



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

22 October 2006

Mr. Robert Schneider, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Jack DelConte, Principal WRCE
Ms. Wendy Wyels, Environmental Program Manager
Mr. Mark List, Sr. Engineering Geologist
Ms. Anne Olsen, WRC Engineer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Waste Discharge Requirements for the Rumsey Band of Wintun Indians, Capay Hills Golf Club Water Reclamation Project, Yolo County

Dear Messrs Schneider, DelConte, List and Mesdames Creedon, Wyels and Olsen:

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (CSPA) has reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative Waste Discharge Requirements (Order or Permit) for the Rumsey Band of Wintun Indians, Capay Hills Golf Club Water Reclamation Project, Yolo County (hereinafter "Discharger"). Due to a lack of time, CSPA did not submit comments within the designated timeframe. However, having now had the opportunity to review the tentative Order, CSPA realizes the Permit is seriously flawed and requests the Order not be included on the Uncontested Items Calendar. The comments below are submitted as a courtesy to provide staff a heads-up of arguments we will orally present at the hearing.

CSPA is a 501(c)(3) public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded water quality and fisheries. CSPA members reside, boat, fish and recreate in and along waterways throughout the Central Valley, including Yolo County.

Our specific comments follow.

1. Sovereign immunity issues

Finding No.2 states, in part, “ The Rumsey Band of Wintun Indians (hereafter, “Discharger”) owns and operates a sanitary sewer system and wastewater treatment facility (WWTF) that serves the Cache Creek Casino Resort and Hotel, a fire station, and a small grocery store. The WWTF and its service area are on land held in trust for the Discharger by the United States Bureau of Reclamation...” The Rumsey Band of Wintun Indians (Tribe) is a sovereign Tribe with rights to sovereign immunity. The WWTP is technically not part of the State and therefore, the discharge to “fee lands” constitutes a discharge of waste from a source situated outside the State.

The Order fails to address sovereign immunity. The Order does not contain the necessary language that eliminates the right of sovereign immunity by accepting the Order and acknowledges the Regional Board’s right to pursue enforcement action including penalties and possible cleanup and abatement orders. As a sovereign Tribe with rights to sovereign immunity, the Discharger does not have to accept future Regional Board actions. The Regional Board lacks the authority to enforce future violations of the Order or require the Tribe to pay penalties.

Regional Board staff has unsuccessfully encountered the issue of sovereign immunity in the past. We hoped that the example of Thunder Valley Casino, Placer County, enforcement case, (see attached enforcement comments) would have led staff to insert the necessary language to limit sovereign immunity. Without sovereign immunity being clearly limited, the proposed Order simply is not worth the paper it is printed on and is a waste of Regional Board staff resources.

2. Order fails to require compliance with Title 27

Finding No. 84 is incorrect and states, “The discharge to fee land authorized herein is exempt from the requirements of Title 27, California Code of Regulations (CCR), Section 20380 et seq. (hereafter Title 27). The exemption, pursuant to Title 27 CCR Section 20090(a), is based on the following:

- a. The waste consists primarily of domestic sewage and treated effluent; and
- b. The waste discharge requirements are consistent with water quality objectives.”

The Title 27 CCR Section 20090(a) states that exemption is reserved for discharges associated with “*municipal treatment plants*”. The definition for municipal is defined in the CWC and the Clean Water Act pertains to public agencies within the state that operate a POTW. The Tribe, Finding No.1 to 3, is not a municipal treatment plant but rather considered a separate sovereign nation. In addition, the operation of the Casino complex (Finding No. 4), which is the sole discharge, does not have the same standard industrial classification code as municipal treatment plant. In fact a casino is considered to be a commercial operation. The discharge is from industrial/commercial operations situated outside the State and is fully subject to Title 27 regulations, just like any other industrial discharger.

In fact, the discharge is properly classified as a designated waste. CWC Section 13173 states, “Designated waste,” means either of the following:

- a. Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code.
- b. Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

Finding No. 55 states, in part, “Based on the high salinity of the treated effluent (1,300 mg/L TDS) relative to underlying groundwater (approximately 600 mg/L TDS), the proposed discharge poses a threat to groundwater quality.” In accordance with Title 27 Section 20210, designated waste shall only be discharged to a Class I or Class II unit. The Order must require the Discharger to comply with Title 27 regulations.

3. A CWA 404 permit is required

The Order’s Attachment A and Finding No.48 indicate that, at least a portion of the disposal area, is within the high water elevation of Cache Creek. However, the Order is silent on water quality certification requirements for CWA 404 permits that are required for fill operations and fails to demonstrate compliance with the Federal and state no net loss policy. Recently, the Regional Board adopted WDRs for the Port of Stockton West Complex Project, San Joaquin County, which included a water quality certification with the Order. The Regional Board intent was clearly not to adopt multiple Orders resulting in a piece-meal approach to the projects. The Order must include a CWA 404 water quality certification for the project.

4. Incomplete RWD

The Order fails to require submission of a complete RWD. Title 27 Section 21740 contains the requirements for a RWD. The Discharger has not submitted the required information. Insofar as Regional Board staff is contending that the Discharger has submitted a complete RWD, we note that Finding No.16 reveals that a complete chemical analysis has not yet been completed and the Discharger has not submitted information sufficient to characterize background groundwater quality or demonstrate that the proposed Order complies with BPTC.

5. It is inappropriate to issue WDRs for discharges to surface waters

Finding No. 52 states, in part, “[p]art of this finding may be due to the influence of fresh water infiltrating the shallow zone from Cache Creek.” Finding No. 48 indicates that a portion of the application area is within the five-year flood plain. The Order fails to address the potential that the storage basin, artificial creek and disposal area are, at

least seasonally, hydraulically connected to Cache Creek. The Order is not an NPDES permit and it is inappropriate to issue a WDR for the discharge of waste to surface water.

6. Incomplete antidegradation analysis

Finding No. 59 provides the Regional Boards flawed justification for allowing degradation and states, “Economic prosperity of local communities and associated industry is of maximum benefit to the people of California, and therefore sufficient reason exists to accommodate growth and groundwater degradation around the facility, provided that the terms of the Basin Plan are met.” The Tribe is not part of the State (Finding No.1 to 3) and it is not in the interest or for the prosperity of the people of the State that waste from outside sources degrade the water quality of the State for the sole gain of a single entity.

The Information Sheet, page 2, states “The antidegradation directives of Section 13000 of the California Water Code require that waters of the State that are better in quality than established water quality objectives be maintained “consistent with the maximum benefit to the people of the State.” Waters can be of high quality for some constituents or beneficial uses and not others. Policies and procedures for complying with this directive are set forth in the Basin Plan (including by reference State Water Board Resolution No. 68-16, “Statement of Policy With Respect to Maintaining High Quality Waters in California,” or “Antidegradation” Policy).

Resolution 68-16 is applied on a case-by-case, constituent-by-constituent basis in determining whether a certain degree of degradation can be justified. It is incumbent upon the Discharger to provide technical information for the Regional Water Board to evaluate that fully characterizes:

- All waste constituents to be discharged;
- The background quality of the uppermost layer of the uppermost aquifer;
- The background quality of other waters that may be affected;
- The underlying hydrogeologic conditions;
- Waste treatment and control measures;
- How treatment and control measures are justified as best practicable treatment and control;
- The extent the discharge will impact the quality of each aquifer; and
- The expected degree of degradation.”

The Information Sheet then admits, “Groundwater monitoring has been conducted at the site but the area monitored is large, no systematic program for characterization was implemented, and some data was collected without sampling and analysis plans or quality assurance plans; therefore staff are unable to establish the most appropriate groundwater limits. In addition, certain aspects of wastewater treatment and control practices may not be justified as representative of Best Practicable Treatment and Control (BPTC). The

Fact Sheet then observes, “[t]he proposed Order establishes interim receiving water limitations to assure protection of the beneficial uses of groundwater of the State pending the completion of certain tasks and provides time schedules to complete specified tasks. During this period, degradation may occur from certain constituents, but can never exceed water quality objectives (or natural background water quality should it exceed objectives) or cause nuisance. Information Sheet, p. 3.

In other words, staff doesn’t know what background water quality is, the appropriate effluent limits or whether BPTC is being applied but is proposing to allow some unknown level of degradation to occur justified by some unknown benefit on the assumption that the Discharger will do in the future what is was legally responsible to do before the permit was issued. This is a blatant violation of the state’s antidegradation policy.

7. A single liner is not BPTC

Finding No. 30 indicates that South Lake is a 16.1-acre pond on the trust land part of the golf course is lined with a single 60-mil high-density polyethylene liner overlain by 12 inches of soil. However, single liner is simply antiquated technology with a proven track record of failure. (G. Fred Lee, PhD, PE, DEE, Deficiencies in Subtitle D Landfill Liner Failure and Groundwater Pollution Monitoring)

A single liner with hydraulic connectivity of 1×10^{-6} cms/sec (i.e. one foot per year) will discharge waste to the underlying shallow groundwater the first year of operation. In comparison to a single liner, an above-ground tank on a concrete containment structures will not discharge wastewater to the soil. In addition, multiple-liner systems equipped with a leachate collection system or its “engineered equivalent” have been used successfully in the central valley for years. The discharge must comply with Title 27 for a Class II impoundment. Even if the Regional Board contends that the discharge is not required to meet Title 27 regulation, a Class II impoundment or “engineered equivalent” would be necessary to provide BPTC.

The Discharger’s single liners will result in the discharge of waste that unnecessarily degrades underlying groundwater and does not comply with State Board Resolution No. 68-16. While the Regional Board may not specify the method of treatment needed for compliance, the Regional Board is required to ensure the WWTP complies with BPTC by developing limitations and discharge specifications. The Order fails to include Discharge Specifications that limit the amount of leachate to that comparable to treatment systems “i.e. engineered equivalent” that meet BPTC. The proposed single liners are not technology that complies with BPTC.

8. Order fails to include discharge specifications for land application

According to *Wastewater Engineering Treatment and Reuse*, Metcalf & Eddy, 2003, for the optimum bacterial degradation of organic wastes, the ratio of carbon to nitrogen to phosphorus (C:N:P Ratio) should be 20:5:1. The percolation of wastewater

containing nitrogen but with disproportionately low concentrations of total organic carbon may retard denitrification and, absent sufficient aeration, may also retard nitrification. In anaerobic soil and groundwater conditions, concentrations of nitrogen in the form of ammonia can leach and discharge to groundwater. The Order fails to require that the Discharger maintain the proper ratio of organic waste need for optimum treatment. The Order does not even require the Discharger to monitor for the carbon and phosphorus; nor did the RWD disclose what the actual concentration was for these constituents in the effluent.

The Order does not include any reasonable potential analysis for determining the groundwater limitation. In this case the shallow groundwater is already polluted for a number of constituents by the Discharger and therefore has no assimilative capacity for further degradation. However, the Order inexplicably allows for addition degradation and pollution.

9. Underground regulations for groundwater limits

We have noted that the Regional Board's Orders for Non15 facilities (Sacramento Office) adopted over the past several years all contain the same groundwater limitation, which is set at the water quality objective or in other words, at the maximum assimilative capacity of the water body for each particular constituent regardless of BPTC measures employed or available. These constituents - TDS, nitrogen compounds, salinity compounds, total coliform organisms, and trihalomethanes - are the same in each Order regardless of the treatment systems used, BPTC available or the high quality of the site's groundwater. We have not seen a single Order in past year, in which the groundwater limitation has actually been reduced to less than the maximum assimilative capacity despite the Regional Boards empty assurances that a BPTC evaluation will be done in the future. It is inappropriate to postpone BPTC evaluations for new sources to a future date as it sets the Discharger up for failure. It is wasteful and bad engineering not to consider all the waste constituents and to evaluate BPTC technology for the treatment and storage systems prior to building the facility.

We found that the majoring of Regional Board Orders give only a cursory and incomplete reasonable potential analysis and fails to justify the proposed groundwater limitations. The Order fails to evaluate reasonable potential to impact groundwater for all the chemical constituents that may be present in the effluent (see Finding No. 76 & 77) and neither the RWD nor the MRP require monitoring for these constituents. The Regional Boards application of a boilerplate groundwater limitation is simply an illegal form of underground regulations, which are intended to subvert Resolution No 68-16 and prevent the implementation of BPTC.

10. The Monitoring and Reporting Program is deficient

The Monitoring and Reporting Program fails to require the Discharger to monitor for all waste constituents that may impact the groundwater (see Finding No.76 & 77). The Order contends that the Discharger will have alarms and continuous monitoring

equipment to avoid upsets; however, the Order does not require continuous monitoring for chlorine, pH and ammonia. Continuous monitoring equipment is relatively inexpensive and is reported to be BPTC. The Order fails to require pesticide reporting and sampling for the golf course. The same constituents monitored in the effluent must be sampled in the influent if removal rates are to be calculated and are necessary in order to show that the WWTP is operated properly. In addition, the MRP fails to monitor for priority pollutants.

15. Inadequate non-15 program to ensure compliance

The Non-15 program lacks the necessary staff resources to ensure compliance will be maintained and therefore, the Order is merely a paper tiger. The staff resources are currently inadequate to conduct compliance inspections of all the permitted facility within the next five years. The program has reached a level where staff is no longer able to maintain a functional program to protect water quality. It is inappropriate to squander what remaining staff resources are left to write Orders and monitor waste discharges for sources outside the state. The Order becomes a meaningless rubber stamp and is indicative of the Regional Boards change in policy from pollution prevention to pollution permission.

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

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachment



California Sportfishing Protection Alliance

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

4 April 2006

Mr. Robert Schneider, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Ken Landau, Assistant Executive Officer
Mr. Richard McHenry
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

RE: Administrative Civil Liability Complaint No. R5-2006-0502; Auburn Rancheria
Casino Wastewater Quality Control Facility, Placer County

Dear Messrs Schneider, Landau, McHenry and Ms. Creedon:

The California Sportfishing Protection Alliance (hereinafter "CSPA") has reviewed the Central Valley Regional Water Quality Control Board's (hereinafter "Regional Board") proposed Administrative Liability Complaint No. R5-2006-0502 (hereinafter "ACL") issued to Auburn Rancheria's Thunder Valley Casino (hereinafter "Discharger") and hereby complains that the proposed ACL violates the State Water Board Water Quality Enforcement Policy and CWC § 13385. CSPA requests that the proposed ACL be scheduled for evidentiary hearing before the Regional Board. As CSPA members reside within the affected area and are affected by the Discharger's violations, CSPA requests Designated Party Status for the hearing.

The Discharger obtained WDR Order No. 5-01-068 on 16 March 2001 and began violating numerous explicit terms of its permit immediately upon initiating operation on 9 June 2003. It illegally modified the treatment, system and failed to:

1. Notify the Regional Board of numerous continuing effluent and receiving water violations (even as it obtained a revised permit),
2. Adequately monitor effluent and receiving waters,
3. Install backup monitoring or disinfection equipment,
4. Correct known failures in its treatment system, or
5. Undertake any cleanup and abatement efforts.

Even though the Discharger was aware of ongoing coliform organism violations, it failed to take reasonable and feasible actions to minimize adverse effects to receiving waters and the public. The Discharger never instituted additional monitoring, notified

downstream property owners, placed warning signs or informed County Environmental Health of the potential dangers to those who could potentially come in contact with downstream waters.

The Discharger also blatantly misled the Regional Board when it requested and obtained revised WDRs, allowing increased flow rate, on 17 March 2005. Not once did the Discharger acknowledge that it was in the midst of ongoing violations in its Report of Waste Discharger or before the Regional Board.

Even though the Discharger's net yearly income is estimated to be approximately \$300 million dollars and the statutory maximum liability for the cited violations is in the vicinity of \$230 million dollars, Regional Board management is inexplicably proposing an ACL in the amount of \$435,000 dollars. This sum, based upon CWC 13385 mandatory minimum penalties, is far below staff recommendations and fails to take into account the specific relevant factors outlined in the State Water Board Water Quality Enforcement Policy. The minimum penalty requirements of CWC 13385 were never envisioned to be a ceiling for flagrant continuing violations.

The ACL is grossly deficient considering the egregiousness of the violations, potential liability and resources of the Discharger. It utterly fails to protect the public or serve as an adequate deterrent. Minimum penalties are clearly inappropriate in the context of this situation.

For the forgoing and other reasons, CSPA objects to the ACL and requests that the matter be scheduled for hearing before the Regional Board.

Sincerely,

Bill Jennings, Chairman & Executive Director
California Sportfishing Protection Alliance

Cc: Michael Lozeau, Watershed Enforcers
Chris Bowman, Sacramento Bee
Interested Parties