

ATTACHMENT B
Comment Letters Received in November 2005

List of Comment Letters (Attachment Numbers Noted on Documents):

1. Comments on Tentative Cease and Desist Order from Rancho Murieta Community Services District and Rancho Murieta Country Club (9-pages)
2. Comment letter from Cassidy Shimko Dawson, representing Regency Centers (3-pages)
3. Comment letter from Rancho Murieta resident Gregory A Tenorio (2-pages)
4. Comment letter from California Sportfishing Protection Alliance (6-pages)



Rancho Murieta Community Services District

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October 28, 2005

Wendy S. Wyels, Supervisor
Title 27 and WDR Units
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, 200
Rancho Cordova, CA 95670-6114

Re: Tentative Cease And Desist Order For Rancho Murieta Community Services District, Rancho Murieta Country Club, Sacramento County

Dear Ms. Wyels:

The Rancho Murieta Community Services District (RMCS D) and Rancho Murieta Country Club (RMCC) submit that the above-referenced Tentative Cease and Desist Order (TCDO), dated October 14, 2005, is not warranted and respectfully request that it be withdrawn. We have major concerns with the accuracy of the information in the TCDO and the conclusions it draws. We have always cooperated with the Regional Board and responded to all requests for information completely and in a timely manner. Additionally, we are in compliance with all Regional Board orders related to this facility. We conclude, consistent with the State Board enforcement policy, that the TCDO is not warranted or appropriate. We thus submit the following comments and corrections. We reserve the right to submit further comments, including suggested text for inaccurate or unsupported Findings.¹

Further, we previously addressed many of the issues in the TCDO with the Regional Board by way of document submittals or personal communications. Any and all documents or communications referred to herein are hereby incorporated by reference.

General Comments On Tentative CDO

The TCDO is highly unwarranted and inappropriate. We have dutifully complied and continue to dutifully comply with all Regional Board directives and our regulatory permits. There is no evidence to the contrary. We address the Regional Board's issues and requests without hesitation and with reliable factual information supported by detailed engineering analyses. Further, much of the TCDO merely reiterates past directives, either written or verbal, by the Regional Board.

¹ This reservation is entirely appropriate considering the short time frame we were given to respond to the TCDO.

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The Regional Board should not issue a cease and desist order to address issues that are currently either the subject of pending permit applications, pending studies and analyses, or proposed operational changes. In May 2002, we applied for a National Pollutant Discharge Elimination System (NPDES) permit to address potential intermittent overflows of recycled and storm waters from the RMCC lakes during the winter season. This completed permit application awaits Regional Board review. In September 2005, at the Regional Board's direction, RMCCSD applied for a General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General Permit) to address any such potential overflows. This permit application, which is consistent with the February 24, 2004 State Board memorandum dealing with overflows mixed with recycled and storm waters from golf courses, also awaits review.

There is no evidence that a current storage capacity problem exists. The storage capacity issue appears to be a result of inaccurate assessments of RMCCSD's request to extend deliveries of recycled water that was carried over. The carry-over volume resulted from detailed testing, operations, and improvements undertaken to comply with new regulatory requirements in the 2001 Waste Discharge Requirements (WDR). Once we deplete this carry-over volume, no storage capacity issue exists. In September 2005, RMCCSD submitted both short- and long-term strategies and plans to address this issue.

A few odor complaints recently came only to the Regional Board's attention. As a result, RMCC satisfied the Regional Board's request to prepare an *Odor Assessment and Mitigation Report*. The Regional Board may order RMCC to conduct further studies if the agency concludes that such studies are necessary to determine the nature and extent of any potential odor problem. We have operated nearly 25 years without odor complaints and, like the Regional Board staff that visited our facilities on October 13, 2005, have not been able to verify the existence of odors. Thus, we believe the odor complaints are dubious. Regardless, RMCC reiterates herein that it agrees to dutifully comply with any future Regional Board directives regarding the alleged odor problem.

As discussed, we do not agree that regulatory enforcement is necessary at this time to address storage capacity at the wastewater treatment facility (WWTF) or alleged odors at RMCC. However, if the Regional Board concludes otherwise upon considering this letter and other forthcoming comments, more appropriate regulatory tools, such as Water Code sections 13267 and 13383 and enforcement letters, should be used. This is consistent with the *State Water Resources Control Board Water Quality Enforcement Policy* as we have fully cooperated with and been responsive to the Regional Board on these issues and will continue to do so.

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Regarding the alleged potential groundwater degradation issue, there is no competent evidence that the WWTF has caused groundwater degradation or that certain treatment ponds are unlined. Any "exceedances" result from groundwater limits that are not representative of actual background levels but rather of place-holder groundwater limits in the 2001 WDR. Nevertheless, we will continue to cooperate with the Regional Board to address any potential groundwater degradation issues.

Again, we submit that there is no reason to issue a cease and desist order at this time and that the TCDO should be withdrawn. If the Regional Board decides to issue a cease and desist order, we request that it be tailored to the circumstances and that the reports and studies required therein be coordinated with the permit application and investigations currently in progress.

Specific Comments On Proposed Findings And Measures In Tentative CDO

We have the following specific concerns with the proposed findings and measures in the TCDO. We numbered our paragraphs to directly correspond with the numbered paragraphs in the TCDO. If the Regional Board decides to issue a cease and desist order based off the TCDO, we suggest that the Findings and Measures addressed below be rewritten or thrown out altogether as appropriate. We will submit future comments addressing this drafting issue.

Findings Proposed In Tentative CDO

RE#1: The Finding should be rewritten as it omits a crucial piece of information intimately related to the issues the TCDO addresses: our recycled water meets the appropriate Title 22 requirements for recycled water application. As the Legislature and State Board Task Force on Recycled Water have recognized, the State relies upon and will increasingly rely upon recycled water to constitute part of the State's water supply to mitigate present and future water shortages.

RE#3: The Finding is factually incorrect in stating that the wastewater treatment ponds and wastewater storage reservoirs are unlined. Since at least 2002, RMCCSD and RMCC have repeatedly submitted evidence to the Regional Board showing that the ponds are lined with impervious clay two to three feet thick. Such evidence includes, but is not limited to, the November 25, 2002 *Preliminary Wastewater Reclamation Plant Evaluation Addendum*; February 15, 2004 *Comprehensive Technical Evaluation Report*; and July 29, 2005 Second Quarter Groundwater Report. As stated, these references are incorporated herein. Additionally, any Findings should also note that the WWTF does not have any type of headworks for the raw sewage prior to Pond 1.

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RE#5: The Finding is incorrect in that the WWTF currently serves nearly 2,500 homes and not "2,000 residences and a commercial center." The Finding should also reflect that at this time, the development community has merely proposed "full build-out."

RE#7: As the Finding's meaning of "stores" is vague, we necessarily request clarification. RMCCSD delivers recycled water to match RMCC daily demands. To the extent water is stored in RMCC lakes, the stored amount is that which RMCC has not used for irrigation. We do not use the lakes for long-term storage.

RE#8: The Finding does not state which RMCC lakes allegedly overflow to the Cosumnes River. If the Finding appears in a cease and desist order, it should substantiate any allegations of overflow with specific information about the source of any overflow and dates of any alleged overflow events.

RE#10: The Finding states that we "satisfactorily completed *most* of the tasks set forth in the CDO." (Emphasis added.) This incorrectly implies that we have not fully responded to the Regional Board's inquiries, requests, or demands. This statement in the TCDO is the first time we have been told that we have not completed all of the tasks. If a cease and desist order is issued, the Finding should be rewritten to enumerate the tasks that the Regional Board believes are outstanding. We have taken all available measures within our control, but must rely upon the Regional Board for matters outside our control, such as issuance of the NPDES permit. The Finding should also be rewritten to state that we have complied with all the tasks set forth in the cease and desist order at issue and that we applied for the NPDES permit in May 2002 and a General Permit in September 2005. The Finding should state that the Regional Board has yet to respond to these applications.

RE#12: The Finding states that the February 28, 2005 technical report entitled *In Support of a Storm Water Discharge Permit* requires that "two feet of freeboard would be maintained in all golf course lakes between 15 March and 15 October." This statement is incorrect. The plain text of the technical report provides no such requirement. Two feet of freeboard is required in the RMCC lakes that supply recycled water for irrigation only when the recycled water is sent to such lakes. However, if two feet of freeboard cannot be attained in the lakes after March 15, recycled water is not sent to RMCC lakes and two feet of freeboard is not required. That is, only when there is recycled water in RMCC lakes does the requirement for two feet of freeboard come into effect. Further, RMCC submitted the report, not RMCCSD.

RE#19: The Finding incorrectly asserts that RMCCSD submitted a draft wastewater disposal study and "stated that only 20 days of storage was available in the WWTF reservoirs" This unsupported statement by the Regional Board was first brought to

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our attention in the January 14, 2004 Notice of Inadequate Capacity (NOIC). Accordingly, we addressed and clarified the statement in the March 14, 2004 letter requesting rescission of the NOIC. As stated, this letter is incorporated herein. The reference in the wastewater disposal study actually stated that “[increasing the overflow elevation] will *add* an additional 9.8 million gallons of storage or approximately 20 days of storage at 0.5 million gallons per day.” (Emphasis added.) Before incorporating this Finding in any future cease and desist order, the Regional Board should re-review the study and our March 14, 2004 letter.

RE#21: The Finding should not refer to “tertiary plant problems” without describing the phrase. The capacity issues the Finding addresses are the regulatory changes that required physical and operational plant modifications which resulted in storage of carry-over secondary water following the 2003 irrigation season. The WWTF did not malfunction. Throughout its history, the WWTF has not experienced many months of continuous downtime. At most it has experienced a day or two, especially during the golf course irrigation season when there are daily irrigation demands. We are not aware of any similar facilities that are expected to provide upwards of four months of storage for unanticipated problems. Further, we were not informed of the requirement to use the 100-year return frequency prior to submitting the cited water balance.

RE#24: The Finding’s conclusion of “0.36 mgd average daily dry weather flow” is unsupported and based on incorrect assumptions. Actual flows during the four months (June through September 2005) averaged 0.468 mgd and comport to the flows used in the June 2005 water balance. The overflow of secondary ponds is also unsupported as shown in Table 1 of the June 22, 2005 water balance, which contained values used to estimate surface area and calculate evaporation, *but not to reflect actual water depth*. We have also clarified this issue with the Regional Board in the past.

RE#25: The “tertiary plant malfunction” the Finding refers to is the change in regulations that required plant modification and storage of additional secondary water during the 2003 irrigation season. Refer to RE#21 above for a more detailed analysis. The Finding is unsupported in that the water balance result is entirely, not “partially,” due to RMCCSD’s storage of secondary effluent that could not be recycled and disposed of in 2003. Further, having the tertiary plant down when it was and for how long it was certainly could *not* be foreseen.

RE#26: The Finding is wholly unsupported and incorrect. RMCC is usually willing to take more recycled water earlier and later in the irrigation season in lieu of taking river flows in the late fall. In the late fall, river flows are low and needed to support fall run salmon. In addition, current RMCC irrigation demand exceeds current annual influent

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flow to RMCS D and, as shown on the June 22, 2005 water balance, will continue to do so until approximately the year 2013 or 2,820 connections.

RE#27: The Finding is unsupported, inaccurate, and misleading. Once the carry-over storage is recycled and disposed, RMCS D has sufficient wastewater storage capacity until the year 2013 or 2,820 connections. This is reflected in the detailed water balances previously submitted. The Regional Board should consider these water balances and further discuss them with us before taking enforcement action on this issue.

RE#33: The Finding's conclusion that Bass Lake is shallow is incorrect and not supported by the evidence. Bass Lake is 18 to 20 feet deep at its deepest point.

RE#34: The assertion that our wastewater is inadequately treated is false. The monthly reports show that all of our recycled water meets Title 22 requirements. The Regional Board inspected the WWTF and golf course on October 13, 2005, and, like us after multiple site inspections, found no evidence of odors or that the wastewater is being inadequately treated.

RE#41: The Finding incorrectly states that groundwater is encountered at approximately 34 feet below the ground surface (bgs) at the WWTF, rather than approximately 15 feet bgs. (Refer to 2005 Second Quarter Groundwater Report.) The total well depth is approximately 34 feet bgs.

RE#42: The Finding incorrectly characterizes Mokelumne gravelly loam as depths of 10 to 39 "feet" rather than "inches." The soil survey provides information on surface soils, not deep soils.

RE#44: The Finding incorrectly states that the groundwater in OW-1 and OW-2 is less acidic than the background well. The average pH is 3.97, 3.94, and 4.00 for MW-1, OW-1, and OW-2, respectively. (Refer to 2005 Second Quarter Groundwater Report.)

RE#46: The Finding incorrectly states the pH range of MW-3 as 6.0 to 7.0, rather than 5.4 to 6.8.

RE#47: The Finding is incorrect in that there is no evidence that the WWTF causes high TDS levels. There is no evidence that the WWTF causes the salinity increase in MW-2. In fact, the CDO contains evidence that strongly suggests there is no possibility that the WWTF is responsible for the increase as the effluent TDS concentrations are so far below the concentrations in the MW-2. Further evidence is in Finding 46, which shows that

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MW-3, which is also downgradient of the WWTF, has lower TDS and that the typical concentration is below background.

RE#48: We strongly disagree with this Finding as we have complied with all of the requirements of CDO No. 05-01-125 and WDR No. 5-01-125. There is no evidence to support that the discharges have violation WDR No. 5-01-125.

RE#51: We submit that the groundwater uses in the Basin Plan were not properly designated in accordance with the Porter-Cologne Water Quality Control Act.

Measures Proposed In Tentative CDO

RE#1: The Measure is redundant and inappropriate in light of the Findings and our compliance history. In May 2002, we applied for a NPDES permit related to the overflows issue, but the Regional Board did not act on the application. In a letter dated March 17, 2005, the Regional Board already directed us to comply with the operations plan we proposed in our February 28, 2005 Technical Report. We are complying with the operations plan, and the CDO does not claim otherwise. The CDO also reiterates the March 30, 2005 Regional Board directive requiring us to obtain coverage under a General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General Permit). On September 9, 2005, we applied for the General Permit, submitting our Notice of Intent and Storm Water Management Plan. We are not in violation of any order in this regard, and thus, the Measure (and the overflows issue) should not appear in any CDO at this time.

RE#2: As discussed in Finding RE#24 above, the assumptions underlying this Measure are incorrect. There is no basis to determine that there currently is inadequate capacity. Nor are there grounds to adopt a reduced influent flow for the WWTF. The Measure is unsupported by the evidence, unnecessary, and unduly burdensome.

RE#3: The requirement for RMCSD to submit the 90% Design Report and the certified California Environmental Quality Act document *with* the Report of Waste Discharge impedes RMCSD's stated desire to expedite the processing of its application for additional disposal strategies and projects by the beginning of the 2006 irrigation season. Thus, if the Regional Board believes there are serious storage capacity issues, it should forgo the requirement.

RE#3-9: There is no violation or evidence to support these Measures. As already discussed, after disposal of the carry-over volume, we currently have sufficient storage capacity. As we pursue project to meet any increased future demands, we will submit

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Reports of Waste Discharge (RWD) as appropriate and in a timely fashion. Even if RWDs are required in a CDO, the schedule for implementation is inappropriate and burdensome considering the Regional Board's and our resource constraints as well as what we generally know about the timelines and complexities involved in updating RWDs.

RE#10-12: These Measures impose an unjustified burden as we complied with the Regional Board's informal enforcement letter dated August 26, 2005, by submitting the *Odor Assessment and Mitigation Report*. Further, the Findings and record do not support that the limited number of complaints received only this year amount to a nuisance. Given that an odor problem has not been conclusively established, calling the required documents "mitigation" reports is inappropriate as it assumes there is an odor problem and that mitigation will be required. The Measures (and odor issue) should not appear in a CDO.

RE#13-14: The dates for the submittal of reports are incorrect. Item 13 requires RMCS D to submit a Well Installation Workplan (Workplan) on February 28, 2006 – after the Well Installation Report is due on January 30, 2006. The Regional Board must approve the Workplan before the wells can be installed. Further, the installation of more wells as provided in these Measures is inappropriate as we do not own the upgradient and downgradient land at issue.

RE#13-15: We have complied with requirements in the WDRs regarding groundwater monitoring, and the monitoring data does not support these additional requirements or Measures. Further, there is no evidence supporting that we are the source of any groundwater degradation, and thus, there is no support for additional groundwater monitoring wells. Requiring installation of additional groundwater monitoring wells is unduly burdensome in violation of Water Code section 13267.

RE#15-16: There is no supporting evidence that additional well installation and monitoring will provide data appreciably different than that which exists from the previous four reporting years. In fact, any new data will be just as variable, inconsistent, and confusing. For this reason and to save the Regional Board's and our scarce administrative resources, we suggest that current data be used to update the existing groundwater limits in the current WDR and that existing wells be used to periodically evaluate and update the groundwater limitations over time.

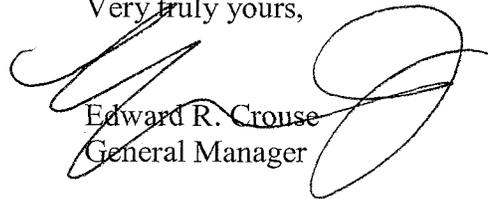
RE#15: The part of the Measure requiring at least 10 consecutive monthly groundwater monitoring events is inappropriate considering how slowly groundwater moves in this area.

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Conclusion

We appreciate the consideration of our comments on the TCDO. We submit that the TCDO should be withdrawn. Most of the Findings are unsupported by the evidence, the Measures are based upon unsupported Findings, and we always fully respond to and cooperate with the Regional Board to address its concerns. RMCS and RMCC hope we can resolve the overflows, capacity, odor, and groundwater issues and avoid the unnecessary imposition of a cease and desist order by continuing to work cooperatively with the Regional Board and exchange information. We would welcome the opportunity to meet with you to further discuss these matters. Considering our failed attempts to discuss these matters with Regional Board staff prior to the tentative CDO's issuance and the short duration of the comment period, we believe such a meeting should take place as soon as possible.

Very truly yours,



Edward R. Crouse
General Manager

cc: Robert Johnson, Rancho Murieta Country Club, Rancho Murieta
Roberta Larson, Somach, Simmons & Dunn, Sacramento



A PROFESSIONAL CORPORATION

CASSIDY
SHIMKO
DAWSON

Attachment B-2

October 28, 2005

VIA FACSIMILE AND EMAIL

Ms. Anne Olson
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club, October 14, 2005

Dear Ms. Olson:

This firm represents Regency Centers in connection with its proposed Murieta Gardens project in Rancho Murieta, California. This letter provides preliminary comments regarding the "Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club", dated October 14, 2005 (the "Tentative CDO"), and regarding any related California Regional Water Quality Control Board - Central Valley Region ("Regional Board") decisions on treatment, storage, and disposal of wastewater in Rancho Murieta. Regency Centers owns certain property in Rancho Murieta and would be materially and adversely affected by any Regional Board decision regulating the Rancho Murieta Community Services District ("RMCS D") in regard to wastewater treatment, storage or disposal. For the reasons set forth below, this letter requests that the Regional Board not impose any new facility expansion requirements on the RMCS D or limit influent flows or connections to RMCS D wastewater treatment facilities. Since Regency Centers has had scant time to respond to the Tentative CDO, Regency reserves the right to submit additional evidence to oppose the Tentative CDO (both as a matter of California administrative law and Federal constitutional due process and equal protection principles).

The Regional Board has issued a Tentative CDO to RMCS D and the Rancho Murieta Country Club that describes four areas of alleged noncompliance and that proposes a series of plans to address those areas:

1. Reclaimed water storage overflows from the golf course storage lakes at the Country Club.

2. Inadequate wastewater treatment facility (WWTF) capacity.
3. Nuisance odors from the golf course storage lakes and irrigation.
4. Potential groundwater degradation.

The Tentative CDO purports to make findings that “the RMCS D facility does not have sufficient wastewater storage capacity and must address the storage/disposal capacity deficit before any new connections are made.” (Page 5, #27). The Tentative CDO also states that the monthly average influent flow to the WWTF “shall not exceed 0.36 million gallons per day (mgd) and the total annual influent inflow shall not exceed 183 million gallons per year.” (Page 10, #2). The Tentative CDO requires the RMCS D to prepare waste discharge reports and a wastewater facilities expansion plan to provide adequate treatment and storage and disposal capacity to accommodate all planned growth through 2020. Regency is not aware of any data that supports these contentions and, as indicated above, reserves the right, after review of the relevant data, to make further objection to the Tentative CDO on the basis of actual data. As our consultants understand the data, the Tentative CDO is unwarranted.

A decision by the Regional Board to adopt the Tentative CDO as its final order or impose any other new requirements for the RMCS D to expand its planned water treatment and storage facilities, reduce its influent flows, or prohibit any new sewer connections would not only be unsupported by the evidence as Regency understands it, but would also cause significant material and adverse economic impacts to residents, other water users and businesses in the Rancho Murieta area (including to Regency's property interests) and conflict with state policies for efficient treatment and reuse of water. The RMCS D has prepared and adopted extensive long term wastewater facility and financing plans that adequately consider potential growth in the Rancho Murieta area and comprehensively provide for future capacity for water treatment and storage. These plans include the possible future conveyance of treated, reclaimed water to other water districts in California and thus are fully consistent with State Water Resources Control Board policies that encourage and recommend adoption and funding of water reclamation projects. (State Water Resources Control Board, Resolution No. 77-1). These more than adequately address the issues raised by the Tentative CDO.

With all due respect to the Regional Board, it appears that the Tentative CDO is purely politically motivated. The harm which would ensue to Regency and its property interests is actionable and not privileged and we therefore urge the Regional Board to have its staff make a careful, quantitative reassessment of RMCS D future wastewater treatment and storage capacity before making any decisions regarding this matter. We also urge the Regional Board not to require any new expansions of wastewater treatment and storage capacity, or impose any limitations on sewer connections, or impose any new

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influent flow limitations. Such requirements could force the RMCS D to enact a building ban that would cause significant and material adverse economic and environmental impacts on Regency Centers, which in our opinion, would give rise to significant legal exposures to the Regional Board.

If you should have any questions regarding this letter, please call the undersigned or Ed Yates at the captioned phone number.

Very truly yours,

CASSIDY, SHIMKO & DAWSON

By: 

Stephen K. Cassidy

Attorneys for Regency Centers

SKC:bls

cc: Mark List, Regional Board
Thomas Engberg, Regency Centers
Douglas Wiele, Foothill Partners
Scott Franklin, Regency Centers
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W SW

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BY FACSIMILE AND REGULAR MAIL

October 28, 2005

California Regional Water Quality Control Board
Sacramento Main Office
Attn: Wendy S. Wyels, Supervisor
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

RECEIVED
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Re: (Tentative) Cease and Desist Order Requiring Rancho Murieta
Community Services District and Rancho Murieta Country Club
Sacramento County to Cease and Desist From Discharging Contrary to
Requirements

Dear Ms. Wyels:

I write this letter in response to the Notice dated October 14, 2005, regarding public comments concerning the above referenced tentative cease and desist order, ("Order").

My concern is with the confusion created by paragraph 27 of the section of the Order entitled "WWTF Storage and Disposal Capacity." That section's condition of addressing the "storage/disposal capacity deficit before any new connections are made" references the new "development projects" previously approved and currently under review by the Sacramento County Department of Environmental Review and Assessment.

I currently own a vacant lot in Rancho Murieta. I am just completing the architectural aspects of the project and have yet to submit them to the county planning department. As I understand it, my lot has already been approved for the construction of a single family home many years ago.

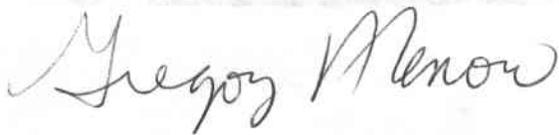
I think the new "development projects" section 27 of the Order references are the larger projects being constructed by a private development company, however, it is not clear from the Order whether vacant lot owners such as myself are or will be affected by the Order.

Here are my concerns. I am not in a position to wait to build my home. I sold a home just recently and am renting in Rancho Murieta with a goal of beginning construction in a few months. I cannot believe that the construction of my single home will impact the concerns addressed in the Order. Further, when I purchased my lot, I was advised that the build-out of Rancho Murieta was far from complete and that the infrastructure was in place to accommodate hundreds more homes. That included wastewater storage capacity.

I therefore need to know if the Order imposes a ban on any and all new sewer connections. If the Regional Water Quality Control Board (the "Board") believes that the Order should apply to my lot, then it should demonstrate why that is the case in order to provide me with due process and the information I need to assess the situation. The Board should provide information that demonstrates at what number of additional sewer connections affects the "storage/disposal capacity deficits" causing further damage or contamination as alleged in the Order. Section 27 of the Order states that the "RMCS D facility does not have sufficient wastewater storage capacity" in part because of the "new development projects previously approved." The projects referred to involve hundreds of new connections. How many connections concern the Board? Can the board demonstrate that one, two, ten or even one hundred connections will have any impact at all on the current situation? Without demonstrating with reasonable certainty what that number is, I believe that the Board would be acting in an arbitrary manner.

I believe that the conditions addressed in paragraph 27, if they are to apply at all, should only apply to the large private development projects. I further believe that the Board must be more precise in calculating the number of connections it considers unacceptable given its concerns as set forth in the Order.

I thank you and the Board for consideration of my comments. If you have any questions, I can be reached during the day at my office at (916) 445-0776. My home telephone number is (916) 354-1747. Thank you.

A handwritten signature in cursive script that reads "Gregory A. Tenorio".

Gregory A. Tenorio

Michael R. Lozeau
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Via e-mail and facsimile transmission-

October 28, 2005

Wendy S. Wyels, Supervisor
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wwyels@waterboards.ca.gov
aolson@waterboards.ca.gov

Re: Comments of California Sportfishing Protection Alliance on Tentative Cease and Desist Order proposed for Rancho Murieta Community Services District ("District") and Rancho Murieta Country Club ("Country Club")

Dear Ms. Wyels and Ms. Olson,

These comments are submitted on behalf of the California Sportfishing Protection Alliance ("CSPA"). CSPA objects to the portion of the CDO purporting to allow discharges of effluent from the Rancho Murieta Community Service District's sewage treatment plant through several series of lakes at the Rancho Murieta Country Club and into the Cosumnes River. The proposal to authorize those discharges pursuant to the State of California's National Pollutant Discharge Elimination System ("NPDES") General Permit for "Storm Water Discharges From Small Municipal Separate Storm Sewer Systems," State Board Order No. 2003-0005 DWQ, NPDES No. CAS000004 ("Small MS4 General Stormwater Permit"), if followed through on by the District and the Regional Board will violate the terms of that permit and the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq* ("CWA" or "Act"). Specifically, neither the MS4 General Permit nor the Act authorize discharges of treated municipal sewage pursuant to a storm water permit issued pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p). In addition, the proposed CDO fails to recognize that, because the series of lakes located on the Rancho Murieta Country Club are tributary to the Cosumnes River, those lakes, although apparently man-made, are waters of the United States. Hence, both the Club's and the District's discharges into those lakes must either cease or be subject to an appropriate NPDES permit.

CSPA also objects to the CDO's proposed embracing of the State Board Executive Director's informal memorandum dated February 24, 2004 and entitled "Incidental Runoff of Recycled Water." That memorandum does not represent adopted policy of the State Board or the Regional Board. The position the Director espouses in the memorandum regarding the use of MS4 permits for authorizing discharges from sewage treatment facilities, sidestepping the full range of NPDES conditions generally required for all sewage plants discharging to surface waters of the State, is plainly illegal. At a minimum, the memorandum is highly controversial, and to the extent dischargers such as the District as well as the Central Valley Board are now relying upon it to frame important water quality decisions, the memorandum is being treated as a rule of general application that has not been adopted consistent with Water Code § 13147 or the accompanying rulemaking regulations nor has it been reviewed by the Office of Administrative Law pursuant to Government Code § 11353. Likewise, to the extent the Regional Board is treating the Executive Director's memorandum as the rule guiding the CDO and the District's and Country Club's compliance with the CWA, the Regional Board also is adopting and implementing a regulation without having followed the requisite procedures.

A. The Proposed CDO Is Incorrect To State That Effluent Discharges From The District's Sewage Treatment Plant May Be Allowed Pursuant To The Small MS4 General Stormwater Permit.

The Regional Board's effort through the proposed CDO to expand the scope of the Small MS4 General Permit to include effluent discharges from the Rancho Murieta sewage plant is inconsistent with the terms of the Small MS4 General Stormwater Permit. The permit is limited to regulating municipal storm water, not sewage effluent. *See, e.g.* General Permit, Findings 1-5. Section B.3 of the General Permit mandates that "discharges of material other than storm water to waters of the U.S. . . . must be effectively prohibited. . . ." The sole exception to that prohibition is the list of authorized non-storm water discharges set forth at Section B.2.c.6 of the General Permit, which include for example "irrigation water" and "landscape irrigation." That list does not include municipal wastewater effluent.

The lakes at the Rancho Murieta Country Club are designed to discharge a large amount of District effluent without it ever being reclaimed or otherwise used to irrigate the country club's golf courses. The District currently treats about 0.5 million gallons per day ("MGD") or 15 million gallons per month of municipal sewage. According to information provided by the District's and Country Club's consultant, during January, February, and March of the rainy season, approximately 8.6 million gallons of effluent originally discharged by the District will flow directly to the Cosumnes River, without being used as irrigation water or any other reclamation purpose. HydroScience Engineers, Inc., "Technical Report in Support of a Storm Water Discharge Permit," p. 10, Table 5. That amounts to over 17 days of effluent from the sewage plant being discharged to the Cosumnes River. None of that effluent that is routed through the lakes

and discharged to the Cosumnes River can be deemed to be either “irrigation water” or “landscape irrigation,” never having touched the golf courses or irrigated anything.

In addition to being prohibited by the Small MS4 General Stormwater Permit, nothing in the federal CWA suggests that the Section 402(p)’s municipal storm water pollution provisions were intended by Congress to be applied to discharges of wastewater effluent from sewage plants to surface waters. On its face, Section 402(p) is, of course, limited exclusively to storm water. Indeed, the CWA states that “[p]ermits for discharges from municipal storm sewers . . . (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers. . . .” 33 U.S.C. § 1342(p)(3)(B)(ii). Obviously, a proposal to use a municipal storm water permit to authorize the seasonal discharge of over 8 million gallons of sewage effluent to the Cosumnes River cuts against that Congressional directive.

In addition, EPA’s storm water regulations underscore the illegality of the proposed course of action. The District’s proposed Storm Water Management Plan (“SWMP”) appears to treat discharges to the Country Club lakes as non-stormwater discharges to its municipal storm sewer system. *See* Proposed SWMP, pp. 30-31. That assumes that the lakes are part of the District’s municipal separate storm sewer system (but see below). If that is assumed to be the case, then the District’s effluent is squarely prohibited from regulation under EPA’s MS4 permit regulations. Under those regulations, the District’s effluent constitutes an “illicit discharge” which “means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities.” 40 C.F.R. § 122.26(b)(2).¹ Thus, as is the case with the State’s Small MS4 General Stormwater Permit discussed above, the District’s effluent cannot be regulated under EPA’s municipal storm water regulations.

Even the State Board Executive Officer’s informal memorandum cannot be read to include Rancho Murieta’s substantial discharges of wastewater to the Cosumnes River. First of all, the memorandum is merely a recommendation by State Board staff and not a binding policy document. As noted above, to the extent the Board chooses to treat the memorandum as the general rule governing the District’s discharges, the Regional Board and the State Board’s Executive Director are running afoul of their rulemaking procedures. Putting aside those procedural concerns and whether or not CSPA agrees

¹ “*Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes. . . .” 40 C.F.R. § 122.26(b)(8).

with every aspect of the memorandum, it nevertheless is clear from the memorandum that the Executive Director was concerned about Regional Boards applying NPDES permits to areas where reclaimed water was being applied for “any amount of incidental runoff,” the so-called “one molecule rule.” Memorandum, p. 2. As the tentative CDO notes, the staff memorandum states that “incidental runoff refers to small amounts of runoff from intended recycle water use areas, over-spray from sprinklers that drifts out of the intended use area, and overflow of ponds that contain recycled water during storms.” Memorandum, p. 1 (emphasis added); Tentative CDO, Finding 11. The District’s discharge of wastewater is not a small amount. The discharge at issue is a substantial amount of unused effluent.

Lastly, the memorandum, although clearly understating the requirements of the federal CWA, states that individual NPDES permits remain required when necessary to achieve water quality objectives. The District and Country Club have not adequately characterized their effluent and discharges. Indeed, they have only grabbed two samples from two of the lakes during a single rainy season over three years ago. Likewise, the monitoring required by the District’s existing waste discharge requirements is also quite sparse, omitting heavy metals and organic pollutants that are routinely sampled by other sewage plants. Despite the limited data available about the quality of the effluent being discharged by the District and Country Club from the sewage plant and the ponds, the data shows that the discharge is in violation of several numeric state water quality standards, including manganese and iron. Even assuming the State Board Executive Director’s memorandum is relevant, the District and Country Club have not met their burden to demonstrate that their discharge will not cause or contribute to violations of water quality standards and indeed are discharging pollutants at levels above applicable standards. Accordingly, contrary to the proposed CDO, the discharge is not consistent with the memorandum.

Neither the Regional Board, the State Board’s executive director nor the District may ignore the CWA or the clear terms of the Small MS4 General Stormwater Permit in order to purportedly encourage the District’s reclamation. The proposal outlined in the ACL provides the opposite incentive – for city’s and developers to undersize the amount of land set aside for their reclamation programs and then avoid the full requirements of the CWA confronted by numerous other municipal waste dischargers around the state by masking their sewage effluent discharges as storm water discharges.

B. The Lakes Located On The Rancho Murieta Country Club Are Waters Of The United States.

The proposed CDO also overlooks the fact that the lakes at the Country Club are waters of the United States. It is beyond dispute that the Cosumnes River is a water of the United States. Because Bass Lake, Lakes 16 and 17, and Lakes 10 and 11 are tributaries of the Cosumnes River, the lakes are themselves waters of the United States.

Accordingly, those waters are jurisdictional and the Country Club and the District must comply with CWA at their points of discharge.

EPA as well as the Army Corps of Engineers define “waters of the United States” to include, among other waterbodies:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; . . . (c) All . . . waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce. . . ; (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; and (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

40 C.F.R. § 122.2; 33 C.F.R. § 328.3(a). Because Bass Lake and the other lakes located at the Country Club are tributaries to the Cosumnes River, those lakes are waters of the United States as defined by the CWA. *See Headwaters Inc. v. Talent Irrigation Dist.*, 243 F.3d 526, 533-34 (9th Cir. 2001). That conclusion is not altered by the facts that the lakes are man-made, only discharge seasonally, or are employed for irrigation uses. *Id.*

That the lakes are waters of the United States is supported by the fact that the lakes are neither part of the District’s treatment plant nor part of its municipal storm sewer system. Although a municipal storm sewer may include a broad array of drainage features, EPA’s definition of municipal storm sewer systems does not include any features not owned or operated by the municipal entity. In this case, the lakes located on the golf courses are operated by the Country Club and apparently owned by the Pension Trust Fund for Operating Engineers. Nor were they in fact ever envisioned as part of Rancho Murieta’s municipal storm sewer system when they were constructed. As a matter of fact and law, the lakes are not part of any municipal separate storm sewer system.

Similarly, the lakes are not part of the District’s publicly owned treatment works. Although a POTW may include the systems used in the storage, treatment, recycling and reclamation of municipal sewage . . . of a liquid nature,” the facility must be owned by a municipality, including in this instance the District. “The term *Publicly Owned Treatment Works* or *POTW* means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act).” 40 C.F.R. § 403.3(o). It also is readily apparent that the lakes are not part of any other waste treatment system.

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Wendy S. Wyels
Anne Olson
October 28, 2005
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For these reasons, CSPA requests that the Regional Board instruct staff to withdraw the proposed CDO, delete those portions that look with favor on the District addressing its and the Country Club's discharges of effluent to the lakes and the Cosumnes River pursuant to the Small MS4 General Stormwater Permit, and instruct the District and the Country Club to either cease all discharges from the lakes to the Cosumnes River (with appropriate approvals of course) or obtain individual NPDES permits for discharges of effluent.

Thank you for the opportunity to comment on the proposed CDO. CSPA looks forward to answering any questions staff or the Board may have at the upcoming Board meeting.

Sincerely,

A handwritten signature in black ink that reads "Michael Lozeau". The signature is written in a cursive, flowing style.

Michael Lozeau

cc: Bill Jennings, Watershed Enforcers, CSPA
Jim Crenshaw, CSPA