

California Regional Water Quality Control Board,
San Francisco Region
1515 Clay Street, Suite 1400
Oakland, CA 94590
NPDES Fax: (510) 622-2481

17 July 2006

Re: Proposed Reissuance of NPDES Permit for City of Calistoga, Dunaweal
Wastewater Treatment Plant, NPDES Permit No. CA 0037966.

Dear Members of the Board,

Thank you for the opportunity to review and comment on the proposed reissuance of NPDES Permit No. CA 0038008, for the City of Calistoga, (“Calistoga Permit”). We write this letter on behalf of San Francisco Baykeeper (“Baykeeper”) regarding the proposed Calistoga Permit’s compliance with the Clean Water Act (“CWA”). These comments are submitted separately yet contemporaneously with four other proposed NPDES permit renewals scheduled for public hearings on August 9, 2006.

The proposed Calistoga Permit includes interim effluent limitations for certain Priority Pollutants that are inconsistent with applicable Basin Plan limits. The interim limits are both less stringent, and in fact very different types of limits, than those set out in the Basin Plan. Thus evaluating compliance with the applicable Water Quality Standards, or even evaluating progress towards those standards, is difficult or impossible.

The Calistoga Permit also provides confusing language as to the meaning of Minimum Levels and how compliance with water quality standards is determined. As stated in *Waterkeepers v. State Water Resources Control Board*, 102 Cal. App. 4th 1448, ML are to be used at most as part of enforcement discretion on the part of the Regional Board, and cannot replace the requirement for strict compliance with WQBELs. The Calistoga Permit must clearly state the limited role of MLs

Finally, the Calistoga Permit fails to address collection system issues. For example, the permit fails to address the impact of the recently adopted General Waste Discharge Requirements for Sanitary Sewer Systems will have on the Calistoga program, or to integrate the requirements of the permit into the requirements of the proposed Calistoga Permit. The reporting requirements of the Calistoga Permit do not address Sewer System Overflow reporting, do not incorporate or reference the monitoring

requirements of the Statewide WDR, and may well perpetuate the confused and inconsistent SSO reporting that has plagued efforts to compare and evaluate collection system performance in California. The Calistoga Permit also does not evaluate current collection system performance, including the current SSO rate. Thus, the proposed Calistoga Permit fails completely to examine, let alone address, any shortcomings in the system.

For all these reasons, Baykeeper requests that the Calistoga Permit be returned to staff to address these issues and present a draft Permit to the Board that is both legal and protective of the environment.

I. The Interim Limits in the Permit are Inconsistent with Basin Plan Limits

The proposed Calistoga Permit sets out interim effluent limitations for several toxic pollutants including Copper, Cyanide, Chlorodibromomethane, and Dichlorobromomethane. Each of these pollutants is designated as a “Priority Toxic Pollutant” by the CTR. 40 C.F.R. 131.38(b).

Section IV.B of the proposed Calistoga Permit also establishes a compliance schedule to reduce discharges of Copper, Cyanide, Chlorodibromomethane, and Dichlorobromomethane from the Dunaweal Wastewater Treatment Plant. In Section IV.B.1, interim effluent limitations, this schedule provides that the interim effluent limitations will be in effect during a four-year period, or until such time as the Regional Water Board amends the limitations based on Site Specific Objectives and/or additional information. *See* Footnote [1] for Table 5. It is not explained, however, what “additional information” might be needed to trigger an amendment to the interim limitations. Without such standards or explanations, it is unclear and whether the interim limitations will ever be amended during the four-year period in which these requirements are to remain in effect.

The interim effluent limitations established for the Calistoga Permit are also inconsistent with those established in the San Francisco Regional Water Quality Control Board’s “Basin Plan”. These standards provide priority toxic effluent limitations measured in terms of hourly average and 4-day concentrations, while the proposed interim effluent limitations for the proposed Calistoga Permit are measured in terms of daily maximums. The Calistoga Permit provides a 14.7 ug/L daily maximum for copper, 21.6 ug/L maximum daily for cyanide, 9.6 ug/L daily maximum for Chlorodibromomethane, and 23 ug/L daily maximum for Dichloro-bromomethane. Not only does the use of daily maximum limitations make comparison difficult or impossible, it wholly omits any standard or limitation that separately acknowledges the harm caused by extended high toxic pollutant concentrations of up to four days. Moreover, the proposed interim limitation for Copper is both inconsistent with and significantly less stringent than the effluent limits set forth in the Basin Plan, which requires a maximum hourly average for Copper of 13 ug/L, and a 4-day average of 9 ug/L. By contrast, the proposed Calistoga

Permit allows a Daily Maximum for copper of 14.7 ug/L. One can therefore envision numerous instances in which the permittee will discharge within the 14.7 ug/L Daily Maximum limit for extended periods, yet fail to meet the Basin Plan required 4-day average of 9 ug/L and/or the required hourly average of 13 ug/L. Accordingly, the interim effluent limitation for Copper is inconsistent with the Basin Plan and the Clean Water Act.

II. Minimum Levels are Used for Agency Enforcement Discretion Only, Not Compliance Determinations

Part IV.A.6 (Table IV note 2) of the Calistoga Permit also sets out the Minimum Levels for the pollutants with the reasonable potential to violate Water Quality Standards. The language of this section is confusing as to the purpose of the MLs, and at least implies that MLs are to be used for compliance determinations. While not the clear “safe harbor” for discharges below MLs but above WQBELs set out in some permits, such as the City of Richmond’s, the language of the Calistoga Permit creates confusion as to the enforceability of WQSS.

The Court of Appeal, First Division (the controlling Division for San Francisco) has rejected the application of MLs in the manner suggested by the Calistoga Permit. The Court held that “...ML’s (are used) only for purposes of reporting and administrative enforcement...” and specifically cannot be used in place of WQBELs. *Waterkeepers v. State Board*, 102 Cal App 4th 1449, 1460-61.

The Calistoga Permit must include clear language setting out the specific use and limits of MLs and their role in the permit.

III. The Permit Fails to Address Collection System Issues

While the Calistoga Permit regulated the Calistoga collection system, the permit fails to address collection system issues. For example, the permit fails to address the impact the recently adopted General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-2003-DWQ. will have on the Calistoga program. The new collection system permit sets minimum reporting and program requirements for all collection systems, and may conflict with or at least make confusing the requirements of the Calistoga Permit. At a minimum, the elements of the Collection System Permit should be incorporated into the Calistoga Permit, and the program elements and deadlines made consistent.

The reporting requirements of the Calistoga Permit do not address Sewer System Overflow reporting, do not incorporate or reference the monitoring requirements of the Statewide WDR, and may well perpetuate the confused and inconsistent SSO reporting that has plagued efforts to compare and evaluate collection system performance in California. Some permittees, for example, do not believe that reporting is required for

SSO of less than 1000 gallons, while others do not believe that reporting is required unless the discharge or SSO impacts surface waters or flows to a storm drain. The Calistoga Permit does nothing to clarify any of these issues.

Further, the permit makes no effort to evaluate current system performance, to compare spill rates to other Bay Area or California systems, to assess the adequacy of Calistoga's efforts to control Sewer System Overflows, or to order additional steps by Calistoga to reduce Sewer System Overflows. Sewer System Overflows are recognized both by the State of California and Nationally as a serious public health and environmental issue requiring attention from regulatory agencies. The NPDES permit re-issuance cycle is the obvious time to address the issue for Calistoga, as staff is focusing on the system, and issuing the primary regulatory document relating to Calistoga's operations. Unfortunately, the Permit fails completely to examine, let alone address, any shortcomings in the collection system. This is unacceptable, and must be addressed by staff.

Thank you for your consideration of our comments and concerns.

Sincerely yours,

Daniel Cooper
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Attorneys for
San Francisco Baykeeper

Cc: Sejal Choksi, San Francisco Baykeeper