

Donner Summit Public Utility District

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

December 24, 2008

Ms. Wendy Wyles
Environmental Program Manager
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #220
Sacramento, CA 95670

**RE: ACLC Complaint R5-2008-0626, Donner Summit Public Utility
District, Nevada County**

Dear Ms. Wyles:

The District is in receipt of the Administrative Civil Liability Complaint (ACLC) R5-2008-0626, Donner Summit Public Utility District, Nevada County dated November 26, 2008. The District Board of Directors discussed the ACLC with its associated monetary fines at their meeting of December 9, 2008. I have been directed to request a meeting with the Central Valley Water Board enforcement staff in order to resolve and settle the outstanding violations. By this letter I am requesting such a meeting. Attached please find the Waiver of the 90-Day Hearing Requirement for ACLC with Option #5 checked. We intend to negotiate in good faith with Regional Board staff on the imposition of the fines and how those fines may be applied toward compliance. If we cannot come to agreement, the District would like to preserve our right to present testimony directly to the Regional and/or State Board.

Before I list the specific issues that we want to discuss at the meeting, I want to detail our need to revise (correct) the written record associated with the ACLC. The Donner Summit Public Utility District now operates in a very politically charged atmosphere due to potential land use decisions to be made at a later date by other agencies related to the potential Royal Gorge development. It appears that there is a wide-spread local perception that opposition to the Donner Summit Public Utility District outfall to the South Yuba River as a means of wastewater disposal will derail the Royal Gorge project. Although the ACLC does not discuss, or even make reference the Royal Gorge development, and our reference to that development herein may at this point be confusing, we are of the belief that the Regional Board remains neutral towards our local development issues (i.e., the Regional Water Quality Control Board is not a land-use agency). Therefore, the bulk of our rebuttal to the ACLC and its associated monetary fine is intended to clarify the written record with regard to our operation and maintenance history so that future land-use and treatment process implementation decisions can be made in an impartial setting that lacks any misrepresentation of facts. At the meeting, we want to discuss a number of concerns found in the ACLC and determine how any potential errors may affect the imposition of fines. I have listed below, in general terms, the topics we want to discuss.

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

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

1. There is a lack of any discussion about rare and unusual algal blooms occurring in the Sierra Nevada in 2008. 2008 was an unusual year for algae found in water ways in and around the Sierra Nevada. There were several published news accounts of other unusual blooms in the South Yuba in addition to the subject bloom. The ACLC omits statements (via emails) from the complainants which support the extraordinary nature of this specific algal bloom. In her October 23-24, 2008 Executive Officer's report, Pamela Creedon reported on Excessive Algal Growth in the Feather River which according to eye witnesses had also never occurred previously. The District is currently battling algae in our drinking water intake water source of which there is no treated wastewater component. We believe that Regional Board staff has knowledge of similar algae blooms that are unrelated to sewage and failure to also present this information unfairly biases arguments in favor of imposing monetary fines.
2. The sole focus on the District's nitrate concentration within the discharge as the only cause of the bloom. Enforcement staff has provided no evidence that the algae bloom was related to nitrate concentrations in the discharge. In fact, the record suggests otherwise; the algae bloom ceased while the discharge and its associated nitrate concentration was ongoing and the bloom reoccurred to a lesser degree in the late fall (photos attached) prior to our re-initiation of the discharge. It appears that additional information is now available (e.g., the reestablishment of the algae bloom without the discharge present) that may be sufficient to reevaluate the necessity of imposing a fine.

Our engineering consultant (ECO:LOGIC) stated in its investigation of the incident that the wastewater discharge likely contributed to the algae bloom. Even with the current reestablishment of the algae, the District has never disputed that we contributed to the algae bloom. We agree that nutrients are necessary for algae to grow and our discharge does provide a nutrient source. However, algae need other factors for growth as well (e.g., sunlight, temperature, micro-nutrients). A review of historical documents in Regional Board files will show that the basis of a seasonal discharge rather than a year-round discharge was specifically to prevent algae blooms that are likely in warmer months with greater solar exposure. It is uncertain why a bloom occurred this year and not in previous years.

Regional board staff has speculated that previous undocumented outbreaks have occurred. There is no evidence of any such occurrences and such written statements unfairly depict our role in the algae bloom. What is more likely is that climate change, which has been embraced as a very real factor by the State of California Department of Water Resources in adversely affecting the reliability of the Sierra-Nevada snowpack to provide drinking water to the State, is also affecting our current ability to discharge in the late spring without affecting algae growth. It is possible that other environmental factors (e.g., temperature, solar exposure, micronutrient addition from adjacent land runoff, etc.) may require us to modify our storage and disposal operation to prevent future algae

outbreaks. We have proposed such study so that we know how to appropriately address this issue. We have been told by Regional Board Permitting Staff that our renewed permit will include a study on appropriate discharge conditions to prevent algae outbreaks because such factors are currently unknown. It is only appropriate that Regional Board staff provide evidence that even a single other discharger has modified its disposal operation in advance of observed problems to address climate change to suggest that our District has failed to act in an environmentally responsible manner that warrants the imposition of such a discretionary fine on a low-income community.

3. There are statements in both reports which appear to be contradictory and are difficult to reconcile. The Report dated November 26, 2008 states that the discharge is not susceptible to cleanup. The District immediately hired an outside consultant (ECO:LOGIC) to investigate the outbreak and they submitted a report of their findings to both us and Regional Board staff. Our consultant's report was quoted when justifying the fine by Regional Board staff. However, the report dated November 26, 2008 further states that "The Discharger's response and cleanup efforts have been marginal." This later statement appears to be inconsistent with the prior statements in the report and counter to factual events. The District requests a retraction of the statement that "response and cleanup efforts have been marginal." Rather, please clarify what response and clean-up effort would have been satisfactory when the cause of the algae outbreak remains unknown.

In the report, dated November 26, 2008 it is acknowledged that Regional staff, "...are unable to verify if the algae growth has occurred previously or if it was unique to the year 2006" (sic). State licensed operators have reported for decades that biostimulation was not present. There have been no complaints by residents, many of which live along the river, that previous algae outbreaks have occurred. The statement that previous outbreaks are likely is speculative and unfairly biases the report in favor of a discretionary fine. The District requests retraction of the statement "...algae growth and bio-stimulation are likely to have occurred in the past".

4. The District is interested in knowing of other high altitude dischargers. The assertion that a review of case files revealed that other dischargers located in high altitudes within the Sierra Nevada are able to fully nitrify and denitrify under similar conditions with success is interesting. However, the names of these dischargers were withheld. We have installed a biological treatment system intended to allow for sufficient nitrification and denitrification. However, the highly variable organic loadings to that system, combined with low temperatures, prevent full denitrification from occurring. We disclosed this state of affairs to Regional Board staff in our justification underlying the assignment of dilution credits (which are available). Under Resolution 68-16, it can be argued that we should attempt to denitrify prior to requesting dilution credits, which we have done. That said, we would appreciate the names of these other unnamed dischargers that are also

5. reacting to variable influent organic loadings so that we can confirm the stated similarities and even learn from them as to how to adequately react to our current issues.
6. It is unclear to the District how or why the section entitled Degree of Culpability is relevant. The District for two decades has discharged into the South Yuba River under various limitations without a known or reported occurrence of an algal bloom. Is regional staff suggesting that the algal bloom occurred due to a simple administrative change to the nitrate limits?
7. The District respectfully takes issue with the rationale that it is receiving an economic benefit by not bringing the WWTP into compliance for nitrate limitations. The District has installed a biological treatment system with all of the known components necessary to for denitrification. If all had occurred as planned, we would now be in compliance. However, low temperatures and highly variable influent organic loadings appear to be hindering our ability to denitrify to the levels described in the various permits. We continue to work toward modifying operation to bring about compliance under Resolution 68-16. However, the issues we now face were described in the Report of Waste Discharge associated with the permit renewal, the justification for dilution credits was provided, and we have been told that dilution credits now form the basis of our yet to be issued renewed permit. We have also been fined for violating the nitrate limitations. The District would gladly put the discretionary fine of \$25,000 into another compliance project. However, as Regional Board Enforcement staff is aware, a new discharge permit is up for renewal and is expected to make it onto the Regional Board meeting for March 2009. Without knowing the limitations by which the District will need to operate the WWTP under the new permit, or the conditions by which algae will and will not grow, we cannot in good faith to our rate payers commit to a compliance project at this time.
8. The District would like further clarification as to how the discretionary fine (\$25,000) was calculated. It has not been determined that nitrate was the causal agent of the algae bloom (see Item 1 and 2, above). Rather, it is likely that the algae bloom would have occurred even if we were in compliance with the drinking water nitrate standard. Regional Board staff has provided no evidence that compliance with drinking water nitrate standards (which we are compliant with once the dilution credits are assigned) will prevent algae growth. It is puzzling that the months June, July, October, November, and December of 2007 were included in the calculation when the subject nuisance occurred in June of 2008. We would like to know why the year 2007 was included when no nuisance conditions were present. Have there been other occurrences of an algal bloom with other dischargers, or violations of other receiving water limitation type violations by other dischargers, which has lead to a fine? Note that the District is already being assessed for the nitrate violations in the Mandatory Minimum fine of \$24,000 and that fine already accounts for any possible economic benefit of non-compliance.

Pg. 5
ACLC R5-2008-626
December 24, 2008

We believe the most productive course of events is for us to aid the State in the development of protective nutrient criteria for our stretch of the South Yuba River. We have already made this proposal and are willing to contribute the discretionary fine towards this end. We would also like to discuss how the Regional Board can encourage regionalization by aiding us in eliminating the septic treatment systems that line the South Yuba River. The tie-in of those systems to our facility will make our treatment facility more robust while eliminating a substantial source of nutrients and micronutrients to the South Yuba River that are likely also a contributing factor to the algae outbreak. At the meeting I will be representing the District and will be accompanied by Robert W. Emerick, Ph.D, P.E. of ECO:LOGIC Engineers.

I look forward to hearing from you in the near future.

Sincerely,



Thomas G. Skjelstad
General Manager

Cc: DSPUD Board of Directors
Sierra Lakes County Water District

Enclosures (4)

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

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

1. I am duly authorized to represent Donner Summit Public Utility District Wastewater Treatment Plant (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0626 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. ☐ (Check here if the Discharger will waive the hearing requirement and will pay the fine)
 - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **forty-nine thousand dollars (\$49,000)** by check, which will contain a reference to "ACL Complaint R5-2008-0626" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. ☒ (Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time) *The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted* I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

Thomas G. Skjelstad, Gen. Mgr.
(Print Name and Title)

[Signature]
(Signature)

12/29/08
(Date)

California Regional Water Quality Control Board
Central Valley Region
Pamela Creedon, Executive Officer



EXECUTIVE OFFICER'S REPORT
23-24 October 2008

ITEMS IN THIS REPORT

Success Stories	Page2
Enforcement.....	Page7
CV Salts Initiative/Dairy.....	Page 12
Sanitary Overflows.....	Page 14
Storm Water.....	Page 14
Surface Water Programs.....	Page 16
Irrigated Lands Conditional Waiver Program Report.....	Page 17
Delta Activities.....	Page 23
General.....	Page 25
Public Outreach.....	Page 26
Staff Recognition.....	Page 31
Personnel and Administration.....	Page 33
Fiscal Report.....	Page 35
Future Board Activities.....	Page 36
Fiscal Expenditure Line Item.....	Page 40
Fiscal Management Organization Summary	Page 41

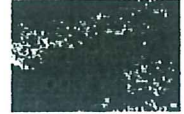
NPDES DISCHARGERS

Redding Staff Participates in Discharger Training for "Electronic Submittal of Monitoring Reports (eSMR²)" On 22 and 24 September 2008, the State Water Resources Control Board and Redding Regional Water Board staff held meetings to inform the NPDES dischargers of the new program for Electronic Submittal of Monitoring Reports (eSMR²) into CIWQS. Approximately 65 dischargers attended the two meetings, where the SWRCB provided information on the upcoming rollout of the eSMR² program. This first training was designated "Meet and Greet" and provided the dischargers with an overview of the program, and setup additional on-hands training for the individual dischargers. Currently there are three additional dates (end of October) where the dischargers and SWRCB/RWQCB staff will work one-on-one to setup templates so that the dischargers can electronic submit their monthly monitoring reports. Eventually, all monitoring reports for the NPDES program will be submitted electronically into CIWQS by the dischargers. The Redding Office was selected by the State Board as the first office to fully convert to electronic submittal of monitoring for NPDES permits. (GDC)

SURFACE WATER PROGRAMS

1. **Lake Britton Cyanobacteria (Blue-Green Algae) Bloom, Shasta County**
On 15 September 2008, Board staff inspected the PSEA camp and State Park campground at Lake Britton in response to a complaint received from the PSEA caretaker. The caretaker reported that a cyan colored substance was in the water and coated portions of the shoreline of Lake Britton. The complainant was concerned that agricultural activities upstream along Burney Creek were causing a degradation of Lake Britton's fishing. Staff's inspection found that no staining was present along the creek from Burney Falls to Burney Creek's confluence with Lake Britton. During the investigation, Regional Board staff encountered a California State Park ranger who stated that the cyan colored material was cyanobacteria which blooms every few years in the Lake. No dead fish or wildlife was observed during the inspection and California Department of Fish and Game staff also concluded the substance was cyanobacteria based on the circumstances of the report and photographs of the area. Some strains of cyanobacteria are poisonous though not all cyanobacteria that can generate poisonous toxins do so during a bloom. (KEK)
2. **Excessive Algal Growth in Feather River Investigated By Redding Staff, Plumas County**
Staff has received complaints from residents and fishermen that the Middle Fork Feather River in the Graeagle area of eastern Plumas County is experiencing abnormal algal growths. The complaints alleged that algal growth, which covered the entire stream bottom and impacted the quality of the cold water fishery, had not occurred in the past. Graeagle is home to numerous large recreational developments (all on septic systems) and has several golf courses situated adjacent to the River. Staff met with local residents and toured the river area. The river does appear to be impacted by algal growth, particularly in the upstream reach just above the town of Graeagle. The algal growth appeared to diminish in downstream reaches probably due to the recent drop in air temperatures in the area. Staff will conduct a study during next year's low flow period (August) to determine if the source of the Algal growth can be determined. This section of the Feather River is a designated, "Wild and Scenic River." (JCP)

Official: Yuba River algae blooms worst in 20 years



BY LAURA BROWN
STAFF WRITER,

Warm temperatures combined with a low water year have encouraged an unwelcome green visitor to infest popular swim holes on the South Yuba River.

Algae blooms are a normal occurrence in rivers and lakes during the summer months and typically do not pose health risks to humans. Some years are worse than others.

"It's showing up everywhere. We saw similar kinds of stuff in the '80s," said John Hiscox of the California Department of Fish and Game.

Swimmers in the Bridgeport area this time of year will see more than the usual amounts of bright green hair-like slime attached to rocks and floating in the shallows.

Though unpleasant, people shouldn't be concerned.

"The Yuba is a healthy system," said Jen Hemmert, a watershed monitoring specialist for the South Yuba River Citizens League. "The algae is not going to be something harmful to recreate in or consume.

"It should naturally be in the water. It's a food source for fish and macroinvertebrate," he added.

"Algae are photosynthetic. They start to bloom when sunlight increases," said SYRCL's river scientist Gary Reedy.

He is concerned that excess algae could rob oxygen from the water and cause swings in pH levels, which could harm fish.

Though some fish deaths related to algae have been reported in private ponds this summer, problems with dissolved oxygen in rivers is uncommon because water is constantly moving, Hiscox said.

Algae needs sunlight, warm temperatures and nutrients such as phosphorous and nitrogen to grow.

This year's low flows and warm summer temperatures have combined with human-caused nutrient loading, ranging from waste water treatment plants to excess human bodies slathered with sunscreen, to produce the perfect recipe for algae blooms, Reedy said.

Algae has also been known to trigger an increase in dissolved carbon, which fuels the growth of more bacteria that consumes mercury and changes into a form that fish can ingest, Reedy said.

Algae is an indicator of water quality, so SYRCL began a new monitoring program this year, visually surveying three areas along the upper watershed.

Since July, algae has increased below the town of Washington at the confluence of the Yuba River and Poorman's Creek and below the Spaulding Dam at Lang's Crossing.

An area below where the Donner Summit Public Utility District discharges effluent into the river also is monitored. This summer the California Regional Water Quality Control Board issued a violation to the district after algae blooms were discovered below the discharge area.

Higher flows released from Spaulding Dam and cleaner water are needed to reduce algae, Reedy said.

"Hopefully we'll get an early winter," Hiscox said.

Cold temperature caused by winter rains and snow melt will kill algae, Hiscox said.

On September 22, Nevada Irrigation District will increase flows in Canyon Creek and the South Yuba River from 4 cubic feet per second to 150 cubic feet for five days. Increasing the water volume is part of an insert flow study in an ongoing re-licensing program for the NID's water projects on the Yuba and Bear rivers.

The flush of water could help remove some of the algae, Hiscox said.
"It will scour it out and move it on down," he said.

<http://www.theunion.com/apps/pbcs.dll/article?AID=/20080910/NEWS/809109972&parentprofile=search&template=printart>

Copyright 2008 All Rights Reserved

Tom Skjelstad

From: gfr340@comcast.net
Sent: Friday, June 27, 2008 8:58 AM
To: Pat Leary
Subject: Re: FW: Our polluted river
Attachments: DSPUD-5-20-08.pdf

Good Morning Pat, and thank you for taking the time to look at those disgusting pictures I sent. I have now attached an article that is of interest and is a must read. Please give me heads up, once you have arranged for one of your reps., to come here, as I now have a crucial witness that is a 26 year resident of our Mtn. This man can meet with and show you the expected problem area that is generating this disrespectful regard to our waterway and not to our surprise with whom the villain is. Once again, as I had mentioned to you on the phone, please do not contact DSPUD. They should not get the opportunity to cover their wrong doings. Thank you, from the bottom of our hearts. Sue Grigsby.

----- Original message -----

From: "Pat Leary" <pleary@waterboards.ca.gov>

> Hi Sue- I have received the photos. We will evaluate this situation as soon as
 > possible, and keep you informed of our findings. Please contact me if you have
 > any further questions.

>
 >
 >

> Patricia Leary
 > Senior Engineer
 > Central Valley Regional Water Quality Control Board
 > Compliance and Enforcement
 > NPDES Section
 > (916) 464-4623
 > (916) 464-4681 (fax)

>
 >

> >>> 6/24/2008 6:13 PM >>>

> Dear Pat Leary,
 > Please view the following attached pics. As I had explained, this is highly
 > unusual. This was my first opportunity to get these to you as I was helping
 > with a funeral today. I have witnessed many seas ons and situations up here, but
 > nothing like this. A very concerned resident of Towle Mtn., Soda Springs Ca.on
 > Lola Montez Rd. Please assure me you rec'd these. Sincerely, Sue Grigsby

>

> ----- Forwarded Message: -----

> From: "Robert Humphreys"
 > To: "Shannon McDole", "Ambrose Tuscano"
 > , "Anthony Bachman", "Dennis &
 > Cherie Shimek", "Scott & Debbie Lucas",
 > "Frank & Sue Grigsby", "Nikki & Gerry Barner"

> , "HJones1001@aol.com" , "Kessler,
> Hal S. (US - San Francisco)" , Kevin ,
> "Larry & Carla Nordstrom" , "Laura Pregent"
> , "Lee N. Price" , "Letty & Orville
> Erringer" , "Mikey Basich" ,
> "Robert Baxter" , "Steve & Roberta Brown"
> , "Tim Dawes" , "Timothy G Geiser"
> , "Todd Mcdole" , "Vance
> Anderson" , "Warren Kocmond" ,
> "Brett Garrett" > garrett.com>
> Subject: Our polluted river
> Date: Fri, 20 Jun 2008 20:07:13 +0000
>
> Friends,
>
> I snapped these pictures of the Yuba yesterday while working on some bridge
> repairs. Then for comparison I took some photos of the CCD crossing of Lower
> Castle Creek.
>
> The contrast speaks for itself. One a pristine mountain stream with pure snow
> melt water. The other, an algae filled, scum-ridden, smelly mess. Sa me
> waterway, less than a mile apart. Of course in the middle of that space is the
> DSPUD.
>
> I don't know about you, but I have never seen the river look this bad. Does
> anybody have any ideas as to how we can address this?
>
> Bob
>

Prior to discharge
50 Feet after discharge site
September 9, 2008



Prior to discharge
50 Feet after discharge site
October 28, 2008



25 days after discharge
50 Feet after discharge site
November 28, 2008



28 days after discharge.
500 Feet after discharge site
December 1, 2008

