



NEBEKER RANCH, INC.

LANCASTER, CALIFORNIA

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Mr. Harold Singer
Executive Officer
California Regional Water Quality Control Board -
Lahontan Region
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96130

Subject: Comments on Proposed Settlement That Includes an Administrative Civil
Liability Order and Proposed Cease and Desist Orders for County
Sanitation Districts 14 and 20.

Dear Mr. Singer:

Thank you for allowing me the opportunity to comment on the subject orders.

I urge the Lahontan Regional Board to reject or continue the proposed Settlement and call for two meaningful workshops over the next 4 to 6 months to flush out and renegotiate a more favorable settlement for the Regional Board, the Sanitation Districts (Districts) and the community. Prior to these workshops, an effort will be made to alert the primary stakeholder groups that have not participated to date.

The reasons for rejection or continuation and renegotiation are significant and include, but are not limited to the following: sending the wrong message to the regulated community; allowing additional nitrogen to continue to enter the soil through the year 2010 after the Regional Board knew of the problem for about a decade; effectively keeping the community out of the process; limitations in the Regional Board enforcement capabilities; and selection of the Supplemental Environmental Project.

Even more important, a preliminary proposal is offered regarding how the 4 to 6 months' time could be productively spent and the probable benefits gained from such an activity. As you mentioned during the Workshops on April 4, 2007, such a brief period of additional time will not interfere with the timely completion of facilities that the Districts are obligated to complete.

Approval of This Settlement Will Send the Wrong Message to the Regulated Community

The Regional Board staff is proposing to impose an Administrative Civil Liability (ACL) on the Districts in the amount of \$4 million. The staff report estimates the economic benefit to District 20 from their violations, without considering the possible violations by District 14, at \$8.7 million. Therefore, the message being given to the

regulated community is “violate your enforcement orders as long as you can, take the Regional Board decisions to court, and you will save considerable money.”

Proposed Settlement Will Allow District 20 to Discharge More Nitrogen Into the Soil

The Regional Board has known of the nitrogen plume in Palmdale for about a decade and has not stopped the discharge. In fact, the proposed Settlement allows an additional 500+ tons to go into the soil until 2011. This decision should not be made lightly because if this nitrogen reaches groundwater, the nitrogen concentration could be increased 1 mg/liter over a 3 - square mile area at a thickness of 150 feet.

District Has Refused To Considered Other Disposal Options

Many entities, such as Edwards Air Force Base, Los Angeles World Airports, Los Angeles County Farm Bureau, myself, etc. have proposed alternative disposal programs to the Districts over the years. Therefore, the Districts are aware of more expeditious disposal options at both Lancaster and Palmdale that are available to them but refuse to propose them to the Regional Board or implement them.

Significantly Flawed Process

This settlement is very complicated and complex. It considers violations that have occurred over decades. Meaningful public understanding and forthcoming recommendations can only be made after careful consideration of the facts. For the Regional Board staff to consider these issues as standard agenda items is inappropriate.

The settlement was crafted by Regional Board and Districts' staff behind closed doors. Required technical expertise, legal issues, and political awareness, especially regarding the current adjudication, does not appear to be brought into the discussions.

The public comments at the Regional Board Hearing on March 14, 2007 were limited to five minutes per agenda item or 15 minutes total for 3 agenda items.

Public workshops were requested and the Regional Board responded by providing two identical workshops on April 4, 2007 with less than 3 business days' notice. No Members of the Regional Board were present.

If the Regional Board was intent on limiting public input to the Board Members, they succeeded.

Limitations in Regional Board Enforcement Capabilities That Should Be Corrected

During the Workshop on April 4, 2007, you acknowledged that Lahontan did not have the resources to confront the Districts in court. A State agency should not have to back down from an aggressive discharger to protect the public's interests because the discharger has more money.

You are also put in an awkward and conflicted position as leader of the prosecution team that should prosecute the issue vigorously and your role as Executive Officer with a role of preserving the limited resources of Lahontan.

Consistency of Enforcement

At the hearing on March 12, 2007, Lahontan Board Member Mr. John Brissenden brought up the issue of fair and equal treatment to the small and large discharger. The Districts appeal a Regional Board decision they do not like to the State Water Resources Control Board, rarely obtain a favorable ruling, and they take the issue to court. For the issue at hand, this strategy allowed the Districts to receive treatment beneficial to them. A small discharger does not have the resources to take this action.

This is not a good situation and needs to be identified and remedied.

Is The Amount of the Administrative Civil Liability (ACL) Reasonable in Light of the Facts?

The Regional Board staff is recommending \$4 million, which I understand is the largest administratively imposed ACL in the history of the State. Except for a small portion, most of this money will go to fund infrastructure for a recycled pipeline.

However,

This \$4 million is less than 1/1000th of the maximum ACL allowed by law (5+ billion)

Cost of replacing the 191,000 AF of degraded and contaminated groundwater in Palmdale is estimated at \$57 million

Cost of cleanup of 191,000 AF of degraded and contaminated groundwater in Palmdale to background by pump and treat is estimated at \$570 million.

Economic savings to the Districts in District 20, not including District 14, are estimated by Regional Board staff to be over twice the \$4 million at \$8.7 million. Section 13385 (e) of the Water Code, referring to Clean Water Act violations (which these are not) specify "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." An analogy with this Section of the Water Code and consideration of the principles of equity suggests the proposed ACL amount should be more in line with the economic savings.

Damage to Littlerock Creek as a potential groundwater recharge site is not considered.

Compromise of 191,000 AF of groundwater storage is also not considered.

Other Important Cost Concerns

Departing from usual and customary practices, the proposed ACL does not include Regional Board expenses of an estimated \$50,000. This amount should be included, especially due to the limited resources of Lahontan

Many of us believe that the costs of the ACL should be borne by District 2, which hires the Districts' staff. Imposing these costs on the District 14 and 20 ratepayers is inequitable since they were not cognizant of nor responsible for the inappropriate behavior of the Districts' staff.

Proposed Supplemental Environmental Project (SEP)

The two main water needs in Antelope Valley are how to safely dispose of large amounts of treated wastewater and how to obtain additional water sources to sustain the

current and future population. Although the proposed SEP seems good on the surface, further examination indicates its impact on these fundamental issues is miniscule.

The proposed \$3.8 million SEP dedicated to a wastewater trunk line is only 3.2% of the total \$119 million required. Distribution facilities must also be needed which will reduce the actual percentage this \$3.8 million provides even further.

The acreage required to dispose of the Districts' current effluent of about 25,000 AF per year along this pipeline is about 3,600 acres of alfalfa or sod and will increase in the future. Estimates have been made that less than 10% of this land is available along the route of this pipeline

The Valley has discussed recharging the groundwater with properly treated wastewater for years. Only vague generalities have been provided that this proposed trunk line will provide suitable wastewater recharge facilities.

Hence, the proposed SEP provides considerably less than 3% of the money required to dispose of a small fraction of the wastewater either by displacing potable water uses or recharging the groundwater.

Proposed Supplemental Environmental Project Eligibility

The State Board Water Quality Enforcement Policy on Page 45, Section C. (a) states "A SEP shall only consist of measures that go above and beyond the obligation of the discharger." The Districts have the obligation under their Waste Discharge Permits to dispose of wastewater in an environmentally safe manner. This proposed SEP provides facilities for the Districts that they should have already provided. The proposed SEP conflicts with the letter and intent of the Enforcement Policy.

Give Up Enforcement

The Proposed Settlement proposes to give up enforcement for known degradation and contamination for past practices. It does not address whether enforcement is being given up for unknown degradation and contamination for past practices. I am referring to the issue that I have previously brought up at many Lahontan Board meetings, namely the ammonium and organic forms that are most likely in the soil column under the Districts' treatment plants, Los Angeles World Airports property and Piute Ponds.

This thought is not new nor creative and is obvious to anyone familiar with the fate and effects of forms of nitrogen in the environment. The Regional Board should direct the Executive Officer to order an investigation of these issues and decide whether potential groundwater degradation and contamination caused by these past practices should be included in this Settlement.

Not Considering Accelerated Schedule

No one familiar with the Districts' past behavior in Antelope Valley has any confidence that the Districts will adhere to any significant milestones or that the Regional Board will assure that they meet these milestones. Too many milestones have been missed for too long. During the March 14, 2007 hearing, the Lahontan Chair, Dr. Amy Horne even asked if the time schedule proposed for the District was industry standard and whether an accelerated time schedule could reach project completion earlier.

Other Unanswered Concerns Important to the Settlement

In the interests of brevity,
Number, placement and design on monitoring wells around Piute Ponds are inadequate and should be improved.

Massive new consumptive use of growing alfalfa on 10,000 acres is inappropriate, especially since many feel the Basin is currently overdrafted.

Lack of Consideration of New Technology

I understand that new treatment technologies are available that can reduce nitrogen content of the effluent below 2 mg/l at considerably less cost than the MBR plant the Districts are proposing. This and other alternatives should be immediately investigated.

Anticipated Future Performance is Predicated on Past Behavior

This was a phrase mentioned many times during the Workshops on April 3, 2007. As you mentioned during the workshops, the primary goal of a regulation and enforcement agency is to change the behavior of a troublesome discharger. You mentioned that with the change in General Manager and Chief Engineer of the Districts, you saw an improvement in behavior

No Measurable Change of Behavior – Goal of Regulation and Enforcement Agencies

The existence of any concrete and measurable evidence of changed behavior is not clear. What one would expect is cessation or minimization of the behavior discussed below.

It is worth noting that the Ventura County Water Quality Coalition was formed to deal with the behavior of the Districts and to encourage the Los Angeles Regional Board to place additional emphases on protecting water quality.

Dereliction of Duty – Districts' Boards 14 and 20

The community seems to understand that both District 14 and 20 Boards have not provided the proper guidance and oversight of the Districts' activities. The evidence is the degradation and pollution of groundwater.

Inappropriate Behavior of Districts' Staff

To question and contest questionable and improper practices of a regulatory agency is acceptable. However, when a discharger embarks on a continued program intended to intimidate many State regulatory agencies from doing their job is against the public's interests. The Districts have a long history agreeing and then not following the agreement, of agreeing and then contesting orders, appealing Regional Board decisions to the State Board and then going to court. This course of conduct has definitely had an adverse effect on the Lahontan Board.

Engagement of Water Purveyors and Community in Water Quality Issues

With the notable exception of a group of 15 mutual water companies known as the A. V. United Water Purveyors, Inc., the water purveyors in Antelope Valley are rarely involved in water quality decisions before the Regional Board. This behavior is in sharp contrast to other communities in the Lahontan region. Sometimes this behavior is construed as implied consent to groundwater degradation & contamination. The water purveyors need to actively participate in decisions that may affect their future water supply.

Proposed Activities During 4 – 6 month Continuance and the Anticipated Benefits.

Task 1. Stakeholder Outreach Meetings

The purpose of this activity is to make the stakeholders aware of the issues and their effects on the community.

As stated earlier, the prior identical workshops on April 4, 2007 were poorly attended because less than 3 days' notice was provided. Outreach meetings will be held to brief the community and request their input on a) additional pollutants allowed to enter the soil which will continue to exacerbate the on-going groundwater degradation and pollution, b) using valuable groundwater and recycled water for unnecessary recycled water projects, c) further contribution to groundwater overdraft, and d) impact of the proposed Settlement on the current groundwater adjudication.

Organizations that will be involved include Antelope Valley Board of Trade, Economic Development Group, Greater Antelope Valley Economic Alliance, Kern County Economic Development Corporation, California City Economic Development Corporation, Aerospace Office, Los Angeles County Farm Bureau, Greater Antelope Valley Realty Association, Southern California Building Industry Association, Edwards Community Alliance, California Defense Alliance, Southwest Defense Alliance, Mutual Defense Industry Association, Association of Rural Town Councils, A. V. United Water Purveyors, Inc., Sierra Club, Conservation District, Antelope Valley Conservancy, and others.

Task 2. Technical Reassessment

A rigorous technical reassessment will provide a more effective utilization of treated wastewater for all applications.

Treatment plant design, groundwater monitoring, fate and effects of nitrogen forms in the vadose zone and groundwater, more expeditious effluent disposal options, limitations in the Districts' selected agricultural sites, improvement in the Districts' Farm Management Plans, etc. will be evaluated.

Districts should be required to propose expeditious methods for wastewater treatment that would produce effluent with maximum nitrogen of 5 mg/l or lower based on effluent (end-of-pipe) limits.

Indications are that new plant designs will reduce costs to the Districts, cost the ratepayers less, and produce end-of-pipe nitrogen concentrations close to the background levels in the groundwater.

Task 3. Potential to Positively Impact the Two Most Important Water Needs in the Antelope Valley

As discussed earlier, the two primary water needs of the Antelope Valley are to provide a greater and more secure supply of water to sustain the population and to dispose of large volumes of wastewater in an environmentally safe manner. These issues have not been directly discussed in the Settlement.

Treatment level, who bears the costs, feasibility of incidental recharge etc. will be evaluated. Districts should be allowed to use recycled water to only those projects that are genuine and otherwise would use potable water such as golf courses, cemeteries, playgrounds, and other green spaces.

Task 4. Interface With the Groundwater Adjudication

The issues relating to wastewater that are important to the current groundwater adjudication include the use of wastewater as a new source of water to maintain the Valley and potential damages from the inappropriate disposal of wastewater in the past.

Districts should not be allowed to pump degraded and polluted water from the ground and use it for farming. Many feel the basin is in overdraft and therefore, the wastewater should be conserved by removing nitrogen to background levels and returned to the basin by groundwater recharge.

Districts should be required to treat their wastewater to levels at which it can be safely used for groundwater recharge. Particular attention should be paid to incidental recharge projects such as discharging to Littlerock Creek, Big Rock Creek, Amargosa Creek, etc.

Task 5. Strengthening Regional Board's Ability to Regulate to Protect Water Quality

The role of Regional Boards as protectors of water quality is important. Yet, they are continually restricted by guidelines, procedures, and laws and not adequately funded. This situation needs to be alleviated.

A task force will be set up with the affected political representatives, State Water Board and Regional Water Board personnel to develop recommendations and an action plan to deal with this problem.

Task 6. District Boards 14 and 20

One of the reasons the Districts are experiencing difficulties is that these Boards have not met the expectations of their ratepayers and other members of the community.

The expectations of the community will be made clear to these Boards. The Boards will be requested to hold their meetings in the Antelope Valley. Expert independent technical and legal assistance will be encouraged and provided when practical.

Task 7. Behavior of Districts' Staff

The inappropriate behavior of the staff discussed above will be improved by engaging the community and the elected political representatives. The first step in curing

a problem is to identify the problem. Meetings will be held at the Districts headquarters to minimize this behavior in the future.

Task 8. Engagement of Water Purveyors and Community in Water Quality Issues.

As discussed above, the people who are in business of selling water for a living should be intimately involved with the Regional Board to protect water quality. Presentations will be held at each of the larger water purveyors and commitments will be requested regarding their participation in the future.

Examples of agencies who will be contacted are AVEC, Los Angeles County Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District, Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, etc.

I hope these suggestions are helpful and I want to thank you for your consideration. Please telephone if mf you have any questions.

Yours truly,



Eugene B. Nebeker, Ph.D., P.E.

cc: Board Members, California Regional Water Quality Control Board – Lahontan Region
Senator Roy Ashburn, District 18
Assemblyman Bill Maze, District 34
Senator George Runner, District 17
Assemblywoman Sharon Runner, District 36
Col. Brent Baker, Edwards Air Force Base