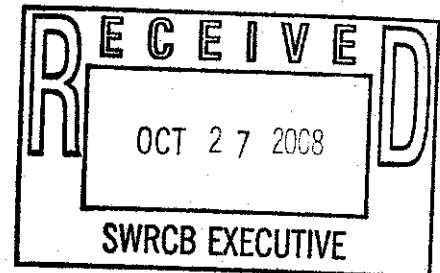


October 27, 2008

VIA EMAIL - COMMENTLETTERS@WATERBOARDS.CA.GOV

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100



Re: Comments on Proposed Order - SWRCB/OCC File A-1846(a) and A-1486(b)
Client-Matter No. 07547.00004

Dear Madam Clerk and Members of the State Water Board:

The City of Tracy ("City") is in receipt of the draft order on the above listed petitions, which is to be discussed by the State Water Resources Control Board ("Board") at its November 4, 2008 hearing. The City would like to urge the Board members not to adopt an order reviewing on its own motion the petitions of the Environmental Law Foundation ("ELF") and the California Sportfishing Protection Alliance ("CSPA"). Instead, these petitions should be deemed denied under 23 C.C.R. §2050.5, or denied outright for failure to raise substantive issues of law or fact.

As previously explained by the City in its responses to the ELF and CSPA petitions; these petitions challenged the DRAFT permit to the City, not the final permit ultimately adopted by the Regional Water Quality Control Board for the Central Valley Region.

For example, CSPA alleged that "the Order does not contain a protective or legal effluent limitation" for Electrical Conductivity ("EC"), incorrectly citing that "the Order contains an interim effluent limitation for EC of 2267 μ mhos/cm, as a monthly average." However, the final permit does not even contain an interim limit for EC, and instead includes a final effluent limitation. See Permit at pg. 9, Provision IV.1.i. Thus, CSPA's argument that the Permit does not contain a final numeric effluent limitation is incorrect and should be dismissed.

Many of the other allegations contained in CSPA's Petition also relate to provisions of the tentative or draft Permit, not the final permit. In fact, the CSPA petition is almost verbatim of its June 26, 2006 comment letter on the *draft* Tracy Permit, which was sent almost a year before the final Permit was adopted. Other issues raised by CSPA have already been determined in other SWRCB Orders. See SWRCB Order No. WQ 2008-08 (resolving acute and chronic toxicity, endangered species, and other issues also raised in Tracy permit petition). For this reason, the CSPA Petition should be rejected, just as it was with their similar petition filed against

Mountain House. See SWRCB/OCC File No. 1849.

ELF's petition raises issues solely related to antidegradation, and has raised these same exact issues in relation to numerous permits throughout the Bay Area and Central Valley. Most, if not all, of these petitions have previously been dismissed.

As a general response, Tracy notes that ELF's petition is not permit-specific, but instead challenges the State's implementation of the antidegradation policies. Moreover, the State Water Board has already made rulings on the ELF's issues related to antidegradation. See SWRCB Order No. WQ 2008-0006 (SWRCB/OCC File A-1871). Therefore, no additional "own motion" review is needed to address these issues further.

In addition, in this case, the Regional Water Board adequately explained that the discharge provides a maximum benefit to the people of the state because it is "necessary to accommodate housing and economic expansion, and . . . it results in a high level of treatment of sewage waste." See Permit at pgs. F-7 to F-9. The Regional Board also included an analysis of individual constituents and concluded that the policy for antidegradation had been met. See Permit at Table F-1. Thus, the Regional Board adequately addressed antidegradation issues.

The City of Tracy also completed an analysis of consistency with the State and federal antidegradation policies in its Environmental Impact Report ("EIR") for the proposed treatment plant expansion. The water quality impacts analysis contained in the EIR indicated that the proposed discharge will not result in significant adverse impacts to beneficial uses or water quality, and is consistent with antidegradation policies. The EIR went through the public process required under the California Environmental Quality Act ("CEQA") and was certified without legal challenge. No evidence presented during the proceedings on the Permit demonstrates that the City's current or future flows will adversely or unreasonably affect beneficial uses or that the discharge will, at the end of the lawfully applied compliance schedules, result in a quality less than that described in the Regional Water Board's policies. Thus, antidegradation is not an issue.

For these reasons, the City respectfully requests that the Board not vote to extend the time period to allow for own motion review.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa A. Thorne
Special Counsel to the
City of Tracy

962653.1