

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Wastewater Change Petition WW0099  
**City of Lodi**

**ORDER APPROVING CHANGE IN  
POINT OF DISCHARGE, PLACE OF USE, AND  
PURPOSE OF USE OF TREATED WASTEWATER**

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SOURCE: Dredger Cut

COUNTY: San Joaquin

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**WHEREAS:**

1. On February 16, 2017, the City of Lodi (City or Petitioner) filed Wastewater Change Petition WW0099 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) pursuant to Water Code section 1210 et seq as part of its White Slough Water Pollution Control Facility Storage Expansion and Surface, Agricultural, and Groundwater Supply Improvement Project (Project). With the petition, the City seeks authorization to change the point of discharge, place of use, and purpose of use of treated wastewater generated from its White Slough Water Pollution Control Facility (WPCF) and reduce the discharge of treated wastewater into Dredger Cut by up to 428 acre-feet per year (afy).
2. The City constructed a 70-acre Expansion Pond and associated conveyance infrastructure at the WPCF to prevent excess surface water discharge to the Delta and decrease groundwater pumping for irrigation. The Expansion Pond constructed in the western portion of the WPCF consists of four (4) individual ponds with an overall storage capacity of up to 388 acre-feet. The City intends to divert disinfected, tertiary-treated effluent produced by the WPCF to the Expansion Pond via a new 18-inch diameter pipeline. The project also includes new conveyance infrastructure to provide delivery of the treated effluent from the Expansion Pond to the City's existing irrigation water delivery system for use as irrigation water on approximately 790 acres of City-owned agricultural land that surrounds the WPCF.
3. Water Code section 1211 requires the owner of any wastewater treatment plant to obtain approval from the State Water Board prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater, when changes in the

discharge or use of treated wastewater result in decreasing the flow in any portion of a watercourse. For the purposes of this Order, the State Water Board considers the following information as the City's existing point of discharge, place of use, and purpose of use of treated wastewater:

- a. The existing point of discharge on Dredger Cut is located by California Coordinate System of 1983, Zone 3, North 2,219,503 feet and East 6,303,507 feet, being within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 23, T3N, R5E, MDB&M.
  - b. The existing place of use is Dredger Cut of White Slough.
  - c. The existing purpose of use is discharge of treated wastewater effluent to Dredger Cut of White Slough.
4. The City's wastewater discharge to Dredger Cut is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES) Permit No. CA0079243, Waste Discharge Requirements (WDR) Order R5-2013-0125, adopted by the Central Valley Regional Water Quality Control Board (Central Valley Regional Board) on October 4, 2013. The WPCF has a design average dry weather flow treatment capacity of 8.5 million gallons per day (MGD) and a peak flow treatment capacity of up to 16.3 MGD. During the non-irrigation months (generally October through mid-April), the WPCF discharges an average of approximately 3.5 MGD of tertiary treated wastewater to Dredger Cut.
5. Under the California Environmental Quality Act (CEQA), the City is the lead agency for preparation of environmental documentation for the project. On March 15, 2017, the Lodi City Council certified a final Mitigated Negative Declaration (MND) titled Initial Study/Mitigated Negative Declaration for the White Slough Water Pollution Control Facility Storage Expansion and Surface, Agricultural, and Groundwater Supply Improvement Project, SCH # 2017012035. On March 21, 2017, the City issued a Notice of Determination (NOD) for the project.
6. The Division issued public notice of the wastewater change petition on March 17, 2017. Protests were timely received from the United States Bureau of Reclamation (Reclamation) and Mr. Richard Morat. Prior to the protest deadline, the California Department of Fish and Wildlife (CDFW) requested a 30-day extension to file a protest. The protest period extension was granted by the Division, however, CDFW staff later informed the Division that a protest would not be filed and indicated CDFW had no concerns regarding the project related to fish and wildlife.
7. By letter dated April 17, 2017, Reclamation protested the City's petition based on prior rights and the potential harm to the stored water supplies of the Central Valley Project (CVP) and that any reduction in wastewater discharges could cause an additional draw on upstream reservoirs to make up for the reductions in flows. Reclamation indicated that it was not requesting that the State Water Board deny the City's petition but rather

requested that the any Order approving the petition be conditioned to protect the operation and resources of the CVP. Reclamation proposed that the Order approving the proposed changes be conditioned with Standard Permit Term 91. Reclamation stated that Standard Permit Term 91 calculations includes all return flow components from the Sacramento Valley. Reclamation further contends that Petitioner would potentially be recycling and delivering treated wastewater during Term 91 conditions without any CVP or State Water Project contract coverage, and made possible due to increased releases from upstream storage to meet Sacramento-San Joaquin Delta water quality control standards as a result of the loss of the wastewater discharges.

8. Following protest dismissal negotiations between the City and Reclamation, on February 6, 2018, the City provided the Division with protest dismissal conditions that resolved the protests of Reclamation. On February 15, 2018, Reclamation confirmed their protests could be considered resolved with inclusion of the protest dismissal conditions in any Order approving the City's petition.
  - a. The first protest dismissal condition includes restrictions on "the City's reduction of wastewater discharges to Dredger Cut under its White Slough Water Pollution Control Facility Storage Expansion and Surface, Agricultural, and Groundwater Supply Improvement Project (Project), which is subject of the City's wastewater change Petition WW0099, shall only occur during the period November 1 to March 31 of each year."
  - b. The second protest dismissal condition indicates that the first dismissal condition, "shall not constitute precedent as to any terms and conditions that may be imposed in an order on any future wastewater change petition filed by the City." The State Water Board will not include the second proposed dismissal condition in the approval Order because it is unnecessary. Only orders adopted by the State Water Board at a public meeting are considered precedential. (See Order WR 96-01, p. 17, fn. 11).

The first protest dismissal condition is included as Condition No. 3 of this Order.

9. By letter received on April 12, 2017, Richard Morat protested the City's petition based on arguments that the Project would have adverse environmental impacts, and the Project's potential negative impacts to fishery resources in the Sacramento-San Joaquin River Estuary and its tributaries due to the reduction in flows in the City's wastewater discharge. Mr. Morat contends that the environmental document prepared for the Project did not adequately address the secondary impacts of reducing inflow to the various sloughs, tributaries, and estuary. Mr. Morat requested that any Order approving the City's petition include the following terms and conditions:
  - a. Cessation of wastewater discharge to Dredger Cut and the Sacramento River-San Joaquin River estuary be allowed only during those periods when 1) water is surplus to the needs of aquatic resources in Dredger Cut and the estuary from the present point of discharge and extending to Suisun Bay, and

2) Bay-Delta water quality standards, whatever they may be, are in full effect with no relaxations; and,

- b. Cessation of wastewater discharge to Dredger Cut and the estuary not be permitted at any time when the Delta is in "balanced conditions" (i.e., the un-relaxed standards are just being met).

10. By letter dated August 11, 2017, the City responded to Mr. Morat's protest indicating that pursuant to CEQA, the City prepared and certified the Mitigated Negative Declaration (MND) for the Project, State Clearinghouse No. 2017012035 (March 2017). The City maintains the MND provided a thorough analyses of the potential environmental impacts associated with the Project, including potential impacts of the City's proposed discharge reduction, and changing the place and purpose of use of the City's treated wastewater. The City also stated the MND analyzed the Project's potential to adversely affect the environment, including water resources and biological resources within the project area.

The City's MND evaluated the Biological Resources of the Project and Fishbio prepared a habitat assessment of special-status fish. According to Fishbio, White Slough, Dredger Cut, the San Joaquin River, and other Delta waterways provide movement and rearing habitat for the special-status fish species fall-run Chinook salmon, Central Valley steelhead, and Delta smelt. However, it is unlikely that these species occur in Dredger Cut or in immediately adjacent or downstream waterways on more than a very occasional or transitory basis. Fishbio concluded that no appreciable changes in the total volume of the overall San Joaquin River or Delta waterways would be expected to occur from changes in volume discharged from the WPCF. The reduction in temperature and changes in water quality during January through April is expected to result in negligible or even positive effects on the suitability of Dredger Cut, White Slough, and downstream waterways as habitat for special-status fish. These fish species are also not expected to occur in the proposed ponds once completed (Fishbio, 2016; Moore Biological Consultants, 2016). Ultimately, the MND concluded that the Project, as mitigated, will not result in any significant impacts to water and biological resources and aquatic species.

The City further emphasized that the change petition supports and furthers the public interest by allowing the City to maximize the use of recycled water, and water recycling is required under California's constitutional mandate that the waters of the state be put to beneficial use to the maximum extent feasible. The City concluded that the terms and conditions proposed by Mr. Morat's protest are not necessary to protect the environment nor are they acceptable to the City. The City stated they will continue to work with Mr. Morat to attempt to resolve the protest.

11. By letter dated October 12, 2017, the State Water Board requested that Mr. Morat review the City's August 11, 2017 response to his protest and indicate whether it was adequate to resolve the protest. The State Water Board requested, pursuant to Water Code section 1703.5, that if the City's response was not adequate, he must provide a

statement of facts supporting his allegations and include substantial evidence that the project would not be in the public interest, would adversely affect public trust uses, or would have an adverse environmental impact.

12. By letter dated October 18, 2017, Mr. Morat indicated that the City's response did not resolve his protest and that the disagreement involves three areas; "1) on the scope of change relative to the environmental impact, 2) the worth of a Mitigated Negative Declaration, and 3) the factual sufficiency of my protest on harm to fish." Mr. Morat stated he was not opposed to the Project and reiterated that his two conditions presented in his April 12, 2017 letter, if adopted, would be reason to withdraw his protest. Mr. Morat did not provide a statement of facts supporting his allegations or include substantial evidence that the project would not be in the public interest, would adversely affect public trust uses, or would have an adverse environmental impact. As such, there is not substantial evidence in light of the whole record to support the allegations contained in Mr. Morat's protest. Therefore, the protest may be dismissed pursuant to Water Code section 1703.6, subdivision (d).
13. The State Water Board has determined that the petition for change in the point of discharge, purpose of use, and place of use of treated wastewater will not cause injury to any other lawful user of water.
14. The State Water Board is a CEQA responsible agency for purposes of considering whether to approve the wastewater change petition that would allow the City to proceed with the proposed project. As a CEQA responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the MND in deciding whether to approve the petition. The impacts identified in the MND and recited in the Mitigation Monitoring and Reporting Program (MMRP) for the Project all pertain to the Pre-Construction or During Construction activities which have been completed. As such, the State Water Board will issue a NOD within five days of the date of this Order.
15. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) The mitigation measures in the MND minimized impacts to biological and cultural resources and no adverse impacts to public trust resources are expected.

**ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. The protests of the United States Bureau of Reclamation (Reclamation) and Mr. Richard Morat are dismissed.
2. The City of Lodi (City) is authorized to reduce the discharge of treated wastewater to Dredger Cut from the White Slough Water Pollution Control Facility (WPCF) by up to 428 acre-feet per year (afy).
3. The reduction of wastewater discharge to Dredger Cut under the City's White Slough Water Pollution Control Facility Storage Expansion and Surface, Agricultural, and Groundwater Supply Improvement Project (Project), which is the subject of the City's wastewater change petition WW0099, shall only occur during the period November 1 through March 31 of each year.
4. The reduced amount of treated wastewater may be used by the City, upon compliance with all NPDES permit requirements, for the purpose of Irrigation of 790 acres as follows and shown on the project map on file with the Division of Water Rights:

Field 1 - 110 acres within SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , and SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 23, and SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 24, all within T3N, R5E, MDB&M,

Field 3 - 60 acres within NE $\frac{1}{4}$  of SE $\frac{1}{4}$  and SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 23, T3N, R5E, MDB&M,

Field 4 - 130 acres within SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , NW $\frac{1}{4}$  of SW $\frac{1}{4}$ , NE $\frac{1}{4}$  of SW $\frac{1}{4}$ , SE $\frac{1}{4}$  of SW $\frac{1}{4}$ , NW $\frac{1}{4}$  of SE $\frac{1}{4}$ , SW $\frac{1}{4}$  of SE $\frac{1}{4}$ , and SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 24, T3N, R5E, MDB&M,

Field 5 - 220 acres within NW $\frac{1}{4}$  of projected Section 25, and NE $\frac{1}{4}$  of projected Section 26, both within T3N, R5E, MDB&M, and

Field 6 - 270 acres within NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of projected Section 25, T3N, R5E, and SW $\frac{1}{4}$  of NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of projected Section 30, T3N, R6E, all within MDB&M,

5. The reduced amount of treated wastewater may be discharged at the new point of discharge and place of storage described as follows:

California Coordinate System of 1983 (CCS83), Zone 3,  
North 2,220,957 feet and East 6,303,809 feet,  
being within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 23, T3N, R5E, MDB&M.

6. The State Water Board reserves continuing authority in the public interest to implement and amend this Order for conformity with requirements that may be established for the Sacramento River and Sacramento-San Joaquin Delta in the future, including but not limited to any future revisions to the Bay-Delta Plan and its associated program of implementation, and in the event of unforeseen adverse impacts to fish and wildlife resources and other instream beneficial uses. Modifications to this Order shall only be made after notice and opportunity for a hearing as required by statute, regulation, or constitutional due process.
  
7. These changes do not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a “take” will result from any act authorized under this Order, the Petitioner shall obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this Order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:  
SAM BOLAND – BRIEN FOR,

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: OCT 23 2019