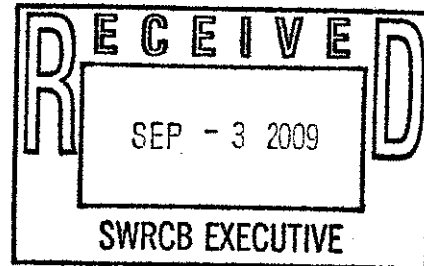


  
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September 3, 2009

*Via Email [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) and Hand Delivery*

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, California

Subject: Comments to SWRCB/OCC File Nos. A-1971, A-1971(a) and A-1971(b);  
September 15, 2009 Board Workshop

Dear Ms. Townsend:

On behalf of the City of Stockton (City), the following comments relate to the Proposed Order in the matter of the Petitions of City of Stockton, California Sportfishing Protection Alliance, San Luis & Delta-Mendota Water Authority and Westlands Water District (Waste Discharge Requirements Order No. R5-2008-0154 [NPDES No. CA0079138] for the City of Stockton Regional Wastewater Control Facility, San Joaquin County) (Proposed Order). The City has previously filed memoranda related to all of the petitions under review, and has furnished considerable information in the record, all of which the City continues to rely upon. These comments focus on the Proposed Order.

We also enclose a copy of materials the City may present at the September 15, 2009 workshop. All of these items are from the record or simply present material based on statutes or regulations or orders of the State Water Resources Control Board (State Water Board) or Central Valley Regional Water Quality Control Board (Regional Water Board), or the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan).<sup>1</sup>

As a preliminary matter, the City supports the Proposed Order's findings with respect to tertiary treatment, dissolved oxygen and ammonia effluent limitations, and "emerging

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<sup>1</sup> The map included in this material is from page 2 of the Bay-Delta Plan augmented with compliance locations from page 13 of the Bay-Delta Plan, language from page 10 of the Bay-Delta Plan, and an arrow showing the point of discharge of the City's Regional Wastewater Control Facility (RWCF).

contaminants.” The State Water Board should adopt these findings as proposed. The City does not support the findings related to electrical conductivity (EC) or the mixing zone for human health constituents, and the proposed terms of remand to the Regional Water Board. Our concerns with these proposed findings are provided below.

**I. THE PROPOSED ORDER’S CONCLUSIONS REGARDING ELECTRICAL CONDUCTIVITY ARE INAPPROPRIATE**

**A. Introductory Comments**

The Proposed Order would, in effect, direct the imposition of an effluent limitation for EC based on the “southern Delta” water quality objectives. Assuming this would result in application of the numeric effluent limitations in section IV of the Waste Discharge Requirements for the City of Stockton Regional Wastewater Control Facility Order No. R5-2008-0154 (Permit), the Regional Water Board’s conclusion that such “[e]ffluent limitations . . . would likely require construction and operation of a reverse osmosis treatment plant” is applicable. (Permit at F-44.)

The Proposed Order does not dispute this finding. Nor does the Proposed Order suggest that the mandate of such effluent limitations would have *any* meaningful consequence for beneficial uses. Instead, it applies a logic based on interpreting an ambiguous provision in the manner most detrimental to the City. Further, the Proposed Order would dismiss with cursory analysis a principle argument of the City, effectively bypassing specific language of the Bay-Delta Plan.

In this regard, the City takes exception to the labeling of the City’s position as “radical.” (Proposed Order at p. 6.) Such chiding would perhaps be understandable if an actual impact to beneficial uses would result from the City’s position. The City is not opposed to reducing salinity in its effluent to the extent feasible. In fact, the City has undertaken significant efforts to reduce salinity, including developing new sources of water supply, adopting stringent local limits for salinity and improving chemical treatment processes to avoid adding additional total dissolved solids. The City does challenge the inclusion of a Salinity Plan as part of an effluent limitation when there is no justification for an effluent limitation because there is no reasonable potential to cause or contribute to exceedance of a water quality standard. Further, the City has stated correctly that the specific salinity reduction goal in the Permit (i.e., City’s water supply plus 500) is not based on any evidence in the record. (See Permit at p. 26.) Finally, the salinity monitoring requirements questioned by the City relate directly to the Salinity Reduction Goal in the Permit that is unsupported by any available evidence. These are reasonable and appropriate claims of a responsible public agency. By the Proposed Order’s logic, every Permit ever issued to the City in the past was “radical” because those Permits were consistent with the City’s position here in regard to EC.

The City maintains that any result that could require the City to construct and operate reverse osmosis facilities for no discernible benefit to beneficial uses is extreme and radical.

The State Water Board itself expressed similar conclusions in Water Quality Order 2005-0005, where the State Water Board stated among other things that the construction of reverse osmosis is not reasonable considering that Manteca's use of reverse osmosis would have little effect on beneficial uses. (*In the Matter of the Petition of the City of Manteca for Review of Waste Discharge Requirements Order No. R5-2004-0028, etc.*, Order WQ 2005-0005 (March 16, 2005) (Manteca Order) at pp. 12, 14.)<sup>2</sup> The Proposed Order speculates that the City "may be able to achieve compliance with the *winter* effluent limitations without significant modifications." (Proposed Order at p. 4, emphasis added.) Assuming this is true, it is of course irrelevant. The City must comply with its Permit year round, and there is no basis to conclude that compliance with effluent limitations of .7 mmhos/cm is possible in the absence of tremendous expenditures that would produce no real-world benefit. In short, the City submits that the derisiveness expressed in the Proposed Order is not only inappropriate, but also obscures the issues that should be of concern to the State Water Board.

**B. Effluent from the City's Regional Wastewater Control Facility (RWCF) Does Not Have Reasonable Potential to Cause or Contribute to a Violation of Water Quality Objectives for EC**

**1. Provisions of the Bay-Delta Plan**

The water quality standard in issue is specific in stating that compliance is determined at a specific location. The Proposed Order would, by contrast, dictate that compliance with the standard is determined downstream of that specific location. The City believes that if it is responsible for compliance with EC standards for the Delta, it is responsible only for the standards that apply where water quality is actually influenced by the discharge. Immediately below, the City restates provisions of the Bay-Delta Plan that are at issue and the physical circumstances of the RWCF's point of discharge. In part 2 below, these comments explain that the Proposed Order draws incorrect conclusions.

In 2006, the Bay-Delta Plan was amended to include the following statement: "Unless otherwise indicated, water quality objectives cited for a general area, such as for the southern Delta, are applicable for all locations in that general area and *compliance locations will be used to determine compliance with the cited objectives.*" (Bay-Delta Plan at p. 10, emphasis added.) For the southern Delta, the Bay-Delta Plan identifies water quality objectives of

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<sup>2</sup> The Proposed Order relies significantly on the State Water Board's recently adopted order *In the Matter of the Petition of Environmental Law Foundation and California Sportfishing Protection Alliance for Review of Waste Discharge Requirement Order No. R5-2007-0136 and Time Schedule Order No. R5-2007-0037 for the City of Tracy Wastewater Treatment Plant, San Joaquin County*, Order WQ 2009-0003 (May 19, 2009) (Tracy Order). The City disagrees with the State Water Board's findings in the Tracy Order for the reasons expressed in its March 4, 2009 letter. (See Letter to Jeanine Townsend, Clerk to the Board, State Water Resources Control Board from Theresa Dunham, Somach Simmons & Dunn (March 4, 2009) regarding Comments to SWRCB/OCC File Nos. A-1846(a) and A-1846(b).) To the extent the Proposed Order relies on the Tracy Order, the City's comments on the Tracy Order are incorporated by reference. The remainder of these comments assume that the State Water Board will follow the Tracy Order as the Proposed Order provides.

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.7 mmhos/cm (April through August), and 1.0 mmhos/cm (September through March) for: San Joaquin River at Airport Way Bridge, Vernalis; and San Joaquin River at Brandt Bridge site; and Old River near Middle River; and Old River at Tracy Road Bridge. (Bay-Delta Plan at p. 13.) Of the four compliance locations, just two are on the San Joaquin River, both of which are upstream of the RWCF, and the Brandt Bridge site is the location closest to the point of discharge for the City's RWCF. (See Attachment 8 to comments submitted by the City of Stockton to James Marshall on the *Preliminary Draft Waste Discharge Requirements and Time Schedule Order for City of Stockton Regional Wastewater Control Facility* (July 18, 2008), Map of Bay-Delta Estuary Water Quality Monitoring Locations (Map of Bay-Delta).)

The federal Clean Water Act (CWA), and its implementing regulations, require effluent limitations where the discharge may cause, have the reasonable potential to cause, or contribute to an excursion above an applicable water quality standard. (33 U.S.C. §§ 1311(b)(1)(C), 1312(a); 40 C.F.R. § 122.44(d)(1)(i).) The water quality standard at issue here is the water quality objective identified for the Brandt Bridge site.

The City's point of discharge is over 6 miles downstream of the Brandt Bridge site. (Bay-Delta Plan at p. 13; see also Map of Bay-Delta.) The Brandt Bridge site is the furthest downstream compliance location for the southern Delta area. (See Map of Bay-Delta.) Although effluent from the RWCF can at times move upstream due to tidal action, any actual upstream influence of its discharge does not extend to Brandt Bridge Road. (Permit at p. F-20.)

According to the Regional Water Board, the first compliance location downstream of the RWCF is on the San Joaquin River at Prisoner's Point toward the San Francisco Bay. The Prisoner's Point compliance location is along the Stockton Deep Water Ship Channel where the San Joaquin River has been deepened and straightened. (Permit at pp. F-41 - F-42.) The applicable water quality standard at Prisoner's Point is set for the protection of fish and wildlife. (Bay-Delta Plan at p. 14.) The Prisoner's Point compliance location is highly influenced by significant Sacramento River flows moving cross-Delta to the pumps near Tracy. (Permit at p. F-42.)

## **2. The Proposed Order Does Not Address the City's Contention**

The City maintains that effluent from the RWCF does not have the reasonable potential to cause or contribute to exceedance of the applicable water quality standards for the south Delta and, thus, no effluent limitation is required or proper based on those standards. The Proposed Order refers to the language added to the Bay-Delta Plan in 2006 which states that water quality objectives cited for a general area, such as the southern Delta, apply for all locations "in that general area." (Proposed Order at p. 5, fn. 4.) The Proposed Order then identifies ambiguity as to whether the relevant objectives for determining compliance are in fact the southern Delta or middle Delta water quality objectives, ultimately opting for the former because the compliance locations specified in the Bay-Delta Plan for south Delta

objectives are "much closer" to Stockton than the compliance locations specified for the middle Delta. (Proposed Order at p. 5.) Respectfully, this approach is overly superficial.<sup>3</sup> The Proposed Order avoids the fact that the compliance locations for the south Delta are all upstream of the RWCF or on different channels altogether.

More fundamentally, the Proposed Order would avoid a core contention of the City. The Proposed Order states that the City contends that the water quality objectives "apply only at the compliance points specified in the plan." (Proposed Order at p. 5.) Much more germane is the Bay-Delta Plan, which says that the specific locations "*will be used to determine compliance with the cited objectives.*" (Bay-Delta Plan at p. 10.) The Proposed Order does *not* use these locations to determine compliance. It uses an unspecified location downstream of these points. The City submits that this is inappropriate. The proper inquiry is whether the discharge has reasonable potential to cause or contribute to exceedance of a water quality standard. The discharge does *not* affect compliance at any location where compliance is to be determined.

### 3. The Proposed Order Does Not Relate to Protection of Beneficial Uses

The City submits that the State Water Board, in its actions, should be guided to the maximum extent possible by reasonableness. Complete abandonment of the reasoned approach adopted in the *Manteca* order is not warranted. Further, the State Water Board is mandated by Porter-Cologne to regulate water quality to the highest level that is reasonable. (Wat. Code, §§ 13000, 13001.) At a minimum, the Bay-Delta Plan should be construed to avoidance unreasonable outcomes.<sup>4</sup>

Moreover, the south Delta water quality objective of .7 mmhos/cm (April-August) was adopted based on University of California Guidelines to maintain 100% yield for beans. (See Water Quality Control Plan Sacramento-San Joaquin Delta and Suisun Marsh (August 1978) at p. VI-19.) The State Water Board is currently evaluating the efficacy and applicability of this objective through an independent scientific investigation, including whether the agricultural beneficial uses in the southern Delta would be reasonably protected at different

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<sup>3</sup> Notably, the narrative language relied on in the Proposed Order has not yet been approved by the U.S. Environmental Protection Agency and is therefore not an applicable water quality objective under federal law. (See 40 C.F.R. § 131.21(c)(2).) Moreover, the narrative language has never been adopted as part of the Bay-Delta Plan water quality objectives in compliance with the Porter-Cologne Water Quality Control Act, Water Code section 13000 et seq. (Porter-Cologne), including sections 13241 and 13242. Likewise, there is no evidence in the record to suggest there has been consideration of the Water Code section 13241 factors in applying the Brandt Bridge water quality objective to the City's point of discharge for the first time. (See Order No. R5-2002-0083 [NPDES No. CA0079138] at p. 14, where the Regional Water Board finds that the RWCF is downstream of the south Delta.)

<sup>4</sup> Should the State Water Board conclude that the south Delta water quality objectives are applicable to the discharge, the Regional Water Board should be encouraged to exercise the maximum flexibility in applying the objectives.

salinity levels.<sup>5</sup> (Bay-Delta Plan at p. 32.) It is unreasonable for the State Water Board to remand a permit back to the Regional Water Board with direction to implement a water quality objective that the State Water Board itself questions as being appropriate.

## II. The Permit Includes a Defined Mixing Zone for Human Health Criteria and Agricultural Criteria

The Proposed Order would remand the Permit to the Regional Water Board because it questions if the discharge is "completely-mixed," as defined in the State's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (2005) (SIP). (Proposed Order at p. 10; see SIP at Appendix 1, p. 1.) The Proposed Order's inquiry with respect to complete-mixing is unnecessary. The SIP states that the determination of a mixing zone depends on whether the discharge is "completely-mixed" or "incompletely-mixed." (Proposed Order at p. 16.) Where the discharge is "incompletely-mixed," the Regional Water Board may grant dilution credits if the discharger has completed independent mixing zone studies and demonstrated to the satisfaction of the Regional Water Board that a dilution credit is appropriate. (*Id.* at pp. 16-17.) As indicated in the Fact Sheet (Attachment F to the Permit), the Regional Water Board has reviewed and relied on studies conducted by the City to establish mixing zones for human health criteria and agricultural criteria. (See Fact Sheet at p. F-20.) From this study, the Regional Water Board estimated the mixing zone to extend approximately 3.5 miles upstream and 1 mile downstream. (See *ibid.*)

The Proposed Order takes issue with the Regional Water Board's estimated mixing zone because it does not correspond exactly with the information in the City's May 2005 study. (See Proposed Order at p. 10, fn. 17.) However, the Regional Water Board proposes a mixing zone that is smaller than that set forth in the May 2005 study. The Regional Water Board's approach complies directly with the SIP, which requires the Regional Water Board to establish a mixing zone that is as small as practicable. (SIP at p. 17.)

Further, to establish the mixing zone for agricultural criteria, the Regional Water Board considered and followed EPA's Technical Support Document, which states that a mixing zone should not result in significant health risks. As indicated in the Permit, there are no drinking water intakes in the vicinity of the discharge. (Permit at p. F-21.) The presence of agricultural water intakes is irrelevant here because such intakes do not result in any significant health risk. Thus, the Regional Water Board's inquiry and application of the mixing zone for agricultural criteria set forth in the Permit's Fact Sheet is appropriate and supported by evidence in the record. (*Ibid.*)

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<sup>5</sup> As part of the scientific investigation, the State Water Board recently released a Draft Report on Salt Tolerance of Crops in the Southern Sacramento-San Joaquin Delta (July 14, 2009) by Dr. Glenn J. Hoffman. The Draft Report suggests that the .7 mmhos/cm may be overly conservative. (Draft Report at p. 74.)

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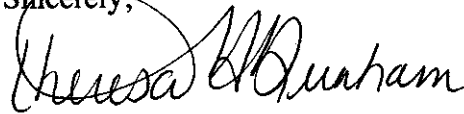
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The Regional Water Board has properly complied with the SIP's requirements for "incompletely-mixed" discharges. A proper mixing zone is established in the Permit based on the discharger's independent mixing zone study. It is not necessary for the Regional Water Board to further consider if the discharge is "completely-mixed" on remand. Thus, section E of the Proposed Order should be eliminated.

In sum, the Proposed Order with respect to EC should be revised substantially. The State Water Board should direct the Regional Water Board on remand to re-evaluate reasonable potential in light of the inapplicability of the south Delta objectives to the City's discharge. Further, as indicated above, section E of the Proposed Order should be deleted.

Sincerely,



Theresa A. Dunham

cc: See Attached Service List

Encs: March 4, 2009 Comments on Proposed Tracy Order  
Exhibits for State Water Board Workshop

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March 4, 2009

*Via Email [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) and Hand Delivery*

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
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Sacramento, CA 95812-0100

Subject: Comments to SWRCB/OCC File Nos. A-1846(a) and A-1846(b)  
(City of Tracy) – March 17, 2009 Board Meeting

Dear Ms. Townsend:

The following comments are submitted on behalf of the City of Stockton (Stockton) regarding the State Water Resources Control Board's (State Water Board) proposed order (Draft Order) in the matter of Petition of Environmental Law Foundation and California Sportfishing Protection Alliance for Review of Waste Discharge Requirements Order No. R5-2007-0036 and Time Schedule Order No. R5-2007-0037 [NPDES No. CA0079154] for the City of Tracy Wastewater Treatment Plant, San Joaquin County (Tracy Permit). Stockton is particularly interested in this matter because the proposed findings with respect to final limitations for electrical conductivity (EC) may be relied upon with respect to EC limits contained in Stockton's Permit, which are currently pending review before the State Water Board. (See Waste Discharge Requirements for the City of Stockton Regional Wastewater Control Facility, Order No. R5-2008-0154 [NPDES No. CA0079138] (Stockton's Permit); see also Petitions A-1971, A-1971(a) and A-1971(b).) Overall, Stockton disagrees with the analysis and findings contained in the Draft Order with respect to final effluent limitations for EC. Comments on this issue are provided below. With respect to the other issues identified in the Draft Order, Stockton supports comments provided by Tracy and the Central Valley Clean Water Association.

I. The Draft Order Improperly Finds That The Permit Effluent Limitations Are Inconsistent With Federal Law

The Draft Order finds the effluent limitations for EC in Tracy's Permit to be inconsistent with federal law. This finding is incorrect because: (1) final water quality-based effluent limitations (WQBELs) for EC are not required because there is no evidence that

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Tracy's discharge has reasonable potential to cause or contribute to a violation of an applicable water quality objective; and, (2) irrespective of whether there is reasonable potential, the effluent limitations are consistent with federal regulatory requirements.

A. Tracy's Discharge Does Not Have Reasonable Potential To Cause Or Contribute To A Violation Of An Applicable Water Quality Standard

Federal regulations require the adoption of WQBELs when the discharge will cause, or have reasonable potential to cause or contribute to, an exceedance of any state water quality standard. (40 C.F.R. § 122.44(d)(1)(i).) The Central Valley Regional Water Quality Control Board (Regional Water Board) found reasonable potential simply by comparing the maximum effluent concentration to the lowest criterion, or in this case 700  $\mu\text{mhos/cm}$ . (Tracy Permit at Table F-5, p. F-52.) While the Regional Water Board's approach for determining reasonable potential might be allowed if there were compliance with applicable law, it fails to properly consider if Tracy's discharge in fact causes or contributes to a violation of the applicable water quality objectives.

In this case, the applicable water quality objectives appear to be the seasonal objectives of 700  $\mu\text{mhos/cm}$  (April through August) and 1,000  $\mu\text{mhos/cm}$  (September through March) for which compliance is measured at Old River at Tracy Road Bridge. (Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Dec. 2006) (Bay-Delta Plan) at p. 13; see Tracy Permit at p. F-43.) To determine compliance with said objectives, the Bay-Delta Plan specifically states that the "compliance locations will be used to determine compliance with the cited objectives." (Bay-Delta Plan at p. 10.) Thus, the Regional Water Board must conduct its reasonable potential analysis to determine if Tracy's discharge will cause or contribute to a violation of the water quality objectives at the Old River/Tracy Road Bridge compliance location.

The record before the State Water Board does not support that Tracy's discharge will cause or contribute to a violation of the water quality objectives, as measured at the Old River/Tracy Road Bridge compliance location. For example, the Delta Simulation Model II modeling evaluation performed for Tracy and Mountain House Community Services District (MHCS D) as part of the Regional Water Board's permitting process indicates that WQBELs set equal to the actual water quality objectives would not affect EC levels, or compliance with the water quality objectives, at the Old River/Tracy Road Bridge compliance location. (See Delta Simulation Model II, City of Tracy and MHCS D (March 29, 2007) (DSM2 Modeling Evaluation) at pp. 15, 17.) Furthermore, the modeling indicates that even if Tracy did not discharge, it would not affect compliance with the objectives under the modeled worst-case conditions. (*Ibid.*) In other words, the objectives are met, or not met, regardless of Tracy's discharge. Thus, the Regional Water Board improperly found reasonable potential. The Regional Water Board itself questioned the necessity of including effluent limitations to protect the agricultural beneficial use. (See Response to Written Comments for City of Tracy

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Wastewater Treatment Plant Tentative NPDES Permit and Tentative Waste Discharge Requirements (Board Meeting – 3/4 May 2007) (Response to Comments) at p. 28.) In light of the Regional Water Board's improper determination of reasonable potential, the State Water Board should revise the Draft Order to find that no final effluent limitation for EC is necessary, and remand the Tracy Permit to the Regional Water Board accordingly.

**B. In The alternative, The EC Effluent Limitation Is Consistent With Federal Regulatory Requirements**

Assuming *arguendo* that the Regional Water Board's finding of reasonable potential is correct and that said water quality objectives are applicable to Tracy's point of discharge, federal regulations require the permit to contain "effluent limitations for that pollutant." (40 C.F.R. § 122.44(d)(1)(iii).) The term effluent limitation is defined in the Clean Water Act (CWA) to mean "any restriction, ... including schedules of compliance." (33 U.S.C. § 1362(11).) Schedule of compliance is defined to include "remedial measures including an enforceable sequence of actions or operations ... ." (33 U.S.C. § 1362(17).) Further, applicable federal regulations specifically allow for the use of best management practices when numeric effluent limitations are infeasible. (40 C.F.R. § 122.44(k)(3).) In other words, an effluent limitation is not necessarily numeric, and may include remedial measures, source control measures and best management practices. (See *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4<sup>th</sup> 1089, 1105; see also *In the Matter of the Petition of Citizens for a Better Environment, Save San Francisco Bay Association, and Santa Clara Valley Audubon Society*, Order No. WQ 91-03 (May 16, 1991), at p. 48.)

The Draft Order recognizes that it is permissible to have effluent limitations that are not numeric. However, it contends that the limit in question is not appropriate because it is not enforceable or designed to implement the water quality objective. (Draft Order at p. 7.) For these reasons, the Draft Order finds that the EC effluent limitation is not consistent with applicable federal regulations. Stockton disagrees with these findings in the Draft Order because the final EC effluent limitation in Tracy's Permit is a WQBEL consistent with federal regulatory requirements.

**1. The EC Final Effluent Limitation Is Enforceable And Is Designed To Achieve Water Quality Standards**

The Draft Order argues that there is no final effluent limitation in Tracy's Permit because it is not "enforceable and designed to implement the water quality objective." (Draft Order at p. 7.) Stockton takes issue with this proposed finding for several reasons. First, the entire permit including the final effluent limitation for EC is enforceable. The final limit includes effluent limitations of 700 µmhos/cm (April 1 – August 31) and 1,000 µmhos/cm (September 1 – March 31) as monthly averages, a requirement to submit and implement a Salinity Plan, and a requirement to participate in the development of a Central Valley wide

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Salinity Management Plan. If Tracy fails to submit a Salinity Plan, or if Tracy fails to implement the approved Salinity Plan, Tracy is in violation of the effluent limitation. In that case, the final numeric limitations of 700  $\mu\text{mhos/cm}$  and 1,000  $\mu\text{mhos/cm}$  become effective. More importantly, Tracy may be subject to enforcement action for failing to comply with the terms of its permit, including its failure to submit and implement the Salinity Plan.

Federal regulations require compliance with water quality standards. Water quality standards are both the beneficial uses of the water and the water quality objectives or criteria adopted to protect the beneficial uses. (40 C.F.R. §§ 131.2, 131.3(i).) As indicated above, the Regional Water Board correctly stated that it is unlikely effluent limitations for Tracy are necessary to protect the agricultural beneficial use, which is one part of the water quality standard. Furthermore, the effluent limitation includes final WQBELs set at 700  $\mu\text{mhos/cm}$  and 1,000  $\mu\text{mhos/cm}$  that become effective if Tracy fails to prepare and implement a Salinity Plan that is approved by the Regional Water Board. Thus, the final WQBEL is both enforceable and designed to achieve water quality standards.

## 2. The Salinity Plan Requirement Is A Proper Effluent Limitation

As described above, effluent limitations need not be numeric, and may be narrative in form and include remedial measures, source control efforts and/or best management practices. (See section I.B, *ante*.) The EC effluent limitation at issue here qualifies as a narrative limitation. For example, the Salinity Plan requirement is a remedial measure as well as a source control measure because it requires Tracy to: implement all reasonable steps to lower salinity in its water supply; identify and implement measures to reduce salinity in its discharge from various sources within its service area; implement measures to meet an interim salinity goal of 500  $\mu\text{mhos/cm}$  over water supply; and, participate in the development of a Salinity Management Plan for the whole Central Valley. (Tracy Permit at p. 9.) All of these requirements are designed to ensure compliance with water quality standards.

In its attempt to argue otherwise, the Draft Order mischaracterizes the effluent limitation, including the Salinity Plan requirement. The Draft Order states that “[t]he Permit simply requires, . . . , the discharger to develop and comply with its own plan to reduce salinity in its discharge.” (Draft Order at p. 7.) This characterization is false. The Salinity Plan is not simply self-defined as suggested by the Draft Order. Once developed, the Salinity Plan must be submitted to the Regional Water Board for review and approval. (Tracy Permit at p. 9.) The Regional Water Board’s review process includes notice for public comment, and authorizes the Regional Water Board to revise the plan prior to its approval. (*Ibid.*) Thus, the Regional Water Board, members of the public, and the State Water Board will all have the opportunity to provide input into the Salinity Plan and its various elements prior to its approval and implementation.

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Moreover, the Draft Order suggests that its findings are correct because they are consistent with U.S. EPA's statements in a letter with respect to denial of certain compliance schedule provisions contained in the State's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP). (See Draft Order at fn. 10, p. 8.) The Draft Order's comparison to statements made by U.S. EPA are misplaced. The U.S. EPA letter determined that the compliance schedule provisions were inappropriate because they could result in the deferral of developing WQBELs until such time that a total maximum daily load (TMDL) is developed. (Letter to Celeste Cantu from Alexis Strauss (Oct. 23, 2006) at p. 4.) In this case, there are WQBELs in the permit and the development of limitations is not being deferred until a later time.

### 3. The Effluent Limitation Is A Final WQBEL

Finally, the Draft Order points to selective statements in the Tracy Permit to argue that the Regional Water Board itself did not consider the effluent limitation in the permit to be a final WQBEL. (Draft Order at p. 8 ["[t]he Central Valley Water Board appears to acknowledge that the Permit provision does not constitute a final water quality-based effluent limitation."].) This statement in the Draft Order is incorrect. A complete reading of the fact sheet clearly indicates that the Regional Water Board did indeed consider the adopted effluent limitation to be a final WQBEL. For example, the Regional Water Board found that imposing salinity WQBELs that would require the construction and operation of reverse osmosis facilities prior to implementing other measures (i.e., a Salinity Plan) would not be a reasonable approach. (Tracy Permit at p. F-48.) The Regional Water Board did *not* find that the imposition of any final WQBEL was unreasonable. In fact, the opposite is true. The record clearly indicates that the Regional Water Board intended and considered the adopted effluent limitation to be a final WQBEL. (See Tracy Permit at pp. F-48 - F-49 ["[t]his Order also includes final WQBELs, ..."]; see also Staff Report City of Tracy Wastewater Treatment Plant Proposed NPDES Permit Renewal, Time Schedule Order, and Waste Discharge Requirements for Land Discharge San Joaquin County at pp. 5-6 ["The proposed Order also includes final water-quality based effluent limitations (WQBELs) stating ..."].) Thus, the Draft Order incorrectly characterizes the Regional Water Board's action, and the Regional Water Board's interpretation of its own action.

In sum, assuming *arguendo* that reasonable potential exists, the permit includes a proper final WQBEL and the State Water Board should reject the proposed findings in the Draft Order that suggest otherwise.

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II. The Draft Order Improperly Finds That The State Water Board's Reasoning In The Manteca Order<sup>1</sup> Does Not Apply Here

In its proposed disapproval of the Tracy Permit limits as adopted by the Regional Water Board, the Draft Order argues that the Regional Water Board inappropriately relied on the State Water Board's conclusion in the Manteca Order. (Draft Order at p. 8.) More specifically, the Draft Order argues that the Manteca Order and its rationale do not apply because: its conclusions on this issue were non-precedential<sup>2</sup>; the Tracy Permit does not comply with requirements in the Manteca Order; and, the 2006 Bay-Delta Plan reaffirmed the south Delta water quality objectives and removed ambiguity with respect to application of the EC objectives. Stockton disagrees. The State Water Board's reasoning in the Manteca Order still applies because little has changed.

The State Water Board found it unreasonable to impose an effluent limit of 700  $\mu\text{mhos/cm}$  on the City of Manteca because: requiring Manteca to comply with such an effluent limitation would not significantly change the EC of the water in the south Delta; the implementation program for meeting the objective is based on increased flows, the construction of salinity barriers and other actions unrelated to wastewater discharges; and, most importantly, the compliance with the effluent limitation could only be assured with the construction and operation of reverse osmosis facilities, which the State Water Board determined to not be a reasonable approach.<sup>3</sup> (Manteca Order at pp. 13-14.) For the reasons specified below, all of these findings are applicable to Tracy and other similarly-situated dischargers.

A. Removal Of Tracy's Discharge Would Not Significantly Affect EC Levels In The South Delta

As discussed above, the DSM2 Modeling Evaluation performed by the Department of Water Resources (DWR) in consultation with Tracy, MHCSD, South Delta Water Agency, and the Petitioner California Sportfishing Protection Alliance (CSPA), shows that Tracy's

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<sup>1</sup> *In the Matter of the Petition of City of Manteca for Review of Waste Discharge Requirements Order No. R5-2204-0028*, Order No. WQ 2005-0005 (March 15, 2005).

<sup>2</sup> Although the Manteca Order may not be precedential, it is not unreasonable or unlawful for the Regional Water Board to utilize that decision as guidance in addressing similar issues for similarly-situated dischargers.

<sup>3</sup> In its Manteca Order, the State Water Board also took official notice of the fact that the operation of a large-scale reverse osmosis treatment plant would result in the production of highly saline brine for which an acceptable method of disposal would need to be developed. Due to this fact, the Manteca Order specifically advises that "any decision that would require use of reverse osmosis to treat the City's municipal wastewater effluent on a large scale should involve thorough consideration of the expected environmental effects." (Manteca Order at p. 12.)

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discharge at its current level of quality, let alone set at a level equal to the water quality objectives, does not significantly affect the level of EC in the south Delta as measured at Old River/Tracy Road Bridge. (See DSM2 Modeling Evaluation at p. 15; see also Tracy Permit at p. F-47 ["[t]he reasonable worst-case Tracy impact is relatively small compared to other salinity sources in the area."] ) Like Manteca, requiring Tracy to comply with an effluent limitation of 700  $\mu\text{mhos/cm}$  or 1,000  $\mu\text{mhos/cm}$  will not significantly affect Delta water quality. Furthermore, as the modeling shows, even if Tracy ceased its discharge to the Delta, water quality in the south Delta would not be affected. (See DSM2 Modeling Evaluation at p. 15.)

B. The Primary Methods For Implementing South Delta Objectives Are Unrelated To Wastewater Discharges

The State Water Board's conclusions in the Manteca Order are in large part supported by the history of the Bay-Delta Plan. More specifically, the Manteca Order found that related State Water Board decisions and water quality control plans did not treat effluent discharges as a source of salinity in the Delta. (Manteca Order at p. 10.) The Manteca Order also found that the primary responsibility for meeting the south Delta objectives is on the DWR and the Bureau of Reclamation to provide increased flows, and reductions in salinity as delivered to the Delta and its tributaries by irrigation return flows and groundwater. (*Id.* at pp. 10-11, 13.) Finally, the Manteca Order found that "the State Board intended for permit effluent limitations to play a limited role with respect to achieving compliance with the EC water quality objectives in the southern Delta." (*Id.* at p. 14.)

Since the State Water Board made these findings in the Manteca Order, nothing has changed appreciably. In fact, the Draft Order concedes that all of these factors apply to Tracy as well as Manteca. (Draft Order at fn. 12, p. 8.) At most, the Draft Order implies that the State Water Board's action on the 2006 Bay-Delta Plan somehow extinguished application of the reasoning in the Manteca Order to other similarly-situated dischargers. (*Ibid.*) As discussed further below, the State Water Board's action(s) with respect to the 2006 Bay-Delta Plan did nothing to change the State Water Board's reasons for concluding it improper to adopt an effluent limitation of 700  $\mu\text{mhos/cm}$ , as expressed in the Manteca Order. (See section II.A, *ante.*) Until the State Water Board considers effluent discharges as a primary source of salinity, and properly evaluates limitations on effluent discharges from wastewater treatment plants as a means for implementing south Delta water quality objectives, the State Water Board is precluded from adopting limitations accordingly. (See *Cities of Arcadia, et al. v. State Water Resources Control Bd.* (Super. Ct. Orange County, 2008, No. 06CC02974), Preemptory Writ of Mandate [superior court found it necessary for water quality standards to be reviewed in light of the factors and requirements set forth under Water Code sections 13241 and 13000 where such standards had not previously been considered as applied to stormwater].)



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C. Compliance With Effluent Limitations Set At 700  $\mu\text{mhos/cm}$  Could Only Be Assured Through The Construction And Use Of Reverse Osmosis Facilities

In its Manteca Order, the State Water Board found that compliance with the permit effluent limitation of 700  $\mu\text{mhos/cm}$  could not be assured without construction and use of reverse osmosis facilities; and, that this would *not* be a reasonable approach prior to implementing other measures to reduce salt loads in the south Delta. (Manteca Order at p. 14.) To distinguish Tracy from Manteca, the Draft Order argues that the Tracy Permit record fails to consider that there are other "feasible alternatives" for complying with such an effluent limitation. (Draft Order at p. 9.) The Draft Order then identifies various alternatives that the Regional Water Board should consider before concluding that reverse osmosis is required. (*Id.* at pp. 9-10.) Importantly, the Draft Order does *not* find or imply that requiring reverse osmosis is no longer unreasonable.

However, the Draft Order fails to account for uncertainty associated with the "feasible alternatives" identified, and fails to consider the limited time available for a compliance schedule. (See Draft Order at pp. 9-10.) The Draft Order mentions pre-treatment requirements for Leprino's wastewater, a TMDL for Old River, site-specific water quality objectives, and other alternatives for meeting an effluent limitation of 700  $\mu\text{mhos/cm}$ . In reality, there is a tremendous amount of uncertainty associated with any of these "alternatives." Further, there is no evidence in the record to suggest that any of these alternatives are feasible.

More importantly, there is no evidence in the record to suggest that any of these alternatives are feasible in the amount of time that Tracy will likely be afforded to comply with a final effluent limitation of 700  $\mu\text{mhos/cm}$ , if one is adopted by the Regional Water Board on remand. At most, Tracy expects that the level of EC in its effluent will decrease to approximately 956  $\mu\text{mhos/cm}$  as its discharge flow increases to 16 million gallons per day (mgd). (Tracy Permit Table F-4, at p. F-47.)

The length of the compliance schedule that Tracy may potentially receive for complying with final numeric effluent limits for EC will in large part depend on Regional Water Board and/or State Water Board interpretations of the state's newly adopted *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits*, State Water Board Resolution No. 2008-0025 (April 15, 2008) (Compliance Schedule Policy). Under the Compliance Schedule Policy, the Regional Water Board has the discretion to include a compliance schedule in a permit for up to ten years from the date of "adoption, revision, or new interpretation" of the applicable water quality objective. (Compliance Schedule Policy at p. 5.) The Compliance Schedule Policy defines "new, revised, or newly interpreted water quality objective" to mean,

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[a] water quality objective or criterion in a water quality standard that is adopted, revised, or newly interpreted after the effective date of this Policy, except that the following dates shall apply instead of the effective date of this Policy in the Regions specified below:

... iv) Central Valley: September 25, 1995. (Compliance Schedule Policy at p. 3(d).)

The term "newly interpreted water quality objective" is further defined to mean a narrative water quality objective interpreted during permit development. (Compliance Schedule Policy at p. 3(e).) The Compliance Schedule Policy does not define "revised."

The Draft Order does not currently address the question if the water quality objectives in question would be considered "revised."

The south Delta water quality objectives in the Bay-Delta Plan were first adopted into the Bay-Delta Plan in 1978. (Water Quality Control Plan Sacramento-San Joaquin Delta and Suisun March (August 1978) at p. VI 29.) As part of the Bay-Delta Plan update in 2006, the State Water Board amended the Bay-Delta Plan to "clarify" that "[u]nless otherwise indicated, water quality objectives cited for a general area, such as for the southern Delta, are applicable for all locations in that general area and compliance locations will be used to determine compliance with the cited objectives." (Bay-Delta Plan at p. 10.) For Tracy, the Regional Water Board used this language to find that the objectives for the south Delta are applicable to Tracy because Tracy's outfall is approximately four miles upstream of the Old River at Tracy Boulevard Bridge compliance location. (Tracy Permit at p. F-43.) It could potentially be argued that Tracy, and other similarly-situated dischargers, could not receive an in-permit compliance schedule to comply with the south Delta water quality objectives because they were adopted prior to September 1995. However, a more reasonable interpretation in light of the actual historical circumstances is that the 2006 Bay-Delta Plan revisions are a revision of the water quality objective, and therefore compliance schedules may be adopted in the permit in accordance with the requirements in the Compliance Schedule Policy. The Compliance Schedule Policy allows up to ten years from the date of adoption, revision, or new interpretation of the water quality objective. This would mean that dischargers could only receive compliance schedules in NPDES permits for a period of time that does not exceed ten years from the effective date of the "revised" Bay-Delta Plan, which would be approximately June 27, 2017.

If it was determined that the south Delta salinity objectives were not revised in 2006, then the Regional Water Board would be precluded from adopting an in-permit compliance schedule that allowed compliance sometime prior to June of 2017. In that case, Tracy could request the Regional Water Board adopt a time schedule order or a cease and desist order to provide additional time before compliance with the effluent limitation is essentially required. By law, an outside order (i.e., time schedule order or cease and desist order) may only protect

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a discharger from the assessment of mandatory minimum penalties for a period of five years. (Wat. Code, § 13385(j)(3)(C).) Thus, at most, Tracy could receive protection from mandatory minimum penalties for a period of five years from adoption of a revised permit that includes numeric effluent limitations for EC based on the south Delta objectives. Furthermore, an outside order would provide no protection from third party litigants bringing an action against Tracy for violation of effluent limitations. (See *Citizens for a Better Environment v. Union Oil* (1996) 83 F.3d 1111 [unless an enforcement order includes an assessment of monetary penalties, the citizen suit is not barred by CWA § 309(g)(6) (33 U.S.C. § 1319(g)(6))].)

If the State Water Board remands the Tracy Permit to the Regional Water Board with direction to amend the Tracy Permit in the manner as proposed in the Draft Order, Tracy thus may likely need to comply with a final effluent limitation of 700 µmhos/cm within five years of the Regional Water Board's adoption of permit revisions. Five years is not enough time to implement other alternatives, and/or plan for, construct and begin operations of reverse osmosis facilities. Because of the uncertainty surrounding the other alternatives, the construction and operation of reverse osmosis facilities is the only method by which Tracy could be assured to meet an effluent limitation of 700 µmhos/cm within five years. It is, for that matter, questionable whether a compliance schedule until 2017 would be sufficient for a major capital project with likely significant environmental impacts such as reverse osmosis. (See Manteca Order at p. 12.) Tracy could not defer planning based on other speculative possibilities.

In light of the foregoing, the Draft Order erroneously finds that the State Water Board's reasoning and rationale as expressed in the Manteca Order are no longer applicable. In fact, there is very little that distinguishes the facts of Tracy's discharge from those of Manteca. Moreover, if adopted, the Draft Order will do precisely what the State Water Board intended to avoid by adopting the Manteca Order—require Tracy to construct and operate reverse osmosis facilities prior to implementing other measures. Irrespective of the “non-precedential” nature of the Manteca Order, the construction and operation of reverse osmosis facilities prior to implementing other measures is still an unreasonable approach, especially considering the insignificant impact of Tracy's discharge with respect to EC levels in the south Delta. Stockton recommends the Draft Order be revised accordingly.

III. The Draft Order Improperly Finds That The 2006 Amendments To The Bay-Delta Plan Resulted In Application Of Bay-Delta Objectives To POTWs

A. If The Draft Order Is Adopted, The State Water Board's 2006 Amendments And/Or The Water Quality Objectives Violate The Water Code

The Draft Order maintains that “in 2006, [the State Water Board] revisited the Bay Delta Plan, and readopted the salinity objectives without change.” (Draft Order at p. 8, fn. 12.) Despite this statement and the similar facts between the Manteca Order and this case, the Draft Order suggests that the 2006 re-adoption and clarification compel a different outcome for

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Tracy as compared to Manteca. (See Draft Order at p. 10.) More specifically, the Draft Order appears to rely on the 2006 amendments to require stricter controls on EC for Tracy versus Manteca. To the extent the 2006 amendments trigger stricter controls, the 2006 amendments to the Bay Delta Plan must have expanded water quality objectives at issue and/or their implementation. Such an expansion violates Water Code sections 13241 and 13242.

Water Code section 13241 requires the State Water Board to adopt water quality objectives to "ensure the reasonable protection of beneficial uses and the prevention of nuisance." Water Code section 13241 "recognize[s] that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." The factors that the State Water Board must consider when it adopts water quality objectives include:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water. (Wat. Code, § 13241.)

The Water Code thus imposes a mandatory duty on the State Water Board to adopt water quality objectives that are reasonable. (See also Wat. Code, § 13000 and *United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 121-122 ["The Board's paramount duty was to provide 'reasonable protection' to beneficial uses, considering all the demands made upon the water."])<sup>4</sup> "[E]conomic considerations are a necessary part of the determination of reasonableness." (Memorandum to Regional Water Boards from W. R. Attwater, Office of Chief Counsel, State Water Board (Jan. 4, 1994), at p. 3.) This requires an assessment of the costs of an objective's adoption or amendment based upon: (1) whether the objective is being attained; (2) what methods are available to achieve compliance with the objective if not it is not being attained; and (3) the costs of those methods.

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<sup>4</sup> Stockton hereby requests the State Water Board to take official notice of this Memorandum pursuant to California Code of Regulations, title 23, section 648.2.

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(Memorandum to Regional Water Boards from W. R. Attwater, Office of Chief Counsel, State Water Board, *supra*, at p. 1.) The State Water Board must consider any information on economic impacts provided by the regulated community and other interested parties. (*Ibid.*) If the potential economic impacts are significant, the State Water Board must articulate why the objective is necessary to protect beneficial uses in a reasonable manner despite the adverse consequences. (*Ibid.*) Where an amended objective is at issue, the associated staff report or resolution may address the economic considerations. (*Id.* at pp. 1-2.) In 2006, the State Water Board did not conduct the type of analysis required by Water Code section 13241 with respect to the EC objective and potential adverse consequences for POTWs. (See Plan Amendment Report, Appendix 1 to the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, *supra*.)<sup>5</sup> Nor was such an analysis conducted in connection with the south Delta water quality objectives when they were originally adopted.

In addition, when the State Water Board adopts new or modified water quality objectives, it must include a program of implementation to achieve the objectives. (Wat. Code, § 13242.) An implementation program describes the actions necessary to achieve the objectives, including recommendations for appropriate action by any public or private entity. (Wat. Code, § 13242(a).) The Bay-Delta Plan relies primarily upon flow requirements to implement the EC objectives in the southern Delta. For example, the State Water Board observed:

[A]lthough discharge of treated wastewater to the Delta or its tributaries under an NPDES permit can affect EC in the southern Delta, previous State Board decisions and water quality control plans do not discuss treated effluent discharges as a source of salinity in the southern Delta. Similarly, previously adopted implementation programs for complying with the EC objectives in the southern Delta have focused primarily on providing increased flows and reducing the quantity of salts delivered to the Delta and its tributaries by irrigation return flows and groundwater. The record also establishes that the implementation date for actions to implement the 0.7  $\mu\text{mhos/cm}$  EC objective for April through August has been repeatedly postponed and that the State Board recently adopted a report recommending review of southern Delta EC objectives. Revised Water Right Decision 1641 places primary responsibility for meeting the EC objectives on the Department of Water Resources and the Bureau of Reclamation . . . . (Manteca Order at pp. 10-11.)

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<sup>5</sup> Stockton hereby requests the State Water Board to take official notice of the administrative record for the Bay-Delta Plan beginning with the 1978 Bay-Delta Plan through and including the 2006 amendments to the Bay-Delta Plan. (Cal. Code Regs., tit. 23, § 648.2.) To the extent official notice is granted, Stockton hereby incorporates by reference the administrative record for the Bay-Delta Plan. (*Id.* at § 64.3.)

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Thus, to the extent that the Bay Delta Plan requires stricter EC controls on POTWs (e.g., reverse osmosis), the Bay Delta Plan violates Water Code sections 13241 and 13242. In accordance with these sections, the State Water Board must consider cost and other factors associated with requiring POTWs to employ stricter controls to implement the objectives. (See also *Cities of Arcadia v. State Water Resources Control Bd.*, *supra.*) Based on the Manteca Order, and the record for the Bay Delta Plan, the State Water Board did not fulfill this duty.

B. The State Water Board's Re-Adoption Of The Bay-Delta Plan In 2006 Does Not Constitute A Re-Affirmation Of South Delta Water Quality Objectives

The Draft Order attempts to characterize the State Water Board's action with respect to the 2006 Bay-Delta Plan as re-affirmation of the appropriateness of the south Delta water quality objectives. However, the language in the 2006 Bay-Delta Plan and the State Water Board's continuing efforts to evaluate these same objectives suggest otherwise. As part of the amendments to the 2006 Bay-Delta Plan, the State Water Board identified four emerging issues because "circumstances and scientific knowledge are changing." (Bay-Delta Plan at p. 5.) Included are Delta and Central Valley salinity issues. (*Ibid.*) With respect to south Delta salinity, the Bay-Delta Plan specifically acknowledged that the State Water Board was evaluating the salinity requirements for the beneficial uses of water in the southern Delta (i.e., water quality objectives). (*Id.* at p. 6.)

Since taking action in 2006, the State Water Board continues to evaluate the appropriateness of the south Delta water quality objectives.<sup>6</sup> In other words, the State Water Board is not convinced that the currently adopted south Delta water quality objectives are appropriate. Thus, the Draft Order mischaracterizes the State Water Board's action in 2006 as a "re-affirmation" of the south Delta objectives. At most, the State Water Board did not change the existing objectives while it continued its evaluation of the numeric objectives to determine if they are appropriate. In the meantime, the Draft Order, if adopted, would drive Tracy—and potentially other POTWs—to implement nonsensical and inappropriate treatment technologies.

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<sup>6</sup> Stockton hereby requests the State Water Board to take official notice of its ongoing efforts to evaluate the efficacy of the south Delta water quality objectives for protection of the agricultural beneficial use. (Cal. Code Regs., tit. 23, § 648.2.) To the extent official notice is granted, Stockton hereby incorporates by reference the State Water Board's notices at [http://www.waterrights.ca.gov/baydelta/docs/wq\\_control\\_planning](http://www.waterrights.ca.gov/baydelta/docs/wq_control_planning). (*Id.* at § 648.3.)

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Based on the foregoing, the State Water Board should dismiss CSPA's claims with respect to the EC limitations in Tracy's Permit. Or, at the very least, revise the Draft Order in accordance with the comments provided above.

Sincerely,



Theresa A. Dunham

cc (via email): James R. Wheaton, Esq. / Adam Lazar, Esq., Environmental Law Foundation  
Mr. Bill Jennings, Executive Director, CSPA  
Steven H. Blum, Senior Staff Counsel, SWRCB  
Debra E. Corbett, Esq., Tracy City Attorney  
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Melissa A. Thorne, Esq., Downey Brand  
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Mr. James Pedri, Assistant Executive Officer, RWQCB, Redding Office

TAD:cr

City of Stockton  
Slides for State Water Resources  
Control Board Workshop

SWRCB/OCC Files A-1971, A-1971(a),  
A-1971(b)

September 15, 2009

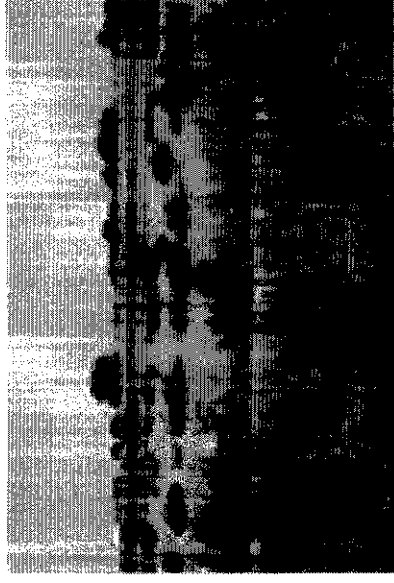


# Compliance History

- April 2002 – September 2008 over 36,000 Numerical Permit Requirements
  - 2,102 discharge days
  - 27,010 daily requirements
  - 1,544 weekly requirements
  - 1,360 monthly requirements
  - 4,468 others
- January 2000 – April 2008
  - 14 effluent limit exceedances
- Assessed Mandatory Minimum Penalties for 6 Exceedances

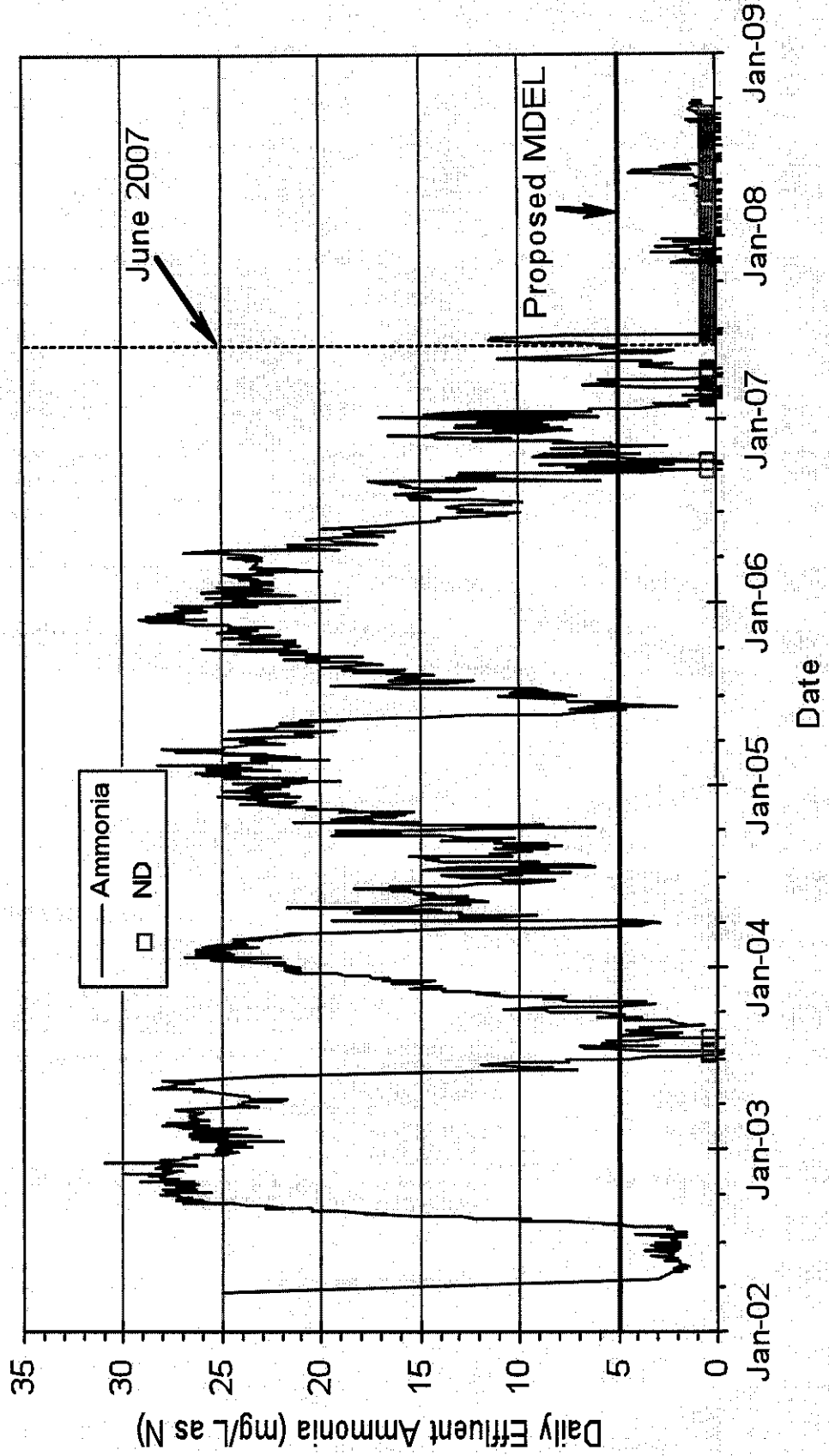
# Ammonia and City's Actions

- Strict Limits Now in Effect (Aug '08)
- Based on EPA Ambient Criteria for Protection of Aquatic Life
- Treatment Plant Improvements
  - Full nitrification – Biotowers (Sep '06)
  - Enhanced Wetlands (Sep '06)
  - Treatment stabilized (Jun '07)

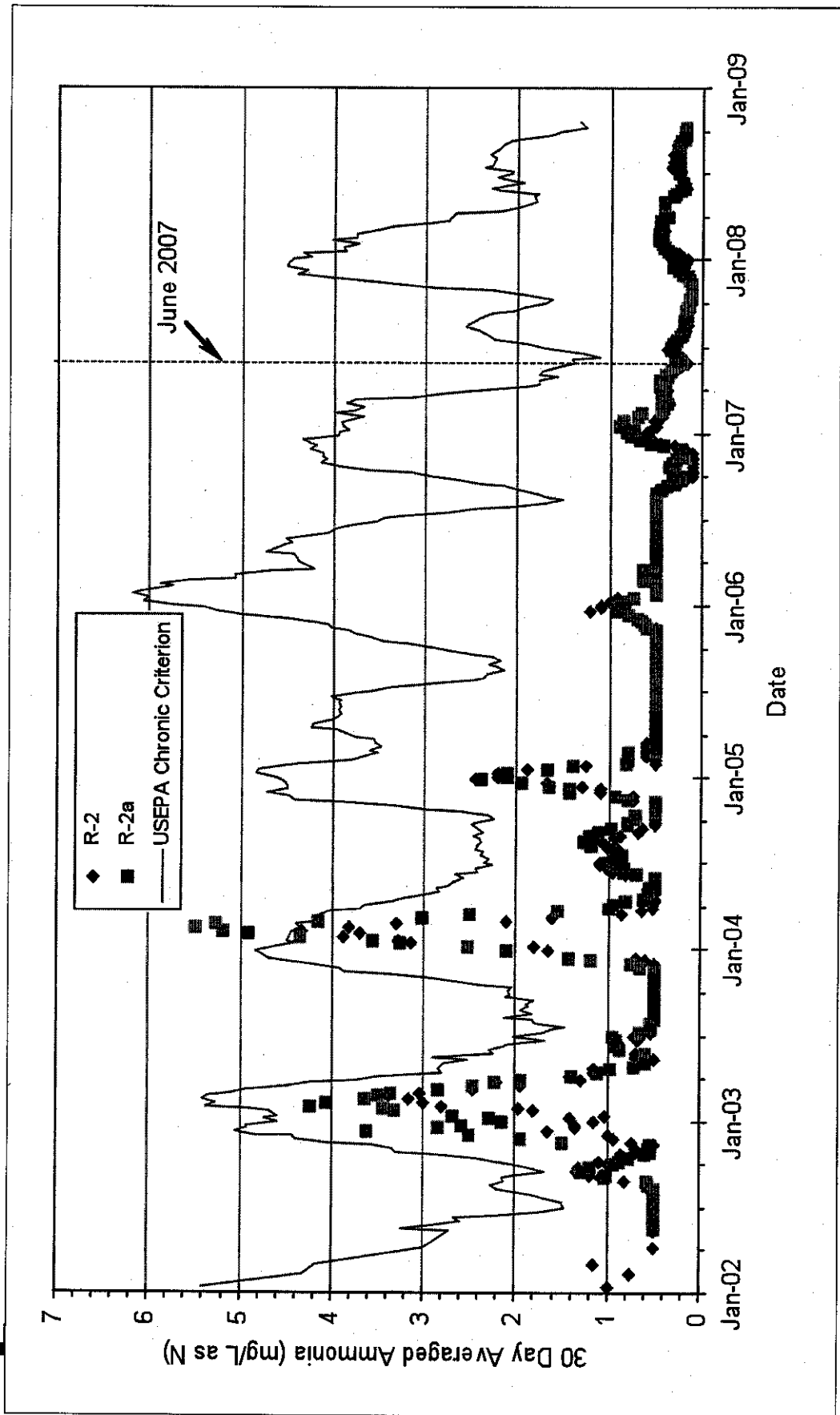


RWCF Wetlands

# Effluent Ammonia Concentrations



# Ammonia in the San Joaquin River



# SALINITY (EC)

## EC:

- SWRCB Order WQ 2005-0005 (City of Manteca)  
“Construction and operation of reverse osmosis facilities to treat discharges ... prior to implementation of other measures to reduce the salt load in the southern Delta, would not be a reasonable approach.”  
(Manteca Order at p. 14.)
- 2008 Permit Issued to Stockton:  
“Effluent limitations ... would likely require construction and operation of a reverse osmosis treatment plant.”  
(Permit at p. F-44.)

## EC ISSUE:

- Even Assuming the Approach in the Manteca Order is Not Followed, Does the Bay-Delta Plan Require Stringent Effluent Limitations for Stockton Based on South Delta EC Objectives?

# EC: GENERAL LEGAL BACKGROUND

- A. CWA § 301(b)(1)(C): Water Quality-Based Effluent Limitations for Point Sources Required as Necessary to Meet Water Quality Standards.
- B. 40 C.F.R. § 122.44(d)(1)(i): Effluent Limitations Required Where the Discharge has Reasonable Potential to Cause or Contribute to an Excursion Above an Applicable Standard.
- C. Consequences for Point Source when Receiving Water Exceeds Standard even Absent Discharge.



