

NPDES 08-04



980 Ninth Street, Suite 1900  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

MICHAEL A. CAMPOS  
macampos@stoel.com

January 3, 2008

Clerk of the Board  
Environmental Appeals Board  
U.S. Environmental Protection Agency  
Colorado Building  
1341 G St., N.W., Suite 600  
Washington, D.C. 20005

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U.S. E.P.A.  
2008 JAN -4 AM 9:00  
ENVIR. APPEALS BOARD

**Re: Madera Irrigation District's Petition for Review In re The Chukchansi Gold Resort and Casino Waste Water Treatment Plant, NPDES Permit No. CA0004009**

Dear Clerk:

Enclosed are the original and six copies of the Madera Irrigation District's (MID) Petition for Review of the Chukchansi Gold Resort and Casino Waste Water Treatment Plant NPDES Permit No. CA0004009, issued by the Environmental Protection Agency, Region IX, on December 4, 2007. For the reasons stated in the Petition, MID believes that the NPDES Permit should be remanded to EPA Region IX for further review to address the issues raised in its Petition.

Please return an endorsed copy of the Petition to me in the envelope provided.

If you have any questions regarding MID's Petition, do not hesitate to call Melissa Foster or me at (916) 447-0700 to discuss this matter further.

Very truly yours,

Michael A. Campos

MAC:ms

Enclosures

cc: ALL WITHOUT EXHIBITS  
Carl Janzen  
Loren Harlow  
Joanne Kipps  
Lloyd Carter  
Madera County Resource Management Agency

Oregon  
Washington  
California  
Utah  
Idaho  
Colorado  
Minnesota

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

In re:

The Chukchansi Gold Resort and  
Casino Waste Water Treatment  
Plant

NPDES Permit No. CA0004009

PETITION FOR REVIEW

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**TABLE OF CONTENTS**

Table of Authorities ..... i

Introduction ..... 1

Threshold Procedural Requirements ..... 2

Factual and Statutory Background ..... 3

Issues Presented for Review ..... 3

Argument ..... 4

Conclusion ..... 8

Exhibits

TABLE OF AUTHORITIES

Page

**CASES**

In Re: Phelps Dodge Corp., Verde Valley Development, 10 E.A.D. 460 (2002)).....	4
---	---

**STATUTES**

40 C.F.R. Part 124 .....	2
40 C.F.R. § 124.9(a) .....	2
40 C.F.R. § 124.19(a) .....	1, 2

## INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), Petitioner Madera Irrigation District (“MID”) hereby petitions for review certain provisions of the National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0004009 (the “Permit”), which was issued by the Environmental Protection Agency (“EPA”), Region IX to The Chukchansi Gold Resort and Casino Waste Water Treatment Plant (“Discharger”) on December 4, 2007.<sup>1</sup> Notice of the final Permit was provided to Petitioner and other interested parties via electronic mail dated December 7, 2007, a copy of which is attached hereto as Exhibit B. The public notice indicated that “[w]ithin 33 days of the signing of the permit, i.e. by January 5th 2008, any person who filed comments on the proposed permit may petition the Environmental Appeals Board (EAB) to review the conditions of the permit.” Petitioner hereby timely files this Petition for Review of NPDES Permit No. CA0004009.

The Permit authorizes the Discharger to discharge up to 350,000 gpd of tertiary treated wastewater to an unnamed creek on tribal land which flows into Coarsegold Creek, a tributary to the Fresno River and San Joaquin River, which are waters of the United States. Petitioner contends that certain Permit conditions are deficient and Petitioner specifically challenges the following Permit provisions:

- (1) the lack of a numeric effluent limitation for phosphorus; (Permit Fact Sheet, p. 11; Permit Part I.A.1a, Table 1, footnote 6 (Permit p. 3).)
- (2) the insufficient investigation and monitoring requirements based on unknown flows and effects of phosphorus of unknown concentration in the discharge on the beneficial uses of the receiving waters. (*Id.*)

Moreover, for the reasons set forth below, MID believes that the content of the Permit involves important policy considerations for organic farmers and irrigation customers in

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<sup>1</sup> A copy of the final Permit, Permit Fact Sheet, Permit Appendices A-C, and EPA’s Response to Comments on the Draft Permit are attached hereto as Exhibits A1 through A4. The Discharger’s address is 711 Lucky Lane, Coarsegold, California.

Southeast Madera County, California. The Permit lacks an effluent limitation for phosphorus and the lack of such an effluent limitation, coupled with the lack of information regarding flow volume of the proposed discharge to a water of the United States, could cause serious harm to organic farmers and/or M&I users in Southeast Madera County who may use supplies directly from the Fresno River and San Joaquin River unless additional investigation is conducted by Region IX prior to issuance of the Permit. Therefore, Petitioner respectfully requests the EAB to exercise its discretion to further review the contents of the final Permit and to remand the Permit to Region IX for further consideration.

### **THRESHOLD PROCEDURAL REQUIREMENTS**

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. Part 124. Petitioners raised all of the issues set forth herein during the public comment period and during the public hearing, to wit:

1. Petitioner has standing to petition for review of the permit decision because it participated in the public comment period on the permit. (*See* 40 C.F.R. § 124.19(a); *see also* Petitioner's comments attached hereto as Exhibit C,<sup>2</sup> as well as EPA's Response to Comments (contained in Exhibit A) (noting that Petitioner's representative was present at the April 26, 2007 public hearing and presented oral comments during the public hearing.<sup>3</sup>))
2. The issues raised by Petitioner in its petition were raised during the public comment period and are therefore preserved for review. (*See* ¶ 1, *supra*.)

Thus, Petitioner has standing to seek review of the Permit pursuant to 40 C.F.R. § 124.9(a).

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<sup>2</sup> Petitioner's comments also reiterated its position that it joined in and supported the comments provided during the public comment period by Joanne Kipps, Lloyd Carter, and the Madera County Resource Management Agency. Petitioner timely filed its comments on January 22, 2007 and again on April 9, 2007.

<sup>3</sup> A copy of the Public Notice regarding the April 26, 2007 hearing is attached hereto as Exhibit D. The Public Workshop ran from 5:00 p.m. – 6:00 p.m. and the Public Hearing followed from 6:00 p.m. – 8:00 p.m. The Public Workshop and Public Hearing were held at the Coarsegold Community Center, 35610 Highway 41, Coarsegold, CA 93614.

## FACTUAL AND STATUTORY BACKGROUND

The Permit allows for surface water discharges from an existing facility that currently land applies and/or recycles all of its wastewater onsite. The Discharger currently relies on an activated sludge treatment process that treats an average of 104,000 gallons per day (“gpd”), but which has capacity to treat 170,000 gpd. The Discharger plans to convert the existing treatment plant to an Immersed Membrane Bioreactor (“MBR”) treatment plant, which will have a maximum design capacity of 350,000 gpd and a designed average flow of 235,000 gpd. The Discharger noted in Section IV of Form 2E, which the Discharger provided to EPA, that the average daily flow of the new MBR plant would be 105,000 gpd. (See Permit Fact Sheet at p. 4.)

EPA’s responses to comments and the Permit Fact Sheet both indicate that the proposed discharge would happen after use for toilet flushing at the casino and/or after irrigation use, but neither of the foregoing, let alone the Permit itself, set forth an approximate or average flow that will be discharged to a water of the United States. Therefore, under the terms of the Permit, it is possible that 350,000 gpd could be discharged to a water of the United States.

## ISSUES PRESENTED FOR REVIEW

Petitioner seeks review by the EAB of the following issues:

1. The exact volume of water proposed to be discharged to a water(s) of the United States is not known;
2. The Permit lacks a numeric or narrative effluent limitation for phosphorus, which is required to protect domestic uses as well as receiving water habitat for fish and other aquatic life;
3. The public relies on the receiving waters for domestic purposes, such as sustenance for organic farming and M&I use, and a lack of flow volume and phosphorous effluent limitation could adversely affect such users;

Based on the information set forth in Nos. 1-3, *supra*, various Permit provisions are uncertain. Moreover, the issues outlined herein indicate that the Permit will allow the

Discharger to produce pollutant discharges to waters of the United States that the Permit does not regulate and a number of discharges will, or potentially will, violate California's antidegradation requirements.

### ARGUMENT

Riparian users that rely on the Fresno River and/or Hidden Lake as a domestic water supply could encounter flows comprised entirely of flows provided by the Discharger's proposed discharge. Clearly, before the Permit goes into effect, effluent limitations need to be included in the Permit to protect MUN and AGR uses, as well as to protect the habitat for fish and other aquatic life. Moreover, the Permit needs to address the exact volume of water proposed to be discharged to the receiving water on a regular basis by the discharger.

For the reasons set forth herein, MID believes that this Petition provides an adequate showing that the Permit contains findings of fact that are clearly erroneous. Further, the Permit and the discharge it seeks to administer involves important policy considerations, as the discharge could have a detrimental effect on organic farmers and irrigation customers in Southeast Madera County, California, such that the EAB should exercise its discretion to further review the contents of the final Permit. Specifically, certain Permit terms are too lenient and are uncertain to allow for adequate protection of the receiving waters involved, organic farmers, and M&I users. MID requests more stringent permit requirements that provide certainty as to the amount of phosphorus that will be discharged into the receiving waters, as well as a more specific identification of the actual flow volumes that will be added to the receiving waters.

Below, Petitioner specifically addresses certain comments and EPA's responses thereto that Petitioner believes are deficient and are thus grounds for remand of the Permit to Region IX. (*See, e.g., In Re: Phelps Dodge Corp., Verde Valley Development*, 10 E.A.D. 460 (2002))



1. **EPA Failed To Address Potential Impacts On Organic Farmers And/Or M & I Users, Thus Rendering Certain Comment Responses Deficient.**

Comments 3-10 and 3-13 regarding the draft Permit address agricultural and irrigation use, and they are set forth below. EPA, however, failed to consider impacts of nutrient loading on organic farming and failed to adequately consider the impacts to other users of the receiving waters, thus rendering their responses to comments 3-10 and 3-13 deficient.

Comment 3-10: No analysis on stream life has been performed. The downstream user impacts have issues that are unresolved. Madera Irrigation District has no authority or approval to use treated wastewater as part of its irrigation system. The waters that leave tribal land end up in Hensley Lake, one of the major sources of the supply for the MID and, it provides water to farmers who use it for irrigation.

Response: The permit contains effluent limitations and other provisions to ensure the protection of all designated beneficial uses of downstream waters, including the use of water for Agricultural Supply.

Comment 3-13: Downstream of Coarsegold Creek there are small cattle ranches where livestock feed alongside and drink waters of the creek. Has the potential impact of unwanted chemicals finding their way into the human food chain been considered?

Response: Yes. One of the beneficial uses of the receiving waters which the effluent limits imposed on the Permittee are designed to protect is Agricultural Supply use (AGR). This beneficial use protects the use of the water for farming, horticulture, or ranching, including, but not limited to, irrigation (including leaching of salts), stock watering, or support of vegetation for range grazing. Thus the potential impact of pollutants in the water finding their way into the human food chain via consumption of livestock that use the water or consume the vegetation that uses the water has been considered.

2. **EPA Region IX Impermissibly Denied Petitioner's Request For An Effluent Limitation For Phosphorus.**

Region IX did not adequately justify its decision not to establish such limitations in the Permit, given the Nutrient Management Plan and all information available to EPA regarding the receiving waters. The Permit solely requires monitoring and reporting for phosphorus, noting that “no limit set at this time.” (Permit Part I.A.1.a., Table 1, footnote 6 (Permit p. 3).) The monitoring requirements for phosphorus require weekly measurements in the form of a twenty-four hour composite sample.

The Permit Fact Sheet contains a discussion of the EPA’s rationale for not providing an effluent limitation, numeric or narrative, for phosphorus. EPA states:

“The Fresno River Nutrient Reduction Plan concluded that in the Fresno River basin, phosphorus may be more important in preventing nutrient loading in receiving waters than nitrogen. However the RB5 Basin Plan does not have a numeric limit for phosphorous for receiving water. The Basin Plan does however include a narrative limitation on nutrients. Therefore EPA using BPJ, has established monthly monitoring requirements to assess the potential impacts of phosphorus on nutrient loading in the receiving water at the point of discharge and downstream.”

Since the Fresno River Nutrient Reduction Plan indicates, and EPA acknowledges, the importance of phosphorus, and the Region’s Basin Plan includes a narrative effluent limitation for nutrients, then at a minimum the Permit should contain a narrative effluent limitation for phosphorus as well as require much more strict monitoring and investigation regarding phosphorus in the receiving waters and the impact of phosphorus loading on downstream users, especially organic farmers and M&I users. The Permit lacks both elements, and should be remanded to EPA and be revised accordingly.

3. **EPA’s Analysis of Relevant Flow Volumes and Potential for Nutrient Loading is Deficient.**

Comment 8-1 discusses flow volumes and receiving water flows. Comment 8-1 and EPA’s response to comment 8-1 are set forth below:

Comment 8-1: There is not adequate data to demonstrate that proposed discharge channels have the carrying capacity to accommodate the amount of wastewater that could be produced. The criteria of the discharge volume relative to the flow of Coarsegold creek has not been addressed.

Response: The discharge channel on tribal land where the effluent is planned to be discharged is an unnamed tributary to Coarsegold creek. As indicated on the topographical map supplied by the discharger, with its permit application, this unnamed tributary receives water from at least two other unnamed washes, before emptying into two interconnected ponds on Tribal land. The upper and larger pond is separated from the lower and smaller pond by a small weir. Discharge from the smaller pond then discharges under Highway 41 via a 5 foot by 5 foot reinforced concrete box. Hydrologic studies of the site indicate that the likely 10 year flow from the pond is likely to range in the 37 cubic feet per second (cfs) range. The 100 year flow from the pond is anticipated to be in the 112 cfs range. The maximum design flow of the treatment plant at full design capacity is 350,000 gallons per day, with an average flow at full capacity of 240,000 gallons per day. 1 cfs = 650,000 gallons per day. Thus, at maximum capacity the flow from the treatment plant will not exceed 0.6 cfs and the average flow at full capacity would not exceed 0.4 cfs. This is between 1% and 1.6 % of the expected 10 year flow. Thus, the carrying capacity of the discharge channel is sufficient to accommodate the amount of wastewater that could be produced.

Data on the flow in Coarsegold creek presented by the County of Madera in their Fresno River Nutrient Reduction Plan Report shows a yearly variance in in-stream flow from less than 0.1 cfs to over 11 cfs between May 2003 and April 2004, with peak flow in March 2004 and lowest flows in December 2003.

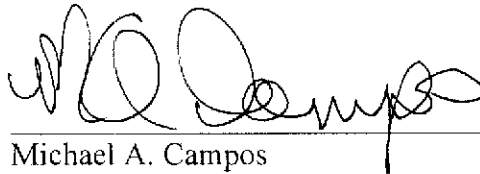
(EPA Response to Comments, Comment 8-1, p. 26 (emphasis added).)

The response to the comment, however, fails to address why the Permit is not more specific about the volume that the Discharger intends to discharge to the receiving water. Further, the average flow indicated in the Response to Comment 8-1 is over twice as much as the 105,000 gpd average daily flow indicated by the Discharger in Section IV of Form 2E that the Discharger provided to EPA. The Permit also does not specify the actual or approximate flows to be discharged to a water of the United States. According to the Permit Fact Sheet,

“wastewater generated by the WWTP will continue to be recycled and re-used onsite for toilet flushing and on-site irrigation to the maximum extent practical. The volume of wastewater that cannot be recycled or re-used or disposed of via spray or leach fields will be discharged. Such additional flow, if any, will be disposed via a discharge point . . . .” (Permit Fact Sheet at p.2.) Without knowing an exact, or even a ballpark approximate flow volume, and without any limitation on phosphorus loading into the receiving water by the discharge, the effects of the discharge on organic farmers and M&I users may not be known until it is too late and the adverse effects cannot be corrected, rendering the water unfit for organic farming and/or M&I use.

**CONCLUSION**

Based on the foregoing, Petitioner respectfully requests that the final Permit be remanded to EPA Region IX for further consideration based on the information set forth herein.



Michael A. Campos  
Attorney for Petitioner  
Madera Irrigation District  
Stoel Rives LLP  
980 Ninth Street, Suite 1900  
Sacramento, CA 95814  
Telephone: (916) 447-0700  
Facsimile: (916) 447-4781  
macampos@stoel.com

Date: January 3, 2008