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SUBJECT: **MALAGA COUNTY WATER DISTRICT, CONSIDERATION OF CIVIL LIABILITY, PROSECUTION TEAM RESPONSE TO COMMENTS BY CSPA**

The California Sportfishing Protection Alliance (CSPA) commented on the notice of the July 2013 hearing regarding civil liability of the Malaga County Water District (District). At issue is whether a number of daily Electrical Conductivity (EC) records entered into the California Integrated Water Quality System (CIWQS) as violations then dismissed are, in fact, violations and subject to assessment of minimum mandatory penalties.

For background, to control mineralization in the closed Tulare Lake Basin, the Water Quality Control Plan for the Tulare Lake Basin, Second Edition, includes in its implementation chapter the following for discharges to navigable waters:

> "The maximum electrical conductivity (EC) of a discharge shall not exceed the quality of the source water plus 500 micromhos per centimeter or 1,000 micromhos per centimeter, whichever is more stringent. When the water is from more than one source, the EC shall be a weighted average of all sources."

This has been implemented in discharge permits through the years, and was in the 1999 permit for the Malaga County Water District almost verbatim. WDR Order R5-1999-100 included the following limitation (General Discharge Specification B.3):

> "Effluent EC shall not exceed that of the source water plus 500 µmhos/cm, or 1000 µmhos/cm, whichever is less."

The manner to determine compliance with this EC limit was not specifically defined in the 1999 order and may be interpreted in different ways. Effluent samples were required to be sampled daily. Samples of the District's source water supply (wells) were required to be sampled quarterly, and a flow weighted average of the source water determined on a quarterly basis.

Consequently, prior to 2008, staff had, in reviewing discharger monitoring reports submitted by the District, interpreted this limit to mean a daily, instantaneous limit and compared the daily effluent EC to the flow weighted quarterly average EC of the source water. Staff entered into the California Integrated Water Quality System (CIWQS) as violations readings for each day a daily grab sample exceeded 500 µmhos/cm of the flow weighted average of the EC for the quarter.

In reviewing these data for determining mandatory penalties, the enforcement team considered the problems with how compliance was determined. First, from the sampling of the District's wells, and knowing how much water was pumped from each well during the quarter, one *could* calculate the flow weighted average of electrical conductivity of the supply. But that did not mean that the calculated average would accurately reflect the source water conductivity on the day that the effluent gab sample was collected. Therefore, the enforcement team dismissed any daily violation unless source water was measured on that day.

This manner of determining compliance was not unique to this instance. Enforcement staff considered the data for determining compliance with the limit in the previous review of data and the assessment of MMPs in 2006. In 2001, the Office of the Chief Counsel put out a Question and Answer document to assist in implementation of the Clean Water Enforcement and Prevention Act of 1999. Q&A No. 39 says that MMPs are different than regular ACLs in that boards should only impose MMPs for actual monitoring data points, and not extrapolate if there is any doubt about the data. For consideration of all such data, the enforcement team used caution in reviewing it and gave dischargers the benefit of the doubt in concluding whether data showed violations.

Enforcement staff has proposed assessment of MMPs when the daily sampling of the effluent EC (prior to the 2008 WDR) clearly showed it exceeded the maximum effluent limitation of 1000 µmhos/cm. However, the instrumentation used by the District for measuring EC is, according to the manufacturer of the instrument, reliable within two percent. The enforcement team dismissed any potential violations that were less than two percent over the limit.

As a result of the aforementioned reviews, the enforcement team dismissed a number EC data entries (by the count of the enforcement team, it was 82 instances and not 108 as purported by CSPA), determining that there was enough doubt as to whether the recoded data did, in fact, show violation of the permit.

The issue of ambiguity of how to determine compliance with effluent EC in the Tulare Basin was not unique to the Malaga permit, but was ubiquitous to many of the WDRs in the Tulare Basin, both for land and surface water disposal. In 2008, Regional Water Board staff took a broader look at the Basin Plan implementation policy and how it was being reflected in waste discharge requirements. The policy stems from recognition of a need to control mineralization of the groundwater of the Tulare Lake basin. So staff looked at whether or not it made sense to require dischargers to meet daily, instantaneous limits to minimize the overall mineralization in the basin. Staff concluded that it did not make sense---the quality of water in the Tulare Basin depends on flow and quality of wastewater over a sustained period of time and daily changes in effluent quality have little or no effect in groundwater quality. Therefore, permits written in 2008

and after have reflected limits necessary to sustain the quality of the water that is recharging the groundwater. For example, the District's current permit (WDR R5-2008-0033) regulating the District includes the following effluent limitation (Effluent Limitation IV.A.2):

> "As an average monthly EC, exceed the monthly flow-weighted average of EC in the source water plus 500 µmhos/cm, or a total of 1,000 µmhos/cm, whichever is more stringent."

Conclusion

The records of daily EC readings in question are not clearly violations of General Discharge Specification B.3 of WDR Order R5-1999-100 and, because there is reasonable doubt as to whether they were violations, should not subject the District to mandatory minimum penalties.