



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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20 April 2007

Dr. Karl Longley, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Landau, Assistant Executive Officer
Mr. Dave Carlson, Env. Program Manager, NPDES
Mr. Jim Marshall, Sr. WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Waste Discharge Requirements for Mountain House Community Services District
Wastewater Treatment Facility, San Joaquin County

Dear Messrs. Longley, Landau, Carlson, Marshall and Ms. Creedon;

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (hereinafter "CSPA") has reviewed the Central Valley Regional Water Quality Control Board's (hereinafter "Regional Board") tentative NPDES permit (hereinafter "Order" or "Permit") for the Mountain House Community Services District wastewater treatment facility (hereinafter "Discharger") and submits the following comments.

CSPA incorporates by reference the four previous comment letters concerning the proposed Order submitted on 13 July 2006, 22 July 2006, 26 July 2006 and 1 August 2006 and our oral comments submitted at the 4 August 2006 Regional Board hearing. We also incorporate by reference the comments submitted by the Environmental Law Foundation.

- 1. The Regional Board must not issue a permit and/or the accompanying TSO until the Discharger submits a detailed engineering analysis that the new system is capable of meeting all water quality standards and objectives.**

On 13 July 2006 the California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (hereinafter "CSPA") submitted the following comment with regard to "new" dischargers and compliance schedules:

"II. The proposed permit does not comply with the CTR or SIP which prohibits compliance schedules for new or recommencing dischargers

The proposed permit states in numerous locations that the Discharger has not previously discharged to surface waters and has previously discharged all wastewater to land for disposal. The proposed discharge is a new discharge. The proposed permit contains a compliance time schedule for Aldrin, bis(2-ethylhexyl)phthalate, cyanide and heptachlor in Limitations Section 2 in direct violation of the SIP. The proposed permit also contains a one-year compliance time schedule for bromoform, dibromochloromethane and dichlorobromomethane in Limitations Section d.

An existing but never used NPDES permit does not obviate the fact that the new treatment works and new outfall is a New Source or New Discharger subject to New Source requirements. The California Toxic Rule (CTR), page 31703 Federal Register/Vol 65, No. 97, states “[a] ‘new California discharger’ includes ‘any building, structure, facility, or installation from which there is, or may be, a discharge of pollutants’, the construction of which commences after the effective date of this regulations.” New California dischargers are “required to comply immediately upon commencement of discharge with effluent limitations derived from the criteria in this rule.” This is echoed by the federal regulations, 40 CFR § 122.47(a)(2), which state that a compliance schedule can be included for new dischargers “only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.” In the extant situation, the relevant standards were issued prior to construction and more than three years before commencement of discharge.

Alternatively, should the fallacious argument be presented that Mountain House’s current never-used NPDES permit somehow circumvents the new source rule, the dormancy of discharges from the facility means that Mountain House is a recommencing discharger. The California Toxic Rule (CTR), page 31704 Federal Register/Vol 65, No. 97, states “... a recommencing discharger shall install and implement all pollution control equipment to meet the conditions of the permit before discharging. The facility must also meet all permit conditions in the shortest feasible time (not to exceed 90 days).” Further, 40 CFR § 122.47(a)(2) allows compliance schedules for recommencing dischargers “only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.” Here, relevant standards were issued more than three years before commencement of discharge.

The preceding paragraphs are further reinforced by the regulations, 40 CFR § 122.29(d)(4), which state “[t]he owner or operator of a new source, a new discharger, or a recommencing discharger shall install and have in operating condition, and shall ‘start up’ all pollution control equipment to meet the conditions of its permits before beginning to discharge. Within the shortest

feasible time (not to exceed 90 days), the owner or operation must meet all permit conditions.”

The Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) states “[c]ompliance schedules shall not be allowed in permits for new dischargers.” SIP at 2.1, page 20. Since the Discharger has never legally discharged pollutants to the Old River, it is a new or, at the very least, a recommencing discharger.

We note that federal Regulations, 40 CFR § 122.4((i), even prohibit the issuance of a NPDES permit “[t]o a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violations of water quality standards.” Indeed, the owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards must demonstrate before the close of the public comment period that; 1) there are sufficient remaining pollutant load allocations to allow for the discharge, and 2) the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. Id.

The Old River and the South Delta have never had to assimilate wastes discharged by Mountain House. Significant negative changes have transpired since the present permit was issued; i.e., crash of pelagic species, new listed species, new critical habitat designations, additional pollutant loading to the river, etc. Water quality standards and, consequently, limits in the Permit do not consider that aquatic species in receiving waters are subject to multiple stressors. It is both unreasonable and illegal to grant a facility that has never before discharged the same discharge and compliance schedule privileges accorded to an existing discharger that is presently in compliance with its permit but is faced with the need to expand and/or meet new criteria.”

The Regional Board has eliminated the compliance schedules from the proposed NPDES permit and has proposed an accompanying Time Schedule Order (TSO). The TSO proposes to allow the Discharger until 30 April 2012 to comply with limitations for bis(2-ethylhexyl)phthalate, aldrin, heptachlor and iron. The Regional Board has failed to clearly understand the previously submitted comment, the CTR, the SIP and applicable cited Federal Regulations with regard to compliance schedules for new wastewater discharges. The discussion is not where the compliance schedule is properly placed; the discussion is whether a new facility should be required to be fully compliant upon initiation of discharge to surface waters. The proposed TSO states very clearly in the Findings that the discharge will be non-compliant upon initiation of the wastewater discharge to surface waters. In designing and constructing a new wastewater treatment plant the designer must consider the characteristics of the wastewater and applicable water quality standards and design the system accordingly. A new discharge must be fully compliant upon initiation of the wastewater discharge to surface waters. The Regional Board must not issue a permit and/or the accompanying TSO until the

Discharger submits a detailed engineering analysis that the new system is capable of meeting all water quality standards and objectives.

2. **The proposed Permit fails to contain a protective Effluent Limitation for electrical conductivity (EC) in accordance with Federal Regulations 40 CFR 122.44 (d)(1)(i). The Effluent Limitation for EC in the proposed Permit is nonbinding and subject to removal at the whim of the Executive Officer. The Effluent Limitation for EC in the proposed Permit will be eliminated subject to an illegal “pay to pollute” requirement at the discretion of the Executive Officer. The proposed “pay to pollute” requirement establishes an illegal tax (or fee) imposed at the discretion of the Executive Officer beyond the authority of the Regional Board.**

The proposed Permit contains Effluent Limitation No. k which requires that: “The EC in the discharge shall not exceed a monthly average of 700 umhos/cm (April 1 to August 31) and a monthly average of 1,000 umhos/cm (September 1 to March 31), unless:

1. *The Discharger implements all reasonable steps as agreed by the Executive Officer to obtain alternative, lower salinity water supply sources; and*
2. *The Discharger develops and implements a salinity source control program as approved by the Executive Officer that will identify and implement measures to reduce salinity in discharges from residential, commercial, industrial and infiltration sources in an effort to meet the interim salinity goal of a maximum 500 umhos/cm electrical conductivity increase over the weighted average electrical conductivity of the City of Tracy’s water supply; and*
3. *When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan.*

Failure to meet conditions 1) through 3), above, shall result in the final effluent limitation becoming effective.”

Federal Regulations 40 CFR 122.44 (d)(1)(i) requires that: “Limitations must control all pollutants or pollutant parameters (either conventional or nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The proposed Permit Fact Sheet, Table 5, shows the discharge has contained EC concentrations as high as 1830 umhos/cm. The Fact Sheet also details that the water quality necessary to protect the agricultural and municipal/domestic beneficial uses of the receiving stream are 700 umhos/cm and 900 umhos/cm, respectively. The discharge clearly presents a reasonable potential to exceed the Basin Plan narrative and Chemical Constituents criteria for water quality for EC and in accordance with 40 CFR 122.44 (d)(1)(i) the proposed Permit is required to contain an effluent limitation for EC. There is

no provision in 40 CFR 122.44 (d)(1)(i) that allows the Executive Officer to remove or alter the Effluent Limitation in an NPDES permit. The proposed Effluent Limitation for EC which is conditional and subject to revision outside the public process does not comply with the requirements of 40 CFR 122.44 (d)(1)(i).

There is no information that the proposed interim Effluent Limitation for EC of "...a maximum 500 umhos/cm electrical conductivity increase over the weighted average electrical conductivity of the City's water supply" is protective of the beneficial uses of the receiving stream and therefore does not meet the requirements of 40 CFR 122.44 (d)(1)(i).

The proposal to: "When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan" allows a discharger to pay to pollute. There is no legal or technical basis for such a proposal. It is not within the legal or technical realm of the Regional Board and especially the Executive Officer to allow a Discharger to discharge waste above water quality standards provided they pay to fill the Executive Officers coffers. Such a proposal does not protect water quality.

The proposal to: "When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan" is an illegal tax or fee. The Regional Board does not have the authority to create and levee new taxes. Such fees are not addressed in the State Board's Resolution 2006-0064 which adopted emergency regulations revising fee schedules in accordance with Title 23 of the CCR and is an illegal fee.

The proposal to: "When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan" could be considered a conflict of interest since the Regional Board or the Executive Officer exploits an official capacity for the financial benefit of the Board.

3. The proposed Permit contains a compliance schedule for aluminum based on "a new interpretation of the Basin Plan" as detailed in the Fact Sheet and Findings. The Regional Board fails to provide any explanation or definition of the "new interpretation" of the Basin Plan.

The simple unsupported claim that there is a "new interpretation" of the Basin Plan is insufficient to claim coverage under State Board Order WQ 2001-06 at pp 53-55. The Regional Board has included compliance schedules for aluminum in enforcement orders for several years. The Regional Board must, at a minimum, define the old interpretation of the Basin Plan with respect to aluminum and how has it changed. The permit must be modified to include the details of the new interpretation or the compliance schedule moved to an enforcement order.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" being more prominent than the last name "Jennings".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance