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For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

**In the Matter of Waste Discharge Requirements and
Time Schedule Order For City Of Tracy, Tracy
Wastewater Treatment Plant, California Regional
Water Quality Control Board – Central Valley
Region Order No. R5-2007-0036 and No. R5-2007-
0037; NPDES No. CA0079154**

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) **PETITION FOR REVIEW**
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Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting Waste Discharge Requirements (NPDES No. CA0079154) and Time Schedule Order for the City of Tracy Wastewater Treatment Plant on 4 May 2007. *See* Orders No. R5-2007-

0036 and R5-2007-0037. The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Orders No. R5-2007-0036 and R5-2007-0037, Waste Discharge Requirements (NPDES No. CA0079154) and Time Schedule Order for City of Tracy Wastewater Treatment Plant. Copies of the orders adopted by the Regional Board at its 4 May 2007 Board meeting are attached hereto as Attachments A and B.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

4 May 2007

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letters on 27 January 2006, 22 July 2006, 26 July 2006, 31 July 2006 and 6 April 2007. Additionally, the Environmental Law Foundation submitted comments on our behalf on 6 April 2007. Further, we testified at the 4 August 2006 Regional Board hearing on this issue and incorporated by reference the oral and written comments by Central Delta Water Agency and Westlands Water District. These letters, our oral testimony and the following comments, set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

A. The Order does not contain a protective or legal effluent limitation for EC

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; "Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or *contribute* to an excursion above any State water quality standard, including State narrative criteria for water quality." The

Water Quality Control Plan (Basin Plan) for the Central Valley Region, Water Quality Objectives, page III-3.00, contains a Chemical Constituents Objective that includes Title 22 Drinking Water Maximum Contaminant Levels (MCLs) by reference. The Title 22 MCLs for EC are 900 $\mu\text{mhos/cm}$ (recommended level), 1,600 $\mu\text{mhos/cm}$ (upper level) and 2,200 $\mu\text{mhos/cm}$ (short term maximum). From the Fact sheet the wastewater discharge average EC level is 1753 $\mu\text{mhos/cm}$ and the maximum observed EC was 2419 $\mu\text{mhos/cm}$. Clearly the discharge exceeds the MCLs for EC presenting a reasonable potential to exceed the water quality objective. The Order contains an interim effluent limitation for EC of 2267 $\mu\text{mhos/cm}$, as a monthly average. The EC limitation clearly exceeds every stage MCL for EC. The Order fails to establish an effluent limitation for EC that are protective of the Chemical Constituents water quality objective.

The Basin Plan states, on Page III-3.00 Chemical Constituents, “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.” The Basin Plan’s “Policy for Application of Water Quality Objectives” provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations. This application of the Basin Plan is consistent with Federal Regulations, 40CFR 122.44(d).

For EC, *Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Agriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985)*, levels above 700 $\mu\text{mhos/cm}$ will reduce crop yield for sensitive plants. The University of California, Davis Campus, Agricultural Extension Service, published a paper, dated 7 January 1974, stating that there will not be problems to crops associated with salt if the EC remains below 750 $\mu\text{mhos/cm}$.

The City’s wastewater discharge increases concentrations of EC to unacceptable concentrations adversely affecting the agricultural beneficial use. The wastewater discharge not only presents a reasonable potential, but also actually causes, violation of the Chemical Constituent Water Quality Objective in the Basin Plan. The available literature regarding safe levels of EC for irrigated agriculture mandate that an Effluent Limitation for EC is necessary to protect the beneficial use of the receiving stream in accordance with the Basin Plan and Federal Regulations. Failure to establish effluent limitations for EC that are protective of the Chemical Constituents water quality objective blatantly violates the law.

Based on the information in the Antidegradation Analysis, Salinity, EC and TDS discussions of Attachment F, the significant portion of salinity is discharged by an industrial discharger, Leprino Foods. The salinity discussion of Leprino Foods states: “Leprino discharges an additional salt load to the Facility. Leprino provides preliminary treatment of its wastewater to reduce the high organic loading typical of food processing waste. However, no treatment is provided to reduce the high salt loading. The industrial wastewater is discharged to the Discharger’s industrial treatment facility, which includes 52 acres of unlined industrial ponds, and is returned to the main treatment facility at the primary sedimentation tanks. The industrial ponds provide significant residence time. While in the industrial ponds, salts are concentrated through the evaporation of the

wastewater. In addition, the Discharger wastes high TDS process water from the main treatment facility to the industrial ponds, such as digester supernatant, pump seal water, boiler cooling water, etc. Based on data provided by the Discharger from January 2003 through December 2004, the industrial wastewater discharged to the industrial ponds has an average TDS of about 1000 mg/L, but triples to an average TDS of over 3000 mg/L by the time the wastewater is returned to the main facility. This results in a significant salt load to the main treatment facility, and ultimately to Old River.” Based on the municipal drinking water supply average TDS concentration of 450 mg/l, without the significant industrial discharges of salt, the municipal wastewater could be very close to compliance with EC and TDS limitations.

Federal Regulation, 40 CFR 122.44, which mandates an effluent limitation be established if a discharge exceeds a water quality objective. The discharge of EC from the City of Tracy clearly exceeds the drinking water MCLs that are incorporated into the Basin Plan by reference. The Order cites a State Board Order for Manteca, (Water Quality Order 2005-005) states, “...*the State Board takes official notice [pursuant to Title 23 of California Code of Regulations, Section 648.2] of the fact that operation of a large-scale reverse osmosis treatment plant would result in production of highly saline brine for which an acceptable method of disposal would have to be developed. Consequently, 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.*” The State Board does not have the authority to ignore Federal Regulation. Bay Area treatment plants have been utilized for RO brine disposal previously. In addition, a significant majority of the EC loading at Tracy can be attributed to Leprino Foods, an industrial discharger, which could negate the need for advanced treatment or modification of the water source. Based on the drinking water supply average TDS concentration of 450 mg/l, without the significant industrial discharges of salt, the municipal wastewater could be very close to compliance with EC and TDS limitations.

The special studies section of The Order states that: “To comply with Resolution 68-16, the treatment or control of discharges of waste to waters of the state must be sufficient to provide the minimum degradation of such waters that is feasible, but in no case can the discharge cause the exceedance of applicable water quality objectives.” Clearly The Order, which allows exceedance of water quality objectives, fails to comply with the Antidegradation Policy (Resolution 68-16).

B. The antidegradation analysis is woefully inadequate and inconsistent with the state’s antidegradation policy

The Antidegradation discussion does not discuss the fact that the industrial discharges likely contribute the principal salt load. The Antidegradation analysis does not state that with respect to salts that the EC, principally discharged by a local industry, is not a discussion of BPTC at the wastewater treatment plant, but instead a failure of the industrial pretreatment program. Failure to control local industries is not BPTC.

Two significant expansions of the wastewater treatment plant are discussed in the Order. The antidegradation discussion states that:

1. The increase will not cause a violation of water quality objectives.
2. Compliance with these requirements will result in the use of best practicable treatment or control of the discharge.
3. The receiving water may exceed applicable water quality objectives for certain constituents as described in this Order, and
4. The Order requires the Discharger, in accordance with specified compliance schedules, to meet requirements that will result in the use of best practicable treatment or control of the discharge and will result in compliance with water quality objectives.

However, there are numerous constituents shown in Table F-1 that have significant increases in the mass of pollutants discharged that are not specifically discussed in the analysis. Nor does the antidegradation analysis discuss why the wastewater treatment plant is allowed expansion that does not result in full permit compliance and does not achieve best practicable treatment or control of the discharge.

For example, the antidegradation analysis fails to adequately discuss the significant increase in oxygen demanding substances or available best practicable treatment or control of the discharge of these substances. The Order allows a 78% increase in mass loading of nitrate and a 77% increase in mass loading of phosphorous. This translates to an additional 187 lbs/day of nitrate and 186 lbs/day of phosphorus discharged from the expanded wastewater treatment plant. The Order establishes that receiving waters are impaired for dissolved oxygen. Nitrogen and phosphorus are the primary contributors to eutrophication and increased mass loading of these constituents will cause a further oxygen demand on an already impaired waterbody. Nitrogen and phosphorus can be treated and removed from the discharge through readily available technologies. Failure to employ these commonly used technologies will cause, and significantly contribute to, violation of the water quality objective for dissolved oxygen.

The Order allows an expansion of the wastewater treatment plant. Compliance Schedules 4(b)(i) states that the permitted average dry weather discharge flow may increase to 10.8 mgd and the permitted peak wet weather discharge flow may increase to 26 mgd. However the Discharger is not required be in compliance with the effluent limitations for electrical conductivity (EC). The antidegradation analysis does not discuss why an increased flow is allowed until the Discharger confirms that an expanded wastewater system can comply with all effluent and receiving water limitations. Allowing an interim expansion without requiring complete compliance is contrary to the statement in the antidegradation analysis that the flow increase will not cause a violation of water quality objectives. The antidegradation analysis fails to discuss why the wastewater treatment plant is allowed any expansion that does not result in full permit compliance and does not achieve best practicable treatment or control of the discharge.

The above discussion also applies to temperature and apparently for bis(2-ethylhexyl)phthalate, copper, dibromochloromethane and bromodichloromethane which have compliance dates of 1 January 2008.

The accuracy of Table F-1 is questionable since mass limitations have been removed from the effluent limitations section of the Order. The failure to include mass limitations for toxic pollutants would allow dumping of pollutants during wet weather periods. The statement that the increase in toxic pollutants will not cause significant impacts to aquatic life, which is the beneficial use most likely affected by the pollutants discharged (e.g. from temperature and metals) conflicts with the information contained in Table F-1 which shows numerous toxic pollutants which would significantly increase, for example copper concentrations are projected to increase by 54%.

With respect to salinity, the Order establishes an interim effluent limit of 2265 $\mu\text{mhos/cm}$ as electrical conductivity (EC) based on the Discharger's current level of performance. Considerable dilution is available prior to any downstream municipal supply intakes. These statements directly conflict with the Attachment F Salinity discussion which states: "The background receiving water EC averaged 640 $\mu\text{mhos/cm}$ in 277 sampling events collected by the Discharger from July 1998 through November 2003. These data show that the receiving water frequently has no assimilative capacity for EC." The Order further states that the: "...interim effluent limit is essentially the same as the short-term secondary maximum contaminant level (MCL) for protection of municipal and domestic supply (2200 $\mu\text{mhos/cm}$)." The Order fails to mention the MCLs for EC are 900 $\mu\text{mhos/cm}$ as the primary water quality goal, 1,600 $\mu\text{mhos/cm}$ as a short-term level and 2,200 $\mu\text{mhos/cm}$ as a short term maximum. In addition, The Order applies the 2,265 $\mu\text{mhos/cm}$ EC limit as a monthly average, not a short term. The Order does not apply the MCLs as this language would lead the reader to believe.

The Order requires that: *prior to increasing the discharge to 16 mgd, this Order requires the Discharger to (1) evaluate and propose an appropriate numeric effluent limit to protect the beneficial use agricultural supply in the area of the discharge that will implement the Basin Plan's narrative chemical constituent objective, and (2) to evaluate and implement BPTC of salinity in the discharge, including source control.* However other parts of The Order state that it is unlikely that the treatment plant will expand to 16 mgd, at least during the life of The Order. Basing a limitation on an event that may not occur is not protective of water quality.

The Order requires that: *Prior to the increase in discharge to 16 mgd, this Order will be reopened to include an effluent limit for salinity that is protective of the beneficial use of agricultural supply and will require implementation of BPTC.* The information provided in the Order indicates that the increase to 16 mgd may be far in the future, beyond the life of The Order and perhaps beyond the next permitting cycle. Therefore BPTC is not being required in The Order and according to the information provided may not be required in the next permitting cycle.

With respect to temperature, the Discharger must comply with a time schedule to reduce the effluent temperature to meet the Basin Plan standards or to comply with an exemption granted under the Thermal Plan.

The Order allows a discharge that causes and contributes to a violation of water quality objectives, specifically Basin Plan Objectives for chemical constituents (Title 22 MCLs), irrigated agricultural goals, temperature and dissolved oxygen and unreasonably affects beneficial uses, specifically aquatic life, irrigated agriculture and municipal and domestic supply. NPDES permits must include any more stringent effluent limitation necessary to implement the Regional Board Basin Plan (Water Code 13377). The Order fails to properly implement the Basin Plan's Antidegradation Policy. The discharge must be capable of achieving 100% compliance with Effluent and Receiving Water Limitations prior to allowing an expansion of the Waste Water Treatment Plant.

C. The flow limitations in the Order fail to comport with federal regulations

The Federal Regulations, at 40 CFR 122.45 (b), require that POTW effluent limitations, standards, or prohibitions be based on design flow. Virtually every engineering textbook includes *Ten States Standards* as standard engineering design and a recognized civil engineering basis for wastewater treatment plant (WWTP) design parameters. Pursuant to these standards;

1. Average Dry Weather Flow (ADWF) represents the daily average flow when groundwater is at or near normal and runoff is not occurring.
2. Maximum Wet Weather Flow (MWWF) represents the total maximum flow received during any 24-hour period when the groundwater is high and runoff is occurring.
3. Peak Hourly Wet Weather Flow (PHWWF) represents the total maximum flow received during one-hour when groundwater is high, runoff is occurring, and domestic and commercial flows are at their peak.

The PHWWF must be used to evaluate the effect of hydraulic peaks on the design of pumps, piping, clarifiers, and any other flow sensitive aspects.

The discharge flow limitations in the Order are presented as average monthly for ADWF and as maximum daily for peak-wet weather flow (PWWF). Unfortunately, the technical basis for the flow limitations is not discussed in the Order. The federal definition of daily maximum is an average for the day. Therefore the PWWF limitation is actually a daily average. The monthly average ADWF and one day's average wet weather flow (PWWF) are not acceptable WWTP design parameters. Consequently, the flow limitations contained in the Order are not based on acceptable WWTP design parameters and therefore fail to comply with federal regulations.

D. The limit for acute toxicity is inconsistent with Basin Plan and federal requirements

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms.

The Order requires that the Discharger conduct acute toxicity tests and states that compliance with the toxicity objective will be determined by analysis of indicator organisms. However, the Order contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test.

The Order acknowledges in detail that there is no assimilative capacity in the receiving stream for individual toxic pollutants. It further acknowledges that ambient waters are impaired for unknown toxicity. Allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal regulations and contributes to exceedance of the Basin Plan's narrative water quality objective for toxicity. Accordingly, the Order should be revised to prohibit acute toxicity.

E. The Order fails to contain an effluent limitation for chronic toxicity

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.

The Order states that: "...to ensure compliance with the Basin Plan's narrative toxicity objective, the discharger is required to conduct whole effluent toxicity testing..." Attachment F, page 59. However, sampling does not equate with or ensure compliance.

The Order requires the Discharger to conduct an investigation of the possible sources of toxicity if a threshold is exceeded. This language is not a limitation and essentially eviscerates the Regional Board's authority, and the authority granted to third parties under the Clean Water Act, to find the Discharger in violation for discharging chronically toxic constituents. An effluent limitation for chronic toxicity must be included in the Order.

In addition, the Chronic Toxicity Testing Dilution Series should bracket the actual dilution at the time of discharge, not use default values that are not relevant to the discharge.

F. The Order violates state and federal endangered species acts.

As discussed above, South Delta waterways are listed on the 303(d) list as impaired because of unknown toxicity and are home to species protected by state and federal endangered species acts. There is no remaining assimilative capacity for toxicity, toxic pollutants or oxygen demanding constituents. Astonishingly, the Order allows acute toxicity, fails to limit chronic toxicity and, as we discuss below, includes effluent limits that are not protective of listed species. The Order is likely to result in the illegal “take” of listed species and will likely result in the destruction or adverse modification of critical habitat in violation of Section 9 of the federal Endangered Species Act (ESA).

Federal regulation at 40 CFR § 122.49(c) state “[t]he *Endangered Species Act*, 16 U.S.C. 1531 *et seq.* section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.”

The Order has been developed with federal funds and is issued pursuant to U.S. Environmental Protection Agency (EPA) authorization. Consequently, the Regional Board and/or EPA must enter into formal consultation with both the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the ESA. The discharge of toxicity and toxic pollutants by the Discharger is a violation of Section 9 of the ESA and requires an incidental take permit pursuant to Section 10 of the ESA. The Regional Board’s issuance of an Order that authorizes and/or “causes” an illegal “take” is also a violation of Section 9 of the ESA. Consequently, both the Discharger and the Regional Board must secure incidental take permits from NMFS and USFWS.

The Order will also likely result in an illegal “take” of listed species pursuant to Section 2080 of the California Fish and Game Code; i.e., the California Endangered Species Act (CESA). The Discharger must obtain a permit under Section 2081 or a consistency determination under Section 2080.1 of CESA. Unlike ESA, CESA requires that authorized take be “fully mitigated” and that all required measures be “capable of successful implementation.” Since there are no provisions for time schedules under CESA, the Discharger must comply with protective limits as soon as possible and certainly prior to any increase in the rate of discharge. The inadequate toxicity, temperature, ammonia, and dissolved oxygen limits in the Order should be revised to be fully protective of listed species. The Discharger and Regional Board must initiate consultation with the California Department of Fish and Game.

G. Temperature limitations violate the Basin Plan, Thermal Plan and federal regulations

The Order contains an Effluent Limitation that states: “The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F.” It also includes a Receiving Water Limitation that states that the discharge shall not cause: “The creation of a zone, defined by water temperatures of more than 1°F above natural receiving water temperature, which exceeds 25 percent of the cross-sectional area of the river channel at any point or a surface temperature rise greater than 4°F above the natural temperature of the receiving water at any time or place.”

Unless the Order is allowing a mixing zone, compliance with the effluent limitation would cause immediate violation of the Receiving Water Limitations. The receiving water limitations are apparently based on Basin Plan water quality objectives, whereas the Effluent Limitation appears to have no technical or legal explanation. Federal Regulations, 40 CFR 122.44(d)(1)(i), requires an effluent limitation be adopted whenever a pollutant discharge has a reasonable potential to exceed a water quality standard or objective. Given the size and tidal characteristics of the receiving waters, a discharge at 20°F above the natural receiving water temperature will clearly cause exceedance of a 4°F Receiving Water objective and an exceedance of a 1°F limit for more than 25% of the cross-sectional area of the river channel. The Effluent Limitation allowing a 20°F increase in temperature violates federal regulations and must be removed and replaced with a protective limit that will ensure compliance.

The Order language does not accurately reflect the Basin Plan and Thermal Plan objective for temperature, violates 40 CFR 122.44(d)(1)(i) and must be changed.

H. The Order allows degradation of groundwater

The discussion concerning biosolids dewatering, in Attachment F, page 16, states that the facility currently degrades groundwater quality with their practice of discharging sludge to sand lined drying beds. It is not BPTC to pave the sludge drying bed with a “relatively impermeable” barrier of asphaltic concrete. A “relatively impermeable” barrier will still allow wastes to migrate to groundwater and is not best practicable treatment and control (BPTC) of the discharge. Completely impermeable lining materials are readily available and would prohibit pollutant migration to groundwater. . A “relatively impermeable” barrier is not BPTC. The Order should be revised to require BPTC for discharges to groundwater.

I. Failure to include an effluent limitation for dissolved oxygen violates federal regulations

The Order states that the receiving waters are impaired for dissolved oxygen. The discharge contains oxygen-demanding substances. In numerous locations, the Order establishes that receiving water lacks assimilative capacity for additional oxygen demanding constituents. The Order contains a Receiving Water Limitation for DO. The discharge presents a reasonable potential to cause or contribute to exceedance of the

Basin Plan's water quality objective for DO. In accordance with Federal Regulations, 40 CFR 122.44, the Order is required to contain an Effluent Limitation for DO.

J. The ammonia limitation is not protective of the Basin Plan's narrative toxicity objective and fails to employ a "worst case" scenario

The toxicity of ammonia varies with pH and temperature. The Order finds that there is a reasonable potential for ammonia in the discharge to exceed water quality standards, therefore in accordance with federal regulations an Effluent Limitation is required to be included in the Order. The Effluent Limitation must be adequate to maintain compliance with the narrative water quality objective 100% of the time.

In assessing acute toxicity, the Order states that the maximum observed pH was 9.3. The Order states that: "however, due to the variability of pH sampling, using the maximum pH may be overly protective. Therefore, the 90th percentile of pH readings was used to determine the acute design pH." The final Effluent Limitations must be protective of all events over the five-year life of the Order; therefore the worst-case pH should be used in developing the final ammonia limitation. There is NO documentation that pH variability would not result in a recurrence of an effluent pH of 9.3 during the life of the Order and a resulting toxic discharge. To the contrary, a 9.3 pH has occurred and recurrence is statistically probable. The 90th percentile pH of 8.5 does not produce an ammonia effluent limitation that is fully protective over the life of the Order. There were 280 receiving water pH observations made from July 1998 through November 2003; 53 months or approximately 1,590 days. With this relatively infrequent sampling, there is no reason to assume that the worst-case pH during this period was actually detected. The effluent pH values were not even discussed in assessing the acute toxicity for ammonia, although the chronic limitations are being established without benefit of dilution. The permit writer does not provide any statistical or rhetorical evidence that use of a 90th percentile receiving water pH results in a protective effluent limitation for ammonia.

For chronic toxicity, a median of the 280 pH observations was utilized in developing an ammonia effluent limitation. The Order states that: "the median was chosen for chronic toxicity, because over a period of time receptors would be exposed to a more or less average ammonia concentration." The median receiving water pH is then compared to the effluent median pH and the Order concludes that since the receiving water median pH is higher than the effluent median pH, that the critical pH was selected. The critical pH is the maximum observed value, not a relative median. The permit writer's statement that: "... receptors would be exposed to a more or less average ammonia concentration" comparing an average time period to the use of a median has no statistical basis. The median pH value does not produce an ammonia effluent limitation that will be protective of all events over the five-year life of the Order.

With respect to chronic toxicity, a 30-day average temperature was used in developing the ammonia effluent limitation. The above discussions are also accurate for this use of temperature. The limitation is not based on the worst-case discharge that has been observed in the discharge and is not protective of all conditions that will be observed over the life of the Order. The Order presents no technical explanation or

statistical analysis in an attempt to justify the use of medians and average values as compared to worst case observed conditions.

The ammonia effluent limitation is not protective of the Basin Plan's narrative toxicity objective and if not corrected using the worst case observed pH and temperature, will allow toxic discharges to a receiving stream with no assimilative capacity. The Order must be modified to include effluent limits that prevent acute and chronic toxicity from ammonia.

K. The Order fails to include limits and monitoring for methylmercury

The Order includes an interim effluent mass limitation, or cap, for total mercury. Inexplicably, it ignores methylmercury; the bioaccumulative and biodamaging form of mercury. Regional Board TMDL staff has consistently maintained that the pending Delta Mercury TMDL will require substantial reductions in the mass loading of methylmercury from wastewater treatment plants. The Order must include an interim cap on methylmercury loading.

The Order states that, if the Regional Board determines that a mercury offset program is feasible, the Order may be reopened to reevaluate the interim mercury mass loading limitation(s) and the need for mercury offset program. An explicit permit re-opener to include final load reductions established in the Delta Mercury TMDL must be incorporated in the Order.

The Monitoring and Reporting Program does not contain monitoring for methylmercury. Sampling for methylmercury is critical to support the mercury TMDL and the allocation of loads.

The Order states, "The total pollutant mass load for each individual calendar month shall be determined using an average of all concentration data collected that month and the corresponding average monthly flow. Using average mercury concentration will not hold mercury loading to current levels because the average is not a measure of current loading. The total mass loading of mercury each month must be based upon the total accumulated monthly flow multiplied by a sum of the peak mercury concentrations in order to determine the total mass of mercury discharged. The Order illegally allows the Discharger to substantially increase mercury loading to mercury-impaired waters.

L. Monitoring requirements are inadequate

The Monitoring and Reporting Program requires collection and analysis of total mercury. It must also require that methylmercury samples be collected and analyzed. Since sulfate concentrations affect methylation rates, sulfate should be analyzed concurrently with total and methyl mercury. Monthly methylmercury and sulfate sampling should also be required for receiving water monitoring.

Grab samples for metals and semi volatile constituents are inappropriate for effluent monitoring. Flow proportional 24-hour composite sampling for metals and semi-

volatile constituents is necessary. Continuous pH, EC and turbidity should also be required as they are inexpensive. The Order currently requires monthly grab samples for EC. Continuous EC monitoring is especially critical to determine the critical values related to the numerous EC discussions and studies in The Order.

M. The Order fails to adequately discuss CEQA

The Order states that the action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of Division 13 of the Public Resources Code in accordance with Section 13389 of the CWC. The action to adopt an NPDES permit may be exempt from CEQA; however The Order discusses significant expansion of the wastewater treatment plant, which is not exempt from CEQA.

Later in the Fact Sheet, in discussing the temperature impacts of the discharge the Order discusses a CEQA document that was completed for the wastewater treatment plant expansion. The CEQA discussion within the Order must be expanded to discuss all of the water quality impacts discovered during the CEQA analysis.

For example in discussing temperature the Order states that: *modeling by the Discharger shows that the 1 °F limitation of Objective 5.A.(1)b of the Thermal Plan may be exceeded 3 months of the year. As described in the Final EIR for the expansion of the Facility, the Discharger has mitigation measures to ensure that any thermal impacts will be less than significant. The Discharger proposes to conduct four years of intensive monitoring of thermal impacts in the vicinity of the outfall and develop an appropriate range of mitigation measures, if necessary.* The Discharger confirms that they exceed the thermal plan 3-months out of each year. The Order states Discharger has mitigation measures in their EIR, yet no such mitigation measures are identified or discussed in the Order. Intensive sampling for four-years is not mitigation.

N. A significant number of the Effluent Limitations are not limited for mass

Most of the above effluent limitations do not have associated mass limitations. Mass limitations are required by Federal regulations, 40 CFR 122.45(f). 40 CFR §122.45(f) states that: *“All pollutants limited in permits shall have limitations...expressed in terms of mass except...[f] or pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass...Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.”*

U.S. EPA’s Technical Support Document for Water Quality-Based Toxics Control (TSD), states in section 5.7.1, pp. 110-111 that:

“Mass-based effluent limits are required by NPDES regulations at 40 CFR 122.45(f). The regulation requires that all pollutants limited in NPDES permits have limits, standards, or prohibitions expressed in

terms of mass with three exceptions, including one for pollutants that cannot be expressed appropriately as mass. Examples of such pollutants are pH, temperature, radiation, and whole effluent toxicity. Mass limitations in terms of pounds per day or kilograms per day can be calculated for all chemical-specific toxics such as chlorine or chromium. Mass-based limits should be calculated using concentration limits at critical flows. For example, a permit limit of 10 mg/l of cadmium discharged at an average rate of 1 million gallons per day also would contain a limit of 38 kilograms/day of cadmium.

Mass-based limits are particularly important for control of bioconcentratable pollutants. Concentration-based limits will not adequately control discharges of these pollutants if the effluent concentrations are below detection levels. For these pollutants, controlling mass loadings to the receiving water is critical for preventing adverse environmental impacts.

However, mass-based effluent limits alone may not assure attainment of water quality standards in waters with low-dilution. In these waters, the quantity of effluent discharged has a strong effect on the instream dilution and therefore on the RWC [receiving water concentration]. At the extreme case of a stream that is 100 percent effluent, it is the effluent concentration rather than the effluent mass discharge that dictates the instream concentration. Therefore, EPA recommends that permit limits on both mass and concentration be specified for effluents discharging into waters with less than 100 fold dilution to ensure attainment of water quality standards.”

O. Reasonable potential exists for Bis(2-ethyl-hexyl)phthalate and an effluent limitation is required

For Bis(2-ethyl-hexyl)phthalate the State MCL is 4 $\mu\text{g/l}$ and the USEPA MCL is 6 $\mu\text{g/l}$ and the CTR criterion for Human health protection for consumption of water and aquatic organisms is 1.8 $\mu\text{g/l}$ and for consumption of aquatic organisms only is 5.9 $\mu\text{g/l}$. Based on 4 monitoring samples performed by the Discharger from January 2002 through December 2002, bis(2-ethylhexyl)phthalate was detected, but not quantified in all four samples. The concentration was estimated in each case, with a maximum estimated concentration of 2 $\mu\text{g/l}$ exceeding the CTR water quality standard of 1.8 $\mu\text{g/l}$. According to the SIP procedures there is a reasonable potential for the discharge to exceed a water quality standard. The SIP and Federal Regulations, 40 CFR 122.44, require establishment of an effluent limitation where there is a reasonable potential for a discharge to exceed a water quality standard or objective. The failure to include an effluent limitation for bis(2-ethyl-hexyl)phthalate violates 40 CFR 122.44.

P. The Order allows the Receiving Water Limitation for turbidity to expire

The Order states that the Receiving Water Limitation for turbidity expires when the Final Effluent Limitation for turbidity becomes effective. Receiving Water Limitations are directly based on Basin Plan Water Quality Objectives. Removal of the Receiving Water Limitation for turbidity would potentially allow exceedance of the water quality objective. Federal Regulations, 40 CFR 122.44 (d)(1)(i), requires the Order contain a limitation if there is a reasonable potential for a discharge to exceed a water quality objective.

Q. The Order allows 100% use of the assimilative capacity of the receiving stream without an adequate analysis of flow rates

The Human Health Dilution Credits section states that after the Phase 1 improvements are complete, it may not be necessary to grant the entire assimilative capacity of the receiving water for CTR human carcinogens. For example, the discussion regarding chlorodibromomethane states the background ambient concentration was nondetected. A reasonable potential to cause or contribute to an in-stream excursion of a water quality objective was found. Based on this information it was concluded that the ambient monitoring demonstrates the receiving water has assimilative capacity for chlorodibromomethane and a dilution credit up to 20:1 was granted. However, the *Evaluation of Available Dilution for Priority Pollutant Human Health Criteria* section of the Fact sheet states, in part that: “However, direct Old River flow measurements do not exist over the required period.” Flow rates are necessary to determine dilution ratios. The Fact Sheet further discusses that the receiving stream is tidally influenced and flow rates at the point of discharge may reverse. The Fact Sheet appears to indicate that modeling was used to determine the harmonic mean flow rate. The use of a model to determine the harmonic mean flow does not appear to meet the SIP definition (page Appendix 1-3) and does not appear valid absent measured flow rates. Most new treatment systems are utilizing ultraviolet (UV) disinfection to eliminate problems complying with chlorodibromomethane, which would appear to make UV best practicable treatment.

R. The Order’s compliance schedule misapplies Title 22 disinfection requirements.

Region 5 has, in the past, gone to great lengths to state that Title 22 Reclamation Requirements do not apply to surface water discharges, but that the science used to develop Title 22 has applicable and necessary to protect the beneficial uses of contact recreation and irrigated agriculture. The Order requires that: “By August 1, 2008, or upon compliance with Special Provisions VI.C.4.b. whichever is sooner, wastewater discharged to Old River shall be oxidized, coagulated, filtered, and adequately disinfected pursuant to the DHS reclamation criteria, Title 22 CCR, Division 4, Chapter 3, (Title 22) or equivalent.” By directly requiring compliance with Title 22 requirements, The Order would appear to be vulnerable to legal challenge in applying Title 22 requirements to surface water discharges.

S. The Order illegally allows an unpermitted discharge to Sugar Cut Slough

The previous tentative order contained a Provision (2d) and a Sugar Cut Slough Monitoring Study. The Provision stated: “In a June 1995 report prepared by CH2M Hill for the Discharger, it was concluded that the ponds leak to the shallow groundwater and the groundwater is in hydraulic connection with Sugar Cut Slough.” The Provision then stated, in part: “...additional monitoring is necessary to determine if the unlined ponds are in hydraulic continuity and if they are affecting water quality in Sugar Cut Slough.” The Discharger’s consultants have already concluded that there is hydraulic continuity between wastes from the facility and with surface waters.

The present Order seems to have deleted references to the pond leakage and any workplan. Apparently, it will be addressed as a discharge to land. However, the Clean Water Act and California Water Code §13376 clearly requires submittal of a Report of Waste Discharge for a discharge of waste to surface waters. There is sufficient information to conclude that waste material, regardless of quality, is being discharged to surface waters from leaking wastewater ponds. The Order must be revised to require the Discharger to submit a Report of Waste Discharge for its illegal discharge to Sugar Cut Slough.

T. Regional Board Authority To Issue Compliance Schedules under the CTR Has Now Lapsed

40 C.F.R. section 131.38(e)(3) formerly authorized compliance schedules delaying the effective date of WQBELs being set based on the NTR and CTR. Pursuant to 40 C.F.R. section 131.38(e)(8), however, this compliance schedule authorization *expressly expired* on May 18, 2005, depriving the State and Regional Boards with any authority to issue compliance schedules delaying the effective date of such WQBELs. Indeed, the EPA Federal Register Preamble accompanying the CTR stated as much, noting, “EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on May 18, 2005.”

The Regional Board may contend that the EPA Federal Register Preamble has effectively extended this compliance schedule authority when the Preamble observed, “[I]f the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision significantly prior to May 18, 2005, EPA will act to stay the authorizing compliance schedule provision in today’s rule.” It is true that the State Board subsequently adopted its Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, enacted by State Board Resolution No. 2000-015 (March 2, 2000) (“State Implementation Plan” or “SIP”) and that the SIP provides for compliance schedules without imposing a May 18, 2005 cutoff. EPA, however, *has not* acted to stay 40 C.F.R. section 131.38(e)(8) by the only means it can lawfully do so: notice and comment rulemaking that amends 40 C.F.R. section 131.38(e)(8). Without such a rulemaking, 40 C.F.R. section 131.38(e)(8) remains the law and it unequivocally ends authorization to issue compliance schedules after May 18,

2000. *See Friends of the Earth, Inc. v. Environmental Protection Agency*, 446 F.3d 140 (D.C. Cir. 2006).

U. The Regional Boards' Approach To Compliance Schedules Is Unlawful under the CWA.

Even if 40 C.F.R. section 131.38(e)(8) did not preclude issuing compliance schedules which delay the effective date of WQBELs set under the NTR and CTR, the CWA itself precludes such compliance schedules—and any compliance schedule which delays the effective date of WQBELs past 1977.

1. CWA Section 301(b)(1)(C) establishes a firm deadline for complying with WQBELs

Numerous courts have held that neither the EPA nor the States have the authority to extend the deadlines for compliance established by Congress in CWA section 301(b)(1). 33 U.S.C. §1311(b)(1); *See State Water Control Board v. Train*, 559 F.2d 921, 924-25 (4th Cir. 1977) (“Section 301(b)(1)’s effluent limitations are, on their face, unconditional”); *Bethlehem Steel Corp. v. Train*, 544 F.2d 657, 661 (3d Cir. 1976), *cert. denied sub nom. Bethlehem Steel Corp. v. Quarles*, 430 U.S. 975 (1977) (“Although we are sympathetic to the plight of Bethlehem and similarly situated dischargers, examination of the terms of the statute, the legislative history of [the Clean Water Act] and the case law has convinced us that July 1, 1977 was intended by Congress to be a rigid guidepost”).

This deadline applies equally to technology-based effluent limitations and WQBELs. *See Dioxin/Organochlorine Ctr. v. Rasmussen*, 1993 WL 484888 at *3 (W.D. Wash. 1993), *aff’d sub nom. Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517 (9th Cir. 1995) (“The Act required the adoption by the EPA of ‘any more stringent limitation, including those necessary to meet water quality standards,’ by July 1, 1977”) (citation omitted); *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1312 (9th Cir. 1992) (“[Section 1311(b)(1)(C)] requires achievement of the described limitations ‘not later than July 1, 1977.’”) (citation omitted). Any discharger not in compliance with a WQBEL after July 1, 1977, violates this clear congressional mandate. *See Save Our Bays and Beaches v. City & County of Honolulu*, 904 F. Supp. 1098, 1122-23 (D. Haw. 1994).

Congress provided no blanket authority in the Clean Water Act for extensions of the July 1, 1977, deadline, but it did provide authority for the States to foreshorten the deadline. CWA section 303(f) (33 U.S.C. § 1313(f)) provides that: “[n]othing in this section [1313] shall be construed to affect any effluent limitations or schedule of compliance required by any State to be implemented prior to the dates set forth in section 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.”

Because the statute contains explicit authority to expedite the compliance deadline but not to extend it, the Regional Board may not authorize extensions beyond this deadline in discharge permits.

2. The July 1, 1977 deadline for WQBELs applies even where water quality standards are established after that date

The July 1, 1977, deadline for achieving WQBELs applies equally even if the applicable WQS are established after the compliance deadline. 33 U.S.C. section 1311(b)(1)(C) requires the achievement of “more stringent limitations necessary to meet water quality standards . . . established pursuant to any State law . . . or required to implement any applicable water quality standard established pursuant to this chapter.” Congress understood that new WQS would be established after the July 1, 1977, statutory deadline; indeed, Congress mandated this by requiring states to review and revise their WQS every three years. *See* 33 U.S.C. § 1313(c). Yet, Congress did not draw a distinction between achievement of WQS established before the deadline and those established after the deadline.

Prior to July 1, 1977, therefore, a discharger could be allowed some time to comply with an otherwise applicable water quality-based effluent limitation. Beginning on July 1, 1977, however, dischargers were required to comply as of the date of permit issuance with WQBELs, including those necessary to meet standards established subsequent to the compliance deadline.

3. Congress has authorized limited extensions of CWA deadlines for specific purposes, precluding exceptions for other purposes

In the Clean Water Act Amendments of 1977, Congress provided limited extensions of the July 1, 1977, deadline for achieving WQBELs. In CWA section 301(i), Congress provided that “publicly-owned treatment works” (“POTWs”) that must undertake new construction in order to achieve the effluent limitations, and need Federal funding to complete the construction, may be eligible for a compliance schedule that may be “in no event later than July 1, 1988.” 33 U.S.C. § 1311(i)(1) (emphasis added). Congress provided for the same limited extension for industrial dischargers that discharge into a POTW that received an extension under section 1311(i)(1). *See* 33 U.S.C. § 1311(i)(2). In addition, dischargers that are not eligible for the time extensions provided by section 1311(i) but that do discharge into a POTW, may be eligible for a compliance schedule of no later than July 1, 1983. *See* 33 U.S.C. § 1319(a)(6).

The fact that Congress explicitly authorized certain extensions indicates that it did not intend to allow others, which it did not explicitly authorize. In *Homestake Mining*, the Eighth Circuit held that an enforcement extension authorized by section 1319(a)(2)(B) for technology-based effluent limitations did

not also extend the deadline for achievement of WQBELs. 595 F.2d at 427-28. The court pointed to Congress' decision to extend only specified deadlines: “[h]aving specifically referred to water quality-based limitations in the contemporaneously enacted and similar subsection [1319](a)(6), the inference is inescapable that Congress intended to exclude extensions for water quality-based permits under subsection [1319](a)(5) by referring therein only to Section [1311](b)(1)(A).” *Id.* at 428 (citation omitted). By the same reasoning, where Congress extended the deadline for achieving effluent limitations for specific categories of discharges and otherwise left the July 1, 1977, deadline intact, there is no statutory basis for otherwise extending the deadline.

4. Schedules of compliance may be issued only to facilitate, not to avoid, achievement of effluent limitations by the statutory deadline

The Clean Water Act defines the term effluent limitation as: “any restriction established . . . on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.” 33 U.S.C. § 1362(11).

The term schedule of compliance is defined, in turn, as “a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.” 33 U.S.C. § 1362(17). The purpose of a compliance schedule is to facilitate compliance with an effluent limitation by the applicable deadline by inserting interim goals along the way: “[a] definition of effluent limitations has been included so that control requirements are not met by narrative statements of obligation, but rather are specific requirements of specificity as to the quantities, rates, and concentration of physical, chemical, biological and other constituents discharged from point sources. It is also made clear that the term effluent limitation includes schedules and time tables of compliance. The Committee has added a definition of schedules and time-tables of compliance so that it is clear that enforcement of effluent limitations is not withheld until the final date required for achievement.” S. Rep. No. 92-414, at 77, *reprinted in* 1972 U.S.C.C.A.N. 3668 (Oct. 28, 1971) (emphasis added). Thus, Congress authorized compliance schedules, not to extend its deadlines for achievement of effluent limitations, but to facilitate achievement by the prescribed deadlines.

In *United States Steel Corp.*, the industry plaintiff argued that 33 U.S.C. § 1311(b)(1)(C) allows the July 1, 1977, deadline to be met simply by beginning action on a schedule of compliance that eventually would result in achieving the technology- and water quality-based limitations. 556 F.2d at 855. The Court of Appeals disagreed: “[w]e reject this contorted reading of the statute. We recognize that the definition of ‘effluent limitation’ includes ‘schedules of compliance,’ section [1362(11)], which are themselves defined as ‘schedules . . .

of actions or operations leading to compliance' with limitations imposed under the Act. Section [1362(17)]. It is clear to us, however, that section [1311(b)(1)] requires point sources to achieve the effluent limitations based on BPT or state law, not merely to be in the process of achieving them, by July 1, 1977." *Id.* Thus, compliance schedule may not be used as a means of evading, rather than meeting, the deadline for achieving WQBELs.

5. States may not issue permits containing effluent limitations that are less stringent than those required by the Clean Water Act

Finally, a compliance schedule that extends beyond the statutory deadline would amount to a less stringent effluent limit than required by the CWA. States are explicitly prohibited from establishing or enforcing effluent limitations less stringent than are required by the CWA. *See* 33 U.S.C. § 1370; Water Code §§ 13372, 13377. The clear language of the statute, bolstered by the legislative history and case law, establishes unambiguously that compliance schedules extending beyond the July 1, 1977, deadline may not be issued in discharge permits. The Permit, however, purports to do just that. By authorizing the issuance of permits that delay achievement of effluent limitations for over thirty years beyond Congress' deadline, the Permit makes a mockery of the CWA section 301(b)(1)(C) deadline and exceeds the scope of the Regional Board's authority under the Clean Water Act and the Porter-Cologne Act. 33 U.S.C. § 1311(b)(1)(C).

V. Substantial late modifications were made to the Order that were not circulated for public review as required by law.

Significant late revisions were incorporated into the adopted Order that substantially changed and weakened the permit. The late changes should have been publicly circulated for comments, as required by law.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources.

CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

- A. Vacate Order No. R5-2007-0036 (NPDES No. CA0079154) and Order No. R-5-2007-0037 (Time Schedule Order) and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.
- B. Alternatively: prepare, circulate and issue a new order that is protective of identified beneficial uses and comports with regulatory requirements.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments; our 27 January 2006, 22 July 2006, 26 July 2006, 31 July 2006 and 6 April 2007 comment letters, the comments submitted by the Environmental Law Foundation on our behalf on 6 April 2007 that were accepted into the record and our oral testimony presented to the Regional Board on 22 September 2006. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer,

Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of Mr. Steve Bayley, Deputy Director of Public Works, City of Tracy, 520 Tracy Boulevard, Tracy, CA 95376.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in oral testimony at the 22 September 2006 hearing on the Order or in letters submitted to the Regional Board on 27 January 2006, 22 July 2006, 26 July 2006, 31 July 2006 and 6 April 2007. Additionally, the Environmental Law Foundation submitted comments on our behalf on 6 April 2007 and testified on our behalf on 4 May 2007.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Jackson at (530) 283-1007.

Dated: 27 May 2007

Respectfully submitted,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachments:

- A. Order No. R5-2007-0036 and No. R-5-2007-0037