

Tom Skjelstad

From: Diana C Messina [DCMessina@waterboards.ca.gov]
Sent: Thursday, July 08, 2010 4:07 PM
To: Tom Skjelstad; emerick@ecologic-eng.com
Cc: Victor Vasquez
Subject: Response Letter for Donner Summit PUD Public Meeting
Importance: High
Attachments: Donner Summit letter 8 July 2010.pdf; Diana C Messina.vcf

Hi Tom and Bob:

Attached is a scanned version of our office's response letter to your 30 June 2010 letter requesting information for your upcoming public meeting. The 8 July 2010 letter is signed by the Assistant Executive Officer, Frederick Moss, who is the executive manager under Pamela Creedon, and who is over the Compliance and Enforcement functions of our office. The originally signed letter is being mailed this afternoon and may not make it to the District by Saturday.

If you need any further clarification regarding the contents in the letter, please contact Victor Vasquez of our Compliance and Enforcement Unit at (916) 464-4623. Victor is also copied on this email.

We hope the District has a successful public meeting.

Diana

Diana C. Messina, Supervising Engineer
Point Source Permitting Section
Central Valley Water Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
dcmessina@waterboards.ca.gov
(916) 464-4828

>>> Victor Vasquez 7/8/2010 3:19 PM >>>
Diana,

Attached is the PDF of the Donner Summit letter. Please forward to your contacts at Donner Summit.

-Victor

7/9/2010

Donner Summit Public Utility District

P.O. Box 610 53823 Sherritt Lane – Soda Springs California –95728
Phone (530) 426-3456 – Fax (530) 426-3460

June 30, 2010

Diana Messina, Senior Engineer
Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Dear Diana,

The Donner Summit Public Utility District (PUD) is in the process of presenting a plan before our community and that of Serene Lakes (the community by which Donner Summit PUD provides contract wastewater treatment service) for compliance with the current NPDES permit. The compliance plan proposed by both Boards has a cost in excess of \$23,000,000 and will result in a substantial rate increase for both of the affected communities. At our first public meeting, held on 21 June 2010, several questions were asked that we believe are best responded to by the regulatory community. Our next public meeting will be held on Saturday, July 10. The purpose of this letter is to request some clarification to three critical questions so that we can better present answers at the next public meeting. The three questions follow:

1. A Proposition 218 hearing is required for the rate increase to pay for the treatment process upgrades. Insofar as two districts are affected by the rate increase, one being provided wastewater service under contract with the other district, what actions are available to either district should the ratepayers of one district choose not to support the compliance project? Specifically, if the ratepayers of either district rejected the recommended compliance project, could Serene Lakes construct and operate their own wastewater treatment facility under a separate permit?
2. If both Districts are making due diligence toward compliance (e.g., approved Prop 218 rates), what happens if the project is held up due to a CEQA/NEPA challenge at no fault of either District?
3. What powers and authorities does the Regional Board have with regards to assuring compliance with either water quality objectives or the time schedule contained in the current permit? Examples of actions taken with other communities would be helpful.

Thank you very much for your assistance in answering these questions prior to our July 10 meeting. Also, please consider yourself or any other Regional Board member invited to attend our July 10 meeting so that you can learn first-hand our intended compliance project.

Best Regards,



Thomas G. Skjelstad
General Manager

BOARD MEMBERS: Cathy A. Preis, President ~ Dave Oneto, Vice President ~ Bob Sherwood, Secretary
Philip Gamick ~ Taylor Dolph

DISTRICT STAFF: Thomas G. Skjelstad, General Manager ~ Jim King, Plant Manager
Julie Bartolini, Office Manager



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental
Protection

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<http://www.waterboards.ca.gov/centralvalley>

8 July 2010

Thomas Skjelstad, General Manager
Donner Summit PUD
PO Box 610
Soda Springs, CA 95728

COMPLIANCE WITH CEASE AND DESIST ORDER, DONNER SUMMIT PUBLIC UTILITY DISTRICT, NEVADA COUNTY

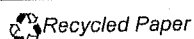
Thank you for your 30 June 2010 letter to Diana Messina of our Central Valley Water Board (Board) staff, which requested information to convey to your local community and the Serene Lakes community at your 10 July 2010 public meeting. This letter is in response to your questions that resulted from your 21 June 2010 public meeting.

The discharge of wastewater by the Donner Summit Public Utility District (Discharger) from its Wastewater Treatment Plant is regulated by Waste Discharge Requirements (WDRs) Order R5-2009-0034 and Cease and Desist Order (CDO) R5-2009-0035. The WDRs authorize the discharge of treated wastewater to waters of the US under the National Pollutant Discharge Elimination System (NPDES) Program. The CDO requires the Discharger to: (1) cease and desist discharging or threatening to discharge wastes contrary to the WDRs, and (2) implement its Pollution Prevention Plan to comply with all effluent limitations contained in the WDRs by 24 April 2014.

Recently, the State Water Resources Control Board's Division of Financial Assistance approved the Discharger's preliminary planning documents and issued a Plan of Study Approval. This is an important milestone, marking a significant step forward in the Discharger's efforts to acquire state funding for its project, which is designed to bring its facility into compliance with discharge requirements. We urge the Discharger and the communities within the Discharger's service area to work towards securing the additional local funding needed to complete the project by the 24 April 2014 compliance date. Failure to timely implement the compliance project, which is needed to achieve compliance with the WDRs and the CDO, will result in serious consequences for the Discharger and the communities served by the Discharger. In response to question 3 in your letter, the probable consequences of non-compliance include the following:

- After 24 April 2014, the five-year exemption from mandatory minimum penalties (MMPs) provided by the CDO will expire, and the Discharger will be subject to MMPs of \$3,000 apiece for certain violations of the WDRs. For the period of November 2009

California Environmental Protection Agency



through May 2010 alone, the Discharger has incurred at least 35 violations that would have been subject to MMPs if the Discharger had not been considered to be in compliance with the CDO. This means that during this short period, the CDO has provided protection from penalties of at least \$105,000.

However, the five years of protection provided by the CDO may be cut short, if the Board determines that the District is not in compliance with the CDO. Failing to fund the compliance project and failing to show diligent progress towards achieving compliance within the approved compliance schedule may result in the Board making such a determination, thereby eliminating the protection from mandatory minimum penalties that the CDO currently provides. It is worth noting that the Board has very limited statutory authority to forgive mandatory minimum penalties. These penalties can, unfortunately, easily push a community to the brink of insolvency and bankruptcy.

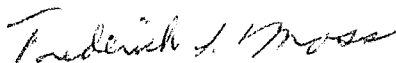
- The CDO only provides the Discharger with protection from mandatory penalties, not discretionary penalties. Under state and federal law, the Discharger will incur significant potential liability for discharging waste in violation of the WDRs and the CDO. These violations may result in the imposition of discretionary administrative civil liability that can range as high as \$10,000 per violation, per day, with additional penalties for each gallon discharged in violation of the WDRs and the CDO. Potential liability can quickly escalate into the tens of millions of dollars.
- Failing to comply with the terms of an NPDES permit not only subjects the District to enforcement actions initiated by the Central Valley Water Board, but also exposes the District to liability from citizen lawsuits under the federal Clean Water Act. These lawsuits can result in injunctions being levied against the District (which would essentially force the District to undertake the improvements that are currently being considered), and can also result in penalties as high as \$25,000 per violation, per day, with additional penalties for each gallon discharged in violation of the NPDES permit requirements. These lawsuits are not merely hypothetical; environmental groups in the Central Valley Region have shown their willingness to pursue these actions.
- California Water Code section 13301 states, in relevant part, the following, "In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to that system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order." This type of prohibition, commonly known as a connection ban, would essentially prohibit the District from providing new sewer service to new residents or businesses.
- In the worst-case scenario, if operation of the District's plant continues to violate the WDRs and the CDO, and thereby creates a public nuisance, the District may lose the ability to discharge effluent to the South Yuba River. In that unfortunate event, all dwellings and businesses that receive sewer service from the Discharger would effectively be rendered uninhabitable and subject to county code enforcement.

Your letter explains how your current service area consists of two districts. Your current permit regulates the Donner Summit Public Utility District's service area as a whole. In response to question 1 of your letter, we cannot assure you that the Central Valley Water Board will approve the separation of the service area for separate treatment and disposal of waste. In the recent past, the Board has taken a strong position in favor of increased regionalization, adopting a resolution to that effect (Resolution R5-2009-0028), and has highly discouraged additional discharges to our surface and ground waters. Although a separate district is not prohibited from applying for a separate discharge permit, Board approval of an additional permit is not assured, especially for communities that have a history of violating permit conditions. We urge your communities to take advantage of the economy of scale inherent in treating and disposing waste on a regional basis, as experience has shown that splitting a service area usually results in higher per-capita costs for both districts.

In response to question 2 of your letter, if the Donner Summit Public Utilities District demonstrates due diligence towards compliance with the existing discharge requirements, but the project is delayed due to circumstances outside of the District's control, the Central Valley Water Board may use discretion in assessing discretionary penalties. However, as previously mentioned, for violation of final effluent limitations after 24 April 2014, the Board does not have discretion and must assess mandatory minimum penalties.

It is imperative that the Discharger and the communities within its service area ensure that compliance with the WDRs and CDO is achieved by 24 April 2014. It is the responsibility of the Discharger to ensure that its discharge complies with the Clean Water Act, the Porter-Cologne Water Pollution Control Act, and all applicable regulations and policies as stipulated in your NPDES permit.

If you have any questions regarding this matter, please contact Victor Vasquez of my staff at (916) 464-4623 or vvasquez@waterboards.ca.gov.



FREDERICK S. MOSS
Assistant Executive Officer

cc: Pamela Creedon, Executive Officer
Diana Messina, Permitting Section, Central Valley Water Board
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Robert Emerick, ECO:LOGIC Engineering, Inc., Rocklin