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13 CALIFORNIA SPORTFISHING
14 PROTECTION ALLIANCE

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 CALIFORNIA SPORTFISHING
17 PROTECTION ALLIANCE, a non-profit
18 corporation,

18 Petitioner

19 v.

20 CALIFORNIA REGIONAL WATER
21 QUALITY CONTROL BOARD, CENTRAL
22 VALLEY REGION, a public agency, et al.;
23 CALIFORNIA WATER RESOURCES
24 CONTROL BOARD, a public agency,

23 Respondents.

24 SACRAMENTO REGIONAL COUNTY
25 SANITATION DISTRICT, a public agency,

25 Real Party In Interest.

26 CENTRAL VALLEY CLEAN WATER
27 ASSOCIATION,

28 Intervenor.

Case No. 34-2013-80001358-CU-WM-GDS

**[PROPOSED] ORDER ENFORCING
WRIT OF MANDATE**

Date: March 6, 2015
Judge: Hon. Michael P. Kenny, Dept. 31

FILED/ENDORSED

MAR 26 2015

By S. Lee, Deputy Clerk

1 Petitioner California Sportfishing Protection Alliance's ("Petitioner") Objection to Return to
2 Writ of Mandate came on for hearing by the Court on March 6, 2015. Petitioner appeared through
3 its counsel, Andrew L. Packard; Respondent California Regional Water Quality Control Board,
4 Central Valley Region ("Respondent") was represented by Nhu Q. Nguyen of the California
5 Attorney General's Office, and Real Party In Interest Sacramento Regional County Sanitation
6 District ("SRCSD") was represented by Brittany Lewis-Roberts of Somach Simmons & Dunn.

7 Having considered all the papers and evidence submitted in support of and in opposition to
8 Petitioner's Objection, having considered all relevant authorities, and having considered the
9 arguments of counsel, the Court ruled on the matter. A true and correct copy of the Court's March
10 11, 2015 *Ruling On Submitted Matter: Objections to Respondent Regional Water Quality Control*
11 *Board's Return to Write of Mandate* is incorporated into this Order and attached hereto as Exhibit
12 A.

13
14 The Court finds that Respondent is delaying compliance with the writ, which requires
15 immediate compliance.

16 The Court finds good cause exists for ordering Respondent to comply with the terms of the
17 writ no later than July 31, 2015. Respondent Board shall file a return no later than August 14, 2015,
18 notifying the Court of how it has complied with the writ.

19 **IT IS SO ORDERED.**

20
21 Dated: 3/26, 2015

MICHAEL P. KENNY

Hon. Michael P. Kenny
Judge of the Sacramento Superior Court

EXHIBIT A

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FILED/ENDORSED
MAR 11 2015
By S. Lee, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation,

Petitioner,

v.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION, a public agency, et al.,

Respondents.

SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT, a public agency,

Real Party in Interest,

CENTRAL VALLEY CLEAN WATER ASSOCIATION,

Intervenor.

Case No. 34-2013-80001358-CU-WM-GDS

RULING ON SUBMITTED MATTER: OBJECTIONS TO RESPONDENT REGIONAL WATER QUALITY CONTROL BOARD'S RETURN TO WRIT OF MANDATE

Background

This case involved the issuance of a wastewater discharge requirements permit, which serves as a National Pollutant Discharge Elimination System permit, to the Sacramento Regional County Sanitation District (SRCSD). The permit allowed for the discharge of treated wastewater

1 from the Sacramento Regional Wastewater Treatment Plant into the Sacramento River.

2 The California Regional Water Quality Control Board, Central Valley Region
3 (hereinafter, "the board"), issued the permit on December 9, 2010, through its Order No. R5-
4 2010-0114. The permit was a renewal of a permit previously issued in 2000. On January 5, 2011,
5 Petitioner filed a timely petition for review with the California State Water Resources Control
6 Board pursuant to Water Code section 13320. SRCSD also filed a timely petition for review with
7 the State Board.
8

9 The State Board consolidated the two petitions for review on March 28, 2011. Nearly six
10 months later, on September 19, 2011, the State Board notified CSPA and SRCSD that it would
11 review the permit on its own motion.
12

13 SRCSD filed a petition for writ of mandate in this Court on December 30, 2011, entitled
14 Sacramento Regional County Sanitation District v. State Water Resources Control Board, Case
15 No. 34-2011-80001028. That writ proceeding subsequently was stayed by stipulation of the
16 parties and an order of the Court entered on January 23, 2012.

17 On December 4, 2012, the State Board issued Order No. WQ-2012-0013. That order
18 approved an amended permit and dismissed the issues that CSPA had raised in its petition for
19 review.
20

21 CSPA filed the present writ matter on January 3, 2013. The petition contained nineteen
22 causes of action, only six of which were addressed in Petitioner's brief. Prior to the writ hearing,
23 on April 11, 2014, the Court issued a tentative ruling dismissing with prejudice the remaining
24 thirteen causes of action (specifically the 1st, 4th, 5th, 6th, 8th, 10th, 12th, 13th, 14th, 15th, 17th, 18th,
25 and 19th). Of the remaining six issues, the Court granted the petition as to the following three:
26

- 27 1. Respondent Board failed to include freshwater aquatic life criteria for hardness-
28 dependent metals in the permit that were calculated in the manner required by
applicable regulatory law.

- 1 2. Respondent Board failed to establish a weekly effluent limitation for aluminum as
2 required by applicable regulatory law.
- 3 3. Respondent Board granted SRCSD an exemption from the applicable Thermal Plan
4 that was not supported by the evidence regarding potential harm to aquatic life.

5 On December 29, 2014, Respondent Board filed a return to the writ of mandate. In the
6 return, Respondent Board indicated the subject permit (hereinafter, the "Permit") will expire on
7 December 1, 2015, and Respondent Board has "tentatively" scheduled the Permit for renewal at
8 its public meeting on December 12, 2015. In the meantime, Respondent Board anticipates
9 receiving, "updated information from the Sacramento Regional County Sanitation District
10 (Discharger) relating to the three issues in this writ as well as information relating to renewal of
11 the permit in general." Respondent Board contends it is awaiting information from a temperature
12 study that was to be completed by December 2014. Respondent Board contends this will enable it
13 to make new determinations regarding Thermal Plan exceptions. Respondent Board also contends
14 it is awaiting a report of waste discharge which is due by June 4, 2016 and will, "include updated
15 effluent and receiving water datasets and modeling information. The new information will be
16 needed to calculate a weekly limit for aluminum...and to recalculate the hardness-dependent
17 metals criteria and effluent limitations..."

18 In its brief, Respondent Board does not provide an actual date when it will comply with
19 the writ. Instead, it provides, "[i]n the next six months, as the Regional Water Board is receiving
20 updated information, it will be able to determine definitive timelines for final compliance with the
21 writ."

22 Petitioner filed an objection to the return, arguing that Respondent Board is not complying
23 with the Court's Order. Petitioner requests the Court order Respondent Board to comply with the
24 writ on or before its next regularly scheduled meeting on April 16 and 17, 2015 and to file a
25 further return to the writ 60 days from the date of the order on its objections, demonstrating
26 27 28

1 compliance with the writ.¹

2 Discussion

3 The Court is not convinced by Respondent Board's arguments that it has "proposed a
4 practical and efficient approach to full compliance with the writ."² Instead, it appears Respondent
5 Board has improperly interpreted the writ as not requiring immediate compliance, and has
6 decided to wait to address the Permit's deficiencies until it is most convenient for Respondent
7 Board. This is not acceptable.

9 Respondent Board improperly issued the Permit. It now is delaying compliance with the
10 writ. Although the Court provided in the writ that the Respondent Board was to file a return
11 within 60 days and a further return every six months after the filing of the first return, setting
12 forth what it has done to date to comply, this is not a reason to delay compliance. Respondent
13 Board has failed to prove that it does not have the data necessary to immediately comply with the
14 writ (even if it requires re-doing the calculations when the Permit is renewed in December).

16 In the Court's tentative ruling on this matter, it ordered the parties to appear at the hearing
17 and posed several questions to Respondents and Real Party in Interest regarding the ability to
18 implement the required changes, and the effects of implementing them earlier than Respondent
19 Board proposed. Both Respondent and Real Party acknowledged that Respondent Board could
20 issue an amended permit as part of its July 2015 hearing. Both Respondent and Real Party
21 indicated that the only "side effect" of this would be a potential delay in the processing of the
22 permit's renewal, which they anticipated would be approximately two months. Both Respondent
23 and Real Party argued that allowing the current permit to expire and instituting the Court's
24 findings in the new permit would be preferable to avoid a "piecemeal" process. However, this
25

26 _____
27 ¹ Petitioner initially suggests that the Court order compliance by Respondent's February 5 and 6, 2015 meeting. As
this hearing is not taking place until March 6, 2015, these dates are now in the past.

28 ² Respondent's Response to Objection to Writ Return, p. 1.

1 essentially asks the Court to allow an improper permit to continue for the parties' convenience.
2 While the Court acknowledges that the parties will have more data in December, 2015 when
3 considering the permit's renewal, to wait until that time to address the writ is inadequate.

4 **Conclusion**

5 The Court orders Respondent Board to comply with the terms of the writ no later than
6 July 31, 2015. Respondent Board shall file a return no later than August 14, 2015, notifying the
7 Court of how it has complied with the writ.

8
9 In accordance with Local Rule 1.06, counsel for Petitioner is directed to prepare an order
10 enforcing the terms of the writ, incorporating this ruling as an exhibit to the order; submit them to
11 counsel for Respondent and counsel for Real Party in Interest for approval as to form in
12 accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature
13 and entry in accordance with Rule of Court 3.1312(b).

14
15 DATED: March 11, 2015

16 MICHAEL P. KENNY

17 _____
18 Judge MICHAEL P. KENNY
19 Superior Court of California,
20 County of Sacramento

