

Via Electronic Mail and United States Mail

September 10, 2012

Chairman Dr. Karl E. Longley and Members of the Board  
Central Valley Regional Water Quality Control Board  
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Rancho Cordova, CA 95670-6114

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**Re: Comments on Settlement Agreement and Stipulation for Entry of Order; Order (Proposed), Order No. R5-2012-00XX (Proposed)  
In the matter of *City of Redding, Redding Department of Public Works***

Dear Chairman Longley and Members of the Board,

On behalf of California Sportfishing Protection Alliance (“CSPA”), we submit comments on the Settlement Agreement and Stipulation for Entry of Order; Order (Proposed) (“Proposed Settlement”) between the City of Redding and the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”).

As with many recent enforcement actions taken by the Regional Board, the Proposed Settlement does not include necessary, comprehensive injunctive measures that will bring the City of Redding into compliance with the Clean Water Act. As structured, the Proposed Settlement will not be effective in bringing the City into compliance with the law, and therefore will not ensure protection of water quality in the Redding area. The Regional Board should not approve the Proposed Settlement, and should instead revise it to include meaningful injunctive measures that comprehensively address the deficiencies in the City’s wastewater management and treatment system. The Regional Board should also revise the Proposed Settlement to impose civil liability in an amount that will effectively motivate the City to make timely and appropriate investments in its infrastructure, as well as deter future violations by the City and other dischargers.

## **I. CSPA's Interest**

CSPA is a 501(c)(3) non-profit public benefit conservation and research organization. CSPA was established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality, wildlife and fishery resources, aquatic ecosystems and associated riparian habitats. CSPA accomplishes its mission by actively seeking federal, state, and local agency implementation of environmental regulations and statutes, and routinely participates in administrative, legislative and judicial proceedings. CSPA's members use and enjoy the Sacramento River, its tributaries, and the waters in and around the Redding area for fishing, boating, swimming, bird watching, picnicking, viewing wildlife, and engaging in scientific study. The City discharges raw and/or inadequately treated sewage into the Sacramento River and to waters tributary to the Sacramento River, which degrades water quality and harms aquatic life in these waters.

CSPA agrees that the Regional Board should be taking long overdue action to address the repeated and ongoing violations by the City of Redding ("City") of both the Federal Water Pollution Control Act ("Clean Water Act") and the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act"). However as explained below, the Proposed Settlement does not include measures necessary to ensure future compliance with the Clean Water Act by Redding.

To compel Redding's compliance with the Clean Water Act, CSPA issued a sixty (60) day notice of intent to sue letter on May 7, 2012. CSPA filed a complaint against the City of Redding on July 17, 2012. CSPA's notice letter and complaint allege violations of the (1) *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2003-0130, NPDES Permit No. CA0079731 ("2003 Clear Creek NPDES Permit"), (2) *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2010-0096, NPDES Permit No. CA0079731 ("2010 Clear Creek NPDES Permit"), and (3) *Waste Discharge Requirements for the City of Redding, Stillwater Wastewater Treatment Facility*, Order No. R5-2007-0058, NPDES Permit No. CA0082589 ("2007 Stillwater NPDES Permit"). CSPA alleges violations of each of these permits caused by the sanitary sewer overflows ("SSOs") from the City's sewage collection system ("Collection System"). CSPA's notice letter and complaint also allege violations of *Waste Discharge Requirements for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (General Permit)*, State Water Resources Control Board, Order No. 2003-0005-DWQ, NPDES Permit No. CAS000004 ("MS4 Permit"). The MS4 requires the City to effectively prohibit non-stormwater discharges (such as SSOs) to its municipal separate storm sewer system ("MS4"). CSPA alleges the City's numerous and repeated SSOs which discharge to the MS4 result in a violation of the MS4 Permit.

In its complaint, CSPA requests comprehensive injunctive relief to bring the City into compliance with the 2010 Clear Creek NPDES Permit, the 2007 Stillwater NPDES Permit, and the MS4 Permit. It also requests penalties for the City's violations of each of these permits.

## **II. Background on the City's Wastewater Infrastructure**

The City owns and operates two wastewater treatment plants ("WWTP"), Clear Creek WWTP and Stillwater WWTP, located on either side of the Sacramento River in the City of Redding. Effluent from the Clear Creek Wastewater Treatment Plant is discharged to the Sacramento River. Effluent from the Stillwater Wastewater Treatment Plant is either discharged to the Sacramento River, or applied to land owned by the discharger. The City's wastewater infrastructure includes the WWTPs and its Collection System, which consists of 17 lift stations, and approximately 423 miles of collection mains.<sup>1</sup>

## **III. Regulation of the City's Wastewater Infrastructure**

There are three National Pollution Discharge Elimination System ("NPDES") permits relevant to the Proposed Settlement: (1) 2003 Clear Creek NPDES Permit, (2) 2010 Clear Creek NPDES Permit, and (3) 2007 Stillwater NPDES Permit. Each of these permits imposes terms and conditions on the City of Redding's discharges from both its Collection System and its WWTPs. The City is also subject to and required to comply with the State Water Resources Control Board General Order WQ-2006-0003 for Sanitary Sewer Systems ("SSO WDR"). The SSO WDR imposes terms and conditions upon discharges from, and the operation of, the City's Collection System. The Proposed Settlement references alleged violations of each of the City's NPDES permits and the SSO WDR.

## **IV. The Proposed Settlement**

The Proposed Settlement alleges the City of Redding failed to comply with terms and conditions of the SSO WDR, the 2003 Clear Creek NPDES Permit, the 2008 Clear Creek NPDES Permit, and the 2007 Stillwater NPDES Permit. To settle the alleged violations, the City of Redding and the Regional Board have agreed to the imposition of \$1,450,000 in liability, including \$800,000 toward a Supplemental Environmental Project ("SEP"), \$225,000 to the State Water Pollution Cleanup and Abatement Account, \$21,000 in mandatory minimum penalties, and the balance in stipulated penalties. A total of \$425,000 in liability will be progressively suspended if the City of Redding meets progressive annual milestones related to completion of the SEP.

The SEP requires the City to dedicate \$800,000 to a fund to subsidize the repair and replacement of private laterals in the City of Redding. Private laterals are the sewer pipes that carry wastewater from residences, commercial establishments, and other private property to the publicly owned and operated Collection System. The "**goal** of [the SEP] is to reduce inflow and infiltration into the [City's] collection system from defective private sewer laterals." Proposed Settlement, ¶ 12(a) (emphasis added). According to the Proposed Settlement, implementing the

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<sup>1</sup> The City provides sewage collection and treatment services to a population of approximately 70,000 people. The City charges \$40.95 per month for single family residences to collect, convey, and treat sewage generated in the City. The charge to multi-family units and commercial and industrial dischargers are higher. A rate schedule can be found here <http://www.ci.redding.ca.us/municipalutilities/Docs/RATES/RATES%20WASTEWATER%202011-2012.pdf>

SEP will result in fewer SSOs and help avoid bypassing wastewater treatment at the WWTPs during wet-weather events.

While the Proposed Settlement calls for \$1.45 million in civil liability, over 55% (\$800,000) goes to a City-run program the City should have invested in long ago to prevent the alleged violations in the first place, and an additional 31% is “deferred” provided the City invests as promised. Thus, the Proposed Settlement only requires the City to pay \$225,000 (approximately 15% of the overall liability), despite the fact that since September 3, 2007 it has violated state and federal law at least 206 times.<sup>2</sup> The “penalty” to be paid by Redding amounts to \$1,092.23 per violation – hardly significant enough to create a change in behavior and prevent future violations.

The Proposed Settlement purports to address and resolve 206 alleged violations of the City’s NPDES permits and the SSO WDR occurring since September 3, 2007. Of these seventy-six (76) were caused by discharges of effluent from the City’s WWTPs with pollutant levels that exceeded the effluent limitations set forth in the 2003 Clear Creek NPDES Permit, the 2008 Clear Creek NPDES Permit, or the 2007 Stillwater NPDES Permit. Fifty-four (54) were caused by bypass events at the City’s WWTPs. Seventy-six (76) of the alleged violations were caused by SSOs from the City’s Collection System.

## **V. CSPA’s Comments on the Proposed Settlement**

CSPA agrees with the Regional Board that the City of Redding must be held accountable for its repeated failure to comply with its NPDES permits and the SSO WDR. CSPA does not however agree that the Proposed Settlement will (a) ensure that the City takes meaningful and necessary steps to solve the problems that cause its regular violations, or (b) provide sufficient deterrence such that the City of Redding, or other dischargers, will be motivated to invest in the necessary infrastructure or operation and management of their facilities to prevent violations from occurring in the first place.

### **A. The Proposed Settlement Does Not Require Redding to Take Action Designed to Eliminate, or Even Minimize, Future Violations Similar to Those it Claims to “Resolve”**

CSPA’s first major concern with the Proposed Settlement is that it fails to include injunctive measures that will ensure the City improves its wastewater infrastructure to comply with the law. The Proposed Settlement includes a SEP – which offsets the City’s liability – that provides for the creation of a fund to grant qualifying property owners up to \$5,000 to upgrade their private laterals.

The SEP is intended to reduce inflow and infiltration to the City’s Collection System, with the ultimate goal being the overall reduction of water flowing in the Collection System and to the WWTPs. Assuming this program is effective, it will likely reduce the amount of water

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<sup>2</sup> CSPA calculated 206 violations by adding the violations alleged in the various Administrative Civil Liability Complaints and Notices of Violation allegedly resolved by the Proposed Settlement. A summary table of the violations as calculated by CSPA is provided as Table 1 in Attachment A.

flowing in the system, and may address the cause of some of the alleged violations.<sup>3</sup> However it certainly will not address all of the capacity related problems faced by Redding. The SEP, while important, will only partially address one of the many problems faced by Redding.

The Proposed Settlement does not include comprehensive injunctive measures that will be necessary for Redding to come into compliance with the law. For example, more than 40% of the SSOs “resolved” by the Proposed Settlement were caused by roots in the Collection System. *See* Attachment A, Table 2. Another 30% were caused by grease and/or debris in the Collection System. *Id.* The Proposed Order does not include any requirements designed to address these issues. Similarly, the Proposed Settlement does not require the City to develop and implement strategies to address the over 70 violations of limitations on pollutant levels in its treated effluent. *See* Attachment A, Table 1 (identifying violations). Without a comprehensive program that addresses all of the shortcomings in the City’s operation, maintenance, and management of its wastewater infrastructure, the Proposed Settlement will not ensure the City will move ahead in compliance with its permits. The Proposed Settlement therefore fails to ensure the protection of water quality in the Sacramento River and its local tributaries. The Regional Board should therefore reject the Proposed Settlement, and instead instruct staff to prepare a comprehensive enforcement that requires programmatic changes Redding’s collection, management, treatment, and discharge of wastewater.

**B. The Civil Liability Imposed by the Proposed Settlement is Not an Effective Deterrence to Prevent Future Violations**

As explained, the absence of meaningful injunctive relief in the Proposed Settlement will not ensure that the City comes into compliance with the Clean Water Act or the Porter-Cologne Act. The civil liability proposed will not achieve this result either. If the monetary “penalty” for failing to comply with the law is significant enough that the cost of failing to comply approaches the cost of compliance, then the City would seemingly be inclined to take the measures necessary to ensure compliance in the first place. The Proposed Settlement does not contain such a deterrent.

The Regional Board staff and the City have agreed on a total civil liability of \$1.45 million. If the City was actually obligated to pay this entire amount as a “penalty,” it may actually serve as an effective deterrent to future violations. But that is not the case here. Instead the City is offered the option of using \$800,000 (over 55%) of the total liability to fund a program it should have implemented long ago.

Apparently private lateral repair and replacement is a significant source of inflow and infiltration in the City. It appears that inflow and infiltration is substantial enough that it regularly causes SSOs and overwhelms the treatment plant such that the City is unable to properly treat its wastewater. Considering the magnitude of the problem, and the City’s obligations to address these issues, the City should have invested in a private lateral replacement program years ago. Its failure to do so has caused hundreds of thousands of gallons of untreated

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<sup>3</sup> According to CSPA’s calculations, 50 violations resulted from bypasses at the WWTPs and 8 SSOs (or just over 10%) resulted from insufficient capacity in the Collection System. *See* Attachment A, Table 1 and 2.

raw sewage to discharge from the Collection System, and millions of gallons of inadequately treated sewage to be discharged to the Sacramento River.

The Proposed Settlement allows the City to use over half the money it should pay as a penalty for violating the law to fund a program it should already be funding. In so doing, the Regional Board creates a perverse incentive to Redding and other dischargers to put off compliance costs unless and until they are compelled to do so. In essence, a discharger is better off delaying needed investment until it violates the law – and harms the environment – since at that point it will then be allowed to spend money fixing the problem and simultaneously avoid paying a penalty for its violation.

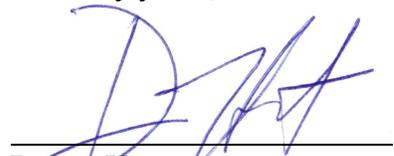
CSPA strongly disagrees with the approach to civil liability taken by the Regional Board. The idea that a discharger would be able to use over half of the “penalty” assessed to fund a program it should already have in place will not effectively deter non-compliance and protect water quality. Instead, it creates a system that encourages dischargers to delay improvements until they are caught, and the harm to the environment has already occurred. The Regional Board should require the City to implement the SEP, but it should not allow the City to offset its civil liability with the funds spent on the SEP.

**VI. Request to Have the Proposed Settlement Revised and Heard by the Full Board**

CSPA thanks the Regional Board for the opportunity to comment on the Proposed Settlement. The Proposed Settlement authorizes the adoption of the Order it contains by the Regional Board’s delegee, rather than the Regional Board itself. The comments presented here constitute significant new information that reasonably effects the propriety of the Proposed Settlement. Further, the issues addressed by the Proposed Settlement are themselves significant and warrant full public consideration by the Regional Board. CSPA therefore requests the Regional Board hold a public hearing to hear public comment prior to adoption of the Proposed Settlement. CSPA further requests that the Regional Board direct staff to revise the Proposed Settlement to include comprehensive injunctive relief and not allow the City to offset its liability by funding a program it should have funded years ago.

Thank you for your consideration of these comments.

Sincerely yours,



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Drevet Hunt  
Lawyers for Clean Water, Inc.

cc: Bill Jennings, California Sportfishing Protection Alliance

**Attachment A**

**Table 1: Violations Addressed in the Proposed Settlement**

<b>Violations Alleged in Proposed Order</b>	<b>Number of Violations</b>
Alleged May 2011 ACL Violations	6
Alleged July 2011 ACL Violations	32
Alleged Chlorine Violation	5
Alleged DCBM Violation	31
Alleged Bypass Violation	54
Alleged pH Violations	2
Alleged SSO Violations	76
Total	206

**Table 2: SSOs and Causes (from data available on CIWQS)**

<b>Cause</b>	<b>Number of SSOs</b>	<b>Percentage</b>
Roots	33	43%
Capacity	8	11%
Failed Pump Station	2	3%
Grease	13	17%
Debris	11	14%
Contractor Error	9	12%
Total	76	100%