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6 Attorneys for CITY OF MANTECA

8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10 In the Matter of the Petition of City of Manteca
for Review of Action and Failure to Act by
11 Central Valley Regional Water Quality Control
Board.

SWRCB/OCC File _____

CITY OF MANTECA'S PETITION FOR
REVIEW AND STATEMENT OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF
[Wat. Code, § 13320]

15 The City of Manteca (Manteca or Petitioner) submits this Petition for Review and
16 Statement of Points and Authorities (Petition) to the State Water Resources Control Board (State
17 Water Board or Board) in accordance with Water Code section 13320. Manteca respectfully
18 requests that the State Water Board review the Central Valley Regional Water Quality Control
19 Board's (Central Valley Water Board) actions and inactions related to its adoption of Order
20 No. R5-2009-0095, NPDES¹ No. CA0081558 *Waste Discharge Requirements for City of Manteca
and Dutra Farms, Inc., City of Manteca Wastewater Quality Control Facility* (Permit) and Time
22 Schedule Order No. R5-2009-0096 (TSO). Manteca challenges the effluent limitations for
23 electrical conductivity (EC) of 700 micromhos per centimeter ($\mu\text{mhos/cm}$) (April 1 through
24 August 31) for current and future discharges and the corresponding TSO. Manteca also challenges
25 the determination that the secondary effluent storage pond (SESP) does not qualify for the reuse
26 exemption of title 27 of the California Code of Regulations (Title 27).

27
28 ¹ National Pollutant Discharge Elimination System.

1 Attached as Exhibit A to this Petition is a copy of the Permit. This Petition satisfies the
2 requirements of title 23, section 2050 of the California Code of Regulations. Manteca requests the
3 opportunity to file supplemental points and authorities in support of this Petition once the
4 administrative record becomes available. Manteca also reserves the right to submit additional
5 argument and evidence in reply to the Central Valley Water Board's or other interested parties'
6 responses to this Petition filed in accordance with title 23, section 2050.5(a) of the California Code
7 of Regulations.

8 1. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF THE
9 PETITIONER

10 The Petitioner is the City of Manteca, California, which operates and maintains the City of
11 Manteca Wastewater Quality Control Facility (Manteca WQCF or WQCF). Petitioner's address is
12 as follows:

13 City of Manteca
14 Phil Govea, P.E.
15 Deputy Director of Public Works—Utility Engineering
16 1001 W. Center Street
17 Manteca, CA 95337
18 Phone: (209) 456-8415
19 Email: pgovea@ci.manteca.ca.us

20 In addition, Manteca requests that all materials in connection with the Petition and
21 administrative record be provided to Manteca's special counsel:

22 Roberta A. Larson, Esquire
23 Theresa A. Dunham, Esquire
24 Somach Simmons & Dunn
25 500 Capitol Mall, Suite 1000
26 Sacramento, CA 95814
27 Phone: (916) 446-7979
28 Email: blarson@somachlaw.com; tdunham@somachlaw.com

29 2. THE SPECIFIC ACTION OR INACTION OF THE CENTRAL VALLEY WATER
30 BOARD WHICH THE PETITIONER REQUESTS THE STATE WATER BOARD TO
31 REVIEW

32 Manteca petitions the State Water Board to review the Central Valley Water Board's
33 adoption of the Permit and TSO. In particular, Manteca seeks review of the effluent limitations in
34 the Permit that require the WQCF's current and future average monthly discharges of EC not to
35 exceed 700 μ mhos/cm April 1 through August 31 each year. The Permit establishes these EC

1 limitations in Table 6 and Table 7 of the Effluent Limitations and Discharge Specifications at
2 pages 12 and 13, respectively. The purpose of the TSO is to provide Manteca with a five-year
3 time period for coming into compliance with these limitations. Manteca also challenges the
4 Central Valley Water Board's determination that the SESP does not qualify for the reuse
5 exemption of Title 27. (See Permit at pp. F-13 - F-14.) For this reason, Manteca also challenges
6 the associated compliance schedule of Special Provisions on page 33 of the Permit.

7 3. THE DATE ON WHICH THE CENTRAL VALLEY WATER BOARD ACTED OR
8 REFUSED TO ACT

9 The Central Valley Water Board adopted the Permit on October 8, 2009.

10 4. A STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT IS
11 INAPPROPRIATE OR IMPROPER

12 As explained in more detail in the statement of points and authorities, the Permit imposes
13 the water quality objectives for EC in the southern Delta to protect the agriculture beneficial use as
14 effluent limitations on the Manteca WQCF's discharge. (See Permit at pp. 12, 13, F-48 - F-49.)
15 The effluent limitations are the same for the current discharge flow and expanded future discharge
16 flow. (Permit at pp. 12, 13.) The discharges are not to exceed 700 $\mu\text{mhos/cm}$ EC (April 1 to
17 August 31) or 1,000 $\mu\text{mhos/cm}$ (September 1 to March 31). (Permit at pp. 12, 13.) Manteca's
18 prior waste discharge permit included a year-round effluent limitation for EC of 1,000 $\mu\text{mhos/cm}$.
19 (Permit at p. F-49; *In the Matter of the Petition of City of Manteca* (Mar. 16, 2005)
20 Order WQ 2005-0005 (2005 Manteca Order) at pp. 22-23.) Moreover, the effluent limitations at
21 issue are also inconsistent with the still valid rationale of the 2005 State Water Board order that
22 expressly governs the Manteca WQCF's discharge. (See 2005 Manteca Order at pp. 6-15.)

23 The final effluent limitations of 700 $\mu\text{mhos/cm}$ EC are unlawful as applied to the Manteca
24 WQCF and otherwise inappropriate. In particular, the effluent limitations are inconsistent with the
25 State Water Board's findings and conclusions in the 2005 Manteca Order, which apply specifically
26 to Manteca. Further, water quality objectives for EC in the southern Delta were improperly
27 applied to Manteca's discharges from its WQCF. A review of the history of the *Water Quality*
28 *Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan)

1 reveals that when first adopted in 1978, the State Water Board did not intend for the EC objectives
2 to apply to municipal discharges. (See *Water Quality Control Plan Sacramento-San Joaquin*
3 *Delta and Suisun Marsh* (Aug. 1978) (1978 Bay-Delta Plan).) The State Water Board did not
4 perform, and has not subsequently performed, the analyses required by Water Code
5 sections 13000, 13241 and 13242 to amend the objectives so that they may lawfully apply to such
6 discharges. If the Permit includes an effluent limitation for EC, the requirement should be a year-
7 round limitation of 1,000 $\mu\text{mhos/cm}$ for present and future discharges; this would render the TSO
8 unnecessary.

9 In addition, the Permit includes a compliance schedule for the SESP to comply with the
10 final groundwater limitations and/or for Manteca to prove compliance with the *Water Quality*
11 *Control Plan for the Sacramento and San Joaquin River Basins* (Basin Plan) to be exempt from
12 Title 27. (Permit at p. 33.) As explained in the points and authorities below, the SESP qualifies
13 for the reuse exemption of Title 27. The SESP meets the criteria for the reuse exemption because
14 the pond holds only municipal effluent that has been treated at the WQCF and stored for beneficial
15 reuse on agricultural fields. (See Permit at pp. F-13 - F-14.)

16 5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED

17 The Permit provisions challenged place Manteca in the untenable position of spending
18 significant public resources to comply with EC and Title 27 requirements that are not necessary,
19 reasonable nor supported by the evidence. The provisions are more stringent and onerous than
20 required by or provided for under current law. Although the State Water Board has identified
21 potential interim planning solutions in its Tracy Order², none of these options are feasible here
22 given the limited five-year window provided in the TSO to comply with the effluent limitation.
23 As a matter of law, Manteca can receive protection from mandatory minimum penalties for a
24 period of only five years. (See Wat. Code, § 13385(j)(3)(C).) Thus, the effluent limitations of
25 700 $\mu\text{mhos/cm}$ EC and associated TSO will require Manteca to install microfiltration and reverse
26 osmosis (MF/RO) facilities as the only certain means to ensure compliance.

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28 ² *In the Matter of the Petition of Environmental Law Foundation and California Sportsfishing Protection Alliance*
(May 19, 2009) Order WQ 2009-0003.

1 Manteca estimates the cost to construct MF/RO facilities will be \$38.4 million, which
2 results in an additional annual cost of \$3.7 million for capital improvements and operation and
3 maintenance of the facilities. These costs do not account for the disposal of approximately
4 0.5 million gallons per day (mgd) of highly saline brine that the MF/RO process will generate.
5 Use of the MF/RO facilities will, at best, only negligibly improve EC in the receiving water. The
6 2005 Manteca Order specifically governs the WQCF's discharge and approves a year-round EC
7 effluent limitation of 1,000 μ mhos/cm. In reliance on the 2005 Manteca Order, Manteca already
8 spent significant resources to reduce the salinity in its discharge by over 27 percent to comply with
9 the year-round effluent limitation.

10 Similarly, Manteca will have to spend significant resources to comply with the
11 requirements of Title 27 for the SESP, the use of which is part of a recycled water operation. This
12 is inconsistent with the State Water Board's Recycled Water Policy and other recent legislative
13 and regulatory efforts to promote the reuse of properly treated effluent. Manteca is aggrieved in
14 having to spend additional increasingly scarce public resources to comply with Permit
15 requirements and a TSO that are arbitrary, unnecessary and not required by law.

16 6. THE SPECIFIC ACTION REQUESTED BY THE PETITIONER

17 Based on this Petition, evidence in the record and arguments set forth in the record,
18 Manteca requests that the State Water Board adopt an order that replaces the Permit's seasonal
19 effluent limitations for EC with year-round effluent limitations of 1,000 μ mhos/cm and rescinds
20 the TSO. Manteca also requests that the State Water Board find that the SESP qualifies for the
21 reuse exemption of Title 27 and make the associated Permit revisions. In the alternative, Manteca
22 requests a remand of the Permit to the Central Valley Water Board for changes as directed by the
23 State Water Board.

24 7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES
25 RAISED IN THIS PETITION

26 As required by title 23, section 2050(a)(7) of the California Code of Regulations, Manteca
27 includes a statement of points and authorities in support of this Petition beginning on page 7.
28

1 8. A STATEMENT THAT THIS PETITION WAS SENT TO THE CENTRAL VALLEY
2 WATER BOARD

3 In accordance with title 23, section 2050(a)(8) of the California Code of Regulations,
4 Manteca mailed true and correct copies of this Petition by First Class mail on November 9, 2009,
5 to the Central Valley Water Board. The address to which Manteca mailed the copies to the Central
6 Valley Water Board is:

7 Pamela Creedon, Executive Officer
8 Central Valley Regional Water Quality Control Board
9 11020 Sun Center Drive, Suite 200
10 Rancho Cordova, CA 95670-6114

11 Petitioner is the discharger. Therefore, Manteca did not mail a separate copy of this
12 Petition to the discharger.

13 9. A STATEMENT AS TO WHETHER THE PETITIONER RAISED THE
14 SUBSTANTIVE ISSUES OR OBJECTIONS IN THE PETITION TO THE
15 CENTRAL VALLEY WATER BOARD

16 Manteca timely raised the substantive issues and objections in this Petition before the
17 Central Valley Water Board in written comments dated July 20, 2009 and September 10, 2009,
18 and in testimony provided at the October 8, 2009 public hearing.

19 DATED: November 9, 2009

20 SOMACH SIMMONS & DUNN
21 A Professional Corporation

22 By: Theresa A. Dunham
23 Theresa A. Dunham
24 Attorneys for City of Manteca
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27
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1 **STATEMENT OF POINTS AND AUTHORITIES**

2 The Central Valley Water Board adopted the Permit and TSO on October 8, 2009. The
3 Permit imposes final effluent limitations for salinity identical to the water quality objectives for
4 salinity in the southern Delta. The WQCF cannot consistently comply with some of these water
5 quality-based effluent limitations (WQBELs). The Central Valley Water Board also found that a
6 storage pond at the WQCF used to store recycled water prior to agricultural reuse does not fall
7 within the reuse exemption in Title 27 and requires Manteca to demonstrate compliance with
8 preconditions to otherwise be exempt from the regulation. As a result, Manteca must spend
9 increasingly scarce public funds to make costly and potentially unnecessary upgrades to the
10 WQCF for no meaningful water quality benefit.

11 Manteca files this Petition in accordance with title 23, section 2050(a) of the California
12 Code of Regulations. Manteca requests the opportunity to file a supplemental or reply
13 memorandum after receipt of the administrative record and Central Valley Water Board's
14 response. This Petition incorporates by reference all of Manteca's comments, evidence and
15 testimony in the record.

16 I. **INTRODUCTION**

17 In the recent past, the State Water Board received and reviewed a number of petitions
18 directly related to the control of salinity in the Bay-Delta. This Petition raises significant issues in
19 that the Permit reluctantly adopted by the Central Valley Water Board will require Manteca to
20 spend nearly \$40 million dollars within the next five years to improve salinity levels in the San
21 Joaquin River by just 0.02 percent.³ This expenditure of scarce resources will need to commence
22 immediately to ensure compliance with stringent effluent limitations even though the water quality
23 objectives on which the effluent limitations are based may change. In addition to addressing key
24 issues with respect to salinity, this Petition also raises fundamental issues regarding the application
25 of the reuse exemption in Title 27 to storage ponds used to store recycled water prior to use. As
26 the state agency tasked to ensure the *reasonable* regulation of the state's water quality given all

27 _____
28 ³ The percentage of improvement is based on summer 2008 conditions for Manteca's discharge and EC concentrations
in the San Joaquin River for this time period.

1 demands made upon the waters, it is imperative that the State Water Board decides upon the issues
2 in Manteca's Petition. Moreover, the challenged provisions result from the Central Valley Water
3 Board's attempt to interpret two recent precedential orders issued by the State Water Board.

4 More specifically, the Petition challenges whether the Central Valley Water Board acted
5 appropriately and reasonably when it adopted certain Permit provisions related to EC and Title 27.
6 Manteca petitions the State Water Board to review the WQBELs that require the average monthly
7 EC of the WQCF's effluent not to exceed 700 $\mu\text{mhos/cm}$ between April 1 and August 31 each
8 year. Manteca also petitions for review of the Central Valley Water Board's determination that
9 the SESP does not qualify for the reuse exemption of Title 27. These Permit provisions dictate
10 that Manteca use its increasingly scarce public resources to comply with potentially unnecessary
11 requirements that are also unreasonable and not supported by the evidence.

12 Accordingly, Manteca respectfully requests that the State Water Board revise the Permit to
13 continue the previous permit's imposition of a year-round effluent limitation of 1,000 $\mu\text{mhos/cm}$
14 for EC in lieu of the adopted bifurcated scheme.⁴ This would render the TSO unnecessary, so
15 Manteca further requests that the State Water Board rescind the TSO. Manteca requests that the
16 State Water Board find that the SESP qualifies for the reuse exemption of Title 27 and modify the
17 Permit accordingly. In the alternative, Manteca respectfully requests a remand of the Permit to the
18 Central Valley Water Board for revisions as directed by the State Water Board.

19 II. FACTUAL BACKGROUND

20 Manteca owns and operates the Manteca WQCF. The WQCF serves a total population of
21 approximately 80,500 people in Manteca, the City of Lathrop, Raymus Village, and other
22 communities. The WQCF produces secondary and tertiary treated municipal effluent. Manteca
23 stores secondary treated effluent in an onsite pond (i.e., the SESP) for agricultural use. Manteca
24 owns and operates approximately 190 acres of the agricultural fields, while Dutra Farms, Inc.

25
26 ⁴ The Permit imposes effluent limitations of 1,000 $\mu\text{mhos/cm}$ from September 1 to March 31 for the current discharge
27 of 9.87 mgd and the future expanded discharge of 17.5 mgd. (Permit at pp. 12, 13.) As explained in this statement of
28 points and authorities, Manteca maintains that the water quality objectives at issue do not apply to municipal
discharges. Nevertheless, the WQCF can comply with the effluent limitations of 1,000 $\mu\text{mhos/cm}$ and does not now
challenge them.

1 owns and operates another 70 acres. Secondary effluent in excess of crop demands undergoes
2 tertiary-level treatment. The tertiary treated effluent is used for construction purposes or is
3 discharged to the San Joaquin River. Manteca has plans for additional uses of tertiary treated
4 effluent as recycled water. (See City of Manteca Recycled Water Master Plan, 2007.)

5 The Manteca WQCF previously operated under Order No. R5-2004-0028 issued by the
6 Central Valley Water Board in 2004, as modified by the State Water Board in the 2005 Manteca
7 Order. (Order No. R5-2004-0028, NPDES No. CA0081558 *Waste Discharge Requirements for*
8 *City of Manteca, City of Lathrop and Dutra Farms Wastewater Quality Control Facility*
9 (2004 Permit), attached hereto as Exh. B; 2005 Manteca Order at pp. 22-23.) Manteca has
10 significantly upgraded the WQCF since 2004. In August 2005, Manteca obtained higher quality
11 surface water from the South County Water Supply Program to blend with Manteca's existing
12 groundwater drinking water supply to improve the water supply source (i.e., lower salinity). In
13 May 2006, Manteca added biological nitrification-denitrification to the secondary treatment
14 process. In September 2007, Manteca added a secondary effluent equalization pond, tertiary
15 filters, an ultraviolet light pathogen deactivation system (UV disinfection), and recycled water-
16 pumping station and made other improvements. In 2007, Manteca also modified the WQCF to
17 separate fully the food-processing wastes from the municipal effluent. As a result of these
18 improvements, Manteca has reduced the EC in its effluent by almost 30 percent.

19 In August 2008, Manteca submitted a report of waste discharge and applied to renew the
20 Permit for the WQCF under the NPDES program. Manteca sought to increase the WQCF's
21 permitted discharge from 9.87 mgd to 17.5 mgd of tertiary treated wastewater. The Central Valley
22 Water Board deemed the application complete on December 11, 2008, and adopted the Permit on
23 October 8, 2009.

24 The Permit includes findings and conditions related to EC and whether the SESP qualifies
25 for the reuse exemption under Title 27. The Permit imposes effluent limitations of 700 $\mu\text{mhos/cm}$
26 (April 1 to August 31) and 1,000 $\mu\text{mhos/cm}$ (September 1 to March 31) for the current and
27 increased future discharges of EC. (Permit at pp. 12, 13.) Since the Central Valley Water Board
28 declined to find the SESP subject to the reuse exemption from Title 27, the Permit establishes a

1 compliance schedule for the WQCF to determine compliance with the Basin Plan, which is a pre-
2 condition required to apply the sewage or wastewater exemptions of Title 27 to the SESP. (Permit
3 at p. F-14; see also Title 27, § 20090(a), (b).)

4 III. ARGUMENT

5 A. The Final Effluent Limitations of 700 µmhos/cm for EC Are Unlawful as Applied to the 6 Manteca WQCF and Otherwise Inappropriate

7 As indicated above, in 2004, the Central Valley Water Board adopted a permit for Manteca
8 that contained effluent limitations for EC that are identical to those at issue in this Petition. (See
9 2005 Manteca Order at p. 11; Permit at p. F-49.) Manteca challenged those limitations by way of
10 a petition to the State Water Board. After reviewing Manteca's petition, the State Water Board
11 issued and adopted the 2005 Manteca Order, which found that the effluent limitation of
12 700 µmhos/cm was unreasonable and inappropriate as applied to Manteca. (2005 Manteca Order
13 at p. 12; Permit at p. F-50.) The 2005 Manteca Order revised the 2004 Permit accordingly. (See
14 2005 Manteca Order at pp. 22-24.) Now, just four years later, the Central Valley Water Board has
15 adopted the very same limitation declared unreasonable in the 2005 Manteca Order. For the same
16 reasons articulated in the 2005 Manteca Order, the adoption of such a limitation in the 2009 Permit
17 is as unlawful and unreasonable today as it was in 2005.

18 1. The Rationale in the 2005 Manteca Order Remains Valid, Sound and Applies Here

19 The 2005 Manteca Order governs the issuance of Manteca's Permit. The recently adopted
20 State Water Board Order regarding the City of Tracy (Tracy) Wastewater Treatment Plant does not
21 change the regulatory landscape for Manteca. (See Tracy Order.) The Tracy Order directed the
22 Central Valley Water Board to apply the southern Delta EC objectives to Tracy's discharge.
23 (Tracy Order at pp. 5-10.) However, the Tracy Order does not apply to Manteca. Rather, a quasi-
24 adjudicatory decision of the State Water Board specific to Manteca's circumstances—the
25 2005 Manteca Order—governs. While the 2005 Manteca Order is not precedential for other
26 dischargers, it controls with regard to the Manteca WQCF.

27 The 2005 Manteca Order relied on "the unique background and facts in this case."
28 (2005 Manteca Order at p. 12.) The unique circumstances of the WQCF's discharge that existed

1 in 2005 remain unchanged today. Conclusions in the 2005 Manteca Order apply equally to the
2 current conditions and circumstances in that: (1) assuring compliance with the 700 μ mhos/cm EC
3 limitations in Manteca's Permit for April through August will require construction and operation
4 of MF/RO facilities for at least a portion of the WQCF's effluent at a very large cost (see
5 PowerPoint Presentation to Central Valley Water Board from Phil Govea, City of Manteca
6 (Presentation), attached hereto as Exh. C, at Slide No. 8; see also Declaration of Phil Govea in
7 Support of City of Manteca's Request for Stay (Govea Decl.) at ¶¶ 9-10, filed concurrently
8 herewith); and (2) Manteca's use of MF/RO would have little effect on the EC of water in the river
9 (i.e, the receiving water) because the rate of Manteca's discharge as compared to the receiving
10 water is negligible.⁵ (See 2005 Manteca Order at p. 12; see also Presentation, Exh. C, at Slide
11 No. 10.)

12 In the 2005 Manteca Order, the State Water Board noted the marginal effect of the
13 WQCF's discharge on the San Joaquin River and acknowledged that municipal dischargers are not
14 part of the Bay-Delta Plan's program to implement the objectives: "... [R]equiring the City to
15 comply with an effluent limitation of 700 μ mhos/cm EC would not significantly change the EC of
16 water in the southern Delta area." (2005 Manteca Order at p. 13.) The State Water Board's own
17 data confirm the extremely minor impact of Manteca's discharge on the river. The data indicate
18 that *all* of the municipal discharges to the San Joaquin River *collectively* contribute less than
19 one percent of the total salt loading. (San Joaquin River Annual Salt Loading WY 1985-1995,
20 included in Materials for April 15, 2009 Special Meeting of the State Water Resources Control
21 Board regarding Salinity Issues at p. 0009; see Letter to J. Marshall, Central Valley Water Board
22 from P. Govea, City of Manteca regarding comments on tentative Permit (Sept. 10, 2009) at p. 2.)

23
24

25 ⁵ In the Manteca Order, the State Water Board found:

26 (1) [A]ssuring compliance with the 700 μ mhos/cm EC limitation in the City's permit for April
27 through August would probably require construction and operation of a reverse osmosis treatment
28 plant for at least a portion of the City's effluent at a very large cost; and (2) *because of the relatively high salinity of the receiving water and the relatively small portion of flow provided by the City's discharge, the City's use of reverse osmosis would have relatively little effect on the EC of water in the river.* (2005 Manteca Order at p. 12, emphasis added.)

1 In its most recent decision to adopt WQBELs that are more stringent than those required by
2 the 2005 Manteca Order, the Central Valley Water Board found that the Tracy Order and 2006
3 amendments to the Bay-Delta Plan supersede the conclusions in the 2005 Manteca Order. We
4 disagree. As indicated in section A.5 below, the State Water Board's assertion in the Tracy Order
5 that the 2006 amendments to the Bay-Delta Plan merely affirmed that the EC objectives apply to
6 municipal discharges is unsubstantiated. (Tracy Order at p. 8, fn.12.) Moreover, to date, the
7 United States Environmental Protection Agency (U.S. EPA) has not approved the amendments as
8 required by law before they may apply to NPDES permit conditions. (See 40 C.F.R. § 131.21; see
9 *Alaska Clean Water Alliance v. U.S. EPA*, No. C96-1726R, 1997 U.S. Dist. LEXIS 11144, at *8-9
10 (W.D. Wash. July 8, 1997) [finding that, "Congress did not intend new or revised state standards
11 to be effective *until after* EPA had reviewed and *approved* them," emphasis added], and *Northwest*
12 *Environmental Advocates v. U.S. EPA*, No. 05-1876-HA, 2208 U.S. Dist. LEXIS 2115, at *3-4
13 (D. Or. Jan. 7, 2008) [holding that 40 C.F.R. § 131.21(c) prohibits state water quality standards
14 promulgated after May 30, 2000, from being effective until formally approved by U.S. EPA].)
15 Nothing since the 2005 Manteca Order has altered the material facts that underpin it. Indeed, the
16 Tracy Order notes that the objectives are "unchanged" from the 1991 version of the Bay-Delta
17 Plan; the same objectives were in effect when the State Water Board adopted the 2005 Manteca
18 Order. (Tracy Order at p. 12; see section A.5.a below.) Thus, the State Water Board's rationale
19 and conclusion in the 2005 Manteca Order that the 700 µmhos/cm should not apply to Manteca's
20 discharge remains sound and applies equally to the 2009 Permit.

21 2. There are no Feasible Interim Planning Solutions that can be Fully Implemented in
22 Time for Manteca to Avoid Pursuing MF/RO

23 In its Tracy Order, the State Water Board stated that the Central Valley Water Board could
24 consider "interim planning solutions" for additional flexibility in regulating salt discharges.
25 (Tracy Order at p. 10.) The "interim planning solutions" identified included variances, site-
26 specific objectives and/or an off-set policy. (*Id.* at p. 10, fn.17.)⁶ Although characterized as

27 _____
28 ⁶ In contrast, total maximum daily loads and the Central Valley Water Board's CV-SALTS processes were identified
as long-term options. (Tracy Order at p. 10, fn.17.)

1 “interim” options, all three require planning, development, public review, and multiple agency
2 adoption and/or approval. (See Stay Request, section C.2.b.) By virtue of the required processes
3 alone, leaving aside the feasibility of these options based on technical or policy grounds, the time
4 associated with implementation of such options is at least five years. (Declaration of Michael D.
5 Bryan, Ph.D., In Support of City of Manteca’s Request for Stay (Bryan Decl.), filed concurrently
6 herewith, at ¶¶ 6, 9, 12 and 14.) Moreover, this timeframe does not account for or reflect current
7 staffing issues and furloughs due to the state’s budgetary circumstances.

8 As indicated previously, Manteca received a TSO that allows five years to come into
9 compliance with the effluent limitations at issue here, which provides Manteca with protection
10 from mandatory minimum penalties (MMPs). As a matter of law, Manteca cannot receive further
11 protection from MMPs beyond this timeframe. (Wat. Code, § 13385(j)(3)(C).) Thus, absent a
12 change in statute or other regulation, Manteca must comply with the effluent limitations of
13 700 µmhos/cm (April 1-August 31) by October 1, 2014. To ensure compliance and avoid the
14 imposition of MMPs and other enforcement actions, Manteca has no choice but to move forward
15 with MF/RO at this time, as it is the only option with sufficient certainty to ensure compliance
16 with the TSO.

17 3. The Delta’s Salinity Problems are Complex, and the EC Objectives for the
18 Southern Delta are in Flux

19 As indicated in the 2006 Bay-Delta Plan, the State Water Board continues to review and
20 evaluate the efficacy of the southern Delta water quality objectives. (Bay-Delta Plan at p. 6.) As
21 part of this effort, the State Water Board is to review: (1) the salinity requirements of the
22 beneficial uses of water in the southern Delta; (2) the causes of salt loading in the southern Delta;
23 (3) practices that could reduce the salt loading; (4) flow and salt load reduction measures to
24 implement the salinity objectives; and (5) the timeline to implement these measures. (*Ibid.*) Thus,
25 the State Water Board initiated a public process to review and potentially update the Bay-Delta
26 Plan, water rights and water quality regulation.⁷ Most recently, the State Water Board published a

27 ⁷ http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/. Manteca requests that the State
28 Water Board take official notice under section 648.2 of title 23 of the California Code of Regulations of the fact that the State Water Board initiated the ongoing public process to review the Bay-Delta Plan.

1 schedule for this process indicating full adoption and approval of such amendments by March of
2 2011.⁸

3 Recent scientific investigations indicate that the 700 $\mu\text{mhos/cm}$ is more restrictive than
4 needed to protect beneficial uses. (See Dr. Glenn Hoffman, *Salt Tolerance of Crops in the*
5 *Southern Sacramento-San Joaquin Delta* (July 14, 2009) (Hoffman Report).) The Hoffman
6 Report considers several approaches to determine salinity requirements for the conditions specific
7 to the southern Delta to support the agricultural beneficial use. The Hoffman Report recommends
8 EC objectives for crop protection during the summer irrigation season that range from
9 800 $\mu\text{mhos/cm}$ to 1,400 $\mu\text{mhos/cm}$. (*Id.* at pp. 76-77.) Notably, the Hoffman Report demonstrates
10 that the Manteca WQCF's current discharge of EC is within levels that protect the most sensitive
11 beneficial uses. In light of the State Water Board's pending process, it is unreasonable to expect
12 Manteca to commit scarce resources to meet a water quality objective that may change in the next
13 15 months. However, because of the uncertainty and controversy surrounding the Bay-Delta Plan,
14 Manteca is left with no other option.

15 4. Manteca Relied in Good Faith on the 2005 Manteca Order to Take Affirmative
16 Steps to Significantly Reduce the Salinity of the WQCF's Discharge

17 Manteca made drastic operational changes and irretrievably committed resources to
18 comply with the modified 2004 Permit's year-round EC effluent limitation of 1,000 $\mu\text{mhos/cm}$.
19 Before mid-2005, groundwater was Manteca's potable water source. The local groundwater is
20 high in total dissolved solids and thus caused EC levels in the effluent to exceed the WQCF's prior
21 1,000 $\mu\text{mhos/cm}$ EC limitation. Beginning in August 2005, Manteca began to change the makeup
22 of the potable water supply source to include surface water from the newly constructed South San
23 Joaquin Irrigation District surface water treatment plant. Moreover, Manteca constructed the
24 Industrial Pipeline System in part to eliminate EC contributed to the WQCF from Manteca's
25 largest industrial discharger. The Industrial Pipeline System became fully operational in April
26 2007 and separates the food processing wastes from the WQCF for direct application to
27

28 ⁸ See www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/index.shtml.

1 agricultural fields. In September 2007, the City replaced its chlorine disinfection and
2 dechlorination processes by upgrading the WQCF to use UV disinfection and tertiary treatment
3 through the installation of filters.

4 As a result of these actions, Manteca has reduced the WQCF effluent EC from an average
5 of approximately 1,000 $\mu\text{mhos/cm}$ to an average of less than 800 $\mu\text{mhos/cm}$ —more than a
6 27 percent reduction. (See Transcript of the Central Valley Regional Water Quality Control
7 Board, Item 17, City of Manteca and Dutra Farms, Inc., Manteca Wastewater Quality Control
8 Facility, San Joaquin County – Consideration of NPDES Permit Renewal (NPDES
9 No. CA0081558) and Time Schedule Order (Oct. 8, 2009) (Transcript) at pp. 31-32; all cited
10 pages attached hereto as Exh. D.) Manteca has fully complied with the 1,000 $\mu\text{mhos/cm}$ year-
11 round EC effluent limitation. Despite the significant decreases, the WQCF will not comply with
12 the EC effluent limitations of 700 $\mu\text{mhos/cm}$ for April through August for current and increased
13 future discharges. (See Transcript at p. 35.) To ensure compliance would require MF/RO for only
14 2.5 mgd of the WQCF effluent.⁹ (See *ibid.*) Initial construction costs for MF/RO facilities are
15 estimated at \$38.4 million, which results in an annual cost of approximately \$3.7 million for
16 capital improvements and operation and maintenance of the facilities. (See *ibid.*) These costs do
17 not account for the disposal of approximately 0.5 mgd of highly saline brine that will result from
18 the MF/RO process.¹⁰ (See *ibid.*) Even with this expenditure, there would be no meaningful
19 improvement in EC receiving water levels.¹¹ In sum, compliance with the WQBELs of
20 700 $\mu\text{mhos/cm}$ will result in a 0.02 percent reduction of salinity in the San Joaquin River. (See
21 *ibid.*) The marginal benefit simply does not justify the costs to construct and operate MF/RO
22 facilities nor warrant the undesirable environmental effects of the brine disposal. Thus, these
23

24 ⁹ Manteca is considering whether to regulate water softeners to reduce further the salinity in the WQCF's effluent.
25 (Transcript at pp. 33-34.) While regulating water softeners may provide some benefit, this alone would not be enough
to eliminate the need to install MF/RO facilities.

26 ¹⁰ The State Water Board previously took official notice that the use of reverse osmosis would produce highly saline
brine that requires acceptable disposal. (2005 Manteca Order at p. 12.)

27 ¹¹ Based on Manteca's 2008 antidegradation analysis, an increase in Manteca's discharge to 17.5 mgd results in an
28 incremental improvement in EC in the river during critical dry flow conditions to an estimated one percent; during dry
normal years, the improvement would be an approximate 0.5 percent.

1 WQBELs are directly contrary to the rationale in the State Water Board's 2005 Manteca Order
2 that expressly governs the WQCF's discharge and must be rescinded.

3 5. The Bay-Delta Plan Water Quality Objectives for EC Do Not Apply to Municipal
4 Discharges nor the Entire Southern Delta

5 The Bay-Delta Plan establishes water quality objectives for EC to protect agricultural
6 beneficial uses. The EC objectives at issue here are for four specified compliance locations in the
7 southern Delta and include 700 $\mu\text{mhos/cm}$ between April and August and 1,000 $\mu\text{mhos/cm}$
8 between September and March. (Bay-Delta Plan at p. 13.) To implement the EC objectives, the
9 Permit imposes final effluent limitations for EC that are identical to the objectives and
10 immediately effective on the Manteca WQCF.¹² (Permit at pp. 12, 13.)

11 The Permit includes effluent limitations based on the erroneous determination that the
12 Bay-Delta Plan's EC objectives to protect agricultural water supply in the southern Delta apply to
13 municipal discharges. (Permit at p. F-48.) A careful review of the history of the EC objectives
14 reveals that the State Water Board did not intend for the objectives to apply to municipal
15 discharges in the Delta. The State Water Board must amend the Bay-Delta Plan in accordance
16 with the Water Code before the EC objectives and associated implementation program may
17 lawfully apply to the Manteca WQCF's discharge.¹³

18 a. The History of the Bay-Delta Plan Agricultural Water Quality Objectives
19 for EC Evinces No Intent to Apply the Objectives to Manteca

20 The Bay-Delta Plan's history reveals that the State Water Board did not intend for the EC
21 objectives at issue to apply to municipal discharges—at least not until the Board amended the plan
22 in 2006.¹⁴ The State Water Board established the EC objectives for the southern Delta to protect
23

24 ¹² The WQBELs adopted in the Permit take effect immediately; however, because Manteca cannot immediately
25 comply with the WQBELs consistently, the Central Valley Water Board concurrently adopted a TSO, which provides
Manteca with an additional five years to comply.

26 ¹³ Since the Bay-Delta Plan EC objectives do not lawfully apply to municipal discharges at this time, there is no
27 applicable numeric water quality objective with which to conduct a reasonable potential analysis for municipal
discharges of EC.

28 ¹⁴ As discussed in section III.A.5.b, *infra*, the State Water Board did not satisfy the Water Code for amending basin
plans so that the EC objectives may lawfully apply to municipal discharges.

1 agricultural beneficial uses in the 1978 version of the Bay-Delta Plan. (See 1978 Bay-Delta Plan.)
2 The 1978 Bay-Delta Plan represented the first time the State Water Board fully combined its water
3 quality and water rights functions to develop a single set of water quality objectives. (*Id.* at p. I-2.)
4 In the plan, the State Water Board stated that it would adopt a *water right* decision to implement
5 the salinity objectives. (*Id.* at p. VII-2.) The State Water Board intended to control *water*
6 *quantity/flow* in the Delta—not municipal discharges—to meet the EC objectives.

7 The 1991 version of the Bay-Delta Plan included water quality objectives for EC in the
8 southern Delta applicable at four compliance points—the Vernalis gauge station and three other
9 southern Delta locations. (*Water Quality Control Plan for Salinity, San Francisco Bay/
10 Sacramento-San Joaquin Delta Estuary* (May 1991) (1991 Bay-Delta Plan) at Table 1-1, p. 4
11 of 8.) The objectives specified EC levels of 0.7 millimhos per centimeter (mmhos/cm) or
12 700 μ mhos/cm from April 1 through August 31, and 1.0 mmhos/cm or 1,000 μ mhos/cm from
13 September 1 through March 31.¹⁵ (*Ibid.*) Similar to the 1978 Bay-Delta Plan, the 1991 version did
14 not apply EC objectives to municipal discharges. Rather, the plan required that the objective be
15 met through flow requirements: “[T]he State Board recognizes that the flow requirements and
16 salinity objectives are largely to be met by the regulation of water flow.” (*Id.* at p. 2-2; see
17 2005 Manteca Order at p. 13.) The State Water Board also established a goal to reduce the salt
18 loadings to the San Joaquin River by at least 10 percent through increased irrigation efficiency,
19 which decreases subsurface drainage. (*Id.* at p. 7-4.) The 1991 Bay-Delta Plan refers to
20 development of a salt load reduction policy, the goals of which “should be achieved through
21 development of best management practices and waste discharge requirements *for non-point source*
22 *dischargers.*” (*Id.* at p. 7-5, emphasis added; see 2005 Manteca Order at p. 7.)

23 In May 1995, the State Water Board adopted a revised Bay-Delta Plan. (*Water Quality
24 Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, 95-1WR, May
25 1995* (1995 Bay-Delta Plan).) The 1995 Bay-Delta Plan delayed the implementation date of the
26 EC objectives until December 31, 1997. (*Id.* at p. 17; 2005 Manteca Order at p. 7.) The plan

27
28 ¹⁵ The 1991 Bay-Delta Plan specified the values as maximum 30-day running averages of mean daily EC. (1991 Bay-Delta Plan at Table 1-1, p. 4 of 8.)

1 expressed that the State Water Board would evaluate implementation measures for the southern
2 Delta agricultural salinity objectives during *water right proceedings*. (1995 Bay-Delta Plan at
3 pp. 17, 29; 2005 Manteca Order at p. 8.) The 1995 Bay-Delta Plan addresses the implementation
4 program for the objectives as follows:

5 Elevated salinity in the southern Delta is caused by low flows, salts imported in
6 irrigation water by the State and federal water projects, and discharges of land-
7 derived salts primarily from agricultural drainage. *Implementation of the*
8 *objectives will be accomplished through the release of adequate flows to the San*
9 *Joaquin River and control of saline agricultural drainage to the San Joaquin River*
10 *and its tributaries.* (1995 Bay-Delta Plan at p. 29, emphasis added; 2005 Manteca
11 Order at pp. 7-8.)

12 In March 2000, the State Water Board adopted Revised Water Right Decision 1641
13 (D-1641). D-1641 addressed the relationship between water diversions (flow) and implementation
14 of water quality objectives for the Delta. (See *id.* at p. 83.) In 2004, the State Water Board
15 adopted Resolution No. 2004-0062 to affirm the Bay-Delta Plan as it then existed unless and until
16 changed by further Board action. (See 2005 Manteca Order at p. 10.) In adopting the staff report,
17 the State Water Board accepted the recommendation to receive information on whether to amend
18 the EC objectives at issue. (Resolution No. 2004-0062, attached hereto as Exh. E for the Board's
19 convenience, at p. 1; see 2005 Manteca Order at p. 10.) The State Water Board also agreed to
20 consider whether to amend the Bay-Delta Plan implementation program as related to any changes
21 to the EC objective. (Resolution No. 2004-0062 at p. 2; see 2005 Manteca Order at p. 10.) At no
22 time during the 25-year history did the State Water Board identify treated municipal discharges as
23 a source of salinity in the southern Delta to be regulated under the Bay-Delta Plan. (Resolution
24 No. 2004-0062.)

25 On December 13, 2006, the State Water Board amended the Bay-Delta Plan again. (See
26 State Water Board Resolution No. 2006-0098, attached hereto as Exh. F for the Board's
27 convenience.) The amendments did not change the EC objectives as established in Table 2 of the
28 Bay-Delta Plan for the southern Delta despite substantial evidence that the objectives are not
necessary for the reasonable protection of agricultural beneficial uses. (See, e.g., Plan Amendment
Report, Appendix 1 to the 2006 Water Quality Control Plan for the San Francisco

1 Bay/Sacramento-San Joaquin Delta Estuary (Nov. 29, 2006) (2006 Plan Amendment Report) at
2 pp. 67-72.) Indeed, the 2006 Bay-Delta Plan reads:

3 The water quality objectives in Table 2 provide reasonable protection of the
4 beneficial use AGR, from the effects of salinity intrusion and agricultural drainage
5 in the western, interior, and southern Delta. *These objectives are unchanged from*
6 *the 1991 Bay-Delta Plan.* (2006 Bay-Delta Plan at p. 11, emphasis added.)

7 However, general language was added to the Bay-Delta Plan as follows:

8 Unless otherwise indicated, *water quality objectives cited for a general area, such*
9 *as for the southern Delta, are applicable for all locations in that general area and*
10 *compliance locations will be used to determine compliance with the cited*
11 *objectives.* (2006 Bay-Delta Plan at p. 10, emphasis added.)

12 In addition, the State Water Board amended the implementation program in chapter IV to
13 require “discharge controls on in-Delta discharges of salts by agricultural, domestic, and *municipal*
14 *discharges.*” (2006 Bay-Delta Plan at p. 28, emphasis added.) The Board also removed a footnote
15 that clarified the compliance/monitoring locations and entities that must comply with the EC
16 objectives and a footnote that established the compliance deadline. (*Id.* at p. 18.) If and when the
17 amendments receive all necessary approvals, the 2006 Bay-Delta Plan will supersede all previous
18 versions of the plan. (*Id.* at p. 1.) However, as discussed below, that has yet to occur. Until such
19 time that it does, the 2006 Amendments do not fundamentally change application of the southern
20 Delta EC objectives so that they may now apply to municipal discharges.

21 b. The State Water Board did Not Follow Water Code Requirements for
22 Amending the Bay-Delta Plan to Apply the EC Objectives to Municipal
23 Discharges

24 The 2006 Bay-Delta Plan amendments at issue were substantive. The revisions
25 unreasonably and wholly altered the geographic scope of the EC objectives for the southern Delta
26 and applied them to municipal discharges in the implementation program *for the first time.*
27 Specifically, the State Water Board claims to have amended the Bay-Delta Plan to expand the
28 spatial application of the objectives from the four specific compliance locations to “all locations in
that general area.” (2006 Bay-Delta Plan at p. 10; see 2006 Plan Amendment Report at p. 16.)
However, the amendments occurred without the analysis mandated by Water Code section 13241,
without a comprehensive implementation plan as required by Water Code section 13242 and in
violation of the reasonableness requirement of Water Code section 13000. Further, U.S. EPA has

1 yet to approve the amendments as required by section 131.21 of title 40 of the Code of Federal
2 Regulations prior to their use in NPDES permits. (*Alaska Clean Water Alliance, supra,*
3 1997 U.S. Dist. LEXIS 11144, at *8-9; *Northwest Environmental Advocates, supra,*
4 2008 U.S. Dist LEXIS 2115, at *3-4.)

5 Water Code section 13241 requires the State Water Board to adopt water quality objectives
6 to “ensure the *reasonable* protection of beneficial uses and the prevention of nuisance.”

7 (Emphasis added.) Water Code section 13241 “recognize[s] that it may be possible for the quality
8 of water to be changed to some degree without *unreasonably* affecting beneficial uses.”

9 (Emphasis added.) The factors the State Water Board must consider when it adopts water quality
10 objectives include:

- 11 (a) Past, present, and probable future beneficial uses of water.
- 12 (b) Environmental characteristics of the hydrographic unit under consideration,
including the quality of water available thereto.
- 13 (c) Water quality conditions that could reasonably be achieved through the
coordinated control of all factors which affect water quality in the area.
- 14 (d) *Economic considerations.*
- 15 (e) The need for developing housing within the region.
- 16 (f) The need to develop and use recycled water. (Wat. Code, § 13241,
emphasis added.)

17 In addition, Water Code section 13000 requires the State Water Board to regulate water
18 quality to the extent reasonable given the demands made upon the waters. Therefore, multiple
19 provisions of the Water Code impose a mandatory duty on the Board to adopt water quality
20 objectives that are reasonable. (Memorandum to Central Valley Water Boards from
21 W. R. Attwater, Office of Chief Counsel, State Water Board (Jan. 4, 1994) p. 3.) “[E]conomic
22 considerations are a necessary part of the determination of reasonableness.” (*Ibid.*) This requires
23 an assessment of the costs of an objective’s adoption or amendment based upon: (1) whether the
24 objective is attained; (2) what methods are available to achieve compliance with the objective if
25 not it is not attained; and (3) the costs of those methods. (*Id.* at p. 1.) The State Water Board must
26 consider any information on economic impacts provided by the regulated community and other
27 interested parties. (*Ibid.*) If the potential economic impacts are significant, the State Water Board
28 must articulate why the objective is necessary to protect beneficial uses in a reasonable manner
despite the adverse consequences. (*Ibid.*) Where an amended objective is at issue, the associated

1 staff report or resolution may address the economic considerations. (*Id.* at pp. 1-2.)

2 When the State Water Board adopts new or modified water quality objectives, it must
3 include a program of implementation to achieve the objectives. (Wat. Code, § 13242.) An
4 implementation program describes the actions necessary to achieve the objectives, including
5 recommendations for action by any public or private entity. (Wat. Code, § 13242(a).) The
6 administrative record for the 2006 Bay-Delta Plan as amended clearly shows that the State Water
7 Board complied with *none* of these statutory requirements. Instead, the record indicates that the
8 State Water Board attempted to characterize these substantive changes as editorial and declaratory
9 revisions. (See, e.g., Tracy Order at p. 8, fns.12 and 10.) Such a claim conflicts directly with the
10 State Water Board's findings and conclusions in the 2005 Manteca Order. As previously
11 explained, the Bay-Delta Plan has always relied primarily on flow requirements to implement the
12 EC objectives in the southern Delta. In the specific case of the Manteca WQCF's discharge, the
13 State Water Board observed:

14 [A]lthough discharge of treated wastewater to the Delta or its tributaries under an
15 NPDES permit can affect EC in the southern Delta, *previous State Board decisions*
16 *and water quality control plans do not discuss treated effluent discharges as a*
17 *source of salinity in the southern Delta. Similarly, previously adopted*
18 *implementation programs for complying with the EC objectives in the southern*
19 *Delta have focused primarily on providing increased flows and reducing the*
20 *quantity of salts delivered to the Delta and its tributaries by irrigation return flows*
21 *and groundwater. The record also establishes that the implementation date for*
22 *actions to implement the 0.7 mmhos/cm EC objective for April through August has*
23 *been repeatedly postponed and that the State Board recently adopted a report*
24 *recommending review of southern Delta EC objectives. Revised Water Right*
25 *Decision 1641 places primary responsibility for meeting the EC objectives on the*
26 *Department of Water Resources and the Bureau of Reclamation*
27 *(2005 Manteca Order at pp. 10-11, emphasis added.)*

28 Having made these statements in 2005, the State Water Board *cannot* rewrite history by
way of amendments to the Bay-Delta Plan in 2006 claiming that the EC objectives were always
intended to apply to municipal discharges.

 Moreover, the 2006 Bay-Delta Plan memorializes the State Water Board's commitment to
review (and likely amend) the EC objectives and implementation program at issue. (2006 Bay-
Delta Plan at p. 6.) Thus, contrary to the assertions made in the Tracy Order, the State Water
Board's adoption of the 2006 Bay-Delta Plan can hardly be characterized as a reaffirmation of the

1 southern Delta objectives. (See Tracy Order at p. 10, claiming “reaffirmation” by way of the 2006
2 amendments.) The State Water Board has initiated a public process to review the southern Delta
3 EC objectives. Considering the Bay-Delta Plan’s history and its long-standing inclusion of an
4 implementation program that relies on water rights regulation—not regulation of municipal
5 discharges—to meet southern Delta EC objectives, any changes to the Bay-Delta Plan that alter
6 this fundamental premise are necessarily substantive. All substantive changes to the Bay-Delta
7 Plan are subject to the mandates required in Water Code sections 13241, 13242 and 13000. If the
8 substantive changes are not adopted pursuant to these statutory requirements, the changes and
9 application thereof are unlawful. Thus, to the extent that the Central Valley Water Board relied on
10 the 2006 amendments to the Bay-Delta Plan to find that the effluent limitations of 700 µmhos/cm
11 were appropriate, even though such action specifically violated the 2005 Manteca Order, the
12 Central Valley Water Board’s action was unlawful.

13 6. The Permit Should Include Only Year-Round Effluent Limitations of
14 1,000 µmhos/cm for the Manteca WQCF’s Present and Future Discharges

15 Year-round effluent limitations of 1,000 µmhos/cm EC for present and future discharges
16 within the Permit term are lawful, enforceable and will protect beneficial uses. Manteca’s
17 2004 Permit includes a year-round numeric effluent limitation for EC of 1,000 µmhos/cm. The
18 limitation was enforceable and deemed appropriate by the State Water Board after review of
19 evidence in the record. (2005 Manteca Order at p. 22.) “Although the conditions in waste
20 discharge permits are established to implement relevant water quality control plans, the effluent
21 limitations in permits may differ from the numerical water quality objectives established in a Basin
22 Plan for various reasons.” (*Id.* at pp. 12-13.) The Central Valley Water Board likely would have
23 retained the 1,000 µmhos/cm limitation but for its interpretation of the Tracy Order and the
24 2006 Bay-Delta Plan as foreclosing the option. (See Responses to Central Valley Water Board
25 Written Comments (RTC) (Sept. 17, 2009), attached hereto as Exh. G at p. 4; see also Permit at
26 pp. F-49 - F-51; Transcript at pp. 44-46, 63-64, 66, 68-69.) Because the Tracy Order did not
27 overturn or otherwise change application of the 2005 Manteca Order to Manteca, and because
28 implementation of the Bay-Delta Plan in the Permit is unlawful, the Permit should be revised to

1 include year-round EC effluent limitations of 1,000 µmhos/cm for present and future discharges.
2 With that revision, the TSO would become unnecessary and should be rescinded.

3 B. The SESP is Exempt from Title 27 Under the Reuse Exemption

4 Title 27 establishes the minimum standards that govern the water quality associated with
5 waste discharges to land for treatment, storage or disposal. (Title 27, § 20080(a).) The regulations
6 classify wastes and specify requirements to site, design, construct, monitor, and close waste
7 management units (e.g., landfills, waste piles, surface impoundments, and land treatment units).
8 (Title 27, § 20080.) For example, Title 27 classifies as “designated waste” nonhazardous waste
9 that contains pollutants that could affect beneficial uses or exceed applicable water quality
10 objectives when released. (Title 27, §§ 20164, 20210; see Wat. Code, § 13173.) Designated
11 wastes must meet Title 27 containment criteria, such as liner requirements, and require extensive
12 monitoring. (Title 27, § 20210.) Title 27 conditionally exempts certain activities from its
13 provisions. (Title 27, § 20090.) These exemptions include the sewage and reuse exemptions at
14 issue in this case.

15 Manteca stores secondary treated effluent in the SESP prior to use of the recycled water on
16 the agricultural fields. (Permit at p. F-14.) The Central Valley Water Board agrees that the SESP
17 is part of the Manteca WQCF’s water reuse operations, but disagrees that the SESP qualifies for
18 the reuse exemption of Title 27. Since the SESP stores fully treated municipal wastewater for
19 reuse on agricultural lands, Manteca contends that the reuse exemption applies. The reuse
20 exemption reads:

21 Recycling or other use of materials salvaged from waste, or produced by waste
22 treatment, such as scrap metal, compost, and recycled chemicals, provided that
23 discharges of residual wastes from recycling or treatment operations to land shall be
according to applicable provisions of this division. (Title 27, § 20090(h).)

24 The Central Valley Water Board misconstrued Title 27 and a recent State Water Board
25 order to conclude erroneously—and reluctantly—that the only Title 27 exemption that may be
26 applied is the sewage exemption. (RTC at p. 4; Transcript at pp. 55-56, 60-62, 66-70.) The
27 factual basis for this conclusion is that the SESP stores the recycled water until it can be used.
28 (RTC at p. 4.) The Permit’s fact sheet reads: “[T]he Regional Water Board cannot determine

1 whether the wastewater stored in the SESP, and thus the underlying groundwater, comply with the
2 applicable water quality control plan.” (Permit at p. F-14.) As a result, the Permit includes a
3 compliance schedule for the Manteca WQCF to meet the final groundwater limitations by
4 October 1, 2014, and demonstrate or achieve compliance with all preconditions for the sewage
5 exemption. (Permit at pp. 33, F-14.) “Compliance with the groundwater limitations will result in
6 the storage of secondary effluent in the SESP meeting the preconditions for an exemption from
7 Title 27.” (Permit at p. 33.) Under the compliance schedule, Manteca must submit a method of
8 compliance workplan/schedule within six months after the Permit’s adoption and submit annual
9 progress reports thereafter. (Permit at p. 33.)

10 Manteca recognizes that the State Water Board’s recent order regarding the City of Lodi
11 (Lodi) altered the manner in which the Central Valley Water Board is to apply Title 27
12 exemptions. (See *In the Matter of Own Motion Review of City of Lodi Waste Discharge*
13 *Requirements* (July 7, 2009), Order WQ 2009-0005 (Lodi Order).) However, a key fact
14 distinguishes Manteca’s circumstances from those of Lodi and supports application of the reuse
15 exemption in a manner consistent with the Lodi Order. The State Water Board declined to apply
16 the reuse exemption in the Lodi Order because some of the wastewater stored in Lodi’s pond
17 allegedly was untreated industrial waste. (*Id.* at pp. 5, 9.) “[T]he wastewater mixture applied to
18 the fields and discharged to the ponds includes, at various times, secondary effluent, untreated
19 industrial wastewater, a biosolids slurry, stormwater and runoff, and biosolids supernatant.” (*Id.* at
20 p. 10.) This is not the case in Manteca, as the WQCF stores only secondary treated recycled water
21 in the SESP. Nothing in the Lodi Order suggests that the State Water Board would categorically
22 refuse to apply the reuse exemption to ponds that contain only recycled water and are integral to
23 the recycling program.

24 Moreover, the storage of secondary effluent for reuse falls within the reuse exemption
25 because it is an essential component of recycling. Such an outcome is consistent with decades-
26 long legislative and regulatory efforts to increase recycled water use to augment the state’s
27 dwindling water supplies. The Legislature and State Water Board recently ramped up these
28 efforts. For example, signed into law in 2007, Assembly Bill 1481 (De La Torre) required the

1 State Water Board to develop and adopt a general permit for landscape irrigation uses of recycled
2 water. The Board adopted the general permit on July 7, 2009. Moreover, the State Water Board
3 adopted its Recycled Water Policy (Policy) in February 2009. The Policy establishes the goal to:
4 “Increase the use of recycled water over 2002 levels by at least one million acre-feet per year (afy)
5 by 2020 and by at least two million afy by 2030.” (*Id.* at p. 1.) The Policy expressly directs the
6 State and Central Valley Water Boards to exercise their authority *to the fullest extent possible to*
7 *encourage the use of recycled water from municipal wastewater sources.* (*Id.* at pp. 1, 3.)

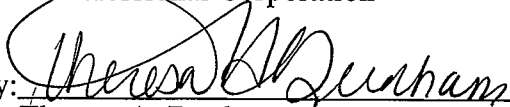
8 Further, a finding that the reuse exemption of Title 27 applies does not mean that the
9 Central Valley Water Board will adopt waste discharge requirements that do not protect
10 groundwater. To the contrary, the Central Valley Water Board is required by Water Code
11 section 13263 to adopt requirements that are consistent with the Basin Plan taking into
12 consideration beneficial uses and water quality objectives, thereby ensuring that the state’s
13 groundwater resources are protected. For these reasons, Manteca need not demonstrate that the
14 WQCF’s use of the SESP complies with the Basin Plan before the reuse exemption may apply.

15 IV. CONCLUSION

16 Based on this Petition and the evidence in the record, Manteca respectfully requests that
17 the State Water Board revise the Permit to replace the seasonal effluent limitations for EC with
18 year-round effluent limitations of 1,000 µmhos/cm for present and future discharges. Since this
19 would render the TSO unnecessary, Manteca requests that the State Water Board also rescind the
20 TSO upon revising the effluent limitations. Manteca further requests that the State Water Board
21 find that the SESP qualifies for the reuse exemption of Title 27 and revise the Permit findings and
22 provisions accordingly. In the alternative, Manteca respectfully requests a remand of the Permit to
23 the Central Valley Water Board with direction to revise the EC limitations and application of
24 Title 27 to the SESP.

25 SOMACH SIMMONS & DUNN
26 A Professional Corporation

27 DATED: November 9, 2009

28 By: 
Theresa A. Dunham
Attorneys for City of Manteca

PROOF OF SERVICE
(State)

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 9, 2009, I served the following document(s):

CITY OF MANTECA'S PETITION FOR REVIEW AND STATEMENT OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

XXX (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
Phone: (916) 464-3291
Email: pcreedon@waterboard.ca.gov

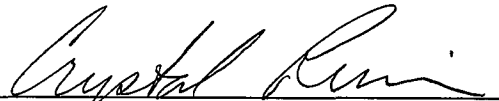
Phil Govea, P.E.
Deputy Director of Public Works—
Utility Engineering
City of Manteca
1001 W. Center Street
Manteca, CA 95337
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XXX (by personal delivery) by having a messenger personally deliver a true copy thereof to the person(s) and at the address(es) set forth below:

Elizabeth Miller Jennings, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812
Phone: (916) 341-5161
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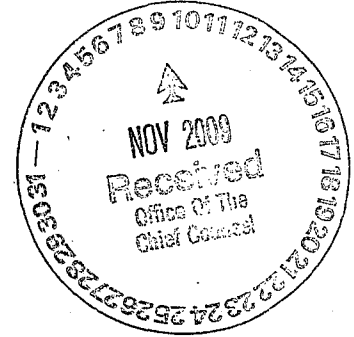
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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2009, at Sacramento, California.



Crystal Rivera

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6 Attorneys for CITY OF MANTECA

7
8

9 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10

11 In the Matter of the Petition of City of Manteca
for Review of Action and Failure to Act by
12 Central Valley Regional Water Quality Control
Board.

SWRCB/OCC File _____

CITY OF MANTECA'S REQUEST FOR
STAY AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF
[Wat. Code, § 13320]

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16 Concurrent with this Request for Stay and Memorandum of Points and Authorities in
17 Support Thereof (Stay Request), the City of Manteca (Manteca) filed a Petition for Review and
18 Statement of Points and Authorities in Support Thereof (Petition). The Petition challenges certain
19 provisions of Order No. R5-2009-0095, NPDES¹ No. CA0081558 *Waste Discharge*
20 *Requirements for City of Manteca and Dutra Farms, Inc., City of Manteca Wastewater Quality*
21 *Control Facility* (Permit) and the associated Time Schedule Order No. R5-2009-0096 (TSO)
22 adopted by the Regional Water Quality Control Board, Central Valley Region (Central Valley
23 Water Board) on October 8, 2009.² Manteca hereby requests a stay of the following provisions of
24 the Permit: Effluent limitations for electrical conductivity (EC) of 700 micromhos per centimeter
25 ($\mu\text{mhos/cm}$) (April 1 to August 31) as set forth in Effluent Limitations and Discharge

26

27 ¹ National Pollutant Discharge Elimination System.

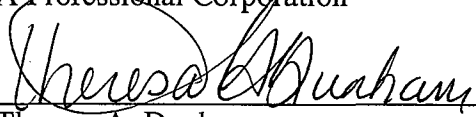
28 ² The Permit is attached as Exhibit A to the City of Manteca's Petition for Review and Statement of Points and
Authorities in Support Thereof, filed concurrently herewith.

1 Specifications IV.A.1.a, Table 6, and IV.A.2.a, Table 7 of Permit pages 12 and 13, respectively.
2 Manteca also requests a stay of the TSO in its entirety.

3 Manteca requests that any such stay take effect as of the effective date of the Permit and
4 TSO until the State Water Resources Control Board (State Water Board or Board) fully acts on
5 the Petition or the time to do so at Manteca's request expires. By virtue of the stay, the length of
6 the period for compliance in the TSO would not change. Rather, each deadline would shift by a
7 period equal to the time between the date that the Permit issued (October 8, 2009) and the date of
8 the Petition's disposition. The total time allowed for compliance and periods for interim steps
9 toward compliance should equal the period(s) provided in the applicable provision unless
10 extended by the State Water Board.

11 Concurrent with this Stay Request, Manteca submits declarations in support of the
12 evidence referred to herein. The Stay Request and declarations demonstrate that a stay is
13 appropriate in this case because: (1) the stay will prevent substantial harm to Manteca and the
14 public interest; (2) the stay will not cause substantial harm to other interested persons or the
15 public interest; and (3) the Petition raises substantial questions of fact or law. (See Cal. Code
16 Regs., tit. 23, § 2053(a)(1)-(3).) To comply with the Permit's effluent limitations of
17 700 µmhos/cm for salinity, Manteca would have to plan, design and install new treatment
18 facilities at a substantial cost for no meaningful water quality benefit. Moreover, there are no
19 "interim planning solutions" that can be fully implemented in time for Manteca to avoid
20 substantial harm. In short, Manteca would have to spend a significant amount of public funds on
21 such facilities *before* the State Water Board can resolve the Petition. In challenging the effluent
22 limitations for salinity as not necessary, reasonable or supported by the record, this Stay Request
23 explains that Manteca will incur substantial harm as a result of the unnecessary expenditure of
24 public funds.

25
26
27 DATED: November 9, 2009
28

SOMACH SIMMONS & DUNN
A Professional Corporation
By: 
Theresa A. Dunham
Attorneys for City of Manteca

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Water Code sections 13320 and 13321, Petitioner Manteca concurrently files
3 its Petition and this Stay Request related to Manteca's Permit and the associated TSO. This Stay
4 Request satisfies the requirements of section 2053 of title 23 of the California Code of
5 Regulations.

6 A. **STATEMENT OF FACTS**

7 Manteca owns and operates the Manteca Wastewater Quality Control Facility (Manteca
8 WQCF or WQCF) in San Joaquin County, California. The WQCF serves a total population of
9 approximately 80,500 people in Manteca, the City of Lathrop, Raymus Village, and other
10 communities. The WQCF produces secondary treated effluent and stores it in an onsite pond
11 prior to reuse on nearby agricultural fields. The secondary effluent in excess of crop demands
12 undergoes tertiary-level treatment. The tertiary treated effluent is used for construction purposes
13 or is discharged to the San Joaquin River. Manteca has plans for additional uses of the recycled
14 water. (See City of Manteca Recycled Water Master Plan, 2007.)

15 The Permit authorizes the Manteca WQCF to increase its discharge from 9.87 million
16 gallons per day (mgd) to 17.5 mgd of tertiary treated water over the next five years. The Permit
17 prescribes final effluent limitations for EC applicable to both the WQCF's current and future
18 discharges. In particular, EC in the effluent may not exceed 700 μ mhos/cm from April through
19 August or 1,000 μ mhos/cm September through March. (Permit at pp. 12, 14.) The summer
20 limitations of 700 μ mhos/cm are new. (See TSO at p. 1.) To comply with these limitations,
21 Manteca must spend an estimated \$38.4 million of increasingly scarce public funds to plan for,
22 design and construct microfiltration and reverse osmosis (MF/RO) facilities and conduct the
23 associated environmental review. (Declaration of Phil Govea in Support of City of Manteca's
24 Request for Stay (Govea Decl.) at ¶ 9.) Manteca must immediately begin to spend a significant
25 portion of this amount for planning, pre-design and compliance with the California
26 Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to ensure timely
27 compliance with the TSO. (Govea Decl. at ¶ 11.) The MF/RO facilities are unnecessary to
28 protect human health or the environment.

1 B. STANDARD FOR ISSUANCE OF A STAY

2 Water Code section 13321 provides: "In the case of a review by the state board under
3 Section 13320, the state board, upon notice and hearing, if a hearing is requested, may stay in
4 whole or in part the effect of the decision and order of a regional board or of the state board."
5 The State Water Board's regulations further provide that it may grant a stay if the petitioner
6 demonstrates:

- 7 (1) [S]ubstantial harm to petitioner or to the public interest if a stay is not
8 granted;
9 (2) [A] lack of substantial harm to other interested persons and to the public
10 interest if a stay is granted; and
11 (3) [S]ubstantial questions of fact or law regarding the disputed action.

12 (Cal. Code Regs., tit. 23, § 2053(a).)

13 The request for stay must be supported by a declaration under penalty of perjury of a
14 person or persons with knowledge of the facts alleged. (Cal. Code Regs., tit. 23, § 2053(a).) As
15 demonstrated below, Manteca's request satisfies these requirements.

16 C. THE STATE WATER BOARD SHOULD ISSUE A STAY PENDING RESOLUTION
17 OF MANTECA'S PETITION FOR REVIEW

18 On October 8, 2009, the Central Valley Water Board reluctantly issued the Permit and
19 TSO that are the subject of Manteca's Petition. (See Transcript of the Central Valley Regional
20 Water Quality Control Board, Item 17, City of Manteca and Dutra Farms, Inc., Manteca
21 Wastewater Quality Control Facility, San Joaquin County – Consideration of NPDES Permit
22 Renewal (NPDES No. CA0081558) and Time Schedule Order (Oct. 8, 2009) (Transcript)
23 at pp. 44-46, 55-56, 60-70. All pages cited to the Transcript are attached as Exhibit D to the City
24 of Manteca's Petition for Review and Statement of Points and Authorities in Support Thereof.)
25 The Permit imposes effluent limitations for EC of 700 µmhos/cm (April 1 to August 31) in
26 Effluent Limitations and Discharge Specifications IV.A.1.a, Table 6, and IV.A.2.a, Table 7, at
27 pages 12 and 13, respectively. These new effluent limitations took immediate effect when
28 adopted. (*Ibid.*) Since the Manteca WQCF cannot immediately comply with the new limitations,
the Central Valley Water Board adopted the TSO. The TSO includes an ambitious schedule to
bring the WQCF into compliance with the limitations by October 1, 2014. (TSO at pp. 4-5.)

1 Despite the potential availability of “interim planning options,” the only certain option for
2 compliance considering the limited time available is the installation of MF/RO facilities for part
3 of the WQCF’s discharge. (Transcript at pp. 34, 42; Govea Decl. at ¶¶ 9-11.) To ensure
4 compliance with the TSO, Manteca must immediately begin to plan and design the MF/RO
5 facilities. (Govea Decl. at ¶ 11.) Moreover, Manteca’s installation of MF/RO facilities is a
6 project under CEQA that will likely require preparation and public review of an Environmental
7 Impact Report. Because of the short time period within which Manteca must perform several
8 tasks to come into compliance, Manteca would have to spend a significant amount of public funds
9 toward this end *before* the State Water Board can resolve the Petition.

10 In challenging the effluent limitations and TSO as unnecessary and unreasonable, the
11 Petition raises substantial technical and legal issues. Specifically, the Petition challenges the
12 Central Valley Water Board’s action as being contrary to this Board’s decision in *In the Matter of*
13 *the Petition of Manteca* (Mar. 16, 2005), Order WQ 2005-0005 (2005 Manteca Order). The
14 Petition also raises questions of uncertainty relating to the feasibility of “interim planning
15 solutions” and to the State Water Board’s ongoing process to update the water quality objectives
16 that are at issue in Manteca’s Permit. On balance, Manteca and the public—the ratepayers—will
17 incur substantial harm as a result of the unnecessary expenditure of public funds if the State
18 Water Board declines to grant this Stay Request. Given the minimal impact of Manteca’s
19 discharge on the river, no substantial harm to interested persons or the public interest will result if
20 the State Water Board grants the Stay Request.

21 Manteca requests that the stay take effect as of the date the Permit and TSO became
22 effective. The provisions subject to the stay and TSO would remain stayed until the State Water
23 Board resolves Manteca’s Petition. By virtue of the stay, the total length of the period for
24 compliance would not change, but each deadline would shift by a period equal to the time
25 between October 8, 2009 (i.e., the date the Permit was adopted) and the date of the Petition’s
26 disposition.

1 1. Manteca Seeks to Stay the Effluent Limitations for EC of 700 μ mhos/cm and
2 Associated TSO

3 Manteca seeks a stay of certain final effluent limitations for EC as improper and
4 unsupported by the evidence. In particular, Manteca respectfully requests that the State Water
5 Board stay the requirement that the WQCF's current and future average monthly discharges of
6 EC not exceed 700 μ mhos/cm April 1 through August 31 of each year. The Permit establishes
7 these seasonal EC limitations in Table 6 and Table 7 of the Effluent Limitations and Discharge
8 Specifications at pages 12 and 13, respectively. Manteca also requests a stay of the TSO in its
9 entirety. The Central Valley Water Board adopted the TSO solely to provide Manteca with time
10 to come into compliance with the challenged effluent limitations without incurring mandatory
11 minimum penalties. By law, the TSO and its protections are limited to five years from adoption
12 of the effluent limitations. (Wat. Code, § 13385(j)(3)(C).)

13 2. This Case Warrants a Stay of the Effluent Limitations for EC of 700 μ mhos/cm
14 and Associated TSO

15 Manteca timely submits this request for a stay of the final effluent limitations of
16 700 μ mhos/cm for EC and TSO in its entirety as adopted by the Central Valley Water Board on
17 October 8, 2009. (See *In the Matter of the Petitions of Boeing Company* (June 21, 2006), Order
18 WQ 2006-0007 (Boeing Order), at p. 5.) As subsequently demonstrated, a stay is proper and
19 should issue in this case. The dispute raises substantial questions of fact or law regarding the
20 challenged action; Manteca and the public interest will suffer substantial harm if the State Water
21 Board does not grant the Stay Request; and no substantial harm to other interested persons or the
22 public interest would result if the State Water Board grants the Stay Request.

23 a. The Disputed Action Raises Substantial Questions of Fact or Law

24 Salinity is a long-standing issue of concern in the Delta. Few water quality issues have
25 presented such contentious technical and legal questions, many of which remain in flux and
26 unresolved. Saline flows intrude into the Delta's freshwaters from the San Francisco Bay and
27 enter the Delta's surface waters from agricultural drainage. The State Water Board concluded
28 that "[e]levated salinity in the southern Delta is caused by low flows, salts imported in irrigation

1 water by the State and federal water projects, and discharges of land-derived salts primarily from
2 agricultural drainage.” (*Water Quality Control Plan for the San Francisco Bay/Sacramento-San*
3 *Joaquin Delta Estuary*, 95-1WR, May 1995 at p. 29; 2005 Manteca Order at pp. 7-8.)

4 The water quality objectives for EC in the southern Delta were at issue in the
5 2005 Manteca Order and continue to be at issue in the Petition. As explained fully in the
6 2005 Manteca Order, the State Water Board has historically regulated flows/water rights to meet
7 these objectives. (See 2005 Manteca Order at pp. 6-10, 13-14.) Indeed, the Bay-Delta Plan did
8 not purport to apply the objectives to municipal discharges when originally adopted. (See *Water*
9 *Quality Control Plan Sacramento-San Joaquin Delta and Suisun Marsh* (Aug. 1978); see also
10 2005 Manteca Order at pp. 13-14.) In 2005, the State Water Board concluded that the effluent
11 limitations at issue here (i.e., 700 $\mu\text{mhos/cm}$) were unreasonable because requiring the WQCF to
12 comply with the limitation would not significantly impact receiving water quality but would
13 result in the unreasonable expenditure of public resources to design and build MF/RO facilities.
14 Manteca’s Petition challenges the very effluent limitations that this Board found unreasonable in
15 the 2005 Manteca Order.

16 Moreover, the EC objectives for the southern Delta are in a state of flux. (See
17 2005 Manteca Order at p. 10; *In the Matter of the Petitions of Stockton, et al.* (Oct. 6, 2009),
18 Order WQ 2009-0012, at p. 6.) The State Water Board initiated a public process to review the EC
19 objectives and is likely to revise them and/or water rights as a result. (See Bay-Delta Plan at p. 6;
20 State Water Board Resolution No. 2004-0062, at p. 1. Resolution No. 2004-0062 is attached as
21 Exhibit E to the City of Manteca’s Petition for Review and Statement of Points and Authorities in
22 Support Thereof.) Indeed, recent scientific studies indicate that 700 $\mu\text{mhos/cm}$ as an objective is
23 more restrictive than needed to protect beneficial uses. (See Dr. Glenn Hoffman, *Salt Tolerance*
24 *of Crops in the Southern Sacramento-San Joaquin Delta* (July 14, 2009) (Hoffman Report).) The
25 Hoffman Report considers several approaches to determine salinity requirements for the
26 conditions specific to the southern Delta to protect the agricultural beneficial use. The Hoffman
27 Report recommends EC objectives for crop protection during the summer irrigation season that
28 range from 800 $\mu\text{mhos/cm}$ to 1,400 $\mu\text{mhos/cm}$. (*Id.* at pp. 76-77.) The State Water Board will

1 consider the Hoffman Report during the public process to review the EC objectives. Notably, the
2 Hoffman Report demonstrates that the Manteca WQCF's current discharge of EC is within levels
3 that protect the most sensitive beneficial uses.

4 In addition, the record reflects that the Central Valley Water Board reluctantly imposed
5 the effluent limitations of 700 μ mhos/cm for EC on Manteca's discharge because the Central
6 Valley Water Board believed it had no choice. The Central Valley Water Board interpreted a
7 recent order of the State Water Board to foreclose the option of continuing the year-round effluent
8 limitation of 1,000 μ mhos/cm in effect under the Manteca WQCF's prior permit as modified by
9 the 2005 Manteca Order. (See Permit at pp. F-49 - F-51; Transcript at pp. 44-46, 63-64, 66,
10 68-69; see also 2005 Manteca Order at p. 22.) Manteca submits that in lieu of the seasonal
11 effluent limitations for EC, the Permit should be revised to maintain the year-round EC effluent
12 limitation of 1,000 μ mhos/cm consistent with the 2005 Manteca Order. This would render the
13 TSO unnecessary and inappropriate.

14 For these reasons, the disputed action as framed in the Petition raises substantial technical
15 and legal issues. Whether the 2005 Manteca Order still applies to Manteca is the primary,
16 overarching issue. If the 2005 Manteca Order still applies, the final effluent limitations of
17 700 μ mhos/cm EC are unreasonable and must be removed from Manteca's Permit.

18 b. Manteca and the Public Interest will Suffer Substantial Harm if the State
19 Water Board does not Grant Manteca's Stay Request

20 Manteca and the public interest will suffer substantial harm if the State Water Board does
21 not grant Manteca's Stay Request for the period of time pending resolution of the Petition. (See
22 Boeing Order at p. 4 ["whether a stay is appropriate must be judged in the temporal sense"].) To
23 comply with the TSO, Manteca will immediately have to begin the process to design and
24 construct MF/RO facilities. (Govea Decl. at ¶ 11.) To wait until the State Water Board resolves
25 the Petition would jeopardize Manteca's ability to comply timely with the TSO. For example, to
26 achieve compliance by October 1, 2014, Manteca must research treatment options and conduct
27 pre-design within one year of the Permit's adoption. (Govea Decl. at ¶ 12; Presentation to
28 Central Valley Water Board from Phil Govea, City of Manteca (Presentation), attached as

1 Exhibit C to the City of Manteca's Petition for Review and Statement of Points and Authorities in
2 Support Thereof, at Slide No. 14.) Manteca would have to conduct and complete the CEQA
3 review within the next two years. (*Ibid.*) Manteca estimates the initial construction costs of the
4 facilities at \$38.4 million, which results in an additional annual cost of \$3.7 million for capital
5 improvements and operation and maintenance costs. (Govea Decl. at ¶ 9.) These costs do not
6 account for the disposal of approximately 0.5 mgd of highly saline brine that the MF/RO process
7 will generate.³ (*Ibid.*) Manteca will have to raise the rates of its service to pay for the planning,
8 design and construction of new MF/RO facilities. (*Ibid.*; Transcript at p. 35.) More immediately,
9 Manteca expects to spend \$1.6 million for planning, pre-design and CEQA compliance over the
10 next two years. (Govea Decl. at ¶¶ 11, 12.) Once expended, these resources are irretrievable.
11 (Govea Decl. at ¶ 11.)

12 Compounding the strain of the future expenditures of public funds needed to comply with
13 the Permit and TSO, Manteca has already spent significant resources to comply with the prior
14 permit's year-round effluent limitation of 1,000 µmhos/cm EC. (See Permit at p. F-50; Transcript
15 at pp. 30-33.) In the 2005 Manteca Order, the State Water Board deemed the limitation of
16 1,000 µmhos/cm EC appropriate to control salinity in the WQCF's discharge. (2005 Manteca
17 Order at pp. 14, 22.) Manteca relied in good faith on the 2005 Manteca Order to commit
18 irretrievable public funds and other resources to reduce the salinity in the effluent by more than
19 27 percent. To accomplish this, Manteca made drastic operational changes. For example,
20 Manteca replaced part of the local potable water supply source of highly saline groundwater with
21 water from a new surface water treatment plant and constructed an industrial pipeline system in
22 part to eliminate highly saline industrial waste discharged to the WQCF. (Permit at p. F-50;
23 Transcript at pp. 31-32.) Manteca also replaced its chlorinated disinfection and dechlorination
24 processes with ultraviolet disinfection (UV disinfection) and tertiary treatment through the
25 installation of filters. (Transcript at p. 31.)

26
27
28 ³ In an order that governs Manteca's discharge, the State Water Board took official notice that the use of reverse osmosis produces highly saline brine that requires acceptable disposal. (2005 Manteca Order at p. 12.)

1 Further, there are no interim planning options that can be fully implemented with any
2 certainty in the five-year timeframe afforded Manteca in the TSO, which would allow Manteca to
3 avoid costs associated with designing and planning MF/RO. In its Tracy Order⁴, the State Water
4 Board stated that the Central Valley Water Board could consider “interim planning solutions” for
5 additional flexibility in regulating salt discharges. (*In the Matter of the Petition of Environmental*
6 *Law Foundation and California Sportsfishing Protection Alliance*, Order WQ 2009-0003 (Tracy
7 Order) at p. 10.) To avoid costs associated with planning, design and environmental review,
8 Manteca would need to know with a high degree of certainty that the interim planning options
9 would result in compliance prior to moving forward with MF/RO. However, the time required to
10 carry forward these options and confirm their outcome fails to provide Manteca with any relief
11 from incurring substantial harm. For example, the potential interim planning solutions identified
12 in the Tracy Order include variances, site-specific objectives or a policy allowing off-sets. (*Id.* at
13 p. 10, fn.17.) In this case, Manteca is not eligible to request a variance because variances from
14 water quality-based effluent limitations must be requested prior to the close of the public
15 comment period on the permit in question. (See 40 C.F.R. § 122.21(n)(3).) Moreover, state-
16 adopted variances require studies to demonstrate that the standard is not attainable for reasons
17 specified in section 131.10(g) of title 40 of the Code of Federal Regulations. (See U.S. EPA
18 NPDES Permit Writers’ Manual, EPA-833-B-96-003 (Dec. 1996) at pp. 177-178; see also
19 U.S. EPA Water Quality Handbook, chapter 5, § 5.3.) The preparation and consideration of such
20 studies by Manteca and the Central Valley Water Board, and approval of the variance from the
21 State Water Board, the Office of Administrative Law and U.S. EPA would collectively require
22 more time than Manteca can afford before needing to move forward with the only certain
23 compliance option—MF/RO.

24 Similarly, the development, consideration and adoption of site-specific objectives takes
25 too long to be a feasible interim planning solution. (See Declaration of Michael Bryan in Support
26 of City of Manteca’s Request for Stay (Bryan Decl.), filed concurrently herewith at ¶¶ 9, 14, 15.)

27 _____
28 ⁴ *In the Matter of the Petition of Environmental Law Foundation and California Sportfishing Protection Alliance*
(May 19, 2009) Order WQ 2009-0003.

1 By the time Manteca could evaluate the feasibility of obtaining a site-specific objective for an
2 area as pivotal as the southern Delta, far too much time will have passed to allow Manteca
3 sufficient time to plan, design and commence compliance with CEQA. A site-specific objective
4 is also illogical and duplicative considering that the State Water Board is in the process of
5 reviewing the water quality objectives for EC in the southern Delta.⁵ As mentioned, the State
6 Water Board will consider credible evidence that the current EC objective of 700 $\mu\text{mhos/cm}$ is
7 more stringent than necessary to protect the agricultural beneficial use. (See Hoffman Report.)
8 As a result, the objective and effluent limitations required to implement the objective are likely to
9 change and render unnecessary the MF/RO facilities required to ensure compliance with the
10 Permit and TSO.

11 The certainty and timing of a policy for off-sets is also unknown at this time. Although
12 the Central Valley Water Board has entertained preliminary discussions with respect to the
13 development of such a policy, no draft off-set policy exists for the Central Valley and there are no
14 formal plans in place to develop one. Moreover, any such policy would require an amendment to
15 either the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*
16 (Basin Plan) and/or the Bay-Delta Plan. Even under the best circumstances, with funding
17 provided by the discharge community, a Basin Plan and/or Bay-Delta Plan amendment will take
18 at least five years. (See Bryan Decl. at ¶¶ 6, 9, 12, 14, 15.) Like a site-specific objective, there
19 would be no certainty for Manteca until the off-set policy was adopted by the Central Valley
20 Water Board and approved by the State Water Board, the Office of Administrative Law and
21 U.S. EPA. By that time, Manteca will be well beyond the time needed to plan, design and
22 construct MF/RO facilities and conduct the associated environmental review.

23 Given the current review of the water quality objective at issue, Manteca's recent
24 expenditures to reduce salinity in the WQCF's discharge in good faith reliance on the State Water
25 Board's 2005 Manteca Order, infeasibility of timely interim planning options and costs to
26

27 ⁵ See State Water Resources Control Board, Division of Water Rights, Timeline for the Review and Potential Amend-
28 ment of Southern Delta Salinity and San Joaquin River Flow Objectives from the 2006 Bay-Delta Plan (Oct. 15,
2009) at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/sds_srjf/docs/sds_srjf_timeline.pdf.

1 Manteca and its ratepayers to plan for and design the MF/RO treatment facilities, Manteca and
2 the public interest will suffer substantial harm absent a stay. Further, having to spend significant
3 resources to complete the tasks in the TSO to comply with the challenged effluent limitations
4 *before* the State Water Board fully acts on the Petition would deny Manteca any meaningful
5 appeal of the effluent limitations.

6 c. If the State Water Board Grants the Stay, Neither Interested Persons Nor
7 the Public Interest Will Suffer Substantial Harm

8 The only Permit requirements that the stay would affect are the effluent limitations for EC
9 of 700 $\mu\text{mhos/cm}$ (April 1 to August 31). Consequently, the TSO would also be subject to the
10 stay. As explained, Manteca has taken drastic steps in recent years to reduce significantly its
11 discharges of salinity. The WQCF consistently discharges less EC than the prior permit's year-
12 round effluent limitation of 1,000 $\mu\text{mhos/cm}$.⁶ Moreover, the salinity collectively contributed to
13 the southern Delta from municipal discharges constitutes less than one percent of the total salt
14 loading.⁷ (San Joaquin River Annual Salt Loading WY 1985-1995, included in Materials for
15 April 15, 2009 Special Meeting of the State Water Board regarding Salinity Issues, at p. 0009; see
16 Letter to J. Marshall, Central Valley Water Board from P. Govea, City of Manteca regarding
17 comments on tentative Permit (Sept. 10, 2009) at p. 2.) Not only will the actual salinity of
18 Manteca's discharge remain relatively constant regardless of whether the stay is granted, but
19 Manteca's proportional contribution to the river is so minor that the receiving water quality would
20 not measurably change.

21 Imposing the 700 $\mu\text{mhos/cm}$ effluent limitations immediately and requiring Manteca to
22 expend public resources on planning and design to ensure timely compliance with the TSO before
23 the State Water Board resolves the Petition will not benefit water quality or beneficial uses. (See
24 *In the Matter of the Petition of International Business Machines* (Dec. 15, 1988), Order
25 No. WQ 88-15 (IBM Order) at p. 7 [whether there would be immediate impact on water quality is

26 ⁶ Manteca's discharge averages 735 $\mu\text{mhos/cm}$ EC on a monthly basis. (Transcript at p. 35.)

27 ⁷ Based on Manteca's 2008 antidegradation analysis, an increase in Manteca's discharge to 17.5 mgd results in an
28 incremental improvement in EC in the river during critical dry flow conditions to an estimated one percent; during
dry normal years, the improvement would be an approximate 0.5 percent.

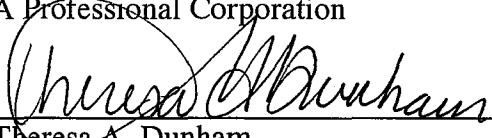
1 factor to consider in deciding whether to grant stay[.]) If the State Water Board overturns the
2 Permit requirements, the TSO and need to install MF/RO facilities will become unnecessary,
3 rendering the efforts in the interim a waste of public funds. (See *ibid.*) Further, the potential
4 delay associated with the State Water Board's petition process is inconsequential given that
5 regulators, municipalities and other interested parties have been addressing salinity issues in the
6 Bay-Delta for decades. (See *ibid.*) Therefore, neither interested persons nor the public interest
7 will suffer substantial harm if Manteca receives a stay of the effluent limitations of
8 700 μ mhos/cm EC.

9 D. CONCLUSION

10 This Stay Request demonstrates that the action disputed in the Petition raises substantial
11 questions of fact or law. This Stay Request also demonstrates that a stay of the challenged
12 effluent limitations for EC will not cause substantial harm to interested persons or the public.
13 However, a lack of a stay will cause Manteca substantial harm in the form of an expenditure of
14 scarce resources and imposition of rate increases. Accordingly, Manteca respectfully requests
15 that the State Water Board stay the Permit provisions and associated TSO that require the WQCF
16 to meet effluent limitations of 700 μ mhos/cm EC from April to August by October 1, 2014.

17 SOMACH SIMMONS & DUNN
18 A Professional Corporation

19 DATED: November 9, 2009

20 By: 
21 Theresa A. Dunham
22 Attorneys for City of Manteca
23
24
25
26
27
28

PROOF OF SERVICE
(State)

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 9, 2009, I served the following document(s):

CITY OF MANTECA'S REQUEST FOR STAY AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

XXX (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
Phone: (916) 464-3291
Email: pcreedon@waterboard.ca.gov

Phil Govea, P.E.
Deputy Director of Public Works—
Utility Engineering
City of Manteca
1001 W. Center Street
Manteca, CA 95337
Phone: (209) 456-8415
Email: pgovea@ci.manteca.ca.us

XXX (by personal delivery) by having a messenger personally deliver a true copy thereof to the person(s) and at the address(es) set forth below:

Elizabeth Miller Jennings, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812
Phone: (916) 341-5161
Fax: (916) 341-5199
Email: BJennings@waterboards.ca.gov

Lori Okun, Sr. Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812
Phone: (916) 341-5165
Fax: (916) 341-5199
Email: lokun@waterboards.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2009, at Sacramento, California.


Crystal Rivera



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

23 October 2009

Mr. Phil Govea, P.E.
Deputy Director of Public Works
City of Manteca
1001 West Center Street
Manteca, CA 95337

CERTIFIED MAIL
7006 0810 0002 9651 1527

**NOTICE OF ADOPTION
WASTE DISCHARGE REQUIREMENTS ORDER NO. R5-2009-0095
NPDES PERMIT NO. CA0081558
AND TIME SCHEDULE ORDER NO. R5-2009-0096
FOR
CITY OF MANTECA
WASTEWATER QUALITY CONTROL FACILITY
SAN JOAQUIN COUNTY**

Enclosed are Waste Discharge Requirements (WDRs) Order No. R5-2009-0095 (NPDES Permit No. CA0081558) and Time Schedule Order (TSO) No. R5-2009-0096 for the City of Manteca Wastewater Quality Control Facility, adopted with late revisions by the California Central Valley Regional Water Quality Control Board (Central Valley Water Board), on 8 October 2009. Although the WDRs allow wastewater to be discharged to land and surface waters of the State, the discharge is a privilege, not a right, and may be revoked at any time. Copies of the Orders must be maintained at the facility and must be accessible to anyone operating the wastewater treatment facility.

Please review your WDRs carefully to ensure that you understand all aspects of the discharge requirements. Please note that the Provisions section of the WDRs require submittal of specified technical reports and progress reports by the dates provided in the Order. These submittals include the items listed in the following table.

WDRs-Required Progress and Technical Reports	Due Date
Method of Compliance Workplan/Schedule for Final Groundwater Limitations and Exemption from Title 27 for storage of secondary effluent in Secondary Effluent Storage Pond	8 April 2010
Revised PPP for Mercury	8 July 2010
Site-Specific Salinity Study Work Plan	8 July 2010
BPTC Evaluation Work Plan	8 October 2010
Mercury PPP Annual Progress Report	1 December, annually ¹
Final Groundwater Limitations Method of Compliance Annual Progress Report	1 October, annually ²
Site-Specific Salinity Study Annual Progress Report	1 December, annually ³
Completed Site-Specific Salinity Study Report	8 October 2012
¹ After submittal of Revised Mercury PPP until final compliance	
² After approval of Method of Compliance Workplan/Schedule for Final Groundwater Limitations until final compliance	
³ After approval of Site Specific Salinity Study Work Plan until final compliance	

In addition to the technical reports required by the WDRs, the WDRs also contain a Monitoring and Reporting Program (MRP). The MRP, located in Attachment E of the WDRs, contains specified monitoring requirements that you must implement. Please review the MRP closely so that you may establish the appropriate sampling schedules and protocols. In addition to the monthly and quarterly self monitoring reports, the MRP requires the technical reports listed in the following table.

MRP-Required Technical Reports	Due Date
Report outlining MLs, MDLs, and analytical methods	7 December 2009
Annual Operations Report	30 January, annually
Nutrient Management Plan	1 February, annually
Annual Pretreatment Report	28 February, annually
Water Recycling/Reuse Annual Report	1 July, annually
Effluent and Receiving Water Characterization Study Work Plan and Time Schedule	8 April 2012
Effluent and Receiving Water Characterization Study Final Report	6 months following final monitoring event


Also, please review your TSO to ensure that you understand all aspects of its requirements. Please note that the time schedule, located on page 4 of the TSO, requires submittal of specified technical reports and progress reports by the dates provided in the Order. These submittals include the items listed in the following table.

TSO-Required Progress and Technical Reports	Due Date
Method of Compliance Workplan/Schedule for Electrical Conductivity Seasonal Effluent Limitations contained in WDRs Order R5-2009-0095	8 April 2010
PPP for Electrical Conductivity	8 April 2010
Annual Progress Report for Electrical Conductivity	1 December, annually ¹
¹ After approval of Method of Compliance Workplan/Schedule for Electrical Conductivity until final compliance	

In order to conserve resources, this letter only transmits paper copies of the documents to the Discharger and certain interested persons identified below. Other interested persons may download the documents from the Central Valley Water Board's Internet website at http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/index.html. Copies of these documents can also be obtained by contacting staff or visiting the Central Valley Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

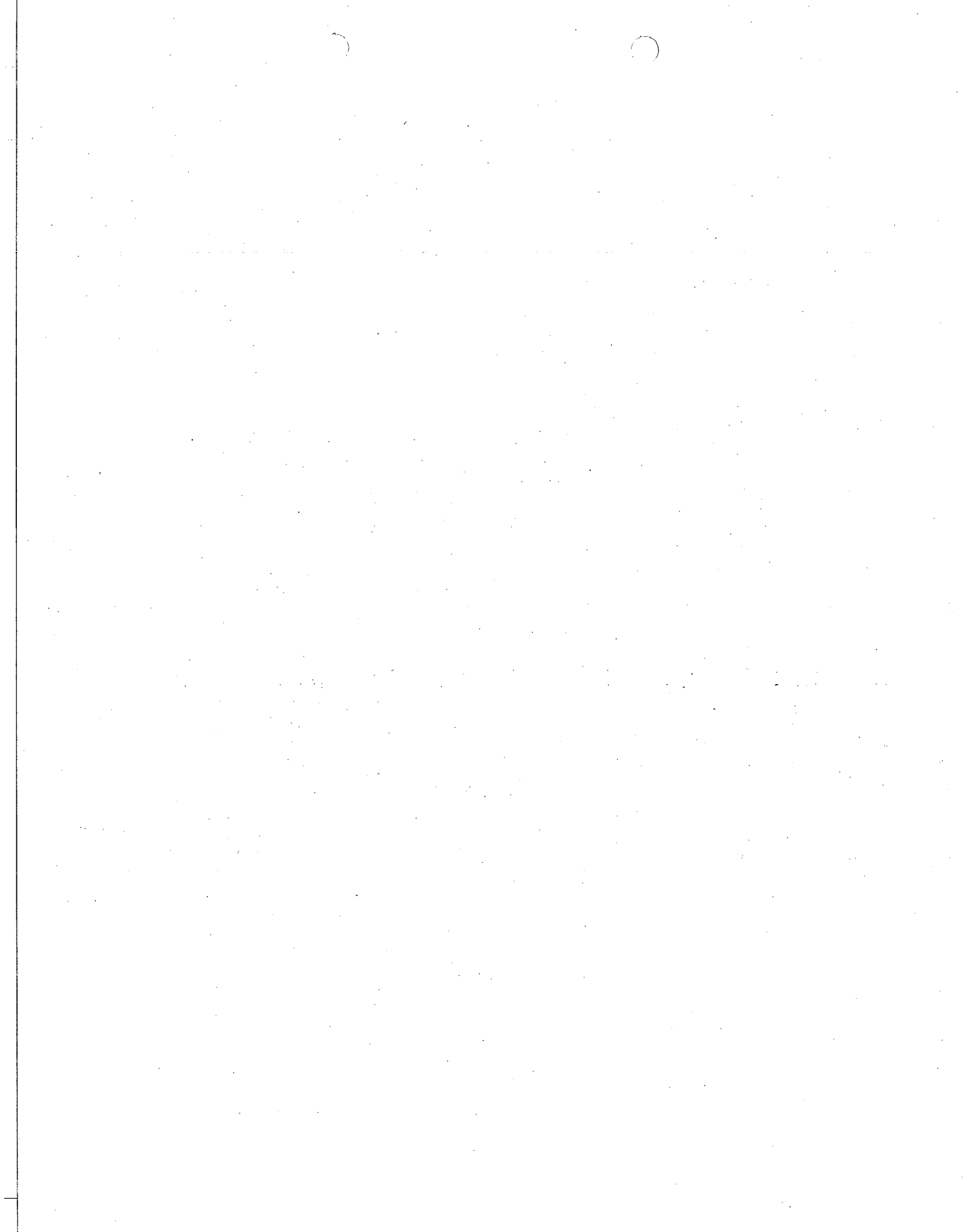
If you have any questions regarding submitting an updated report of waste discharge, or questions about making any changes to your permitted operations, please contact James D. Marshall at (916) 464-4772 or at jdmarshall@waterboards.ca.gov.

All compliance and enforcement questions should be directed to Ann M. Hopkinson. Ms. Hopkinson can be reached at (916) 464-4825 or at ahopkinson@waterboards.ca.gov. All technical reports and monitoring reports should be submitted to Ms. Hopkinson.


for JAMES D. MARSHALL, P.E.
Senior Engineer

Enclosures: Adopted Waste Discharge Requirements
Adopted Time Schedule Order

cc: Mr. David Smith, U.S. Environmental Protection Agency, Region IX, San Francisco
Mr. Phil Isorena, State Water Resources Control Board, Sacramento
Ms. Debbie Webster, Central Valley Clean Water Association
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton
Mr. Richard McHenry, California Sportfishing Protection Alliance
Mr. Jon D. Rubin, Esq. Diepenbrock Harrison, Sacramento



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TIME SCHEDULE ORDER NO. R5-2009-0096

REQUIRING THE CITY OF MANTECA
WASTEWATER QUALITY CONTROL FACILITY
SAN JOAQUIN COUNTY

TO COMPLY WITH REQUIREMENTS PRESCRIBED IN ORDER NO. R5-2009-0095
(NPDES PERMIT NO. CA0081558)

The California Regional Water Quality Control Board, Central Valley Region, (hereinafter Central Valley Water Board) finds that:

1. On 8 October 2009, the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order No. R5-2009-0095, prescribing waste discharge requirements for the City of Manteca (hereinafter Discharger) at the Wastewater Quality Control Facility (hereafter Facility), San Joaquin County.
2. WDR Order No. R5-2009-0095, contains Final Effluent Limitations IV.A.1.a. and 2.a. which both reads, in part, as follows:

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Electrical Conductivity April to 31 August)	µmhos/ cm	700				

3. California Water Code (CWC) section 13300 states: *"Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements."*
4. Federal regulations, 40 CFR §122.44 (d)(1)(i), require that NPDES permit effluent limitations must control all pollutants which are or may be discharged at a level which will cause or have the reasonable potential to cause or contribute to an in-stream excursion above any state water quality standard, including any narrative criteria for water quality. Beneficial uses, together with their corresponding water quality objectives or promulgated water quality criteria, can be defined per federal regulations as water quality standards.
5. In accordance with CWC section 13385(j)(3), the Central Valley Water Board finds that, based upon results of effluent monitoring, the Discharger is not able to consistently comply with the new seasonal effluent limitation for electrical conductivity of 700 µmhos/cm, which is required from 1 April through 31 August. This limitation is a new requirement that becomes applicable to the Order after the effective date of adoption of the waste discharge requirement for which new or modified control measures are

necessary in order to comply with the limitations, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

6. Immediate compliance with this new effluent limitation for electrical conductivity is not possible or practicable. The Clean Water Act and the California Water Code authorize time schedules for achieving compliance.
7. On 10 September 2009 the Discharger submitted justification for a compliance schedule which included: (a) documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream; (b) documentation of source control measures and/or pollution minimization measures efforts currently underway or completed; (c) a proposal for additional or future source control measures, pollutant minimization actions, or waste treatment (i.e., facility upgrades); and (d) a demonstration that the proposed schedule is as short as practicable. Therefore, this Order provides a time schedule for the Discharger to develop, submit, and implement methods of compliance, including utilizing pollution prevention activities, conducting site specific studies to develop site specific water quality objectives, or constructing necessary treatment facilities to meet the new effluent limitation for electrical conductivity.
8. CWC section 13385(h) and (i) require the Regional Water Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. CWC section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC section 13385(j)(3) exempts the discharge from mandatory minimum penalties *"where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all the [specified] requirements are met."*
9. Compliance with this Order only exempts the Discharger from mandatory penalties for violations of effluent limitations for electrical conductivity from 1 April through 31 August, in accordance with CWC section 13385(j)(3). CWC section 13385(j)(3) requires the Discharger to update and implement a pollution prevention plan pursuant to section 13263.3 of the California Water Code.
10. Since the time schedule for completion of action necessary to bring the waste discharge into compliance exceeds 1 year, this Order includes an interim requirement and date for achievement. The time schedule does not exceed 5 years.

The compliance time schedule in this Order includes an interim effluent limitation for electrical conductivity. The monthly average effluent limitation for electrical conductivity in previous Order No. R5-2004-0028 was established as the interim limit in this Order.

11. The Central Valley Water Board finds that the Discharger can maintain compliance with the interim limitation included in this Order. Interim limitations are established when compliance with the final effluent limitations cannot be achieved by the existing discharge. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on

a long-term basis. The interim limitations, however, establish an enforceable ceiling concentration until compliance with the effluent limitation can be achieved.

The interim limitations must be based on performance or the existing effluent limitations, whichever is more stringent. The existing effluent limits for EC are 1000 $\mu\text{mhos/cm}$. To determine facility performance where there are 10 sampling data points or more, sampling and laboratory variability is accounted for by projecting a maximum effluent concentration based on log-normally distributed data where 99.9% of the data points will lie within 3.3 standard deviations of the mean. Based on effluent EC data from 2007-2008 during the irrigation season (1 April – 31 August) the projected maximum effluent concentration for EC is 996 $\mu\text{mhos/cm}$. Considering the accuracy of EC monitoring, the projected maximum effluent concentration should be presented as no more than 2 significant figures (i.e., 1000 $\mu\text{mhos/cm}$). Based on this evaluation the projected maximum effluent concentration and current effluent limitation are equivalent. Therefore, an interim limitation of 1000 $\mu\text{mhos/cm}$ is required in this Order.

12. On 8 October 2009, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider a Time Schedule Order under CWC section 13300 to establish a time schedule to achieve compliance with waste discharge requirements.
13. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.), in accordance with CWC section 15321 (a)(2), Title 14, of the California Code of Regulations.
14. Any person adversely affected by this action of the Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of the Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED THAT:

- The Discharger shall comply with the following time schedule to ensure compliance with the seasonal effluent limitations for electrical conductivity (1 April through 31 August) contained in WDR Order No. R5-2009-0095 as described in the above Findings:

<u>Task</u>	<u>Date Due</u>
Submit Method of Compliance Workplan/Schedule	Within 6 months of adoption of this Order
Submit and implement a Pollution Prevention Plan (PPP) pursuant to CWC section 13263.3	Within 6 months of adoption of this Order
Annual Progress Reports ¹	1 December, annually, after approval of workplan until final compliance
Full compliance with the effluent limitations for electrical conductivity.	1 October 2014

¹ The progress reports for electrical conductivity shall detail what steps have been implemented towards achieving compliance with waste discharge requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date.

- The following interim effluent limitation shall apply to the 9.87 million gallons per day (mgd) and 17.5 mgd discharge and be **effective immediately until 30 September 2014** or when the Discharger is able to come into compliance, whichever is sooner.

Parameter	Average Monthly Effluent Limitation (µmhos/cm)
Electrical Conductivity (1 April through 31 August)	1000

- For the compliance schedule required by this Order, the Discharger shall submit to the Central Valley Water Board on or before the compliance report due date, the specified document or, if appropriate, a written report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for such noncompliance shall be stated, and shall include an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Regional Water Board by letter when it returns to compliance with the time schedule.

4. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement. If compliance with these effluent limitations is not achieved by the Full Compliance date, the discharge would not be exempt from the mandatory minimum penalties for violation of certain effluent limitations, and would be subject to issuance of a Cease and Desist Order in accordance with CWC section 13301.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 8 October 2009.

fw 

PAMELA C CREEDON, Executive Officer

