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VIA: Electronic Submission
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For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Waste Discharge Requirements For)
City of Visalia Wastewater Treatment Facility, Tulare) **PETITION FOR REVIEW**
County, California Regional Water Quality Control)
Board – Central Valley Region Order No. R5-2006-)
????; NPDES No. CA0079189)
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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 adopting Waste Discharge Requirements (NPDES No. CA0079189) for City of Visalia Wastewater Treatment Facility, Tulare County, on 21 September 2006. *See* Order No. R5-2006-????.

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 Order No. R5-2006-????, Waste Discharge Requirements (NPDES No. CA0079189) for City of Visalia Wastewater Treatment Facility, Tulare County. CSPA has not received copies of the adopted orders and, as of 21 October 2006, these comments had not been posted on the Regional Board's Adopted Orders web page. Consequently, CSPA is unable to provide the specific Order number or a copy of the adopted Order.

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

21 September 2006

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

CSPA submitted detailed comment letters on 2 August 2006 and 18 September 2006. Those letters, which are incorporated into this 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 21 September 2006 hearing. Although requested, CSPA only received copies of the public hearing tapes on 19 October 2006 and has not had adequate time to review them but believes these verbal comments further support this petition.

A copy of the final Order has not been provided, as of the submission of this petition. Numerous changes were inserted as late revisions immediately prior to and during the hearing. Our petition reflects our understanding of a very confusing Permit. Consequently, CSPA reserves the right to modify this Petition after we have been afforded an opportunity to review the final Order.

The specific reasons the adopted Order is improper are:

- A. Tertiary treatment is required and receiving Water Beneficial Uses are not protected as required by Federal Regulations and the CWC.

The Order was originally circulated for public comment containing a requirement that the Discharger upgrade their treatment system to a tertiary level of treatment to protect beneficial uses. The Order was recirculated stating that the requirement has been removed based on a 2 August 2006 letter from the California Department of Health Services (DHS). The DHS letter summarizes that: "According to the tentative WDR which describes the flow characteristics of Mill Creek as "ephemeral, conveying short-duration storm water runoff, flood releases from Lake Kaweah, and occasionally delivering irrigation supply water from Lake Kaweah or the Friant-Kern Canal." In addition it states that Mill Creek downstream of the City's WWTF is an effluent dominated water body. However, the tentative WDR also indicates that there is no evidence of recreational use of Mill Creek downstream of the WWTF discharge. Based on this information of Mill Creek provided in the tentative WDR and assuming appropriate posting of the area is provided to minimize and discourage recreational activity, the Department is recommending that the City's effluent meets the requirements of secondary-23 recycled water as defined in Title 22 Section 60301.225." The Order states; Finding No. 37, in part that: "Farmers along Mill Creek with riparian water rights use creek water to irrigate their crops." ... "Regional Land use data compiled by DWR indicates fodder crops of furrow-irrigated corn and border strip-irrigated alfalfa are the primary crops and irrigation methods. A small percentage of land in the WWTF and discharge area contains walnut and pistachio orchards." ... "While Mill Creek downstream of the City's discharge is accessible by the public, there is no nearby habitation except for farm residences, and limited public use of the discharge area." Finding No. 52, in part that; "Agricultural Supply (AGR). The State Water Board has granted water rights to existing water users downstream of the discharge for irrigation uses. The discharge comprises most of the flow in Mill Creek during much of the year from discharge point to percolation ponds. Mill Creek water downstream of the discharge point is currently used to irrigate fiber and fodder crops (e.g. pasture, Sudan grass, silage corn, wheat, oats, barley, and alfalfa). It has yet to be determined what other crops have the potential to be grown with the water from Mill Creek.

"Water Contact and Noncontact Recreation (REC-1 and REC-2). Mill Creek downstream of the discharge point flows through areas where there is public access, but little human habitation. While the case file contains no evidence of REC-1 or REC-2 occurring, the presence of water in a natural setting accessible to the public makes it probable both do and will occur." Finding No. 55 states in part that: "This Regional Water Board determined that WARM and REC-1 are probable beneficial uses in Finding No. 52." The basis for irrigation uses appears largely dependant on a Department of Water Resources (DWR) Regional Land Use Survey and riparian water right issued by the State Board. Riparian water rights need not be recorded with the State Board, so it is unlikely that all riparian water uses are registered. It is unlikely that DWR intended their Land Use Survey as a definitive assessment of all uses of the water extracted from Mill Creek.

It does not appear that Regional Board staff conducted an actual use survey of property owners and the determined all of the uses of water from Mill Creek. It is just as likely that riparian water users also irrigate their home vegetable gardens with the water extracted from Mill Creek. Irrigation of home vegetable gardens, food crop irrigation, would require a tertiary-2.2 level of treatment. It is also likely that the farm residents could use the creek for REC-1 uses, also requiring a tertiary-2.2 level of treatment. A survey of the actual points along Mill Creek by Regional Board staff could have revealed REC-1, REC-2 and food crop AGR beneficial uses. Despite the lack of actual site specific data, as cited above Order Findings No. 37, 52 and 55 find ready public access for recreational purposes and determine that REC-1 is a “probable” beneficial use – requiring a tertiary-2.2 level of treatment. The action of allowing a secondary-23 wastewater discharge also takes away the downstream water users right to grow food crops. Unrestricted AGR use of the receiving stream would require a tertiary-2.2 quality of wastewater effluent.

Provision No. 7 directs the Discharger to develop and implement a workplan and after approval by the Executive Officer, to “discourage” recreational activities in Mills Creek. The Clean Water Act, California Water Code and the Basin Plan all require the Regional Board to preserve, enhance and protect the beneficial uses of receiving waters for present and future generations. The permit identifies that contact recreation is a listed beneficial use. In two decades of submitting comments regarding permits to the Regional Board, this is the first permit that actually contains provisions to discourage and prevent the public’s enjoyment of designated beneficial uses of the receiving waters. This permit is by design unlawful.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” As is stated above, the discharge of a secondary level of treated wastewater to Mill Creek renders the creek unusable for REC-1 and unrestricted AGR beneficial uses contrary to CWC 13377. Although the cited DHS letter does not discuss unrestricted AGR uses, their letter confirms that REC-1 uses are not protected by their statement allowing a secondary-23 discharge provided that “...appropriate posting of the area is provided to minimize and discourage recreational activity...” The requirement for posting the creek to discourage recreational uses confirms that the use or a reasonable potential for the use exists. DHS operates under a different set of rules than the Regional Board: their mandate is not to protect water quality of beneficial uses of receiving waters but, rather, to protect the public health. In this instance the mandates to the two agencies are contrary.

The Order, Findings No. 54 and 55, cite the State Board’s presidential Order (WQ2002-0015) on Vacaville’s NPDES permit and state that if beneficial uses are found

to not exist in Mill Creek, the beneficial use can be reconsidered through a Use Attainability Analysis (UAA) and if appropriate a Basin Plan amendment dedesignating the beneficial use. By allowing a wastewater discharge of secondary-23 wastewater to Mill Creek renders the water unusable for REC-1 and unrestricted AGR uses, the Regional Board has usurped the Basin Planning and public process. California's antidegradation policy is composed of both the federal antidegradation policy and the State Board's Resolution 68-16. (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) ("Order 86-17"); Memorandum from William Attwater, SWRCB to Regional Board Executive Officers, "federal Antidegradation Policy," pp. 2, 18 (Oct. 7, 1987) ("State Antidegradation Guidance").) As part of the state policy for water quality control, the antidegradation policy is binding on all of the Regional Boards. (Water Quality Order 86-17, pp. 17-18.) Implementation of the state's antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 ("APU 90-004") and USEPA Region IX, "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12" (3 June 1987) ("Region IX Guidance"), as well as Water Quality Order 86-17. Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3.) Both the state and federal policies apply to point and nonpoint source pollution. (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4.) The federal antidegradation regulations delineate three tiers of protection for waterbodies. Tier 1, described in 40 CFR § 131.12(a)(1), is the floor for protection of all waters of the United States. (48 Fed. Reg. 51400, 51403 (8 Nov. 1983); Region IX Guidance, pp. 1-2; APU 90-004, pp. 11-12.) It states that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Uses are "existing" if they were actually attained in the water body on or after November 28, 1975, or if the water quality is suitable to allow the use to occur, regardless of whether the use was actually designated. (40 CFR § 131.3(e).) As is stated above, the proposal to allow a discharge of secondary-23 wastewater to Mill Creek renders the water unusable for REC-1 and unrestricted AGR uses in violation of the antidegradation regulations, policies and the Basin Plan.

Federal regulations, state policy (Antidegradation Policy) and the Basin Plan (IV-16.00) require that: "Any discharge of waste to high quality waters must apply best practicable treatment or control (BPTC) not only to prevent a condition of pollution or nuisance occurring, but also to maintain the highest quality water possible consistent with the maximum benefit to the people of the State." BPTC has reasonably been established throughout the Central Valley region for domestic wastewater treatment plants as a tertiary level of treatment by the number of treatment facilities that are currently required to treat to this level to maintain beneficial uses of receiving waters. In addition, the Discharger has provided, and the Regional Board has required, little data regarding compliance with the California Toxics Rule (CTR). Many wastewater treatment systems

are relying on a tertiary level of treatment to achieve compliance with CTR water quality standards. The sunset date for compliance with the CTR is May 2010. Failure to implement a tertiary level of treatment immediately will assure not compliance with CTR based limitations in a timely manner. Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA.

In addition to the above citations, Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA. The Order should be remanded back to the Regional Board to require tertiary treatment be implemented to protect the beneficial uses of the receiving stream.

- B. The Basin Plan prohibits the discharge of wastewater to low flow streams as a permanent means of disposal.

The Basin Plan, Implementation, Page IV-24-00, Regional Water Board prohibitions, states that: “Water bodies for which the Regional Water Board has held that the direct discharge of waste is inappropriate as a permanent disposal method include sloughs and streams with intermittent flow or limited dilution capacity.” The proposed Permit characterizes the receiving stream as low flow, or ephemeral, with no available dilution. The Order does not discuss any efforts to eliminate the discharge to surface water and compliance with the Basin Plan Prohibition. Federal Regulation 40 CFR 122.4 states that no permit shall be issued for any discharge when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA and are inconsistent with a plan or plan amendment. The permit must be amended to require that the Discharger develop a workplan to eliminate the wastewater discharge to surface water in accordance with the Basin Plan.

- C. The proposed Order is inconsistent with Title 22 requirements.

Advanced treatment is required for discharges of wastewater to unlined storage basins where high percolation rates facilitate recharge to groundwater. Section 60322 of Title 22 requires that all recharge activity must be protective of public health. Section 60323 of Title 22 requires that an engineering report be prepared that specifically addresses recharge activity for all constituents that pose a threat to public health; i.e., not just for pathogens or trihalomethanes. After reviewing the data for all constituents that could threaten public health, the California Department of Public Health (DHS) must certify that the activity will not cause a problem. As part of this assessment, DHS must hold a public meeting for public comment on the recharge project. The Order and Fact

Sheet do not address the Permit's adequacy or conformance with Title 22 requirements protecting groundwater recharge and reuse.

- D. The Report of Waste Discharge is inadequate and must be resubmitted and the proposed Order is inconsistent with Title 27 requirements.

The Basin Plan limits discharges to areas that recharge to good quality groundwater to a maximum EC of 1,000 $\mu\text{mhos/cm}$, and a maximum concentration of chloride and boron of 175 and 1.0 mg/L, respectively. The 2005 Tulare Annual Crop and Livestock Report that a significant amount of the agricultural crops produced within the county is salt-sensitive crops including citrus, beans, carrots, onions, almonds, strawberries, clover, plums and grapes. Monitoring wells downgradient of the disposal ponds show that these waste management units have contributed to the degradation of the underlying groundwater for salinity and nitrates. According to the Fact Sheet, the Discharger currently uses the disposal ponds for approximately 30 percent of the annual volume discharged by the WWTP. In addition, monitoring the wastewater application areas has not been adequately done and wastewater irrigation practices are also likely contributing to salinity and nitrate problems.

The Regional Board cannot authorize acts of pollution. California Water Code Section 13050(1)(1) defines pollution as "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses. (B) Facilities which serve these beneficial uses." CWC Section 13173 states, "Designated waste" means either of the following: (a) Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code. (b) Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

The discharge of waste from the disposal ponds is known to exceed applicable water quality objectives, the underlying soils have been found to have a maximum hydraulic conductivity significantly greater than 1×10^{-6} cm/sec, and under ambient environmental conditions the lagoon (i.e. waste management unit), waste is released. In fact, the groundwater data indicates that the disposal ponds have already degraded the receiving waters for salinity and nitrates. Therefore, the disposal ponds wastewater is properly classified as a "designated waste" as defined by CWC Section 13173. The discharge of designated waste from the disposal ponds must comply with the requirements of Title 27 Section 20005 for the handling, storage and disposal of designated waste. The Order must require the Discharger to comply with Title 27 regulations including, but not limited to, installing a synthetic liner and leachate collection system for the lagoons (lagoons are a surface impoundment), conducting groundwater monitoring, financial assurance, and for closure and post closure plans.

The Permit indicates that “By 150 days following adoption of this Order, the Discharger shall submit a technical report describing a Use Area management plan that ensures wastewater and commercial fertilizer will be applied to the Use Area as defined herein in accordance with this Order’s recycling specifications and at reasonable agronomic rates considering the crop, soil, climate, and irrigation management system. The technical report shall (a) describe what measures the Discharger has implemented or proposes to implement to ensure consistent compliance with Recycled Water Specification G.4.a; (b) describe the types of crops to be grown and harvested annually, crop water use, nitrogen uptake, and supporting data and calculations for monthly water and yearly nutrient balances; (c) describe the wastewater constituent concentration effect resulting from irrigation; (d) include a map showing locations of all domestic and irrigation wells that are within and near the Use Area, areas of public access, location and wording of public warning signs and setback distances from irrigation/domestic wells, property boundaries, and roads; (e) shall be subject to the requirements of Provision H.4; and (f) subject to Executive Officer written approval.” CWC Section 13260 (a) states, in part, “All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board: (1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.” It is clear from this Provisions request for information that the Discharger has not submitted the necessary information in order to have a complete RWD. It is also apparent given the lack of information regarding the location and uses of groundwater wells near the WWTP, that adequate analysis of the impact to the underlying groundwater from the Discharger recharge basins sufficient to determine if the wastewater was safe at all times for domestic use.

- E. The Order allows an increased flow rate from 16.6 million gallons per day (mgd) to 22 mgd and does not contain an antidegradation analysis.

Section 101(a) of the Clean Water Act, the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the Act carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures. (40 CFR § 131.12(a).) California’s antidegradation policy is composed of both the federal antidegradation policy and the State Board’s Resolution 68-16. (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) (“Order 86-17”); Memorandum from William Attwater, SWRCB to Regional Board Executive Officers, “federal Antidegradation Policy,” pp. 2, 18 (Oct. 7, 1987) (“State Antidegradation Guidance”).) As part of the state policy for water quality control, the antidegradation policy is binding on all of the Regional Boards. (Water Quality Order 86-17, pp. 17-18.) Implementation of the state’s antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU 90-004”) and USEPA

Region IX, “Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12” (3 June 1987) (“ Region IX Guidance”), as well as Water Quality Order 86-17.

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality. (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1.) Application of the policy does not depend on whether the action will actually impair beneficial uses. (State Antidegradation Guidance, p. 6. Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3.) Both the state and federal policies apply to point and nonpoint source pollution. (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4.)

The federal antidegradation regulations delineate three tiers of protection for waterbodies. Tier 1, described in 40 CFR § 131.12(a)(1), is the floor for protection of all waters of the United States. (48 Fed. Reg. 51400, 51403 (8 Nov. 1983); Region IX Guidance, pp. 1-2; APU 90-004, pp. 11-12.) It states that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” Uses are “existing” if they were actually attained in the water body on or after November 28, 1975, or if the water quality is suitable to allow the use to occur, regardless of whether the use was actually designated. (40 CFR § 131.3(e).) Tier 1 protections apply even to those waters already impacted by pollution and identified as impaired. In other words, already impaired waters cannot be further impaired.

Tier 2 waters are provided additional protections against unnecessary degradation in places where the levels of water quality are better than necessary to support existing uses. Tier 2 protections strictly prohibit degradation unless the state finds that a degrading activity is: 1) necessary to accommodate important economic or social development in the area, 2) water quality is adequate to protect and maintain existing beneficial uses, and 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved. (40 CFR § 131.12(a)(2).) Cost savings to a discharger alone, absent a demonstration by the project proponent as to how these savings are “necessary to accommodate important economic or social development in the area,” are not adequate justification for allowing reductions in water quality. (Water Quality Order 86-17, p. 22; State Antidegradation Guidance, p. 13.) If the waterbody passes this test and the degradation is allowed, degradation must not impair existing uses of the waterbody. (48 Fed. Reg. at 51403). Virtually all waterbodies in California may be Tier 2 waters since the state, like most states, applies the antidegradation policy on a parameter-by-parameter basis, rather than on a waterbody basis. (APU 90-004, p. 4). Consequently, a request to discharge a particular chemical to a river, whose level of that chemical was better than the state standards, would trigger a Tier 2 antidegradation review even if the river was already impaired by other chemicals.

Tier 3 of the federal antidegradation policy states “[w]here high quality waters constitute an outstanding national resource, such as waters of national and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water shall be maintained and protected. (40 CFR § 131.12(a)(3).) These Outstanding National Resource Waters (ONRW) are designated either because of their high quality or because they are important for another reason. (48 Fed. Reg. At 51403; State Antidegradation Guidance, p. 15). No degradation of water quality is allowed in these waters other than short-term, temporary changes. (Id.) Accordingly, no new or increased discharges are allowed in either ONRW or tributaries to ONRW that would result in lower water quality in the ONRW. (EPA Handbook, p. 4-10; State Antidegradation Guidance, p. 15.) Existing antidegradation policy already dictates that if a waterbody “should be” an ONRW, or “if it can be argued that the waterbody in question deserves the same treatment {as a formally designated ONRW},” then it must be treated as such, regardless of formal designation. (State Antidegradation Guidance, pp. 15-16; APU 90-004, p. 4.) Thus the Regional Board is required in each antidegradation analysis to consider whether the waterbody at issue should be treated as an ONRW. It should be reiterated that waters cannot be excluded from consideration as an ONRW simply because they are already “impaired” by some constituents. By definition, waters may be “outstanding” not only because of pristine quality, but also because of recreational significance, ecological significance or other reasons. (40 CFR §131.12(a)(3).) Waters need not be “high quality” for every parameter to be an ONRW. (APU 90-004, p. 4) For example, Lake Tahoe is on the 303(d) list due to sediments/siltation and nutrients, and Mono Lake is listed for salinity/TDC/chlorides but both are listed as ONRW. The State Board’s APU 90-004 specifies guidance to the Regional Boards for implementing the state and federal antidegradation policies and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison

of the proposed increased loadings relative to other sources; 7) an assessment of the significance of changes in ambient water quality and 8) whether the waterbody was a ONRW. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis; while tertiary treatment may provide BPTC for pathogens, dissolved metals may simply pass through. There are numerous areas where the proposed facility does not provide BPTC, specifically: the facility does not dechlorinate the discharge and the effluent has been measured as high as 15.5 mg/l, a clearly toxic concentration; the facility does not nitrify and denitrify the wastestream, resulting in concentrations of ammonia and total nitrogen that exceed toxic, drinking water and biostimulatory substances limitations; the discharge has failed to adequately control industrial discharges resulting in the discharge of salts, thereby degrading groundwater and surface water quality; a letter from the discharger indicates their chlorination system is inadequate for reclamation discharges to an orchard, yet continue to implement reclamation discharges for groundwater recharge. The regulation of wastewater treatment plants throughout the Central Valley Region, in areas regulated by the Sacramento office, clearly show that since most wastewater systems are required to treat to a tertiary level, that a tertiary level of treatment is best available treatment (BAT) and BPTC. The Order states, Finding No. 11, states that the City's water supply conductivity (EC) was measured at 229 $\mu\text{mhos/cm}$. Yet the City's wastewater effluent has been measured as high as 939 $\mu\text{mhos/cm}$ for EC. Finding No. 21 indicates that 17 significant industrial users discharge to the City's wastewater collection system. Failure to adequately regulate industrial discharges, has been found, in the past, to be the cause of elevated EC concentrations, and groundwater degradation. The Order must be remanded back to the Regional Board to require completion of an Antidegradation analysis and modify the permit in accordance with the outcome to protect beneficial uses and comply with applicable regulations.

- F. The wastewater treatment plant does not have the capability for dechlorination failing to provide BPTC and resulting in toxic discharges.

The wastewater treatment facility does not dechlorinate the discharge and the effluent has been measured as high as 15.5 mg/l, a clearly toxic concentration of chlorine. The Order allows for continued discharge of toxic levels of chlorine for 3- years following permit adoption (Proposed Order, page 39, No. 13). Dechlorination chemicals are added at the end of the chlorine contact tank and such systems have been easily retrofitted to dechlorinate easily within months. The discharge of chlorine at toxic concentrations violates the receiving water permit requirements prohibiting the discharge of toxic substances. Permit Finding No. 34 states that warm freshwater aquatic habitat is a beneficial use of the receiving stream. The discharge fails to provide BPTC by failing to dechlorinate the wastewater discharge and exceeds the Basin Plan water quality objective for toxicity in violation of Federal Regulation 40 CFR 122.44.

- G. The wastewater treatment plant inadequately nitrifies the discharge allowing the discharge of toxic levels of ammonia.

The Order, page 3, cites the Report of Waste Discharge as presenting that the maximum ammonia concentration was measured in the effluent at 8 mg/l. The permit does not state the worst case temperature; therefore EPA's ambient water quality criteria for ammonia cannot be consulted. Toxicity testing was not required under the existing Waste Discharge requirements. Federal Regulations, 40 CFR 122.44 requires that an effluent limitation be established if a discharge presents a reasonable potential to exceed the Basin Plan toxicity water quality objective. The Discharger has failed to provide BPTC, as established at wastewater treatment plants regulated by the Sacramento Regional Board office, by failing to nitrify the wastestream.

- H. The order contains an inadequate reasonable potential by using incorrect statistical multipliers.

The reasonable potential analysis utilized a hardness value of 100 mg/l, see permit Attachment D. The permit fails to identify the measured hardness of the receiving water or the effluent. The SIP and CTR require the ambient receiving water hardness be used to determine reasonable potential. Federal regulations, 40 CFR § 122.44(d)(1)(ii), state "when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water." Emphasis added. Attachment D: The reasonable potential analyses for CTR constituents fail to consider the statistical variability of data and laboratory analyses as explicitly required by the federal regulations. For example, a multiplier of 1 was used for CTR constituents instead of the required multiplier factors necessary to properly evaluate reasonable potential. The procedures for computing variability are detailed in Chapter 3, pages 52- 55, of USEPA's *Technical Support Document For Water Quality-based Toxics Control*. The reasonable potential analyses for CTR constituents are flawed and must be recalculated. The fact that the SIP illegally ignores this fundamental requirement does not exempt the Regional Board from its obligation to consider statistical variability in compliance with federal regulations.

- I. The discharger has degraded groundwater quality by discharging to unlined ponds, failing to provide BPTC, and likely discharging wastewater illegally.

The Order, Finding No. 16, states that the Discharger discharges sludge to 15.65 acres of unlined drying beds. The Discharger has also discharged wastewater to ponds for disposal. In 1997 the Regional Board issued a Cease and Desist Order, No. 97- 062, finding that the Dischargers wastewater disposal practices degraded groundwater quality

with salinity constituents. Findings 43, 44, and 45: A 30 January 1998 report by the Discharger proposed to pump agricultural wells at the WWTF to control the concentrations of salt with discharge to Mill Creek or to irrigate the “use area”. Finding No. 45 states, “Regional groundwater pumping of agricultural wells may have achieved what the Discharger proposed pursuant to the CDO. The permit does not discuss issuance of waste discharge requirements, or an NPDES permit, that would have allowed this pumping to surface water or to land for disposal. The groundwater, containing waste constituents from the WWTF is clearly a waste, which would need to be regulated. The wastewater and sludge discharge to unlined ponds and drying beds continues. The nitrogen of the discharge exceeds 10 mg/l for nitrogen (N), which exceeds the drinking water MCL. Drinking water is a designated beneficial use of the groundwater. The Order wrongfully requires a groundwater study, despite the past findings, and issuance of a CDO, that the discharge has degraded groundwater quality.

- J. The order fails to include an effluent limitation for bis(2-ethylhexyl)phthalate despite clear reasonable potential to exceed a water quality standard.

The Order, Finding No. 86, states that the maximum measured effluent concentration of bis(2-ethylhexyl)phthalate was 53 $\mu\text{g/l}$, exceeding the NTR water quality standard of 5.9 $\mu\text{g/l}$. Regional Board staff through out the maximum data point since other samples were of lower concentration without QA/QC verification of any sample inaccuracy. Failure to include an effluent limitation for bis (2-ethylhexyl) phthalate violates the SIP and Federal Regulation, 40 CFR 122.44.

- K. The limitation for acute toxicity is inconsistent with basin plan and federal requirements.

The acute toxicity limitation is not effective for 3-years following permit adoption. Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Water Quality Control Plan (Basin Plan) Water Quality Objective for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms. The Tentative Permit contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test. The Tentative Permit acknowledges in detail that there is no assimilative capacity in the receiving stream for individual toxic pollutants. Allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal regulations and contributes to exceedance of the Basin Plan’s narrative water quality objective for toxicity. Accordingly, the Order should be revised to prohibit acute toxicity.

- L. The order fails to contain an effluent limitation for chronic toxicity.

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The Water Quality Control Plan for (Basin Plan), Water Quality Objectives for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. The Order does not contain chronic effluent limitations. Sampling does not equate with or ensure compliance. An effluent limitation for chronic toxicity must be included in the Order.

- M. The order allows reclaimed water to be used for groundwater recharge but fails to discuss title 22 reclamation requirements or implement title 22 requirements.

Finding No. 33 states the Discharger discharges wastewater to ephemeral Mill Creek. Downstream, the Discharger diverts the wastewater to basins used for groundwater recharge. Groundwater recharge activities are currently required to comply with California Code of Regulations, Title 22, Section 60320. The permit does not discuss compliance with Title 22 not does it discuss issuance on a Master Reclamation Permit. DHS is currently proposing that all groundwater recharge projects be irrigated with water treated to a level no less than tertiary.

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 Order No. ??? (NPDES No. CA0079189) and remand to the Regional Board with instructions prepare and circulate a new tentative order 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 its 2 August 2006 and 18 September 2006 letters that were accepted into the record and its oral testimony presented to the Regional Board on 21 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. James Ross, Superintendent of Public Works, City of Visalia WWTF, 7579 Avenue 288, Visalia, CA 92377.

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 21 September 2006 hearing on the Order or in letters submitted to the Regional Board on 2 August 2006 and 18 September 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. None. Waiting for a copy of the adopted order.