



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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9 January 2009

Mr. Ken Landau, Assistant Executive Officer
Mr. Lonnie Wass, Supervising Engr
Mr. Doug Patteson, Senior WRCE
Mr. Jeff Pyle, EG
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Tentative Waste Discharge Requirements for Hilmar Cheese Company, Inc. and Reclamation Area Owners, Hilmar Cheese Processing Plant, Merced County

Dear Messrs. Landau, Wass, Patterson and Pyle;

The California Sportfishing Protection Alliance (CSPA) has reviewed the Tentative Waste Discharge Requirements for Hilmar Cheese Company, Inc. and Reclamation Area Owners, Hilmar Cheese Processing Plant and respectfully submits the following comments.

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

1. The proposed Waste Discharge Requirements (WDR), according to the cover letter, have not been sent to all the responsible parties.

The proposed WDR lists "RECLAMATION AREA OWNERS" in the Title as Dischargers. Proposed WDR Attachment D lists the Reclamation Area Owners. The proposed WDR, Finding No. 1 states that: *"Hilmar Cheese discharges wastewater to two areas known as the Primary and Secondary Lands as shown on Attachment B, which is attached hereto and made part of this Order by reference. The Primary and Secondary Lands are collectively referred to as Reclamation Areas. Hilmar Cheese owns some of the Primary Lands and leases the rest from others (Primary Land Owners). All of the Secondary Lands are owned by others (Secondary Land Owners). The Primary and Secondary Land Owners are collectively referred to as*

Reclamation Area Owners. The parcels and Reclamation Area Owners for this Order are shown in Attachment C and listed in Attachment D, which are attached hereto and made part of this Order by reference. Hilmar Cheese and the Reclamation Area Owners are collectively referred to as Discharger. Hilmar Cheese is the primary discharger responsible for compliance with this Order. Each Reclamation Area Owner is responsible for compliance with the requirements of this Order concerning discharge to its respective parcels that are included within the Reclamation Area.” (Emphasis added) The proposed WDRs contain information and requirements that is binding on the property owners. The Reclamation Area Owners are not included on the cover letter “cc” list and have not been properly and legally informed of the proposed requirements. The listed Reclamation Area Owners have the right to know that they are being regulated by WDRs and must have an opportunity to provide comments on the proposed WDRs.

2. The proposed waste discharge requirements (WDRs) do not comply with California Code of Regulations (CCR) Title 27, as the discharge is not in compliance with the applicable water quality control plan (Basin Plan).

Discharges of wastewater may be exempted from CCR Title 27 requirements only if: waste discharge requirements have been issued; the discharge is in compliance with the applicable Basin Plan, and; the wastewater is not hazardous (Section 20090). The Basin Plan contains water quality objectives for groundwater. The Basin Plan *Water Quality Objectives for Groundwater* requires groundwater not exceed: 2.2 MPN/100 ml for coliform organisms; the maximum contaminant levels (MCLs) from CCR Title 22 for drinking water; taste or odor producing substances that cause nuisance or adversely affect beneficial uses, and; toxic substances that produce detrimental physiological responses in human, plant, animal or aquatic life associated with designated beneficial uses. The Basin Plan also includes the State and Regional Board Antidegradation Policy (Resolution 68-16). The Antidegradation Policy requires the maintenance of high quality waters. In accordance with the Antidegradation Policy changes in water quality are allowed only if the change is consistent with maximum benefit to the people of the state; does not unreasonable affect present and anticipated beneficial uses; does not result in water quality that exceeds water quality objectives, and; best practicable treatment and control of the discharge is provided.

The discharge has, as is detailed below, caused an exceedance of Basin Plan water quality objectives (MCL) for total dissolved solids (TDS), electrical conductivity (EC) and nitrate and therefore does not meet the test of being in compliance with requirements of the Basin Plan. The discharge has also caused salt (EC, TDS) concentrations that exceed the levels that produce detrimental physiological responses in plant life associated with the irrigated agriculture designated beneficial use. The discharge has not been shown to comply with the Basin Plan incorporated Antidegradation Policy (68-16). The Antidegradation Policy requires that an allowance for any degradation must be shown to be in the interest of the people of the state, must not exceed water quality standards and that the discharge must provide best practicable treatment and control (BPTC) of the discharge. To the contrary, the discharge has caused pollution of the underlying groundwater and has been the subject of enforcement actions.

Proposed WDR Finding No. 42 states that; *“As detailed in the CAO, the discharge has unreasonably degraded groundwater beneath the Plant’s storage ponds and Primary Lands. In May and June 2008, Jacobson James collected samples from about 43 domestic wells, seven industrial supply wells, and seven irrigation wells. The greatest impact was observed in the Upper A Zone (unconfined aquifer) in the vicinity of the Primary Lands. The maximum TDS concentration recorded during the May and June 2008 investigations by Jacobson James was 2,700 mg/L (which corresponds to an EC of about 3,800 μ mhos/cm). TDS concentrations in the semiconfined and confined aquifers were significantly lower, with concentrations ranging from about 260 to 1,000 mg/L.”*

Proposed WDR Finding No. 43 states that; *“In an effort to establish water quality conditions upgradient (east) of the Plant, Jacobson James evaluated “ambient” groundwater quality by advancing 11 direct push or cone penetrometer borings and installing a monitoring well into shallow groundwater upgradient of the Plant. The following values characterize ambient background groundwater quality for several constituents of concern based on this investigation and are presented in the following table;*

Ambient/Background Groundwater Quality

<i>EC (μmhos/cm²)</i>	<i>TDS (mg/L)</i>	<i>NO₃ as N (mg/L)</i>	<i>Cl (mg/L)</i>	<i>Na (mg/L)</i>	<i>SO₄ (mg/L)</i>
<i>847</i>	<i>570</i>	<i>27</i>	<i>77</i>	<i>92</i>	<i>54”</i>

Proposed WDR Finding No. 44 states that; *“Historical groundwater data is limited. The oldest data available is from 1989 when monitoring wells MW-1 and MW-2 were installed. EC values in samples collected from MW-1 in 1989 and 1990 ranged from 150 to 440 μ mhos/cm, while values in MW-2 ranged from about 280 to 580 μ mhos/cm. In 2008, EC values in samples from MW-1 ranged from 2,470 to 4,530 μ mhos/cm, while samples from MW-2 ranged from 1,640 to 3,690 μ mhos/cm.”* Clearly, the discharge of waste from Hilmar polluted groundwater with EC. The secondary MCL for EC begins at 900 μ mhos/cm.

Total nitrogen discharged from the facility is characterized as 20 mg/l. Nitrogen will generally convert to nitrate as it migrates to groundwater. The primary drinking water MCL for nitrates is 10 mg/l. The discharge presents a reasonable potential to contribute to already degraded groundwater conditions, which exceed the primary MCL for nitrate. The wastewater treatment facility does not nitrify and/or denitrify. The removal of nitrogen from wastewater is common practice and can be considered best practicable treatment and control of the discharge.

Proposed WDR Finding No. 71 states that; *“Unless exempt, release of designated waste is subject to full containment pursuant to the requirements of Title 27, CCR, Section 20005 et seq. (hereafter Title 27). Title 27 Section 20090(b) exempts discharges of designated waste to land from Title 27 containment standards and other Title 27 requirements provided the following conditions are met:*

- a. The applicable regional water board has issued WDRs, or waived such issuance;*

- b. *The discharge is in compliance with the applicable basin plan; and*
- c. *The waste is not hazardous waste and need not be managed according to Title 22, CCR, Division 4.5, Chapter 11, as a hazardous waste.*

The discharge of effluent and the operation of treatment or storage facilities associated with a food processing facility is exempt from Title 27, provided any resulting degradation of groundwater is in accordance with the Basin Plan and the waste need not be managed as a hazardous waste. None of the waste regulated by the proposed Order is hazardous waste nor required to be treated as hazardous waste. With treatment to remove organics and salinity, lined storage ponds, and application at agronomic rates, the discharge authorized by the proposed WDRs will not cause exceedance of groundwater quality objectives and complies with the Antidegradation Policy and is therefore exempt from Title 27. In addition, recycling effluent through application to Secondary Lands is a reuse that is exempt under Title 27, Section 20090(h)."

It is well documented that the wastewater discharge from Hilmar has polluted groundwater, as cited above. The State Water Resources Control Board (State Board) issued a Water Quality Order for the Lodi White Slough Facility, WQO-2009-0005 (Lodi Order) dated 7 July 2009. The Lodi Order includes clarifications on how to apply the Title 27 exemptions. The Lodi Order requires the Discharger to provide evidence showing that the discharge meets applicable preconditions before the Regional Board can make Findings that the discharge is exempt from Title 27. Findings are not adequate if they merely assume that the Discharger will comply with WDRs requiring the Discharger to comply with the Basin Plan. (See Guidance Memo *Applying Title 27 Exemptions after the City of Lodi Order*, from Lori Okun to Pamela Creedon, dated 28 October 2009) The WDR must find that the discharge currently complies with the Basin Plan. Without such a Finding, the Regional Board cannot legally make the Finding that the Discharger's land disposal activities meet the precondition for an exemption. In this case, the discharge still exceeds water quality standards (Finding No. 19) and the WDR is reliant on a "new" technology to be installed and operational before an expansion in flows is allowed (see accompanying compliance Order, Finding No. 57 and CEQA Finding No. 72). The Discharger does not meet the preconditions of current compliance with the Basin Plan, which is necessary to receive an exemption to CCR Title 27.

3. The proposed WDR does not comply with the requirements of the State and Regional Board's Antidegradation Policy (Resolution 68-16).

Proposed WDR Finding No. 55 correctly states that; "*State Water Board Resolution No. 68-16 ("Policy with Respect to Maintaining High Quality Waters of the State") (hereafter Resolution 68-16) prohibits degradation of groundwater unless it has been shown that:*

- a. *The degradation is consistent with the maximum benefit to the people of the State;*
- b. *The degradation will not unreasonably affect present and anticipated future beneficial uses;*
- c. *The degradation does not result in water quality less than that prescribed in State and regional policies, including violation of one or more water quality objectives; and*

- d. *The Discharger employs best practicable treatment or control (BPTC) to minimize degradation.”*

Proposed WDR Finding No. 57 states that; *“Historically, Hilmar Cheese’s disposal of partially-treated wastewater degraded groundwater in the vicinity of the Primary Lands and affected beneficial uses. The cleanup of this is regulated by the CAO and groundwater investigations are ongoing. An accompanying Time Schedule Order requires Hilmar Cheese to fully treat all of its wastewater to the effluent limits of this Order by no later than July 2011. The CAO addresses development of remedial actions to clean up groundwater from past discharges, which will address future use of the Primary Lands.”*

The Antidegradation Policy discussion ignores the fact that groundwater at the site has been, and currently continues to be, polluted by the wastewater discharge. The wastewater discharge has and continues to degrade designated beneficial uses. The proposed WDR Finding that providing jobs offsets any groundwater degradation, and in this case pollution, is in the best interest of the people of California is lacking any factual analysis. For instance, the WDR does not address the economical impacts of allowing California’s critical groundwater resources to be degraded. What percentage of groundwater in the state is actually usable for its designated beneficial uses and what are the impacts of “writing off” another aquifer for a specialty food processor. Is cheese in such limited quantities in California that trading the state’s groundwater quality is necessary? What would be the increased cost of a block of cheese if groundwater were not allowed to be degraded? Are there not other cheese producers that could fill the void if Hilmar were required to stop polluting immediately? Is cheese a good trade for polluted groundwater? Is cheese a rare and necessary commodity for which California is willing to trade groundwater quality? What are the impacts to the users of groundwater? What are the costs in California for treating groundwater to meet industrial requirements? What are the costs in California for treating groundwater to meet drinking water MCLs? How many people in California have been sick or died from nitrate poisoning? What are the crop yield reductions and the related costs to agriculture and consumers from excessive salt in groundwater? The WDR however addresses only one question of how many jobs does Hilmar provide. The proposed WDR does not seriously address the best interest of the people of California. The Antidegradation Policy analysis is simply wrong and insufficient.

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

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance