

ATTACHMENT C
Comment Letters Received in October 2005

List of Comment Letters (Attachment Numbers Noted on Documents):

1. Comments on Tentative Cease and Desist Order from Somach, Simmons & Dunn, Representing Rancho Murieta Community Services District and Rancho Murieta Country Club (7-pages)
2. Request to Reschedule Hearing on Revised Tentative Cease and Desist Order from Cassidy Shimko Dawson, Representing Regency Centers (2-pages)
3. Comment Letter from Cassidy Shimko Dawson, Representing Regency Centers (5-pages)
4. Letter from Cassano Kamilos Homes supporting Regency Centers position on the Tentative Cease and Desist Order (1-page)
5. Comment Letter from Elk Grove Unified School District (2-pages)
6. Comments from Stanton, Kay & Watson, Representing Rancho North Properties, LLC (3-pages)
7. Additional Comment Letter from Stanton, Kay & Watson, Representing Rancho North Properties, LLC (3-pages)
8. E-mail from Rancho Murieta Resident Jeannie LeBlanc; 11/18/2005 (1-page)
9. E-mail from Rancho Murieta Resident Cheryn Salazar; 11/18/2005 (1-page)
10. E-mail from Rancho Murieta Resident Janis Eckard; 11/20/2005 (1-page)
11. E-mail from Rancho Murieta Resident Brad Sample; 11/21/2005 (2-pages)
12. Letter from Rancho Murieta Resident Donald Sams: 11/23/2005 (2-pages)

SOMACH, SIMMONS & DUNN

Attachment 1

A PROFESSIONAL CORPORATION

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November 21, 2005

Via Facsimile and U.S Mail

Robert Schneider, Chair, and Members
Regional Water Quality Control Board
Central Valley Region
Sacramento Main Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: **Comments on Tentative Cease and Desist Order, Rancho Murieta
Community Services District and Rancho Murieta Country Club,
Sacramento County—Agenda Item No. 8, Meeting of November 28,
2005**

Dear Chairman Schneider and Members of the Board:

This letter is submitted on behalf of Rancho Murieta Community Services District (RMCS D) and Rancho Murieta Country Club (RMCC) to provide comments on the Tentative Cease and Desist Order (Tentative CDO) scheduled for consideration by the Central Valley Regional Water Quality Control Board (Regional Board) on November 28, 2005. RMCS D and RMCC appreciate staff's efforts to consider our comments on the prior draft of the Tentative CDO and to incorporate appropriate revisions into the Order. RMCS D and RMCC, however, continue to assert that the Tentative CDO is entirely unsupported and should not be adopted. As an initial matter, it is important to note that the Regional Board's action must be supported by findings and that those findings must be supported by evidence in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515; see also *In re Petition of the City and County of San Francisco, et al.*, SWRCB Order 95-4 at pp. 4-5, 9.) The Regional Board must "set forth findings to bridge the analytical gap between the raw evidence and the ultimate decision or order. (*Topanga, supra*, 11 Cal.3d at 514-515.)

The Tentative CDO purports to relate to four "compliance issues": overflow of reclaimed water from the RMCC storage lakes to surface water during the rainy season; inadequate wastewater storage and disposal capacity at the RMCS D WWTF; complaints regarding odors emanating from the RMCC storage lakes and from the golf course irrigation system; and potential groundwater degradation at the RMCS D WWTF. (Tentative CDO at Finding 6.) In fact, there is no evidence to support that there are any

“compliance issues” at the wastewater treatment facility and the findings do not support the enforcement action. We find it difficult to understand why the Regional Board staff continues to pursue the CDO despite the fact that the majority of the factual findings on which the operative provisions of the initial tentative CDO were based have been changed or deleted.

The staff report and findings in the Tentative CDO confirm that RMCS and RMCC have satisfactorily responded to and complied with every order and requirement imposed on them. (Staff Report at pp. 1-5 and Attachment A; Tentative CDO at Findings 10, 13, 15, 28, 36.) RMCS and RMCC have fully cooperated with Regional Board staff and will continue to do so. There is simply no justification for allocating enforcement resources to parties who are cooperating with Regional Board staff and complying with their orders. To the extent that recent events warrant additional study and evaluation, the Regional Board has alternative means to request such study and evaluation. Indeed, issuance of a CDO in the present circumstance is not consistent with the State Water Resources Control Board’s (SWRCB) Water Quality Enforcement Policy, which provides for increasing levels of enforcement in response to non-compliance. CDOs should be reserved for dischargers with “chronic non-compliance problems [that] are rarely amenable to a short-term solution.” (Water Quality Enforcement Policy at p. 20.) RMCS and RMCC do not fit within this category.

Recycled Water Lake Overflows

With respect to overflows in particular, the basis for the Tentative CDO is that Regional Board staff changed its mind about the appropriate mechanism to address infrequent overflows during the storm season. RMCS and RMCC have timely complied with all of Regional Board staff’s requests to address overflows. This includes timely applying for a NPDES permit and timely applying for coverage under the State Board’s Water Quality Order No. 2003-0005-DWQ, the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4 Permit). (Tentative CDO at Findings 10, 15.) It was not until the revised Tentative CDO was circulated on November 14, 2005 that RMCS and RMCC were informed in writing that Regional Board staff had changed its direction and now believes that coverage under the MS4 Permit is not appropriate. Regional Board staff’s shift in position, without proper notice to the discharger and an explanation of the basis for the change, is not a basis for issuing a CDO. RMCS and RMCC should not be punished because Regional Board staff failed to timely issue MS4 Permit coverage and then changed their mind about whether such coverage was appropriate.

In fact, the issuance of a CDO in response to Regional Board staff’s new position, without notice and opportunity to address that new position, violates due process and fundamental principles of fairness. RMCS and RMCC cannot be expected to speculate

about future changes in the Regional Board's interpretation or approach and the rationale for them based upon nothing more than statements made by staff in an informal meeting. Nor can they be penalized for failing to act on staff's new interpretation before staff has articulated that new interpretation. Such an enforcement action violates RMCS and RMCC's rights to be notified of and have an opportunity to respond to new requirements that have far-reaching financial and operational impacts in a deliberate and thoughtful manner.

In this regard, it is especially troubling that the Staff Report indicates the reason the staff is no longer processing the RMCS's application for coverage under the MS4 permit of winter lake overflows is due to a settlement with the City of Roseville regarding its Master Reclamation Permit. (Staff Report at 3.) This settlement agreement is not attached to the Staff Report, and thus it is unclear to one reviewing the revised Tentative CDO in what way it constitutes "new information." More importantly, a settlement is binding only upon the parties to that agreement with regard to the particular dispute, and does not set legal precedent or make policy. As is routinely the case, the parties to the Roseville settlement—including the Regional Board-- specifically stated that the agreement would not serve as a "waiver of any position asserted in [the] litigation" and that the settlement "*shall not be construed as an admission by any party regarding any fact or legal issue in this case.*" (Stipulation to Dismiss the State Water Resources Control Board and to Add the City of Roseville as a Real Party in Interest; Notice of Conditional Settlement, Sacramento Superior Court Case No. 04CS01228.) In other words, the settlement altered *nothing* with regard to the legal positions or policies of the Regional Board. The staff's attempt to use this agreement now to abruptly reverse its position that the lake overflows may be covered under the MS4 permit is both improper and untenable.

Moreover, even if the Roseville settlement were a proper basis for a shift in Regional Board policy, the permit amendment that resulted from the agreement *had absolutely nothing whatsoever to do with permitting recycled water runoff from ponds or lakes under the MS4 permit.* The lawsuit challenged Roseville's master reclamation permit because, unlike RMCS and RMCC's WDRs, Roseville's permit did not include a prohibition on recycled water overflows that reach surface water, nor were the overflows specifically permitted. In the absence of any specific findings or evidence, the mere fact that a prohibition was implemented cannot serve as a determination that the other alternative of permitting these occasional storm-related overflows under the MS4 permit is foreclosed. The Roseville settlement, therefore, does not support the Tentative CDO.

Regional Board staff also indicates that, contrary to the position they have taken since early 2004, Regional Board staff has now determined that the winter overflows do not fall within the State Board's guidance memorandum regarding incidental runoff of

recycled water and, therefore, are not eligible for coverage under the MS4 permit. (Tentative CDO at Finding 16; Staff Report at p. 3.) The Staff Report mischaracterizes the nature of the winter overflows, as well as the State Board's guidance memorandum.

In particular, the Staff Report characterizes the overflow as "wastewater," but in fact, the water in the ponds that infrequently overflows is Title 22 tertiary treated recycled water, suitable for direct beneficial use. (Tentative CDO at Finding 4; see also, Wat. Code, § 13050(n).) The Staff Report suggests that regulation of the recycled water overflows under the MS4 permit is inappropriate because of the volume of recycled water in the overflow. (Staff Report at p. 3.) The State Board's guidance memorandum, however, recognizes that it is appropriate to regulate overflows from recycled water ponds through the MS4 permit so long as pollutants are reduced to the maximum extent practicable and the permits are designed to achieve water quality objectives. (Memorandum from Celeste Cantu to Regional Board Executive Officers re: Incidental Runoff of Recycled Water (February 24, 2004) at p. 4.) The State Board memorandum does not reference volume of the overflow as a consideration in determining whether coverage under the MS4 permit is appropriate. (*Id.*) Rather, the State Board memorandum acknowledges that, because of the statewide goal to maximize use of recycled water, runoff from recycled water projects should be subject to a NPDES permit *only* in limited cases when necessary to achieve water quality objectives. (*Id.* at p. 3.) The circumstances of recycled water overflows from RMCS and RMCC's WWTF do not fall within the limited circumstances when a NPDES permit is required. RMCS and RMCC have not, however, had sufficient opportunity to address this issue with Regional Board staff because staff's new position is set forth for the first time in the Tentative CDO.

Finally, the schedule allotted in the Tentative CDO for RMCC to prepare and submit reports related to overflows is unrealistic. Any order issued should extend the February 28, 2006 deadline to May 31, 2006, to ensure that RMCC and RMCS have ample time to engage their boards of directors in the preparation an adequate work report. (Order Measure 2.) Likewise, the December 30, 2007 deadline should be extended to December 7, 2008 as RMCC and RMCS must, among other tasks, obtain Regional Board approvals and comply with the California Environmental Quality Act. (Order Measure 3.)

Given RMCS and RMCC's consistent compliance record and the lack of support for the conclusion that coverage under the MS4 permit is precluded, there is no basis for issuance of the Tentative CDO. At the very minimum, there is no basis for removing the option of coverage under the MS4 permit to regulate infrequent winter overflows of recycled water, consistent with the State Board's guidance memorandum. This alternative should remain on the table for further discussion and RMCS and RMCC should have the opportunity to provide additional information to allow the

Regional Board staff to fully evaluate whether coverage of the overflows under the MS4 permit is appropriate. Therefore, should the Regional Board decide to adopt the CDO, Paragraph 1 of the CDO should be amended to include a third option: Obtain coverage under the municipal separate storm sewer permit for regulation of such discharges.

Wastewater Treatment Facility Capacity

Similarly, with respect to wastewater treatment facility capacity, RMCS D and RMCC have taken all steps requested by Regional Board staff and are continuing to work with them and each other regarding these issues. RMCS D and RMCC have submitted a plan to address present and future capacity concerns and are committed to implementing that plan. (Tentative CDO at Finding 28.) As noted in our initial plan, submitted in September 2005, once the carry-over storage issue is addressed, sufficient irrigation acreage is available to meet the community's needs. Staff does not contend otherwise. A CDO, therefore, is not necessary to address the capacity concerns at the facility. Nonetheless, staff is proposing that RMCS D be required to develop an interim contingency plan. RMCS D does not believe it is appropriate to expend additional resources on an interim plan when a long-term solution has already been identified. Instead, RMCS D and the Regional Board should focus on expediting implementation of the ultimate solution. At a minimum, however, the CDO should be revised to include, along with the specific dates, the phrase "at full build out" for capacity related works and improvements. This will allow RMCS D to design facilities to meet the community's needs without regard to whether that occurs in 2014, 2019 or some other date.

The November 30, 2007 deadline for RMCS D to submit a Report of Waste Discharge (ROWD) is reasonable. (Order Measure 8.) RMCS D intends to make every effort to submit the ROWD well in advance of that deadline. Given the concern the Regional Board staff has expressed regarding the capacity issue, it is critical that the Regional Board promptly expedite review and reissuance of the WDRs upon receiving the ROWD.

Odors

Regional Board staff acknowledges that a CDO is not necessary to address odor complaints at the facility.¹ (Board Action Summary, Rancho Murieta Community Services District and Rancho Murieta County Club, Sacramento County, *Consideration of a Cease and Desist Order*, p. 2.) RMCS D and RMCC have submitted an acceptable

¹ On October 13, 2005, staff visited RMCS D and RMCC to investigate the odor complaints, but were unable to substantiate any of the allegations. RMCS D's monthly monitoring reports also confirm that the odor complaints are unfounded.

odor program (Tentative CDO at Finding 36). There is simply no factual basis on which the provisions relating to odors can be sustained.

If the Regional Board nonetheless proceeds with issuance of a CDO, it should be revised to require both RMCS and RMCC, not just RMCS, to notify customers regarding the reporting and resolution of odor complaints. (Order Measure 11.)

Groundwater Monitoring

As with odors, a CDO is not necessary to address potential groundwater impacts at the facility. (It is undisputed that there is no evidence that groundwater is being degraded by the WWTF. (Staff Report at p. 5.) The *absence* of information is not a basis for enforcement action. If the Regional Board needs information about groundwater impacts, it may seek such information by issuing a letter pursuant to Section 13267 of the Water Code, or by amending the facility's Monitoring and Reporting Program (which, concurrent with the proposed CDO, staff *is* proposing to modify.) (Draft Revised Monitoring and Reporting Program, Rancho Murieta Wastewater Treatment Facility and Rancho Murieta Country Club, November 15, 2005.) Given that amendments to the MRP are already underway, the issuance of a CDO is not only inappropriate but potentially duplicative. Moreover, RMCS and RMCC contend that the existing wells may be adequate to provide the baseline information the Regional Board is seeking. Installation of additional wells will not necessarily yield the desired information, is costly and may be unwarranted, RMCS and RMCC should have the opportunity to provide information from the existing wells to determine whether the information is sufficient before being required to install additional wells. In light of these facts, there is no basis for imposing groundwater monitoring requirements through an enforcement order.²

Compliance Determination

In the event that the Tentative CDO is adopted, RMCS and RMCC request that it be revised to identify specific compliance milestones, especially with respect to odor control and groundwater evaluation. RMCS and RMCC take their compliance obligations very seriously. Thus, it is important for RMCS and RMCC to have specific, identifiable tasks to discharge their responsibilities under a CDO. As currently drafted, the Tentative CDO leaves compliance open-ended and uncertain, which can leave RMCS and RMCC in limbo with regard to whether they are considered to be in compliance. This is particularly problematic with regard to the limitations on

² If the Regional Board decides to retain groundwater monitoring provisions in the CDO despite the lack of an evidentiary basis, the CDO should be revised to extend the deadlines for submission of the well installation workplan, well installation report, and degradation assessment report by a minimum of three months. (Order Measures 12-14.) The timeframe provided in the Tentative CDO is insufficient to complete the required tasks.

connections to the system. RMCS D must know when the obligations under the CDO have been discharged such that connections can again be processed.

As detailed in the staff report and Tentative CDO, RMCS D and RMCC's history of compliance and cooperation undermine the conclusion that a CDO is appropriate. Issuance of a CDO in this instance is not supported by the evidence or the findings and represents significant over-reaching and inconsistency with the SWRCB's Water Quality Enforcement Policy.

Thank you for your consideration of our comments.

Sincerely,



Roberta L. Larson

RLL/jlp

cc: Mark List, Regional Water Quality Control Board (via electronic mail)
Wendy Wyels, Regional Water Quality Control Board (via electronic mail)
Frances McChesney, Regional Board Counsel (via electronic mail)
Edward Crouse, General Manager/District Engineer, Rancho Murieta
Community Services District
Robert Johnson, General Manager, Rancho Murieta Country Club
Richard Brandt, McDonough, Holland and Allen
Gary Funamura, Trainor Robertson
Kristen T. Castanos



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Attachment 2

November 21, 2005

Via Facsimile

Mr. Robert Schneider
Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re Request to Reschedule Hearing on Revised Tentative Cease and Desist
Order for Rancho Murieta Community Services District, Rancho Murieta
Country Club, Sacramento County

Dear Mr. Schneider:

This firm represents Regency Centers in connection with its proposed Murieta Gardens project in Rancho Murieta, California. Regency Centers is a property owner in the service area of the Rancho Murieta Community Services District. We are sending this letter to you and the other Central Valley Regional Water Quality Control Board (“Regional Board”) members on behalf of Regency Centers to request that the November 28/29, 2005 hearing on the proposed cease and desist order discussed herein be rescheduled for January 2006. For reasons identified in the attached letter to Ms. Wendy S. Wyels, Regency Centers would be financially and legally affected by the Regional Board’s decision in this matter.

On October 14, 2005, Regional Board staff released a Tentative Cease and Desist Order (“Tentative CDO”) for Rancho Murieta Community Services District (“RMCS”) and Rancho Murieta Country Club. Despite the very short schedule for providing written comments, we submitted comments on the Tentative CDO by the October 28, 2005 deadline. Regional Board staff reviewed our letter and made certain revisions to the Tentative CDO. We received those revisions on November 14 and the revisions are in fact significant.

If the November 28/29, 2005 hearing on the proposed cease and desist order is not rescheduled for January 2006, Regency Centers will suffer significant hardship. We

Mr. Robert Schneider
California Regional Water Quality Control Board
November 21, 2005
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Attachment 2

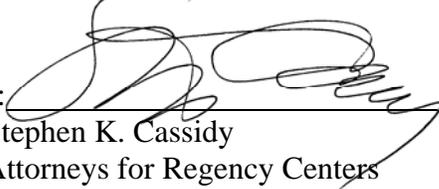
cannot adequately review and prepare comments on the significant revisions to the Tentative CDO within the short time frame allotted by Regional Board staff. Further, there are several alternatives that have not been reviewed by the RMCSB and Regional Board staff that may efficiently resolve the carryover and storage issues, including use of reclaimed water on landscaping in future developments. Cassano Kamilos Homes, Woodside Homes of Northern California, Warmington Homes California, and Rancho North Properties, all land owners at Rancho Murieta, support the request for a continuance made in this letter.

Given the long term nature of the wastewater treatment storage and disposal planning requirements in the Tentative CDO, postponing the hearing will not result in water quality impacts. Regency Centers appreciates your serious consideration of this request for a continuance of the November 28/29, 2005 hearing on the revised Tentative CDO until January 2006. Please feel free to contact me with any questions or concerns.

Very truly yours,

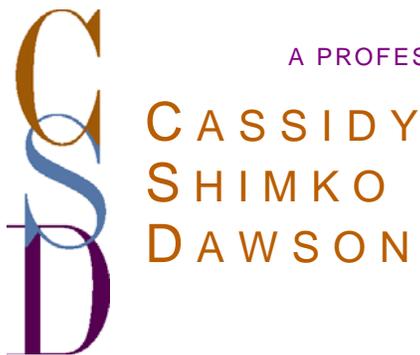
CASSIDY, SHIMKO & DAWSON

By:


Stephen K. Cassidy
Attorneys for Regency Centers

SKC:bls

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Scott Franklin, Regency Centers
Richard Brandt, McDonough, Holland and Allen
Kristen Castanos, Somach, Simmons and Dunn
Robert Cassano, Cassano Kamilos Homes
Clay Heil, Warmington Homes
Edward Mevi, Rancho Levi
Andrew Zinniger, Woodside Group, Inc.



November 21, 2005

Via Facsimile and Email

Ms. Wendy S. Wyels
Supervisor, Title 27 and WDR Units
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club, November 14, 2005

Dear Ms. Wyels:

This firm represents Regency Centers in connection with its proposed Murieta Gardens project in Rancho Murieta, California. This letter provides Regency Centers' preliminary comments regarding the "Tentative Cease and Desist Order to the Rancho Murieta Community Services District and Rancho Murieta Country Club", dated November 14, 2005 (the "Tentative CDO"), and regarding any related California Regional Water Quality Control Board - Central Valley Region ("Regional Board") decisions on treatment, storage, and disposal of wastewater in Rancho Murieta. Regency Centers owns certain property in Rancho Murieta and for the reasons explained below would be materially and adversely affected by any Regional Board decision establishing new requirements for the Rancho Murieta Community Services District ("RMCS D") in regard to wastewater treatment, storage or disposal. For the reasons set forth below, the Regional Board should not limit influent flows or connections to RMCS D wastewater treatment facilities. Since Regency Centers has had scant time to respond to the Tentative CDO, Regency Centers reserves the right to submit additional evidence at or before the hearing to oppose the Tentative CDO (both as a matter of California administrative law and Federal constitutional due process and equal protection principles).

On October 14, 2005, Regional Board staff released a Tentative Cease and Desist Order (Tentative CDO) for RMCS D and Rancho Murieta Country Club (RMCC). Despite the very short schedule for providing written comments, we submitted comments on the Tentative CDO by the October 28, 2005 deadline. Regional Board staff reviewed

our letter and other letters from concerned parties and made certain revisions to the Tentative CDO. On November 21, 2005, the Regional Board issued the revised Tentative CDO, which will be considered for approval at November 28/29 meeting of the Regional Board in Rancho Cordova. The Tentative CDO describes four areas of alleged noncompliance by the RMCS D and RMCC and proposes a series of plans to address those areas:

1. Reclaimed water storage overflows from the golf course storage lakes at the Country Club;
2. Inadequate wastewater treatment facility (WWTF) storage and disposal capacity;
3. Nuisance odors from the golf course storage lakes and irrigation; and
4. Potential groundwater degradation;

The Tentative CDO purports to make findings that “the RMCS D facility does not have sufficient wastewater storage capacity and/or disposal capacity to comply with Discharge Specifications B11 [sic], B.12, and B.13 of the WDRs [waste discharge requirements], and therefore RMCS D must address the storage/disposal capacity deficit in a timely manner.” (Page 5, #27). Regency Centers is not aware of any data that supports these contentions and, as indicated above, reserves the right, after review of the relevant data, to make further objection to the Tentative CDO on the basis of actual data. There is, in fact, no support for the contention of the Regional Board's staff that there is “inadequate wastewater storage capacity at the RMCS D facility.” The only support for this conclusion regarding the WWTF storage capacity is the Staff Report contention that the water balance model submitted by the RMCS D “predicts that the WWTF storage reservoirs would be in violation of the 2 foot freeboard requirements during the 100 year annual precipitation event.” (Page 4) This contention, however, is not supported by the evidence as it directly contradicts the conclusion made by the RMCS D engineers regarding long term storage and disposal capacity. In its letter of November 20, 2005, the RMCS D states that, “Once the carryover storage is recycled and disposed, RMCS D has sufficient wastewater capacity until the year 2013....” The same Staff Report even admits a lack of certainty whether overflows would violate current permits by stating that the RMCS D’s storage capacity deficit “*may or may not* cause WDRs violations in the near future.” (Page 7, emphasis added).

The Tentative CDO also states that the monthly average influent flow to the WWTF “shall not exceed 0.52 million gallons per day (mgd) and the total annual influent inflow shall not exceed 193 million gallons per year.” (Page 11, #4). The Tentative CDO requires the RMCS D to prepare waste discharge reports and a wastewater facilities expansion plan to provide adequate treatment and storage and disposal capacity to

accommodate all planned growth through 2019. As Regency Centers' consultants understand the data, the Tentative CDO provisions limiting influent flow to the WWTF are unwarranted due to the lack of nexus between the overflow issues and the influent flow limitations. These limitations would produce economic injury to Regency Centers and potentially many other interests, including agricultural water districts and RMCS D bondholders. While the Tentative CDO does address an issue that has not been resolved, the carryover and overflow of Rancho Murieta storage ponds, the CDO also inappropriately imposes a powerful and punitive enforcement measure, a limit on the monthly average influent flow. Such a measure, while not directly establishing a limit on water connections to the RMCS D, will establish a de facto moratorium on all development in the RMCS D coverage area. The Regional Board, however, cannot impose a measure that establishes a moratorium by framing it in other terms; instead the Regional Board must identify a moratorium as such and must strictly follow procedural requirements in California state law on moratoria regarding notice, evidence and findings. Imposition of such a de facto moratorium is far out of proportion to the specific issue at hand: resolution of the carryover storage and overflow issue at the Rancho Murieta Country Club ponds.

The RMCS D has prepared and adopted extensive long term wastewater facility and financing plans that adequately consider potential growth in the Rancho Murieta area and comprehensively provide for future capacity for water treatment and storage. These plans include the possible future conveyance of treated, reclaimed water to other water districts in California and thus are fully consistent with State Water Resources Control Board policies that encourage and recommend adoption and funding of water reclamation projects. (State Water Resources Control Board, Resolution No. 771.-) These RMCS D plans, which were repeatedly approved by the Regional Board, more than adequately address the issues raised by the Tentative CDO regarding long term storage and disposal. Despite these verified and previously approved long term storage and disposal plans, the Regional Board staff is still recommending the establishment of a de facto moratorium on all development in the RMCS D coverage area for the years 2005 through 2013. Neither the Tentative CDO nor the Staff Report however explains why such a drastic measure is needed to resolve the specific carryover and overflow issues.

The Staff Report contends that the concerns of Regency Centers (set out in my letter of October 28, 2005) have been addressed and that "the CDO does not include a connection ban." (Page 9) However, the Staff Report admits that a limitation of 52 mgd will allow only 120 new connections, or 60 connections per year, unless RMCS D can complete capacity improvements sooner than required by the Tentative CDO. (Page 4) Such a limitation will undoubtedly lead to a severe limitation on all future development at Rancho Murieta and, in fact, the Staff Report also contains a more accurate assessment of the impacts of the influent limitation in the statement that the "the pace of new development may have to be temporarily slowed" (Page 9). The 52 mgd influent limitation in the Tentative CDO may require the RMCS D to limit connections for the

entire Regency Centers Murrieta Gardens project, for which large investment sums have been made and previous entitlements have already been approved.

The Staff Report states that much of the basis for issuing a CDO to RMCS D was the change of policy regarding reclaimed water overflows prompted by the revised Master Reclamation Permit for the City of Roseville WWTF issued on *October 21, 2005* (Page 3). In essence, the new rules for overflows were established one month ago and the Regional Board staff is using those new rules as the basis for recommending that a building moratorium be established in the Rancho Murieta service area. Such a change in policy without notice or other due process considerations violates administrative law requirements and defies any notion of fairness. Regency Centers and other developers have relied on the previous long term WDRs, Regional Board approvals and RMCS D permits as the basis for their investment backed expectations in purchasing and developing property in Rancho Murieta. New influent flow limitations, which as a practical matter are really a development moratorium, would ignore the longstanding Regional Board and RMCS D polices that Regency Centers has relied on.

A decision by the Regional Board to adopt the Tentative CDO as its final order or impose any other new requirements for the RMCS D to reduce its influent flows, or prohibit any new sewer connections would not only be unsupported by the evidence as Regency Centers understands it, but would also cause significant material and adverse economic impacts to residents, other water users and businesses in the Rancho Murieta area (including to Regency Centers' property interests) and conflict with state policies for efficient treatment and reuse of water. The harm which would ensue to Regency Centers and its property interests is actionable and not privileged and we therefore urge the Regional Board to have its staff review its quantitative reassessment of RMCS D future wastewater treatment and storage capacity before making any decisions regarding this matter. We also request that that the Regional Board direct its staff to more closely assess all the alternatives for resolution of the overflow issue, such as ceasing all reclaimed water discharges, negotiating the adoption of a more appropriate WDR requirements and considering the implementation of existing, feasible technical solutions but as of yet unexplored by Regional Board staff, such as construction of storage tanks and use of reclaimed water on landscaping by future developments.

In conclusion, we urge the Regional Board not to impose any limitations on sewer connections, or impose any new influent flow limitations. Such requirements could force the RMCS D to enact a building ban that would cause significant and material adverse economic and environmental impacts on Regency Centers, which in our opinion, would give rise to significant legal exposures to the Regional Board. Cassano Kamilos Homes, Woodside Homes of Northern California, Warmington Homes California, and Rancho North Properties, all land owners at Rancho Murieta, support the positions taken in this letter.

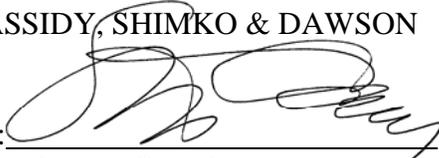
Ms. Wendy S. Wyels
California Regional Water Quality Control Board
November 21, 2005
Page 5 of 5

Attachment 3

If you should have any questions regarding this letter, please call the undersigned or Ed Yates at the captioned phone number.

Very truly yours,

CASSIDY, SHIMKO & DAWSON

By: 
Stephen K. Cassidy
Attorneys for Regency Centers

cc: Mark List, CVRWQCB
Anne Olson, CVRWQCB
Thomas Engberg, Regency Centers
Douglas Wiele, Foothill Partners
Scott Franklin, Regency Centers
Richard Brandt, McDonough, Holland and Allen
Kristen Castanos, Somach, Simmons and Dunn
Robert Cassano, Cassano Kamilius Homes
Clay Heil, Warmington Homes
Edward Mevi, Rancho Levi
Andrew Zinniger, Woodside Group, Inc.



CASSANO KAMILOS HOMES
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Attachment 4

November 21, 2005

Wendy S. Wyels
Supervisor, Title 27 and WDR Units
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Tentative Cease and Desist Order to the Rancho Murieta Community Services
District and Rancho Murieta Country Club, November 14, 2005

Dear Ms. Wyels:

Cassano Kamilos Homes, Inc. is the owner of 30.2 acres of land in Rancho Murieta, California. We have a map application in process to subdivide this land into 95 single family lots. Our first public hearing is scheduled for November 30, 2005. We support the positions of Regency Centers as our own positions – see their letter of November 21, 2005 attached.

If you should have any questions regarding this letter, please call me at (916) 851-9300.

Very truly yours,

Cassano Kamilos Homes, Inc.

Robert Cassano
President

cc: Anne Olson
Mark List

**Members of the Board:**

Jeanette J. Amavisca
Pollyanna Cooper-LeVangie
Priscilla S. Cox
Pamela A. Irey
William H. Lugg, Jr.
Chet Madison, Sr.
Brian D. Myers

Attachment 5

Constantine I. Baranoff
Associate Superintendent
Facilities and Planning

Robert L. Trigg Education Center
9510 Elk Grove-Florin Road, Elk Grove, CA 95624

(916) 686-7711
FAX: (916) 686-7754

November 21, 2005

Mr. Mark R. List
California Regional Water Quality Control Board
Central Valley Region
Sacramento Main Office
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

**Subject: Rancho Murieta Community Services District
Proposed Cease and Desist Order**

Dear Mr. List:

It is the understanding of the Elk Grove Unified School District (EGUSD) that the California Regional Water Quality Control Board is proposing to issue a "Cease and Desist Order" to the Rancho Murieta Community Services District (RMCS D) with regards to allowing additional sewer connections to the RMCS D system. As you may be aware from the Initial Study that was circulated and approved several months ago, EGUSD has been pursuing the construction of a new elementary school in the general vicinity of the Rancho Murieta community for several years.

The existing campus where these children are currently housed has exceeded its design capacity by several hundred pupils. As a result, students are being bussed to other campuses within the school district resulting in significant travel times for these children. EGUSD has identified and done significant planning on a site that is immediately adjacent to the Rancho Murieta community. RMCS D has agreed in principle to provide sewer and water connections for the new school location. The school district is hoping to begin construction of this school sometime in early 2006 to relieve the overcrowding at the existing campus. Construction is anticipated to take approximately 12 to 15 months.

A vast majority of the students who will be serviced by this school live in the Rancho Murieta community; therefore, there will be a certain redundancy in wastewater treatment needs. Though it is likely going to take several years to reach full occupancy, the school is anticipating a generation of approximately 20,000 gallons per day (gpd) of ultimate capacity needs. The school will likely open with an approximate 12,000 gpd usage.

Mr. Mark R. List
November 21, 2005
Page 2

With the minimal wastewater treatment that the school will require, we are requesting that a waiver or modification to the "Cease and Desist Order" be issued that will allow EGUSD to connect into the RMCSD sewer system on a timely basis. EGUSD cannot proceed with construction until this issue is resolved. Any delay in granting this request may cause the school to not open in timely manner, and will seriously impact the continued overcrowding at the existing campus.

Thank you for your consideration of this matter. If I may be of any further service or provide any additional information, please feel free to contact me or Steven Looper at (916) 686-7711.

Sincerely,



Constantine I. Baranoff
Associate Superintendent, Facilities and Planning

SEL:CTB:gg
Corresp\RMCSD 11-21-05

Cc: Steven E. Looper
Edward R. Crouse

LAW OFFICES OF
STANTON, KAY & WATSON, LLP

101 NEW MONTGOMERY STREET, FIFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE (415) 512-3501
FAX (415) 512-3515
WWW.SKWSF.COM

FACSIMILE

The following pages are a confidential communication intended only for the person named below. If you are not the person named below, or the employee or agent responsible for delivery of the following information, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. We will gladly reimburse your telephone and postage expense.

From: Frederick W. Thompson
Date: November 21, 2005

Pages including cover sheet: 3
Client Matter Number: 6507.30

TO: MEMBERS OF THE BOARD

FAX: (916) 464-4780

Original **WILL NOT** follow

Comments:

District and Rancho Murieta Country Club

LAW OFFICES OF
STANTON, KAY & WATSON, LLP

101 NEW MONTGOMERY STREET, FIFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE (415) 512-3501
FAX (415) 512-3515
WWW.SKWSP.COM

FREDERICK W. THOMPSON
FredT@skwsf.com

November 21, 2005

VIA FACSIMILE 916-464-4780

To Members of the Board
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center
Rancho Cordova, California 95670

RE: Tentative Cease and Desist Order to the Rancho Murieta Community Services
District and Rancho Murieta Country Club
Hearing Date: November 28, 2005

Dear Board Members:

This firm represents Rancho North Properties, LLC, a California limited liability company ("Company"). The Company owns approximately 758 acres of land at Rancho Murieta that would be affected by the subject Cease and Desist Order. The owner of the Company, the Pension Trust Fund for Operating Engineers, has owned land at Rancho Murieta for a long period of time. The property is suitable for development as residential housing and the Company is seeking a buyer for the land. The marketability of the land, and the price for which it can be sold, would be seriously impaired by the imposition of the proposed Cease and Desist Order. Our client was first made aware of the most current tentative Cease and Desist Order and the most current staff report four days ago. Given the significant impact on its land, our client should have more than four days to analyze the impacts before having to respond to the proposed action. The Board should not take action as currently proposed that drastically alters the historical course of managing reclaimed wastewater at Rancho Murieta without giving the interested parties an opportunity to respond to the proposed action.

To Members of the Board
November 21, 2005
Page 2

The Company agrees with the request set forth in the letter of Cassidy, Shimko & Dawson dated November 21, 2005 to continue the hearing to January of 2006.

Very truly yours,



Frederick W. Thompson

FWT:ps

cc: VIA FACSIMILE
David R. Howard
Ms. Anne Olson
Mark List
Richard Brandt, Esq.
Steven K. Cassidy, Esq.

LAW OFFICES OF
STANTON, KAY & WATSON, LLP

101 NEW MONTGOMERY STREET, FIFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

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From: Frederick W. Thompson
Date: November 21, 2005

Pages including cover sheet: 3
Client Matter Number: 6507.30

TO: WENDY WYELS

FAX: (916) 464-4780

Original WILL NOT follow

Comments:

District and Rancho Murieta Country Club

LAW OFFICES OF
STANTON, KAY & WATSON, LLP

101 NEW MONTGOMERY STREET, FIFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE (415) 512-3501
FAX (415) 512-3515
WWW.SKWSF.COM

FREDERICK W. THOMPSON
FredT@skwsf.com

November 21, 2005

VIA FACSIMILE 916-464-4780

Wendy S. Wyels
Supervisor, Title 27 and WDR Units
California Regional Water
Quality Control Board
Central Valley Region
11020 Sun Center
Rancho Cordova, California 95670

RE: Tentative Cease and Desist Order to the Rancho Murieta Community Services
District and Rancho Murieta Country Club
Hearing Date: November 28, 2005

Dear Ms. Wyels:

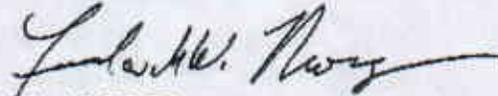
This firm represents Rancho North Properties, LLC, a California limited liability company ("Company"). The Company owns approximately 758 acres of land at Rancho Murieta that would be affected by the subject Cease and Desist Order. The owner of the Company, the Pension Trust Fund for Operating Engineers, has owned land at Rancho Murieta for a long period of time. The property is suitable for development as residential housing and the Company is seeking a buyer for the land. The marketability of the land, and the price for which it can be sold, would be seriously impaired by the imposition of the proposed Cease and Desist Order. Our client was first made aware of the most current tentative Cease and Desist Order and the most current staff report four days ago. Given the significant impact on its land, our client should have more than four days to analyze the impacts before having to respond to the proposed action. The Board should not take action as currently proposed that drastically alters the historical course of managing reclaimed wastewater at Rancho Murieta without consideration of less stringent alternatives and giving the interested parties an opportunity to respond to the proposed action.

We reviewed the letters of Cassidy, Shimko & Dawson dated October 28, 2005 and November 21, 2005, respectively, and agree with the positions taken by those parties, including, without limitation, the failure of the Board to grant interested parties, such as our client, due process in this proceeding.

Ms. Wendy S. Wyels
November 21, 2005
Page 2

Pursuant to the Notice of the Public Hearing, our client is an interested party and requests designation as a designated party and the right to speak at the hearing.

Very truly yours,



Frederick W. Thompson

FWT:ps

cc: VIA FACSIMILE
David R. Howard
Ms. Anne Olson
Mark List
Richard Brandt, Esq.
Steven K. Cassidy, Esq.

From: mark c leblanc <marklebl@juno.com>
To: <AOlson@waterboards.ca.gov>
Date: 11/18/2005 10:22:13 AM
Subject: Concerns

Dear Ms. Olson:

I live in Rancho Murieta North. I enjoy walking to the river. The environment of Murieta is extremely important to my family. I do not appreciate the smells of sewage coming from Bass Lake and sometimes the river. I am concerned about sewage treated water going into the Cosumnes. I'm pleased to see the Waterboard finally taking action to control this horrible problem. Please do not allow any new development sewage hookups (other than for existing lots) until all these problems are resolved. We trust you to do the right thing, to enforce the law and protect our community. Thank you

Sincerely,
Jeanie LeBlanc

From: "Cheryn Salazar" <cheryns@cheryn.com>
To: <AOlson@waterboards.ca.gov>
Date: 11/18/2005 3:27:31 PM

Dear Ms. Olson,

I'm writing in response to your Cease and Desist Order. I live in Rancho Murieta south, and I want to support the decision by the Waterboard in requiring our CSD to be in full compliance with existing law. The smells on the golf course as well as concerns for sewage capacity with future buildout is an enormous problem in our community. Also, my children and I witnessed several times this summer a very strong sewage stench at the river on the north side, which got remedied within two days following my report of it. I support the limited sewage hookups until all these problems are resolved. Thank you for enforcing the law and bringing Murieta into environmental compliance.

Cheryn Salazar
354-2550

From: "Janis Eckard" <janiseckard@ranchomurieta.org>
To: "Anne Olson" <aolson@waterboards.ca.gov>
Date: 11/20/2005 10:50:59 AM
Subject: Re: Rancho Murieta Cease and Desist Order

Dear Anne,

Unfortunately, I will not be able to attend the meeting.

As a long term resident of Rancho Murieta, I support the Board's position regarding the Rancho Murieta Cease and Desist Order. When I learned that CSD did not have adequate storage capacity for it's waste water, I became very concerned about additional development in the area. I have also experienced a fowl odor coming from the golf course sprinkler system during the hot summer months. Although I don't know if these problems pose a health risk, I am thankful that someone more knowledgable than me is checking into both matters. I hope residents who have already purchased lots in Rancho Murieta will be able to get a sewer permit allowing the construction of their homes, as I do not feel they should be unfairly punished for this problem. However, until the storage capacity situation is properly corrected, no new developer sewer hookups should be permitted.

Sincerely,

Janis Eckard

----- Original Message -----

From: "Anne Olson" <aolson@waterboards.ca.gov>

To: <Brad.Sample@CH2M.com>

Cc: <patcan85@aol.com>; "Mark List" <mllist@waterboards.ca.gov>; "Wendy Wyels" <wwyels@waterboards.ca.gov>

Sent: Wednesday, November 16, 2005 9:10 AM

Subject: Rancho Murieta Cease and Desist Order

Brad:

I didn't want to bother you with a phone call at work, but I was wondering whether you and/or other residents plan to come to the Board meeting. The Board really appreciates hearing from concerned citizens, whether they support the proposed action or not. If you are not available for the meeting, you can still submit written comments by the 21st. Copies will be given to the Board members and your letter can be read into the record.

Anne Olson, P.E.

Water Resources Control Engineer

Central Valley Regional Water Quality Control Board

(916) 464-4740 direct dial

(916) 464-4780 fax

Please note that my e-mail address has changed to aolson@waterboards.ca.gov

From: <Brad.Sample@CH2M.com>
To: <aolson@waterboards.ca.gov>
Date: 11/21/2005 5:59:25 AM
Subject: FW: Rancho Murieta Cease and Desist Order

Anne,

I'm not sure that you got my response, so I'm re-sending this. I got a 'undeliverable email' message. In any case, I want to reiterate my appreciation and support for the RWQCBs efforts and the actions that are pending. I strongly believe that active and involved regulatory oversight of the Rancho Murieta Community Services District is needed to ensure that all outstanding compliance issues are resolved and then maintained in accordance with existing regulations. I am currently planning on attending the Monday meeting and will state the same sentiments for the administrative record. Thanks again for your efforts.

Brad

-----Original Message-----

From: Sample, Brad/SAC
Sent: Wednesday, November 16, 2005 7:58 PM
To: 'Anne Olson'
Cc: patcan85@aol.com; Mark List; Wendy Wyels
Subject: RE: Rancho Murieta Cease and Desist Order

Anne -

Please do not worry about calling; you can get me on my office phone or on my cell (916-801-6440) at any time if you need to.

I greatly appreciate the effort and attention that you and the RWQCB are paying to the issues in Rancho Murieta. I plan on attending the meeting, but I need to look into my schedule to make sure that I will be available. I'm currently out of the office and have only been able to briefly review the revised tentative CDO. I support what I have read so far, but I need to look at the whole set of documents you sent in more detail. I plan to do so over the coming weekend.

In any event, I will make every possible effort to attend. I understand the pressure that you all are under, and I want to be there to go on record that I support and appreciate your efforts. Thanks.

Brad

-----Original Message-----

From: Anne Olson [mailto:aolson@waterboards.ca.gov]
Sent: Wednesday, November 16, 2005 9:11 AM
To: Sample, Brad/SAC
Cc: patcan85@aol.com; Mark List; Wendy Wyels
Subject: Rancho Murieta Cease and Desist Order

Brad:

I didn't want to bother you with a phone call at work, but I was wondering whether you and/or other residents plan to come to the Board meeting. The Board really appreciates hearing from concerned citizens, whether they support the proposed action or not. If you are not available for the meeting, you can still submit written comments by the 21st. Copies will be given to the Board members and your letter can be read into the record.

Anne Olson, P.E.
Water Resources Control Engineer
Central Valley Regional Water Quality Control Board

(916) 464-4740 direct dial
(916) 464-4780 fax

Please note that my e-mail address has changed to
aolson@waterboards.ca.gov

CC: <mlist@waterboards.ca.gov>, <wwyels@waterboards.ca.gov>

Donald E. Sams
15317 De La Cruz Drive
Rancho Murieta, CA 95683

RECEIVED
SACRAMENTO
CVRWQCB

05 NOV 28 PM 2:25

ALD

November 23, 2005

Mr. Robert Schneider, Chairman
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Re: Rancho Murieta Community Services District and Rancho Murieta Country Club
– Consideration of a Revised Cease and Desist Order as Item #8 on the Central Valley
Regional Water Quality Control Board Agenda of 28 November 2005.

Dear Mr. Schneider,

Thank you for this opportunity to comment. I have resided at the above address since 1997, in a home one lot removed from the 7th fairway of the RMCC north course. I have read your web site files related to the subject agenda item and numerous CRWQCB letters dating from 18 May 2001 to 18 November 2005, as well as the Rancho Murieta Community Service District's October 28, 2005 comment letter.

I have many comments, but will be brief on account of the very near hearing date.

While I have not registered an odor complaint, I too have suffered, at times, from Nuisance odors while at home as the Rancho Murieta CC north course fairway #7 was spray irrigated. My odor complaint, had I registered one, would not have been dubious (see W. S. Wyels, CRWQCB, October 28, 2005, pg. 2), but true. My memory reminds me the odor was similar to the odor problems the South Land Park waste water treatment plant on So. Land Park Drive, Sacramento, California had in the 1960's, and as one may contemporarily notice, at times, while driving on I-5 past the Lodi, California waste water treatment facilities south of the Highway 12 intersection. Since it is being argued that RMCC spray irrigation odor complaints have been limited and thus do not constitute a "nuisance," this resident and possibly others in the future, will likely not cut the RMCC and RMCS D any future "slack" and will report the occurrences as they are noticed.

I understand some of the findings giving rise to the CRWQCB CDO no. 5-01-125 remain or have arisen anew, indicating greater attention to the details of water quality, use and storage are necessary and justified.

While Edward R. Crouse's letter dated October 28, 2005 addressed to Wendy S. Wyels was thorough and promised the Community Service District's cooperation, I nevertheless share some of your staff's concerns. For example:

- Regulatory enforcement of storage capacity at the wastewater treatment facility may be entirely warranted. How else will the RMCCSD, regulatory and approval agencies be able to collectively assure all interested parties that zero, 30 or 60 additional hookups for currently approved lots are manageable? Hookups should be tightly managed, if not regulated, because mutual accountability is essential here and if that means regulatory control and minimal hookups until all issues are resolved, then so be it. Additionally, what does Staff know about currently unoccupied homes contributing little or no current waste water treatment demand, an absent demand apparently included in the water balance and facility capacity calculations?
- Is the CRWQCB truly comfortable with an understanding that if recycled water is not sent to RMCC lakes after March 15, there subsequently is no recycled water in RMCC lakes, thus the requirement for two feet of freeboard does not rule? Would not such an understanding ignore the presence of residual water, "spoils" or "muck" and the probability of same flowing out? Are "spoils" or "muck" lost in outflow permissible?
- Given the RMCCSD's tertiary plant up time and down time record, has the impact of "down time," as actually experienced, now been recognized in water balance calculations as such, thus now eligible as "foreseeable?"
- What RMCCSD assurances have you that once the "carry-over" storage is recycled and disposed of that RMCCSD has sufficient wastewater storage capacity for up to 2,820 connections? Is it not reasonable to assume "carry-over" storage will be required again between now and year 2013, thus compromising an assumed capacity for 2,820 connections, whenever that may occur?
- Given the modifications currently undertaken to the surround of Bass Lake, does the Staff still understand the depth of Bass Lake is 18 to 20 feet deep at its deepest point and the lake's holding capacity is unchanged?

Please do not hesitate to contact me if you have any questions.

While I am not qualified to judge the relevance and significance of all the findings, recommendations and requirements, I nevertheless believe a Cease and Desist Order is warranted and appropriate at this time to preserve and enhance the quality of California's water resources for the benefit of all.

Sincerely,



Donald E. Sams

Cc: Anne L. Olson, P.E., Water Resources Control Engineer