

Regional Water Quality Control Board Central Valley Region Board Hearing: 10 and 11 December 2020

Response to Written Comments on Basin Plan Amendments to Incorporate a Central Valley-Wide Salt and Nitrate Control Program

At a public hearing scheduled for 10 and 11 December 2020, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will consider adoption of amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin (Basin Plans) to incorporate a Central Valley-wide Salt and Nitrate Control Program. These amendments incorporate targeted revisions directed by State Water Resources Control Board (State Board) Resolution No. 2019-0057, as well as non-substantive edits and clarification revisions.

The Central Valley Water Board provided interested persons the opportunity to submit written comments on the proposed Basin Plan Amendments and draft Staff Report from 4 September 2020 to 19 October 2020. This document contains responses to written comments submitted to Central Valley Water Board staff during this period. Where page numbers are noted for the proposed language, these page numbers are referring to the tracked changes Word document of the proposed Basin Plan Amendments.

Written comments were received by:

Lucinda Shih, Water Resources Manager, Contra Costa Water District (CCWD)
(17 September 2020)

James Witty, Soil Scientist, Stantec Consulting Services, Inc. (Stantec)
(15 October 2020)

David Cory, Chair, Central Valley Salinity Coalition (CVSC)

(19 October 2020)

Michael K. Claiborne, Senior Attorney, Leadership Counsel for Justice & Accountability

Debi Ores, Senior Attorney, Community Water Center

Sean Bothwell, Executive Director, California Coastkeeper Alliance

Jennifer Clary, Water Program Manager, Clean Water Action

Lisa Hunt, Director of California River Restoration Science, American Rivers

(LCJ&A, et al.)

(19 October 2020)

Michael K. Claiborne, Attorney, Leadership Counsel for Justice & Accountability

Deborah Ores, Attorney, Community Water Center

Jennifer Clary, Water Programs Manager, Clean Water Fund

Nathaniel Kane, Staff Attorney, Environmental Law Foundation

(Supplemental LCJ&A, et al.)

(4 March 2020; This comment letter was referenced in the LCJ&A, et al comment letter from 19 October 2020 as the comments included in the 19 October 2020 letter being supplemented by this 4 March 2020 comment letter. Therefore, the comments from the 4 March 2020 comment letter are included here as supplemental comments.)

Comments and Responses

Contra Costa Water District (CCWD)

Comments were received from Lucinda Shih, Water Resources Manager representing Contra Costa Water District on 17 September 2020.

CCWD Comment No. 1:

CCWD agrees with the revision of the Secondary Maximum Contaminant Level Policy to remove references to the Drought and Conservation Policy as well as the revision that “the Drought and Conservation Policy will not be applied during Phase 1 of the Salt Control Program; nor will the Policy be used as a multiple discharger variance program”. CCWD requests that similar considerations to the use of the Drought and Conservation Policy be included in any future salinity policies developed after Phase 1 of the Salt Control Program.

CCWD Comment No. 1 Response:

Support noted, and the use and implementation of the Drought and Conservation Policy will be considered for future salinity policies developed after Phase 1 of the Salt Control Program.

CCWD Comment No. 2:

CCWD supports the new over-arching management goal to reduce salt and nitrate

loading as the ultimate objective. However, implementation will be key to the successful realization of the interim and final goals, such as numerically defining current discharge concentrations and mass loading levels in discharge permits and incorporating sufficient and enforceable monitoring to prevent discharges from exceeding current salt or nitrate levels.

CCWD Comment No. 2 Response:

Support noted. The Salt and Nitrate Control Program implementation includes assessments of discharges and ambient conditions. The Conservative Salinity Permitting Approach of the Salt Control Program requires an assessment of discharge compliance with water quality limitations that will be incorporated into discharger permits. The Path A for the Individual Discharger in the Nitrate Control Program requires an assessment and categorization of the discharge and will incorporate permitting limits accordingly.

For the Alternative Salinity Permitting Approach for the Salt Control Program and the Path B Management Zone of the Nitrate Control Program, impacts are assessed collectively. Additionally, discharger participation in a Surveillance and Monitoring Program will be required to periodically assess the progress of the Salt and Nitrate Control Program, support re-evaluation efforts if necessary, and develop characterizations of ambient water quality determinations and trend analyses.

Stantec Consulting Services, Inc. (Stantec)

Comments were received from James Witty, Soil Scientist representing Stantec Consulting Services, Inc. on 15 October 2020.

Stantec Comment No. 1:

Stantec proposes editing sections 2 (a) and 2 (b) on page 17 and sections 2 (a) and 2 (b) on page 19 to include at the end of each section “Where a site-specific numeric objective is applicable but has not been adopted into the Basin Plan, a site-specific numeric objective shall be developed.”

Stantec Comment No. 1 Response:

These revisions are now located on pages 17 to 20. The Central Valley Water Board agrees that where a site-specific numeric objective is applicable but has not been adopted into the Basin Plans, a site-specific numeric objective should be developed. However, requiring the development of site-specific numeric objectives is not appropriate in this Basin Plan Amendment. The Central Valley Water Board directs and prioritizes the development of numeric objectives and Basin Plan Amendments during the Triennial Review process. To mandate the development of new site-specific numeric objectives is inconsistent with the Triennial Review process that should guide Board priorities and Basin Plan Amendments. For this reason, the language at the end of each

aforementioned section is recommended to remain as it is currently proposed.

Stantec Comment No. 2:

The currently revised language of sections 2 (a) and 2 (b) on page 17 and sections 2 (a) and 2 (b) on page 19 only allows for a site-specific objective where one has already been “established and adopted” in the Basin Plan. This is inconsistent with the Antidegradation Policy and historic application of the narrative objectives for salinity.

Stantec Comment No. 2 Response:

Site-specific objective development is congruent with the Antidegradation Policy. While the aforementioned footnoted site-specific salinity values were developed for permit limitations in the past, the Central Valley Water Board will only approve future site-specific salinity limitations in surface water discharges that have been adopted into the Basin Plans as water quality objectives. Site-specific objectives are subject to 40 CFR 131.11(b)(1)(ii) as water quality standards that must follow the public participation and approval requirements of a Basin Plan Amendment. Future applicable site-specific objective development and adoption to the Basin Plans is encouraged, and facilitated through the Central Valley Water Board Triennial Review process.

Additionally, the footnoted numeric site-specific values detailed in edited sections 2 (a) and 2 (b) on pages 17 and 18 and sections 2 (a) and 2 (b) on pages 19 and 20 were are not meant to be used as numeric site-specific water quality objectives; they are intended only to be used as indicated in the Basin Plan Amendments for the Conservative Salinity Permitting Approach of the Salt Control Program. The values of 700 $\mu\text{S}/\text{cm}$ EC for the AGR beneficial use, 900 $\mu\text{S}/\text{cm}$ EC for the MUN beneficial use (applied as a Secondary Maximum Contaminant Level), and the footnoted site-specific numeric values serve as thresholds used to differentiate permittees that discharge salts at a level that require region-wide participation in the Alternative Salinity Permitting Approach from those that qualify for the Conservative Salinity Permitting Approach. Those qualifying for the Conservative Salinity Permitting Approach are responsible for maintaining salt discharges below these thresholds. The Conservative Salinity Permitting Approach does not preclude the development of future site-specific objectives. The language in sections 2 (a) and 2 (b) on pages 17 to 20, as well as the associated footnotes, has been revised to more clearly reflect the purpose of the listed numeric site-specific values and objectives.

Stantec Comment No. 3:

The currently revised language establishes a penalty for discharges in areas where background salinity exceeds conservative objectives.

Stantec Comment No. 3 Response:

There is no “penalty” for being located in areas with high background groundwater; the Board needs Dischargers in these areas to participate in the basin-wide salinity

management program precisely because these dischargers have so much at stake in the Board's long-term salinity management decisions. The effluent limits for these dischargers would not become more restrictive under the Alternative Salinity Permitting Approach, and therefore permittees would not be penalized. They would, however, need to continue implementing reasonable, feasible and practicable efforts to control salinity through performance-based measures as determined by the Central Valley Water Board in addition to participation in the Prioritization and Optimization Study (P&O Study).

Stantec Comment No. 4:

The proposed amendments include footnotes for some dischargers to address their site-specific objectives, but the footnotes are not inclusive of all recent Board decisions regarding discharge salinity limits and/or objectives. The language needs to be edited to allow for the application of site-specific objectives currently in place, as well as those that are applicable.

Stantec Comment No. 4 Response:

See Stantec Comment No. 2 Response.

If subsequent applicable numeric site-specific values are discovered prior to the adoption of the Basin Plan Amendments they will be included in the footnotes. Otherwise, subsequent applicable site-specific objectives should be adopted in a future Basin Plan Amendment.

Central Valley Salinity Coalition (CVSC)

Comments were received from David Cory, Chair representing Central Valley Salinity Coalition on 19 October 2020.

CVSC Comment No. 1:

Overall the Draft Revisions appear to be consistent with the direction provided by the State Water Resources Control Board in Resolution No. 2019-0057.

CVSC Comment No. 1 Response:

Support noted.

CVSC Comment No. 2:

Specific revisions on pages 17 and 19 are not part of the direction provided by the State Board in Resolution No. 2019-0057, and CVSC therefore questions the need for these proposed revisions. CVSC appreciates that revisions have been made to address concerns we expressed on the Administrative Draft; however, the fundamental issue is that these Draft Revisions are beyond the scope of the resolution and the inclusion of this language at this time is unnecessary.

CVSC Comment No. 2 Response:

The revisions on pages 17 through 20 are clarification revisions that are not part of the State Board directed revisions from State Board Resolution No. 2019-0057. However, the site-specific values listed in footnotes 3-5 on these pages were incorporated to preserve site-specific numeric interpretations of the Basin Plan narrative AGR objective for the permittees mentioned. These values are not used as numeric site-specific water quality objectives but rather the threshold for determining whether the discharger qualifies for the Conservative Salinity Permitting Approach or the Alternative Salinity Permitting Approach. The values were developed with robust, scientifically supported studies and have been integral to implementation of the specific permits mentioned. If subsequent applicable site-specific values are discovered prior to the adoption of the Basin Plan Amendments they will be included in the footnotes. Otherwise, subsequent applicable site-specific objectives should be adopted in a future Basin Plan Amendment. Therefore, these clarification revisions will remain as originally proposed.

CVSC Comment No. 3:

On page 52, in the paragraph that addresses potential modifications to Management Zone boundaries, the last sentence references “one of the options provided under Path A.” This sentence may cause confusion, as Path A does not contain regulatory options, but required discharge characterizations. CVSC recommends that the language “one of the options provided under” be deleted.

CVSC Comment No. 3 Response:

This suggested deletion of language has been incorporated into the proposed language to avoid confusion about the potential for Path A having regulatory options.

CVSC Comment No. 4:

On page 54 the added paragraph (vii) includes reference to a “residential sampling program”. The term “residential” is very broad and could be interpreted to include sampling of homes that are served by public water systems rather than the intended homes that are served by domestic wells or state small systems. CVSC acknowledges this language was from the State Board Resolution but recommends adding clarification language to differentiate from residential homes that are served by public water systems that are already required to monitor water served and therefore do not require individual sampling from the residential sampling program.

CVSC Comment No. 4 Response:

This revision is now located on page 55. The intent of the proposed revisions is to follow the State Board-directed as closely as possible. However, the Central Valley Water Board appreciates the opportunity to clarify this term. Therefore, the language in question has been revised to clarify the term “residential”.

CVSC Comment No. 5:

On page 59 concerning the revision for the Central Valley Water Board Review, CVSC recommends removing the word 'quantifiable' from, "The Central Valley Water Board shall review Management Zone Implementation Plans every two years to confirm whether the plans are achieving quantifiable progress towards the goals of the Salt and Nitrate Control Program." This is due to CVSC characterizing the word quantifiable as vague and undefined. The review will incorporate evaluating the plans' implementation and compliance, with quantifiable schedules to adhere to, so it is inherent and unnecessary.

CVSC Comment No. 5 Response:

This revision is now located on page 60. This revision is language taken from a targeted revision directed by State Board in the resolution (p. 4; section 1.i) that uses the word quantifiable. However, for clarification purposes, the sentence has been revised to be, "The Central Valley Water Board shall review Management Zone Implementation Plans every two years to confirm whether the plans are achieving quantifiable milestones and time schedules, as well as achieving progress towards the goals of the Salt and Nitrate Control Program."

Leadership Counsel for Justice & Accountability, Community Water Center, California Coastkeeper Alliance, Clean Water Action, American Rivers (LCJ&A, et al.)

Comments were received from Michael K. Claiborne, Senior Attorney representing the Leadership Counsel for Justice & Accountability, Community Water Center, California Coastkeeper Alliance, Clean Water Action, and American Rivers (LCJ&A, et al.) on 19 October 2020. Additionally, this comment letter referenced that the comments detailed in this 19 October 2020 letter were supplemented by comments made by a similar group of commenters in a 4 March 2020 letter. See Supplemental LCJ&A, et al. letter for those comments.

LCJ&A, et al. Comment No. 1:

On page 7, management goal 2 is revised from 'Achieve balanced salt and nitrate loading' to 'Reduce salt and nitrate loading ...' LCJ&A, et al. does not object to the change but states that the language differs from the State Board resolution language, which required the revisions to convert 'balance' to an interim goal.

LCJ&A, et al. Comment No. 1 Response:

The management goal 2 listed on page 7 that LCJ&A, et al. is referring to is part of a list of over-arching management goals and priorities for the Salt and Nitrate Control Program. Though it is true that the interim goal of 'balanced salt and nitrate loading' is not listed here, that is due to the fact that this list contains only the final goals for the program. Balancing salt and nitrate load is part of achieving the final goal of reduced

salt and nitrate loading. The final management goal uses language from the State Board resolution to define the reduction of salt and nitrate loading goal as being achieved when "...ongoing discharges neither...cause or contribute to exceedances of water quality objectives." This mimics language used in State Board resolution section 4.a (p. 7 of Resolution 2019-0057).

LCJ&A, et al. Comment No. 2:

LCJ&A, et al. requests that the language remain consistent on the replacement of the word 'balance' with 'reduce' when the salt and nitrate loading goals of the program are discussed throughout the document. LCJ&A, et al. recommends changing the language in the Program Overview (p. 31) from "balanced nitrate loadings" to conform to the description of the over-arching management goal two listed on page 7, to "reducing nitrate loadings".

LCJ&A, et al. Comment No. 2 Response:

The description of the goals on page 31 (now on page 32) in the Program Overview section that LCJ&A, et al. described is referring to the Salt and Nitrate Management Plan (SNMP) developed by the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) that is the basis for the Salt and Nitrate Control Program goals. The goals listed on page 32 are not listing the goals of the Salt and Nitrate Control Program, which is the program that is being proposed in these Basin Plan Amendments. The Salt and Nitrate Control Program goals have been revised to reflect the State Board direction to modify a final goal of the program from 'balanced loading' to 'reduction of loading to achieve ongoing discharges neither causing or contributing to exceedances of water quality objectives.' Therefore, the recommended revision on page 32 has not been included.

LCJ&A, et al. Comment No. 3:

LCJ&A, et al. expressed disappointment at the lack of information about financial assistance eligibility for nitrate-impacted water systems, including a list LCJ&A proposed of factors to be considered for determining financial support for those systems, including eligibility for subsidized operations and maintenance costs related to nitrate contamination and subsidy amounts.

LCJ&A, et al. Comment No. 3 Response:

The proposed list of financial assistance factors is appreciated. However, its specificity is better suited to a future guidance document on nitrate-impacted water systems processes than the more general and regulatory language of the proposed Basin Plan Amendment language. The list will be considered if such a guidance document is drafted in the future.

LCJ&A, et al. Comment No. 4:

LCJ&A, et al. recommends that water systems which have encountered nitrate

exceedances in the past, and have since implemented solutions that ensure the provisions of safe drinking water for their customers, must be considered for assistance under the Basin Plan Amendment. This is especially true for smaller water systems where the solutions implemented have led to high water rates, and will promote proactivity among small water systems to perform necessary upgrades.

LCJ&A, et al. Comment No. 4 Response:

Providing a safe, reliable drinking water supply is the highest priority for the management of nitrate under the Salt and Nitrate Control Program. As such, the Basin Plan Amendments require that the drinking water needs of people who are drinking groundwater that exceeds nitrate standards and who do not otherwise have an interim replacement for safe drinking water are addressed first. While nitrate-impacted communities that have already initiated drinking water solutions are not the primary focus of these initial efforts, it is important that those communities participate in the subsequent development of any Alternate Compliance Project (ACP) or Management Zone Implementation Plan in their region. Public outreach and the ability for communities such as these to participate in these projects are requirements of the Nitrate Control Program.

LCJ&A, et al. Comment No. 5:

LCJ&A, et al. believes the thirty-five year exception for nitrate water quality objective exceedances is unreasonable and excessive. In implementing the Nitrate Control Program, LCJ&A expects the Central Valley Water Board to thoroughly and critically review requests for thirty-five year exceptions and to strictly apply the requirement that time schedules must be as short as practicable for each discharger or category of dischargers.

LCJ&A, et al. Comment No. 5 Response:

The Central Valley Water Board will take all appropriate actions to protect all designated or existing beneficial uses of surface waters and groundwater. This includes a careful and thorough review of any requests for exceptions in the Nitrate Control Program. For each nitrate exception approved, the Central Valley Water Board will require status reports from permittees every five years summarizing compliance with the terms and conditions of the exception. The Central Valley Water Board will conduct a review of these exceptions in a public hearing. The length of the exception's terms will be considered in this review, including assessing if the length of the term is still as short as practicable. The Central Valley Water Board may terminate an exception when the terms and conditions of the exception are not being met.

Supplemental Leadership Counsel for Justice & Accountability, Community Water Center, California Coastkeeper Alliance, Clean Water Action, American Rivers (Supplemental LCJ&A, et al.)

Comments were received from Michael K. Claiborne, Attorney representing the Leadership Counsel for Justice & Accountability, Community Water Center, Clean Water Fund, and Environmental Law Foundation (Supplemental LCJ&A, et al.) in a 4 March 2020 letter that was referenced as supplemental to the LCJ&A, et al. comment letter received on 19 October 2020.

Supplemental LCJ&A, et al. Comment No. 1:

Resolution Provision 1.e. requires that dischargers meaningfully consult with affected residents, affected water systems, representatives of environmental justice organizations and other stakeholders in developing and implementing Early Action Plans and Management Zone Implementation Plans. This requirement should be included in the revised Basin Plan Amendments.

Supplemental LCJ&A, et al. Comment No. 1 Response:

Revision suggestion was added to page 53 of the proposed revisions to the Basin Plan Amendments.

Supplemental LCJ&A, et al. Comment No. 2:

Resolution Provision 1.o. sets forth certain expectations for management zones. The first expectation - that management zone boundaries should be based primarily on hydrogeology - is addressed in the revised Basin Plan Amendments. However, the expectations set forth in Section 1.o. 2-5 do not appear to be addressed in the revised Basin Plan Amendments. Documentation of the conditions outside of the management zone's boundaries and coordination with neighboring management zones are critical to ensuring that there are no gaps in coverage that could result in significant adverse impacts to drinking water groundwater resources.

Supplemental LCJ&A, et al. Comment No. 2 Response:

Revision suggestion was added to pages 51-52 of the proposed revisions to the Basin Plan Amendments.

Supplemental LCJ&A, et al. Comment No. 3:

Resolution Provision 4.a. requires the Regional Board to “[c]onvert the Nitrate Control Program’s goal of balanced nitrate loading to an interim goal, with a new additional final goal of ceasing causing or contributing to exceedances of the applicable water quality objective in the receiving water.” This requirement is addressed in the draft revisions, but the goal of balanced nitrate loading is referred to as a “short-term” goal and the goal of ceasing causing or contributing to exceedances is described as a “long-term” goal. Supplemental LCJ&A, et al. requests the Central Valley Water Board instead use the

terms “interim” and “final” to remain consistent with the Resolution, and to avoid expressing an expectation that coming into compliance will always be “long term.”

Supplemental LCJ&A, et al. Comment No. 3 Response:

The language has been modified so that the terms ‘short-term’ and ‘long-term’ are not used to describe the goals of balanced nitrate loading and ceasing to cause or contribute to exceedances, respectively. Instead, the Central Valley Water Board has described the goal in terms of the final goal, “Reduce salt and nitrate loading so that ongoing discharges neither threaten to degrade high quality waters absent appropriate findings by the Central Valley Water Board nor cause or contribute to exceedances of water quality objectives.”

Supplemental LCJ&A, et al. Comment No. 4:

Supplemental LCJ&A, et al. appreciates the removal of the qualifier “reasonable, feasible and practicable” with respect to goal 2. However, in at least two instances, there is some remaining ambiguity in the draft language regarding whether the qualifier applies to both goal 2 and 3, or only to goal 3 as intended. (See p. 8 [“Protect beneficial uses by maintaining water quality that meets applicable water quality objectives and pursuing long-term managed restoration where reasonable, feasible and practicable.”]; p. 67 [“identifies the need for a prioritized, long-term management strategy to address the need for providing safe drinking water while moving toward balanced salt and nitrate loading, compliance with water quality objectives in ongoing discharges, and managed restoration where reasonable, practicable and feasible.”].) We ask for revisions to clarify that the “reasonable, feasible, practicable” qualifier does not apply to goal 2.

Supplemental LCJ&A, et al. Comment No. 4 Response:

The reference to page 8 is now on page 10, and the reference to page 67 is now page 92. Both of the references that Supplemental LCJ&A, et al. requests clarification on, where “where reasonable, feasible and practicable” is mentioned, refers not to the Salt and Nitrate Control Program, but the Salt and Nitrate Management Plan, which was a basis for many components of this Salt and Nitrate Control Program and serves as one of the reference documents for the control efforts. Goal 2 of the Salt and Nitrate Control Program no longer includes the qualifier “reasonable, practicable, and feasible.”

Supplemental LCJ&A, et al. Comment No. 5:

Revision Provision 4.f. requires the management zone to consult with the Central Valley Water Board and the Division of Drinking Water to determine available solutions for addressing drinking water. Supplemental LCJ&A, et al. had previously proposed language to State Board and stakeholders to be considered for addition to the Basin Plan Amendment that was not included in the draft reviewed. This language concerned proposed factors to consider for eligibility for subsidized operations and maintenance costs related to nitrate contamination and subsidy amounts.

Supplemental LCJ&A, et al. Comment No. 5 Response:

See LCJ&A, et al. Comment No. 3 Response.

Supplemental LCJ&A, et al. Comment No. 6:

Supplemental LCJ&A, et al. notes with respect to the second sentence in Revision Provision 4.f., the Resolution requires consultation with the Division of Drinking Water (DDW) for “available solutions for addressing drinking water” whereas the consultation requirement in the draft BPA revision is limited to “long-term drinking water solutions.” Dischargers and the RWB should be utilizing the expertise of DDW in crafting effective short and long-term drinking water solutions that will work for each impacted community.

Supplemental LCJ&A, et al. Comment No. 6 Response:

Revision suggestion was added to page 54 of the proposed revisions to the Basin Plan Amendments.

Supplemental LCJ&A, et al. Comment No. 7:

Resolution Provision 4.i. requires removal of the option for management zones developed in accordance with the Nitrate Control Program to use a volume-weighted average to allocate assimilative capacity as an alternative compliance pathway. Supplemental LCJ&A, et al. acknowledges the removal of this option from most of the Basin Plan Amendments, but requests clarification on at least three instances in the draft that maintain this language. These locations are:

- a) p. 72.: The definition of Alternative Compliance Program includes allocation of assimilative capacity as a “non-traditional regulatory option”;
- b) p. 40: “Central Valley Water Board determinations regarding availability and allocation of assimilative capacity will be based on ambient water conditions in the Shallow Zone”;
- c) on p. 47 referring to support for a request for allocation of assimilative capacity, if applicable

Supplemental LCJ&A, et al. Comment No. 7 Response:

Resolution Provision 4.i. requires the removal of the option to use a volume-weighted average to allocate assimilative capacity as an alternative compliance pathway for management zones in Path B of the Nitrate Control Program. It does not require the removal of this option for permittees under Path A compliance. The three citations referenced concern Path A of the Nitrate Control Program, and so appropriately include the option to use a volume-weighted average to allocate assimilative capacity. Therefore, the aforementioned language was not changed. All remaining instances of this option in the proposed Basin Plan Amendments are in reference to either the Conservative Salinity Permitting Approach of the Salt Control Program or Path A of the Nitrate Control Program.