



# CVCWA Central Valley Clean Water Association

*Representing Over Sixty Wastewater Agencies*

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March 19, 2009

*Via U.S. Mail and Electronic Mail*

Anne Short  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000  
[Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)

**SUBJECT: Comment Letter of the Central Valley Clean Water Association - Southern Delta Salinity and San Joaquin River Flow NOP/Scoping**

Dear Ms. Short:

The Central Valley Clean Water Association (CVCWA) is pleased to submit these comments to the State Water Resources Control Board (State Water Board or Board). The comments address the appropriate scope of the environmental review for the southern Delta salinity and San Joaquin River flow objectives in the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan).

CVCWA is a non-profit association of 60 agencies that own and operate wastewater treatment facilities throughout the Central Valley Region. CVCWA and its member agencies have a keen interest in any changes to the Bay-Delta Plan as they may affect water quality and the environment. Wastewater discharge permits issued for member agencies' wastewater treatment facilities must be consistent with any applicable water quality control plan. In some cases, this means permit requirements must comply with the Bay-Delta Plan. These comments explain that the Board must consider the reasonableness requirements and other factors of Water Code sections 13000 and 13241 with regard to municipal discharges when the Board decides whether and how to amend the water quality objectives and program of implementation. The comments also identify potential environmental and other consequences the Board must evaluate under the Water Code and California Environmental Quality Act (CEQA) and programs that the Board should coordinate with to address the issues.

**A. The State Water Board Must Evaluate the Water Quality Objectives and Program of Implementation as Applicable to Municipal Wastewater Discharges in Accordance with Water Code Sections 13000 and 13241**

Water Code sections 13000 and 13241 require the State Water Board to consider certain factors when it adopts or amends the Bay-Delta Plan's water quality objectives or implementation program. Water Code section 13000 requires that the Board regulate activities "to attain the *highest water quality which is reasonable, considering all demands being made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.*" (Emphasis added.) This legal standard applies to all of the Board's regulatory activities that affect water quality—including acts to adopt or amend water quality objectives and implementation programs. (See *Cities of Arcadia v. State Water Resources Control Board*, Super. Ct. Orange County, 2008, No. 06CC02974 at pp. 5-6.)

Under Water Code section 13170, the State Water Board must also consider the factors in Water Code section 13241 when adopting or amending water quality objectives. Water Code section 13241 reiterates the Board's general duty to be reasonable. For example, the Board must adopt objectives to "ensure the *reasonable protection of beneficial uses and the prevention of nuisance*; however, it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." (Wat. Code, § 13241, emphasis added.) Further, the Board must consider the past, present and probable beneficial uses of water; environmental characteristics of the hydrographic unit; *reasonably achievable water quality conditions*; *economic consequences*; need to develop housing; and need to develop and use recycled water. (Wat. Code, § 13241.)

"[E]conomic considerations are a necessary part of the determination of reasonableness." (Memorandum to Regional Water Boards from W. R. Attwater, Office of Chief Counsel, State Water Board (Jan. 4, 1994), p. 3.) Accordingly, the Board is to assess the costs of an objective's adoption or amendment based upon: (1) whether the objective is being attained; (2) the methods available to achieve compliance with the objective if it is not being attained; and (3) the expense of those methods. (*Id.* at p. 1.) The Board must consider any information on economic impacts provided by the regulated community and other interested parties. (*Ibid.*) If the potential economic impacts are significant, the Board must articulate why the objective is necessary to protect beneficial uses in a reasonable manner despite the adverse consequences. (*Ibid.*) Where an amended objective is at issue, the associated staff report or resolution may address the economic considerations. (*Id.* at pp. 1-2.)

The Notice of Preparation (NOP) implies that potential Bay-Delta Plan revisions may affect discharge permit requirements or otherwise impact the regulation of publicly owned treatment works (POTWs). If this is the case, the Board must consider the revisions as applied to wastewater treatment facilities in accordance with Water Code sections 13000 and 13241. This means that the Board must account for the compliance costs to POTWs if the Board adopts or amends an objective or the implementation program in a manner that affects POTWs. For example, compliance with the existing objectives as numeric effluent limits would require some POTWs to use reverse osmosis for little to no water quality benefit. The use of reverse osmosis not only requires substantial up-front capital expenditures, but increased energy costs to operate and costly disposal for the brine produced. (See *In the Matter of the Petition of City of Manteca*, Order WQ 2005-0005 at p. 12.) This implicates the Board's statutory duty to consider the water quality conditions *reasonably achievable to reasonably protect beneficial uses*. The Board must

regulate water quality in a manner that reflects all demands made of the water and may allow a lesser level of water quality that reasonably protects beneficial uses. Accordingly, the Board would need to consider these and other consequences identified by POTWs to assess the reasonableness of any potential regulatory change.

Even if the State Water Board does not revise the Bay-Delta Plan at this time, the Board still must consider Water Code sections 13000 and 13241 in the context of POTW discharges. In 2006, the Board amended the Bay-Delta Plan to expand the application of the salinity objectives from specific compliance locations to "all locations in that general area." (Bay-Delta Plan at p. 10.) The Board also amended the implementation program to require "discharge controls on in-Delta discharges of salts by agricultural, domestic, and municipal dischargers." (*Id.* at p. 28.) As evinced by the 2006 Bay-Delta Plan administrative record, the Board did not evaluate the requisite Water Code factors for municipal wastewater discharge limits when it made these changes. Consequently, the salinity objectives and implementation program of the 2006 Bay-Delta Plan are not appropriate as applied to municipal dischargers. (*Cities of Arcadia, supra*, No. 06CC02974 at pp. 5-6 (water quality standards require review under factors and requirements of Water Code sections 13000 and 13241 where such standards were not previously considered as applied to stormwater).) If left to stand, the objectives and implementation program require review in accordance with Water Code sections 13000 and 13241. (*Ibid.*)

**B. The State Water Board Must Consider the Environmental Effects of the Existing, New or Revised Objectives and Implementation Program As Well As Project Alternatives with Regard to POTWs**

The NOP provides a list of broad topic areas for which the State Water Board will evaluate the project's potential environmental effects. These topic areas include water quality; air quality, including greenhouse gas emissions; public services and utilities; and energy and natural resources. The Board must consider these topic areas in the context of POTWs if they will be part of the program to implement the existing, new or revised water quality objectives.

For example, the Board should determine whether implementation of the objectives by POTWs would cause them to violate their waste discharge permit requirements or have to comply with more stringent discharge requirements upon permit renewal. If so, the Board must evaluate the associated environmental impacts. The relevant impacts include direct physical changes in the environment as well as any reasonably foreseeable indirect physical changes. In addition, CEQA authorizes the Board to consider any associated economic and technological factors. (See e.g., Cal. Code Regs, tit. 14, § 15021(b).)

As another example, the Board must consider the significance of the environmental impacts where POTWs would have to expand or construct new treatment facilities to implement the objectives. As mentioned, some POTWs would have to use reverse osmosis to attempt to meet numeric effluent limits for electrical conductivity equivalent to the existing salinity objectives. In many cases, this would result in substantial monetary expenditures and energy consumption as well as the need to dispose of brine. The benefit to water quality would be minimal at best, and some POTWs would be unable to comply with the effluent limits despite the treatment technology. In turn, POTWs may need to cease or move their discharges, which would also have additional environmental consequences (e.g., water flows, inadequate wastewater

treatment capacity). Further, the construction of new or expanded facilities and use of reverse osmosis would alter the carbon footprint of POTWs and contribute to climate change.

**C. The State Water Board Should Coordinate with the CV-SALTS and the Drinking Water Policy Development Processes**

The NOP states that the State Water Board will consider information developed to inform other processes related to the Bay-Delta. However, the NOP names only the Bay Delta Conservation Plan and Central Valley Regional Water Quality Control Board's (Regional Water Board) efforts to establish salinity standards and a total maximum daily load in the San Joaquin River upstream of Vernalis. CVCWA agrees with the NOP that any final environmental document prepared by the Board for its review and update of the Bay-Delta Plan must represent the Board's independent judgment.

CVCWA urges the Board to consider and coordinate with at least two additional processes currently underway in the Central Valley Region: CV-SALTS and the Central Valley Drinking Water Policy. Both processes involve efforts of stakeholders and the Regional Water Board to resolve concerns potentially at issue in the Board's review and update of the Bay-Delta Plan. CV-SALTS is a stakeholder driven process designed to develop a Basin Plan amendment to address salinity and nitrate in the Central Valley. Through the Central Valley Drinking Water Policy Workgroup, the Regional Water Board and interested stakeholders have worked collaboratively for many years to develop and evaluate data on high priority drinking water constituents. Based on the information developed, the Regional Water Board may amend its *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*. It would be unnecessary and inappropriate for the State Water Board to preempt or duplicate this process.

**D. The State Water Board Must Consider the Requirements and Factors of Water Code Sections 13000 and 13241 During the First Anticipated Stage**

According to the NOP, the State Water Board anticipates that it will stage components of the environmental review process for the Bay-Delta Plan. Under the first stage, the Board may review and update the southern Delta salinity and San Joaquin River flow objectives. Presumably, the Board may also review and update the Bay-Delta Plan's program of implementation. Under the second stage, the Board may amend water rights and take other measures (perhaps related to water quality regulation) to implement the objectives.

As explained in Section A above, the Board must assess the factors and reasonableness requirements of Water Code sections 13000 and 13241 when it considers whether and how to adopt or amend the salinity objectives and implementation program. This means that the Board must look forward to the types of actions it may take under the second stage when considering the requisite Water Code factors under the first stage. The Board did not evaluate the existing objectives and implementation program as applied to municipal discharges during the 2006 review of the Bay-Delta Plan. For the reasons identified above, the Board must consider the Water Code factors with regard to municipal discharges even if the salinity objectives remain unchanged. Similarly, this consideration must occur during the first anticipated stage.

Ms. Anne Short, SWRCB Division of Water Rights  
CVCWA Comment Letter Regarding Southern Delta Salinity and San Joaquin River Flow NOP/Scoping  
March 18, 2009

Page 5 of 5

CVCWA appreciates the opportunity to submit these comments on the NOP for the update and implementation of the southern Delta salinity and San Joaquin River flow objectives of the Bay-Delta Plan. Please contact me at (530) 268-1338 if you have any questions or if I can otherwise be of assistance.

Sincerely,



Debbie Webster  
Executive Officer

c: Pamela Creedon, Central Valley RWQCB  
Daniel Cozad, Central Valley Salinity Coalition