



# CITY OF STOCKTON

DEPARTMENT OF MUNICIPAL UTILITIES

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January 25, 2006

Selica Potter, Acting Clerk to the Board  
 Tam Doduc, Chair and Members of the Board  
 California State Water Resources Control Board  
 P.O. Box 100  
 1001 I Street, 24<sup>th</sup> Floor  
 Sacramento, CA 95814



SSO Hearing: 2/8/06

## COMMENT LETTER – 1/19/06 PUBLIC HEARING FOR SSORP

The City of Stockton Municipal Utilities Department (Stockton MUD) treats domestic and industrial wastewaters servicing a population of 340,000, through approximately 80,000 sanitary service connections and 1200 miles of sanitary sewer lines. Stockton MUD is also a member of the California Association of Sanitation Agencies and Central Valley Clean Water Association, and fully supports all the comments those associations have made on behalf of their members. Stockton MUD appreciates the opportunity to provide comments regarding the proposed waste discharge requirements (WDRs) for sanitary sewer collection systems in California.

The proposed WDRs represent two years of significant effort on the part of your staff, regional boards, collection system owners and other stakeholders. Stockton MUD staff took part in the Sanitary Sewer Overflow Guidance Committee, which played a key role in identifying issues and providing input regarding the type of regulatory mechanism that should be employed to implement the SWRCB's SSO reduction initiative. The proposed WDRs reflect much of the Committee's work, and Stockton MUD is supportive of the goal of creating a consistent statewide approach for collection systems in California with regard to reporting and preparation of sewer system management plans. The SWRCB staff is to be commended for their willingness to engage in a genuine dialogue as to the best approach to reducing SSOs.

Stockton MUD would like to support the implementation of the WDRs, however, there are several significant concerns that specifically affect municipal utilities of our size and scope that must be addressed before Stockton MUD is able to endorse the adoption of the WDRs. These issues are as follows:



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#### **No Provision for Adequate Protection From Enforcement of Unavoidable SSOs.**

The proposed WDRs do not provide any defense against Clean Water Act citizen suits, which are increasing in number.

Earlier informal drafts of the WDRs provided a limited affirmative defense for rare and exceptional sanitary sewer overflows (SSOs) that are deemed unpreventable. This approach has been abandoned in favor of a provision recommending that regional boards exercise enforcement discretion under certain circumstances. The Draft Fact Sheet states that the enforcement discretion sections of the WDR are consistent with enforcement discretion provisions of the California Water Code, but many of the provisions of Section C.6 go far beyond the enforcement discretion provisions of the California Water Code in the scope of the requirements and are derived from federal NPDES regulations. (See Cal. Water Code § 13327, 40 CFR §122.41.) It is inappropriate to include in the WDRs language taken from federal regulations relating to conditions necessary to establish bypass and upset defenses for facilities such as ours, under NPDES permits, because an NPDES permit approach does not apply to many of California's collection systems, and, moreover, because meaningful legal protection from enforcement actions is not being provided even with full compliance with these conditions. An NPDES permittee that satisfies conditions necessary to demonstrate bypass, including C.6.(iii), or that has an incident that meets the definition of an upset, including C.6.(iv), and that satisfies the conditions to demonstrate upset, including C.6.(ii), establishes an affirmative defense and thereby receives legal protection from government enforcement and third party suits.

Stockton MUD believes that an affirmative defense is the better approach, and that such a defense is lawful. The proposed enforcement discretion approach does not provide sufficient protection from enforcement actions. Therefore, while at the very least, enforcement discretion is essential to an acceptable WDR approach, we believe that these provisions as currently drafted are overly onerous, and do not provide commensurate protection from enforcement for permittees that are fully compliant with the terms of the draft WDRs yet experience unavoidable SSOs.

#### **The WDRs Require Local Agencies to Undertake an Extensive and Expensive New Unfunded Program**

Stockton MUD believes that long-term compliance with this program will cost California municipalities billions of dollars. The development of sewer system management plans (SSMPs) alone, which are required of all collection systems within the first few years of the program, are likely to cost more than \$10 million. There do not appear to be any significant new sources of state or federal funding available to help pay for these new

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mandates. The WDRs will require hundreds of already financially strapped local governments to undertake a broad new program.

**The WDRs Should Supersede Collection System Provisions in Existing WDRs and NPDES Permits in Order to Avoid Subjecting Agencies to Duplicative or Conflicting Requirements**

Stockton MUD must comply with NPDES Permit requirements as well as WDRs. One of the primary drivers for adopting statewide general WDRs was a desire to bring consistency and fairness to the regulation of collection systems across the state. Stockton MUD is concerned that the goal of a "level playing field" will not be accomplished by the proposed WDRs if the Regional Boards may impose more stringent or more prescriptive requirements than those set forth in the WDRs. This provision subjects collection systems such as Stockton MUD's to a moving target, potentially layered requirements, and is directly contrary to the goal of a unified statewide program. Stockton MUD recognizes that NPDES permits must include certain minimum requirements for collection systems. Other than those requirements, however, the WDRs should specify that once a collection system operator has been approved for coverage under the WDRs, the regional boards may not impose different or more stringent requirements except where legally required.

The determination of whether a collection system will be governed by the General WDRs or by an existing permit must be made by the SWRCB and Regional Board at the time of enrollment. Each collection system should be governed by a single permit.

**Significant Details Regarding Implementation of the WDRs Must be Clarified Prior to Adoption.**

Stockton MUD believes that the following WDR issues need clarification prior to adoption.

The SWRCB staff has made an attempt to estimate the costs of this program to local agencies. Unfortunately, the cost analysis is based on costs incurred by the cities in Orange County, and is therefore not representative of costs incurred by older northern California municipalities. For these, and associated reasons, we believe that the cost estimates are significantly flawed and underestimate the costs to all but the largest agencies; we believe these costs will be much higher than indicated, in many instances. A major flaw in the analysis is the omission of any costs that counties and special districts, which will also be expected to enroll in the permit, can be expected to incur. Additionally, there is no analysis or data to support either the supposition that the costs incurred by the cities in Orange County is similar to the costs that will be incurred to

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comply with the general WDR, nor that these entities are representative of local government entities throughout the state.

A related issue is the lack of a defined SWRCB/Regional Board Program to oversee implementation with the WDRs. The staff report does not provide information regarding the number of staff that will be required to review SSMPs, analyze reporting information, and enforce the WDRs. Hundreds of agencies will be developing SSMP elements according to the schedule set forth in the WDRs, yet it is unclear what process, if any, will be used to review and evaluate that information. Nor has the SWRCB disclosed its cost to implement this major new regulatory program and the fees that will be assessed enrollees to cover those costs. We are very concerned that collection agencies are being required to undertake a significant new mandate without understanding all of the cost implications.

In summary, Stockton MUD supports the SWRCB's goal of reducing SSOs and bringing consistency to the regulation of collection systems. The proposed WDRs, however, are deficient in several important respects. We urge the SWRCB to direct staff to revise the WDRs to address these concerns and re-circulate a revised draft for additional comment prior to adoption by the Board.

Thank you for your consideration of my comments. Stockton MUD applauds the SWRCB for undertaking development of an SSO Reduction Program through an open stakeholder process. We are hopeful that these outstanding issues can be satisfactorily addressed.



MARK L. MADISON  
DIRECTOR OF MUNICIPAL UTILITIES

MLM:SG:ALK:as

cc: J. Gordon Palmer, Jr., Interim City Manager  
Johnny Ford, Deputy City Manager

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**FAX TRANSMITTAL**

DATE: January 25, 2006

TO: Selica Potter, Acting Clerk of the Board  
State Water Resources Control Board

FAX NO.: (916) 341-5620

FROM: Alice Sterming, Office Specialist  
Direct Telephone No.: (209) 937-8707

SUBJECT: COMMENT LETTER - 1/19/06 PUBLIC HEARING FOR SSORP

Number of pages being transmitted, including this cover page: 5

REMARKS:

Signed: Alice Sterming, Office Specialist