Comment Summary and Responses

Proposed Amendments to The Water Quality Control Plan for The San Francisco Bay/ Sacramento-San Joaquin Delta Estuary

Comment Deadline: July 27, 2018 at 12:00 p.m.

On July 6, 2018, the State Water Resources Control Board (State Water Board) issued a "Notice of Public Meeting and Consideration of Adoption of Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary [Bay-Delta Plan] and Final Substitute Environmental Document [Final SED]." As explained in the notice, the State Water Board made revisions to the plan amendments following the extensive six-month public comment period on the 2016 draft plan amendments and 2016 recirculated Draft SED. The July 6, 2018 notice provided an opportunity to submit written comments on the revisions to the proposed plan amendments. The revisions were easily identifiable by either double strikeout or double underlined in Appendix K, *Revised Water Quality Control Plan*, of the proposed Final SED. No additional written comments on the proposed Final SED were accepted.

Many of the written comments submitted addressed issues beyond the scope of the comments allowed by the notice. Many of the comments raise issues, criticisms, and suggestions substantially similar to, or identical to, comments previously submitted on the 2016 recirculated Draft SED and 2016 draft plan amendments. As part of its consideration process, the State Water Board reviewed and considered all of the comments received on the 2016 documents and provided written responses. These responses to comments are available in Volume 3 of the proposed Final SED at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/

This document summarizes and responds to the significant written comments received in accordance with the notice requirements and either indicates that changes will be made to the regulatory provisions or to the related documentation in response to the comment (in which case corresponding changes were made) or that changes will not be made and the reason why.

1. General Approach to Comments

Many commenters identified revisions (including editorial revisions) to the proposed plan amendments in Appendix K, *Revised Water Quality Control Plan*, but the substance of the comment addressed matters other than the revision, such as the merits of the project and its potential impacts. Many commenters also commented on editorial changes and changes to introductory and background text in the Bay-Delta Plan. Comments that repeat the substance of comments previously submitted to the State Water Board have been addressed in the proposed Final SED. In addition, if the commenter failed to identify a significant comment, criticism, or suggestion specifically related to a revision to the proposed plan amendments, then the State Water Board is unable to address the

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comment and has not made modifications. The State Water Board is not considering comments or attachments that were not submitted in accordance with, or are beyond the scope of, the notice.

Many commenters suggested that revisions to the plan amendments in Appendix K, *Revised Water Quality Control Plan*, be deleted or removed from the plan amendments. For the reasons stated in these responses, and unless otherwise expressly noted, no commenter-suggested changes were made. Comments are summarized below and italicized.

2. Protection of all Beneficial Uses

Multiple commenters cited to double-underlined references to beneficial uses as a way to assert that the State Water Board is not protecting all beneficial uses. The plan amendments' purpose is to protect fish and wildlife beneficial uses in the Lower San Joaquin River watershed and southern Delta agricultural beneficial uses. No change was made in response to this comment. Commenters also referenced double-underlined language that refers to beneficial uses but then made extensive comments on the impacts of the project and the adequacy of the SED. They also submitted extensive attachments in connection with these comments. The State Water Board is not considering these comments and attachments as they were not submitted in compliance with, or are beyond the scope of, the notice.

3. Avoiding Significant Adverse Impacts

Commenters referenced the addition of language in Table 3 that flows will be managed to avoid significant adverse impacts to fish and wildlife beneficial uses at other times of the year beyond the February to June period and claimed it is a significant new change to the plan amendments. Commenters also questioned similar language in the program of implementation regarding avoiding significant adverse temperature effects or other impacts on fish and wildlife beneficial uses. The 2016 draft plan amendments already included express language in the program of implementation that the State Water Board will act to help ensure that providing flows to meet the flow objectives will not have significant adverse temperature or other impacts on fish and wildlife. This requirement is now repeated in Table 3 for clarity (Master Response 2.1, *Amendments to the Water Quality Control Plan*, pp. 4, 50–51). Because the requirement to avoid temperature impacts was already part of the plan amendments, the 2016 recirculated Draft SED had to, and did, incorporate such elements when modeling a reasonable representation of operations for the purposes of evaluating potentially significant environmental impacts (Master Response 3.2, Surface Water Analyses and Modeling, pp. 48-59). This reasonable modeling representation utilized carryover storage guidelines and adaptive implementation method (c), which allows flow shifting to other times of the year in order to avoid temperature impacts. Therefore, repeating the program of implementation requirement to avoid significant adverse temperature impacts by adding it to Table 3 does not substantively change the LSRJ plan amendments.

Commenters stated they were unclear as to how the requirement to manage flows in order to avoid causing significant adverse temperature or other impacts to fish and wildlife beneficial uses would be implemented. As noted above, the program of implementation states that the objective would be implemented through minimum reservoir carryover storage targets or other requirements to help

ensure that providing flows to meet the flow objectives will not have significant adverse temperature or other impacts on fish and wildlife. (Appendix K, p. 28; Master Response 2.1, pp. 35, 50–51.) Flow ramping is an example that could avoid other impacts, such as redd dewatering. Please also see Master Response 2.2, *Adaptive Implementation*. This master response explains how the benefit of achieving temperature or other goals outside of the February—June period through flow shifting can exceed the benefit of using the flows entirely during the February—June period. (Master Response 2.2, pp. 9, 24–25.)

Future proceedings will establish specific carryover storage targets and other requirements based on local conditions and project-specific information.

Commenters also referenced the language added to Table 3 to suggest that year-round flows are needed. Please see Master Response 2.1, *Suggested Modifications Not Made, Year-Round LSJR Flow Objectives*.

4. Assignment of Responsibility for Implementing LSJR Flow Objectives

Commenters stated that implementation will require releases from storage. Please refer to Master Response 1.2, *Water Quality Control Planning Process*, for discussion of implementation generally. The State Water Board has authority to impose requirements on the diversion and use of water, including conditions on the diversion of water to storage.

Commenters referred to language assigning responsibility to water right holders and water users to support the need for voluntary agreements. Please see Master Response 1.1, *General Comments, Voluntary Agreements*: "The State Water Board recognizes that voluntary agreements can help inform and expedite implementation of the flow objectives and provide durable solutions in Delta watershed, and the State Water Board continues to support voluntary agreements."

Commenters referred to the language assigning responsibility to water rights holders and water users to suggest that the State Water Board has not made a showing or justification for the relief and remedies sought against irrigation districts or other entities. As discussed in Master Response 1.2, *Water Quality Control Planning Process*, the State Water Board is establishing water quality objectives and a program of implementation in this proceeding. Adoption of the plan amendments, including the program of implementation, does not impose enforceable requirements on any entities. Thus, the State Water Board will impose enforceable obligations to implement the water quality objectives in future proceedings involving the specific exercise of the State Water Board's water right or water quality authority. Moreover, as described in Master Response 3.1, *Fish Protection*, and Appendix C, *Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta Salinity Objectives*, scientific evidence indicates that reductions in flows and alterations to the flow regime in the San Joaquin River (SJR) Basin resulting from water development over the past several decades have negatively affected fish and wildlife beneficial uses.

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5. Comments on Other Changes

Commenters referenced the deletion of the Pelagic Organism Decline (POD) heading on page 7 of Appendix K, Revised Water Quality Control Plan, and deletion of language regarding POD studies on page 13 of Appendix K, Revised Water Quality Control Plan, in order to discuss the POD. Updated information regarding POD was provided in the 2016 revision to Appendix K, which was circulated for six months of public comment (September 2016 to March 2017). The double strikeout deletions that commenters note are non-substantive formatting changes and removal of outdated language for consistency.

Commenters referenced the deletion and reinsertion of the same text on page 4 of Appendix K, Revised Water Quality Control Plan, discussing assigning responsibility to water rights holders and users. This was a non-substantive edit that simply moved the first statement into the middle of the paragraph and did not edit the text.

Commenters referenced changes on page 13 of Appendix K, Revised Water Quality Control Plan, that discuss the geographic scope of the plan amendments to suggest inclusion of the Upper SJR. This issue is addressed in Master Response 2.1, *Amendments to the Water Quality Control Plan.*

Commenters referenced changes on page 35 of Appendix K, which are editorial changes. See Appendix K, *Revised Water Quality Control Plan*, pp. 5 and 34, for an explanation of why monitoring is necessary.

A commenter objected to the removal of the statement, "required percentage of unimpaired flow is in addition to flows in the [Lower San Joaquin River ("LSJR")] from sources other than the LSJR Tributaries" (Appendix K, Revised Water Quality Control Plan, p. 29) as a reduction in total flow. The sentence was removed because it was unnecessary and created confusion among commenters. The concept that flows would be protected, however, is already captured in the program of implementation's statement of the State Water Board's intent to help ensure that flows are diverted for the intended purposes.

Commenters asserted the State Water Board cannot add "regulation" to text on page 26 of Appendix K, Revised Water Quality Control Plan, because the State Water Board doesn't have the authority to require implementation of the objectives through the adoption of regulations. Please refer to Master Response 1.2, *Water Quality Control Planning Process*, for discussion of the State Water Board's authority to adopt regulations. The State Water Board may exercise its water right authority through the enactment of regulations, as well as through adjudicative proceedings.

One commenter suggested alternative language for implementing the objectives that would require a water right proceeding on each of the tributaries, even if voluntary agreements are reached. The proposed language is unnecessary and limits the State Water Board's actions. The changes have not been made. Master Response 1.2, *Water Quality Control Planning Process*, discusses implementation authorities generally. The State Water Board will evaluate actions within its authority to implement the water quality objectives, including adjudicative water right proceedings and water quality proceedings.

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6. Emergency Provision

A commenter asserted that the deletion of the emergency provision language regarding local governing bodies strips a local agency utility of its ability to manage emergency situations that may have direct public health implications for its customers. Please see Master Response 2.1, *Amendments to the Water Quality Control Plan, Emergency Provision* (pp. 29–30), for a discussion regarding the emergency provision. The emergency provision is limited to the application of the Bay-Delta Plan, which is a state requirement. The revision eliminates potential conflicts between state and local police powers while recognizing that the Governor has the power to declare emergencies that are not just statewide but also local or regional in nature.

7. Table 3 Percent of Unimpaired Flow

Commenters objected to establishing a requirement of 40 percent unimpaired flow within a range of 30 percent to 50 percent (Table 3 Appendix K, Revised Water Quality Control Plan. Master Response 2.1, *Amendments to the Water Quality Control Plan,* explains that LSJR Alternative 3 provides instream flows that achieve the greatest temperature improvement for the least water supply cost and economic effect relative to the other alternatives (i.e., alternatives with higher unimpaired flow).

Commenters asserted that the change to Table 3 stating that 40 percent of unimpaired flow, within an allowed adaptive range of 30–50 percent, is required from each of the Stanislaus, Tuolumne, and Merced Rivers from February through June as a change to the objective. As described in Master Response 2.1, *Amendments to the Water Quality Control Plan,* these changes were made for clarity and consistency. Forty percent unimpaired flow has always been the recommended starting point under the proposed plan amendments since the Recirculated SED was released in 2016 for public comment. For example, the Executive Summary (p. ES-4) states, "The flow proposal includes the following elements. Narrative and numeric flow objective with a required percent of unimpaired flow, expressed as a range from 30 to 50 percent of unimpaired flow, with a starting flow of 40 percent of unimpaired flow, for February–June for the Stanislaus, Tuolumne, and Merced Rivers through to the SJR near Vernalis…." An unimpaired flow requirement of 30 to 50 percent, starting with 40 percent, is analyzed in the 2016 Recirculated SED. SED Volume 1, Chapter 3 (pp. 3-8, 3-9), states, "This SED evaluates four alternatives for LSJR flow requirements during the February–June time frame, including the LSJR Alternative 1 (No Project Alternative) and three other LSJR alternatives (LSJR Alternatives 2, 3, and 4)... LSJR Alternative 3 evaluates a range between 30 and 50 percent, with 40 percent as the starting percentage of unimpaired flow in the program of implementation."

Commenters assert that using a water year type approach in conjunction with a required percent of unimpaired flow will enable a higher percentage of unimpaired flow at certain times. A proposal that includes reducing and modifying unimpaired flow (UF) as the water year type becomes drier does not allow for adaptive implementation of the quantity or timing of the flow within the February–June time period. As described in Master Response 2.2, *Adaptive Implementation,* the LSJR plan amendments anticipate and account for drier conditions through routine implementation of the flow objectives. The LSJR plan amendments are designed to adjust to dry water years and droughts because they use a proportional metric, percent of unimpaired flow, which automatically adjusts the volume of water required to meet the objective to the amount of water available in the system.

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8. Table 3 Base Flow

Commenters objected to the modification of baseflow in Table 3 and claim this is a lowering of the flow requirement relative to the baseline. As described in Master Response 2.1, *Amendments to the Water Quality Control Plan,* these changes were made for clarity and consistency. The baseflow starting point has always been 1,000 cubic feet per second (cfs) within a range of 800–1,200 cfs and was analyzed in the 2016 Recirculated SED. For example, Volume I, Chapter 3 of the SED (pp. 3-15–3-16), in describing the alternatives analyzed, states the following, "The minimum required LSJR base flow objective for February–June of 1,000 cfs, based on a minimum 7-day running average, at Vernalis may be adjusted to a value between 800 and 1,200 cfs."

A commenter claimed a use attainability analysis is necessary because of the language modifications to baseflow in Table 3. A use attainability analysis is needed when the state proposes to remove fish, shellfish, and wildlife or water recreational beneficial uses (the "fishable/swimmable" goals under the Clean Water Act), or designates uses that do not include fishable/swimmable uses. (40 C.F.R. § 131.10(j).) A use attainability analysis is also required when the state seeks to adopt a subcategory of fishable/swimmable uses which require less stringent criteria. (Id.) The plan amendments do not remove fishable/swimmable uses or designate a subcategory of such uses which require less stringent criteria. Thus, a use attainability analysis is not necessary.

9. STM Working Group

A commenter referred to editorial changes on page 30 regarding the approval process for adaptive adjustments for flow requirements. This was an editorial change on page 30. As described in Master Response 2.2, *Adaptive Implementation,* consensus is not required for decision making. That master response describes the approval process in detail.

10. LSJR Flow Program of Implementation: Biological Goals

A commenter referenced the biological goals changes on page 32 and pointed to the use of temperature as a factor that may be considered when developing biological goals and claimed that the consideration of this factor would be an operational requirement or restriction. Chapter 19, *Analyses of Benefits to Native Fish Populations from Increased Flow between February 1 and June 30,* and Master Response 3.1, *Fish Protection,* present data and analysis that recognize the importance of temperature to different salmonid life stages; as such, reasonable contributions to biological goals may include meeting temperature targets.

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11. Compliance Calculations

A commenter stated the State Water Board did not identify the location of gauges nor identify how full natural flow is (or should be) calculated. Master Response 3.2, *Surface Water Analyses and Modeling, Calculation of Percent Unimpaired Flow*, provides a map in Figure 3.2-2 of the unimpaired/full natural flow compliance stations and gauges.

Commenters questioned the reliability and accuracy of calculations of unimpaired flow/full natural flow generated by California Department of Water Resources (DWR) full natural flow gauge-station data. As discussed in Master Response 2.1, *Amendments to the Water Quality Control Plan, Calculating Unimpaired Flow and Percent Unimpaired Flow,* although data can be variable, the variability evens out over longer averaging periods and daily divergences from actual unimpaired flow eventually sum to zero over time. As described on page 33 of Appendix K, *Revised Water Quality Control Plan,* under *Unimpaired Flow Compliance*, the STM Working Group or State Water Board staff as necessary, will develop information and specific measures to achieve the flow objectives and to monitor and evaluate compliance. Refinements to methods and measurements used to determine compliance is allowed.

A commenter was concerned that it is not possible to accurately predict what the full natural flow will be prior to February. As discussed on pages 33 and 34 of Appendix K, *Revised Water Quality Control Plan*, the State Water Board recognizes that an annual operation plan is based on a forecast from the best available information and may not accurately reflect actual conditions that occur during the February–June time period. As a result, the plan amendments require an annual operations plan that includes actions and operations that consider and will work under a reasonable range of hydrologic conditions and must identify how adjustments will be made as updated information becomes available.

12. Salinity and DWR/USBR Responsibility

The U.S. Bureau of Reclamation (USBR) said there is no technical or legal basis for making USBR the only entity regulated to comply with outdated salinity objective. This comment is in reference to language added to Appendix K, Revised Water Quality Control Plan, that the Bay-Delta Plan continues Revised Decision 1641's obligations on the Central Valley Project (CVP) and State Water Project (SWP) to meet the salinity water quality objectives. As discussed on page 14 in Master Response 3.3, *Southern Delta Water Quality*, in D-1641, the State Water Board found that "the actions of the CVP are the principal cause of salinity concentrations exceeding the objectives at Vernalis" and that "USBR, through its activities associated with operating the CVP in the San Joaquin River basin, is responsible for significant deterioration of water quality in the southern Delta." The new objective does not change the State Water Board's determination in D-1641. As stated in Appendix K, Revised Water Quality Control Plan, as part of implementing the salinity water quality objective for the interior southern Delta, the program of implementation requires USBR to continue to comply with 0.7 deciSiemens per meter (dS/m) at Vernalis. In addition, this requirement is necessary to maintain or improve salinity conditions in the southern Delta to comply with antidegradation policies.

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The USBR questioned why, if State Water Board has determined that 1.0 electrical conductivity (EC) is sufficient for agricultural beneficial uses year-round, that the plan amendments require USBR operate to a Vernalis EC level of 0.7 from April through August. USBR notes that a study it submitted to the State Water Board showed that 0.7 ds/m provides more assimilative capacity assimilative capacity than is needed to achieve 1.0 ds/m in the southern Delta. As discussed on pages 7–8 in Master Response 3.3, *Southern Delta Water Quality*, the recent historical record shows that EC at Vernalis has almost never exceeded 0.7 dS/m because USBR is able to control it with releases from New Melones Reservoir. As such, salinity would not increase above current conditions, and there would be no degradation of water quality at Vernalis. The requirement to meet 0.7 dS/m at Vernalis is necessary to help ensure that there is no change in overall salinity concentrations at the interior stations and, thus, no water quality degradation would occur. Page 2 in Master Response 3.3, *Southern Delta Water Quality*, states: "…the SED analyses of southern Delta water quality and crop salinity requirements considers all factors that contribute to crop salt tolerance and shows that existing salinity conditions in the southern Delta are suitable for all crops." An increase in salinity achieved at Vernalis from April through August would not maintain existing salinity conditions. All modeling was based on USBR continuing to provide dilution flows to attain 0.7 ds/m at Vernalis.

USBR's study that 0.7 dS/m provides more assimilative capacity than necessary to meet the interior southern Delta salinity objective concedes that the linear regression equations it used may not be the best analysis method to evaluate salinity in the southern Delta. Based on the SED analysis of historical southern Delta salinity conditions from 1995 to 2015, an assimilative capacity of 0.3 dS/m (the same as 300 uS/cm or 300 umhos/cm) at Vernalis is necessary to keep salinity conditions at interior southern Delta near the 1.0 dS/m salinity objective. The USBR analysis is based on data for the years 2000 to 2010, but looking at data for more recent years from 2011 to 2015 it shows that the difference in EC between Vernalis and Tracy Blvd. Bridge is much higher. The average increase in monthly EC between Vernalis and Tracy Blvd. Bridge from 2000 to 2010 was 152 uS/cm while the average increase in monthly EC from 2011 to 2015 was 298 uS/cm.

The USBR asked for a clear statement from the State Water Board as to whether the implementation of the interior South Delta salinity objectives could include dilution flows from New Melones and whether the State Water Board 's modeling fully captures the impact of that potential additional draw on New Melones storage, in addition to implementation of the 40 percent unimpaired flow standard. The proposed plan amendments require the southern Delta salinity objectives to be met, but do not specify the source of any flows necessary to meet the objectives. Modeling of the SDWQ alternatives, except for the No Project Alternative, did not include any releases of dilution flow from New Melones; they included releases only to meet 0.7 ds/m April–August, and 1.0 ds/m September–March, at Vernalis. As discussed in SED Chapter 23, Antidegradation Analysis, however, WSE model runs show that changed flow patterns under the LSJR alternatives would result in an overall decrease in salinity and thus improve water with regard to salinity.

The USBR said it will be very difficult to operate to an entire stretch of river rather than a single compliance point. USBR and DWR will be able to propose how to improve monitoring and assess attainment of salinity objectives in the southern Delta. Per Appendix K, Revised Water Quality Control Plan: "DWR's and USBR's water rights shall be conditioned to require development of information that will be used to determine the appropriate locations and methods to assess attainment of the salinity objective in the interior southern Delta, including through completion of the Comprehensive Operations Plan [COP], Monitoring Special Study, Modeling, and Monitoring and Reporting Plan…" As stated in Master Response 3.3, *Southern Delta Water Quality*: "The appropriate locations and

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methods to assess attainment with the salinity objective will be informed by the COP, special studies, modeling and the monitoring and report plan that DWR and USBR will be required to produce (with stakeholder input)."

DWR said that the State Water Board's assignment of responsibility to DWR and USBR for implementing COP should be done as part of a subsequent water rights proceeding and water right decision order in light of statements in the Bay-Delta Plan that the plan should not be construed as establishing responsibilities of water right holders and that the State Water Board will implement the objectives in future proceedings. The statements to which the USBR refers in effect provides that the Bay-Delta Plan water quality objectives by themselves do not impose responsibilities on water right holders, but need to be implemented through future actions. The same can be said of the COP. Appendix K, Revised Water Quality Control Plan, states that the State Water Board will require compliance with the COP and related requirements pursuant to its Porter-Cologne Water Quality Control Act authority to require technical and monitoring requirements or as a requirement of a water right order. The COP is necessary to address the impacts of the project operations on interior southern Delta salinity levels.

DWR commented that the plan amendments call for DWR and USBR to develop the appropriate location and methods to assess attainment of the salinity objectives in the channel reaches, which could be interpreted to require that salinity conditions be uniform. Nothing in the program of implementation says or suggests that conditions must be uniform in the proposed channel reaches. Compliance locations, comprising three river segments, will be used to determine DWR/USBR's compliance with the salinity water quality objective. The State Water Board will continue to require DWR and USBR to address the impacts of their operations on interior southern Delta salinity levels. Specifically, the State Water Board will require the development and implementation of a COP. Among other things, the COP will describe the actions that will fully address the impacts of SWP and CVP export operations on water levels and flow conditions that may affect salinity conditions in the southern Delta, including the availability of assimilative capacity for local sources of salinity.

DWR commented that if the south Delta objectives are changed to 1.0 EC at all locations year-round, and if the Vernalis objective is being met by USBR as 1.0, there will be no ability for the channels downstream of Vernalis to assimilate high salinity publicly owned treatment works (POTW) discharges without increasing EC above 1.0 at the compliance locations in the south Delta. The program of implementation requires USBR to meet 0.7 dS/m, not 1.0 dS/m, April through August at Vernalis. Currently, POTWs are not subject to the salinity water quality objectives in the Bay-Delta Plan because of a court decision. Under the plan amendments, POTWs would be subject to the salinity water quality objective and would have to control their salinity discharges.

DWR also commented that this phrase in Appendix K also applies to it: "it may be infeasible for POTWs discharging to the southern Delta to comply with traditional numeric water quality based effluent limitations for salts in NPDES permits." The quoted statement is not similarly applicable to agricultural discharges, as it is not subject to Clean Water Act numeric water-quality based effluent limitations.

A commenter stated that changes to the program of implementation regarding salinity make it ambiguous as to the salinity standard that applies to USBR and DWR. The proposed plan amendments maintain USBR's responsibility for salinity problems at Vernalis and in the interior southern Delta. The program of implementation specifically requires USBR to maintain EC levels of 0.7 dS/m April–August at Vernalis in order to implement the salinity objectives for the interior

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southern Delta. Per Appendix K, Revised Water Quality Control Plan: "As part of implementing the salinity water quality objective for the interior southern Delta, the State Water Board will amend DWR's and USBR's water rights to continue to require implementation of the interior southern Delta salinity water quality objectives consistent with this plan." With regard to interim responsibility, until the plan is implemented through other water rights actions, Appendix K states: "Prior to State Water Board approval of the Monitoring and Reporting Plan, compliance of the salinity objective for the interior southern Delta will be assessed at stations C-6, C-8, and P-12, which USBR and DWR shall be required to continue to operate as a condition of their water rights.

With regard to the COP, Contra Costa Water District (CCWD) requests that all plans, reports, and studies be posted online, that a minimum 15-day public review and comment period be provided, and that responses to comments be posted online not less than 5-days prior to the Executive Director taking any action. A change has been made by adding the following sentence on page 44 of Appendix K, Revised Water Quality Control Plan, after the first sentence in the first full paragraph: **The Executive Director will act on the COP after providing notice and opportunity for comment .**

A commenter expressed concern that the State Water Board may relieve the SWP and CVP of the responsibility for salinity control and reassign that responsibility to other undetermined water rights. The SED found that there are many factors that contribute to salinity problems in the southern Delta. The plan amendments do not relieve the DWR (SWP) or USBR (CVP) of responsibility for meeting the salinity water quality objective. Appendix K, Revised Water Quality Control Plan, specifically states that the State Water Board will continue to require DWR and USBR to address the impacts of their operations on interior southern Delta salinity levels. It also states that the State Water Board will require the development and implementation of the COP to address the impacts of the projects on interior southern Delta salinity levels, as well as special studies, modeling, and monitoring and reporting to further evaluate salinity in the southern Delta. These studies may inform future action of the State Water Board, including whether it should also hold others responsible for implementing the interior southern Delta salinity objective. No determinations of additional responsibility have been made.

13. Salinity and Publicly Owned Treatment Works

The City of Tracy (Tracy) commented that given the changes to Appendix K for POTWs, the salinity objective itself must be modified (raised) to reflect reality that POTWs can't consistently meet objective without undertaking cost-prohibitive measures, per Water Code section 13241. The State Water Board considered Water Code section 13241 factors for the salinity objective, such as the environmental characteristics of the southern Delta, including the quality of water available thereto, and the water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the southern Delta. In so doing, the proposed salinity objective is adequate to reasonably protect agricultural beneficial uses and will be achieved primarily through water right and water quality actions that affect flow, as set forth in the program of implementation. POTW discharges have a small effect on salinity in the southern Delta and it is inappropriate to lower the water quality objective based on POTW compliance issues for an objective that will primarily be achieved through the flow. Moreover, POTW compliance issues have been addressed in the program of implementation.

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The State Water Board is mindful of not establishing an objective that could lead to degradation of salinity over a wider area, which, given the variability of water quality in the southern Delta, the establishment of an objective higher than 1.0 dS/m could do. While it is true that existing salinity conditions occasionally exceed 1.0 dS/m (the proposed year-round objective) and even 1.2 dS/m at the current Old River at Tracy Road Bridge compliance location, this is largely due to local sources of salinity, and is not reflective of salinity conditions in the southern Delta upstream and downstream of the Tracy Road Bridge location.

Tracy commented that the removal of compliance points for reasonable potential analysis creates additional permit compliance jeopardy. It stated that failure to maintain or adopt the use of compliance points (or some other adequately sized mixing zone) for reasonable potential represents an abuse of discretion, particularly for objectives to protect off-stream agricultural use. It stated that 40 C.F.R. § 122.44(d)(1)(ii) allows the consideration of dilution. It stated that the State Water Board cannot rely on the Technical Support Document for Water Quality Based Toxics Control *(TSD) or the* Permit Writer's Manual *for a requirement to include water-quality based effluent limitations (WQBELs).* Please see Master Response 3.6, *Service Providers,* on how water quality objectives apply throughout the water body for which they were adopted and how the reasonable potential analysis can be conducted considering dilution under the federal regulations that the commenter cites. The TSD and *Permit Writer's Manual* are cited as guidance for why additional procedures on the reasonable potential analysis that the commenter had requested are unnecessary.

Tracy commented that the State Water Board should find that municipal dischargers in the southern Delta, at current levels of discharge, have no reasonable potential, given the State Water Board's findings that they have a de minimis influence on downstream ambient salinity levels. A reasonable potential analysis is a fact- and case-specific inquiry appropriately done at the permitting level every five years to account for changing conditions.

Tracy commented that Appendix K's effluent limitations fail to comply with the Final Statement of Decision in the City of Tracy v. State Water Resources Control Board *case. Tracy stated that this approach creates an impossible regulatory loop of imposing alternative limits because the objectives are not attainable by the municipal discharges, but the alternative limits imposed fail to attain the objective since it is not attainable.* First, with respect to the claim that the objective is not attainable through traditional numeric water quality effluent limitations, although the Bay-Delta Plan acknowledges that in most, if not all, cases it may currently be infeasible, that could change. Second, the Final Statement of Decision found that the Central Valley Regional Water Quality Control Board's (Central Valley Regional Water Board's) requirements for plans contained no enforceable sequence of actions leading to compliance with applicable water quality standards. In contrast, where it is infeasible to comply with traditional numeric effluent limitations, Appendix K, *Revised Water Quality Control Plan*, sets forth enforceable effluent limitations leading to compliance. In addition to performance-based limitations, it requires enforceable best management practices, including industrial pretreatment that minimizes salinity inputs, source control measures, actions to limit or ban the use of residential water softeners or impose salt efficiency standards on water softeners, education and outreach, and ongoing participation in the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS), whose purpose is to control salt and nitrates in the Central Valley. The plan amendments also state that the Central Valley Water Board may grant variances where appropriate, which provides time for dischargers to comply with water quality objectives. Thus, there is no regulatory loop, but concrete and enforceable actions leading to compliance.

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Tracy and the Central Valley Clean Water Agency (CVCWA) commented that no guidance is presented as to how to determine if the State Water Board's initial finding of infeasibility has changed. Tracy further stated that there is no compliance schedule to allow for implementation actions, including desalination, once a finding is changed to compliance being feasible. It stated that this is contrary to the court's order in the Tracy case and Water Code section 13242, which requires a reasonable time schedule for compliance actions to be taken. The State Water Board is not required to determine how the water boards will re-evaluate feasibility at some unknown point in the future. It is not possible to provide an exclusive list of factors to determine whether it is feasible for POTWs to comply with traditional numeric WQBELs. Certainly, future feasibility can be informed by the State Water Board's current finding of infeasibility, but there may additional unknown factors that may be relevant in the future. Feasibility is a case-by-case determination. The Clean Water Act regulations likewise do not define feasibility and infeasibility. (See, e.g., 40 C.F.R. § 122.44.)

Where compliance actions like desalination become necessary, it is reasonable to allow a reasonable time schedule for construction. The following sentences have been added to Appendix K, *Revised Water Quality Control Plan* (p. 48):

In that event, the Central Valley Regional Water Board may grant compliance schedules for compliance actions where appropriate. All compliance schedules shall be in accordance with the State Water Board Compliance Schedule Policy, Resolution No. 2008-0025, except that the salinity objective for the southern Delta set forth in Table 2 shall be considered a "new water quality objective" as used in the Compliance Schedule Policy.

CVCWA commented that future feasibility determinations should be guided by the same considerations regarding the propriety of establishing numeric water quality based effluent limitations for salinity in the southern Delta for the POTWs. As stated in these responses, the Board's current infeasibility finding can inform future determinations of feasibility.

CVCWA requested clarification that effluent limitations are applicable only when there is reasonable potential. That is correct. The State Water Board is not requiring WQBELs in all instances. Rather, the language of Appendix K, *Revised Water Quality Control Plan*, requires the Central Valley Regional Water Board to regulate municipal dischargers consistent with applicable laws. The Clean Water Act regulations at 40 C.F.R. § 122.44 do not require WQBELs if there is no reasonable potential to cause or contribute to excursions of a standard. To clarify this, Appendix K (p. 46–47) has been revised as shown in bold:

The Central Valley Regional Water Board shall regulate ~~impose discharge controls on~~ in-Delta discharges of salts by agricultural, municipal POTW, and other dischargers consistent with applicable state and federal law, including, but not limited to, establishing water-quality based effluent limitations and compliance **where they are applicable**, monitoring and reporting requirements as part of the reissuance of National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act and the regulations thereunder. In most, if not all, cases, it may be infeasible for POTWs discharging to the southern Delta to comply with traditional numeric water-quality based effluent limitations for salts in NPDES permits **where they are applicable**.

Tracy and CVCWA proposed further revisions to the changes to Appendix K, Revised Water Quality Control Plan, related to POTWs. Except as provided above, further revisions have not been made. The requested changes are either editorial, contrary to the State Water Board's responses herein, or unnecessary. Changes to best management practices specified in Appendix K to make them

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discretionary are contrary to the purpose of providing concrete and enforceable requirements. The information requirements set forth in Appendix K are reasonable to submit in connection with NPDES permit renewal applications or annually, as the case may be, to monitor POTW efforts to control salinity. While some of the requirements like the evaluation of technological or economic changes related to upgrades could inform some aspects of future feasibility determinations (i.e., they are only part of the State Water Board's current finding of infeasibility), that is not the purpose of the requirements. Reference to applicable water quality control plans for variances is unnecessary since the existing language states that variances may be granted in accordance with applicable state laws. Water quality control plans are part of state laws. Tracy's written comments and suggested revisions that were not submitted in accordance with, or go beyond the scope of, the notice are not considered and no response is provided.

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