RECLAMATION DISTRICT 2035

Conaway PRESERVATION GROUP

September 30, 2008

Mr. Kenneth D. Landau, Assistant Executive Officer
California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

RE: Request for Designated Party Status
Comments Pertaining to Tentative NPDES Permit No. CA0077950
City of Woodland, CA

Dear Mr. Landau:

The purpose of this letter is to request that both Reclamation District 2035 (RD 2035) and the Conaway Preservation Group, LLC (CPG) be granted designated party status for the purposes of the October 23/24, 2008 hearing and to provide comments and suggested language for inclusion in the City's NPDES permit.

Direct Discharge Impacts on RD 2035 and CPG

The California Regional Water Quality Control Board, Central Valley Region (RWQCB), has recently published the tentative Waste Discharge Requirements (WDR) for the City of Woodland (City) Water Pollution Control Facility (WPCF). If adopted, the proposed WDR would allow the City to increase its discharge from 7.8 to 10.4 million gallons per day (mgd) to the Tule Canal through October 24, 2013. This discharge already has a direct impact on RD 2035 and CPG and will have a greater impact with the proposed increase in capacity. RD 2035 relies on the Tule Canal for water supply, conveyance, and drainage for approximately 20,500 acres of land located in Yolo County near the City of Woodland. RD 2035 and CPG have concerns with regard to this discharge's impact on Tule Canal water quality, underlying groundwater, and the ability to use this facility for storm water conveyance and agricultural runoff in the very near future. The tentative order will allow increased electrical conductivity (EC), total dissolved solids (TDS), selenium, and boron pollutant loads to be discharged into the Tule Canal in violation of agricultural water quality goals and standards. If allowed, this increase will further impair and preclude RD 2035's and CPG's use of the Tule Canal for water conveyance and the subsequent use of this conveyed water for irrigation purposes.

Tentative Order Comments

To resolve these critical and significant issues, RD 2035 and CPG would like to work collectively with the cities of Woodland and Davis to develop a regional water supply and recycled water program that directly addresses this region's water quality and supply issues in the shortest time possible. Given the City of Woodland's need to renew their existing NPDES

permit, we strongly recommend that the Regional Water Quality Control Board (RWQCB) include language in the City's NPDES permit that requires the City to participate in the discussion and evaluation of an integrated water management plan that consider the short- and long-term water supply, effluent disposal, and storm water needs of RD 2035, CPG, and the city of Woodland and Davis. It is our belief that this effort can be viewed as an alternative means of addressing Article VI. C. 2. b. as described below:

> CPG is willing to discuss the receipt and beneficial reuse of approximately 20,000 acre-ft per year of recycled water in exchange for providing the cities of Woodland and Davis with a portion of CPG's existing surface water supply and potentially a groundwater supply that would be used only during periods of low surface water supply and/or drought. If implemented, this solution would significantly improve RD 2035's and the cities of Woodland's and Davis' water supply reliability, proportionally reduce the amount of Sacramento River surface water currently used by RD 2035 land owners to satisfy irrigation demands, potentially eliminate the need for the cities of Woodland and Davis to pursue additional surface water supplies, and dramatically improve Yolo Bypass and Sacramento-San Joaquin Delta water quality.

The State Water Resources Control Board (SWRCB) is in the process of drafting a policy to encourage the use of recycled water, particularly when the use of recycled water is primarily used to meet an irrigation water supply need, thereby extending California's limited potable water supply. The solution we have proposed for consideration is in line with the intent of the draft policy.

Given that both the cities of Woodland and Davis have, or will be making, significant investments for wastewater treatment plant upgrades and effluent disposal in the very near future, it is our view that this effort must be completed within the shortest time possible and within a specified timeline. It is questionable whether either the cities of Woodland or Davis are capable of withstanding the financial burden of funding wastewater and effluent disposal upgrades (e.g., City of Daivs is considering $250 million upgrade), followed immediately by water treatment improvements needed to address high concentrations of TDS, EC, selenium, etc. and their impact on surface and ground water. Therefore, we recommend that (1) the RWQCB include language stating that costs associated with independent wastewater and water supply/treatment improvements be thoroughly compared to regional solutions with respect to the community's ability to fund the required wastewater and water supply/treatment improvements, and (2) further wastewater treatment and effluent disposal improvements are not to be initiated prior to the completion of this study. Otherwise, the most likely result is prolonged ground and surface water deterioration due to the Cities' inability to fund the needed water supply/treatment improvements. Under these circumstances, RD 2035 would be forced to take more drastic measures to assure the continued beneficial uses of the Tule Canal. We have attached a copy of the memorandum prepared by R 2035 District Counsel Scott Morris which describes in more detail the specific issues RD 2035 has with the City's tentative order with regard to the Federal Regulations, Policies, etc.

To assist the RWQCB in addressing this comment, we have crafted the following language for inclusion into the adopted order under Article VI. C:

The Discharger shall comply with the following special study requirements to reduce electrical conductivity, boron, selenium, mercury, total dissolved solids, etc. concentrations to acceptable levels and demonstrate the ability to fund and implement the needed improvements.

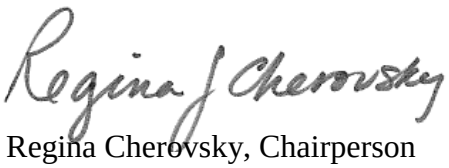
1. Regional Water Supply and Effluent Disposal Study

Task Number	*Description*	*Due Date*
The Discharger, in conjunction with the City of Davis, RD 2035, and CPG shall form a committee to manage, direct, and oversee the development of a mutually beneficial integrated water management plan. This committee shall be responsible for responsible for the implementation and timely completion of the Regional Water Supply and Effluent Disposal Study.		
The Discharger shall conduct all work under the direction of a California registered engineer experienced in pollution investigation in accordance with all laws. All necessary permits shall be obtained.		
1	*Submit for Executive Officer approval, a study workplan that describes the (1) interrelations between primary stakeholders (e.g., City, City of Davis, RD 2035, and CPG) with regard to surface and ground supply, water quality, storm water impacts; (2) study participants, roles, and responsibilities; (3) study approach and tasks; and (4) schedule describing milestones and a time schedule for completion of the study.* *The study time shall be as short as practicable, and in no case, extend beyond eighteen months following the effective date of this Order. The study time schedule should also include provision for the submittal of monthly progress reports.*	*Three months following the effective date of this Order*
2	*Submit a written study comparing potential water supply/treatment and effluent disposal/reuse alternatives to comply with the Basin Plan discharge prohibitions. Alternatives may consist of city and/or agency specific, but must include multi-agency regional alternatives. At least one regional solution must be carried forward for detailed comparison (e.g., cost, environmental impacts, community's ability to financially support, and ability for subsequent implementation). Comparisons to include the City's ability to fund and implement the needed water supply/treatment and effluent disposal/reuse improvements within the shortest time possible, but not to exceed five years from the effective date of this Order.*	*No later than eighteen months from the effective date of this Order*
3	*Implementation of recommended water supply/treatment and effluent disposal/reuse improvements.*	*No later than five years from the effective date of this Order.*

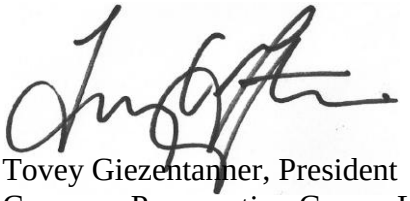
In closing, RD 2035 and CPG urge the RWQCB to (1) grant RD 2035 and CPG designated party status at the upcoming hearing on Woodland's proposed NPDES permit and, (2) include language requiring Woodland to consider the impact their discharge has on downstream stakeholders, the long-term impacts to California's surface and ground water supplies, and participation in developing region wide solutions. If more clarification or other information is needed regarding these requests, please feel free to contact Regina Cherovsky at (530) 662-1484 or Tovey Giezentanner at (916) 801-0344.

Thanks in advance for your time and attention to our request.

Sincerely,



Regina Cherovsky, Chairperson
Reclamation District 2035



Tovey Giezentanner, President
Conaway Preservation Group, LLC

cc: Diana Messina, RWQCB
Kevin Kennedy, HDR

Attachment

KRONICK MOSKOVITZ TIEDEMANN & GIRARD
A LAW CORPORATION

MEMORANDUM

TO: Regina Cherovsky, Chairperson RD2035

FROM: Scott Morris, District Counsel

DATE: September 30, 2008 FILE NO.: 9701.1

RE: City of Woodland Proposed NPDES Permit and Upcoming Regional Water Quality Board Hearing

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This memorandum discusses the Central Valley Regional Water Quality Control Board's upcoming hearing on the City of Woodlands NPDES permit to discharge treated wastewater into the Tule Canal and provides various recommendations for RD2035's consideration.

Request for Designated Party Status

RD 2035 should request designated status at the upcoming hearing regarding renewal of Woodland's NPDES permit. RD 2035 is responsible for flood control and the delivery and maintenance of water supply, water delivery, and water drainage within its boundaries. RD 2035's lands are directly adjacent to Woodland and the proposed operations of Woodlands treatment plant will have a direct impact on RD 2035 operations, water management activities, and the agricultural and other activities of its member landowners. Significantly, RD 2035 relies heavily on the Tule Canal as a water conveyance and drainage facility. Woodland intends to discharge its treated wastewater into the Tule Canal, which will contaminate RD 2035's agricultural runoff. During storm events, Woodland also discharges stormwater into the Tule Canal, which poses the threat of overflow and damage to the Tule Canal. The Board must be made aware of these potential issues so that the proposed permit can be modified to adequately protect landowners within RD 2035. No other party has identical concerns and, thus, RD 2035's participation in the October 23-24, 2008 hearing on the proposed renewal is essential to provide the Board with sufficient information to make an informed and legally adequate decision.

The Proposed Permit Unreasonably Impairs Existing Beneficial Uses of the Tule Canal

The proposed Permit will increase EC, TDS, selenium, and boron discharges to the Tule Canal in violation of agricultural water quality goals and other standards. The Basin Plan states that "Waters shall not contain constituents in concentrations that adversely affect beneficial uses." The Basin Plan's "Policy for Application of Water Quality Objectives" provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations. This application of the Basin Plan is consistent with Federal Regulations, 40CFR 122.44(d). The increase in EC, TDS, and boron will further impair and preclude RD 2035's use of the Tule Canal as a water conveyance for irrigation purposes.

For EC, Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Agriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29,Rev. 1, Rome (1985), levels above 700 µmhos/cm will reduce crop yield for sensitive plants. The University of California, Davis Campus, Agricultural Extension Service, published a paper, dated 7 January 1974, stating that there will not be problems to crops associated with salt if the EC remains below 750 µmhos/cm. The wastewater discharges authorized by the Proposed Permit will exceed these levels without sufficient justification. The wastewater discharge not only presents a reasonable potential, but also actually causes a violation of objectives in the Basin Plan. The available literature regarding safe levels of EC for irrigated agriculture mandate that an effluent limitation for EC is necessary to protect the beneficial use of the Tule Canal in accordance with the Basin Plan and Federal Regulations. Lastly, Federal Regulation, 40 CFR 122.44, mandates an effluent limitation be established if a discharge exceeds a water quality objective.

D. The Proposed Permit Violates State and Federal Antidegradation Policies

The proposed permit allows an increase in discharge from 7.8 to 10.4 million gallons a day into the Tule Canal. As explained above, the permit admits that this will cause existing agricultural beneficial uses of the Tule Canal to be exceeded by the discharge of certain pollutants in excess of allowable or recognized standards. The proposed Permit provides an unacceptable and unsupportable justification for such exceedances. As explained below, the increase of discharges to the Tule Canal in a manner that will impair recognized existing uses violates applicable state and federal standards. Furthermore, the permit allows the existing quality of water in the Tule Canal, a water body that discharges into the Yolo Bypass and the Sacramento-San Joaquin Delta to be further degraded, which violates the State's longstanding antidegradation policy.

Section 101(a) of the Clean Water Act ("CWA"), the basis for antidegradation policy, states that the objective of the Act is to "restore and maintain the chemical, biological and physical integrity of the nation's waters." Section 303(d)(4) of the CWA carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations (40CFR § 131.12(a)) describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures to carry out the policy.

California's antidegradation policy is composed of both the federal antidegradation policy and the State Board's Resolution 68-16 (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) ("Order 86-17); Memorandum from Chief Counsel William Attwater, SWRCB to Regional Board Executive Officers, "federal Antidegradation Policy," pp. 2, 18 (Oct. 7, 1987) ("State Antidegradation Guidance")). As a state policy, with inclusion in the Water Quality Control Plan (Basin Plan), the antidegradation policy is binding on all of the Regional Boards (Water Quality Order 86-17, pp. 17-18). California Water Code ("CWC") Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy. The State Board has adopted the Antidegradation Policy (Resolution 68-16), which the

Regional Board has incorporated into its Basin Plan. Thus, the Board is required by the CWC to comply with the Antidegradation Policy. Implementation of California's antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July1990 ("APU 90-004") and USEPA Region IX, "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12" (3 June 1987) (" Region IX Guidance"), as well as Water Quality Order 86-17.

The State Board's APU 90-004 specifies guidance to the Regional Boards for implementing the state and federal antidegradation policies and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where the Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. None of these factors applies to Woodland's discharges into the Tule Canal.

The conclusory, unsupported, undocumented statements in the proposed Permit are no substitute for a defensible antidegradation analysis. There is nothing resembling an economic or socioeconomic analysis in the proposed Permit and Woodland's independent analysis also did not perform the required analysis, but instead provided only cursory review steeped in generalities. I belive that there are viable alternatives that have never been analyzed. The proposed Permit's bare assertion that increased fees are detrimental to society because disposable incomes will be incrementally reduced is simplistic and unjustifiable. As a rule-of-thumb, USEPA recommends that the cost of compliance should not be considered excessive until it consumes more than 2% of disposable household income in the region. This threshold is meant to suggest more of a floor than a ceiling when evaluating economic impact. In the Water Quality Standards Handbook, USEPA interprets the phrase "necessary to accommodate important economic or social development" with the phrase "substantial and widespread economic and social impact." The antidegradation analysis must discuss the relative economic burden as an aggregate impact across the entire region using macroeconomics. Considering the intrinsic value of the Yolo bypass and the Sacramento-San Joaquin Delta to the entire state and the potential effects upon those who rely and use Delta waters, it must also evaluate the economic and social impacts to water supply, recreation, fisheries, etc. from Woodland's degradation of water quality in the Delta.

The antidegradation analysis in the proposed Permit is not simply deficient, it is literally nonexistent. The brief discussion of antidegradation requirements, in the Findings and Fact Sheet, consist only of skeletal, unsupported, undocumented conclusory statements totally lacking in factual analysis. NPDES permits must include any more stringent effluent limitation necessary to implement the Regional Board Basin Plan (Water Code13377). The Tentative Permit fails to properly implement the Basin Plan's Antidegradation Policy.

Woodland Is Inadequately Prepared To Deal With Stormwater Flows That May Breach The Tule Canal

The proposed Permit indicates that stormflows that cause overflows in the Tule Canal are prohibited, but it is a fact that in past years Woodland has allowed unregulated stormflows to flow into the Tule Canal. These increased flows often flow onto RD 2035 lands. Woodland should explain in more detail and provide evidence that it is prepared to cope with future storm events of less than 100-year occurrence. Also, the Board should clarify what it means by 100 year storm events as these calculations have recently changed to account for better data and more unpredictable or frequent storm events.

F. Woodland Has No Legal Authority To Discharge Into The Tule Canal

The Tule Canal runs entirely within lands managed by RD 2035 and owned by Conaway Ranch. The lands adjacent to, and underlying the Tule Canal, are privately owned by landowners of RD 2035. Given these facts, I am unaware of any legal right possessed by Woodland giving it legal authority to discharge into the Tule Canal. Woodland holds no title or easement to the lands adjacent or underlying the Tule Canal. Thus, Woodland's discharge constitutes a trespass and a public and private nuisance. These issues are further magnified by Woodland's intent to *increase by 33%* its future discharges into the Tule Canal. The Regional Board cannot and must not issue any NPDES permit until it understands these issues, and until they are resolved by Woodland and RD 2035.

G. Other Concerns and Comments

The above comments only highlight RD 2035's most pressing issues. However, in addition to the above comments, RD 2035 is concerned that the State's anti-backsliding policy and the California Toxics Rule may be violated by Woodland. RD 2035 also is concerned that Woodland's discharges may cause impacts to the quality of the groundwater supply of the underlying landowner; delivered by RD2035. Maintenance and proper functioning of the Tule Canal has not been adequately established and increased discharges from Woodland may cause an increased chance of overflow of spillage of contaminated water onto lands within RD2035's service territory. RD 2035 should incorporate as its own all comments provided by other parties regarding Woodland's permit renewal and should reserve the right to raise these issues in the forthcoming hearing or in subsequent legal proceedings.