

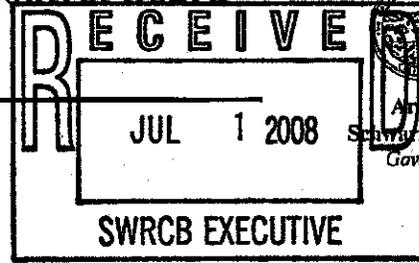


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Secretary for
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California Regional Water Quality Control Board

Central Valley Region
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TO: State Water Board
Attn: Jeanine Townsend

FROM: Pamela C. Creedon
Executive Officer

DATE: 1 July 2008

SIGNATURE:

SUBJECT: **COMMENTS TO A-1871 – JULY 15, 2008 BOARD MEETING**

I have reviewed the draft order on Environmental Law Foundation's (ELF) petition of Order No. R5-2007-0064, Berry Petroleum Company. For the reasons set forth in our response to the ELF petition, we do not agree that the Order requires revision, as recommended by the draft order. For clarity's sake, I offer the following comments on the draft order on behalf of the Central Valley Regional Water Quality Control Board (Regional Water Board).

GENERAL COMMENT

The Environmental Law Foundation petitioned a 22 June 2007 decision by the Regional Water Board to establish permit effluent limitations for electrical conductivity (EC), chloride, and boron at 1,000 umhos/cm, 175 mg/L, and 1.0 mg/L, respectively, which are less stringent than the previous permit. The effluent limitations in Order No. R5-2007-0064 are water-quality based limits that implement the water quality based numeric limitations included in the Tulare Lake Basin Plan. The Regional Water Board included these numeric limitations in the Tulare Lake Basin Plan to protect all applicable beneficial uses of Poso Creek and affected waters downstream of the discharge and determined the limitations to be consistent with State and federal antidegradation requirements. Previous Order No. 5-01-133 included more stringent limitations for these constituents without an explanation and without a demonstration that limitations more stringent than those authorized by the Tulare Lake Basin Plan were necessary to protect beneficial uses.

SPECIFIC COMMENTS

Page 2. Footnote 2 incorrectly states that the four "minor stream" watersheds provide the second largest source of surface water for the Tulare Lake Basin. Fact Sheet, Section II.A.4 of Order No. R5-2007-0064 likely served as the source of the footnote. The Fact Sheet was unclear on its reference to "basin." The four "minor stream" watersheds provide the second largest local source of surface water to Kern County. We recommend changing the footnote to read:

"... the second largest local source (i.e., streams/creeks draining to the San Joaquin Valley portion of Kern County), after the Kern River. In 1998, the ..."

Page 9. The Regional Water Board understands that site-specific factors determine the salinity limits that are necessary to protect the agricultural supply use (AGR). The recent modification of Berry Petroleum's salinity limits were not based on State Water Board Order No. WQO 2004-0010 (Woodland), nor on a determination that an EC limit of 700 umhos/cm is never appropriate. That assumption in the draft order is incorrect. In addition, the last sentence on page 9 states that effluent limits may need to be more stringent than limitations based on numeric objectives if necessary to protect beneficial uses. While correct, that statement is misplaced here since the prior EC limit was based on a narrative objective and the current limit is based on numeric effluent limitations in the implementation section of the Tulare Lake Basin plan. To avoid further confusing this issue, we suggest deleting that paragraph and adding the following sentence on page 12 in the last (carryover) paragraph, after "maximum benefit to the people of the State":

"In order to determine whether high quality water conditions exist, the Central Valley Water Board must first determine what salinity levels in the receiving water are necessary to protect the AGR use, based on site-specific factors. (See State Water Board Order No. WQO 2004-0010 at p. 7.)"

Page 11. The third paragraph on page 11 ends with the statement, "None of the data collected since 1986 exceed or appear to approach the more stringent 2001 Permit limits, which were established for protection of the agricultural supply beneficial use, even when the Discharger employed steam flooding." This sentence may be misread to suggest that the receiving water must attain chloridé, boron, and EC concentrations equivalent to the 2001 Permit effluent limits in order to protect the AGR use. If the Regional Water Board, on remand, decides to increase the 2001 salinity limits, it will revisit the issue and determine whether the receiving waters are "high quality" or "Tier II" waters. This analysis would have to include a determination of the site-specific salinity levels that are necessary, as stated above. We therefore recommend deleting ", which were established for protection of the agricultural supply beneficial use, even where the Discharger employed steam flooding" from the cited sentence, or revising that sentence to read:

"None of the data collected since 1986 exceed or appear to approach the more stringent 2001 Permit limits, so additional evidence or findings are required to explain why higher limits would be *justified*."

Page 12. The first paragraph on page 12 questions whether the 1977 sample taken out of Sump 3 is representative of current discharge conditions as the sample was collected before installation of the current treatment system. As stated in our response to the petition, the salinity of the produced water is essentially determined by the natural characteristics of the formation and the extraction process and not the facility itself, which provides no technology for salt removal. Thus, the older sample results are relevant and should be included in any assessment of the expected salinity of the produced water. We recommend deleting all statements that indicate or imply the wastewater treatment system removes salts.

Page 12. We suggest that the State Water Board clarify the first full paragraph on page 12. As written, the second sentence seems to suggest that an analysis of social and economic benefit is required even for Tier I or non-high quality waters. Consistent with other wording in this section of the draft order, we suggest revising that sentence to read:

"Therefore, assuming the receiving water is a Tier II waterbody, for the Central Valley Water Board to grant ..."

Page 13. Unlike the scenario discussed in the draft order, some dischargers are unable to meet salinity limits that may be more stringent than necessary to meet water quality objectives. We suggest adding the following paragraph before Section 2., "Potential Effects of Flow Increase" to prevent the misapplication of the draft order:

The antibacksliding discussion in this Order does not address the situation in which a discharger is not meeting existing limits. In that case, antibacksliding exceptions other than Section 303(d)(4) may also apply. For example, where water-quality based effluent limits for salinity are more stringent than necessary to achieve water quality objectives and the discharger cannot meet the limits after installing the treatment systems contemplated in the prior permit, Section 402(o)(2)(E) may allow for relaxed limitations. Where less stringent limitations are necessary due to poorer quality source water that results from water conservation programs or other factors beyond a discharger's control, Sections 402(o)(2)(B)(i) (but not (B)(ii)) or 402(o)(2)(C) would allow relaxed limits.

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