclusion of all relevant parties:** Due to the fact this is still a voluntary process we're concerned that some impacted residents will be left out of a source of alternative drinking water supply. The policy documents have not yet defined how it will be determined that a resident is impacted by a particular discharger. The policy document states "intended... to facilitate the assurance of safe drinking water for all residents in the zone adversely affected by the dischargers participating in the MZ and that are within the zone boundary." It is unclear how the management zone boundaries will be determined. Based on this ambiguity it seems likely that boundaries could be drawn to exclude impacted or potentially impacted communities. Furthermore, if there is a discharger located within the boundaries of the management zone - but not participating in a management zone - there will be a white, or unprotected area. There must be some means to assure that any communities nearby that area of discharge are not unfairly excluded from alternative drinking water sources when management zone participants may have also contributed.
- **Governance:** In previous CV-SALTS documents more discussion has gone into how these management zones will be governed, however there is no such discussion found within this policy document. Previous discussions have laid out key priorities and responsibilities for management zones, including: organization, outreach plan, dispute resolution, funding commitments, legal commitments, and a budget plan. As we have stated in past comments, the organization structure needs to include representatives of impacted communities as well as identification of nearby disadvantaged communities and the outreach plan must include a robust plan for how to engage all impacted and future impacted residents.

Offsets Policy

- **Offsets versus mitigation projects:** We continue to be concerned about the conflation of offsets and mitigation projects. Many of the examples offered as offsets are in fact mitigation projects. The distinction is important in regards to when each is appropriate. We reiterate that offsets can be available as a means for allocating assimilative capacity and mitigation projects may be available as conditions for an exception or permitting of a discharge.
 - **Offsets** by definition do not result in degradation to groundwater as the discharger is offsetting the amount they would have degraded the water by reducing or eliminating the loading within the same zone of influence as the discharge. Thus, an offset is not appropriate to be a part of the exceptions policy, as an exception is only for discharges where the discharge is above the MCL and there is no assimilative capacity available. Offsets may be used to meet discharge requirements.
 - **Mitigation projects**, on the other hand, are aimed at mitigating the impacts of that particular discharge. So this would include projects such as implementing practices

elsewhere to reduce that particular discharge's concentration, reducing the load over time through maintenance operations throughout the life of the discharge, or by rectifying the impacts the discharge has upon communities. Mitigation projects should be required as a condition of an exception since it can help reduce the impact the discharge which will result in pollution has on the groundwater.

- **Replacement water supplies** (including emergency water supplies and treatment) are aspects discussed for inclusion in an Early Action Plan. These mitigation projects should remain within the Early Action Plan and mitigation projects which may be proposed as a condition to an exception should focus on reducing the impacts to the groundwater.

Exceptions Policy

- By allowing dischargers to obtain an exception despite the fact they could feasibly comply with the discharge requirements is inconsistent with the eventual goal of basin restoration. Even if compliance with requirements does not result in noticeable improvements to water quality in the near future, if it is feasible to comply and meet water quality objectives, dischargers should do so. Exceptions should only be acceptable for situations where it is infeasible for a discharger to otherwise be in compliance.

Sincerely,



Phoebe Seaton
Co-Director and Attorney at Law
Leadership Counsel for Justice and Accountability



Laurel Firestone
Co-Executive Director and Attorney at Law
Community Water Center



Jennifer Clary
Water Policy Analyst
Clean Water Fund