

Santa Clarita Valley Sanitation District

***Summary of
Common Misconceptions and the Facts about Complying with
the State's Chloride (Salt) Limit for the Santa Clarita Valley***

Below is a summary of common misconceptions raised repeatedly by the public about complying with the State's chloride (salt) limit for the Santa Clarita Valley, and the facts correcting these misconceptions. Detail on each is provided on the following pages.

Misconception #1: Litigation will get rid of the State-mandated chloride limit in the Santa Clarita Valley.

THE FACTS: A lawsuit to challenge the State-mandated chloride (salt) limit is very risky, would be very costly to Valley property owners – and would not eliminate the Santa Clarita Valley's obligation to comply with chloride standards set by the State.

Misconception #2: The Santa Clarita Valley Sanitation District (SCV Sanitation District) has not adequately challenged the State's chloride mandate.

THE FACTS: For 10 years, the SCV Sanitation District aggressively and repeatedly challenged the State's numerous mandates and actions related to chloride (salt) in the Santa Clarita Valley.

Misconception #3: The State's chloride limit is based on a scientific study that was conducted by experts that only supported Ventura County interests, and additional field studies are necessary to set the correct chloride limit.

THE FACTS: The scientific study was conducted in a collaborative public process by experts that also represented Santa Clarita Valley interests. There is no guarantee that new field studies would result in a higher chloride limit. Delaying compliance with the State's chloride limit to conduct field studies would result in steep State fines, Federal fines and mandatory State penalties that Valley property owners would have to pay.

Misconception #4: Paying State fines is cheaper than complying with the State's Chloride limits for the Santa Clarita Valley.

THE FACTS: Paying State fines will end up costing Santa Clarita Valley property owners far more than complying with the State-mandated Chloride limit, because Valley property owners would have to pay State fines plus the cost of building the facilities needed to comply.

Misconception #5: The State doesn't actually issue or collect large fines.

THE FACTS: The State both issues and collects large fines from violators of State water quality standards. Since 2000, State Water Boards have collected nearly \$90 million from violators.

Misconception #6: The State Chloride limit of 100mg/liter is negotiable.

THE FACTS: The State-mandated chloride (salt) limit of 100 mg/liter for the Santa Clara River is NOT negotiable. The State may consider a higher chloride limit only if specifically linked to the proposed Alternative Water Resources Management Plan (AWRM).

Misconception #7: We can avoid the State-mandated chloride limit by not putting our treated wastewater into the Santa Clara River.

THE FACTS: Keeping all of the Santa Clarita Valley's treated wastewater out of the Santa Clara River is not possible or practical.

Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clarita Valley

COMMON MISCONCEPTION #1

Litigation will get rid of the State-mandated chloride limit in the Santa Clarita Valley.

THE FACTS

A lawsuit to challenge the State-mandated chloride (salt) limit (the water quality standard for the Santa Clara River) is very risky, would be very costly to Santa Clarita Valley property owners – and would not eliminate the Santa Clarita Valley's obligation to comply with chloride standards set by the State.

Based on the court record, legal challenges to water quality standards set by the State's water regulatory agencies have rarely been successful, and almost always result in the State regulators making technical changes and re-adopting the water quality standard.

- **High Risk and Highest Cost to Santa Clarita Valley Property Owners**
Based on the court record, a lawsuit challenging the State-mandated chloride limit is very risky, is unlikely to result in any change, and would be very expensive for Valley property owners.
- **Litigation Means Steep Legal Fees, Long Delays and More State Fines that Santa Clarita Valley Property Owners Would Have to Pay**
A lawsuit would just add expensive legal fees on top of the State fines already imposed, and SC Valley property owners would pay these additional costs. The additional delays that litigation would cause – at least three to five years - could result in more State fines for repeatedly missing State compliance deadlines and violating the State's chloride limit. The State can issue fines for every day and every gallon that the Valley's chloride levels are above the State's strict limit. Valley property owners would pay these State fines as well as legal costs.
- **Risk of Federal Fines that SC Valley Property Owners Would Have to Pay**
In addition to State fines, the U.S. Environmental Protection Agency can issue Federal fines and sue the Santa Clarita Valley Sanitation District (SCV Sanitation District) for violating State compliance deadlines. Valley property owners would pay these Federal fines as well as legal costs.

- **Litigation is Unlikely to Eliminate the Santa Clarita Valley’s Obligation to Comply with State-mandated Chloride Limits**

Even in the very limited cases when a challenge of a State water quality standard is successful, the Courts merely remand (send) the matter back to the State regulators (the Regional or State Water Boards) to address the identified deficiencies, and the State regulators take action to re-issue the water quality standard. The State’s compliance requirements do not typically go away.

- **California’s Courts Defer to State Regulatory Agencies**

State regulatory agencies are required by Federal and State laws to set water quality standards and limits. California’s courts have solidly supported the water quality standards set by the State’s Water Boards, and consistently defer to the regulatory agencies’ expertise in setting these regulatory standards.

- **State’s Water Boards Prevail in Nearly All Lawsuits Challenging Their Water Quality Standards**

The State’s Water Boards prevails in the vast majority of the lawsuits challenging their water quality standards. Even in the very few successful cases, with only one exception in the last ten years, the courts merely sent the matter back to the State’s Water Boards to address the identified problem, and the State’s Water Boards modified and re-issued their water quality standards. The communities who lost their challenges still had to comply with – and pay for compliance with - the revised State water quality standards.

- **California’s Courts Do Not Themselves Change Numeric Water Quality Standards Set by the State**

The Courts do not themselves alter water quality standards set by the State’s regulators through the State or Regional Water Boards. The Courts leave that to the State’s regulatory agencies. Even if a challenge is successful, the courts merely send the matter back to the State regulators, and the community who challenged ends up where they started: in front of the State regulators who set the water quality standard in the first place.

- **Low Probability of Success**

Based on the California court record, a lawsuit challenging the chloride water quality standard has a low probability of success. Across the State, Regional Water Boards take dozens of actions every year related to water quality standards. Few are challenged each year. The vast majority of these legal challenges to State-mandated water quality standards are not successful. In the last ten years, California’s courts have reported less than two dozen cases challenging water quality standards that were decided by the courts. **All but two of these legal challenges failed.**

- **The Facts of the Two Successful Cases Do Not Apply in the Santa Clarita Valley**

In the last ten years, the two reported cases that successfully challenged State water quality standards were special cases with unique conditions, the facts of which do not apply to the chloride issue in the Santa Clarita Valley, as discussed below.

In *City of Tracy v. State Water Board* (Sac. Superior Court, Case No. 34-2009-80000392 May 10, 2011), the City was able to remand (get overturned) a State water quality standard because the State Water Board had expressly admitted in another, earlier case that it completely failed to consider factors required by the Water Code when the standard was adopted. The re-adoption of the water quality standard is pending.

In *City of Arcadia, et al. v. State and Los Angeles Regional Water Boards*, 135 Cal. App. 4th 1392 (4th Dist. 2006), the cities secured remand of the Los Angeles River Trash Total Maximum Daily Load (TMDL) and the interpretation of the water quality standard on technical grounds because the environmental checklist was deemed inadequate under the California Environmental Quality Act (CEQA). The Court sent the matter back to the Regional Water Board, but rejected all other elements of the challenge. The Regional Water Board amended the Trash TMDL to address the deficiency and successfully re-adopted it in 2007. The lawsuit did not change the numeric limit in the TMDL and did not relieve the community of the obligation to comply with the State mandate.

- **The SCV Sanitation District Has Not Litigated the State’s Chloride Limit Because it’s Too Risky and Too Costly for Valley Property Owners**

The SCV Sanitation District has elected not to sue the State to attempt to change the State-mandated chloride limit because lawsuits are risky and expensive. The SCV Sanitation District is dedicated to providing the least costly options to Valley property owners, and to protecting them from unnecessary expenses. The best and least expensive option for Santa Clarita Valley property owners is to comply with the State-mandated chloride limit and State deadlines in the least costly and most environmentally-sensitive manner.

Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clara River

COMMON MISCONCEPTION # 2

The Santa Clarita Valley Sanitation District has not adequately challenged the State's chloride mandate.

THE FACTS

For 10 years, the Santa Clarita Valley Sanitation District (SCV Sanitation District) aggressively challenged the State's numerous mandates and actions related to chloride (salt) in the Santa Clarita Valley, including:

- The State's strict chloride limit for allowable chloride levels in the Santa Clara River (The Water Quality Objective)
- The State's listing of the Santa Clara River as impaired by high chloride levels
- The State's regulatory order and schedule to meet strict new chloride limits at the Valley's wastewater treatment plants (Upper Santa Clara River Chloride Total Maximum Daily Load or TMDL)

The following details the results of these challenges by the SCV Sanitation District.

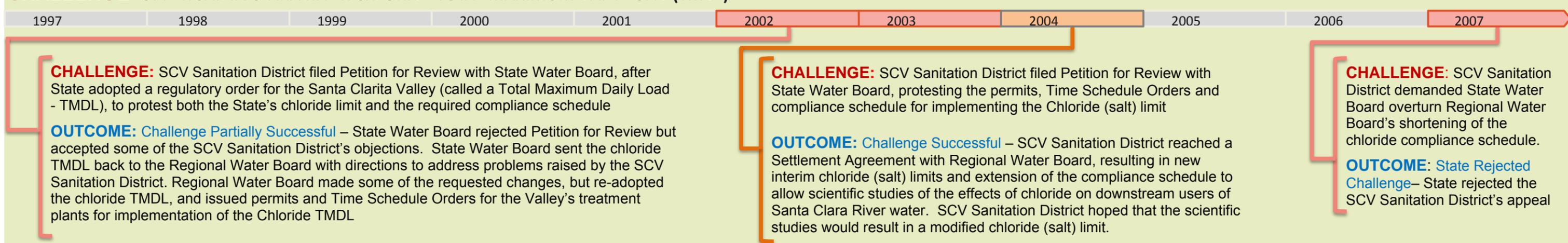
CHALLENGE: THE WATER QUALITY OBJECTIVE



CHALLENGE: LISTING OF SANTA CLARA RIVER AS IMPAIRED



CHALLENGE: UPPER SANTA CLARA RIVER CHLORIDE TOTAL MAXIMUM DAILY LOAD (TMDL)



Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clarita Valley

COMMON MISCONCEPTION #3

The State's chloride limit is based on a scientific study that was conducted by experts that only supported Ventura County interests, and additional field studies are necessary to set the correct chloride limit.

THE FACTS

The scientific study that re-assessed the State's chloride limit was conducted in a public process and reviewed by experts selected jointly by the Santa Clarita Valley Sanitation District, Ventura County, and the California Regional Water Quality Control Board-L.A. Region (Regional Water Board).

The Regional Water Board found that the scientific study provided a scientifically defensible baseline to support the 100 mg/L chloride limit for the protection of salt sensitive agricultural uses.

Conducting field studies in an attempt to change the State's chloride (salt) limit would take up to 10 years and would be very risky to Valley property owners.

There is no guarantee that field studies would provide data that the State believes is conclusive to raise the chloride limit.

Delaying compliance with the State's chloride limit to conduct field studies would result in recurring, steep State fines, Federal fines and mandatory State penalties that Valley property owners would have to pay.

- **Scientific Study Was Conducted in a Collaborative Public Process by Expert Consultants Representing Both Ventura County and Santa Clarita Valley Interests**

The scientific study that re-assessed the State's chloride limit was conducted in a public process by expert consultants selected jointly by the Santa Clarita Valley Sanitation District (SCV Sanitation District), Ventura County and the Regional Water Board. The results of the studies were reviewed by an independent Technical Advisory Panel made up of experts in the fields of agriculture, chemistry, and soil science. The members of the Technical Advisory Panel were selected through the Santa Clara River Chloride Total Maximum Daily Load (TMDL) public process, which was overseen by the SCV Sanitation District and the Regional Water Board, in consultation with other stakeholders in Los Angeles and Ventura County.

- **State Regulators Accepted the Results of Scientific Studies Already Conducted**

The California Regional Water Quality Control Board – L.A. Region (Regional Water Board) considers the findings of the scientific studies that were conducted between 2004 and 2005 to represent the best available information on chloride sensitivity of key crops in the Santa Clara River watershed. The Regional Water Board has stated that the results of the studies were sufficient to scientifically defend the existing chloride limit of 100 mg/L for the protection of salt sensitive agricultural uses. The scientific studies conducted consisted of a review of approximately 200 technical documents related to studies on chloride and salinity effects on avocado, strawberry, and nursery crops. Of these studies, 58 pertained to avocado, 40 of the 58 were experimental studies, and 10 of the 40 were field studies. While there was insufficient scientific information to set a protective chloride threshold value for strawberry and nursery crops, the Technical Advisory Panel agreed that a chloride threshold that was protective of avocado crops would be protective for most other salt sensitive crops as well.

- **State Regulators Do Not Think that Changing the State’s Chloride Compliance Schedule to Allow Field Studies to be Conducted is Warranted**

The California Water Quality Control Board – L.A. Region has stated that they do not feel that changing the chloride compliance schedule for the Santa Clarita Valley to allow for field studies to be conducted is warranted¹. In fact, in 2006, the Regional Water Board shortened the compliance schedule by two years after concluding that the scientific studies provided sufficient documentation to scientifically support the existing chloride limit of 100 mg/L. In 2007, the SCVSD appealed the Chloride TMDL to the State Water Board, but the appeal was unsuccessful and the revision was upheld.

- **Field Studies Would be Costly to Valley Property Owners and Risk Resulting in an Even Stricter Chloride Limit**

A single, long-term avocado field study would cost between \$2 million and \$4 million, and Valley property owners would have to pay that cost. While the Regional Water Board has stated that it could consider new information, there is no guarantee that the results of a single field study conducted by the SCV Sanitation District would be sufficient to convince the Regional Water Board to approve a higher chloride limit.

It is also possible that new field studies could result in an even stricter limit. This could raise the cost of compliance, which Valley property owners would have to pay.

- **Delaying Compliance with the State’s Chloride Limit to Conduct Field Studies Would Result in State Fines, Federal Fines and Mandatory Penalties that Valley Property Owners Would Have to Pay**

Conducting field studies on avocados and strawberries downstream of the Santa Clarita Valley’s wastewater treatment plants would take up to ten years. The Regional Water Board has already refused to extend the compliance schedule to allow the SCV Sanitation District to conduct field studies. If the Santa Clarita Valley delays compliance with the State’s strict chloride (salt) limit in order to conduct field studies, the Valley will likely be in violation of the State’s chloride limit and compliance schedule.

The consequences will be recurring and increasingly steep State fines that Valley property owners would have to pay. The State can issue fines for every gallon and every day that the Valley’s chloride levels are in violation of the State’s strict limit. In addition, State regulators are obligated to assess mandatory penalties if certain deadlines are missed. If violations continue long enough, the U.S. Environmental Protection Agency (EPA) also has the authority to issue Federal fines.

Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clarita Valley

COMMON MISCONCEPTION #4

Paying State fines is cheaper than complying with the State's Chloride limits for the Santa Clarita Valley.

THE FACTS

Paying State fines will end up costing Santa Clarita Valley property owners far more than complying with the State-mandated Chloride limit, because Valley property owners would have to pay State fines PLUS the cost of building the facilities needed to comply.

If the Santa Clarita Valley refuses to comply with the State's chloride limit, State penalties will get even more expensive.

- **SCV Property Owners Pay State Fines**

Santa Clarita Valley property owners would have to pay any State fines levied for being in violation of either the State-mandated Chloride limit for the Valley or the State's strict timeline.

- **SCV Property Owners Also Pay Cost of Building Facilities to Comply with State Limit**

In addition, Santa Clarita Valley property owners would still have to pay the cost of building the facilities necessary to comply with the State's strict Chloride limit.

- **Paying State Fines Does Not Get Rid of the State's Compliance Requirement**

Paying State fines does not replace or eliminate the obligation for the Santa Clarita Valley to comply with the State's Chloride mandates or schedule for compliance.

- **Refusing to Comply with State Chloride Limit Will Cost Valley Property Owners Even More**

If the Santa Clarita Valley refuses to comply, the State penalties get even more expensive.

- **State Enforcement Policy Requires State to Issue Fines**

The State's enforcement policy requires the State to establish the minimum fine for violators by calculating the cost avoided by refusing to comply with the State's requirements and adding 10%. The State can issue fines for every gallon and every day that the Santa Clarita Valley is not in compliance with the State's chloride limit.

Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clarita Valley

COMMON MISCONCEPTION #5

The State doesn't actually issue or collect large fines

THE FACTS

The State both issues and collects large fines from violators of State water quality standards.

- **State Water Boards Fined Violators \$128 million between 2000-2013**

In the last 13 years, the State's Water Boards have fined violators of State water quality standards, permits or other water quality requirements a total of \$128 million.

- **State has Collected Nearly \$90 million**

About 70% of the fines have been collected. Violators must pay the remainder they still owe. The State has not forgiven any of the remaining amounts.

- **The State's Water Boards See Enforcement as Key to the State's Regulatory Framework**

The State Water Resources Control Board's Water Quality Enforcement Policy¹ states:

Without a strong enforcement program the entire regulatory framework would be in jeopardy.

Enforcement is a critical ingredient in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations.

Appropriate penalties and other consequences for violations offer some assurance of equity between those who choose to comply with requirements and those who violate them.

It also improves public confidence when government is ready, willing, and able to back up its requirements with action.

¹ Source: California State Water Resources Control Board Integrated Water Quality System Project

Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clarita Valley

COMMON MISCONCEPTION #6

The State chloride (salt) limit of 100mg/liter for the Santa Clara River is negotiable.

THE FACTS

The State-mandated chloride (salt) limit of 100 mg/liter for the Santa Clara River is NOT negotiable.

- **Santa Clarita Valley Sanitation District Fought State's Chloride (Salt) Limit for Over 10 Years, but Could Not Get State Mandate Changed**

The Santa Clarita Valley Sanitation District (SCV Sanitation District) challenged the State's strict chloride limit for over 10 years, but was not successful in getting the limit changed.

- **SC Valley Must Comply with State's Strict Chloride (Salt) Limit – Or Pay Steep State Fines**

The CA Regional Water Quality Control Board-Los Angeles (Regional Water Board) has already issued two Notices of Violation and levied fines that SCV property owners will have to pay. The Santa Clarita Valley is obligated to comply with the State-mandated chloride limit of 100 mg/l, or face additional, steep State fines and other penalties that Santa Clarita Valley property owners would have to pay.

- **State's Strict Chloride Limit is in Permits for the Valley's Wastewater (Sewage) Treatment Plants**

The State set the chloride limit for the Santa Clara River at 100 mg/L in 1978 and put this limit in the permits issued by the State for the Santa Clarita Valley's wastewater (sewage) treatment plants in 1989.

- **State May Consider a Higher Chloride Limit Only if Specifically Linked to the Proposed Alternative Water Resources Management Plan (AWRM)**

If the SCV Sanitation District Board commits in October 2013 to implementation of a chloride compliance project that meets the State-mandated limit, the Regional Water Board staff has indicated that they might consider some flexibility as to how compliance is achieved, but only specifically linked to the proposed Alternative Water Resources Management plan (AWRM). This is because the AWRM plan is a revised version of a project that was earlier approved by the

Regional Water Board. The AWRM plan is similar to the earlier project, which was assigned conditional Site Specific Objectives, including a chloride limit of 117 mg/L in the Santa Clara River at the County line. The current revised version of the proposed AWRM plan would require State approval of a similar receiving water chloride limit of 117 mg/L.

- **The State May Consider Changes Linked to AWRM Plan ONLY if SCV Sanitation District Board of Directors Also Approves an Alternative that Complies with the State-Mandated Chloride Limit of 100 mg/liter**

There is no certainty that the Regional Water Board will approve the proposed revised AWRM plan. The Regional Water Board may agree to consider a request from the SCV Sanitation District for approval of the revised AWRM plan and associated conditional Site Specific Objectives - but only if the SCV Sanitation District Board also approves a back-up alternative by October 31st, 2013 that complies with the State's existing chloride limit of 100 mg/L, and approves the service charges required for project implementation by 2014.

Common Misconceptions about Complying with the State's Chloride (Salt) Limit for the Santa Clarita Valley

COMMON MISCONCEPTION #7

We can avoid the State-mandated Chloride limit by not putting our treated wastewater into the Santa Clara River

THE FACTS

Keeping all of the Santa Clarita Valley's treated wastewater out of the Santa Clara River is not possible or practical.

- **State and Federal Laws Require Water Flows in the Santa Clara River**

There are State and Federal legal requirements for maintenance of natural habitat in and along the Santa Clara River. The State would not allow the Santa Clarita Valley Sanitation District to remove all of the treated wastewater discharge from the river.

- **The SC Valley Produces Very High Volumes of Treated Wastewater**

The Valley's two wastewater treatment plants produce 20 million gallons of high-quality treated wastewater every day. There are no storage sites large enough in the Santa Clarita Valley to accommodate this much recycled water; pumps, miles of pipes and other distribution infrastructure would have to be built; and there is not currently enough demand for this much water. Storage would be necessary during the winter even if there was demand for and infrastructure to distribute all the water during the summer.

- **The State Regulates the Amount of Water in the Santa Clara River**

"The Regional Board regulates discharges of wastes into waters of the State. Should the City decide to redirect discharges to other uses, it would have to consult with other agencies such as the California Department of Fish and Wildlife regarding potential impacts to wildlife from the redirection of discharges. It is likely that a CEQA analysis would also be required as well as a regulatory analysis to identify other agencies that may have concerns about water quantity in the Santa Clara River."

*Sam Unger, Executive Officer
California Water Quality Control Board-Los Angeles*