CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583

MANDATORY PENALTY
IN THE MATTER OF

MALAGA COUNTY WATER DISTRICT
WASTEWATER TREATMENT FACILITY
FRESNO COUNTY

This Complaint is issued to the Malaga County Water District (hereafter Malaga CWD or Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES No. CA0084239) at its Wastewater Treatment Facility (WWTF).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the unincorporated community of Malaga and industrial users. Non-domestic sewage comprises approximately 83 percent of the influent. Tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal), a water of the United States.

2. The Central Canal is a distributary of the Kings River via the Fresno and Fancher Creek Canals and feeds into other canals and aqueducts to the south and to the west. The Central Canal is hydraulically connected to Fresno Slough that, during periods of heavy rain, drains to the San Joaquin River, both also waters of the United States.

3. On 28 July 1999, the Central Valley Water Board adopted WDRs Order 99-100 to regulate, in part, the discharge of up to 0.35 million gallons per day (mgd) of tertiary-treated wastewater from the WWTF to Central Canal.

4. On 14 March 2008, the Central Valley Water Board adopted WDRs Order R5-2008-0033, which prescribed new requirements for the discharge and rescinded WDRs Order 99-100.

5. CWC section 13385(i) requires assessment of mandatory penalties and states, in part, the following:

   > Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars

($3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

A) Violates a waste discharge requirement effluent limitation.

B) Fails to file a report pursuant to Section 13260.

C) Files an incomplete report pursuant to Section 13260.

D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. CWC section 13323 states, in part, the following:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. WDRs Order 99-100 General Discharge Specification B.2 states, “effluent shall have a pH between 6.0 and 9.0 pH units.”

8. WDRs Order 99-100 General Discharge Specification B.3 states, “effluent [electrical conductivity or EC] shall not exceed that of source water plus 500 µmhos/cm, or 1000 µmhos/cm, whichever is less.”

9. WDRs Order 99-100 Discharge 001 (Central Canal) Specification C.3 states, in part, effluent “turbidity shall not exceed a monthly average of 2 NTU and a daily maximum of 5 NTU.”

10. On 10 July 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and a draft Record of Violations identifying violations of WDRs Order 99-100 that are subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violations covers the period of 1 February 2004 through 30 April 2008. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) violation of the effluent turbidity limitation, two (2) violations of the effluent pH limitation, and five (5) violations of the effluent EC limitation during the period of 1 February 2004 through 30 April 2008. Attachment A, a part of this Complaint, identifies these eight effluent limitation violations, of which three are chronic violations subject to MMPs pursuant to CWC section 13385(i).

11. By 18 September 2008 letter, the Discharger acknowledged the violations identified in the draft Record of Violations identified in Finding 10 and Attachment A to this Complaint.

Following issuance of the Notice of Violation, staff changed the end of the review period from 30 April 2008 to 13 March 2008, when the Central Valley Water Board issued WDRs Order R5-2008-0033.

12. The total amount of the MMPs assessed for the three cited chronic violations is **nine thousand dollars ($9,000)**.

13. CWC section 13385 (k)(1) states, in part:

> 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.

14. CWC section 13385 (k)(2) states, in part:

> 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 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.

15. On 5 August 2008, Central Valley Water Board staff requested State Water Resources Control Board (State Water Board) staff to evaluate the Discharger's eligibility for designation as a small community with a financial hardship.

16. On 21 August 2008, Central Valley Water Board staff received a memorandum from the Executive Director of the State Water Board confirming that the Discharger's WWTF is a publicly owned treatment works serving a small community with a financial hardship within the meaning of CWC section 13385(k)(2). This memorandum can be found as Attachment B, a part of this Complaint.

17. On 26 January 2006, the Central Valley Water Board adopted Administrative Civil Liability Order R5-2006-0003 based on findings of violations of WDRs Order 99-100. The MMPs totaled one million one hundred seven thousand dollars ($1,107,000). Pursuant to CWC

section 13385(k), the Central Valley Water Board suspended payment of the MMPs as the Discharger proposed to spend an equivalent amount towards completion within five years of an approved compliance project designed to correct the violations. When the full amount of the $1,107,000 is spent on the project, the penalties will be permanently suspended.

18. By 18 September 2008 letter, the Discharger indicated that, as of 1 June 2008, it had expended $1,049,588 to complete components of the approved compliance project.

19. The Discharger has also indicated that it anticipates spending approximately $400,000 more than the $1,107,000 that it is required to spend on a compliance project pursuant to ACL Order R5-2006-0003. The Discharger may demonstrate that it is going to spend funds in excess of the amount required under ACL Order R5-2006-0003, and these funds may be applied in lieu of assessing the penalties against the Discharger should the Discharger's project meet both the requirements contained in CWC section 13385(k) and those in the State Board's *Water Quality Enforcement Policy*. The Discharger shall submit documentation of its projected expenditures beyond those required under Order R5-2006-0003 within the comment period so that the Board may consider applying these projected expenditures towards the penalties charged in this Complaint. In the event that the Board determines that approving a compliance project is an appropriate way to resolve the allegations contained herein, the Board will develop an ACL Order memorializing that settlement agreement.

20. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with Title 14 California Code of Regulations, section 15321(a)(2).

MALAGA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **nine thousand dollars ($9,000)**.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **30 December 2008**:

   a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **nine thousand dollars ($9,000);** or

b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed. This includes documentation that may be submitted to the Board under Finding 19, above.

3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

_____
LOREN J. HARLOW, Assistant Executive Officer

_____

Attachment A: Record of Violations
Attachment B: State Board Memorandum dated 18 August 2008 from Dorothy Rice to Jack Del Conte

JKW: 11/18/08

WAIVER OF 90-DAY HEARING REQUIREMENT FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Malaga County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0583 (hereinafter the "Complaint");

2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;

3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

4. □ ***(Check here if the Discharger will waive the hearing requirement and will pay the fine)***

    a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **nine thousand dollars ($9,000)** by check, which contains a reference to "ACL Complaint R5-2008-0583" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.

    b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.

    c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. □ ***(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)*** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583

MALAGA COUNTY WATER DISTRICT WWTF

RECORD OF VIOLATIONS (1 February 2004 to 13 March 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program 99-100)

Violation ID[1]	Violation Date	Parameter	Units	Period	Violation Type[2]	Limit	Reported Value	MMP (Chronic)	MMP (Serious)
1	2/28/05	Turbidity	NTU	Monthly Average	CAT1	2.0	2.7	**E[3]**	
2	9/6/05	EC[4]	µmhos/cm	Daily Maximum	OEV	811[5]	840	**E[3]**	
3	8/9/07	EC	µmhos/cm	Daily Maximum	OEV	1,000	1,033	**E[3]**	
4	8/10/07	pH	pH units	Daily Maximum	OEV	9.0	9.2	**E[3]**	
5	11/25/07	pH	pH units	Daily Maximum	OEV	9.0	9.2	**E[3]**	
6	12/3/07	EC	µmhos/cm	Daily Maximum	OEV	782[6]	820	$3,000	
7	12/10/07	EC	µmhos/cm	Daily Maximum	OEV	1,000	1,700[7]	$3,000	
8	2/15/08	EC	µmhos/cm	Daily Maximum	OEV	816[8]	1,100	$3,000	

1 Violation ID in CIWQS
2 Table of Abbreviations below defines abbreviations used in this table.
3 Violation exempt from MMP amount pursuant to CWC Section 13385(i)(1).
4 Effluent EC violations considered potentially subject to MMP are those that occurred when daily effluent EC: (a) was greater than 1,000 µmhos/cm or (b) was less than 1,000 µmhos/cm but greater than source water EC plus 500 µmhos/cm on days when source water EC was monitored. This approach was followed in evaluating compliance with the effluent EC limitation in ACL Order R5-2006-0003, which was issued for violations subject to MMPs for the period of 1 February 2000 through 30 June 2004.
5 Source water EC reported as 311 µmhos/cm on 9/6/05 yields a maximum effluent EC limit of 811 µmhos/cm on that date.
6 Source water EC reported as 282 µmhos/cm on 12/3/07 yields a maximum effluent EC limit of 782 µmhos/cm on that date.
7 The Discharger provided no information to indicate this value, reported by the lab, is suspect or otherwise inaccurate.
8 Source water EC reported as 316 µmhos/cm on 2/15/08 yields a maximum effluent EC limit of 816 µmhos/cm on that date.

Abbreviation	Definition
CAT1	Violation of Group I pollutant effluent limitation as defined in Enforcement Policy
EC	Electrical conductivity at 25°C
CIWQS	California Integrated Water Quality System database
MMP	Mandatory Minimum Penalty
OEV	Violation of other effluent limitation

VIOLATION SUMMARY						
	Chronic Violations		Serious Violations		Net Number	Net Liability
Violation	Number	Amount	Number	Amount		
pH	2	$6,000			2	$6,000
Turbidity	1	$3,000			1	$3,000
EC	5	$15,000			5	$15,000
Total Violations	8	$24,000			8	$24,000
Exempt (E) Violations	5	<$15,000>			5	<$15,000>
Net Violations & Penalty	3	$9,000			5	**$9,000**

CRWQCB, Loren Harlow

State Water Resources Control Board

Executive Office

Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
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Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

RECEIVED
AUG 25 2008
RWQCB-CVR
FRESNO, CALIF.

TO: Jack Del Conte
Assistant Executive Officer
Regional Water Quality Control Board
Central Valley Region

FROM: Dorothy Rice
Executive Director

DATE: August 18, 2008

SUBJECT: **DETERMINATION OF CITIES OF MALAGA AND CASCADE AS SMALL COMMUNTIES WITH FINANCIAL HARDSHIP**

In response to your request, dated August 5, 2008, for a determination as to whether the cities of Malaga and Cascade qualify as a small community with a financial hardship, I am forwarding the analysis and recommendation (Attachment 1) prepared by the Office of Research, Planning and Performance (ORPP). Attachment 2 to this memo contains my approval of the recommendation to designate the cities of Malaga and Cascade as small communities with a financial hardship.

If you have any questions regarding this determination, please contact me at (916) 341-5615 or Caren Trgovcich at (916) 341-5727.

Attachments

cc: Reed Sato, Director
Office of Enforcement

Caren Trgovcich, Director
Office of Research, Planning, and Performance

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State V ıter Resources Contrc Board

Linda S. Adams
Secretary for Environmental Protection

Office of Research, Planning, and Performance
1001 I Street • Sacramento, California 95814 • (916) 341-5279
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Arnold Schwarzenegger
Governor

TO: Dorothy Rice
Executive Director

Caren Trgovcich, Director
Office of Research, Planning, and Performance

FROM: Gerald Horner
Economist

DATE: August 15, 2008

SUBJECT: **REQUEST FOR DETERMINATION OF A SMALL COMMUNITY WITH A FINANCIAL HARDSHIP - CITIES OF MALAGA AND CASCADE SHORES**

On August 5, 2008, Jack Del Conte, Assistant Executive Officer, Central Valley Regional Water Quality Control Board, requested concurrence on a previous determination regarding the status of the cities of Malaga and Cascade Shores as Small Communities with a Financial Hardship. In reviewing my earlier determination, I have concluded that the cities of Malaga and Cascade Shores do qualify as Small Communities with a Financial Hardship. I have updated my earlier analysis below to reflect recent developments in the factors that can be used to evaluate financial hardship.

California Water Code section 13385(k)(2) defines a "publicly owned treatment works serving a 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."

Determining whether a given publicly owned treatment works (POTW) is "serving a small community" entails two separate determinations: (1) whether the POTW is either situated within a rural county or has a population of 10,000 or less; and (2) whether the POTW's service area has a "financial hardship."

1. Rural County/Population Cap

The first question is whether the cities of Malaga and Cascade Shores are within a "rural county." The State Water Board's Water Quality Enforcement Policy defines a "rural county" as a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine.

Malaga is located in Fresno County which has a 2003 Rural-Urban Continuum Code of 3 and therefore considered to be located within an urban county.

Cascade Shores is located in Nevada County which has a 2003 Rural-Urban Continuum Code of 4 and therefore considered to be located within a rural county.

Next, the POTWs for both communities serve a population of less than 10,000 persons, with the City of Malaga serving 1,468 persons and the City of Cascade Shores serving 200 persons.

2. Financial Hardship

The Water Quality Enforcement Policy (Enforcement Policy) considers the population of the area served and the median household income of the area served in determining financial hardship. The Enforcement Policy's discussion on financial hardship predates the most recent amendment of Section 13385(k)(2), however. Prior to the amendment, the law provided no guidance on how to evaluate financial hardship, only that the finding would be "as determined by the state board." (Water Code, section 79084.) Operating under that open-ended mandate, the State Water Board defined "financial hardship" in the Enforcement Policy in terms of median household income (MHI).

The subsequent amendment of Section 13385(k)(2) suggested additional factors (rate of unemployment and low population density) beyond MHI for the State Water Board to consider. The amendment did not purport to dictate an exclusive list, leaving the final determination of which factors to consider and what weight to give each of them entirely up to the State Water Board's discretion. Nevertheless, by identifying the additional factors, the amendment strongly suggests that the State Water Board look beyond median household income when determining financial hardship.

With that backdrop in mind, we in the Office of Research, Planning and Performance have reconsidered the approach for determining financial hardship. While we decided

to continue to use median household income as a factor, we also developed additional criteria for assessing whether the POTWs in question serve a small community with a "financial hardship." The full list of criteria we considered is:

1. Median household income (the MHI divides the income distribution into two equal groups, one having incomes above the median, and the other having incomes below the median) for the community is less than 80 percent of the California MHI;

2. The community has an unemployment rate of 10 percent or greater (All civilians 16 years old and over are classified as unemployed if they (1) were neither "at work" nor "with a job but not at work" during the reference week, and (2) were actively looking for work during the last four weeks, and (3) were available to accept a job. Also included as unemployed are civilians who did not work at all during the reference week, were waiting to be called back to a job from which they had been laid off, and were available for work except for temporary illness. The 10 percent criterion is similar to the 150 percent of the national unemployment rate used by some federal agencies in defining economically distressed communities. The national employment rate varies between five to six percent. 150 percent of that amount is seven and half percent to nine percent.); or

3. Twenty percent (20 percent) of the population is below the poverty level (Following the Office of Management and Budget's (OMB's) Directive 14, the Census Bureau uses a set of money income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being "below the poverty level." The 20 percent threshold is used by some federal agencies in determining economically distressed communities).

The City of Malaga and the related publicly owned treatment works can be considered a small community with a financial hardship because the population served of 1,468 is less than 10,000, and the MHI of $28,304 is less than 80 percent the California MHI[1].

The City of Cascade Shores and the related publicly owned treatment works can be considered a small community with a financial hardship because the population served of 200 is less than 10,000, and the MHI (documented through a privately commissioned survey in 2004) of $35,681 is less than 80 percent the California MHI. This determination for the community of Cascade Shores assumes that there has been no

[1] In 2000 the California MHI was $47,493. 80 percent of that is $37,994.

change in the service area for the POTW since the original 2004 small community determination.

Please contact me at (916) 341-5279 or via email should you have questions or concerns.

cc: Reed Sato, Director
Office of Enforcement

Erik Spiess, Counsel
Office of Enforcement

State Water Resources Control Board

Executive Office

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Linda S. Adams
Secretary for Environmental Protection

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TO: Gerald Horner
Economist
Office of Research, Planning, and Performance

FROM: Tam Howard for Dorothy Rice
Executive Director

DATE: August 18, 2008

SUBJECT: IDENTIFICATION OF THE CITIES OF MALAGA AND CASCADE AS SMALL COMMUNITIES WITH A FINANCIAL HARDSHIP

I am approving the recommendation to designate the communities of Malaga and Cascade as small communities with a financial hardship. This approval is based upon the analysis and factors used to determine financial hardship described in your memo dated August 15, 2008, regarding small communities with a financial hardship.

If you have any questions, please contact me at (916) 341-5615.

cc: Reed Sato, Director
Office of Enforcement

Erik Spiess
Staff Counsel
Office of Enforcement