

**Ken Berry 10567 Mariposa Avenue, Jackson, CA 95642 berry-k@sbcglobal.net**

October 2, 2008

**Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114**

**Re: City of Grass Valley Wastewater Treatment Facility  
Cease and Desist Order No R5-2008-XXXX**

The Central Valley Regional Water Quality Control Board (R5WB) proposes to approve a Cease and Desist Order (CDO) at its regular meeting to be held on December 4/5, 2008. Approval of the proposed CDO would establish a schedule for the City of Grass Valley to develop and implement a plan to cease discharging certain pollutants to Wolf Creek.

The proposed action may be unlawful because it may violate the requirements of the California Environmental Quality Act (CEQA, Public Resources Code (PRC) §21000 and following). In particular, Finding No. 15 of the proposed CDO cites Title 14 of the California Code of Regulations (14 CCR) §15321(a)(2) as the authority for not preparing an environmental analysis. 14 CCR §15321 is a Categorical Exemption.

However, 14 CCR §15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a CDO is issued pursuant to Water Code (WC) §13301 or §13304 concerning the discharge of hazardous materials. "Hazardous materials" are defined in Health and Safety Code (HSC) §25501(o).

Finding No. 7 of the proposed CDO identifies the authority for taking the action as WC §13301.

Finding 15 contains a detailed discussion of why the R5WB believes the action is exempt from CEQA. 5 independent reasons are given: 1) the CDO is not a project within the meaning of CEQA, 2) the CDO is indefinite because the Discharger will select a control measure, 3) the CDO is exempt because it is an NPDES permit (Water Code (WC) §13389), 4) the CDO implements an NPDES permit, and 5) the CDO is exempt by 14 CCR §15321. It appears that none of these reasons are valid, as discussed below.

Reason 15.5 is invalid on its face, as stated above. Reasons 15.3 and 15.4 are also invalid because WC §13389 applies to permits issued pursuant to the Clean Water Act (CWA), including NPDES permits, and the CDO is not such a permit. If a CDO is required, then CEQA may apply, depending on State law, not the CWA. WC §13389 codifies in CA law a provision of the CWA.

Reason 15.2, that further study is required in the form of the Discharger choosing a treatment method, is an invalid reason for not preparing an environmental document. The determination of mitigation measures is the purpose of the environmental document. Tiering may be used to proceed with a project while details are determined that cannot be known at the outset.

Furthermore, Reason 15.2 appears to negate Reason 15.1. Reason 15.2 specifically mentions "potential adverse effects". Apparently this action does have the potential to adversely affect the environment and it meets the definition of a project under CEQA.

Finding 16 gives another reason for not complying with CEQA, namely that a Mitigated Negative Declaration (MND) has already been prepared by the City of Grass Valley. Reason 2 in Finding 15 prevents the R5WB from relying on the MND. Therefore it appears that the R5WB must prepare an environmental document.

However, Finding 16 identifies an environmental document already prepared pursuant to CEQA. The existence of a previously prepared environmental document ought to significantly reduce the amount of analysis required at this time.

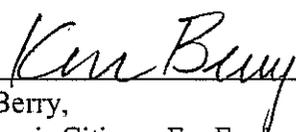
Has the R5WB considered adopting a MND for this project that incorporates the previous MND and makes a finding that the determination of the source control measures mentioned may or may not require preparation of an EIR or MND at a later time?

Our concern is over projects for which no environmental analysis is performed. While this project appears to meet that criteria, there has been previous environmental analysis. Conformance with CEQA may be an issue with the form of the CDO rather than the substance of the project.

This comment is submitted pursuant to CEQA and is submitted on my behalf and behalf of the California Citizens for Environmental Justice. Violation of GC §65962.5 and 14 CCR §15300.2 are is long standing and widespread practice of the State Water Resources Control Boards (SWB) and the Regional Water Quality Control Boards (RWBs), of which R5WB is one.

You may call me at 209-223-1769 if you have any questions.

Sincerely,

  
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Ken Berry,  
California Citizens For Environmental Justice

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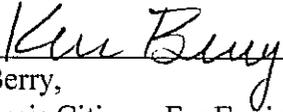
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**Re: City of Grass Valley Wastewater Treatment Facility**

Please include me in the mailing list for notices concerning this facility pursuant to Public Resources Code (PRC) §21092.2.

You may call me at 209-223-1769 if you have any questions.

Sincerely,

  
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Ken Berry,  
California Citizens For Environmental Justice