Attachment 2 – CDO No. R1-2020-0020

CALIFORNIA Water Boards

GAVIN NEWSOM GOVERNOR

JARED BLUMENFELD SECRETARY FOR ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2020-0020
MODIFYING CEASE AND DESIST ORDER NO. R1-2016-0012
REQUIRING THE CITY OF EUREKA
TO CEASE AND DESIST FROM DISCHARGING OR THREATENING
TO DISCHARGE EFFLUENT IN VIOLATION OF
WASTE DISCHARGE REQUIREMENTS FOR THE
CITY OF EUREKA ELK RIVER
WASTEWATER TREATMENT FACILITY

NPDES NO. CA0024449
WDID NO. 1B82151OHUM
Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereafter Regional Water Board), finds:

1. The City of Eureka (hereinafter Permittee) is currently discharging disinfected secondary municipal effluent from the City of Eureka Elk River Wastewater Treatment, Facility (hereinafter Facility) under Order No. R1-2016-0001 and National Pollutant Elimination System (NPDES) Permit No. CA0024449 (hereinafter Order No. R1-2016-0001 or NPDES permit), and Cease and Desist Order No. R1-2016-0012 (hereinafter Order No. R1-2016-0012 or CDO), both adopted on June 16, 2016.

2. Among other requirements, Order No. R1-2016-0001 establishes the following prohibitions:

   a. Discharge Prohibition III.A. The discharge of waste to Humboldt Bay is prohibited unless it is done in a manner which complies with the State Water Board, Water Quality Control Policy for the Enclosed Bays and Estuaries of California (1974, 1995) (Enclosed Bays and Estuaries Policy). and;

   b. Discharge Prohibition III E. The discharge of untreated or partially treated waste (receiving a lower level of treatment than secondary treatment as described in

section II.A of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in Attachment D, Standard Provisions G (Bypass) and H (Upset).

3. The CDO established compliance schedules for the Permittee to achieve compliance with Discharge Prohibitions III.A and III.E. after determining that it was infeasible for the Permittee to comply with these Discharge Prohibitions in a short period of time because new or modified control measures are dependent on the completion of a series of studies that are needed to achieve compliance. The compliance schedule established in the CDO accounted for the considerable uncertainty in determining effective measures necessary to achieve compliance with Order No. R1-2016-0001. The compliance schedule was based on reasonably expected times needed to evaluate potential compliance measures in a step-wise manner.

4. The Permittee has worked diligently to comply with tasks identified in the Requirements section of this Order. The Permittee has completed in a timely manner Tasks 1A through 1D under the compliance schedule to eliminate discharges of untreated or partially treated waste and has made significant progress on Task 2A under the compliance schedule to comply with the Enclosed Bays and Estuaries Policy.

5. The Permittee has met quarterly with Regional Water Board staff during its development of the Enclosed Bays and Estuaries Feasibility Study required under Task 2A of the Order. The Permittee has made progress toward identifying potential projects that could be implemented to provide enhancement to Humboldt Bay to meet the enhancement requirements of the Enclosed Bays and Estuaries Policy. The Permittee has stated, and Regional Water Board staff agree, that additional time is needed to gather information to narrow the project list to a list of potentially feasible enhancement projects and to further evaluate the feasibility of the most promising project options.

6. Development of the Feasibility Study has proven to be a complex, time-consuming task for both the Permittee and the Regional Water Board. Several factors have resulted in delays that make it difficult if not impossible for the Permittee to complete Task 2A by the original July 1, 2020 due date. Those factors include longer than anticipated review times by Regional Water Board staff, an evolving understanding of the possible compliance solutions and the need to research those potential solutions, and Regional Water Board staff's recognition of the need to consult with other environmental permitting agencies such as the California Coastal Commission. In addition, several emergency situations caused temporary, but significant redirection of Permittee and staff priorities, including mandatory power outages in the North Coast Region during Fall 2019, fires in Sonoma County in Fall 2019, and the COVID-19 emergency in Winter/Spring 2020.

7. The Permittee has indicated that at least a full additional year is needed to complete the Enclosed Bays and Estuaries Feasibility Study required by Task 2A due to the need for the Permittee to plan and budget for the extra work and time that will be required. For the reasons noted in Finding 6, Regional Water Board staff believe that it is appropriate to extend the deadline for completion of Task 2A an additional 15 months to October 1, 2021. This date is past the expiration date of Order No. R1-2016-0001; however, the CDO compliance dates can be reassessed during development of the next permit in 2021. This extension also requires extension of time to complete Tasks 2B through 2F in the Enclosed Bays and Estuaries compliance schedule in the Requirements section of this Order.

8. This Order modifies the compliance schedule in Requirement 2 of the CDO for achieving compliance with the Enclosed Bays and Estuaries Policy to extend each compliance date by 15 months.

9. This Order also modifies Task 2A to clarify the need for the feasibility study to address compliance with all applicable permitting and regulatory requirements and adds a new requirement to clarify that all reports and documents required under the CDO shall be submitted to the Regional Water Board Executive Officer for review and approval.

10. Pursuant to Water Code section 13389 and sections 15301, 15306, and 15321 of title 14 of the California Code of Regulations, this is an enforcement action for violations and threatened violations of waste discharge requirements, and as such is exempt from the requirements of CEQA (Public Resources Code sections 21000-21177).

11. Only those conditions identified in this Order shall be reopened with this modification. All other aspects of the existing CDO shall remain in effect and are not subject to modification by this amendment.

12. The Regional Water Board has provided notice of the public hearing to the Permittee, interested agencies and persons regarding the intent to consider issuance of the modified CDO. The Regional Water Board posted notice of the hearing and a copies of this proposed CDO modification order (Order No. R1-2020-0020) and the modified CDO (Order No. R1-2016-0012) on its website on April 15, 2020 and has provided additional notice as required by Government Code sections 11125 and 11125.9.

13. On June 18/19, 2020, after due notice to the Permittee and all other interested persons, the Regional Water Board conducted a public hearing and received evidence regarding this Order.

14. Any person aggrieved by this action of the North Coast Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the

action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code section 13301, 13267, and 13383, CDO R1-2016-0012 is modified as indicated by underline/strikeout format as follows. Note that due to the addition of several new Findings, some Findings in the modified CDO are renumbered. Original CDO finding numbers are indicated in parentheses.

1. Finding 8 of the original CDO (adopted June 16, 2016) has been removed from the modified Order because it is duplicative of Finding 3.

2. Finding 9. The following new text was added to the CDO to provide reference to necessary legal requirements that were considered in developing the CDO.

   Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The reports required by this Order, pursuant to Water Code section 13267, are necessary to ensure that the future threat to water quality created by activities at the Facility are properly assessed and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing the required reports and work plans bear a reasonable relationship to the benefits that will be obtained from having the necessary information for the Regional Water Board to properly regulate and monitor the Facility.

3. Finding 10. The following new text was added to the CDO to provide reference to necessary legal requirements that were considered in developing the CDO.

   Water Code section 13383, subdivision (a) provides the Regional Water Board may establish monitoring, inspection, entry reporting, and record keeping requirements, as authorized by section 13160, 13376, or 13377 for any person who discharges, or proposes to discharge to navigable waters. Subdivision (b) provides that the Regional Water Board may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

4. Finding 14 (previously Finding 13). Modify the original text as follows:

   "*Requirements of this Order establish a time schedule for bringing the Facility into compliance with Discharge Prohibitions. The original CDO, adopted on June 16, 2016, provided the Permittee with a ~~A~~ maximum of 168 months ~~are provided to the Permittee~~ to complete a series of studies, and based upon the findings from those studies, to design, install, and implement control measures that will lead to compliance with the Discharge Prohibitions. This CDO modification provides the Permittee with an additional 15 months to complete studies and design, install, and implement control measures that will lead to compliance with the Discharge Prohibitions, as further discussed in Findings 17 through 21, below*. This CDO modification also includes modifications to language in Task 2A to clarify that the Enclosed Bays and Estuaries Feasibility Study must address compliance with all applicable permitting and regulatory requirements."

5. Finding 15 (previously Finding 14). Modify the original text as follows: "*The compliance schedule established in this Order accounts for the considerable uncertainty in determining effective measures necessary to achieve compliance with Order No. R1-2016-0001. The compliance schedule is based on reasonably expected times needed to evaluate potential compliance measures in a step-wise manner and is intended to achieve compliance at the earliest date practicable. ~~The Regional Water Board may wish to revisit these assumptions as more information becomes available from the Permittee's evluations.~~"*

6. Finding 16 (previously part of Finding 14). Modify the original text as follows: "*The original CDO stated that ~~T~~the Regional Water Board may wish to revisit these assumptions as more information becomes available from the Permittee's evaluations. This CDO modification revisits the assumptions that were originally used in establishing the compliance schedule and establishes a revised compliance schedule for compliance with the Enclosed Bays and Estuaries Plan based on new information, as described further in Findings 17 through 21 below.*"

7. Finding 18. New finding added to read: "*The Permittee has met quarterly with Regional Water Board staff during its development of the Enclosed Bays and Estuaries Feasibility Study required under Task 2A of the Order. The Permittee has made progress toward identifying potential projects that could be implemented to provide enhancement to Humboldt Bay and meet the enhancement requirements of the Enclosed Bays and Estuaries Policy. The Permittee has stated, and Regional Water Board staff agree, that additional time is needed to gather additional information to narrow the project list to a list of potentially feasible enhancement projects and to further evaluate the feasibility of the most promising project options."*

8. Finding 19. New finding added to read: "*Development of the Feasibility Study has proven to be a complex, time-consuming task for both the Permittee and the Regional Water Board. Several factors have resulted in delays that make it difficult if*

not impossible for the Permittee to complete Task 2A by the original July 1, 2020 due date. Those factors include longer than anticipated review times by Regional Water Board staff, an evolving understanding of the possible compliance solutions and the need to research those potential solutions, and Regional Water Board staffs' recognition of the need to consult with other environmental permitting agencies such as the California Coastal Commission. In addition, several emergency situations caused temporary, but significant redirection of Permittee and staff resources and priorities, including mandatory power outages in the North Coast Region during Fall 2019, fires in Sonoma County in Fall 2019, and the COVID-19 emergency in Winter/Spring 2020."

9. Finding 20. New finding added to read: "*The Permittee has indicated that at least a full additional year is needed due to the need for the Permittee to plan and budget for the extra work and time that will be required to complete the Enclosed Bays and Estuaries Feasibility Study required by Task 2A. For the reasons stated in Finding 20, Regional Water Board staff believe that it is appropriate to extend the deadline for completion of Task 2A an additional 15 months to October 1, 2021. This date is after the expiration date of Order No. R1-2016-0001; however, the CDO compliance dates can be reassessed during development of the next permit in 2021.*"

10. Finding 21. New finding added to read: "*This Order also extends the time to complete Tasks 2B through 2F in the Enclosed Bays and Estuaries compliance schedule in the Requirements section of this Order by 15 months. The additional 15 months is needed to complete each task because the subsequent tasks are dependent on completion of Task 2A and the timing between tasks is necessary to complete the work required by each task."*

11. Finding 22. New finding added to read: "*This Order also modifies Task 2A to clarify the need for the feasibility study to address compliance with all applicable permitting and regulatory requirements and adds a new requirement to clarify that all reports and documents required under the CDO shall be submitted to the Regional Water Board Executive Officer for review and approval."*

12. Finding 23 (previously Finding 15). Modify the original text as follows: "*Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) ("CEQA") pursuant to Water Code section 13389 since the adoption or modification of an NPDES permit for an existing source is statutorily exempt and this Order only serves to implement an NPDES permit. (Pacific Water Conditioning Ass'n, Inc. v. City Council of City of Riverside (1977) 73 Cal.App.3d 546, 555-556.). Issuance of this Order is also exempt from CEQA pursuant to sections 15301,15306, and 15321 of title 14 of the California Code of Regulations.*"

13. Finding 25. New finding added to read, *"This Cease and Desist Order is effective upon adoption by the Regional Water Board."*

14. Introduction to requirements section of the CDO. Modify the original text as follows:

*"**THEREFORE, IT IS HEREBY ORDERED**, that pursuant to Water Code section 13301, 13267, and 13383, the Permittee shall cease and desist from discharging and threatening to discharge waste in violation of the terms of Waste Discharge Requirements Order No. R1-2016-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024449 by complying with the following requirements and schedule of actions to achieve compliance at the earliest possible date:"*

15. Requirement 2 of the CDO. Modify dates to provide a 15-month extension to complete each task as follows:

    Task 2A Feasibility Study due date extended from July 1, 2020 to October 1, 2021

    Task 2B Preliminary design plans and specifications for construction due date extended from July 1, 2022 to October 1, 2023

    Task 2C Environmental Impact Report or other CEQA documentation for preferred alternative(s) identified in Task 2A due date extended from July 1, 2023 to October 1, 2024

    Task 2D Final design plans and specifications for construction due date extended from July 1, 2024 to October 1, 2025

    Task 2E Procure and submit copies of all permits necessary to implement the preferred alternative(s) due date extended from July 1, 2026 to October 1, 2027

    Task 2F Complete construction of the preferred alternative which complies with the Enclosed Bays and Estuaries Policy and achieve compliance with all Regional Water Board waste discharge requirements due date extended from July 1, 2030 to October 1, 2031

16. Requirement 2 of the CDO. Modify the original text of Task 2A to read as follows:

    By ~~July 1, 2020~~October 1, 2021, the Permittee shall submit for Executive Officer review and approval a Feasibility Study that considers the Outfall Inspection Report, Updated Sewer Use Ordinance Evaluation Report, Climate Change Readiness Study Plan, and Biological Survey Report required in accordance with Order No. R1-2016-0001, and evaluates and recommends alternatives to achieve compliance with Prohibition III.A of Order No. R1-2016-0001. At a minimum, the Enclosed Bays and Estuaries Compliance Feasibility Study shall:

    a. *Assess the existing Facility system configuration and performance, including compliance with all applicable permitting and regulatory requirements;*

b. *Assess the existing condition and performance of the outfall at Discharge Point 001, including compliance with all applicable permitting and regulatory requirements;*

c. *Analyze potential alternatives to ensure compliance with the Enclosed Bays and Estuaries Policy, including, but not limited to, Facility system configuration, effluent quality, and environmental enhancements;*

d. *Identify the Permittee's Preferred Alternative(s), including costs, a summary of how the Preferred Alternative(s) specifically considered the Outfall Inspection Report, Updated Sewer Use Ordinance Evaluation Report, Climate Change Readiness Study Plan, ~~and~~ Biological Survey Report, and all applicable permitting and regulatory requirements; and*

e. *Propose a schedule of implementation.*

17. Requirement 3. Add new requirement to read, "*All required reports and documents shall be submitted to the Regional Water Board Executive Officer for review and approval.*"

18. Requirement 6 (previously Requirement 5). Modify the original text to read: *"If the ~~Executive Officer of the~~Regional Water Board or its delegee finds that the Permittee fails to comply with the provisions of this Order, the ~~Executive Officer~~Regional Water Board or its delegee may take all actions authorized by law, including referring the matter to the Attorney General for judicial enforcement or issuing a complaint for administrative civil liability pursuant to Water Code sections 13350 and/or 13385. The Regional Water Board reserves the right to take any enforcement actions authorized by law.*"

19. Requirement 7 (previously Requirement 6). Modify the original text to read: "*Any person aggrieved by this action of the North Coast Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050. ~~The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, you must comply with the Order while your request for~~*

~~reconsideration and/or petition is being considered.~~The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the or will be provided upon request."

Ordered by: _____

Matthias St. John
Executive Officer

20_0020_Eureka CDO Modification