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For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Waste Discharge Requirements)
For Hilmar Cheese Company, Inc., Reclamation)
Area Owners, Hilmar Cheese Processing Plant;) **PETITION FOR REVIEW**
California Regional Water Quality Control Board)
- Central Valley Region Order No. R5-2010-0008)
And Time Schedule Order No. R5-2010-0009)

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central

Valley Region (“Regional Board”) in adopting Waste Discharge Requirements for Hilmar Cheese Company, Inc., Reclamation Area Owners, Hilmar Cheese Processing Plant, on 29 January 2010. See Orders No. R5-2010-0008 and R5-2010-0009. The issues raised in this petition were raised in timely written comments.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Orders No. R5-2010-0008 and R5-2010-0009, Waste Discharge Requirements and Time Schedule Order for the Hilmar Cheese Company, Inc., Reclamation Area Owners, Hilmar Cheese Processing Plant. A copy of the adopted Order is attached as Attachment No. 1.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

29 January 2010

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letter on 9 January 2009. Ms. Jo Anne Kipps submitted a comment letter on 3 January 2010. Those letters and the following comments set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

General Comments

The Waste Discharge Requirements (WDRs) Order for Hilmar Cheese Company, Inc. (Hilmar Cheese) and Reclamation Area Owners proposes to carry over a modified version of an effluent limitation for salinity expressed as electrical conductivity (EC) of 900 micromhos per centimeter (umhos/cm) contained in WDRs Order 97-206. This Order required Hilmar Cheese to achieve

full compliance with the EC limit effective 15 March 1999. The Regional Board had prescribed this EC limit back in 1997 to ensure that Hilmar Cheese's discharge of cheese processing wastewater did not impair the beneficial uses of shallow groundwater affected by its discharge, and to implement a mitigation measure contained in a mitigated negative declaration the Regional Board approved for Hilmar Cheese's discharge pursuant to the California Environmental Quality Act.

Hilmar Cheese did not contest the WDRs or mitigated negative declaration, and attempted to comply with the EC limit by constructing a wastewater treatment facility (WWTF) that featured a technology that was unproven for Hilmar Cheese's discharge, and which proved unsuccessful. Hilmar Cheese next implemented conventional secondary treatment followed by ultrafiltration (UF) and reverse osmosis (RO). But Hilmar Cheese also increased the Plant's cheese processing capacity and wastewater discharge flows. It did so without installing sufficient treatment capacity to process the Plant's entire wastewater flow, and continued to discharge partially-treated wastewater to land in a manner that polluted groundwater and created nuisance conditions (objectionable odors and flies). These conditions, and the accompanying complaints by Hilmar Cheese's neighbors (and – some say – the negative press coverage given the situation), prompted the Regional Board's Executive Officer to issue Hilmar Cheese Cleanup and Abatement Order R5-2004-0772 (CAO), and subsequently, Administrative Civil Liability Complaint R5-2005-0501 in the amount of four million dollars.

The March 2006 Settlement Agreement between Hilmar Cheese and the Regional Board settled the Complaint and authorized Hilmar Cheese to continue to discharge fully-treated cheese processing wastewater that met the EC limit to crop land in the Plant vicinity (Secondary Lands), and to continue to discharge partially-treated wastewater characterized by high EC and organic and nitrogen content to lands immediately adjacent to the Plant (Primary Lands). The Settlement Agreement required Hilmar Cheese to submit a Report of Waste Discharge (RWD) by October 2006. Findings 8 and 9 of the WDRs explain why Hilmar Cheese required additional time beyond October 2006 to submit an RWD that identified how it was going to conduct its discharge, and why it requires even more time to experiment with a salinity reduction treatment technology – Electrodialysis Reversal (EDR) – that remains untested for industrial discharges such as Hilmar Cheese's.

The Time Schedule Order (TSO) accompanying the WDRs allows Hilmar Cheese to still further delay implementing the type and capacity of salinity reduction treatment technology it should have implemented over 10 years ago. Because it never fully complied with the EC limit, Hilmar Cheese's discharge created nuisance (Finding 19 of the CAO) and polluted groundwater from EC, total dissolved solids, iron, and manganese (the latter two from organic overloading) and threatened to pollute groundwater from sodium, chloride, and ammonia (Findings 22 and 23 from the CAO). Since the March 2006 Settlement Agreement, Hilmar Cheese has not increased

its WWTF capacity to process the Plant's entire wastewater flow because of reported excessive operational costs, yet it found the financial resources to increase the Plant's cheese processing capacity and to build a new cheese processing plant in Texas.

Specific Comments

A. The Waste Discharge Requirements (WDRs) do not comply with California Code of Regulations (CCR) Title 27 as the discharge is not in compliance with the applicable water quality control plan (Basin Plan).

Discharges of wastewater may be exempted from CCR Title 27 requirements only if: waste discharge requirements have been issued; the discharge is in compliance with the applicable Basin Plan, and; the wastewater is not hazardous (Section 20090). The Basin Plan contains water quality objectives for groundwater. The Basin Plan *Water Quality Objectives for Groundwater* requires groundwater not exceed: 2.2 MPN/100 ml for coliform organisms; the maximum contaminant levels (MCLs) from CCR Title 22 for drinking water; taste or odor producing substances that cause nuisance or adversely affect beneficial uses, and; toxic substances that produce detrimental physiological responses in human, plant, animal or aquatic life associated with designated beneficial uses. The Basin Plan also includes the State and Regional Board Antidegradation Policy (Resolution 68-16). The Antidegradation Policy requires the maintenance of high quality waters. In accordance with the Antidegradation Policy changes in water quality are allowed only if the change is consistent with maximum benefit to the people of the state; does not unreasonable affect present and anticipated beneficial uses; does not result in water quality that exceeds water quality objectives, and; best practicable treatment and control of the discharge is provided.

The discharge has, as is detailed below, caused an exceedance of Basin Plan water quality objectives (MCL) for total dissolved solids (TDS), electrical conductivity (EC) and nitrate and therefore does not meet the test of being in compliance with requirements of the Basin Plan. The discharge has also caused salt (EC, TDS) concentrations that exceed the levels that produce detrimental physiological responses in plant life associated with the irrigated agriculture designated beneficial use. The discharge has not been shown to comply with the Basin Plan incorporated Antidegradation Policy (68-16). The Antidegradation Policy requires that an allowance for any degradation must be shown to be in the interest of the people of the state, must not exceed water quality standards and that the discharge must provide best practicable treatment and control (BPTC) of the discharge. To the contrary, the discharge has caused pollution of the underlying groundwater and has been the subject of enforcement actions.

Waste Discharge Requirements Finding No. 42 states that; *"As detailed in the CAO, the discharge has unreasonably degraded groundwater beneath the Plant's storage ponds and Primary Lands. In May and June 2008, Jacobson James collected samples from about 43*

domestic wells, seven industrial supply wells, and seven irrigation wells. The greatest impact was observed in the Upper A Zone (unconfined aquifer) in the vicinity of the Primary Lands. The maximum TDS concentration recorded during the May and June 2008 investigations by Jacobson James was 2,700 mg/L (which corresponds to an EC of about 3,800 $\mu\text{mhos/cm}$). TDS concentrations in the semiconfined and confined aquifers were significantly lower, with concentrations ranging from about 260 to 1,000 mg/L.”

Waste Discharge Requirements Finding No. 43 states that; *“In an effort to establish water quality conditions upgradient (east) of the Plant, Jacobson James evaluated “ambient” groundwater quality by advancing 11 direct push or cone penetrometer borings and installing a monitoring well into shallow groundwater upgradient of the Plant. The following values characterize ambient background groundwater quality for several constituents of concern based on this investigation and are presented in the following table;*

Ambient/Background Groundwater Quality

<i>EC ($\mu\text{mhos/cm}^2$)</i>	<i>TDS (mg/L)</i>	<i>NO3 as N (mg/L)</i>	<i>Cl (mg/L)</i>	<i>Na (mg/L)</i>	<i>SO4 (mg/L)</i>
<i>847</i>	<i>570</i>	<i>27</i>	<i>77</i>	<i>92</i>	<i>54”</i>

Waste Discharge Requirements Finding No. 44 states that; *“Historical groundwater data is limited. The oldest data available is from 1989 when monitoring wells MW-1 and MW-2 were installed. EC values in samples collected from MW-1 in 1989 and 1990 ranged from 150 to 440 $\mu\text{mhos/cm}$, while values in MW-2 ranged from about 280 to 580 $\mu\text{mhos/cm}$. In 2008, EC values in samples from MW-1 ranged from 2,470 to 4,530 $\mu\text{mhos/cm}$, while samples from MW-2 ranged from 1,640 to 3,690 $\mu\text{mhos/cm}$.”* Clearly, the discharge of waste from Hilmar polluted groundwater with EC. The secondary MCL for EC begins at 900 $\mu\text{mhos/cm}$.

Total nitrogen discharged from the facility is characterized as 20 mg/l. Nitrogen will generally convert to nitrate as it migrates to groundwater. The primary drinking water MCL for nitrates is 10 mg/l. The discharge presents a reasonable potential to contribute to already degraded groundwater conditions, which exceed the primary MCL for nitrate. The wastewater treatment facility does not nitrify and/or denitrify. The removal of nitrogen from wastewater is common practice and can be considered best practicable treatment and control of the discharge.

Waste Discharge Requirements Finding No. 71 states that; *“Unless exempt, release of designated waste is subject to full containment pursuant to the requirements of Title 27, CCR, Section 20005 et seq. (hereafter Title 27). Title 27 Section 20090(b) exempts discharges of designated waste to land from Title 27 containment standards and other Title 27 requirements provided the following conditions are met:*

- a. The applicable regional water board has issued WDRs, or waived such issuance;*
- b. The discharge is in compliance with the applicable basin plan; and*
- c. The waste is not hazardous waste and need not be managed according to Title 22, CCR, Division 4.5, Chapter 11, as a hazardous waste.*

The discharge of effluent and the operation of treatment or storage facilities associated with a food processing facility is exempt from Title 27, provided any resulting degradation of groundwater is in accordance with the Basin Plan and the waste need not be managed as a hazardous waste. None of the waste regulated by the proposed Order is hazardous waste nor required to be treated as hazardous waste. With treatment to remove organics and salinity, lined storage ponds, and application at agronomic rates, the discharge authorized by the Waste Discharge Requirements will not cause exceedance of groundwater quality objectives and complies with the Antidegradation Policy and is therefore exempt from Title 27. In addition, recycling effluent through application to Secondary Lands is a reuse that is exempt under Title 27, Section 20090(h).”

It is well documented that the wastewater discharge from Hilmar has polluted groundwater, as cited above. The State Water Resources Control Board (State Board) issued a Water Quality Order for the Lodi White Slough Facility, WQO-2009-0005 (Lodi Order) dated 7 July 2009. The Lodi Order includes clarifications on how to apply the Title 27 exemptions. The Lodi Order requires the Discharger to provide evidence showing that the discharge meets applicable preconditions before the Regional Board can make Findings that the discharge is exempt from Title 27. Findings are not adequate if they merely assume that the Discharger will comply with WDRs requiring the Discharger to comply with the Basin Plan. (See Guidance Memo *Applying Title 27 Exemptions after the City of Lodi Order*, from Lori Okun to Pamela Creedon, dated 28 October 2009) The WDR must find that the discharge currently complies with the Basin Plan. Without such a Finding, the Regional Board cannot legally make the Finding that the Discharger’s land disposal activities meet the precondition for an exemption. In this case, the discharge still exceeds water quality standards (Finding No. 19) and the WDR is reliant on a “new” technology to be installed and operational before an expansion in flows is allowed (see accompanying compliance Order, Finding No. 57 and CEQA Finding No. 72). The Discharger does not meet the preconditions of current compliance with the Basin Plan, which is necessary to receive an exemption to CCR Title 27.

B. The Waste Discharge Requirements do not comply with the requirements of the State and Regional Board’s Antidegradation Policy (Resolution 68-16).

Waste Discharge Requirements Finding No. 55 correctly states that; “*State Water Board Resolution No. 68-16 (“Policy with Respect to Maintaining High Quality Waters of the State”)*

(hereafter Resolution 68-16) prohibits degradation of groundwater unless it has been shown that:

- a. The degradation is consistent with the maximum benefit to the people of the State;*
- b. The degradation will not unreasonably affect present and anticipated future beneficial uses;*
- c. The degradation does not result in water quality less than that prescribed in State and regional policies, including violation of one or more water quality objectives; and*
- d. The Discharger employs best practicable treatment or control (BPTC) to minimize degradation.”*

Waste Discharge Requirements Finding No. 57 states that; *“Historically, Hilmar Cheese’s disposal of partially-treated wastewater degraded groundwater in the vicinity of the Primary Lands and affected beneficial uses. The cleanup of this is regulated by the CAO and groundwater investigations are ongoing. An accompanying Time Schedule Order requires Hilmar Cheese to fully treat all of its wastewater to the effluent limits of this Order by no later than July 2011. The CAO addresses development of remedial actions to clean up groundwater from past discharges, which will address future use of the Primary Lands.”*

The Antidegradation Policy discussion ignores the fact that groundwater at the site has been, and currently continues to be, polluted by the wastewater discharge. The wastewater discharge has and continues to degrade designated beneficial uses. The Waste Discharge Requirements Finding that providing jobs offsets any groundwater degradation, and in this case pollution, is in the best interest of the people of California is lacking any factual analysis. For instance, the WDR does not address the economical impacts of allowing California’s critical groundwater resources to be degraded. What percentage of groundwater in the state is actually usable for its designated beneficial uses and what are the impacts of “writing off” another aquifer for a specialty food processor. Is cheese in such limited quantities in California that trading the state’s groundwater quality is necessary? What would be the increased cost of a block of cheese if groundwater were not allowed to be degraded? Are there not other cheese producers that could fill the void if Hilmar were required to stop polluting immediately? Is cheese a good trade for polluted groundwater? Is cheese a rare and necessary commodity for which California is willing to trade groundwater quality? What are the impacts to the users of groundwater? What are the costs in California for treating groundwater to meet industrial requirements? What are the costs in California for treating groundwater to meet drinking water MCLs? How many people in California have been sick or died from nitrate poisoning? What are the crop yield reductions and the related costs to agriculture and consumers from excessive salt in groundwater? The WDR however addresses only one question of how many jobs does Hilmar provide. The Waste Discharge Requirements does not seriously address the best interest of the people of California. The Antidegradation Policy analysis is simply wrong and insufficient.

C. Effluent Limitations. To ensure that Hilmar Cheese consistently optimizes pretreatment for salinity removal treatment (either by RO or EDR), the WDRs should prescribe a performance-based effluent limitation for turbidity that equals the maximum turbidity values recommended by RO and EDR treatment technology manufacturers. Such a limit would serve a similar purpose to turbidity effluent limits in WDRs for discharges of tertiary disinfected recycled water, and would require Hilmar Cheese to consistently optimize pretreatment for solids removal prior to RO or EDR treatment.

D. Treatment Redundancy and/or Emergency Storage Capacity. Discharge Prohibition A.2 prohibits the bypass of untreated wastes except as allowed under certain conditions specified in Standard Provisions. Finding 24 states, “In case of short-term operational issues or equipment failures, Hilmar Cheese will construct a wastewater blending system to ensure that effluent discharged to the two storage ponds and the Reclamation Areas meets the effluent limits.” The current wastewater blending proposal implies treatment bypass and, consequently, threatens to violate Discharge Prohibition A.2 as well as Provision E.5, which requires back-up or auxiliary facilities or similar systems “only when the operation is necessary to achieve compliance with the conditions of the Order.”

Most dischargers subject to effluent limits for recycling of wastewater of domestic origin are required to install redundant treatment trains or emergency storage capacity to retain untreated or partially-treated wastewater until it can be run through the treatment system. The proposal described in Finding 24 implies that the Plant’s WWTF will be consistently capable of generating an effluent containing waste constituents in concentrations much less than the limitations imposed in the WDRs. This does not appear to be realistic. Given that Hilmar Cheese is contemplating implementing a salinity removal technology that is untested for industrial wastewaters, it is prudent for the WDRs to require Hilmar Cheese to either install redundant treatment trains for all vital treatment units or emergency storage capacity. At a minimum, the WDRs should identify which facilities or systems in the WWTF are subject to Provision E.5.

E. Wet Weather Storage Capacity. Most WDRs for land discharges contain a finding describing the discharger’s monthly water balance that demonstrates that the discharger has sufficient land disposal capacity to dispose of all the requested flow during wet years of a 100-year frequency. The WDRs indicate that the Plant’s existing effluent storage ponds have a combined storage capacity of 44 million gallons, but do not indicate whether and how Hilmar Cheese plans to expand its effluent storage capacity to accommodate its requested increase in discharge flow from the 1.9 million gallons per day (mgd) authorized in the Settlement Agreement to 2.5 mgd. While the WDRs contain discharge specifications regarding hydraulic loading (C.5 – wastewater applications to the Reclamation Area shall be at reasonable agronomic rates; C.6 – wastewater shall not be discharged to the Reclamation Area during periods of heavy rain), the WDRs should

contain a finding explaining how Hilmar Cheese can increase its discharge flow without expanding its wet weather effluent storage capacity.

F. Indirect Hydraulic Connection to the San Joaquin River. Finding 38 describes how area groundwater depth is controlled by the operation of tile drain systems that discharge to canals owned and operated by the Turlock Irrigation District (TID) (e.g., Lateral No. 6 north of the Plant). The WDRs should disclose that these canals discharge ultimately to the San Joaquin River, a water of the United States that is already impaired, in part from excessive salinity and oxygen-demanding substances (as documented by total maximum daily loads under development for salinity and dissolved oxygen). The WDRs state, “Tile drains under the Primary Lands have been sealed off and no longer discharge to TID canals.” However, even though Hilmar Cheese may have sealed off the tile drains under the Primary Lands, in the absence of physical barriers to restrict the offsite flow of shallow groundwater under the Primary Lands (e.g., via perimeter sheet piles), groundwater underlying the Primary Lands above the level of offsite tile drain systems will flow offsite and will be intercepted by these tile drains systems and will be pumped to TID canals that discharge to the San Joaquin River. The WDRs should disclose this, and disclose whether and which parcels comprising the Secondary Lands are underlain by or adjacent to tile drainage systems.

While the Clean Water Act exempts discharges of tile drainage water affected by agricultural activities from regulation under the National Pollutant Discharge Elimination System (NPDES), it does not specifically exempt from regulation any pollutants in tile drainage discharges released to surface waters of the United States that originate from industrial activities. A case can be made that the hydraulic connection between Hilmar Cheese’s discharge and TID Lateral No. 6 warrants regulation of the discharge via an NPDES permit. At a minimum, the WDRs should require Hilmar Cheese to monitor TID Lateral No. 6 (and other TID canals receiving discharges of groundwater potentially affected by the Plant’s discharge) for salinity constituents (e.g., EC, sodium, chloride), total organic carbon, total nitrogen, priority pollutants such as trihalomethanes (if chlorine is used in Plant sanitation and WWTF operations), and other pollutants of concern. The monitoring should be performed at least quarterly, both upstream and downstream from tile drainage pump systems that collect and discharge to TID canals any groundwater potentially affected by the Plant’s discharge. The resulting data should be evaluated after three years to determine whether the Plant’s discharge should be regulated by an NPDES permit that implements federal categorical effluent limitations.

G. Domestic Wastewater Discharge. Finding 3 states that Hilmar Cheese discharges the Plant’s domestic wastewater to “septic tanks and leachfields regulated separately.” The WDRs should identify the Merced County Environmental Health Department as the agency currently responsible for regulating the Plant’s domestic wastewater discharge. Finding 38 describes groundwater as shallow (5 to 15 feet below ground surface) and states, “During wet periods,

water can be at the ground surface.” Regional Board guidelines for septic tank and leachfield systems (incorporated in the Basin Plan) require a minimum of five feet of vertical separation between the bottom of the leachfield trenches and highest anticipated groundwater. Merced County presumably implements and enforces these guidelines. However, since the Plant’s domestic wastewater flow from 600 employees and up to 300 banquet guests (from Finding 3) is discharged to septic tanks and leachfields to land overlying shallow groundwater that surfaces during wet periods, it appears that the Regional Board’s 5-foot vertical separation requirement has not been aggressively enforced in this discharge situation. Given the shallow groundwater conditions in the Plant vicinity and the current method of domestic waste disposal, waste constituents in the Plant’s domestic discharge threaten to cause or contribute to exceedances of Groundwater Limitations in the WDRs (e.g., for nitrate and total coliform organisms).

While many Central Valley industrial dischargers in rural areas treat and dispose of domestic wastewater via onsite septic tanks and leachfields regulated by county environmental health departments, there are some near or within urbanized areas that discharge to community sewer systems (e.g., E. & J. Gallo Winery in Fresno; Del Monte near Kingsburg; Lion Raisins near Selma). There are other industrial dischargers that treat domestic wastewater via package treatment plants prior to land disposal (e.g., Recot, Inc./Frito-Lay; Saint-Gobain; CertainTeed). If these industrial dischargers can afford to install and operate a package treatment plant for domestic wastewater, surely the Regional Board should require Hilmar Cheese to do likewise.

While the impact to groundwater from the Plant’s domestic discharge pales in comparison with that from its industrial discharge, this should not preclude the Regional Board from requiring Hilmar Cheese to implement best practicable treatment or control for the Plant’s domestic wastewater discharge, especially given the existing degraded condition of groundwater affected by the Plant’s industrial discharge. The WDRs should require Hilmar Cheese to discharge its Plant’s domestic wastewater to either (1) the sewer system serving the Hilmar community or (2) install and operate a package treatment plant capable of reducing the concentration in wastewater discharged to leachfields of total nitrogen to 10 mg/L and of total coliform organisms to Groundwater Limitation E.a(iii) (i.e., 2.2 most probable number per 100 milliliters).

H. Monitoring and Reporting Program (MRP)

The MRP should require the following:

Continuous monitoring of wastewater turbidity immediately prior to salinity removal treatment and reporting of daily average and maximum wastewater turbidity.

Continuous monitoring of effluent EC and reporting of daily average and maximum effluent EC.

Monthly monitoring of effluent for trihalomethanes if wastewater is subjected to chlorination during Plant sanitation or treatment processes (chlorine is typically used to clean UF membranes).

Quarterly monitoring of effluent for iron and manganese, since these two constituents are not included in the table of General Minerals, and groundwater underlying the Primary Lands contains elevated concentrations of these two constituents.

Reporting of monthly average effluent total nitrogen, which is used to calculate total nitrogen loading to Reclamation Area parcels.

Monthly monitoring of water impounded in the Plant's storm water ponds for, at a minimum, EC, sodium, chloride, BOD₅, and total nitrogen, to evaluate whether these ponds only receive discharges of storm water and of essentially pollutant-free wastewater.

I. Miscellaneous Comments

The WDRs contain several provisions that specify how the discharge is to be conducted (i.e., Provisions E.10 and E.11 regarding effluent storage pond capacity; E.12 regarding pond maintenance to preclude vector nuisance; E.13 regarding the grading of Reclamation Area parcels to preclude ponding along public roads; E.14 regarding management of Reclamation Area parcels to prevent vector nuisance; E.15 regarding dissolved oxygen content in effluent storage ponds; E.16 regarding the establishment of effluent pH limitations for discharges to the storage ponds; and E.17 regarding minimum pond freeboard). These discharge requirements are better placed in the "Discharge Specifications" section of WDRs or, as appropriate, in a separate, new "Reclamation Area Requirements" section. [The MRP actually refers to "Recycling Specifications" in the WDRs]. The terms and conditions pertaining specifically to the discharge of effluent to Reclamation Area parcels should be contained in a separate section to make it easy for Reclamation Area parcel owners to identify which requirements apply specifically to them.

Provision E.8 concerns changes in ownership specific to "land or waste treatment and storage facilities presently owned or controlled by the Discharger." This provision should also specify how changes in ownership of Reclamation Area parcels will be handled (e.g., will ownership transfers require Executive Officer written approval?).

Provision E.22 requires Hilmar Cheese to submit by 1 June 2010 a Nutrient Management Plan for each separately-owned parcel where Plant effluent is applied for irrigation purposes. Such plans should have been submitted as part of Hilmar Cheese's RWD to demonstrate its discharge would not impair the beneficial uses of affected groundwater. In any event, the plans should be based on actual monitoring data of dairy wastewater and manure and not rely solely on text-book values that incorporate theoretical values for nitrogen loss.

Attachment D of the WDRs should identify which Reclamation Area parcels are subject to the General Order for Existing Milk Cow Dairies.

J. Time Schedule Order (TSO)

Finding 12 incorrectly states that the effluent limitation for EC contained in the WDRs is a new limitation when, in fact, it has been in effect since 15 March 1999.

The TSO requires Hilmar Cheese to comply with effluent limitations in the WDRs by 1 February 2011 if UF/RO technology is implemented or by 1 July 2011 if anything other than UF/RO technology is implemented. Hilmar Cheese chose not to comply with the EC limit prescribed in WDRs Order 97-206 effective 15 March 1999, but increased cheese processing production at the Hilmar Plant, and constructed a new plant in Texas. Because of this history, the TSO should prescribe a civil penalty if compliance is not achieved in accordance with the TSO in accordance with CWC section 13308, which allows the Regional Board to prescribe a civil penalty of up to \$10,000 for each day in which the violation occurs (section 13308(b)). This addition to the TSO should provide a necessary financial incentive to ensure Hilmar Cheese this time will abide by its commitment to install, operate, and maintain a WWTF capable of generating an effluent that fully complies with the effluent limitations contained in the WDRs by the dates established in the TSO.

Finally, Task 2 prescribes an interim EC limit for discharges to the Primary Lands (3,600 umhos/cm) that essentially reflects the EC Limit in the Settlement Agreement (3,700 umhos/cm). The TSO should also impose interim effluent limitations for BOD₅, and total nitrogen that reflect optimum operation of the WWTF's conventional treatment trains (i.e., 80 mg/L for BOD₅ and 20 mg/L for total nitrogen). This would reduce the potential for waste discharges to the Primary Lands to create odor nuisance and exacerbate existing conditions of pollution created by Hilmar's past discharges.

The time schedule Order (TSO) should be vacated and the Discharger should be required to immediately comply with Waste Discharge Requirements.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries. Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas. CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources. CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

- A. Vacate Orders No. R5-2010-0008 and R5-2010-0009 and remand to the Regional Board with instructions prepare and circulate a new order that comports with regulatory requirements.
- B. Alternatively; prepare, circulate and issue a new order that is protective of identified beneficial uses and comports with regulatory requirements.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments and our 9 January 2009 letter and Ms. Jo Anne Kipps letter dated 3 January 2010. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions. The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF

NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114. A true and correct copy of this petition, without attachment, was sent to the Discharger in care of: Mr. John Jeter, President and CEO, Hilmar Cheese Company, P.O. Box 910, Hilmar, CA., 95324

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in our 9 January 2009 letter and Ms. Jo Anne Kipps' letter dated 3 January 2010 that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Jackson at (530) 283-1007.

Dated: 26 February 2010

Respectfully submitted,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachment No. 1: WDR Order No. R5-2010-0008

Attachment No. 2: Time Schedule Order No. R5-2010-0009