**California Sportfishing Protection Alliance**
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22 December 2006

Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Landau, Assistant Executive Officer
Ms. Diana Messina,
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 (NPDES Permit No. CA0079367) and Cease and Desist Order for Placer County Department of Facility Services, Placer County Sewer Maintenance District No. 3, Placer County

Dear Messrs. Landau, Carlson and Mesdames Creedon and Messina:

The California Sportfishing Protection Alliance and Watershed Enforcers (CSPA) has reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative Waste Discharge Requirements (NPDES Permit No. CA0079367 and Cease and Desist Order (Order or Permit) for Placer County Department of Facility Services, Placer County Sewer Maintenance District No. 3, Placer County (Discharger) and submits the following comments.

CSPA requests status as a designated party for this proceeding. CSPA is a 501(c)(3) public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded surface and ground waters and associated fisheries. CSPA members reside, boat, fish and recreate in and along waterways throughout the Central Valley, including Placer County.

**1. The compliance time schedules in the proposed Permit do not comply with the Board's policies (SIP), the provided information is incomplete in accordance with Federal Regulations (40 CFR 124.8), and the Regional Board's Authority to Issue Compliance Schedules under the CTR Has Now Lapsed in accordance with Federal Regulations (40 C.F.R. section 131.38(e)(3))**

*Basin Plan Objective Based Constituents:* Proposed Permit Finding K discusses Compliance Schedules. Specifically, Finding K states that compliance schedules are allowed in the NPDES permit if the Regional Board views an effluent limitation to be based on a new interpretation of a narrative standard or objective. The proposed Permit does not define "new interpretation" and how that differs from the basis of the water quality standard or objective in the Basin Plan. Specifically, the proposed Permit contains compliance time schedules for aluminum and organochlorine pesticides.

The Central Valley Regional Board has previously and routinely included aluminum limitation compliance schedules in Time Schedule or Cease and Desist Orders. The aluminum limitation is based on the Basin Plan narrative toxicity objective. There is no information in the proposed Permit or Fact Sheet that describes what "new interpretation" is being referenced in allowing the compliance schedule to be included in the proposed Permit as opposed to a compliance order. Federal Regulation 40 CFR 124.8 requires Fact Sheets be prepared to include the principal facts and legal and policy considerations in preparing the permit. The permit is incomplete, in accordance with 40 CFR 124.8, and must be amended to include some information regarding "new interpretation" or the time schedule for aluminum moved to the accompanying Cease and Desist Order.

The proposed Permit includes a compliance schedule for organochlorine pesticide limitations which were based on the Basin Plan's Pesticides objective. As was the case for aluminum, there is no information in the proposed Permit or Fact Sheet that describes what "new interpretation" is being referenced in allowing the compliance schedule to be included in the proposed Permit as opposed to a compliance order. Federal Regulation 40 CFR 124.8 requires Fact Sheets be prepared to include the principal facts and legal and policy considerations in preparing the permit. The permit is incomplete, in accordance with 40 CFR 124.8, and must be amended to include some information regarding "new interpretation" or the time schedule for pesticides moved to the accompanying Cease and Desist Order.

*California Toxics Rule (CTR) based constituents:* The SIP, Section 2.1, provides that based on a Discharger's request and demonstration that it is infeasible to achieve immediate compliance, a compliance schedule may be allowed in an NPDES permit. The proposed Permit accurately cites the SIP in this regard in numerous places. However, Special Provision 1 d, requires submittal of the "Discharger's request and demonstration" within 60 days following adoption of the proposed Permit. Clearly the SIP requires submittal of the "Discharger's request and demonstration" prior to permit adoption if the compliance schedules are to be allowed within the permit. The proposed Permit does not comply with the SIP. The proposed Permit must be delayed until receipt of the "Discharger's request and demonstration" or the compliance schedules must be moved to the accompanying Cease and Desist Order.

**2. Regional Board Authority to Issue Compliance Schedules under the CTR Has Now Lapsed**

40 C.F.R. section 131.38(e)(3) formerly authorized compliance schedules delaying the effective date of WQBELs being set based on the NTR and CTR. Pursuant to 40 C.F.R. section 131.38(e)(8), however, this compliance schedule authorization *expressly expired* on May 18, 2005, depriving the State and Regional Boards with any authority to issue compliance schedules delaying the effective date of such WQBELs. Indeed, the EPA Federal Register Preamble accompanying the CTR stated as much, noting, "EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on May 18, 2005."

The Regional Board may contend that the EPA Federal Register Preamble has effectively extended this compliance schedule authority when the Preamble observed, "[I]f the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision significantly prior to May 18, 2005, EPA will act to stay the authorizing compliance schedule provision in today's rule." It is true that the State Board subsequently adopted its Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, enacted by State Board Resolution No. 2000-015 (March 2, 2000) ("State Implementation Plan" or "SIP") and that the SIP provides for compliance schedules without imposing a May 18, 2005 cutoff. EPA, however, *has not* acted to stay 40 C.F.R. section 131.38(e)(8) by the only means it can lawfully do so: notice and comment rulemaking that amends 40 C.F.R. section 131.38(e)(8). Without such a rulemaking, 40 C.F.R. section 131.38(e)(8) remains the law and it unequivocally ends authorization to issue compliance schedules after May 18, 2000. *See Friends of the Earth, Inc. v. Environmental Protection Agency*, 446 F.3d 140 (D.C. Cir. 2006).

Even if 40 C.F.R. section 131.38(e)(8) did not preclude issuing compliance schedules which delay the effective date of WQBELs set under the NTR and CTR, the CWA itself precludes such compliance schedules—and any compliance schedule which delays the effective date of WQBELs past 1977.

Numerous courts have held that neither the EPA nor the States have the authority to extend the deadlines for compliance established by Congress in CWA section 301(b)(1). 33 U.S.C. §1311(b)(1); *See State Water Control Board v. Train*, 559 F.2d 921, 924-25 (4th Cir. 1977) ("Section 301(b)(1)'s effluent limitations are, on their face, unconditional"); *Bethlehem Steel Corp. v. Train*, 544 F.2d 657, 661 (3d Cir. 1976), *cert. denied sub nom. Bethlehem Steel Corp. v. Quarles*, 430 U.S. 975 (1977) ("Although we are sympathetic to the plight of Bethlehem and similarly situated dischargers, examination of the terms of the statute, the legislative history of [the Clean Water Act] and the case law has convinced us that July 1, 1977 was intended by Congress to be a rigid guidepost").

This deadline applies equally to technology-based effluent limitations and WQBELs. *See Dioxin/Organochlorine Ctr. v. Rasmussen*, 1993 WL 484888 at *3 (W.D. Wash. 1993), *aff'd sub nom. Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517 (9th Cir. 1995) ("The Act required the adoption by the EPA of 'any more stringent limitation, including those necessary to meet water quality standards,' by July 1, 1977") (citation

omitted); *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1312 (9th Cir. 1992) ("[Section 1311(b)(1)(C)] requires achievement of the described limitations 'not later than July 1, 1977.' ") (citation omitted). Any discharger not in compliance with a WQBEL after July 1, 1977, violates this clear congressional mandate. *See Save Our Bays and Beaches v. City & County of Honolulu*, 904 F. Supp. 1098, 1122-23 (D. Haw. 1994).

Congress provided no blanket authority in the Clean Water Act for extensions of the July 1, 1977, deadline, but it did provide authority for the States to foreshorten the deadline. CWA section 303(f) (33 U.S.C. § 1313(f)) provides that: "[n]othing in this section [1313] shall be construed to affect any effluent limitations or schedule of compliance required by any State to be implemented prior to the dates set forth in section 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates."

Because the statute contains explicit authority to expedite the compliance deadline but not to extend it, the Regional Board may not authorize extensions beyond this deadline in discharge permits.

The July 1, 1977, deadline for achieving WQBELs applies equally even if the applicable WQS are established after the compliance deadline. 33 U.S.C. section 1311(b)(1)(C) requires the achievement of "more stringent limitations necessary to meet water quality standards . . . established pursuant to any State law . . . or required to implement any applicable water quality standard established pursuant to this chapter." Congress understood that new WQS would be established after the July 1, 1977, statutory deadline; indeed, Congress mandated this by requiring states to review and revise their WQS every three years. *See* 33 U.S.C. § 1313(c). Yet, Congress did not draw a distinction between achievement of WQS established before the deadline and those established after the deadline.

Prior to July 1, 1977, therefore, a discharger could be allowed some time to comply with an otherwise applicable water quality-based effluent limitation. Beginning on July 1, 1977, however, dischargers were required to comply as of the date of permit issuance with WQBELs, including those necessary to meet standards established subsequent to the compliance deadline.

In the Clean Water Act Amendments of 1977, Congress provided limited extensions of the July 1, 1977, deadline for achieving WQBELs. In CWA section 301(i), Congress provided that "publicly-owned treatment works" ("POTWs") that must undertake new construction in order to achieve the effluent limitations, and need Federal funding to complete the construction, may be eligible for a compliance schedule that may be "in no event later than July 1, 1988." 33 U.S.C. § 1311(i)(1) (emphasis added). Congress provided for the same limited extension for industrial dischargers that discharge into a POTW that received an extension under section 1311(i)(1). *See* 33 U.S.C. § 1311(i)(2). In addition, dischargers that are not eligible for the time extensions provided

by section 1311(i) but that do discharge into a POTW, may be eligible for a compliance schedule of no later than July 1, 1983. *See* 33 U.S.C. § 1319(a)(6).

The fact that Congress explicitly authorized certain extensions indicates that it did not intend to allow others, which it did not explicitly authorize. In *Homestake Mining*, the Eighth Circuit held that an enforcement extension authorized by section 1319(a)(2)(B) for technology-based effluent limitations did not also extend the deadline for achievement of WQBELs. 595 F.2d at 427-28. The court pointed to Congress' decision to extend only specified deadlines: "[h]aving specifically referred to water quality-based limitations in the contemporaneously enacted and similar subsection [1319](a)(6), the inference is inescapable that Congress intended to exclude extensions for water quality-based permits under subsection [1319](a)(5) by referring therein only to Section [1311](b)(1)(A). *Id*. at 428 (citation omitted). By the same reasoning, where Congress extended the deadline for achieving effluent limitations for specific categories of discharges and otherwise left the July 1, 1977, deadline intact, there is no statutory basis for otherwise extending the deadline.

The Clean Water Act defines the term effluent limitation as: "any restriction established . . . on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. § 1362(11).

The term schedule of compliance is defined, in turn, as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard." 33 U.S.C. § 1362(17). The purpose of a compliance schedule is to facilitate compliance with an effluent limitation by the applicable deadline by inserting interim goals along the way: "[a] definition of effluent limitations has been included so that control requirements are not met by narrative statements of obligation, but rather are specific requirements of specificity as to the quantities, rates, and concentration of physical, chemical, biological and other constituents discharged from point sources. It is also made clear that the term effluent limitation includes schedules and time tables of compliance. The Committee has added a definition of schedules and time-tables of compliance so that it is clear that enforcement of effluent limitations is not withheld until the final date required for achievement." S. Rep. No. 92-414, at 77, *reprinted in* 1972 U.S.C.C.A.N. 3668 (Oct. 28, 1971) (emphasis added). Thus, Congress authorized compliance schedules, not to extend its deadlines for achievement of effluent limitations, but to facilitate achievement by the prescribed deadlines.

In *United States Steel Corp.*, the industry plaintiff argued that 33 U.S.C. § 1311(b)(1)(C) allows the July 1, 1977, deadline to be met simply by beginning action on a schedule of compliance that eventually would result in achieving the technology- and water quality-based limitations. 556 F.2d at 855. The Court of Appeals disagreed: "[w]e reject this contorted reading of the statute. We recognize that the definition of 'effluent limitation' includes 'schedules of compliance,' section [1362(11)], which are themselves

defined as 'schedules . . . of actions or operations leading to compliance' with limitations imposed under the Act. Section [1362(17)]. It is clear to us, however, that section [1311(b)(1)] requires point sources to achieve the effluent limitations based on BPT or state law, not merely to be in the process of achieving them, by July 1, 1977." *Id*. Thus, compliance schedule may not be used as a means of evading, rather than meeting, the deadline for achieving WQBELs.

Finally, a compliance schedule that extends beyond the statutory deadline would amount to a less stringent effluent limit than required by the CWA. States are explicitly prohibited from establishing or enforcing effluent limitations less stringent than are required by the CWA. *See* 33 U.S.C. § 1370; Water Code §§ 13372, 13377. The clear language of the statute, bolstered by the legislative history and case law, establishes unambiguously that compliance schedules extending beyond the July 1, 1977, deadline may not be issued in discharge permits. The proposed Permit, however, purports to do just that. By authorizing the issuance of permits that delay achievement of effluent limitations for over thirty years beyond Congress' deadline, the Permit makes a mockery of the CWA section 301(b)(1)(C) deadline and exceeds the scope of the Regional Board's authority under the Clean Water Act and the Porter-Cologne Act. 33 U.S.C. § 1311(b)(1)(C).

**3. The proposed Permit does not comply with the State and Regional Board's Antidegradation Policy and Federal Regulations (40 CFR 131.12).**

The proposed Permit discusses the Antidegradation Policy in Finding N and in the Fact Sheet. The discussion is essentially limited to stating that the proposed Permit does not allow for and expansion in the discharge flow rate and therefore compliance with the policy is achieved. The proposed Permit does not discuss the mass of noncompliance substances discharged to surface waters, their impact on beneficial uses, or whether the Discharger is providing best practicable treatment and control (BPTC) of the discharge. This completely ignores the memorandum from William Attwater (SWRCB Chief Counsel), SWRCB to Regional Board Executive Officers, "federal Antidegradation Policy," pp. 2, 18 (Oct. 7, 1987) ("State Antidegradation Guidance")) and the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 ("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 which require that the Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality. Application of the policy does not depend on whether the action will actually impair beneficial uses. The State Antidegradation Guidance, p. 6, states that actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits. In reissuing the NPDES permit, the Regional Board must conduct an antidegradation analysis.

The ultimate goal of the Federal Clean Water Act as expressed in Section 101 is the elimination of the discharge of pollutants into navigable waters by 1985. The Act throughout, places an emphasis on the control and reduction of the discharge of pollutants

by point sources as interim goals. Technology based effluent limitations are required by Section 301 of the Act for all point sources. A standard of "best available technology" (BPT) is required by 1977, and a more stringent standard of "best available technology" (BAT) is required by 1983 for industrial point sources. For publicly owned treatment works (POTWs), secondary treatment is required by 1977 and "best practicable treatment" (BPT) by 1983. Best practicable treatment and control (BPTC) is also required by the State and Regional Board's Antidegradation Policy (Resolution 68-16).

*Nitrates:* The proposed Permit shows the discharge is not denitrified and a Cease and Desist Order is proposed to include a compliance schedule for nitrates. Clearly nitrates are being discharged above the drinking water maximum contaminant level (MCL) and likely causing exceedance of the Basin Plan objective for the discharge of biostimulatory substances. The Discharger is not providing best practicable treatment and control (BPTC) of the discharge as required by the Antidegradation Policy. The proposed Permit does not address the discharge of nitrates or the failure to provide BPTC in the Antidegradation Policy discussion. The proposed permit does not comply with the Antidegradation Policy.

*Organochlorine Pesticides, aluminum, copper, iron, manganese, dichlorobromomethane, and dibromochloromethane*. The proposed permit contains Effluent Limitations for organochlorine Pesticides, aluminum, copper, iron, manganese, dichlorodibromomethane, and dibromochloromethane based on finding that these constituents have a reasonable potential to exceed water quality objectives and standards. Yet, the Antidegradation Policy discussion does not address the impacts of the discharge of these substances to surface waters or whether the Discharger is providing BPTC. For example, dichlorobromomethane, and dibromochloromethane are chlorination byproducts, and are discharged at problematic concentration due to the Discharger's use of chlorine to disinfect the discharge. However, the Antidegradation Policy discussion does not address whether the use of chlorine is BPTC.

The proposed Permit must be amended to contain a complete Antidegradation Policy and BPTC discussion.

**4. Proposed Permit Discharge Prohibitions disallow the discharge of "pollutant free" wastewater into the wastewater collection system when there is no indication that the defined discharges, groundwater, cooling waters and condensates, are pollutant free and may result in illegal discharges to surface waters.**

Proposed Permit Discharge Prohibition No. D disallows the discharge of "pollutant free" wastewater into the wastewater collection system. These discharges include groundwater, cooling waters and condensates. This prohibition is likely a remnant of days gone by when there was little information regarding the quality of such discharges. In viewing the latest information regarding groundwater pollution, cooling tower additives and metal concentrations in condensates, the statement that these waters are pollutant free is not based on current or accurate information. The prohibition against

such discharges to the sanitary sewer will likely lead to illegal discharges to ground or surface waters or and overly burdensome Regional Board workload to issue new permits. The prohibition should be modified to reflect the fact that these discharges are likely best discharged to the sanitary sewer.

**5. Mass-based effluent limits are required by NPDES regulations at 40 CFR 122.45(f) for total chlorine residual.**

The cited federal regulation requires that all pollutants limited in NPDES permits have limits, standards, or prohibitions expressed in terms of mass with limited exceptions, including one for pollutants that cannot be expressed appropriately by mass. Examples of such pollutants are pH, temperature, radiation, and whole effluent toxicity. Mass limitations in terms of pounds per day or kilograms per day can be calculated for chlorine. We appreciate that mass limitations have been appropriately included in the proposed Permit for most constituents. However, the proposed Permit must be revised to include mass limitations for total chlorine residual in accordance with the cited regulation.

The proposed Permit does not contain Effluent Limitations for chronic toxicity and therefore does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i), and the SIP.
Proposed Permit Special Provision No. e, states that the permit will be reopened if the SIP is revised to require establishment of effluent limitations for chronic toxicity. Contrary to this statement, the SIP, Section 4, Toxicity Control Provisions, Water Quality-Based Toxicity Control, currently states that: "A chronic toxicity effluent limitation is required in permits for all dischargers that will cause, have a reasonable potential to cause, or contribute to chronic toxicity in receiving waters." Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. The proposed Permit requires sampling for toxicity, however, sampling does not equate with or ensure compliance. The Tentative Permit requires the Discharger to conduct an investigation of the possible sources of toxicity if a threshold is exceeded. This language is not a limitation and essentially eviscerates the Regional Board's authority, and the authority granted to third parties under the Clean Water Act, to find the Discharger in violation for discharging chronically toxic constituents. An effluent limitation for chronic toxicity must be included in the Order. Accordingly, the proposed Permit must be revised to prohibit chronic toxicity in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i) and the SIP.

**6. The proposed Permit contains an Effluent Limitation for acute toxicity that allows mortality that exceeds the Basin Plan water quality objective and does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i).**

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms.

The Tentative Permit requires that the Discharger conduct acute toxicity tests and states that compliance with the toxicity objective will be determined by analysis of indicator organisms. However, the Tentative Permit contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test.

For an ephemeral or low flow stream, allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal regulations and contributes to exceedance of the Basin Plan's narrative water quality objective for toxicity. Accordingly, the proposed Permit must be revised to prohibit acute toxicity in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

**7. Failure to establish effluent limitations for EC in the proposed Permit that are protective of the Chemical Constituents water quality objective blatantly violates Federal Regulations, 40 CFR 122.44 (d)(i).**

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; "Limitations must control all pollutants or pollutant parameters (either conventional, 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 Basin Plan states, on Page III-3.00 Chemical Constituents, 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).

For EC, *Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Arriculture 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 discharge maximum effluent concentration is 864 $\mu$mhos/cm. Clearly the discharge of EC presents a reasonable potential to exceed the water quality objective. The proposed Order fails to establish an effluent limitation for EC that are protective of the Chemical Constituents water quality objective. The wastewater discharge increases concentrations of EC to unacceptable concentrations adversely affecting the agricultural beneficial use. 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 receiving stream in accordance with the Basin Plan and Federal Regulations. Failure to establish effluent limitations for EC that are protective of the beneficial uses of the receiving stream blatantly violates the law.

**8. The average daily discharge flow effluent limitation is not properly defined in the proposed Permit.**

The proposed Permit defines the average daily discharge flow as occurring when groundwater is "at or near normal" and runoff is not occurring. A high groundwater table potentially inundating sewer lines will "normally" occur during the rainy season possibly resulting in significant inflow and infiltration (I/I) into the collection system. The average daily dry weather flow will occur when the groundwater table is below the sewer lines, normally during the dry weather months. The proposed permit should be corrected to make the proposed Permit enforceable.

**9. The Topographic Map (Attachment B) and Flow Schematic (Attachment C) are missing from the proposed Permit.**

**10. The "Sampling Type" for metals is inappropriately specified as "grab" in the proposed Monitoring and Reporting Program.**

The "Sampling Type" for metals is inappropriately specified as "grab" in the proposed Monitoring and Reporting Program and should properly be amended to require 24-hour composite sampling.

**11. The proposed Permit fails to consider effluent variability in determining reasonable potential in violation of Federal Regulation 40 CFR 122.44 (d)(1)(ii) and fails to include effluent limitations for chloride and sulfate in violation of Federal Regulations 40 CFR 122.44, 40 CFR 122.4 (a), (d) and (g) and California Water Code, section 13377.**

Federal regulations, 40 CFR § 122.44(d)(1)(ii), state "when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, **the variability of the pollutant or pollutant parameter**

**in the effluent**, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water." Emphasis added. The reasonable potential analyses for chloride and sulfate fails to consider the statistical variability of data and laboratory analyses as explicitly required by the federal regulations.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; "Limitations must control all pollutants or pollutant parameters (either conventional, 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."

Utilizing the proper statistical variability methods the maximum projected effluent concentration for chloride is 362 mg/l (Fact Sheet F-33). The agricultural water quality goal for chloride is 106 mg/l and the Drinking Water maximum contaminant level (MCL) is 250 mg/l. The proposed Permit fails to include an effluent limitation for chloride. Failure to include an effluent limitation for chloride violates Federal Regulations 40 CFR § 122.44(d)(1)(ii).

Utilizing the proper statistical variability methods the maximum projected effluent concentration for sulfate is 290 mg/l. The Drinking Water maximum contaminant level (MCL) for sulfate is 250 mg/l. The proposed Permit fails to include an effluent limitation for sulfate. Failure to include an effluent limitation for sulfate violates Federal Regulations 40 CFR § 122.44(d)(1)(ii).

Irrigated agriculture and municipal and domestic uses are beneficial uses of the receiving water. By failing to include effluent limitations for chloride and sulfate, the proposed Permit will not be protective of the beneficial uses of the receiving stream. California Water Code, section 13377, requires that: "Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA. The proposed Permit must be amended to include effluent limitations for chloride and sulfate.

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

Sincerely,

Bill Jennings, Executive Director
California Sportfishing Protection Alliance