



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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26 June 2006

Mr. Robert Schneider, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Bill Marshall
Ms. Sue McConnell
Mr. Philip Giovannini
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy to follow

RE: Tentative Waste Discharge Requirements and Water Quality Certification, Port of Stockton Dredging Project, Docks 14 & 15

Dear Messrs, Schneider, Marshall, Giovannini and Mesdames Creedon & McConnell:

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (hereinafter "CSPA") has reviewed the Central Valley Regional Water Quality Control Board's (hereinafter "Regional Board") tentative NPDES permit (hereinafter "Order") on the Waste Discharge Requirements and Water Quality Certification for the Port of Stockton and submits the following comments. We incorporate by reference, our previous comments and testimony submitted for the 2004 hearings on the issue, the subsequent appeal to the State Water Resources Control Board (State Board), the State Board's tentative order, the Biological Opinion of the National Marine Fisheries Service (NMFS) regarding the Port's expansion project and the comments submitted by Shute, Mihaly & Weinberger on behalf of Deltakeeper, Friends of Riviera Cliffs and Stockton Standing Up.

As you recall, the State Board tentatively remanded the 2004 order back to the Regional Board for serious irregularities. Upon receiving the State Board's tentative decision, the Port of Stockton relinquished their dredging permit to avoid a final State Board order. That the Regional Board is now proposing a tentative Order that is significantly weaker than the order it issued in 2004 is frankly astonishing. Subsequent to the old order, the NMFS has issued a Biological Opinion that found the Port's expansion could extirpate steelhead runs on the San Joaquin River. The only reason NMFS could issue a no jeopardy opinion was that the steelhead trout ESU would continue to exist in the Sacramento River system. Unfortunately, the tentative Order inexplicably ignores the Biological Opinion.

Given the press of other issues, we were unable to prepare comprehensive comments for a timely submittal. However, we expect to significantly augment these brief comments at the scheduled August hearing.

1. Finding No. 8 states “in January 2002, the Discharger conducted a bathymetric survey of the project area.” Over four years have passed since the last survey of the project area. Additional sedimentation from winter storms can affect not only the total amount of sediment but also the quality of sediment deposited in the project area. Furthermore, the Discharger has commenced operations at the West Complex. Industrial activities relate to the port activities has impacted sediment quality as well. The Discharger has failed to accurately characterize waste as required by CWC § 13260.

2. Finding No. 9 is based on old survey data and is not reflective of the present site conditions. A bathymetric survey must be completed in order to determine the amount of sediments at docks 14 and 15.

3. Finding No. 11 indicates that a significant amount of metal debris is located along the docks. However, the core samples for Dock No. 14 were collected in the middle of the project area. It was reported at that time that the Navy pushed and disposed of items by throwing them off the end of the dock; i.e., docks 14 and 15. The Discharger has failed to collect samples that accurately reflect waste for the tentative Order. It is reasonable to use a magnetometer to locate samples locations for new core samples.

4. Finding No. 19 indicates that COD sample data was used to determine potential impacts but fails to address other water quality impacts related to the sediment. The River is also impaired for pathogens and toxicity. The impacts from dredging in association with other major dischargers in the area, such as the City of Stockton Wastewater Treatment Plant (POTW), are not addressed. The City’s highest ammonia concentrations generally occur during the fall dredging window.

5. Finding No. 17 indicates that the sediment lost to the cutter head is less than one percent. However, sediment lost from the cutter head is highly dependent on the type of sediment, speed of the cutter head and operational control of the cutter head. Higher rates up to five percent have been reported in the literature. However, even at a discharge rate of one percent elutriate during dredging operations, the discharge will exceed water quality criteria for turbidity, dissolved oxygen and ammonia.

6. Any removal of metal debris will likely will likely be achieved with arcane and/or clamshell. The reported elutriate lost from a clamshell may be as high as fifty percent and therefore will have a greater potential impact on water quality than the dredging operation. The Order fails to address the related impacts to the river.

7. Finding No. 64 is incomplete in that only toxicity to *Chironimus tentans* is considered. However, the Discharger’s Report of Waste Discharge, dated September 2002, found toxicity to Pimephales (Fathead minnow) in core sample 15-R-New. The Basin Plan does not prohibit toxicity only to a single species but rather is for all aquatic

organisms. Regional Board staff has not considered impacts that the project may have on fish.

8. Prior to the October 2004 Board Meeting on the Port's permit, Regional Board staff stated the reason for postponing additional toxicity testing until the dredging project started was that the time remaining in the dredge season was too short to have the Discharger conduct additional core samples for toxicity testing. Since that time, the Discharger has had ample time to conduct additional core samples of the new horizon and to submit a mitigation plan. The Discharger has failed to accomplish either task. It is inappropriate to adopt an Order that violates the Basin Plan objective for toxicity. The Discharger has failed to adequately characterize the waste and to reasonably determine any potential impacts and then mitigate them prior to starting the project.

9. Finding No. 29 is inconsistent with the Basin Plan. State Board Policy 68-16 requires that high quality water of the state must be preserved; not simply "significant" groundwater zones. The Order indicates that the waste will degrade water quality and two feet of soil separation is required. The Discharger's groundwater monitoring shows that two feet of separation does not exist at the DMD site. The State Board policy 68-16 requires the Discharger to employ Best Practicable Treatment and Control (BPTC). The Regional Board has long considered liners to be BPTC. The Discharger has not proposed to install a liner. Indeed, they have proposed nothing at all, which is clearly not BPTC.

10. The Discharger contends the dredge spoils will not impact groundwater. We disagree. The Order fails to address wastes associated with the wastewater. This slurry water is different from the dredge spoils leachate. The wastewater was characterized with the modified elutriate test. While the test detection levels were adequate for all waste constituents it is sufficient to demonstrate that the wastewater is a designated waste. The Order recognizes that the wastewater will percolate to the underlying groundwater and the agricultural ditch. The Discharger's CEQA document and the 2003 RWD show that the DMD discharges seepage to the agricultural ditch. The Discharger is on record as testifying at the September 2004 meeting that "[w]e are not here to tell you this material out there is clean. It is toxic."

11. The Order would allow the placement of dredge spoils along levees provided a road is placed on top of them, even if the roadway is dirt. The Order indicates that the dredge spoils will impact water quality. The Discharger's sediment core samples show that the sediment contains organochlorine pesticides. The Basin Plan states, "[t]otal identifiable persistent chlorinated hydrocarbon pesticides shall not be present in the water column at concentrations detectable within the accuracy of analytical methods approved by either the EPA or the Executive Officer." The placement of dredge spoils near surface waters is inappropriate.

12. The Order ignores the Discharger's extensive history on noncompliance with reporting and reuse of dredge materials.

13. Finding No. 33 indicates that the DIWET test may not be representative of the waste concentrations found in the groundwater. Please provide the data on which this finding is based.
14. Since Finding No. 33 indicates that the DIWET is not representative of the waste, then the Discharger has technically failed to provide any data on the characteristics of the dredge spoils at the West Complex docks, on which the Order may rely.
15. Finding No. 63 indicates that dredging will stop if dissolved oxygen concentrations fall below Basin Plan objectives. The Order does not prohibit dredging when the river is impaired. Please insert the following prohibition, which was included in the previous order: “Dredging operations are prohibited anytime the ambient dissolved oxygen concentration within the impaired reach of the San Joaquin River is less than 5.0 mg/L. From 1 September to 30 November dredging operations are prohibited anytime the ambient dissolved oxygen concentrations within the impaired reach of the San Joaquin River is less than 6.0 mg/L.”
16. The Order does not restrict dredging to a specified area or depth. Please insert the following prohibition: “Dredging operations shall be confined to the project area described in Findings __. The maximum depth of dredging shall not exceed a depth of __ feet below mean low, low water.” Requirements for the dredge captain to maintain daily monitoring logs of the dredge location, depth and volume are necessary to ensure compliance with the Order.
17. The Order indicates that the dredging operation may last over fifty days. This means that the DMD site may be filled during the wet season if the project starts this September. Our water balance using the Stockton weather station rain data, DMD facility size, pan evaporation rates and percolations rates estimated from soil boring logs shows that the Discharger cannot comply with the freeboard requirement if it is filled to two feet freeboard. The Regional Board’s policy is that pond capacity shall also consider rainfall during the 100-year return period. Please provide the water balance, signed by the appropriate registered engineer, that shows the storage capacity for the Robert’s I site, area B and C, can comply with the Order’s restriction if dredge slurry stops at two feet at the start of the wet season. We believe the berm will be overtopped during the 100-year return period if two feet of freeboard is used.
18. The Discharger’s CEQA document did not consider the expansion of the DMD site. The previous Order No. R5-2004-0137 (see late WDR revision and discussions with Regional Board legal staff) stated that “increasing the heights of the berms at the DMS site is prohibited. The proposed Order does not prohibit the Discharger from increasing the berm height and therefore the capacity of the site. Please provide us with a copy of the CEQA document on which the proposed Order allowing the DMD expansion is based. Since the Regional Board is taking the first action allowing the expansion, it becomes the lead agency.

19. Regional Board staff at the October Board meeting told the Regional Board that they would take comments from National Marine Fisheries Service (NMFS) into account when they considered the water quality certification. Not a single concern of NMFS staff has been listed. There is not even acknowledgement that the Biological Opinion was even completed.

20. Monitoring does not reflect river conditions in that the river is known to be stratified at times and dissolved oxygen concentrations are known to vary with depth. Samples for pH, turbidity and dissolved oxygen need to be taken from the surface, mid-depth and bottom.

21. The previous Order contained effluent limitations for a number of waste constituents. The Discharger's CEQA document and the previous order show that the discharge of slurry water will enter the agricultural ditch and be discharged to the river. The tentative Order also indicates that discharge to the ditch will occur. The tentative Order fails to address the discharge of seepage to the agricultural ditch or effluent limitations that the previous Order contained. Seepage is a discharge that must be addressed. Given the number of effluent limitations that were in the previous order, and with which the discharger agreed to comply, the tentative Order is a massive backsliding from the previous order.

22. The CEQA document shows that the agricultural ditch at times actively dewateres the DMD. This discharge requires an NPDES permit. Furthermore, the fact that the Discharger has conducted treatment of the dredge spoils means that the DMD is a waste treatment unit and also requires an NPDES permit.

23. The tentative Order indicates that the project will take fifty days to complete. However, sediment toxicity testing will not be submitted for ninety days. The project will be completed prior to toxicity information for even the first dock. The previous Order required the Discharger to demonstrate that the new sediment horizon for each dock was not toxic before moving on the next dock. Again the tentative Order backslides from the previous order.

24. Data submitted by the Discharger on January 2005 showed that the spoils in zone A were still acidic and that the Discharger was not in compliance with this Order. The tentative Order does not discuss the Discharger's historic problems with compliance and that previous spoils have been used without being neutralized before reuse. The Order must require the Discharger to notify parties receiving spoils of the waste constituents they contain.

25. Our comments regarding dissolved oxygen depletion and the inadequacy of the proposed aeration are already in the record. We briefly reiterate that there is no documentation that the old Corps aerator disperses oxygen throughout the water column and it is fundamentally inappropriate and illegal to employ a demonstration project as mitigation. We further note that the demonstration aerator was paid for by state funds that, by statute, cannot be used to privately mitigate for private-party impacts.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

Original Signed by Bill Jennings
Bill Jennings, Executive Director
California Sportfishing Protection Alliance