

Bill Jennings
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel: 209-464-5067
Fax: 209-464-1028
E-mail: deltakeep@aol.com

Mike Jackson
Law Office of Mike Jackson
P.O. Box 207
429 W. Main Street
Quincy, CA 95971
Tel: 530-283-1007
Fax: 530-283-0712
E-mail: mjatty@sbcglobal.net

VIA: Electronic Submission
Hardcopy to Follow

Andrew Packard
Law Office of Andrew Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227
Fax: 707-763-9227
E-mail: andrew@packardlawoffices.com

For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Waste Discharge Requirements For)
City of Davis Wastewater Treatment Plant;) **PETITION FOR REVIEW**
California Regional Water Quality Control Board –)
Central Valley Region Order No. R5-2007-0132;)
NPDES No. CA0079049)

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting Waste Discharge Requirements (NPDES No. CA0079049) for City of Davis Wastewater Treatment Plant, on 25 October 2007. *See* Order No. R5-2007-0132. The issues raised in this petition were raised in timely written comments.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Order No. R5-2007-0132, Waste Discharge Requirements (NPDES No. CA0079049) for the City of Davis Wastewater Treatment Plant. A copy of the adopted Order is attached as Attachment No. 1.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

25 October 2007

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letter on 2 October and 19 May 2007. Those letters and the following comments set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

A. The Order, *Other Plans, Policies and Regulations* Section, discusses exemption from CCR Title 27 for domestic wastewater, yet fails to assess that sewage sludge which is not exempt has degraded groundwater quality.

The onsite disposal of sludge has degraded groundwater quality. Sewage sludge is not exempted from CCR Title 27 designated waste standards. The onsite disposal of sewage sludge is not BPTC. The onsite disposal of sewage sludge should be prohibited or required to meet the requirements of CCR Title 27 as a designated waste.

B. The City of Davis' wastewater discharge is toxic to aquatic life, yet the Order fails to include prohibit toxic discharges, fails to assess violations for past and ongoing toxic discharges, fails to assess the impacts to endangered species and fails to require a remedy that will eliminate toxic discharges. The Order

violates Federal Regulations 40 CFR 122.44 (d)(1)(i), the SIP, CWC Section 13377 and Federal Regulation, 40 CFR 122.4 (a), (d) and (g).

Compliance Assessment

The Order Fact Sheet finds that the City's discharge of wastewater is toxic, beginning at page F-46, Whole Effluent Toxicity, states that: "A review of the Report of Waste Discharge indicates toxicity in the effluent. The percent survival of Ceriodaphnia dubia from the chronic toxicity test was 60 % in both June 2003 and May 2005. The chronic test for larval fathead minnow growth showed impacts from the effluent in August 2002 and October 2002. The chronic test for Ceriodaphnia dubia reproduction showed impacts from the effluent in August 2002, October 2002, February 2003, June 2003, August 2004, October 2004. The 4-day algal growth test showed impacts from the effluent on May 2002, June 2002, February 2003, June 2003, June 2004, and June 2005. Algal growth tended to be significantly greater than the control in Discharge 001 and significantly less than the control in Discharge 002. The toxicity tests conducted up to date have used 100 % effluent from the wastewater treatment plant. With a low available dilution and whole effluent testing results showing impacts to aquatic life, it is concluded that discharges from the WWTP have caused adverse effects on aquatic organisms. Therefore, this Order requires the Discharger to initiate a TRE to investigate the causes of, and identify corrective actions to reduce or eliminate effluent toxicity." (emphasis added)

The Order does not assess compliance with the existing Permit and it appears that the Regional Board has not undertaken any enforcement action with regard to toxicity. The "Compliance Summary" section of the Order does not discuss toxic discharges.

Failure to Adequately Assess or Remedy Toxic Discharges

The Order Fact Sheet shows the presence of toxic constituents in the existing wastewater discharge:

<u>Constituent</u>	<u>Maximum Concentration Observed</u>
Aluminum	700 ug/l
Ammonia	above toxic criteria
Chlorine	2.95 mg/l
Copper	13 ug/l
Cyanide	6 ug/l

The Order does not contain protective limitations for acute toxicity, allowing 30% mortality in the discharge to receiving waters with no dilution. The Order does not contain any limitations for chronic toxicity. The Order instead: "...requires the Discharger to initiate a TRE to investigate the causes of, and identify corrective actions to reduce or eliminate effluent toxicity." Regional Board staff apparently does not understand that the above cited toxic constituents are likely sources of the observed toxicity in the wastewater discharge and will cause interference, with attempts to conduct a TRE. Conducting a TRE does not prohibit toxicity.

Aquatic Life Beneficial Uses and Endangered Species

The Order Fact Sheet, page F-4 No. 8 finds that: “The designated beneficial uses of the Yolo Bypass include warm freshwater aquatic habitat, warm fish migration habitat, cold fish migration habitat, warm spawning habitat and potential cold freshwater aquatic habitat. The *Habitat Improvement for Native Fish in the Yolo Bypass*, states that “considering the four runs of salmon present, adult migration may occur in any month,” which indicates the presence of salmonids in the Yolo Bypass year-round.” Despite this Finding, the Order fails to discuss any impacts to endangered species; to the contrary the Endangered Species Act discussion finds no impacts to endangered species.

With hydraulic continuity between the Yolo Bypass and the South Delta, findings regarding endangered species must recognize and discuss endangered species migration, the likely source of salmon into the Bypass. South Delta waterways are crucial habitat and migration corridors for a number species protected under federal and state endangered species acts. Species include: Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha* - federal and state listed as threatened); Central Valley steelhead (*Oncorhynchus mykiss* - federal listed as threatened); Delta smelt (*Hypomesus transpacificus* - federal and state listed as threatened); Sacramento splittail (*Pogonichthys macrolepidotus* - California species of concern); winter-run Chinook salmon (*Oncorhynchus tshawytscha* - federal and state listed as endangered); fall/late-fall-run Chinook salmon is both a federal and California species of concern; Green sturgeon (*Acipenser medirostris*) is federally listed as threatened and is a California species of concern and longfin smelt (*Spirinchus thaleichthys*), hardhead (*Mylopharodon conocephalus*) and Sacramento perch (*Archoplites interruptus*) are identified as California species of concern. Further, a number of non-special status species, including striped bass, largemouth bass, smallmouth bass, catfish and panfish are found throughout the South Delta.

The Order will likely result in an illegal “take” of listed species pursuant to Section 2080 of the California Fish and Game Code; i.e., the California Endangered Species Act (CESA). The Discharger must obtain a permit under Section 2081 or a consistency determination under Section 2080.1 of CESA. Unlike ESA, CESA requires that authorized take be “fully mitigated” and that all required measures be “capable of successful implementation.” Since there are no provisions for time schedules under CESA, the Discharger must comply with protective limits as soon as possible and certainly prior to any increase in the rate of discharge. The inadequate toxicity, temperature, ammonia, and dissolved oxygen limits in the Tentative Permit should be revised to be fully protective of listed species. The Discharger and Regional Board must initiate consultation with the California Department of Fish and Game.

Chronic Toxicity

Order, State Implementation Policy states that: “On March 2, 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface*

Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). The SIP became effective on April 28, 2000 with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005 that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order implement the SIP.” The SIP, Section 4, Toxicity Control Provisions, Water Quality-Based Toxicity Control, states that: “A chronic toxicity effluent limitation is required in permits for all dischargers that will cause, have a reasonable potential to cause, or contribute to chronic toxicity in receiving waters.” The Order contains no such limitation for chronic toxicity as required by the SIP.

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. The Order states that: “...to ensure compliance with the Basin Plan’s narrative toxicity objective, the discharger is required to conduct whole effluent toxicity testing...”. However, sampling does not equate with or ensure compliance. As is shown above, the discharge is currently toxic. The Tentative Permit requires the Discharger to conduct an investigation of the possible sources of toxicity. This language is not a limitation and essentially eviscerates the Regional Board’s authority, and the authority granted to third parties under the Clean Water Act, to find the Discharger in violation for discharging chronically toxic constituents. An effluent limitation for chronic toxicity must be included in the Order.

Order is quite simply wrong; by failing to include effluent limitations prohibiting chronic toxicity the Order does not “...implement the SIP”. The Regional Board has commented time and again that no chronic toxicity effluent limitations are being included in NPDES permit until the State Board adopts a numeric limitation. The Regional Board explanation does not excuse the Order’s failure to comply with Federal Regulations, the SIP, the Basin Plan and the CWC. The Regional Board’s Basin Plan, as cited above, already states that: “...waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses...” Accordingly, the Order must be revised to prohibit chronic toxicity (mortality and adverse sublethal impacts to aquatic life, (sublethal toxic impacts are clearly defined in EPA’s toxicity guidance manuals)) in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i) and the Basin Plan and the SIP.

Acute Toxicity

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms.

The Tentative Permit requires that the Discharger conduct acute toxicity tests and states that compliance with the toxicity objective will be determined by analysis of indicator organisms. However, the Tentative Permit contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test.

For an ephemeral or low flow stream, allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal regulations and contributes to exceedance of the Basin Plan's narrative water quality objective for toxicity. Accordingly, the Order must be revised to prohibit acute toxicity in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

CWC

California Water Code, section 13377, requires that: "Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." By failing to include adequately protective toxicity limitations for this toxic discharge the Order violates CWC 13377.

Federal Regulations

Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA. By failing to include adequately protective toxicity limitations for this toxic discharge the Order violates 40 CFR 122.4.

C. The Order fails to require that the City of Davis apply best practicable treatment and control (BPTC) and comply with the Federal regulations 40 CFR § 131.12 and State Policy (Resolution 68-16) regarding Antidegradation despite clear documentation that the wastewater discharge has degraded groundwater quality.

The Order documents that the City of Davis utilizes percolation from unlined wastewater and sludge disposal ponds, overland flow terraces and wetlands as a means of disposal. Wastewater percolates to shallow groundwater. The electrical conductivity (EC) of the wastewater has been measured as high as 3,688 umhos/cm. EC in downgradient monitoring wells has been measured as high as 7240 umhos/cm. The Order Fact Sheet contains the following discussion with regard to groundwater:

“Groundwater. The Discharger utilizes oxidation ponds, unlined sludge lagoons, overland flow fields, and wetlands. Domestic wastewater contains constituents such as total dissolved solids (TDS), specific conductivity, pathogens, nitrates, organics, metals and oxygen demanding substances (BOD). Percolation from the ponds, sludge lagoons, overland flows fields, and wetlands may result in an increase in the concentration of these constituents in groundwater. The increase in the concentration of these constituents in groundwater must be consistent with Resolution 68-16. Any increase in pollutant concentrations in groundwater must be shown to be necessary to allow wastewater utility service necessary to accommodate housing and economic expansion in the area and must be consistent with maximum benefit to the people of the State of California. Some degradation of groundwater by the Discharger is consistent with Resolution 68-16 provided that:

- i. the degradation is limited in extent;
- ii. the degradation after effective source control, treatment, and control is limited to waste constituents typically encountered in municipal wastewater as specified in the groundwater limitations in this Order;
- iii. the Discharger minimizes the degradation by fully implementing, regularly maintaining, and optimally operating best practicable treatment and control (BPTC) measures; and
- iv. the degradation does not result in water quality less than that prescribed in the Basin Plan.

Groundwater monitoring results indicates that electrical conductivity has degraded groundwater quality when compared to background. This Order requires the Discharger to evaluate the background groundwater quality to establish effluent limitations for groundwater. This Order also requires the implementation of BPTC measures to minimize impacts to groundwater.” (Emphasis added)

The Order confirms that the wastewater discharge has degraded groundwater quality. The Order does not include an Antidegradation analysis despite the preceding paragraph discussing Antidegradation requirements. The treatment of domestic wastewater with surface water disposal (NPDES discharges) in the Central Valley of California is

typically treated through wastewater systems that do not utilize percolation as a means of disposal; therefore it can be readily concluded that percolation is not BPTC. The Order does not discuss other pollutant migration, pathogens, volatile and semi-volatile constituent, metals, with regard to groundwater degradation. The Order does not require cessation of the wastewater percolation to groundwater. The Order does not require cleanup of polluted groundwater. The Order does not include any discussion of or recommendation for enforcement action by the Regional Board to protect groundwater quality. The Order, as currently presented, does not protect groundwater quality and therefore does not comply with State and Federal Antidegradation regulations and policies.

D. The Order fails to meet Federal CWA Section 101(a) and 303(d)(4), Regulations at 40 CFR § 131.12 State and Basin Plan (Resolution 68-16) requirements for antidegradation.

Specifically, the Order Antidegradation Policy discussion does not discuss best practicable treatment and control (BPTC) of the wastewater discharge to surface waters and does not discuss the fact that the discharge “has” degraded groundwater quality. Both BPTC and groundwater degradation must be thoroughly analyzed with regard to Antidegradation requirements prior to permit consideration.

As is discussed above, the City of Davis’ wastewater discharge degrades the beneficial uses of contact recreation and irrigated agriculture. The public existing and potential health costs and the costs to farmers alone warrant significant discussion and analysis in an Antidegradation assessment. The Order does not assess that the Discharger is currently not providing BPTC as is required by State and Federal Antidegradation requirements with regard to protecting the beneficial uses of contact recreation and irrigated agriculture.

As is discussed above, the City of Davis’ wastewater discharge is toxic to aquatic life. The impacts to aquatic life and endangered species is not discussed in any Antidegradation analysis. The Order does not assess that the Discharger is currently not providing BPTC as is required by State and Federal Antidegradation requirements with regard to protecting the beneficial use of aquatic life.

As is discussed above, the Order concludes that the City of Davis has degraded groundwater quality by allowing wastewater to percolate and by on-site sludge disposal. The Order does not assess that the Discharger is currently not providing BPTC as is required by State and Federal Antidegradation requirements and has degraded groundwater quality.

The onsite disposal of sludge has degraded groundwater quality. Sewage sludge is not exempted from CCR Title 27 designated waste standards. The onsite disposal of sewage sludge is not BPTC. The onsite disposal of sewage sludge should be prohibited or required to meet the requirements of CCR Title 27 as a designated waste.

Section 101(a) of the Clean Water Act, the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the Act carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures. (40 CFR § 131.12(a).)

California’s antidegradation policy is composed of both the federal antidegradation policy and the State Board’s Resolution 68-16. (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) (“Order 86-17”); Memorandum from William Attwater, SWRCB to Regional Board Executive Officers, “federal Antidegradation Policy,” pp. 2, 18 (Oct. 7, 1987) (“State Antidegradation Guidance”).) As part of the state policy for water quality control, the antidegradation policy is binding on all of the Regional Boards. (Water Quality Order 86-17, pp. 17-18.) Implementation of the state’s antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU 90-004”) and USEPA Region IX, “Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12” (3 June 1987) (“Region IX Guidance”), as well as Water Quality Order 86-17.

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality. (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1.) Application of the policy does not depend on whether the action will actually impair beneficial uses. (State Antidegradation Guidance, p. 6. **Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES** and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3.) Both the state and federal policies apply to point and nonpoint source pollution. (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4.)

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources; 7) an assessment of the significance of changes in ambient water quality and 8) whether the waterbody was a ONRW. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect

and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis; while tertiary treatment may provide BPTC for pathogens, dissolved metals may simply pass through.

Any antidegradation analysis must comport with implementation requirements in State Board Water Quality Order 86-17, State Antidegradation Guidance, APU 90-004 and Region IX Guidance. The conclusory, unsupported, undocumented statements in the Permit are no substitute for a defensible antidegradation analysis.

E. The Order fails to contain an Effluent Limitation for lead in accordance with Federal Regulations 40 CFR 122.44 and California Water Code, Section 13377.

Lead exceeds water quality standards in the effluent at 1.9 $\mu\text{g/l}$, above the CTR Water Quality Standard of 1.5 $\mu\text{g/l}$. The California Water Code (CWC), Section 13377 states in part that: "...the state board or the regional boards shall...issue waste discharge requirements... which apply and ensure compliance with ...water quality control plans, or for the protection of beneficial uses..." Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation for lead in the Order violates 40 CFR 122.44 and CWC 13377.

F. The Order fails to contain an Effluent Limitation for nickel in accordance with Federal Regulations 40 CFR 122.44 and California Water Code, Section 13377.

Nickel exceeds water quality standards in the effluent at 40 $\mu\text{g/l}$, above the CTR Water Quality Standard of 32 $\mu\text{g/l}$. The California Water Code (CWC), Section 13377 states in part that: "...the state board or the regional boards shall...issue waste discharge requirements... which apply and ensure compliance with ...water quality control plans, or for the protection of beneficial uses..." Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation for nickel in the Order violates 40 CFR 122.44 and CWC 13377.

G. The Order fails to contain an Effluent Limitation for zinc in accordance with Federal Regulations 40 CFR 122.44 and California Water Code, Section 13377.

Zinc exceeds water quality standards in the effluent at 80 $\mu\text{g/l}$, above the CTR Water Quality Standard of 73 $\mu\text{g/l}$. The California Water Code (CWC), Section 13377 states in part that: "...the state board or the regional boards shall...issue waste discharge requirements... which apply and ensure compliance with ...water quality control plans, or for the protection of beneficial uses..." Section 122.44(d) of 40 CFR requires that

permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation for zinc in the Order violates 40 CFR 122.44 and CWC 13377.

H. The Order establishes Effluent Limitations for metals based on the hardness of the effluent as opposed to the ambient upstream receiving water hardness as required by Federal Regulations, the California Toxics Rule (CTR, 40 CFR 131.38(c)(4)).

The Order acknowledges (Fact Sheet page F-16, Hardness) that Federal Regulation 40 CFR 131.38(c)(4) states that: “For purposes of calculating freshwater aquatic life criteria for metals from the equations in paragraph (b)(2) of this section, for waters with a hardness of 400 mg/l or less as calcium carbonate, the actual ambient hardness of the surface water shall be used in those equations.” (Emphasis added).

Despite citation of the regulatory requirement, the Order then illegally uses the hardness of the effluent rather than the actual ambient hardness of the surface water to establish Effluent Limitations. There is no explanation or attempted technical justification for this illegal action; the Regional Board staff quite simply thumbs their nose at the law and deliberately ignore Federal Regulations. There are procedures for changing regulations if public and peer reviewed science indicates the need to do so, this has not been done and any such need has not been expressed.

The ramifications of this specific illegal use of effluent rather than ambient receiving water hardness will be devastating to water quality in the receiving streams. The Order has been modified to use an effluent hardness value of 190 mg/l as CaCO₃ rather than the ambient receiving water hardness of 74 mg/l at discharge point 001 and to use an effluent hardness value of 250 mg/l as CaCO₃ rather than the ambient receiving water hardness of 85 mg/l at discharge point 002. This illegal action has eliminated the Effluent Limitations for copper and silver (See Tables 6a and 6b and Fact Sheet discussions for hardness, copper (F-23 and 24) and silver (F-40 and 41, *discussion deleted*)). Copper and silver are toxic to freshwater aquatic life above given criteria based of the hardness of the water column. The reasonable potential for copper and silver in the prior Order, using the ambient receiving water hardness, clearly showed the discharge presented a reasonable potential to exceed CTR water quality standards. The Order, Fact Sheet page F-5 Compliance Summary and Section IV.C.5, states that the City of Davis wastewater discharge has failed bioassays which show the discharge to be toxic to aquatic life. The City’s wastewater system is clearly not capable of adequately removing copper and silver to nontoxic concentrations. Failure to include Effluent Limitations for copper and silver allow the City of Davis to continue to discharge toxic substances and degrade the designated and confirmed aquatic life beneficial uses of the receiving waters.

I. The Order fails to include an Effluent Limitation for copper as required by Federal Regulations 40 CFR 122.44 and the permit should not be adopted in accordance with California Water Code Section 13377.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The Water Quality Standard for copper is 10.2 $\mu\text{g/l}$, using the appropriate ambient receiving water hardness of 74 mg/l. The wastewater discharge maximum observed 16 was ug/l. Clearly the discharge exceeds the water quality objective. The proposed Order fails to establish an effluent limitation for copper.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

J. The Order fails to include an Effluent Limitation for silver as required by Federal Regulations 40 CFR 122.44 and the permit should not be adopted in accordance with California Water Code Section 13377.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The Water Quality Standard for silver is 2.4 $\mu\text{g/l}$, using the appropriate ambient receiving water hardness of 74 mg/l. The wastewater discharge maximum observed 4.2 was ug/l. Clearly the discharge exceeds the water quality objective. The proposed Order fails to establish an effluent limitation for silver.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

K. The Order contains an Interim Effluent Limitation for electrical conductivity (EC) that is not protective of the beneficial uses of the receiving water in

violation of Federal Regulations 40 CFR 122.4 (a), (d) and (g), 122.44 (d)(i), the Basin Plan and the California Water Code Section 13377.

The Order contains an Interim Effluent Limitation of 2050 umhos/cm as an annual average. The instantaneous maximum concentration of EC is not limited and could be astronomically high.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The Water Quality Control Plan (Basin Plan) for the Central Valley Region, Water Quality Objectives, page III-3.00, contains a Chemical Constituents Objective that includes Title 22 Drinking Water Maximum Contaminant Levels (MCLs) by reference. The Title 22 MCLs for EC are 900 μ mhos/cm (recommended level), 1,600 μ mhos/cm (upper level) and 2,200 μ mhos/cm (short term maximum). The Order inappropriately cites that drinking water (MUN) is not a beneficial use of Willow Slough Bypass.

Irrigated agriculture and freshwater aquatic life are beneficial uses of the receiving water.

The Basin Plan states, on Page III-3.00 Chemical Constituents, that “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.” The Basin Plan’s “Policy for Application of Water Quality Objectives” provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations. This application of the Basin Plan is consistent with Federal Regulations, 40CFR 122.44(d).

For EC, *Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Arriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985)*, levels above 700 μ mhos/cm will reduce crop yield for sensitive plants. The University of California, Davis Campus, Agricultural Extension Service, published a paper, dated 7 January 1974, stating that there will not be problems to crops associated with salt if the EC remains below 750 μ mhos/cm. A recent (May 2007) memorandum from Mr. Mark Gowdy, Regional Board staff specializing in salinity issues, to Ms. Diana Messina, NPDES Permitting Section, concluded that a study by the City of Woodland of Site Specific Objectives (SSO) for EC levels in the Yolo Bypass: “is based on assumptions that are not appropriate for developing EC SSO for the Tule Canal and downstream waterbodies.” This Regional Board staff memorandum further cites the *Ayers R.S. and D.W. Westcott – Irrigation and Drainage Paper No. 29* as “the basis for Basin Plan EC water quality objectives that provide protection of agricultural supply (AGR) beneficial uses at numerous locations in the region.” The City of Woodland discharges wastewater into the Yolo Bypass upstream of the City of Davis and the site specific study is relevant to the Davis wastewater discharge. Ultimately recent site specific studies confirm the Findings of the *Ayers R.S. and D.W. Westcott* report that

irrigation waters with EC levels above 700 $\mu\text{mhos/cm}$ will reduce crop yield for sensitive plants.

In a *Biological Significance* document, dated November 1st 2006, James M. Harrington, Staff Water Quality Biologist with the California Department of Fish and Game, citing McKee and Wolf (1971 Water Quality Criteria) wrote that: “Surveys of inland fresh waters indicates that good mixes of fish fauna are found where conductivity values range between 150 and 500 $\mu\text{mhos/cm}$. Even in the most alkaline waters, the upper tolerance limit for aquatic life is approximately 2000 $\mu\text{mhos/cm}$.”

The Order Interim Effluent Limitation for EC of 2050 $\mu\text{mhos/cm}$ as an annual average exceeds the recommended levels necessary to protect beneficial uses of irrigated agriculture (700 $\mu\text{mhos/cm}$) and the upper tolerance limit for aquatic life (2000 $\mu\text{mhos/cm}$). The City’s wastewater discharge increases concentrations of EC to unacceptable concentrations adversely affecting the agricultural and aquatic life beneficial use.

Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA. The Order Effluent Limitation for EC is inconsistent with the Basin Plan Requirement that “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.”

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” The Order Interim Effluent Limitation for EC of 2050 $\mu\text{mhos/cm}$ as an annual average exceeds the recommended levels necessary to protect beneficial uses of irrigated agriculture (700 $\mu\text{mhos/cm}$) and the upper tolerance limit for aquatic life (2000 $\mu\text{mhos/cm}$).

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The Order Interim Effluent Limitation for EC of 2050 $\mu\text{mhos/cm}$ as an annual average exceeds the recommended levels necessary to protect beneficial uses of irrigated agriculture (700 $\mu\text{mhos/cm}$) and the upper tolerance limit for aquatic life (2000

umhos/cm) exceeding the Basin Plan Chemical Constituents water quality standard, that “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.” The Basin Plan’s “Policy for Application of Water Quality Objectives” provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations, which are cited above.

L. Effluent Limitations for specific conductivity (EC) is improperly regulated as an annual average contrary to Federal Regulations 40 CFR 122.45 (d)(2).

Federal Regulation 40 CFR 122.45 (d)(2) requires that permit for POTWs establish Effluent Limitations as average weekly and average monthly unless impracticable. The Order establishes Effluent Limitations for EC as an annual average contrary to the cited Federal Regulation. Establishing the Effluent Limitations for EC in accordance with the Federal Regulation is not impracticable; to the contrary the Central Valley Regional Board has a long history of having done so. Proof of impracticability is properly a steep slope and the Regional Board has not presented any evidence that properly and legally limiting EC is impracticable.

M. The Order fails to contain an Effluent Limitation for bis(2-ethylhexyl)phthalate despite a clear reasonable potential to exceed waste quality standards in violation of Federal Regulations 40 CFR 122.44.

Bis(2-ethylhexyl)phthalate exceeds water quality standards in the receiving stream at 6.0 $\mu\text{g/l}$, above the CTR Water Quality Standard of 5.9 $\mu\text{g/l}$. Bis(2-ethylhexyl)phthalate has been detected in the wastewater effluent at 59 $\mu\text{g/l}$, also above the CTR Water Quality Standard. The Order Fact Sheet states that the receiving water sampling data for bis(2-ethylhexyl)phthalate is subject to error and is being discarded without any supporting documentation from the laboratory quality assurance/quality control (QA/QC) documents. The City of Davis could have easily tested plastic tubing, collected travel blanks and undertaken measures to avoid errors and did not do so. The Regional Board total disregards scientific methods, specifically sampling and laboratory QA/QC methodologies, in throwing out data points that would lead to a reasonable potential for a pollutant to exceed water quality standards when the burden should properly be placed on wastewater Dischargers to conduct proper sampling and analysis. The California Water Code (CWC), Section 13377 states in part that: “...the state board or the regional boards shall...issue waste discharge requirements...which apply and ensure compliance with ...water quality control plans, or for the protection of beneficial uses...” Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. Failure to include an effluent limitation for bis(2-ethylhexyl)phthalate in the Order violates 40 CFR 122.44 and CWC 13377.

N. The Order fails to include an Effluent for Manganese as required by Federal Regulations 40 CFR 122.44 and the permit should not be adopted in accordance with California Water Code Section 13377.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The Water Quality Standard for the protection of irrigated agriculture (Westcott and Ayers) and human health (US EPA Ambient water quality criteria (consumption of aquatic organisms)) for the manganese is 100 $\mu\text{g/l}$ and 200 $\mu\text{g/l}$, respectively. The wastewater discharge maximum observed 740 was $\mu\text{g/l}$. Clearly the discharge exceeds the water quality objective. The proposed Order fails to establish an effluent limitation for manganese.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

O. The Order fails to include an Effluent for Boron as required by Federal Regulations 40 CFR 122.44 and the permit should not be adopted in accordance with California Water Code Section 13377.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The Water Quality Standard for the protection of irrigated agriculture for boron is 700 $\mu\text{g/l}$. The wastewater discharge maximum observed 1800 was $\mu\text{g/l}$. Clearly the discharge exceeds the water quality objective. The proposed Order fails to establish an effluent limitation for boron.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to

implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

P. The Order fails to include an Effluent for dioxin as required by Federal Regulations 40 CFR 122.44 and the permit should not be adopted in accordance with California Water Code Section 13377.

Federal Regulations, 40 CFR 122.44 (d)(i), requires that; “Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” The CTR criterion for Human health protection for consumption of aquatic organisms only is 0.014 pg/l for 2,3,7,8-tetrachlorodibenzo-p-dioxin. There are many congeners of chlorinated dibenzodioxins that exhibit toxic effects similar to those of 2,3,7,8-TCDD, including 2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD). USEPA toxic equivalency factors (TEFs) express the relative toxicities of the congeners compared to 2,3,7,8-TCDD to allow these congeners to be compared to the criterion for 2,3,7,8-TCDD. As shown in the SIP, the TEF for 1,2,3,4,6,7,8- HpCDD is 0.01. The observed maximum concentration in Discharge 001 for 1,2,3,4,6,7,8-HpCDD was 13.8 pg/l, based on six samples collected between May 2002 and May 2005. The observed maximum concentration in Discharge 002 for 1,2,3,4,6,7,8-HpCDD was 3.80 pg/l, based on seven samples collected between May 2002 and May 2005. Multiplying by the TEF of 0.01, the relative toxicity of 1,2,3,4,6,7,8-HpCDD is 0.138 pg/l in Discharge 001 and 0.0380 pg/l in Discharge 002, both of which are above the CTR criterion of 0.014 pg/l. Therefore, the discharge has a reasonable potential to cause or contribute to an in-stream excursion above the CTR criterion for dioxin and congeners.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

Q. The Order, Salinity Limitations, page 7, inappropriately requires the City of Davis conduct a study of EC, boron, sodium and chloride levels to protect irrigated agriculture in the Yolo Bypass contrary to CWC 13267.

Current Waste Discharge Requirements, Order No. 5-01-067, included a requirement that the City of Davis complete the required study regarding the impacts of salinity. Similar studies have been completed by the University of California at Davis and the City of Woodland, two nearby domestic wastewater dischargers. The City of Woodland discharges into the Yolo Bypass just upstream of the City of Davis and the completed

study has been submitted to and reviewed by Regional Board staff. As cited above, a recent (May 2007) memorandum from Mr. Mark Gowdy, Regional Board staff specializing in salinity issues, to Ms. Diana Messina, NPDES Permitting Section, concluded that a study by the City of Woodland of Site Specific Objectives (SSO) for EC levels in the Yolo Bypass: “is based on assumptions that are not appropriate for developing EC SSO for the Tule Canal and downstream waterbodies.” This Regional Board staff memorandum further cites the *Ayers R.S. and D.W. Westcott – Irrigation and Drainage Paper No. 29* as “the basis for Basin Plan EC water quality objectives that provide protection of agricultural supply (AGR) beneficial uses at numerous locations in the region.” The City of Woodland discharges wastewater into the Yolo Bypass upstream of the City of Davis and the site specific study is relevant to the Davis wastewater discharge. Ultimately recent site specific studies confirm the Findings of the *Ayers R.S. and D.W. Westcott* report that irrigation waters with EC levels above 700 µmhos/cm will reduce crop yield for sensitive plants. The requirement to complete an additional study, when the requested information is readily available, is a waste of resources and time and appears to be an attempt to delay the proper regulation of salinity in the City of Davis’ wastewater discharge. CWC 13267 requires that the burden of technical reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the report. The information that could be gained from such a study already exists.

R. The Order contains a compliance schedule for virtually all regulated constituents based on “a new interpretation of the Basin Plan” as detailed in the Fact Sheet. The Regional Board fails to provide any explanation or definition of the “new interpretation” of the Basin Plan.

In a memorandum, dated 19 July 2002, to NPDES Staff from Kenneth Landau; Mr. Landau states in part that; “The critical factor in use of this “new interpretation” is that the previous Permit contains something that clearly indicates that a reasoned decision was made by the Board to grant mixing zones or not protect certain beneficial uses. This can include standards which are not measured for a considerable distance downstream, effluent limits obviously too large to be protective, or statements that “the ditch contains no fish”. Just because an existing permit is silent on an issue (for instance nothing was mentioned about drinking water protection), does not mean a “new interpretation” can be considered to occur.” The simple unsupported claim that there is a “new interpretation” of the Basin Plan is insufficient to claim coverage under State Board Order WQ 2001-06 at pp 53-55. The Regional Board has included compliance schedules for aluminum in enforcement orders for several years. The Regional Board must, at a minimum, define the old interpretation of the Basin Plan with respect to each constituent and how has it changed. The permit must be modified to include the details of the “new interpretation” or the compliance schedules moved to an enforcement order.

S. The Order allows eight years for the City of Davis to comply with tertiary treatment requirements contrary to the Basin Plan.

The Order, Final Effluent Limitations (i) allows eight years for the City of Davis to comply with tertiary treatment requirements contrary to the Basin Plan, *Policy for Application of Water Quality Objectives* (Policy WQO), page IV-17.00. The Basin Plan, Policy WQO, allows that where the Regional Board determines it is infeasible to achieve immediate compliance with water quality objectives; the Regional Board may establish a schedule of compliance in an NPDES permit. The Basin Plan requires that a compliance schedule be as short as practicable and shall not exceed ten years from the date of adoption of the criteria. Waste Discharge Requirements, Order No. 5-01-067, required tertiary treatment be completed before expiration of that Order (2006). Ten years from the date of adoption of Order No. 5-01-067 is 2011. The Regional Board may not grant a compliance schedule beyond 2011.

There is no evidence, other than unsubstantiated, unsupported, undocumented conclusory statements in the Order that the proposed compliance schedule is as short as practicable. To the contrary, the City of Davis has apparently squandered the period from 2001 to the present and has not accomplished any meaningful movement toward achieving tertiary treatment and protection of beneficial uses of the receiving stream. Other local surrounding wastewater treatment systems, the City of Woodland and the University of California at Davis already provide tertiary treatment. The Central Valley Regional Board has a long established successful practice of requiring tertiary treatment systems be completed within the life cycle of an NPDES permit (5-years). There is no explanation why the City of Davis cannot meet the standards that have been applied consistently and successfully throughout the Region. The proposed compliance schedule fails the Basin Plan's required tests that compliance be achieved within 10-years and the schedule is as short as practicable.

T. The Order, Fact Sheet, Hardness Discussion, inappropriately eliminates hardness data contrary to the CWC, Section 13377.

The Order, Fact Sheet, Hardness discussion states that low hardness data points were not used because they do not correspond to low flow periods. One would expect the low hardness periods to occur when the Yolo Bypass is flooded with Sacramento River water, periods of very high flow rates. This period has not been assessed for assimilative capacity for pollutants of concern and the low hardness data during this period is relevant to the toxicity of hardness dependent toxic metals. Failure to use this hardness data will result in artificially high Effluent Limitations for hardness dependent metals resulting in additional toxic discharges from the City of Davis contrary to the CWC, Section 13377. California Water Code, section 13377, requires that: "Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance."

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality 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 declining aquatic resources.

CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

- A. Vacate Order No. R5-2007-0132 (NPDES No. CA0079049) and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.
- B. Alternatively; prepare, circulate and issue a new order that is protective of identified beneficial uses and comports with regulatory requirements.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments and our 2 October and 19 May 2007 comment letters. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of: Mr. Keith Smith, Utilities Engineer, City of Davis, Department of Public Works, 23 Russell Blvd., Davis, CA 95616.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in 2 October and 19 May 2007 comment letters that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Jackson at (530) 283-1007.

Dated: 24 November 2007

Respectfully submitted,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachment No. 1: Order No. R5-2007-0132