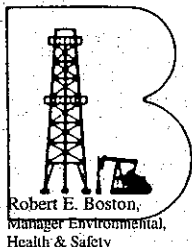


# Berry Petroleum Company

5201 Truxtun Ave., Suite 300  
Bakersfield, CA 93309-0640

(661) 616-3900  
www.bry.com



May 10, 2007

Mr. W. Dale Harvey  
California Regional Water Quality Control Board  
Central Valley Region  
1685 E Street  
Fresno, California 93706

Subject: Tentative Waste Discharge Requirements  
Berry Petroleum Company  
Poso Creek/McVan Facility  
Poso Creek Oil Field, Kern County

Dear Mr. Harvey:

On behalf of Berry Petroleum Company (Berry), I would like to thank staff of the California Regional Water Quality Control Board (RWQCB) for expediting the preparation of tentative Waste Discharge Requirements (tWDRs and National Pollution Elimination Discharge System [NPDES] permit) for our McVan Facility in Poso Creek Oil Field. I would also like to thank RWQCB staff for going over the tWDRs with me and Berry's consultants (Geomatrix Consultants, Inc. [Geomatrix]) on May 3, 2007. During that meeting, we promised to provide the RWQCB comments on the tWDR by May 14, 2007 and to include suggested language for problematic provisions of the tWDR. The attached comments on the tWDR provide the requested edits.

We look forward to uncontested adoption of the tWDRs at the on June 21/22, 2007 RWQCB meeting. Based on our recent discussions with RWQCB staff, the attached edits are prepared such that Berry will not need to contest the tWDRs. There is one issue that was left unresolved in our recent discussions that I felt was important to formally address. In the tWDRs, the RWQCB staff directs that Berry provide the RWQCB information to define beneficial uses of surface water downstream of the discharge point and to support the RWQCB's dedesignation of beneficial uses of surface water in Poso Creek. RWQCB staff has indicated they expect a two-to-three-year-long study of beneficial uses over an undefined study area. While Berry is willing to assist the RWQCB with limited data collection to support such an effort, Berry does not believe it is appropriate for Berry to be responsible for characterization of beneficial uses of surface waters in Tulare Lake Basin. Several facts bear on this belief:

- The RWQCB is charged by the California Water Code (Section 13050, California Water Code) with designation of beneficial uses of surface and groundwater's, including in the Tulare Lake Basin.
- The RWQCB is also charged by the California Water Code (Section 13240, California Water Code) with reviewing and updating the Basin Plans, including beneficial uses, every three years.
- The RWQCB adopted beneficial uses of surface and groundwater's in the 1975 Water Quality Control Plan Report for Tulare Lake Basin, including coldwater freshwater habitat (COLD) for Poso Creek in the Valley Floor Waters (Hydrographic Unit 558 in which the Berry facility resides. Poso Creek is the only surface water in Tulare Lake with COLD designation in the Valley Floor Waters, which suggest that the original designation may have been an error. On behalf of Berry, Geomatrix has requested the RWQCB staff to provide the basis for the original COLD designation of Poso Creek in Valley Floor Waters to

ascertain if the original designation was an error or at least ascertain what documentation existed for the original COLD designation. We have not yet received the requested information.

- In previous WDRs, Order No. 95-153, the RWQCB found that COLD is not a beneficial use of the unnamed ephemeral stream tributary to Poso Creek.
- In the existing WDRs, Order No. 5-01-133, the RWQCB found that “beneficial uses identified in the Basin Plan for Poso Creek, except for COLD, are applied to the unnamed ephemeral stream.”
- The tWDRs state “Given the ephemeral nature of Poso Creek and the unnamed tributary, COLD does not appear to be a beneficial use for these reaches.”
- In State Water Resources Control Board (SWRCB) Order WQO 2002-0015, the SWRCB found that COLD and municipal supply (MUN) did not apply to Old Alamo Creek and directed the RWQCB to “expeditiously initiate basin plan amendments to consider dedesignation of COLD and MUN from Old Alamo Creek, and may require that Vacaville (the discharger) to provide assistance, such as data collection and water quality-related investigations”
- In the Old Alamo Creek case, the RWQCB subsequently found that COLD did not apply to Old Alamo Creek (Resolution 5-2005-0053), based on an EPA-funded study that concluded “By virtue of its location, which is entirely on the Central Valley floor, it is doubtful that COLD would be attainable even under historic conditions” (TetraTech, 2004).
- The RWQCB has known of the COLD designation issue for Poso Creek and its unnamed tributary for more than 10 years, but has not addressed it in the triennial reviews of the Tulare Lake Basin Plan that have occurred in the interim.

Accurate designation of beneficial uses is in interest of the people of the State of California and is assigned to the RWQCB and its basin planning process. Berry does not believe it is responsible for the burden of documenting existing or potential beneficial uses of Valley Floor Waters nor for dedesignation of the existing COLD beneficial use of Poso Creek in the Valley Floor Waters. The RWQCB has been aware of the COLD designation problem since Order 95-153 was adopted. Berry requests that the RWQCB expeditiously initiate a basin plan amendment to dedesignate COLD from Valley Floor Waters based on the RWQCB’s statutory obligation, using the RWQCB’s internal resources, and the consistent with SWRCB’s direction in a similar matter (WQO 2002-0015, described above).

Berry will be happy to provide summaries of previous monitoring data, summaries of monitoring data generated during the period of the RWQCB’s dedesignation process, and other readily available local information Berry has legal access to. However, Berry does not plan to collect any new information or data in Poso Creek to support the RWQCB’s dedesignation process, unless the RWQCB can provide a detailed and limited scope for that effort such that Berry can be assured that:

“The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.” (Section 13267, California Water Code).

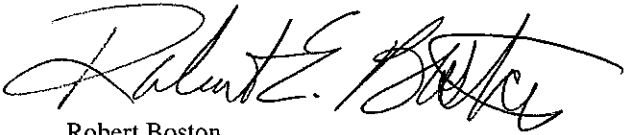
The attached requested edits for the tWDR reflect Berry’s belief and above-stated intention. Provided the RWQCB can agree to make the requested changes to the final WDRs, Berry plans not to contest WDRs during the RWQCB

deliberations and plans not to appeal the RWQCB's adoption of the final WDRs. Berry is happy to discuss any of the requested edits with RWQCB staff in the interim.

Thank you for the opportunity to review and comment on the tWDR. Please call me if you have any questions concerning this letter or the attached comments.

Sincerely,

BERRY PETROLEUM COMPANY

A handwritten signature in black ink, appearing to read "Robert Boston", written in a cursive style.

Robert Boston

Cc: F. McChesney, SWRCB  
David Ossentjuk, Esq., Berry  
T. Souther and W. Aravanis, Geomatrix

Attachment: Comments on tWDR