

**Alameda County  
Water District**

**Alameda County Flood  
Control and Water  
Conservation District,  
Zone 7**

**Contra Costa  
Water District**

**Kern County  
Water Agency**

**Metropolitan Water  
District of Southern  
California**

**State Water  
Contractors**

**San Luis & Delta-  
Mendota  
Water Authority**

**Santa Clara Valley  
Water District**

**Westlands  
Water District**

September 2, 2011



**Via E-Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)  
And U.S. Mail**

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: Comments to SWRCB/OCC File A-2144(a) and A-2144(b) — September 20, 2011  
Board Meeting

Dear Ms. Townsend:

The undersigned Water Agencies write in support of the State Water Resources Control Board's proposed decision to review the above-referenced matter on its own motion. The draft order proposed for adoption at the State Water Board's meeting on September 20 is especially appropriate here, because the matter involves waters within the geographical jurisdiction of two Regional Boards, and highly complex legal, policy and science issues of statewide importance. The undersigned believe that the State Water Board should take the time necessary for probing deliberation of the issues.

With that said, we ask the State Water Board to ensure that it commits the appropriate resources to achieve timely disposition of this matter, as the subject sewage treatment plant continues and will continue to discharge tons of ammonia and other pollutants into the Delta each day, and the Delta crisis will be prolonged while these discharges remain unabated. Abatement should begin as soon as possible, including through interim measures urged by the Water Agencies' response to the discharger's petition, and by the petition of the California Sportfishing Protection Alliance.

In light of the gravity of the issues raised in this matter, we urge the State Water Board "to exercise its full power and jurisdiction to protect the quality of waters in the state from

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degradation.” Water Code § 13000. Doing so may mean imposing new or more stringent permit terms going beyond the discharger’s new permit or the issues raised by the pending petitions. Although the draft order might suggest that the State Water Board’s review will be limited to certain issues raised by the petitions, review of the permit upon the Board’s own motion pursuant to Water Code section 13320(a) confers broader jurisdiction. *See, e.g.,* Cal. Code Regs., tit. 23, § 2050.5, subd. (c) (“The state board may, on its own motion, review a regional board’s action or failure to act for any reason...”); Water Code § 13320(a) (“The state board may, on its own motion, at any time, review the regional board’s action...”); Cal. Code Regs., tit. 23, § 2055 (“When a review is undertaken on the board’s own motion, all affected persons known to the board shall be notified and given an opportunity to submit information and comments, subject to such conditions as the board may prescribe”) (emphases added).

We also urge the State Water Board to consider “any other relevant evidence, which in the judgment of the State Water Board, should be considered to effectuate and implement the policies” of the Porter-Cologne Water Quality Control Act. Water Code §13320(b). To that end, we are requesting by separate application that the State Water Board consider a new scientific study, recently accepted for publication in a recognized peer-reviewed scientific journal, that further bolsters the grounds for denying the discharger’s request to relax its new permit and allow more nitrogen loading into the Delta. The study was prepared by, among other scientists, Dr. Patricia Glibert from the University of Maryland Center for Environmental Science and is entitled, “Ecological stoichiometry, biogeochemical cycling, invasive species and aquatic food webs: San Francisco Estuary and comparative systems.”

We look forward to the issuance, after December 23, 2011, of a substantive draft order regarding the subject discharge that is protective of Delta water quality and resources, and stand by ready to participate in the proceedings regarding such order.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD



Andrew Tauriainen

On behalf of the Water Agencies,  
pursuant to authorization of attached counsel

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**PROOF OF SERVICE**

I, Do Gentry, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On September 2, 2011, I served a copy of the within document(s):

**Letter to Clerk to the Board, State Water Resources Control Board, Re:  
Comments to SWRCB/OCC File A-2144(a) and A-2144(b)—September 20,  
2011 Board Meeting**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

***See attached Service List***

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 2, 2011, at Sacramento, California.

  
\_\_\_\_\_  
Do Gentry

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