

Attachment C

State Water Resources Control Board Order Approving
Change Point of Discharge, Purpose of Use, and Place of
Use (City of Modesto Wastewater Petition WW0077)

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Wastewater Petition WW0077
City of Modesto

**ORDER APPROVING CHANGE IN
POINT OF DISCHARGE, PURPOSE OF USE, AND PLACE OF USE**

SOURCE: San Joaquin River

COUNTY: Stanislaus

WHEREAS:

1. The City of Modesto (Modesto) filed Wastewater Change Petition WW0077 with the State Water Resources Control Board (State Water Board) on July 31, 2014, pursuant to Water Code section 1211. The petition seeks to change the point of discharge, purpose of use, and place of use of treated wastewater discharged into the San Joaquin River.
2. Modesto proposes a change in wastewater operations that would eliminate the current discharge of treated wastewater generated by Modesto's Wastewater Treatment Plant (WWTP) and convey, via pipeline and the Delta Mendota Canal (DMC), up to 30,600 acre-feet per annum (afa) of current and future treated wastewater to Del Puerto Water District (DPWD) and several Central Valley Project Improvement Act (CVPIA) – Designated Refuges south of the Delta.

For the purposes of this Order, the State Water Board considers the following information as Modesto's existing point of discharge, place of use and purpose of use of treated wastewater:

- a. The point of discharge to the San Joaquin River is as follows: California Coordinate System (CCS) NAD83, Zone 3, North 2,013,197 feet and East 6,388,628 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 4, T5S, R8E, MDB&M.
- b. The place of use for treated wastewater that is not discharged to the San Joaquin River is 2,500 irrigated acres of Modesto owned ranch land.
- c. The purpose of use is irrigation.

Modesto's treated wastewater discharge to the San Joaquin River is regulated pursuant to the Central Valley Regional Water Quality Control Board Discharge Requirements Order R5-2012-0031, National Pollutant Discharge Elimination System Permit No. CA0079103 for a facility design flow of 70 million gallons per day (mgd) for secondary-level treatment and 2.3 mgd for advanced treatment. The WWTP either discharges to the San Joaquin River from October 1 of each year to May 31 of the succeeding year when river flow provides a 20:1 dilution ratio or applies this treated wastewater to 2,500 acres of Modesto-owned ranch

lands. Modesto currently discharges to the river an annual average discharge of 8,646 acre-feet (af) of treated wastewater with a maximum annual discharge of 14,335 af. The average and maximum monthly discharge rates to the river from 2000 through 2012 are shown in the following table.

Average Monthly Rate of Discharge (mgd)											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
20.3	24.7	22.8	6.5	4.5	0.0	0.0	0.0	0.0	0.1	3.3	11.4
Maximum Monthly Rate of Discharge (mgd)											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
55.9	40.6	50.7	16.7	23.1	0.0	0.0	0.0	0.0	0.6	18.5	28.4

When Modesto cannot discharge to the river or land-apply this effluent, it stores this effluent in two ponds that provide approximately 7,800 af of storage capacity.

In 2009, Modesto started upgrading its wastewater treatment plant to promote tertiary treatment of the wastewater. After Modesto completes the second phase of its wastewater treatment plant in 2016, it may produce approximately 16,500 afa of treated wastewater. At full buildout in 2040, Modesto anticipates producing approximately 30,600 afa of treated wastewater.

Modesto's recycled water project is developed as part of the North Valley Regional Recycled Water Program (NVRWP) which is established in partnership with the City of Turlock and DPWD to address water supply shortages within DPWD's service area. The NVRWP will also provide water to CVPIA-Designated Refuges. Recycled water from Modesto and City of Turlock will be conveyed to the DMC, and from the DMC, water would be provided to DPWD and to refuges through turnouts from the DMC. During low water demand periods, the treated wastewater will be transported to the San Luis Reservoir for storage.

The proposed place of use for this treated wastewater is 43,259 irrigated acres within DPWD's service area and 124,897 acres of CVPIA Designated Refuges, in addition to 2,500 acres of Modesto Ranch Lands.

3. Public notice of the change was issued on February 10, 2015. Protests were received from Turlock Irrigation District (TID) and Westlands Water District (Westlands).

TID protested against Modesto's change petition on the basis that the proposed change would 1) be contrary to public interest; 2) be contrary to law; and 3) cause adverse environmental impacts. TID provided dismissal terms and conditions as follows:

- a. Modesto shall continue to apply wastewater treated at Modesto's Jennings Road WWTP in an amount not less than 8,500 afa to all or any portion of the lands described as Stanislaus County Assessor's Parcel Nos. 22-01-02, 22-01-04, 22-01-05, 22-03-02, 22-04-01, 22-04-02, 22-04-03, and 58-01-01, containing 2,530 acres, more or less, and referred to as "Jennings Ranch" or "Modesto Ranch." Food industry process water shall not be considered treated wastewater for purposes of this condition.
- b. The wastewater use requirement shall not be reduced if Modesto sells, conveys, exchanges, or otherwise transfers any of the Modesto Ranch Lands.
- c. Modesto shall not use groundwater from within the Turlock Groundwater Subbasin, and shall not use water from TID to irrigate any Modesto Ranch Lands.
- d. Modesto shall keep a record of the types and amounts of treated wastewater delivered to the Modesto Ranch Lands during each calendar month. Modesto shall make all such

information available to the Deputy Director for Water Rights and to TID upon request. Additionally, this information shall be compiled each year into an annual report, which shall include a summary showing the monthly amounts of each type and amount of treated wastewater delivered during the prior calendar year. The annual report shall be provided to the Deputy Director for Water Rights and to TID no later than March 31 of the following calendar year.

On August 6, 2015, TID and Modesto reached an agreement on protest dismissal terms. TID agrees to dismiss its protest if the State Water Board includes the following terms in the order approving Wastewater Change Petition WW0077.

- 1) Until and after the NVRWP begins operations, Modesto will continue to use cannery process water with Modesto's secondary treated wastewater to irrigate the Modesto Ranch Lands, which are being farmed and some of which are within the jurisdictional boundaries of TID. The Modesto Ranch Lands are defined as the numbered "Parcels" on the map titled "Parcel Map of Jennings Treatment Plant" attached to the "Protest Dismissal Agreement" filed with the State Water Board. Modesto will continue to apply secondary treated wastewater and cannery process water to the Modesto Ranch Lands in the manner described in Section 8.8.5 of the Final Environmental Impact Report (EIR) for the NVRWP dated June 2015 (SCH No. 2014042068).
- 2) No groundwater from the Turlock Groundwater Subbasin and no surface water from TID may be used to irrigate any Modesto Ranch Lands; provided that this condition does not apply to any such groundwater or surface water in any cannery process water or wastewater delivered to Modesto and subsequently used to irrigate any Modesto Ranch Lands.
- 3) Modesto will continue to comply with the two preceding conditions if Modesto sells, conveys, exchanges or otherwise transfers any of the Modesto Ranch Lands. Modesto will add a legally sufficient covenant running with the land, in a form acceptable to TID, to all deeds and other instruments selling, conveying, exchanging or otherwise transferring any portion or all of the Modesto Ranch Lands, which covenant will be binding on all of Modesto's successors and assigns.
- 4) Modesto will keep a record during each calendar month of: (1) the amounts of cannery process water and treated wastewater delivered to the Modesto Ranch Lands for irrigation and (2) the location and number of acres of land receiving the water. Modesto will make this information available to the Deputy Director for Water Rights and TID upon reasonable request. Additionally, Modesto will compile this information each year into an annual report, which will include a table of the monthly amounts of each type of treated wastewater delivered to the Modesto Ranch Lands for irrigation during the prior calendar year. Modesto will file each annual report with the Division and provide a copy to TID no later than June 30 of the following calendar year.

Westlands protested on the basis that 1) the petition was incomplete; 2) the proposed change would cause injury to Westlands as a legal user; 3) the change petition was contrary to the public interest and contrary to law; and 4) the proposed change would cause adverse impacts to the environment. Westlands did not provide protest dismissal conditions with its protest. On September 2, 2015, Modesto, Westlands, and DPWD signed a Protest Dismissal Agreement (Agreement). Westlands agreed to dismiss its protest if the following conditions are incorporated as terms of this order:

- 1) Beginning when Modesto starts delivering treated wastewater to DPWD through the NVRWP, and continuing through the term of any water sale agreement between Modesto

and DPWD for deliveries of treated wastewater through the NVRRWP, DPWD will provide 500 afa of water to Westlands through the DMC. The water that DPWD will provide to Westlands under this paragraph will be from a source other than the NVRRWP. During the first year of such deliveries, the 500 af amount will be prorated based on the number of days remaining in the year on the day when Modesto deliveries of treated wastewater to DPWD through the NVRRWP begins divided by 365. DPWD and Westlands will be solely responsible for all contractual, permitting and environmental requirements associated with DPWD's providing water to Westlands under the Agreement.

- 2) The amount that DPWD must pay Modesto for treated wastewater delivered through the NVRRWP will not be reduced because DPWD must provide water to Westlands under this agreement.
 - 3) Westlands will pay DPWD for the Water that DPWD provides to Westlands under the Agreement at the same per-acre-foot rate that DPWD pays for treated wastewater delivered from the NVRRWP.
4. The State Water Board has determined that the petition for change in the point of discharge, purpose of use, and place of use will not cause injury to any other lawful user of water.
 5. Under the California Environmental Quality Act (CEQA), Modesto is the lead agency for preparation of environmental documentation for the project. On January 8, 2015, Modesto released the Draft EIR titled North Valley Regional Recycled Water Program (SCH No. 2014042068). On July 7, 2015, Modesto issued a final EIR for the NVRRWP. On July 13, 2015, Modesto issued a Notice of Determination (NOD) for the project.
 6. The State Water Board is a CEQA responsible agency for purposes of considering whether to approve the wastewater change petition that will allow Modesto to proceed with the proposed project. As a CEQA responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a))

The State Water Board has considered the EIR in deciding whether to approve the petition. The State Water Board finds that there is no evidence that approval of the wastewater change petition, with the lead agency implementing mitigation measures from the EIR to minimize impacts to biological and water resources, will have any adverse impacts on water resources within the State Water Board's purview for the petition. The State Water Board finds that changes or mitigation measures have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effects as identified in the final EIR. The changes or mitigation measures are within the responsibility of Modesto, not the State Water Board, and have been adopted. Mitigation monitoring for this Project, identified in the "Mitigation Monitoring and Reporting Plan" and included as Appendix J of the final EIR, require reporting to agencies other than the State Water Board. The State Water Board will issue an NOD within five days of the date of this order.

7. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) The mitigation measures in the EIR minimize impacts to water resources and biological resources and no adverse impacts to public trust resources are expected.
8. Although Modesto anticipates producing approximately 30,600 afa of treated wastewater and proposes to deliver the full amount to DPWD and the CVPIA refuges at full build out of its WWTP in 2040, approval of this wastewater change petition is limited to the WWTP's historical discharge to the San Joaquin River.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Modesto is authorized to change the point of discharge, the purpose of use, and the place of use of treated wastewater effluent that would otherwise have been discharged from the WWTP to the San Joaquin River between October 1 and May 31. Modesto may eliminate the WWTP effluent discharged into the San Joaquin River up to the historical maximum monthly rate of 55.9 mgd (up to 14,335 afa).
2. The wastewater discharge may occur at a new point of discharge at the DMC intake near Zacharias Road located within CCS, NAD83, Zone 3, North 2,002,798 feet and East 6,360,310 feet, being within NW¼ of NW¼ of Section 22, T5S, R7E, MDB&M. Modesto, upon compliance with all NPDES permit requirements, may discharge tertiary treated wastewater on an as-needed basis to its existing point of discharge located at CCS, NAD83, Zone 3, North 2,013,197 feet and East 6,388,628 feet, being within SE¼ of SW¼ of Section 4, T5S, R8E, MDB&M.
3. The place of use is changed to include 43,259 irrigated acres within DPWD's service area and 124,897 acres of the CVPIA refuges, and 2,500 acres of Modesto Ranch Lands, as shown on the project map on file with the State Water Board.
4. The purpose of use is for irrigation and fish and wildlife preservation and enhancement purposes.
5. During low water demand periods, the treated wastewater may be stored in the San Luis Reservoir for later use.
6. Until and after the NVRWP begins operations, Modesto shall continue to use cannery process water with Modesto's secondary treated wastewater to irrigate the Modesto Ranch Lands, which are being farmed and some of which are within the jurisdictional boundaries of TID. The Modesto Ranch Lands are defined as the numbered "Parcels" on the map titled "Parcel Map of Jennings Treatment Plant" attached to the "Protest Dismissal Agreement" filed with the State Water Board. Modesto shall continue to apply secondary treated wastewater and cannery process water to the Modesto Ranch Lands in the manner described in Section 8.8.5 of the Final EIR for the NVRWP dated June 2015 (SCH No. 2014042068).
7. No groundwater from the Turlock Groundwater Subbasin and no surface water from TID may be used to irrigate any Modesto Ranch Lands; provided that this condition does not apply to any such

groundwater or surface water in any cannery process water or wastewater delivered to Modesto and subsequently used to irrigate any Modesto Ranch Lands.

8. Modesto shall continue to comply with the two preceding conditions if Modesto sells, conveys, exchanges or otherwise transfers any of the Modesto Ranch Lands. Modesto shall add a legally sufficient covenant running with the land, in a form acceptable to TID, to all deeds and other instruments selling, conveying, exchanging or otherwise transferring any portion or all of the Modesto Ranch Lands, which covenant shall be binding on all of Modesto's successors and assigns.
9. Modesto shall keep a record during each calendar month of: (1) the amounts of cannery process water and treated wastewater delivered to the Modesto Ranch Lands for irrigation and (2) the location and number of acres of land receiving the water. Modesto shall make this information available to the Deputy Director for Water Rights and TID upon reasonable request. Additionally, Modesto shall compile this information each year into an annual report, which shall include a table of the monthly amounts of each type of treated wastewater delivered to the Modesto Ranch Lands for irrigation during the prior calendar year. Modesto shall file each annual report with the Division and provide a copy to TID no later than June 30 of the following calendar year.
10. Beginning when Modesto starts delivering treated wastewater to DPWD through the NVRRWP, and continuing through the term of any water sale agreement between Modesto and DPWD for deliveries of treated wastewater through the NVRRWP, DPWD shall provide 500 afa of water to Westlands through the DMC. The water that DPWD will provide to Westlands under this paragraph shall be from a source other than the NVRRWP. During the first year of such deliveries, the 500 afa amount shall be prorated based on the number of days remaining in the year on the day when Modesto deliveries of treated wastewater to DPWD through the NVRRWP begins divided by 365. DPWD and Westlands shall be solely responsible for all contractual, permitting and environmental requirements associated with DPWS's providing water to Westlands under the Agreement.
11. The amount that DPWD must pay Modesto for treated wastewater delivered through the NVRRWP shall not be reduced because DPWD must provide water to Westlands under this agreement.
12. Westlands shall pay DPWD for the water that DPWD provides to Westlands under the Agreement at the same per-acre-foot rate that DPWD pays for treated wastewater delivered from the NVRRWP.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: NOV 18 2015