

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Wastewater Petition WW0043

**City of Tracy**

**AMENDED ORDER APPROVING CHANGE IN PLACE OF USE OF  
TREATED WASTEWATER**

SOURCE: Old River tributary to San Joaquin River

COUNTY: San Joaquin

**WHEREAS:**

1. Water Code section 1211 requires the owner of any wastewater treatment plant to obtain approval from the State Water Resources Control Board (State Water Board) prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater, when changes in the discharge or use of treated wastewater result in decreasing the flow in any portion of a watercourse.
2. The City of Tracy's (City) Wastewater Treatment Plant (WWTP) treats municipal wastewater and provides the treated wastewater for recycled water uses in the City. A portion of the treated wastewater is also discharged to the Old River, tributary to the San Joaquin River. The maximum treated wastewater design capacity at the WWTP is approximately 10.8 million gallons per day (mgd) (or 16.7 cubic feet per second (cfs)) up to a total of 12,106 acre-feet per year (afy).
3. In 2004, the City previously filed Wastewater Change Petition WW0043, requesting approval from the State Water Board for a change in place and purpose of use of a portion of its treated wastewater, resulting in a reduction in discharge to Old River of up to 8.1 mgd (12.5 cfs), with a maximum annual quantity of 5,900 afy. The State Water Board approved Petition WW0043 by Order dated February 23, 2007 (2007 Order).
4. On March 8, 2018, the City filed a petition requesting an amendment to the 2007 Order, pursuant to Water Code section 1211. With the petition, the City seeks to change the place of use of up to 12.5 cfs (with a maximum annual quantity of 5,900 afy) of treated wastewater previously authorized under the 2007 Order.
5. With this petition, up to 12.5 cfs with a maximum annual quantity of 5,900 afy of treated wastewater would be used within the jurisdictional boundaries of the City's Sphere of Influence, Byron Bethany Irrigation District (BBID) within the City's Sphere, and West Side Irrigation District (WSID) for irrigation and industrial purposes.

6. For the purposes of this Order, the State Water Board considers the following information as the City's existing points of discharge, purpose of use, and place of use of treated wastewater:
  - a. The points of discharge into the Old River are located as follows: 1) Discharge Point 001: 37° 48' 19" N and 121° 24' 07" W; and 2) Discharge Point 002: 37° 48' 20" N and 121° 24' 15" W as shown in the City's Waste Discharge Requirements Order No. R5-2017-0113, (National Pollutant Discharge Elimination System Permit No. CA0079154), issued by the Central Valley Regional Water Quality Control Board;
  - b. Purpose of Use: Industrial and Irrigation; and,
  - c. Place of Use: Within SW¼ of SE¼ of Section 30, T2S, R4E, MDB&M (industrial); SE¼ of SE¼ of Section 30, T2S, R4E, MDB&M (irrigation of 2.6 acres); and SW¼ of SW¼ of Section 29, T2S, R4E, MDB&M (irrigation of 2.5 acres) as shown on map dated July 2004, filed with the State Water Board.
7. Pursuant to California Code of Regulations (CCR) section 795(a), a public notice of the change was not issued as the proposed change do not have the potential to impair the water supply of other legal users of water or instream beneficial uses. On February 8, 2019, the State Water Board requested the California Department of Fish and Wildlife's (CDFW) comments on the proposed change pursuant to CCR section 794(b). No comments were received from CDFW.
8. The City's proposed change with the 2018 petition to modify the 2007 Order will not increase the reduction in treated wastewater discharge into Old River beyond the quantity that was previously approved by the State Water Board. Therefore, the State Water Board has determined that the petition for change in the place of use will not cause injury to any other lawful user of water.
9. Under the California Environmental Quality Act (CEQA), the City is the lead agency for preparation of environmental documentation for the project. On November 2016, the City issued a Mitigated Negative Declaration (MND) titled Tracy Recycled Water Project (SCH # 2016112056). On December 2016, the City issued a Notice of Determination (NOD) for the project.
10. The State Water Board is a CEQA responsible agency for purposes of considering whether to approve the wastewater change petition that will allow the City to proceed with the proposed project. As a CEQA responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the MND in deciding whether to approve the petition. There is no evidence that approval of the wastewater change petition, with the lead agency implementing mitigation measures from the MND to minimize impacts to cultural and biological resources, will have any adverse impacts on the environment. The State Water Board will issue a NOD within five days of the date of this order.
11. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) The mitigation measures in the MND minimize impacts to biological and cultural resources and no adverse impacts to public trust resources are expected.
12. The State Water Board has a Policy for Water Quality Control for Recycled Water (Recycled Water Policy), originally adopted on February 3, 2009 and amended on January 22, 2013 and December 11, 2018. The purpose of the Recycled Water Policy is to increase the use of recycled water from municipal wastewater sources, and one of the goals for California, as stipulated in the Recycled Water Policy, is to increase the use of recycled water over 2002 levels by at least one million afy by 2020, and by at least two million afy by 2030. The City's Recycled Water Project (Project), as proposed

in the petition, is consistent with the purpose and will help California meet the goals of the Recycled Water Policy. The Board finds that the Project is in the public interest.

13. Pursuant to Resolution 2012-0029, the State Water Board has delegated the authority to administer the State Water Board's water rights program to the Deputy Director for the Division of Water Rights. The Deputy Director for the Division of Water Rights has redelegated the authority.

### ORDER

#### NOW, THEREFORE, IT IS ORDERED THAT:

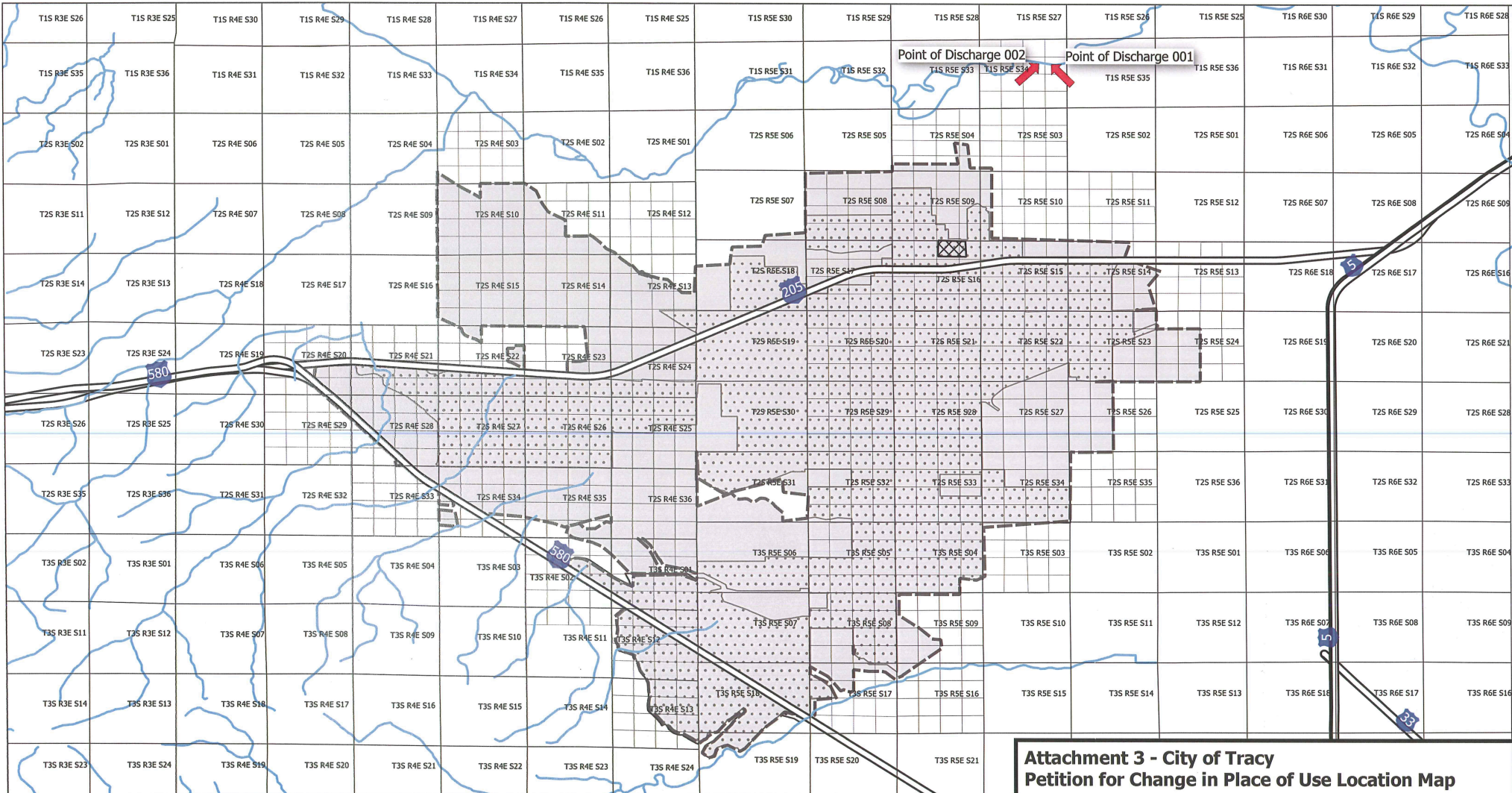
1. This Order supersedes the State Water Resources Control Board (State Water Board) February 23, 2007 Order approving the City of Tracy's (City) Wastewater Change Petition WW0043.
2. The points of discharge of treated wastewater from the City's Wastewater Treatment Plant (WWTP) to Old River are unchanged and are located as follows: 1) Discharge Point 001: California Coordinate System 1983 (CCS83), Zone 3, North 2,116,937 feet, and East 6,301,096 feet, being within SE¼ of NE¼ of projected Section 34, T1S, R5E, MDB&M; 2) Discharge Point 002: CCS83, Zone 3, North 2,117,045 feet, and East 6,300,455 feet, being within SW¼ of NE¼ of projected Section 34, T1S, R5E, MDB&M.
3. The City is authorized to change the point of discharge and place of use of treated wastewater by reduction in discharge to Old River of up to 8.1 million gallons per day (mgd) (or 12.5 cubic feet per second), with a maximum annual limit of 5,900 acre-feet per year, and use the treated wastewater for industrial and irrigation purposes within the service areas of the City's Sphere of Influence, BBID within the City's Sphere, and WSID as shown on map dated February 14, 2019, filed with the State Water Board.
4. The City is responsible for compliance with any applicable waste discharge or water recycling requirements issued by the Central Valley Regional Water Quality Control Board or the State Water Board.
5. The State Water Board reserves continuing jurisdiction in the public interest to implement and amend this Order for conformity with instream flow requirements that may be established for the Old River in the future, and in the event of unforeseen adverse impacts to fish and wildlife resources and other instream beneficial uses. Modifications to this Order shall be only be made after notice and opportunity for a hearing.
6. The City shall file an annual report with the Deputy Director for the Division of Water Rights by April 30 of each year that includes at minimum the following information for the previous calendar year: monthly amount of inflow to the City's WWTP, monthly discharges to the Old River, maximum daily recycled water delivery rate in mgd, and monthly total recycled water deliveries.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY  
SCOTT MCFARLAND, FOR

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: MAR 15 2019



**Attachment 3 - City of Tracy  
Petition for Change in Place of Use Location Map**

Notes:  
Proposed Place of Use covers approximately 29,000 Acres of City Limits, City Sphere of Influence, BBID, and WSID service areas. Actual irrigation would only occur in a small portion of this total area and would be dependent on total recycled water production.  
Data on this map from multiple sources including City of Tracy, Cal-Trans, CDFG, BBID, WSID, and CDRP.

Prepared By:



**Tully & Young**  
Comprehensive Water Planning






I, Greg Young, of 965 University Ave. Ste. 222, Sacramento, California, do hereby certify that this map was prepared under my supervision and correctly represents the project described in the accompanying application.

Name Greg Young

Date 2-19-19

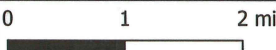
California Civil Engineer Certificate No. C51255

-  Township, Range, Section
-  Streams
-  Treatment Plant
-  Highways
-  Proposed Place of Use
-  City Limits

**Point of Discharge**

Discharge Point 001: California Coordinate System of 1983 (CCS83), Zone 3, North 2,116,937 feet, and East 6,301,096 feet, being within SE¼ of NE¼ of projected Section 34, T15, R5E, MDB8M

Discharge Point 002: CCS83, Zone 3, North 2,117,045 feet, and East 6,300,455 feet, being within SW¼ of NE¼ of projected Section 34, T15, R5E, MDB8M





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In the Matter of Wastewater Petition WW43

City of Tracy

**ORDER APPROVING CHANGE IN THE PURPOSE OF USE AND PLACE  
OF USE OF TREATED WASTEWATER**

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SOURCE: Old River tributary to San Joaquin River

COUNTY: Alameda

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**WHEREAS:**

1. Treated Wastewater Change Petition WW43 was filed by the City of Tracy (City) with the State Water Resources Control Board (State Water Board) on July 8, 2004, pursuant to section 1211 of the Water Code. Public notice of the change was issued on September 16, 2005, and no protests were received.
2. The petition was filed to add the use of treated wastewater for industrial and irrigation purposes as authorized purposes of use, reduce the discharge of treated wastewater to Old River, and add the proposed Tesla Power Plant site as an authorized place of use. Water will be piped at a maximum rate of 12.5 cubic feet per second (cfs) with a maximum annual quantity of 5,900 acre-feet using an approximately 11-mile long, 30-inch diameter recycled water pipeline from the wastewater treatment facility to the Tesla Power Plant. At the power plant, water will be used for cooling purposes and irrigation of net acres of 5.1 acres within the 60 acres power plant site. The City will not abandon its existing point of discharge.
3. The State Water Board has determined that the petition to add the use of treated wastewater for industrial and irrigation purposes as authorized purposes of use and the proposed Tesla Power Plant site as an authorized place of use does not cause injury to any other lawful user of water.
4. Licensing of the Tesla Power Plant is within the jurisdiction of the California Energy Commission (CEC). (Pub. Resources Code § 25500.) The CEC's process is functionally equivalent to the preparation of an environmental impact report under the California Environmental Quality Act (CEQA). (Pub. Resources Code § 21080.5; 14 Cal. Code Regs § 15251(k).) When issuing a license, the CEC is the lead agency for purposes of CEQA. (Pub. Resources Code § 25519(c).) As a responsible agency under CEQA, the State Water Board is required to use the CEC's functionally equivalent document in granting an approval for the same project. (14 Cal. Code Regs. § 15253(a).) The requirements for State Water Board use of the CEC document have been met. (14 Cal. Code Regs. § 15253(b)(1)-(6).) The CEC found that use of treated wastewater in lieu of potable water supplies was environmentally preferable.

The CEC assigned a Committee of two CEC Commissioners to conduct proceedings. Pursuant to CEC siting regulations, CEC staff published a Final Staff Assessment (FSA) in April 2003, an Addendum to the FSA in July 2003, and the Second Addendum to the FSA in September 2003. The Committee published the Presiding Member's Proposed Decision (PMPD) in February 2004.

A Revised PMPD issued in May 2004, followed by an Errata issued on June 15, 2004. The CEC adopted the Revised PMPD as the Commission Decision and approved the Tesla Power Plant project on June 16, 2004.

The State Water Board reviewed and considered the information contained in the listed documents. The project under State Water Board review is delivery of treated wastewater to the proposed Tesla Power Plant for power plant cooling and processing and landscape irrigation purposes. The delivered wastewater is used in a closed system and is not returned to the stream system. The deliveries could reduce the current volume of treated wastewater the City discharges into Old River. The Commission Decision finds that (a) there are no adverse effects to downstream water rights because the reduction in discharge of wastewater containing higher levels of total dissolved solids (as compared to native flows) improved downstream water quality, which was beneficial to downstream water right holders, and (b) there are no significant adverse impacts to plants, fish or wildlife.

The July 2003 Final Staff Assessment Addendum, Reclaimed Water Supply Pipeline, Tesla Power Project states, at pages 2.13-13 and 2.13-18, that the Central Valley Regional Water Quality Control Board, National Marine Fisheries Service and Contra Costa Water District highly encourage the reduction in discharge of the City's wastewater into Old River. Moreover, written support for the reclaimed water supply project has been received from the agencies previously noted, as well as from the U.S. Fish and Wildlife Service, State Water Board, City, Alameda County Zone 7 Water District, and the California Department of Fish and Game (July 2003 Final Staff Assessment Addendum, page 1-5.)

The State Water Board, as responsible agency, is required to consider the CEC's functionally equivalent document and reach its own conclusions on whether and how to approve the Wastewater Change Petition. The State Water Board finds that there are no significant adverse impacts to plants, fish or wildlife resulting from reduction in treated wastewater discharge to Old River. Mitigation measures for this project are within the responsibility of the CEC, not the State Water Board, and have been or should be adopted.

5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the order making the petitioner aware of possible obligations resulting from these acts.

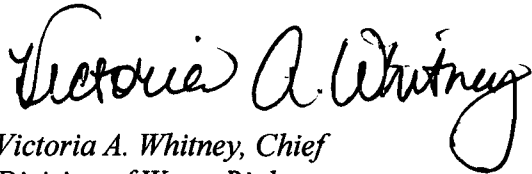
**NOW, THEREFORE, IT IS ORDERED THAT:**

1. The City of Tracy is authorized to change the point of discharge and place of use of treated wastewater by reduction in discharge to Old River of 12.5 cfs and use the treated wastewater for industrial and irrigation purposes within SW¼ of SE¼ of Section 30, T2S, R4E, MDB&M (industrial); SE¼ of SE¼ of Section 30, T2S, R4E, MDB&M (irrigation of 2.6 acres); and SW¼ of Section 29, T2S, R4E, MDB&M (irrigation of 2.5 acres) as shown on a map dated July 2004 on file with the State Water Board.
2. The petitioner shall comply with the following Endangered Species condition:

This change does not authorize any act, which results in the taking of a threatened or endangered species, or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act

authorized under this order, the petitioner shall obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order.  
(0000014)

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated:

**FEB 23 2007**