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For Petitioner Friends of the North Fork

VIA: Electronic Submission
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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of General Order R5-2017-0085,)	
NPDES NO. CAG585001, Waste Discharge)	PETITION FOR REVIEW
Requirements For Municipal Wastewater)	
Dischargers That Meet Objectives/Criteria)	
at the Point of Discharge to Surface Water,)	
California Regional Water Quality Control)	
Board—Central Valley Region)	

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), Friends of the North Fork (“Friends” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting Waste Discharge Requirements For Municipal Wastewater Dischargers That Meet Objectives/Criteria at the Point of Discharge to Surface Water, on 11 August 2017. See General Order R5-20170085, NPDES NO.CAG585001. The issues raised in this petition were raised in timely written comments, oral testimony and documents in the record.

1. NAME AND ADDRESS OF THE PETITIONER:

Friends of the North Fork
102 Sandburg Court
Roseville, California 95747

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

Petitioner seeks Review of Order R5-20170085, NPDES NO.CAG585001 adopting a General Order for Waste Discharge Requirements For Municipal Wastewater Dischargers That Meet Objectives/Criteria at the Point of Discharge to Surface Water. A copy of the Order adopted by the Regional Board at its 11 August 2017 Board meeting is online at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2017-0085.pdf

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

11 august 2017

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

A. To the extent that adopting this General Order (GO) for all of Region 5 is an act:

(1) within the discretion of the Regional Board to invite applications from 19 and potentially more POTW operators for each and any exiting permit, the adopted Order is:

- hostile to the public and public involvement,
- hostile to POTW management for water quality improvement,
- hostile to government transparency,
- hostile to the many state and federal water quality programs which purpose is benefitted by individual NPDES permits with reduced discharged of pollutants from POTWs, and
- hostile to the opportunity NPDES permit and permit renewals provide to strengthen all of these water quality related programs, or

(2) To the extent that supporting this General Order (GO) for all of Region 5 is an act within the discretion of USEPA, USEPA would, in addition to supporting the Regional Board's discretionary delinquencies listed above, be improperly abandoning its NPDES oversight authority.

For purposes of oversight, public involvement and water quality, the State Board needs to correct the inappropriate actions of the Regional Board.

But the closing of individual NPDES permits in the manner proposed is not permitted and is improper by state and federal law for the Regional Board, and is not permitted by federal law for USEPA.

B. The GO would be the death knell of public involvement in NPDES POTW permits that come under the GO. The little involved and absent public from party status in POTW NPDES now results from the practices and comments of State and Regional Board and USEPA that fail to ensure NPDES public involvement by:

- Not training the public
- Not effectively reaching out to the public,
- USEPA supporting the GO and taking the position stated by the USEPA representative after the 11 august 2017 hearing that if proper notice is given for hearings and

stakeholder meetings and there is little or no public presence, that is public involvement.

- Not have public meetings on NPDES permits on Board initiative or when requested by the public to have one,
- Blaming the public for not participating.

C. A key part of the failure in public involvement regarding the GO itself is an unprecedented undermining of environmental impact disclosure in the developing the GO, as well as the potential for this in its implementation, which are violations of CEQA. Absence of disclosure of environmental impacts of changing from individual NPDES permits to a GO is an environmental and public involvement problem. The GO falls under exceptions to categorical exemptions.

D. The impact of the GO on the Clean Water Act Industrial Pretreatment is demonstrated to be absent from the Regional Board's development of the Order.

A serious flaw in the development of the GO is that the Regional Board did not review the pretreatment compliance investigation audits as part of identifying POTWs potentially eligible for the Order.

1. Putting POTWs that have or supposedly have approved Pretreatment Programs into a GO is problematic and unacceptable—a “hide the public handle on water quality” shell game.

a. The City of Auburn's problematic POTW that is expected by the Regional Board to be eligible for the GO, has failed to provide the public with a map of its collection system after a California Public Records Act request months ago, part of which request was filled. This came up as an issue in December for the Tuscan Townhomes development the canyon rim that has sewer collection, storm and groundwater flow problems, and a spring on the waterlogged property which presence is not acknowledged in project documents.

b. Seeing that the City of Roseville is considered to be eligible for the GO, I contacted their utilities department. The first two people referred to for industrial wastewater issues had no idea what a or the City's Pretreatment program is. The next person responded some days later by providing protocols that were found. The fourth person knew the city was required to have a Pretreatment program but said that it was unnecessary since he City is meeting its end point of discharge requirements.

2. The Regional Board's “Regionalization Policy” seems to excuse POTWs from implementing Pretreatment programs. Placer County Sewer Service Area 1 that is around the Auburn Airport and has electroplater, metal finisher and other CIUs and SIUs and had ongoing violations. The Regional Board's insisted that the wastewater be piped to the City of Lincoln POTW.

3. Growers expressed concern about the wastewater because they use treated Lincoln wastewater for rice. One document shows that the Regional Board told the growers that their

concern was not being raised at the right time. This suggests a willingness of the part of the Regional Board to risk crop safety which may be an effort to avoid Pretreatment program implementation, effectiveness or even existence.

4. Friends as part of its second Colfax NPDES permit renewal involvement in 2012, believed it had secured language in an order that required an investigation into whether Colfax (which discharges less than 5mgd) should have a Pretreatment Program. Instead, only an investigation of the City's single industrial permit was required. The USEPA Region Pretreatment coordinator said that the Regional Board requested only that USEPA fund the single industry facility investigation, so that was all that was done. Friends stated to the Regional Board at one of its meetings that this Miller-Coors fruit drink distillery compliance investigation report audit found multiple problems with the City's regulation of the facility. The Regional Board's enforcement officer stood up and said there was nothing to be seen in the audit. This is the facility that has caused major interference and upset of the Colfax POTW, including shutting down the water treatment process for 90 days of the first six months of 2015. This was not considered to be a permit violation, apparently because flow was diverted to Pond #3 that has a 75-foot earthen dam.

The Regional Board in this case has shown no interest in investigating the need for a Pretreatment program in Colfax even though our street survey showed what may be around 20 industrial and commercial outfits that potentially need regulation.

5. A Regional Board pattern or practice might exist of the Board way laying Pretreatment programs and allowing industrial discharges into POTWs with ratepayers picking up the cost of treatment at the POTW itself instead of the dischargers cleaning up their discharges into the collection system. Before the CSA No. 1 effluent was piped elsewhere, the county designed new POTW for the service area which has many residents. Colfax actions might also have been consistent with putting industrial clean-up costs on taxpayers in a community instead of dischargers. This is consistent with what also appears to be the case in Colfax.

6. Each approved but neglected Pretreatment program, or potentially needed program that Friends has reviewed suggests that the absence of such Pretreatment programs may attract CIUs and SIUs to communities. If this is a pattern, the Regional Board is has from part to much of the blame. The shame in this not only attracting CIUs and SIUs to communities unprepared to manage these wastes and where sewer ratepayers pick up the cost of handling their discharges in the local POTW.

Pretreatment program failures have water quality consequences for our most pristine waters.

E. At the hearing Friends expressed its concern about the Central Valley Clean Water Association (CVCWA) getting draft NPDES permits before the public. Regional Board Staff

responded that others can get these too. Friends experience when we learned first about this was to request a copy also, which request was at first denied, but later granted.

What the staff did not respond to was the use that CVCWA and POTWs discharging into relatively highly polluted waters puts to these early permit drafts, namely to review NPDES permits for requirements they do not want to see as precedent in permits that might get into their permits.¹ The GO would in many ways equalize all POTWs brought under it.

F. Friends was not aware of the stakeholder group that met at least two times for this order. If we had known, I would have been there, just as I joined the State Board Cost of Compliance (COC) Stake holder group perhaps half way through its meetings. I also joined the Regional Board's Drinking Water Quality policy stakeholder group, though this seemed to wider representation than for Region 5. The composition of stakeholder groups is largely and in some cases nearly exclusively dischargers and discharger consultants. The State Board COC and the Regional Board GO seem to be of the same cost cutting and with impact on public involvement not on the radar screen.

NPDES and Pretreatment are federal programs so the stakeholder process for the GO appears to have violated the Federal Advisory Committee Act.

G. Friends does not repeat some of the issues raised in the Application for Designated Person Status.

H. Friends has not had an opportunity to review any transcripts from the hearing and there are additional issues from the hearing.

I. Friends has not received the documents requested from the State and Regional Boards in Public Records Act requests, and there may be additional issues for this matter in those documents.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:

Friends of the North Fork formed 2014-2015 to protect the beauty and renewable nature resources including recreational activity of the North Fork American river, including the Auburn State Recreation Area. Our founding and our continuing board members know the magnificent canyon intimately.

The proposed GO severely undermines our efforts to use water quality programs and the NPDES permit process to protect the river.

¹ CVCWA is not registered as a lobbyist employer nor is their staff registered as a lobbyist, so it does not report on its expenditures and what its expenditures are for. Friends has noted the irony that the heavy weight of lobbying against water quality regulation of POTWs comes from public agencies that are created to serve the public. CVCWA's absence from the Secretary of State's lobbying records enhances avoidance of this public disclosure.

The signer of this Petition has a B.S. in Forestry and Conservation and has hiked the North Fork American River canyon from Discovery Park at the Sacramento River confluence to Pickering Bar near Gold Run, and parts of it beyond. The North Fork is the first Sierra Nevada river and watershed south of Interstate 80 from Auburn to Donner Summit.

State and Regional Water Boards have made it anything but a priority to protect the canyon's water quality. For example, the approved Colfax sewer operation ground application of wastewater failed and the pollution continued for many years. For example, after several meetings and then the issuance of CEQA notice for an American River TMDL, the State Board withdrew the TMDL effort.

This Petition is an opportunity for the State Board to change water quality course in the watershed in the direction of preventing further deterioration that would come from a GO.

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

Petitioner seeks an Order by the State Board to:

Vacate Resolution Order No. R5-20170085, NPDES NO.CAG585001 and if the State Board has corrective direction, remand to the Regional Board with instructions as the Board deems appropriate.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION. NEED FOR AN EVIDENTIARY HEARING.

A fundamental fact of the GO proceeding is a presumption that NPDES permits are not necessary and that the Order is sufficient to replace NPDES permits for many POTWs.

However, the GO was approved in spite of State and Regional Board failure to implement federal public involvement, NPDES and Pretreatment requirements. For the Regional Board to now retreat further from requirements it is not meeting now is impermissible.

1. The mandates for public involvement in the USEPA memorandum delegating the NPDES and the Pretreatment programs to the State of California require USEPA investigation, and if not EPA, State Board. When the State Board was evaluating NPDES, Friends asked to be included in making comments which was refused. A GO would severely impact these and other public involvement requirements.

2. There are multiple 40 CFR section 124.10 through section 124.57 public involvement requirements that a GO would vitiate. For example, there would be no GO NPDES 40 CFR 124.13 public comment periods on POTWs, and no GO 40 CFR 124.56 fact sheets as on individual POTW NPDES permits

3. The State and Regional Boards do not have and are not implementing or for their own use or for making available the requirements of 40 CFR 123.26 and 123.27. Friends particularly notes the acute failure to implement 40 CFR 123.26(b)(4).

4. a. There is evidence that the State of California Industrial Pretreatment Program in Region 5 does not now have the necessary authority, funding or management required by 33 USC Section 1342(b), including Subsections 1342 (1)(A),)3) and (7). In particular, the Regional board appears to be in wanton, open, intentional nearly complete violation of 33 USC Section 1342(b)(8). This could and perhaps does endanger the continuing delegation of the Pretreatment Program by USEPA, and, as an independent matter, the waters, public health and environment of Region 5 waters both under the Clean Water Act and the California Porter Cologne Water Quality Act.

b. The proposed General Order would exacerbate all of these problems.

5. The Regional Board is in repeated violation of 33 USC 1370.

The State Board should vacate the Order.

Should the State Board have additional questions regarding the issues raised in this Petition, Friends will provide additional briefing on any such question.

Petitioner believes that an evidentiary hearing before the State Board is necessary to present facts relevant to this Petition, to present oral argument, to respond to any questions the State Board may have, and to resolve issues raised in this Petition.

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

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

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

Friends presented the issues addressed in this Petition to the Regional Board in oral testimony at the 11 August 2017 hearing on the Order and in request for party status and comments submitted to the Regional Board on 4 August 2017 that are part of the record.

Friends thanks the Regional and State Boards for the opportunity to address the grave and timely issues presented in this Petition effort.

If you have any questions regarding this Petition, please contact Michael Garabedian at (916) 719-7296.

Dated: 11 September 2017

Respectfully submitted,

/S/

Michael Garabedian, President
Friends of the North Fork