

1 CITY OF VACAVILLE
Gerald Hobrecht (SBN 113027)
2 City Attorney
Shana Faber (SBN 110910)
3 Assistant City Attorney
650 Merchant Street
4 Vacaville, CA 95688
Telephone: (707) 449-5105
5 Facsimile: (707) 449-5149

6 SOMACH, SIMMONS & DUNN
A Professional Corporation
7 Paul S. Simmons, Esq. (SBN 127920)
Theresa A. Dunham, Esq. (SBN 187644)
8 813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
9 Telephone: (916) 446-7979
Facsimile: (916) 446-8199

10 Attorneys for Petitioner
11 CITY OF VACAVILLE

12
13 BEFORE THE
14 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
15

16 In the Matter of City of Vacaville's Petition for
Review of Action and Failure to Act by the
17 California Regional Water Quality Control
Board, Central Valley Region, in Adopting
18 Waste Discharge Requirements for City of
Vacaville Easterly Wastewater Treatment Plant,
19 Order No. R5-2008-0055 (NPDES
No. CA0079049), and Time Schedule Order
20 No. R5-2008-0056.

SWRCB/OCC File _____

CITY OF VACAVILLE'S PETITION FOR
REVIEW; PRELIMINARY
MEMORANDUM IN SUPPORT OF
PETITION; AND REQUEST FOR STAY
(Wat. Code, § 13320)

21
22 The City of Vacaville (City or Petitioner), in accordance with section 13320 of the Water
23 Code, hereby petitions for review, and requests a stay, of certain provisions of Order
24 Nos. R5-2008-0055 (NPDES No. CA0081434) and R5-2008-0056 of the California Regional
25 Water Quality Control Board, Central Valley Region (Regional Water Board) and other action or
26 inaction of the Regional Water Board. The issues and a summary of the bases for the Petition and
27 request for stay follow. Concurrent with this Petition and request for stay, Petitioner requests that
28 the Petition be put into abeyance and that the request for stay not be acted upon or considered

1 until such time as subsequently requested. Petitioner reserves the right to file a more detailed
2 statement of points and authorities in support of its Petition and a supplemental memorandum in
3 support of the request for stay when the State Water Resources Control Board (State Water
4 Board) considers the issues presented herein.¹

5 The City owns and operates the Easterly Wastewater Treatment Plant (EWWTP) located
6 at 6040 Vaca Station Road, Elmira, Solano County, California. The EWWTP provides secondary
7 level treatment of wastewater from the City of Vacaville and the unincorporated community of
8 Elmira. The EWWTP has an average dry weather flow of about 15 million gallons per day (mgd)
9 and a peak wet weather design flow of 55 mgd.

10 **1. NAME AND ADDRESS OF PETITIONER:**

11 City of Vacaville
12 6040 Vaca Station Road
13 Elmira, CA 95625
14 Attn: Mr. David Tompkins, Assistant Public Works Director
Telephone: (707) 469-6400
Email: dtompkins@cityofvacaville.org

15 In addition, all materials in connection with this Petition should be provided to the City's
16 special counsel at the following address:

17 Somach Simmons & Dunn
18 A Professional Corporation
19 Paul S. Simmons, Esquire
20 Theresa A. Dunham, Esquire
21 813 Sixth Street, Third Floor
22 Sacramento, CA 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199
Email: psimmons@somachlaw.com
Email: tdunham@somachlaw.com

23 ¹ The State Water Board's regulations require submission of a statement of points and authorities in support of a
24 petition (Cal. Code Regs., tit. 23, § 2050(a)(7)), and this document is intended to serve as a preliminary memorandum.
25 Similarly, the State Water Board's regulations require a request for stay to include proof of substantial harm and proof
26 of substantial questions of fact or law. (Cal. Code Regs., tit. 23, § 2053(a).) However, there is litigation currently
27 pending between Petitioner and the State and Regional Water Boards, the adjudication of which will bear significantly
28 on several issues raised in this Petition. (*City of Vacaville v. State Water Resources Control Board* (Contra Costa
County Superior Court Case No. CIV MSN 03-0956).) The City intends to request that the Petition be put into
abeyance and that the request for stay not be considered at this time. Depending on the developments in the pending
litigation, the City may find it necessary to reactivate this Petition for review and/or request the stay of certain permit
provisions by the State Water Board. At that time, it may be necessary to further prepare, or augment the statement of
points and authorities and memorandum in support of the request for stay contained herein.

1 **2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL WATER BOARD**
2 **WHICH THE STATE WATER BOARD IS REQUESTED TO REVIEW:**

3 The City petitions the State Water Board to review the Regional Water Board's adoption
4 of Order No. R5-2008-0055, Waste Discharge Requirements for the City of Vacaville Easterly
5 Wastewater Treatment Plant (Permit), and Order No. R5-2008-0056, Time Schedule Order
6 Requiring the City of Vacaville Easterly Wastewater Treatment Plant to Comply with
7 Requirements Prescribed in Order No. R5-2008-0055 (TSO), and action or inaction related
8 thereto, as more fully described herein. The City also requests a stay of certain provisions of
9 Order No. R5-2008-0055 and of Order No. R5-2008-0056 in its entirety. A copy of the Permit
10 (Order No. R5-2008-0055) is attached as Exhibit A. A copy of the TSO (Order
11 No. R5-2008-0056) is attached as Exhibit B.

12 The specific determinations, designations and requirements of the Permit and TSO that the
13 City requests the State Water Board to review are:

- 14 A. The determination or finding of beneficial uses in New Alamo Creek through the
15 tributary provisions in the Water Quality Control Plan for the Sacramento and San
16 Joaquin River Basins (Basin Plan), which are based on beneficial uses in the
17 Sacramento-San Joaquin River Delta as contained in the Basin Plan;
- 18 B. The determination or finding of the municipal (MUN) beneficial use to New
19 Alamo Creek and all groundwater through the State Water Board's Resolution
20 No. 88-63, as incorporated into the Basin Plan;
- 21 C. The adoption of water quality-based effluent limitations for
22 chlorodibromomethane, dichlorobromomethane, total trihalomethanes, and nitrate
23 (as N) based on the improper determination or finding that MUN is a beneficial
24 use in New Alamo Creek under the Basin Plan;
- 25 D. The adoption of receiving water limitations for pesticides to be present in
26 concentrations that exceed maximum contaminant levels (MCLs) set forth in the
27 California Code of Regulations, Title 22, Division 54, Chapter 15, thiobencarb to
28 be present in excess of 1.0 ug/L, and radionuclides to be present in excess of the

- 1 MCLs specified in Table 4 (MCL Radioactivity) of section 64443 of Title 22 of
2 the California Code of Regulations in surface water based on the improper
3 determination that MUN is a beneficial use in New Alamo Creek under the Basin
4 Plan;
- 5 E. The adoption of receiving water limits for coliform, nitrate+nitrite (sum as N) and
6 ammonia in groundwater based on the improper determination or finding that
7 MUN is a beneficial use for all groundwater under the Basin Plan;
- 8 F. The adoption of interim effluent limitations and compliance schedule provisions
9 for chlorodibromomethane and dichlorobromomethane, which are necessitated by
10 the improper determination or finding that MUN is a beneficial use in New Alamo
11 Creek under the Basin Plan;
- 12 G. The finding of reasonable potential and adoption of water quality based effluent
13 limitations for nitrate based on an MCL, which is an unlawful water quality
14 objective based on incorporation by reference or otherwise not adopted in
15 accordance with state law;
- 16 H. The adoption of a receiving water limit for ammonia in groundwater through the
17 interpretation of the taste and odor objective with an odor threshold developed for
18 worker safety;
- 19 I. The adoption of receiving water limits for total dissolved solids (TDS) and pH in
20 groundwater through the interpretation of the narrative chemical objective using
21 agricultural water quality goals developed by the United Nations without
22 consideration of site-specific factors or compliance with the Water Code;
- 23 J. The adoption of a receiving water limit for nitrate+nitrite (sum as N) in
24 groundwater based a MCL for nitrate+nitrite (sum as N), which is an unlawful
25 water quality objective based on incorporation by reference; and,
- 26 K. The adoption of a TSO to meet the final water quality-based effluent limits for
27 nitrate (as N), which are based on the determination that MUN is a beneficial use
28

1 in New Alamo Creek under the Basin Plan, and also based on unlawful water
2 quality objectives.

3 **3. THE DATE ON WHICH THE REGIONAL WATER BOARD ACTED OR**
4 **REFUSED TO ACT:**

5 The Regional Water Board adopted Order No. R5-2008-0055, and Order
6 No. R5-2008-0056 on April 25, 2008. Unless otherwise provided, the City contends that all
7 actions and inactions of the Regional Water Board challenged herein are not supported by
8 adequate findings or evidence in the record and/or are inconsistent with applicable law.

9 **4. STATEMENT OF REASONS WHY THE REGIONAL WATER BOARD'S**
10 **ACTION WAS INAPPROPRIATE OR IMPROPER:**

- 11 A. The Permit Improperly Identifies Beneficial Uses Of New Alamo Creek To Be
12 The Same Uses That Are Identified In The Basin Plan For The Sacramento-San
13 Joaquin Delta Just Because New Alamo Creek Is Tributary To The Delta.

14 The Permit improperly identifies beneficial uses for New Alamo Creek to be the same as
15 those listed in the Basin Plan for the Sacramento-San Joaquin Delta (Delta) because New Alamo
16 Creek is tributary to the Delta. (Permit at pp. 3-4, F-13 - F-14; see also Table 5 at p. 4.) The
17 Basin Plan states that the beneficial uses of a water body specifically identified in the Basin Plan
18 generally apply to its tributary streams. (Basin Plan at p. II-2.00.) The Basin Plan also states
19 however that "[i]n some cases a beneficial use may not be applicable to the entire body of water.
20 In these cases the Regional Water Board's judgment will be applied." (*Id.*) The beneficial uses
21 for the Delta do not necessarily apply to all of the tributaries to the Delta. MUN is not a
22 beneficial use of New Alamo Creek. The Regional Water Board is required to conduct a case-by-
23 case evaluation and use its judgment to determine what beneficial uses appropriately apply to the
24 tributary stream. There is no evidence in the Permit record that the Regional Water Board has
25 properly evaluated New Alamo Creek and exercised its judgment to determine what beneficial
26 uses appropriately apply to New Alamo Creek. (See Permit at pp. 3-4, F-13 - F-14.)
27
28

1 B. The Regional Water Board Improperly Designates The MUN Beneficial Use To
2 New Alamo Creek And All Groundwater Through The Implementation Of State
Water Board Resolution 88-63, As Incorporated Into The Basin Plan.

3 The Regional Water Board designates New Alamo Creek and all groundwater having
4 MUN based on the State Water Board's "Sources of Drinking Water Policy" (Resolution 88-63)
5 and the implementation of the Policy through the Basin Plan. (Permit at pp. 3, F-14; Basin Plan
6 at p. II-2.00.) The automatic designation of MUN through the Basin Plan's incorporation of
7 Resolution 88-63 is unlawful as it fails to consider the exceptions contained in Resolution 88-63
8 as they may apply to New Alamo Creek, and it fails to comply with state and federal provisions
9 that govern the designation of beneficial uses. Furthermore, Resolution 88-63 is an invalid policy
10 and it, and its incorporation into the Basin Plan, is arbitrary and lacking evidentiary support.

11 C. The Permit Improperly Includes Effluent Limitations Based On The Inappropriate
12 Determination That MUN Is A Beneficial Use Of New Alamo Creek.

13 The Permit contains water quality based effluent limitations for chlorodibromomethane,
14 dichlorobromomethane, total trihalomethanes, and nitrate (as N) based on the determination that
15 MUN is a beneficial use in New Alamo Creek. (Permit at pp. 9, 11, F-20, F-21 - F-22, F-23 -
16 F-24, F-31 - F-32.) There is no evidence in the Permit record to suggest that MUN is a beneficial
17 use in New Alamo Creek. Furthermore, the automatic designation of MUN to New Alamo Creek
18 through the tributary provisions in the Basin Plan, and/or Resolution 88-63 as included in the
19 Basin Plan, is unlawful. Because the MUN designation of New Alamo Creek is unlawful, the
20 water quality-based effluent limitations based on this designation are also unlawful.

21 D. The Permit Improperly Includes Receiving Water Limitations For Surface Water
22 Based On The Inappropriate Determination That MUN Is A Beneficial Use Of
New Alamo Creek.

23 The Permit contains the following receiving water limitations for surface water based
24 specifically on the inappropriate determination or finding that MUN is a beneficial use of New
25 Alamo Creek under the Basin Plan: pesticides to be present in concentrations that exceed MCLs
26 set forth in the California Code of Regulations, Title 22, Division 54, Chapter 15; thiobencarb to
27 be present in excess of 1.0 ug/L; and, radionuclides to be present in excess of the MCLs specified
28 in Table 4 (MCL Radioactivity) of section 64443 of Title 22 of the California Code of

1 Regulations. (Permit at pp. 13-14, F-46 - F-47.) There is no evidence in the Permit record to
2 suggest that MUN is a beneficial use in New Alamo Creek. Furthermore, the automatic
3 designation of MUN to New Alamo Creek through the tributary provisions in the Basin Plan,
4 and/or Resolution 88-63 as included in the Basin Plan, is unlawful. Accordingly, the receiving
5 water limitations for surface water based on this designation are also unlawful.

6 E. The Permit Improperly Includes Receiving Water Limitations For Groundwater
7 Based On The Inappropriate Determination That MUN Is A Beneficial Use For
8 All Groundwater.

9 The Permit contains receiving water limits for groundwater for coliform, nitrate+nitrite
10 (sum as N) and ammonia based on the determination or finding that MUN is a beneficial use for
11 all groundwater. (Permit at pp. 16, F-49 - F-51.) There is no evidence in the Permit record to
12 suggest that MUN is a beneficial use for all groundwater. Furthermore, the automatic designation
13 of MUN to all groundwater through Resolution 88-63 as incorporated into the Basin Plan, is
14 unlawful. Accordingly, groundwater receiving water limitations based on this designation are
15 also unlawful.

16 F. The Permit Improperly Includes Interim Effluent Limitations And Compliance
17 Schedule Provisions Necessitated By The Improper Determination or Finding That
18 MUN Is A Beneficial Use In New Alamo Creek

19 The Permit contains interim effluent limitations and compliance schedule provisions for
20 chlorodibromomethane and dichlorobromomethane. (Permit at pp. 11-12, 33.) The interim
21 effluent limitations and compliance schedule provisions are only necessary because the Permit
22 improperly includes water quality-based effluent limitations for chlorodibromomethane and
23 dichlorobromomethane based on the determination or finding that MUN is a beneficial use in
24 New Alamo Creek under the Basin Plan. (Permit at pp. 9, 11, F-20 - F-21.) To the extent that the
25 Permit improperly includes water quality-based effluent limitations based on MUN, the Permit
26 improperly includes interim effluent limitations and compliance schedule provisions for
27 chlorodibromomethane and dichlorobromomethane.
28

1 G. The Permit Improperly Includes Effluent Limitations For Nitrate (as N) Based On
2 An MCL, Which Is An Unlawful Water Quality Objective.

3 The Permit finds reasonable potential for the City's effluent from the EWWTP to cause or
4 contribute to an exceedance of an MCL for nitrate (as N) set at 10 mg/L. (Permit at p. G-8.)
5 California's drinking water regulations in the California Code of Regulations, title 22,
6 section 64431 contain a MCL for nitrate (as NO₃) and a MCL for nitrate+nitrite (sum as N). (See
7 Cal. Code Regs., tit. 22, § 64431, Table A.) The Permit also refers to the U.S. EPA MCL for
8 nitrate (as N) that is set at 10 mg/L that was effective on June 24, 1977. MCLs are not properly
9 adopted water quality objectives. Thus, the Permit improperly finds reasonable potential (see
10 Permit at pp. G-8, F-23 - F-24) and includes effluent limitations for nitrate (as N) based on an
11 unlawful water quality objective.

12 H. The Permit Improperly Includes A Receiving Limit For Ammonia In Groundwater
13 Based On An Odor Threshold That Was Developed For Other Purposes.

14 The Permit includes a receiving water limit for ammonia in groundwater through the
15 interpretation of the narrative taste and odor objective. (Permit at pp. 16, F-50 - F-51.) The
16 ammonia criterion as applied to groundwater in this instance is not consistent with the intent and
17 purpose for which the ammonia criterion relied upon by the Regional Water Board was
18 established. The ammonia criterion was developed to provide quantitative data on odor
19 thresholds for industrial health and safety purposes. There is no evidence in the record to suggest
20 that ammonia at such concentrations in groundwater will impair municipal or domestic uses of
21 groundwater due to adverse odors. Thus, the groundwater limitation for ammonia is an improper
22 interpretation of the narrative taste and odor objective.

23 I. The Permit Improperly Includes Receiving Water Limits For TDS And pH In
24 Groundwater Based On The Interpretation Of The Narrative Chemical Objective
25 With Agricultural Water Quality Goals Developed By The United Nations.

26 The Permit includes receiving water limits for TDS and pH in groundwater that are
27 derived from the agricultural water quality goals contained in the *Water Quality for Agriculture,*
28 *Food and Agriculture Organization of the United Nations - Irrigation and Drainage Paper*
No. 29, Rev. 1 (1985) (UN Report). (Permit at pp. 16, F-49 - F-50.) However, the Permit fails to

1 apply the agricultural water quality goals as intended in the UN Report and as required by the
2 State Water Board. (See *In the Matter of the Own Motion Review of City of Woodland*, Order
3 WQO 2004-0010 (June 7, 2004) at p. 7.) Before using the agricultural water quality goals to
4 interpret the narrative chemical water quality objective, the Regional Water Board is required to
5 consider site-specific factors such as rainfall, soil quality, soil type, and other factors before
6 applying the goals contained therein. (*Id.* at pp. 7-9.) There is no evidence in the record to
7 suggest that the Regional Water Board considered the relevant site-specific factors associated
8 with application of agricultural water quality goals. Thus, the receiving water limits for TDS and
9 pH in groundwater are improper and unsupportable, and improper interpretations of the narrative
10 chemical objective.

11 J. The Permit Improperly Includes A Receiving Limit For Nitrate+Nitrite (sum as N)
12 In Groundwater Based On A MCL Which Is An Unlawful Water Quality Objective.

13 The Permit includes a receiving water limit for nitrate+nitrate (sum as N) in groundwater
14 based on the state MCL for nitrate+nitrate (sum as N) that has been incorporated by reference into
15 the Basin Plan. (Permit at pp. 16, F-50.) The state MCL for nitrate+nitrite (as N) is not a
16 properly adopted water quality objective because it is based on incorporation by reference, and
17 otherwise has not been adopted pursuant to state law. Thus, the Permit improperly includes a
18 receiving water limitation for nitrate+nitrite (sum as N) in groundwater based on an unlawful
19 water quality objective.

20 K. The TSO Improperly Requires The City To Meet A Final Water Quality Based
21 Effluent For Nitrate (as N) That Is Based On A Determination Or Finding That
22 MUN Is A Beneficial Use In New Alamo Creek Under The Basin Plan And Is
Also Based On Unlawful Water Quality Objectives For Nitrate (as N).

23 The TSO requires the City to meet final effluent limitations for nitrate by May 1, 2013,
24 and includes a schedule of compliance. (TSO at p. 4.) Because the provisions of the TSO are
25 based on the determination or finding that MUN is a beneficial use in New Alamo Creek under
26 the Basin Plan, and because they are based on unlawful water quality objectives, the TSO is
27 unlawful.

1 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**

2 The City is aggrieved by Permit conditions and limitations, which are more stringent or
3 onerous than required by or provided for under current law. The City will be required to expend
4 its limited public assets to comply with inappropriate or unlawful Permit conditions for
5 chlorodibromomethane, dichlorobromomethane, total trihalomethanes, and nitrate (as N), as well
6 as spending funds for monitoring and special studies to determine compliance with inappropriate
7 and unlawful receiving water limits in surface water and groundwater. Given that the City's
8 resources are limited, it is aggrieved when it is forced to use resources to comply with
9 requirements that are arbitrary, unnecessary, unlawful and not required by law. This harm is
10 exacerbated by the fact that these additional efforts are being required to protect nonexistent
11 beneficial uses, or are not likely to provide for measurable betterment to the water quality of the
12 receiving water. The City is further aggrieved by the inclusion of each of the unlawful and
13 excessive Permit conditions with which it cannot now, or in the immediate future, comply,
14 because it may be subject to penalties and citizen suits in accordance with the CWA and the
15 California Water Code.

16 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL WATER BOARDS**
17 **REQUESTED:**

18 Based on the foregoing, the City requests that the State Water Board modify, or order the
19 Regional Water Board to modify, Order Nos. R5-2008-0055 and R5-2008-0056 with direction for
20 revisions, as follows:

- 21 A. Delete the determination or findings of beneficial uses for New Alamo Creek that
22 are based on the tributary provisions of the Basin Plan and the beneficial uses for
23 the Delta as contained in the Basin Plan, which are found in Findings II.H;
- 24 B. Delete the determination or findings of the MUN beneficial use for New Alamo
25 Creek and all groundwater that is based on the State Water Board's Resolution
26 No. 88-63, as incorporated into the Basin Plan, which is found in Findings II.H;
- 27 C. Delete the water quality-based effluent limitations for chlorodibromomethane,
28 dichlorobromomethane, total trihalomethanes, and nitrate (as N), which are based

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- on the finding that MUN is a beneficial use in New Alamo Creek under the Basin Plan, which are found in Effluent Limitations and Discharge Specifications IV.A.1 and IV.A.2;
- D. Delete the following receiving water limitations for surface water: pesticides to be present in concentrations that exceed MCLs set forth in the California Code of Regulations, Title 22, Division 54, Chapter 15; thiobencarb to be present in excess of 1.0 ug/L; and, radionuclides to be present in excess of the MCLs specified in Table 4 (MCL Radioactivity) of section 64443 of Title 22 of the California Code of Regulations, which are based on the determination or finding that MUN is a beneficial use in New Alamo Creek under the Basin Plan, which are found in Receiving Water Limitations V.A.9 and V.A.10.b;
 - E. Delete the finding of reasonable potential and water quality-based effluent limitations for nitrate (as N) at Effluent Limitations and Discharge Specifications IV.A.1 and IV.A.2 that are based on an unlawful water quality objective, which are found in the Fact Sheet at IV.C.3.m and incorporated into the Findings by Findings II.D;
 - F. Delete the interim effluent limitations for chlorodibromomethane and dichlorobromomethane necessitated by the inclusion of water quality-based effluent limitations based on the finding that MUN is a beneficial use in New Alamo Creek under the Basin Plan, which are found in Effluent Limitations and Discharge Specifications IV.A.3;
 - G. Delete the compliance schedule provisions for final effluent limitations for chlorodibromomethane and dichlorobromomethane necessitated by the inclusion of water quality-based effluent limitations based on the finding that MUN is a beneficial use in New Alamo Creek under the Basin Plan, which are found in Provisions VI.C.7.b;
 - H. Delete the groundwater receiving water limitations for coliform, ammonia, TDS, pH, and nitrate+nitrite (sum as N), which are based on the finding that MUN is a

- 1 beneficial use for all groundwater and/or based on unlawful water quality
2 objectives, which are found in Receiving Water Limitations V.B.2; and,
3 I. Rescind the TSO in its entirety, which requires the City to meet the water quality
4 based effluent for nitrate (as N) by May 1, 2013.
5 J. Make any necessary revisions consistent with the above terms and provisions of
6 this Petition.

7 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
8 **ISSUES RAISED IN THIS PETITION:**

9 The City's preliminary statement of points and authorities is set forth in Section 4 above.
10 The City reserves the right to supplement this statement.

11 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**
12 **APPROPRIATE REGIONAL WATER BOARD:**

13 A true and correct copy of the Petition was mailed by First Class mail on May 23, 2008, to
14 the Regional Water Board at the following address:

15 Pamela Creedon, Executive Officer
16 California Regional Water Quality Control Board, Central Valley Region
17 11020 Sun Center Drive, #200
18 Rancho Cordova, CA 95670

18 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED**
19 **IN THE PETITION WERE RAISED BEFORE THE REGIONAL WATER**
20 **BOARD:**

21 The substantive issues and objections in this Petition were raised before the Regional
22 Water Board, including in written comments submitted with the Report of Waste Discharge² and
23 in written comments submitted on January 25, 2008 and on March 17, 2008.

24
25
26
27 _____
28 ² The City's Report of Waste Discharge was submitted to the Regional Water Board on September 1, 2005 in
accordance with provisions contained in Order No. 5-01-044.

1 **10. REQUEST FOR STAY**

2 The City hereby requests a stay of the following provisions of Order No. R5-2008-0055:

3 A. Final water quality-based effluent limitations for chlorodibromomethane,
4 dichlorobromomethane, and nitrate (as N), found in Effluent Limitations and Discharge
5 Specifications IV.A.1 and IV.A.2;

6 B. Interim effluent limitations for chlorodibromomethane and
7 dichlorobromomethane, found in Effluent Limitations and Discharge Specifications IV.A.3; and

8 C. Compliance schedule provisions for chlorodibromomethane and
9 dichlorobromomethane, found in VI.C.7.b.

10 D. Surface water limitations in the receiving water for chemical constituents and
11 toxicity to the extent that such narrative limitations require compliance with receiving water
12 limitations for chlorodibromomethane, dichlorobromomethane and nitrate based on the
13 interpretation of the narrative limitation, found in Receiving Water Limitations V.A.3
14 and V.A.16.

15 The City also hereby requests a stay of Order No. R5-2008-0056 in its entirety.

16 The City requests that any such stay be made effective as of the effective date of the
17 Permit and TSO pending the disposition of this Petition. The effect of the stay should be to
18 commence the schedule for the compliance periods, and the periods for interim steps toward
19 compliance until the date the State Water Board issues a dispositive order on the Petition. The
20 total period for compliance, and the periods for interim steps toward compliance, should equal the
21 period or periods provided in the applicable provision, unless ultimately enlarged by the State
22 Water Board.

23 A stay of these provisions will prevent substantial harm to the City and will not result in
24 harm to the public or interested persons.

25 There are substantial questions of law or fact related to these provisions.

26 A stay is warranted because these provisions will place the City in the position of risking
27 unnecessary violation of its permit, and require the expenditure of substantial funds by the City,
28 which funds are not recoverable if these provisions of the Permit are modified or determined

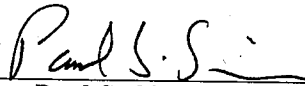
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

unlawful in accordance with the State Water Board's review of the Petition, the City's claims in *City of Vacaville v. State Water Resources Control Board, supra*, or otherwise.

The City will submit a preliminary memorandum in support of this request for stay, including preliminary declarations and evidence to support that the stay will prevent substantial harm to the City and will not result in harm to the public or interested persons. The preliminary memorandum and evidence will be supplemented as necessary at such time that the City requests the State Water Board to actively consider the stay request.

SOMACH, SIMMONS & DUNN
A Professional Corporation

Dated: May 23, 2008

By 
Paul S. Simmons
Attorneys for Petitioner
CITY OF VACAVILLE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL VALLEY REGION

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
 Phone (916) 464-3291 • FAX (916) 464-4645
 http://www.waterboards.ca.gov/centralvalley

ORDER NO. R5-2008-0055

NPDES NO. CA0077691

**WASTE DISCHARGE REQUIREMENTS
 FOR
 CITY OF VACAVILLE
 EASTERLY WASTEWATER TREATMENT PLANT
 SOLANO COUNTY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 1. Discharger Information

Discharger	City of Vacaville
Name of Facility	Easterly Wastewater Treatment Plant
Facility Address	6040 Vaca Station Road
	Elmira, CA 95625
	Solano County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a major discharge.	

The discharge by the **City of Vacaville Easterly Wastewater Treatment Plant** from the discharge points identified below is subject to waste discharge requirements as set forth in this Order:

Table 2. Discharge Location

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Municipal Wastewater	38° 20' 48" N	121° 54' 06" W	Old Alamo Creek

Table 3. Administrative Information

This Order was adopted by the Regional Water Quality Control Board on:	25 April 2008
This Order shall become effective on:	14 June 2008
This Order shall expire on:	1 April 2013
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	<u>180 days prior to the Order expiration date</u>

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on **25 April 2008**

 PAMELA C. CREEDON, Executive Officer

EXHIBIT A

Table of Contents

I.	Facility Information	1
II.	Findings	1
III.	Discharge Prohibitions	8
IV.	Effluent Limitations and Discharge Specifications	9
	A. Effluent Limitations – Discharge Point 001	9
	1. Final Effluent Limitations – 1 May – 31 October – Discharge Point 001	9
	2. Final Effluent Limitations – 1 November – 30 April-Discharge Point 001	10
	3. Interim Effluent Limitations	11
	B. Land Discharge Specifications – Not Applicable	13
	C. Reclamation Specifications – Not Applicable	13
V.	Receiving Water Limitations	13
	A. Surface Water Limitations	13
	B. Groundwater Limitations	15
VI.	Provisions	16
	A. Standard Provisions	16
	B. Monitoring and Reporting Program (MRP) Requirements	21
	C. Special Provisions	21
	1. Reopener Provisions	21
	2. Special Studies, Technical Reports and Additional Monitoring Requirements	23
	3. Best Management Practices and Pollution Prevention	27
	4. Construction, Operation and Maintenance Specifications	27
	5. Special Provisions for Municipal Facilities (POTWs Only)	28
	6. Other Special Provisions	32
	7. Compliance Schedules	32
VII.	Compliance Determination	33

List of Tables

Table 1.	Discharger Information	Cover
Table 2.	Discharge Location	Cover
Table 3.	Administrative Information	Cover
Table 4.	Facility Information	1
Table 5.	Basin Plan Beneficial Uses	4
Table 6.	Effluent Limitations (Tertiary – 1 May to 31 October)	9
Table 7.	Effluent Limitations (Secondary – 1 November to 30 April)	10
Table 8.	Interim Effluent Limitations (CTR Constituents)	12
Table 9.	Interim Effluent Limitations (Non-CTR Constituents)	12

List of Attachments

Attachment A – Definitions	A-1
Attachment B – Map	B-1
Attachment C – Flow Schematic	C-1
Attachment D – Standard Provisions	D-1
Attachment E – Monitoring and Reporting Program (MRP)	E-1
Attachment F – Fact Sheet	F-1

Attachment G– Reasonable Potential Analysis Table G-1
Attachment H – Constituents to be Monitored H-1
Attachment I – Requirements for Monitoring Well Installation Work Plans and Reports I-1

I. FACILITY INFORMATION

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 4. Facility Information

Discharger	City of Vacaville
Name of Facility	Easterly Wastewater Treatment Plant
Facility Address	6040 Vaca Station Road
	Elmira, CA 95625
	Solano County
Facility Contact, Title, and Phone	Mr. David Tompkins, Assistant Public Works Director, (707) 469-6400
Mailing Address	SAME
Type of Facility	Public Owned Treatment Works (POTW)
Facility Design Flow	Average Dry Weather Flow (ADWF) = 15 million gallons per day (mgd)
	Average Wet Weather Flow (AWWF) = 39 mgd
	Peak Wet Weather Flow (PWWF) = 55 mgd

II. FINDINGS

The California Regional Water Quality Control Board, Central Valley Region (hereinafter Regional Water Board), finds:

A. Background. The City of Vacaville (hereinafter Discharger) is currently discharging pursuant to Order No. 5-01-044 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0077691. The Discharger submitted a Report of Waste Discharge, dated 1 September 2005 and applied for a NPDES permit renewal to discharge up to 15 mgd (ADWF) of treated municipal wastewater from the Easterly Wastewater Treatment Plant, hereinafter Facility. The application was deemed complete on 1 October 2005.

For the purposes of this Order, references to the "discharger" or "permittee" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Discharger herein.

B. Facility Description. The Discharger owns and operates the Easterly Wastewater Treatment Plant, which consists of two parallel plants, the existing North Plant and the newly constructed South Plant. The treatment system consists of headworks, primary sedimentation basins, aeration basins, secondary circular clarifiers, chlorination and dechlorination facilities, emergency ponds, dissolved aeration floatation thickener, anaerobic digesters, biosolids storage ponds, biosolids belt filter press and biosolids drying beds. Wastewater is discharged from Discharge Point 001 (see table on cover page) to Old Alamo Creek, tributary to New Alamo Creek, tributary to Ulatis Creek, and tributary to Cache Slough, all waters of the United States within Vaca Mountains

Watershed. Attachment B provides a map of the area around the Facility. Attachment C provides a flow schematic of the Facility.

- C. Legal Authorities.** This Order is issued pursuant to section 402 of the Federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and chapter 5.5, Division 7 of the Clean Water Code (CWC), commencing with section 13370. It shall serve as a NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, Chapter 4, Division 7 of the CWC (commencing with section 13260).
- D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through I are also incorporated into this Order.
- E. California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations (CFR)¹ require that permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. The discharge authorized by this Order must meet minimum federal technology-based requirements based on Secondary Treatment Standards at Part 133 and Best Professional Judgment (BPJ) in accordance with Part 125, section 125.3. A detailed discussion of the technology-based effluent limitations development is included in the Fact Sheet (Attachment F).
- G. Water Quality-based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards. This Order contains requirements, expressed as a technology equivalence requirement, more stringent than secondary treatment requirements that are necessary to meet applicable water quality standards. The Regional Water Board has considered the factors listed in CWC Section 13241 in establishing these requirements. The rationale for these requirements, which consist of tertiary treatment or equivalent requirements, is discussed in the Fact Sheet.

Section 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to

¹ All further statutory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective for the pollutant, water quality-based effluent limitations (WQBELs) must be established using: (1) EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed State criterion or policy interpreting the State's narrative criterion, supplemented with other relevant information, as provided in 40 CFR section 122.44(d)(1)(vi).

H. Water Quality Control Plans. The Regional Water Board adopted a *Water Quality Control Plan, Fourth Edition (Revised August 2006), for the Sacramento and San Joaquin River Basins* (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan.

The Basin Plan does not specifically identify beneficial uses for *Old Alamo Creek and New Alamo Creek*, but does identify present and potential uses for *the Sacramento San Joaquin River Delta (Delta)* to which *Old Alamo Creek*, via *New Alamo Creek*, is tributary. These beneficial uses are as follows: municipal and domestic supply (MUN), irrigation and stock watering agricultural supply (AGR), industrial process (PRO) and service supply (IND), contact (REC-1) and non-contact (REC-2) water recreation, freshwater habitat for both warm (WARM) and cold (COLD) species, migration (MIGR) waters for both warm (striped bass, sturgeon, and shad) and cold water freshwater species (salmon and steelhead), spawning (SPWN) for warm water species (striped bass, sturgeon, and shad), wildlife habitat (WILD), and navigation (NAV). The Basin Plan at page II-2.00 further states that the "...beneficial uses of any specifically identified water body generally apply to its tributary streams except as provided below:

- *MUN, COLD, MIGR and SPWN do not apply to Old Alamo Creek (Solano County) from its headwaters to the confluence with New Alamo Creek.*"

In addition, the Basin Plan implements State Water Resources Control Board (State Water Board) Resolution No. 88-63, which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Thus, as discussed in detail in the Fact Sheet, beneficial uses applicable to *Old Alamo Creek and New Alamo Creek* are as follows:

Table 5. Basin Plan Beneficial Uses

Discharge Point	Receiving Water Name	Beneficial Use(s)
001	Old Alamo Creek	<u>Existing:</u> Irrigation and stock watering agricultural supply (AGR), industrial process (PRO) and service supply (IND), contact (REC-1) and non-contact (REC-2) water recreation, warm freshwater habitat (WARM), wildlife habitat (WILD) and navigation (NAV).
3.2 miles downstream of 001	New Alamo Creek	<u>Existing:</u> Municipal and domestic supply (MUN), irrigation and stock watering agricultural supply (AGR), industrial process (PRO) and service supply (IND), contact and non-contact water recreation (REC-1 and REC-2), freshwater habitat for both warm (WARM) and cold (COLD) species, migration (MIGR) waters for both warm (striped bass, sturgeon, and shad) and cold water freshwater species (salmon and steelhead), spawning (SPWN) for warm water species (striped bass, sturgeon, and shad), wildlife habitat (WILD) and navigation (NAV).
Groundwater	Groundwater	<u>Existing:</u> Municipal and domestic supply (MUN), irrigation and stock watering agricultural supply (AGR), industrial process (PRO) and service supply (IND).

The Basin Plan includes a list of Water Quality Limited Segments (WQLSs), which are defined as "...those sections of lakes, streams, rivers or other fresh water bodies where water quality does not meet (or is not expected to meet) water quality standards even after the application of appropriate limitations for point sources (40 CFR 130, et seq.)." The Basin Plan also states, "Additional treatment beyond minimum federal standards will be imposed on dischargers to WQLSs. Dischargers will be assigned or allocated a maximum allowable load of critical pollutants so that water quality objectives can be met in the segment." The listing for the northwestern portion of the Delta, which includes the section of Ulatis Creek to which Old and New Alamo Creeks are tributary, is listed as a WQLS for Chlorpyrifos, DDT, Diazinon, Electrical Conductivity, Exotic Species, Mercury, Group A pesticides, and Unknown Toxicity in the 303(d) list of impaired water bodies. Since Old Alamo Creek and New Alamo Creek are immediate tributaries to the Delta and provide very little to no dilution, effluent limitations for these constituents are included in this Order except for Diazinon; Chlorpyrifos, DDT, and Group A pesticides, since these constituents have consistently shown non-detect results in the effluent discharged. However monitoring for these constituents are included in the Effluent Constituent Study, Attachment H Requirements of this Order implement the Basin Plan.

- I. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in

addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants.

J. State Implementation Policy. On March 2, 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000 with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005 that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order implement the SIP.

K. Compliance Schedules and Interim Requirements. In general, an NPDES permit must include final effluent limitations that are consistent with Clean Water Act section 301 and with 40 CFR 122.44(d). There are exceptions to this general rule. The State Water Board has concluded that where the Regional Water Board's Basin Plan allows for schedules of compliance and the Regional Water Board is newly interpreting a narrative standard, it may include schedules of compliance in the permit to meet effluent limits that implement a narrative standard. See *In the Matter of Waste Discharge Requirements for Avon Refinery* (State Board Order WQ 2001-06 at pp. 53-55). See also *Communities for a Better Environment (CBE) et al. v. State Water Resources Control Board*, 34 Cal.Rptr.3d 396, 410 (2005). The Basin Plan for the Sacramento and San Joaquin Rivers includes a provision that authorizes the use of compliance schedules in NPDES permits for water quality objectives that are adopted after the date of adoption of the Basin Plan, which was September 25, 1995 (See Basin Plan at page IV-16). Consistent with the State Water Board's Order in the CBE matter, the Regional Water Board has the discretion to include compliance schedules in NPDES permits when it is including an effluent limitation that is a "new interpretation" of a narrative water quality objective. This conclusion is also consistent with the United States Environmental Protection Agency policies and administrative decisions. See, e.g., *Whole Effluent Toxicity (WET) Control Policy*. The Regional Water Board, however, is not required to include a schedule of compliance, but may issue a Time Schedule Order pursuant to Water Code section 13300 or a Cease and Desist Order pursuant to Water Code section 13301 where it finds that the discharger is violating or threatening to violate the permit. The Regional Water Board will consider the merits of each case in determining whether it is appropriate to include a compliance schedule in a permit, and, consistent with the Basin Plan, should consider feasibility of achieving compliance, and must impose a schedule that is as short as practicable to achieve compliance with the objectives, criteria, or effluent limit based on the objective or criteria.

For CTR constituents, Section 2.1 of the SIP provides that, based on a Discharger's request and demonstration that it is infeasible for an existing Discharger to achieve immediate compliance with an effluent limitation derived from a CTR criterion,

compliance schedules may be allowed in an NPDES permit. Unless an exception has been granted under section 5.3 of the SIP, a compliance schedule may not exceed 5 years from the date that the permit is issued or reissued, nor may it extend beyond 10 years from the effective date of the SIP (or 18 May 2010) to establish and comply with CTR criterion-based effluent limitations. Where a compliance schedule for a final effluent limitation that exceeds 1 year, the Order must include interim numeric limitations for that constituent or parameter. Where allowed by the Basin Plan, compliance schedules and interim effluent limitations or discharge specifications may also be granted to allow time to implement a new or revised water quality objective. This Order includes compliance schedules and interim effluent limitations and/or discharge specifications for cyanide, chlorodibromomethane, and dichlorobromomethane. In addition for compliance with the effluent limitation for nitrate, a compliance schedule is established in an accompanying Time Schedule Order (TSO). A detailed discussion of the basis for the compliance schedule(s) and interim effluent limitation(s) and/or discharge specifications is included in the Fact Sheet.

L. Alaska Rule. On 30 March 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 C.F.R. § 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.

M. Stringency of Requirements for Individual Pollutants. This Order contains both technology-based and water quality-based effluent limitations for individual pollutants. The technology-based effluent limitations consist of restrictions on BOD₅ and TSS. The water quality-based effluent limitations consist of restrictions on turbidity and pathogens. This Order's technology-based pollutant restrictions implement the minimum, applicable federal technology-based requirements. In addition, this Order contains effluent limitations more stringent than the minimum, federal technology-based requirements that are necessary to meet water quality standards. Specifically, this Order includes effluent limitations for BOD, TSS, turbidity and pathogens that are more stringent than applicable federal standards, but that are nonetheless necessary to meet numeric objectives or protect beneficial uses. The rationale for including these limitations is explained in the Fact Sheet. In addition, the Regional Water Board has considered the factors in Water Code section 13241 in establishing these requirements.

Water quality-based effluent limitations have been scientifically derived to implement water quality objectives that protect beneficial uses. Both the beneficial uses and the water quality objectives have been approved pursuant to federal law and are the applicable federal water quality standards. To the extent that toxic pollutant water quality-based effluent limitations were derived from the CTR, the CTR is the applicable standard pursuant to 40 CFR section 131.38. The scientific procedures for calculating the individual water quality-based effluent limitations are based on the CTR-SIP, which was approved by USEPA on May 1, 2001. All beneficial uses and water quality

objectives contained in the Basin Plan were approved under state law and submitted to and approved by USEPA prior to May 30, 2000. Any water quality objectives and beneficial uses submitted to USEPA prior to May 30, 2000, but not approved by USEPA before that date, are nonetheless "*applicable water quality standards for purposes of the [Clean Water] Act*" pursuant to 40 CFR section 131.21(c)(1). Collectively, this Order's restrictions on individual pollutants are no more stringent than required to implement the technology-based requirements of the CWA and the applicable water quality standards for purposes of the CWA.

- N. Antidegradation Policy.** Section 131.12 requires that the state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 is consistent with the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters (surface and groundwaters) be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. As discussed in detail in the Fact Sheet the permitted discharge is consistent with the antidegradation provision of section 131.12 and State Water Board Resolution No. 68-16.
- O. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Based on new information and the dedesignation of MUN and COLD beneficial uses from Old Alamo Creek (per Basin Plan amendment, Resolution R5-2005-0053 adopted on 25 April 2005), some effluent limitations have been removed and others have been relaxed. Additionally, the Discharger conducted a dilution study that found a minimum dilution of 1.1:1 at the confluence of Old Alamo and New Alamo Creeks. The rationale for the removal and relaxation of these effluent limitations is explained in the Fact Sheet. All other effluent limitations in this Order not related to new information or the beneficial use changes are at least as stringent as the effluent limitations in the previous Order.
- P. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that 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). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect the beneficial uses of waters of the state. The discharger is responsible for meeting all requirements of the applicable Endangered Species Act.
- Q. Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. Water Code sections 13267 and 13383 authorizes the Regional Water Board to require technical and

monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.

R. Standard and Special Provisions. Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The discharger must comply with all standard provisions and with those additional conditions that are applicable under section 122.42. The Regional Water Board has also included in this Order special provisions applicable to the Discharger. A rationale for the special provisions contained in this Order is provided in the attached Fact Sheet.

S. Provisions and Requirements Implementing State Law. The provisions/requirements in subsections V.B, and VI.C.1, 2, 6, and 7 of this Order are included to implement state law only. These provisions/requirements are not required or authorized under the federal CWA; consequently, violations of these provisions/requirements are not subject to the enforcement remedies that are available for NPDES violations.

T. Notification of Interested Parties. The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet of this Order.

U. Consideration of Public Comment. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet of this Order.

IT IS HEREBY ORDERED, that Order No. 5-01-044 is rescinded upon the effective date of this Order except for enforcement purposes, and, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) commencing with section 13000 and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

III. DISCHARGE PROHIBITIONS

- A. Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited.
- B. The by-pass or overflow of wastes to surface waters is prohibited, except as noted in Special Provision VI.C.4.d. and as allowed by Federal Standard Provisions I.G. and I.H. (Attachment D).
- C. Neither the discharge nor its treatment shall create a nuisance as defined in Section 13050 of the California Water Code.