CONTRA COSTA
WATER DISTRICT

1331 Concord Avenue
P.O. Box H2O
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122
www.ccwater.com

April 12, 2010

Directors
Joseph L. Campbell
President

Karl L. Wandry
Vice President

Elizabeth R. Anello
Bette Boatmun
John A. Burgh

Walter J. Bishop
General Manager

Jan O'Hara
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Comments on the Proposed Region 2 Basin Plan Amendment: Addition of Water Bodies and Beneficial Uses to the San Francisco Bay Basin Plan

Dear Ms. O'Hara:

Contra Costa Water District (CCWD) appreciates this opportunity to provide input to the San Francisco Bay Basin (Region 2) proposed Basin Plan Amendment. CCWD has two comments regarding the listing for Mallard Reservoir. First, Mallard Reservoir is not a surface water of the region and should be removed from the Basin Plan list. Second, CCWD strongly urges the Board to reconsider the staff recommendation to attribute existing REC-1 and REC-2 beneficial uses to all bodies of water. These comments are described in more detail below.

Mallard Reservoir should be removed from the Basin Plan list of surface waters of the region.

CCWD's Mallard Reservoir is listed in the Basin Plan as a surface water of the region. This listing is in error, as Mallard Reservoir is an integral part of CCWD's Bollman Water Treatment Plant and therefore is not a surface water of the region. CCWD has brought this error to the Board's attention in our letter of May 9, 2003, and follow-up letter of June 16, 2003, copies of which are attached, and in our comments to the Board on October 19, 2005 in the context of the Proposed Amendment to the Basin Plan for the San Francisco Bay Region for the 2005 General Update with Non-Regulatory Revisions.

CCWD values the Regional Board's efforts to update and correct the Basin Plan listing of surface waters. This is a step forward in ensuring that discharges to all surface waters are properly regulated to protect water quality. It is appropriate to add surface waters that have been overlooked in past Basin Plans, and it is equally important to use this opportunity to remove previous listings that were made in error. Erroneously listed bodies of water create expectations of activities that are incompatible with the purpose of the facilities and create more oversight work without fulfilling the purpose of the NPDES system, which is to prevent the discharge of pollutants to surface waters.

The Basin Plan defines surface waters of the region as consisting of "non-tidal wetlands, rivers, streams, and lakes (collectively described as inland surface waters), estuarine wetlands known as baylands, estuarine waters, and coastal waters." Mallard Reservoir, however, does not fall under this definition. Mallard Reservoir was designed and constructed to serve solely as the forebay to CCWD's Bollman Water Treatment Plant, and as such it is not an inland surface water, estuarine wetland, estuarine water, or coastal water.

In October 2002, the San Francisco District of the United States Army Corps of Engineers (COE) advised CCWD that Mallard Reservoir is "not a water of the United States and therefore not regulated by COE under Section 404 of the Clean Water Act." COE stated that, "Mallard is a man-made bermed containment constructed on dry land (i.e., uplands) well before 1972. It does not impound any natural drainage, but receives water through a pipeline from Suisun Bay." Mallard Reservoir has concrete liner side panels on approximately 75 percent of the embankment, while another 10 percent is rip-rap and the remaining embankment is composed of berm earthen material.

In light of the above facts, CCWD requests the Regional Board to find that Mallard Reservoir is listed in error as a "surface water of the region" and to remove Mallard Reservoir from the Basin Plan. If Mallard Reservoir is not removed at this time, CCWD requests that the Regional Board provide direction as to the procedure that CCWD should follow to ensure that this error is corrected and Mallard Reservoir is removed from the Basin Plan.

CCWD strongly urges the Regional Board to reconsider the staff recommendation to attribute existing REC-1 and REC-2 beneficial uses to all water bodies.

The proposed REC-1 and REC-2 beneficial use designation for all surface waters in the region originates in an overly broad interpretation of the intent of Section 101(a)(2) of the Clean Water Act (Act). Section 101(a)(2) of the Act declared, in part, that a "goal" for the "Nation's waters" was "where attainable" an interim water quality goal that would provide for recreation "in and on the water" be "achieved by July 1, 1983." Regional Board staff cites this provision of the Act as creating a, "…'rebuttable presumption' that fishable and swimmable uses are attainable." Any suggestion, however, that Mallard Reservoir itself possesses current or prospectively attainable REC-1 attributes may be refuted by California Health and Safety Code section 115825(b), which prohibits all body contact recreation in drinking water reservoirs. Likewise, an appropriate assessment of this water body would also amply demonstrate the absence of current or prospectively attainable REC-2 attributes. While it is widely accepted that one of the overall objectives of the Act is to protect recreational uses, setting an unattainable beneficial use for a water body does not advance this goal.

The proposal to use "E*" for REC-1 in water bodies such as drinking water reservoirs where there is, in fact, no existing REC-1 use runs counter to the stated goal of this amendment, which is to improve the clarity of the Basin Plan. In Mallard Reservoir, for example, the physical, administrative, and legal barriers that have been in place since the reservoir was constructed mean that there is not, and never has been, any body contact recreation. In addition there is not, and never has been, any non-contact recreation in Mallard Reservoir. Further, as a component of the Bollman Water Treatment Plant, Mallard Reservoir has no prospective REC-1 or REC-2 uses. This would be far from clear to a public that sees both REC-1 and REC-2 listed as existing uses of the Reservoir, even with a footnote on REC-1 noting that body contact recreation may be limited. Clarity and reasonableness demand that the "E" designation be removed from beneficial uses that do not, and never have, actually existed. If necessary, the Regional Board should perform a Use Attainability Analysis, pursuant to Title 40 Part 131 of the Federal Code of Regulations to bring about this revision.

If you would like any additional information, or would like to discuss these comments, please call me at (925) 688-8083 or call Shing Kong at (925) 688-8344.

Sincerely,

Leah Orloff
Water Resources Manager

LO/SK:wec

CONTRA COSTA
WATER DISTRICT

1331 Concord Avenue
P.O. Box H20
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122

June 16, 2003

Directors
Joseph L. Campbell
President

Elizabeth R. Anello
Vice President

Bette Boatmun
James Pretti
Karl L. Wandry

Walter J. Bishop
General Manager

Mr. Thomas Mumley
Planning Division Chief
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments to Revised Draft General NPDES Permit for Discharges from Surface Water Treatment Facilities

Dear Mr. Mumley:

This letter is in follow-up to the San Francisco Bay Regional Water Quality Control Board (RWCQB) response to the Contra Costa Water District (CCWD) comment letter dated May 9, 2003. The CCWD letter provided comments on the proposed *Region Wide NPDES Permit for Discharges from Surface Water Treatment Facilities.*

For the record, CCWD wishes to emphasize our opinion that Mallard Reservoir (Mallard), the "receiving water" for our Bollman Water Treatment Plant discharges, should not be listed in the San Francisco Bay Region Water Quality Control Plan (plan). CCWD strongly believes that Mallard was wrongly designated in the plan and should not be subject to the NPDES permit program. As such, CCWD requests that the record preserve our legal rights to appeal this designation to the State Water Resources Control Board.

Should you have any questions or comments, please contact me at (925) 688-8023.

Sincerely,

David A. Omoto
Environmental Compliance Officer

DAO:llc

cc: Ms. Jenny Chen/SF-Bay RWQCB

CONTRA COSTA WATER DISTRICT

1331 Concord Avenue
P.O. Box H20
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122

May 9, 2003

Directors
Joseph L. Campbell
President

Elizabeth R. Anello
Vice President

Bette Boatmun
James Pretti
Karl L. Wandry

Walter J. Bishop
General Manager

Ms. Jenny Chen
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments to Revised Draft General NPDES Permit for Discharges from Surface Water Treatment Facilities

Dear Ms. Chen:

Contra Costa Water District (CCWD) respectfully submits these comments on the proposed *Region Wide NPDES Permit for Discharges from Surface Water Treatment Facilities* (permit). While CCWD recognizes that the overall intent of the NPDES permit program is to protect the beneficial uses of waters of the United States, we do not believe that the permit, or at least certain provisions in the permit, applies to the Bollman Water Treatment Plant (Bollman). We are submitting comments to this effect on applicability, as well as general permit comments. Our comments are discussed under the following topics:

- Permit Applicability
- Impacts to Beneficial Uses
- General Comments on the Permit

Permit Applicability

CCWD believes that Mallard Reservoir (Mallard), the "receiving water" for Bollman discharges, is not a "water of the United States." Furthermore, Mallard should not be listed in the San Francisco Bay Region Water Quality Control Plan. As such, Mallard should not subject to the NPDES permit program.

In a recent (October 2002) conversation with the San Francisco District-United States Army Corp of Engineers (COE), CCWD sought COE's informal opinion on jurisdiction at Mallard for a pending CCWD maintenance project. COE stated that, "Mallard is a man-made bermed containment constructed on dry land (i.e., uplands) well before 1972. It does not impound any natural drainage, but receives water through a pipeline from Suisan Bay." As such, COE advised CCWD that Mallard was "not a water of the United States and therefore not regulated by COE under Section 404 of the Clean Water Act."

In recognition that the definition of waters of the United States is controversial, there is much value in the COE opinion. The COE opinion, whether it is informal or formal, is based on facts surrounding the construction and operation of Mallard. COE used these facts to conclude that Mallard was not a water of the United States under the federal Clean Water Act. In light of these facts and the COE opinion, CCWD asks the Regional Water Quality Control Board (RWQCB) to review NPDES applicability to Mallard and render an opinion.

Finally, CCWD does not believe that Mallard should be listed in the *San Francisco Bay Region Water Quality Control Plan* (Plan) as a beneficial use body of water. It is a terminal reservoir that does not discharge to waters of the United States. Mallard was constructed and is operated as described above by COE, which opined that it is not a water of the United States. Mallard was specifically constructed to function as a source of agricultural, industrial and municipal water supply. It was never intended to provide other beneficial use designations (i.e., warm water fish habitat, fish spawning, etc.).

CCWD has contacted RWQCB on the procedures to remove a beneficial use body of water from the Plan. We are reviewing these procedures and will attempt to remove Mallard from the plan. CCWD asks RWQCB to allow us a reasonable amount of time to remove Mallard from the list before imposing permit requirements.

Impacts to Beneficial Uses

CCWD believes that the Bollman backwash solids discharges neither historically nor currently impact the beneficial uses of the receiving water.

Mallard was constructed in the 1930's to serve as a source of agricultural and industrial water supply. It receives water from the Sacramento-San Joaquin Delta by way of a pump and gravity flow canal system. Mallard has a capacity of about 3,100 acre-feet and a surface area of about 200 acres. The design of Mallard has not changed since its original construction.

CCWD was formed in 1936 to provide potable (municipal) water, as well as to continue to provide the original industrial and agricultural water supply services. Mallard served and continues to serve as the primary reservoir for these services. We believe that sometime in the 1980's, RWQCB assigned the additional beneficial uses of: fish spawning, warm water fish habitat; and wildlife habitat.

Although Mallard supports vibrant fish spawning, warm water fish, and wildlife habitats (habitat), these were never the intended beneficial uses. Regardless, CCWD works closely with the Department of Fish & Game (DFG) to maintain the habitat at Mallard. All reservoir work, such as slope erosion repair, is conducted through formal DFG approvals and mitigation agreements.

Public access to Mallard is strictly prohibited. Mallard is monitored frequently each day to guard against public access and observe the general state of the reservoir. However, we do allow access to the Audubon Society for their annual bird count. CCWD has received unsolicited praise from the Audubon Society for the health, variety, and numbers of birds observed during their counts.

CCWD has never observed any impacts to Mallard's beneficial uses from Bollman backwash solids discharges. We believe that our cooperative efforts with DFG show our commitment to protect and maintain the existing habitat. We feel that the unsolicited positive testimonials from the Audubon Society support our position that Bollman discharges do not impact habitat.

As a public drinking water utility, CCWD is well aware of the need to protect Mallard water quality. We go to great lengths to protect and preserve Mallard water quality. But there is no evidence to date that demonstrates that Bollman backwash solids discharges impact either habitat or human beneficial uses. Mallard continues to support habitat and provide a safe and reliable source of potable, agricultural and industrial water in spite of these discharges.

Finally, we believe that the capital and operational costs to control backwash solids discharges to a body of water, which has historically had no observable impacts from these discharges, are excessive. CCWD is currently developing a Water Treatment Plant M aster Plan. The draft plan indicates that the capital costs alone to control backwash solids are on the order of $3 million to $4 million.

Given Mallard's history as a vibrant habitat that provides a safe and reliable source of water, CCWD believes that any future capital expenditure to control back wash solids discharges to meet the current needs of the designated beneficial uses is unnecessary. Construction and operation of backwash solids control measures will do little to protect and/or improve beneficial uses that have never been impacted under the current mode of operation. CCWD strongly believes that Bollman backwash solids discharges should not be subject to the permit requirements.

Notwithstanding that Mallard is not a beneficial use body of water, should RWQCB determine that it is, then it might be appropriate to conduct studies that assess and evaluate control technology costs and backwash solids discharge impacts on beneficial uses. If this were the determination by RWQCB, CCWD asks to work closely with you to define acceptable study parameters.

General Comments on the Permit

We believe that the definitions of intermittent and continuous discharges need to be revised to consider frequent, routine discharges. At Bollman, for example, backwash cycles typically discharge for about 25 minutes. By the permit definition, this discharge is an intermittent discharge and subject to sampling during each occurrence

under Table 1 of the Self-Monitoring Program. As we could have up to six backwashes per day, sampling for each backwash would be resource intensive.

Consideration should be given to allow routine "intermittent" discharges, such as backwash operations, to fall under continuous discharge sampling frequencies. One prospect is to consider that if total routine discharge is greater than an hour per day, the discharge would be considered in the continuous category. Our backwash discharges are more the case of an interrupted continuous discharge rather than an unique intermittent discharge.

From a practical standpoint, the variance in water quality from one backwash cycle to the next in a given day, or even from week to week, will be much less than that found from seasonal differences. With this in mind, the needs of the permit will be met with the sampling frequencies outlined for continuous discharge while minimizing the resource impact on the agencies trying to comply with the permit requirements.

To summarize our comments:

- Based on an opinion from COE, CCWD does not believe that Mallard is a water of the United States. Therefore, it is not subject to the NPDES permit program. We request RWQCB's opinion on this matter.
- We will attempt to remove Mallard from the beneficial use body of waters list in the Plan. CCWD asks RWQCB to allow a reasonable amount of time to do so before imposing permit requirements.
- CCWD has never observed any impacts to Mallard beneficial uses from backwash solids discharges. If RWQCB believes otherwise, it might be appropriate to study and assess the costs associated with discharge solids control and impacts to beneficial uses. This study or studies should be undertaken only after both parties agree on an acceptable approach.
- For monitoring and sampling purposes, there must be some parameters for which routine "intermittent" discharges can be considered a "continuous" discharge.

Thank you for this opportunity to submit these comments. Should you have any questions or comments, please contact me at (925) 688-8023.

Sincerely,

David A. Omoto
Environmental Compliance Officer

DAO:llc