

EXHIBIT 13



Central Valley Regional Water Quality Control Board

TO: Thomas Howard
Executive Director, State Water Board
FROM: Clay Rodgers
Assistant Executive Officer, Region 5, Fresno

Handwritten signature: Lonnie Wass for Clay Rodgers

DATE: 13 September 2012

SUBJECT: SMALL COMMUNITY WITH FINANCIAL HARDSHIP DETERMINATION
- MALAGA COUNTY WATER DISTRICT, FRESNO COUNTY

We respectfully request that the State Water Board complete a small community review of Malaga County Water District (Malaga) to determine whether the community qualifies as a "Small Community with Financial Hardship" in enforcement matters pertaining to the Malaga wastewater treatment facility (WWTF).

In 2008 (as well as in 2004) State Water Board staff determined that Malaga did indeed qualify for the "Small Community with Financial Hardship" designation, using the 2002 Enforcement Policy. The 2002 policy had been updated and new information has been provided; therefore, a re-evaluation is appropriate. A copy of the 2008 determination for Malaga by ORPP is enclosed.

Key information to consider in your review comes from a report Malaga submitted to the State Water Board Division of Financial Assurance (DFA) in February 2010: Water, Sewer & Solid Waste Rate Study for Malaga County Water District, which was prepared by independent public finance advisors. The report indicates that residential customers account for only 8% of the District's wastewater service units. Industrial users account for the majority of the District's wastewater service units. Such information does not appear to have been considered for the 2008 determination.

Thank you in advance for your attention to this matter. If there are any questions, please do not hesitate to call me at (559) 445-5102 or Lonnie Wass, Supervising Engineer, at (559) 445-6051.

Attachments: 2008 Small Community Determination - Malaga

cc (via e-mail only): Cris Carrigan, Director, Office of Enforcement, SWRCB
Eric Oppenheimer, director, ORPP, SWRCB
Ellen Howard, Staff Council, Office of Enforcement, SWRCB
Gerald Horner, Research Program Specialist, ORPP, SWRCB





Linda S. Adams
Secretary for
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State Water Resources Control Board

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Arnold Schwarzenegger
Governor

TO: Dorothy Rice
Executive Director

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

FROM: Gerald Horner
Economist

DATE: August 12, 2008

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

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

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

"a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."

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

California Environmental Protection Agency

1. Rural County/Population Cap

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

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

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

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

2. Financial Hardship

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

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

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

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

1. Median household income (the MHI divides the income distribution into two equal groups, one having incomes above the median, and the other having incomes below the median) for the community is less than 80 percent of the California MHI;
2. The community has an unemployment rate of 10 percent or greater (All civilians 16 years old and over are classified as unemployed if they (1) were neither "at work" nor "with a job but not at work" during the reference week, and (2) were actively looking for work during the last four weeks, and (3) were available to accept a job. Also included as unemployed are civilians who did not work at all during the reference week, were waiting to be called back to a job from which they had been laid off, and were available for work except for temporary illness. The 10 percent criterion is similar to the 150 percent of the national unemployment rate used by some federal agencies in defining economically distressed communities. The national employment rate varies between five to six percent. 150 percent of that amount is seven and half percent to nine percent.); or
3. Twenty percent (20 percent) of the population is below the poverty level (Following the Office of Management and Budget's (OMB's) Directive 14, the Census Bureau uses a set of money income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being "below the poverty level." The 20 percent threshold is used by some federal agencies in determining economically distressed communities).

The City of Malaga and the related publicly owned treatment works can be considered a small community with a financial hardship because the population served of 1,468 is less than 10,000, and the MHI of \$28,304 is less than 80 percent the California MHI¹.

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

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

Dorothy Rice
Cities of Malaga and Cascade Shores SCFH

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August 12, 2008

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

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

cc: Reed Sato, Director
Office of Enforcement

Erik Spiess, Counsel
Office of Enforcement