



JOHN Y. "JACK" DIEPENBROCK
TAREN L. DIEPENBROCK
KEITH W. MBRIDE
BRADLEY J. ELGIN
EILEEN M. DIEPENBROCK
MARK D. HARRISON
GENE K. CHEEVER
LAWRENCE B. GARCIA
ANDREA A. MATANAZZO
JOEL PATRICK ERB
JOHN D. NUBB
JENNIFER L. DAUER
JEFFREY L. DORSO

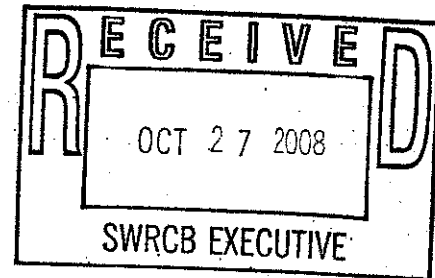
JEFFREY L. ANDERSON
SEAN K. HUNGERFORD
LEONOR Y. DICICAN
JULIE Y. NEIDER
CHRIS A. MCCANDLESS
DAVID P. TEMBLADOR
DAN M. SILBERBOAD
LAWRIT T. KING, JR.
DANIEL J. WHITNEY
DAVID A. DIEPENBROCK
JONATHAN R. MARZ
YALENE C. SINCAID
RACHEL A. COLES
ANTHONY J. CORTEZ
BRADLEY B. JOHNSON

R. JAMES DIEPENBROCK
(1929 - 2002)

October 27, 2008

Via e-mail: commentletters@waterboards.ca.gov
And U.S. Mail

Ms. Jeanie Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: A-1846(a) and A-1846(b) – November 4, 2008 Board Meeting
Proposed Order for City of Tracy Wastewater Treatment Plant
Waste Discharge Requirements Order No. R5-2007-0036 [NPDES
No. CA0079154] and Time Schedule Order No. R5-2007-0037

Dear Ms. Townsend:

On behalf of Westlands Water District ("Westlands"), please accept this comment letter supporting the State Water Resources Control Board's ("State Water Board") adoption of the proposed order to review on its own motion Waste Discharge Requirements Order No. R5-2007-0036 [NPDES No. CA0079154] and Time Schedule Order No. R5-2007-0037 (referred to collectively as "City of Tracy Permit").

When the Regional Water Quality Control Board ("Regional Water Board") considered issuance of the City of Tracy Permit, Westlands raised concerns with the then-proposed discharge limitations. Those concerns went largely unaddressed¹ and are now heightened because of: (1) recent science, which, at least preliminarily, indicates municipal and industrial discharges have more significant affects on fishery resources than previously believed, and (2) the program of implementation adopted by the State Water Board in its 2006 Water Quality Control Plan for the San Francisco Bay and Sacramento-San Joaquin River Delta, which requires the Regional Water Board to

¹ Westlands' comment letter is attached hereto and hereby incorporated herein by this reference.

400 CAPITOL MALL
SUITE 1800
SACRAMENTO, CA 95814
916 492.5000
FAX: 916 446.4535

WWW.DIEPENBROCK.COM

DIEPENBROCK HARRISON

Ms. Jeanie Townsend, Clerk of the Board
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do more to help implement water quality objectives than it did in the City of Tracy Permit.

If the State Water Board adopts the proposed order, Westlands would appreciate the opportunity to present to the State Water Board its more detailed concerns with the City of Tracy Permit.

Sincerely,

DIEPENBROCK HARRISON
A Professional Corporation

By


Jon D. Rubin
Attorneys for Westlands Water District

DMS:gjc

Attachment

cc: Thomas W. Birmingham

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ATTACHMENT 1



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JOHN Y. "JACK" DIEPENBROCK
KAREN L. DIEPENBROCK
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DAVID J. EICH
EILEEN H. DIEPENBROCK
MARK D. HARRISON
GERT K. CHEEVER
MICHAEL T. ADAM
LAWRENCE R. GARDN
SUSAN E. KINGSLAND
ANDREA A. BARZAARD
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JON D. BROWN

R. JAMES DIEPENBROCK
(1929-2002)

JEFFREY L. ANDERSON
LARA K. O'NEIL
MICHAEL E. THORNTON
JENNIFER L. DARTER
CRAIG O'NEAL WILKINSON
SEAN K. HURFENRATH
LEONOR Y. DICHICAN
CHRIS A. MCCORDS
JEFFREY K. DORIS
DALE M. SILVERGOLD
ANDREW P. TAMMAMER
BLAIR W. WILL
KRISTA J. DUNKERLEER
DAVID R. HEE
JENNIFER D. DEGITOLD
SAMM B. BARTHOLOM

June 26, 2006

Via: Hand Delivery

California Regional Water Quality Control Board
Central Valley Region
11021 Sun Center Drive, Suite 2000
Rancho Cordova, CA 95670-6114

Re: *Tentative Waste Discharge Requirements (NPDES No. CA0079154) and
Time Schedule Order for City of Tracy*

Dear Members of the Board:

The following comments on the tentative Waste Discharge Requirements (NPDES No. CA0079154) and Time Schedule Order for City of Tracy ("City" or "Discharger"), Wastewater Treatment Plant, San Joaquin County ("Proposed WDRs"), are submitted on behalf of the Westlands Water District ("Westlands").

Westlands is a California water district with a right to receive up to 1,150,000 acre-feet of Central Valley Project ("CVP") water from the U.S. Bureau of Reclamation ("Reclamation" or "USBR"). Westlands provides water for municipal and industrial uses, and for the irrigation of approximately 500,000 acres on the west side of the San Joaquin Valley in Fresno and Kings 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, dependant on Westlands' agricultural economy.

The Proposed WDRs would authorize the City to discharge water from its Wastewater Treatment Plant into Old River, a water of the United States and part of the Sacramento-San Joaquin Delta ("Delta"). Proposed WRDs at 2. The Proposed WDRs explains:

400 CAPITOL HALL
SUITE 1800
SACRAMENTO, CA 95814

WWW.DIEPENBROCK.COM 916 492.5000
FAX: 916 446.4535

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The Discharger's effluent is high in salt, especially for municipal wastewater. The high salinity is partly due to its municipal water supply and from significant salt loading from an industrial source, Leprino Foods Company, a local cheese manufacturer. . . .

Proposed WDRs at F-45. Despite those statements, the Proposed WDRs require little of the City to mitigate for adverse water quality impacts caused by discharges from the Waste Water Treatment Plant.¹

The Proposed WDRs would establish an interim effluent limit of 2,265 umhos/cm (2.265 electrical conductivity) and "goal" of 1.35 electrical conductivity. Proposed WDRs at Appendix F-8, F-47. Westlands is very concerned that such an effluent limit and "goal" are inconsistent with the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("1995 Bay-Delta Plan"), and would potentially increase the burden placed on the CVP and thus potentially jeopardize the water supply of Westlands.

In 1995, the State Water Resources Control Board ("State Water Board") adopted the 1995 Bay-Delta Plan.² The 1995 Bay-Delta Plan sets, in part, objectives for salinity, measured in Old River, the compliance point for one such objective is located just miles from the point of discharge for the City's Waste Water Treatment Plant. See Exhibit 1. For the Old River objectives, the 1995 Bay-Delta Plan establishes a maximum 30-day running average of mean daily electrical conductivity of 0.7 during April through August, and 1.0 from September through March. *Id.* At 14, 17. The "goal" and effluent limit of the Proposed WDRs are clearly inconsistent with the 1995 Bay-Delta Plan. The California Court of Appeal recently found a similar inconsistency to be a fatal defect. See *State Water Resources Control Board Cases*, 136 Cal.App.4th 674, 734-35 (2006).

Indeed, the legal violation that results from an effluent limit and "goal" that cause the exceedance of the relevant water quality objectives is recognized in the Proposed

¹ The WDRs would require the City to "complete and submit a report on the results of a site-specific investigation of appropriate EC levels to protect the beneficial use of agricultural supply in areas irrigated with Old River waters in the vicinity of the discharge." WDRs at 19. See also WDRs at 21. Such a report would likely have significant implications. As such, it is not appropriate for it to be prepared by the City. At the least, a group of stakeholders should be involved in its preparation.

² A copy of the 1995 Bay-Delta Plan is attached hereto as Exhibit 1 and can be obtained from the State Water Board website, at the following address: http://www.waterrights.ca.gov/baydelta/html/1995_Plan.htm.

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WDRs. Under the section entitled: "Best Practicable Treatment or Control (BPTC) of Salinity", it states:

To comply with Resolution 68-16, [the State's antidegradation policy,] the treatment or control of discharges of waste to waters of the state must be sufficient to provide the minimum degradation of such waters that is feasible, but in no case can the discharge cause the exceedance of applicable water quality objectives.

Proposed WDRs at 21.³

The Proposed WDRs attempt to avoid the import of that inconsistency by citing State Water Board Decision D-1641. The Proposed WDRs states:

D-1641 contains salinity water quality objectives (see Table F-3) to protect the agricultural beneficial uses. These salinity objectives must be met by [the Department of Water Resources ("DWR")] and USBR as a requirement of Water Rights permits and licenses issued by the State Water Board for operation of the State Water Project (SWP) and Central Valley Project (CVP).

Proposed WDRs at F-45. Those statements are wrong. Decision D-1641 does not contain water quality objectives.⁴ Those objectives are established in the 1995 Bay-Delta Plan. That error has significance, as the issuance of Decision D-1641 represents just one of three actions compelled by the 1995 Bay-Delta Plan program of implementation to achieve the Old River objectives.

In addition to action under the State Water Board's water rights authority (i.e. an amendment to a water right permit or license), which D-1641 represents, the 1995 Bay-Delta Plan program of implementation calls for measures requiring an exercise of water

³ The City has historically discharged at levels that violate the objectives. The Proposed WDRs recognizes:

A review of the Discharger's monitoring reports from July 1998 through December 2004 shows an average effluent EC of 1753 $\mu\text{mhos/cm}$, with a range from 1008 $\mu\text{mhos/cm}$ to 2410 $\mu\text{mhos/cm}$ for 305 samples. These levels exceed the applicable objectives.

Proposed WDRs at F-45.

⁴ Relevant sections of D-1641 are attached hereto as Exhibit 2. A copy of D-1641 can be obtained from the State Water Board website, at the following address: www.waterrights.ca.gov/baydelta/d1641.htm.

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quality authorities and actions by other agencies, like regulation of discharges from the City's Waste Water Treatment Plant.

As the California Court of Appeal recently explained:

In addressing implementation of the objectives in the 1995 Bay--Delta Plan, the Board divided the program of implementation into "four general components: (1) measures within [the Board's] authority over water diversion and use which implement the water quality objectives; (2) measures requiring a combination of [the Board's] water quality and water rights authorities and actions by other agencies to implement the objectives; (3) recommendations to other agencies to improve fish and wildlife habitat conditions; and (4) a monitoring and special studies program."

* * *

The Board included within the second component of the program of implementation . . . the agricultural salinity objectives for the southern Delta[.]

State Water Resources Control Board Cases, supra, 136 Cal.App.4th at 703-04

In Decision D-1641, the State Water Board provided a concise explanation why it included the salinity objectives in the "second component". In that decision, the State Water Board wrote:

Water quality in the southern Delta downstream of Vernalis is influenced by San Joaquin River inflow; tidal action; diversions of water by the SWP, CVP, and local water users; agricultural return flows; and channel capacity [citation omitted]. The salinity objectives for the interior southern Delta can be implemented by providing dilution flows, controlling in-Delta discharges of salts, or by using measures that affect circulation in the Delta.

Decision D-1641 at 86-87 (emphasis added). It is for those reasons the State Water Board in Decision D-1641 did not impose full or complete responsibility for the salinity objectives on Reclamation and DWR. It is also for those reasons that the California

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Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board") should not adopt the Proposed WDRs.

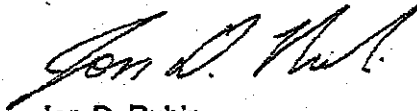
Westlands is also concerned because, if the Central Valley Water Board authorizes the City to discharge at levels that far exceed the Old River objectives, as reflected in the Proposed WDRs, Reclamation and DWR may be forced to re-operate the Central Valley Project and State Water Project ("SWP"), respectively. In particular, some have argued that when the Old River objectives are exceeded, Reclamation and DWR must release water from their reservoirs and/or reduce diversions of water from the Delta. Such a result would improperly force Reclamation and DWR to take action intended to mitigate for the City's impacts and jeopardize further the CVP and SWP water otherwise available.

In sum, if the Proposed WDRs are adopted, this Board would obfuscate the mandate of the 1995 Bay-Delta Plan, effectively further shifting the burden of the Old River objectives to Reclamation and DWR, a result that would be unlawful and would improperly and unfairly place additional risk on the water supply of Westlands and others that depend on CVP water.

Thank you very much for your consideration of these comments.

Sincerely,

DIEPENBROCK HARRISON
A Professional Corporation



Jon D. Rubin
Attorneys for Westlands Water District

Enclosures

cc: Thomas Birmingham
Terry Erlewine