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VIA: Electronic Submission
Hardcopy to Follow

For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Resolution No. R5-2006-0101)
Amending Waste Discharge Requirements Order No.) **PETITION FOR REVIEW**
R5-2004-0028, NPDES No. CA0081558 For City of)
Manteca Wastewater Quality Control Facility, San)
Joaquin County, California Regional Water Quality)
Control Board – Central Valley Region)
)

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in amending Waste Discharge Requirements for City of Manteca Wastewater Quality Control facility, San Joaquin County, on 22 September 2006. *See* Resolution No. R5-2006-0101. The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Resolution No. R5-2006-0101, Amending Waste Discharge Requirements for City of Manteca Wastewater Quality Control Facility, San Joaquin County. Copies of the orders adopted by the Regional Board at its 22 September 2006 Board meeting are attached hereto as Attachments A.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

22 September 2006

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted detailed comments on 15 September 2006. That letter, incorporated into the petition, and the following comments set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. CSPA also presented detailed comments during the 22 September 2006 hearing. Although requested, CSPA only received tapes of the public hearing on 19 October and has not had adequate time to review them but believes its verbal comments further support this petition. The specific reasons the adopted Order is improper are:

- A. The Resolution fails to require the Discharger to conduct a reuse site evaluation for a Title 22 engineer report.

The DHS has established statewide water-recycling criteria in Title 22, CCR, Section 60301 et. seq. (hereafter Title 22). Section 60323(a) of Title 22 states that no person shall produce or supply recycled water for direct reuse from a proposed water recycling plant unless an engineering report is submitted for review and approval by DHS and the Regional Board. Irrigation of fodder crops, as well as irrigation of turf grass, trees, and pasture is a beneficial reuse. Resolution Finding No. 4 amends Order No. R5-2004-0028 to include a new recycle water area. The new recycled water area will border numerous residential homes that may house children on the eastside and a brand new baseball theme park to the south. Public exposure to the new recycle water area is

significant. The Resolution fails to require an Engineering Report to evaluate the new recycled water reuse area.

- B. The Resolution fails to require that the Department of Health Services (DHS) approve the engineer report and fails to incorporate DHS's comments regarding the Title 22 report.

A 1988 Memorandum of Understanding between DHS and the State Water Board on the use of recycled water establishes basic principles relative to the two agencies and the Regional Water Boards. The Memorandum allocates primary areas of responsibility and authority between the agencies and provides for methods and mechanisms necessary to assure ongoing, continuous future coordination of activities relative to use of recycled water. In accordance with the existing MOU with DHS, DHS comments regarding Title 22 reports must be incorporated into the Resolution. However, it is not possible for DHS to comment without the having the necessary engineering report. The public has not been afforded the opportunity to review the engineer's report or DHS's comments and therefore, the Regional Board has effectively denied the public the opportunity to submit meaningful comments on the Discharger's new recycle water system.

- C. The Resolution fails to require that all irrigation systems for the water conveyance and distribution piping and equipment for the new land application areas must comply with California Department of Health Services requirements and American water Works Association (AWWA) *Guidelines for Distribution of Non-Potable Water* and *Guidelines for the On-site Retrofit of Facilities Using Disinfected Tertiary Recycled Water* with the exception of the pipe installation addressed in the 9 February 2005 DHS

DHS requires that the American Water Works Association (AWWA) Guidelines for Distribution of Non-Potable Water and Guidelines for the On-site Retrofit of Facilities Using Disinfected Recycled Water be implemented in design and construction of recycling equipment. The guidelines require installation of purple pipe, adequate signs, and adequate separation between the recycled water lines and domestic water lines and sewer lines. Normally the recycled water irrigation system is evaluated by DHS when the Discharger submits the required engineering report. Regional Board staff report, page 3, states, "Such compliance is not specifically required, but will be part of the review of the Engineering Report." Contrary to Regional statement, the Resolution does not require the Discharger to submit an engineer report for the new reuse area.

- D. The Resolution fails to provide site-specific information regarding the new land application expansion project without which the public cannot make meaningful comments.

The Resolution is deficient in that it fails to provide the following necessary information pertaining to the new recycle water area and potential impacts to water quality as follows:

1. Site soil conditions, including basic soil type and estimated percolation rates.
2. Depth of underlying groundwater, gradient of the groundwater, background groundwater characteristics and groundwater quality underlying the existing land application area.
3. Site map showing the locations of groundwater monitoring wells for the existing land application area and locations of any new monitoring wells.
4. Location of domestic, municipal, industrial, and agricultural groundwater wells situated near the facility. Numerous domestic wells and irrigation wells are known to border the new property. The Resolution does not disclose if any of the City of Manteca's municipal wells are impacted already for nutrient waste such as nitrates. In addition, the location of dewatering projects including reclamation ditches and reclamation pump stations were not noted that may transport the wastewater to surface waters.
5. Crop types to be grown and the expected nutrient removal rates to be achieved.
6. The new land application area may now receive sludge from the WWTP. Therefore, sludge (biosolids) characteristics and field loading rates, total N loading rates (including organic N), total dissolved solids loading rates and the heavy metal accumulation rates for the soils.
7. The land uses surrounding the new recycle water area was not disclosed. The degree of potential access by the public including neighborhood children, employees and farm workers is believed to be significant.
8. Basic weather conditions that will influence irrigation practices and the type of crops grown such as the annual precipitation and the mean pan evaporation rate. Crop and irrigation practices are known to have a significant potential to impact water quality of the underlying groundwater and in turn will affect waste loading for the new land application area.

Order No. R5-2004-0028 required the Discharger to conduct a groundwater investigation and to report the results to the Regional Board by 2005. Therefore, the Discharger's RWD should have been able to provide the necessary information to be incorporated in the Regional Board's Resolution. In that the Discharger may claim the time delay to supply the information for the RWD would harm the project. CWC Section 13260 clearly states that it is the responsibility of the Discharger to submit a complete RWD and the Discharger has been afforded sufficient time to do so.

In addition, Order No. R5-2004-0028 also required the Discharger to evaluate nutrient and sludge loadings impacts to groundwater underlying the existing recycled

water area. Waste sludge from the WWTP will now also be applied to the new recycled water area. The applications of sludge, particularly high concentrations of organic nitrogen, are likely to further degrade/pollute the underlying groundwater.

Order No. R5-2004-0028 also required that the Discharger complete a Title 22 Engineer Report for the existing recycled water area by January 2006. The Resolution fails to discuss if the Discharger completed the report or if the discharge complies with Title 22 requirements for the existing recycled water area. The Resolution also did not include any comments DHS may have made regarding the engineer report for the existing reuse area.

The Resolution fails to discuss the data /results of any of the cited reports. This information is critical for the public to know if the underlying groundwater is degraded/polluted and if the Discharger's facility complies with State Board Resolution No. 68-16. Regional Board Staff Report, page 3, comments to CSPA concerns regarding the Regional Board's failure to properly monitor the new recycle water area states "Soil profile and groundwater monitoring ultimately determine whether over application of wastes has occurred." We agree this information is critical in order to determine if pollution has occurred in the existing reuse area, which is why we believe it is necessary to include this data in the Resolution.

Furthermore, there is no discussion regarding the compliance status of the facility with respects to recycle water requirements. It is unknown when Regional Board staff last inspected the existing recycled water area for compliance or if the new area was reviewed prior to drafting the Resolution. It would be very inappropriate for the Regional Board to approve an expansion project for a new recycled water system when Discharger is currently in violation of with existing recycled water area requirements.

Consequently, the Regional Board has failed to provide the most basic information necessary for the public to make meaningful comments and instead is continuing to use a piecemeal approach to amend the Order. This Resolution is the fifth resolution amending the Discharger's Permit and C&D Order since their adoption in 2004. In order to avoid reopening the Permit the Regional Board has piecemealed the Order with a series of ongoing resolutions. Given the significant changes to the facility that requires five resolutions in two years, the Permit must be reopened so the public has the opportunity to comment on the entire Order, including future projects.

- E. The Resolution fails to require a Pollution Prevention Plan in order to reduce/control sources of waste constituents that may affect groundwater quality.

The Resolution allows the expansion of a new recycled water area but fails to require the Discharger to implement a Pollution Prevention Plan for salinity and other nutrients that may impact underlying groundwater. CWC Section 13263.3 (a) "The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental

stewardship for society.” Pollution prevention for source control and reduction measure for salinity and waste nutrients is necessary is to achieve water quality objectives and for the facility to comply with Resolution No. 68-16. Without preparing a Pollution Prevention Plan, which is the most basic “Best Practicable Control,” the Discharger has not implemented BPTC measures.

- F. The Resolution does not demonstrate that the Discharger has implemented BPTC and is not supported by the appropriate antidegradation analysis.

The Resolution is completely silent (emphasis added) on compliance with State Board Resolution 68-16 and the antidegradation analysis for the expansion project. The expansion project will increase the mass loading of waste to a new land application area and the underlying groundwater that has not previously received waste discharges. The Regional Board Staff Report, page 3, states” The comment is acknowledged and will be considered during the next rewrite of the permit.” The Regional Board may not legally postpone compliance with Resolution 68-16 or promise to complete the required antidegradation analysis at some unspecified future date for an expansion project that the Regional Board has already implemented.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA’s members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA’s members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality 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 declining aquatic resources.

CSPA member’s health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

- A. Vacate Resolution No. R5-2006-0101 and remand to the Regional Board with instructions prepare and circulate a new tentative Resolution that comports with regulatory requirements.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in above, its 15 September 2006 letter that was accepted into the record and oral testimony presented to the Regional Board on 22 September 2006. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of Mr. Michael F. Brinton, City of Manteca, Department of Public Works, 1001 W. Center Street, Manteca, CA 95337.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in oral testimony at the 22 September 2006 hearing on the Order and in comments submitted to the Regional Board on 20 August 2006 that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Lozeau at (510) 749-9102.

Dated: 21 October 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachments:

- A. Resolution No. R5-2006-0101