



REGIONAL WATER QUALITY CONTROL BOARD

June 30, 2011

SUMMARY OF Q&A WITH WDCWA BOARD

BACKGROUND

The Cities concluded in 2008 that a regional surface water supply project is the least-costly and most environmentally-friendly way to meet current and future anticipated water quality regulations, both for drinking water and wastewater discharges. This project was developed after decades of water supply planning, an exhaustive review of alternatives, reviews by two independent bodies, objectives adopted through various actions by the City Councils of Woodland and Davis, and consideration of water quality mandates imposed by the Regional Water Quality Control Board (RWQCB).

The connection between this project – which will greatly improve water quality and water supply reliability – and wastewater discharge permit requirements is somewhat complex. The project will result in reduced salinity and other contaminants of concern in wastewater discharges, as per future anticipated requirements of the Cities' wastewater discharge permits. However, there is some speculation that the Regional Water Quality Control Board will ease restrictions on constituents in wastewater discharges, most notably salinity. Further, a recent court decision involving the City of Tracy reaffirms that when setting water quality objectives, the State Water Resources Control Board, and by extension the RWQCB, must consider a number of factors, including economics. These, in particular, have been cited by those concerned about costs as potential reasons to delay the water supply project.

On June 30, 2011, Ken Landau, Deputy Executive Officer of the Central Valley Regional Water Quality Control Board and Dianna Messina, Supervising Engineer with the Central Valley Regional Water Quality Control Board, addressed these issues and other questions from the Woodland-Davis Clean Water Agency Board. To follow is a summary of the key points (a full transcript is available upon request). Ms. Messina supervises the National Pollutant Discharge Elimination System (NPDES) permits that regulate discharges into surface water. She works directly with Woodland and Davis, UC Davis, and dischargers from Stanislaus County to Butte County. As Deputy Executive Officer, Mr. Landau is responsible for overseeing the establishment of all permits that set limits for constituents in surface water discharges and establish timelines for compliance, as well as setting total maximum daily load (TMDL)s, basin planning, and other issues relating to surface water in the Central Valley.

KEY POINTS

- Woodland and Davis have compliance time schedules for meeting certain requirements for some pollutants in their respective wastewater discharge permits for certain pollutants (Woodland – 2016; Davis – 2017). For other pollutants, the time schedules for compliance may vary. Each city is required to comply.
- Under state law, the Regional Water Quality Control Board will be required to impose mandatory minimum penalties, if the cities do not meet final effluent limitations set forth in their wastewater discharge permits. A \$3,000 penalty is assessed for each violation.
- The RWQCB, based upon very specific findings, may establish interim limits and schedules of compliance for certain constituents for no more than for ten years. For other constituents, the RWQCB may only protect the cities from mandatory minimum penalties for no more than five years. During that period, the discharger must comply with the interim limits and demonstrate progress toward meeting the permit requirements (constructing a project, for example). If the discharger does not comply with the interim limits, it will be responsible for paying the mandatory minimum penalties.

- For those constituents limited to protection from mandatory minimum penalties for a five-year period, if the RWQCB can make findings that a project is planned to meet permit requirements and that the discharger has been diligent during that first five years in trying to achieve compliance, then the RWQCB has the discretion to grant up to an additional five years. The RWQCB must be able to make the finding that the time period to achieve compliance is the shortest, most practical time period. This is an enforcement order action.
- If a community is not moving forward with a project that will aide in meeting wastewater discharge standards as set forth in an adopted permit, the RWQCB can assess discretionary fines up to \$10,000 a day, plus \$10 a gallon for every gallon discharged. Under state law, the RWQCB may also collect the amount of money saved by not coming into compliance, at a minimum (the cost of a project, for example).
- The RWQCB has assessed and collected fines against dischargers who violate effluent limits, and continues to do so.
- By state law, the RWQCB is prohibited from dictating how a discharger achieves compliance with permit requirements. The RWQCB sets the discharge limit(s), and the discharger proposes a plan to meet the requirements.
- The surface water project was being planned long before the RWQCB started applying pressure on either of the cities to reduce salinity in their wastewater discharges. When the cities, in partnership with the RWQCB, started evaluating what was needed to reduce salinity at their wastewater treatment plants, it made sense to use the surface water project as the compliance project. The project meets multiple objectives.
- The existing effluent limitations for salinity in the Davis and Woodland permits are based on the wastewater plants' current performance, and the Cities are able to comply. It is anticipated that both Davis and Woodland may receive effluent limitations for salinity based on more restrictive standards in the future. There are studies in progress to determine those limits. According to Mr. Landau, "I cannot foresee any number in a permit that would allow you to continue to discharge anywhere near the concentrations of salt that you're putting out right now. So, a major reduction in salt will be necessary."
- Besides salinity limits, both the Cities of Davis and Woodland must also meet existing effluent limitations for selenium. The time for compliance with selenium effluent limits are 2015 for Davis and 2016 for Woodland. The Water Supply Project is one option for meeting the selenium effluent limitations.
- Salinity effluent limits and related court challenges for the City of Tracy are not applicable for Woodland and Davis. Salinity standards for the Delta are set by the State Water Board and are different than those that may be imposed on Davis and Woodland.
- By law, if a community is not diligently pursuing use of its water rights, the State Water Board can revoke those rights. During the hearings for the water right applications, the Cities made a strong case that the water right applications were predicated on near-term needs for surface water to meet water quality and wastewater discharge regulations. The applications were not based on growth and future needs, which inherently require more time to use the water for reasonable and beneficial use.

SUMMARY COMMENTS FROM KEN LANDAU:

"Both Davis and Woodland have real problems with salinity in their wastewater. State and federal law requires us to get you to fix it. The water supply project has the advantage of fixing the wastewater problem and providing other benefits to the community in terms of water supply, quality and reliability. There are other alternatives to achieving compliance that, as I'm remembering, cost as much or more than the water supply project, and only fix the wastewater. In terms of calling our bluff, our RWQCB generally isn't all that excited about shutting down communities. There's a point at which, particularly with mandatory penalties and even beyond mandatory penalties, those can't just go on forever or we will have to take stronger enforcement action. If you come up with another project that takes a year or so longer, we might be fine with that. If you come up with another project that takes five or ten years longer, I doubt it. If you come up with no project at all, we probably won't have any choice but to start ratcheting up the pressure from our side. It would be time schedules and fines. And again, how much will we fine the community, over what period of time, I don't know. The potential is there for buying the cities very quickly, the way the fine structures are set up. But, the Water Board has a lot of discretion in terms of the amount, except that we are required by law, by regulation actually, to recover the savings that the communities are enjoying by not complying, and that could be a very enormous minimum amount."