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Re: Comments on CV-SALTS Policy Documents

Dear Richard and Daphne:

I know your time deadline has expired to respond as to the extensive CV-SALTS documents you circulated. Hopefully, you have had meaningful responses from many of the water coalition representatives. My comments will therefore be limited. A couple of overarching observations follow trailed by a few more specific comments.

We are all engaged in an effort to see if we can fashion a regulatory program that reasonably imposes the requirements of the Water Code on irrigated agriculture through two water board non-statutory policies – Nonpoint Source Policy (NPS) and Antidegradation Policy (ADP).

The ADP adopted in 1968 has not previously been directly imposed on nonpoint source agriculture, and it is not yet certain if it reasonably can be. The acid test for CV-SALTS is if we can design a program that has the flexibility to continue to allow farming over water basins which are above nitrate or salinity standards and will likely continue to contribute these elements to groundwater.

I. EXCEPTIONS POLICY

1. On page 1, you captured this challenge by stating:

“...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.” (Draft Exceptions Policy, pg. 1.)



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This points out the critical need for a permanent exception policy that is readily available for agriculture and works for both salinity and nitrates.

2. The six examples on pages 2 and 3 identify situations where exceptions are necessary, however, they are far too limited and restricted.

Similarly, the document asserts on pages 3 and 4 that the exception policy requires applicants to meet six criteria, one of which is “documentation of the applicants active participating in CV-SALTS.” This is an unreasonable regulatory requirement to impose on the possibly hundreds or thousands of applicants.

3. The eight recommendations for revising the exceptions policy are sound, however, provision 4) deals with a new provision requiring the dischargers to ensure safe drinking water. This requirement, which is repeated in section 1), on page 6, and in other similar references, needs an additional and limiting provision stating that this requirement to supply drinking water shall not be operative against dischargers if there is an alternative drinking water program which serves the household groundwater users in the area .

4. A significant global issue has to do with how perhaps 40,000 farmers in the Central Valley will choose to petition the Board to obtain their necessary exceptions and, of even greater significance, how the Board will timely process and issue all such approvals. Most all of the regulatory sections in the proposal reference that the applications shall be made by the individual discharger. However, even if farmers do apply jointly, or in groups, this will be an overwhelming challenge. We have to address how we will reasonably and timely implement these policies in addition to just developing the regulatory process itself.

## II. OFFSETS POLICY

Offsets are also important to permit farm discharges, particularly in areas lacking assimilative capacity.

1. A. Section 3), pg. 2 states:

“Where there is no assimilative capacity available, or the Central Valley Water Board is unwilling to allocate the available assimilative capacity, offsets can be used to minimize the net negative affect on receiving water quality as a condition for authorizing an exception to a non-compliant discharge.” (Draft Offsets Policy, pg. 2)



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B. Page 3 states, in section 5):

“Historically, the large number of non-point source discharges spread over a wide area makes it very time-consuming and expensive to assemble all of the documentation required by the state’s Nonpoint Source Policy. Offsets may offer the opportunity to focus and simplify the process so that some of the monitoring and reporting resources can be redirected to accelerate or expand water quality improvement projects.” (Draft Offsets Policy, pg. 3)

C. Page 4, Section 2) clarifies that:

“When there is no assimilative capacity available in the receiving water, the offset must result in a net improvement in water quality (e.g., the offset ratio must be > 1:1) compared to baseline regulatory requirements. Offset ratios <1:1 may be authorized only in accordance with the state’s Antidegradation policy unless an exception is granted or Time Schedule Order (TSO) allows a less stringent interim ratio to apply.” (Draft Offsets Policy, pg. 4)

Again, we must analyze and discuss how all of this will be timely processed.

2. The proposal on page 7 suggests a “crop coalition” could “collect an annual Fertilizer Use Fee from its own members and to remit the proceeds to the Nitrate Mitigation Bank as an Alternate Compliance Program.” (Draft Offsets Policy, pg. 7) There are a couple of problems. First, a water quality coalition cannot impose fertilizer fees on its members. Secondly, this mandate standing alone will not improve the groundwater, nor will it supply alternative drinking water. We must resolve the alternative drinking water by means other than trying to regulate it, which will not work. We must resolve the alternative drinking water issue; however, this is not the program likely to do so

3. “Lowering water quality for high quality waters is only permissible where the Board has issued, through the proscribed public process, waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.” (Draft SMCL, v2.2, pg. 11)



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We must have thoughtful discussions as to how the ADP will work, or if it is what needs modification.

4. The document on pages 16-20 makes suggestions to amend the Central Valley basin plan. As to the Tulare Lake Basin, on page 17, makes specific reference to the Antidegradation Policy. This is also the case on page 20, where in the first bullet it references compliance with the Antidegradation policies. This reinforces our previous comments that it is incumbent on the CV-SALTS Program to provide appropriate avenues for agriculture to fully comply with basin plan and policy limitations (i.e., assimilative capacity, Antidegradation) before making express demands of compliance with standards/policies which cannot be reasonably achieved.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Thomas', followed by a long horizontal line extending to the right.

William J. Thomas  
for BEST BEST & KRIEGER LLP

WJT:lmg