



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

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14 December 2008

Ms. Wendy Wyels, Env. Program Manager 1  
Ms. Patricia Leary, Senior WRCE  
Mr. Barry Hilton, WRCE  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6144  
Sacramento, CA 95812-010

VIA: Electronic Submission  
Hardcopy if Requested

**RE: Administrative Civil Liability Complaint R5-2008-0625 For Assessment of  
Mandatory Minimum Penalties, Riviera West Mutual Water Company Domestic  
Water Treatment Plant, Lake County**

Dear Mesdames Wyels, Leary and Mr. Hilton:

The California Sportfishing Protection Alliance (CSPA) has reviewed the Administrative Civil Liability Complaint (ACLC) R5-2008-0625, Mandatory Penalty, Riviera West Mutual Water Company, Domestic Water Treatment Plant, Lake County and has the following comments and submits the following comments.

The proposed \$3,942,000 ACLC has been issued to the Riviera West Mutual Water Company (Riviera West) Domestic Water Treatment Plant pursuant to California Water Code (CWC) section 13385, which mandates the imposition of a minimum Administrative Civil Liability penalty. The ACLC contains Findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 96-099 and R5-2002-0130 (NPDES No. CA0083925). Riviera West owns and operates a domestic water treatment plant (WTP), which provides potable water for the Riviera West area of Lake County near Konocti Bay. Supernatant from filter backwash water is decanted from the backwash tank and intermittently discharged to Clear Lake. The proposed penalty is for \$3,942,000 principally for failure to submit required monthly monitoring reports.

On 19 July 2002, the Central Valley Water Board also issued a Cease and Desist Order (CDO), No. R5-2002-0131 to Riviera West. The CDO provided a time schedule until 19 July 2004 for the Discharger to comply with effluent limitations for chlorine, EC, TDS, and aluminum. The CDO further contained findings that the Discharger had not submitted any of the monitoring reports required under the previous WDRs: Riviera West (a) failed to submit 23 of the 23 required quarterly reports; (b) failed to submit the results of 308 of the 308 required weekly effluent turbidity, pH, and chlorine residual samples; (c) failed to submit the results of 2,160 of the required 2,160 daily effluent flow samples; and (d) failed to submit the results of

308 of the required 308 weekly raw water turbidity, pH, and temperature samples. The CDO required Riviera West to comply immediately with requirements to submit monitoring reports. To date, Riviera West has continued to fail to submit the required monitoring reports.

The applicable California Water Code Section, 13385, for mandatory minimum penalties for failure to submit monitoring reports took effect on 1 January 2004. The ACLC assesses 1,314 serious violations for not submitting monitoring reports as required by WDRs Order R5-2002-0130 during the period beginning 1 January 2004 and ending 30 June 2007. The Regional assesses that because WDRs Order R5-2002-0130 expired on 1 July 2007, and was not administratively extended, the last required monitoring report was for June 2007. Riviera West has continued to fail to submit any monitoring reports beyond 30 June 2007.

Our specific comments are as follows:

1. The ACLC assesses mandatory penalties for the period from 1 January 2004 through June 2007, three and a half years, for failure to submit monitoring reports. However it has been documented that the Discharger failed to submit monitoring reports from at least 1997 through the present, 11 years.
2. The ACLC states that Riviera West's NPDES permit has expired and was not administratively extended. Therefore, Riviera West is discharging waste to surface waters without a permit. The ACLC does not cite a violation of the California Water Code, Section 13376, for discharging waste without a permit.
3. The Central Valley Regional Board's Water Quality Control Plan (Basin Plan) for the Sacramento San Joaquin River Basins prohibits the discharge of domestic and industrial waste, excluding stormwater, to Clear Lake (Implementation, IV-24.00, Prohibitions). Specifically, the Basin Plan states that: "...the direct discharge of wastes is inappropriate as a permanent disposal method include sloughs and streams with intermittent flow or limited dilution capacity." Despite the Basin Plan Prohibition, the Regional Board issued an NPDES for the direct discharge of waste to Clear Lake from the potable water treatment industry at Riviera West. It is doubtful that faced with a mandatory penalty close to \$4 million dollars that Riviera West any longer appreciates the Regional Board's ignoring of their regulatory obligation to comply with the Basin Plan. The ACLC does not address the Basin Plan Prohibition against discharges of waste to Clear Lake. Obviously, had the Regional Board complied with the Basin Plan discharge Prohibition; the mandatory penalty would not be at issue.
4. The CDO required compliance with effluent limitations for chlorine, EC, TDS, and aluminum by 19 July 2004. Without any sampling, compliance with the permit limitations and the CDO cannot be determined. There is no mention of priority pollutant sampling or whether Riviera West was required to submit a Technical Report assessing compliance with the California Toxics Rule. Quite simply, failure to submit monitoring reports destroys the process of Discharger compliance assessment, which is the foundation of California's wastewater regulatory programs.

We randomly selected, from the internet, the following water District's annual water quality reports to review as a possible assessment of the potential impacts of discharging potable water filtrate to surface waters. While there is no direct connection to Riviera West's water, as can be seen from the following summaries, discharges from domestic water supply systems actually exceed drinking water standards, toxicity objectives, CTR water quality standards, health risk objectives and agricultural water quality goals.

City of **Modesto and Empire** Domestic Water System - May 2005 report  
Drinking Water Sources

Aluminum - high value is 0.20 mg/l (200 µg/l) – exceeds freshwater ambient water quality criteria of 87 µg/l, the California Secondary MCL of 200 µg/l and the Federal Secondary MCL of 50 µg/l.

Arsenic – high value is 13 µg/l and the average value is 3.75 µg/l – exceeds the Federal MCL of 10 µg/l, there is an OEHHA PHG of 0.004 µg/l and a USEPA Integrated Risk Information System (IRIS) of 0.02 µg/l.

Barium – high value of 0.26 mg/l (260 µg/l) – exceeds the Basin Plan maximum concentration water quality objective of 100 µg/l for Delta waters and the American River. Does not exceed other criteria or standards.

Nitrate (N) – high value of 9.65 mg/l is close to the primary MCL of 10 mg/l.

Tetrachloroethylene (PCE) – high value of 4.2 µg/l – exceeds a CTR standard of 0.8 µg/l.

1,1,2 trichloroethane – high value of 1.0 µg/l – exceeds the NTR standard of 0.38 µg/l.

Copper – high value of 60 µg/l – with a hardness of 120 mg/l, exceeds the CTR standard of 11 µg/l (4-day average) and 17 µg/l (1-hour average).

Silver – high value of 2.30 µg/l does *not* exceed the ambient criteria of 5.6 µg/l.

Specific Conductance (EC) – high value of 1,600 µmhos/cm exceeds the agricultural goal of 700 µmhos/cm, the secondary MCL of 900 µmhos/cm.

Zinc – high value of 180 mg/l (180,000 µg/l) – exceeds the CTR standards of 140 µg/l (4-day average) and 140 µg/l (1-hour average).

Dichlorodifluoromethane (Freon 12) was measured at 1.40 µg/l exceeding U.S. EPA's ambient water quality criteria for public health effects for water and fish consumption of 0.19 µg/l.

The drinking water distribution system - exceeded the total trihalomethane MCL of 80 µg/l with a maximum value of 81µg/l.

Bromodichloromethane was measured at a maximum of 3.7 µg/l above the CTR standard of 0.56 µg/l.

Copper was measured at the tap at a 90<sup>th</sup> percentile value of 0.025 mg/l (25 µg/l) above the CTR standard of 11 µg/l (4-day average) and 17 µg/l (1-hour average).

The Salida Domestic Water System - May 2005 report. Drinking Water Sources – the minimum measured hardness was 45 mg/l.

Arsenic – high value is 9.0 µg/l and the average value is 6.4 µg/l – exceeds an OEHHA PHG of 0.004 µg/l and a USEPA Integrated Risk Information System (IRIS) of 0.02 µg/l – does not exceed the MCL.

#### Water Distribution System

Chlorine was measured at a high of 1.36 mg/l and an average of 0.61 mg/l which exceeds U.S. EPA's ambient criteria for the protection of freshwater aquatic life of 0.01 mg/l (4-day average) and 0.02 mg/l (1-hour average).

Bromodichloromethane was measured at a maximum of 3.60 µg/l above the CTR standard of 0.56 µg/l.

Chloroform was measured at a maximum of 29.0 µg/l above an OEHHA cancer risk criteria of 1.1 µg/l.

Copper was measured at the tap at a 90<sup>th</sup> percentile value of 0.060 mg/l (60 µg/l) above the CTR standard of 4.7 µg/l (4-day average) and 6.6 µg/l (1-hour average).

Tetrachloroethene was detected numerous times in 2006. The highest detected concentration was 47 µg/l which exceeds the CTR water quality standard of 0.8 µg/l.

Trichloroethene was detected twice, out of 4-samples, in 2006. The highest detected concentration was 1.1 µg/l which does not exceed the CTR water quality standard of 2.7 µg/l.

The South Turlock Domestic Water System – May 2006 report, hardness was measured at 86 mg/l.

Arsenic – high value is 9.0 µg/l and the average value is 6.4 µg/l – exceeds an OEHHA PHG of 0.004 µg/l and a USEPA Integrated Risk Information System (IRIS) of 0.02 µg/l – does not exceed the MCL of 10 µg/l.

Chlorine was measured at a high of 1.20 mg/l which exceeds U.S. EPA’s ambient criteria for the protection of freshwater aquatic life of 0.01 mg/l (4-day average) and 0.02 mg/l (1-hour average).

The Central Turlock Domestic Water System – May 2006 report, hardness was measured at 61 mg/l.

Arsenic – high value is 8.0 µg/l and the average value is 6.4 µg/l – exceeds an OEHHA PHG of 0.004 µg/l and a USEPA Integrated Risk Information System (IRIS) of 0.02 µg/l – does not exceed the MCL of 10 µg/l.

Chlorine was measured at a high of 1.25 mg/l which exceeds U.S. EPA’s ambient criteria for the protection of freshwater aquatic life of 0.01 mg/l (4-day average) and 0.02 mg/l (1-hour average).

The Hillcrest (Del Rio) Domestic Water System – May 2006 report, hardness was measured at 55 mg/l.

Arsenic – high value is 5.0 µg/l and the average value is 6.4 µg/l – exceeds an OEHHA PHG of 0.004 µg/l and a USEPA Integrated Risk Information System (IRIS) of 0.02 µg/l – does not exceed the MCL of 10 µg/l.

Dibromochloropropane (DBCP) was detected at 0.060 µg/l, which exceeds a Public Health Goal of 0.0017 µg/l.

The City of Davis Domestic Water System – 2005 report

Arsenic – high value is 6.0 µg/l and the average value is 6.4 µg/l – exceeds an OEHHA PHG of 0.004 µg/l and a USEPA Integrated Risk Information System (IRIS) of 0.02 µg/l – does not exceed the MCL of 10 µg/l.

Chromium – high value is 60 µg/l, which exceeds the drinking, water primary MCL of 50 µg/l.

Nitrate (NO<sub>3</sub>) – high value is 47 mg/l, which exceeds the primary drinking water MCL of 45 mg/l.

Selenium – high value is 45 µg/l, which exceeds the CTR, water quality standard of 5 µg/l.

Copper – 90<sup>th</sup> percentile value is 290 µg/l which exceeds the CTR water quality standard of 11 µg/l (4-day average) and 17 µg/l (1-hour average), assuming a hardness of 120 mg/l.

Lead – 90<sup>th</sup> percentile value is 2.5 µg/l which exceeds the CTR water quality standard of 0.921 µg/l.

Manganese – the highest detected value was 70 µg/l, which exceeds the Secondary drinking water MCL of 50 µg/l.

Specific Conductance (EC) – the highest detected value was 1,500 µmhos/cm, which exceeds the agricultural goal of 700 µmhos/cm, the secondary MCL of 900 µmhos/cm.

Boron – the highest detected value was 1,100 µg/l, which exceeds the agricultural water quality goal of 700 µg/l.

Bromodichloromethane was measured at a maximum of 0.60 µg/l, which exceeds the CTR standard of 0.56 µg/l.

Chloroform was measured at a maximum of 1.7 µg/l, which exceeds an OEHHA cancer risk objective of 1.1 µg/l.

Our sole point in presenting this data is to show that potable water discharges can cause serious problems when discharged to surface waters and without monitoring we have no knowledge of the impacts.

5. Historical practices of land disposal of wastewater at some locations at Clear Lake have found that the underlying porous volcanic rock has generated a direct hydraulic continuity with the Lake waters. Land disposal as an alternative to a direct discharge to surface water may not provide any greater protection of water quality to Clear Lake.
6. The Antidegradation Policy, Resolution 68-16, requires that wastewater Dischargers provide best practicable treatment and control (BPTC) of their discharge. Many potable water suppliers store filter backwash in lined ponds and decant water to the potable water treatment plant headworks with solids removal offsite for disposal. This would present a reasonable BPTC practice. This would also eliminate the need for any waste discharge permit and the potential for ongoing violations and threats to water quality.

We are sympathetic with the situation of facing a penalty approaching \$4 million dollars for the small community represented by Riviera West despite the fact that the penalty was avoidable. However application of BPTC requirements and compliance with the Basin Plan prohibition would also have avoided accumulation of the penalties. We are concerned with the ACLC's closing option to Riviera West of entering into "settlement discussions" with the Central Valley Water Board and requesting that any hearing on the matter be delayed by signing a waiver since the penalties are mandatory under the California Water Code and represent only a small fraction

of the total committed violations. The phrase “settlement discussions” would lead one to understand that some level of penalty below the mandatory minimum can be agreed to.

Thank you for considering these comments. If you have questions or require clarification, please don’t hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

CC: Reed Sato, SRWCB Enforcement Unit