



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
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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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