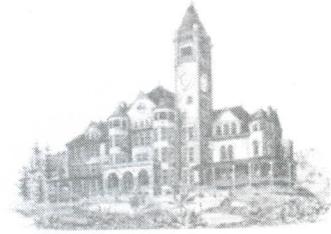




## CITY ATTORNEY CITY OF IONE



March 2, 2012

Kenneth Landau  
Assistant Executive Officer  
California Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Dr., Suite 200  
Rancho Cordova, CA 95670-6114

**Re: City of Ione Comments on Cease & Desist Order R5-2011-0019**

Dear Mr. Landau:

The City of Ione submits the following comments on the Cease and Desist Order (“CDO”) Hearing, with a “particular focus on the attainability of the deadlines.” As an initial matter, the City wishes to express the appreciation of both City staff and the Ione City Council for the time that the Regional Board, particularly members of your Prosecution Team staff, has devoted to helping the City of Ione work through its complicated wastewater issues.

With assistance from Regional Board staff, the City of Ione has narrowed its project focus from an expensive regional wastewater plant using activated sludge with tertiary treatment, to a smaller project that more closely matches the needs of Ione’s ratepayers and the requirements of the Regional Board while utilizing existing City infrastructure to improve water quality in the Ione Valley. The City hopes, therefore, that the Regional Board will grant the City a short period of additional time in which to comply with each of the remaining deadlines in the CDO.

Specifically, the City requests an extension for the preparation of the Report of Waste Discharge and associated tasks from May 30, 2012 to November 30, 2012 to allow the City sufficient time to retain a new Wastewater Engineer and to garner sufficient public support for a Proposition 218 process. Additionally, though not as critical, the City also asks for a similar extension delaying final project certification from October 31, 2013 to May 30, 2014 to allow sufficient time to obtain financing through the Regional Board’s State Revolving Fund Program.

Kenneth Landau  
March 2, 2012

The City understands and very much appreciates the Regional Board's concerns regarding Ione's history of non-compliance associated with further modification of CDO deadlines, especially as the City previously negotiated those deadlines in advance of the April 2011 Regional Board CDO Hearing. The City of Ione understands that continued communication and cooperation with Regional Board staff is expected and required, especially given the City's history. As further explained below, the City has met all of the Regional Board's monitoring and reporting requirements since the 2011 CDO Hearing and has, to date, met the CDO deadlines. The City offers the following narrative to explain where it has fallen short in its past efforts and why it will be difficult for the City to comply with the remaining CDO deadlines despite extensive efforts at compliance over the last year.

As you know, the City has been operating its wastewater treatment plant under a CDO since July 2003. The 2003 CDO was concerned with the potential for the seepage of wastewater to Sutter Creek and the potential for degradation of the Ione Valley aquifer in violation of State Resolution 68-16, the Anti-Degradation Policy. Over the last ten years, the City of Ione has considered three different solutions to stop seepage from its secondary wastewater treatment plant and eliminate any degradation of groundwater. The first of those solutions was an expansion of the City's existing pond system designed to increase treatment and disposal capacity to 1.08 MGD. The pond expansion was pursued between 2004 and 2006 but was jettisoned after a successful CEQA lawsuit by a neighbor of the City's existing secondary plant.

The second proposed solution, considered and pursued by the City between 2007 and 2011, was the construction of an underground, activated sludge treatment plant with tertiary disinfection and subsequent disposal of unrestricted re-use Title 22 water to industrial and other end-users without resorting to an NPDES Permit. This plant was intended to serve as a regional plant that would treat the wastewater flows of Ione, Mule Creek State Prison, and the Amador Regional Sanitation Agency ("ARSA"). Further, the plant was to be designed, built, operated and financed ("DBOF") by PERC Water, the company that currently serves as the City's wastewater plant operator.

When former City Manager Kim Kerr negotiated CDO deadlines with Regional Board staff in early 2011, the City anticipated that negotiations would be quickly finalized with its regional partners and with PERC for the construction of a regional, activated sludge plant including tertiary treatment. By July 2011, however, when Interim City Manager, Jeff Butzlaff and the new City Attorney, James Maynard, began their service to the City, negotiations involving the regional plant described in the City of Ione's Wastewater Treatment Master Plan and Final Environmental Impact Report had failed. Because the City pursued this complicated, expensive and ultimately unworkable solution over a lengthy period, it lost critical time for compliance with the Regional Board's mandates.

*Significantly, this period also coincided with the collapse of the national economy between 2008 and 2011. The economic downturn stopped homebuilding in Ione and critically restricted the flow of developer connection fees that were an important source of financing such a regional solution. Ultimately, the City was unable to enlist the participation of other public agencies in Amador County. The City also failed to anticipate the significant effect that the collapse of its negotiations with its regional partners would have on the ratepayers*

Kenneth Landau  
March 2, 2012

of Ione had the City moved forward with an activated sludge plant including tertiary treatment. The City, despite repeated requests for further information regarding costs and financing from PERC, was unable to negotiate a DBOF deal that was consistent with the public interest.

When the City hired new executive staff in July 2011, it was immediately apparent to both the Interim City Manager and to the new City Attorney that the proposed treatment plant was simply too expensive a solution given Ione's limited ratepayer base (1600 ratepayers) and the lack of willing regional partners. City staff then attempted to negotiate terms with PERC between July 2011 and October 2011 for a smaller, lower-cost plant to treat Ione's flows and ensure regulatory compliance. If the City had moved forward with the PERC proposed plant, Ione's sewer rates would have increased from \$40.70 per Equivalent Dwelling Unit ("EDU") to well over \$100 per EDU, an increase that would not have survived the Proposition 218 ratepayer protest process.

On October 19, 2011, the Ione City Council agreed to withdraw from further negotiations with PERC and directed staff to seek funding through the State Water Board, Division of Financial Assistance, State Revolving Fund, and to consider less-expensive treatment alternatives focused on compliance with the 2011 CDO. The City Council also authorized staff to disseminate a Request for Proposal to retain an engineering consultant to advise the City on applying for and obtaining SRF funding and to advise the City Council on low-cost alternate technologies using existing City infrastructure. At this meeting the City Council directed staff to focus on a project that would resolve the issues outlined in the CDO and that would serve both Ione's ratepayers and existing development entitlements.

After considering the responses to that RFP for a consultant to assist with design evaluation and SRF funding, a technical review panel recommended, on January 17, 2012, that the City Council retain Winzler & Kelly as the City's SRF Consultant to: (1) evaluate lower-cost treatment alternatives, and (2) to prepare the SRF-required Facilities Planning Report. Winzler & Kelly was to work in tandem with the City's Wastewater Engineer as RBI was to prepare the Report of Waste Discharge ("RWD") by May 30, 2012, the next deadline in the CDO.

City Staff had planned to bring an extension to the RBI contract and a recommendation to retain Winzler & Kelly for SRF application and evaluation of project alternatives forward to City Council in mid-December but the press of holidays, and the absence of one City Councilmember due to complications from surgery, prevented the City Council from considering the contracts on that date. Further, the January 3, 2012 Council meeting was cancelled so the RBI contract extension and the Winzler & Kelly professional services agreement were brought forward to City Council on January 17, 2012. At that meeting, the Council deadlocked 2-2 as to the approval of a contract extension for RBI and also deferred a decision on the Winzler & Kelly SRF contract. Council directed that a community workshop could be held to clarify the need for the expenditure of public funds on wastewater engineering consultants.

The City was on track to meet the next deadline of May 30, 2012 had both engineering contracts been approved in mid-January. External factors, however, including an imminent recall election scheduled for February 28, 2012 and the discovery and disclosure of

Kenneth Landau  
March 2, 2012

massive mismanagement of the City's finances by the former City Manager, have seriously impacted the City's compliance schedule. These delays have decreased the odds that the City will meet the next CDO deadline of May 30, 2012 for submission of the Report of Waste Discharge, especially given the City's current solicitation for a new City Wastewater Engineer to replace RBI.

It should be apparent, however, from the evidence submitted herein, that the City Council has diligently worked toward compliance with the Regional Board's deadlines despite a sharp change in overall project direction in October 2011. Though City Council, on October 19, 2011, directed City staff to seek the lowest-cost funding available in conjunction with an evaluation of lower-cost project alternatives, neither the City Council nor the Ione community fully appreciated the *amount* of additional up-front monies that would be required to retain qualified engineering firms (rather than having the RWD completed by PERC via a DBOF contract) to complete the required reports, designs and other SRF and Regional Board planning documents. The City has met the January 31, 2012 CDO deadline for the submission of a Seepage Discharge Compliance Plan.

Since that date, however, RBI has withdrawn its proposal to prepare the Report of Waste Discharge ("RWD") and has indicated it no longer wishes to provide engineering or program management services to the City of Ione. This has placed Ione's City Council in an untenable position as the City no longer has the services of a proven wastewater consultant. *To remedy that issue, Council has authorized a fast-track retention process, currently underway, to identify a new City Wastewater Engineer by April 3, 2012.* The new City wastewater engineer will develop a sampling and analysis plan to confirm RBI's hypothesis that anoxic sediments on the bottom of percolation pond 5 and potentially percolation pond 6, are causing the mobilization of Iron and Manganese, and will also prepare the RWD.

The City Council wishes to conduct sampling of percolation Ponds 5 and 6 as soon as possible so that the hypothesis developed by RBI and Hydrofocus can be confirmed or refuted. In other words, the City Council does not wish to retain an SRF/Design consultant to implement the plan identified in the City's Seepage Discharge Compliance Plan until sampling confirms that the solution outlined in the Seepage Discharge Compliance Plan will resolve the issues identified by the CDO. If sampling does not confirm RBI's hypothesis, the City's Wastewater Committee is currently developing a back-up plan for compliance.

Finally, and most significantly, two factors have greatly complicated the City Council's ability to garner either internal consensus or community support for any project or City expenditure of funds. *These factors should be ascribed great weight when considering whether the City diligently worked toward compliance with the deadlines of the CDO through January 2012.* The first factor was a recall election, held on February 28, 2012, to determine whether the City's former Mayor and Wastewater Committee member, and current City Councilmember, David Plank, would continue to serve on the Council.

The recall campaign has made it difficult, if not impossible, for the City to conduct even its routine business—every issue has been highly politicized by proponents of the recall. Now that the recall election has failed, the City believes it can make serious and timely progress

Kenneth Landau  
March 2, 2012

toward CDO compliance while also gaining the public support necessary to survive a Proposition 218 challenge to any rate increase necessitated by the City's wastewater project.

The second, and much more critical factor, was the discovery by the City's Interim City Manager that former City Manager Kim Kerr overstated the size (and the existence) of the City's General Fund Reserve. The City Council and community had been led to believe that Ione was solvent and had a general fund reserve of \$1.2 million. In fact, Ione has overspent its General Fund by almost \$1 million over the last several years and has no general fund reserve. Further, Ms. Kerr failed to identify an almost \$500,000 structural deficit in a City budget of approximately \$2.5 million. Lastly, the former City Manager spent money from various special funds without any regard as to whether such expenditures were appropriate. Though this financial mismanagement did not directly impact the City's Sewer Fund, it severely impacted the City Council's relationship with Ione's residents and ratepayers, and undermined trust in Ione's municipal government.

The City Council is currently working to regain the public trust through a series of community forums and workshops on both the City Budget and on wastewater issues. Additionally, the City Council's Wastewater Committee, now comprised of Mayor Ron Smylie and Councilman Lloyd Oneto, will add several Ione residents to the Council's Wastewater Committee to improve the public's faith in the process and to help restore confidence in decisions by the City Council.

The City has several outstanding tasks that must be accomplished before the RWD can be completed. These tasks include:

1. Retention of a new City Wastewater Engineer;
2. Development of a Sampling and Analysis Plan to confirm RBI's hypothesis;
3. Retention of Winzler & Kelly or another proposer to assist with both SRF funding and design evaluation and analysis;
4. Retention of Winzler & Kelly or another proposer to design the facility;
5. Community workshops and forums to gain community support in advance of a Proposition 218 process;
6. Negotiations with both the Amador Regional Sanitation Agency and Mule Creek State Prison regarding the use of Ione's existing tertiary treatment plant;

Again, the City requests a six-month extension to both the RWD deadline and to the plant certification deadline as the City has lost two months between mid-January and mid-March and expects it will need at least three additional months to complete retention of a new City Wastewater Engineer, to develop a sampling and analysis plan, and to take samples of the anoxic sediments in percolation ponds 5 and 6.

Alternately, the City requests an extension to the RWD deadline only as it may be possible to expedite construction to make up for lost time during the design and construction phase.

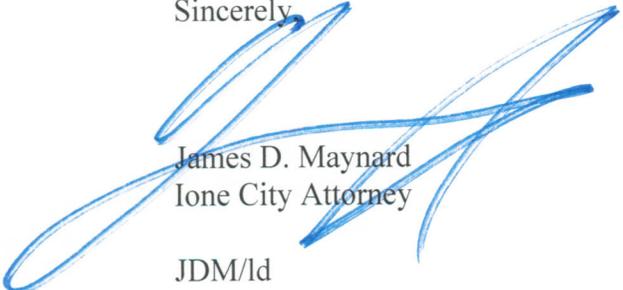
For the reasons outlined herein, the Ione City Council sincerely hopes to avoid the future imposition of Administrative Civil Liability as the Council firmly believes it is now on the right track to get a project designed and built with support from both Ione's ratepayers and

Kenneth Landau  
March 2, 2012

from the Regional Board and its staff. An extension of the RWD deadline would certainly assist the City with that goal and would allow the City to focus its efforts on regulatory compliance rather than focusing its attention on future regulatory and legal proceedings through the imposition of Administrative Civil Liability.

The City looks forward to discussing these issues with you at your March meeting and appreciates the time Board Staff and Board Members have spent reviewing the City's submission. Though the City has recently stumbled, it is committed to completing improvements to its infrastructure that will ensure regulatory compliance in the very near future.

Sincerely,



James D. Maynard  
Ione City Attorney

JDM/ld

cc: Ione City Council  
Jeff Butzlaff, Interim City Manager  
Jim Scully, Interested Party  
Wendy Wyels, CVRWQCB Compliance and Enforcement Section Supervisor