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City of Placerville

3101 Center Street
Placerville, California 95667

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Via Hand-Delivery

June 4, 2008

Wendy Wyels
Environmental Program Manager
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Re: **RESPONSE OF THE CITY OF PLACERVILLE TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0522**

Dear Ms. Wyels:

This letter constitutes the response by the City of Placerville to Administrative Civil Liability Complaint (ACLC) R5-2008-0522, seeking Mandatory Minimum Penalties (MMP) for alleged violations of effluent limitations at the Hangtown Creek Wastewater Treatment Plant.

INTRODUCTION

The City of Placerville appreciates the productive working relationship we have established with the Central Valley Regional Water Quality Control Board (Regional Water Board). In April, the City's NPDES permit was renewed by the Board, along with an accompanying Time Schedule Order (TSO) that provided relief from additional MMPs until the City can complete its treatment plant improvements and achieve full compliance.

Unfortunately, the City and the Regional Water Board are confronted with a situation where, due to circumstances not fully within the City's control, numerous violations of effluent limitations in the City's administratively continued NPDES permit occurred during a two-year period before the renewed permit was adopted. The MMP law is largely unforgiving, and the Regional Water Board has very limited options once violations have been established. In this case, however, the Regional Water Board does have an alternative to assessing the $270,000 in proposed MMPs against Placerville. The Regional Water Board may allow the City to direct an equivalent amount toward a compliance project, pursuant to Water Code Section 13385(k). As discussed

below, the City urges the Regional Water Board to determine that the $270,000 penalty has been satisfied by expenditures toward its Facility Improvement Project.[1]

FACTUAL BACKGROUND

The City of Placerville has been diligently engaged in the upgrade of the Hangtown Creek Wastewater Treatment Plant to achieve compliance with the requirements of its NPDES permit since 2001. The process will culminate in the construction of approximately $45 million worth of improvements to the treatment plant. The construction of these improvements is currently under way and completion is anticipated in spring of 2009. The improvements under construction are engineered to comprehensively upgrade the treatment process to comply with more stringent effluent limits rather than increase the treatment plant capacity. All liquid and solids process components are being upgraded. The activated sludge plant is being converted to biological nutrient removal, which will reduce the nitrate concentrations; secondary clarifiers are being added and the tertiary system is being upgraded with new filters and ultraviolet disinfection that will reduce the settleable solids, turbidity, and total coliform levels, and eliminate the use of chlorine for disinfection. The Regional Water Board has recognized the challenges faced by the City in achieving compliance, and as noted above, has provided compliance schedules in a TSO for the interim period until the treatment plant improvements can be completed.

In order to place the alleged violations of the City's permit into context, it is important to understand that the City's efforts to comply have been hampered to a significant extent by factors outside the City's control. A detailed chronology of steps taken since 2002 is provided with this response. (Attachment A, Letter from Stephen D. Herrera to Roberta Larson, May 30, 2008.) Significantly, the City experienced numerous delays and setbacks in its efforts to obtain State Water Board funding for the needed $45 million in upgrades. In November 2003, the City met with Regional and State Water Board staff and learned that due to cash flow limitations, additional State Revolving Fund (SRF) Loan commitments were not expected to be available until late 2004 or early 2005; this estimate was later pushed back to late 2005. In September 2005, the City met with Regional Water Board staff and provided updates regarding proposed improvements at the treatment plant, including the City's revised plan to fund the improvements using an SRF Loan, Small Community Wastewater Grant and bonds. At that time, Regional Water Board staff explained that the reissued NPDES Permit for the City's facility would not be adopted until after the March 2006 expiration date, due to the backlog in processing permits. The compliance schedules provided in the permit and CDO expired in March of 2006, and due to the lack of a new compliance schedule to accommodate financing and construction, the violations subject to MMPs occurred from that date forward.

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[1] The ACLC seeks penalties for violations occurring between 2003 and 2007. The California Code of Civil Procedure provides that an action commenced under the Porter-Cologne Water Quality Act is to be brought within three years of when the Regional Water Board learns of the violation. (Code of Civ. Proc. §338(i).) Thus, violations 1 through 18 are not subject to MMPs.

THE STATE WATER BOARD HAS PROPOSED LEGISLATION THAT WOULD CLEARLY CONFIRM THE CITY'S ELIGIBILITY FOR A COMPLIANCE PROJECT.

While, as discussed below, the City continues to believe that it meets the existing criteria for a small community compliance project, we recognize that the determination is a close call. The City's population is close enough to the 10,000 threshold to complicate the Regional Water Board's decision. Any population estimate, however calculated, is simply that—an estimate–that by its nature cannot be entirely verified. Yet the outcome of this calculation is critical to the residents and ratepayers of Placerville, who have already been faced with raising a significant portion of the $ 45 million cost of treatment plant upgrades to bring the City into compliance with its permit.

The State Water Resources Control Board has recognized the plight of small communities such as Placerville in the wake of large MMP assessments, and has proposed that the Legislature increase the eligibility threshold for MMP relief to communities with a population of 20,000 or fewer.[2] (Attachment B: Fact Sheet Water Quality Initiative at p. 3; Attachment C, Excerpt of Proposed Water Code Amendments for the 2008 Water Quality Improvement Initiative, May 28, 2008.) This corresponds to the current threshold for small community grant eligibility. This legislation has significant support from local government and the administration, and the prospects for passage are favorable.

Rather than impose sizeable penalties on the City now that would not be required if the law is changed, the City requests that the Regional Water Board defer consideration of the proposed ACLC until after the Legislature and the Governor act on the measure. The last day to pass legislation is August 31, 2008, and the Governor has 30 days from that date to sign or veto all bills. Thus, the fate of the proposed amendments to the MMP law may not be known by the September 11-12, 2008 hearing date. If the bill becomes law, the City would clearly be eligible for a compliance project, and if agreement could be reached with the Regional Water Board to allow the City to offset the penalty with expenditures for its facility upgrades, no hearing before the Regional Board would be necessary. Therefore, the City requests that the hearing on the ACLC be deferred until after September 30, 2008, in order not to preclude the City from realizing the benefit of the State Water Board's proposal, should it become law.

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[2] In response to concerns about increasing financial burdens expressed by communities and their elected representatives, the State Water Board agreed to develop a "Small Community Strategy" to address these concerns. ("Small Community Wastewater Strategy", Draft Staff Document, June 2, 2008.) The strategy focuses on actions the State Water Board can take to assist small communities, and the proposed statutory expansion of small community relief from MMPs is an outgrowth of that strategy.

THE CITY IS ELIGIBLE FOR A SMALL COMMUNITY COMPLIANCE PROJECT UNDER CURRENT LAW.

As the City articulated in an April 7, 2008 letter to Regional Water Board staff, the population of the City at the time the alleged violations occurred was less than 10,000 persons. (Attachment D, Letter to Patricia Leary from Randy Pesses, April 7, 2008.) The City continues to request that the Regional Water Board allow the City to direct an equivalent amount of the proposed MMPs to a small community compliance project because the methodology used to calculate the City's population lacked the precision necessary to support the denial of eligibility. Moreover, a restrictive interpretation of the statutory criteria to exclude the City is inconsistent with legislative intent.

1. <u>The Methodology Used to Calculate the Population is Not Reflective of the Actual Population Served at the Time the Violations Occurred</u>

The Regional Water Board staff's usual procedure when considering a request for a small community compliance project under Water Code Section 13385(k) is to obtain a determination of eligibility from the State Water Board staff. The State Water Board staff reviews information available to it, including service area boundaries, and makes an initial determination of whether a community meets the definition of a small community with a financial hardship. (See Attachment B to the ACLC.) In most cases, where a community is well under the statutory threshold, this level of analysis is more than sufficient to verify eligibility, and the process works well. In a close case such as this, however, where there is a need for greater accuracy in reaching a decision that can cost a small community's ratepayers hundreds of thousands of dollars, the methodology used lacks the requisite precision.

The State Water Board staff concluded that the population served by the City's treatment plant exceeded 10,000. At the City's request, the State Water Board staff provided additional information regarding how the eligibility was calculated. (Attachment E, Letter from G. Horner to R. Larson, May 28, 2008.) The State Water Board staff agreed that an analysis of the City's billing records would yield a more accurate estimate. In addition, the denial letter states that the population served in 2006 was *estimated* at 10,086. Unfortunately, the State estimate did not have the benefit of specific local information. There are a number of factors that reduce this initial estimate of the service area's population.

- The population estimate does not account for the number of homes within the City limits that are not served by the publicly owned treatment works but are on septic tanks, and this number should be deducted from the population estimate. There are approximately 150 residential parcels in Placerville that are on a septic system according to a recently performed GIS analysis of the City's sewer service, parcel records, and city boundaries.[3] Using the California Department of Finance's official average household size estimate for Placerville and applying the average housing

[3] The GIS analysis was performed in May and June of 2008 using sewer line maps and sewer account records cross tabbed with County Assessor parcel records.

vacancy rate of 5.7 percent, there are approximately 330 persons living in homes on septic systems.[4]

- The population estimates provided by G. Horner based its count on the sewer service area boundary which is approximately 40 percent larger than the City limits. The original population estimate reviewed the street segments outside the City boundary, presuming much of these homes received sewer service from the City. However, City records show there are *only* approximately 40 residential sewer accounts outside the City limits with a total estimated population of approximately 90 people.[5]
- Finally, the population estimate does not use the California Department of Finance's methodology for estimating city populations, which uses unit completion data, vacancy rates, and average household size to estimate the current year population (Housing Unit Method).

Thus, we believe the State Water Board's population estimate to be overstated.

2. <u>The Legislature Intended to Protect Ratepayers in Small Disadvantaged Communities from the Harsh Impact of MMPs</u>

The City appreciates that the Regional Water Board is not the architect of the MMP statute, but is charged with implementing the law. As such, the Board's discretion is limited. Nonetheless, it is important that the Regional Water Board strive to effectuate the intent of the Legislature in applying the statute. The small community compliance project provision of the law has been the focus of significant legislative attention, and the statute was amended in 2006 to broaden eligibility. The intent of the most recent revisions to the law was to provide the State and Regional Water Boards "*more discretion* to work with publicly-owned treatment works serving small communities with financial hardship to correct violations and other conditions of noncompliance without imposing mandatory minimum penalties" and provide "*more flexibility* on how funds are spent on compliance projects." (Senate Floor Analysis, SB 1733 (Aanestad), August 31, 2006.) Thus, in a situation where the Regional Water Board is faced with making a close call based on *estimates* and *approximations* rather than data, the Regional Water Board should adopt the inferences most favorable to the small community.

In this case, it is far from clear that the City's population prior to 2008 exceeded 10,000, and the City has presented information that demonstrates that the population served by its treatment plant was less than 10,000 during the relevant time period. In order to effectuate the intent of the Legislature and achieve the goals of the statute to provide relief to small communities, the

[4] The estimate uses the California Department of Finance's Housing Unit Method to estimate the population of homes on septic systems. The average household size in 2000 was 2.336 persons per household, assumed to be the average household size of septic system parcels, which have been on septic systems prior to 2000.

[5] See the previous footnote.

Regional Water Board should allow Placerville to utilize the small disadvantaged community compliance project.[6]

CONCLUSION

The City is already taking all possible steps to comply with its permit, and the Regional Water Board has recognized the need to allow additional time to comply. The City does not believe it is the Regional Water Board's intent to penalize the City despite its best efforts, and imposition of the proposed MMPs can serve no purpose other than a punitive one. The City urges the Regional Water Board to allow the City to satisfy the penalty by demonstrating that it has expended an equivalent amount toward its treatment plant improvements. In the alternative, the City requests that consideration of the ACLC be deferred until the Legislature acts on the State Water Board's proposal to increase the eligibility for small community relief to a population of 20,000 or less.

Very truly yours,

John Driscoll
City Manager/City Attorney
City of Placerville

JWD:lrm
cc: Patricia Leary, Regional Water Board
Randy Pesses, Director of Public Works
Roberta Larson, Somach Simmons & Dunn
Steve Herrera, Owen Psomas
Webster Owen, Owen Psomas

Enclosures:
Attachment A – Letter dated May 30, 2008, from Stephen Herrera to Roberta Larson
Attachment B – CEPA Fact Sheet: Water Quality Improvement Initiative
Attachment C – 2008 Proposal for Water Quality Improvement Initiative Legislative Language, Consolidated Text of All Amendments (Excerpt)
Attachment D – Letter dated April 7, 2008, from Randy Pesses to Patricia Leary
Attachment E – Letter dated May 28, 2008, from Gerald Horner to Roberta Larson

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[6] While the usual practice is to seek a determination of eligibility from the State Water Board staff, the statute specifies that "the state board *or the regional board* may elect to require the publicly owned treatment works to spend an equivalent amount toward the completion of a compliance project" if the board determines the criteria are satisfied. (Water Code section 13385(k) (emphasis added).) Thus, the Regional Water Board is not bound by the State Water Board staff determination and is free to reach a different conclusion.

Attachment A

OWEN
PSOMAS

May 30, 2008

Ms. Roberta Larson
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403

Re: City of Placerville - Hangtown Creek Water Reclamation Facility
Owen Psomas Project No. 07-320
Mandatory Minimum Penalties

Dear Roberta:

As requested, we are providing the following chronological description of the steps taken by the City to comply with the effluent limitations specified in Administrative Civil Liability Complaint Number R5-2008-0522:

- March 16, 2001. The California Regional Water Quality Control Board Central Valley Region (RWQCB) adopted Order No. 5-01-045 (NPDES No. CA0079898) Waste Discharge Requirements for City of Placerville Hangtown Creek Wastewater Treatment Plant (currently known as Hangtown Creek Water Reclamation Facility) El Dorado County.

- March 16, 2001. The RWQCB also adopted order No. 5-01-046 Requiring the City of Placerville Hangtown Creek Wastewater Treatment Plant El Dorado County To cease-and-desist from Discharging Contrary to Requirements. These cease and desist order only applied to receiving water temperature limitation in the waste discharge requirements adopted on the same day.

- Spring 2002 (Approximate Date). The City hired Scott Chadd as Public Works Director;

- August 14, 2002. Owen Engineering completed a Master Plan Review for the Hangtown Creek Wastewater Treatment Plant that included a plan and schedule for compliance with the waste discharge requirements and cease-and-desist order. The schedule showed construction completion in 2010.

- August 14, 2002. The City met with RWQCB staff to discuss the City's draft work plan and schedule for compliance with the waste discharge requirements and cease-and-desist order.

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- September 5, 2002. The City submitted a Work Plan and Schedule for Compliance to the RWQCB requesting that the time schedules for compliance with the effluent limitations specified in Provision 5 in Order Number 5-01-045 and Requirement 1 in cease-and-desist Order Number 5-01-46. The City requested the time schedules were needed to allow sufficient time for construction of improvements at the Hangtown Creek Water Reclamation Facility (HCWRF).

- September 12, 2002. The City met with State Water Resources Control Board Division of Financial Assistance (SWRCB) staff to initiate the process for obtaining an SRF Loans to finance the Phase III-A and III-B improvements at the HCWRF.

- September 16, 2002. The City met with RWQCB staff to discuss potential solutions for receiving water temperature limit compliance.

- October 31, 2002. The City paid $6,000 to cover a mandatory minimum penalties imposed by the RWQCB. The City also notified the RWQCB that Owen-Engineering and Management Consultants (now Owen Psomas) has been hired to design the wastewater treatment plant improvements required to comply with the waste discharge requirements.

- November 21, 2002. The City met with RWQCB and SWRCB staff to discuss the receiving water temperature improvements needed at the HCWRF.

- January 2003. Owen Psomas began design of the Phase III-A improvements at HCWRF. City staff initiated a sampling program to gather data needed for the design of improvements at the HCWRF.

- January 6, 2003. The City met with SWRCB staff to further discuss requirements for obtaining an SRF Loan to finance needed improvements at the HCWRF.

- January 31, 2003. The RWQCB amended the existing NPDES Permit for the HCWRF (Order No. 5-01-045) and the existing cease-and-desist (Order No. 5-01-046) to extend the schedules for compliance with the new effluent limitations for Turbidity, Nitrates, Total Coliform, and the existing receiving water temperature limitation to 16 March 2006, the NPDES Permit expiration date. The RWQCB recognized that additional time would be needed for construction, but indicated they could only extend the date to the permit expiration date.

- April 10, 2003. The City met with SWRCB staff to discuss the Facility Plan for the Phase III-A improvements at the HCWRF.

- April 2003. Robertson and Bryan, Inc. (RBI) completed a Survey of the Aquatic Biological Resources and Seasonal Water Temperature Regime in Hangtown Creek, which was needed to develop seasonal receiving water temperature limits, and to design effluent cooling facilities.

- April 2003. RBI completed an Initial Study/Mitigated Negative Declaration for Hangtown Creek Wastewater Treatment Plant Phase III-A Improvements.

- October 16, 2003. Owen Engineering learned that, at best, the SWRCB will not have sufficient cash to commit funds for additional SRF loans until around December 2004.

- November 19, 2003. The City met with RWQCB and SWRCB staff and learned that due to current cash flow limitations, additional SRF Loan commitments were not expected to be available until late 2004 or 2005. The SWRCB staff suggested that the City investigate other potential funding sources. The RWQCB staff indicated that as long as the City was doing everything it could to proceed with the needed project improvements, the RWQCB staff would consider extending the compliance time schedules in the HCWRF NPDES Permit and cease-and-desist order.

- February 2, 2004. The City received Facilities Plan Approval from the SWRCB for the Phase III-A improvements at the HCWRF even though SWRCB staff had indicated SRF loan funds were not available.

- February 11, 2004. The City submitted a status report to the RWQCB regarding the status of improvements at the HCWRF.

- Spring 2004 (Date Approximate). The City met with United States Environmental Protection Agency representatives in Washington, DC to request assistance in obtaining a SRF Loan from the SWRCB.

- April 2004. The City met with RWQCB and California Department of Fish and Game (CDFG) staff to provide an overall project update and to discuss modified receiving water temperature objectives for Hangtown Creek for protection of rainbow trout.

- July 25, 2004. The City met with SWRCB staff, who indicated that they anticipated that the SWRCB will again be able to sign SRF Loan contracts around May 2005.

- July 29, 2004. The City met with SWRCB staff to initiate the process to obtain a SRF Loan to finance the Phase III-B improvements at the HCWRF, which included effluent cooling facilities. SWRCB staff indicated that it would begin accepting applications for new SRF Loans in September or October 2004, suggested that the City also apply for a Small Community Wastewater Grant (SCW Grant).

- September 2, 2004. RBI completed a Subsequent Initial Study Phase III-B Improvements Hangtown Creek Wastewater Treatment Plant.

- October 12, 2004. The City met with RWQCB staff to discuss the City's progress in designing improvements and overall plan for NPDES permit compliance.

- October 20, 2004. The City submitted its draft Revenue Program to the SWRCB for approval.

- November 3, 2004. The City met with SWRCB staff to deliver if the 10 percent submittal and discuss SRF Loan and SCW Grant requirements for future submittals.

- November 10, 2004. The SWRCB notified the City that the effluent cooling facilities improvements are eligible for a SCW Grant.

- November 30, 2004. The City submitted plans and specifications for the combined HCWRF improvement project (including Phase III-A and III-B improvements) to the SWRCB for review.

- December 2004. The SWRCB approved the Facility Plan for the Phase III-B improvements at the HCWRF.

- May 17, 2005. The SWRCB sent an Eligibility Determination Agreement and Project Performance Standards to the City for the entire project, including Phase III-B improvements. The City executed and returned the documents to the SWRCB on May 24, 2005.

- May 18, 2005. The City met with SWRCB staff to discuss project funding requirements.

  - ✓ SWRCB staff indicated that execution of a new SRF Loan contract for the City was not anticipated until Fall 2005 at the earliest (approximately 6 months later than previously estimated by the SWRCB).
  - ✓ The City indicated that it intended to proceed with the steps needed to allow it to sell bonds to cover its share of the costs for project implementation.
  - ✓ The City also indicated that it hopes to request bids for the 2005 Improvements Project in 2005 (provided the SWRCB still indicates that execution of an SRF Loan is likely in Fall 2005).

- June 8, 2005. The City submitted a letter to the RWQCB to provide an update regarding the status of the proposed improvements at the HCWRF.

- September 27, 2005. The City met with RWQCB staff and provided update regarding proposed improvements at the HCWRF, and the City's revised plan to fund the improvements using an SRF Loan, SCW Grant, and bonds. Due to backlog, RWQCB staff estimated that the reissued in NPDES Permit for the HCWRF would not be adopted until after the March 2006 expiration date.

- September 27, 2005. City submitted a signed copy of Form 200 Application/Report of Waste Discharge to the RWQCB to obtain a reissued NPDES Permit for the HCWRF.

- October 2005. The City advertised seeking bids for construction of the 2005 Facility Improvement Project.

- March 3, 2006. The City submitted a request to the RWQCB for approval to award the construction contract. Subsequently, the City received approval to award the construction contract.

- March 14, 2006. The City awarded a Contract with Western Water Constructors, Inc. to construct improvements at the HCWRF.

- March 31, 2006. The City issued the Notice to Proceed to Western Water Constructors, Inc. to proceed with construction of improvements at the HCWRF.

- April 2006. The City began construction of the approximately $40 million 2005 Facility Improvements project.

- May 3, 2006. The City submitted the additional information needed to complete its Application/Report of Waste Discharge for a reissued NPDES permit. The submittal included a requested schedule for compliance with effluent limits for Total Coliform, Turbidity, and Nitrate.

- July 24, 2006. The City received a letter from the RWQCB presenting the results from a Reasonable Potential Analysis of historic monitoring data for the HCWRF, and requesting submittal of an Infeasibility Report by August 15, 2006.

- August 4, 2006. The City requested an extension until September 29, 2006 for submittal of the requested Infeasibility Report.

- September 29, 2006. The City submitted an Infeasibility Report to the RWQCB. The report included a requested schedule for compliance with the effluent limits for Total Coliform, Turbidity, and Nitrate.

- November 7, 2006. The City met with RWQCB staff who estimated the reissued NPDES Permit would be adopted by March 2007.

- December 15, 2006. The City met with RWQCB staff who estimated the reissued NPDES Permit would be adopted by Spring 2007.

- January 10, 2007. The City submitted additional effluent and receiving water Total Hardness data to the RWQCB.

- February 2007. The City submitted written notification to the RWQCB day it intended to place the new Headworks in service.

- February 26, 2007. On behalf of the City, Owen Psomas submitted additional effluent and receiving water Total Hardness data to the RWQCB.

- March 2007. The City submitted written notification to the RWQCB day it intended to place the two new Secondary Clarifiers in service.
- April 10, 2007. On behalf of the City, Owen Psomas submitted additional effluent and receiving water Total Hardness data to the RWQCB.
- June 26, 2007. On behalf of the City, Owen Psomas submitted additional effluent and receiving water Total Hardness data to the RWQCB.
- July 11, 2007. The City received a letter from the RWQCB that included a copy of the Administrative Draft NPDES Permit for the HCWRF and a request for submittal of a Supplemental Infeasibility Report by August 10, 2007.
- July 24, 2007. The City requested an extension until September 4, 2007 for submittal of the requested Supplemental Infeasibility Report.
- August 27, 2007. The City submitted written comments to the RWQCB regarding the Administrative Draft NPDES Permit.
- August 30, 2007. The City submitted the Supplemental Infeasibility Report to the RWQCB.
- September 6 and 11, 2007. The City met with RWQCB staff to discuss City comments regarding the Administrative Draft NPDES Permit.
- September 2007. On behalf of the City, Owen Psomas submitted quarterly progress reports regarding the 2005 Facility Improvement Project to the SWRCB in accordance with SRF Loan and SCW Grant requirements.
- October 4, 2007. The City submitted a letter to the RWQCB providing justification for the receiving water temperature compliance schedule set forth in the Administrative Draft Cease and Desist Order.
- October 5, 2007. The City submitted additional information to the RWQCB, which was requested at the meetings on September 6 and 11, 2007.
- October 23, 2007. The City submitted a letter to the RWQCB, summarizing the currently projected schedule for placing new or upgraded treatment process units in service at the HCWRF.
- November 8, 2007. On behalf of the City, Owen Psomas submitted a quarterly progress report regarding the 2005 Facility Improvement Project to the SWRCB in accordance with SRF Loan and SCW Grant requirements.
- November 13, 2007. The City submitted additional information to the RWQCB describing the substantial steps taken to address impacts from Infiltration/Inflow on the HCWRF.

- November 14, 2007. On behalf of the City, Owen Psomas submitted additional information to the RWQCB regarding the Electrical Conductivity levels and Total Dissolved Solids concentrations in the potable water supply in the HCWRF service area.

- January 28, 2008. On behalf of the City, Owen Psomas was notified by RWQCB staff that the City should expect to receive a copy of the Tentative NPDES Permit by January 31, 2008.

- January 29, 2008. The City received a letter from the RWQCB that included a copy of the Tentative NPDES Permit for the HCWRF, and requested comments by March 10, 2008.

- January 2008. The City submitted written notification to the RWQCB day it intended to place the new Gravity Belt Filter, Digester No. 1, renovated Digesters Nos. 2 and 3, and Belt Press No. 2 in service over the next four to eight weeks.

- January 31, 2008. On behalf of the City, Owen Psomas submitted a quarterly progress report regarding the 2005 Facility Improvement Project to the SWRCB in accordance with SRF Loan and SCW Grant requirements.

- March 12, 2008. On behalf of the City, Owen Psomas submitted additional effluent Ammonia Nitrogen data to the RWQCB.

- April 1, 2008. The City met with RWQCB staff to discuss City comments regarding the Tentative NPDES Permit and Tentative Cease and Desist Order.

- April 1, 2008. On behalf of the City, Owen Psomas submitted additional information to the RWQCB regarding Total Coliform and Turbidity effluent data and the proposed effluent limits for pesticides.

- April 1, 2008. On behalf of the City, Owen Psomas submitted additional information to the RWQCB regarding the effluent Electrical Conductivity levels.

- April 3, 2008. On behalf of the City, Owen Psomas submitted additional information to the RWQCB regarding the City's current residential sewer service charges, effluent, receiving water, and water supply monitoring locations.

- April 25, 2008. The RWQCB adopted a reissued NPDES Permit for the HCWRF.

- May 14, 2008. On behalf of the City, Owen Psomas submitted a quarterly progress report regarding the 2005 Facility Improvement Project to the SWRCB in accordance with SRF Loan and SCW Grant requirements.

- May 30, 2008. The construction is scheduled to be completed by February 2009.

OWEN
PSOMAS

If you have any questions, please contact me.

Sincerely,

Stephen D. Herrera
Senior Project Manager

SDH:pl

Enclosures

cc: Randy Pesses, City of Placerville
Webb Owen, Owen Psomas

Attachment B

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Fact Sheet: Water Quality Improvement Initiative

Significantly improve the ability to identify, appoint and retain qualified candidates to serve on Regional Water Quality Control Boards; significantly increase the accountability, consistency and efficiency of the Water Boards; significantly enhance the Water Boards' enforcement capabilities and increase uniformity in enforcement of water quality laws

Statutory—Water Quality Improvement

- **Focus on 10-percent Rule:** Expand the pool of candidates eligible to serve on Regional Water Boards by focusing the application of the 10-percent rule to apply on a per-region basis. The 10% rule excludes members who receive more than ten percent of their incomes from regulated interests from serving on a Regional Water Board.

- **Stagger Regional Water Board Member Term Expiration Dates:** Increase Regional Water Board stability and ease some of the difficulties in the Regional Water Board appointments process by staggering the expiration dates of Regional Water Board Member terms.

- **Reduce Regional Water Board Size:** Increase the efficiency of the Regional Water Boards and facilitate the appointment of qualified members by reducing the number of Regional Board members for each region from 9 to 7.

- **Delegate Permitting Authority to Regional Water Board Executive Officers:** Increase Regional Board efficiency by transferring the authority to issue federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits from the Regional Water Boards to the Regional Water Board Executive Officers. This will also increase the Governor's ability to identify, appoint and retain qualified candidates to serve on Regional Water Quality Control Boards. Until the U.S. Environmental Protection Agency formally approves the delegation of NPDES permit decisions to the Regional Board Executive Officers, the Regional Board members would continue to be restricted to receiving less than 10 percent of their income from sources under NPDES permits issued by the Regional Board, but their income from outside of their region would no longer affect their ability to serve on the board.

- **Increase Water Boards' Accountability and Effectiveness:** Increase the accountability and effectiveness of the Regional Water Boards by making the

Regional Water Board Chair positions full-time paid positions that are appointed by the Governor and confirmed by the Senate.

- **Address Inconsistencies Among Regional Water Boards:** Improve consistency among Regional Water Boards by creating a new formal, public process, utilizing a council of full-time Water Board Chairs, to identify and address concerns regarding inconsistency and by requiring Regional Water Boards to develop Memorandums of Understanding (MOUs) to coordinate regulatory efforts when more than one Regional Water Board regulates the same facility. The MOUs would be subject to State Water Board review.

- **Set Priorities, Establish Performance Targets and Report Progress:** Increase the effectiveness and accountability of the Water Boards by requiring the State and Regional Water Board Chairs to establish and implement a biennial priority setting process, based on the strategic plan. Under the proposal, the Water Boards would report their progress to the Governor and Legislature every two years and the Regional Water Boards would report on their progress to the State Water Board every six months.

- **Expedite Adoption of Total Maximum Daily Loads (TMDLs):** Expedite the cumbersome process for adopting TMDLs by making the environmental review process for these actions consistent with federal requirements and by only requiring a TMDL to be affirmatively approved by the State Water Board upon its own motion or when an interested person files a petition. The Water Boards would be required to consider the costs of complying with a proposed TMDL during the TMDL adoption process. Also authorize the State Water Board to make technical changes to TMDL implementation plans rather than remanding the plans back to the Regional Water Boards to make the changes.

- **Conform Conflict of Interest Rules:** Allow the State to fully benefit from the expertise of Water Board members and conform the Water Boards' conflict of interest rules with the same rules as apply to other state officials under the Political Reform Act.

Statutory—Enforcement

- **Establish Civil Penalties for Submittal of Fraudulent Information:** Authorize the State Water Resources Control Board and the Regional Water Quality Control Boards to administratively issue civil liabilities for persons who provide false or misleading information to the State Water Board or a Regional Water Board.

- **Remove Unnecessary Barriers To Prompt, Effective Enforcement Actions:** Remove provisions in current law that require the Water Boards to provide written notice to illegal dischargers prior to being able to issue penalties for illegal discharges and that require the Water Boards to hold a public hearing prior to referring a case to the Attorney General.

- **Enhance Civil Enforcement for Water Code Violations and Increase Efficiency:** Authorize District Attorneys and City Attorneys for cities with a

population of 750,000 or more, at the request of the Water Boards, to seek civil liability for water quality violations. Currently only the Attorney General has this authority.

- **Modify Mandatory Minimum Penalties (MMPs) for Small Disadvantaged Communities' Reporting Violations:**
  - Limit to three the number of MMPs that can accrue against a small, disadvantaged community for a single missing report unless the State or Regional Water Board notifies the discharger of the violation and the potential penalties.
  - Expand the number of small disadvantaged communities that are eligible to complete a compliance project instead of paying all or a portion of the MMP by increasing the population criteria from a maximum of 10,000 people to a maximum of 20,000 people.

- **Expedite MMP Payments:** Eliminate the backlog of MMPs and expedite MMP payments by requiring facilities with self reported violations to send in the MMP payment along with their report, if the facility does not contest the violation. These facilities will receive a penalty discount if the self reporting and payment of violation does not require action by the Water Boards.

- **Enhance Water Board Authority to Administratively Enforce Underground Storage Tank (UST) Requirements, and Increase Consistency with Federal Requirements:** Authorize the State Water Board to impose administrative penalties for violations of UST requirements after consulting with the local enforcement agency. Currently local agencies have the authority to administratively impose such penalties, but the State Water Board, which oversees local agencies' implementation and enforcement of UST requirements, does not have such authority in case the local agency fails to take appropriate action. In addition, conform state UST law to federal UST law by allowing the Water Boards to take enforcement action for UST failures to comply with notification requirements in current law, regardless of intent.

- **Enhance Oversight of UST Testers:** Clarify provisions of current law that all tank testers who use the authority of their license to perform work on USTs, including service technician type work such as installing, repairing, maintaining and/or calibrating monitoring equipment for a UST, are subject to regulation, including enforcement, by the State Water Board.

- **Modify Date for Enforcement Reporting:** Enable the State Water Board to submit a timely report on its enforcement efforts by changing from January 1 to July 1 of each year the deadline for the report on enforcement activities in the prior year required in current law.

Administrative Initiatives

- **Performance Measurement System Development:** The Water Boards are currently developing and implementing performance measures for Water Board programs, beginning with their enforcement program, to measure

consistency, efficiency and effectiveness. The Water Boards will be inventorying all programs and functions of the Water Boards to establish a baseline of resources needed.

- **Data Management Systems Improvements:** The Water Boards are working to significantly improve their information management and web sites to enable on-line public access to water quality information for surface, ground and coastal waters, to access a report card on the Water Boards' performance to protect those waters, and to access water rights information.

- **Bay Delta Cross Functional Team:** The Water Boards have formed a San Francisco Bay-Delta team of State Water Board and Regional Water Board staff to develop and implement a comprehensive set of water quality and water right actions to address factors within the Water Boards' authority that may be contributing to the decline of Delta fishery resources.

- **NPDES Process Reengineering:** The State Water Board is working to standardized the NPDES permit process to enable the Water Boards to achieve consistent, enforceable permits where violations can be readily identified and enforcement actions promptly taken.

- **Strategic Plan Update:** The Water Boards are in the process of updating their strategic plan, involving the input of hundreds of stakeholders, to set a course for the Water Boards to improve the effectiveness and efficiency of their programs over the next several years.

- **Regional Board Member Training:** The Water Boards have developed and provided comprehensive training for Regional Water Board members, through the Water Education Foundation, to promote shared understanding and consistency in statewide implementation of water quality laws and requirements.

- **Sewage Spill Notification Improvements:** The State Water Board has issued an order to require prompt reporting (within two hours) of sewage spills to ensure immediate notification of emergency response and public health personnel.

- **Enforcement Resources Enhancement:** The Governor's Budget includes proposed Budget Change Proposals for the 2008-2009 fiscal year to support enhancements in enforcement and other priority program areas.

- **Enforcement Reporting:** The Water Boards are improving their enforcement data systems by eliminating data entry backlogs to support accurate enforcement reporting, and enhanced and timely legislative reporting on the Water Boards' enforcement track record.

Attachment C

2008 Proposal for Water Quality Improvement Initiative
Legislative Language
Consolidated Text of All Amendments

Excerpt from Page 13:

(k)(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:
(A) The compliance project is designed to correct the violations within five years.
(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.
(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.
(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of ~~**10,000**~~ ***20,000*** persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

Attachment D

City of Placerville

3101 Center Street
Placerville, California 95667

April 7, 2008 **FILE COPY**

Ms. Patricia Leary
Senior Engineer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Dear Ms. Leary:

It was a pleasure meeting you at the Regional Board offices the other day in conjunction with our meeting with Diana Messina and Beth Thayer concerning the upcoming NPDES permit for the Hangtown Creek Water Reclamation Facility in the City of Placerville. I appreciate your willingness to discuss with us the best approach for the City to take in its response to the pending administrative civil liability complaint for mandatory minimum penalties (MMP) associated with discharge violations from the Hangtown Creek plant.

As I stated at our meeting, the City understands that the MMP law greatly constrains the Regional Water Board's discretion with regard to assessing penalties for violations of effluent limitations. However, the proposed imposition of $273,000 in MMPs would place a significant burden on the City's ratepayers for no corresponding water quality benefit. The Legislature recognized the unfairness of imposing these penalties on small communities with limited resources that would be better spent on improving their treatment systems to ensure future compliance. Consistent with legislative intent, this letter outlines the bases upon which the City makes its request for relief from this imposition pursuant to the provisions of Section 13385 (k) et seq. of the California Water Code, and addresses the overall equity of the circumstance.

As you are well aware, the City of Placerville has been diligently engaged in the upgrade of the subject wastewater treatment plant to achieve compliance with the requirements of Cease and Desist Order R5-01-46 since 2001 or earlier, a process which has culminated in the construction of approximately $45 million worth of improvements to this treatment plant. The construction of these improvements is currently under way and completion is

anticipated for the spring of 2009. A letter from this office was forwarded to your attention dated October 4, 2007, outlining the substantial efforts that have been made by City staff and our consultant team to comply with the CDO and complete the upgrades to the treatment plant.

When the City was first notified of the proposed imposition of these mandatory minimum penalties, City staff reviewed the pertinent sections of the California Water Code and determined that the above cited section 13385 (k) outlined the circumstances under which certain small communities could receive relief from the imposition of these penalties. The City submitted a request to your department that the City be determined to meet the stipulated criteria, and therefore, eligible for the allowable exemption (copy attached).

We were advised by your staff that this determination is made by staff of the State Water Resources Control Board, and we were directed to prepare a letter outlining our request and forward it to a Mr. Gerald Horner, Economist with the State Board. The City received a copy of an internal memo from Mr. Horner addressed to you that outlines the results of Mr. Horner's determination. We recognize that the Water Code was recently amended to revise the criteria for small community compliance projects, and we appreciate that the particular methodology for determining eligibility is not specified in the statute. It is surprising, however, that Mr. Horner's analysis was extrapolated to reject the City's request, given that the intent of the most recent revisions to the law was to provide the State and Regional Water Boards "*more discretion* to work with publicly-owned treatment works serving small communities with financial hardship to correct violations and other conditions of noncompliance without imposing mandatory minimum penalties" and provide "*more flexibility* on how funds are spent on compliance projects." (Senate Floor Analysis, SB 1733 (Aanestad), August 31, 2006.) There are a number of incorrect assumptions in Mr. Horner's analysis that result in an incorrect conclusion, the details of which are outlined below.

After the City's original request letter was submitted that identified the official City population based upon the 2000 census as 9,610, and the median income level for the City at approximately 76% of the statewide median, Mr. Horner requested a copy of a map that delineated the City's overall service area. From that map, he estimates land area beyond the city limits and assumes a population density to conclude that Placerville serves a community with a population that is much greater than 10,000. He states that the population within the city limit is not the test, but it is the size of the community served. We question the use of a standard population density factor to make this determination, given that "low population density" is one of the factors relevant to determining eligibility. Nonetheless, assuming this approach is used in the analysis, it is important to look at the community *actually served*. Had we understood the manner in which Mr. Horner intended to use the map, we would have pointed out at the time we provided it that the serviceable area on the map is based upon the watershed boundary for Hangtown Creek, but not all of those properties are served by the city sewer system. Most existing properties outside the City limits, and a significant number of existing properties within the City, are currently served by septic systems. City records indicate that approximately 20 equivalent dwelling units outside the City limits are currently served by the City

system. There are approximately 2,793 existing residential accounts within the City limits. If one assumes an average population density of 2.3 persons per household, the total population of the community served by the city system is (2,793 + 20) x 2.3 = 6,470. If City limits is not the test, then actual population served should be, and with 6,470 people served, the City of Placerville falls substantially below the 10,000 population threshold.

It is very clear in the language of section 13385 that the legislature considered the problems associated with the operation of a new or reconstructed wastewater treatment unit, and in section 13385 (j) (1) (D) et seq. there are provisions that allow a discharger a period of 90 days to bring the reconstructed wastewater treatment unit online to meet discharge requirements. It would seem totally inconsistent with the intent of the statute to allow the municipality 90 days after the unit is online to meet discharge requirements, but to impose mandatory minimum penalties upon the same municipality while it is actually reconstructing the wastewater treatment unit.

In this case, the City of Placerville has been faced with the necessity to completely reconstruct almost our entire wastewater treatment plant, a project costing $45 million with a construction schedule of 42 months. Most of the violations listed in the proposed administrative civil liability complaint can be attributed one way or another to plant upset caused as a result of construction activities.

Taken in its entirety, it is clear that the intent of this section of the Water Code was not to impose $273,000 in mandatory fines to a municipality that has clearly demonstrated its commitment to comply with all state and federal regulation; all discharge requirements identified within the pending NPDES permit; all testing, monitoring and reporting requirements; and, when all is said and done, to enhance the overall water quality and habitat value of the Hangtown Creek riparian zone.

It has been estimated by our consultants and City plant operations staff that the anticipated added cost of just the monitoring, testing and reporting will be an additional $250,000 per year. The costs of utilizing ultraviolet light rather than chlorine gas for effluent disinfection will add roughly $300,000 per year to the cost of plant operation. These added costs coupled with the substantial debt service burden associated with paying off $45 million worth of the SRF loans and revenue bonds represents a substantial additional burden to the ratepayers and citizens of the City of Placerville. Mr. Horner was presumably unaware of the overall circumstance and the burden facing the City, and as noted above, based his determination on extrapolations rather than actual households served.

In light of the information presented here, the City renews its request that, in lieu of issuing an Administrative Civil Liability Complaint for MMPs for the City's wastewater treatment plant, the Regional Water Quality Control Board prepare a stipulated ACL Order that allows the City to direct the entire MMP amount toward a small community compliance project in accordance with Water Code section 13385(k). While you and

your staff are already aware of the improvements the City is making, we would be pleased to supply a description of the project for inclusion in the stipulated order.
We would like to schedule a meeting with you at your earliest convenience to discuss this matter and, hopefully, reach agreement on a stipulated order. It is the desire of the City to resolve this issue at staff level if at all possible, and we look forward to meeting with Regional Board staff in the near future to bring about an equitable resolution to this issue.
If you have any questions or require additional information from the City, please do not hesitate to contact me at 530-642-5557.

Very truly yours,

Randy Pesses

Randy Pesses
Public Works Director

cc: John Driscoll, City Manager/City Attorney
Steve Herrera, Owen-Psomas
Web Owen, Owen-Psomas
Dan Yaroch, City of Placerville
Barry Hilton, Regional Water Quality Control Board
Roberta Larson, Somach Simmons & Dunn

Attachment was Nov. 30, 07
letter to Patricia Leary

Attachment E

Linda S. Adams
Secretary for Environmental Protection

State Water Resources Control Board

Office of Research, Planning, and Performance
1001 I Street • Sacramento, California 95814 • (916) 341-5279
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5284 • http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

May 28, 2008

Roberta L. Larson
Somach Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento CA 95814

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0522-CITY OF PLACERVILLE

Dear Ms. Larson:

This is in response to your May 21 request for the basis of my decision regarding the negative determination of the City of Placerville Sewer Service Area (CPSSA) as Small Community with a Financial Hardship (SCFH).

You have specifically requested: 1) the methodology used to calculate the population outside of the City of Placerville (City) and inside of the CPSSA and 2) whether I considered the number of septic systems within the City.

California Water Code section 11385(k)(2) defines "small community" as "a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the State board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."

I concluded that the CPSSA did not meet the criteria for a SCFH because the City population exceeded the 10,000 limit and the City comprises an area within the CPSSA. The implicit assumption is that the population of the City was in fact a portion of the population being served by the CPSSA. It is clear that the population residing in the CPSSA is greater than 10,000.

The City has indicated that the population being served is less than 10,000 based on the number of residential accounts and an average number of persons per household. After reviewing the City's data regarding this contention, I do not agree for a number of reasons. First, in addition to the residential accounts, the number of commercial and industrial accounts should be considered. There were 473 commercial establishments in the City of Placerville in the year 2002 employing over 5,000 persons with an annual payroll of almost $130 million. Annual sales totaled over $562 million. Second, the number of persons served per household account is low. It does not consider accounts with multiple housing units such as duplexes and apartment complexes.

I did not calculate the population outside of the City and inside of the service area because the data does not exist to do so and a separate census would be required. In any case, this procedure will not give us the population being served by CPSSA due to the number of structures having septic tanks.

To more accurately determine the population being served by the CPSSA, I would suggest that an analysis of the City's Service Area billing records be conducted.

I am more than happy to discuss this with you further.

Sincerely,

Gerald L. Horner, Economist

cc: Caren Trgovcich, Director, Office of Research, Planning and Performance
Patricia Leary, Central Valley Regional Water Quality Control Board