



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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28 December 2008

Mr. Ken Landau, Assistant Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Renewal Of Waste Discharge Requirements (NPDES No. CA0079987) for Maxwell Public Utilities District, Wastewater Treatment Facility, Colusa County

Dear Mr. Landau,

The California Sportfishing Protection Alliance (CSPA) has reviewed the proposed Waste Discharge Requirements (NPDES No. CA0079987) for the Maxwell Public Utilities District, Wastewater Treatment Facility (Permit) and submits the following comments.

CSPA requests status as a designated party for this proceeding. CSPA is a 501(c)(3) public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded water quality and fisheries. CSPA members reside, boat, fish and recreate in and along waterways throughout the Central Valley, including Colusa County.

1. The proposed Permit contains Effluent Limitations less stringent than the existing permit contrary to the Antidegradation requirements of the Clean Water Act and Federal Regulations, 40 CFR 122.44 (l)(1)

Under the Clean Water Act (CWA), point source dischargers are required to obtain federal discharge (NPDES) permits and to comply with water quality based effluent limits (WQBELs) in NPDES permits sufficient to make progress toward the achievement of water quality standards or goals. The antidegradation and antidegradation rules clearly spell out the interest of Congress in achieving the CWA's goal of continued progress toward eliminating all pollutant discharges. Congress clearly chose an overriding environmental interest in clean water through discharge reduction, imposition of technological controls, and adoption of a rule against relaxation of limitations once they are established.

Upon permit reissuance, modification, or renewal, a discharger may seek a relaxation of permit limitations. However, according to the CWA, relaxation of a WQBEL is permissible only if the requirements of the antidegradation rule are met. The antidegradation regulations prohibit EPA from reissuing NPDES permits containing interim effluent limitations, standards or conditions less stringent than the final limits contained in the previous permit, with limited exceptions. These regulations also prohibit, with some exceptions, the reissuance of permits originally based on best professional judgment (BPJ) to incorporate the effluent guidelines promulgated under CWA §304(b), which would result in limits less stringent than those in the previous BPJ-based permit. Congress statutorily ratified the general prohibition against backsliding by enacting

§§402(o) and 303(d)(4) under the 1987 Amendments to the CWA. The amendments preserve present pollution control levels achieved by dischargers by prohibiting the adoption of less stringent effluent limitations than those already contained in their discharge permits, except in certain narrowly defined circumstances.

When attempting to backslide from WQBELs under either the antidegradation rule or an exception to the antibacksliding rule, relaxed permit limits must not result in a violation of applicable water quality standards. The general prohibition against backsliding found in §402(o)(1) of the Act contains several exceptions. Specifically, under §402(o)(2), a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant *if*: (A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; (B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section; (C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy [(e.g., Acts of God)]; (D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or (E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit, and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Even if a discharger can meet either the requirements of the antidegradation rule under §303(d)(4) or one of the statutory exceptions listed in §402(o)(2), there are still limitations as to how far a permit may be allowed to backslide. Section 402(o)(3) acts as a floor to restrict the extent to which BPJ and water quality-based permit limitations may be relaxed under the antibacksliding rule. Under this subsection, even if EPA allows a permit to backslide from its previous permit requirements, EPA may never allow the reissued permit to contain effluent limitations which are less stringent than the current effluent limitation guidelines for that pollutant, or which would cause the receiving waters to violate the applicable state water quality standard adopted under the authority of §303.49.

Federal regulations 40 CFR 122.44 (l)(1) have been adopted to implement the antibacksliding requirements of the CWA:

(1) Reissued permits. (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Sec. 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions--A permit with respect to which paragraph (1)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or (2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (1)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

Sections 402(o)(2) and 303(d)(4) of the CWA and 40 CFR 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous Order.” Specifically, the existing Order No. R5-2002-0022, contained the following Effluent Limitations which have been removed:

- The turbidity Effluent Limitations from the existing Order have been moved to Construction, Operation and Maintenance Specification No. 4, Turbidity; “The Discharger shall operate the treatment system to insure that turbidity shall not exceed 2 NTU as a daily average; 5 NTU more than 5 percent of the time within a 24 hour period; and 10 NTU, at any time.” The proposed Permit Fact Sheet discusses Pathogens and states that the previous Order established Effluent Limitations for turbidity. Turbidity limitations are maintained in the proposed Permit but have been moved to “Special Provisions”, they are no longer Effluent Limitations. The Fact Sheet Pathogen discussion states that infectious agents in sewage are bacteria, parasites and viruses and that tertiary treatment is necessary to effectively remove these agents. This discussion also states that turbidity limitations were originally established: “...to ensure that the treatment system was functioning properly and could meet the limits for total coliform organisms. This discussion is incorrect. First, coliform organism limitations are also an indicator

parameter of the effectiveness of tertiary treatment. The coliform limitations in the proposed and past Permit are significantly lower than the Basin Plan Water Quality Objective and are based on the level of treatment recommended by the California Department of Public Health (DPH). Second, both the coliform limitations and turbidity are recommended by DPH as necessary to protect recreational and irrigated agricultural beneficial uses of the receiving water. Turbidity has no lesser standing than coliform organisms in the DPH recommendation. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. There are no limitations for viruses and parasites in the proposed Permit, which the Regional Board has indicated are necessary to protect the contact recreation and irrigated agricultural uses of the receiving water. Both coliform and turbidity limitations are treatment effectiveness indicators that the levels of bacteria viruses and parasites are adequately removed to protect the beneficial uses. Special Provisions are not Effluent Limitations as required by the Federal Regulations. The turbidity Effluent Limitations must be restored in accordance with the Clean Water Act and Federal regulations 40 CFR 122.44 (l)(1).

The only rationale that can explain moving the turbidity from Effluent Limitations to Provisions is to protect Dischargers from mandatory minimum penalties as prescribed by the California Water Code, Section 13385. It is doubtful that it was intent of the legislature in adopting the mandatory penalty provisions to have the Regional Boards delete Effluent Limitations from permit to avoid penalties.

- The Effluent Limitation requiring wastewater shall be oxidized, coagulated, filtered, and adequately disinfected pursuant to the California Department of Public Health (DPH, formerly known as California Department of Health Services or DHS) reclamation criteria, California Code of Regulations, Title 22, Division 4, Chapter 3, (Title 22), or equivalent, has been moved to “Other Special Provisions”.
- The existing NPDES permit (R5-200-) for this facility contains Effluent Limitations for settleable solids (SS). The most important physical characteristic of wastewater is its total solids content. SS are an approximate measure of the quantity of sludge that will be removed by sedimentation. Low, medium and high strength wastewaters will generally contain 5 ml/l, 10 ml/l and 20 ml/l of SS, respectively. Knowledge of SS parameters is critical for proper wastewater treatment plant design, evaluating sludge quantities, operation and troubleshooting. Excessive SS in the effluent discharge are typically indicative of process upset or overloading of the system. Failure to limit and monitor for SS limits the regulators ability to assess facility operations and determine compliance. Settleable matter is a water quality objective in the Basin Plan. Failure to include an Effluent Limitations for SS threatens to allow violation of the settleable matter receiving water limitation. As such, there is a reasonable potential for settleable solids to exceed the Basin Plan’s water quality standard and Effluent Limitations are required in accordance with 40 CFR 122.44. We would have applauded the operators if indeed they did not violate the SS limitation during the life of the existing permit; this would not however remove the reasonable potential to cause exceedances in the future during system upsets or overloading; this also does not constitute “new” information as is

required under the Antibacksliding regulations. However, Table F-2 shows that the discharge did indeed exceed the settleable solids limitation with a maximum effluent concentration of 1.5 ml/l.

2. The proposed Permit does not contain an Effluent Limitation for oil and grease in violation of Federal Regulations 40 CFR 122.44 and California Water Code Section 13377

The proposed Permit is for a domestic wastewater treatment plant. Domestic wastewater treatment plants, by their nature, receive oil and grease in concentrations from home cooking and restaurants that present a reasonable potential to exceed the Basin Plan water quality objective for oil and grease (Basin Plan III-5.00). Confirmation sampling is not necessary to establish that domestic wastewater treatment systems contain oil and grease in concentrations that present a reasonable potential to exceed the water quality objective. It is not unusual for sewerage systems to allow groundwater cleanup systems, such as from leaking underground tanks, to discharge into the sanitary sewer. Groundwater polluted with petroleum hydrocarbons can also infiltrate into the collection system as easily as sewage exfiltrates. The Central Valley Regional Board has a long established history of including oil and grease limitations in NPDES permits at 15 mg/l as a daily maximum and 10 mg/l as a monthly average, which has established BPTC for POTWs.

The California Water Code (CWC), Section 13377 states in part that: "...the state board or the regional boards shall...issue waste discharge requirements...which apply and ensure compliance with ...water quality control plans, or for the protection of beneficial uses..." Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. Where numeric water quality objectives have not been established, 40 CFR §122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a), proposed State criteria or a State policy interpreting narrative criteria supplemented with other relevant information, or an indicator parameter. US EPA has interpreted 40 CFR 122.44(d) in *Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program* (Factsheets and Outreach Materials, 08/16/2002) that although States will likely have unique implementation policies there are certain tenets that may not be waived by State procedures. These tenets include that "where the preponderance of evidence clearly indicates the potential to cause or contribute to an exceedance of State water quality standards (even though the data may be sparse or absent) a limit MUST be included in the permit." Failure to include an effluent limitation for oil and grease in the proposed permit violates 40 CFR 122.44 and CWC 13377.

3. The proposed Permit does not contain Effluent Limitations for chronic toxicity and therefore does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i) and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)

The Proposed Permit, State Implementation Policy states that: "On March 2, 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000 with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005 that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and

objectives and provisions for chronic toxicity control. Requirements of this Order implement the SIP.”

The SIP, Section 4, Toxicity Control Provisions, Water Quality-Based Toxicity Control, states that: “A chronic toxicity effluent limitation is required in permits for all dischargers that will cause, have a reasonable potential to cause, or contribute to chronic toxicity in receiving waters.” The SIP is a state *Policy* and CWC Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy.

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. There has been no argument that domestic sewage contains toxic substances and presents a reasonable potential to cause toxicity if not properly treated and discharged. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. The Proposed Permit states that: “...to ensure compliance with the Basin Plan’s narrative toxicity objective, the discharger is required to conduct whole effluent toxicity testing...” However, sampling does not equate with or ensure compliance. The Tentative Permit requires the Discharger to conduct an investigation of the possible sources of toxicity if a threshold is exceeded. This language is not a limitation and essentially eviscerates the Regional Board’s authority, and the authority granted to third parties under the Clean Water Act, to find the Discharger in violation for discharging chronically toxic constituents. An effluent limitation for chronic toxicity must be included in the Order. There is a reasonable potential for toxic constituents in the discharge to cause chronic toxicity. For example; the proposed Permit MRP, 6, Ammonia Toxicity, allows that:– The acute toxicity testing may be modified to eliminate ammonia-related toxicity until 18 May 2010, at which time the Discharger shall be required to implement the test without modifications to eliminate ammonia toxicity. According to US EPA’s ambient water quality criteria for the protection of freshwater aquatic life ammonia can be both acutely and chronically toxic to aquatic organisms. It must also be noted that the unnamed tributary to Lurline Creek is tributary to Lurline Creek, Colusa Trough, and Colusa Basin Drain. The listing for the Colusa Basin Drain includes: azinphos-methyl, carbofuran, diazinon, Group A pesticides, malathion, methyl parathion, molinate/or dram, and unknown toxicity. Despite the receiving water being listed for unknown toxicity; the proposed permit fails to include a protective Effluent Limitation for chronic toxicity.

Proposed Permit is quite simply wrong; by failing to include effluent limitations prohibiting chronic toxicity the proposed Permit does not “...implement the SIP”. The Regional Board has commented time and again that no chronic toxicity effluent limitations are being included in NPDES permit until the State Board adopts a numeric limitation. The Regional Board explanation does not excuse the proposed Permit’s failure to comply with Federal Regulations, the SIP, the Basin Plan and the CWC. The Regional Board’s Basin Plan, as cited above, already states that: “...waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses...” Accordingly, the proposed Permit must be revised to prohibit chronic toxicity (mortality and adverse sublethal impacts to aquatic life, (sublethal toxic impacts are clearly defined in EPA’s toxicity guidance manuals)) in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i) and the Basin Plan and the SIP.

4. The proposed Permit fails to include a final Effluent Limitation for electrical conductivity (EC) that is protective of the beneficial uses of the receiving water

despite a clear reasonable potential to exceed water quality standards contrary to Federal regulations 40 CFR 122.44

The proposed permit requires that: “Effective immediately, the electrical conductivity of the discharge shall not exceed 2000 µmhos/cm as an annual average.”

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” There is no provision in the Federal Regulations for an “interim” effluent limitation.

The Basin Plan states, on Page III-3.00 Chemical Constituents, “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.” The Basin Plan’s “Policy for Application of Water Quality Objectives” provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations. This application of the Basin Plan is consistent with Federal Regulations, 40CFR 122.44(d).

For EC, *Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Agriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985)*, levels above 700 µmhos/cm will reduce crop yield for sensitive plants. The University of California, Davis Campus, Agricultural Extension Service, published a paper, dated 7 January 1974, stating that there will not be problems to crops associated with salt if the EC remains below 750 µmhos/cm.

The discharge of EC or TDS may exceed water quality objectives for each designated beneficial use:

AGR: The Basin Plan states, on Page III-3.00 Chemical Constituents, “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.” The Basin Plan’s “Policy for Application of Water Quality Objectives” provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations. This application of the Basin Plan is consistent with Federal Regulations, 40CFR 122.44(d). For EC, *Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Agriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985)*, levels above 700 µmhos/cm will reduce crop yield for sensitive plants. The State Water Resources Control Board’s *Irrigation with Reclaimed Municipal Waste (July 1984)* and *McKee and Wolf (1971 Water Quality Criteria)*, state that waters with TDS above 2,100 mg/l are unsuitable for any irrigation under most conditions.

IND: *McKee and Wolf (1971 Water Quality Criteria)* lists the limiting TDS concentrations for numerous industrial uses in mg/l; boiler feed water 50-3000, brewing 500-1000, canning 850, general food processing 850 and paper manufacturing 80-500.

COLD/MIGR/SPWN: In a *Biological Significance* document sent to the Regional Board regarding the Musco Olive facility, dated November 1st 2006, James M. Harrington, Staff Water Quality Biologist

with the California Department of Fish and Game, citing McKee and Wolf (1971 Water Quality Criteria) wrote that: “Surveys of inland fresh waters indicates that good mixes of fish fauna are found where conductivity values range between 150 and 500 umhos/cm. Even in the most alkaline waters, the upper tolerance limit for aquatic life is approximately 2000 umhos/cm.”

The beneficial uses of receiving streams may be degraded by salt concentrations in wastewater discharges and Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA. California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” The Region 5 Permits does not protect the beneficial uses of the receiving stream and therefore does not comply with the requirements of Federal Regulations and the California Water Code.

The Central Valley Basin Plan, page IV-15.00, contains a *Controllable Factors Policy* which states that: “Controllable water quality factors are not allowed to cause further degradation of water quality in instances where other factors have already resulted in water quality objectives being exceeded. Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the State, that are subject to the authority of the State Water or Regional Water Board, and that may be reasonably controlled.”

The wastewater discharge average EC level is 1770 μ mhos/cm and the maximum observed EC was 4030 μ mhos/cm. Clearly the discharge exceeds the MCLs for EC presenting a reasonable potential to exceed the water quality objective. The proposed permit contains an interim effluent limitation for EC of 2,000 μ mhos/cm, as an annual average. The proposed EC limitation clearly exceeds the agricultural water quality goal for EC. The proposed Order fails to establish an effluent limitation for EC that are protective of the Chemical Constituents water quality objective. The City’s wastewater discharge increases concentrations of EC to unacceptable concentrations adversely affecting the agricultural beneficial use. The available literature regarding safe levels of EC for irrigated agriculture mandate that an Effluent Limitation for EC is necessary to protect the beneficial use of the receiving stream in accordance with the Basin Plan and Federal Regulations.

5. The Effluent Limitation for specific conductivity (EC) is improperly regulated as an annual average contrary to Federal Regulations 40 CFR 122.45 (d)(2) and common sense.

Federal Regulation 40 CFR 122.45 (d)(2) requires that permit for POTWs establish Effluent Limitations as average weekly and average monthly unless impracticable. The proposed Permit establishes an interim Effluent Limitation for EC as an annual average contrary to the cited Federal Regulation. Establishing the Effluent Limitation for EC in accordance with the Federal Regulation is not impracticable; to the contrary the Central Valley Regional Board has a long

history of having done so. Proof of impracticability is properly a steep slope and the Regional Board has not presented any evidence that properly and legally limiting EC is impracticable.

6. The proposed Permit contains an inadequate antidegradation analysis that allows for degradation of groundwater absent any analysis of best practicable treatment and control of the discharge (BPTC) and the best interest of the people of California and therefore does not comply with the requirements of Section 101(a) of the Clean Water Act, Federal Regulations 40 CFR § 131.12, the State Board’s Antidegradation Policy (Resolution 68-16) and California Water Code (CWC) Sections 13146 and 13247.

The proposed Permit, B. Groundwater Limitations, allows that: “1. Release of waste constituents from any storage, treatment, or disposal component associated with the WWTP, in combination with other sources, shall not cause the underlying groundwater to contain waste constituents in concentrations greater than background water quality. Any increase in total dissolved solids (TDS) or electrical conductivity @ 25 °C (EC) concentrations within the monitoring points, when compared to background, shall not exceed the increase typically caused by the percolation discharge of domestic wastewater, and shall not violate water quality objectives, impact beneficial uses, or cause pollution or nuisance. For purposes of this limitation, the monitoring points are the five existing groundwater monitoring wells within the property owned or controlled by the Discharger.” The proposed permit further requires that: “Resolution No. 68-16 requires that the Discharger provide best practicable treatment or control prior to a discharge to groundwater. If monitoring of the groundwater indicates that the discharge has caused an increase in constituent concentrations, when compared to background, the Discharger is required in Section VI.C.2.b of this Order to conduct a study of the extent of groundwater degradation.”

The proposed Permit allows for the degradation of groundwater to “the increase typically caused by the percolation discharge of domestic wastewater”. This allowance for degradation is allowed absent any analysis of compliance with the Board’s Antidegradation Policy.

CWC Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy. The State Board has adopted the Antidegradation Policy (Resolution 68-16), which the Regional Board has incorporated into its Basin Plan. The Regional Board is required by the CWC to comply with the Antidegradation Policy.

Section 101(a) of the Clean Water Act (CWA), the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the CWA carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations (40 CFR § 131.12(a)) describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures.

California’s antidegradation policy is composed of both the federal antidegradation policy and the State Board’s Resolution 68-16 (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) (“Order 86-17”); Memorandum from Chief Counsel William Attwater, SWRCB to Regional Board Executive Officers, “federal Antidegradation Policy,” pp. 2, 18 (Oct. 7, 1987) (“State Antidegradation Guidance”). As a state policy, with inclusion in the Water Quality Control Plan (Basin Plan), the antidegradation policy is binding on all of the Regional Boards (Water Quality Order 86-17, pp. 17-18).

Implementation of the state's antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 ("APU 90-004") and USEPA Region IX, "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12" (3 June 1987) ("Region IX Guidance"), as well as Water Quality Order 86-17.

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1). Application of the policy does not depend on whether the action will actually impair beneficial uses (State Antidegradation Guidance, p. 6). Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3). Both the state and federal policies apply to point and nonpoint source pollution (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4).

The State Board's APU 90-004 specifies guidance to the Regional Boards for implementing the state and federal antidegradation policies and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources; 7) an assessment of the significance of changes in ambient water quality and 8) whether the waterbody was a ONRW. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis; while tertiary treatment may provide BPTC for pathogens, dissolved metals may simply pass through.

The antidegradation analysis in the proposed Permit is not simply deficient, it is literally nonexistent. The brief discussion of antidegradation requirements, in the Findings and Fact Sheet, consist only of skeletal, unsupported, undocumented conclusory statements totally lacking in factual analysis. The proposed Permit does not include any analysis allowing for groundwater degradation or showing that the surface water discharge is BPTC. The Tentative Permit fails to properly implement the Basin Plan's Antidegradation Policy and discuss that any groundwater degradation caused by the percolation of domestic wastewater that adversely affects beneficial

uses; contain concentrations of chemical constituents in excess of the drinking water maximum contaminant levels (MCLs), taste- or odor producing substances, and/or toxic substances is not exempt from the requirements of CCR Title 27.

7. The proposed permit fails to discuss California Code of Regulations (CCR) Title 27 and whether any exemption applies for a wastewater discharge that has degraded groundwater quality.

CCR Title 27, §20090. SWRCB – Exemptions: (C15: §2511): The following activities shall be exempt from the SWRCB-promulgated provisions of this subdivision, so long as the activity meets, and continues to meet, all preconditions listed: (a) **Sewage**—Discharges of domestic sewage or treated effluent which are regulated by WDRs issued pursuant to Chapter 9, Division 3, Title 23 of this code, or for which WDRs have been waived, and which are consistent with applicable water quality objectives, and treatment or storage facilities associated with municipal wastewater treatment plants, provided that residual sludges or solid waste from wastewater treatment facilities shall be discharged only in accordance with the applicable SWRCB-promulgated provisions of this division. (b) **Wastewater**—Discharges of wastewater to land, including but not limited to evaporation ponds, percolation ponds, or subsurface leachfields if the following conditions are met: (1) the applicable RWQCB has issued WDRs, reclamation requirements, or waived such issuance; (2) the discharge is in compliance with the applicable water quality control plan; and (3) the wastewater does not need to be managed according to Chapter 11, Division 4.5, Title 22 of this code as a hazardous waste.

Region 5's Basin Plan

WATER QUALITY OBJECTIVES FOR GROUND WATERS

The following objectives apply to all ground waters of the Sacramento and San Joaquin River Basins, as the objectives are relevant to the protection of designated beneficial uses. These objectives do not require improvement over naturally occurring background concentrations. The ground water objectives contained in this plan are not required by the federal Clean Water Act.

Bacteria

In ground waters used for domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml.

Chemical Constituents

Ground waters shall not contain chemical constituents in concentrations that adversely affect beneficial uses. At a minimum, ground waters designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Tables 64449-A (Secondary Maximum Contaminant Levels- Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels- Ranges) of Section 64449. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. At a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/l. To protect all beneficial uses, the Regional Water Board may apply limits more stringent than MCLs.

Tastes and Odors

Ground waters shall not contain taste- or odor producing substances in concentrations that cause nuisance or adversely affect beneficial uses.

Toxicity

Ground waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life associated with designated beneficial use(s). This objective applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple substances.

Any groundwater degradation caused by the percolation of domestic wastewater that adversely affects beneficial uses; contain concentrations of chemical constituents in excess of the drinking water maximum contaminant levels (MCLs), taste- or odor producing substances, and/or toxic substances is not exempt from the requirements of CCR Title 27.

8. The proposed Permit establishes Effluent Limitations for metals based on the hardness of the effluent as opposed to the ambient upstream receiving water hardness as required by Federal Regulations, the California Toxics Rule (CTR, 40 CFR 131.38(c)(4)).

Federal Regulation 40 CFR 131.38(c)(4) states that: “For purposes of calculating freshwater aquatic life criteria for metals from the equations in paragraph (b)(2) of this section, for waters with a hardness of 400 mg/l or less as calcium carbonate, the actual ambient hardness of the surface water shall be used in those equations.” (Emphasis added). The proposed Permit states that the effluent hardness was used to calculate Effluent Limitations for metals.

The Federal Register, Volume 65, No. 97/Thursday, May 18th 2000 (31692), adopting the California Toxics Rule in confirming that the ambient hardness is the upstream hardness, absent the wastewater discharge, states that: “A hardness equation is most accurate when the relationship between hardness and the other important inorganic constituents, notably alkalinity and pH, are nearly identical in all of the dilution waters used in the toxicity tests and in the surface waters to which the equation is to be applied. If an effluent raises hardness but not alkalinity and/or pH, using the lower hardness of the downstream hardness might provide a lower level of protection than intended by the 1985 guidelines. If it appears that an effluent causes hardness to be inconsistent with alkalinity and/or pH the intended level of protection will usually be maintained or exceeded if either (1) data are available to demonstrate that alkalinity and/or pH do not affect the toxicity of the metal, or (2) the hardness used in the hardness equation is the hardness of upstream water that does not include the effluent. The level of protection intended by the 1985 guidelines can also be provided by using the WER procedure.”

The proposed Permit states that: “No receiving water hardness data was available for the Facility. Hardness of the effluent ranged from 157 mg/L to 429 mg/L with an average of 282 mg/L based on 27 samples collected between June 2002 and December 2006. Since the unnamed tributary to Lurline Creek is an intermittent stream, the reasonable lowest effluent hardness of 157 mg/L as CaCO₃ (recorded on June 2005) was used for purposes of establishing WQBELs.” Clearly the effluent hardness does not comply with the SIP and CTR requirements to use the instream ambient hardness.

9. The proposed Permit does not contain Effluent Limitations in compliance with federal regulations 40 CFR 122.44 despite clear reasonable potential to exceed water quality standards.

The proposed Permit Fact Sheet, page F-15, states that: “Federal regulations require effluent limitations for all pollutants that are or may be discharged at a level that will cause or have the reasonable potential to cause, or contribute to an in-stream excursion above a narrative or numerical water quality standard. Based on information submitted as part of the application, in studies, and as directed by monitoring and reporting programs, the Regional Water Board finds that the discharge has a reasonable potential to cause or contribute to an in-stream excursion above a water quality standard for ammonia, chlorodibromomethane, cyanide, dichlorobromomethane, pH, salinity (chloride, electrical conductivity @ 20 °C, and total dissolved solids), and tributyltin. A summary of the reasonable potential analysis (RPA) is provided in Attachment G, and a detailed discussion of the RPA for each constituent is provided below.” Review of the assessed data in Attachment G leads to the same conclusion reached by the permit writer regarding reasonable potential to exceed water quality standards; however Effluent Limitations for chloride, EC, TDS and tributyltin are absent in the proposed Permit. Electrical conductivity and associated salts are discussed above. Any data regarding tributyltin has been removed from Attachment G.

Bis(2-ethylhexyl)phthalate.

The State MCL for bis(2-ethylhexyl)phthalate is 4 µg/L and the USEPA MCL is 6 µg/L. The NTR criterion for human health protection for consumption of water and aquatic organisms is 1.8 µg/L and for consumption of aquatic organisms only is 5.9 µg/L. The Maximum Effluent Concentration for bis(2-ethylhexyl) phthalate was 7 µg/L, based on seven samples collected between March 2002 and October 2006 (three samples were non-detects, two DNQ samples were 0.8 µg/L and 1 µg/L, and one sample with bis(2-ethylhexyl)phthalate found in method blank was 4 µg/L.

The Central Valley Regional Board has begun using the following language in this and each NPDES permit recently issued and has failed to find reasonable potential for bis(2-ethylhexyl)phthalate to exceed water quality standards regardless of the dataset or the laboratory quality assurance/quality control (QA/QC) provided by the laboratory. The CTR was adopted in May of 2000 and priority pollutants were previously regulated for a short time by the ISWP. Sampling for bis(2-ethylhexyl)phthalate has been conducted for over a decade and the Regional Board staff, despite clean QA/QC results, find the following:

“Since bis(2-ethylhexyl)phthalate is a common contaminant of sample containers, sampling apparatus, and analytical equipment, and sources of the detected bis(2-ethylhexyl)phthalate may be from plastics used for sampling or analytical equipment, the Regional Water Board has determined there is uncertainty in the available data. Consequently, there is insufficient information to complete a reasonable potential analysis at this time. In accordance with Section 1.2 of the SIP Regional Water Board staff shall have discretion to consider if any data are inappropriate or insufficient for use in implementing the policy. Where Regional Water Board staff have found the data are insufficient to determine reasonable potential. Section 1.3 of the SIP allows the Board to implement monitoring for the parameter of concern. Therefore, additional monitoring has been established for bis(2-ethylhexyl)phthalate. Should monitoring results indicate that the discharge has the reasonable potential to cause or contribute to an exceedance of a water quality standard, then this Order may be reopened and modified by adding an appropriate effluent limitation.”

It has become the Central Valley Regional Board’s policy to not regulate bis(2-ethylhexyl)phthalate despite clear requirements in the SIP and the CTR. The Regional Board total disregards scientific methods, specifically sampling and laboratory QA/QC methodologies, in throwing out data points that would lead to a reasonable potential for a pollutant to exceed water quality standards when the burden should properly be placed on wastewater Dischargers to

conduct proper sampling and analysis. Despite the claims, the Regional Board's permits do not contain any additional language requiring any special assessment or clean sampling and analysis techniques be implemented for bis(2-ethylhexyl)phthalate. Surely it would violate CWC 13267 requirements to justify the need for technical reports and sampling if the Regional Board has no intent on using the data or believes it to be unreliable even before review. Federal Regulations, 40 CFR 122.44(d), requires that limits must be included in permits where pollutants will cause, have reasonable potential to cause, or contribute to an exceedance of the State's water quality standards. US EPA has interpreted 40 CFR 122.44(d) in *Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program* (Factsheets and Outreach Materials, 08/16/2002) that although States will likely have unique implementation policies there are certain tenets that may not be waived by State procedures. These tenets include that "where the preponderance of evidence clearly indicates the potential to cause or contribute to an exceedance of State water quality standards (even though the data may be sparse or absent) a limit MUST be included in the permit." The proposed Permit fails to comply with 40 CFR 122.44 by failing to contain an Effluent Limitation for bis(2-ethylhexyl)phthalate.

Fluoride.

Water Quality for Agriculture, Food and Agriculture Organization of the United Nations— Irrigation and Drainage Paper No. 29, Rev. 1 (R.S. Ayers and D.W. Westcot, Rome, 1985), recommends that the fluoride concentration in waters used for agricultural irrigation not exceed 1000 µg/L. The Maximum Effluent Concentration for fluoride was 1600 µg/l exceeding the water quality goal. Federal Regulations, 40 CFR 122.44(d), requires that limits must be included in permits where pollutants will cause, have reasonable potential to cause, or contribute to an exceedance of the State's water quality standards. US EPA has interpreted 40 CFR 122.44(d) in *Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program* (Factsheets and Outreach Materials, 08/16/2002) that although States will likely have unique implementation policies there are certain tenets that may not be waived by State procedures. These tenets include that "where the preponderance of evidence clearly indicates the potential to cause or contribute to an exceedance of State water quality standards (even though the data may be sparse or absent) a limit MUST be included in the permit." The proposed Permit fails to comply with 40 CFR 122.44 by failing to contain an Effluent Limitation for fluoride.

Persistent Chlorinated Hydrocarbon Pesticides.

4,4'-DDE was detected in one sample out of a total of seven samples at a concentration of 0.024 µg/L. The Basin Plan requires that no individual pesticides shall be present in concentrations that adversely affect beneficial uses; discharges shall not result in pesticide concentrations in bottom sediments or aquatic life that adversely affect beneficial uses; total chlorinated hydrocarbon pesticides shall not be present in the water column at detectable concentrations; and pesticide concentrations shall not exceed those allowable by applicable antidegradation policies. The community of Maxwell lies within a heavily agricultural area. Federal Regulations, 40 CFR 122.44(d), requires that limits must be included in permits where pollutants will cause, have reasonable potential to cause, or contribute to an exceedance of the State's water quality standards. US EPA has interpreted 40 CFR 122.44(d) in *Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program* (Factsheets and Outreach Materials, 08/16/2002) that although States will likely have unique implementation policies there are certain tenets that may not be waived by State procedures. These tenets include that "where the preponderance of evidence clearly indicates the potential to cause or contribute to an exceedance of State water quality standards (even though the data may be sparse or absent) a limit MUST be included in the permit." The proposed Permit fails to comply with 40 CFR 122.44 by failing to contain an Effluent Limitation for Persistent Chlorinated Hydrocarbon Pesticides.

10. The proposed Permit replaces Effluent Limitations for turbidity which were present in the existing permit; contrary to the Antibacksliding requirements of the Clean Water Act and Federal Regulations, 40 CFR 122.44 (l)(1).

Under the Clean Water Act (CWA), point source dischargers are required to obtain federal discharge (NPDES) permits and to comply with water quality based effluent limits (WQBELs) in NPDES permits sufficient to make progress toward the achievement of water quality standards or goals. The antibacksliding and antidegradation rules clearly spell out the interest of Congress in achieving the CWA's goal of continued progress toward eliminating all pollutant discharges. Congress clearly chose an overriding environmental interest in clean water through discharge reduction, imposition of technological controls, and adoption of a rule against relaxation of limitations once they are established.

Upon permit reissuance, modification, or renewal, a discharger may seek a relaxation of permit limitations. However, according to the CWA, relaxation of a WQBEL is permissible only if the requirements of the antibacksliding rule are met. The antibacksliding regulations prohibit EPA from reissuing NPDES permits containing interim effluent limitations, standards or conditions less stringent than the final limits contained in the previous permit, with limited exceptions. These regulations also prohibit, with some exceptions, the reissuance of permits originally based on best professional judgment (BPJ) to incorporate the effluent guidelines promulgated under CWA §304(b), which would result in limits less stringent than those in the previous BPJ-based permit. Congress statutorily ratified the general prohibition against backsliding by enacting §§402(o) and 303(d)(4) under the 1987 Amendments to the CWA. The amendments preserve present pollution control levels achieved by dischargers by prohibiting the adoption of less stringent effluent limitations than those already contained in their discharge permits, except in certain narrowly defined circumstances.

When attempting to backslide from WQBELs under either the antidegradation rule or an exception to the antibacksliding rule, relaxed permit limits must not result in a violation of applicable water quality standards. The general prohibition against backsliding found in §402(o)(1) of the Act contains several exceptions. Specifically, under §402(o)(2), a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant *if*: (A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; (B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section; (C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy [(e.g., Acts of God)]; (D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or (E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit, and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Even if a discharger can meet either the requirements of the antidegradation rule under §303(d)(4) or one of the statutory exceptions listed in §402(o)(2), there are still limitations as to how far a permit may be allowed to backslide. Section 402(o)(3) acts as a floor to restrict the extent to which BPJ and water quality-based permit limitations may be relaxed under the antibacksliding rule. Under this subsection, even if EPA allows a permit to backslide from its

previous permit requirements, EPA may never allow the reissued permit to contain effluent limitations which are less stringent than the current effluent limitation guidelines for that pollutant, or which would cause the receiving waters to violate the applicable state water quality standard adopted under the authority of §303.49.

Federal regulations 40 CFR 122.44 (l)(1) have been adopted to implement the antibacksliding requirements of the CWA:

(l) Reissued permits. (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Sec. 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions--A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or (2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge

into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

The proposed Permit Fact Sheet discusses Pathogens and states that the previous Order established Effluent Limitations for turbidity. Turbidity limitations are maintained in the proposed Permit but have been moved to “Special Provisions”, they are no longer Effluent Limitations. The Fact Sheet Pathogen discussion states that infectious agents in sewage are bacteria, parasites and viruses and that tertiary treatment is necessary to effectively remove these agents. This discussion also states that turbidity limitations were originally established: “...to ensure that the treatment system was functioning properly and could meet the limits for total coliform organisms. This discussion is incorrect. First; coliform organism limitations are also an indicator parameter of the effectiveness of tertiary treatment. The coliform limitations in the proposed and past Permit are significantly lower than the Basin Plan Water Quality Objective and are based on the level of treatment recommended by the California Department of Public Health (DPH). Second; both the coliform limitations and turbidity are recommended by DPH as necessary to protect recreational and irrigated agricultural beneficial uses of the receiving water. Turbidity has no lesser standing than coliform organisms in the DPH recommendation. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. There are no limitations for viruses and parasites in the proposed Permit, which the Regional Board has indicated are necessary to protect the contact recreation and irrigated agricultural uses of the receiving water. Both coliform and turbidity limitations are treatment effectiveness indicators that the levels of bacteria viruses and parasites are adequately removed to protect the beneficial uses. Special Provisions are not Effluent Limitations as required by the Federal Regulations. The turbidity Effluent Limitations must be restored in accordance with the Clean Water Act and Federal regulations 40 CFR 122.44 (l)(1).

The only rationale that can explain moving the turbidity from Effluent Limitations to Provisions is to protect Dischargers from mandatory minimum penalties as prescribed by the California Water Code, Section 13385. It is doubtful that it was intent of the legislature in adopting the mandatory penalty provisions to have the Regional Boards delete Effluent Limitations from permit to avoid penalties.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance