



August 13, 2018

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000  
commentletters@waterboards.ca.gov

**Subject: Comments by Zone 7 and CCWD Regarding Salt and Nitrate Control Program Basin Plan Amendment**

Dear Ms. Townsend:

Alameda County Flood Control & Water Conservation District, Zone 7 (Zone 7) and Contra Costa Water District (CCWD) appreciate the opportunity to comment on the proposed Basin Plan Amendments to the Central Valley Basin Plan to incorporate a Central Valley-wide salt and nitrate control program (BPAs). On May 4, 2018, Zone 7 and CCWD submitted comments to the Central Valley Regional Water Quality Control Board (CVRWQCB) on the proposed BPAs. We appreciate the previous response from the CVRWQCB to our comments and the commitment expressed by the Board to the principle of source water protection.

Zone 7's and CCWD's comments included proposed BPA language to ensure that there would be a clearly and unmistakably articulated commitment to the source water protection principle in the BPAs. However, none of the alternative language proposed by Zone 7 and CCWD was adopted. In the following four paragraphs, we will explain why the CVRWQCB's responses to our comments were inadequate and/or inconsistent with the proposed BPAs.

1. In response to Zone 7 and CCWD's concerns on potential water quality degradation by the proposed BPAs, the Board expressed a firm commitment to the general principle of source water protection. However, the Board's response to our comments was inadequate, because **that commitment should be realized through clear and unambiguous requirements in the BPAs.** This would include (1) establishing water quality objectives that are protective of beneficial uses (Zone 7 & CCWD comments Nos. 4, 5, and 6<sup>1</sup>); (2) clarifying responsibilities of waste dischargers (Zone 7 & CCWD comments Nos. 2 and 3); and (3) eliminating the exemptions that undermine efforts to maintain existing salt levels of discharges (Zone 7 & CCWD comment No. 8). Without the guidance of clear water quality objectives, there is no guarantee that the performance-based measures, which are the key controls under the Alternative Salinity Permitting Approach and yet remain undefined in

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<sup>1</sup> The reference to the comment numbers in this letter was based on the previous response from the CVRWQCB.

the proposed amended Basin Plan, would provide an enforceable regulatory basis to prevent water degradation from occurring.

2. **The CVRWQCB's response that** "The proposed Basin Plan Amendments make no changes to the existing water quality objectives" **is inconsistent with the proposed BPAs.** The existing salinity objectives are established through referencing Cal. Code Regs, tit.22, §64449, which clearly limit the application of the "short-term" salinity Maximum Contaminant Levels "to a temporary basis pending construction of treatment facilities or development of acceptable new water sources." (§64449 (d)(3)). However, the proposed BPAs expand the use of these higher "short-term" salinity levels to drought and conservation situations that are beyond the temporary basis defined in Title 22. This is a notable reduction in the protectives afforded by existing water quality objectives. This significant change has the potential to cause water quality degradation, especially during drought periods when clean water supply is limited.
3. **The proposed "Recommendations for Implementation to Other Agencies" should be removed.** The CVRWQCB's response to Zone 7 and CCWD Comment No. 3 did not actually reply to our concerns. We agree that it is within the Board's authority to directly regulate water users' activities that would cause water quality impacts, if it does so through science-based processes based on the Clean Water Act (CWA) or the Porter-Cologne Water Quality Control Act, and perhaps to do so indirectly via CEQA and NEPA documentation processes. However, the legal responsibility of water users, when imposed or implemented either through individual mitigation actions or through basin-wide integrated plans, should be limited to the particular impacts, and the levels of such impacts, that are caused by their own regulated activities; water users should not be expected to take actions intended to cover or offset the impacts caused by other waste dischargers. The proposed BPAs not only misinterpret the legal responsibilities of water users, but also impose unreasonable financial responsibilities on the general public by relying upon funding from Federal/State/local agencies to address waste discharge impacts that the proposed BPAs would now allow to occur without regulation or mitigation, which is inconsistent with both the CWA and Porter-Cologne.
4. **Growth increment should not be a basis for allowing discharges with higher salinity** (Zone 7 and CCWD Comment No. 8). The responses to Zone 7 and CCWD Comments Nos. 1 and 4 did not answer this specific comment. The CVRWQCB's commitment to source water protection is inconsistent with allowing discharges of higher levels of salinity due to a growth increment. Dischargers, especially those whose discharges are already at salinity levels higher than the protective values specified in the Conservative Salinity Permitting Approach, should manage growth without causing additional impacts to water quality. Allowing exemptions due to growth increment is unsustainable, in that it sacrifices precious water resources and downstream beneficial uses to compensate for growth in the upstream area. This is inconsistent with the CVRWQCB's promise to maintain salt levels of discharges at the existing levels.

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Based upon their concerns as previously expressed and as reiterated above, Zone 7 and CCWD hereby provide the following suggested language to be incorporated into the State Water Resources Control Board's (Water Board) resolution to adopt the proposed BPAs:

1. The Water Board's understandings of the Basin Plan's requirements and statements are: (a) that the "short-term" salinity Maximum Contaminant level defined in Cal. Code Regs., tit. 22, §64449 is intended to apply only on a temporary basis, pending construction of water treatment facilities or the development of new water sources, and is inappropriate to be applied to drought and conservation conditions; (b) that discharges would be maintained at current salinity levels, and growth increment will not be used as an exemption for discharges with higher salinity; and (c) that region-wide collaborative efforts for salt and nitrate management would not supersede the water quality protection responsibilities of individual parties based on the impacts of their own activities.
2. The Water Board hereby directs the Central Valley Regional Water Quality Control Water Board to review the Salt Control Program and Recommendations for Implementation to Other Agencies portions of the proposed BPAs, and to revise the proposed BPAs as necessary to make them consistent with the Water Board's understandings as described in the immediately preceding paragraph.

If you have any questions, please do not hesitate to get in touch with us.

Sincerely,



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