

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2023-0039**

CONCURRENCE WITH THE CENTRAL VALLEY REGIONAL WATER QUALITY
CONTROL BOARD'S ORDER GRANTING AN EXCEPTION TO THE
TEMPERATURE WATER QUALITY OBJECTIVE IN THE STATE THERMAL PLAN
FOR THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT
WASTEWATER TREATMENT PLANT

WHEREAS:

1. The Mountain House Community Services District (MHCSD) Wastewater Treatment Plant (Facility) is a publicly owned treatment works that provides sewerage services for the community of Mountain House, serving a population of approximately 21,750 people. The Facility provides tertiary treatment and ultraviolet light disinfection for up to 3.0 million gallons per day (MGD) and is currently constructing upgrades to expand the capacity to 5.4 MGD to accommodate for planned growth within the service area. Disinfected tertiary treated wastewater from the Facility is discharged to Old River, a water of the United States within the legal boundary of the Sacramento-San Joaquin Delta (Delta).
2. The Facility operates under a National Pollutant Discharge Elimination System (NPDES) permit and waste discharge requirements (WDRs) issued by the Central Valley Regional Water Quality Control Board (Regional Water Board). The Regional Water Board adopted the most recent permit for the Facility on June 22, 2023, in [Order No. R5-2023-0033](#).
3. The Facility's discharge is subject to the State Water Resources Control Board's (State Water Board) "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California" (Thermal Plan) with respect to the thermal component of the discharge. The Thermal Plan contains temperature water quality objectives for surface waters. As defined by the Thermal Plan, the Facility's discharge is an existing discharge of elevated temperature waste to an estuary.
4. Section 5.A.(1)a. of the Thermal Plan includes a temperature water quality objective applicable to the Facility's discharge that specifies that *"[t]he maximum temperature shall not exceed the natural receiving water temperature by more than 20°F."*
5. According to the Thermal Plan's general water quality provisions, *"Regional Boards may, in accordance with Section 316(a) of the Federal Water Pollution Control Act of 1972, and subsequent federal regulations including 40 CFR 122, grant an exception to Specific Water Quality Objectives in this Plan. Prior*

to becoming effective, such exceptions and alternative less stringent requirements must receive the concurrence of the State Board.”

6. Code of Federal Regulations, title 40, section 125.73(a) states that, “[t]hermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.”
7. The MHCS D requested an exception to the temperature objective specified in Section 5.A.(1)a. of the Thermal Plan and submitted documentation to the Regional Water Board that the exception and alternative less stringent temperature effluent limitation will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the Old River and Delta.
8. The alternative temperature effluent limitation contained in Order R5-2023-0033 states that, “[t]he maximum temperature of the discharge measured at EFF-002 shall not exceed the natural receiving water temperature by more than: a) 20°[Fahrenheit (F)] 1 March through 31 October; [and] b) 30°F 1 November through 28/29 February.”
9. The MHCS D conducted several temperature studies over the past 10 years to assess the impacts of the discharge on aquatic life of the Old River and the Delta. The Thermal Plan Exception Justification Report (Report) characterized the aquatic and wildlife communities of Old River in the vicinity of the discharge and evaluated the effects on the Thermal Plan exception and alternative effluent limitation on protection and propagation of a balanced, indigenous population of fish, benthos, zooplankton, phytoplankton, and wildlife in and on the Old River based on near-field plume and far-field fully mixed temperature assessments. The Report demonstrates that discharges that attain the alternative temperature effluent limitation, at a discharge rate of 3 MGD average dry weather flow, would have no species-specific, habitat, or community level adverse thermal effects on the aquatic ecology of Old River. Moreover, considering the cumulative impact of the Facility’s thermal discharge together with all other significant impacts on the species affected, the Thermal Plan exception and alternative effluent limitation would assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the Old River.

10. The California Department of Fish and Wildlife, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service (collectively the Fishery Agencies) assisted MHCSD in developing the goals, questions, and objectives to be addressed by the temperature studies. After the temperature studies were completed, the Fishery Agencies reviewed the Report and did not object to allowance of the exception and alternative effluent limitation.
11. On June 22, 2023, following a hearing and after considering the applicability of the requested Thermal Plan exception and based on all evidence in the record, the Regional Water Board adopted Order No. R5-2023-0033 and found that MHCSD adequately demonstrated that, *“an effluent limitation based on the Thermal Plan objective 5.A.(1)a is more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.”* The Regional Water Board also found that, *“the alternative effluent limitation, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on Old River and the Delta.”*
12. The Regional Water Board findings that the alternative temperature effluent limitation complies with the requirements of the Clean Water Act (CWA) section 316(a) fulfill the requirements of state and federal antidegradation policies.
13. Consistent with Water Code section 189.7, the Central Valley Water Board conducted outreach to potentially affected disadvantaged and tribal communities concerning the Central Valley Water Board’s proposed NPDES permit and the State Water Board’s proposed concurrence with the exception to the Thermal Plan. The Central Valley Water Board provided electronic notice of the proposed actions to MHCSD, interested persons, and affected communities; solicited written comments; and held a public hearing and adoption meeting to consider any additional oral comments. The Central Valley Water Board also, consistent with Water Code section 13149.2 found it had taken into account environmental justice, tribal impact, and racial equity considerations in adopting the exception to the Thermal Plan. The Central Valley Water Board did not receive any comments on its proposed action to adopt the exception to the Thermal Plan. Additionally, the State Water Board did not receive any comments on its proposed concurrence with the exception to the Thermal Plan.
14. The State Water Board finds that the Regional Water Board acted appropriately in adopting MHCSD’s alternative thermal effluent limitation and in submitting this exception to the State Water Board for concurrence.

THEREFORE, BE IT RESOLVED THAT:

The State Water Board:

1. Concurs with the Regional Water Board's action granting the MHCSD an exception to the temperature water quality objective specified in Section 5.A.(1)a of the Thermal Plan and adopting an alternative less stringent temperature effluent limitation as specified in the Regional Water Board's Order No. R5-2023-0033.
2. Conditions the alternative effluent limitation on continuing compliance with the provisions of CWA section 316(a) regarding maintenance of a balanced, indigenous communities of shellfish, fish, and wildlife in the vicinity of the discharge. The alternative limitation shall be reviewed by the Regional Water Board at the time of any renewal of MHCSD's discharge permit to determine whether they assure protection and propagation of balanced indigenous communities of aquatic life in the vicinity of the discharge as required by CWA section 316(a) and 40 CFR 125.73.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 17, 2023.

AYE: Chair E. Joaquin Esquivel
Vice Chair Dorene D'Adamo
Board Member Sean Maguire
Board Member Laurel Firestone
Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None



Courtney Tyler
Clerk to the Board