



## CITY OF STOCKTON

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April 25, 2014

Ms. Pamela Creedon  
Executive Officer  
California Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

**Renewal of Waste Discharge Requirements (NPDES No. CA0079138) for City of Stockton Regional Wastewater Control Facility, San Joaquin County**

Dear Ms. Creedon:

The City of Stockton (City) appreciates the opportunity to provide comments and evidence related to the Tentative Waste Discharge Requirements (Tentative Order) for the City of Stockton's Regional Wastewater Control Facility (RWCF). The Tentative Order would provide for strict regulation of the RWCF discharge and operations. The City does not object to the vast majority of the Tentative Order's provisions. However, the City has significant disagreement with some of the proposed terms, and respectfully submits that those terms are not justified.

In this cover letter, the City emphasizes its major concerns with respect to the proposed new, more stringent limitation of 10 mg/L for nitrate plus nitrite (as N) as a monthly average. There are several reasons for our concerns, both legal/regulatory and technical, which are summarized below and described in more detail in attachments to this letter.

In brief, the RWCF currently provides a high level of water quality treatment, including tertiary filtration and nitrification. The City, its residents, and local economic development efforts also face extremely difficult economic circumstances. Notwithstanding these conditions, the City has been actively pursuing significant improvements to the RWCF to ensure long-term reliable operations. The scheduled improvements over the next several years are being funded by rate increases. The Tentative Order's proposed nitrate plus nitrite limitation would layer a new and additional cost estimated at \$195 million - \$252 million net present value.

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This additional burden, particularly in this context, underscores the need for close scrutiny of the proposed limitation. With this in mind, we submit that the proposed limitation is not consistent with State Water Resources Control Board precedential orders or applicable state and federal regulations, and that this limitation is unique in the Tentative Order in not adhering to the approaches required by applicable regulations and used for the development of other limitations in the Tentative Order. Also, we submit that, on a technical level, the Tentative Order relies on generic statements of how excessive nutrients can potentially affect aquatic systems, but does not review the available scientific literature for the San Joaquin River or Delta to determine the degree to which such effects are occurring in the river and Delta; nor does it link such adverse effects, based on evidence in the record, to nitrate plus nitrite discharged from the RWCF, or to the effluent limitation that is proposed.

To assist the Central Valley Regional Water Quality Control Board (Regional Board) in its review of further and more detailed comments and evidence, we provide a summary below of the City's financial conditions, its efforts to rehabilitate and improve the RWCF facilities, and some of our concerns related to the development of the proposed nitrate plus nitrite limitation that are further detailed in the attachments to this letter. We also note that there are other, very important, issues and concerns identified in the attachments, as well as focused modifications to the Tentative Order, that merit consideration and action.

**Financial Conditions**

It is well known that the City is bankrupt. The recession that began in December 2007 crushed City revenues and began an inexorable process during which it became progressively clear that the City could not meet its obligations. The City went through several years of struggle to maintain solvency by exhausting reserves, slashing service levels, laying off staff, and generally cutting anything that could be cut. These avenues were exhausted in early 2012. At that point, the City was profoundly insolvent from a service and budget perspective and teetering on the verge of cash insolvency. After considerable other efforts to avoid the need to do so, the City declared bankruptcy on June 28, 2012. Its eligibility for bankruptcy protection became a subject of litigation, but in March 2013, the bankruptcy court affirmed the City's eligibility for bankruptcy protection.

The City then began to work in earnest with a court-appointed mediator to negotiate voluntary resolutions to outstanding issues and to develop a bankruptcy "plan of adjustment." By fall of 2013, the City had reached tentative agreements with several large creditors, and developed a plan of adjustment for exiting bankruptcy, which included a general sales tax increase, mainly to rebuild police services, but also to assist in the exit from bankruptcy without further service cuts. The City's initial plan of

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adjustment was approved by the City Council in early October 2013, and the voters approved the sales tax increase in November 2013. The plan of adjustment remains the subject of litigation, with a trial currently scheduled for May 2014.

While the RWCF and related capital improvements are funded through ratepayer fees directly related to such services, and funds collected for such purposes are not part of the General Fund, the bankruptcy proceedings have negatively affected all of the City's services and employees to some extent. For example, due to bankruptcy and renegotiated contracts with labor groups, the City has had difficulty recruiting and maintaining qualified wastewater treatment operators.

Against the backdrop of a highly visible bankruptcy process, the City faces many other cultural and social challenges. The City has a population of 292,000, with a per capita income that is 32 percent below the state average. Further, the City continues to have one of the highest foreclosure rates in the nation, and median home sales dropped by 66.3 percent between 2006 and 2010. Even more challenging is the City's unemployment rate, which is between 15-21 percent. As the City progresses out of the bankruptcy process, it will need to address related social issues in order to maintain its long-term viability.

### **RWCF's Capital Improvement and Energy Management Plan**

Despite the many challenges it faces, the City has continued to move forward to address numerous improvements at the RWCF to ensure long-term reliable operations. As noted in the Tentative Order, the City Council approved the *Regional Wastewater Control Facility Capital Improvement and Energy Management Plan* (CIEMP) in August 2011, and the City released an initial study for Phase 2 Improvement Projects from the CIEMP for environmental review late last year. The Draft Environmental Impact Report for the Phase 2 Improvement Projects will be released for public review and comment later this year. It is expected that the Phase 2 Improvement Projects will take an estimated ten years to implement, and will cost the City and its ratepayers approximately \$150 million in capital expenditures alone. Some of the essential improvements include rehabilitation and upgrades to the headworks secondary treatment facilities, sludge handling facilities, and tertiary facilities. To fund the CIEMP, the City has raised wastewater rates by 80.88 percent over the last five years with the final rate increase being implemented on July 1, 2014. We note that this is in addition to a cumulative, 63 percent four-year water rate increase that began in 2009.

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**Estimated Costs for Nitrate Removal**

The best available estimate of the cost of adding nitrate removal facilities is between \$195 million and \$252 million net present value. (See Nitrate Removal Evaluation Final Report (HDR, April 2014), Attachment E.) A recent study conducted by HDR evaluated four treatment alternatives for nitrate removal. The study is a planning level estimate consistent with industry standards, and is considered to be accurate within a range of +40 percent to -20 percent. The estimated costs are based on the permitted flow rate under the Tentative Order. (Attachment E at p. 32, Table 8.) Such costs are significant and would require the City to attempt to pass another set of rate increases greater in magnitude than the rate increases that have been occurring each July 1 since 2009 on its already burdened ratepayers.

Also, projects for nitrate removal, along with their additional costs, will put additional pressure on the City and the RWCF staff, and would make it even more difficult to implement the necessary CIEMP Phase 2 Improvement Projects. The City also is concerned that it could not justify such additional costs to its decision-makers and ratepayers given the belief that a legal or technical basis to support the proposed limit is lacking.

**Absence of Justification for Nitrate Plus Nitrite Limitation**

The Tentative Order proposes a limit of 10 mg/L for nitrate plus nitrite (as N) as an average monthly limit due to reasonable potential to cause or contribute to exceedances of narrative water quality objectives for biostimulatory substances and taste and odor. However, the Tentative Order does not provide evidence or information that connects the proposed limit of 10 mg/L to the identified narrative objectives. Further, the Tentative Order denies dilution credits that have been previously granted for compliance with drinking water standards. The stated reasons for such actions are based on generalized comments and concerns with respect to nutrients in the Delta, but no direct connection or information is provided that suggests that the City's discharges have reasonable potential to impact applicable water quality standards. Nor is there a sufficient logical linkage or nexus between the stated concerns and the specific effluent limitation that is proposed. Further, specifically for the purpose of providing a sound technical basis for permitting decisions, the City commissioned a study to determine whether effluent limitations consistent with the current capabilities of the RWCF are protective of beneficial uses. We do not believe the data or scientific analysis in the study have received appropriate consideration in the Tentative Order. These issues and others are covered in more detail in the attachments to this letter.

The Tentative Order may be motivated by worthy intentions, but this does not provide an appropriate basis for permit limits. It is even more inappropriate when the cost to

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comply is of such magnitude. The nitrate plus nitrite (as N) limit proposed here is not necessary to protect beneficial uses, and is not supported by the evidence in the record or applicable law. The Tentative Order should be revised to remove the 10 mg/L average monthly effluent limit for nitrate plus nitrite. In its place, the Regional Board should adopt an appropriate nitrate plus nitrite limit in compliance with state and federal regulatory processes and the available evidence, which has been noticed as Nitrate Option 1. The Option 1 seasonal limitations for nitrate plus nitrite are 25-35 percent more restrictive than the nitrate plus nitrite limitation in the current permit. To provide further support to the Regional Board decision to acknowledge the science, continuing the study for another year could also be part of the adopted permit. The Regional Board can utilize the reopener clause if the data justify further adjustments to the nitrate plus nitrite dilution credit.

**Identification of Additional Comments and Evidence Submitted With This Letter**

With this letter, we provide several attachments, all of which contain further comments and evidence for consideration. The attachments include:

Attachment A: Key Issues and Concerns

Attachment B: Additional Comments and Factual Corrections

Attachment C: Effects of Nitrate Plus Nitrite Discharged from the Stockton Regional Wastewater Control Facility on Algal Communities in the San Joaquin River and Delta, and Their Effects on Beneficial Uses (RBI)

Attachment D: Evaluation of the Potential Effects of Nitrate Plus Nitrite Discharged from the Stockton Regional Wastewater Control Facility (RBI)

Attachment E: Nitrate Removal Evaluation Final Report (HDR Engineering)

Attachment F: References and Other Material

The comments and evidence in the attachments are incorporated herein and are a part of the City's comments on the Tentative Order and evidence supplied in response to the Tentative Order. In this regard, the City explicitly incorporates by reference here the statements in Attachments A-C as part of its comments on the Tentative Order, and thus each of the statements in those comments should be addressed in any response to comments.

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The City of Stockton is dedicated to serving its ratepayers by assuring that technologies implemented are scientifically required to protect the environment. The City of Stockton thanks you for considering the attached evidence and comments.



C. MEL LYTLE, PH.D.  
DIRECTOR OF MUNICIPAL UTILITIES



MARGARET P. ORR, PE  
DEPUTY DIRECTOR WASTEWATER

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Attachments