

**CITY OF TRACY'S COMMENTS ON DRAFT NPDES PERMIT
R5-2007-XXXX, NPDES No. CA0079154
Comment deadline – April 6, 2007**

The City of Tracy makes the following comments on the proposed NPDES Permit/WDR and attachments as well as on the corresponding Time Schedule Order (TSO).¹ These comments may repeat previous comments made by the City that apply to provisions that were not amended in this draft of these tentative Orders. **All page number citations and comments relate to the underline/strikeout version of the Permit.**

COMMENTS ON PROPOSED TENTATIVE NPDES PERMIT/WDRs

Page 1, Finding I. The Facility contact and phone number should be changed to reflect that Steve Bayley is the Deputy Director of Public Works and his number is (209) 831-4434.

Request: Update Facility contact information provided above.

Page 2, Finding II.F. The tentative permit inaccurately added language stating that the discharge must meet “Best Professional Judgment (BPJ) in accordance with Part 125, section 125.3.” Section 125.3. The quoted part of this sentence should be removed as the imposition of effluent limits using BPJ is no longer allowed under the regulations cited as those limits were required to be imposed prior to 1989 and only applied to industrial dischargers, not Publicly Owned Treatment Works (“POTWs”). See 40 C.F.R. §125.3(a)(1)(stating POTWS to have effluent limitations based on secondary treatment) and (a)(2)(i)(B)(stating for dischargers other than POTWS, effluent limits can be based on BPJ, but must be complied with by March 31, 1989). Even if BPJ limits were authorized under the cited section, the Regional Water Board has not complied with 40 C.F.R. §125.3(d), which requires the consideration of certain factors before BPJ limits are imposed.

Request: Remove the phrase, which says: “and Best Professional Judgment (BPJ) in accordance with 40 CFR §125.3.”

Page 5, Finding M. Alaska Rule. The text included is not wholly accurate and should be amended to read:

On March 30, 2000, USEPA revised its regulation that specifies when new and revised State ~~and Tribal~~ water quality standards (WQS) become effective for CWA purposes (40 CFR 131.21, 65 FR 24641, April 27, 2000, effective date of May 30, 2000). . . . The final rule also provides that standards already in effect under State law and submitted to USEPA for approval by May 30, 2000, may be used for CWA purposes, ~~whether or not approved by USEPA~~ unless or until USEPA has promulgated a more stringent water quality standard. However, if the State standards submitted before May 30, 2000 were disapproved by USEPA prior to May 30, 2000, as was the case with portions of the 1994 Basin Plan, the Alaska Rule did not apply to grandfather in these disapproved standards.

Request: Make the above requested changes to Finding M.

¹ These comments may also apply to similar issues in the Fact Sheet. As such, the City requests that conforming changes be made to the Fact Sheet.

Page 6, Finding P. Antibalancing. This finding should include language stating that effluent limitations can be removed upon new information, including a determination of no reasonable potential. *See accord* SWRCB Order No. 2003-0009 at pg. 9 (“the antibalancing exception for new information applies where new monitoring data indicate that the discharge of a pollutant does not have reasonable potential to cause or contribute to a water quality standards violation”).

Request: *Amend the finding to address allowable removal of effluent limits based on new information.*

Page 6, Finding Q. Monitoring Requirements. The second sentence in this finding is incomplete and should be amended.

Request: *Amend the second sentence as follows: “Sections 13225(c), 13267(b), and 13383 of the CWC authorize the Regional Water Boards to require technical and monitoring reports after the requisite burden analysis is performed.”*

Page 8, Provision III.A. Discharge Prohibitions. This provision should be clarified that it only covers treated wastewater. This prohibition should no longer cover untreated wastewater upstream of the headworks as that is now covered by the Sanitary Sewer Overflow waste discharge requirements and should not be duplicatively addressed here. Permits in the Bay Area region have made this change, and similar changes should be made to the Central Valley permits. *See* Order Nos. R2-2007-006, R2-2007-007, R2-2007-008 (Jan. 23, 2007).

Request: *Insert the word “treated” so Provision III. A. only applies to the “Discharge of treated wastewater.”*

Page 8, Provision III.B. This provision should only cover the by-pass and overflow of partially treated wastewater, not untreated as that is now covered by the Sanitary Sewer Overflow waste discharge requirements. The permit should also make clear that taking portions of process units out of service and partial bypassing of treatment processes performed in accordance with provisions of an Operational Plan submitted by the Discharger and approved by the Executive Officer shall not be considered “bypasses” or violations of this Order. *See accord* Order No. R2-2007-006 at Provision III.C.

Request: *Replace the word “untreated” with “partially treated.” Add the following language at the end of this section: “Taking portions of process units out of service and partial bypassing of treatment processes performed in accordance with provisions of an Operational Plan submitted by the Discharger and approved by the Executive Officer shall not be considered “bypasses” or violations of this Order.”*

Pages 8-10, Provision IV.A.1.a.- i. Final Effluent Limits. The use of the language “effective immediately” is confusing since some of the final limits are *not* effective immediately because interim limits apply.

Request: *Amend the language in Provision IV.A.1. to read: “Effective immediately, the discharge of treated wastewater shall maintain compliance with the following final effluent limitations, or interim effluent limitations as applicable, at Discharge Point 001...” This will help avoid confusion over applicable limits and be consistent with footnote 5 on pg. 10.*

Page 8, Provision IV.A.1.a. Oil and Grease/Settleable Solids Limits. The Oil and Grease and Settleable Solids limits were imposed with no valid justification or statistical reasonable potential analysis for either constituent. These limits are being maintained ostensibly because of antibacksliding concerns, without an RPA being performed. *See* Fact Sheet at pg. F-42 and F-53. There is no demonstrated reasonable potential to exceed the narrative objectives for these constituents because there is no evidence that these constituents are causing nuisance, visible film or coating (for oil and grease), or adversely affecting beneficial uses. Without such a demonstration, the new information on the discharge shows that there is no reasonable potential and a limit is not required under the new information exception to the general rule against backsliding.

These water quality-based limits have not been adequately justified and should be removed. The origin of the oil and grease limitation is a 1974 USEPA guidance document for petroleum marketing terminals, not for POTWs. It is inappropriate to establish an effluent limitation on a POTW based on this guidance. This new information would justify removal of the previously imposed limit. A narrative receiving water requirement could also be added for oil and grease instead of an effluent limitation given the lack of justification for an effluent limitation.

The settleable solids limit is duplicative of the settleable matter receiving water limit in Provision V.A.5., at page 14, and is unnecessary. Suspended solids limitations are in place in the Permit (*see* Tables 5-8) and measure a similar parameter that is of greater concern in relation to water quality. This tentative Order should eliminate the settleable solids limitations because the total suspended solids limitations will protect water quality objectives in the receiving water.

Furthermore, daily limits for these constituents have not been properly justified under 40 C.F.R. §122.45(d)(2). “Ensuring that the treatment works operate in accordance with design capabilities” is not a valid justification as proper operation is already required by the permit (*see* Attachment D, I.D at pg. D-1) and POTWs are not designed to meet oil and grease or settleable solids requirements on a daily basis. No acute toxicity concerns exist to warrant a daily value as weekly averages would just as easily demonstrate proper operation of the treatment plant. In fact, the State Water Board has held as much. *See* State Board Order No. WQO 2002-0012 at pg. 20 (“Weekly averages are effective for monitoring the performance of biological wastewater treatment plants.”) Because these limits are contrary to federal law and State Water Board precedent, daily limits must be removed as inadequately justified.

Request: Remove the Oil and Grease and Settleable Solids limits.

Page 8, Provision IV.A.1.a., Table 4, and Pages E-4 and E-6. pH Limits. The City first does not believe that continuous monitoring of pH in the City’s influent and effluent is necessary (as set forth on pages E-4 and E-6) since pH levels do not fluctuate that widely. Therefore, the City requests that monitoring be changed to a daily grab sample as is currently done. However, if the need for continuous monitoring is adequately justified under Water Code section 13267(b) and 13225(c) and maintained, then the City requests the following language be added to a footnote to the limits for pH as is done in Bay Area permits (*see* Order No. R2-2007-006 at pg. 10, fn 1), or to Provision VII (Compliance Determination) as was done for chlorine:

“(1) If the Discharger monitors pH continuously, pursuant to 40 CFR §401.17, for pH effluent limitations under continuous monitoring, the Discharger shall be in compliance with the pH limitation specified herein, provided that both of the following conditions are satisfied: (i) the

total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and (ii) no individual excursion from the range of pH values shall exceed 60 minutes.”

Request: *Add the requested language related to compliance with the pH Limits.*

Page 8, Provision IV.A.1.a., Table 4, Aluminum Limits. Reasonable potential was initially found because of calculations made to the City’s data that used a *Projected* Maximum Effluent Concentration (MEC) of 140 µg/L under the TSD instead of the actual MEC of 74 µg/L as required under the SIP. *See* Fact Sheet at pg. F-57. This projection of MEC is not authorized by the applicable guidance under the SIP Section 1.3, which requires that RPA be performed using actual observed MEC. Moreover, use of projected value is in conflict with new findings recently added to the Permit stating that the reasonable potential analysis would be performed under the SIP. *See* Fact Sheet at pg. F-31, Section VI.C.3.c. Thus, the City requests that the Regional Board re-do the RPA using the actual MEC of 74 µg/L for aluminum as stated the Regional Board would do in paragraph 3.c. on page F-31 and using the primary MCL value of 1.0 mg/L translated through the Chemical Constituents objective. The 74 µg/L actual MEC is below both the acute and chronic values and the MCL values used to translate the narrative objective so no reasonable potential exists for the effluent.

If the ambient background water levels exceed the acute and chronic values used to translate the narrative objective, then these values may not accurately reflect local conditions and the fact that the U.S. EPA chronic 304(a) guidance criteria for aluminum of 750 µg/L (CMC) and 87 µg/L (CCC) must be considered in light of site specific factors and issues related to indicator organisms, species diversity, population density, growth anomalies, or biotoxicity test results before a determination can be made as to whether or not an applicable water quality standard has been violated. As U.S. EPA pointed out in its criteria guidance “...aluminum is substantially less toxic at higher pH and hardness.” Further, U.S. EPA modified the aluminum criteria in 2002 by expressing the criteria as total recoverable metal in the water column rather than acid soluble, and by adding the following footnote to the 87 µg/L chronic criterion, which not only recognizes the above, but also states that “EPA is aware of field data indicating that many high quality waters in the U. S. contain more than 87 µg aluminum/L, when either total recoverable or dissolved is measured.” (emphasis added); *see also* Fact Sheet at pg. F-32. Thus, waters exceeding 87 µg/L may not be “impaired” or even exceeding water quality standards. EPA’s recognition merely acknowledges that aluminum is a naturally occurring element making up about 8% of the earth’s surface. The Regional Water Board must undertake additional analysis before imposing these guidance criteria to as water quality objectives applicable to Old River as required under the City of Woodland order in *City of Woodland v. Regional Water Quality Control Board for the Central Valley Region, et al*, Case No. RG04-188200, Statement of Decision at pg. 13 (overturned Regional Board’s regulation of aluminum because the Regional Board did not consider site-specific factors and, instead, simply relied on the EPA’s ambient water quality criteria for aluminum).²

² It is also unclear as to the applicability of the aluminum guidance criteria in waters with pH and hardness greater than 6.5 and 10 mg/L, respectively. While a pH of 6.5 is near the lower end of the range observed in natural waters, it is rare to find a natural water with a hardness of less than 10 mg/L. It is also important to recognize that hardness levels have a significant impact on toxicity for many metals. These types of site specific considerations must be taken into account when determining the applicability of a particular guidance criteria to local waters.

Further, the Regional Board's Basin Plan also states that "water quality objectives do not require improvement over naturally occurring background concentrations. In cases where the natural background concentration of a particular constituent exceeds an applicable water quality objective, the natural background concentration will be considered to comply with the objective." See Basin Plan at IV-17.00. This is likely why the Regional Board chose not to utilize the aluminum chronic criterion to interpret its narrative toxicity objective when it has identified impaired waters for inclusion on the section 303(d) list.³ Furthermore, Tracy's effluent at a maximum effluent concentration of 74 µg/L appears to be a diluting factor when the Permit states that Background concentrations of aluminum are 1000 µg/L. See Permit at pg. F-57. No effluent limitation should be required since the aluminum background levels comply with the primary MCL value. 22 C.C.R. §64431.

If the proposed effluent limits are maintained, the Fact Sheet explains that a compliance schedule is being provided. See Fact Sheet at pg. F-32, and Provision VI.C.4.f. However, Table 4 contains no interim effluent limitations for aluminum. This inconsistency should be corrected, otherwise the compliance schedule is meaningless unless the final limits are moved into the findings.

Finally, the monthly average and daily maximum aluminum limits of 77 µg/L and 125 µg/L proposed are less than the lowest chronic and acute aluminum criteria guidance numbers of 87 µg/L (CCC) and 750 µg/L (CMC) and far below the primary and secondary MCL values of 1000 and 200 µg/L, respectively, without an explanation as to why limits more stringent than the guidance criteria are necessary. Therefore, these limits are more stringent than required under federal law and must include an analysis under Water Code sections 13263 and 13241. See *City of Burbank v. State Water Resources Control Board*, 35 Cal. 4th 613 (2005).

Request: Redo Reasonable Potential Analysis using the actual MEC instead of a calculated, projected MEC. If an effluent limit is retained, impose limits no more stringent than 1.0 mg/L as a monthly average and 0.2 mg/L as a weekly average, which represent the MCL values. If this were done, the permit would contain a WQBEL for aluminum, but a compliance schedule and interim limits would no longer be necessary.

Page 8, Provision IV.A.1.a., Table 4, and page 13, Provision IV.5.e., Table 9. Copper Limits. The Regional Water Board inappropriately utilizes the copper objective from Sacramento-San Joaquin Basin Plan, Table III-1, in the derivation of proposed effluent limitations instead of the CMC included in the California Toxics Rule.

The draft Tentative Order proposes use of the dissolved copper objective of 0.01 mg/L (10 µg/L) in addition to the use of CTR dissolved copper standards in the derivation of proposed effluent limitations. The City argues that the Table III-1 copper objective should not be used in the effluent limit derivation for the following reasons: (1) the Table III-1 objective is based on

³ There are very few waters in the State listed for aluminum. Of those listed, including Carson Creek in Region 5 and Felicita Creek and Loveland Reservoir in Region 9, each is based on the chemical constituents narrative objective using the MCL value of 0.2 mg/L. The City's MEC of 0.074 mg/L is far below the MCL value, and the receiving waters should be re-evaluated to see if this value is attained as an annual average, which is the averaging period that MCLs are adopted and implemented by DHS. See Cal. Code of Regs. Title 22, Division 4, Chapter 15, Article 4, §64432.

scientific data developed prior to 1968, is aimed at the protection of freshwater aquatic life, and is therefore obsolete in comparison to the CTR Criterion Maximum Concentration for dissolved copper for protection of freshwater aquatic life, (2) no 13241 analysis was performed on and no 13242 implementation plan was adopted for this objective; and (3) the Table III-1 is not a site-specific objective and is not based on studies unique to the Sacramento-San Joaquin Valley. Therefore, the Table III-1 copper objective is not valid.

Clearly, the Table III-1 copper objective was adopted in the Basin Plan in 1975 to protect aquatic life uses based on scientific information at the time, specifically information contained in a 1968 national water quality criteria document.⁴ However, since 1968, the USEPA has established more scientifically rigorous national water quality criteria for copper for protection of aquatic life uses, following the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, 1985. These EPA criteria (which form the basis for the CTR copper standards) supersede and replace the 1968 NTAC advisory criteria that were the basis for the Table III-1 objective. The use of the Table III-1 copper objective in addition to the CTR standard in effluent limit derivation is, therefore, inappropriate (due to its basis in outdated science) and redundant (since the CTR standard considered all relevant and appropriate scientific evidence, including the data supporting the 1968 criteria.)

As noted above, given that the Table III-1 objective was based on a 1968 national criteria document, which were used as statewide guidelines in the 1975 Basin Planning Process, the objective clearly does not qualify as a site-specific objective. In the preamble to the CTR, the statement is made that site-specific criteria in the Basin Plans would be used in the calculation of water quality based effluent limits in NPDES permits. *See* 65 Fed. Reg. 31686 (May 18, 2000). However, the City argues that the copper objective in Table III-1 is not a site specific objective since there is no evidence that this value takes into account the local water quality and species present in Old River. Further, the City points to the site specific objectives for the Sacramento River upstream of Hamilton City that are referenced in the CTR preamble. *Id.* Those site-specific objectives were established for a specific reach of the Sacramento River based on a site specific analysis. Such an analysis was not performed for the Table III-1 copper objective.

In addition, EPA has recently promulgated new criteria guidance for copper based on the Biotic Ligand model, which accounts more closely for site specific conditions. The Regional Board

⁴ Review of the record that led to the establishment of the Table III-1 copper objective reveals the following:

- The subject copper objective was included in the 1975 Basin Plan as a result of direction provided to Basin Plan contractors in Management Memorandum No. 20 on March 21, 1973 by the Division of Planning and Research of the SWRCB. Management Memorandum No. 20 was sent to a statewide list of Basin Plan contractors and was not specific to the Central Valley.
- Management Memorandum No. 20 included a table titled “Tentative Guidelines for Evaluating the Quality of Water in Various Fresh-Water Habitats”. This table was applicable to the following beneficial uses: Warm fresh-water habitat (WARM), Cold fresh-water habitat (COLD), Fish Spawning (SPWN), Fish Migration (MIGR) and Wildlife Habitat (WILD).
- In the above described table, a guideline value for copper of 0.01 mg/l was included. A footnote in the table indicated that the value was “Preliminary Information” derived from a revision to the National Technical Advisory Committee (NTAC) to the Secretary of the Interior, 1968. Water Quality Criteria. Federal Water Pollution Control Administration, US Department of the Interior.
- No triennial review has been performed on this value despite clear legal requirements to do so. 33 U.S.C. §1313(c)(1); Water Code §13372(a), §13240.

should utilize this model to come up with new effluent limitations, which EPA has deemed to be protective of aquatic life, instead of relying on dated Basin Plan objectives that have not undergone the mandated triennial review for nearly 40 years!

Regarding the interim limit for copper, the Regional Board has not demonstrated why it would be impracticable to set this limit as a monthly or weekly average in violation of 40 C.F.R. §122.45(d)(2). Thus, this limit should be set as a monthly average value.

Request: For the above reasons, the City requests that the proposed effluent limits for copper be recalculated using only the CTR standards as adjusted by the new Biotic Ligand Model (BLM), and the interim limit be set as a monthly average value. If not enough data exist, the City should be given adequate time under a compliance schedule to perform WER or BLM adjustment to reflect local water quality conditions along with a modification to the reopener at Provision VI.C.I.g. to amend the final limits based on the WER or BLM adjustment.

Pages 8-9, Provision IV.A.1.a., Table 4. Human Health-based Limits. The tentative permit improperly includes maximum daily limits to implement human-health based water quality objectives. The limits for iron, dichlorobromomethane, and chlorodibromomethane are all based on long-term (70 years of exposure) objectives to protect human health. No justification exists for short-term limits for these constituents.

In fact, for iron, the Regional Water Board has already been told as much. *See In the Matter of the Own Motion Review of the City of Woodland*, SWRCB Order No. WQ 2004-0010 (holding that “implementing the limits as instantaneous maxima appears to be incorrect because the criteria guidance value . . . is intended to protect against chronic effects.”)⁵ The iron objective in the Basin Plan reflects an EPA secondary drinking water MCL value, and was not derived from EPA water quality criteria for aquatic life or human health. As stated on EPA’s website: “. . . these contaminants are not health threatening at the S[econdary] MCL, and public water systems only need test for them on a *voluntary* basis. . . . Secondary standards are set to give public water systems some guidance on removing these chemicals to levels that are below what most people will find to be noticeable.” (See <http://www.epa.gov/safewater/consumer/2ndstandards.html>) No justification exists to apply this secondary MCL value as an instantaneous maximum or daily maximum value. The only effects above the MCL value are aesthetic and relate to drinking water, not surface water: “rusty color; sediment; metallic taste; reddish or orange staining.” *Id.* Further, the iron objective in the Basin Plan is invalid as available evidence indicates that neither a Water Code section 13241 analysis was performed nor was a 13242 implementation plan adopted when this objective was incorporated into the Basin Plan in 1975.

For dichlorobromomethane and chlorodibromomethane, the CTR set these human health criteria to protect against drinking 2 liters of water and 6.5 grams of organisms from that water body every day over 70 years. *See accord* Fact Sheet at pg. F-25 (“The human health-based criteria for carcinogens, other than arsenic, are based on safe levels for lifetime exposure” thereby

⁵ The Fact Sheet attempts to distinguish between the MCL and the “site specific” Basin Plan objective. *See* Fact Sheet at pg. F-39. However, the Basin Plan objective is exactly the same as the MCL and there was no evidence to demonstrate that this objective was derived from a different source or to protect a different use than the MUN use or adversely affects any other use on a short term basis. Daily limits are not required to protect long-term exposure drinking water sources.

allowing for harmonic mean dilution values). Because these criteria are for chronic, long-term periods of exposure, a daily value is not necessary and has not been justified under 40 C.F.R. §122.45(d)(2). Further, other recent permits adopted by this Regional Water Board have adopted only monthly average limits. *See* El Dorado Irrigation District permit, Order No. R5-2005-0028 (Amendment 1)(Jan. 25, 2007).

Request: Impose only monthly averages for iron, dichlorobromomethane, and chlorodibromomethane since the objectives for these constituents are set to protect against long term chronic effects.

Page 9, Provision IV.A.1.d. and Fact Sheet, Page F-54. Temperature. Language was added to clarify that this limitation (i.e. that the “maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F”) derived from the temperature objectives in the Thermal Plan.

The Central Valley Basin Plan establishes the threshold for acceptable temperature alterations as “...it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely effect beneficial uses.” If such demonstration is the result of the study specified on page F-7 of the Fact Sheet, the Permit should state that the subject effluent limitation should and will be modified.

Request: Add a reopener provision to Provision VI.C.1. for temperature modifications based on studies conducted by the City. Pages F-9 before Table F-1 and F-71 should also be amended to reflect changes made to the permit

Pages 10-13, Provision IV.A.2.a, 3.a., 4.a., and 5.a., Tables 5-8. Maximum Daily and Mass Limits for BOD₅ and TSS. Federal law requires only monthly and weekly averages and concentration-based limits for BOD₅ and TSS. 40 C.F.R. §133.102. The Regional Water Board is proposing to add limits based on maximum daily values and mass limits that are more stringent than required by federal law.⁶ As such, the Regional Water Board was required to perform a Cal. Water Code section 13263 analysis prior to imposing these limits.

Other regional boards have removed previously included daily values and mass limits for conventional pollutants.⁷ In a recently issued San Diego Region permit, the following justification was given: “Order No. R9-2006-002 does not retain the maximum at anytime concentration [...] for CBOD₅ and total suspended solids contained in Order No. 2000-012 and previous permits for the Discharger which were established using best professional judgment. Recent attempts to derive maximum at anytime limitations based on the secondary treatment standards at 40 CFR 133 using appropriate statistical approaches did not yield similar results as the previous maximum at anytime limitations; therefore, based on this new information, retaining the previous maximum at anytime limitations in Order No. R9-2006-002 is not supported.” A similar justification exists to remove the daily limits from the City’s tentative permit without

⁶ The Regional Board attempts to justify its actions based on federal guidance, namely the TSD. *See* Fact Sheet at pg. F-58. However, EPA guidance cannot overrule promulgated federal regulatory requirements. 40 C.F.R. §122.45(d)(2) and §133.102.

⁷ Differential treatment between different regions raises the issue of equal protection under the law. If the law is the same in both places, but the City is being regulated more stringently without adequate justification, then equal protection under the law has been violated.

concern for backsliding, which appears to be the only justification for maintaining these limits.

Moreover, the justification for use of daily maximum limits is not clear since these are not water quality-based limits.⁸ The only purported justification is located in the technology-based limitations section of the Fact Sheet on pg. F-13. That section states that daily maximum limits are included “to ensure that the treatment works are not organically overloaded and operate in accordance with design capabilities.” As previously stated, this language is contrary to the holding in State Board Order No. 2002-0012 at pg. 20 (“Weekly averages are effective for monitoring the performance of biological wastewater treatment plants.”). Further, this finding does not prove that weekly and monthly average limits prescribed by federal law are impracticable. 40 C.F.R. §122.45(d)(2). Therefore, these daily limits are not authorized by federal law or State Board precedent. Moreover, the Permit already requires proper operation and maintenance such that these additional requirements are duplicative and unnecessary. *See* Attachment D, I.D at pg. D-1.

On the issue of mass limits, other Regional Boards do not routinely include mass limits for conventional pollutants. *See e.g.*, Order R2-2005-0008 at pg. 26; *see also* Order No. R9-2006-002 at pg. F-25 (the new permit “does not retain the [...] mass emission rate limitations for CBOD₅ and total suspended solids contained in Order No. 2000-012 and previous permits for the Discharger which were established using best professional judgment.” Order No. R9-2006-002 at pg. F-17. “In the case of secondary treatment standards which are expressed as BOD (or CBOD) and TSS concentrations ..., the need for mass emission rate (MER) limitations that are directly related to protection of ... waters or proper operation has not been determined. Consequently, MER effluent limitations for CBOD, [and] TSS ... have not been included in this Order; however, if information demonstrating a need for these limitations become available in the future, they may be reinstated in this Order.”) The imposition of mass limits seems to be contrary to the findings in the Fact Sheet, which state that “pursuant to the exceptions to mass limitations provided in 40 CFR 122.45(f)(1), some effluent limitations are not expressed in terms of mass, such as pH and temperature, and when the applicable standards are expressed in terms of concentration (e.g. CTR criteria and MCLs) and mass limitations are not necessary to protect the beneficial uses of the receiving water.” *See* Fact Sheet at pg. F-58. However, the Permit fails to remove the mass limits for BOD and TSS even though the standards for these constituents are set as a concentration. 40 C.F.R. Part 133.

Request: Remove all maximum daily and mass limits for the conventional pollutants, BOD and TSS.

Page 10, Provision IV.A.1.h. Dissolved Oxygen Limits. A dissolved oxygen (DO) limit has not been adequately justified. The Regional Water Board has determined that “effluent DO concentration data is not available.” *See* Fact Sheet at pg. F-39. Moreover, the limit was

⁸ The Fact Sheet states that the information sheet for Order No. 96-104 stated: “The permit establishes monthly average effluent limits for both BOD₅ and suspended solids at 20 mg/l each. These limits are set to protect against potential adverse impacts from the discharge on dissolved oxygen in Old River.” *See* Fact Sheet at pg. F-35 (emphasis added). This language merely discusses monthly limits and does not justify daily limits. In addition, the Permit already requires effluent limitations for dissolved oxygen (Provision IV.A.1.h) and a receiving water limitation to ensure discharges do not cause concentrations of dissolved oxygen to fall below 5 mg/L (Provision Vi.A.1.) For these reasons, daily limits are unnecessary and nothing in section IV.C.3.h., nor in the follow-on section IV.C.4.c. on pg. F-58, justifies the use of maximum daily limits.

justified based on historic receiving water data (1998 to 2003), which is too old to rely on. *See City of Woodland v. Regional Water Quality Control Board for the Central Valley Region, et al*, Case No. RG04-188200, Statement of Decision (holding data should not be more than 3 years old when performing a reasonable potential analysis). In addition, the Permit already includes restrictions on all of the constituents that cause an oxygen demand on the receiving water (e.g., BOD, TSS, ammonia, and nitrogen). *See* Fact Sheet at pg. F-39. Finally, the Permit contains a receiving water limitation requiring that the discharge not cause the concentrations of dissolved oxygen to fall below 5 mg/L in Old River. *See* Provision V.A.1. Therefore, a DO effluent limit is duplicative, unnecessary, and should be removed.

Request: Remove the Dissolved Oxygen effluent limitation.

Page 10, Provision IV.A.1.i. Electrical Conductivity. The proposed Permit includes final numeric effluent limitations for electrical conductivity of “700 µmhos/cm (April 1 to August 31) and a monthly average of 1000 µmhos/cm (September 1 to March 31), unless:

- 1) The Discharger implements all reasonable steps as agreed to 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/cm⁹ 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 financially¹⁰ in the development of the Central Valley Salinity Management Plan.” (Emphasis added).¹¹

The City disagrees with this approach because the final limits will likely become effective during

⁹ Given other sources of salinity being conveyed by Tracy’s effluent, an increment over the new water supply will be too low and will present compliance problems particularly as better source water is used. The interim TDS limit should accomplish the same purpose by ensuring salt inputs stay below historic values.

¹⁰ This requirement is objectionable since NPDES permit should not be used as federally enforceable mechanisms to fund watershed activities unless every discharger in the Central Valley has similar requirements in their permit or waiver conditions. In addition, this requirement has no parameters to delineate the amount of financial participation and is, therefore, unreasonable. All financial participation should be voluntary and should be proportional to the salinity contributions made.

¹¹ As shown by the underlined text, these final effluent limitations would go into effect immediately upon the effective date of the Permit (e.g., 50 days after adoption) unless the Executive Officer acts to agree, approve and notify as set forth in these three paragraphs. The City has no control over whether these conditions are ever met since they rely on Executive Officer action. Once these limits go into effect, antibacksliding concerns may be triggered. For this reason, this option, along with Options 2 and 3 on Enclosure 1, is not workable as explained in detail in the City’s earlier comments and the City proposes Option 4, attached hereto. Even Option 1 is not acceptable because it assumes that the final numeric effluent limits set forth in the findings are appropriate, but will just take time for compliance. As explained herein, the City does not believe the numeric effluent limitations proposed apply, are required, or are feasible. For this reason, interim performance-based effluent limitations for TDS along with non-numeric effluent limitations or BMPs should be imposed in lieu of numeric final limits.

the time while the Executive Officer must act, and then antibacksliding issues will arise. Failure to meet conditions 1) through 3), above, shall result in the final effluent limitation becoming effective. *See* Permit at pg. 10. The City does not believe that a final numeric effluent limitation for EC is warranted in this situation (*see* Fact Sheet pages F-49 to F-52 and all previous comments by the City on this issue), and provides alternative requirements for the Regional Board’s consideration in Option 4 attached hereto. The options set forth in Enclosure 1 are also problematic because these options require that reverse osmosis treatment will immediately or eventually be implemented. Given the large cost and environmental impact of reverse osmosis and brine disposal and the miniscule benefit given Tracy’s contribution of salt to the Delta, none of the options proposed are supported by the City.

However, the City is willing to accept the annual mass discharge limit on total dissolved solids (TDS) set forth in Provision IV.A.5.f., which reflects “an interim approach[] to continue controlling and regulating salts in a reasonable manner,” as recommended by Regional Board Chairman Dr. Longley. In addition, because compliance with a numeric final limit for EC is infeasible,¹² federal regulations authorize the use of Best Management Practices (BMPs) in lieu of numeric limits. 40 C.F.R. §122.44(k)(3). The San Francisco Regional Board recently recognized this ability in its letter to the State Board on the proposed EBMUD Order. *See* Letter from Bruce Wolfe http://www.swrcb.ca.gov/wqpetitions/docs/emud/comments/bruce_wolfe.pdf (Feb. 20, 2007)(“Relying upon 40 CFR 122.44(k)(3), where numeric effluents are not feasible, a permit may establish BMPs.”).

A California Court of Appeal has approved this practice, particularly in a situation, as here, where the City is merely a small part of the total loading. *See* Fact Sheet at pg. F-52, Figure F-3. In the *CBE* case, the Court held that section 122.44(d) does not require a numeric effluent even upon a demonstration of reasonable potential. *Communities for a Better Environment v. SWRCB*, 109 Cal.App.4th 1089, 1105 (2003)(“It thus appears that in the application of the modifier ‘numeric,’ the trial court confused effluent limitations (i.e., WQBELs) with water quality criteria. We see nothing in the regulation which mandates numeric WQBELs in all circumstances. The definition of ‘effluent limitation’ in the CWA refers to ‘any restriction,’ does not specify that a limitation must be numeric, and provides that an effluent limitation may be a schedule of compliance. (33 U.S.C. §1362(11).) Moreover, section 122.44(k)(3) permits non-numeric WQBELs where numeric ones are not feasible.”); *see also In the Matter of the Petition of Citizens for a Better Environment, Save San Francisco Bay Association, and Santa Clara Audubon Society*, SWRCB Order No. WQ 91-03, 1991 WL 135460 at p.12 (May 16, 1991)(“numeric effluent limitations are not legally required. Further, we have determined that the program of prohibitions, source control measures, and ‘best management practices’ set forth in the permit constitutes effluent limitations as required by law.”)¹³ The Regional and State

¹² The SIP defines “infeasible” as “not being capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” *See* SIP at pg. Appendix 1-3; *see also* Fact Sheet at pgs. F-49 and F-52 (finding imposition of limits requiring reverse osmosis is not reasonable or feasible approach); SWRCB Order No. 2005-005 (City of Manteca order).

¹³ “The State Board noted the EPA’s regulatory definition of ‘effluent limitation’ was broad, and noted that the *Costle* decision supported the conclusion that numeric limitations were not required—especially since the CWA ‘gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges.’” *CBE* at 1106 *citing* 1991 WL 135460, p. 15, quoting *NRDC v. Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). The *Costle* case “suggests that Congress did not intend numeric effluent limitations to be the only limitation on pollution discharges under the CWA, but intended a flexible approach including alternative effluent control strategies.” *Id.*

Boards had concluded in the *CBE* case that a numeric WQBEL for dioxin was not feasible (i.e., “not appropriate”) because the Refinery was not a substantial source of dioxin and was essentially a “conveyance . . . from other sources.”¹⁴ *CBE*, 109 Cal. App. 4th 1089 at 1099. Similarly, Tracy itself is not a source of the salt, but a conveyance from source water, groundwater, and residential, commercial and industrial users.

The imposition of treatment technologies like reverse osmosis far exceeds the mandated treatment requirements of the CWA and will likely become unnecessary once the TMDL for salinity is in place (*see* Finding II.H. identifying EC as a listed pollutant for the western Delta), and finally approved.¹⁵ Such a waste of resources is not reasonable given the relative insignificance of Tracy’s discharge (*see* Fact Sheet at pgs F-51 and F-52), nor reasonably required (*see* Water Code §13000), and ignores the fact that control of some substances may require a “carefully conceived, agency-approved, long-term pollution control procedure for a complex environmental setting.” *See CBE*, 109 Cal.App.4th at 1107.

For this reason, the imposition of “effluent limits” in the form of a performance-based TDS interim limit, a narrative requirement to obtain a new lower salinity water supply, and BMPs to implement all reasonable steps to identify and implement feasible measures to reduce salinity in discharges from residential, commercial, industrial, and infiltration sources will address the salinity issues in the Delta during this permit term. If a TMDL is adopted, alternative or additional requirements could be imposed at that time, as needed. In the meantime, the combination of an interim mass-based limit for TDS and permit requirements directed at lower EC source water and BMPs will ensure that the City does not add additional salinity in the interim and comply with the requirement to have “effluent limitations” or BMPs where numeric effluent limitations are not feasible.

Request: Adopt Option 4 attached hereto in lieu of numeric limits for EC.

¹⁴ The State Board had noted the interim permitting problem while a TMDL was being adopted and implemented: “if the water body is impaired, the water may not be able to assimilate more of the impairing pollutant. If this is the case, effluent limitations for the pollutant may be based solely on the applicable criterion or objective with no allowance for dilution. Hence, they may be extremely stringent. Ultimately, when the TMDL is done, the stringent limitations may become unnecessary because nonpoint source controls may provide assimilative capacity for the point source discharge[.] This may be especially true in cases where [as here] nonpoint pollutant sources are the primary contributors and point sources are insignificant.” *CBE* at 1103.

¹⁵ Courts have recognized a step-wise process in pollutant control. In *San Francisco BayKeeper v. Whitman*, 287 F.3d 764,766-767 (April 15, 2002), the Ninth Circuit Court of Appeals determined that:

“[w]hen the NPDES system fails to adequately clean up certain rivers, streams or smaller water segments, the Act requires the use of a water-quality based approach. States are required to identify such waters, which are to be designated as ‘water quality limited segments’ (‘WQLSs’). The states must then rank these waters in order of priority, and based on that ranking, institute more stringent pollution limits called ‘total maximum daily loads’ or ‘TMDLs.’ 33 U.S.C. §§1313(d)(1)(A), (C). TMDLs are the maximum quantity of a pollutant the water body can receive on a daily basis without violating the water quality standard. The TMDL calculations are to ensure that the cumulative impacts of multiple point source discharges are accounted for, and are evaluated in conjunction with pollution from non-point sources. States must *then* institute whatever additional cleanup actions are necessary, which can include further controls on both point and nonpoint pollution sources.” (emphasis added).

Thus, the Court reasoned that the TMDL program is the tool for correcting water quality impairments when they are deemed to exist, not continued ratcheting down under the NPDES permitting program. Any other determination would render the TMDL program superfluous.

Pages 10-13, Provision IV.A.2.a, 3.a., 4.a., and 5.a., Tables 5-8. Mass and Daily Limits for Ammonia, Nitrate and Nitrite. Each of the tables in these provisions includes new monthly, daily, and mass effluent limitations for ammonia, nitrate, and/or nitrite. These limits were not in the City's previous permit. *See* Fact Sheet at pg. F-4. Furthermore, the City, without a requirement to do so, has begun constructing nitrification/denitrification facilities that will address these constituents and should be operational by the time this Permit becomes effective (e.g., 50 days after permit adoption). Once those facilities are in place, it will be unlikely that there will be reasonable potential for these constituents and effluent limitations will not be needed.

Even if this were not the case, the Regional Board has failed to demonstrate that there is reasonable potential currently for nitrate. Review of the chart on page F-57 shows that both the effluent MEC and the receiving water (B) are lower than the translated number from the Chemical Constituents narrative objective of 10 mg/L. Thus, the indication of "Yes" for reasonable potential in the last column is inexplicable. The Fact Sheet states that "[t]he discharge has the reasonable potential to cause or contribute to an in-stream excursion above the water quality standards for nitrate and nitrite because of the nitrification and denitrification processes." *See* Fact Sheet at pg. F-41. This is not accurate as the denitrification processes will assist in the removal of ammonia and nitrogen. For these reasons, the nitrate limits must be removed as there is no statistical demonstration of reasonable potential.

The imposition of mass limits for these constituents also seems to be contrary to the findings in the Fact Sheet, which state that "pursuant to the exceptions to mass limitations provided in 40 CFR 122.45(f)(1), some effluent limitations are not expressed in terms of mass, such as pH and temperature, and when the applicable standards are expressed in terms of concentration (e.g. CTR criteria and MCLs) and mass limitations are not necessary to protect the beneficial uses of the receiving water." *See* Fact Sheet at pg. F-58. However, the Permit fails to remove the mass limits for ammonia, nitrate, and nitrite even though the standards used for these constituents are concentration-based. *See* Fact Sheet at pg. F-34 for ammonia, and pg. F-41. Thus, there is no independent justification for mass limits for these constituents.

In addition, there is no justification for the inclusion of daily limits for ammonia. Other recent permits issued by this Regional Board have NOT included daily limits for this constituent. *See* City of Fresno permit, Order No. R5-2006-0090 (Sept. 21, 2006)(ammonia, nitrate, and nitrite limits expressed only as a monthly average). No justification exists for this disparate treatment, and the daily limits for ammonia should be removed as unjustified and unnecessary.

Request: Remove nitrate limits as there is no reasonable potential; remove the mass and daily limits for ammonia and nitrite as unjustified and unnecessary.

Page 11-12, Provision IV.A.2.b., IV.3.b., and IV.4.b. Flow Restrictions. No justification has been provided for including a flow restriction and mass limits since these two types of restrictions serve the same purpose. Further, the City is concerned that its current discharge flow limit of 9 mgd (ADWF) might be exceeded before 2008. For this reason, the City suggests that the flow requirements be removed or that the flow restriction in Provision IV.A.2.b. be set as an over three consecutive dry weather months each year. This is consistent with permits being adopted in the San Francisco Bay region.

Request: Revise IV.A.2.b. to read: “The Average Dry Weather Discharge Flow shall not exceed 9.0 million gallons per day. The average dry weather flow shall be determined over three consecutive dry weather months each year.”

Page 13, Provision IV.A.2.d. Mercury Mass Limits. The City questions the determination of reasonable potential since the Regional Board is ignoring promulgated criteria to protect human health and using non-promulgated guidance criteria for fish tissue instead. This action is more stringent than required by federal law and an analysis under Water Code section 13263 must be performed.

If the mercury mass limit is maintained over the City’s objection, the City requests that the Regional Board change the proposed monthly mass limit back to the previously suggested annual mass limit of 0.51 pounds per year to better reflect the long term concerns with mercury mass loadings and to provide a bit more regulatory flexibility. A performance-based limit should not cause the City to be out of compliance or it is not truly performance-based. If the City cannot consistently comply with this numeric monthly limit (as was demonstrated in previous comments submitted by the City¹⁶ and incorporated by reference herein), then that limit is impracticable and can be substituted with a longer term average limit. See 40 C.F.R. §122.45(d)(2). In addition, if compliance with the mandated limit is infeasible, then the pollutant minimization activities also required under the Permit (see Provision VI.C.1.d. and Provision VI.C.3.a.)¹⁷ could be imposed in lieu of a numeric mass limit. 40 C.F.R. §122.44(k)(3); *Communities for a Better Environment*, 109 Cal.App.4th at 1105.

Request: Replace the proposed monthly limit with the previously suggested annual mass limit of 0.51 pounds per year because the monthly limit is impracticable, or remove the mass limit in Provision IV.A.2.d. because compliance is infeasible and BMPs and Pollution Prevention requirements are imposed in lieu of a numeric limit as authorized by 40 C.F.R. §122.44(k)(3).

Pages 14, 16 and 28, Provisions IV.B., IV.C., V.B. and VI.C.5, Page E-10, Paragraphs VI, VII, and VIII (relating to groundwater), Page F-67, Paragraphs IV.E. and F, Page F-70, Paragraph V.B., Page F-70 and F-71, Paragraphs VI.D.2. and VI.E.1., Page F-80, Paragraph VII.B.5., and Page F-81, Paragraph VII.B.7. Unnecessary References and Provisions. These provisions referencing Land Discharge Specifications, Reclamation Specifications, Groundwater Limitations and Monitoring, and Construction, Operation and Maintenance Specifications, and Biosolids Monitoring contain no substantive provisions applicable to this NPDES permit and must be removed.

Furthermore, several of these provisions cite to the City’s separate WDR Order. This separate Order should not be referenced as someone might claim that this reference incorporates that separate permit into this NPDES permit and, thus, those separate requirements become federally enforceable. A separate order is enforceable on its own without being referenced herein. Removal of all references must occur before the final order is adopted. Alternatively, express

¹⁶ The City showed that some months have closely approached the proposed monthly value (e.g., a value of 0.0392 was seen in December of 2004).

¹⁷ It should be noted that these two provisions requiring pollution prevention plans for mercury are duplicative. One or the other should be removed, or the requirements should be consolidated.

language stating that the separate WDR is “not applicable” or NOT being incorporated into the NPDES permit should be added to make this issue crystal clear.

Request: *Remove Provisions IV.B., IV.C., V.B and VI.C.5., Paragraphs VI, VII, and VIII in Appendix E, and Paragraphs IV.E. and F., V.B., VI.D.2., VI.E.1., VII.B.5., and VII.B.7. in Appendix F as unnecessary. If maintained, all references to the City’s WDR Order should indicate that this separate order is not be incorporated by reference into the NPDES permit.*

Pages 14-16, Provision V.A.6.b. and V.A.13.f. MCLs. The tentative permit applies MCLs for radioactivity and pesticides directly to surface waters even though MCLs only apply to treated, served tap water.

Request: *For the reasons provided herein and previously in comments related to the use of MCLs, Provisions V.A.6.b. and V.A.13.f. should be deleted.*

Pages 17 and 20, Provisions VI.A.2.c. (second paragraph) and VI.B.1. Unlawful Permit Modification. These provisions purport to require compliance with new regulatory effluent standards and prohibitions and new monitoring requirements even without an amendment of the permit. This requirement is of dubious validity because it prospectively incorporates by reference non-existent regulations, and improperly amends the permit without a formal amendment or public hearing and comment process. This is not allowed under State law. Delegation of activities related to modifications of waste discharge requirements to the Executive Office is not authorized. Some permits have included language that states that “The monitoring program may be modified by the Executive Officer at any time.” The Regional Board’s delegation powers only allow delegation of certain activities and only to the Board’s Executive Officer. See Water Code §13223(a); *see accord San Francisco BayKeeper, et al v. SFRWQCB, Order Granting Petition for Writ of Mandate and Statement of Decision, San Francisco Superior Court, Consolidated Case No. 500527 (Nov. 2003)(holding that the ability to make changes to the substantive requirements of the permit cannot be delegated to the Executive Officer).*

Request: *Remove the second paragraph of Provision VI.A.2.c. and the portion of VI.B.1, which states “, and future revisions thereto.”*

Page 21. Provision VI.C.1.g. Water Effects Ratios (WER) and Metal Translators. The language should be modified to state that if the Discharger spends the time, cost, and effort to perform a scientifically valid study to determine site-specific WERs and/or site-specific dissolved-to-total metal translators for copper, iron, and/or aluminum, and if those study results are approved by the Executive Officer, this Order will be reopened to modify the effluent limitations for the applicable inorganic constituents.

Request: *Change “may be reopened” to “will be reopened.”*

Page 21, Provision VI.C.1.h., and Fact Sheet, Page F-72, Paragraph VII.B.1.h. Human Health Dilution Credits. It is unclear why this needs to be a provision in this permit. The Antidegradation Policy does not require that permits be reopened upon implementation of new treatment technologies to lower effluent limits to meet the new performance levels. If harmonic mean levels are set to implement the existing water quality objectives, those same levels would apply despite the new technology.

Request: *Remove Provision VI.C.1.h. and Paragraph VII.B.1.h. in Appendix F as not required, inconsistent with law, and unnecessary.*

Page 25, Provisions VI.C.3.a. and b. Pollution Prevention Plans. The proposed insertion of the words “and implement” should be rejected as contrary to law. Words such as “conduct,” “implement,” and “implementation” related to a Pollution Prevention Plan (PPP) is contrary the ruling in SWRCB’s precedential order in the *Tosco Avon Refinery* case, Order No. 2001-06. Under that case, the Regional Water Board was held to lack the authority to require incorporation of or “implementation” of a PPP in a state-issued permit. *See* Water Code §13263.3(k) (“a regional board . . . may not include a pollution prevention plan in an waste discharge requirements or other permit issued by that agency”); Order No. 2001-06 at 38-40 and 60, para. 9 (March 7, 2001)(“The Regional Board cannot require in a permit that a discharger implement a pollution prevention plan.”)(all emphasis added).

Under the *Tosco* decision, the state law proscription against including PPPs in permits was to ensure that the contents of PPPs are not subject to citizen suits under the Clean Water Act. *Id.* In that case, the State Water Board found that state law, at Water Code §13263.3, did not prevent a requirement in a permit to prepare a PPP. *Id.* at 40. However, a requirement to implement the plan was inconsistent with the process set forth in section 13263.3 because the Regional Water Board can only require a discharger to comply with the PPP “after providing an opportunity for comment at a public proceeding with regard to that plan.” *Id.* citing Water Code §13263.3(e).

The only way to avoid this inconsistency with the law is for the permit to not include words such as implement or conduct *or* for the permit to expressly state that for any PPP required, the permit does not incorporate this plan by reference into the permit.

Request: *To remedy this problem, the words “and implement” should be removed, or the following sentence be added to the end of Provisions VI.C.3.a. and b.:*

“.... The Pollution Prevention Plan required herein is not incorporated by reference into this permit.”

Page 26, Provision VI.C.4b. Compliance Schedules. Phase 1 Improvements. The Regional Board should modify the language to state that “The permitted average ~~daily discharge dry~~ weather flow may increase to 10.8 mgd” upon compliance with the stipulated conditions. Further, the Regional Board should clarify that the average dry weather flow is defined as the flow for three consecutive dry weather months in a calendar year.

Request: *Make suggested changes to permit language.*

Page 26, Provisions VI.C.4.b.i. and VI.C.4.c.i. Final Effluent Limits. The language of these sections needs to include “The discharge shall demonstrate¹⁸ compliance with Final or interim Effluent Limitations in Provision IV.A.1., Interim Effluent Limitations IV.A.5.d. and f., and Receiving Water Limitations V.A.”

¹⁸ In Provision VI.C.4.c., this sentence incorrectly uses “demonstration” instead of “demonstrate.” This should be corrected.

Request: *These wording changes should be made to the end of the first sentence in Provisions VI.C.4.b.i. and VI.C.4.c.i. to make it clear that final limits do not apply where interim limits under a compliance schedule are imposed.*

Page 26, Provision VI.C.4.c. Compliance Schedules. Phase 2-4 Improvements. The Regional Board should modify the language to state that “The permitted average ~~daily discharge~~ dry weather flow may increase to 16 mgd upon compliance” with the stipulated conditions. Further, the permit should define average dry weather flow as the flow for three consecutive dry weather months in a calendar year.

Request: *Make suggested changes to permit language.*

Pages 27-28, Provisions VI.C.4.d.i. and f., Pages F-8 Compliance Schedules for Final Effluent Limitations for Copper and Aluminum. The Regional Board has not provided justification on in the permit or Fact Sheet for tying compliance with the copper and aluminum limits to the date of the Phase I improvements since these improvements are not designed specifically to address either copper or aluminum removal, only tertiary treatment and nitrification/denitrification, although the tertiary filters will likely provide some additional metals removal. Therefore, shortening the compliance schedules to that date is inappropriate and this language stating “or upon compliance with Special Provisions VI.C.4.b., whichever is sooner,” should be removed from both Provisions and the justifications in the Fact Sheet at pages F-8 and F-80 should be revised accordingly.

Antidegradation is not a proper justification for the shortened compliance schedules. The compliance schedule analysis should be independent of flow and antidegradation concerns since the limits and criteria are concentration-based, and the Regional Board has not demonstrated that increase mass from the expansion has causes any degradation or impacts to beneficial uses. Furthermore, in the instance of aluminum, it is not clear that the antidegradation policy applies since the background waters may not be “high quality waters” as the Fact Sheet states that background currently exceeds the translated narrative objectives being applied. *See* Fact Sheet at pgs. F-32 and F-57.

A complete antidegradation analysis and review of water quality impacts of the plant expansion was performed in the EIR prepared by the City of Tracy under CEQA. In order to assess the impacts of the proposed treatment plant improvements and expansion to 16 mgd, this analysis examined the incremental water quality impacts of the proposed discharge and concluded that the discharge would not adversely impact water quality or beneficial uses.¹⁹ For a number of

¹⁹ The federal antidegradation policy allows lowered water quality where necessary to accommodate important economic and social development in the area in which the waters are located. 40 C.F.R. §131.12(b). In this case, the treatment plant expansion is required to accommodate the new connections anticipated and approved under slow-growth plan adopted by the City. Without such new capacity, additional growth would require a new treatment plant built elsewhere or new septic systems, which raise different water quality issues. Thus, if any lowered water quality is allowed under this permit, it is authorized to accommodate important economic and social development in the area. *Id.* SWRCB Resolution 68-16, which requires the maintenance of high quality waters until it is demonstrated that (i) a change (degradation) is consistent with the maximum benefit of the people of the state, (ii) will not unreasonably affect beneficial uses, and (iii) will not result in quality less than that described in the Regional Board’s policies. In the Fact Sheet, the Regional Board 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 . . .

water quality parameters, the concentrations in the treated effluent will be better than the levels in ambient waters. For copper, the incremental changes in water quality was determined to be insignificant, and in most cases, for other parameters, changes were hardly even measurable. *See* Tracy Wastewater Treatment Plant Expansion FEIR (Sept. 2002). This EIR was approved and certified without challenge even though many of the entities commenting on the proposed permit also commented on the EIR. Thus, antidegradation cannot be used as a justification for collapsing the compliance schedules. To do so also eliminates the City's ability to perform WER or translator studies since these can take two years to perform and additional time to obtain approvals. The May 2010 compliance date for copper is the shortest feasible schedule. Because the aluminum limit is an effluent limit based upon interpretation of a narrative Basin Plan objective, the appropriate compliance schedule would be 10 years.

Request: *Remove the language “or upon compliance with Special Provisions VI.C.4.b., whichever is sooner,” from Provision VI.C.4.d.i. and f. , and footnote 3 on page 28 of the Permit, and make corresponding changes to the Fact Sheet. Change compliance date for aluminum to May 3, 2017 to be consistent with the Basin Plan compliance schedule.*

Page 30, Provision VI.C.6.b. Collection System. The City very much appreciates the modification of the previously imposed requirements applicable to the collection system now that the collection system will be regulated separately under the statewide permit. However, the proposed provision uses language that might be interpreted to make compliance with that separate permit a condition of this NPDES permit. To remedy this problem, the language of this provision must be amended to state: “The Discharger shall be subject to the requirements of Order 2006-0003 and any future revisions thereto, which are not incorporated herein.”

Request: *Clarify that the statewide collection system general permit is not incorporated by reference into this NPDES permit for the treatment plant.*

Page 34, Provision VII.G. Total Residual Chlorine Effluent Limitations (Section IV.A.1.e.) The City appreciates the changes made to this Compliance Determination section and inclusion of language related to continuously monitored chlorine residual or dechlorination agents. However, some of the new language inserted raises the same issue raised by the City previously in its comments, namely prejudging violations of the Permit. For those reasons, the first sentence of the last paragraph of this section should be removed. It is unnecessary and prejudices that something is a violation without a hearing, the ability to present defenses, or to explain the results.

Request: *Remove the first sentence from the last paragraph, which reads: “Any excursion above the 1-hour average or 4-day average total residual chlorine effluent limitations is a violation.”*

Page 34, Provision VII.H. TDS Annual Mass Loading. The City questions the need for section H.2 as currently drafted as this language appears to create a rolling-annual average instead of a calendar year annual limit. Rolling averages are problematic when compliance

it results in a high level of treatment of sewage waste.” *See* Fact Sheet at pg. F-8. The Regional Board also included an analysis of individual constituents and concluded that the policy for antidegradation had been met. *Id.*

triggers Mandatory Minimum Penalties. The Permit sets limits based on calendar month and calendar week (*see* Attachment A, pg. A-1 for AMEL and AWEL definitions), so the City questions why this section appears to change that pattern. The City requests that section H.2 be replaced with the following:

“2. Twelve monthly mass loadings shall be calculated for each calendar month. The Discharger shall submit a cumulative total of the mass loadings for the previous calendar year in its annual report and the monthly mass loadings shall be reported ~~twelve calendar~~ monthsly with each self-monitoring report.”

Request: Amend Provision VII.H.2. as requested.

ATTACHMENT A

The City appreciates the changes made, and has no additional comments on Attachment A.

ATTACHMENT D – STANDARD PROVISIONS

Pages D-6 and D-9 to D-10, Paragraphs V.B.2.a. and b., and VII.A. These paragraphs relate to Non-Municipal Facilities. Since these paragraphs do not apply, they should be removed from this municipal permit. The point of the Permit Template was to streamline permits. The inclusion of inapplicable provisions defeats that purpose.

Request: Remove Paragraphs V.B.2.a. and b., and VII.A., and renumber Paragraph V.B.2.c. as V.B.2.a., and Paragraph VII.B as VII.A.

ATTACHMENT E – MONITORING AND REPORTING PROGRAM

Page E-2, Paragraph II, Table of Monitoring Locations. The monitoring stations related to Outfall 002 (M-001 and R-004) should be clarified to explain that these sites related to Outfall 002 need not be monitored unless and until Outfall 002 is operational. There is an asterisk on Outfall 002 in the table for M-001, but it does not footnote anything. This change would be consistent with footnote 1 on page E-10.

The table should also change the location of R-001 since traveling to a point six miles away is overly burdensome and bears no relation to the Tracy discharge. Instead, the City suggests that R-001 be changed to “Old River, approximately 1 mile upstream of Outfall 001, downstream of the split of Old and Middle Rivers, see Figure E-1.”

Request: Add an asterisk at the bottom of page E-2 that states: “* The Discharger need not collect samples from Outfall 002 or Monitoring Location R-004 until Outfall 002 is operational and in use.” Amend the R-001 site as requested.

Pages E-4 and E-7 Methylmercury samples now required. These monitoring requirements appear to be an outgrowth of the Delta mercury TMDL. However, that TMDL is still in development, and although the Regional Board will be requiring monitoring all POTWs and most other sources in the future, imposition of this monitoring is premature. If the TMDL is approved, the permit’s reopener provision at Provision VI.C.1. could be modified to insert this requirement at a later point in time once officially authorized.

Request: *Remove the methylmercury monitoring as there are no adopted criteria for methylmercury against which to compare monitoring data, and this monitoring has not been justified under Water Code §13267(b) and §13225(c). Instead, modify Provision VI.C.1. to authorize a reopener to amend the monitoring requirements after adoption of a mercury TMDL.*

Page E-7, Paragraph IV.A.1., footnote 4, and Page E-12, Paragraph VIII.A.1., footnote 2. This footnote now states that the “For priority pollutants without effluent limitations, the detection limits shall be equal to or less than the lowest ML published in Appendix 4 of the SIP.” This is not required by the SIP and should not be required here. The SIP allows the permit holder to choose an ML to use for compliance determination purposes. See SIP at Section 2.4.2. Only when there is no ML value below the effluent limitation may the RWQCB select the lowest ML value for inclusion in the permit. Moreover, it is unclear why a more stringent requirement would apply when no effluent limit is imposed. For these reasons these footnotes need to be modified to be consistent with the SIP.

Request: *Modify the last sentence of these footnotes to state “For priority pollutants without effluent limitations, the detection limits shall be selected from the MLs published in Appendix 4 of the SIP” in order to be consistent with SIP Section 2.4.2.*

Page E-12, Paragraph VIII.A.1. Remove the reference to noting the presence or absence of bottom deposits as the River is over 20 feet deep and bottom deposits are not readily visible.

Request: *Remove reference to “c. bottom deposits” on Page E-12, or add “As applicable” to “Attention shall also be given to the presence or absence of:”.*

Page E-14, Sampling Table. The table at the bottom of page E-14 and top of page E-15 states that “Monitoring Period Begins on... September 1, 2006.” Since this time has passed, a new date should be included in this table.

Request: *Replace “September 1, 2006” with an updated date.*

ATTACHMENT F – FACT SHEET

Page F-8, last paragraph. Inconsistent Statements. The Fact Sheet states that an annual mass loading for TDS shall be “83,317 lbs/yr,” yet the Permit at page 14 states “13,688 tons/year.” This paragraph also needs to delete references to an agricultural supply study as that has been deleted from the Permit.

Request: *Make the Salinity requirements consistent between the Fact Sheet and the Permit and implement Option 4 suggested by the City.*

Page F-12, Paragraph V.C.3.b. This page discusses the development of numeric limits from narrative water quality criteria. However, the proper procedure is to develop and adopt numeric water quality objectives into the Basin Plan pursuant to the requirements of 33 U.S.C. §1313(c)(2); CWC §13241. Narrative objectives cannot be relied upon for eternity when guidance criteria exist that would allow the Regional Board to adopt numeric objectives.

While Federal regulations do authorize the use of narrative water quality objectives for toxicity in limited circumstances (albeit in direct contravention of the CWA's mandate). (*See* 40 C.F.R. §122.44(d)(1)(vi), and §131.11(b)), those regulations clearly intended that any such narrative objectives would be used only as *interim* measures until numeric objectives were adopted. (54 Fed. Reg. 23876, 23877 (1989) (“EPA is promulgating paragraph (vi) as an interim measure to control a pollutant of concern until the state promulgates a water quality criterion for the pollutant.”)(emphasis added)). Thus, the Regional Board exceeds its authority by relying on the narrative water quality objectives *indefinitely*, and particularly where ample information exists to allow the State to properly adopt a numeric water quality objective.²⁰

Request: Adopt site specific objectives for all constituents that USEPA has promulgated criteria guidance in accordance with 33 U.S.C. §1313(c)(2) and CWC §13241.

Pages F-31, F-33, F-36, F-40, F-41, F-45, and F-54, Paragraphs V.C.3.e. (Aluminum), f. (Ammonia), j. (Chlorine Residual), r. (Mercury), s. (Nitrate/Nitrite), x. (Salinity). The Fact Sheet states that the discharge has the reasonable potential to violate the Basin Plan's narrative toxicity or narrative chemical constituents objectives for several constituents. The permit or fact sheet must include evidence to demonstrate that a constituent exceeds these narrative objectives, as applicable to the local conditions. In addition, and notwithstanding the above comments, the permit must include interim limits for nitrate and nitrite, if necessary at all given the new treatment coming on line in the next few months, within the permit instead of in the attached TSO. Recent binding California case law held that where a regional board newly interprets a narrative objective in the Basin Plan, the regional board may then include an effluent limit and a compliance schedule as authorized under that Plan. In this case, the Regional Board's Basin Plan allows a compliance schedule of up to 10 years. Thus, the Basin Plan authorizes the schedule of compliance to be including within the amended NPDES permit. *See accord Communities for a Better Environment v. State Water Resources Control Board*, 34 Cal.Rptr.3d 396, 410 (2005).

Request: Provide evidence that narrative objectives have the reasonable potential to be exceeded based on local conditions. Remove all interim limits from the TSO that are required through implementation of narrative objectives and place them inside the NPDES permit.

Page F-46, Paragraph V.C.3.x.vi. Salinity Sources. The City suggests the following changes to the paragraph related to the discharges from Leprino:

~~“Based on data provided by the Discharger from January 2003 through December 2004, the The TDS of Leprino's pre-treated industrial wastewater discharged to the industrial ponds is primarily in the range of 1500 mg/L to 2300 mg/L. has an average TDS of about 1000 mg/L, but triples to an average TDS of over 3000 mg/L by the time the wastewater is returned to the main facility. This results in a significant salt load to the~~

²⁰ In a 1990 precedential administrative order, the Respondent State Board itself held that the Clean Water Act and federal regulations require the adoption of numeric water quality-based objectives for toxicity by February 1990, even where the relevant Basin Plan already contains a narrative water quality objective for toxicity. (*In the Matter of the Petition of Citizens for a Better Environment (CBE), et al, United States Fish and Wildlife Service (USFWS), and City of San Jose*, SWRCB Order No. WQ 90-5, 1990 Cal. ENV LEXIS 26 at 75- 77 (October 4, 1990) at Exhibit 31).

main treatment facility, and ultimately to Old River. Leprino's pre-treated industrial wastewater is then commingled with Discharger's water in the 52 acres of ponds and discharged to the main treatment facility."

Request: Make the suggested changes to the paragraph above.

Page F-62. Paragraph V.C.5.a. Acute Aquatic Toxicity. The City appreciates the changes made to this section, but still questions whether a reasonable potential analysis has been performed prior to inclusion of toxicity requirements in the draft permit. None is shown in Table F-5 on Page F-57 or on Page F-55, Provision V.C.3.dd. Under federal law, both WET requirements and specific chemical effluent limits are not required. See 40 C.F.R. §122.44(d)(1)(iv) and (v).

Request: Perform a reasonable potential analysis for acute toxicity prior to imposing limits for acute toxicity.

Pages F-65 and F-66, Paragraph V.D.1. Interim Limits. The Fact Sheet states that there are interim limits for Electrical Conductivity, when that interim limit was removed from the Permit.

Request: Remove the Interim Limit language for EC from the Fact Sheet.

TIME SCHEDULE ORDER

The City strongly urges the Regional Board not to adopt this Time Schedule Order and to instead include any necessary interim requirements suggested therein in the permit instead. Ample compliance schedule authority exists in the Basin Plan and Thermal Plan to allow the Regional Board to place requirements for constituents imposed based upon a narrative objective in the Basin Plan (e.g., nitrate and nitrite) within the permit. See *Communities for a Better Environment v. State Water Resources Control Board*, 34 Cal.Rptr.3d 396, 410 (2005).

Furthermore, no TSO is needed for nitrate as there is no reasonable potential for nitrate and no limit is required. There is no need for a TSO and interim limits for nitrite as the City believes that it will be able to comply with the nitrite limit upon the effective date of the Permit. Finally, no TSO is needed for dissolved oxygen as an effluent limitation has not been adequately justified (see above) and the TSO contains no interim limit for DO.

Request: Move all applicable and necessary requirements of the TSO, if any, into the Permit and delete the need to adopt a TSO. Make conforming changes as needed to the Permit and Fact Sheet.

ENCLOSURE
SALINITY CONTROL OPTION 4
Proposed Waste Discharge Requirements
for the City of Tracy

The following sets forth an additional option for regulating salinity in the City of Tracy NPDES permit. This option should also be provided for consideration by the Regional Water Board and the public at the 3/4 May 2007 Regional Water Board meeting.

OPTION 4: INTERIM TDS LIMIT, ALTERNATE SOURCE WATER REQUIREMENT, AND BMPs in lieu of NUMERIC ELECTRICAL CONDUCTIVITY EFFLUENT LIMITS (no final numeric effluent limits for EC would be prescribed)

Make the following changes to the 6 March 2007 tentative NPDES permit:

1. **NPDES Permit.** Insert new Finding II.L., as follows, and renumber remaining Findings.

L. The discharge has the reasonable potential to cause or contribute to an exceedance of the State Water Board's Salinity Compliance Points in the vicinity of the discharge. There may be little or no assimilative capacity for electrical conductivity in Old River at times. The numeric effluent limitations that would apply to the discharge are a monthly average of 700 µmhos/cm (April 1 to August 31) and a monthly average of 1000 µmhos/cm (September 1 to March 31). However, compliance with these effluent limitations is infeasible. Federal regulations and state case law authorize the imposition of narrative effluent limitations or Best Management Practices (BMPs) in lieu of numeric effluent limits in this instance. 40 C.F.R. §122.44(k)(3); *Communities for a Better Environment v. SWRCB*, 109 Cal.App.4th 1089, 1103-1107 (2003); *In the Matter of the Petition of Citizens for a Better Environment, Save San Francisco Bay Association, and Santa Clara Audubon Society*, SWRCB Order No. WQ 91-03 (May 16, 1991).

Instead, the permit will include an interim TDS limit, a requirement for the utilization of lower salinity community water source(s), and appropriate BMPs that include source control and pollution prevention activities requiring identification and, where feasible, reduction or elimination of saline discharges from residential, commercial, industrial and infiltration sources to the collection system. These would be new enforceable requirements of the permit.

2. **NPDES Permit.** Limitations and Discharge Requirements, Delete effluent limitation for electrical conductivity, section IV.A.1.i.

3. **NPDES Permit.** Limitations and Discharge Requirements, Amend the following sentence in section IV. A.5.f:

“This interim performance-based limitation shall be in effect until the Regional Water Board establishes a Total Maximum Daily Load final effluent limitations for salinity in the western Delta and assigns a different waste load allocation to the City and the permit is revised to implement the TMDL. The Discharger is also required to implement all reasonable steps to obtain and utilize alternative, lower salinity water source(s).”

4. **NPDES Permit.** Insert new Reopener Provision in section VI.C.1.j:

“j. TMDLs. If Total Maximum Daily Loads (TMDLs) are adopted with waste load allocations applicable to the City, this Order may be reopened and modified to include appropriate revisions or effluent limitations, as necessary, consistent with the TMDL.”

5. **NPDES Permit.** Amend section VI.C.2.b. as follows:

“b. **Best Practicable Treatment or Control (BPTC) of Salinity.** The Discharger shall submit to the Regional Water Board for approval by the Executive Officer, a work plan, including a time schedule for a comprehensive technical evaluation of the Facility’s waste treatment ~~and/or~~ control of salinity, to determine BPTC of its discharge to Old River, to meet the requirements of State Water Board Resolution 68-16. The technical report describing the work plan and schedule shall contain a preliminary evaluation and propose a time schedule for completing the comprehensive technical evaluation. Given that the receiving waters are listed on the State’s 303(d) list, the ultimate goal is to adopt a TMDL that will attain and maintain the water quality objectives in the receiving waters. In the meantime, tTo comply with Resolution 68-16, 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 and consistent with the maximum benefit to the people of the State, ~~but in no case can the discharge cause the exceedance of applicable water quality objectives.~~”

Following completion of the evaluation, the Discharger shall submit to the Regional Water Board a technical report describing the evaluation’s results and critiquing the treatment facility and other salinity control measures to be undertaken in accordance with the Pollution Prevention Plan set forth in Section VI.C.3.b., with respect to BPTC. Where deficiencies are documented, the technical report shall provide recommendations for necessary modifications (e.g., new or revised salinity source control and pollution prevention measures, facility component upgrade and retrofit and Best Management Practices) to achieve BPTC and identify the source(s) of funding and proposed schedule for modifications. The schedule shall be as short as practicable. The technical report shall include specific methods the Discharger proposes as a means to measure

progreesses and include specific methods the Discharger proposes as a means to measure processes and assure continuous optimal performance of BPTC measures. The Discharger shall comply with the following compliance schedule in implementing the work required by this Provision:

Task	Compliance Date
1 - Submit technical report: work plan and schedule for comprehensive evaluation	Within 6 months following Order adoption
2 - Commence comprehensive evaluation	30 days following Executive Officer approval of Task 1.
3 - Complete comprehensive evaluation	As established by Task 1 and/or 2 years following Task 2, whichever is sooner
4 - Submit technical report: comprehensive evaluation results	60 days following completion of Task 3.
5 - Submit annual report describing the overall status of BPTC implementation over the past reporting year	To be submitted in accordance with the MRP (Attachment E, Section X.D.1.)

6. **NPDES Permit.** Amend sections VI.C.3.b. and c. to read:

“b. **Pollution Prevention Plan for Salinity.** The Discharger shall prepare and implement a pollution prevention plan for salinity in accordance with CWC section 13263.3(d)(3) to reduce the salinity of its discharge. However, the Pollution Prevention Plan required herein is not incorporated by reference into this permit. The minimum requirements for the pollution prevention plan are outlined in the Fact Sheet, Attachment F, Section VII.B.3.d. A work plan and time schedule for preparation of the pollution prevention plan shall be completed and submitted to the Regional Water Board within 6 months of the effective date of this Order for approval by the Executive Officer. The Pollution Prevention Plan shall be completed and submitted to the Regional Water Board within two (2) years following work plan approval by the Executive Officer, and progress reports shall be submitted in accordance with the Monitoring and Reporting Program (Attachment E, Section X.D.1.).

c. Salinity Reduction Goal Interim Requirements. The Discharger shall provide to the Regional Water Board annual reports demonstrating reasonable progress in the maintenance of current levels or reduction of salinity in its discharge to Old River. The Regional Water Board finds that an annual mass loading limit for TDS and new lower salinity water source(s) as required in

~~Section IV.A.5.f monthly average salinity of 1350 µmhos/cm as electrical conductivity (EC) is a are reasonable intermediate goal effluent limits that can be achieved in this permit term. The annual reports shall be submitted in accordance with the Monitoring and Reporting Program (Attachment E, Section X.D.1.).~~"

7. **NPDES Permit.** Attachment F, Fact Sheet, make miscellaneous changes to reflect changes identified in 1 -6, above as follows:

Section III.A.4. ... (pg.F-8) [**NOTE: This change should be made for any option selected to make it consistent with changes to the Permit.**]

~~"...Prior to increasing the discharge to 16 mgd, this Order requires the Discharger to (1) evaluate and propose an appropriate numeric effluent limit to protect the beneficial use agricultural supply in the area of the discharge that will implement the Basin Plan's narrative chemical constituent objective, and (2) to evaluate and implement BPTC of salinity in the discharge, including BMPs and source control. Prior to the increase in discharge to 16 mgd, this Order will be reopened to include an effluent limit for salinity that is protective of the beneficial use of agricultural supply and will require implementation of BPTC. With respect to temperature, the Discharger must comply with a time schedule to reduce the effluent temperature to meet the Basin Plan standards or to comply with an exception granted under the Thermal Plan."~~

Section IV.C.3.x.vii. **Effluent Salinity Controls.** ... (pg. F-53)

~~"...This Order includes an interim annual mass loading effluent limitation for TDS based on current treatment plant performance, a requirement to utilize a new lower salinity water source(s), and requires the Discharger to implement Best Management Practices (BMPs), a Pollution Prevention Plan, and source control measures to maintain or reduce the salinity in its discharge to Old River. The interim effluent limitation is based on current treatment plant performance and will ensure that the mass loading of salinity does not increase as the effluent flow rate increases. This Order also does not includes final WQBELs stating that the for electrical conductivity in the discharge shall not exceed a monthly average of 700 µmhos/cm (April 1 to August 31) and a monthly average of 1000 µmhos/cm (September 1 to March 31), as monthly averages, because these numeric effluent limitations are infeasible and unreasonable. Pursuant to federal regulations, state law, and in accordance with case law cited in Finding II.L, the Regional Water Board is authorized to impose narrative requirements or BMPs in lieu of numeric effluent limits. 40 C.F.R. §122.44(k)(3). As such, unless;~~

- ~~(1) The Discharger implements all reasonable steps as agreed to by the Executive Officer to obtain alternative, lower salinity water supply sources;~~

- ~~(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 an interim salinity goal of a maximum 500 umhos/cm electrical conductivity increase over the weighted average 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, would result in the final effluent limitation becoming effective. Furthermore, this Order requires that the Discharger implement best practicable treatment or control (BPTC) of its discharge and requires the development and implementation of pollution prevention plan for salinity in accordance with CWC section 13263.3(d)(1)(D). Appropriate BMPs include source control and pollution prevention activities requiring identification and, where feasible, reduction or elimination of saline discharges from residential, commercial, industrial and infiltration sources to the collection system. These BMPs would be new enforceable requirements of the permit.~~

The City has already begun undertaking salinity control activities without being legally obligated to do so. Tracy obtained 10,000 acre-feet of low TDS surface water from Stanislaus River, and shared construction of a water treatment plant and 40 miles of water pipeline at a cost of \$50,000,000. In addition, Tracy has purchased contracts for 10,000 acre-feet of Delta-Mendota Canal water at an additional cost of \$10,000,000. Tracy is expanding its surface water treatment plant by 15 mgd to 30 mgd at a cost of \$50,000,000. This construction is due to be completed in 2007. These costs are in addition to the costs Tracy is expending to upgrade and expand its Wastewater Treatment Plant to tertiary. The current phase cost of these treatment plant improvements is \$85,000,000. The Regional Board believes that requiring reverse osmosis treatment/brine disposal to meet final EC limits, which will cost in the hundreds of million dollars range, is not reasonable to impose upon the ratepayers of this City that has already been very proactive in addressing treatment needs and salinity reductions.

Section IV.D. Interim Effluent Limitations

“1. [NOTE: This change should be made for any option selected to make it consistent with changes to the Permit.] Copper, Ammonia, and Aluminum, and Electrical Conductivity. The SIP contains guidance on implementation of the NTR and CTR. The SIP, section 2.2.1, requires that if a compliance schedule is granted for a CTR or NTR constituent, the Regional Water Board

shall establish interim requirements and dates for their achievement in the NPDES permit. The interim limitations must be based on current treatment plant performance or existing permit limitations, whichever is more stringent. The State Water Board has held that the SIP may be used as guidance for non-CTR constituents. Therefore, the SIP requirement for interim effluent limitations has been applied to both CTR and non-CTR constituents in this Order.

The interim effluent limitations for copper, ammonia, and aluminum, ~~and electrical conductivity~~ established in this Order are based on the current treatment plant performance. ...

The Regional Water Board finds that the Discharger can undertake source control and treatment plant measures to maintain compliance with the interim limitations included in this Order. Interim limitations are established when compliance with effluent limitations cannot be achieved by the existing discharge. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim limitations, however, establish an enforceable ceiling concentration until compliance with the effluent limitation can be achieved. ~~For electrical conductivity, in addition to the enforceable interim effluent limitations, the Discharger is required to demonstrate reasonable progress in reducing salinity in its discharge to Old River and Special Provisions VI.C.3.c. establishes an intermediate goal of 1350 µmhos/cm EC as a monthly average to be achieved this permit term.~~

Table F-12 summarizes the calculations of the interim effluent limitations for copper, ammonia, and aluminum, ~~and electrical conductivity~~: ...”

4. **“Total Dissolved Solids (TDS) and Salinity.** ... This interim effluent limitation for TDS shall remain in effect until the Regional Water Board establishes a Total Maximum Daily Load final effluent limitations for salinity are adopted in the western Delta and assigns a different waste load allocation to the City.”

Add new section VI.C.1.j: **“j. Total Maximum Daily Loads (Special Provisions VI.C.1.j).** The Regional Water Board is currently working with stakeholders to develop Total Maximum Daily Loads (TMDLs) for the Central Valley. The Basin Plan may be amended in the future to incorporate TMDLs. A reopener has been included in the Order to allow the Regional Water Board to reopen the permit to include appropriate revisions or effluent limitations, as necessary, consistent with these TMDLs.”

Section VII.B.3.c.: **“Salinity Reduction Goal Interim Requirements (Special Provisions VI.C.3.c).** A salinity goal interim limit and a new lower salinity water supply requirement have ~~has~~ been established in this Order to provide a measurenable goal requirements to maintain ~~for~~ effluent salinity reductions

~~to demonstrate that the Discharger is making reasonable progress in the reduction of salinity in levels its discharge to Old River. An monthly average effluent salinity of 1350 μ mhos/cm as electrical conductivity (EC) annual mass loading limit for TDS is required in Section IV.A.5.f has been established as a reasonable goal interim effluent requirement for this permit term. In the Tulare Lake Basin Plan (Page IV-10), the Regional Water Board adopted a maximum allowable effluent limitation for publicly owned wastewater treatment works discharging to navigable water: "*The maximum electrical conductivity (EC) of a discharge shall not exceed the quality of the source water plus 500 micromhos per centimeter...*" Although not directly applicable to the Facility's discharge to Old River, the Tulare Lake Basin Plan salinity effluent limit does indicate what constitutes a reasonable incremental increase above the Discharger's water supply (i.e. water supply EC plus 500 μ mhos/cm). Based on water supply monitoring performed by the Discharger from 2001-2004, the EC of the water supply averaged 739 μ mhos/cm, with a maximum of 821 μ mhos/cm. Reducing the monthly average effluent salinity to 1350 μ mhos/cm as EC is an achievable goal that would demonstrate a reasonable measure of progress in the reduction of salinity discharged to Old River."~~