

# San Simeon Community Services District



111 Pico Avenue, San Simeon, California 93452  
(805) 927-4778 Fax (805) 927-0399  
Board of Directors  
John Russell, Ralph McAdams, Allen Fields, Dee Dee Ricci, Terry Lambeth

June 6, 2007

Mr. Roger Briggs, Executive Officer  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

*Re: Request for a Continuance of the July 6, 2006 Hearing for the San Simeon Community Services District Wastewater Treatment Plant*

Dear Mr. Briggs:

This correspondence shall serve as a response to your correspondence dated May 18, 2007 and received on May 23, 2007 in regard to the Regional Water Quality Control Board's (RWQCB) proposed mandatory minimum penalty order R2006-0102. As you are aware, the Board of Directors of the San Simeon Community Services District (SSCSD), in a letter to you dated February 27, 2007, authorized its General Manager to propose a Compliance Project (CP) pursuant to Water Code Section 13385(k) regard to the proposed mandatory minimum penalty order R2006-0102..

My office strongly disagrees with your assessment that the SSCSD does not qualify for the proposed penalty amount to be directed to compliance projects essential to the resolution of existing problems at the wastewater treatment facility. Your analysis seems to indicate that you are unaware that Water Code 13385(k) was amended in 2005 for the purpose of providing assistance to disadvantaged communities that are trapped between non-compliance and the inability to upgrade wastewater facilities to meet compliance standards. The author of the amendment to Water Code 13385(k) specifically stated that the amendment "provide reasonable and much-needed flexibility in how the collection of mandatory minimum penalties can be utilized."

Clearly, in making the amendment to Water Code 13385(k), the legislature determined that mandatory minimum penalties could have a disproportionately harsh impact on small communities. In fact, the legislature in 2000 amended existing law to allow a small community to

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expend the equivalent amount of the penalties on a project to bring the entity into compliance, rather than send the money to the State's Cleanup and Abatement Account. However, the legislature in 2005 found

that the definition of "small community" was too narrow to include those small cities or communities that the original definition intended to encompass. As a result, a small community with an income level lower than the county or statewide average is currently found not eligible to spend the penalty money on compliance because their actual median income is lost in the broader calculations. The amendment to water Code 13385(k) modified the definition so that those small communities that clearly are facing financial constraints are indeed eligible to direct all or part of the mandatory minimum penalty into a project that will contribute towards compliance. Simply stated, the changes made to Water Code 13385(k) provide the RWQCB with additional flexibility in determining whether a community has a "financial hardship." It appears that in denying the SSCSD's request to apply the penalties to a Compliance Project, you have failed to take into consideration this flexibility and change in law.

Based upon the forgoing, this correspondence shall serve as a formal written request from the San Simeon Community Services District for a continuance of the July 6 hearing in order for the District to provide the RWQCB with properly evaluated, analyzed and detailed community and financial information to help facilitate the RWQCB's decision that the SSCSD indeed qualifies for a Compliance Project under Water Code Section 13385(k). In addition, the SSCSD requests a hearing in regard to previous order R3-2005-0120 and R3-2005-0032 since the above amendment to Water Code 13385(k) applies to the imposition of penalties after January 1, 2003.

Furthermore, attempting to hold this hearing in Watsonville instead of San Luis Obispo will hinder the SSCSD's ability to properly address the RWQCB on this critical issue. Also, I would add that I am unavailable on Jul 6, 2007, as I have already scheduled a July 4<sup>th</sup> vacation. In order to facilitate a continuance, the District hereby waives its rights under Water Code Section 13323(b) requiring that the Regional Water Board conduct a hearing within 90 days of service of the Complaint.

In conclusion, The SSCSD Board wishes to continue to make clear its desire to address this issue in a positive and aggressive manner. We intend to work cooperatively with the RWQCB to affect multiple solutions that: [a] solve the existing problems at the wastewater treatment facility and [b] permanently improve the water quality of its District and environs.

Sincerely,



Robert Schultz  
District Counsel