

April 23, 2010

Stanislaus County Grand Jury
Mr. Denis France, Foreperson
Presiding Judge Jacobson
Post Office Box 3387
Modesto, CA 95353
(209) 558-7766

Dear Honorable Members of the Grand Jury, and Judge Jacobson,

I am responding to the following Grand Jury report:

City of Hughson Civil Grand Jury Case No. 010-04 2009/2010

I will respond to each of the findings as follows:

Findings

- *The Civil Grand Jury finds that none of the actions of the city staff rose to the level of "willful misconduct" at the time of the complaint. Interviews of the Council member making the accusations and other Council members, the Mayor, the City Manager and other persons of interest did not reveal any clear or provable allegations.*

I totally disagree with the Civil Grand Jury in their finding.

Not only did I report additional wrong doing, but I am sure others did as well. If there was no willful misconduct, how did David Chase get charged with two felonies? Additionally, the Grand Jury did not investigate the State of California's decision to revoke the license of David Chase, for issues associated with his license application. The City Manager Joe Donabed also signed off with the State approving the application.

I also reported the inappropriate harassment in the workplace. For over a year now I have been hearing various complaints by the city staff and members of the community of abusive treatment by certain management staff members. Unfortunately, I had relied on the City Manager to appropriately address the problems. There were times when it appeared at least from the outside that action was taking place. However, I was very disappointed to later learn that this was just a smoke screen, and the City Manager did not fully address the problems. When I would try to discuss these issues in public I was always told by the City Manager and the City Attorney that we could not, as they were personnel actions. The reality was that the issues were being swept under the carpet.

Every attempt to bring the problems out into the public view was stopped by the City Manager, City Attorney, or Mayor. I know of as many as 20 to 30 specific events of

misconduct, ethic violations, and mismanagement of the City. However, the Grand Jury would suggest that they could not find ONE SINGLE instance of misconduct?

It was not until the April 26, 2010 City Council Meeting that FIVE women employees of the City came forward with their stories of the workplace harassment and misconduct. I am also aware of one more woman employee that was also subjected to sexual harassment, but will refuse to come forward. These women went on the record with their facts, mainly because the Grand Jury had issued a response that there was no misconduct? How could you make such a huge mistake? Your response has changed people's lives forever. Why did you not interview the workers? How could you have known anything by just interviewing the City Manager, City Attorney, and the Mayor?

The Grand Jury needs to obtain a copy of the April 26, 2010 meeting and listen to their allegations. They will open your eyes to the type of management team running the City. Sexual Harassment is not appropriate in any work environment, and is not a joking matter. The Grand Jury did a significant injustice to those women that reached out for help, and you made an opinion that there was no misconduct. Is it appropriate for a male senior staff member to call female subordinates into his office because he has spilled coffee on his shirt or tie, then have the women clean his shirt or tie while he is wearing it? How is this behavior not wrong? How many female Grand Jury Members would like to be subjected to this type of behavior, or their sister, daughter, or granddaughter? The reality of actions of the senior management in Hughson is an absolute disgrace to all those women in history that have fought for equal rights.

There were also allegations of potential fraud involved with senior management.

None of the above items were investigated. These problems were the root of the entire issue. These were the performance issues being raised by the council members. These concerns are real, and the Grand Jury had a duty to conduct a fair and impartial investigation, which is gradually coming out to have not been the case. I would like to challenge the Grand Jury to re-interview some of the witnesses, and others not called. I think we all know now, that there may be a different opinion of the facts. You owe it to these employee's who publicly shared some of their worst experiences. Please stand with me and give them the opportunity to be heard.

Brown Act Violations:

- *The Civil Grand Jury finds that Councilman A violated the Brown Act by sending emails to all Council members on April 22, June 19, and July 2, 2009.*

I have no comment, it does not involve me.

- *The Civil Grand Jury finds Councilman B violated the Brown Act in an email to the Mayor and two other Council members on June 19, 2009.*

I have no comment, it does not involve me.

- *The Civil Grand Jury finds Councilman C violated the Brown Act in an email to all Council members on November 16, 2009.*

I totally disagree with the finding.

I actually did nothing wrong. The mayor was refusing to place requests by councilmember(s) to put items on the the city council meeting agenda. I was never given the opportunity to present these facts to the Grand Jury. The items I was requesting had specifically to do with inappropriate actions by both senior city staff and the Mayor. The Mayor had specifically lied to me on two separate occasions and I have witnesses to both situations. However, the Grand Jury refused to allow me the opportunity to present my side to the email, and the fact I had relied on the advice of the City Attorney. Again, the email I sent was specifically associated with the Mayor refusing to put items on the agenda, or refusing to call a special meeting. The whole reason I sent this email was because I was instructed by the City Attorney that I could in fact send the email to all the councilmembers. I also have a witness that overheard the conversation, and can provide testimony to that fact if called by the Grand Jury. I would have testified to this, if I would have been given a chance to defend myself on the email. However, the Grand Jury never gave me that opportunity, so how did you know my side of the story? You didn't, and that is why I disagree with your finding.

What right or legal authority did the Mayor have to refuse me the right as a City Councilmember to place an item on the public agenda? This is specifically the reason that I sent the email I have been accused of violating the Brown Act. If the Mayor was trying to obstruct the ability for the rest of the City Council to conduct business, why were his actions not a violation?

FPPC Violations:

- *The Civil Grand Jury finds that Councilman A violated the Fair Political Practices Commission regulation 18700, having to do with conflict of interest, when on June 19, 2009 he emailed the other Council members concerning the Streetscape Project in downtown Hughson.*

I have no comment, it does not involve me.

- *The Civil Grand Jury finds that Councilman A violated the FPPC regulation 18700 by offering to use his position as a City Council member to influence the Board of Supervisors in exchange for employment.*

I have no comment, it does not involve me.

Hughson Municipal Code Violations:

- *The Civil Grand Jury finds that Councilman A sought to overreach his power by demanding to investigate what he claimed to be "willful misconduct" at City Hall. According to the Hughson Municipal Code 2.08.140, it is the responsibility of the City Manager to investigate complaints about city administration.*

I have no comment, it does not involve me.

- *The Civil Grand Jury finds that the City Council's decision, with a three-to-two vote, to direct the City Manager to fire the City Engineer and City Clerk and the subsequent attempt to fire the City Manager was likely the result of a prearranged plan by City Councilmen A, B, and C.*

I totally disagree with the Grand Jury.

This is absolutely not the truth. The key comment "...likely result..," which is absolutely not what happened. The Council did not "direct" the City Manager to do anything, we can only recommend. If the Grand Jury would have called the three accused to testify to that account, then you would have found we did nothing wrong. Once again, the Grand Jury made an assumption, and your facts were wrong. There is no proof that I was involved in a prearranged plan with any other city council member. I had not even discussed my decision with any of the council members. My position of changing the way the City does business was well known to the community, as that was one of the platforms for why I was running for office. I had been asking some tough questions of the management staff from the first time I took office. It was always my opinion, that the council members were being given only part of the story by both the city engineer and the city clerk. I was on the record with my questions, and the answers were not adding up. I had confirmed numerous events that occurred with the senior management staff and later found my concerns were real.

I was absolutely not involved in any prearranged plan at all!! I was never provided any proof, or questions related to this topic by the Grand Jury. Again, this is merely an assumption on the part of the Grand Jury, and I do not believe there is any proof otherwise.

Regarding the City Engineer and City Clerk, it was completely up to the City Manager to take the action, which in fact he did not. In addition, it was later found that the Mayor overstepped his authority and told the City Manager to "NOT" follow the voted actions of the City Council. The Grand Jury did not investigate the Mayor for overstepping his

authority, and instructing the City Manager to not take the action from the closed session meeting.

In fact, no action from the closed session was actually ever carried out. As such, there was no violation by council members A, B, or C. However, there was a violation by the Mayor to direct the City Manager NOT to carry out the decision of the City Council. Regardless, of the City Manager's personal decision of whether or not to follow the desire of the City Council, the Mayor had no authority to countermand the voted action of the City Council.

Again, how is the Mayor's action not a willful attempt to obstruct the City Council from carrying out their duties? What authority did he have to DIRECT the City Manager to not carry out the action from a closed session meeting? If fact, it appears to me, that the only person who directed the City Manager was the Mayor himself!!!!

- *The Civil Grand Jury finds that Councilmen A, B, and C disregarded their fiduciary responsibility to the citizens of Hughson by attempting to fire the City Manager instead of accepting his offer to shorten his contract.*

I totally disagree with the Grand Jury.

Once again, the Grand Jury has made an assumption that is absolutely and completely not true. The Grand Jury has absolutely no evidence that can substantiate this position. I had not even made a decision on the employment status of the City Manager Joe Donabed, until the special meeting where action was taken. I was actually not sure what action to take for the future, and whether Joe Donabed was the right person to lead the City. With all the issues floating around, I began talking to past leaders of the community that I knew personally. I was recommended by one of those leaders to discuss my feelings with Pastor Ernie Spears.

During my conversation with Pastor Spears I had decided that I would support Joe Donabed as the City Manager, and that I would contact him before the meeting. Pastor Spears is providing a letter to confirm our conversation, and my desire to not have Joe Donabed leave. I called the City Manager and discussed my thoughts with him and listened to his position. He told me his position, and we discussed various options. I told Joe Donabed that we could sort everything out at the upcoming special meeting. Joe Donabed agreed with me, and actually thanked me for calling him. I also thought that we had a very productive conversation, and I was looking forward to hearing his comments at the meeting.

It was later determined that Joe Donabed himself removed the offer to shorten his contract off the table, not the City Council. The Grand Jury is absolutely wrong on this issue. I, Ben Manley, did absolutely nothing wrong at all. In fact, I tried to reach out an olive branch with Joe Donabed to work through the problems. It was Joe Donabed who created the problem, and exhibited the unwillingness to work with the City Council. I felt his unexcused absence from the meeting sent a clear message to me about his desire to discuss the problems and work through them. In fact, I was even more concerned when Joe Donabed did not even bother to call me, after I had reached out him first.

- *The Civil Grand Jury finds that the preponderance of evidence shows that Councilmen A, B, and C promoted their own agenda against the best interests of the citizens of Hughson.*

I totally disagree with the Grand Jury.

Once again, the Grand Jury has made an assumption that is absolutely and completely not true. The Grand Jury has absolutely no evidence that can substantiate this position. Everything I did was in the best interest of the community, and those who expressed concern to me about the City senior administration.

The City of Hughson has never seen a more mismanaged time in its history. The complaints I was hearing in the community were beginning to show their ugly head. I believe the previous six or seven years have been influenced by a small group of people who have scarred the community forever. The voters put Doug Humphrey and I in office for a reason, and that was to return Hughson to the community we all grew up in. I have not made one single decision to date as a council member that was not in the best interest of the community.

The Grand Jury investigation has been influenced and directed in a way that is absolutely wrong. It was the City Council that wanted an investigation of the willful misconduct of the senior staff, but for some reason the focus changed to the City Council. The only way the Grand Jury could have made these findings was if someone committed perjury, and/or provided false or changed documents. However, since I have not been provided one single bit of evidence, or been able to provide a defense, this letter will provide my position.

I never conspired with anyone regarding my positions or votes. Just because two of the other council members were illegally taped when the meeting was not in order, does not make me a party to their conversation. No place on that tape do you hear my voice. No place on that tape do you hear a specific time of place that I did anything with the other two council members. I have been very vocal in the meetings and in the public about my desire to see city business handled in a new way, and my interested in focusing on change. There was absolutely no wrong doing on my part. I am being falsely accused, and there is no evidence anywhere to prove otherwise.

I am ashamed that the Grand Jury did not ask me about the actual allegations. They never gave me an opportunity to defend myself? If I had been asked, I could have provided the above witnesses and other documents to support my position. I thought in America you are innocent, until proven guilty? I thought we had the right to face our accusers? Had these fundamental rights of our society been provided, then it would have changed this opinion at least on me, Ben Manley.

Why were the allegations of misconduct not investigated? Here are a few I know you are already aware of, and failed to carry out your duty to investigate:

- 1. Violations of ethics code by City Planning and Recreation Commissioners**
- 2. Violations of employment laws by previous City Council Members, senior staff members, and the City Attorney**

3. Possible Workers' Compensation Fraud
4. HIPPA and Employment Violations reported, and not properly investigated
5. High number of liability and workers' compensation claims
6. Discrimination against certain employee's by senior staff
7. Failure to perform by City Clerk
8. Misappropriation of City Funds
9. Misleading the City Council to approve expending funds with misleading information
10. Giving false information, and possible fraud on the State of California by the City Engineer and City Manager
11. Violations of ethics and overstepping his authority by Mayor Bawanan for:
 - a. Instructing the City Manager to not carry out a decision of the City Council
 - b. Not placing items on the City Council Agenda and not calling special meetings when requested by the other Council Members
 - c. Misleading the City Council
 - d. Violations of Roberts Rules of Order
 - i. Not allowing council members to ask questions of staff
 - ii. Not allowing council members to speak on certain items
 - e. Knowingly lie to the City Council
 - f. Having knowledge of employment law violations and not taking appropriate action to report and investigate
 - g. Singling out a member of the community in an open meeting regarding false information; and when confronted realized he was wrong
 - h. Ignoring wrong doing by Public Works staff, and continued gifts of public funds

It is unfortunate that the Grand Jury did not address, nor explore the information I have provided during the original inquiry. As I know you were aware. However, I really believe you were carefully diverted from the concerns I and others have expressed about the mismanagement of the City by Senior Staff Members. The real shame is that your report was used as a tool to embarrass myself and others. I can only hope that you will reopen this investigation and speak to some of the staff members you ignored previously. In fact, now that the women at City Hall are on the record regarding the problems in the workplace. My concerns expressed to you in the past, still stand, and are now to some extent publically verified.

Based on my comments above, there is clear proof that none of your assumptions were true about me, Ben Manley. I can't speak for the others, but I am sure they will have some of the same concerns about the findings. I would like you to evaluate my specific response, and do your due diligence. I am sure you will find a different set of facts, which will hopefully allow you to change your findings involving me. Below you will find my position on your specific recommendations.

•The Civil Grand Jury recommends Councilmen A, B, and C resign or be removed by the Attorney General of the State of California, the FPPC or a recall by the citizens of Hughson.

I completely disagree with your recommendation. As outlined above, I did absolutely nothing wrong at, which would require me to be removed from office. In fact I was given a

letter from the FPPC, specifically clearing me with any wrong doing on a complaint. Also, I have NOT been charged by, or been made aware of any current investigation associated with my activities on the City Council. As such, I believe that you owe me the opportunity to clear my name regarding your findings.

•The Civil Grand Jury recommends the City Council practice due diligence in initiating an outside search for any city manager hired in the future.

I completely disagree with this recommendation. The grand Jury should not dictate to the City of Hughson how they fill positions of employment. There should not be any reason to disallow a qualified employee from obtaining a promotion to City Manager, if they are capable and qualified. There should be absolutely no need to hire a future employee from outside, if the City follows the Municipal Code and internal hiring Policy and Procedures. There is no specific law that will require a forced outside hiring search. In addition, I would hope we are actively cultivating our staff in a way to develop our future leaders from within our rank and file. If the City agrees with the Grand Jury in this matter, what kind of message are we sending to our employees regarding internal growth opportunities?

I believe the whole issue has been blown out of proportion. The City Council never said that they were NOT going to go through an extensive search for the next City Manager. At the time of this opinion, we were only considering an Interim City Manager, not a permanent replacement. The person we considered, had the qualifications, educational background, and intimate knowledge (20+ years employed and nearly 30 years living in town) of the City of Hughson. As such, I believe it would have been a huge fiduciary and practical mistake on our part to not have considered his services, while we searched for a permanent replacement. Regardless, we all know the person declined the offer.

•The Civil Grand Jury recommends the City provide more detailed workshops for the City Council on the Brown Act, especially in relation to emails and serial meetings, as well as applicable FPPC regulations.

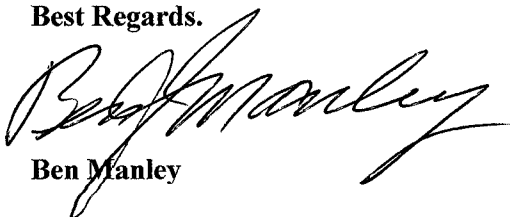
I agree with the recommendation, and have complied.

•The Civil Grand Jury recommends City Council members follow the practice of open and transparent decision-making in the spirit of the Brown Act.

I agree with the recommendation.

In conclusion, I hope I have answered the questions in the format that you need. I would like to state once more, my desire for the Grand Jury to perform their duty, and investigate the information in this letter. It is important to me to clear my name of these inappropriate allegations. Please contact me for any clarification. I look forward to your decision on my response letter.

Best Regards.



Ben Manley



FULL GOSPEL ASSEMBLY OF GOD

2007 5th St.
P.O. Box 279
Hughson, CA 95326

April 22, 2010

To Whom It May Concern:

My name is Rev. Ernest Spears. I have been senior pastor at Full Gospel Assembly of God Church in Hughson for more than 38 years. Mr. Ben Manley is a part of our congregation and serve's on our church board of directors.

The first week in October of 2009 Ben came in to talk with me about some problems he was experiencing as a Hughson City Councilman. He shared that he felt shut out when asking questions about things pertaining to the council and the city. We talked about our faith and confidence in Mr. Joseph Donabed as the city manager. I served on the Committee that interviewed Mr. Donabed in 2003 and over whelmingly recommended his being appointed as our city manager. Mr. Manley told me at that time he had no problems with Mr. Donabed but wanted to know how to get some questions answered.

My advice as his pastor was to get a meeting with Mr. Donabed face to face and talk over what was bothering him. Also to set down with the city attorney and find out what was within his rights to know.

When leaving my office Mr. Manley was happy with all that we talked about and also voiced he was behind the city manager Mr. Donabed. He would go and set up this meeting amd move forward.

I do not believe at any time he came on to the council with the intention of relieving Mr. Donabed of his duties or conspiring to do so.

In His Service

A handwritten signature in cursive script, appearing to read 'Ernest Spears'.

Rev. Ernest L. Spears

Sr. Pastor



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Office of Enforcement
1001 I Street, 16th Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5272 ♦ FAX (916) 341-5896 ♦ <http://www.waterboards.ca.gov>

Arnold Schwarzenegger
Governor

SEP 22 2009

CERTIFIED MAIL
NO. 7008 1140 0002 3861 8119

Mr. David Chase
417 Myrtle Avenue
Modesto, CA 95350

Dear Mr. Chase:

SUBJECT: OFFICE OF ENFORCEMENT (OE); LETTER OF PROPOSED DISCIPLINARY ACTION; CASE NO. 248

The State Water Resources Control Board's (State Water Board) Office of Enforcement completed an investigation of alleged falsification of wastewater treatment experience in an application for a certificate to operate a wastewater treatment plant (WWTP). This Letter of Proposed Disciplinary Action is issued for violations of the *Classification of Wastewater Treatment Plants and Operator Certification Regulations* (Regulations): California Code of Regulations (CCR), Title 23, Division 3, Chapter 26, section 3670 et seq.

The Regulations provide the State Water Board the authority to impose administrative sanctions on certified wastewater treatment plant operators including "reprimand or denial, suspension, probation, or revocation of a certificate" for performing certain acts. [CCR, section 3710(a).] Water Code section 13627(e) also provides the State Water Board the authority to impose administrative sanctions on certified wastewater treatment plant operators.

Our investigation has determined that you violated CCR, section 3710(a)(3)'s prohibition against submitting false or misleading information when you submitted an application to the Office of Operator Certification (OOC) for a Grade I WWTP operator certification (Grade I application). In your Grade I application you falsely asserted that you spend 20-30 hours a week in the actual operation of the Hughson WWTP. Our investigation determined that: (1) you did not operate the Hughson WWTP; and, (2) you were not even present on site at the Hughson WWTP for 20-30 hours a week during the period in question.

The job duty descriptions you provided on your application are easily interpreted as onsite day-to-day operation of a WWTP. Your actual involvement at the WWTP, however, was managerial and engineering-related and does not qualify as operational experience for purposes of issuing a Grade I operator certification.

Furthermore, our investigation determined that there are no reasonable grounds upon which to believe that you had spent 20-30 hours a week in the actual operation of the Hughson WWTP at the time that you submitted that statement in your Grade I Application. Accordingly, for the

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reasons discussed in further detail below, the Office of Enforcement is proposing disciplinary action based on your submission of false and misleading information to the State Water Board's Office of Operator Certification (OOC).

REQUIRED OPERATOR EXPERIENCE FOR GRADE I CERTIFICATION

Based on information provided in your Grade I Application, the OOC issued you a Grade I WWTP operator certification (Certification No. I-27984). In order to receive certification, the Regulations require all applicants to meet certain minimum qualifications including education, experience, the passing of an exam, and the submission of an application and fees.

CCR, section 3683(c)(1) requires that the experience requirement for eligibility for Grade I certification shall be a minimum of "[o]ne year of experience performing the functions of a wastewater treatment plant operator." You may only gain this experience while certified as an Operator-in-Training (OIT). While an OIT, you must work under the direct supervision of a certified operator of the same or higher grade, and you must be performing the duties of the grade of operator for which the OIT certificate was issued. [CCR, section 3707.]

On July 12, 2005, the OOC received your application for Grade I OIT certification. [See Exhibit A.] In this application, you indicated that you would work an average of 20 hours per week in operations and you described your job duties as: "Backup operator, daily monitoring and control of industrial waste streams, plan and analysis sampling and monitoring of collection system, control and integrate plant upgrades with daily operations, startup and acceptance test new treatment elements." You signed this application on July 11, 2005, certifying that all the statements you made are true. Matthew [Tom] Kehoe, a Grade II operator and the chief plant operator (CPO) of the City of Hughson WWTP (Hughson WWTP) at the time also signed the application, certifying that the information is "true and correct".

OOC issued you a Grade I OIT certificate valid from July 12, 2005 through June 30, 2007, allowing you to work at the level of a Grade I operator if under the direct supervision of a certified operator. [See Exhibit B.]

SUBMISSION OF INFORMATION IN APPLICATION FOR GRADE I CERTIFICATION PURPORTING TO HAVE OBTAINED REQUIRED OPERATOR EXPERIENCE

On May 4, 2007, the OOC received your application for Grade I certification. [See Exhibit C.] In this application, you stated that you worked an average of 20-30 hours per week in the actual operation of a WWTP and you described your job duties as: "Backup operator, daily monitoring and control of industrial waste streams, plan and analysis sampling and monitoring of collection system, control and integrate plant upgrades with daily operations, startup and acceptance test new treatment elements." You signed this Grade I application on April 10, 2007, certifying that all the statements made are true. Jared B. Steeley, a Grade II operator and the CPO of the Hughson WWTP at that time also signed the application, certifying that the information is "true and correct".

The OOC issued you a Grade I WWTP operator certificate No. I-27984 on May 4, 2007, valid until June 30, 2009. [See Exhibit D.] (Your certification was subsequently renewed and now expires on June 30, 2011.) In an effort to determine if your application accurately reflects your actual operations experience, Julie Berrey (Berrey), Environmental Scientist with the Office of

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Enforcement (OE), reviewed relevant documentation, and spoke with you and all known certified operators who have worked at the Hughson WWTP since OOC issued your OIT certificate on July 12, 2005. Specifically, Berrey spoke with: you; Brian Holloway; Lawrence Hunter; Tom Kehoe; Timothy Mejia; Jared Steeley; and Jaime Velazquez. An investigation summary containing an analysis of the documents reviewed and interviews conducted is attached hereto as Exhibit E.

THE INFORMATION YOU PROVIDED WAS FALSE AND MISLEADING

False Information:

Hours Worked

The Grade I application asks for the average number of hours per week that you work in actual operation of the WWTP. The Grade I application instructions specifically state that you are to give "the average number of hours per week that you work in the actual operation of the Wastewater Treatment Plant." [See Exhibit F.] You stated that you worked 20-30 hours per week in operations when in fact, you did not.

Only one operator, Kehoe, said he saw you at the plant with any regularity, two to three hours a day, but that you spent your time there doing other public works related functions, not operating the WWTP. All the other operators we interviewed stated that you visited the WWTP only occasionally. One operator saw you there as often as once or twice a week, although he did not see you operate while you were there. The other operators stated they saw you much less frequently than that. Furthermore, as described in more detail below, the available logbooks indicate that you were only at the WWTP sporadically, and that you rarely, if ever, operated the facility during those visits.

In a December 12, 2008 telephone interview, you initially stated that you worked under Kehoe's and Steeley's supervision, and nobody else's. (Kehoe was the CPO during the first five months of your OIT training period. Steeley was the CPO for the remainder of your OIT training period.) When questioned further, you told the investigators that most of your operational experience came under Kehoe's supervision, and that "I did not work on a daily capacity while he [Steeley] was there." You explained that you did not need to be there because Holloway was taking on daily operations. When questioned further, you admitted that you did not have to make WWTP adjustments (operate) when Steeley was the CPO. When pressed to describe actual hands-on operations that you conducted, you stated that "a couple of times" Kehoe asked you to adjust the DO. By your own admission, you did not operate the Hughson WWTP 20-30 hours per week.

Our investigators interviewed Kehoe and Steeley. Kehoe stated that at best, only 2% - 3% of the time you spent at the WWTP was in operations. Steeley stated in both his interview and in a written statement that he submitted to the State Water Board that you never operated the Hughson WWTP while he was CPO. [See Exhibit G.]

This is corroborated by interviews with all the other known operators who worked at the WWTP during your OIT period. Each operator stated that he rarely saw you at the WWTP and that he never saw you operate.

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Additionally in December 2005, State Water Board investigated allegations that you made against Kehoe. Our investigators found that based on an interview with you, your "responsibilities include administration of the Public Works departments, project management and regulatory compliance" and that you "relied on Kehoe for daily WWTP operations, maintenance, [and] compliance with regulatory requirements." [See Exhibit H.] While you told the investigators that you were an OIT, you in no way indicated that you personally operated the WWTP.

In a September 29, 2008 correspondence to you, our investigators asked you a number of questions and requested that you provide any documentation you have reasonably available to support your responses to those questions. [See Exhibit I.] In your October 13, 2008 written response to our questions, you stated that the only relevant records that would corroborate the actual hours you spent in operations are the operation logs, but that those logbooks are missing. [See Exhibit J.] While it is true that the 2005 logbook is missing, the logbooks for subsequent years are available. The logbook appears to be a bound book with pre-printed dates on each page. The daily entries always start with the initials of the operator(s) who are operating that day, even if they are OITs who may not operate unsupervised. "DC" is never at the top of the page. The logbook entries continue with operations that occurred at the plant and other notes on what occurred that day. The notes also state when visitors come. In my interviews with Holloway and Velazquez, the current Hughson WWTP operators, I confirmed that it is routine practice to always list all visitors or operators present at the plant. Between January 1, 2006 through mid-2008, you were only mentioned in the logbook 15 times. [See Exhibit K.] Nearly every time, the logbook notes state that you were "visiting" or that you "dropped by". Only once, on August 31, 2007, does the record show that you may have been operating. The notation in the logbook states, "David Chase in plant for rounds".

The 2005 logbook is missing. However, even if all the other operators' statements regarding your experience are false, and you had worked 20-30 hours per week during that time, you could not have accrued the necessary qualifying experience to be eligible for a Grade I WWTP operator certification.

A review of correspondence between the Hughson WWTP and the Regional Board revealed that Steeley wrote four letters to the Regional Board between November 17, 2005 and May 5, 2006 notifying the Regional Board of operator staffing changes. [See Exhibit L.] In many of these letters, Steeley does not refer to the operators by name, but details about the certification levels of the operators he refers to indicate that he is not talking about you. In the interview of Steeley, our investigator reviewed each piece of correspondence and asked him to tell which operators he was referring to. In none of those letters of correspondence was he referring to you as one of the operators of the Hughson WWTP.

"Back up operator"

The OIT and Grade I operator application instructions state that you must "list the specific duties you perform as a Wastewater Treatment Plant Operator. This means the day-to-day activities primarily consisting of the control of any process which may affect the quality of the Plant's discharge." [See Exhibit F.] Furthermore, when OOC issued your OIT certificate on July 22, 2005, you were copied on a letter explaining that by regulation, your "duties must be that of a certified operator" and that you "must work under the direct supervision of a certified operator." [See Exhibit B.]

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You falsely listed "Back up operator" on your application. In interviews with our investigators, you stated that you never worked as a back up operator. All the operators with whom we spoke corroborated that you never acted as the back up operator.

In a November 12, 2008 interview, you stated that only Kehoe and Steeley directly oversaw your operations. You confirmed that you never worked with other WWTP operators at the Hughson WWTP, so none of them ever directly oversaw your operations. Both Kehoe and Steeley said that you never performed back up operator duties and that they never oversaw you working as a back up operator.

Misleading Information:

Most of the duties that you listed in your OIT and Grade I applications could be reasonably interpreted to mean hands-on operation of the WWTP. Upon investigation, however, we discovered that you were performing managerial and engineering duties, not hands-on operation.

Although WWTP-related, many of the job duties you claim as operations experience on your Grade I operator application do not qualify as operator experience. CCR section 3671(o) states:

"Operates" means the performance of day-to-day activities primarily consisting of the control of any process which may affect the quality of the discharge of a wastewater treatment plant. "Operates" may include performance of day-to-day maintenance work so long as the primary function of the operator is control of the process. "Operates" does not include maintenance functions which are not necessary for the reliable operation of major treatment processes.

OOC has determined that engineering activities do not qualify as operations experience as these are engineering functions and not day-to-day activities in running and controlling a WWTP.

Many of your job duties, as you listed them in your applications for OIT and Grade I certification, could be construed to qualify as operational experience; however, the details of your actual duties clearly show that you did not operate the WWTP:

"[D]aily monitoring and control of industrial waste streams": If you were monitoring the influent and then making process changes to the WWTP processes in response to the fluctuating influent, this would be considered operations. However, our investigation determined that your experience is solely related to industrial pre-treatment and the Hughson WWTP's collection system, which does not qualify as operations experience.

When asked about the "Daily monitoring and control of industrial waste streams" duty during the November 12, 2008 interview, you explained how fluctuations in the sole industrial discharger's effluent greatly impact the WWTP. You indicated that you were intimately involved in ensuring the WWTP could appropriately handle the flows. Certain adjustments to the treatment process, such as adjusting the aerators or adjustments to the wasting, could compensate for the discharger's fluctuations. Yet, when pressed, you stated that you "alerted staff" to these fluctuations but that you never actually made these operational changes yourself.

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“[P]ermitting and enforcement”: This has to be evaluated on a case-by-case basis. If you are routinely operating the Hughson WWTP and as a part of that you are working with the Regional Board to develop the operating permit for the Hughson WWTP itself, then these permitting functions may qualify. You, however, were not regularly operating the Hughson WWTP, and you stated in your interviews that this duty was primarily related to the collections system and the permitting and enforcement of industrial dischargers which does not qualify as operations experience.

“[O]versee, plan and analysis of sampling and monitoring of collection system”: This is all part of collections and pre-treatment, which does not qualify as operating experience.

“[C]ontrol and integrate plant upgrades with daily operations”: If your role is that of a routine operator who is physically adjusting operations in order to accommodate and integrate plant upgrades, then this would likely qualify as operating experience. However, you were supervising these upgrades in the role of an engineer or a manager, without any hands-on experience. This does not qualify as operating experience.

“[S]tartup and acceptance test new treatment”: As described above, this could qualify as operating experience if your role is that of a routine operator who is physically operating and testing this new equipment as it comes on line. However, since you were supervising the start up and acceptance testing in the role of an engineer or a manager, the time spent on this duty does not qualify as operating experience.

Furthermore, through our investigation we have determined that your duties were not performed under the direct supervision of a certified operator, so for that reason as well, you have not met the experience requirements.

Unreasonable for you to believe that you operated WWTP:

It is unreasonable for you to believe that you operated the Hughson WWTP 20 – 30 hours per week. As explained above, the Grade I application and the accompanying instructions clearly state that operator duties are “day-to-day activities primarily consisting of the control of any process which may affect the quality of the Plant’s discharge,” and that you are to state the average number of hours you work in “actual operation of the Wastewater Treatment Plant.” [See Exhibits C and F.] The letter you received with your OIT certificate notified you that you must be performing the duties of a certified operator and that these duties must be performed under the direct supervision of a certified operator. [See Exhibit B.]

There was not a culture of misunderstanding of the meaning of “operation” at the Hughson WWTP, because all of the operators interviewed, including those who had been OITs at the time of their employment at Hughson WWTP, corroborated that they rarely, if ever, saw you operate the WWTP. Only Kehoe conceded that at best, 2% - 3% of the time you spent at the WWTP was in operations.

When you received your OIT certificate, you were notified, among other things, that your duties must be those of a certified operator and that you must work under the direct supervision of a certified operator. In your interviews, you stated that you rarely, if ever, were directly supervised by a certified operator. You were rarely, if ever, actually working at the WWTP. With the

exception of Kehoe, every known operator who worked at the Hughson WWTP said they never saw you operate the WWTP during your OIT period.

Furthermore, you are a professional in the field. You are the public works director, a Professional Engineer, and your Grade I application states that you had previous experience working at the Altamont WWTP. It is common knowledge throughout the industry that everybody, regardless of educational or professional background, must get at least one year of hands-on experience operating a WWTP in order to qualify for Grade I certification. If you had reasonably thought that your PE registration was adequate for a Grade I certification, you would never have applied for the OIT certificate first. In fact, you admitted knowledge of this requirement in an interview with Berrey. [See Exhibit E.] In your first interview, Berrey told you that engineering work did not meet requirements for qualifying experience. You kept trying to assert that you were not doing engineering work, but in fact operating the WWTP, because you knew this was necessary for certification. In interviews, you kept trying to obscure the fact that you did no hands-on operations.

THE OOC MISTAKENLY ISSUED GRADE I CERTIFICATION

Based on the false and misleading information you submitted in your application for Grade I certification, OOC issued you a Grade I certificate on May 4, 2007, reasonably interpreting the duties you listed on your application to be actual hands-on operations of the WWTP. Both you and the CPO, Steeley, signed the application declaring that the information therein was true.

In your October 13, 2008 correspondence, you stated that Sara Fong of OOC conducted an investigation of your work experience when you applied for your Grade I certificate. [See Exhibit J.] There is no evidence in the OOC file to suggest that such an investigation was performed. Fong is no longer working in the OOC, but is still employed by the State Water Board. She stated that while she signed the form letter issuing your Grade I certificate, a review of the file indicates that she did not review your application or investigate your assertions. Debbie Zuccala of OOC did review your application, and the only "investigation" she performed was to call your supervisor, Joe Donabed, to corroborate your hours of operation. Since Joe Donabed is the City Manager and is not a certified operator, he would not be expected to understand that "operations" requires hands-on work. Fong and Zuccala stated that they relied on the signature of the CPO corroborating your experience.

Steeley stated unequivocally that he signed your Grade I application even though he knew you had not operated under his tenure. Berrey asked why he signed your Grade I operator certification application if he knew you hadn't gained operations experience under his direction. He said you intimated that your professional engineer (PE) registration substituted for WWTP operations experience and that he felt pressured to sign your application. In his written statement, Steeley states: "I felt at the time that Mr Chase *[sic]* pressured me into signing his OIT since he was my boss." [See Exhibit G.]

In your defense, you stated in interviews your impetus to seek WWTP operator certification was that in a previous inspection Boris Trgovcich encouraged you to get certified so that you could act as a backup operator. In fact, you had already been an OIT for nearly 5 months when Trgovcich first spoke to you.

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THE OFFICE OF ENFORCEMENT HEREBY PROPOSES THE FOLLOWING DISCIPLINARY ACTION:

- Revoking your Grade I certificate. This will prohibit you from engaging in WWTP operations. You may not re-apply for an OIT certificate for a minimum of two years. After two years, you may re-apply for an OIT certificate and begin the certification process again, including starting over to receive operating experience. If you decide to re-apply for a Grade I or higher certification, you will need to pass the relevant examination and pay all applicable fees.

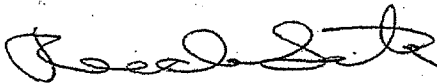
This letter constitutes a decision of the Office of Enforcement under Title 23, CCR, sections 3710 and 3711. You may appeal this decision to the division as provided in section 3711. **Your appeal must be in writing and postmarked no later than 30 calendar days after the date you receive this letter.** A copy of the Regulations is enclosed for your convenience. [See Exhibit M.] Any appeal should be addressed to:

Ms. Barbara L. Evoy, Deputy Director
Division of Financial Assistance
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120

Your appeal must contain all documents and evidence you wish to be considered by Ms. Evoy in her review. If you fail to timely appeal this decision as provided above, this letter will become a final determination and the recommended disciplinary action will be automatically imposed.

If you have any questions, please contact Mark Bradley at mbradley@waterboards.ca.gov or (916) 341-5891.

Sincerely,



Reed Sato, Director
Office of Enforcement
Exhibits

- A. Application for Grade I OIT certification
- B. Grade I OIT certificate and cover letter
- C. Application for Grade I certification
- D. Grade I certificate
- E. Investigation summary
- F. Operator certification application instructions
- G. Steeley's July 21, 2008 written statement
- H. Draft report of December 2005 investigation
- I. September 29, 2008 correspondence
- J. October 13, 2008 correspondence

Mr. David Chase

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- K. Hughson WWTP logbook entries
- L. Correspondence between Hughson WWTP and Regional Board
- M. Regulations

cc: Exhibits will be provided upon request

All via e-mail

Joe Donabed
Hughson City Manager

Dan Radulescu
Central Valley Regional Water Quality
Control Board
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Rancho Cordova, CA 95670-6114

Brian Holloway

Lawrence Hunter

Matthew (Tom) Kehoe

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Doug Wilson, DFA
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Valerie Gregory, DFA
Julie Berrey, OE
Yvonne West, OE
State Water Board

Timothy Mejia

Jared Steeley

Jaime Velazquez