

February 19, 2007

VIA ELECTRONIC MAIL

Mr. Mark R. List, P.G., Chief
Waste Discharge to Land Unit
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, California 95670-6114

SUBJECT: Comments on Draft Cease and Desist Order and Connection Restriction,
City of Lakeport Municipal Sewer District, City of Lakeport Wastewater
Treatment Facility, Lake County

Dear Mr. List:

The City of Lakeport Municipal Sewer District (CLMSD) has received the Draft Cease and Desist Order and Connection Restriction (Draft Order) issued by the Central Valley Regional Water Quality Control Board (Regional Water Board) staff on January 18, 2007. The Draft Order's proposed connection restriction and its impact on this small, rural community are of grave concern. The Draft Order additionally was written to be retroactive, and the City was instructed to not allow any new structures to connect to the collection system even before having a hearing before the Board (a directive with which the City has complied). This is even more troubling because the Draft Order uses a specific flow value to justify the ban which should not have been used, a point with which we believe the Regional Water Board staff now agrees. In other words, the Draft Order was flawed when issued.

In addition, the City is troubled that the Draft Order recites various events and circumstances such as typical spills within the collection system that have no relationship to the proposed order. These elements of the Draft Order seem directed to show that the City is generally not responsible and thus deserving of enforcement of some kind. We ask that it be made clear to the Regional Water Board that these historic events do not support a ban. Further, we ask that staff confirm that there is nothing remarkable about these events are typical and in fact the City has been unusually diligent in reporting spills associated with the collection system.

We believe the proper course of action is for the Regional Water Board staff to immediately recall the Draft Order and work collaboratively with the City to identify and

address any capacity issues that may exist in the near term and in the future. Failing that, if some alternative logic for a ban is offered to the Regional Water Board itself, we believe the Regional Water Board should reject the proposed order and direct such a process. If, however, an Order is issued, there are several changes that are necessary and appropriate, and described below.

In order to clarify the capacity issues associated with the City's Wastewater Treatment Facility (WTF), the City provides the following comments. In addition, the City has provided comments on other provisions contained within the Draft Order.

Background To Issuance Of The Draft Order

During the spring of 2006 (March–April), extensive flooding occurred along the shores of Clear Lake, and at the Willow Point RV Park in particular. Because of the flooding and 20 uncapped private sewer clean-outs, approximately 65 acre-feet of excess water entered the CLMSD's collection system. The flooding and the excess Clear Lake water entering the collection system inundated the WTF. After consultation with the appropriate state and local agencies (including the lake county health department and staff at the Regional Water Board), it was determined that the most appropriate alternative under the circumstances was to proceed with irrigation, after additional disinfection. As a result of having to irrigate the land with high volumes of water on already saturated ground, 3.6 to 6 million gallons of reclaimed water may have left the site, flowed into a tributary creek, and subsequently entered into Clear Lake.

CLMSD recognizes that the April 2006 incident was a violation of WDR Order No. 98-207. In response to the unfortunate incident, CLMSD has worked diligently to ensure that the private sewer caps are properly capped with watertight covers, and that flows are monitored upstream and downstream of the Willow Point RV Park. In addition, the County Health Department has cited the owner of the Willow Point RV Park for its sewer spills.

In response to the April 2006 event, the Regional Water Board issued a Notice of Violation (NOV) on August 10, 2006. The NOV required CLMSD to submit a Technical Report that included a water balance prepared by a California Registered Engineer. CLMSD complied with this requirement by submitting the *Notice of Violation Technical Report*, as prepared by PACE Civil, Inc. of Redding on September 15, 2006 (hereinafter referred to as the "PACE Report").

The 100 year rainfall event water balance contained in the PACE Report shows that the CLMSD's current capacity for treatment, storage and disposal is 0.57 mgd; based upon an average Dry Weather Flow (ADWF) and a maximum 600 acre-feet in the storage reservoir. Using the capacity contained in the PACE Report, Regional Water Board staff issued the Draft Order and Connection Restriction on January 18, 2007. The Draft Order states that there is inadequate capacity under the permitted flow rate of 1.05 mgd and under the current flow rate of 0.64 mgd. (Draft Order, Finding 31, page 9.) CLMSD acknowledges that the plant's current storage capacity is less than the permitted discharge flow rate of 1.05 mgd, as tentatively identified in the PACE Report based upon the

assumptions used. However, CLMSD does not agree that the current flow rate exceeds the plant's current capacity; nor does the Draft Order establish that it does. Thus, there was no basis for issuing a connection restriction on the City of Lakeport.

The Findings In The Draft Order For The Connection Restriction Are Based On An Estimated Plant Capacity Of 0.57 MDG (ADWF)

The Regional Water Board must support decisions with specific findings and must relate evidentiary findings to the ultimate order. Findings must be based on evidence in the record and the Regional Water Board must "set forth findings to bridge the analytical gap between the raw evidence and the ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; see also *In Re Petition of the City and County of San Francisco, et al.*, SWRCB Order No. 95-4, 1995 WL 576920 at pp. 4-5.) It appears that the Draft Order contains two (2) proposed findings that relate to current capacity and current flows:

The Discharger's 18 September 2006 water balance, prepared by a California Registered Engineer, shows that there is adequate storage capacity for an average dry weather flow (ADWF) of 0.57 mgd. However, at the currently permitted flow rate of 1.05 mgd, there is inadequate storage capacity. The water balance is based on 100-year annual precipitation data, 600 acre-feet of storage with two feet of freeboard (as requested by the Regional Board Staff and in contradiction to the existing WDR), a beginning storage volume in October of each year of 100-acre feet or less, and applying wastewater to 260 acres of disposal area. Regional Board staff's review of monthly monitoring reports shows that the monthly ADWF from May through September 2006 ranges from 0.38 to 0.64 mgd. Therefore, the water balance demonstrates that the Discharger does not have enough storage capacity for its permitted flow; nor does it have enough storage capacity for its current wastewater flow. Both of these conditions are a violation of Discharge Specification No. B.11. (Draft Order, Finding #12, p. 2.)

And,

The Discharger's water balance shows that currently available treatment, storage and disposal capacity is 0.57 mgd. The maximum monthly average dry weather influent flow during 2006 was 0.64 mgd. Because the Discharger's water balance shows that there is inadequate storage capacity under the permitted flow rate of 1.05 mgd and under the currently flow rate of 0.64 mgd, this Order prohibits new connections to the WWTP until adequate capacity is obtained. (Draft Order, Finding #31, p. 9.)

Thus, based on information contained in these two findings, the Regional Water Board staff has issued a connection restriction because a flow rate of 0.64 mgd exceeds the plant capacity of 0.57 mgd.

The Draft Order Incorrectly Identifies An Average Dry Weather Flow Rate of 0.64 mgd

The Draft Order is not based on a proper identification of current ADWF for the CLMSD wastewater plant. As a result, the Draft Order erroneously concludes that the CLMSD does not have adequate capacity to treat wastewater flows for the City of Lakeport. Typically, ADWF is defined as “the average amount of water flowing through a system (often a wastewater treatment system) during dry weather.”¹ Dry weather is often interpreted to mean the three lowest months of precipitation, or in some cases the three lowest consecutive months of influent flow. CLMSD’s consultant, a registered professional engineer, calculated ADWF by averaging the monthly averages for the months of June through September over a seven-year period. Under this calculation, the ADWF for the facility is 0.48 mgd, which is below the facility’s capacity. The three-year average for July, August and September, which is consistent with other Regional Water Board permits, is provided below.²

CLMSD Average Dry Weather Flow (July, August, September) 2004 – 2006	
2004	.414 MGD
2005	.452 MGD
2006	.415 MGD
3-year average =	.427 MGD

Three-year ADWF of .427 mgd indicates that the plant has remaining capacity.

We are aware of no basis to conclude that the May 2006 flow of 0.64 MGD is the ADWF. Thus, the one-month flow report from May of 2006 cannot be used to determine the adequacy of plant capacity for current flows or relied upon to issue a connection ban.

Because the May 2006 monthly flow is not representative of ADWF, the Draft Order should not have been issued. CLMSD respectfully requests that the Regional Water Board staff re-evaluate the CLMSD’s ADWF using an appropriate definition of average dry weather flow. The three-year ADWF of .427 mgd is below the .57 mgd capacity established in the PACE Report of September 2006 and the connection restriction is not supported.

The Water Balance Should Be Calculated Based on 650 acre-feet of Storage

The Draft Order finds that the water balance is based on “100-year annual precipitation data, 600 acre-feet of storage with two feet of freeboard, a beginning storage volume in October of each year of 100 acre-feet or less, and apply wastewater to 260 acres of disposal area.” (Draft Order, Finding #12, p. 2.) The water balance incorrectly

¹ A search of the Regional Water Board’s website resulted in finding a definition for ADWF from the U.S. Fish and Wildlife Service.

² The City of Dixon Cease and Desist Order (Order No. R5-2005-0078) states that dry weather flow shall be based on the months of July through September.

uses 600 acre-feet of storage in its calculation. WDR Order No. 98-207 requires that the “effluent storage reservoir freeboard shall never be less than two (2) feet (measured vertically at the spillway) except during years equaling or exceeding the precipitation of a 100-year return period.” (WDR Order No. 98-207, Provision B.11, p. 3.) In other words, when there is 100-year precipitation event, the storage reservoir is not required to retain two (2) feet of freeboard. Without two (2) feet of freeboard, the reservoir storage is 650 acre-feet. (WDR Order No. 98-207, Finding #4, p.1.) Because the water balance is calculated to determine if there is adequate capacity during a 100-year precipitation event, the amount of storage available during such an event should be part of the water balance calculation. In this case, 650 acre-feet of storage is available during a 100-year precipitation event. Therefore, the water balance should reflect this amount of storage.

Any Newly Identified Issues Concerning Capacity Would Not Be Supported By Current Findings

As stated previously, the Draft Order’s connection restriction is based on a finding that the CLMSD WTF capacity is 0.57 mgd (ADWF) and that the flow of the plant exceeded this capacity in May of 2006. As already explained, the use of the May 2006 flow is not representative and the use of this flow results in comparing apples to oranges. When the ADWF of the WTF is compared to the PACE calculated capacity of 0.57 mgd (ADWF), the flow through the plant does not exceed its capacity.

At a meeting between Regional Water Board staff and CLMSD on February 13, 2007, staff indicated that the average dry weather flow of 0.64 mgd as used in the Draft Order may in fact be incorrect. However, at the same meeting, staff continued to support the application of the connection restriction by claiming that the water balance as contained in the PACE Report may not be accurate. The PACE Report has been in the Regional Water Board’s possession for several months. We have received no prior comment on its capacity calculations and the Draft Order did not take issue with such calculations. It is extremely troubling to learn at this stage that there may be an altogether different logic being proposed for a connection ban that is already in place now.

If in fact the Regional Water Board staff now believes that the capacity of the plant is not 0.57 mgd, the Draft Order’s proposed findings would presumably be entirely different than those in the Draft Order. As a result, the Draft Order must be withdrawn. Should the Regional Water Board staff conclude, based on other evidence, that a connection restriction is still warranted, the Regional Water Board would need to propose a new Cease and Desist Order along with the proposed connection restriction. CLMSD does not believe that other or additional evidence supports the need for a connection restriction. In this regard, since the February meeting, CLMSD has further evaluated capacity and this evaluation reconfirms that adequate capacity exists. In any circumstance, however, it would be far better policy to confer with the City as to how best to address any new or recent Regional Water Board staff concerns.

Regional Water Board staff and PACE are currently working on a revised water balance that takes into account issues, such as average dry weather flow, average daily flow, and 650 acre-feet reservoir capacity given the 100 year event.

Draft Order's Recitation Of Spills Does Not Support A Connection Restriction

The Draft Order contains a number of findings related to violations of WDR Order No. 98-207, including a calculation regarding the number of spills reported by CLMSD since WDR Order No. 98-207 was adopted. (Draft Order, Attachment A.) Unfortunately, the Draft Order leaves the impression that CLMSD is not a responsible operator of its waste discharge facility. This is not the case. The spills referenced in the Attachment span over eight years, and, all but three spills are from the collection system. The collection system spills were typically caused from blockages and roots in the sewer laterals, which is in large part due to the aging collection system. In addition, over 80% of reported spills are 100 gallons or less, and many are below 25 gallons. In other words, the spill log provided in the Draft Order as Attachment A indicates that the CLMSD diligently reports all spills, regardless of size, and has done so for almost a decade. CLMSD should be commended for its spill reporting procedures. Instead, this practice is apparently being used against CLMSD.

Furthermore, the three spills that did occur at the treatment facility are not related to the plant's true capacity but resulted from unusual circumstances. The first spill in October of 1998 was caused by storm water flow entering the recapture pond. The second spill, November 1998, was caused by an overflow from the recapture pond due to the installation of a plastic pipe in an earthen berm. The third spill from the treatment facility is the spill that occurred in April 2006. As was discussed previously, the spill in April 2006 was caused by Clear Lake water entering uncapped, private sewer manholes at the Willow Point RV Park. This was a unique situation that does accurately represent plant capacity and, is not a violation that can be used to support a connection restriction. Clearly, all three of these spills are not related to the WTF's current capacity and therefore they do not support the imposition of a connection restriction.

Draft Orders Recitation of Future Developments Inaccurately Portrays Pending Projects

The Draft Order identifies several projects receiving review pursuant to the California Environmental Quality Act (CEQA) as evidence that future development is being proposed for the City of Lakeport and that therefore a connection restriction is warranted. However, the Draft Order does not accurately portray these projects and their potential impact on CLMSD.

The first project identified is for an annexation project. (Draft Order, Finding #29(a), p. 8.) As the CEQA documents indicate, the annexation of this 157-acre area does not directly result in the production of additional wastewater because the annexation does not include the development of new residential housing. Because this project does

not directly include the generation of additional wastewater, it should not be used as evidence of future development pending in the City of Lakeport.

The second project identified by the Draft Order consists of installing a wastewater collection system to serve the county airport, Lampson Field. (Draft Order, Finding #29(b), p. 9.) The Draft Order fails to mention that CLMSD's agreement to provide sewerage services to the county airport is off-set by an agreement with Lake County's Sanitation District whereby an area currently serviced by CLMSD in North Lakeport will be sent to the County's Northwestern facility. The off-set will result in CLMSD removing 100 Residential Unit Equivalents (RUE) from its system in exchange for accepting the county airport, which equals 100 RUEs. Thus, there is no future development or increase in capacity, as the agreement results in an equal exchange.

Finally, the Draft Order references a project mentioned in a local newspaper article. (Draft Order, Finding #30, p 9.) The finding indicates that the staff has not received any CEQA documents or other correspondence pertaining to this project. That is because this project is extremely speculative and very preliminary. To date, this project has not requested or received any entitlements relating to development. Currently, there is an option on the land to be purchased. Other than that, there are no identified or concrete plans related to the development of this project. As such, the project is too speculative to identify as future development in the City of Lakeport, and certainly inappropriate as a basis for the Draft Order.

In summary, the Draft Order fails to identify any concrete projects that will result in an increase of flow the WTF. Thus, the Draft Order fails to provide sufficient evidence to support a connection restriction based on the threat of pending development that cannot be accommodated.

WTF Flows Have Never Exceeded Permitted Capacity

WDR Order No. 98-207 provides requirements for the treatment and disposal of 1.05 mgd (ADWF). CLMSD concedes that the current WTF does not have adequate storage to support the permitted flow rate of 1.05 mgd (ADWF). However, flows through CLMSD have never reached or exceeded the permitted rate of 1.05 mgd. CLMSD contends that the WTF has sufficient capacity for the plant's current flows plus capacity for an additional estimated 450 RUEs. (PACE Report, p. 19.) Because the WTF is able to treat and store the current flows entering the facility, the plant's capacity is sufficient and a connection restriction is unwarranted.

In October of 2006, the Regional Water Board adopted a connection restriction for the Napa Berryessa Resort Improvement District. (Order No. R5-2006-0013.) This connection restriction is one of the first adopted by the Regional Water Board in the last several years. The connection restriction for this facility was adopted because it had a history of flow violations that exceeded the facility's permitted flow requirements as contained in WDR Order No. 95-173. (Order No. R5-2006-0013, p. 10.) Flows from CLMSD have never exceeded permitted capacity. Furthermore, CLMSD does not share the same history of violations that are attributed to the Napa Berryessa Resort

Improvement District. For this additional reason, CLMSD questions the Draft Order's basis for the connection restriction.

CLMSD Has Two Pending Projects that Will Increase Capacity Immediately

Even though CLMSD contends that there is remaining capacity at the WTF as it is currently configured, the City of Lakeport has initiated preparation of a sewer master plan and has tentatively agreed to two (2) immediate projects in concept that will increase the WTF's capacity. The first project under consideration is to extend the current bypass channel to divert all surface water around the recapture basin. Currently, the WTF includes a bypass channel around the storage reservoir for surface water flows. However, the bypass channel terminates at the recapture basin, which is designed to recapture all irrigation tail-water from the disposal fields. By diverting surface water around the recapture basin, CLMSD can extend the number of days each year that it is possible to apply effluent to the disposal fields, and eliminate the need to recapture surface flows.

Second, the City has tentatively approved the development of an additional 90 acres of land for spray irrigation disposal purposes. The development of this land, which is already owned by CLMSD, will allow more effluent to be disposed during the dry season, therefore helping to alleviate pressure on the storage reservoir.

The increased capacity caused by these two projects alone would nullify the need for a connection restriction. CLMSD contends that remaining capacity does exist, and that pending projects provide an additional safety net that make further the connection restriction unwarranted.

Draft Order Needs To Be Revised To Give Executive Office The Authority To Rescind The Connection Restriction

If a connection restriction is in fact approved, permit provisions 17, 18, 19 and 20 must be amended to allow the connection restriction to be automatically removed when CLMSD has completed the two projects discussed immediately above that will result in an increase in capacity. (Draft Order, pps. 15 & 16.) The Executive Officer must be delegated the authority to determine that the tasks have been completed to her satisfaction. As currently proposed, the connection restriction would remain in place until the Regional Water Board takes action to make any changes to the connection restriction, regardless of CLMSD's actions to increase capacity. By requiring the Regional Water Board to act, CLMSD may have to wait months for the connection restriction to be removed just by virtue of the Regional Water Board's calendar and busy schedule. Delays in removing the connection restriction would unduly penalize CLMSD and the City of Lakeport community. The Regional Water Board is authorized to delegate a number of its powers and duties to its Executive Officer. (CA Water Code §13223.) There are five exceptions to the Regional Water Board's ability to delegate authority. One of them includes "the issuance, modification, or revocation of any cease and desist order." If removal of the connection restriction is tied directly to the completion of certain identified tasks that result in an increase in capacity, the Executive Officer's determination regarding completion of the tasks does not constitute a modification or

revocation of a cease and desist order. Thus, termination of the connection restriction upon the Executive Officer's determination of increased capacity falls within the ambit of California Water Code section 13223.

CLMSD Requests Changes to Study Requirements

CLMSD has reviewed the study requirements contained in the Draft Order and requests the following changes:

Provision #3 (p. 11) – CLMSD is not opposed to calibrating all mag meters and providing the Regional Water Board with the *Flow Meter Calibration Report*. However, there is no mag meter on the irrigation flow meter and therefore it cannot be calibrated at this time.

Provision #5 (pps. 11 & 12) – The June 1, 2007 deadline for a *Revenue Plan* for all work and improvements is not realistic. CLMSD is in the process of preparing a Master Plan, which is anticipated to be complete in July of 2008 depending on the 2006 – 2007 rain season. The submission of a *Revenue Plan* for any future expansions should be tied directly to completion of the Master Plan. In the meantime, CLMSD is willing to provide a revenue plan for the two more immediate projects, which are described above.

Provision #6 (p. 12) – CLMSD intends to coordinate with Lake County and utilize the County's Spill Contingency Plan. At this time, the July 1, 2007 date appears to be feasible.

Provision #8 (p. 12) – As discussed previously, CLMSD is in the process of approving and implementing two projects (increased acreage for irrigation and diversion of surface water away from recapture basin) that will increase CLMSD's capacity upon project completion. However, the October 1, 2007 date may not be feasible. To complete these projects, CLMSD will need to contract with an engineering firm. Until that contract can be put in place, CLMSD cannot be sure that completion will occur by October 1, 2007. In addition, this requirement should be removed from the Draft Order in the event that the Regional Water Board agrees that there is current capacity at the WTF.

Provisions #9, #10 and #11 (p. 13) – The dates related to the submittals regarding groundwater evaluation are not viable. To prepare a *Background Groundwater Quality Study and Degradation Assessment Report*, a *BPTC Evaluation Workplan*, and a *BPTC Evaluation Report*, CLMSD needs a considerable amount of more time. In the alternative, CLMSD recommends that all three dates be pushed back 6 to 9 months.

Provision #12 (p. 13) – As mentioned above, CLMSD does not believe that the *Sewer System Master Plan* can be completed prior to July 1, 2008. This plan is dependent upon collecting real inflow and infiltration data which has not been possible to date.

Provision #13 (p. 14) – CLMSD has already complied with the provisions of the Statewide General Waste Discharge Permit for Sanitary Sewer Systems. CLMSD complied with this provision by submitting the required documentation on October 29, 2006.

Provision #14 (p. 14) – CLMSD will need until February 1, 2009 to submit a *Report of Waste Discharge* (RWD) that reflects the proposed upgrades identified in the *Sewer System Master Plan*. As previously indicated, the *Sewer System Master Plan* will not be completed until July of 2008. CLMSD will need at least twelve (12) months to prepare the RWD based on the *Master Plan*.

CLMSD Identifies Additional Clarifications That Must Be Addressed in the Draft Order

Finding #2 (p. 1) – Replace the word “northwestern” with “southwestern.”

Finding #4 (p. 1) – Add the word “approximately” before the number of residents.

Finding #5 (p. 1) – The proper characterization of the WTF should be “[t]he Wastewater Treatment Facility (WWTF) is comprised of a domestic wastewater collection system, a treatment facility, a storage reservoir, a surface water recapture system, and disposal fields.”

Finding #20 (p. 5) – The second paragraph implies that the WTF shut down and that rain water entered the reservoir. This is not an accurate depiction of what occurred. Rain water did not enter the reservoir through the tailwater diversion ditch. It was heavy rain water through precipitation and the increase in flows from the Willow Point RV Park that inundated the system and caused the reservoir storage to encroach upon the two-feet of freeboard set aside for a 100 year event.

Finding #20 (p. 6) – The City of Lakeport did not issue citations to the Willow Point RV Park for it is not the agency with jurisdiction. Citations were issued by Lake County Environmental Health Department and the California Department of Housing and Community Development.

Finding #20 (p. 6) – The last paragraph of this finding should be amended to add “[w]ater samples collected before and during the April release into Clear Lake show that water quality levels were not significantly impacted as water levels in the Lake were also very high.”

Finding #21 (p. 6) – Although the inflow/infiltration (I/I) assessment report was not submitted timely back in June of 1999, it was submitted. The lateness of the report was due to a change in management staff. This issue has been resolved for many years and has no relevancy to the situation at hand.

Finding #22 (p. 6) – This finding implies that spills identified in Attachment A are evidence of the collection system's I/I problems. However, most of the spills are related to blockages in the collection system and are not directly related to I/I. The finding should be revised to clarify what evidence the Draft Order is providing regarding I/I.

Finding #28 (p. 8) – The Regional Water Board claims to have no record of CLMSD complying with the requirements contained in the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems General Order No. 2006-003-DWQ. CLMSD enrolled in this program as required by the General Order. Enrollment information was mailed to the State on October 29, 2006.

As discussed in great detail above, CLMSD is very concerned with the imposition of a connection restriction. Based on the information contained in the Draft Order, the Regional Water Board staff's basis for the restriction was in error. Because the connection restriction has no merit, the Regional Water Board must not approve this portion of the Draft Order and all of the provisions related thereto must be removed. If you have questions regarding these comments, please call me at (707) 263-5613, extension 15.

Sincerely,



Richard Knoll
Acting City Manager/Community Development Director
City of Lakeport