

ATTACHMENT B

Bear Valley Water District Comments to the Tentative Permit Alternative and Associated Time Schedule Order

Pursuant to Bear Valley Water District's (District) transmittal letter, the District submits the following analysis and detailed comments on the Tentative Permit Alternative (Alternative) and accompanying Time Schedule Order for the renewal of NPDES NO. CA 00085146. Based upon the following analysis, the District believes the Tentative Permit Alternative is fundamentally flawed and is not an appropriate Alternative for the Board's consideration.

I. Tentative Permit Alternative Comments & Analysis

The District's comments to the Alternative can be generally summarized as follows:

- A. The Water Quality Based Effluent Limits (WBELs) are based upon technology equivalent requirements to meet water quality standards. The Tentative Permit Alternative analysis incorrectly establishes Water Quality Objectives (WQOs) for Bloods Creek and does not properly follow the implementation plan for establishing numerical standards as contained in the Sacramento San Joaquin River Basin Plan (Basin Plan). A reasoned case-by-case analysis of the facts surrounding Bloods Creek does not warrant or justify Title 22 tertiary treatment requirements.
 - B. The Tentative Permit Alternative disregards the recommendation of the California Department of Health (DPH) that secondary treatment with a 20:1 dilution ratio is protective of public health for discharge to Bloods Creek.
 - C. The Tentative Permit determines that Title 22 Tertiary Standards¹ are required due to Clean Water Act Anti-backsliding requirements. The requirements of Anti-backsliding are not appropriate and new information would justify backsliding if necessary.
 - D. The Tentative Permit Alternative does not consider factors required by California Water Code Section 13241 in setting WQOs in excess of those required in the Basin Plan.
- A. The Alternative contains effluent limitations for BOD₅, Total Suspended Solids (TSS), Turbidity, and Coliform organisms that are not applicable Water Quality Based Effluent Limitations (WQBELs).

The Alternative justifies Title 22 tertiary effluent limitations based upon a technology equivalency standard and derivation of WQBELs on an improper and inappropriate Water

¹ See CCR, Division 4, Chapter 3 (Title 22).

Quality Objective, (WQO), Title 22 pathogen standards through an apparent derivation of a numerical standard from the Basin Plan narrative chemical objective.

The alternative does not properly follow the implementation plan for establishing numerical standards as contained in the Basin Plan. A reasoned case-by-case analysis of the facts surrounding Bloods Creek does not warrant or justify Title 22 tertiary treatment requirements.

The Clean Water Act (CWA) requires that effluent limits and treatment required to meet the limits be based on water quality standards. Title 22 tertiary treatment effluent limitations cannot be based upon improper water quality standards.

1. Establishment of Water Quality Objectives and WBELs

Under the Clean Water Act², an NPDES permit must contain technology-based effluent limitations and any more stringent standards (WQBELs) to achieve water quality standards.³ WQBELs are required where any pollutant may be discharged at concentrations or levels that cause or have the reasonable potential to cause or contribute to the exceedance of a water quality standard. A Reasonable Potential Analysis (RPA) is required to determine what pollutants may require a WQBEL.

Water quality standards consist of beneficial uses, water quality criteria to protect beneficial uses and an anti-degradation policy.⁴ In California, water quality criteria are referred to as water quality objectives (WQOs). WQOs may be either numeric or narrative. The Central Valley's Basin Plan contains both narrative and numeric WQOs for Bloods Creek and the Stanislaus River.⁵

The applicable Basin Plan numerical WQO for pathogens in the Stanislaus River and by the tributary rule to Bloods Creek is as follows:

“In water designated for contact recreation (REC-1), the fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed the geometric mean of 200 MPN/100 ml, nor shall more than ten percent of the total number of samples taken during any 30-day period exceed 400 MPN/100 ml.”

The Basin Plan also contains narrative objectives for both Chemical Constituents and Toxicity as follows:

² 33 USC Section 1251 et seq.

³ See id. Sections 1311, 1342.

⁴ 33 USC Section 1313(c) (2) (A); 40 CFR Section 131.6.

⁵ See Table II-1, Water Quality Control Plan for the Sacramento and San Joaquin River Basins (4th ed. 1998).

Chemical Constituents: “Waters shall not contain chemical constituents in concentrations that adversely affect beneficial uses.”

Toxicity: “All Waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.”

The Basin Plan at IV-17.00 in its Implementation chapter describes the process for establishing numerical standards from narrative objectives as follows:

“To evaluate compliance with the narrative water quality objectives, the Regional Water Board considers, on a case-by-case basis, direct evidence of beneficial use impact, all material and relevant information submitted by the discharger and other interested parties, and relevant numerical criteria and guidelines developed and/or published by other agencies and organizations In considering such criteria, the Board evaluates whether the specific numerical criteria, which are available through these sources and through other information supplied to the Board, are relevant and appropriate to the situation at hand and, therefore, should be used in determining compliance with the narrative objective. (Emphasis Added)

2. *The Alternative Permit’s Stated Basis for determining Narrative WQOs Utilizing the Basin Plan’s Implementation Chapter.*

To derive numerical water quality objectives from a narrative objective, the Regional Water Board considers all material and relevant evidence to determine, on a case-by-case basis, water quality objectives. (Basin Plan at IV-17.00).

To justify Title 22 tertiary treatment standards as the WQO for Pathogens relevant and appropriate to the District’s discharge, the follow is a summary of the Alternative’s findings:

- The Alternative at Section IV.C.1 (Fact Sheet, pg 7) states: “*This Order contains requirements, expressed as a technology equivalence requirement, more stringent than secondary treatment requirements that are necessary to meet applicable water quality standards. The rationale for these requirements, which consist of tertiary treatment or equivalent requirements, is discussed in section IV. C.3. c. viii of this Fact Sheet*”. (Emphasis Added)
- Section IV. C.3 c. viii of the Fact Sheet at pages 7 & 8 under subheading viii. Pathogens (a) WQO states: *Title 22 is not directly applicable to surface water; however, the Regional Water Board finds that it is appropriate to apply an equivalent level of treatment to that required by DPH’s reclamation criteria because the receiving water is used for irrigation of agricultural land and for contact recreation purposes. The stringent disinfection criteria of Title 22 are*

appropriate since the undiluted effluent may be used for the irrigation of food crops and/or body contact recreation. (Emphasis Added)

The next paragraph continues at page 8... *“In site-specific situations where a discharge is occurring to a stream used as domestic water supply without treatment, DPH has recommended the same Title 22 tertiary treatment requirements for the protection of MUN, as well as protecting REC-1 and AGR. DPH has also recommended a 20:1 dilution ratio in addition to the Title 22 tertiary treatment requirement where there are existing domestic water users of raw water near the treatment plant outfall.”* (Emphasis Added)

- Finally, at page 11, the Alternative references the chemical constituent narrative, and the implementation plan for determining numeric water quality objectives. It concludes: *“Pathogens are not bio-accumulative, so discharges at the permitted levels in this Order do not threaten potential uses of the receiving water for untreated domestic use. Therefore, the requirement to implement tertiary treatment and 20:1 dilution protects beneficial uses and is appropriate for this discharge under the case-by-case approach.”* (Emphasis Added)

3. *The Tentative Permit Alternative rationale for tertiary WQOs is not supported by site-specific facts, and is not relevant and appropriate to the situation at hand and, therefore, should not be used in determining compliance with the narrative objective.*

- a. *No undiluted domestic or irrigation usage.*

*At Page F-17 of the Fact Sheet Section in Section IV.C.2.a.i. the finding states: “In addition, the State Water Board has issued water rights to existing water users along Bloods Creek and the North Fork Stanislaus River downstream of the discharge of domestic and irrigation uses”. However, the water rights cited in the TWDR Fact Sheet Section IV.C.2.a.i. are *upstream* of the BVWD discharge point.*⁶

The probability that new water rights will be secured on Bloods Creek downstream of the BVWD discharge point is low because the Stanislaus River and its tributaries, including Bloods Creek, are listed on the most recent State Water Resources Control Board Declaration of Fully Appropriated Streams, dated November 19, 1998. Furthermore, lands downstream of the discharge are U.S. Forest Service property managed as forest habitat and no new uses are anticipated.⁷

⁶ See attached letter date June 22, 2011 from CondorEarth Technologies by John H. Kramer, PhD, Certified Hydrogeologist No. 182. (Attachment A-1)

⁷ Ibid.

The nearest water right, F006737S, of 100 gallons per day held by the United States Forest Service on the North Fork of the Stanislaus River at Sand Flat Campground is approximately 4 miles downstream of the discharge point.⁸

Boy Scout Camp Wolfboro, located downstream of the Sand Flat Campground, uses well water. The next downstream rights available for consumptive use are over 10 miles downstream from the discharge point, and the only active one is approximately 21 miles downstream. This take-out point is for raw water subsequently treated at certified treatment plants operated by UPUD, the City of Angels Camp and CCWD⁹.

Also at page F-17, Fact Sheet Section IV.C.2.a.i. incorrectly asserts: “In addition to existing uses, growth in the area downstream of the discharge is expected to continue, which presents a potential for increased domestic and agricultural uses of the water in Bloods Creek.”

The area downstream of the BVWD discharge is public forest lands for tens of miles with no potential for private development. This fact was documented in an EIR certified by Alpine County (SCH#2006012049) and accepted by the State Water Resources Control Board – Division of Water Rights in their Decision 1648 dated March 17, 2009. Water uses that could be measurably affected by BVWD discharges are fixed and will not increase in any significant manner.¹⁰

There are no existing water rights or any evidence of domestic water users *near the treatment plant outfall* on Bloods Creek downstream of the WWTF discharge point.¹¹

As the above clearly demonstrates, there are no domestic or irrigation intakes on Bloods Creek that would potentially use undiluted wastewater.

⁸ See attached memorandum from Julio Guerra, District Manager, dated 16 April 2011 analyzing existing water rights on Bloods Creek (Attachment B.1) and letter date June 22, 2011 from CondorEarth Technologies by John H. Kramer, PhD, Certified Hydrogeologist No. 182. (Attachment A-1)

⁹ Ibid. 6.

¹⁰ Ibid. 6.

¹¹ See attached memorandum from Julio Guerra, District Manager, dated 16 April 2011 analyzing existing water rights on Bloods Creek. (Attachment B.2)

b. *No direct recreational contact*

At page F-18, the Fact in Section IV.C.2.a.ii. of the Tentative Permit asserts: “There is ready public access to Bloods Creek, exclusion of the public is unrealistic and contact recreation activities currently exist along the North Fork Stanislaus River (downstream of discharge point) and these uses are likely to increase as the population in the area grows”.

The contention that Bloods Creek and the downstream recreational uses on the North Fork and main stem of the Stanislaus are readily accessible is generally not true at times of permitted discharge to Bloods Creek (1 January to 30 June). At these times, recreational use is dominated by cross country skiers who do not contact the flowing stream. Trails close when conditions are too wet. Nearest vehicle access to the Bloods Creek drainage downstream of the BVWD discharge is at a campground operated by the Northern California Power Authority near the crossing of the Spicer Access Road approximately 2.5 miles downstream of the discharge point. This campground is closed to public access until June. Prior to that time, accumulated snow typically restricts access to the stream. Furthermore, it is very unlikely that early season recreational users in June would experience exposure to Bloods Creek due to high flows and cold water temperatures.¹²

The Tentative Permit Alternative restricts duration of the discharge and requires stream flow dilution prior to a discharge. The period of highest potential contact recreation is prohibited Under Discharge Prohibitions III, at Page 9 of Tentative Permit:

“E. Discharge to Bloods Creek between 1 July and 31 December is prohibited.”

F. The discharge of treated effluent to Bloods Creek in quantities which do not receive a minimum of 20:1 dilution (receiving water flow: effluent flow) is prohibited.”

In a 1 February 2011 letter to Jim Marshall, Senior Engineer, Regional Board staff, District Engineer Gary Ghio calculated that under the 20:1 discharge specification, actual dilution would be approximately 69:1 due to snow melt in the polishing reservoir supplementing the evidence to support the conclusion that neither domestic supply or contact recreation would occur with undiluted waste water.¹³

¹² Ibid. 6.

¹³ See attached letter dated 1 February 2011 to Jim Marshall, Senior Engineer, CRWQCB, CVR, from Gary S. Ghio, District Engineer. (Attachment B.3)

As the above analysis demonstrates, no direct contact recreation will occur with undiluted effluent. In addition, the permit prohibits a discharge with less than a 20:1 dilution providing a safety factor to ensure no direct use of treated wastewater will occur.¹⁴

4. *The Alternative does not Adequately Perform a Reasonable Potential Analysis to Establish WBELs.*

WQBELs are required where any pollutant may be discharged at concentrations or levels that cause or have the reasonable potential to cause or contribute to the exceedance of a water quality standard. An RPA is required to determine what pollutants may require a WQBEL.

The Order must establish WQOs to determine if there is reasonable potential to exceed water quality standards prior to the establishment of WBELs. The Alternative states that the Order contains technology equivalent requirements more stringent than secondary treatment to meet applicable water quality standards. However, the water quality standards must be first determined by a complete RPA that would justify technology equivalent requirements.

The Alternative at page 12 **(b) RPA Results** indicates:

“MUN, AGR and REC-1 are beneficial uses of Bloods Creek. Domestic wastewater contains pathogens that could impact these beneficial uses. Therefore effluent discharged to Bloods Creek must be adequately disinfected.”

The Alternative continues at page 12 & 13 **(c) WBELs**:

“In accordance with the requirements of Title 22 this Order includes effluent limitations for total coliform organisms

Final WQBEL's for BOD₅, TSS are based on the technical capability of the tertiary process, which is necessary to protect the beneficial uses of the receiving waters.

The RPA simply states that the effluent must be disinfected.

The Alternative contains no *relevant and appropriate* findings pursuant to the Basin Plan Implementation Section to justify a WQO of Title 22 Tertiary Treatment, the same as for direct reuse of wastewater. The proposed WQBELs cannot be justified based upon an RPA analysis conducted utilizing an improper WQO. Similarly, technology equivalent requirements more stringent than secondary treatment cannot be justified to meet applicable water quality standards.

¹⁴ See attached memorandum from Julio Guerra, District Manager, dated 21 April 2011 analyzing potential recreation. (Attachment B.4)

The appropriate WQO for coliform based upon the dilution requirements of 20:1 is secondary treatment with a 23 MPN/100 ml 7 day median and 240 MPN/100 ml daily maximum.

B. *Tentative Permit Alternative Disregards DPH's Recommendation regarding the Use of Title 22 Tertiary Standards for Surface Waters possessing MUN, AG and RECI Beneficial Uses.*

Although the Board retains the ultimate responsibility and authority under the CWC and Clean Water Act to establish effluent requirements, the Board has historically relied upon DPH's recommendations to protect public health from wastewater discharges.

DPH, in a letter to the Regional Board dated 8 April 1999, indicated that wastewater discharged to water bodies with designated beneficial uses of irrigation or contact recreation and where the wastewater receives dilution of more than 20:1 would be adequately disinfected if the effluent coliform concentration does not exceed 23 MPN/100 ml as a 7-day median and effluent coliform concentration does not exceed 240 MPN/100 ml more than once in any 30 day period. In July 2003, DPH reconfirmed its prior position and stated: "*A filtered and disinfected effluent should be required in situations where critical beneficial uses (i.e., food crop irrigation, body contact recreation) are made of the receiving water unless [emphasis added] a 20:1 dilution ratio is available. In these circumstances, a secondary, 23 MPN discharge is acceptable.*"¹⁵

Upon review of the District's revised report of waste discharge and the calculations provided by the District's Engineer, DPH provided a letter dated 1 March 2011 to the Board consistent with prior DPH guidance. DPH recommended that tertiary treatment not be required for the District's WWTF discharge, provided six conditions be included in the permit.¹⁶

Notwithstanding DPH's recommendation regarding the inapplicability of Title 22 requirements to the District's discharge, the Alternative, without appropriate rationale, requires compliance with Title 22 tertiary treatment standards.

C. *The Requirements of Anti-backsliding are not Appropriate and in Any Case, New Information Would Justify Backsliding if Necessary.*

1. *Anti-backsliding Requirements are Not Applicable*

Water Quality Based Effluent Limitations (WBELS) are end of pipe effluent limits that are established to protect the beneficial uses of the receiving waters. Anti-backsliding is not a justification for tertiary WBELS since the Alternative establishes new WBELS requiring tertiary treatment standards. Order No. R5-2005-0139 applied tertiary

¹⁵ Letter dated 1 July 2003, to Thomas R. Pinkos, Executive Officer, CRWQCB, CVR, from David P. Spath, Chief, Division of Drinking Water and Environmental Management. (Not attached.)

¹⁶ See attached letter dated 1 March 2011 to Dianna C. Messina, Supervising Engineer, CRWQCB, CVR from Carl L. Carlucci, P.E. Supervising Engineer, CDPH. (Attachment B. 5)

standards to an internal waste stream, not as effluent limits; pursuant 40CFR122.45(a), “... *effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(k) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).*” The secondary effluent limits on discharges to Bloods Creek are the governing factor in this consideration, consequently the internal waste stream tertiary limits do not appear to be supported by regulation as no use requiring tertiary treated water out of the Polishing Reservoir existed.

The Alternative asserts Title 22 tertiary treatment is required in the following statement: “Although DPH revised their recommendation, this Order retains tertiary level of treatment, or equivalent, prior to discharges to Bloods Creek in accordance with anti-backsliding requirements and consistent with Order No. R5-2005-0139 (as amended By Resolution No. R5-2008-0141”. (Alternative in Section IV. C. 3.c.v.iii at page 11)

The reasonable potential analysis in Order No. R5-2005-139 analyzed for pathogens and determined that secondary treatment with a dilution of 20:1 and effluent concentrations of 23 MPN/100 ml and 240 MPN/100 ml were sufficient to protect the beneficial uses of Bloods Creek. In Order No. R5-2005-0139 at *B. Effluent Limitations-Discharges to Bloods Creek by Outfall 01* limits the discharge to 7-day Median 23 MPN/100 ml and Daily Maximum 240 MPN/100 ml for Total Coliform organisms.

Tertiary treatment is required for the discharge to Storage Reservoir in Order No. R5-2005-1039. (*B1. Effluent limitations to Bear Valley Wastewater Storage Reservoir*). The sole finding to support tertiary treatment standards for discharge to the Storage (now Polishing) Reservoir is finding 24, Pathogens, where it states: “...*Title 22 also requires that recycled water used as a source of water supply for non restricted recreational impoundments be tertiary recycled water that has been subjected to conventional treatment...*” A reasonable interpretation of the permit findings would lead to the determination that tertiary requirements were based upon an erroneous conclusion that the Reservoir was a non restricted recreational impoundment.

The Alternative recognizes that the tertiary requirements of Order No. R5-2005-1039 were not applicable to discharge to Bloods Creek where it states at page 11: “This Order ... move(s) the point of compliance for meeting tertiary level requirements to the discharge to Bloods Creek rather than the discharge to the storage /polishing reservoir, as Bloods Creek is the body of water requiring beneficial use protection”.

The current effluent limitations for discharge to Bloods Creek are secondary disinfected standards as established by the RPA. Anti-backsliding does not justify tertiary WBELs since the Alternative establishes new WBELs requiring tertiary treatment standards for the discharge to Bloods Creek. The Alternative acknowledges the new point of compliance and new WBELs when it states “Bloods Creek is the body of water requiring beneficial use protection”.

2. *Sufficient New Information is Available that Would Permit Backsliding.*

40 CFR 122.44(l)(2)(i)(B)(1) permits backsliding where information is available which was not available at the time of permit issuance.

As stated at Page F-51 of the Tentative Permit, sufficient new factual information that was not available at the time of permit issuance and that would have justified the application of less stringent requirements has been provided. The District provided new information in its Report of Waste Discharge and comments provided 29 April 2011 on the administrative draft permit,

D. The Preliminary Draft Permit does not consider factors required by California Water Code Section 13241 when setting Water Quality Objectives (WQOs) in excess of those required in the Basin Plan or California Water Code Section 13050(h).

1. Inadequate CWC Section 13241 Analysis

The Preliminary Draft Permit for the District's WWTF proposes effluent limitations to include BOD₅, TSS, Coliform organisms, and Turbidity. While discharge from the Polishing Reservoir has been demonstrated to be in compliance with those limitations under conditions representative of potential discharge, in order to meet the technology-based filtration requirement of Title 22 standards for unrestricted reuse, the District will be required to construct a tertiary treatment plant including filtration.

The California Supreme Court has held that, when numeric effluent limitations more stringent than required by the Federal Clean Water Act are implemented, the Regional Board must consider the factors contained in CWC Section 13241.¹⁷

As fully discussed in Section I A.3, the proposed effluent limitations are not appropriate WQBELs based upon a narrative interpretation of the Basin Plan. The limitations are more stringent than required by the Federal Clean Water Act.

The WQO for Coliform, as contained in the Basin Plan and as fully described in Section I A.1, is the geometric mean of 200 MPN/100 ml, nor shall more than ten percent of the total number of samples taken during any 30-day period exceed 400 MPN/100 ml. The proposed effluent limitation of 2.2 MPN/100 ml with filtration is clearly more restrictive than the numerical WQO contained in the Basin Plan.

Therefore, implementation of tertiary standards including filtration, which will require construction of a tertiary plant, requires a complete CWC Section 13241 analysis.

The State Water Resources Control Board has held, "...when a Regional Board includes permit limits more stringent than limits based on applicable numeric objective in the relevant basin plan, the Regional Board must address the section 13241 factors on the

¹⁷ City of Burbank v. State Water Resources Control Board, (2005) 35 Cal .4th 613.

permit findings. These factors include, among others, economic considerations, environmental characteristics of the hydrographic unit under consideration, and the need for recycled water.”¹⁸

Water Code Section 13241 provides:

“Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to all of the following:

- (a) Past, present, and probable future beneficial uses of water;*
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;*
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;*
- (d) Economic considerations;*
- (e) The need for developing housing with the region; and*
- (f) The need to develop and use recycled water.”*

The Alternative at pages 2 and 13 states: *“The Regional Water Board has previously considered the factors in CWC Section 13241 in establishing these requirements.”* A thorough review of Order No. R5-2005-0139 reveals that CWC Section 13241 was not considered in the prior permit. In fact, there is no citation or reference to CWC Section 13241 in the order.

In considering solely factor (d) of CWC Section 13241, the District will be required, based on prior engineering reports from ECO: LOGIC, to expend at least \$11 million for capital construction costs¹⁹. Adjusting this estimated construction cost to June 2011 utilizing the

¹⁸ *In the Matter of the Review on its Own Motion of Waster Discharge Requirements Order No. 5-01-044 for Vacaville’s Easterly Wastewater Treatment Plant, State Board Order WQO 2002_0015 (Oct, 3, 2002), p. 35 footnote omitted.*

¹⁹ See attached table 5-3, Opinion of Probable Capital Cost, Bear Valley Water District, Phase 1 Tertiary Facilities Pre-Design Report, June 2007 prepared by ECO: LOGIC. (Attachment B.6)

ENR San Francisco Construction Cost Index yields a present day estimated construction cost of close to \$12 million.²⁰

The projected capital and operational costs for the District's 561 connections based on rate studies also conducted by ECO:LOGIC and updated by District Engineer Gary Ghio would raise a typical single-family equivalent user's rates from a base rate of \$76.50 per month to a range of \$320.76 to \$1,058.51 per month depending upon the number of equivalent residential living units (RLU). (User fees are based upon the number of RLUs and range from 3 to 9.9.)²¹ Further economic impact to the community may accrue since the CEQA review to comply with Order No. R5-2005-0139 for the tertiary plant considered only construction aspects and did not address the ongoing impacts of the facility.

In considering the *environmental characteristics of the hydrographic unit*, the environmental impact of the operation of a tertiary treatment plant may create more adverse environmental impacts than it solves. Bear Valley is situated in a pristine, high Sierra environment surrounded by unspoiled and undeveloped acreage. Most of the community is snowbound for as much as six months each year, and travel is by snowshoe, skis, or snowmobiles. The construction of a plant and creation of an all-weather road would be a significant disruption to the environment. Further, on-going operations would necessarily include lights, noise, electrical requirements and greenhouse gases that will create ongoing adverse impacts, even though the need for tertiary treatment is predicted to occur only in conjunction with 1-in-25 year precipitation.

Based on the above-noted factors, the Preliminary Draft permit is clearly deficient in considering the CWC Section 13241 factors in establishing effluent limitations that require the District to install and operate a treatment facility including filtration in excess of the numeric WQO as contained in the Basin Plan.

2. *CWC 13050(h) Requires Reasonable Protection of Beneficial Uses...*

CWC Section 13050(h) indicates that WQO are to be established for the reasonable protection of beneficial uses. The District has produced water balance calculations that demonstrate a discharge to surface waters will not occur until precipitation rates approach a 1-in-25 year return frequency.²² Discharge to surface waters did not occur during the term of Order No. R5-2005-0139, has not occurred since 1999, would be a rare and

²⁰ See letter dated June 20, 2011 by Gary Ghio, District Engineer, estimating economic costs to Bear Valley Water District to construct a tertiary treatment plan. (Attachment B.7)

²¹ Ibid.

²² See attached letter dated 1 February 2011 to Jim Marshall, Senior Engineer, CRWQCB, CVR, from Gary S. Ghio, District Engineer. (Attachment B.8)

unusual event, and contrary to established District policy²³. The Alternative's WQO's devastating economic impact on a small mountain village of requiring a multi-million dollar construction project for a plant that may only be required once in 25 years is not reasonable protection. As fully discussed above, the Tertiary Treatment requirements proposed by the Alternative is far in excess of that required for the protection of the beneficial uses of Bloods Creek.

II. *Compliance Schedule Required for the Tentative Permit Alternative*

As discussed in Section 1, the Title 22 tertiary treatment requirements are new WBEL's for discharge to Bloods Creek. In accordance with the State Board's Resolution 2008-0025, a compliance schedule should be incorporated into the Alternative. For the reasons full described below, the District requires more than 5 years to construct a multi-million dollar treatment facility.

1. *Proposition 218 or Proposition 26 Requirements*

As fully discussed in the preceding Sections, the Alternative would require the District to construct a multi-million treatment plant and improvements. The District does not possess the funds to construct such a facility. As a result, the District will either have to comply with Proposition 218 or Proposition 26 requirements to raise sufficient funds to build the improvements.

In 2009, the District proposed to increase user fees for a tertiary facility that was later determined to be inadequate at one quarter the price tag of a suitable facility. The funding effort encountered resistance and a Proposition 218 protest appeared on the verge of success when Board staff advised that if new information were presented, tertiary requirements would be reevaluated. Other utilities have determined that three years are required to adequately plan and educate the users on the need for increased fees. The District believes that it will similarly require adequate time to educate its users to comply with Prop 218 or 26.

2. *Shortened Construction Schedule*

The District's facilities are located at 7000 feet elevation. In normal years, the construction season lasts only through June to September. This year, a wet year with greater than one in one hundred year precipitation, construction could not commence as snow still covers the area as of this writing and vehicular traffic to the site will not be allowed until sometime in July. As a consequence of the unique circumstances of the District's setting, construction of new facilities would require significantly more time to complete than one located on the valley floor.

²³ See attached Resolution 487.1 adopted by Bear Valley Water District on 16 May 2011. (Attachment B.9)

3. *The Alternative Proposes New WBELs for BOD5, TSS, Turbidity and Coliform Organisms.*

As fully discussed in the District's comments in Section I, the proposed alternative imposes new effluent requirement for the discharge to Bloods Creek.

At page 4, the Alternative Time Schedule Order states: "These limitations are based on new requirements that become applicable to the Order after the effective date of the waste discharge requirements, and after 1 July 2000 for which new or modified control measures are necessary in order to comply with the limitation,..."

4. *State Board Resolution NO. 2008-0025 Permits a 10 Year Timeline.*

"B. The duration of the compliance schedule may not exceed ten years from the date of adoption, revision, or new interpretation of the applicable water quality objective or criterion in a water quality standard."

5. *The District Needs more than 5 years to Comply with the New WBELs.*

The District requests an extension for compliance with the timeline for compliance with the new requirements for BOD₅, TSS, Turbidity and Coliform Organisms. Due to the requirements of Proposition 218 and/or Proposition 26, and the shortened construction season, construction within a 5 year period will be difficult or impossible. The requirements of State Board Resolution No. 2008-0025 have been met; and therefore it is permissible to grant a 10 year compliance period.