BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of City of Manteca for Review of Action and Failure to Act by Central Valley Regional Water Quality Control Board.

The City of Manteca (Manteca or Petitioner) submits this Petition for Review and Statement of Points and Authorities (Petition) to the State Water Resources Control Board (State Water Board or Board) in accordance with Water Code section 13320. Manteca respectfully requests that the State Water Board review the Central Valley Regional Water Quality Control Board’s (Central Valley Water Board) actions and inactions related to its adoption of Order No. R5-2009-0095, NPDES No. CA0081558 Waste Discharge Requirements for City of Manteca and Dutra Farms, Inc., City of Manteca Wastewater Quality Control Facility (Permit) and Time Schedule Order No. R5-2009-0096 (TSO). Manteca challenges the effluent limitations for electrical conductivity (EC) of 700 micromhos per centimeter (μmhos/cm) (April 1 through August 31) for current and future discharges and the corresponding TSO. Manteca also challenges the determination that the secondary effluent storage pond (SESP) does not qualify for the reuse exemption of title 27 of the California Code of Regulations (Title 27).

1 National Pollutant Discharge Elimination System.
Attached as Exhibit A to this Petition is a copy of the Permit. This Petition satisfies the requirements of title 23, section 2050 of the California Code of Regulations. Manteca requests the opportunity to file supplemental points and authorities in support of this Petition once the administrative record becomes available. Manteca also reserves the right to submit additional argument and evidence in reply to the Central Valley Water Board’s or other interested parties’ responses to this Petition filed in accordance with title 23, section 2050.5(a) of the California Code of Regulations.

1. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF THE PETITIONER

The Petitioner is the City of Manteca, California, which operates and maintains the City of Manteca Wastewater Quality Control Facility (Manteca WQCF or WQCF). Petitioner’s address is as follows:

City of Manteca  
Phil Govea, P.E.  
Deputy Director of Public Works—Utility Engineering  
1001 W. Center Street  
Manteca, CA 95337  
Phone: (209) 456-8415  
Email: pgovea@ci.manteca.ca.us

In addition, Manteca requests that all materials in connection with the Petition and administrative record be provided to Manteca’s special counsel:

Roberta A. Larson, Esquire  
Theresa A. Dunham, Esquire  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814  
Phone: (916) 446-7979  
Email: blarson@somachlaw.com; tdunham@somachlaw.com

2. THE SPECIFIC ACTION OR INACTION OF THE CENTRAL VALLEY WATER BOARD WHICH THE PETITIONER REQUESTS THE STATE WATER BOARD TO REVIEW

Manteca petitions the State Water Board to review the Central Valley Water Board’s adoption of the Permit and TSO. In particular, Manteca seeks review of the effluent limitations in the Permit that require the WQCF’s current and future average monthly discharges of EC not to exceed 700 μmhos/cm April 1 through August 31 each year. The Permit establishes these EC
limitations in Table 6 and Table 7 of the Effluent Limitations and Discharge Specifications at pages 12 and 13, respectively. The purpose of the TSO is to provide Manteca with a five-year time period for coming into compliance with these limitations. Manteca also challenges the Central Valley Water Board’s determination that the SESP does not qualify for the reuse exemption of Title 27. (See Permit at pp. F-13 - F-14.) For this reason, Manteca also challenges the associated compliance schedule of Special Provisions on page 33 of the Permit.

3. THE DATE ON WHICH THE CENTRAL VALLEY WATER BOARD ACTED OR REFUSED TO ACT

The Central Valley Water Board adopted the Permit on October 8, 2009.

4. A STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT IS INAPPROPRIATE OR IMPROPER

As explained in more detail in the statement of points and authorities, the Permit imposes the water quality objectives for EC in the southern Delta to protect the agriculture beneficial use as effluent limitations on the Manteca WQCF’s discharge. (See Permit at pp. 12, 13, F-48 - F-49.) The effluent limitations are the same for the current discharge flow and expanded future discharge flow. (Permit at pp. 12, 13.) The discharges are not to exceed 700 µmhos/cm EC (April 1 to August 31) or 1,000 µmhos/cm (September 1 to March 31). (Permit at pp. 12, 13.) Manteca’s prior waste discharge permit included a year-round effluent limitation for EC of 1,000 µmhos/cm. (Permit at p. F-49; In the Matter of the Petition of City of Manteca (Mar. 16, 2005) Order WQ 2005-0005 (2005 Manteca Order) at pp. 22-23.) Moreover, the effluent limitations at issue are also inconsistent with the still valid rationale of the 2005 State Water Board order that expressly governs the Manteca WQCF’s discharge. (See 2005 Manteca Order at pp. 6-15.)

The final effluent limitations of 700 µmhos/cm EC are unlawful as applied to the Manteca WQCF and otherwise inappropriate. In particular, the effluent limitations are inconsistent with the State Water Board’s findings and conclusions in the 2005 Manteca Order, which apply specifically to Manteca. Further, water quality objectives for EC in the southern Delta were improperly applied to Manteca’s discharges from its WQCF. A review of the history of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan)
reveals that when first adopted in 1978, the State Water Board did not intend for the EC objectives to apply to municipal discharges. (See Water Quality Control Plan Sacramento-San Joaquin Delta and Suisun Marsh (Aug. 1978) (1978 Bay-Delta Plan).) The State Water Board did not perform, and has not subsequently performed, the analyses required by Water Code sections 13000, 13241 and 13242 to amend the objectives so that they may lawfully apply to such discharges. If the Permit includes an effluent limitation for EC, the requirement should be a year-round limitation of 1,000 μmhos/cm for present and future discharges; this would render the TSO unnecessary.

In addition, the Permit includes a compliance schedule for the SESP to comply with the final groundwater limitations and/or for Manteca to prove compliance with the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) to be exempt from Title 27. (Permit at p. 33.) As explained in the points and authorities below, the SESP qualifies for the reuse exemption of Title 27. The SESP meets the criteria for the reuse exemption because the pond holds only municipal effluent that has been treated at the WQCF and stored for beneficial reuse on agricultural fields. (See Permit at pp. F-13 - F-14.)

5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED

The Permit provisions challenged place Manteca in the untenable position of spending significant public resources to comply with EC and Title 27 requirements that are not necessary, reasonable nor supported by the evidence. The provisions are more stringent and onerous than required by or provided for under current law. Although the State Water Board has identified potential interim planning solutions in its Tracy Order, none of these options are feasible here given the limited five-year window provided in the TSO to comply with the effluent limitation. As a matter of law, Manteca can receive protection from mandatory minimum penalties for a period of only five years. (See Wat. Code, § 13385(j)(3)(C).) Thus, the effluent limitations of 700 μmhos/cm EC and associated TSO will require Manteca to install microfiltration and reverse osmosis (MF/RO) facilities as the only certain means to ensure compliance.

Manteca estimates the cost to construct MF/RO facilities will be $38.4 million, which results in an additional annual cost of $3.7 million for capital improvements and operation and maintenance of the facilities. These costs do not account for the disposal of approximately 0.5 million gallons per day (mgd) of highly saline brine that the MF/RO process will generate.

Use of the MF/RO facilities will, at best, only negligibly improve EC in the receiving water. The 2005 Manteca Order specifically governs the WQCF’s discharge and approves a year-round EC effluent limitation of 1,000 µmhos/cm. In reliance on the 2005 Manteca Order, Manteca already spent significant resources to reduce the salinity in its discharge by over 27 percent to comply with the year-round effluent limitation.

Similarly, Manteca will have to spend significant resources to comply with the requirements of Title 27 for the SESP, the use of which is part of a recycled water operation. This is inconsistent with the State Water Board’s Recycled Water Policy and other recent legislative and regulatory efforts to promote the reuse of properly treated effluent. Manteca is aggrieved in having to spend additional increasingly scarce public resources to comply with Permit requirements and a TSO that are arbitrary, unnecessary and not required by law.

6. THE SPECIFIC ACTION REQUESTED BY THE PETITIONER

Based on this Petition, evidence in the record and arguments set forth in the record, Manteca requests that the State Water Board adopt an order that replaces the Permit’s seasonal effluent limitations for EC with year-round effluent limitations of 1,000 µmhos/cm and rescinds the TSO. Manteca also requests that the State Water Board find that the SESP qualifies for the reuse exemption of Title 27 and make the associated Permit revisions. In the alternative, Manteca requests a remand of the Permit to the Central Valley Water Board for changes as directed by the State Water Board.

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

As required by title 23, section 2050(a)(7) of the California Code of Regulations, Manteca includes a statement of points and authorities in support of this Petition beginning on page 7.
8. **A STATEMENT THAT THIS PETITION WAS SENT TO THE CENTRAL VALLEY WATER BOARD**

In accordance with title 23, section 2050(a)(8) of the California Code of Regulations, Manteca mailed true and correct copies of this Petition by First Class mail on November 9, 2009, to the Central Valley Water Board. The address to which Manteca mailed the copies to the Central Valley Water Board is:

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Petitioner is the discharger. Therefore, Manteca did not mail a separate copy of this Petition to the discharger.

9. **A STATEMENT AS TO WHETHER THE PETITIONER RAISED THE SUBSTANTIVE ISSUES OR OBJECTIONS IN THE PETITION TO THE CENTRAL VALLEY WATER BOARD**

Manteca timely raised the substantive issues and objections in this Petition before the Central Valley Water Board in written comments dated July 20, 2009 and September 10, 2009, and in testimony provided at the October 8, 2009 public hearing.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: November 9, 2009

By: [Signature]

Theresa A. Dunham
Attorneys for City of Manteca
STATEMENT OF POINTS AND AUTHORITIES

The Central Valley Water Board adopted the Permit and TSO on October 8, 2009. The Permit imposes final effluent limitations for salinity identical to the water quality objectives for salinity in the southern Delta. The WQCF cannot consistently comply with some of these water quality-based effluent limitations (WQBELs). The Central Valley Water Board also found that a storage pond at the WQCF used to store recycled water prior to agricultural reuse does not fall within the reuse exemption in Title 27 and requires Manteca to demonstrate compliance with preconditions to otherwise be exempt from the regulation. As a result, Manteca must spend increasingly scarce public funds to make costly and potentially unnecessary upgrades to the WQCF for no meaningful water quality benefit.

Manteca files this Petition in accordance with title 23, section 2050(a) of the California Code of Regulations. Manteca requests the opportunity to file a supplemental or reply memorandum after receipt of the administrative record and Central Valley Water Board’s response. This Petition incorporates by reference all of Manteca’s comments, evidence and testimony in the record.

I. INTRODUCTION

In the recent past, the State Water Board received and reviewed a number of petitions directly related to the control of salinity in the Bay-Delta. This Petition raises significant issues in that the Permit reluctantly adopted by the Central Valley Water Board will require Manteca to spend nearly $40 million dollars within the next five years to improve salinity levels in the San Joaquin River by just 0.02 percent.3 This expenditure of scarce resources will need to commence immediately to ensure compliance with stringent effluent limitations even though the water quality objectives on which the effluent limitations are based may change. In addition to addressing key issues with respect to salinity, this Petition also raises fundamental issues regarding the application of the reuse exemption in Title 27 to storage ponds used to store recycled water prior to use. As the state agency tasked to ensure the reasonable regulation of the state’s water quality given all

3 The percentage of improvement is based on summer 2008 conditions for Manteca’s discharge and EC concentrations in the San Joaquin River for this time period.
demands made upon the waters, it is imperative that the State Water Board decides upon the issues
in Manteca’s Petition. Moreover, the challenged provisions result from the Central Valley Water
Board’s attempt to interpret two recent precedential orders issued by the State Water Board.

More specifically, the Petition challenges whether the Central Valley Water Board acted
appropriately and reasonably when it adopted certain Permit provisions related to EC and Title 27.
Manteca petitions the State Water Board to review the WQBELs that require the average monthly
EC of the WQCF’s effluent not to exceed 700 μmhos/cm between April 1 and August 31 each
year. Manteca also petitions for review of the Central Valley Water Board’s determination that
the SESP does not qualify for the reuse exemption of Title 27. These Permit provisions dictate
that Manteca use its increasingly scarce public resources to comply with potentially unnecessary
requirements that are also unreasonable and not supported by the evidence.

Accordingly, Manteca respectfully requests that the State Water Board revise the Permit to
continue the previous permit’s imposition of a year-round effluent limitation of 1,000 μmhos/cm
for EC in lieu of the adopted bifurcated scheme. This would render the TSO unnecessary, so
Manteca further requests that the State Water Board rescind the TSO. Manteca requests that the
State Water Board find that the SESP qualifies for the reuse exemption of Title 27 and modify the
Permit accordingly. In the alternative, Manteca respectfully requests a remand of the Permit to the
Central Valley Water Board for revisions as directed by the State Water Board.

II. FACTUAL BACKGROUND

Manteca owns and operates the Manteca WQCF. The WQCF serves a total population of
approximately 80,500 people in Manteca, the City of Lathrop, Raymus Village, and other
communities. The WQCF produces secondary and tertiary treated municipal effluent. Manteca
stores secondary treated effluent in an onsite pond (i.e., the SESP) for agricultural use. Manteca
owns and operates approximately 190 acres of the agricultural fields, while Dutra Farms, Inc.

4 The Permit imposes effluent limitations of 1,000 μmhos/cm from September 1 to March 31 for the current discharge
of 9.87 mgd and the future expanded discharge of 17.5 mgd. (Permit at pp. 12, 13.) As explained in this statement of
points and authorities, Manteca maintains that the water quality objectives at issue do not apply to municipal
discharges. Nevertheless, the WQCF can comply with the effluent limitations of 1,000 μmhos/cm and does not now
challenge them.
owns and operates another 70 acres. Secondary effluent in excess of crop demands undergoes tertiary-level treatment. The tertiary treated effluent is used for construction purposes or is discharged to the San Joaquin River. Manteca has plans for additional uses of tertiary treated effluent as recycled water. (See City of Manteca Recycled Water Master Plan, 2007.)

The Manteca WQCF previously operated under Order No. R5-2004-0028 issued by the Central Valley Water Board in 2004, as modified by the State Water Board in the 2005 Manteca Order. (Order No. R5-2004-0028, NPDES No. CA0081558 Waste Discharge Requirements for City of Manteca, City of Lathrop and Dutra Farms Wastewater Quality Control Facility (2004 Permit), attached hereto as Exh. B; 2005 Manteca Order at pp. 22-23.) Manteca has significantly upgraded the WQCF since 2004. In August 2005, Manteca obtained higher quality surface water from the South County Water Supply Program to blend with Manteca’s existing groundwater drinking water supply to improve the water supply source (i.e., lower salinity). In May 2006, Manteca added biological nitrification-denitrification to the secondary treatment process. In September 2007, Manteca added a secondary effluent equalization pond, tertiary filters, an ultraviolet light pathogen deactivation system (UV disinfection), and recycled water-pumping station and made other improvements. In 2007, Manteca also modified the WQCF to separate fully the food-processing wastes from the municipal effluent. As a result of these improvements, Manteca has reduced the EC in its effluent by almost 30 percent.

In August 2008, Manteca submitted a report of waste discharge and applied to renew the Permit for the WQCF under the NPDES program. Manteca sought to increase the WQCF’s permitted discharge from 9.87 mgd to 17.5 mgd of tertiary treated wastewater. The Central Valley Water Board deemed the application complete on December 11, 2008, and adopted the Permit on October 8, 2009.

The Permit includes findings and conditions related to EC and whether the SESP qualifies for the reuse exemption under Title 27. The Permit imposes effluent limitations of 700 μmhos/cm (April 1 to August 31) and 1,000 μmhos/cm (September 1 to March 31) for the current and increased future discharges of EC. (Permit at pp. 12, 13.) Since the Central Valley Water Board declined to find the SESP subject to the reuse exemption from Title 27, the Permit establishes a
compliance schedule for the WQCF to determine compliance with the Basin Plan, which is a pre-
condition required to apply the sewage or wastewater exemptions of Title 27 to the SESP. (Permit
at p. F-14; see also Title 27, § 20090(a), (b).)

III. ARGUMENT

A. The Final Effluent Limitations of 700 μmhos/cm for EC Are Unlawful as Applied to the
Manteca WQCF and Otherwise Inappropriate

As indicated above, in 2004, the Central Valley Water Board adopted a permit for Manteca
that contained effluent limitations for EC that are identical to those at issue in this Petition. (See
2005 Manteca Order at p. 11; Permit at p. F-49.) Manteca challenged those limitations by way of
a petition to the State Water Board. After reviewing Manteca’s petition, the State Water Board
issued and adopted the 2005 Manteca Order, which found that the effluent limitation of
700 μmhos/cm was unreasonable and inappropriate as applied to Manteca. (2005 Manteca Order
at p. 12; Permit at p. F-50.) The 2005 Manteca Order revised the 2004 Permit accordingly. (See
2005 Manteca Order at pp. 22-24.) Now, just four years later, the Central Valley Water Board has
adopted the very same limitation declared unreasonable in the 2005 Manteca Order. For the same
reasons articulated in the 2005 Manteca Order, the adoption of such a limitation in the 2009 Permit
is as unlawful and unreasonable today as it was in 2005.

1. The Rationale in the 2005 Manteca Order Remains Valid, Sound and Applies Here

The 2005 Manteca Order governs the issuance of Manteca’s Permit. The recently adopted
State Water Board Order regarding the City of Tracy (Tracy) Wastewater Treatment Plant does not
change the regulatory landscape for Manteca. (See Tracy Order.) The Tracy Order directed the
Central Valley Water Board to apply the southern Delta EC objectives to Tracy’s discharge.
(Tracy Order at pp. 5-10.) However, the Tracy Order does not apply to Manteca. Rather, a quasi-
adjudicatory decision of the State Water Board specific to Manteca’s circumstances—the
2005 Manteca Order—governs. While the 2005 Manteca Order is not precedential for other
dischargers, it controls with regard to the Manteca WQCF.

The 2005 Manteca Order relied on “the unique background and facts in this case.”
(2005 Manteca Order at p. 12.) The unique circumstances of the WQCF’s discharge that existed
in 2005 remain unchanged today. Conclusions in the 2005 Manteca Order apply equally to the
current conditions and circumstances in that: (1) assuring compliance with the 700 \( \mu \text{mhos/cm} \) EC
limitations in Manteca's Permit for April through August will require construction and operation
of MF/RO facilities for at least a portion of the WQCF's effluent at a very large cost (see
PowerPoint Presentation to Central Valley Water Board from Phil Govea, City of Manteca
(Presentation), attached hereto as Exh. C, at Slide No. 8; see also Declaration of Phil Govea in
Support of City of Manteca's Request for Stay (Govea Decl.) at ¶¶ 9-10, filed concurrently
herewith); and (2) Manteca's use of MF/RO would have little effect on the EC of water in the river
(i.e., the receiving water) because the rate of Manteca's discharge as compared to the receiving
water is negligible.\(^5\) (See 2005 Manteca Order at p. 12; see also Presentation, Exh. C, at Slide
No. 10.)

In the 2005 Manteca Order, the State Water Board noted the marginal effect of the
WQCF's discharge on the San Joaquin River and acknowledged that municipal dischargers are not
part of the Bay-Delta Plan's program to implement the objectives: "... [R]quiring the City to
comply with an effluent limitation of 700 \( \mu \text{mhos/cm} \) EC would not significantly change the EC of
water in the southern Delta area." (2005 Manteca Order at p. 13.) The State Water Board's own
data confirm the extremely minor impact of Manteca's discharge on the river. The data indicate
that all of the municipal discharges to the San Joaquin River collectively contribute less than
one percent of the total salt loading. (San Joaquin River Annual Salt Loading WY 1985-1995,
included in Materials for April 15, 2009 Special Meeting of the State Water Resources Control
Board regarding Salinity Issues at p. 0009; see Letter to J. Marshall, Central Valley Water Board
from P. Govea, City of Manteca regarding comments on tentative Permit (Sept. 10, 2009) at p. 2.)

\(^5\) In the Manteca Order, the State Water Board found:

(1) [A]ssuring compliance with the 700 \( \mu \text{mhos/cm} \) EC limitation in the City's permit for April
through August would probably require construction and operation of a reverse osmosis treatment
plant for at least a portion of the City's effluent at a very large cost; and (2) because of the
relatively high salinity of the receiving water and the relatively small portion of flow provided by
the City's discharge, the City's use of reverse osmosis would have relatively little effect on the EC
of water in the river. (2005 Manteca Order at p. 12, emphasis added.)
In its most recent decision to adopt WQBELs that are more stringent than those required by the 2005 Manteca Order, the Central Valley Water Board found that the Tracy Order and 2006 amendments to the Bay-Delta Plan supersede the conclusions in the 2005 Manteca Order. We disagree. As indicated in section A.5 below, the State Water Board’s assertion in the Tracy Order that the 2006 amendments to the Bay-Delta Plan merely affirmed that the EC objectives apply to municipal discharges is unsubstantiated. (Tracy Order at p. 8, fn.12.) Moreover, to date, the United States Environmental Protection Agency (U.S. EPA) has not approved the amendments as required by law before they may apply to NPDES permit conditions. (See 40 C.F.R. § 131.21; see Alaska Clean Water Alliance v. U.S. EPA, No. C96-1726R, 1997 U.S. Dist. LEXIS 11144, at *8-9 (W.D. Wash. July 8, 1997) [finding that, “Congress did not intend new or revised state standards to be effective until after EPA had reviewed and approved them,” emphasis added], and Northwest Environmental Advocates v. U.S. EPA, No. 05-1876-HA, 2208 U.S. Dist. LEXIS 2115, at *3-4 (D. Or. Jan. 7, 2008) [holding that 40 C.F.R. § 131.21(c) prohibits state water quality standards promulgated after May 30, 2000, from being effective until formally approved by U.S. EPA].) Nothing since the 2005 Manteca Order has altered the material facts that underpin it. Indeed, the Tracy Order notes that the objectives are “unchanged” from the 1991 version of the Bay-Delta Plan; the same objectives were in effect when the State Water Board adopted the 2005 Manteca Order. (Tracy Order at p. 12; see section A.5.a below.) Thus, the State Water Board’s rationale and conclusion in the 2005 Manteca Order that the 700 μmhos/cm should not apply to Manteca’s discharge remains sound and applies equally to the 2009 Permit.

2. There are no Feasible Interim Planning Solutions that can be Fully Implemented in Time for Manteca to Avoid Pursuing MF/RO

In its Tracy Order, the State Water Board stated that the Central Valley Water Board could consider “interim planning solutions” for additional flexibility in regulating salt discharges. (Tracy Order at p. 10.) The “interim planning solutions” identified included variances, site-specific objectives and/or an off-set policy. (Id. at p. 10, fn.17.) Although characterized as

6 In contrast, total maximum daily loads and the Central Valley Water Board’s CV-SALTS processes were identified as long-term options. (Tracy Order at p. 10, fn.17.)
“interim” options, all three require planning, development, public review, and multiple agency adoption and/or approval. (See Stay Request, section C.2.b.) By virtue of the required processes alone, leaving aside the feasibility of these options based on technical or policy grounds, the time associated with implementation of such options is at least five years. (Declaration of Michael D. Bryan, Ph.D., In Support of City of Manteca’s Request for Stay (Bryan Decl.), filed concurrently herewith, at ¶¶ 6, 9, 12 and 14.) Moreover, this timeframe does not account for or reflect current staffing issues and furloughs due to the state’s budgetary circumstances.

As indicated previously, Manteca received a TSO that allows five years to come into compliance with the effluent limitations at issue here, which provides Manteca with protection from mandatory minimum penalties (MMPs). As a matter of law, Manteca cannot receive further protection from MMPs beyond this timeframe. (Wat. Code, § 13385(j)(3)(C).) Thus, absent a change in statute or other regulation, Manteca must comply with the effluent limitations of 700 µmhos/cm (April 1-August 31) by October 1, 2014. To ensure compliance and avoid the imposition of MMPs and other enforcement actions, Manteca has no choice but to move forward with MF/RO at this time, as it is the only option with sufficient certainty to ensure compliance with the TSO.

3. The Delta’s Salinity Problems are Complex, and the EC Objectives for the Southern Delta are in Flux

As indicated in the 2006 Bay-Delta Plan, the State Water Board continues to review and evaluate the efficacy of the southern Delta water quality objectives. (Bay-Delta Plan at p. 6.) As part of this effort, the State Water Board is to review: (1) the salinity requirements of the beneficial uses of water in the southern Delta; (2) the causes of salt loading in the southern Delta; (3) practices that could reduce the salt loading; (4) flow and salt load reduction measures to implement the salinity objectives; and (5) the timeline to implement these measures. (Ibid.) Thus, the State Water Board initiated a public process to review and potentially update the Bay-Delta Plan, water rights and water quality regulation.7 Most recently, the State Water Board published a

7 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/. Manteca requests that the State Water Board take official notice under section 648.2 of title 23 of the California Code of Regulations of the fact that the State Water Board initiated the ongoing public process to review the Bay-Delta Plan.
schedule for this process indicating full adoption and approval of such amendments by March of 2011.  

Recent scientific investigations indicate that the 700 µmhos/cm is more restrictive than needed to protect beneficial uses. (See Dr. Glenn Hoffman, *Salt Tolerance of Crops in the Southern Sacramento-San Joaquin Delta* (July 14, 2009) (Hoffman Report).) The Hoffman Report considers several approaches to determine salinity requirements for the conditions specific to the southern Delta to support the agricultural beneficial use. The Hoffman Report recommends EC objectives for crop protection during the summer irrigation season that range from 800 µmhos/cm to 1,400 µmhos/cm. *(Id. at pp. 76-77.)* Notably, the Hoffman Report demonstrates that the Manteca WQCF’s current discharge of EC is within levels that protect the most sensitive beneficial uses. In light of the State Water Board’s pending process, it is unreasonable to expect Manteca to commit scarce resources to meet a water quality objective that may change in the next 15 months. However, because of the uncertainty and controversy surrounding the Bay-Delta Plan, Manteca is left with no other option.

4. Manteca Relied in Good Faith on the 2005 Manteca Order to Take Affirmative Steps to Significantly Reduce the Salinity of the WQCF’s Discharge

Manteca made drastic operational changes and irretrievably committed resources to comply with the modified 2004 Permit’s year-round EC effluent limitation of 1,000 µmhos/cm. Before mid-2005, groundwater was Manteca’s potable water source. The local groundwater is high in total dissolved solids and thus caused EC levels in the effluent to exceed the WQCF’s prior 1,000 µmhos/cm EC limitation. Beginning in August 2005, Manteca began to change the makeup of the potable water supply source to include surface water from the newly constructed South San Joaquin Irrigation District surface water treatment plant. Moreover, Manteca constructed the Industrial Pipeline System in part to eliminate EC contributed to the WQCF from Manteca’s largest industrial discharger. The Industrial Pipeline System became fully operational in April 2007 and separates the food processing wastes from the WQCF for direct application to

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agricultural fields. In September 2007, the City replaced its chlorine disinfection and
dechlorination processes by upgrading the WQCF to use UV disinfection and tertiary treatment
through the installation of filters.

As a result of these actions, Manteca has reduced the WQCF effluent EC from an average
of approximately 1,000 µmhos/cm to an average of less than 800 µmhos/cm—more than a
27 percent reduction. (See Transcript of the Central Valley Regional Water Quality Control
Board, Item 17, City of Manteca and Dutra Farms, Inc., Manteca Wastewater Quality Control
Facility, San Joaquin County – Consideration of NPDES Permit Renewal (NPDES
No. CA0081558) and Time Schedule Order (Oct. 8, 2009) (Transcript) at pp. 31-32; all cited
pages attached hereto as Exh. D.) Manteca has fully complied with the 1,000 µmhos/cm year-
round EC effluent limitation. Despite the significant decreases, the WQCF will not comply with
the EC effluent limitations of 700 µmhos/cm for April through August for current and increased
future discharges. (See Transcript at p. 35.) To ensure compliance would require MF/RO for only
2.5 mgd of the WQCF effluent.9 (See ibid.) Initial construction costs for MF/RO facilities are
estimated at $38.4 million, which results in an annual cost of approximately $3.7 million for
capital improvements and operation and maintenance of the facilities. (See ibid.) These costs do
not account for the disposal of approximately 0.5 mgd of highly saline brine that will result from
the MF/RO process.10 (See ibid.) Even with this expenditure, there would be no meaningful
improvement in EC receiving water levels.11 In sum, compliance with the WQBELs of
700 µmhos/cm will result in a 0.02 percent reduction of salinity in the San Joaquin River. (See
ibid.) The marginal benefit simply does not justify the costs to construct and operate MF/RO
facilities nor warrant the undesirable environmental effects of the brine disposal. Thus, these

9 Manteca is considering whether to regulate water softeners to reduce further the salinity in the WQCF’s effluent.
(Transcript at pp. 33-34.) While regulating water softeners may provide some benefit, this alone would not be enough
to eliminate the need to install MF/RO facilities.

10 The State Water Board previously took official notice that the use of reverse osmosis would produce highly saline
brine that requires acceptable disposal. (2005 Manteca Order at p. 12.)

11 Based on Manteca’s 2008 antidegradation analysis, an increase in Manteca’s discharge to 17.5 mgd results in an
incremental improvement in EC in the river during critical dry flow conditions to an estimated one percent; during dry
normal years, the improvement would be an approximate 0.5 percent.
WQBELs are directly contrary to the rationale in the State Water Board’s 2005 Manteca Order that expressly governs the WQCF’s discharge and must be rescinded.

5. The Bay-Delta Plan Water Quality Objectives for EC Do Not Apply to Municipal Discharges nor the Entire Southern Delta

The Bay-Delta Plan establishes water quality objectives for EC to protect agricultural beneficial uses. The EC objectives at issue here are for four specified compliance locations in the southern Delta and include 700 µmhos/cm between April and August and 1,000 µmhos/cm between September and March. (Bay-Delta Plan at p. 13.) To implement the EC objectives, the Permit imposes final effluent limitations for EC that are identical to the objectives and immediately effective on the Manteca WQCF. (Permit at pp. 12, 13.)

The Permit includes effluent limitations based on the erroneous determination that the Bay-Delta Plan’s EC objectives to protect agricultural water supply in the southern Delta apply to municipal discharges. (Permit at p. F-48.) A careful review of the history of the EC objectives reveals that the State Water Board did not intend for the objectives to apply to municipal discharges in the Delta. The State Water Board must amend the Bay-Delta Plan in accordance with the Water Code before the EC objectives and associated implementation program may lawfully apply to the Manteca WQCF’s discharge.

a. The History of the Bay-Delta Plan Agricultural Water Quality Objectives for EC Evinces No Intent to Apply the Objectives to Manteca

The Bay-Delta Plan’s history reveals that the State Water Board did not intend for the EC objectives at issue to apply to municipal discharges—at least not until the Board amended the plan in 2006. The State Water Board established the EC objectives for the southern Delta to protect

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12 The WQBELs adopted in the Permit take effect immediately; however, because Manteca cannot immediately comply with the WQBELs consistently, the Central Valley Water Board concurrently adopted a TSO, which provides Manteca with an additional five years to comply.

13 Since the Bay-Delta Plan EC objectives do not lawfully apply to municipal discharges at this time, there is no applicable numeric water quality objective with which to conduct a reasonable potential analysis for municipal discharges of EC.

14 As discussed in section III.A.5.b, infra, the State Water Board did not satisfy the Water Code for amending basin plans so that the EC objectives may lawfully apply to municipal discharges.
agricultural beneficial uses in the 1978 version of the Bay-Delta Plan. (See 1978 Bay-Delta Plan.)

The 1978 Bay-Delta Plan represented the first time the State Water Board fully combined its water quality and water rights functions to develop a single set of water quality objectives. (Id. at p. I-2.)

In the plan, the State Water Board stated that it would adopt a *water right* decision to implement the salinity objectives. (Id. at p. VII-2.) The State Water Board intended to control *water quantity/flow* in the Delta—not municipal discharges—to meet the EC objectives.

The 1991 version of the Bay-Delta Plan included water quality objectives for EC in the southern Delta applicable at four compliance points—the Vernalis gauge station and three other southern Delta locations. *(Water Quality Control Plan for Salinity, San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (May 1991) (1991 Bay-Delta Plan) at Table 1-1, p. 4 of 8.) The objectives specified EC levels of 0.7 millimhos per centimeter (m mh/cm) or 700 fAmhos/cm from April 1 through August 31, and 1.0 mmhos/cm or 1,000 fAmhos/cm from September 1 through March 31.\(^\text{15}\) *(Ibid.)* Similar to the 1978 Bay-Delta Plan, the 1991 version did not apply EC objectives to municipal discharges. Rather, the plan required that the objective be met through flow requirements: "[T]he State Board recognizes that the flow requirements and salinity objectives are largely to be met by the regulation of water flow." (Id. at p. 2-2; see 2005 Manteca Order at p. 13.) The State Water Board also established a goal to reduce the salt loadings to the San Joaquin River by at least 10 percent through increased irrigation efficiency, which decreases subsurface drainage. (Id. at p. 7-4.) The 1991 Bay-Delta Plan refers to development of a salt load reduction policy, the goals of which “should be achieved through development of best management practices and waste discharge requirements *for non-point source dischargers.*” (Id. at p. 7-5, emphasis added; see 2005 Manteca Order at p. 7.)


\(^{15}\) The 1991 Bay-Delta Plan specified the values as maximum 30-day running averages of mean daily EC. (1991 Bay-Delta Plan at Table 1-1, p. 4 of 8.)
expressed that the State Water Board would evaluate implementation measures for the southern Delta agricultural salinity objectives during water right proceedings. (1995 Bay-Delta Plan at pp. 17, 29; 2005 Manteca Order at p. 8.) The 1995 Bay-Delta Plan addresses the implementation program for the objectives as follows:

Elevated salinity in the southern Delta is caused by low flows, salts imported in irrigation water by the State and federal water projects, and discharges of land-derived salts primarily from agricultural drainage. Implementation of the objectives will be accomplished through the release of adequate flows to the San Joaquin River and control of saline agricultural drainage to the San Joaquin River and its tributaries. (1995 Bay-Delta Plan at p. 29, emphasis added; 2005 Manteca Order at pp. 7-8.)

In March 2000, the State Water Board adopted Revised Water Right Decision 1641 (D-1641). D-1641 addressed the relationship between water diversions (flow) and implementation of water quality objectives for the Delta. (See id. at p. 83.) In 2004, the State Water Board adopted Resolution No. 2004-0062 to affirm the Bay-Delta Plan as it then existed unless and until changed by further Board action. (See 2005 Manteca Order at p. 10.) In adopting the staff report, the State Water Board accepted the recommendation to receive information on whether to amend the EC objectives at issue. (Resolution No. 2004-0062, attached hereto as Exh. E for the Board’s convenience, at p. 1; see 2005 Manteca Order at p. 10.) The State Water Board also agreed to consider whether to amend the Bay-Delta Plan implementation program as related to any changes to the EC objective. (Resolution No. 2004-0062 at p. 2; see 2005 Manteca Order at p. 10.) At no time during the 25-year history did the State Water Board identify treated municipal discharges as a source of salinity in the southern Delta to be regulated under the Bay-Delta Plan. (Resolution No. 2004-0062.)

On December 13, 2006, the State Water Board amended the Bay-Delta Plan again. (See State Water Board Resolution No. 2006-0098, attached hereto as Exh. F for the Board’s convenience.) The amendments did not change the EC objectives as established in Table 2 of the Bay-Delta Plan for the southern Delta despite substantial evidence that the objectives are not necessary for the reasonable protection of agricultural beneficial uses. (See, e.g., Plan Amendment Report, Appendix 1 to the 2006 Water Quality Control Plan for the San Francisco
The 2006 Bay-Delta Plan amendments at issue were substantive. The revisions unreasonably and wholly altered the geographic scope of the EC objectives for the southern Delta and applied them to municipal discharges in the implementation program for the first time.

Specifically, the State Water Board claims to have amended the Bay-Delta Plan to expand the spatial application of the objectives from the four specific compliance locations to “all locations in that general area.” (2006 Bay-Delta Plan at p. 10; see 2006 Plan Amendment Report at p. 16.) However, the amendments occurred without the analysis mandated by Water Code section 13241, without a comprehensive implementation plan as required by Water Code section 13242 and in violation of the reasonableness requirement of Water Code section 13000. Further, U.S. EPA has
yet to approve the amendments as required by section 131.21 of title 40 of the Code of Federal
Regulations prior to their use in NPDES permits. (Alaska Clean Water Alliance, supra,
1997 U.S. Dist. LEXIS 11144, at *8-9; Northwest Environmental Advocates, supra,
2008 U.S. Dist LEXIS 2115, at *3-4.)

Water Code section 13241 requires the State Water Board to adopt water quality objectives
to “ensure the reasonable protection of beneficial uses and the prevention of nuisance.”
(Emphasis added.) Water Code section 13241 “recognize[s] that it may be possible for the quality
of water to be changed to some degree without unreasonably affecting beneficial uses.”
(Emphasis added.) The factors the State Water Board must consider when it adopts water quality
objectives include:
(a) Past, present, and probable future beneficial uses of water.
(b) Environmental characteristics of the hydrographic unit under consideration,
including the quality of water available thereto.
(c) Water quality conditions that could reasonably be achieved through the
coordinated control of all factors which affect water quality in the area.
(d) Economic considerations.
(e) The need for developing housing within the region.
(f) The need to develop and use recycled water. (Wat. Code, § 13241,
emphasis added.)

In addition, Water Code section 13000 requires the State Water Board to regulate water
quality to the extent reasonable given the demands made upon the waters. Therefore, multiple
provisions of the Water Code impose a mandatory duty on the Board to adopt water quality
objectives that are reasonable. (Memorandum to Central Valley Water Boards from
W. R. Attwater, Office of Chief Counsel, State Water Board (Jan. 4, 1994) p. 3.) “[E]conomic
considerations are a necessary part of the determination of reasonableness.” (Ibid.) This requires
an assessment of the costs of an objective’s adoption or amendment based upon: (1) whether the
objective is attained; (2) what methods are available to achieve compliance with the objective if
not it is not attained; and (3) the costs of those methods. (Id. at p. 1.) The State Water Board must
consider any information on economic impacts provided by the regulated community and other
interested parties. (Ibid.) If the potential economic impacts are significant, the State Water Board
must articulate why the objective is necessary to protect beneficial uses in a reasonable manner
despite the adverse consequences. (Ibid.) Where an amended objective is at issue, the associated
staff report or resolution may address the economic considerations. (Id. at pp. 1-2.)

When the State Water Board adopts new or modified water quality objectives, it must include a program of implementation to achieve the objectives. (Wat. Code, § 13242.) An implementation program describes the actions necessary to achieve the objectives, including recommendations for action by any public or private entity. (Wat. Code, § 13242(a).) The administrative record for the 2006 Bay-Delta Plan as amended clearly shows that the State Water Board complied with none of these statutory requirements. Instead, the record indicates that the State Water Board attempted to characterize these substantive changes as editorial and declaratory revisions. (See, e.g., Tracy Order at p. 8, fns.12 and 10.) Such a claim conflicts directly with the State Water Board’s findings and conclusions in the 2005 Manteca Order. As previously explained, the Bay-Delta Plan has always relied primarily on flow requirements to implement the EC objectives in the southern Delta. In the specific case of the Manteca WQCF’s discharge, the State Water Board observed:

[Although discharge of treated wastewater to the Delta or its tributaries under an NPDES permit can affect EC in the southern Delta, previous State Board decisions and water quality control plans do not discuss treated effluent discharges as a source of salinity in the southern Delta. Similarly, previously adopted implementation programs for complying with the EC objectives in the southern Delta have focused primarily on providing increased flows and reducing the quantity of salts delivered to the Delta and its tributaries by irrigation return flows and groundwater. The record also establishes that the implementation date for actions to implement the 0.7 mnhos/cm EC objective for April through August has been repeatedly postponed and that the State Board recently adopted a report recommending review of southern Delta EC objectives. Revised Water Right Decision 1641 places primary responsibility for meeting the EC objectives on the Department of Water Resources and the Bureau of Reclamation . . . .] (2005 Manteca Order at pp. 10-11, emphasis added.)

Having made these statements in 2005, the State Water Board cannot rewrite history by way of amendments to the Bay-Delta Plan in 2006 claiming that the EC objectives were always intended to apply to municipal discharges.

Moreover, the 2006 Bay-Delta Plan memorializes the State Water Board’s commitment to review (and likely amend) the EC objectives and implementation program at issue. (2006 Bay-Delta Plan at p. 6.) Thus, contrary to the assertions made in the Tracy Order, the State Water Board’s adoption of the 2006 Bay-Delta Plan can hardly be characterized as a reaffirmation of the
southern Delta objectives. (See Tracy Order at p. 10, claiming “reaffirmation” by way of the 2006 amendments.) The State Water Board has initiated a public process to review the southern Delta EC objectives. Considering the Bay-Delta Plan’s history and its long-standing inclusion of an implementation program that relies on water rights regulation—not regulation of municipal discharges—to meet southern Delta EC objectives, any changes to the Bay-Delta Plan that alter this fundamental premise are necessarily substantive. All substantive changes to the Bay-Delta Plan are subject to the mandates required in Water Code sections 13241, 13242 and 13000. If the substantive changes are not adopted pursuant to these statutory requirements, the changes and application thereof are unlawful. Thus, to the extent that the Central Valley Water Board relied on the 2006 amendments to the Bay-Delta Plan to find that the effluent limitations of 700 μmhos/cm were appropriate, even though such action specifically violated the 2005 Manteca Order, the Central Valley Water Board’s action was unlawful.

6. The Permit Should Include Only Year-Round Effluent Limitations of 1,000 μmhos/cm for the Manteca WQCF’s Present and Future Discharges

Year-round effluent limitations of 1,000 μmhos/cm EC for present and future discharges within the Permit term are lawful, enforceable and will protect beneficial uses. Manteca’s 2004 Permit includes a year-round numeric effluent limitation for EC of 1,000 μmhos/cm. The limitation was enforceable and deemed appropriate by the State Water Board after review of evidence in the record. (2005 Manteca Order at p. 22.) “Although the conditions in waste discharge permits are established to implement relevant water quality control plans, the effluent limitations in permits may differ from the numerical water quality objectives established in a Basin Plan for various reasons.” (Id. at pp. 12-13.) The Central Valley Water Board likely would have retained the 1,000 μmhos/cm limitation but for its interpretation of the Tracy Order and the 2006 Bay-Delta Plan as foreclosing the option. (See Responses to Central Valley Water Board Written Comments (RTC) (Sept. 17, 2009), attached hereto as Exh. G at p. 4; see also Permit at pp. F-49 - F-51; Transcript at pp. 44-46, 63-64, 66, 68-69.) Because the Tracy Order did not overturn or otherwise change application of the 2005 Manteca Order to Manteca, and because implementation of the Bay-Delta Plan in the Permit is unlawful, the Permit should be revised to
include year-round EC effluent limitations of 1,000 \( \mu \text{mhos/cm} \) for present and future discharges.

With that revision, the TSO would become unnecessary and should be rescinded.

B. The SESP is Exempt from Title 27 Under the Reuse Exemption

Title 27 establishes the minimum standards that govern the water quality associated with waste discharges to land for treatment, storage or disposal. (Title 27, § 20080(a).) The regulations classify wastes and specify requirements to site, design, construct, monitor, and close waste management units (e.g., landfills, waste piles, surface impoundments, and land treatment units). (Title 27, § 20080.) For example, Title 27 classifies as "designated waste" nonhazardous waste that contains pollutants that could affect beneficial uses or exceed applicable water quality objectives when released. (Title 27, §§ 20164, 20210; see Wat. Code, § 13173.) Designated wastes must meet Title 27 containment criteria, such as liner requirements, and require extensive monitoring. (Title 27, § 20210.) Title 27 conditionally exempts certain activities from its provisions. (Title 27, § 20090.) These exemptions include the sewage and reuse exemptions at issue in this case.

Manteca stores secondary treated effluent in the SESP prior to use of the recycled water on the agricultural fields. (Permit at p. F-14.) The Central Valley Water Board agrees that the SESP is part of the Manteca WQCF's water reuse operations, but disagrees that the SESP qualifies for the reuse exemption of Title 27. Since the SESP stores fully treated municipal wastewater for reuse on agricultural lands, Manteca contends that the reuse exemption applies. The reuse exemption reads:

Recycling or other use of materials salvaged from waste, or produced by waste treatment, such as scrap metal, compost, and recycled chemicals, provided that discharges of residual wastes from recycling or treatment operations to land shall be according to applicable provisions of this division. (Title 27, § 20090(h).)

The Central Valley Water Board misconstrued Title 27 and a recent State Water Board order to conclude erroneously—and reluctantly—that the only Title 27 exemption that may be applied is the sewage exemption. (RTC at p. 4; Transcript at pp. 55-56, 60-62, 66-70.) The factual basis for this conclusion is that the SESP stores the recycled water until it can be used. (RTC at p. 4.) The Permit’s fact sheet reads: “[T]he Regional Water Board cannot determine
whether the wastewater stored in the SESP, and thus the underlying groundwater, comply with the applicable water quality control plan.” (Permit at p. F-14.) As a result, the Permit includes a compliance schedule for the Manteca WQCF to meet the final groundwater limitations by October 1, 2014, and demonstrate or achieve compliance with all preconditions for the sewage exemption. (Permit at pp. 33, F-14.) “Compliance with the groundwater limitations will result in the storage of secondary effluent in the SESP meeting the preconditions for an exemption from Title 27.” (Permit at p. 33.) Under the compliance schedule, Manteca must submit a method of compliance workplan/schedule within six months after the Permit’s adoption and submit annual progress reports thereafter. (Permit at p. 33.)

Manteca recognizes that the State Water Board’s recent order regarding the City of Lodi (Lodi) altered the manner in which the Central Valley Water Board is to apply Title 27 exemptions. (See In the Matter of Own Motion Review of City of Lodi Waste Discharge Requirements (July 7, 2009), Order WQ 2009-0005 (Lodi Order).) However, a key fact distinguishes Manteca’s circumstances from those of Lodi and supports application of the reuse exemption in a manner consistent with the Lodi Order. The State Water Board declined to apply the reuse exemption in the Lodi Order because some of the wastewater stored in Lodi’s pond allegedly was untreated industrial waste. (Id. at pp. 5, 9.) “[T]he wastewater mixture applied to the fields and discharged to the ponds includes, at various times, secondary effluent, untreated industrial wastewater, a biosolids slurry, stormwater and runoff, and biosolids supernatant.” (Id. at p. 10.) This is not the case in Manteca, as the WQCF stores only secondary treated recycled water in the SESP. Nothing in the Lodi Order suggests that the State Water Board would categorically refuse to apply the reuse exemption to ponds that contain only recycled water and are integral to the recycling program.

Moreover, the storage of secondary effluent for reuse falls within the reuse exemption because it is an essential component of recycling. Such an outcome is consistent with decades-long legislative and regulatory efforts to increase recycled water use to augment the state’s dwindling water supplies. The Legislature and State Water Board recently ramped up these efforts. For example, signed into law in 2007, Assembly Bill 1481 (De La Torre) required the
State Water Board to develop and adopt a general permit for landscape irrigation uses of recycled water. The Board adopted the general permit on July 7, 2009. Moreover, the State Water Board adopted its Recycled Water Policy (Policy) in February 2009. The Policy establishes the goal to: "Increase the use of recycled water over 2002 levels by at least one million acre-feet per year (afy) by 2020 and by at least two million afy by 2030." (Id. at p. 1.) The Policy expressly directs the State and Central Valley Water Boards to exercise their authority to "the fullest extent possible to encourage the use of recycled water from municipal wastewater sources." (Id. at pp. 1, 3.)

Further, a finding that the reuse exemption of Title 27 applies does not mean that the Central Valley Water Board will adopt waste discharge requirements that do not protect groundwater. To the contrary, the Central Valley Water Board is required by Water Code section 13263 to adopt requirements that are consistent with the Basin Plan taking into consideration beneficial uses and water quality objectives, thereby ensuring that the state’s groundwater resources are protected. For these reasons, Manteca need not demonstrate that the WQCF’s use of the SESP complies with the Basin Plan before the reuse exemption may apply.

IV. CONCLUSION

Based on this Petition and the evidence in the record, Manteca respectfully requests that the State Water Board revise the Permit to replace the seasonal effluent limitations for EC with year-round effluent limitations of 1,000 μmhos/cm for present and future discharges. Since this would render the TSO unnecessary, Manteca requests that the State Water Board also rescind the TSO upon revising the effluent limitations. Manteca further requests that the State Water Board find that the SESP qualifies for the reuse exemption of Title 27 and revise the Permit findings and provisions accordingly. In the alternative, Manteca respectfully requests a remand of the Permit to the Central Valley Water Board with direction to revise the EC limitations and application of Title 27 to the SESP.

DATED: November 9, 2009

SOMACH SIMMONS & DUNN
A Professional Corporation

By: ________________
Theresa A. Dunham
Attorneys for City of Manteca
PROOF OF SERVICE
(State)

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 9, 2009, I served the following document(s):

CITY OF MANTECA'S PETITION FOR REVIEW AND STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

XXX (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
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Phil Govea, P.E.
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XXX (by personal delivery) by having a messenger personally deliver a true copy thereof to the person(s) and at the address(es) set forth below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2009, at Sacramento, California.

Crystal Rivera
Concurrent with this Request for Stay and Memorandum of Points and Authorities in Support Thereof (Stay Request), the City of Manteca (Manteca) filed a Petition for Review and Statement of Points and Authorities in Support Thereof (Petition). The Petition challenges certain provisions of Order No. R5-2009-0095, NPDES\(^1\) No. CA0001558 Waste Discharge Requirements for City of Manteca and Dutra Farms, Inc., City of Manteca Wastewater Quality Control Facility (Permit) and the associated Time Schedule Order No. R5-2009-0096 (TSO) adopted by the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) on October 8, 2009.\(^2\) Manteca hereby requests a stay of the following provisions of the Permit: Effluent limitations for electrical conductivity (EC) of 700 micromhos per centimeter (\(\mu\)hos/cm) (April 1 to August 31) as set forth in Effluent Limitations and Discharge

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\(^1\) National Pollutant Discharge Elimination System.

\(^2\) The Permit is attached as Exhibit A to the City of Manteca's Petition for Review and Statement of Points and Authorities in Support Thereof, filed concurrently herewith.
Specifications IV.A.1.a, Table 6, and IV.A.2.a, Table 7 of Permit pages 12 and 13, respectively.

Manteca also requests a stay of the TSO in its entirety.

Manteca requests that any such stay take effect as of the effective date of the Permit and TSO until the State Water Resources Control Board (State Water Board or Board) fully acts on the Petition or the time to do so at Manteca's request expires. By virtue of the stay, the length of the period for compliance in the TSO would not change. Rather, each deadline would shift by a period equal to the time between the date that the Permit issued (October 8, 2009) and the date of the Petition’s disposition. The total time allowed for compliance and periods for interim steps toward compliance should equal the period(s) provided in the applicable provision unless extended by the State Water Board.

Concurrent with this Stay Request, Manteca submits declarations in support of the evidence referred to herein. The Stay Request and declarations demonstrate that a stay is appropriate in this case because: (1) the stay will prevent substantial harm to Manteca and the public interest; (2) the stay will not cause substantial harm to other interested persons or the public interest; and (3) the Petition raises substantial questions of fact or law. (See Cal. Code Regs., tit. 23, § 2053(a)(1)-(3).) To comply with the Permit’s effluent limitations of 700 \( \mu \text{mhos/cm} \) for salinity, Manteca would have to plan, design and install new treatment facilities at a substantial cost for no meaningful water quality benefit. Moreover, there are no “interim planning solutions” that can be fully implemented in time for Manteca to avoid substantial harm. In short, Manteca would have to spend a significant amount of public funds on such facilities before the State Water Board can resolve the Petition. In challenging the effluent limitations for salinity as not necessary, reasonable or supported by the record, this Stay Request explains that Manteca will incur substantial harm as a result of the unnecessary expenditure of public funds.

DATED: November 9, 2009

By: [Signature]

Theresa A. Dunham
Attorneys for City of Manteca
MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Water Code sections 13320 and 13321, Petitioner Manteca concurrently files its Petition and this Stay Request related to Manteca’s Permit and the associated TSO. This Stay Request satisfies the requirements of section 2053 of title 23 of the California Code of Regulations.

A. STATEMENT OF FACTS

Manteca owns and operates the Manteca Wastewater Quality Control Facility (Manteca WQCF or WQCF) in San Joaquin County, California. The WQCF serves a total population of approximately 80,500 people in Manteca, the City of Lathrop, Raymus Village, and other communities. The WQCF produces secondary treated effluent and stores it in an onsite pond prior to reuse on nearby agricultural fields. The secondary effluent in excess of crop demands undergoes tertiary-level treatment. The tertiary treated effluent is used for construction purposes or is discharged to the San Joaquin River. Manteca has plans for additional uses of the recycled water. (See City of Manteca Recycled Water Master Plan, 2007.)

The Permit authorizes the Manteca WQCF to increase its discharge from 9.87 million gallons per day (mgd) to 17.5 mgd of tertiary treated water over the next five years. The Permit prescribes final effluent limitations for EC applicable to both the WQCF’s current and future discharges. In particular, EC in the effluent may not exceed 700 μmhos/cm from April through August or 1,000 μmhos/cm September through March. (Permit at pp. 12, 14.) The summer limitations of 700 μmhos/cm are new. (See TSO at p. 1.) To comply with these limitations, Manteca must spend an estimated $38.4 million of increasingly scarce public funds to plan for, design and construct microfiltration and reverse osmosis (MF/RO) facilities and conduct the associated environmental review. (Declaration of Phil Govea in Support of City of Manteca’s Request for Stay (Govea Decl.) at ¶ 9.) Manteca must immediately begin to spend a significant portion of this amount for planning, pre-design and compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to ensure timely compliance with the TSO. (Govea Decl. at ¶ 11.) The MF/RO facilities are unnecessary to protect human health or the environment.
B. STANDARD FOR ISSUANCE OF A STAY

Water Code section 13321 provides: "In the case of a review by the state board under Section 13320, the state board, upon notice and hearing, if a hearing is requested, may stay in whole or in part the effect of the decision and order of a regional board or of the state board."

The State Water Board’s regulations further provide that it may grant a stay if the petitioner demonstrates:

1. Substantial harm to petitioner or to the public interest if a stay is not granted;
2. Lack of substantial harm to other interested persons and to the public interest if a stay is granted; and
3. Substantial questions of fact or law regarding the disputed action.

(Cal. Code Regs., tit. 23, § 2053(a).)

The request for stay must be supported by a declaration under penalty of perjury of a person or persons with knowledge of the facts alleged. (Cal. Code Regs., tit. 23, § 2053(a).) As demonstrated below, Manteca’s request satisfies these requirements.

C. THE STATE WATER BOARD SHOULD ISSUE A STAY PENDING RESOLUTION OF MANTECA’S PETITION FOR REVIEW

On October 8, 2009, the Central Valley Water Board reluctantly issued the Permit and TSO that are the subject of Manteca’s Petition. (See Transcript of the Central Valley Regional Water Quality Control Board, Item 17, City of Manteca and Dutra Farms, Inc., Manteca Wastewater Quality Control Facility, San Joaquin County – Consideration of NPDES Permit Renewal (NPDES No. CA0081558) and Time Schedule Order (Oct. 8, 2009) (Transcript) at pp. 44-46, 55-56, 60-70. All pages cited to the Transcript are attached as Exhibit D to the City of Manteca’s Petition for Review and Statement of Points and Authorities in Support Thereof.)

The Permit imposes effluent limitations for EC of 700 µmhos/cm (April 1 to August 31) in Effluent Limitations and Discharge Specifications IV.A.1.a, Table 6, and IV.A.2.a, Table 7, at pages 12 and 13, respectively. These new effluent limitations took immediate effect when adopted. (Ibid.) Since the Manteca WQCF cannot immediately comply with the new limitations, the Central Valley Water Board adopted the TSO. The TSO includes an ambitious schedule to bring the WQCF into compliance with the limitations by October 1, 2014. (TSO at pp. 4-5.)
Despite the potential availability of "interim planning options," the only certain option for compliance considering the limited time available is the installation of MF/RO facilities for part of the WQCF's discharge. (Transcript at pp. 34, 42; Govea Decl. at ¶¶ 9-11.) To ensure compliance with the TSO, Manteca must immediately begin to plan and design the MF/RO facilities. (Govea Decl. at ¶ 11.) Moreover, Manteca's installation of MF/RO facilities is a project under CEQA that will likely require preparation and public review of an Environmental Impact Report. Because of the short time period within which Manteca must perform several tasks to come into compliance, Manteca would have to spend a significant amount of public funds toward this end before the State Water Board can resolve the Petition.

In challenging the effluent limitations and TSO as unnecessary and unreasonable, the Petition raises substantial technical and legal issues. Specifically, the Petition challenges the Central Valley Water Board's action as being contrary to this Board's decision in In the Matter of the Petition of Manteca (Mar. 16, 2005), Order WQ 2005-0005 (2005 Manteca Order). The Petition also raises questions of uncertainty relating to the feasibility of "interim planning solutions" and to the State Water Board's ongoing process to update the water quality objectives that are at issue in Manteca's Permit. On balance, Manteca and the public—the ratepayers—will incur substantial harm as a result of the unnecessary expenditure of public funds if the State Water Board declines to grant this Stay Request. Given the minimal impact of Manteca's discharge on the river, no substantial harm to interested persons or the public interest will result if the State Water Board grants the Stay Request.

Manteca requests that the stay take effect as of the date the Permit and TSO became effective. The provisions subject to the stay and TSO would remain stayed until the State Water Board resolves Manteca's Petition. By virtue of the stay, the total length of the period for compliance would not change, but each deadline would shift by a period equal to the time between October 8, 2009 (i.e., the date the Permit was adopted) and the date of the Petition's disposition.
1. Manteca Seeks to Stay the Effluent Limitations for EC of 700 μmhos/cm and Associated TSO

Manteca seeks a stay of certain final effluent limitations for EC as improper and unsupported by the evidence. In particular, Manteca respectfully requests that the State Water Board stay the requirement that the WQCF's current and future average monthly discharges of EC not exceed 700 μmhos/cm April 1 through August 31 of each year. The Permit establishes these seasonal EC limitations in Table 6 and Table 7 of the Effluent Limitations and Discharge Specifications at pages 12 and 13, respectively. Manteca also requests a stay of the TSO in its entirety. The Central Valley Water Board adopted the TSO solely to provide Manteca with time to come into compliance with the challenged effluent limitations without incurring mandatory minimum penalties. By law, the TSO and its protections are limited to five years from adoption of the effluent limitations. (Wat. Code, § 13385(j)(3)(C).)

2. This Case Warrants a Stay of the Effluent Limitations for EC of 700 μmhos/cm and Associated TSO

Manteca timely submits this request for a stay of the final effluent limitations of 700 μmhos/cm for EC and TSO in its entirety as adopted by the Central Valley Water Board on October 8, 2009. (See In the Matter of the Petitions of Boeing Company (June 21, 2006), Order WQ 2006-0007 (Boeing Order), at p. 5.) As subsequently demonstrated, a stay is proper and should issue in this case. The dispute raises substantial questions of fact or law regarding the challenged action; Manteca and the public interest will suffer substantial harm if the State Water Board does not grant the Stay Request; and no substantial harm to other interested persons or the public interest would result if the State Water Board grants the Stay Request.

a. The Disputed Action Raises Substantial Questions of Fact or Law

Salinity is a long-standing issue of concern in the Delta. Few water quality issues have presented such contentious technical and legal questions, many of which remain in flux and unresolved. Saline flows intrude into the Delta's freshwaters from the San Francisco Bay and enter the Delta's surface waters from agricultural drainage. The State Water Board concluded that "[e]levated salinity in the southern Delta is caused by low flows, salts imported in irrigation
water by the State and federal water projects, and discharges of land-derived salts primarily from agricultural drainage.” (Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, 95-1WR, May 1995 at p. 29; 2005 Manteca Order at pp. 7-8.)

The water quality objectives for EC in the southern Delta were at issue in the 2005 Manteca Order and continue to be at issue in the Petition. As explained fully in the 2005 Manteca Order, the State Water Board has historically regulated flows/water rights to meet these objectives. (See 2005 Manteca Order at pp. 6-10, 13-14.) Indeed, the Bay-Delta Plan did not purport to apply the objectives to municipal discharges when originally adopted. (See Water Quality Control Plan Sacramento-San Joaquin Delta and Suisun Marsh (Aug. 1978); see also 2005 Manteca Order at pp. 13-14.) In 2005, the State Water Board concluded that the effluent limitations at issue here (i.e., 700 μmhos/cm) were unreasonable because requiring the WQCF to comply with the limitation would not significantly impact receiving water quality but would result in the unreasonable expenditure of public resources to design and build MF/RO facilities. Manteca’s Petition challenges the very effluent limitations that this Board found unreasonable in the 2005 Manteca Order.

Moreover, the EC objectives for the southern Delta are in a state of flux. (See 2005 Manteca Order at p. 10; In the Matter of the Petitions of Stockton, et al. (Oct. 6, 2009), Order WQ 2009-0012, at p. 6.) The State Water Board initiated a public process to review the EC objectives and is likely to revise them and/or water rights as a result. (See Bay-Delta Plan at p. 6; State Water Board Resolution No. 2004-0062, at p. 1. Resolution No. 2004-0062 is attached as Exhibit E to the City of Manteca’s Petition for Review and Statement of Points and Authorities in Support Thereof.) Indeed, recent scientific studies indicate that 700 μmhos/cm as an objective is more restrictive than needed to protect beneficial uses. (See Dr. Glenn Hoffman, Salt Tolerance of Crops in the Southern Sacramento-San Joaquin Delta (July 14, 2009) (Hoffman Report).) The Hoffman Report considers several approaches to determine salinity requirements for the conditions specific to the southern Delta to protect the agricultural beneficial use. The Hoffman Report recommends EC objectives for crop protection during the summer irrigation season that range from 800 μmhos/cm to 1,400 μmhos/cm. (Id. at pp. 76-77.) The State Water Board will
consider the Hoffman Report during the public process to review the EC objectives. Notably, the Hoffman Report demonstrates that the Manteca WQCF’s current discharge of EC is within levels that protect the most sensitive beneficial uses.

In addition, the record reflects that the Central Valley Water Board reluctantly imposed the effluent limitations of 700 μmhos/cm for EC on Manteca’s discharge because the Central Valley Water Board believed it had no choice. The Central Valley Water Board interpreted a recent order of the State Water Board to foreclose the option of continuing the year-round effluent limitation of 1,000 μmhos/cm in effect under the Manteca WQCF’s prior permit as modified by the 2005 Manteca Order. (See Permit at pp. F-49 - F-51; Transcript at pp. 44-46, 63-64, 66, 68-69; see also 2005 Manteca Order at p. 22.) Manteca submits that in lieu of the seasonal effluent limitations for EC, the Permit should be revised to maintain the year-round EC effluent limitation of 1,000 μmhos/cm consistent with the 2005 Manteca Order. This would render the TSO unnecessary and inappropriate.

For these reasons, the disputed action as framed in the Petition raises substantial technical and legal issues. Whether the 2005 Manteca Order still applies to Manteca is the primary, overarching issue. If the 2005 Manteca Order still applies, the final effluent limitations of 700 μmhos/cm EC are unreasonable and must be removed from Manteca’s Permit.

b. Manteca and the Public Interest will Suffer Substantial Harm if the State Water Board does not Grant Manteca’s Stay Request

Manteca and the public interest will suffer substantial harm if the State Water Board does not grant Manteca’s Stay Request for the period of time pending resolution of the Petition. (See Boeing Order at p. 4 [“whether a stay is appropriate must be judged in the temporal sense”].) To comply with the TSO, Manteca will immediately have to begin the process to design and construct MF/RO facilities. (Govea Decl. at ¶ 11.) To wait until the State Water Board resolves the Petition would jeopardize Manteca’s ability to comply timely with the TSO. For example, to achieve compliance by October 1, 2014, Manteca must research treatment options and conduct pre-design within one year of the Permit’s adoption. (Govea Decl. at ¶ 12; Presentation to Central Valley Water Board from Phil Govea, City of Manteca (Presentation), attached as
Exhibit C to the City of Manteca’s Petition for Review and Statement of Points and Authorities in Support Thereof, at Slide No. 14.) Manteca would have to conduct and complete the CEQA review within the next two years. (Ibid.) Manteca estimates the initial construction costs of the facilities at $38.4 million, which results in an additional annual cost of $3.7 million for capital improvements and operation and maintenance costs. (Govea Decl. at ¶ 9.) These costs do not account for the disposal of approximately 0.5 mgd of highly saline brine that the MF/RO process will generate.3 (Ibid.) Manteca will have to raise the rates of its service to pay for the planning, design and construction of new MF/RO facilities. (Ibid.; Transcript at p. 35.) More immediately, Manteca expects to spend $1.6 million for planning, pre-design and CEQA compliance over the next two years. (Govea Decl. at ¶¶ 11, 12.) Once expended, these resources are irretrievable. (Govea Decl. at ¶ 11.)

Compounding the strain of the future expenditures of public funds needed to comply with the Permit and TSO, Manteca has already spent significant resources to comply with the prior permit’s year-round effluent limitation of 1,000 μmhos/cm EC. (See Permit at p. F-50; Transcript at pp. 30-33.) In the 2005 Manteca Order, the State Water Board deemed the limitation of 1,000 μmhos/cm EC appropriate to control salinity in the WQCF’s discharge. (2005 Manteca Order at pp. 14, 22.) Manteca relied in good faith on the 2005 Manteca Order to commit irretrievable public funds and other resources to reduce the salinity in the effluent by more than 27 percent. To accomplish this, Manteca made drastic operational changes. For example, Manteca replaced part of the local potable water supply source of highly saline groundwater with water from a new surface water treatment plant and constructed an industrial pipeline system in part to eliminate highly saline industrial waste discharged to the WQCF. (Permit at p. F-50; Transcript at pp. 31-32.) Manteca also replaced its chlorinated disinfection and dechlorination processes with ultraviolet disinfection (UV disinfection) and tertiary treatment through the installation of filters. (Transcript at p. 31.)

3 In an order that governs Manteca’s discharge, the State Water Board took official notice that the use of reverse osmosis produces highly saline brine that requires acceptable disposal. (2005 Manteca Order at p. 12.)
Further, there are no interim planning options that can be fully implemented with any
certainty in the five-year timeframe afforded Manteca in the TSO, which would allow Manteca to
avoid costs associated with designing and planning MF/RO. In its Tracy Order, the State Water
Board stated that the Central Valley Water Board could consider “interim planning solutions” for
additional flexibility in regulating salt discharges. *(In the Matter of the Petition of Environmental
Law Foundation and California Sportfishing Protection Alliance, Order WQ 2009-0003 (Tracy
Order) at p. 10.)* To avoid costs associated with planning, design and environmental review,
Manteca would need to know with a high degree of certainty that the interim planning options
would result in compliance prior to moving forward with MF/RO. However, the time required to
carry forward these options and confirm their outcome fails to provide Manteca with any relief
from incurring substantial harm. For example, the potential interim planning solutions identified
in the Tracy Order include variances, site-specific objectives or a policy allowing offsets. *(Id. at
p. 10, fn.17.)* In this case, Manteca is not eligible to request a variance because variances from
water quality-based effluent limitations must be requested prior to the close of the public
comment period on the permit in question. *(See 40 C.F.R. § 122.21(n)(3).)* Moreover, state-
adopted variances require studies to demonstrate that the standard is not attainable for reasons
specified in section 131.10(g) of title 40 of the Code of Federal Regulations. *(See U.S. EPA
NPDES Permit Writers’ Manual, EPA-833-B-96-003 (Dec. 1996) at pp. 177-178; see also
U.S. EPA Water Quality Handbook, chapter 5, § 5.3.)* The preparation and consideration of such
studies by Manteca and the Central Valley Water Board, and approval of the variance from the
State Water Board, the Office of Administrative Law and U.S. EPA would collectively require
more time than Manteca can afford before needing to move forward with the only certain
compliance option—MF/RO.

Similarly, the development, consideration and adoption of site-specific objectives takes
too long to be a feasible interim planning solution. *(See Declaration of Michael Bryan in Support
of City of Manteca’s Request for Stay (Bryan Decl.), filed concurrently herewith at §§ 9, 14, 15.)*

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By the time Manteca could evaluate the feasibility of obtaining a site-specific objective for an area as pivotal as the southern Delta, far too much time will have passed to allow Manteca sufficient time to plan, design and commence compliance with CEQA. A site-specific objective is also illogical and duplicative considering that the State Water Board is in the process of reviewing the water quality objectives for EC in the southern Delta. As mentioned, the State Water Board will consider credible evidence that the current EC objective of 700 µmhos/cm is more stringent than necessary to protect the agricultural beneficial use. (See Hoffman Report.) As a result, the objective and effluent limitations required to implement the objective are likely to change and render unnecessary the MF/RO facilities required to ensure compliance with the Permit and TSO.

The certainty and timing of a policy for off-sets is also unknown at this time. Although the Central Valley Water Board has entertained preliminary discussions with respect to the development of such a policy, no draft off-set policy exists for the Central Valley and there are no formal plans in place to develop one. Moreover, any such policy would require an amendment to either the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) and/or the Bay-Delta Plan. Even under the best circumstances, with funding provided by the discharge community, a Basin Plan and/or Bay-Delta Plan amendment will take at least five years. (See Bryan Decl. at ¶¶ 6, 9, 12, 14, 15.) Like a site-specific objective, there would be no certainty for Manteca until the off-set policy was adopted by the Central Valley Water Board and approved by the State Water Board, the Office of Administrative Law and U.S. EPA. By that time, Manteca will be well beyond the time needed to plan, design and construct MF/RO facilities and conduct the associated environmental review.

Given the current review of the water quality objective at issue, Manteca’s recent expenditures to reduce salinity in the WQCF’s discharge in good faith reliance on the State Water Board’s 2005 Manteca Order, infeasibility of timely interim planning options and costs to

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Manteca and its ratepayers to plan for and design the MF/RO treatment facilities, Manteca and the public interest will suffer substantial harm absent a stay. Further, having to spend significant resources to complete the tasks in the TSO to comply with the challenged effluent limitations before the State Water Board fully acts on the Petition would deny Manteca any meaningful appeal of the effluent limitations.

c. If the State Water Board Grants the Stay, Neither Interested Persons Nor the Public Interest Will Suffer Substantial Harm

The only Permit requirements that the stay would affect are the effluent limitations for EC of 700 μmhos/cm (April 1 to August 31). Consequently, the TSO would also be subject to the stay. As explained, Manteca has taken drastic steps in recent years to reduce significantly its discharges of salinity. The WQCF consistently discharges less EC than the prior permit’s year-round effluent limitation of 1,000 μmhos/cm. Moreover, the salinity collectively contributed to the southern Delta from municipal discharges constitutes less than one percent of the total salt loading. (San Joaquin River Annual Salt Loading WY 1985-1995, included in Materials for April 15, 2009 Special Meeting of the State Water Board regarding Salinity Issues, at p. 0009; see Letter to J. Marshall, Central Valley Water Board from P. Govea, City of Manteca regarding comments on tentative Permit (Sept. 10, 2009) at p. 2.) Not only will the actual salinity of Manteca’s discharge remain relatively constant regardless of whether the stay is granted, but Manteca’s proportional contribution to the river is so minor that the receiving water quality would not measurably change.

Imposing the 700 μmhos/cm effluent limitations immediately and requiring Manteca to expend public resources on planning and design to ensure timely compliance with the TSO before the State Water Board resolves the Petition will not benefit water quality or beneficial uses. (See In the Matter of the Petition of International Business Machines (Dec. 15, 1988), Order No. WQ 88-15 (IBM Order) at p. 7 [whether there would be immediate impact on water quality is

6 Manteca’s discharge averages 735 μmhos/cm EC on a monthly basis. (Transcript at p. 35.)
7 Based on Manteca’s 2008 antidegradation analysis, an increase in Manteca’s discharge to 17.5 mgd results in an incremental improvement in EC in the river during critical dry flow conditions to an estimated one percent; during dry normal years, the improvement would be an approximate 0.5 percent.
factor to consider in deciding whether to grant stay].) If the State Water Board overturns the
Permit requirements, the TSO and need to install MF/RO facilities will become unnecessary,
rendering the efforts in the interim a waste of public funds. (See _ibid._) Further, the potential
delay associated with the State Water Board’s petition process is inconsequential given that
regulators, municipalities and other interested parties have been addressing salinity issues in the
Bay-Delta for decades. (See _ibid._) Therefore, neither interested persons nor the public interest
will suffer substantial harm if Manteca receives a stay of the effluent limitations of
700 μmhos/cm EC.

D. CONCLUSION

This Stay Request demonstrates that the action disputed in the Petition raises substantial
questions of fact or law. This Stay Request also demonstrates that a stay of the challenged
effluent limitations for EC will not cause substantial harm to interested persons or the public.
However, a lack of a stay will cause Manteca substantial harm in the form of an expenditure of
scarce resources and imposition of rate increases. Accordingly, Manteca respectfully requests
that the State Water Board stay the Permit provisions and associated TSO that require the WQCF
to meet effluent limitations of 700 μmhos/cm EC from April to August by October 1, 2014.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: November 9, 2009

By: Theresa A. Dunham
Attorneys for City of Manteca
PROOF OF SERVICE
(State)

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 9, 2009, I served the following document(s):

CITY OF MANTECA'S REQUEST FOR STAY AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

XXX (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
Phone: (916) 464-3291
Email: pcreedon@waterboard.ca.gov

Phil Govea, P.E.
Deputy Director of Public Works—Utility Engineering
City of Manteca
1001 W. Center Street
Manteca, CA 95337
Phone: (209) 456-8415
Email: pgovea@ci.manteca.ca.us

XXX (by personal delivery) by having a messenger personally deliver a true copy thereof to the person(s) and at the address(es) set forth below:

Elizabeth Miller Jennings, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812
Phone: (916) 341-5161
Fax: (916) 341-5199
Email: BJennings@waterboards.ca.gov

Lori Okun, Sr. Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812
Phone: (916) 341-5165
Fax: (916) 341-5199
Email: lokun@waterboards.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2009, at Sacramento, California.

Crystal Rivera

-1-
23 October 2009

Mr. Phil Govea, P.E.
Deputy Director of Public Works
City of Manteca
1001 West Center Street
Manteca, CA 95337

NOTICE OF ADOPTION
WASTE DISCHARGE REQUIREMENTS ORDER NO. R5-2009-0095
NPDES PERMIT NO. CA0081558
AND TIME SCHEDULE ORDER NO. R5-2009-0096
FOR
CITY OF MANTECA
WASTEWATER QUALITY CONTROL FACILITY
SAN JOAQUIN COUNTY

Enclosed are Waste Discharge Requirements (WDRs) Order No. R5-2009-0095 (NPDES Permit No. CA0081558) and Time Schedule Order (TSO) No. R5-2009-0096 for the City of Manteca Wastewater Quality Control Facility, adopted with late revisions by the California Central Valley Regional Water Quality Control Board (Central Valley Water Board), on 8 October 2009. Although the WDRs allow wastewater to be discharged to land and surface waters of the State, the discharge is a privilege, not a right, and may be revoked at any time. Copies of the Orders must be maintained at the facility and must be accessible to anyone operating the wastewater treatment facility.

Please review your WDRs carefully to ensure that you understand all aspects of the discharge requirements. Please note that the Provisions section of the WDRs require submittal of specified technical reports and progress reports by the dates provided in the Order. These submittals include the items listed in the following table.
In addition to the technical reports required by the WDRs, the WDRs also contain a Monitoring and Reporting Program (MRP). The MRP, located in Attachment E of the WDRs, contains specified monitoring requirements that you must implement. Please review the MRP closely so that you may establish the appropriate sampling schedules and protocols. In addition to the monthly and quarterly self monitoring reports, the MRP requires the technical reports listed in the following table.

<table>
<thead>
<tr>
<th>MRP-Required Technical Reports</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report outlining MLs, MDLs, and analytical methods</td>
<td>7 December 2009</td>
</tr>
<tr>
<td>Annual Operations Report</td>
<td>30 January, annually</td>
</tr>
<tr>
<td>Nutrient Management Plan</td>
<td>1 February, annually</td>
</tr>
<tr>
<td>Annual Pretreatment Report</td>
<td>28 February, annually</td>
</tr>
<tr>
<td>Water Recycling/Reuse Annual Report</td>
<td>1 July, annually</td>
</tr>
<tr>
<td>Effluent and Receiving Water Characterization Study Work Plan and Time Schedule</td>
<td>8 April 2012</td>
</tr>
<tr>
<td>Effluent and Receiving Water Characterization Study Final Report</td>
<td>6 months following final monitoring event</td>
</tr>
</tbody>
</table>

Also, please review your TSO to ensure that you understand all aspects of its requirements. Please note that the time schedule, located on page 4 of the TSO, requires submittal of specified technical reports and progress reports by the dates provided in the Order. These submittals include the items listed in the following table.
In order to conserve resources, this letter only transmits paper copies of the documents to the Discharger and certain interested persons identified below. Other interested persons may download the documents from the Central Valley Water Board’s Internet website at http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/index.html. Copies of these documents can also be obtained by contacting staff or visiting the Central Valley Water Board’s office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

If you have any questions regarding submitting an updated report of waste discharge, or questions about making any changes to your permitted operations, please contact James D. Marshall at (916) 464-4772 or at jdmmarshall@waterboards.ca.gov.

All compliance and enforcement questions should be directed to Ann M. Hopkinson. Ms. Hopkinson can be reached at (916) 464-4825 or at ahopkinson@waterboards.ca.gov. All technical reports and monitoring reports should be submitted to Ms. Hopkinson.
The California Regional Water Quality Control Board, Central Valley Region, (hereinafter Central Valley Water Board) finds that:

1. On 8 October 2009, the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order No. R5-2009-0095, prescribing waste discharge requirements for the City of Manteca (hereinafter Discharger) at the Wastewater Quality Control Facility (hereafter Facility), San Joaquin County.

2. WDR Order No. R5-2009-0095, contains Final Effluent Limitations IV.A.1.a. and 2.a. which both reads, in part, as follows:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Units</th>
<th>Average Monthly</th>
<th>Average Weekly</th>
<th>Maximum Daily</th>
<th>Instantaneous Minimum</th>
<th>Instantaneous Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Conductivity</td>
<td>µmhos/cm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(April to 31 August)</td>
<td></td>
<td>700</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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</table>

3. California Water Code (CWC) section 13300 states: “Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.”

4. Federal regulations, 40 CFR §122.44 (d)(1)(i), require that NPDES permit effluent limitations must control all pollutants which are or may be discharged at a level which will cause or have the reasonable potential to cause or contribute to an in-stream excursion above any state water quality standard, including any narrative criteria for water quality. Beneficial uses, together with their corresponding water quality objectives or promulgated water quality criteria, can be defined per federal regulations as water quality standards.

5. In accordance with CWC section 13385(j)(3), the Central Valley Water Board finds that, based upon results of effluent monitoring, the Discharger is not able to consistently comply with the new seasonal effluent limitation for electrical conductivity of 700 µmhos/cm, which is required from 1 April through 31 August. This limitation is a new requirement that becomes applicable to the Order after the effective date of adoption of the waste discharge requirement for which new or modified control measures are
necessary in order to comply with the limitations, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

6. Immediate compliance with this new effluent limitation for electrical conductivity is not possible or practicable. The Clean Water Act and the California Water Code authorize time schedules for achieving compliance.

7. On 10 September 2009 the Discharger submitted justification for a compliance schedule which included: (a) documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream; (b) documentation of source control measures and/or pollution minimization measures efforts currently underway or completed; (c) a proposal for additional or future source control measures, pollutant minimization actions, or waste treatment (i.e., facility upgrades); and (d) a demonstration that the proposed schedule is as short as practicable. Therefore, this Order provides a time schedule for the Discharger to develop, submit, and implement methods of compliance, including utilizing pollution prevention activities, conducting site specific studies to develop site specific water quality objectives, or constructing necessary treatment facilities to meet the new effluent limitation for electrical conductivity.

8. CWC section 13385(h) and (i) require the Regional Water Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. CWC section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC section 13385(j)(3) exempts the discharge from mandatory minimum penalties "where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all the [specified] requirements are met."

9. Compliance with this Order only exempts the Discharger from mandatory penalties for violations of effluent limitations for electrical conductivity from 1 April through 31 August, in accordance with CWC section 13385(j)(3). CWC section 13385(j)(3) requires the Discharger to update and implement a pollution prevention plan pursuant to section 13263.3 of the California Water Code.

10. Since the time schedule for completion of action necessary to bring the waste discharge into compliance exceeds 1 year, this Order includes an interim requirement and date for achievement. The time schedule does not exceed 5 years.

The compliance time schedule in this Order includes an interim effluent limitation for electrical conductivity. The monthly average effluent limitation for electrical conductivity in previous Order No. R5-2004-0028 was established as the interim limit in this Order.

11. The Central Valley Water Board finds that the Discharger can maintain compliance with the interim limitation included in this Order. Interim limitations are established when compliance with the final effluent limitations cannot be achieved by the existing discharge. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on
a long-term basis. The interim limitations, however, establish an enforceable ceiling concentration until compliance with the effluent limitation can be achieved.

The interim limitations must be based on performance or the existing effluent limitations, whichever is more stringent. The existing effluent limits for EC are 1000 µmhos/cm. To determine facility performance where there are 10 sampling data points or more, sampling and laboratory variability is accounted for by projecting a maximum effluent concentration based on log-normally distributed data where 99.9% of the data points will lie within 3.3 standard deviations of the mean. Based on effluent EC data from 2007-2008 during the irrigation season (1 April – 31 August) the projected maximum effluent concentration for EC is 996 µmhos/cm. Considering the accuracy of EC monitoring, the projected maximum effluent concentration should be presented as no more than 2 significant figures (i.e., 1000 µmhos/cm). Based on this evaluation the projected maximum effluent concentration and current effluent limitation are equivalent. Therefore, an interim limitation of 1000 µmhos/cm is required in this Order.

12. On 8 October 2009, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider a Time Schedule Order under CWC section 13300 to establish a time schedule to achieve compliance with waste discharge requirements.

13. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et seq.), in accordance with CWC section 1532.1 (a)(2), Title 14, of the California Code of Regulations.

14. Any person adversely affected by this action of the Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of the Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.
IT IS HEREBY ORDERED THAT:

1. The Discharger shall comply with the following time schedule to ensure compliance with the seasonal effluent limitations for electrical conductivity (1 April through 31 August) contained in WDR Order No. R5-2009-0095 as described in the above Findings:

<table>
<thead>
<tr>
<th>Task</th>
<th>Date Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submit Method of Compliance Workplan/Schedule</td>
<td>Within 6 months of adoption of this Order</td>
</tr>
<tr>
<td>Submit and implement a Pollution Prevention Plan (PPP) pursuant to CWC section 13263.3</td>
<td>Within 6 months of adoption of this Order</td>
</tr>
<tr>
<td>Annual Progress Reports</td>
<td>1 December, annually, after approval of workplan until final compliance</td>
</tr>
</tbody>
</table>

Full compliance with the effluent limitations for electrical conductivity. 1 October 2014

The progress reports for electrical conductivity shall detail what steps have been implemented towards achieving compliance with waste discharge requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date.

2. The following interim effluent limitation shall apply to the 9.87 million gallons per day (mgd) and 17.5 mgd discharge and be effective immediately until 30 September 2014 or when the Discharger is able to come into compliance, whichever is sooner.

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Average Monthly Effluent Limitation (µmhos/cm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Conductivity (1 April through 31 August)</td>
<td>1000</td>
</tr>
</tbody>
</table>

3. For the compliance schedule required by this Order, the Discharger shall submit to the Central Valley Water Board on or before the compliance report due date, the specified document or, if appropriate, a written report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for such noncompliance shall be stated, and shall include an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Regional Water Board by letter when it returns to compliance with the time schedule.
4. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement. If compliance with these effluent limitations is not achieved by the Full Compliance date, the discharge would not be exempt from the mandatory minimum penalties for violation of certain effluent limitations, and would be subject to issuance of a Cease and Desist Order in accordance with CWC section 13301.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 8 October 2009.

PAMELA C CREEDON, Executive Officer