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September 22, 2008

Ms. Pamela C. Creedon, Executive Officer
Mr. Kenneth D. Landau, Assistant Executive Officer
Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Dr., Suite #200
Rancho Cordova, CA 95670

**Re: *Renewal of Waste Discharge Requirements (NPDES NO. CA0079138)
and Time Schedule Order for City of Stockton Regional Wastewater
Treatment Control Facility, San Joaquin County***

Dear Ms. Creedon and Mr. Landau:

Through this letter, the San Luis & Delta-Mendota Water Authority ("Authority"), on behalf of its member agencies, and Westlands Water District ("Westlands") provide written comments on the tentative waste discharge requirements (National Pollutant Discharge Elimination System ("NPDES") permit No. CA0079138) applicable to the City of Stockton's ("City") Regional Wastewater Treatment Control Facility ("RWCF") ("Tentative Discharge Requirements").

The Authority, formed in 1992 as a joint powers authority, consists of 31 public agencies, each of which contracts with the United States Department of the Interior, Bureau of Reclamation ("Reclamation"), for water from the Central Valley Project ("CVP"). The Authority's members hold contracts with Reclamation for the delivery of approximately 3.3 million acre-feet of CVP water annually. Reclamation conveys CVP water delivered to the Authority's members through the Sacramento-San Joaquin River Delta ("Delta"). Of the amount of water under contract, the Authority's members put to beneficial use, on average, approximately 2 million acre-feet of water on about 1.2 million acres of agricultural lands within the western San Joaquin Valley and parts of San Benito and Santa Clara Counties, California; 200,000 acre-feet for municipal and industrial uses, including those within the Silicon Valley; and approximately 300,000

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acre-feet for environmental purposes, including for waterfowl and wildlife habitat management in the San Joaquin Valley, California.

Westlands, a member of the Authority, is a California water district formed in 1952. Westlands uses CVP water for irrigation of approximately 500,000 acres on the west side of the San Joaquin Valley in Fresno and Kings Counties, as well as for municipal and industrial purposes within those Counties. Westlands' farmers produce more than 60 high quality commercial food and fiber crops sold for the fresh, dry, canned, and frozen food markets, both domestic and export. More than 50,000 people live and work in the communities that are dependent on Westlands' agricultural economy.

The Authority and Westlands appreciate the challenge the California Regional Water Quality Control Boards ("Regional Boards") face in balancing the competing interests potentially affected by renewal of the City's NPDES permit. In an effort to help the Central Valley Regional Board make a properly balanced and reasoned decision, the Authority and Westlands submit the following comments.

Interest In Tentative Discharge Requirements

The RWCF is part of the City's wastewater collection and treatment system. That system is comprised of over 38,000 sewer connections and 900 miles of sanitary lines. (City of Stockton, Municipal Utilities Department, http://www.stocktongov.com/MUD/General/waste_water/waste_main.cfm, available as of September 18, 2008.) The City's RWCF provides sewerage service to the City, the Port of Stockton, and surrounding urbanized areas of San Joaquin County. As currently permitted, the City's treated municipal wastewater should be discharged from a single outfall into the Delta.

The Authority and Westlands have an acute interest in discharges to the Delta because of the impact they can have on the water supply of the Authority's member agencies, including Westlands. Two examples highlight this point. First, the State Water Resources Control Board ("SWRCB") assigned to Reclamation significant responsibility for water quality objectives established in the Water Quality Control Plan for the San Francisco/Sacramento-San Joaquin Delta Estuary ("Bay Delta Plan"), a copy of which is attached hereto as Exhibit A. As a result, discharges into the Delta that fail to adequately protect beneficial uses of Delta water could require Reclamation to increase releases from CVP reservoirs and/or reduce pumping at in-Delta CVP facilities,

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to avoid a claim that Reclamation is not meeting its responsibilities. Either of those actions would likely reduce the amount of water available to the Authority's member agencies, including Westlands. In addition, it is likely pollutants discharged from wastewater treatment facilities, including the RWCF, adversely affect fish species dependant upon the Delta. Such effects may increase the level of regulatory constraints imposed under the federal Endangered Species Act on Reclamation's CVP operations. The added regulatory constraints on the CVP also could limit the amount of CVP water made available to the Authority's member agencies, including Westlands.

Background Of Law Applicable To The NPDES Permit For The City's RWCF

The federal Water Pollution Control Act of 1972 (the "Clean Water Act") is designed to restore and maintain the "chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251.) The Clean Water Act makes it unlawful to discharge pollutants from a point source into the waters of the United States. (33 U.S.C. § 1311(a).) Section 402 of the Clean Water Act, however, establishes the NPDES under which the United States Environmental Protection Agency or an authorized state may issue permits that grant a permittee the right to discharge. (33 U.S.C. § 1342.)

In California, the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act") is designed to protect the "quality of all the waters of the state . . . for use and enjoyment by the people of the state." (Cal. Water Code § 13000.) To that end, the Porter-Cologne Act requires the regulation of all "activities and factors which may affect the quality of the waters of the state . . . to attain the highest water quality which is reasonable." (*Ibid.*)

Furthermore, California is a state authorized to administer NPDES permits and does so through the SWRCB and the Regional Boards. (Cal. Water Code §§ 13370; 13377.) Because the Regional Boards are responsible for monitoring and enforcing the State and federal plans, policies, and regulations that help protect and restore the water quality in California, a NPDES permit issued by a Regional Board must therefore advance the requirements and regulations promulgated under the Clean Water Act and Porter-Cologne Act.

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General Comment Regarding The Renewal Of The City's NPDES Permit¹

Conditions in the Delta are believed to have declined considerably since the City's prior permit was issued in 2002. As explained by the CALFED Bay Delta Program:

In the last few years [approximately 2002-2004], the abundance indices calculated by the Interagency Ecological Program (IEP) Fall Midwater Trawl survey (FMWT) and Summer Towner Survey (TNS) show marked declines in numerous pelagic fishes in the upper San Francisco Estuary (the Delta and Suisun Bay) (IEP 2005). The abundance indices for 2002-2004 include record lows for delta smelt and age-0 striped bass and near-record lows for longfin smelt and threadfin shad.

(http://www.science.calwater.ca.gov/pod/pod_index.html.)

Former Director of the California Department of Fish and Game, Ryan Broddrick, conveyed a similar point. He expressed to the U.S. House of Representatives, Committee on Natural Resources, Subcommittee on Water and Power:

Of particular concern to [the Department of Fish and Game] is the recent serious and unexpected decline (approximately 90%) in young Delta smelt produced this season. As alarming as the reduced numbers are, this decline is part of a more generally observed decline in other important fish and aquatic resources in the estuary. Anadromous fish (steelhead and salmon), sport fish (striped bass), other native fishes, and some important fish food organisms (invertebrates) of the Delta are in serious trouble.

(Statement Presented by Ryan Broddrick Director, California Department of Fish and Game To U.S. House of Representatives, Committee on Natural Resources

¹ Although the Authority and Westlands present some of their concerns in concise format here, the Authority and Westlands will likely seek designated party status in advance of the hearing on these Tentative Discharge Requirements, currently scheduled for October 23 and 24, 2008.

In addition, the Authority and Westlands reserve the right to adopt comments made by any other designated or interested party and to elicit additional information at the hearing on this matter.

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Subcommittee on Water and Power Oversight Hearing on "Extinction is not a Sustainable Water Policy: The Bay Delta Crisis and the Implications for California Water Management", July 2, 2007, Vallejo City Council Chambers, Vallejo, California, a copy of which is attached hereto as Exhibit B.) This characterization caused Director Brodrick to conclude that the Delta is "broken." (Id.)

During the time of the perceived changes in the "health" of the Delta, and as noted above, the City held a NPDES permit for the RWCF, which the Central Valley Regional Board issued in 2002. The City has long acted in contempt of its responsibilities under that NPDES permit. Evidence demonstrates the City has, on an ongoing basis, violated discharge prohibitions, effluent limitations, receiving water limitations, and monitoring and reporting obligations under its prior NPDES permit. The Tentative Discharge Requirements reference some of those violations, albeit briefly. (See, e.g., Tentative Discharge Requirements, Attachment F, II.D.)

The changed circumstances in the Delta, the existence of the ongoing violations by the City, and the emergence of new studies and information on the effects of contaminants discharged in wastewater warrant two immediate actions by the Central Valley Regional Board. First, any NPDES permit issued by the Central Valley Regional Board to the City should have a shorter term than 5 year period, currently proposed, with provisions that allow for opening of the permit as new information develops. Second, the Central Valley Regional Board must base its decision to renew the City's NPDES permit upon contemporaneous scientific information and in recognition of the City's contemptuous actions. It cannot base the decision on outdated data or simply roll over the waste discharge requirements from the prior to the renewal NPDES permit.

The importance of a critical review of each effluent limitation proposed for the renewal NPDES permit is demonstrated by identified, high levels of mortality that have occurred for many years in the San Joaquin River, just downstream of the permitted location for the City's discharge. Most recently, in May 2007, a large number of salmon died just below the RWCF outfall. Although the Central Valley Regional Board determined that the mortality likely occurred at a time when the City was in compliance with the then existing discharge permit requirements, scientists concluded that the area was apparently a hostile place for juvenile salmon. (See 2007 Annual Technical Report On implementation and Monitoring of the San Joaquin River Agreement and the Vernalis Adaptive Management Plan, p. 55, a copy of which is attached hereto as Exhibit C.)

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The Tentative Discharge Requirements Are Unlawfully Inconsistent With The Bay Delta Plan And Basin Plan

The Tentative Discharge Requirements are not consistent with the Bay Delta Plan, or the Water Quality Control Plan, Fourth Edition, for the Sacramento and San Joaquin River Basins ("Bay Delta Plan"). Most obvious, the Tentative Discharge Requirements impose an electrical conductivity (EC) limitation of 1,300 $\mu\text{mhos/cm}$ (annual average), (Tentative Discharge Requirements, IV.A.1.j), while the Bay Delta Plan and the Basin Plan impose much more stringent requirements. The Bay Delta Plan and the Basin Plan establish 30-day running average salinity objectives of 700 $\mu\text{mhos/cm}$ from April through August, and 1,000 $\mu\text{mhos/cm}$ from September through March: (1) in the San Joaquin River at Brandt Bridge, (2) in Old River near Middle River, and (3) in Old River at Tracy Road Bridge. Thus, because of the differing periods of measurement, the EC limitation, at a minimum, exceeds the salinity objectives established in the Bay Delta Plan and the Basin Plan by approximately 30 to 85 percent.

To support EC limitations that are contrary to the Bay Delta Plan and the Basin Plan, the Tentative Discharge Requirements cite to Water Quality Order 2005-005. The Tentative Discharge Requirements suggest that, in Water Quality Order 2005-005, the SWRCB intended for "permit limitations to play a limited role with respect to achieving compliance with the EC water quality objectives." (Tentative Discharge Requirements, Attachment F, IV.C.3.y.v.) The Tentative Discharge Requirements also suggest that EC limitations consistent with the salinity objectives in the Bay Delta Plan and Basin Plans are infeasible. (*Id.*) The rationales fail for at least two reasons.

An interpretation that effluent limitations have a circumscribed role in achieving salinity water quality objectives is belied by the Bay Delta Plan. In the Bay Delta Plan, which the SWRCB adopted after it issued Water Quality Order 2005-005, the SWRCB made clear that the Central Valley Regional Board maintains a role in implementing salinity water quality objectives. The most explicit example is the SWRCB order to the Central Valley Regional Board, that requires it to "impose discharge controls on in-Delta discharges of salts by agricultural, domestic, and municipal dischargers", as a means of implementing salinity objectives in the San Joaquin River at Brandt Bridge, in Old River near Middle River, and in Old River at Tracy Road Bridge. (Bay Delta Plan at Ch. IV, B.1.) Contrary to that order, but as conceded in the Tentative Discharge Requirements, the proposed EC limitations "may cause or contribute to an exceedance of a water

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quality objective for salinity.” (Tentative Discharge Requirements, Attachment F, IV.C.3.y.v.)

Furthermore, an argument that it is infeasible for the City to implement measure that will allow it to comply with the existing water quality objectives established in the Bay Delta Plan and Basin Plan is not well taken. Those objectives are not new. They date back to at least 1995, when the SWRCB issued its 1995 Water Quality Control Plan for the San Francisco/Sacramento-San Joaquin Delta Estuary. Ample time has passed for dischargers like the City to develop means of complying with the salinity objective set forth in the Bay Delta Plan and Basin Plan.

The Tentative Discharge Requirements do include a circumstance when the City must comply with the salinity objectives established in the Bay Delta Plan and the Basin Plan. However, the circumstance occurs only when the City fails to comply with a salinity reduction plan mandated in the Tentative Discharge Requirements. In other words, the Tentative Discharge Requirements impose on the City obligations that are consistent with the Bay Delta Plan and Basin Plan only as a penalty that may not ever be imposed. While the development and implementation of a plan may be appropriate in certain circumstances, this does not appear to be one of those circumstances. As discussed immediately above, the City has or should have been aware of the water quality objectives established for salinity for 13 or more years (the Bay Delta Plan superseded a prior plan adopted by the SWRCB in 1995, which included the same objectives for salinity), and the City has reasonable means to ensure its dischargers meet the objectives established in the Bay Delta Plan and Basin Plan.

The Carryover Of Effluent Limitations From The City's Prior Permit Fails To Consider Changed Circumstances

As discussed above, the Central Valley Regional Board should not simply incorporate into the renewal NPDES permit the existing effluent limitations. The best available scientific data may not support a finding that past limitations are currently protective of beneficial uses. A change may also be warranted because of the City's ongoing violations of its prior NPDES permit.

Two examples of where the existing discharge requirements may not be appropriate are the effluent limitations for ammonia and dissolved oxygen. The effluent limitations for ammonia and dissolved oxygen in the Tentative Discharge Requirements

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are essentially carryover effluent limitations from the City's prior NPDES permit for the RWCF.² The rationales provided in the Tentative Discharge Requirements for the carryover of the ammonia and dissolved oxygen are presented in a summary fashion. The Tentative Discharge Requirements conclude that the ammonia limitation in the prior permit sufficiently protected the beneficial uses of the waters receiving the City's discharges based on an analysis of the maximum and average concentrations of ammonia in effluent and receiving water. (Tentative Discharge Requirements, Attachment F, IV.C.3.f.)

The Tentative Discharge Requirements for dissolved oxygen provide a similarly cursory explanation. They state:

The previous permit, Order No. R5-2002-0083, contained effluent limitations for dissolved oxygen of 6.0 mg/L from 1 September through 30 November and 5.0 mg/L throughout the remainder of the year.

The minimum DO concentration observed was 1.8 mg/L based on 1,498 samples collected between 1 May 2002 through 31 January 2007. The discharge demonstrates reasonable potential to exceed water quality objectives contained in the Basin Plan. Therefore, the daily minimum effluent limitations for dissolved oxygen contained in the previous permit, Order No. R5-2002-0083, are retained in this Order

(Tentative Discharge Requirements, Attachment F, IV.C.3.p.) The conclusions and analyses, however, do not consider important, emerging scientific research or the recognized, ongoing violations by the City of its prior NPDES permit.

² Actually, the Tentative Discharge Requirements allows an additional one pound of ammonia discharge as both an average monthly and maximum daily figure as compared with the City's prior permit, which could be construed as an unauthorized relaxation of the permit's requirements.

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The SWRCB and the Central Valley Board have identified the emergence of potentially important, new science related to toxics, including ammonia, in the Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay Delta Strategic Workplan"), a copy of which is attached hereto as Exhibit D. For example, in that Workplan, the SWRCB and the Central Valley Regional Board wrote:

Studies suggest that delta smelt may be particularly sensitive to ammonia and that ammonia may limit primary productivity in the Delta. Definitive, controlled laboratory experiments must be conducted to determine the importance of these potential impacts.

(*Id.* at 53.) Also, the Central Valley Regional Board's concern with ammonia in the Delta has been the subject of two recent, summary papers, copies of which are attached hereto as Exhibit E.³

At present, the Tentative Discharge Requirements do not indicate what – if any – contemporaneous scientific materials the Central Valley Regional Board consulted and considered to arrive at its decision regarding the ammonia limitation (or any other effluent limitation for that fact). The lack of explanation or change to the Tentative Discharge Requirements from what existed in the prior NPDES permit held by the City strongly suggest that no new information was relied upon or considered. It also appears that the Tentative Discharge Requirements fail to account for the ongoing violations by the City. For these reasons, and contrary to the Tentative Discharge Requirements, the evidence reflects a need for the Central Valley Regional Board to conduct an independent analysis which will support a finding that the Tentative Discharge Requirements and effluent limitations provided therein will protect the beneficial uses of the receiving waters.

Need For More Rigorous Monitoring

The Tentative Discharge Requirements lack the level of rigor required for monitoring. The SWRCB and the Central Valley Regional Board recognized in the Bay

³ The two papers were found on the Central Valley Regional Board's website at: waterboards.ca.gov/centralvalley/water_issues/delta_water_quality/ammonia_issues/ammonia_issues_11jun08.pdf, and waterboards.ca.gov/centralvalley/water_issues/delta_water_quality/ammonia_issues/delta_smelt_update_30jul08.pdf.

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Delta Strategic Workplan the importance of increased monitoring for contaminants. The Bay Delta Strategic Workplan provides:

The pelagic organism decline in the Delta and subsequent increased focus on contaminants as a potential cause highlight the need for regularly compiling, assessing, and reporting data that is currently being collected and the need to better coordinate monitoring efforts.

(Bay Delta Strategic Workplan, p. 59.) The renewal of the City's NPDES permit provides an opportunity to effectuate better monitoring of contaminants.

More specifically, the SWRCB and Central Valley Regional Board noted that there "are a suite of contaminants and source categories that pose a concern for some Delta beneficial uses and there is also concern for an emerging list of new contaminant categories (pharmaceuticals and endocrine disrupters)." (Bay Delta Strategic Workplan, p. 25.) Recent investigations claim to have discovered detectable levels of pharmaceuticals in drinking water supplies across the country. ("Prescription Drugs Found in Drinking Water Across U.S." Associated Press, March 10, 2008; "AP Enterprise: Drugs Affect More Drinking Water," Associated Press, September 11, 2008; "AP Enterprise: Report Prompts More Testing," Associated Press, September 11, 2008.) The investigations assert medication not absorbed by its taker "passes through the [body] and is flushed down the toilet," and that even though the wastewater is treated "most treatments do not remove all drug residue." Thus, according to the investigations, prescription drugs can enter water supplies through municipal wastewater discharges.

It is presently unclear whether NPDES permits, like the one the City seeks, should include discharge requirements that specifically address pharmaceuticals. However, emerging science indicates that "persistent exposure to random combinations of low levels of pharmaceuticals . . . [indicate] alarming effects on human cells and wildlife." ("Prescription Drugs Found in Drinking Water Across U.S." Associated Press, March 10, 2008.) Therefore, at a minimum, the City should be required to monitor the pharmaceutical constituents in its waste discharges.

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Conclusion

For the reasons set forth above, the Authority and Westlands respectively request that the Central Valley Regional Board not adopt the Tentative Discharge Requirements. The Authority and Westlands remain concerned that the Tentative Discharge Requirements are not protective of beneficial uses. They do not appear consistent with the Bay Delta Plan and the Basin Plan, and they do not appear to reflect important, emerging science.

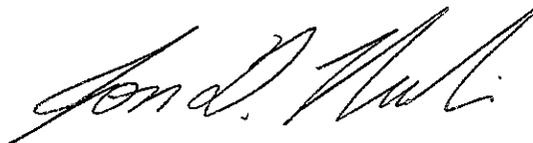
Further, the changed circumstances in the Delta, the existence of the ongoing violations by the City, and the emergence of new studies and information on the effects of contaminants in wastewater warrant a renewal NPDES permit that has a term shorter than 5 years, as currently proposed, with provisions that allow for opening of the permit as new information develops, and more thorough analyses of what effluent limitations will protect beneficial uses, analyses based on contemporaneous scientific information.

Finally, the NPDES permit ultimately issued by the Central Valley Regional Board must include increased monitoring by the City.

Thank you very much for your consideration of these comments.

Very truly yours,

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cc: Daniel Nelson, SLDMWA
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