

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TIME SCHEDULE ORDER R5-2017-0120

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT
MOUNTAIN HOUSE WASTEWATER TREATMENT PLANT
SAN JOAQUIN COUNTY

TO COMPLY WITH REQUIREMENTS PRESCRIBED IN WASTE DISCHARGE REQUIREMENTS
ORDER R5-2017-0119
(NPDES PERMIT NO. CA0084271)

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) finds that:

1. Waste Discharge Requirements (WDR) Order R5-2017-0119 was adopted by the Central Valley Water Board renewing the NPDES permit that prescribes waste discharge requirements for Mountain House Community Services District (hereafter Discharger), Mountain House Wastewater Treatment Plant (hereafter Facility), San Joaquin County. The Discharger provides sewerage service for the communities of Mountain House and serves a population of approximately 16,000. WDR Order R5-2017-0119 regulates the discharge of 3.0 million gallons per day (MGD) (design average dry weather flow) of disinfected tertiary treated domestic wastewater to Old River, a water of the United States and within the legal boundary of the Sacramento-San Joaquin Delta.
2. The State Water Resources Control Board adopted the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on 18 May 1972, and amended this plan on 18 September 1975. The Thermal Plan contains temperature objectives for surface waters, which are applicable to the discharge from the Facility. WDR Order R5-2017-0119 includes effluent limitations for temperature, consistent with the previous NPDES permit, WDR Order R5-2013-0004-01, that implement Thermal Plan objective 5.A.(1)a. Section IV.A.1.d. of WDR Order R5-2017-0119 includes the following final temperature effluent limitations applicable to the discharge:
 - “**d. Temperature.** *The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F.*”
3. WDR Order R5-2017-0119 section VII.J includes the following compliance determination for the temperature effluent limitation:
 - “**J. Temperature Effluent Limitations (Section IV.A.1.d).** *Compliance with the final effluent limitations for temperature shall be ascertained using the daily average effluent temperature at Monitoring Location EFF-002 and the temperature of the receiving water measured on the same day by grab sample at Monitoring Location RSW-003, or Monitoring Location RSW-004 when excessive water hyacinth growth prevents safe access to Monitoring Location RSW 003.*”

Need for Time Schedule Extension and Legal Basis

4. The Central Valley Water Board adopted Time Schedule Order (TSO) R5-2013-0005, providing a compliance schedule for the Discharger to comply with the final effluent limitations for temperature contained in previous WDR Order R5-2013-0004-01. The Discharger has made diligent efforts to achieve compliance. On 29 July 2013, the Discharger submitted a Temperature Study Work Plan and Schedule. In May 2013, the Facility installed continuous temperature monitoring devices within the effluent outfall pipeline at the point of discharge. On 26 January 2016, the Discharger submitted the Temperature Study Report (Study) in accordance with TSO R5-2013-0005.
5. On 30 June 2017, the Discharger submitted a Thermal Plan Exception Report (Report). The Report evaluated the Discharger's compliance with the current effluent and receiving water limitation for temperature for the monitoring period from May 2013 to January 2017. The Discharger was in consistent compliance with the receiving water limitation throughout the monitoring period; however, the Discharger was not able to consistently meet the effluent limitation for temperature in cold winter months. Of the 89 temperature measurements, the greatest temperature difference between the measured effluent temperature and the natural receiving water temperature was 26.0 °F that occurred on 2 December 2015. The seasonal trend of effluent to receiving water temperature differential suggests compliance is routinely feasible in the spring and summer months, where the differential is typically at or under 10°F, whereas the differential nears 20°F in late fall and winter months. A temperature differential in excess of 20°F has occurred in late-November through February.
6. The Thermal Plan allows regional boards to provide exceptions to specific water quality objectives in the Thermal Plan so long as the exceptions comply with CWA section 316(a) and federal regulations. The applicable exception is promulgated in 40 C.F.R. section 125.73(a), which provides that, "*Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.*" The Thermal Plan requires that the State Water Board concur with any exceptions prior to them becoming effective.
7. The Discharger requested an exception to Thermal Plan objective 5.A.(1)a in accordance with federal regulations. The exception includes the following final temperature effluent limitations:
 - "d. **Temperature.** *The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F from 1 March through 31 October and more than 30°F from 1 November through 28/29 February.*"

The Discharger's Report characterized the aquatic and wildlife communities of Old River in the vicinity of the Discharge, and evaluated the effects on the proposed Thermal Plan exception on protection and propagation of a balanced, indigenous population of fish, benthos, zooplankton, phytoplankton, and wildlife in and on Old River based on the near-field plume assessment and

far-field fully mixed assessment. The Report provided the technical basis that demonstrates the alternative effluent limitation that would result from the proposed Thermal Plan exception, at the Discharger's permitted discharge rate of 3 MGD, would have no species-specific, habitat, or community level adverse thermal effects on the aquatic ecology of Old River. Moreover, considering the cumulative impact of the Discharger's thermal discharge together with all other significant impacts on the species affected, the proposed Thermal Plan exception and alternative effluent limitation would assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on Old River.

8. On 23 August 2017, the Discharger submitted an infeasibility analysis and requested extension of the compliance schedules for temperature to allow additional time to be granted for a Thermal Plan exception.

The process to grant a Thermal Plan exception includes: 1) technical review of the appropriateness of the requested exception and proposed alternative temperature limitations by the California Department of Fish and Wildlife (CDFW), National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS); 2) completion of appropriate review under California Environmental Quality Act (CEQA); 3) Central Valley Water Board adoption of the Thermal Plan Exception; and 4) State Water Resources Control Board approval of the Thermal Plan Exception.

The compliance time schedule authorized by this Order allows time to proceed through the Thermal Plan exception process. However, if the Thermal Plan exception is not authorized, the Discharger must submit a Work Plan and Schedule to comply with the final effluent limitations for temperature per the Thermal Plan, without an exception.

Mandatory Minimum Penalties

9. California Water Code (CWC) sections 13385(h) and (i) require the Central Valley Water Board to impose mandatory minimum penalties (MMP's) upon dischargers that violate certain effluent limitations. CWC section 13385(j)(3) exempts the discharge from MMP's, "*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 or 13308, if all the [specified] requirements are met...for the purposes of this subdivision, the time schedule may not exceed five years in length...*".
10. Per the requirements of CWC section 13385(j)(3), the Central Valley Water Board finds that:
 - a. This Order specifies the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to CWC section 13385(h) and (i).
 - b. The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after 1 July 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
 - c. To comply with final effluent limitations, the Discharger has determined that an additional five years is necessary to develop and implement the projects discussed in Findings 7 and 8.

- d. This Order establishes a time schedule to bring the waste discharge into compliance with the effluent limitations in as short a time as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.
11. The final effluent limitations for temperature became applicable to the waste discharge on the effective date of previous WDR Order R5-2013-0004-01 (22 March 2013). TSO R5-2013-0005 provided protection from MMP's for violations of temperature final effluent limitations from 22 March 2013 until 1 February 2018.
12. By statute, a Time Schedule Order may provide protection from MMP's for no more than five years, except as provided in CWC section 13385(j)(3)(C)(ii).
13. Per the requirements of 13385(j)(3)(C)(ii)(II), following a public hearing, and upon a showing that the Discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the Central Valley Water Board may extend the time schedule for an additional five years, if the Discharger demonstrates that the additional time is necessary to comply with the effluent limitation. In accordance with CWC Section 13385(j)(3)(C)(ii)(II), the time schedule is extended no more than five years. The Central Valley Water Board finds, as described in previous findings in this Order, that the Discharger has demonstrated due diligence and is making diligent progress to bring the waste discharge into compliance with final effluent limitations for temperature contained in WDR Order R5-2017-0119.
14. Compliance with this Order exempts the Discharger from MMP's for violations of the final effluent limitations for temperature from **1 February 2018** through **31 January 2023**.
15. In accordance with CWC section 13385(j)(3)(C), the total length of protection from MMP's for the final effluent limitations for temperature does not exceed ten years.
16. This Order provides a time schedule for completing the actions necessary to ensure compliance with the final effluent limitations for temperature contained in WDR Order R5-2017-0119. Since the time schedule for completion of actions necessary to bring the waste discharge into compliance exceeds one year, this Order includes interim effluent limitations and interim requirements and dates for their achievement.

This Order includes new performance-based interim effluent limitations for temperature. The maximum temperature difference between the effluent and receiving water was 26.0°F on 2 December 2015. Therefore, considering the variability of the effluent, this Order establishes an interim effluent limitation for temperature requiring that the maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F from 1 March through 31 October and more than 30°F from 1 November through 28 February. The Discharger's Thermal Plan Exception Report demonstrates the proposed Thermal Plan exception and alternative effluent limitation will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on Old River.

17. The Central Valley Water Board finds that the Discharger can maintain compliance with the interim effluent limitations included in this Order. Interim effluent limitations are established when compliance with the final effluent limitations cannot be achieved by the existing Facility. 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

effluent limitations, however, establish an enforceable ceiling concentration until compliance with the final effluent limitation achieved.

18. If an interim effluent limit contained in this Order is exceeded, then the Discharger is subject to MMPs for that particular exceedance as it will no longer meet the exemption in CWC 13385(j)(3). It is the intent of the Central Valley Water Board that a violation of an interim daily maximum effluent limit subjects the Discharger to one MMP for the day in which the sample was collected.

Other Regulatory Requirements

19. 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.”*
20. CWC section 13267(b)(1) states: *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”*
21. The Discharger owns and operates the treatment facility which is subject to this Order. The technical and monitoring reports required by this Order are necessary to determine compliance with WDR Order R5-2017-0119 and with this Order.
22. Issuance of this Order is exempt from the provisions of the CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CWC section 13389, since the adoption or modification of a NPDES permit for an existing source is statutorily exempt and this Order only serves to implement a NPDES permit. (*Pacific Water Conditioning Ass’n, Inc. v. City Council of City of Riverside* (1977) 73 Cal.App.3d 546, 555-556.)
23. The Central Valley Water Board has notified the Discharger and interested agencies and persons of its intent to extend the compliance schedules for temperature contained in TSO R5-2013-0005 for this discharge and has provided them with an opportunity to submit their written views and recommendations.

IT IS HEREBY ORDERED THAT:

1. This Order shall become effective on **1 February 2018**.
2. Time Schedule Order R5-2013-0005 is rescinded upon the effective date of this Order except for enforcement purposes.
3. Pursuant to CWC Section 13300 and 13267, the Discharger shall comply with the following time schedule to submit reports and ensure completion of the study and ensure compliance with final effluent limitations in WDR Order R5-2017-0119.

Task	Compliance Date
i. Submit Temperature Study – Work Plan and Schedule	Complete
ii. Install meter at outfall to monitor temperature	Complete
iii. Submit Temperature Study – Final Study Report	Complete
iv. Submit Thermal Plan Exception Justification Report and Request	Complete
v. Submit Final Thermal Plan Exception Justification Report and Request The Final Report shall include: <ul style="list-style-type: none"> • Treatment feasibility and cost analysis of compliance with the current temperature effluent limitations without an exception. • Technical reviews by CDFW, NMFS and USFWS concurring with the findings in the Thermal Plan exception request. 	1 September 2018
vi. Submit annual progress reports. The annual progress reports shall include the status of the Thermal Plan Exception process, including at minimum: <ul style="list-style-type: none"> • technical reviews by CDFW, NMFS and USFWS • State Water Board approval 	1 June 2018 1 June 2019
vii. Submit Work Plan and Schedule to Comply with Final Effluent Limitation for Temperature without Exception Only required if Thermal Plan Exception has not been granted by 1 September 2019.	1 September 2019
viii. Comply with the Final Effluent Limitations for Temperature. Submit report demonstrating the Facility complies the final temperature effluent limitations.	31 January 2023

4. The discharge at Discharge Point 001 shall not exceed the following seasonal interim effluent limitation. The seasonal interim effluent limitation for temperature is effective from **1 February 2018 through 31 January 2023**.
 - i. Between 1 November and 28 February, the daily average temperature of the discharge, as measured at EFF-002, shall not exceed the natural receiving water daily average temperature by more than 30°F, as measured at RSW-003 or Monitoring Location RSW-004 when excessive water hyacinth growth prevents safe access to Monitoring Location RSW-003.

5. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

6. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All civil engineering, geologic, or geophysical plans, calculations, specifications, and related reports submitted with technical reports specified herein shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated and shall contain the professional's signature and/or stamp of the seal.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the WDRs may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

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 December 2017**.

ORIGINAL SIGNED BY

PAMELA C. CREEDON, Executive Officer