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Submitted via email to: dcmessina@waterboards.ca.gov

Central Valley Region
California Regional Water Quality Control Board
11020 Sun Center Dr., #200
Rancho Cordova, CA 95670

Ladies and Gentlemen:

RE: United Auburn Indian Community (UAIC) NPDES Permit Renewal

Thank you for the opportunity to comment on the UAIC's request to increase discharges into Orchard Creek due to Thunder Valley Casino facility expansion plans. We have grave concerns surrounding the NPDES permit and requests for waivers. We urge you to deny the requests and renewals and impose much more stringent requirements, and/or issue a Cease and Desist order with an imminent timeline to comply.¹

The current discharge permitted (Waste Discharge Requirements Order No. R5-2005-0032) that allows up to 0.35 million gallons per day (MGD) of tertiary treated domestic wastewater to be discharged into Orchard Creek, must be reduced and eventually terminated. The request for a 40% increase in the permitted discharge to 0.875 mgd (due to facility expansions) must be denied for the following reasons:

It was our (the public's) understanding that the originally permitted casino discharge into Orchard Creek was to be temporary, that new sewage connection lines would be constructed, and wastewater from the casino would tie in directly to the Lincoln Wastewater facility. If that plan has either gone awry or has been abandoned, the burden of plan abandonment or postponement must not be born by either the public or the Auburn Ravine Watershed.

It is unsatisfactory to allow a continuance of any discharge into Orchard Creek, which flows into Auburn Ravine, when huge public and private efforts are underway to restore Auburn Ravine. Much effort, time, and resources are being expended to improve Auburn Ravine's water quality. To increase the wastewater discharge, to literally produce an avalanche of wastewater discharge, is unacceptable and will offset, if not undermine, the efforts to restore Auburn Ravine's water quality for recreational uses and salmon and

¹ Consistent with the State Water Board's Order in the CBE matter, the Regional Water Board has the discretion to include compliance schedules in NPDES permits when it is including an effluent limitation that is a "new interpretation" of a narrative water quality objective. This conclusion is also consistent with USEPA policies and administrative decisions. See, e.g., Whole Effluent Toxicity (WET) Control Policy. The Regional Water Board, however, is not required to include a schedule of compliance, but may issue a Time Schedule Order pursuant to CWC section 13300 or a Cease and Desist Order pursuant to CWC section 13301 where it finds that the discharger is violating or threatening to violate the permit. Wastewater Requirements, pg 7-8

steelhead migrations. The statement that "...effluent quality from the proposed expanded facility is assumed to be identical to current effluent quality"² is unsatisfactory and certainly no consolation.

Guidelines. (N. Antidegradation Policy) We submit that meeting state and federal antidegradation policies should be considered the bare minimum of standards (and not the norm or goal), and that the requirements should improve water quality and not "maintain unless degradation is justified...."

As noble as the statement may be, "...the water quality resulting from the proposed increase in discharge to Orchard Creek...is consistent with the maximum social and economical benefit to the people of the State, will not unreasonably affect beneficial uses, will not cause water quality to be less than water quality objectives...." (pg 9, Tentative Order), we strongly object to the apparent accepted premises.

1—The data used to support claims of "maximum social and economic benefit to the people..." is erroneous and misleading. What is/are the social benefit(s) of increasing wastewater discharges into creeks where massive grassroots efforts are underway to improve water quality? We cannot fathom a single social benefit to the public that supports increasing discharges and pollutants and submit that data used to support this claim is questionable.

The 6.0 Anti-Degradation Analysis (Page 71/31 pdf ver) discusses alternatives in section 6.5.2. The only acceptable alternatives are the first two (with the connection to the Lincoln wastewater treatment facility being the better of those two). The UAIC Thunder Valley Casino was originally approved in part on the premise and promise that it would be hooked up to a regional wastewater treatment plant. To dismiss either of these two best alternatives due to a required time frame, places the burden of water quality impacts on the Auburn Ravine watershed and citizens who use it.

Dischargers know, or should know, their permit limits when they consider expansions. The responsibility for knowing limits, for adhering to original plans, and for protecting the quality of creeks and public health—the driving factors in considering the facility expansion requirements—should be with the dischargers. That responsibility should not be born by the public or the watershed due to economic feasibility or time frames that were either poorly planned or unknown.

We respectfully contest the claims of the benefits of an increased discharged as presented in Section 6.5.3. They are speculative at best, erroneous at worst, and give no indication of how employees will be compensated (Minimum wage? Livable wage?). As seductive as the stated 1,000 construction jobs may sound (lasting possibly a month or two, depending upon the phase of the construction specialty), a press release from the UAIC/Thunder Valley Casino, from February 2009, lists their construction job number at "over 500" (not 1,000 as stated).³ Even at 500 jobs, weighing temporary jobs against permanent watershed degradation and against the counter impacts on the current efforts to improved Auburn Ravine, are unacceptable. It's a losing proposition for both the public and the watershed.

² Report, Section 6.0 Anti-Degradation Analysis, p 43, p.2 pdf ver.

³ From Thunder Valley Casino Press Release, February 19, 2009.

<http://www.thundervalleyresort.com/pdf/press/pr20090219construction.pdf>

Other stated benefits are either grossly overstated or in error, based on the previously cited Thunder Valley Casino Press Release and numerous media reports: The local community will NOT “have 30,000 square feet of additional ballroom space to host events...” as claimed. The “multipurpose” room will be 10,000 square feet according to the press release.

The “Performing Arts Center” has been cut, according to the media reports and the press release cited, yet it is mentioned in the discharge report as a benefit.

The increased taxes and fees paid to local agencies are impressive, but again, they are purely speculative and possibly grossly incorrect. The \$1 per night hotel occupancy tax assumes a percentage of occupancy that cannot be guaranteed. But for sake of discussion, the UAIC press release states the expansion will have 400 hotel rooms. At 100% occupancy for one year (highly unlikely), the maximum amount generated would be only \$146,000 and not “approximately \$200,000” as stated in the report. Since we cannot trust the accuracy of the benefits as stated, we suspect other data may be erroneous as well. Thus we urge a denial of the requests for the increased discharges and a Cease and Desist from existing discharges.

As welcome as any benefits of any project are, it must be pointed out that some of these benefits are not necessarily philanthropic. Instead, they were required mitigation for the right to put a casino in the heart of Placer’s agricultural landscape. Therefore, they are not “added” benefits of any facility expansion—they are merely consolation to other negative impacts. Other claimed benefits to the public in fact directly benefit the casino as much or more than they do the public, i.e., transportation improvements, fire protection services, etc.

Summary: The data to support the claim of social and/or economic benefit from increasing the wastewater discharge is flimsy at best, spurious at worst. If anything, the claim could be made that there will be an negative economic impact (an economic “burden”) as monitoring will have to be or should be increased, clean-up and regulatory actions will probably increase as they have been on so many other small, independent wastewater treatment plants with non-compliance issues, and the health and safety impacts from noncompliance occurrences could be significant to individual health as well as the natural resources.

2—Such a vague term as “...not unreasonably affect beneficial uses...” is unquantifiable, most likely unenforceable, and is totally unacceptable, especially with regard to water quality. There must be zero tolerance only for any degradation to water quality, whether it is couched in terms of “reasonable” or “unreasonable.” The discharge requirements at the source must be the very highest. To allow this type of analysis conclusion or approval could compromise the regulatory authority as well as water quality in the creek and must not be allowed in the requirements.

3—The requirement that the discharge will not cause water quality to be “less than water quality objectives” is not going to protect the creeks. Yes, there may be objectives, but we, the “people of the State” referenced, want the highest water quality “objectives.” This discharge requirement is a long way from satisfying the “people’s objectives.”

4—There is no support for a discharge to protect existing water quality or existing in-stream uses. If existing water quality is unsatisfactory, then this requirement potentially supports that level of degradation. Current “in-stream uses” may already be curtailed or hindered, thus this requirement phrase is meaningless in terms of its claim of “protection.”

What exactly is the protection if it is the will of the people of the State for improved water quality? What and how are “in-stream uses” being protected?

Backsliding. (O. Anti-Backsliding Requirements) We will not argue whether or not the relaxation of effluent limitations is consistent with the anti-backsliding requirements of the CWA and federal regulations. We do argue that the lowering of water quality with respect to zinc, a heavy metal, which “cannot be attenuated by reasonable means” is unacceptable. The cause of the lowering of the quality of Orchard Creek is irrelevant and immaterial to a primary overarching concern.

Zinc is especially problematic, especially with cumulative runoffs or diffuse water pollution from other points of entry, resulting in damaging collective impacts. There are studies that illustrate its effects (Newt brain damage caused by zinc water pollution⁴; Toxicity to microscopic organisms in aquatic environments⁵). The quality of the Auburn Ravine watershed will be diminished. Contaminated water, especially containing heavy metals, should not leave the UAIC/casino/discharger’s property and must not be permitted or allowed for any reason.

Negative Impact To Future Waste Water System Hookups. By permitting this project and allowing waivers, what will be the impact on future possibilities of forming a Special Assessment District when one of the largest dischargers (the casino) may opt to not participate? Our best answer is that as a piecemeal permitting project, the impacts will be huge and may permanently prevent any further trunk lines to be constructed.

In order to not diminish public efforts to restore and improve our watersheds, we urge the Water Board to deny the request, to urge the applicant/discharger to either construct an appropriate sewage line to the Lincoln Wastewater Treatment Plant, and/or to cease and desist with its current discharge. For the expansion plan to be completed, a requirement to form a Special Assessment District and construction of a suitable trunk line must be completed first.

Thank you for considering our views,

Carol Love, Secretary
Sierra Club Placer Group Executive

Committee

Email: sierraclub-placer@live.com

⁴ <http://www.springerlink.com/content/16j277516126723w/> **Summary** The zinc content of various organs of newts kept in zinc-polluted water was estimated by atomic absorption spectrophotometry. Histological examination revealed the presence of zinc-rich, unusual cells in the primordium hippocampi of chronically poisoned animals.

⁵ <http://www.env.gov.bc.ca/wat/wq/BCguidelines/zinc/zinc.html> Zinc is most toxic to microscopic organisms in the aquatic environments..... Zinc may bind to particulate matter. Soluble species of zinc are readily available for biological reactions and, therefore, considered as most toxic. It has been shown that zinc in water is a better predictor of fish tissue contamination than zinc in either sediment or invertebrates (i.e., food source).