



# CVCWA

## Central Valley Clean Water Association

*Representing Over Fifty Wastewater Agencies*

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August 29, 2011

Sent via email to [byee@waterboards.ca.gov](mailto:byee@waterboards.ca.gov)

Ms. Betty Yee  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

**Re: Triennial Review of the Basin Plans for the Sacramento and San Joaquin River Basins**

Dear Ms. Yee:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to provide comments regarding the Issue List and Work Plan for the 2011 Triennial Review of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (2011 Triennial Review). Given the importance of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) to the system of water quality regulation, Publicly-owned Treatment Works (POTWs) and other wastewater treatment agencies, industry, agriculture, the State and Regional Water Boards and other stakeholders must all work together to find creative solutions for updating these vital documents. CVCWA and its members continue to look for ways to establish mutually agreeable partnerships among interested parties to facilitate necessary updates to the Basin Plan.

On July 22, 2009, CVCWA submitted comments regarding issues it recommends the Central Valley Regional Water Quality Control Board (Central Valley Water Board) address during the 2011 Triennial Review of the Basin Plan. CVCWA's 2009 comment letter identified Tier One priority issues, which CVCWA urged the Central Valley Water Board to address and several Tier Two issues that it urged the Central Valley Water Board to consider, if resources allow. This

comment letter responds to the draft Issue List and Work Plan for the 2011 Triennial Review of the Basin Plan (Work Plan).

Overall, CVCWA agrees that the issues identified as being high-priority are indeed high-priority Basin Planning issues. However, of the high-priority issues identified, CVCWA believes that several are of higher priority than others. Further, in several of the high-priority issues, the Work Plan suggests that Basin Planning activities for that specific issue should be stakeholder funded. For some of those issues, we disagree. Our comments on certain high-priority issues are provided here.

**Issue 1: Salt and Nitrate Management for Surface and Ground Waters**

In 2009, CVCWA requested that the Central Valley Water Board keep the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) a top priority during the 2011 Triennial Review. CVCWA appreciates the Central Valley Water Board's recognition of the importance of stakeholders being involved in developing solutions, and the need for the Central Valley Water Board to ensure stakeholders can focus on the CV-SALTS program, even while focusing on local issues. Also, CVCWA appreciates the Central Valley Water Board highlighting the concerns that POTWs have regarding the southern Delta salinity objectives, and the need to carefully coordinate the CV-SALTS with the State Water Resources Control Board (State Water Board) review of the salinity objectives. CVCWA was party to litigation against the State Water Board challenging the adoption of the southern Delta salinity objectives. The Sacramento Superior Court ordered the State Water Board to reconsider the southern Delta salinity objectives consistent with Water Code section 13241, and to develop a program of implementation that complied with Water Code section 13242. The outcome of the State Water Board's review of these objectives should inform the CV-SALTS program.

Accordingly, CVCWA supports the continued allocation of Central Valley Water Board staff resources for the CV-SALTS effort. CVCWA will continue to participate in CV-SALTS and will work with its members and other stakeholders to identify the financial resources necessary to complete CV-SALTS activities.

**Issues 2, 3, and 4: Regulatory Guidance to address Water Bodies Dominated by NPDES Discharges; Regulatory Actions in Agricultural Dominated Water Bodies and Agricultural Conveyance Facilities; Beneficial Use Designations for Surface and Ground Waters**

Issues 2, 3 and 4 are all similar in nature in that they are intended to address inappropriate beneficial use designations, which result in the inappropriate application of water quality objectives to effluent and agriculturally dominated water bodies. Because of the similar nature of these actions, we recommend that all three issues be combined into one. Or, in the alternative, we recommend that Issue 4, Beneficial Use Designations for Surface and Ground

Waters, be identified as Issue 2 on the Central Valley Water Board's Triennial Review Work Plan list.

As you know, many of CVCWA'S member agencies operate wastewater treatment plants that discharge to effluent and agricultural dominated water bodies with *inappropriately designated uses*. In many instances, inappropriate uses are attributed to these water bodies through the Central Valley Water Board's broad application of the tributary statement rather than site-specific analyses of appropriate beneficial uses. There are also cases where the municipal and industrial (MUN) beneficial use has been assigned to an agricultural drain or effluent dominated water body through the Central Valley Water Board's application of the State Water Board's Sources of Drinking Water Policy (Resolution 88-63). In both cases, CVCWA members are particularly concerned about the inappropriate beneficial use designations in effluent and agricultural dominated water bodies. Specifically, inappropriate beneficial use designations can result in the adoption of water quality based effluent limitations that may ultimately require POTWs to expend unnecessary resources to install treatment facilities to protect non-existent beneficial uses. Further, to remove inappropriate beneficial use designations, POTWs and others must spend considerable resources on developing the information necessary for the Central Valley Water Board to de-designate a beneficial use by means of an amendment to the Basin Plan.

With respect to the list of specific examples for review of beneficial uses identified on page 18, CVCWA recommends that the list be expanded to also include the agricultural drains into which the Cities of Biggs, Davis, Live Oak and Willows discharge their effluent. All of these agricultural drains fit within the agricultural conveyance exception contained in Resolution 88-63, and all of these drains are upstream of waterbodies which do not have the MUN beneficial use designated in the current Basin Plan.

Next, CVCWA appreciates the fact that the Work Plan is attempting to put forward creative solutions to resolve the inappropriate application of beneficial uses by suggesting that it may be appropriate to try and group water bodies, starting with those that fit within the exceptions identified in Resolution 88-63. CVCWA would support this effort. CVCWA also understands that it may be necessary for site-specific amendments to uses to also be pursued in parallel.

However, CVCWA is concerned that funding for these efforts are primarily identified in the Work Plan as being stakeholder funded. The difficulty and expense of de-designating a beneficial use highlights the need for the Central Valley Water Board to re-examine its policy and practice for addressing de-designations, which is to require stakeholders to fund the de-designation process. The de-designation of beneficial uses often requires lengthy and resource-intensive Use Attainability Analyses (UAA). (See 40 C.F.R. § 131.10(j) [requiring a UAA for de-designation of wildlife and recreation designations].) Even when the federal regulations do not specifically require a UAA, adequate data must be compiled to demonstrate that attaining a designated use

is not feasible. (See 40 C.F.R. § 131.10(g).) The studies necessary under Section 131.10(g) can be extensive and costly.

Stakeholders, and in particular small municipalities like the Cities of Live Oak and Willows, are not financially able to fund the costly and expensive studies associated with use de-designation and the associated Basin Plan amendment process. Further, these cities are being asked to fund a de-designation that is now required because of a change in interpretation of policies by the Central Valley Water Board and the State Water Board. Considering that the inappropriate designation of beneficial use for some of these cities resulted from Central Valley Water Board actions twenty-years ago, it is improper to now ask these small, economically disadvantaged communities to pay for the costly studies and the Basin Plan amendments. Accordingly, CVCWA requests that the Work Plan be revised to identify state funding options, including the option of CV-SALTS, which may be available to fund these efforts versus identifying "stakeholders" as the funding mechanism. While we appreciate that the Central Valley Water Board has resource constraints, so do the POTWs in the Central Valley.

**Issue 9: Policies for Maintaining Water Quality for Drinking Water**

CVCWA and other stakeholders have been actively participating in the Central Valley Drinking Water Policy Work Group (work group) for almost ten years. In the past year, the work group has completed the work identified in the 2003 Technical Work Plan, and is currently working with Regional Water Board staff on the development of an outline and work plan for a Drinking Water Policy. Completion of the technical work, which has included control measure studies for POTWs, stormwater and agriculture and analytical water quality modeling of the Sacramento and San Joaquin Rivers and Delta has yielded some important results. First, the perception that loadings of pollutants of concern to drinking water agencies (organic carbon, pathogens, salt and nutrients) will be increasing in the future due to population growth in the Central Valley has been dispelled. Detailed technical evaluations of future loading scenarios show that loadings will trend down in the future due to current and planned improvements in source control by POTWs and urban runoff agencies, a reduction in agricultural land use, water conservation and water recycling. Second, the concern that water treatment costs will increase in the future due to degradation of water quality in the Delta has been largely resolved based on the results of a study performed for the work group that addressed this issue. As a result, the findings from the work group point to a Drinking Water Policy which will not include new numeric water quality objectives for organic carbon or pathogens. Ongoing concerns regarding the impact of salts and the role of nutrients in taste and odor episodes will be addressed through CV-SALTS and the SWRCB's Nutrient Numeric Endpoint work, with support from the work group.

As a result of these new findings by the work group, the Issue 9 description should be modified and updated to reflect the current status and direction of the effort. We suggest the discussion section of Issue 9 be revised as follows:

The Sacramento/San Joaquin Delta is a source of drinking water for two thirds of the state's population (over 25 million people). In addition, the Sacramento and San Joaquin Rivers, the two large rivers which flow into the Delta, and their tributaries, are sources of drinking water for many Central Valley communities. The water quality of the Sacramento and San Joaquin Rivers is affected by pollutants from various activities, including agriculture, mining, confined animal facilities, urban runoff, and municipal wastewater effluent. Pollutants include salts, organic carbon, nutrients, pathogens, pesticides and trace metals. Concerns have long existed that increased development and population growth in the Central valley will increase pollutant loads and deteriorate water quality in the Delta.

The Basin Plan assigns the municipal and domestic water supply (MUN) beneficial use to all surface waters with a few limited exceptions. Maximum contaminant levels (MCLs) to protect drinking water supplies are contained in Title 22 of the California code of Regulations and have been incorporated by reference into the Basin Plan for the protection of waters designated MUN. MCLs exist for arsenic, salinity, nitrates, some pesticides, volatile organics, disinfection byproducts (trihalomethanes) and radiological constituents, but do not exist for organic carbon, bromide or specific pathogens (Cryptosporidium and Giardia).

In response to directives in the 1996 Reauthorization of the federal Safe Drinking Water Act, the USEPA has developed more stringent regulations pertaining to disinfection by-products (DBPs) and pathogens. High levels of organic carbon in source waters may make control of trihalomethanes and haloacetic acid compounds difficult if chlorine is used as a drinking water disinfectant, while high levels of bromide can make control of bromate difficult if ozone is used as a drinking water disinfectant.

The Sacramento River generally has low concentrations of organic carbon (generally around 2 mg/l) and the San Joaquin River has higher organic carbon concentrations (generally around 4 mg/l). Drinking water purveyors must conduct additional actions when total organic carbon concentrations exceed 4 mg/l. Delta agricultural drainage, wetlands and the smaller rivers that flow into the Delta are sources of organic carbon. As urban areas develop within the watersheds tributary to the Delta, and as new wetlands are created in the Delta, there is concern that organic carbon levels will increase in the Delta. The tidal exchange between the Delta and San Francisco Bay brings elevated levels of bromide into the Delta.

Concerns also have been expressed regarding salinity and nutrients. Stakeholders have been coordinating with the CV-SALTS efforts to develop a regionwide salt management policy that will also address drinking water concerns. See Issue No. 1 for more details regarding development of a salt management policy. Drinking water purveyors are also

concerned that taste and odor problems they experience are associated with high nutrient levels. There are also concerns regarding the presence of algal species that may produce algal toxins. Stakeholders are also coordinating with the State Water Board's effort to develop nutrient numeric endpoints to ensure that drinking water concerns are addressed in that effort. See Issue No. 12 for a list of State Water Board planning efforts regarding nutrient management.

The CALFED Record of Decision (ROD) identified the need for a comprehensive source water protection program and a comprehensive drinking water policy for the Delta and upstream tributaries. The Central Valley Water Board signed a MOU committing to working with the Department of Public Health (DPH), the State Water Board, and USEPA to develop and adopt a policy to protect sources of drinking water for the Delta and its tributaries. The Central Valley Water Board committed to developing a comprehensive drinking water policy in Resolution No. R5-2004-0091 and reiterated its commitment for a policy in Resolution No. R5-2010-0079. In the 2010 resolution, the Central Valley Water Board directed staff to bring a final drinking water policy to the Board in three years.

**Issue 11: Secondary MCLs as Water Quality Objectives for Surface and Ground Waters**

In 2009, CVCWA recommended that the water quality objective for chemical constituents that incorporates by reference secondary maximum contaminant levels (MCLs) be deleted from the Basin Plan. CVCWA also recommended that, at a minimum, the Central Valley Water Board should amend the Basin Plan to clarify how secondary MCLs should be applied to receiving waters. CVCWA appreciates that the Central Valley Water Board proposes to identify the issue of secondary MCLs as water quality objectives in the Work Plan and looks forward to working with the Central Valley Water Board to resolve issues related to the use of secondary MCLs as water quality objectives for both surface and ground waters.

Ultimately, CVCWA still recommends that the Basin Plan be amended to delete secondary MCLs because secondary MCLs are recommendations to drinking water providers that are based on consumer acceptance levels and are therefore unrelated to human health and welfare or the protection of aquatic life. The application of secondary MCLs to natural waterways is inappropriate when one considers the basis for secondary MCLs (aesthetics) and the fact that water treatment in accordance with the Safe Drinking Water Act will occur prior to use by consumers.

If the Central Valley Water Board chooses not to delete the secondary MCLs, CVCWA recommends that the Central Valley Water Board amend the Basin Plan to clarify that secondary MCLs should be analyzed using "dissolved" standards because, according to Safe Drinking Water Act regulations under the Surface Water Treatment Rule, drinking water purveyors are required to filter the water prior to treatment, which will remove particulates. The Work Plan notes that the rationale for using a total recoverable analysis rather than dissolved is that MUN includes

small domestic water supply systems that may not be required to filter. In fact, such systems are required to meet the filtration requirements of the Safe Drinking Water Act, regardless of size. CVCWA also supports, as an alternative to deletion, use of secondary MCL ranges where applicable to provide additional flexibility.

**Issue Identified by CVCWA Not Included in the Work Plan**

In addition to the priority issues discussed above, CVCWA identifies one additional issue from its 2009 comments that should be included in the Work Plan.

***Remove Non-Detect Standard for Organochlorine Pesticides.***

CVCWA previously requested that the Basin Plan be amended to remove the provision that states organochlorine pesticides “shall not be present in the water column at concentrations detectable within the accuracy of analytical methods approved by the EPA or the Executive Officer.” (Basin Plan at p. III.6.00.) This water quality objective results in a fluctuating standard based on the accuracy of the analytical method rather than being based on the appropriate level to protect the uses of waterways. Instead, CVCWA supports the use of the CTR criteria for organochlorine pesticides. Accordingly, CVCWA recommends that the Regional Water Board amend the Basin Plan by deleting the “non-detect” provision.

CVCWA appreciates the Central Valley Water Board’s efforts to conduct a meaningful triennial review process. CVCWA will remain involved in the triennial review process on behalf of its members and during subsequent Basin Plan amendment processes that follow on from the review process. Thank you for your consideration of CVCWA’s comments. If you have any questions, please contact me at (530) 268-1338.

Sincerely,



Debbie Webster  
Executive Officer

c: Pamela Creedon (via email)