



# State Water Resources Control Board



## Executive Office

Charles R. Hoppin, Chairman

1001 I Street, 25<sup>th</sup> Floor, Sacramento, California 95814

P.O. Box 100, Sacramento, California 95812-0100

(916) 341-5615 ♦ FAX (916) 341-5621 ♦ [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Linda S. Adams

Secretary for

Environmental Protection

Arnold Schwarzenegger  
Governor

December 15, 2010

### CERTIFIED MAIL AND EMAIL

**[via U.S. Mail and Email]**

Roberta A. Larson, Esq.  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814  
[blarson@somachlaw.com](mailto:blarson@somachlaw.com)

Dear Ms. Larson:

**PETITION OF CITY OF MANTECA (WASTE DISCHARGE REQUIREMENTS ORDER NO. R5-2009-0095 [NPDES NO. CA0081558] FOR CITY OF MANTECA AND DUTRA FARMS, INC., CITY OF MANTECA WASTEWATER QUALITY CONTROL FACILITY, SAN JOAQUIN COUNTY), CENTRAL VALLEY WATER BOARD: WITHDRAWAL OF DENIAL OF STAY SWRCB/OCC FILE A-2054**

On November 16, 2010, the Superior Court for Sacramento County (Court) entered a judgment and peremptory writ of mandate in the matter of City of Manteca v. State Water Resources Control Board, California Regional Water Quality Control Board, Central Valley Region, et al., Case No. 34-2010-80000492-CU-WM-GDS (attached). In compliance with the writ, the State Water Resources Control Board hereby voids and sets aside the Denial of Stay, dated February 26, 2010.

If you have any questions about this matter, please contact Steven H. Blum, Senior Staff Counsel, in the Office of Chief Counsel, at (916) 341-5177.

Sincerely,

Tom Howard  
Executive Director

Enclosure

cc: See next page

cc: **[via U.S. Mail and email]**  
Mr. Phil Govea, P.E.  
Deputy Director of Public  
Works – Utility Engineering  
City of Manteca  
1001 West Center Street  
Manteca, CA 95337  
[pgovea@ci.manteca.ca.us](mailto:pgovea@ci.manteca.ca.us)

**[via U.S. Mail and email]**  
Mr. Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
[deltakeep@aol.com](mailto:deltakeep@aol.com)

**[via U.S. Mail and email]**  
Mike Jackson, Esq.  
Law Office of Mike Jackson  
P.O. Box 207  
429 West Main Street  
Quincy, CA 95971  
[mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net)

**[via U.S. Mail and email]**  
Andrew Packard, Esq.  
Law Office of Andrew Packard  
319 Pleasant Street  
Petaluma, CA 94952  
[andrew@packardlawoffices.com](mailto:andrew@packardlawoffices.com)

**[via U.S. Mail only]**  
Mr. Tom C. Foley  
Wastewater Superintendent  
1001 West Center Street  
Manteca, CA 95337

Mr. David W. Smith, Chief **[via email only]**  
Permits Office  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
[smith.davidw@epa.gov](mailto:smith.davidw@epa.gov)

Ms. Pamela C. Creedon **[via email only]**  
Executive Officer  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114  
[pcreedon@waterboards.ca.gov](mailto:pcreedon@waterboards.ca.gov)

Mr. Kenneth D. Landau **[via email only]**  
Assistant Executive Officer  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114  
[klandau@waterboards.ca.gov](mailto:klandau@waterboards.ca.gov)

Mr. Lonnie Wass **[via email only]**  
Senior WRC Engineer  
Central Valley Regional Water Quality  
Control Board, Fresno Office  
1685 E Street  
Fresno, CA 93706-2020  
[lwass@waterboards.ca.gov](mailto:lwass@waterboards.ca.gov)

Mr. Joe Karkoski **[via email only]**  
Senior Land and Water Use Analysis  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114  
[jkarkoski@waterboards.ca.gov](mailto:jkarkoski@waterboards.ca.gov)

Mr. James D. Marshall **[via email only]**  
Associate Water Resource  
Control Engineer  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114  
[jdmarshall@waterboards.ca.gov](mailto:jdmarshall@waterboards.ca.gov)

(Continued next page)

cc: (Continued)

Lori T. Okun, Esq. **[via email only]**  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100  
[lokun@waterboards.ca.gov](mailto:lokun@waterboards.ca.gov)

Emel G. Wadhvani, Esq. **[via email only]**  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100  
[ewadhvani@waterboards.ca.gov](mailto:ewadhvani@waterboards.ca.gov)

Patrick E. Pulupa, Esq. **[via email only]**  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100  
[ppulupa@waterboards.ca.gov](mailto:ppulupa@waterboards.ca.gov)

Elizabeth Miller Jennings, Esq. **[via email only]**  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100  
[bjennings@waterboards.ca.gov](mailto:bjennings@waterboards.ca.gov)

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 ROBERTA L. LARSON (SBN 191705)  
THERESA A. DUNHAM (SBN 187644)  
3 CASSIE N. AW-YANG (SBN 233697)  
4 500 Capitol Mall, Suite 1000  
Sacramento, CA 95814  
Telephone: (916) 446-7979  
5 Facsimile: (916) 446-8199

6 Attorneys for Petitioner and Plaintiff  
CITY OF MANTECA

**EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103**

STATE WATER RESOURCES  
CONTROL BOARD  
10 NOV 22 PM 10:40  
DIV. OF WATER RIGHTS  
SACRAMENTO

9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SACRAMENTO

SOMACH SIMMONS & DUNN  
A Professional Corporation

12  
13 CITY OF MANTECA,  
14 Petitioner and Plaintiff,  
15 v.  
16 STATE WATER RESOURCES CONTROL  
BOARD,  
17 Respondent and Defendant.

Case No. 34-2010-80000492  
**Peremptory Writ of Mandamus**  
Assigned for all purposes to  
Judge Michael P. Kenny  
Dept. 31

18  
19  
20  
21 **TO: RESPONDENT STATE WATER RESOURCES CONTROL BOARD:**

22 **WHEREAS, the Court has ordered that a Peremptory Writ of Mandamus be issued**  
23 **from this Court,**

24 **YOU ARE HEREBY COMMANDED immediately upon receipt of this Peremptory**  
25 **Writ to do the following:**

- 26 1. Vacate your Stay Denial dated February 26, 2010;  
27 2. Take any further action specially enjoined on you by law.

28 ///

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

YOU ARE FURTHER COMMANDED to make and file a return to this writ within  
30 days of its issuance, setting forth what you have done to comply.

Dated: 11/16/10 DENNIS B. JONES, Clerk of the Court

By: S. Lee, Deputy  
S. LEE

SOMACH SIMMONS & DUNN  
A Professional Corporation

SOMACH SIMMONS & DUNN  
A Professional Corporation

1 SOMACH SIMMONS & DUNN  
A Professional Corporation  
2 ROBERTA L. LARSON (SBN 191705)  
THERESA A. DUNHAM (SBN 187644)  
3 CASSIE N. AW-YANG (SBN 233697)  
500 Capitol Mall, Suite 1000  
4 Sacramento, CA 95814  
Telephone: (916) 446-7979  
5 Facsimile: (916) 446-8199

6 Attorneys for Petitioner and Plaintiff  
CITY OF MANTECA

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

ENDORSED  
ENT'D  
NOV 16 2010  
By S. Lee, Deputy

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

12 CITY OF MANTECA,  
13 Petitioner and Plaintiff,  
14 v.  
15 STATE WATER RESOURCES CONTROL  
BOARD,  
16 Respondent and Defendant.

Case No. 34-2010-80000492

~~PROPOSED~~ JUDGMENT  
GRANTING PRELIMINARY  
WRIT OF MANDAMUS

Assigned for all purposes to  
Judge Michael P. Kenny  
Dept. 31

18 This matter came regularly before this Court on August 13, 2010 for hearing in  
19 Department 31 of this Court, the Honorable Michael P. Kenny presiding. Theresa A. Dunham  
20 appeared as attorney for Petitioner and Plaintiff City of Manteca; Jeffrey P. Reusch appeared as  
21 attorney for Respondent and Defendant State Water Resources Control Board.

22 The Court, having examined the record of the administrative proceedings received into  
23 evidence, all other pleadings and evidence filed herein, and arguments having been presented, and  
24 the Court having issued a Ruling herein,

25 IT IS ORDERED that:

- 26 1. Judgment is hereby entered in favor of Petitioner and Plaintiff City of Manteca  
27 (hereinafter "Petitioner") and against Respondent and Defendant State Water Resources Control  
28 Board (hereinafter "Respondent").

1           2. Pursuant to Water Code section 13321, subdivision (c), Petitioner's request that  
2 this Court order a stay of certain effluent limitations, and Time Schedule Order  
3 No. R5-2009-0096 in its entirety, is hereby GRANTED. The effluent limitations subject to the  
4 stay are:

5           Effluent limitations for Electrical Conductivity of 700 umhos/cm (April 1 to  
6 August 31) as set forth in Effluent Limitations and Discharge Specifications  
7 IV.A.1.a; Table 6, and IV.A.2.a, Table 7 of pages 12 and 13 of Waste Discharge  
8 Requirements Order No. R5-2009-0095, NPDES No. CA0081558.

9           The stay shall be effective as of the effective date of Order No. R5-2009-0095, and shall  
10 run until Respondent fully acts on Petitioner's Petition for Review or the time to do so at  
11 Petitioner's request expires.

12           3. A Peremptory Writ of Mandamus shall issue from this Court, commanding  
13 Respondent to vacate its stay denial dated February 26, 2009.

14           4. The Writ shall further command Respondent to make and file a return within  
15 30 days after issuance of the writ, setting forth what Respondent has done to comply with the  
16 writ, and to take any further action specially enjoined on it by law; and

17           5. Each party shall bear its own costs of suit.

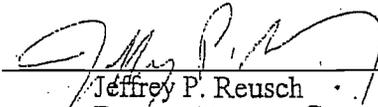
18           A copy of the Court's Ruling on Submitted Matter is incorporated by reference and  
19 attached hereto as Exhibit A.

20 Dated: 11/16/10

MICHAEL KENNY  
Michael P. Kenny  
Judge of the Superior Court

21  
22  
23 **APPROVED AS CONFORMING TO THE COURT'S RULING**

24  
25 Dated: 11/16/10

  
Jeffrey P. Reusch  
Deputy Attorney General  
Counsel for Respondent State Water  
Resources Control Board

26  
27  
28



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

**ENDORSED**  
OCT - 8 2010  
By S. Lee, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

**CITY OF MANTECA,**  
**Petitioner and Plaintiff,**  
**v.**  
**STATE WATER RESOURCES**  
**CONTROL BOARD,**  
**Respondent and Defendant.**

Case No. 34-2010-80000492-CU-WM-GDS  
**RULING ON SUBMITTED MATTER:  
ORDER GRANTING IN PART AND  
DENYING IN PART PETITIONER CITY  
OF MANTECA'S PETITION FOR WRIT  
OF MANDATE AND REQUEST FOR  
STAY**

On March 26, 2010, Petitioner and Plaintiff City of Manteca ("Manteca") filed its Petition for Writ of Mandate and Request for Stay ("Petition") pursuant to Water Code §§ 13321(c) and 13330 and Civil Procedure Code § 1094.5. Manteca challenges Respondent and Defendant State Water Resources Control Board's (the "State Board") denial of Manteca's November 9, 2009 Stay Request pursuant to Section 2053 of Title 27 of the California Code of Regulations ("CCR"). Manteca seeks a stay of a certain effluent limitation requirement and related time schedule order imposed on Manteca by the Regional Water Quality Control Board, Central Valley Region ("Regional Board").<sup>1</sup>

On August 12, 2010, the Court issued a Tentative Ruling ordering the parties to appear before the Court on August 13, 2010, to address certain issues related to the merits of Manteca's

<sup>1</sup> The Regional Board, originally a party to the action, was dismissed from the action on May 26, 2010.

1 Petition. After oral argument, at which both parties appeared, the Court took the matter under  
2 submission. The Court, having heard oral argument, read and considered the written argument of  
3 all parties, and read and considered the documents and pleadings in the above-entitled action,  
4 now rules on the Manteca's Petition as follows:

5 I. FACTUAL AND PROCEDURAL BACKGROUND

6 On October 8, 2009, the Regional Board adopted *Waste Discharge Requirements Order*  
7 *No. R5-2009-0095, NPDES Permit No. CA0081558, and Time Schedule Order for City of*  
8 *Manteca Wastewater Quality Control Facility, San Joaquin County*, ("WDRs") to govern  
9 discharges from the Manteca Wastewater Quality Control Facility ("WQCF"). (Administrative  
10 Record ("AR") at 41-232.) The WDRs impose an effluent limitation requirement of 700  
11 µmhos/cm EC to control salinity in the WQCF's discharge. (AR at 46, 49.) The time schedule  
12 order ("TSO") requires Manteca to achieve the 700 µmhos/cm EC effluent limitation requirement  
13 in accordance with the following deadlines:

<u>Task:</u>	<u>Date Due:</u>
15 Submit Method of Compliance 16 Workplan/Schedule	Within 6 months of adoption of this Order
17 Submit and implement a Pollution 18 Prevention Plan (PPP) pursuant to 19 CWC section 13263.3	Within 6 months of adoption of this Order
20 Annual Progress Reports, which 21 must "detail what steps have been 22 implemented towards achieving 23 compliance with waste discharge 24 requirements, including studies, 25 construction progress, evaluation of 26 measures implemented, and 27 recommendations for additional 28 measures as necessary to achieve full compliance by the final date")	1 December, annually, after approval of workplan until final compliance
24 Full compliance with the effluent 25 limitations for electrical 26 conductivity	1 October 2014

26 (AR at 49.)

27 Manteca alleges that in order to comply with the WDRs, it must plan, design, and install  
28 microfiltration and reverse osmosis facilities at a substantial cost to Manteca. (Memorandum at

1 2:12-14.) More specifically, Manteca alleges that compliance with the WDRs would cost  
2 approximately \$38.4 million for initial construction and an additional cost of approximately \$3.7  
3 million for capital improvements and operation and maintenance, exclusive of costs Manteca will  
4 have to incur to properly dispose of the 0.5 mgd of saline brine the new treatment facilities would  
5 generate. (Memorandum at 2:14-19; 9:17-19; AR at 409 (Declaration of Phil Govea in Support of  
6 Manteca's Stay Request ("Govea Decl.") at ¶ 9).) Installation of the new treatment facilities  
7 would likely require preparation and public review of an environmental impact report pursuant to  
8 the California Environmental Quality Act ("CEQA"). (Memorandum at 2:19-2; AR at 409  
9 (Govea Decl. at ¶ 11.) Manteca estimates the planning, pre-design, and CEQA-compliance costs  
10 will approach \$1.6 million. (Memorandum at 9:20-22; AR at 410 (Govea Decl. at ¶ 11).) Once  
11 expended, these costs are irretrievable. (AR at 410 (Govea Decl. at ¶ 11).) Compliance with the  
12 WDRs will "essentially double the sewer rates" paid by Manteca residents. (AR at 362  
13 (Transcript at 35:3-4).)

14 Prior to the issuance of the WDRs, Manteca was complying with Regional Board Order  
15 No. R5-2004-0028, as modified by State Board Order No. WQ 2005-0005. (AR at 234-345; see,  
16 e.g., Declaration of Roberta L. Larson in Support of Petition for Writ of Mandate and Request for  
17 Stay ("Larson Decl.") at Exh. "A" (*In the Matter of the Petition of City of Manteca* (Mar. 16,  
18 2005), Order WQ 2005-0005).) In State Board Order No. WQ 2005-0005, the State Board found  
19 the limitation of 1,000 µmhos/cm EC appropriate to control salinity in the WQCF's discharge.  
20 (Memorandum at 10-7-9; Larson Decl. at Exh. "A" (*In the Matter of the Petition of City of*  
21 *Manteca* (Mar. 16, 2005), Order WQ 2005-0005 at 14, 22.) In response to these orders, Manteca  
22 upgraded the WQCF and pursued alternative supplies of water, resulting in a reduction of salinity  
23 in the WQCF's effluent of nearly 30%. (Memorandum at 4:1-9, 10:5-17; AR at 9; see also AR at  
24 182 (WDRs, Exh. "F" (Fact Sheet) at F-50).)

25 On November 9, 2009, Manteca filed a Petition for Review and Statement of Points  
26 Authorities in Support thereof ("Petition for Review") with the State Board challenging, in  
27 relevant part, the 700 µmhos/cm EC effluent limitation requirement and the corresponding TSO  
28 imposed by the Regional Board. (See, e.g., AR at 1-40.) The State Board acknowledged receipt

1 of Manteca's Petition for Review in a letter dated November 10, 2010. (AR at 423-426.)

2 In connection with its Petition for Review, Manteca filed a Stay Request pursuant to  
3 Water Code § 13321 and 23 CCR § 2053. (See, e.g., AR at 31-40.) Manteca sought a stay of the  
4 700 µmhos/cm EC effluent limitation requirement and the TSO pending the State Board's  
5 resolution of Manteca's Petition for Review. (AR at 31.) In its Stay Request, Manteca argued  
6 each of the three preconditions for a stay pursuant to 23 CCR § 2053: (1) the Regional Board's  
7 adoption of the WDRs raised substantial questions of fact and law; (2) Manteca and the public  
8 interest would suffer substantial harm of the State Board did not grant Manteca's Stay Request;  
9 and (3) neither interest persons nor the public interest would suffer substantial harm if the State  
10 Board granted Manteca's Stay Request.

11 Also on November 9, 2009, Manteca wrote to the State Board requesting that the parties  
12 enter into a stipulation staying the TSO and the 700 µmhos/cm EC effluent limitation requirement  
13 challenged by Manteca pursuant to its Petition for Review. (AR at 417-19.) In a letter dated  
14 December 14, 2009, the State Board declined Manteca's offer to enter into a stipulation, stating it  
15 was inappropriate for the State Board, as the adjudicating body, to enter into such a stipulation.  
16 Instead, Manteca should propose a similar stipulation to the interested parties for consideration by  
17 the State Board. (AR at 431-34.)

18 In a letter dated February 26, 2009, the State Board notified Manteca that the State Board  
19 had denied Manteca's Stay Request. (AR at 447-49.) Enclosed was a February 18, 2010  
20 memorandum outlining the basis for the State Board's denial ("Stay Denial"). (AR at 457-61.)  
21 In the Stay Denial, the State Board reiterated the legal standard applicable to stay requests  
22 pursuant to 23 CCR § 2053:

23 The State  Board has recognized the extraordinary nature of a stay remedy and  
24 places a heavy burden on a petitioner seeking a stay. [Footnote omitted.] The  
25 State  Board's regulations provide that a stay may be granted only if a petitioner  
alleges facts and produces proof of *all* of the following:

- 26 (1) substantial harm to Petitioner or to the public interest if a stay is not  
granted;  
27 (2) a lack of substantial harm to other interested persons and to the public  
interest if a stay is granted; and  
28 (3) substantial questions of fact or law regarding the disputed action.

1 (AR at 458-59 (footnote omitted).)

2 The Stay Denial was predicated only on Manteca's perceived failure to establish the  
3 substantial harm Manteca would suffer if its Stay Request was denied. (AR at 459-460.) The  
4 State Board's finding in this regard was based on three conclusions. First, the State Board  
5 determined that "mere expense, even if relatively substantial, does not justify the granting of a  
6 stay." (AR at 459 (footnote omitted).) "In this instance, the threatened harm consists entirely in  
7 planning expenditures while the petition is pending, and a speculative claim of future penalties if  
8 Petitioner fails to meet the five-year deadline." (AR at 459.)

9 Second, the State Board found Manteca's claim of harm deficient in light of recent  
10 precedential orders issued by the State Board holding that similar permits should contain the same  
11 effluent limitations that Manteca challenged. (AR at 459.) In those precedential orders, the State  
12 Board "discussed several practical ways of meeting the limitations or of providing a basis for  
13 changing them." (AR at 459.)

14 Third, the State Board concluded that Manteca misunderstood the nature of a stay  
15 pursuant to 23 CCR § 2053. (AR at 459-460.) According to the State Board, "[a] stay does not  
16 extend the deadlines in permits or even in a TSO; it removes the necessity to comply with given  
17 requirements during the period of the stay." (AR at 460.) Accordingly, "[o]nce the petition is  
18 reviewed, if the underlying order is upheld, the stay is dissolved and the requirements remain in  
19 place." (AR at 460.) Thus, Manteca would be required to comply with any and all deadlines that  
20 were previously in place prior to implementation of the stay. (*See also* AR at 3 ("A stay is not  
21 designed to apply beyond the determination of the petition itself . . .").)

22 With respect to the other two requirements, the State Board declined to address the merits  
23 of Manteca's arguments in detail because "Petitioner has failed to satisfy the first stay  
24 requirement . . ." <sup>2</sup> (AR at 460.)

25 Subsequently, Manteca filed its Petition seeking a peremptory writ of mandate directing  
26

27 <sup>2</sup> With respect to the third requirement – substantial questions of law or fact – the State Board also stated: "However,  
28 as discussed above, the State [ ] Board has considered similar legal arguments in two recent, precedential conclusions  
and rejected arguments similar to Petitioner's." (AR at 460 (Stay Denial at 4).)

1 the State Board to grant Manteca's Stay Request and/or a Court order staying the 700 µmhos/cm  
2 EC effluent limitation and the TSO pending the State Board's resolution of Manteca's Petition for  
3 Review.

## 4 IL DISCUSSION

### 5 A. The State Board abused its discretion in denying Manteca's Stay Request.

6 Pursuant to Code of Civil Procedure § 1094.5, a court's review "extend[s] to the questions  
7 whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a  
8 fair trial; and whether there was any prejudicial abuse of discretion." (*Duncan v. Dept. of*  
9 *Personnel Admin.* (2000) 77 Cal.App.4th 1166, 1173; Civ. Proc. Code § 1094.5(b).) Abuse of  
10 discretion is established if the respondent has not proceeded in the manner required by law, the  
11 order or decision is not supported by the findings, or the findings are not supported by the  
12 evidence." (*Duncan, supra*, 77 Cal.App.4th at 1173.)

13 The parties disagree regarding the standard of review applicable to the Court's  
14 review of the State Board's Stay Denial. While Manteca contends the independent  
15 judgment standard of review applies, the State Board contends the substantial evidence  
16 standard of review applies.

17 Numerous factors lend confusion to the landscape related to the State Board's authority to  
18 stay a regional board's waste discharge requirements. For instance, the titles of both Water Code  
19 §§ 13320 and 13321 seemingly authorize the State Board to act on Manteca's Stay Request.  
20 Water Code § 13320 is titled "Review by state board; Evidence; Findings; Submission of  
21 disagreement between regional boards; Action on request for stay." Water Code § 13321 is titled  
22 "Stay of decision and order of regional or state board; Duration on petition to court."

23 Additionally, the language of both Water Code §§ 13320 and 13321 appear to authorize  
24 the State Board to act on Manteca's Stay Request. Water Code §13320(e) provides:

25 If a petition for state board review of a regional board action on waste discharge  
26 requirements includes a request for a stay of the waste discharge requirements, the  
27 state board shall act on the requested stay portion of the petition within 60 days of  
28 accepting the petition. The board may order any stay to be in effect from the  
effective date of the waste discharge requirements.

///

1 Water Code § 13321(a) provides:

2 In the case of a review by the state board under Section 13320, the state board,  
3 upon notice and hearing, if a hearing is requested, may stay in whole or in part the  
effect of the decision and order of a regional board or of the state board.

4 Finally, 23 CCR § 2053, outlining the requirements for the issuance of a stay by the State  
5 Board, cites both Water Code §§ 13320 and 13321 as the authorities for the regulation.

6 Despite this confusion, the Court agrees with the State Board that the substantial evidence  
7 standard of review appropriately governs this Court's review of the State Board's Stay Denial.

8 The primary purpose of Water Code § 13320 relates to the State Board's authorization to  
9 review "any action or failure to act by a regional board" pursuant to enumerated sections and /or  
10 chapters of the Water Code.<sup>3</sup> In reviewing a regional board's action, the State Board:

11 [M]ay find that the action of the regional board, or the failure of the regional  
12 board to act, was appropriate and proper. Upon finding that the action of the  
13 regional board, or failure of the regional board to act, was inappropriate or  
14 improper, the state board may direct the appropriate action be taken by the  
15 regional board, refer the matter to any other state agency having jurisdiction, take  
the appropriate action itself, or take any combination of those actions. In taking  
any such action, the state board is vested with all of the powers of the regional  
boards under this division.

16 (Water Code § 13320(c).) Although Water Code § 13320(e) relates to a stay of a regional board's  
17 waste discharge requirements, the Court agrees with the State Board that this subsection merely  
18 provides for the timing of the State Board's stay decision and the permissible effective date of the  
19 State Board's decision if a stay is granted. The true authority of the State Board to rule on a stay  
20 request lies in Water Code § 13321(a), which expressly provides that the State Board "may stay  
21 in whole or in part the effect of the decision and order of a regional board."<sup>4</sup> (*See City of*  
22 *Huntington Beach v. Bd. of Admin.* (1992) 4 Cal.4th 462, 468 ("In this regard, all parts of a statute

23 <sup>3</sup> These sections and/or chapters include Water Code § 13225(c) (authorizing a regional board to "require as  
24 necessary any state or local agency to investigate and report on any technical factors involved in water quality control  
or to obtain and submit analyses of water"); Article 4 of Chapter 4 (relating to a regional board's authority with  
25 respect to waste discharge requirements); Chapter 5 (administrative enforcement and remedies by regional boards);  
Chapter 5.5 (compliance with the Federal Water Pollution Control Act); Chapter 5.9 (the Storm Water Enforcement  
26 Act of 1998); and Chapter 7 (the Water Recycling Law).

27 <sup>4</sup> The argument now set forth by Manteca in connection with its Petition appears to contradict the position set forth in  
its Stay Request. Although the introductory paragraph indicates that Manteca submitted its Stay Request "[p]ursuant  
28 to Water Code sections 13320 and 13321 (Stay Request at 3:2), Manteca goes on to quote only Water Code § 13321  
and 23 CCR § 2053 for the "Standards for Issuance of a Stay" (*id.* at Section B).

1 should be read together and construed in a manner that gives effect to each, yet does not lead to  
2 disharmony with the others”) (citation omitted).)

3 If a petitioning party is unsatisfied with the State Board’s decision regarding a regional  
4 board’s actions, Water Code § 13330 allows that party to file a petition for writ of mandate with  
5 the court, requesting that the court review the State Board’s decision. (Water Code §§ 13330(a),  
6 (b).) Water Code § 13330(d) delineates the standard of review to be employed by the Court in  
7 reviewing the State Board’s decision and provides in relevant part:

8 For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure,  
9 the court shall exercise its independent judgment on the evidence in any case  
10 involving the judicial review of a decision or order of the state board issued under  
11 Section 13320 . . . .

11 (Water Code § 13320(d).) ---

12 Here, there is no evidence that Manteca presented (or was authorized to present) its Stay  
13 Request to the Regional Board. Thus, no Regional Board decision regarding Manteca’s Stay  
14 Request exists for the State Board to review. Instead, Manteca’s Stay Request was appropriately  
15 presented to the State Board for consideration, which subsequently issued its Stay Denial. In  
16 issuing its Stay Denial, the State Board was not reviewing an “action or failure to act by a  
17 regional board” in accordance with Water Code § 13320 and, accordingly, Manteca is not seeking  
18 review of a State Board decision or order issued pursuant to Water Code § 13320.

19 However, regardless of whether the independent judgment or substantial evidence  
20 standard of review applies, the Court finds that the State Board abused its discretion in denying  
21 Manteca’s Stay Request. The State Board’s Stay Denial is unsupported by the evidence, thereby  
22 constituting an abuse of discretion under both the independent judgment and substantial evidence  
23 standards of review. Neither the weight of the evidence nor substantial evidence supports the  
24 State Board’s Stay Denial.

25  
26  
27  
28

///

1 **B. Manteca is entitled to a stay of the WDRs and TSO pending the State Board's review**  
2 **of Manteca's Petition for Review.**

3 In order to obtain a stay of the TSO and the 700 µmhos/cm EC effluent limitation  
4 requirement pursuant to 23 CCR § 2053, Manteca must establish:

- 5 1. Substantial harm to Manteca or to the public interest if a stay is not granted;
- 6 2. A lack of substantial harm to other interested persons and to the public  
7 interest if a stay is granted; and
- 8 3. Substantial questions of fact or law regarding the disputed action.

9 (23 CCR § 2053(a)(1)-(3).)

10 As discussed further below, the Court finds that Manteca sustained its burden of  
11 demonstrating that it and/or the public interest would suffer substantial harm if its Stay Request is  
12 not granted and a lack of substantial harm to other interested persons and to the public interest if a  
13 stay is granted. The Court additionally finds that substantial questions of fact or law exist  
14 regarding the disputed action.

15 1. **Denial of Manteca's Stay Request results in substantial harm to Manteca and**  
16 **the public interest, including its ratepayer citizens.**

17 The State Board contends that Manteca fails to establish that substantial harm to Manteca  
18 or the public interest will result if the stay is not granted because: (1) Manteca failed to establish  
19 that reverse osmosis was the only method through which Manteca could achieve compliance with  
20 the salinity effluent limitation requirements; and (2) compliance costs, without more, do not  
21 constitute substantial harm. (Opposition at 7:11-13:10.)

22 a. **Manteca demonstrates that reverse osmosis is the only feasible**  
23 **alternative available to achieve compliance with the WDRs within five**  
24 **years.**

24 Manteca presented the testimony and declaration of Phil Govea in support of its Stay  
25 Request.<sup>5</sup> Mr. Govea declared that "Manteca has no other certain alternative beside [reverse

26 <sup>5</sup> In support of its Stay Request, Manteca submitted the Declaration of Phil Govea establishing that he is qualified to  
27 testify regarding the impact of the WDRs and TSO. (See, e.g., AR at 408-410.) Mr. Govea attested that he is the  
28 Deputy Director of Public Works – Utility Engineering for Manteca. Although he had only held the position for over  
two years as of November 2009, he held other engineering positions with Manteca for ten years prior to his tenure as  
Deputy Director. Mr. Govea attested that he had personally managed and been responsible for significant

1 osmosis] to comply with the final effluent limitations of 700 µmhos/cm for EC.” (AR at 409  
2 (Govea Decl. at ¶ 10).) In his testimony before the Regional Board, Mr. Govea further explained  
3 that in light of previous improvements to the WQCF and actions by Manteca designed to reduce  
4 the salinity in the WQCF’s effluent,<sup>6</sup> reverse osmosis is the only certain alternative Manteca can  
5 implement to achieve the 700 µmhos/cm EC effluent limitation requirement. (AR at 359  
6 (Transcript at 32:6-33:4).) Mr. Govea testified:

7           So with that in mind, this – we also are looking at other measures for reducing  
8 EC. Unfortunately, there isn’t a smoking gun, an industrial discharger, left in our  
9 system to regulate, to take more EC out, to achieve the 700 limit. All that is left  
10 was the Eckert Industry, and they are no longer in our system. We are in the  
11 initial stages of looking at water softener reduction or elimination, but some of  
12 our preliminary analysis doesn’t show that will be a promising solution.

13           So we believe that all that is left, really, for us to achieve, consistently achieve,  
14 compliance, with an EC limit of 700 is to go to advanced treatment microfiltration  
15 and reverse osmosis.

16 (AR at 360-36 (Transcript at 33:16-34:5).)

17           Weighing heavily in Manteca’s favor are comments by the State Board itself, which  
18 concedes, contrary to the State Board’s Opposition, that reverse osmosis is the only feasible option  
19 to achieve compliance with the WDRs. In Order No. WQ 2005-0005, the State Board states:  
20 “assuring compliance with the 700 µmhos/cm EC effluent limitation in the City’s permit for April  
21 through August would probably require construction and operation of a reverse osmosis treatment  
22 plant for at least a portion of the City’s effluent at a very large cost.” (Larsen Decl. at Exh. “A”  
23 (*In the Matter of the Petition of City of Manteca* (Mar. 16, 2005), Order No. WQ 2005-0005 at  
24 12).) The State Board more conclusively stated:

25           modifications to the Manteca WQCF, was personally involved in reviewing the Report of Waste Discharge for the  
26 Manteca WQCF to the Regional Board and more, and directed and oversaw work performed by consultants and staff  
27 for activities directly and indirectly related to compliance with the WDRs and TSO.

28           <sup>6</sup> In its Petition for Review submitted to the State Board, Manteca asserts that, in response to Order No. R5-2004-  
0028, Manteca already obtained higher quality surface water from the South County Water Supply Program to blend  
with Manteca’s existing groundwater drinking water supply to improve the water supply source; added biological  
nitrification-denitrification to the secondary treatment process; added a secondary effluent equalization pond, tertiary  
filters, an ultraviolet light pathogen deactivation system, and recycled water pumping station; and modified the  
WQCF to separate fully the food-processing wastes from the municipal effluent. (AR at 9.) The Regional Board  
confirms that Manteca “has replaced a portion of its groundwater supplies with lower salinity surface water from the  
South San Joaquin Irrigation District” and “removed the food processing wastewater from Eckhart Cold Storage from  
its waste-stream that is discharged to the San Joaquin River.” (AR at 182 (WDRs, Exh. “F” (Fact Sheet) at F-50).)

1 The record indicates, however, that compliance with the permit effluent limitation  
2 of 700  $\mu$ mhos/cm EC scheduled to become effective on April 1, 2005, could not  
3 be assured without construction and use of reverse osmosis facilities.  
4 Construction and operation of reverse osmosis facilities to treat discharges from  
the City's WQCF, prior to implementation of other measures to reduce the salt  
load in the southern Delta, would not be a reasonable approach.

5 (Larsen Decl. at Exh. "A" (*In the Matter of the Petition of City of Manteca* (Mar. 16, 2005), Order  
6 No. WQ 2005-0005 at 12 (emphasis added)).) As recently as October 2009, the Regional Board  
7 confirmed that [t]he facts regarding the need to construct reverse osmosis to meet the 700  
8  $\mu$ mhos/cm EC standard have not changed."<sup>7</sup> (AR at 182.)

9 In light of the State Board's own statements regarding the necessity of reverse osmosis to  
10 achieve the 700  $\mu$ mhos/cm EC limit, the State Board's statements regarding other alternatives  
11 available to Manteca carry little weight (in addition to being refuted by evidence in the record).  
12 This is especially true when one of the State Board's suggested alternatives is non-compliance.  
13 Non-compliance is not a credible alternative for Manteca for numerous reasons, the most obvious  
14 being that non-compliance does nothing to achieve the 700  $\mu$ mhos/cm EC limit and directly  
15 violates the WDRs and TSO.

16 b. Substantial harm to Manteca and the public interest will result if  
17 Manteca's Stay Request is denied.

18 The State Board nebulously contends that compliance costs, *without more*, do not  
19 constitute substantial harm. However, the State Board fails to provide any information on  
20 precisely what "more" a petitioner is required to demonstrate in order to establish substantial  
21 harm when exorbitant compliance costs constitute the brunt of the harm suffered by that  
22 petitioner. Here, however, the Court finds that Manteca has demonstrated substantial harm in  
23 accordance with the standards articulated (albeit somewhat inconsistently) by the State Board in  
24 prior decisions.

25 In *In the Matter of the Petition of International Business Machines*, the State Board

26  
27 <sup>7</sup> About one month after adoption of the WDRs, the Regional Board acknowledged that "compliance with the 700  
28  $\mu$ mhos/cm effluent limitation may not be feasible without use of expensive and energy-intensive salt removal  
technologies." (AR at 429.)

1 addressed International Business Machines' ("IBM") request for a stay, which was predicated in  
2 part on the contention that "IBM will suffer substantial harm if it is required to submit a technical  
3 report regarding a continuously pumping monitoring well and groundwater reuse plan for the  
4 well, by December 15, 1988." (*In the Matter of the Petition of International Business Machines*  
5 (Dec. 15, 1988), Order No. WQ 88-15 at 4.) IBM disputed the necessity and technical  
6 effectiveness of the well and alleged that it was not reasonably feasible to provide a groundwater  
7 reuse plan by the timeframe established by the Regional Board. (*Id.* at 5.) IBM contended,  
8 "requiring such a well now will necessitate the re-evaluation of other aspects of the long term  
9 plan . . ."; IBM previously demonstrated the technical effectiveness of the requested well;  
10 "[e]valuation of reuse options would require detailed analyses of water quality cost, and liability,  
11 duration of pumping and other factors, involving extensive discussion with many parties"; and  
12 that IBM would "be substantially prejudiced by having to expend this effort in evaluating reuse  
13 options while the State Board is considering the petition which may render the issue moot." (*Id.*  
14 at 5-6.) The State Board agreed "that IBM could be substantially prejudiced by preparing the  
15 extensive technical report and groundwater reuse plan adequate to meet the Regional Board's  
16 order by December 15, 1988." (*Id.* at 6.)

17 Implicit in the State Board's decision is the State Board's understanding of the potentially  
18 unnecessary effort and expenditure of costs related to a Regional Board requirement that could  
19 potentially be reversed by the State Board. In granting IBM's stay request, the State Board did  
20 not require IBM to establish anything "more" as it purports to require of Manteca. Manteca's  
21 Stay Request is predicated on similar contentions. Even the Regional Board conceded: "We  
22 agree with Manteca that funds should not be expended on design and construction of salinity  
23 removal technologies that could prove to be unnecessary, depending on the outcome of current  
24 planning efforts." (AR at 429.)

25 Although unclear from the State Board's Opposition, the State Board appears to have  
26 previously required other aggrieved parties to demonstrate that "the costs of compliance with the  
27 Regional Board order are disproportionate to the benefit to be gained by the required water  
28 quality monitoring." (*See In the Matter of the Petition of County of Sacramento Sanitation*

1 *District No. 1* (Aug. 22, 2003), Order WQO 2003-0010 at 4; *In the Matter of the Petition of*  
2 *Pacific Lumber Company* (May 17, 2001), Order WQ 2001-09 at 3.) Manteca estimates that the  
3 planning, pre-design, and CEQA-compliance costs required to be expended in order to prepare to  
4 comply with the WDRs and TSO approach \$1.6 million. (Memorandum at 9:20-22; AR at 410.)  
5 Actual compliance with the WDRs would cost approximately \$38.4 million for initial  
6 construction and an additional cost of approximately \$3.7 million for capital improvements and  
7 operation and maintenance. (Memorandum at 2:14-19; 9-17-19; AR at 409.) Importantly, once  
8 expended, these costs are irretrievable and will result in significant rate increases for Manteca  
9 residents. (AR at 410 (Govea Decl. at ¶¶ 9, 11); AR at 362 (Transcript at 35:3-4).)

10 Given the Court's conclusions regarding the lack of substantial harm to interested parties  
11 and the public interest if Manteca's Stay Request is granted (which are discussed by the Court in  
12 detail below), the Court finds that Manteca has established that these compliance costs "are  
13 disproportionate to the benefit to be gained by the required water quality monitoring."

14 2. **Manteca demonstrates a lack of substantial harm to other interested persons**  
15 **and to the public interest if its Stay Request is granted.**

16 In arguing that Manteca failed to demonstrate a lack of substantial harm to interested  
17 persons or to the public if the stay is granted, the State Board focuses entirely on Manteca's  
18 perceived sole reliance on the testimony of Mr. Govea in the underlying proceedings.  
19 (Opposition at 14:14-17.) In doing so, the State Board ignores the vast majority of evidence in  
20 the record establishing the lack of substantial harm to interested persons or to the public if  
21 Manteca's Stay Request is granted.

22 Prior to issuance of the TSO and WDRs at issue here, Manteca had complied and  
23 continues to comply with Regional Board Order No. R5-2004-0028, as modified by State Board  
24 Order No. WQ 2005-0005. (AR at 233-345; Larson Decl., Exh. "A.") In State Board Order No.  
25 WQ 2005-0005, the State Board found the limitation of 1,000  $\mu$ mhos/cm EC appropriate to  
26 control salinity in the WQCF's discharge. (Memorandum at 10:7-9; Larson Decl., Exh. "A" at  
27 14, 22.) In response to these orders, Manteca spent approximately \$65 million upgrading the  
28 WQCF and related facilities and pursued alternative supplies of water, resulting in a reduction of

1 salinity in the WQCF's effluent of nearly 30%. (Memorandum at 4:1-9, 10:5-17; AR at 5, 9.)

2 As a result of the upgrades, the WQCF's discharge now averages 735  $\mu\text{mhos/cm}$  EC on a  
3 monthly basis, which closely approximates the 700  $\mu\text{mhos/cm}$  EC effluent limitation requirement  
4 required by the WDRs. (Memorandum at 13:11-12, n.11; AR at 359, 362 (Transcript of Regional  
5 Board Hearing (Oct. 8, 2009) 32:2-5, 35:15-36:5).)

6 In correspondence dated December 9, 2009, the Regional Board expressed its support of  
7 Manteca's Stay Request, confirming Manteca's minimal contribution to the salinity in the San  
8 Joaquin River:

9 Manteca's discharge is not a significant source of salt to the San Joaquin River, so  
10 the environmental benefits from reduced effluent salinity are minimal, although  
not insignificant.

11 \* \* \*

12 Manteca's current irrigation-season salinity level of 745  $\mu\text{mhos/cm}$  is already  
fairly close to the existing 700  $\mu\text{mhos/cm}$  irrigation season receiving water quality  
13 objective, and is within the ranges that are being discussed as potential new south  
Delta water quality objections.

14 (AR at 429-430.)

15 During oral argument, the State Board relied on the Regional Board's statement that the  
16 environmental benefits of Manteca's compliance with the WDRs, although minimal, are "not  
17 insignificant" in support of the State Board's argument that Manteca failed to demonstrate a lack  
18 of substantial harm if a stay is granted. The State Board's reliance on this statement, however, is  
19 undermined by the State Board's own comments in Order No. WQ 2005-0005, which concede the  
20 limited impact that Manteca's compliance with the WDRs will have on salinity levels.

21 In revising upward the original effluent limitation for EC imposed by the Regional Board  
22 in Order No. R5-2004-0028, the State Board acknowledged that the existing record supported the  
23 conclusion that "because of the relatively high salinity of the receiving water and the relatively  
24 small portion of flow provided by the City's discharge, the City's use of reverse osmosis would  
25 have relatively little effect on the EC of water in the river." (Larsen Decl. at Exh. "A" (Order No.  
26 WQ 2005-0005 at 12.) The State Board continued:

27 The causes and potential solutions to the salinity problems in the southern Delta  
28 are highly complex subjects that have received and are continuing to receive an  
unprecedented amount of attention from the State Board in the exercise of its

1 coordinated authority over water rights and water quality. The southern Delta  
2 water quality objectives for EC referenced by the Regional Board were  
3 established in the State Board's 1995 Delta Plan. Although the ultimate solutions  
4 to southern Delta salinity problems have not yet been determined, previous  
5 actions establish that the State Board intended for permit effluent limitations to  
6 play a limited role with respect to achieving compliance with the EC water  
7 quality objectives in the southern Delta.

8 (Larsen Decl. at Exh. "A" (Order No. WQ 2005-0005 at 13-14 (emphasis added).)

9 Mr. Govea's testimony corroborates the Regional Board's and State Board's conclusions  
10 and confirms that the impact of Manteca's compliance with the WDRs would have a minimal  
11 impact on the salinity of the water:

12 Looking at it, at this issue, another perspective put in context, the two left bars are  
13 Manteca treatment plant is putting out, as I said, about 735 micromhos per  
14 centimeter right now. The river concentration is about 594 micromhos per  
15 centimeter. The two right most bars, if the plant were to achieve 700 through  
16 microfiltration and reverse osmosis, the river would drop from 594.13 to 594.01; a  
17 .02 per cent reduction in salinity.

18 To put this into context even further. If you think about loading in the San Joaquin  
19 River, the amount of EC, salinity, that is there now and put it in terms of height,  
20 there is the equivalent of the Empire State Building in terms of loading in the river;  
21 and the amount of contribution that the City has is equivalent of a six-foot-six  
22 person.

23 (AR at 361-62 (Transcript of Regional Board Hearing (Oct. 8, 2009) at 35:15-36:5).)

24 **3. Substantial questions of fact and law support the issuance of a stay.**

25 *In the Matter of the Petition of International Business Machines* also is instructive with  
26 respect to whether substantial questions of fact and law support the issuance of a stay. There, the  
27 State Board held that "there are substantial questions of fact as to whether the Gap well as  
28 required by the Regional Board is needed at all. We will be addressing these in greater detail as  
part of our review of the petition as a whole." (*In the Matter of the Petition of International*  
*Business Machines* (Dec. 15, 1988), Order No. WQ 88-15 at 4.)

Similarly, substantial questions of fact and law exist as to whether Manteca will need to  
comply with the 700  $\mu\text{mhos/cm}$  EC effluent limitation requirement – an issue the State Board will  
address as part of its review of Manteca's Petition for Review. The Regional Board confirms:

The [State Board] is reexamining the salinity standards in the Bay Delta Plan,  
which might ultimately change the receiving water standards with which Manteca  
must comply. CVSALTS may provide other regulatory options to the City, and

1 should ultimately reduce salinity in the San Joaquin River. Either of these efforts  
2 may resolve Manteca's salinity issues without the need for litigation. . . . The  
3 planning efforts, and not the courts, are the appropriate venue to resolve these  
4 issues. We agree with Manteca that funds should not be expended on design and  
5 construction of salinity removal technologies that could prove to be unnecessary,  
6 depending on the outcome of the current planning efforts.

7 (AR at 429-30.)

8 The State Board relies on *In the Matter of the Petitions of Stockton, et al.* (Oct. 6, 2009),  
9 Order WQ 2009-0012, and *In the Matter of the Petition of Environmental Law Foundation* (MAY  
10 19, 2009), Order WQ 2009-0003, in contending that no substantial questions of fact or law exist.  
11 "In these orders, the State Board held, unequivocally, that the water quality objectives of the  
12 Bay-Delta Plan apply to municipal treatment facilities, and that salinity limitations of 700  
13  $\mu\text{mhos/cm}$  are appropriate." (Opposition at 16:8-10.)

14 The Court agrees with Manteca, however, that the State Board's decisions in these other  
15 matters are not determinative of whether substantial questions of law or fact exist with respect to  
16 Manteca. The State Board previously went out of its way to distinguish the "unique background  
17 and facts" related to Manteca from those related to the Cities of Tracy and Stockton. (Larsen  
18 Decl. at Exh. "A" (Order No. WQ 2005-0005 at 15.) The Court also notes that the very decisions  
19 on which the State Board relies are being challenged by the Cities of Stockton and Tracy in  
20 separate judicial proceedings, the outcome of which could impact the validity of the State Board's  
21 actions with respect to these other municipalities, as well as Manteca. (See Declaration of  
22 Roberta Larson in Support of Manteca's Reply Brief ("Larsen Reply Decl.") at ¶¶ 8, 9, Exhs.  
23 "G," "H.") Additionally, as Manteca notes – and the State Board does not refute – the "EC  
24 objectives for the southern Delta are in a state of flux." (See Memorandum at 16:23-17:12.)

25 Accordingly, the Court finds that Manteca is entitled to a stay of the 700  $\mu\text{mhos/cm}$  EC  
26 effluent limitation requirement and TSO pending the State Board's review of Manteca's Petition  
27 for Review. However, as further discussed below, the Court finds that Manteca fails to establish  
28 that it is entitled to an extension or tolling of the TSO deadlines.

///

1 C. Manteca fails to establish that it is entitled to an extension or tolling of the TSO  
2 deadlines.

3 Through its Petition, Manteca seeks more than just a stay of the TSO deadlines. Manteca  
4 actually seeks a tolling or an extension of the TSO deadlines as they relates to 700 µmhos/cm EC  
5 effluent limitation requirement:

6 Manteca requests that the Court grant the stay and make it effective as of  
7 November 27, 2009, when the Permit and TSO took effect. [Citations.] With  
8 respect to the provisions that would be subject to the stay, its effect would be to  
9 commence the schedule for the various compliance deadlines upon the final  
disposition of the Petition for review. By virtue of the stay, the total period for  
compliance would not change, but each deadline would shift by a period equal to  
the time between November 27, 2009, and the date of the disposition.

10 (Memorandum at 7:3-9.) The State Board objects to Manteca's request, arguing that "[a] stay, as  
11 authorized by Water Code section 13321, would not provide the tolling relief sought by  
12 Petitioner." (Opposition at 1:23-25; 4:14-5:18.) The Court agrees.

13 Manteca relies in part on 23 CCR § 2053 for its argument that a stay can include a  
14 "shifting" of the TSO deadlines. 23 CCR § 2053 provides that a stay extends to the "effect" of an  
15 action of a regional board. Because the effect of the TSO is to impose compliance deadlines,  
16 Manteca argues that a stay can be granted to relieve Manteca of these deadlines by essentially  
17 modifying the TSO deadlines.

18 In making this argument, Manteca ignores the fact that a stay is intended to preserve the  
19 status quo. "A stay is meant to provide a brief period of relief from a Regional Board's order  
20 pending resolution on the merits." (*In the Matter of the Petitioners of Boeing Company* (June 21,  
21 2006), Order WQ 2006-0007 at 8; *See also In the Matter of Tahoe-Truckee Sanitation Agency*  
22 *Request for Stay* (Feb. 2, 1978), Order No. 78-3 at 4 ("It is appropriate to note here that the  
23 general purpose of granting a stay is to provide that the 'status quo', or existing situation, will be  
24 maintained pending resolution of the matters under review").) The State Board has interpreted 23  
25 CCR § 2053 as authorizing a stay only until the State Board issues a decision on Manteca's  
26 Petition for Review. "The interpretation of a regulation, like the interpretation of a statute, is, of  
27 course, a question of law, and while an administrative agency's interpretation of its own  
28 regulation obviously deserves great weight, the ultimate resolution of such legal questions rests

1 with the courts.' [Citation.] However, the court generally will not depart from the agency's  
2 interpretation unless it is clearly erroneous or unauthorized." (*Physicians and Surgeons Labs.,*  
3 *Inc. v. Dept. of Health Servs.* (1992) 6 Cal.App.4th 968, 986-87 (citation omitted).)

4 Manteca does not allege that the Department's interpretation of 23 CCR § 2053 is clearly  
5 erroneous or unauthorized. Instead, Manteca argues that the Department has previously granted  
6 such extensions of TSO deadlines in other matters and should essentially exercise its discretion to  
7 do so with respect to Manteca. Manteca relies on *In the Matter of Cease and Desist Order*  
8 *against the Department of Water Resources and the United States Bureau of Reclamation, In the*  
9 *Matter of the Review on Own Motion of Waste Discharge Requirements for Vacaville's Easterly*  
10 *Wastewater Treatment Plant, and In the Matter of the Petition of City of Stockton*<sup>8</sup> in support of  
11 its argument. The authorities cited by Manteca are distinguishable and/or fail to support  
12 Manteca's argument that the Court is authorized to toll or extend the TSO deadlines pursuant to  
13 23 CCR § 2053.

14 The State Board distinguishes the controlling legal authority in the *Department of Water*  
15 *Resources and the United States Bureau of Reclamation* matter, arguing that it allowed the State  
16 Board to stay and extend the compliance deadlines at issue. There, the State Board modified a

17  
18 <sup>8</sup> The State Board objects to the introduction of *In the Matter of the Petition of City of Stockton* (Oct. 17, 2002),  
19 Order WQ 2002-00018, because it is a non-precedential decision. Although, the State Board's objection to the  
20 decision is sustained, the Court notes that the *Stockton* matter offers little assistance to Manteca in support of its  
21 argument that it is entitled to a tolling and/or extension of the TSO deadlines. In the *Stockton* matter, the Regional  
22 Board and the City of Stockton entered into a stipulation staying certain compliance deadlines and expressly  
23 providing:

24 With respect to the stay of compliance periods as provided above, the effect of the stay shall be to  
25 commence the schedule for the compliance periods, and the periods for interim steps toward  
26 compliance, upon the date the State Board issues a dispositive order on the Petition, if the State  
27 Board untimely upholds the challenged provision or on the date the State Board dismisses the  
28 Petition. The total period for compliance, and the periods for interim steps toward compliance,  
will equal the period or periods provided in the applicable provision, unless ultimately enlarged by  
the State Board.

(Larson Reply Decl. at ¶ 2, Exh. "B.")

25 This stipulation was ultimately approved by the State Board. Manteca fails to provide an explanation for why, if the  
26 Regional Board previously supported its Stay Request, Manteca and the Regional Board did not enter into a similar  
27 stipulation for approval by the State Board. This is particularly interesting given that Manteca originally proposed to  
28 the State Board that the parties enter into a similar stipulation. (AR at 417-19.) The State Board declined, stating  
that as the adjudicating authority, it was inappropriate for the State Board to enter into such a stipulation. (AR at  
431-34.) However, the State Board informed Manteca that municipalities had entered into such agreements with  
regional boards that were then submitted to the State Board for approval.

1 cease and desist order issued against the Department of Water Resources ("DWR") and the  
2 United States Bureau of Reclamation ("USBR") in response to the threatened violation of DWR's  
3 water rights permits for the State Water Project and USBR's water right license and permits for  
4 the Central Valley Project. (*In the Matter of Cease and Desist Order against the Department of*  
5 *Water Resources and the United States Bureau of Reclamation* (Jan. 5, 2010), Order WR 2010-  
6 0002 at 2.) The purpose of the proceeding was to "determine whether to modify the compliance  
7 schedule contained in Order WR 2006-0006, and whether to impose any interim protective  
8 measures." (*Ibid.*)

9 The State Board decided:

10 We will extend the compliance deadline until after we have completed our current  
11 review of the salinity objectives and associated program of implementation  
12 contained in the [2006 Bay-Delta Plan] and any subsequent water right  
13 proceeding so that, in developing a revised compliance plan, DWR and USBR can  
14 take into account any change to their responsibility for meeting the objective that  
15 may occur as a result of our review."

16 (*Ibid.*)

17 Importantly, Water Code § 1832, not 23 CCR § 2053, authorized the State Board to  
18 modify, not simply stay, the cease and desist order:

19 Cease and desist orders of the board shall be effective upon the issuance thereof.  
20 The board may, after notice and opportunity for hearing, upon its own motion or  
21 upon receipt of an application from an aggrieved person, modify, revoke, or stay  
22 in whole or in part any cease and desist order issued pursuant to this chapter.

23 (*Id.* at 3.) Accordingly, the Court finds that the *DWR* matter does not support Manteca's  
24 argument in support of a tolling or extension of the TSO deadlines.

25 The *Vacaville* matter also is of no assistance to Manteca.<sup>9</sup> There, the State Board stayed  
26 various waste discharge requirements and compliance deadlines until the Regional Board dealt  
27 with the matter on remand. In issuing the stay, the State Board stated: "By staying these  
28 schedules, the Board intends that the schedules not run during the stay period. This means that

<sup>9</sup> Manteca attaches only four pages of a 77-page decision to the Declaration of Ms. Larson in support of its Reply.  
(*See* Larson Reply Decl. at ¶ 2, Exh. "A.") The State Board's objection to this evidence is sustained on this basis.  
However, because the State Board attaches a complete copy of the State Board's decision in the *Vacaville* matter, the  
Court will address the decision in its ruling.

1 the effective date of the relevant final limits will be delayed beyond their existing effective date  
2 by a period of time equal to the stay period.” (*In the Matter of the Review on Own Motion of*  
3 *Waste Discharge Requirements Order No. 5-01-044 for Vacaville's Easterly Wastewater*  
4 *Treatment Plant* (Oct. 3, 2002), WQO 2002-0015 at 75.)

5 Upon review of the State Board's decision in the *Vacaville* matter, the Court finds no  
6 indication that that the stay issued by the State Board was issued pursuant to 23 CCR § 2053 or  
7 was based on the same or similar criteria outlined in 23 CCR § 2053. In fact, the State Board  
8 contends that the State Board stayed a compliance schedule as part of the final relief granted by  
9 the State Board on *Vacaville's* petition for review – a contention undisputed by Manteca and  
10 supported by the Court's review of the decision.

11 **D. The Parties' Requests for Judicial Notice.**

12 Manteca's Request for Judicial Notice, which is unopposed by the State Board, is  
13 GRANTED.

14 Manteca's Request for Judicial Notice in Support of Reply, which also is unopposed by  
15 the State Board, is GRANTED in part and DENIED in part as follows: Requests for Judicial  
16 Notice Nos. 1, 3, and 4, which consist only of partial sections of various State Board orders, are  
17 DENIED. The remaining Requests for Judicial Notice are GRANTED.

18 The State Board's first Request for Judicial Notice, which is unopposed by Manteca, is  
19 GRANTED.

20 The State Board's Second Request for Judicial Notice, which also is unopposed by  
21 Manteca, is GRANTED.

22 **E. The State Board's Objections to Manteca's Evidence.**

23 The State Board objects to Exhibit "A" of the Larson Declaration on the ground that  
24 Manteca fails to attach a complete copy of the State Board's Order WQO-00015, *In the Matter of*  
25 *the Review of Own Motion of Waste Discharge Requirements Order No. 5-01-044 for Vacaville's*  
26 *Easterly Wastewater Treatment Plant* (Oct. 3, 2002). The State Board's objection is  
27 SUSTAINED. The Court instead will consider the complete copy of State Board Order WQO-  
28 00015 attached as Exhibit "F" to the State Board's Second Request for Judicial Notice.



CERTIFICATE OF SERVICE BY MAILING  
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9<sup>th</sup> Street, Sacramento, California.

Theresa A. Dunham, Esq.  
SOMACH SIMMONS & DUNN  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814

Jeffrey P. Reusch  
Deputy Attorney General  
Office of the Attorney General  
1300 I Street  
Sacramento, CA 94244-2550

Superior Court of California,  
County of Sacramento

Dated: October 8, 2010

By: S. LEE  
Deputy Clerk

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

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 16, 2010, I served the following document(s):

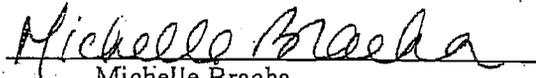
**[Proposed] Judgment Granting Writ of Mandamus**

XX (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

Jeffrey P. Reusch  
Deputy Attorney General  
Office of the Attorney General  
Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Attorney for Defendants State Water  
Resources Control Board and Central  
Valley Regional Water Quality Control  
Board

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 16, 2010, at Sacramento, California.

  
Michelle Bracha

SOMACH SIMMONS & DUNN  
A Professional Corporation