

EXHIBIT 14



CRWQCB, CLR



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

TO: Clay Rodgers
Assistant Executive Officer
Region 5, Fresno

FROM: *Thomas Howard*
Thomas Howard
Executive Director
State Water Resources Control Board

RECEIVED

OCT 22 2012

RWQCB-CVR
FRESNO, CALIF.

DATE: October 9, 2012

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

In response to your request, dated September 13, 2012, for a determination as to whether the Malaga County Water District (District) qualifies as serving a small community with a financial hardship, I am forwarding you the attached analysis prepared by the Office of Research, Planning, and Performance, with my approval of the recommendation on page 5. As described in the last paragraph (pages 4-5) of the analysis, the District serves a small community that meets the criteria for financial hardship, however, less than 10 percent of the District's revenue is attributable to residential sources and the Regional Board has the discretion to pursue a Mandatory Minimum Penalty.

If you have any questions regarding this determination, please contact me at (916) 341-5615 or Eric Oppenheimer at (916) 445-5960.

Attachment

cc: Cris Carrigan, Director
Office of Enforcement

Eric Oppenheimer, Director
Office of Research, Planning, and Performance

Gerald Horner, Economist
Office of Research, Planning, and Performance

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

State Water Resources Control Board

TO: Thomas Howard
Executive Director
State Water Resources Control Board

FROM: Gerald L. Horner
Senior Economist (RPS II)
Office of Research, Planning, and Performance
916-341-5279
ghorner@waterboards.ca.gov

DATE: October 4, 2012

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

On September 13, 2012, Clay Rodgers, Assistant Executive Officer, Central Valley Regional Water Quality Control Board, requested a review on a previous determination regarding the status of the Malaga County Water District (District) as serving a Small Community with a Financial Hardship (SCFH). In reviewing my earlier determination, I did not consider that the District depends primarily on non-residential fees to fund its Publicly-Owned Treatment Works (POTW).

California Water Code Section 13385(k)(2), which defines a POTW “serving a small community”, states:

“For the purposes of this subdivision, “a publically owned treatment works serving a small community” means 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 POTW is “serving a small community” entails two separate determinations: (1) if the POTW is either situated within a rural county or has a population of 10,000 or less; and (2) if the POTW’s service area has a “financial hardship.”

1. Rural County/Population Cap

The POTW is located in Fresno County. The first question is if Fresno County is a “rural county.” The State Water Board’s Water Quality Enforcement Policy (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.

The District is located in Fresno County which has a 2003 Rural-Urban Continuum Code of three and, therefore, is considered to be located within an urban county.

Next, the POTW serves a population of 947 persons, which is less than a population of 10,000 and, therefore, meets the small community criteria.

2. Financial Hardship

Consistent with Water Code Section 13385(k)(2), the Water Quality Enforcement Policy¹ defines "financial hardship" in terms of median household income (MHI), unemployment rate, and poverty level. The specific criteria, of which at least one must be met to be considered having a "financial hardship", are as follows:

1. Median household income for the community is less than 80 percent of the California MHI (MHI divides the income distribution into two equal groups, one having incomes above the median, and the other having incomes below the median.)²;
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, (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 (1) did not work at all during the reference week, (2) were waiting to be called back to a job from which they had been laid off, and (3) were available for work except for temporary illness.); or
3. At least 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 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.").

US Census data for the District for the year 2010 indicate an MHI of \$17,337, an unemployment rate of 19.9 percent, and a poverty rate of 39.5 percent. Under these criteria, the POTW meets the criteria for serving a SCFH. However, the District is funded primarily from non-residential fees, and the Central Valley Regional Water Quality Control Board has requested that this issue be considered in determining if the District is serving a SCFH. California Water Code Section 13385(k)(2) and the Enforcement Policy do not address the issue of a POTW serving nonresidential entities, nor do they provide criteria or guidance for considering non-residential fee payers when making a SCFH determination.

¹ State Water Resources Control Board, "Water Quality Enforcement Policy", California Environmental Protection Agency, November 17, 2009, Effective May 20, 2010.

² In 2010, California MHI was \$60,883; 80 percent of that is \$48,706.

3. Nonresidential Fee Payers

The District provides water, wastewater, solid waste, and parks and recreation services to residential, commercial, and industrial customers.³ The District's Water Enterprise serves about 257 residential, 245 commercial, and five industrial accounts (Table 1).

Table 1. Malaga County Water District Water Enterprise Number of Accounts, Equivalent Water Service Units, and Revenue, FY 2008-09.

	<u>Accounts</u>		<u>EWSUs[#]</u>		<u>Revenue</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Amount[*]</u>	<u>Percent</u>
Residential	257	51%	284	7%	\$45,210	7%
Commercial	245	48%	1,626	40%	\$240,975	39%
Industrial	5	1%	2,107	52%	\$320,025	52%
Total	507		4,017		\$610,211	

Bold numbers are directly from the Bartle Wells report³

[#] Annual Equivalent Water Service Units

^{*} Bartle Wells report, Figure 5, page 9. Amounts sum to \$606,210.

Residential customers used about 284 Equivalent Water Service Units (EWSU) of water in Fiscal Year (FY) 2008-09, or seven percent of total supply, and generated about seven percent of total revenue. Commercial and industrial accounts generated the remaining 93 percent of water use and revenue.

The District's sewer enterprise serves 502 sewer accounts representing 2,337 average monthly equivalent sewer service units (ESSU) (Table 2).⁴

Table 2. Malaga County Water District Sewer Enterprise Number of Accounts, Equivalent Sewer Service Units and Revenue, FY 2008-09.

	<u>Accounts</u>		<u>ESSUs[*]</u>		<u>Revenue^{**}</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
Residential	n/a [#]		182	8%	\$69,311	8%
Commercial	n/a [#]		1,048	45%	\$399,110	45%
Industrial	n/a [#]		1,107	47%	\$421,579	47%
Total	502		2,337		\$890,000	

Bold numbers are directly from the Bartle Wells report.

^{*} Average monthly Equivalent Sewer Service Units

^{**} Revenue for each user category was derived from ESSU sewer inflow by category. Revenue is assumed to be directly proportional to ESSU inflow.

[#] Not reported in the Bartle Wells report.

Residential customers account for eight percent of the total ESSUs while commercial customers account for 45 percent and industrial customers 47 percent. The District sewer charges are based on quantity of flow and quality characteristics represented by biological oxygen demand

³ Bartle Wells Associates, "Malaga County Water District Water, Sewer, & Solid Waste Rate Study Final Report", February, 2010.

⁴ Ibid. Bartle Wells, page 5. An Equivalent Sewer Service Unit is defined as a typical single-family residence sewer discharge with a flow of 150 gallons per day, 175 mg/l biological oxygen demand, and 185 mg/l suspended solids.

(BOD), suspended solids (SS), and electroconductivity (EC). Surcharges are also levied for surge loading.

A comparison of the water and wastewater revenue streams from residential and nonresidential customers suggests that residential customers generate about seven percent of the water revenue and eight percent of the wastewater revenue. This suggests that either the qualities of the wastewater stream from residential and nonresidential customer are similar, or the surcharges for BOD, SS, EC, and surge loading are insignificant.⁵ Water and sewer services, and revenue for residential and nonresidential, are typically correlated; therefore, nonresidential revenue should be higher relative to residential revenue due to increased treatment costs. It is not possible to assess the increased treatment cost because the sewer rate loading surcharges were not included in the Bartle Wells report.⁶

The District's sewer enterprise has posted overall deficits of \$140,000 and \$60,000 in FY 2007-08 and FY 2008-09, respectively, due to debt service and capital outlays. Significant rate adjustments will be required to meet projected expenses. The monthly residential sewer rate in FY 2009-10 was \$28.34. The current residential sewer rate is \$39.35 per month. The Division of Financial Assistance, State Water Board, maintains a website reporting the monthly user charges for wastewater services. The last reported year was FY 2007-08, when the statewide average monthly charge for single family dwelling was \$33.82, and the median charge was \$26.83.

In the 2010 Bartle Wells study commissioned by the District, a five percent rate increase is recommended for FY 2013-14, and three percent annual increases in subsequent years.⁷ If the Bartle Wells recommendations are followed, the residential sewer rate would be \$49.34 in FY 2019-20.⁸ It is important to know if the projected increase in rates is allocated according to services provided. Since the intent of Section 13385(k)(2) is to allow a POTW serving a SCFH to apply the penalty amount toward a project to correct the violation, the District is the primary beneficiary. However, the District does not appear to consider the income, employment, and poverty status of the residential community when devising their rate and surcharge structure.

Based on a strict interpretation of the Enforcement Policy, the district is technically serving a small community that meets the criteria for financial hardship. It bears emphasis, however, that neither the Water Code or the Enforcement policy include criteria for differentiating districts primarily relying on residential fees from those relying mainly on commercial and industrial revenue, for the purpose of making SCFH determinations. Water Code Section 13385(k)(2) and the enforcement policy provide Regional Boards with the discretion to authorize implementation of compliance projects in-lieu of MMPs, but this approach is not mandatory. Given that the data contained in the Bartle Wells report, which shows that approximately 92 percent of the District's revenue is from nonresidential sources, it would not appear to be unreasonable for the Regional Board to pursue an MMP in this case.

⁵ "Non-domestic-strength sewer customers discharge wastewater that is of a different strength than domestic customers." Ibid. Bartle Wells, page 5. Discharge characteristics were not presented in the Bartle Wells report.

⁶ Ibid. Bartle Wells, Table 5, page 12; and Chapter 1, Malaga County Water District Master Schedule of Fees, Charges and Recovered Costs, FY 2010/2011, Effective April, 2010. The sewer rate schedule states that that the surcharges are "to be determined by the District Engineer based on cost to District exclusive of applicable penalties to be charge by District or incurred by District as a result of excessive loading of violation of Title One of this Code."

⁷ Ibid. Bartle Wells, Table 17, page 23.

⁸ Ibid. Bartle Wells, Table 19, page 24.

Please contact me at (916) 341-5279 or by email (ghorner@waterboards.ca.gov) should you have questions or concerns.

cc: Eric Oppenheimer, Director
Office of Research, Planning, and Performance
State Water Resources Control Board

Cris Carrigan, Director
Office of Enforcement
State Water Resources Control Board

Clay Rodgers
Assistant Executive Officer
Central Valley Regional Water Quality Control Board

Ellen Howard
Staff Counsel
State Water Resources Control Board

Recommendation Approved



Executive Director

