

EXHIBIT 18



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

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lmw
Walsh
JKW

26 May 2013

Ms. Pamela C. Creedon, Executive Officer, Rancho Cordova
Mr. Ken Landau, Assistant Executive Officer, Rancho Cordova
Mr. Lonnie M. Wass, Supervising Eng., Fresno
Ms. Jill Walsh, SEA, Fresno
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: Administrative Civil Liability Complaint R5-2013-0527, Mandatory Minimum Penalties,
Malaga County Water District WWTF, Fresno County

Dear Messrs. Landau, Wass and Mesdames Creedon and Walsh,

The California Sportfishing Protection Alliance (CSPA) has reviewed the proposed Administrative Civil Liability Complaint (No. R5-2008-0583) for Malaga County Water District and submits the following comments.

On 23 January 2009, CSPA sent a letter providing comments on the proposed Administrative Civil Liability Complaint (No. R5-2008-0583) for Malaga County Water District. The proposed ACLC has not been finalized and has been replaced by ACLC R5-2013-0527. Our 23 January 2009 letter cited in part that:

The Malaga County Water District owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the unincorporated community of Malaga and industrial users. Non-domestic sewage comprises approximately 83 percent of the influent. Tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal).

"Exempted" Violations

The Regional Board exempted 108 violations not discussed in the mandatory minimum penalty for this time period; however this fact was not cited in the public documents for Administrative Civil Liability Complaint R5-2008-0583. The violations are available and were accessed from the State and Regional Board's database, CIWQS. The database shows that the violations were for exceedances of the electrical conductivity (EC) limitation and were exempted because the source water was not sampled on the same day as the wastewater discharge (effluent) or that the exceedance was less than 2% over the limitation. Recalling that the limitation states that:

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"Effluent [electrical conductivity or EC] shall not exceed that of source water plus 500 µmhos/cm, or 1000 µmhos/cm, whichever is less."

The NPDES permit Order 99-100 does not require sampling of the effluent and source water concurrently for the discharge limitation to be valid. Our review of the exempted violations also shows that the source water quality variability was minimal. The exempted violations are all reported as occurring in 2004 and 2007 with the exception of one which is reported as occurring in 2008. There is no explanation of the compliance period for 2005 and 2006. The exempted violations reporting also changed; the 2004 data indicates individual grab sample exceedances whereas the 2007 data indicates a monthly average (as is indicated by an "M" next to the data point). There is nothing in the permit which would indicate that the sampling or compliance period for EC is a monthly average. Monthly averaging of the data would likely result in fewer recorded violations than discrete points. The "exemption" from mandatory penalties is not justified; the discharge exceeded the discharge limitation.

Conclusion

The 108 exempted violations were not included, mentioned or discussed in Administrative Civil Liability Complaint R5-2008-0583. Therefore, it is reasonable to request the Central Valley Regional Water Quality Control Board to take appropriate enforcement, by issuance of MMPs, for the "exempted" violations. The State Water Resources Control Board, Office of Enforcement, should be requested to review their decision to designate Malaga CWD as a small community since 83% of the wastewater is from non-domestic sources.

The currently proposed ACLC, R5-2013-0527 improperly fails to include the "exempted" violations and therefore also fails to adequately assess adequate mandatory minimum penalties (MMPs) as is required under the California Water Code. The comments transmitted in our 23 January 2009 letter are still applicable to the currently proposed ACLC. A copy of our 23 January 2009 letter is attached and should be included along with this correspondence as CSPA's comments on the proposed ACLC for Malaga County Water District.

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

Cc: Cris Carrigan Esq., Office of Enforcement, SWRCB

Attachment: CSPA Comment Letter, 23 January 2009



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23 January 2009

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Malaga County Water District WWTF, Fresno County

Dear Mesdames Creedon, Kipps, Walsh and Messrs. Wass and Landau:

The California Sportfishing Protection Alliance (CSPA) has reviewed ACL R5-2008-0583 and acknowledges that the public comment period has expired. This letter addresses 108 exempted violations that were not included, mentioned or discussed in the circulated ACL R5-2008-0583 and requests that the Central Valley Regional Water Quality Control Board take appropriate enforcement regarding the "exempted" violations. Frankly, CSPA is disturbed by an apparent trend by the Regional Board to illegally exempt violations of Waste Discharge Requirements that require imposition of mandatory minimum penalties.

Malaga, a small community in Fresno County, owns and operates a wastewater collection, treatment and disposal system. The system is regulated under waste discharge requirements, an NPDES permit, issued by the Regional Board. Only 17% of the wastewater however is from domestic sources, 83% is from industrial sources, as we understand food processors. The Regional Board's Assistant Executive Officer recently issued an Administrative Civil Liability Complaint (R5-2008-0583) for mandatory minimum penalties (MMPs) amounting to \$9,000 as required by the California Water Code, Section 13385. The amount of the complaint was diverted to a compliance project as allowed under the California Water Code.

Our review of the State and Regional Board's database however indicated that 108 violations (\$324,000) of the permit Effluent Limitation for electrical conductivity (EC) were exempted and not cited in the complaint. Our review shows no legitimacy for exempting the violations. We are sympathetic to the small community. However this instance of violations appears to be caused and largely controllable by the local industry. If this proves to be the case, the community should properly recover its costs from the industrial discharger. We therefore request the Regional Board issue an Administrative Civil Liability Complaint for the 108

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“exempted” violations. Failure to issue the complaint will force us to petition the Board’s inaction to the State Board for consideration.

Administrative Civil Liability Complaint R5-2008-0583
Mandatory Minimum Penalty Assessment

The Malaga County Water District owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the unincorporated community of Malaga and industrial users. Non-domestic sewage comprises approximately 83 percent of the influent. Tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal).

The Permit

The wastewater discharge was regulated under WDRs Order 99-100 from 1999 through 14 March 2008 when the Central Valley Water Board adopted Order R5-2008-0033 to renew the NPDES Permit. WDRs Order 99-100 contain in part the following limitations:

- General Discharge Specification B.2 states, “effluent shall have a pH between 6.0 and 9.0 pH units.”
- WDRs Order 99-100 General Discharge Specification B.3 states, “Effluent [electrical conductivity or EC] shall not exceed that of source water plus 500 μ mhos/cm, or 1000 μ mhos/cm, whichever is less.”
- WDRs Order 99-100 Discharge 001 (Central Canal) Specification C.3 states, in part, effluent “turbidity shall not exceed a monthly average of 2 NTU and a daily maximum of 5 NTU.”

Assessed Violations

On 10 July 2008, the Regional Board issued Malaga CWD a Notice of Violation and a draft Record of Violations identifying violations of WDRs Order 99-100 that are subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violations covers the period of 1 February 2004 through 30 April 2008, an MMP had been issued previously to cover violations prior to 2004. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) violation of the effluent turbidity limitation, two (2) violations of the effluent pH limitation, and five (5) violations of the effluent EC limitation during the period of 1 February 2004 through 30 April 2008. Attachment A, a part of this Complaint, identifies these eight effluent limitation violations, of which three are chronic violations subject to MMPs totaling nine thousand dollars (\$9,000) pursuant to CWC section 13385(i).

The California Water Code

CWC section 13385(i) requires assessment of mandatory penalties and states, in part, the following: Notwithstanding any other provision of this division, and except as provided in

subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

CWC section 13385 (k)(1) states, in part: In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following: (A) The compliance project is designed to correct the violations within five years. (B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section. (C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

CWC section 13385 (k)(2) states, in part: For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

On 21 August 2008, Central Valley Water Board staff received a memorandum from the Executive Director of the State Water Board confirming that the Discharger's WWTF is a publicly owned treatment works serving a small community with a financial hardship within the meaning of CWC section 13385(k)(2).

The \$9,000 penalty was diverted to a compliance project.

"Exempted" Violations

The Regional Board exempted 108 violations not discussed in the mandatory minimum penalty for this time period; however this fact was not cited in the public documents for Administrative Civil Liability Complaint R5-2008-0583. The violations are available and were accessed from the State and Regional Board's database, CIWQS. The database shows that the violations were for exceedances of the electrical conductivity (EC) limitation and were exempted because the source water was not sampled on the same day as the wastewater discharge (effluent) or that the exceedance was less than 2% over the limitation. Recalling that the limitation states that:

“Effluent [electrical conductivity or EC] shall not exceed that of source water plus 500 µmhos/cm, or 1000 µmhos/cm, whichever is less.”

The NPDES permit Order 99-100 does not require sampling of the effluent and source water concurrently for the discharge limitation to be valid. Our review of the exempted violations also shows that the source water quality variability was minimal. The exempted violations are all reported as occurring in 2004 and 2007 with the exception of one which is reported as occurring in 2008. There is no explanation of the compliance period for 2005 and 2006. The exempted violations reporting also changed; the 2004 data indicates individual grab sample exceedances whereas the 2007 data indicates a monthly average (as is indicated by an “M” next to the data point). There is nothing in the permit which would indicate that the sampling or compliance period for EC is a monthly average. Monthly averaging of the data would likely result in fewer recorded violations than discrete points. The “exemption” from mandatory penalties is not justified; the discharge exceeded the discharge limitation.

Conclusion

The 108 exempted violations were not included, mentioned or discussed in Administrative Civil Liability Complaint R5-2008-0583. Therefore, it is reasonable to request the Central Valley Regional Water Quality Control Board to take appropriate enforcement, by issuance of MMPs, for the “exempted” violations. The State Water Resources Control Board, Office of Enforcement, should be requested to review their decision to designate Malaga CWD as a small community since 83% of the wastewater is from non-domestic sources.

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

Sincerely,



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Comments due 12/30/08, received 1/23/09

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