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January 19, 2005

Via Overnight Delivery and E-mail (HYPERLINK
"mailto:commentletters@waterboards.ca.gov"commentletters@waterboards.ca.gov
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Selica Potter, Acting Clerk to the Board

State Water Resources Control Board

Executive Office

1001 I Street, 24th Floor

Sacramento, CA 95814

Subject: COMMENT LETTER - 1/19/06 PUBLIC HEARING FOR SSOPR

Dear Board Members:

I. INTRODUCTION

We are writing to provide you with our comments relating to the proposed Statewide General Waste Discharge Requirements for Wastewater Collection System Agencies dated December 5, 2005 (the "WDRs"). It is our understanding that your Board will be considering the proposed WDRs at a public hearing scheduled for February 8, 2006.

II. BACKGROUND

The Santa Ynez Community Services District ("SYCSD") owns and operates a "satellite" public wastewater collection system and related appurtenances located in the unincorporated Town of Santa Ynez in Santa Barbara County. SYCSD holds capacity rights in a regional wastewater treatment facility owned and operated by the neighboring City of Solvang. All wastewater collected by the District's system is conveyed to the Solvang plant for treatment and disposal.

The Santa Ynez Indian Reservation (the "Reservation") is located adjacent to SYCSD's boundaries but has not been annexed to the District. The Santa Ynez Band of Mission Indians (the "Tribe") owns a wastewater collection system on the Reservation. For many years the Tribe's collection system discharged wastewater from the Reservation into the District's collection system. The wastewater from the Reservation was then transported through the District's collection system to the Solvang plant for treatment and disposal.

Because the Reservation has not been annexed to SYCSD, the Tribe and SYCSD entered into a contract pursuant to which the Tribe acquired from SYCSD a portion of the SYCSD's capacity rights in the Solvang treatment plant. That contract also provides that SYCSD is responsible for the operation, maintenance and repair of the Tribe's wastewater collection system on the Reservation.

In order to provide wastewater capacity for its expanded casino facilities and a new hotel on the Reservation, the Tribe recently completed the construction of its own private wastewater treatment plant. Because the Reservation is located on Federal trust land, the Tribe's wastewater treatment plant is not subject to state jurisdiction. Therefore, the Tribe instead obtained an NPDES permit for its treatment plant directly from the U.S. Environmental Protection Agency.

Although the Tribe continues to own a portion of the District's capacity rights in the Solvang treatment plant, the Tribe is no longer conveying any wastewater from the Reservation to the Solvang plant. Instead, all wastewater from the Reservation is now being conveyed through the Tribe's private collection system to the Tribe's private plant for treatment and disposal.

Pursuant to the preexisting contract between SYCSD and the Tribe, SYCSD continues to be responsible for the operation, maintenance and repair of the Tribe's wastewater collection system. In addition, pursuant to a separate contract between the parties, SYCSD has agreed to be responsible for the operation, maintenance and repair of the Tribe's new wastewater treatment plant.

III. COMMENTS ON PROPOSED WDRs

A. The Proposed WDRs do not Adequately Identify What Collection Systems are Covered

SYCSD is unable to determine whether the proposed WDRs will apply to the Tribe's wastewater collection system located on the Reservation. In some places the WDRs indicate that they apply to all public entities "that own or operate sanitary sewer systems or any facilities that collect or convey untreated wastewater to a publicly-owned treatment facility in the State of California". (See p. 1, para. 1; p. 5 para. A.3) Because the Tribe's collection system does not (at this point) convey wastewater to a publicly-owned treatment facility, these provisions indicate that the Tribe's collection system will not be subject to the WDRs.

In other places the WDRs indicate that if a public agency "operates" a collection system, then the collection system is subject to the WDRs. (See p. 2., para. 5; p. 6, para. B.1) Since SYCSD "operates" the Tribe's collection system, these provisions would make the Tribe's collection system subject to the WDRs.

In still other places, the WDRs address satellite collection systems that are owned or operated by a public agency and that are tributary to a treatment facility owned or operated by a separate public agency. (See p. 5 para. A.6) Since SYCSD operates the Tribe's collection system as well as the Tribe's treatment plant, these provisions arguably would make the Tribe's collection system subject to the WDRs.

There are also inconsistencies between the WDRs and the accompanying Draft Fact Sheet with respect to this issue. As indicated above, the WDRs make reference to collection systems that are "owned or operated" by a public agency. The Fact Sheet, on the other hand, indicates that the WDRs only apply to collection systems that are "owned" by a public agency. The Fact Sheet specifically states at page 6: "The WDRs require all public agencies, which own wastewater collection systems ... to enroll in the WDR. Privately owned systems are not subject to this WDR ." Based on this language in the Fact Sheet, even if the Tribe were sending wastewater to the Solvang plant, the Tribe's collection system would not be subject to the WDRs because it is privately owned, and the fact that SYCSD operates the collection system would not appear to be relevant.

B. The WDRs Need to Clearly State that Special Districts are not Responsible for Reporting and Responding to SSOs from Private Collection Facilities

The draft WDRs dated August 1, 2005 indicate at the top of page 4 that agencies subject to the WDRs would not be responsible for reporting sanitary sewer overflows ("SSOs") originating from privately-owned laterals. The current draft WDRs make it difficult to determine (i) whether agencies subject to the WDRs will be held responsible for responding to and/or reporting spills from private collection systems, (ii) whether an agency's obligations change if a spill from a private system reaches a street, storm drain or waters of the State, and (iii) whether a spill from a private system is considered an "SSO" for any purpose under the WDRs. The

definitions for "Sanitary Sewer Overflow" under Sections A.1.(i) and (ii) at page 5 of the December 5, 2005 draft WDRs appear to apply to all overflows, regardless of where they originate. The definition for "Sanitary Sewer System" under Sections A.2. at page 5 makes no distinction between public and private facilities.

SYCSD strongly believes that agencies subject to the WDRs should have no responsibility for responding to and/or reporting spills from private collection systems, even when such spills reach a street, storm drain or waters of the State. This is of particular concern to SYCSD because, as a special district, it does not have the legal authority to adequately respond to private spills. SYCSD was formed under the Community Services District Act (Government Code Section 61000 et seq.). As such, it is a district of limited powers and can perform only those functions that its enabling legislation authorizes it to perform. SYCSD can also only perform such services as have been approved by the Local Agency Formation Commission (LAFCO). LAFCO reviews the functions and services of local agencies with overlapping boundaries to ensure that conflicts do not arise regarding the services the agencies provide. Responding to sewage spills on private property is not currently within the scope of SYCSD authorized services.

Unlike a city that owns wastewater collection facilities and also performs an array of other municipal functions including storm water control, SYCSD's jurisdiction is generally limited to the operation, maintenance and repair of its collection system and the Tribe's wastewater facilities located on the Santa Ynez Indian Reservation. The limited scope of SYCSD's authority means that it is not responsible for any portion of a sewage collection system located on private property, for other private sewer facilities, or for responding to or cleaning up sewage spills originating on private property.

The local roadways and storm drain systems within SYCSD's service area are owned and maintained by the County of Santa Barbara, and come under the jurisdiction of the County Public Works Department. SYCSD has no ownership rights in and no authority to access storm drain facilities and, therefore, cannot address private sewer spills that enter storm drains. Similarly, SYCSD has no authority to enter creeks or other water bodies without permission from the Department of Fish & Game and/or other regulatory agencies, and SYCSD cannot enter private property without the consent of the owner in order to respond to private sewer spills.

Finally, the fees SYCSD collects from its ratepayers are tied directly to the cost of the specific services SYCSD provides. These fees not cover the costs that would be incurred if the District were required to respond to sewage spills originating on private property. SYCSD believes it would be inequitable to impose a general rate increase to cover such costs and that such costs should instead be paid by the private party on whose property the spill originates. In addition, in light of Proposition 218's requirement for voter approval of "property related" charges, it may not be possible for SYCSD to increase its fees to cover the cost of cleaning up private sewage spills.

If any agency is to be given the responsibility for responding to sewage spills originating on private property, it should be an agency with the

authority to properly address those situations. In addition, it should be an agency that has general sources of revenues available for cover the cost of such services. The responsibility should not be imposed on a district of limited powers like SYCSD because such agencies generally lack the necessary legal authority and have fee structures that cannot be readily adapted to cover the cost of such services.

For these reasons, SYCSD believes that the WDRs need to clearly state that they do not impose on agencies subject to the WDRs any responsibility for responding to, cleaning up or reporting wastewater spills or overflows originating from privately owned wastewater facilities.

Thank you for your consideration of these comments.

Respectfully submitted,

SANTA YNEZ COMMUNITY

SERVICES DISTRICT

Carl Maler, Board President

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