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July 27, 2018

VIA EMAIL – [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Ms. Felicia Marcus, Chair, and  
Members of the State Water Resources Control Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

SUBJECT: City of Tracy's Comment Letter on the Proposed Phase I Bay-Delta Plan  
Amendment Modifications

Dear Chair Marcus and Members of the Board:

The City of Tracy (Tracy) thanks the State Water Resources Control Board (State Board) for its attempts to modify the proposed Phase I revisions to the Bay-Delta Plan (BDP Amendment) and Substitute Environmental Document (SED) to address concerns raised by Tracy and others over the proposed salinity and flow objectives. As you are aware, Tracy is not only a storm water and wastewater discharger that will be subject to the revised Delta water quality objectives for salinity, but is also a water supplier to its local residents and businesses, with 70% of its source water being supplied by the South San Joaquin Irrigation District (SSJID) that will be subject to the flow objectives. Tracy fears that its source water will be decreased by SSJID as a result of the flow objectives, and will have to rely on saltier groundwater, making it even harder for its wastewater discharges to attain the proposed salinity objective. While the proposed BDP Amendment now currently deems compliance by wastewater treatment plants (WWTPs) with the proposed 1.0 year round EC objective "infeasible," this may create additional problems not adequately addressed in the BDP Amendment or the accompanying SED.

Tracy is disappointed that many of its helpful suggestions for positive changes in earlier comments were ignored and that other new issues have now arisen, which also need to be addressed. Since Tracy and other municipal discharges cannot consistently attain the current or proposed southern Delta salinity standards at end-of-pipe, and the costs to do so are prohibitive and not cost effective given the *de minimis* change in receiving water quality (even if Tracy removed its discharges altogether), the objective itself must be modified to reflect that reality. Cal. Water Code §13241.

Tracy provides the following comments and suggested changes in Attachment A that allow for more regulatory flexibility for application of the proposed salinity objective in the southern Delta while still reasonably protecting existing beneficial uses. This letter also provides additional

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comments on the adequacy of the SED under the California Environmental Quality Act (CEQA), which cannot be restricted as the comment period stays open until adoption. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1201 [rejecting the argument that oral and documentary comments presented at the public hearing on project approval were untimely for purposes of exhaustion and stating that that if a CEQA action is subsequently brought, the environmental document may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval].)

Tracy has long been concerned over compliance with the Southern Delta Water Quality (SDWQ) component of the Bay-Delta Plan Amendment. The proposed year round Electrical Conductivity (EC) objective of 1.0 deciSiemens per meter (dS/m)<sup>1</sup> as a rolling 30-day average does not lessen those concerns, or adequately address the Court order that Tracy obtained in 2011.

### **1. Removal of Compliance Points for Location of Reasonable Potential Analysis Creates Additional Permit Compliance Jeopardy.**

The Court in *City of Tracy v. State Board*, Case No.34-2009-800000392, Final Statement of Decision (May 10, 2011) (“*Tracy case*”) found that the State Board erred by finding the Delta Plan required compliance with the EC objectives to be measured at the end of Tracy’s discharge pipe. *Tracy case* at p. 39. Instead, although the 2006 Plan stated that the water quality objectives were applicable to all locations in the general area, the 2006 Plan did not change the requirement that the “compliance locations indicated in the tables will be used to determine compliance with the objectives.” As such, the Court held that the Board was required to conduct its reasonable potential analysis at the Old River/Tracy Road Bridge compliance location, instead of at the end of Tracy’s discharge pipe. The Court further opined that “[m]easuring Tracy’s ‘reasonable potential’ at its discharge pipe deprived Tracy of a potential ‘mixing zone’ for its discharge.” *Id.*

Appendix K, *Revised Water Quality Control Plan*, ignores the Court’s concerns about a lack of mixing zone, and attempts to modify the compliance location back to the end of the discharge pipe. Page 43 of Appendix K states “Chapter III of this plan provides the general rule that unless otherwise provided, water quality objectives cited for a general area are applicable for all locations in that general area. Consistent with this, the use of compliance locations and gage stations to determine compliance by DWR and USBR shall not be interpreted as a limitation on the applicability of the southern Delta salinity objective, which applies throughout the southern Delta.” The response to comments makes it clear that the “trial court’s determination is [ ] no longer applicable here because the proposed salinity objective applies throughout the southern Delta” and the need for effluent limitations “must be considered at the point of discharge for NPDES permitted dischargers.” See Master Response 3.6 at pgs. 22-23 (emphasis added).

The new program of implementation language states that the “Central Valley Regional Water Board shall regulate Delta discharges of salts by agricultural, municipal POTW, and other dischargers consistent with applicable state and federal law, including but not limited to,

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<sup>1</sup> The proposed Bay-Delta Plan Amendments express EC units in either deciSiemens per meter (dS/m) or micromhos per centimeter (µmhos/cm), where 1.0 dS/m equates to 1,000 µmhos/cm. This numeric values in this letter relate to dS/m throughout.



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establishing water quality based effluent limitations and compliance, monitoring and reporting requirements as part of the reissuance of National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act and regulations thereunder.” Appendix K at pg. 46.

The State Board relies upon federal regulations (40 C.F.R. §122.44(d)(ii)[sic]) and USEPA’s guidance document entitled “*Technical Support Document for Water Quality-Based Toxics Control*” (EPA/505/2 90 001)(TSD) and “*Permit Writers Manual*” (EPA 833-K-10-001) for this requirement to include water quality based effluent limitations (WQBELs). See Master Response 3.6 at pg. 22. The reasonable potential analysis discussion and guidance in the TSD (and the State Board’s State Implementation Policy for Toxics Control (SIP)) only applies to toxic pollutants, so this should not be a basis for this action.

The *Permit Writers Manual* is not applicable to a water quality objective and implementation plan adoption process. This guidance document only applies when implementing the Basin Plan through NPDES permits, which is not occurring in *this* regulatory action. However, the *Permit Writers Manual* does reference that a reasonable potential analysis can occur by comparing “the projected concentration of a pollutant of concern at the edge of a regulatory mixing zone.” *Permit Writers Manual* at pg. 6-29 (emphasis added). Further, Step 2 of the determination as to whether effluent limits are needed is to “Determine whether water quality standards provide for consideration of Dilution Allowance or Mixing Zone.” *Id.* at pg. 6-15. This document recognizes that “many state water quality standards have general provisions allowing some consideration of mixing of effluent and receiving water when determining the need for and calculating WQBELs.” *Id.* Only where consideration of a dilution allowance or mixing zone is *not permitted* by the water quality standards must the relevant water quality criterion be attained at the point of discharge. *Id.* at pg. 6-16. Failure to maintain or adopt the use of the compliance points (or some other adequately sized mixing zone) for reasonable potential represents an abuse of discretion, particularly for objectives to protect an off-stream agricultural use, not an aquatic life use, since there is no analysis of organisms being exposed to pollutants within the mixing zone needed for an agricultural protection objective.

The State Board construes the requirements of 40 C.F.R. §122.44 too narrowly. A review of the language of this section is provided to demonstrate this fact. Section 122.44 requires NPDES permits to “include conditions meeting the following requirements when applicable.” 40 C.F.R. §122.44. Subsection (d)(1) requires “any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under section 301, 304, 306, 307, 318, and 405 of CWA necessary to: (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.” 40 C.F.R. §122.44(d)(1).

Subsection (d)(1)(ii) then requires “when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.” 40 C.F.R. §122.44(d)(1)(ii).



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The State Board's response looks solely at the dilution issue, when, in reality, it should find that municipal dischargers in the southern Delta, at current discharge levels, have no reasonable potential given the other findings related to "studies show[ing] the *de minimis* influence of WWTP discharges on downstream ambient electrical conductivity (EC) levels, both in low and high CVP and SWP export scenarios" (Master Response 3.6 at pg. 19); "the extent to which a WWTP can meet salinity water quality objectives in the southern Delta is in part controlled by factors beyond its control, namely flows and circulation patterns, which are largely controlled by tidal action and water diversions" (*Id.*); "WWTP discharges also reflect the EC levels of their source water, which are high in the southern Delta" (*Id.*); "RO treatment would not have a measurable impact on ambient salinity levels of receiving waters in the southern Delta" (*Id.*); "there would be no meaningful impact on water quality related to salinity in the southern Delta by implementing RO treatment at WWTP" (*Id.*); "RO treatment from WWTP discharges into the southern Delta is currently not a feasible technology for the purpose of controlling salinity in the southern Delta" (*Id.*). See also Appendix K at pg. 46. The State Board, as the parent agency over the permitting authority, should adopt procedures within the BDP Amendments and implementation plan that account for existing controls on point and nonpoint sources of pollution to determine that no reasonable potential exists for municipal dischargers at this time.<sup>2</sup> This conclusion can be revisited in future triennial reviews of the BDP, but at this point, this should be the determination, either preferably as a specific regulatory finding of no reasonable potential, or as a variance contained within the implementation plan itself. This would maintain the status quo from the last 7 years since the Court's order enjoining the State and Regional Boards from applying the EC objectives to Tracy and other municipal discharges to the southern Delta. The sky has not fallen in those 7 years, and the record contains no evidence that southern Delta water quality has gotten worse in that timeframe related to municipal discharges (as opposed to drought or other conditions).

Failure to make this simple and reasonable change to either maintain the current compliance points for municipal discharges, or to determine no reasonable potential under current flow and concentrations for municipal discharges, will ensure that a finding of reasonable potential occurs, subjecting Tracy and others to the new "infeasible" finding, which suffers from the legal infirmities discussed below.

## **2. The Proposed Determination of RO being an "Infeasible" Technology Does Not Resolve Tracy's Issues.**

Instead of using its determinations and facts cited above that the implementation of RO is not feasible and would not change water quality even if implemented (or if the WWTP discharges were removed entirely) to modify the water quality objective itself as arguably required by Water Code section 13241,<sup>3</sup> the proposed BDP Amendment merely finds WQBELs to be infeasible and

<sup>2</sup> The *Permit Writers Manual* recognizes that state implementation procedures allow, or might even require, a permit writer to determine reasonable potential through a qualitative, not quantitative, assessment process without using available facility-specific effluent monitoring data. *Permit Writers Manual* at pg. 6-30. The current program of implementation fails to include such implementation procedures.

<sup>3</sup> When establishing water quality objectives, Water Code section 13241 requires consideration of the "environmental characteristics of the hydrographic unit under consideration, including the quality of the water available thereto," which would include the quality of the WWTP effluent discharges. Cal. Water Code §13241(b).



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temporarily authorizes Best Management Practice (BMP) based effluent limitations pursuant to 40 C.F.R. §122.44(k). In lieu of numeric effluent limitations, Appendix K temporarily allows alternative enforceable effluent limits, which include the following:

- a. performance-based effluent limits using last 3 years of data and considers the potential for drought conditions, changing water sources, and water conservation.
- b. BMPs, including industrial pretreatment, source water salinity control, water softener bans or limitations, salinity education and outreach, and CV-SALTS participation.

The problem with this approach is that it fails to comply with the Final Statement of Decision in the *Tracy* case at pages 44-46. This approach also creates an impossible regulatory loop of imposing alternative limits because the objective is not attainable by municipal dischargers, but the alternative limits imposed fail to attain the objective since it is not attainable.

In addition, Tracy fears that the determination of infeasibility related to the proposed SDWQ salinity objective will be arbitrarily changed in the future, since new language in the BDP Amendments state:

Where it is or becomes feasible for a POTW to comply with numeric water quality based effluent limitations for salts, the Central Valley Regional Water Board shall require them in the applicable NPDES permit. Appendix K at pg. 48.

No guidance is presented as to how to determine if the State Board's initial finding of infeasibility has changed, and importantly, the BDP Amendment contains no compliance schedule to allow for implementation of compliance actions, including desalination, once a finding is changed to compliance being feasible. This is contrary to the Court's order in the *Tracy* case and Water Code section 13242, which requires a reasonable time schedule for compliance actions to be taken. Cal. Water Code §13242(b); *see also* CWA Section 303(e), 33 U.S.C §1313(e)(3)(F)(requiring adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section).

Because of the problems with this approach, Tracy, along with CVCWA and other Delta POTWs, instead proposed adoption of implementation provisions, as required under Water Code section 13242, where the determination of reasonable potential and a determination of WWTP compliance with the salinity objective are measured in-stream at a downstream compliance location, rather than at end-of-pipe. The proposed changes fail to add adequate assurance that WWTPs can consistently and feasibly comply over time without bearing unnecessary costs and causing unneeded environmental impacts in doing so.

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The State Board must also consider the “water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area,” and address the fact that WWTP discharge levels cannot be reasonably and feasibly controlled. Cal. Water Code §13241(c). Economic conditions and the need for developing housing, and the need to develop and use recycled water are also mandatory considerations that can justify modifying the objective as needed since the law recognizes that “it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses.” Cal. Water Code §13241, and subs. (d) - (f).



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### 3. The State Board failed to adequately consider Alternatives to the proposed 1.0 EC objective.

Besides creating a reasonable implementation plan, the only way to ensure consistent compliance by municipal dischargers would be to modify and increase the proposed objective, at least for the locations around WWTP outfalls, up to the previously proposed 1.4 dS/m objective, which does not have the same substantial and unavoidable environmental impacts because that higher objective does not implicate the need for desalination.<sup>4</sup> Chapter 18 of the BDP Amendment documents at page 18-1 recognize that CEQA “requires an analysis of a range of reasonable alternatives to a project, or its location, that will feasibly attain most of the project’s objectives but that would avoid or lessen any of the significant effects of the project. (Cal. Code Regs., tit. 14 § 15126.6(a); *id.*, tit. 23 §3777(b)(3).)” CEQA also “requires a discussion of the environmentally superior alternative.” Chapter 18 at pg. 18-33.

Although Table A-2 of the February 2012 SJR Flow and Southern Delta Salinity Technical Report noted that “a range of values” from 1.0 to 1.4 “will be evaluated in the SED,” the SED only analyzed three (3) alternatives: 1) No Project Alternative; 2) 1.0 EC objective; and 3) 1.4 EC objective.

No other alternative in the range of values between 1.0 and 1.4 was considered for any portion of the southern Delta even though a fair argument was presented that this intermediate approach would represent the environmentally superior objective. Adoption of a long term average objective of 0.7 EC, coupled with a higher short term (30-day) objective was also not explored even though this would track baseline and ensure both short and long term protection.

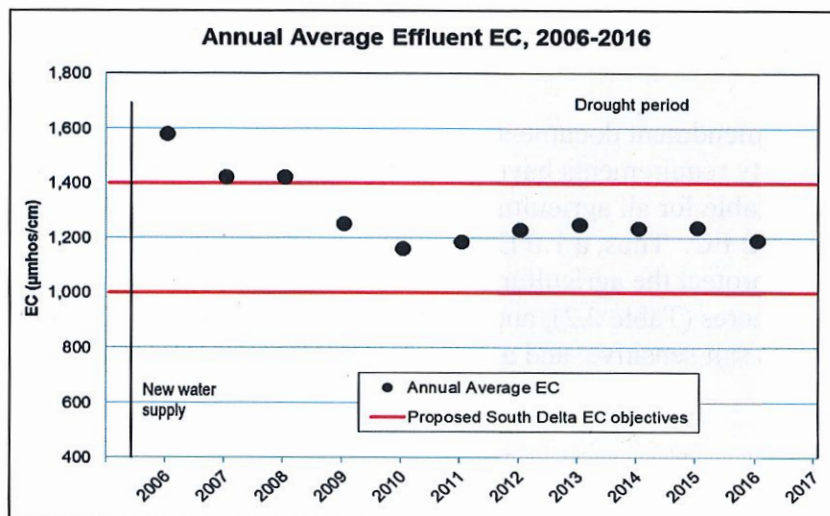
Tracy (and others) proposed adoption of a narrative objective, or a numeric objective either as a range (of 1.0 to 1.4 EC similar to that used for Secondary Maximum Contaminant Levels (MCLs) for salinity of 0.9 to 2.2 EC (*see* Appendix C at pg. 4-14)) or as a number in between 1.0 and 1.4 attainable by all sources, including WWTPs. In fact, Tracy previously suggested adoption a site specific objective (SSO) for the reach of the southern Delta where Tracy discharges of 1.25 dS/m EC to accommodate Tracy’s discharge without requiring RO treatment (assuming long term average effluent limitations were authorized and there was accommodation during drought as was provided in the CV-SALTS Basin Plan amendments). This level would still provide reasonable protection of the AGR use and, given modeling results, would be unlikely to change ambient water quality. This alternative was not explored even though Tracy provided the following data that this objective would be attainable without extraordinary effort or treatment.

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<sup>4</sup> SDWQ Alternative 3 would not result in significant and unavoidable impacts on service providers related to the construction or expansion of facilities because there would be no change from baseline conditions with respect to water quality in the southern Delta. *See* pg. 18-28; *see accord* pg. 18-27 (“There would be no water quality exceedances at the three interior southern Delta compliance stations under SDWQ Alternative 3 because salinity at these stations has never exceeded 1.4 dS/m. Under SDWQ Alternative 2 or Alternative 3, impacts on agricultural resources would be less than significant”).



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**Tracy WWTP Annual Average Effluent EC: 2006 – 2016.**

Failure to explore these environmentally superior alternatives represents an abuse of discretion in violation of both CEQA and the Water Code. This is especially true when the State Board's own expert opined that a higher objective of 1.1 for EC would be fully protective of agriculture in the southern Delta. *See Appendix E, Salt Tolerance of Crops in the Southern Sacramento-San Joaquin Delta* (prepared by Dr. Glenn J. Hoffman); Master Response 3.3 at pgs. 2 and 6 ("the water quality objective 'could be increased to as high as 0.9 to 1.1 dS/m, and all of the crops normally grown in the South Delta would be protected.'"), and pg. 4 ("even with low leaching fractions, current water quality conditions are adequate to support agricultural production in the southern Delta").

The BDP Amendment documents recognize that maximum monthly values have exceeded 1.200 dS/m in the interior Delta. *See Master Response 2.4 at pgs.27-28; Chapter 18, pg. 18-27* ("the general range of historical salinity in the southern Delta (0.2 dS/m-1.2 dS/m)"; Appendix E at pg. 98 (water quality in South Old River at Tracy Bridge averages about 0.7 dS/m and ranges from 0.1 to 1.4 dS/m). Thus, the State Board's own documents demonstrate that 1.0 dS/m may not be consistently attainable. CWA requirements only mandate water quality regulation, wherever attainable and reasonable. *See 40 C.F.R. §130.3, §131.2, and Tracy case at pg.33; Cal. Water Code §13000.* When establishing water quality standards, Water Boards can adjust objectives to make compliance less costly so long as the beneficial uses are reasonably protected. (*See City of Burbank v. State Water Board, 35 Cal.4th 613, 623 (April 4, 2005)* [affirming conclusion of court of appeal that section 13241 requires water boards to take economic considerations into account when establishing water quality standards in a basin plan].) The State Board has recognized that "the salinity objectives are not intended to provide absolute protection for every field in the southern Delta regardless of management practices, but rather are intended to provide general protection for agriculture in the region so that current levels of production can be maintained." *See Master Response 3.3 at pg. 7.* Therefore, the objective could be increased slightly even if there were minimal impacts to agricultural uses (e.g., a 5 percent yield reduction



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of dry beans in the unlikely scenario that objective is reached in the water, minimum precipitation, and 20% leaching fraction.) Chapter 18 at pg. 18-34.<sup>5</sup>

Moreover, the BDP Amendment documents declare that “analyses of southern Delta water quality and crop salinity requirements have shown that existing salinity conditions in the overall southern Delta are suitable for all agricultural crops,” even where existing salinity conditions occasionally exceed 1.2 EC. Thus, a 1.0 EC objective for the southern Delta is lower than needed to reasonably protect the agricultural beneficial use, where less than 10,000 acres of the over 140,000 planted acres (Table 2.2), and less than 9% of the crops grown in the area (Table 2.3) are categorized as salt sensitive, and an even smaller percentage is for the crop of concern, dry beans.

Tracy also proposed other alternatives and mitigation measures that were glossed over and/or rejected out of hand with minimal if any analysis.

- Incorporate the flexibility being offered in the Central Valley through the CV-SALTs program and Basin Plan amendments, so that exceptions/variances, offsets, drought policies, and other long term salinity management strategies can be incorporated into NPDES permit provisions as needed. Although variance policies were referred to (e.g., Appendix K, Table 2, fn 5), those policies are outdated and have recently been replaced so newer policies should be referenced instead.
- Incorporate drought provisions, allowing a higher EC objective (up to 1.4 dS/m) in drought and immediately after drought years. The proposed BDP Amendments added a State of Emergency provision for temporary changes to the flow objectives if there is a declared emergency, but not for the salinity objectives. Appendix K at pg. 34. This needs to be expanded to salinity objectives since the two are inextricably intertwined.
- Incorporate the Clean Water Act analysis in 33 U.S.C. §1312(b)(2) in the implementation plan, which allows the issuance of an NPDES permit that modifies the effluent limitations that otherwise would be required under the Act “if the applicant demonstrates at [a] hearing that there is no reasonable relationship between the economic and social costs [of the effluent limitations] and the benefits to be obtained (including attainment of the objective of [the Act]) from achieving such limitation.” The Court in the *Tracy* decision opined that this would be allowed for salinity, since EC is not a priority toxic pollution.

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<sup>5</sup> The BDP Amendment documents clarify the unlikelihood of beans being grown where low leaching fractions exist. “Given the intolerance of beans to low permeability soils, they are more likely to be grown on soils with the higher leaching fractions.” Master Response 3.3, pg. 12; *see also* Appendix E at pg. 101 (“observation that bean is furrow irrigated with an irrigation efficiency of about 70% which results in a high leaching fraction.”). The BDP Amendments also recognize that “this plan establishes water quality objectives for which implementation can be fully accomplished only if the State Water Board assigns some measure of responsibility to water rights holders and water users to mitigate for the effects on the designated beneficial uses of their diversion and use of water.”) Appendix K at pg. 4.



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Tracy requests that these alternatives be more carefully reviewed, given serious consideration, and be incorporated into the final BDP Amendment and SED. With the incorporation of some or all of the proposed alternatives for objectives and for the program of implementation for any new objective, the SED should be able to refine its analysis. The analysis should also be updated since most of the water quality data being relied upon was at least 9 years old.

**4. The Amendments Create Confusion over CV-SALTS-related Basin Plan amendments application in the southern Delta.**

Master Response 2.4 at page 26 states that “the plan amendments do not preclude future actions that might help reduce salinity, such as those that may be associated with the CV-SALTS initiative.” However, several locations in the BDP Amendment state that “this plan supersedes the regional water quality control plans to the extent of any conflict between this plan and the regional water quality control plans.” *See e.g.*, Appendix K, pgs. 4 and 5. The City has participated in the CV-SALTS process for nearly a decade and is dismayed to see that all of the work done by the stakeholders and Regional Water Board would be ignored for areas within the Delta. The Basin Plan amendments adopted by the Central Valley Regional Board are currently open for public comment before the State Board. The amendments negotiated with water users and dischargers should be incorporated into the BDP Amendment, instead of being superseded by it.

Page 49 of Appendix K, paragraphs i and v, should be updated to recognize the current status of CV-SALTS initiative and incorporate those plan provisions and policies into this BDP Amendment.

As previously offered, Tracy is available to assist in creating language needed to make final changes discussed herein that are needed meet the legal obligations set forth in CEQA, state and federal water quality law, and the *Tracy* case.

Respectfully submitted,

  
Kuldeep Sharma  
City of Tracy



**ATTACHMENT A: Proposed Changes to APPENDIX K**

**Suggested change to Table 2 on page 15:**

<i>Electrical Con-</i>	<i>Maximum 30-</i>	<i>All</i>	<i>Long term (5 yr)</i>	<i>0.7</i>
<i>ductivity</i>	<i>day running</i>		<i>avg.</i>	
<i>(EC)</i>	<i>average of mean</i>		<i>Year-round</i>	<i>1.0-1.3</i>
	<i>daily EC</i>		<i>Apr-</i>	
	<i>(mmhosdS/m/cm</i>		<i>Aug</i>	
	<i>[6])</i>		<i>Sep-Mar</i>	<i>±0</i>

**Suggested changes to Footnote 5 to Table 2 on page 16:**

[5] Salinity objectives are subject to the Variance Policy, Salinity Variance Program and Salinity Exception Program adopted ~~in~~ **by the** Central Valley Regional Water Board Resolution No. R5-2014-0074.

Or

[5] Salinity objectives are subject to the Variance Policy, Salinity Variance Program and Salinity Exception Program adopted in Central Valley Regional Water Board Resolution No. R5-2014-0074, or modifications thereto.

**Suggested changes to Section entitled “State of Emergency” in Revised Plan, at page 34 shown in red:**

**State of Emergency**

At its discretion, or at the request of any affected responsible agency or person, the State Water Board may authorize a temporary change in the implementation of the LSJR flow **or southern Delta salinity** objectives in a water right proceeding **or permitting action** if the State Water Board determines that either (i) there is an emergency as defined in the California Environmental Quality Act (Pub. Resources Code, § 21060.3) or (ii) the Governor of the State of California ~~or a local governing body~~ has declared an ~~state or local~~ emergency pursuant to the California Emergency Services Act (Gov. Code, § 8550 et seq.) and LSJR flow **or salinity** requirements affect or are affected by the conditions of such emergency. Before authorizing any temporary change, the State Water Board must find that measures will be taken to reasonably protect the fish and wildlife beneficial use in light of the circumstances of the emergency.



**Suggested changes to Section vii of “State Regulatory Actions” in Section IV.B.1 of Revised Plan, pages 46-48 shown in red:**

- ii. vii. Salinity problems in the southern Delta primarily result from low flows, tidal action, diversions by the CVP, SWP and local water users, agricultural return flows, poor circulation, and channel capacity. As early as the 1991 Bay-Delta Plan, the State Water Board recognized the need to meet the salinity objectives largely through regulation of water flow. This Bay-Delta Plan continues Revised Decision 1641’s obligations on the CVP and SWP to meet the salinity water quality objectives. Overall, discharges from publicly owned treatment works (POTWs) in the southern Delta have only a small effect on southern Delta salinity. Studies show the de minimis influence of POTW discharges on downstream ambient EC levels, both in low and high CVP and SWP export scenarios. The extent to which a POTW can meet salinity water quality objectives in the southern Delta is in part controlled by factors beyond its control, namely flows and circulation patterns, which are largely controlled by tidal action and water diversions. POTW discharges also reflect the EC levels of their source water, which is high in the southern Delta. POTWs are subject to the Clean Water Act and must control their salt discharges. It is reasonable to view the extent to which ~~they~~-POTWs must control their discharges in light of the constraints they face, the de minimis effect of their discharge on water quality related to salinity, and this implementation program’s focus on water levels and flows to achieve the salinity water quality objectives. Desalination through reverse-osmosis processes can reduce salinity in POTW effluent, but is energy intensive, may be cost-prohibitive to construct and operate, and may also create brine waste disposal issues in an area that is already challenged by high salts. The State Water Board, therefore, finds that reverse-osmosis treatment for POTW wastewater discharges into the southern Delta is currently not a feasible technology for the purpose of controlling salinity in the southern Delta.

The Central Valley Regional Water Board shall regulate ~~impose discharge controls on~~ in-Delta discharges of salts by agricultural, municipal POTW, and other dischargers consistent with applicable



state and federal law, including, but not limited to, establishing water quality based effluent limitations **where reasonable potential exists**, and compliance, monitoring and reporting requirements as part of the reissuance of National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act and the regulations thereunder. **Reasonable potential shall be determined at the closest traditional downstream compliance point to the discharge as set forth in the 2006 Bay Delta Plan and approved in the *City of Tracy* case.**

In most, if not all, cases, it **may be** infeasible for POTWs discharging to the southern Delta to comply with traditional numeric water-quality based effluent limitations for salts in NPDES permits **where applicable**. In cases where it is infeasible, the Central Valley Regional Water Board shall include in NPDES permits the following types of enforceable effluent limitations **in accordance with 40 C.F.R. §122.44(k)**:

- (a) A performance-based effluent limitation, **which may be mass-based**, derived using, at a minimum, the past three years of effluent data and one that considers the potential for drought conditions, changing water sources, and water conservation.
- (b) Best management practices, **which may include** but not limited to: (A) an industrial pretreatment program, implemented through local ordinances, that minimizes salinity inputs from all industrial sources of salinity within the POTW's collection system; (B) source control measures, such as reducing salinity concentrations in source water supplies; (C) actions to limit or ban the use of residential self-generating water softeners or imposing salt efficiency standards on such water softeners; (D) a salinity education and outreach program; and (E) ongoing participation in the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS).

**In determining if it has become feasible for POTWs discharging to the southern Delta to comply with traditional numeric water-quality based effluent limitation for EC, where such limits are applicable, the Central Valley Regional Water Board shall consider the influence of POTW discharges on downstream ambient EC levels, factors that affect compliance with the EC water quality objective beyond the POTWs control including flow and circulation patterns, and the costs**



and environmental effects of constructing and operating reverse-osmosis or other advanced treatment.

In addition, where to determine if it remains infeasible for POTWs discharging to the southern Delta to comply with traditional numeric water-quality based effluent limitations for salts where such limits are applicable, the Central Valley Regional Water Board shall consider require POTWs to submit the following information, which shall be submitted with a POTW's application for a renewal of its NPDES permit, except for (e) and (f), which shall be submitted in annual reports:

- (a) An evaluation of whether technological or economic changes have made previously deemed infeasible upgrades to control salinity in the POTW's effluent feasible.
- (b) A survey of industrial sources of salinity regulated by the industrial pretreatment program, along with all annual reports submitted pursuant to that program documenting the implementation of salinity management strategies at the industrial facility within the collection system area.
- (c) Documentation of source control measures taken. If alternative lower-salinity source water supplies were available but not utilized, a justification for not using such supplies shall be provided.
- (d) An evaluation of the efficacy of actions taken to limit or ban the use of residential self-generating water softeners or to impose efficiency standards on water softeners within the POTW's collection system area. This evaluation shall include the estimated number of such water softeners in the POTW's collection system area. If a ban against the use of self-generating water softeners is not instituted, a justification why a ban is not feasible.
- (e) Materials developed and disseminated in support of the salinity education and outreach program.
- (f) Documented proof of participation in CV-SALTS **Prioritization and Optimization Study.**

Whereif it eventually becomes feasible for a POTW to comply with numeric water quality based effluent limitations for salts, the

Central Valley Regional Water Board shall require such limits in the applicable NPDES permit, **where reasonable potential exists, along with a reasonable schedule of compliance.** In such cases, POTW compliance actions **may** include, without limitation, source control, such as reducing salinity concentrations in source water supplies; pretreatment programs, such as reducing water softener use among water users; and desalination. Where appropriate, the Central Valley Regional Water Board may also grant variances in accordance with applicable state and federal law **and applicable water quality control plans.**

~~The Central Valley Regional Water Board shall regulate impose discharge controls on in Delta discharges of salts by agricultural, domestic, and municipal dischargers consistent with applicable state and federal law, including, but not limited to, establishing water quality based effluent limitations and compliance, monitoring and reporting requirements as part of the reissuance of National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act and the regulations thereunder. Publicly owned treatment works (POTWs) regulated by NPDES permits that discharge salinity constituents above water quality objectives for EC may qualify for a variance of up to ten years pursuant to the Central Valley Regional Water Board Resolution R5-2014-0074. Actions by POTWs to comply with water quality objectives for EC include, without limitation, source control, such as reducing salinity concentrations in source water supplies; pretreatment programs, such as reducing water softener use among water users; and desalination.~~

**Suggested changes to “Central Valley Regional Water Board Actions” on pages 49-50 shown in red:**

Central Valley Regional Water Board Actions

The Central Valley Regional Water Board is undertaking the following efforts, which will assist in implementing the southern Delta salinity objective:

- i. Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS): CV-SALTS is a stakeholder-led effort initiated by the State Water Board and the Central Valley Regional Water Board in 2006 to develop comprehensive long-term measures to address salinity and nitrate problems in California’s Central Valley, including formulation of a basin plan amendment and implementation actions **adopted by the Regional Board on May 31, 2018. Once approved by t**The State Water Board, **these**



implementation actions may apply ~~may consider modifications~~ to the southern Delta salinity objective and ~~will not be superseded by the~~ program of implementation in ~~a future the Bay-Delta Plan update, as well as requirements imposed through water right actions, based on information and recommendations generated from the CV-SALTS initiative.~~

- ii. San Joaquin River at Vernalis Salt and Boron TMDL: The Central Valley Regional Water Board is implementing the salinity and boron TMDL at Vernalis. Actions described in the program of implementation for the TMDL include execution of a Management Agency Agreement with USBR addressing salt imported into the San Joaquin River basin via the Delta-Mendota Canal, development of new numeric salinity objectives, and establishment of the Real Time Management Program for the control of salinity discharges to the San Joaquin River.
- iii. Upstream of Vernalis San Joaquin River Salinity Objectives: CV-SALTS has established a subcommittee that has developed a proposal for, and the Central Valley Regional Water Board approved, a basin plan amendment to the Water Quality Control Plan for the Sacramento River Basin and San Joaquin River Basin to establish numerical salinity objectives and a program of implementation for the Lower San Joaquin River upstream of Vernalis. Those objectives are not affected by the Bay-Delta Plan.
- iv. Irrigated Lands Regulatory Program: Under the Irrigated Lands Regulatory Program, the Central Valley Regional Water Board issues waste discharge requirements (WDRs) to coalition groups and individual dischargers requiring surface water quality monitoring and the preparation and implementation of management plans to address identified water quality problems, including those associated with salinity. The most recent WDRs require third parties to develop regional water quality management plans for areas where irrigated agriculture is contributing to water quality problems. It requires growers to implement practices consistent with those plans to address the identified problems.
- v. Variations from Surface Water Quality Standards for Point Source Dischargers, Variance Program for Salinity, and Exception from Implementation of Water Quality Objectives for Salinity: The Central Valley Regional Water Board adopted Resolution R5-2014-0074 to amend water quality control plans for the Sacramento River and San Joaquin River basins and the Tulare Lake basin to add policies for *Variations from Surface Water Quality Standards for Point Source Dischargers (Variance Policy)*, a *Variance Program for Salinity (Salinity Variance Program)* and an *Exception from Implementation of Water Quality Objectives for Salinity (Salinity Exception Program)*. The amendments were approved by the State Water Board on March 17, 2015, (Resolution No. 2015-0010), and by OAL on June 19, 2015, and by USEPA on July 8, 2016 approval of the amendments is anticipated in 2016. Recent amendments to these policies were approved by the Central Valley Regional Board on May 31, 2018, and once approved by the State Water Board, OAL and EPA, will become applicable and supersede these previous policies.
  - The *Variance Policy* will allow the Central Valley Regional Water Board the authority to grant short-term exceptions from meeting water quality based effluent limitations to dischargers subject to NPDES permits. The policy will only apply to non-priority pollutants, which includes salinity.

- The *Salinity Variance Program* will allow the Central Valley Regional Water Board the authority to grant multiple discharger variances from meeting water quality based effluent limitations for salinity constituents to publicly owned treatment works. A multiple discharger variance provides a streamlined approval procedure in which an individual discharger variance application, which is consistent with the multiple discharger variance, does not require separate review and approval from the USEPA once the multiple discharger variance is approved by USEPA.
- The *Salinity Exception Program* establishes 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.

The above programs will support the development and initial implementation of the comprehensive salt and nitrate management plans in the Central Valley by requiring dischargers to participate in the **continuing** CV-SALTS efforts.



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**From:** Thorme, Melissa <mthorme@DowneyBrand.com>  
**Sent:** Friday, July 27, 2018 10:47 AM  
**To:** 'LSJR-SD-Comments@waterboards.ca.gov'; WQCP1Comments  
**Cc:** Kuldeep Sharma (Kuldeep.Sharma@cityoftracy.org); Steve Bayley (Steve.Bayley@cityoftracy.org)  
**Subject:** Comment Letter – Revisions to Proposed Bay-Delta Plan Amendments  
**Attachments:** City of Tracy.pdf  
**Categories:** Red Category

Ms. Townsend – Please see attached comment letter submitted on behalf of the City of Tracy. If you can confirm receipt, that would be appreciated.

Thank you,

Melissa

Melissa A. Thorme

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