

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

**CEASE AND DESIST ORDER NO. R5-2015-XXXX**

**VALLEY WATER MANAGEMENT COMPANY  
RACE TRACK HILL FACILITY AND  
FEE 34 FACILITY, EDISON  
KERN COUNTY**

**PROSECUTION TEAM'S RESPONSES TO PUBLIC COMMENTS**

Central Valley Water Board staff received 23 letters from interested parties. One letter was from the Honorable Senator Jean Fuller. Mr. Jim Dowdall, a former Regional Water Board Employee, submitted letters on 24 and 30 June 2015. One letter was from the community of Rio Bravo. The others were from oil field operators or mineral rights holders with activities in the Edison Oil Field and with discharges to the Valley Water Management Fee 34 and Race Track Hill Facilities. Many of the letters were similar in construction and content. Comments, grouped based on topics, and responses thereto are presented first. Unique comments and responses are addressed thereafter.

**Grouped comments/Responses:**

1. **Meeting Location:** Several letters requested that the hearing be held in Bakersfield or the Bakersfield area; The Honorable Jean Fuller's letter is limited to this topic.

**Grouped Response 1:** This issue is moot. In a 15 June 2015 letter to the Honorable Jean Fuller, the Advisory Team elaborated on why the hearing would be held in the Central Valley Water Board's Rancho Cordova office at the regularly scheduled 30 July 2015 meeting. In short, the Advisory Team does not believe that consideration of the subject CDO will entail significant policy or precedential decisions related to new or changed regulatory policies.

2. **Valley Water Management Is The Only Means Of Disposal. Issuance of The CDO Will Result in the Shutdown of Oilfield Operations:** Some of the letters indicate that discharge to Valley Water Management is their only means of produced water disposal. Several of the letters, including those mentioned above, state that adoption of the CDO in its present form will require the operators to shut in wells and cease operations. A couple letters state or imply that the CDO will result in the shutdown of the Edison Oilfield altogether.

**Grouped Response 2:** The CDO requires Valley Water to cease discharge to its spray field disposal operation by 15 August, but it does not require the shutdown of the facility.

The CDO allows Valley Water Management Company to continue to discharge to its ponds while it investigates the horizontal and vertical extent of groundwater impacts caused by its discharges and while it makes plans to modify the facility or facility operations so discharges can comply with appropriate waste discharge requirements. The CDO requires Valley Water Management Company to obtain suitable waste discharge requirements by 31 December 2016. Valley Water Management Company has not provided a suitable analysis of the overall disposal capacity of the Race Track Hill and Fee 34 Facilities or of the individual disposal capacities of the ponds and spray fields, so the actual effect on the amount of waste that can be discharged at these sites is unknown.

3. **Adoption of the CDO will result in a wide range of Economic Impacts:** Several of the letters indicate that the cessation of discharges to the spray field and/or closure of the Valley Water Management Facility would result in the end of royalties being sent to widows and the elderly on fixed incomes, result in bankruptcies, and for some the complete cessation of oil production. The 30 June 2015 letter from the National Association of Royalty Owners – California, Inc., states there are 800 royalty owners in Kern County that would be directly impacted by the CDO. Other letters note that the economic effects will ripple throughout the local and state economies, affecting not only the operators, but also those they contract with. The 30 June 2015 letter from Naftex, which has some existing injection well capacity for disposal, estimates that cessation of discharges to Valley Water Management Company's Fee 34 and Race Track Hill Facilities, will result in a 28% loss in production and about \$14,000 per day in revenues.

**Grouped Response 3:** The letters generally assume that the CDO will result in the closure of the Valley Water Management Fee 34 and Race Track Hill Facilities. The CDO does not require cessations of discharges to the Facilities; See response 2 above. The CDO requirement to cease spray field discharges by 15 August will reduce the capacity of the Valley Water Management operation; however, this reduction has not been quantified, and so neither have the potential economic impacts of the CDO been quantified. The Central Valley Water Board Prosecution Team must balance any economic impacts with the threat to groundwater quality and the public health associated with those affected or potentially affected by water quality objectives that are not being met at the site.

Valley Water reported that in calendar year 2014 the Race Track Hill Facility accepted 3,456,113 barrels of water while the California Division of Oil, Gas, and Geothermal Resources reported that 12,403,064 barrels of water were produced during the same period in the Edison Oil Field. Closing the sprayfield at the Race Track Hill Facility will not shut down the Edison Oil Field.

4. **Many Operators have already spent money; the CDO will increase their costs:** Many of the letters indicate that the operators have already spent considerable sums of money upgrading their equipment and sites to comply with environmental requirements. Some also indicate the additional regulatory burden imposed by the Valley Water

Management Company investigations and additional investigation that will be required if the CDO is adopted will further increase their operational costs.

**Grouped Response 4:** The Prosecution Team staff appreciates that the signatories of the letters have expended funds to improve their sites. The letters, however, generally do not provide any specific data or evidence for consideration by the Prosecution Team or the Central Valley Water Board. The Prosecution Team and the Central Valley Water Board must balance costs with the threat to groundwater quality and the public health associated with those affected or potentially affected by water quality objectives that are not being met at the site.

5. **There is no imminent threat to groundwater; there is no evidence of a problem:** Many of the letters state there is no threat to groundwater and no evidence of a problem.

**Grouped Response 5:** The Prosecution Team disagrees. The reasons for this disagreement are discussed in detail in the Prosecution Team's Opening and Rebuttal Briefs.

6. **There is no imminent threat to groundwater; there is no evidence of a problem:** Many of the letters state there is no threat to groundwater and no evidence of a problem.

**Grouped Response 6:** The Prosecution Team disagrees. The reasons for this disagreement are discussed in detail in the Prosecution Team's Opening and Rebuttal Briefs.

7. **The CDO should be modified/delayed so alternatives can be explored:** Many of the letters state that the CDO should be modified to allow more time or just delayed so Valley Water Company and the individual dischargers to the system can consider alternatives including increased underground injection, blending with better quality water for recycling, and implementing a salt management plan.

**Grouped Response 7:** See Grouped Response 3.

8. **The State Will Inherit Abandoned Wells and Orphan Sites:** A few letters indicate that if the CDO is adopted many wells will be orphaned and sites will be abandoned and the State will have to pay to close the sites.

**Grouped Response 7:** As mentioned above, the CDO does not require Valley Water Company to cease all discharges. If some operators abandon their leases, then the Central Valley Water Board has the authority to require the responsible parties to cleanup and close the site or cleanup the site itself.

## **MR. JIM DOWDALL LETTERS**

Mr. Dowdall's 30 June 2015 letter is composed of two parts. Part one serves as an addendum to his 24 June letter. Part 2 poses several numbered comments/questions.

**Part 1 Comment 1:** Mr. Dowdall calls for a moratorium on all future tentative Orders affecting oil producers who discharge to ponds. Mr. Dowdall asks that this moratorium be statewide until all oil producers have time to provide their input on their operations and impacts to water quality.

**Response Part 1 Comment 1:** The proposed CDO is for Valley Water. Each enforcement matter is analyzed on its own merits, including the quality of existing groundwater, a particular discharger's activities, and on the evidence presented. A moratorium is inappropriate given the potential threats to water quality.

**Part 1 Comment 2:** Mr. Dowdall states that to say that Valley Water Management Company is causing an imminent threat to groundwater quality when not one complaint from any well owners in the vicinity has ever been filed with the water board for 60 years is absurd. He goes on to say that the Central Valley Water Board has to clearly demonstrate that an imminent threat exists to adopt the CDO.

**Response Part 1 Comment 2:** Pursuant to California Water Code section 13301, the Central Valley Water Board need only find that a discharge threatens to violate waste discharge requirements to issue a CDO. The proposed CDO does not conclude that there is an imminent threat to groundwater; it finds that Valley Water's discharges have violated or threatened to violate various requirements of Resolution 58-349 and Order 92-10. It also finds that the discharges create or threaten to create a condition of pollution in surface water and groundwater. As described in more detail in the Prosecution Team's Opening and Rebuttal Briefs, more recent information provided by Valley Water now indicates discharges at the Race Track Hill Facility have polluted groundwater.

**Part 1 Comment 3:** Mr. Dowdall states he has 36 years of experience working in the oil industry and expresses an interest in commenting at the Board Hearing.

**Response Part 1 Comment 3:** Mr. Dowdall is welcome to attend the scheduled meeting and offer comment.

## **DOWDALL PART 2 COMMENTS**

**Part 2 Comment 1:** Regarding CDO Finding No. 8, Mr. Dowdall asks whether any complaints were ever received from any one of the owners of the 36 groundwater supply wells being allegedly polluted by Valley Water Management Company operations.

**Response Part 2 Comment 1:** The CDO does not allege the 36 wells in question are polluted.

**Part 2 Comment 2:** Mr. Dowdall states CDO Finding No.17 is not specific enough.

**Response Part 2 Comment 2:** Comment noted.

**Part 2 Comment 3:** Mr. Dowdall states CDO Finding No. 19 is historically inaccurate and questions Central Water Board staff's ability to determine visually freeboard violations.

**Response Part 2 Comment 3:** Regional Board inspectors can make visual estimates of whether adequate freeboard exists.

**Part 2 Comment 4:** Mr. Dowdall comments that he is aware of the report described in Finding No. 20 and its adequacy.

**Response Part 2 Comment 4:** Comment noted.

**Part 2 Comment 5:** Mr. Dowdall states that because no complaints have ever been received he deduces that a condition of pollution to the groundwater has never been caused and is not likely to be caused by the present operation.

**Response Part 2 Comment 5:** Comment noted.

**Part 2 Comment 6:** Finding No. 27 is a speculation. What kind of major storm, a possible maximum precipitation (PMP) event or what?

**Response Part 2 Comment 6:** The hills to which Valley Water sprays its wastewater are relatively steep, and its ponds are constructed in natural drainages. As discussed in the Prosecution Team briefs in more detail, Valley Water has not provided an appropriate engineering analysis demonstrating that it has the infrastructure necessary to ensure that all wastewater and surface runoff can be retained onsite during wet years. Neither state or federal regulations specify a minimum storm event for design, and thus any discharge off-site could be considered a violation of the Federal Clean Water Act and California Water Code section 13385.

**Part 2 Comment 7:** Regarding Finding No. 28, Mr. Dowdall asks what was the basis for the California Water Code section 13267 Order issued to Valley Water Management Company, and what is the status of the Company's petition of the Order.

**Response Part 2 Comment 7:** The basis for the 13267 Order was that the Regional Water Quality Control Board needed more information about Valley Water's operations and the effect on ground and surface water. According to the declaration of Larry Bright, the State Water Resources Control Board acknowledged the filing of a petition to this Order; the State Water Resources Control Board and the Central Valley Water Board are separate entities.

**Part 2 Comment 8:** Regarding Finding No. 30, Mr. Dowdall asks why are not any of the monitoring wells and boring locations shown on any of the CDO attachments.

**Response Part 2 Comment 8:** Both Prosecution Team and Valley Water Management Company exhibits indicate where and what work is in progress and include maps with boring and well locations. As of the date of this response, Exhibit 32 indicates the most up to date work done by Valley Water Management Company.

**Part 2 Comment 9:** Mr. Dowdall asks whose conclusions are listed in Finding No. 31.

**Response Part 2 Comment 9:** Generally, the conclusions in Finding No. 31 are those of Valley Water Management Company's consultant as paraphrased by Central Valley

Water Board staff. The 5<sup>th</sup> bullet is Central Valley Water Board's staff interpretation of the statements and data provided by Valley Water Company's consultant.

**Part 2 Comment 10:** Mr. Dowdall states that the statement in Finding No. 32 that Valley Water Management discharges have polluted groundwater is premature.

**Response Part 2 Comment 10:** Comment noted.

**Part 2 Comment 11:** Mr. Dowdall states Finding No. 33 gives him no information at all.

**Response Part 2 Comment 11:** The statement in Finding No. 33 is based on the known strike and dip of geologic beds underlying the site and the limited groundwater data available at the time the Phase 1 Investigation Report was submitted.

**Part 2 Comment 12:** Mr. Dowdall states Finding No. 34 is way off base.

**Response Part 2 Comment 12:** Comment noted.

**Part 2 Comment 13:** Mr. Dowdall states that the Central Valley Water Board should describe its intentions for the anticipated oil field General Waste Discharge Requirements at the 30/31 July 2015 meeting.

**Response Part 2 Comment 13.** A CDO is proposed in order to stop activity that is causing pollution at the present time and the proposed CDO invites Valley Water to apply for revised waste discharge requirements in cooperation with the Central Valley Water Board staff over the next year.

**Part 2 Comment 14:** Mr. Dowdall states Finding No. 36 is not a reasonable statement.

**Response Part 2 Comment 14.** Comment noted.

**Part 2 Comment 15:** Mr. Dowdall questions how the statements in Finding No. 37 can be valid if there have been no complaints of pollution to groundwater from Valley Water Management Company operations for nearly 60 years. Mr. Dowdall asks how much Valley Water Management Company has spent conducting investigations.

**Response Part 2 Comment 15:** Complaints do not equal pollution and pollution does not equal complaints. Valley Water has estimated that to date it has spent approximately \$600,000, and will spend another \$100,000 in preparing for the CDO hearing (Declaration of Larry Bright, para. 14). His other comments are noted.

**Part 2 Comment 16:** Mr. Dowdall questions how the Central Valley Water Board can proceed with a CDO where there is not enough information to complete the CEQA process.

**Response Part 2 Comment 16:** CEQA review requires analysis of what physical developments Valley Water may or may not propose to its current operations. At this point, the Central Valley Water Board does not know if or whether any physical

alterations to the Valley Water facility will be necessary. However, that does not mean the proposed CDO is premature or should not be heard by the Central Valley Water Board.

**Part 2 Comment 17:** Regarding Finding No. 39, Mr. Dowdall ask where has groundwater been polluted and states that the Central Valley Water Board must demonstrate to him that Valley Water Management Company has polluted groundwater.

**Response Part 2 Comment 17:** Comment noted. The Prosecution Team refers to its briefs submitted in this matter.

**Part 2 Comment 18:** Mr. Dowdall asks whether the statement in Finding No. 42 is negligent.

**Response Part 2 Comment 18:** The Finding is generally standard to all items presented to the Central Valley Water Board for consideration. The proposed CDO is drafted so that it can be modified by the Central Valley Water Board after the hearing is held. It is submitted prior to the hearing, but subject to revision to reflect any modifications the Board wishes to make. Mr. Dowdall and other interested persons will be allowed to speak. The Prosecution Team does not invite people to speak, but does notice tentative orders on its website in accordance with applicable regulations and statutes.

**Part 2 Comment 19:** Mr. Dowdall states that eliminating discharges to spray fields will cause a greater risk to impacting groundwater quality based upon the higher hydraulic head that will be put on the ponds at Race Track Hill by eliminating a BMP.

**Response Part 2 Comment 19:** The spray fields as currently operated are polluting or threatening to pollute groundwater in violation of the Water Code and are, therefore, not a BMP (best management practice).

**Part 2 Comment 20:** Mr. Dowdall states that requiring Valley Water Management Company to perform a hydrogeological investigation consistent with the requirements described in Title 27 California Code of Regulations is illegal since the CDO is not a Title 27 order. Mr. Dowdall also asks how the CDO can require the Valley Water Management Company to sample local wells if the well owners do not allow access. Mr. Dowdall states that more information and time is needed to allow Valley Water Management Company to comply with the Water Code.

**Response Part 2 Comment 20:** Nothing in the California Water Code or Title 27 of the California Code of Regulations proscribes the Central Valley Water Board from using the methodology described in Title 27. Regarding sampling of off-site wells, Valley Water can inform the Central Valley Water Board if well owners refuse access. The Prosecution Team appreciates Mr. Dowdall's familiarity with the Basin Plan and the Water Code. As stated in his excerpt, Valley Water Management Company must demonstrate that its "proposed discharge will not substantially affect water quality nor cause a violation of water quality objectives." This hearing is Valley Water's opportunity to do so, and it bears the burden to prove this. It cannot do this. When Mr. Dowdall states that more time is needed to comply, the Prosecution Team disagrees.

Discharging is a privilege and not a right (California Water Code Section 13263(g)). All of Valley Water's proposed alternatives will take years of further study or effort.

**Part 2 Comment 21:** Regarding the requirement to submit a Phase 3 Work Plan for the Fee 34 Facility, Mr. Dowdall states that the Central Valley Water Board needs to perform the investigations before proceeding with the CDO.

**Response Part 2 Comment 21:** The CDO presents a phased approach to allow Valley Water Management Company some time to evaluate its options, but the CDO is limited in scope by bringing Valley Water into compliance with current environmental regulations, water quality objectives and addressing the extent of pollution caused by Valley Water Management Company's activities.

**Part 2 Comment 22:** Mr. Dowdall posits that the Central Valley Water Board Prosecution Team intends to shut down Valley Water Management Company and/or Valley Water's surface disposal operations.

**Response Part 2 Comment 22:** Any Valley Water discharges, including the spray fields or use of the ponds, need to be addressed immediately. The proposed CDO provides Valley Water with 18 months to apply for revised Waste Discharge Requirements that are consistent with the Basin Plan and Water Code.

**Part 2 Comment 23:** Mr. Dowdall states that the State should share in the cost to provide replacement water if required by the CDO.

**Response Part 2 Comment 23:** Mr. Dowdall's comment is noted, but is inconsistent with Water Code Section 13304.

## **RIO BRAVO COMMUNITY COMMENTS**

**Comment:** The Rio Bravo Community states that its water supply for the upkeep of its open area green space and common recreation areas has been suspended due to the current drought. Rio Bravo suggests that it could use up to 1000 acre feet of water from Valley Water Company to supply up to half of its green belt irrigation demand. Rio Bravo requests that the requirement for the cessation of wastewater spraying be removed from the CDO so that Valley Water Management Company will be able to investigate a proposal to provide treated wastewater for the irrigation of its green spaces.

**Response:** Due to high total dissolved solids, chloride, and boron concentrations, wastewater from the Race Track Hill Facility would need significant blending and/or salt removal treatment prior to use as green belt irrigation water. Nothing in the CDO prevents Valley Water Management Company from exploring other discharge options. Additionally, it is important for the Central Valley Water Board to move forward with the CDO to protect local groundwater resources.