Central Valley Clean Water Association

Representing Over Sixty Wastewater Agencies

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January 9, 2009

Via Electronic Mail
James D. Marshall, P.E.
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114
jdmarshall@waterboards.ca.gov

Re: Comments on the Tentative Waste Discharge Requirements for the City of Turlock Water Quality Control Facility (NPDES Permit No. CA0078948)

Dear Mr. Marshall:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the Tentative Waste Discharge Requirements for the City of Turlock Water Quality Control Facility (WQCF) (Tentative Order). CVCWA represents the interests of more than 60 wastewater agencies in the Central Valley in regulatory matters related to water quality and the environment.

CVCWA offers the comments on the Tentative Order in the spirit of ensuring the reasonable regulation of water quality and protection of beneficial uses under applicable law. For the reasons explained below, CVCWA respectfully requests that the Regional Water Board find that the agricultural drain to which the City's WQCF discharges does not have a designation of municipal and domestic supply (MUN) and modify the requirements in the Tentative Order accordingly. CVCWA also requests that the Tentative Order be revised to require final compliance with the effluent limitations for electrical conductivity (EC) by July 28, 2022, and/or July 28, 2026.

A. The Agricultural Drain at Issue Is Not Designated MUN

The Tentative Order applies the MUN designation to the Harding Drain based on the State Water Board's Sources of Drinking Water Policy (Resolution No. 88-63) and the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan). The Tentative Order recognizes that the agricultural drain meets the exceptions of Resolution No. 88-63. However, the Tentative Order incorrectly concludes that the Regional Water Board must formally de-designate the agricultural drain for the exception to apply.

CVCWA disagrees that formal de-designation must occur. A review of Resolution No. 88-63 and the Basin Plan establish that the exceptions are self-implementing. That is, the Regional Water Board need only find that the exception for agricultural drainage applies to the Harding Drain in order to exclude requirements in the Tentative Order related to the MUN designation.

1. Resolution No. 88-63 Exempts the Agricultural Drain to Which the WQCF Discharges from the Generally Applicable MUN Designation

Resolution No. 88-63 provides that all surface waters and groundwater are suitable or potentially suitable for the MUN use and the Regional Water Boards should designate them as such with certain exceptions. One such exception is where:

> The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards. (Resolution No. 88-63.)

Accordingly, waters that meet the exception for agricultural drainage are not part of the class of surface waters or groundwater subject to a MUN designation. The unnamed agricultural drain to which the WQCF discharges qualifies for the exception to the blanket designation of MUN to surface waters.

2. The Basin Plan Requires Case-by-Case Consideration of Beneficial Uses and Incorporates the Exceptions to MUN Designations Under Resolution No. 88-63 Where Applicable

The Beneficial Uses chapter of the Basin recognizes that it is impractical to list the beneficial uses of every surface water body in the region. (Basin Plan at p. II-2.00.) Therefore the Basin Plans states: "For unidentified water bodies, the beneficial uses will be evaluated on a case-by-case basis." (Basin Plan at p. II-2.00.) In addition, the chapter incorporates Resolution No. 88-63 into the Basin Plan: "Water Bodies within the basins that do not have beneficial uses designated in Table II-1 are assigned MUN designations *in accordance with* the provisions of State Water Board Resolution No. 88-63 which is, by reference, a part of this Basin Plan." (Basin Plan at p. II-2.01, emphasis added.) Moreover, the Basin Plan reads: "In making any exemptions to the beneficial use designation MUN, *the Regional Board will apply the exceptions* listed in Resolution [sic] 88-63." (Basin Plan at p. II-2.01, emphasis added.)

The agricultural drain to which the WQCF discharges does not have a beneficial use designation in Table II-1. Therefore, the Basin Plan directs the Regional Water Board to consider the agricultural drain's beneficial uses on a case-by-case basis. In doing so, the Basin Plan requires that the Regional Water Board designate unidentified water bodies as MUN "in accordance with" Resolution No. 88-63, which includes exceptions. (Basin Plan at p. II-2.01.) The Basin Plan incorporates Resolution No. 88-63 without qualification, and Resolution No. 88-63 directs Regional Water Boards not to designate certain agricultural drains with the MUN beneficial use. The Basin Plan provides that the Regional Water Board is to apply the exceptions in Resolution No. 88-63. Therefore, the plain language of the Basin Plan requires the Regional Water Board to apply Resolution No. 88-63's exception for waters in an agricultural drain in this case.

B. The Compliance Schedule for EC Should Extend Until July 28, 2022, and/or July 28, 2026

Sections IV.A.1.h, fn.1 and IV.B.1.h, fn.1 of the Tentative Order state that compliance with the final EC limits is required by July 28, 2022 (all water year types, except critically dry) or July 28, 2026 (for critically dry water years) in accordance with the adopted TMDL for salt and boron. However, the Tentative Order includes a compliance schedule for EC that requires full compliance by January 1, 2016.

The United States E.P.A. has confirmed that a compliance schedule may extend beyond the term of an NPDES permit. (Discussion of Selected Issues, Enclosure to letter from Alexis Strauss to Tom Howard, November 29,2006 at p.8.) The State Water Board's compliance schedule policy provides that a compliance schedule may *exceed* ten years for an effluent limitation "that implements or is consistent with the wasteload allocations specified in a TMDL" provided that the TMDL implementation plan contains a compliance schedule or implementation schedule. (Resolution 2008-0025 at p.5.) In addition, the permit for the City of Modesto implements limitations for EC consistent with the same TMDL now at issue and allows Modesto until July 28, 2022 and/or July 28, 2026, to comply. (See Order No. R5-2008-0059 at p. 32.)

Accordingly, CVCWA requests that the Tentative Order include a compliance schedule that extends the final compliance date to July 28, 2022, and/or July 28, 2026, as appropriate. Such a modification is consistent with the direction provided by the E.P.A. and State Water Board on compliance schedules, TMDLs and prior permitting action taken by the Regional Water Board for the City of Modesto.

In summary, CVCWA respectfully requests the Tentative Order find that the MUN designation does not apply to the agricultural drain to which the WQCF discharges and that staff modify the requirements in the Tentative Order to reflect that finding. CVCWA also respectfully requests that the Tentative Order extend the final compliance deadline for EC to be consistent with the TMDL.

Sincerely,

Debbie Webster

DW:CNA:mb

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