

January 21, 2015

*VIA ELECTRONIC MAIL ONLY*

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



SUBJECT: SWRCB /OCC Files A-2236(a) through (kk); Comments on Proposed Order in *In Re Petitions Challenging 2012 Los Angeles Municipal Separate Storm Sewer System Permit (Order No. R4-2012-0175)*

Dear Ms. Townsend:

The Central Valley Salts Coalition (CV-SALTS Coalition) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Board) Proposed Order *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4* (Proposed Order). In its Proposed Order, the State Board reviews the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) November 2012 adoption of the municipal separate storm sewer system (MS4) permit for the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within Los Angeles County (hereinafter referred to as the "Los Angeles MS4 Order"). In general, the CV-SALTS Coalition would not ordinarily comment on a Proposed Order that addresses municipal stormwater issues associated with a permit originating out of Southern California. However, in this case, the CV-SALTS Coalition finds it necessary to comment on certain key elements of the Proposed Order, which makes significant findings with respect to baseline determinations under State Board Resolution No. 68-16, as well as certain findings associated with alternative compliance pathways for meeting receiving water limitations. We are concerned that certain statements and findings on these issues could extend beyond the Los Angeles MS4 Order and impact significant efforts underway in the Central Valley.

The CV-SALTS Coalition is a nonprofit corporation. Our members have made, and continue to make, significant investment in time and resources in efforts to address salt and nitrate issues in the Central Valley. Our membership includes the following diverse stakeholders:

California Association of Sanitation Districts	Dairy CARES/Western United Dairymen
California Cotton Growers and Ginners	East San Joaquin Water Quality Coalition
California League of Food Processors	Iron House Sanitary District
California Resources Corporation	Northern California Water Association
California Rice Commission	Pacific Water Quality Association
Central Valley Clean Water Association	Sacramento Regional County Sanitation District
City of Davis	San Joaquin River Group
City of Fresno	San Joaquin Valley Drainage Authority
City of Manteca	So San Joaquin Valley Water Quality Coalition
City of Modesto	Stockton East Water District
City of Stockton	Tulare Lake Basin Water Storage and Drainage Districts
City of Tracy	Western Plant Health Association
City of Vacaville	Westlands Water District
County of San Joaquin	Wine Institute

As indicated, we are interested in the Proposed Order because it makes certain pronouncements that may impact the CV-SALTS Coalition efforts to comprehensively address salts and nitrates in the Central Valley.

**I. Alternative Compliance Paths Should Be Sufficient For Complying With Receiving Water Limitations**

The CV-SALTS Coalition understands that the Los Angeles MS4 Order includes a provision that allows permittees to achieve compliance with receiving water limitations through implementation of an Enhanced Watershed Management Program, and by retaining all non-stormwater and stormwater up to specified volume.<sup>1</sup> Under the Los Angeles MS4 Order, compliance with these provisions then creates compliance with final water quality-based effluent limitations, other total maximum daily load (TMDL)-specific limitations and receiving water limitations, but does so in a manner that may not actually result in strict compliance with such

---

<sup>1</sup> Proposed Order at p. 39.

requirements. The CV-SALTS Coalition is concerned that the Proposed Order finds fault with this approach. In particular, the CV-SALTS Coalition is concerned that the Proposed Order's pronouncements could be interpreted as meaning that under no circumstances should alternative compliance options be allowed to be considered compliance with receiving water limitations and other water quality based requirements. The Proposed Order also seems to suggest that compliance with all water quality standards is feasible in all cases.

The CV-SALTS Coalition appreciates that the Proposed Order identifies the broad, discretionary authority that the State Board, and thus by extension regional water quality control boards (regional water boards), have with respect to requiring compliance with water quality standards (i.e., receiving water limitations).<sup>2</sup> As suggested by the Proposed Order, use of this discretion could be used to delete receiving water limitation requirements in their entirety, or could be used in certain specific situations where the State Board or an individual regional water board determines that implementation of certain provisions (e.g., offsets or direct beneficial use protection) is sufficient, and that in light of other factors such as economics, it is not appropriate to then further require compliance with receiving water limitations. However, the Proposed Order rejects the Los Angeles Water Board's use of this authority even though the Proposed Order appears to agree that retention of stormwater as included in the Los Angeles MS4 Order provides for important multiple environmental benefits. Rather, the Proposed Order continues to mandate compliance with receiving water limitations, at some future date.<sup>3</sup>

We are concerned with the precedent that could be established by the Proposed Order with respect to this issue. As indicated in the recent State Board CV-SALTS Update (presented on January 20, 2015), a key component of the Central Valley Salt and Nitrate Management Plan is to create alternative compliance options for meeting water quality standards. For example, the

---

<sup>2</sup> Proposed Order at p. 11.

<sup>3</sup> The Proposed Order would revise the Los Angeles MS4 Order to require monitoring, and would include requirements for additional control measures for achieving compliance with final water quality-based effluent limitations, other TMDL-specific requirements, and receiving water limitations should data indicate that compliance with such requirements is not being achieved even though the stormwater retention approach has been fully implemented. (See Proposed Order at pp. 39-44.)

CV-SALTS process is looking to provide the Central Valley Regional Water Quality Control Board with authority to approve continued discharges of nitrate that may exceed the drinking water standard as long as the discharger (or collective group of dischargers) commit to providing safe drinking water to individuals and communities that may be impacted by nitrate in groundwater. While the Salt and Nitrate Management Plan would also include long-term provisions for managed restoration, shorter and mid-term efforts may include options for allowing discharges that exceed numeric water quality objectives as long as an alternative compliance project/program provides safe drinking water is implemented. While the details of this approach are still being developed to address the concerns of many, we hope that this approach will help to address immediate public health concerns.

Even though the Proposed Order does not apply directly to the ongoing CV-SALTS efforts, we want to be certain that the State Board does not inadvertently make findings here that would have unintended consequences on future Central Valley efforts for addressing salt and nitrate. Accordingly, we recommend that the Proposed Order be revised in a manner that clearly indicates that it is not intended to apply to future alternative compliance options that may be recommended by regional water quality control boards.

## **II. Anti-degradation**

Next, the CV-SALTS Coalition is concerned with the anti-degradation discussion contained in the Proposed Order. Specifically, the CV-SALTS Coalition disagrees with the finding that baseline water quality is considered to be the best quality of water since 1968. The state's anti-degradation policy (otherwise known as Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*) does not establish baseline water quality as of 1968. Rather, the state's policy refers to "[w]henver the existing quality of water is better than the quality established in policies *as of the date on which such policies become effective . . .*"<sup>4</sup> Although not defined within Resolution No. 68-16, the term "policies" as used in Resolution No. 68-16 is clearly meant to refer to policies other than Resolution

---

<sup>4</sup> Resolution No. 68-16, Resolve 1, emphasis added.

No. 68-16 because the term “policy” or “this policy” is used when referring directly to the policy created by Resolution No. 68-16.<sup>5</sup>

When considered in context with water quality control plans and the establishment of water quality objectives under Porter-Cologne, a better reading of Resolution No. 68-16 is that “policies” refers to water quality control plans and the policies contained therein, including water quality objectives. For example, whereas clause no. 2 specifically refers to “water quality control policies” that have been or are being adopted. Then, Resolve No. 1 refers to “such policies” and when they become effective. Under the Proposed Order’s finding of baseline, all such other policies would not matter because baseline is said to be best water quality since 1968. The Proposed Order’s finding of baseline is inconsistent with Resolution No. 68-16 because it ignores reference to such policies, which would render such language superfluous.<sup>6</sup>

In light of reference to water quality control policies, baseline water quality must be determined in a manner that is consistent with such policies, as they become effective. To achieve such consistency, we believe that baseline water quality is constituent and region-specific, and is dependent on the date that the water quality objective in question is adopted into the water quality control plan. Accordingly, the CV-SALTS Coalition recommends that the Proposed Order be revised to accurately describe baseline as it is set forth in Resolution No. 68-16.

### **III. Conclusion**

In summary, the CV-SALTS Coalition respectfully requests that the State Board consider the impact that this Proposed Order may have on alternative compliance options in general. Since this Proposed Order represents a key, first impression on alternative compliance options,

---

<sup>5</sup> See *Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 777 [stating that sentences should “be viewed . . . in light of the statutory scheme” in which they are found]; see also *Cal. Drive-in Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292 [stating that the rules of statutory interpretation also apply to the interpretation of agency regulations].

<sup>6</sup> See, e.g., *Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 253 [courts should avoid interpretations that render language superfluous].

Ms. Jeanine Townsend  
RE: SWRCB /OCC Files A-2236(a)-(kk); CASQA Comments on Proposed Order  
January 21, 2015  
Page 6

the State Board should be careful to not suggest or imply that alternative compliance options are only viable if they result in strict compliance with water quality standards. Rather, we believe that the State Board needs to remain open-minded with respect to alternative compliance options, and what can realistically, and feasibly be achieved by municipal stormwater and others. Moreover, we are concerned that the Proposed Order makes significant pronouncements with respect to baseline determinations under Resolution No. 68-16 that have not received appropriate review and discussion. At this time, the State Board is undergoing a review of Resolution No. 68-16, and its application. Making such statements here, outside of that overall review process, is pre-mature and undermines those efforts. More importantly, we believe that such a finding is not supported by the language in Resolution No. 68-16, and this is incorrect legally. Thank you for your considerations.

Sincerely,



David Cory

Chairman,  
Central Valley Salinity Coalition