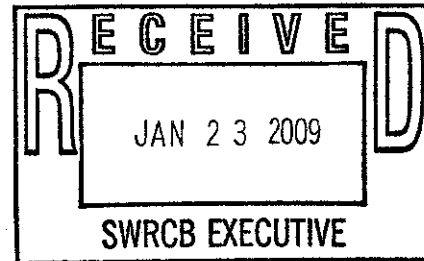




January 23, 2009

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**RE: CLFP Comments Regarding A-1886, the State Water Board's Own Motion Review of Waste Discharge Requirements and Master Reclamation Permit for the City of Lodi**

Dear Ms. Townsend:

The California League of Food Processors (CLFP) is an industry trade association that represents food processing companies with facilities located in California. One of CLFP's members, Pacific Coast Producers, operates a fruit cannery in Lodi and that facility discharges wastewater on a seasonal basis into the City of Lodi's industrial waste management system. Due to the important potential regulatory precedent regarding land application that would be established by the State Water Board (SWB) in the Proposed Order, Pacific Coast Producers and other CLFP members have a significant stake in the outcome of this proceeding. These comments will focus on that element of the Proposed Order. CLFP previously filed comments with the State Board regarding this issue on December 4, 2007.

CLFP respectfully disagrees with the State Board's Proposed Order, which concludes that the Waste Discharge Requirements issued by the Central Valley Regional Board to the City of Lodi are inconsistent with the requirements of Title 27 and must be revised. CLFP objects to the State Board's order for the following reasons:

1. Title 27 does not apply to the City of Lodi cannery waste stream.
2. Contrary to the assertions by the California Sportfishing Protection Alliance (CALSPA), the land application of food processing wastewater is conducted in manner consistent with the current Waste Discharge Requirements and provides adequate protection for groundwater.
3. The State Board may be implementing underground regulations by imposing a new interpretation for Title 27 exemptions.

### **Title 27 Does Not Apply to the City of Lodi Cannery Waste Stream**

Contrary to the claim CALSPA, application of Title 27 to the agricultural reuse of treated industrial wastewater by the City of Lodi is unwarranted. California Water Code Subsection 20090(b) provides an exemption from Title 27 for the discharge of wastewater to land if the following three conditions are met:

1. The applicable Regional Water Board has issued WDRs, reclamation requirements, or waived such issuance.
2. The discharge is in compliance with the applicable water quality control plan, and
3. The wastewater does not need to be managed as a hazardous waste.

The first condition for the exemption is clearly satisfied because a WDR was approved by the Central Valley Regional Board in 2007. In its Proposed Order the State Board acknowledges that the cannery wastewater does not qualify as hazardous waste<sup>1</sup>, so the third condition for the exemption has been met.

Regarding condition 2, the City of Lodi was directed by the Central Valley Regional Board to further characterize the wastewater influent and to conduct a study of organic loading at the land application site. The purpose of the study is to verify compliance with the Basin Plan. It is CLFP's understanding that although some data from this new study has been collected and analyzed, the reports are still forthcoming and that the City is working to provide the Central Valley Regional Board with the necessary information.

CALSPA contends that the industrial waste (92 percent of which is food processing cannery waste) is not exempt from Title 27 because the cannery waste may have concentrations of nitrogen and EC above water quality objectives. However, this statement ignores the fact that a portion of those constituents in the cannery wastewater will readily biodegrade, the cannery wastewater is mixed with treated wastewater by the City prior to land application to reduce the concentration of nitrogen and EC, and that the land application site is managed in a manner that will mitigate potential impacts on groundwater. CALSPA asserts that pollutants will certainly migrate to the groundwater, but concedes that "the impacts to groundwater have not been assessed for the industrial wastewater discharge."<sup>2</sup>

The State Board makes the same assertion as CALSPA; that although additional requested data collection and analysis efforts are not complete, the lack of this additional data somehow implies a potential threat to groundwater, and that the Title 27 exemption does not apply because the City's land disposal operations are not consistent with the applicable water quality objectives in the Basin Plan. CLFP is confused why the State Board is unwilling to wait for complete data and analysis before concluding that the City has failed to demonstrate compliance. Is it State Board policy to render decisions based only on partial data? What necessitates this rush to judgment? The State Board should allow the current review process to be completed before rendering conclusions.

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<sup>1</sup> SWB Proposed Order, Page 9

<sup>2</sup> CALSPA Petition for Review, page 15

If the City has violated its WDR permit conditions with respect to late or insufficient reporting of monitoring data it would seem that the best method for dealing with that problem would be through a routine enforcement action by the Regional Board, rather than the State Board ordering revision of the WDR to remove the Title 27 exemption.

**The Land Application of Food Processing Wastewater is Conducted in Manner That is Consistent With the Current Waste Discharge Requirements and Provides Adequate Protection for Groundwater**

The wastewater is applied to land at proper agronomic and hydraulic loading rates. The crops grown at the land application site use the nitrogen, and biological remediation by the soil ensures that the groundwater does not exceed water quality objectives. This type of management system is used successfully at land application sites throughout the state.

The seasonal application of cannery discharge to the land application site has not been shown to cause the groundwater to exceed water quality objectives with regard to salinity. The Board's Proposed Order discusses EC.<sup>3</sup> with respect to the "mound" of groundwater under the City's pond. The cannery water, as noted above, is only applied to the land application site, is only 10 percent of the total flow, and does not enter the pond. As the Proposed Order notes, the Regional Board's WDR already includes a salinity evaluation and minimization plan to address salt sources and to provide annual progress reports on salinity reduction to the agricultural fields.<sup>4</sup> CLFP is confident that those reports, when completed, will address the concerns raised by CALSPA and the State Board.

**The State Board May be Implementing Underground Regulations by Imposing a New Interpretation for Title 27 Exemptions**

CLFP is most concerned the State Board may be undermining the Regional Board's rulemaking process and arbitrarily implementing its own underground regulation. As stated previously, the California Water Code provides a specific standard for providing exemptions from Title 27 provisions. That State Board does not seem to dispute that the City is in full compliance with two of those provisions.

The actions recommended in the Proposed Order seem to be based in large part on allegations made by CALSPA regarding the makeup of the cannery wastewater and the potential threat posed by the wastewater to degrade the groundwater at the land application site. CALSPA seems to assume that land application does not work, so if prior to dilution by the City the cannery wastewater has elevated levels of nitrogen then the groundwater under the land application site must be degraded. However, the record does not seem to support that supposition.

In the Proposed Order the State Board states that because the "background groundwater quality has not yet been adequately characterized" the "City's compliance with the Basin

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<sup>3</sup> SWB Proposed Order, page 13

<sup>4</sup> SWB Proposed Order, page 18, and Central Valley Regional Board Order No. R5-2007-0113 VC3b)

Plan cannot be determined." *If the additional studies are not complete and the City's compliance with the Plan cannot be determined, how can the State Board conclude that the existing WDR is inadequate and that the City's operations are in violation of Title 27?*

CLFP contends that there is an important policy issue at stake in this proceeding. If the Proposed Order is adopted it will not only result in unnecessarily stringent requirements for the City of Lodi, it may also result in a flood of challenges to other existing WDR's on the grounds that the Title 27 exemptions were not appropriate. In this case the State Board would overturn a duly adopted WDR largely on the contention that data yet to be collected and analyzed will show that the current permit conditions are not adequate to protect groundwater. This precedent of putting regulatory expediency before sound and complete science should be avoided as it is not good public policy and it may be challenged as an underground regulation. CLFP urges the State Board to consider the potential long term harmful implications of the Proposed Order.

#### **Recommendations**

CLFP has two recommendations for the State Board. First, CLFP recommends that the hearing date for this proceeding be delayed to allow the parties to further review the important issues under consideration. Second, CLFP strongly recommends that the State Board not adopt the Proposed Order due to the reasons explained in this comment letter. CLFP appreciates your consideration of its recommendations. Please contact me if you have any questions.

Sincerely,



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