

Bill Jennings
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel: 209-464-5067
Fax: 209-464-1028
E-mail: deltakeep@aol.com

Mike Jackson
Law Office of Mike Jackson
P.O. Box 207
429 W. Main Street
Quincy, CA 95971
Tel: 530-283-1007
Fax: 530-283-0712
E-mail: mjatty@sbcglobal.net

Andrew Packard
Law Office of Andrew Packard
319 Pleasant Street
Petaluma, CA 94952
Tel: 707-763-7227
Fax: 707-763-9227
E-mail: andrew@packardlawoffices.com

For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

**In the Matter of Waste Discharge Requirements,)
Sutter Home Winery, Westside Facility;)
California Regional Water Quality Control Board) **PETITION FOR REVIEW**
- Central Valley Region, Order No. R5-2009-0073)
)**

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 Sutter Home

Winery, Westside Facility, on 13 August 2009. See Order No. R5-2009-0073. 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 Order No. R5-2009-0073, Waste Discharge Requirements for the Sutter Home Winery, Westside Facility. 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:

13 August 2009

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 5 July 2009. That letter 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:

A. The WDR fails to require the Discharger comply with California Code of Regulations (CCR) Title 27 requirements and must be revised to include requirements for Title 27.

The existing wastewater discharge has degraded groundwater quality. The WDR allows until 2014 to comply with groundwater limitations as opposed to requiring compliance with CCR Title 27 or applicable preconditions for exemption. CCR Title 27 §20090. SWRCB - Exemptions. (C15: §2511) states that: The following activities shall be exempt from the SWRCB-promulgated provisions of this subdivision, so long as the activity meets, and continues

to meet, all preconditions listed: (a) **Sewage**—Discharges of domestic sewage or treated effluent which are regulated by WDRs issued pursuant to Chapter 9, Division 3, Title 23 of this code, or for which WDRs have been waived, and which are consistent with applicable water quality objectives, and treatment or storage facilities associated with municipal wastewater treatment plants, provided that residual sludges or solid waste from wastewater treatment facilities shall be discharged only in accordance with the applicable SWRCB-promulgated provisions of this division. (b) **Wastewater**—Discharges of wastewater to land, including but not limited to evaporation ponds, percolation ponds, or subsurface leachfields if the following conditions are met: (1) the applicable RWQCB has issued WDRs, reclamation requirements, or waived such issuance; (2) the discharge is in compliance with the applicable water quality control plan; and (3) the wastewater does not need to be managed according to Chapter 11, Division 4.5, Title 22 of this code as a hazardous waste.

Region 5's Basin Plan, *Water Quality Objectives for Ground Waters* requires that: The following objectives apply to all ground waters of the Sacramento and San Joaquin River Basins, as the objectives are relevant to the protection of designated beneficial uses. These objectives do not require improvement over naturally occurring background concentrations. The ground water objectives contained in this plan are not required by the federal Clean Water Act.

Bacteria: In ground waters used for domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml.

Chemical Constituents: Ground waters shall not contain chemical constituents in concentrations that adversely affect beneficial uses. At a minimum, ground waters designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Tables 64449-A (Secondary Maximum Contaminant Levels- Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels-Ranges) of Section 64449. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. At a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/l. To protect all beneficial uses, the Regional Water Board may apply limits more stringent than MCLs.

Tastes and Odors: Ground waters shall not contain taste- or odor producing substances in concentrations that cause nuisance or adversely affect beneficial uses.

Toxicity: Ground waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life associated with designated beneficial use(s). This objective applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple substances.

The WDR does not provided sufficient data to demonstrate that the discharge actually meets the preconditions such as comply with the Basin Plan and is exempt from Title 27 requirements. To the contrary, Finding Nos. 39, 40, and 41 indicates that the Discharger's waste and disposal practices have released constituents that degraded and polluted the underlying groundwater. Water Code Section 13173 defines "designated waste" to include "[n]on hazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations that exceed applicable water quality objectives or that could reasonably be expected to affect beneficial uses of waters of the as contained in the appropriate state water quality control plan."

While the Discharger contends that future modification to the facility will reduce waste concentrations, the Discharger has yet to provide any actual data to support these claims. As shown in Finding No. (s) 39 and 40, the facility has degraded groundwater near the ponds and LAA. Based on waste concentration reported in Finding No. 18 the 2008 average wastewater had TDS concentration of 3094 mg/L, BOD 904 mg/L, Nitrogen 38 mg/L and Nitrate 8.8 mg/L. Finding No. 16 indicates the expansion will increase wastewater flows from about 2.7 million gallons per year to around 28 million gallons per year. The Report of Waste Discharge water balance shows that the wastewater will be applied to total of 107.5 acres of LAA (15.5 acres of existing LAA and an additional 92 acres of new LAA). Therefore, loading calculations show that the waste loads to the LAA will increase as a result of expansion project.

In accordance with Title 27, a Discharger that treat or dispose of waste to a land treatment unit are required to demonstrate, prior to the application of waste, that the waste can be completely degraded, transformed or immobilization will take place in the treatment zone. To demonstrate this, prior to the application of waste, the Discharger is required to make waste application to a test plot for a sufficient period in order to provide data to the Regional Board that shows waste can be completely degraded, transformed or immobilization. Given the extremely shallow groundwater (0.41 ft bgs see Finding No. 35) it is necessary that any claim of waste treatment in the LAA is supported by actual data. The RWD is incomplete as it failed to make such a demonstration and not conduct the necessary tests.

Finding No. 25 indicates that the TDS loading in 2007 12,512 lbs/ac/yr which is largely composed on low nutrient salts. Finding 18 indicates "In 2008, the Discharger discovered errors in the analytical data that overstate the concentration of TDS in the samples. Because operation

of the expanded facility will emphasize source control, the Discharger believes the historic data do not represent future wastewater quality.” If true then no valid data exist for TDS. The Discharger has had over seven years to collect accurate TDS data but failed to do so. Finding No. 41 states, “Review of the groundwater data presented in Findings 34, 39, and 40 indicates highly variable groundwater quality across the site. All of the reasons for the variability are not known; but the low groundwater gradient, past land use, **localized discharge of both high and low quality wastewater/stormwater**, and nearby irrigation canals are probable influences.”

Precondition to exempt a discharge from Title 27 requirements include that the discharge comply with the Basin Plan. However, the record indicates that the Discharge has degraded groundwater quality in the vicinity of the ponds and as such does not comply with the Basin Plan. In the case of the LAA, the Region Board lacks the necessary data to make such a determination. The WDR and record indicate that the Discharger's discharge has degraded groundwater and that based on reported concentrations of waste is properly classified as a “designated waste.” The Discharger has not provided the necessary data to justify the precondition for the exemption. Therefore, the Discharger must comply with the prescriptive standards specified in Title 27, including but not limited to submitting a complete RWD for Title 27 and financial assurance documentation.

B. The WDR must be revised to address seasonal variability of nutrient uptake by crops.

The uptake of nitrogen by plants such as corn and grapes is variable. Corn takes up nitrogen in an S shaped curve, with very low uptake during the first 30 days of growth, then taking up nitrogen very rapidly until silking. Uptake after silking is less rapid. The literature indicates (Iowa State 1962) that 75-80% of nitrogen in corn is taken up by silking. Winter forage is generally reduced due to climate conditions and cool weather. Where little growth is made before cold weather sets in, relatively little nitrogen uptake will occur. The application of waste is the highest early spring and winter when nitrogen uptake is low. In addition, vineyards are dormant in the late fall and early winter season. Given that groundwater is shallow (less than 0.5 feet in some locations of the LAA) pollutants applied at these times will not be retained within the LAA but will pass to underlying groundwater and contribute to further degradation or pollution. The groundwater underlying the site is already polluted and the facility's discharge at least seasonally will contribute further exacerbate the problem.

C. Finding No. 27 is incorrect and must be revised.

Finding No. 27 states in part that “Crops will be cut and removed from the LAAs. Removal of the crop will remove the nitrogen and dissolved solids that are taken up by the crop.” This Finding is simply incorrect. Finding 24 indicates that over 55 percent of the completed LLA with be dedicated to vineyards. Typically vineyards other than some minor annual pruning will not

have the vines removed annually and therefore will not be cropped as indicated in Finding No. 27. Finding No. 27 is incorrect and must be revised.

D. The WDR must be revised to include a NPDES permit in accordance with California Water Code Section 13376.

CWC § 13376. Reports of discharges; Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report need be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended.

Finding No. 23 states in part “The wastewater storage and treatment ponds are not large enough to allow storage of wastewater through the winter and application only during the growing season. As a result, the Discharger will have to apply wastewater throughout the year.” According to Finding No. 25, waste application methods will include flood irrigation, sprinkler and drip irrigation. All of the listed application methods will result in waste being deposited on surface soils. Finding No. 43 indicates, “Approximately the western third of the facility is located within the 100-year floodplain.” As shown on Attachment B a large portion of the land application area (LAA) is within the 100-year flood plain. In fact, portions of the LAA have been flood in recent times and therefore, waste will be discharged to surface waters during periods of flooding. The Order must be revised to be an NPDES permit or the land application areas protected from flooding.

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 Order No. R5-2009-0073 and remand to the Regional Board with instructions prepare and circulate a new tentative 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 5 July 2009 comment letter. 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. Robert Torres, Sutter Home Winery, Inc., P.O. Box 248, St. Helena, CA 94574

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 a 5 July 2009 comment letter 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: 11 September 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachment No. 1: Order No. R5-2009-0073