

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

Administrative Civil Liability Order No. R1-2014-0005

**In the Matter of
Trinity Dam Mobile Home Park
Administrative Civil Liability Complaint No. R1-2013-0035
issued to Larry and Margaret Barcellos**

Trinity County

1. This matter comes before the California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) from an Administrative Civil Liability Complaint No. R1-2013-0035 dated May 24, 2013 (ACLC) issued to Larry and Margaret Barcellos (hereinafter Dischargers). The ACLC alleges violations of Cleanup and Abatement Order No. R1-2011-0045, and proposes an administrative civil liability in the amount of one hundred sixty five thousand nine hundred dollars (\$165,900) pursuant to Water Code section 13350. A hearing took place on January 30, 2014, in accordance with the Hearing Notice and Procedure and California Code of Regulations, title 23, sections 648-648.8. The Regional Water Board heard relevant evidence and testimony to decide whether to issue this administrative civil liability order assessing the proposed liability, a higher or lower amount, or to reject the proposed liability.
2. To help ensure the fairness and impartiality of the proceeding, the functions of those who acted in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) were separated from those who advise to the Regional Water Board (Advisory Team). Members of the Prosecution Team are subject to the prohibition on ex parte communications with the members of the Regional Water Board or the Advisory Team, just like other Parties.
3. Dischargers own the Trinity Dam Mobile Home Park located at 4720 Trinity Dam Boulevard in Lewiston (Park). The Park is located in Lewiston Valley, Trinity County, California (APN 025-350-25) and contains 21 dwelling units. An intermittent stream, tributary to the Trinity River, runs adjacent to the Park. The Park is located outside of a municipal service district and therefore septic disposal and domestic water supply are provided by individual or combined systems at the Park. The existing septic disposal system was constructed in 1957 and consists of a collection system, a 43,000 gallon grouted cinder block septic tank, effluent pumps, and a 0.7 acre effluent treatment and disposal pond.
4. On January 6, 2011, Regional Water Board staff (Staff) inspected the Park with the Trinity County Environmental Health Department and the California Department of Housing and Community Development, in response to a neighbor's complaint regarding surfacing sewage and odors. During the inspection, Staff observed surfacing sewage from the Park's septic system flowing across the property boundary and onto the neighbor's driveway and yard area. Additionally, Staff observed surfacing sewage from the Park flowing between the two properties towards the roadside ditch, which flows to the nearby intermittent stream and thence to the Trinity River. The pumps and piping associated with the septic tank were also

leaking onto the ground. Staff observed an unfenced effluent treatment and disposal pond at the north end of the property containing undisinfected effluent from the Park. This pond is unlined and was built by constructing an earthfill embankment across an intermittent stream.

5. Following the site visit, the Regional Water Board issued Cleanup and Abatement Order No. R1-2011-0045 (CAO) on April 7, 2011, finding that current waste disposal practices and their cumulative impacts have caused and threaten to cause discharges of sewage to the ground surface where it may enter into an intermittent tributary to the Trinity River and thence the Trinity River. These conditions constitute a condition of nuisance, wherein the improper disposal of waste is injurious to health and affects a number of persons living in the vicinity. (ACLC, Attachment A at 1-2.)
6. The CAO required the following:
 - a. The discharge of treated or untreated sewage to the ground surface shall be immediately and permanently abated. Actions to be considered shall include construction of an approved sewage treatment and disposal system, reductions in wastewater generation and/or transporting wastewater to an approved offsite treatment and disposal facility.
 - b. By April 29, 2011, the Dischargers shall submit a report of all sewage disposal equipment associated with each dwelling unit at the park. Locations of all components, including collection lines, pumps and piping shall be depicted on a site map. The submittal shall include the age and composition of all components of the sewage disposal system and determination of influent flow (wastewater, precipitation, and infiltration/inflow).
 - c. By May 31, 2011, the Dischargers shall submit a workplan for construction of a sewage disposal system which conforms to the Standards and Provisions of the Basin Plan. The workplan shall be accompanied by an application, appropriate fee, and a complete Report of Waste Discharge. The workplan shall include a surface and groundwater sampling plan to determine the extent of contamination from the unauthorized sewage releases at the Park.
 - d. Following Assistant Executive Officer written concurrence, the Dischargers shall implement the workplan to construct a new onsite waste disposal system(s) and groundwater well installation. All construction and related work shall be completed no later than August 31, 2011.
 - e. The Dischargers shall conduct all work under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation. All work plans and technical reports submitted to the Regional Water Board shall be signed and stamped by a licensed professional. All necessary permits shall be obtained.
 - f. The Dischargers shall submit monthly progress reports that fully document the implementation of specific abatement measures, describe the specific locations of those measures, and identify the locations including photographs, descriptions, and mapped locations of all abatement measures that have been implemented to abate sewage discharges to waters of the State. Monthly progress reports shall be submitted by the 15th of

each month and continue until all long-term abatement measures have been completed and approved by the Regional Water Board. (Id. at 3-4.)

7. The Dischargers did not contest or seek review of the CAO, and the period for doing so expired on or around May 11, 2011. (Wat. Code § 13320, subd. (a).)
8. On April 26, 2011, the Dischargers submitted a request for an extension to the deadline for completing the tasks in the CAO. (ACLC, Attachment B.) The Assistant Executive Officer did not grant this request because it was received less than 15 days in advance of the first task deadline (April 29, 2011), it did not include adequate justification for the additional time, and it did not propose a revised schedule to complete the required tasks.
9. On July 22, 2011, Staff received an email including an attached letter dated May 19, 2011. (ACLC, Attachment C.) Staff had not received this May 19, 2011 letter or a copy thereof prior to July 22, 2011. The letter advised that the Dischargers' civil engineer would inspect the mobile home park and prepare a response to the CAO. Staff did not receive any follow-up communication.
10. On September 27, 2011, after the last of the CAO deadlines had passed without communication or response from the Discharger, Staff advised the Discharger that failure to comply with the CAO could result in administrative civil liability pursuant to Water Code section 13350. (ACLC, Attachment D.)
11. On August 29, 2012, 456 days after the May 31, 2011 submittal deadline, the Dischargers' consulting engineer submitted a workplan describing two optional disposal systems as well as an application for waste discharge. (PT Exhibit 1.) On September 26, 2012, Staff sent a letter informing the Discharger that the workplan and application were incomplete because the Discharger had failed to identify which option it planned to implement. (ACLC, Attachment E.) To date, the Discharger has not responded to that letter.
12. The Prosecution Team issued Administrative Civil Liability Complaint R1-2013-0045 on May 24, 2013, alleging that the Dischargers violated the CAO by submitting an incomplete workplan and report of waste discharge application 456 days late. The Prosecution Team proposes administrative civil liability in the amount of one hundred sixty five thousand nine hundred dollars (\$165,900) pursuant to Water Code section 13350.
13. Water Code section 13350, subdivision (a), provides that any person who violates any cleanup and abatement order issued by a regional board or the state board shall be liable civilly, and remedies may be proposed in accordance with subdivision (e). Under subdivision (e), administrative civil liability may be imposed either on a daily basis or on a per gallon basis, but not both. Liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. For non-discharge violations, civil liability shall not be less than one hundred dollars (\$100) for each day in which the cleanup and abatement order is violated unless the Regional Water Board makes an express finding setting forth the reasons for its actions based upon the specific factors required to be considered pursuant to Section 13327. (Wat. Code, § 13350, subdivision (f).)

14. Pursuant to Water Code section 13327, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
15. On November 17, 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). Among other things, the Enforcement Policy details a ten-step penalty calculation methodology to address and quantify the factors that are required to be considered under Water Code section 13327. This “calculation process” is designed to assist the decision-maker to make fair and consistent assessments, eliminate unfair economic advantage for non-compliance, and deter similar violations. (Id. at 10.) The entire Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11709.pdf

CALCULATION OF PENALTY

16. To determine the proposed liability in this case, Prosecution Team followed the Enforcement Policy methodology as detailed Attachment F of the ACLC. Dischargers contend that “they have attempted in good faith to comply” with the CAO, and thus request that the Regional Water Board reduce the penalty, also in accordance with the Enforcement Policy methodology. (Dischargers’ Legal and Technical Arguments/Analysis at 1.) The Regional Water Board will address each step in turn:
17. **Steps 1 and 2 – Potential for Harm and Assessments for Discharge Violations:** Steps 1 and 2 of the Enforcement Policy address discharge violations. Those steps do not apply since the alleged violation of the CAO is a non-discharge violation (i.e., failure to submit the workplan).
18. **Step 3 – Per Day Factor for Non-Discharge Violations:** As explained on page 15 of the Enforcement Policy, non-discharge violations include non-actions such as failure to monitor and report, and failure to prepare and submit required plans. “While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program” that is designed and necessary to protect water quality. To determine the initial liability factor for non-discharge violations, the Enforcement Policy requires the calculation of a Per Day Factor to be multiplied by the maximum per day allowed under the Water Code. (Enforcement Policy, at 15-16.) The Per Day Factor is determined by a matrix considering “Potential for Harm” and “Deviation from Requirement” categories. For both categories, Table 3 provides a range from “minor” to “major” depending on the facts of a given case. (Enforcement Policy at 16.) This becomes the initial amount for non-discharger violations.

Prosecution Team categorized both factors as major, resulting in an average per day factor of 0.85. We agree. The Potential for Harm is major because the Dischargers’ failure to comply with the CAO presents the threat of discharge of raw sewage into an intermittent stream that flows to the Trinity River, a water of the State. The Deviation from Requirement is major

because the Dischargers have completely failed to submit technical reports and tasks required in the CAO. The Dischargers' consulting engineer submitted a workplan and application for a Report of Waste Discharge on August 29, 2012, 456 days late, and those items were incomplete. As noted in the Enforcement Policy, "if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major." (Enforcement Policy at 16.)

Dischargers argue that the Potential for Harm should be categorized as minor because "the discharge has been abated for nearly two years with no instances of reoccurrence" (Dischargers' Legal and Technical Arguments/Analysis at 2), and there is no evidence of any actual harm. Prosecution Team notes that these allegations are not supported by any evidentiary submittals. (PT's Rebuttal at 2-3.) At the hearing, testimony indicated that some abatement effort may have occurred following the issuance of the CAO; however, this testimony was not corroborated by any additional evidence such as engineering contracts, receipts or even photographs. The purpose of reporting requirements and other submittals is to keep Staff informed and thus is a critical component for the administration of water quality protections. Regardless of any actions taken, there is no assurance that what was clearly a threat in 2011 has been remedied. Dischargers also disagree with the major Deviation from Requirement determination, relying again on unsupported statements that the discharge of raw sewage has been fully abated. Dischargers failed to meet any of the submittal requirements of the CAO, which is necessary to inform the Board Dischargers' intent, and actions, and water quality conditions at the Site.

According to the methodology, the per day assessment should then multiplied by the maximum per day amount allowed under the Water Code, which in this case is \$5,000. Average per day factor (0.85) X maximum penalty (\$5,000) = \$4,250.

19. **Step 4 – Adjustment Factors:** There are three additional factors that should be considered for modification of the amount of the initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. Not all factors apply in every case. For culpability, the Dischargers have presented some testimony that an effort was made to empty a septic tank to increase treatment capacity. While outside the period of violation, Dischargers also provided evidence that they are exploring treatment options now. Regardless of whether this was prompted by additional enforcement, the Regional Water Board recognizes that the permanent solution to this problem will take some time. For culpability consideration, a multiplier of 1.0 is appropriate. However, Dischargers must report back to Staff and meet the deadlines in CAOs and other orders. For cooperation and cleanup consideration, a multiplier of 1.1 is appropriate. Dischargers failed to submit any of the CAO requirements in a timely manner, and even if efforts were made to abate discharges, Dischargers failed to inform the Regional Water Board of these efforts. Dischargers do not have a history of past violations.
20. In Step 5, numbers are multiplied by the number of violations to determine a base liability amount. But first we must determine the number of violations considering the length of time these violations remained ongoing. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated assessment so long as the multiple violations do not result in a distinguishable economic benefit to the violator. The economic benefit (discussed

below) from violations in this case cannot be measured on a daily basis. Therefore, the number of violations will be counted on the first day of violation, plus an assessment for each five day period until the 30th day, plus an assessment for each 30 days of violations remaining. (Enforcement Policy at 18.)

Using the alternative penalty calculation, **21 days** of violation have been accrued, based on a per-day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450 out of the 456 day total.

After adjusting the number of days, the Initial Amount of Administrative Civil Liability is **\$89,250**. This amount is determined by multiplying the Per Day Factor (0.85) by the adjusted number of days (21) by the maximum per day amount (\$5,000).

21. **Step 5 – Determination of Base Liability Amount:** The Total Base Liability Amount is **\$98,175** (Per Day Factor (0.85) x Statutory Maximum (\$5,000) x Adjusted Days (21) x Culpability (1) x Cleanup and Cooperation (1.1) x History of Violations (1.0)).
22. **Step 6 – Ability to Pay and Ability to Continue in Business:** The Dischargers own at least two properties. The properties are located in Butte and Trinity counties and, in 2010, had a calculated total assessed value of \$74,844 and \$259,310 respectively. (PT Exhibit 2 at 10 & 3.) The Dischargers generate income from the Mobile Home Park and a small hardware store located on the Trinity property. The income generated at the Mobile Home Park is primarily from low-income residential units with an average monthly rental of \$300 per unit. Approximately half of the 21-unit park is occupied generating about \$3,000 per month or \$36,000 annually. The annual sales for the hardware store in 2011 were \$80,000. The Regional Water Board does not agree with the Prosecution Team that Dischargers have the ability to pay the penalty amount and still stay in business. Prosecution provided no analyses on how it reached this conclusion. We think it more likely that imposing Prosecution Team’s proposed fine would result in the abandonment of the property, displacement of low-income tenants, and no remedy for the water quality conditions. The Regional Water Board appreciates Prosecution Team’s objective to make it clear that dischargers must comply with Board Orders. In this case, we think a lower fine will serve this purpose while also reserving financial resources to accomplish our ultimate goal for water quality compliance. Accordingly, the Regional Water Board will reduce the fine to **\$44,750**, approximately half with staff costs added (discussed below).
23. **Step 7 – Other Factors as Justice May Require:** Prosecution Team staff time incurred to prepare the ACLC and supporting information was estimated to be 35 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be **\$5,250**. This amount shall be added to the total liability amount.
24. **Step 8 – Economic Benefit:** The Enforcement Policy (pages 20-21) requires that the adjusted Total Base Liability Amount should be at least 10 percent higher than any economic benefit realized by the discharger for failing to comply with the CAO. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that

the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. The economic benefit is equal to the present value of the avoided costs plus the “interest” on delayed costs.

The Discharger here may have benefited economically by delaying the submittal of the required ROWD and technical reports. Professional consulting costs average about \$120 per hour (range \$85-\$150 per hour). The estimated number of hours for preparing and providing a ROWD and other technical reports required in the CAO are 40 hours for the ROWD and Workplan. Based on these numbers, estimated cost for preparing and providing a ROWD is \$4,800.

The average annual percentage interest rate (APR) for a personal loan from May 2011 to November 2011 (Period 1) is 10.52% and from November 2011 to January 2013 (Period 2) is 8.95%. Based on this APR, the Discharger would have incurred the following interest costs and estimated economic benefit:

Task	ROWD & Workplan
Period 1 at 10.52%	183 days = 0.501 years
Period 2 at 8.95%	273 days = 0.748 years
Total Interest	\$4800 $((0.501*10.52\%) + (0.748*8.95\%)) = \574.32
Economic Benefit	\$574.32

The estimated economic benefit to the Discharger is at least \$574.32. The Total Base Liability Amount is more than ten percent greater than the estimated economic benefit.

25. **Step 9 – Maximum and Minimum Penalty Amounts:** The statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed. Where the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum.

- a. **Maximum Liability Amount.** Prosecution Team states that the maximum liability that may be imposed under Water Code section 13350 is \$2,280,000, based on the maximum liability of \$5,000 per day for 456 days of violation. This calculation appears to ignore the alternative penalty calculation for multiple days of violations. If the multiple days of violation methodology is appropriate for assessing the proposed penalty, it follows that the maximum and minimum amounts should be derived using the same formula. Parties agree that the number of violations equals 21. Accordingly, the maximum liability amount that may be imposed under Water Code section 13350 is \$105,000, based on the maximum liability of \$5,000 per day for 21 days of violation. Where the amount proposed exceeds the statutory maximum, the amount must be reduced to that maximum. (Enforcement Policy at 21.)

- b. **Minimum Penalty Amount.** The minimum liability under Water Code section 13350, subdivision (e)(1)(B) is no less than \$100 per day if there is no discharge and a CAO is violated. For this case, using the same formula above, the minimum liability is \$2,100 (\$100 x 21 days). The Enforcement Policy requires that the adjusted Total Base Liability Amount be, at a minimum, 10 percent higher than the economic benefit received as a result of the alleged violation. (Enforcement Policy at 21.) The Dischargers' estimated economic benefit plus 10 percent is \$631.75 (\$574.32 x 1.1). Because the statutory minimum amount is higher than the adjusted economic benefit, the minimum liability here is \$2,100. The \$44,750 penalty imposed by this order is lower than Prosecution Team's minimum penalty estimate of \$45,600; however, our findings regarding Dischargers' ability to pay provide the reason for assigning a liability amount below any calculated minimum penalty.

26. **Step 10 – Final Liability Amount:** The required factors have been considered. The total final liability amount is \$44,750 + staff costs (\$5,250) = \$50,000.

ADMINISTRATIVE CIVIL LIABILITY

27. Based on consideration of the above facts, the applicable law, and after applying the penalty methodology, the Regional Water Board finds that civil liability be imposed administratively against the Dischargers in the amount of **\$50,000**.
28. The Enforcement Policy provides an option for the suspension of a portion of the monetary liability of a discretionary ACL for completion of an enhanced compliance action (ECA). (Enforcement Policy at 30.) ECAs must have clear goals and completion dates, and are generally subject to the rules regarding Supplemental Environmental Projects. (See Policy on Supplemental Environmental Projects, Feb. 3, 2009.) If a discharger completes the ECA satisfactorily, the suspended ACL amount is dismissed. If not, the suspended amount becomes due and payable immediately. (*Id.*) A portion, not to exceed half of the penalties assessed in this Order shall be eligible for an ECA if approved by the Executive Officer of the Regional Water Board. Based on the testimony provided at the hearing, it appears that connection to the Lewiston Community Services District could provide a superior method of disposal that will provide benefits above and beyond baseline nominal compliance using a replacement onsite wastewater treatment system.
29. Notwithstanding the issuance of this Order, the Regional Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.
30. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request, and may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/

Administrative Civil Liability Order
R1-2014-0005
Larry and Margaret Barcellos
Trinity Dam Mobile Home Park

IT IS HEREBY ORDERED, pursuant to Water Code section 13350, that:

1. Larry and Margaret Barcellos (Barcellos) shall be assessed an Administrative Civil Liability in the amount of **fifty thousand dollars (\$50,000)**.
2. Subject to (3) below, payment shall be made no later than 30 days from the date on which this order is adopted. Barcellos shall send the original signed check to the State Water Resources Control Board Division of Administrative Services, ATTN: Accounting, 1001 "I" Street, 18th Floor, Sacramento, California 95814, and shall send a copy to Andrew Tauriainen, Office of Enforcement, State Water Resources Control Board, 1001 "I" Street, 16th Floor, Sacramento, California 95814.
3. Within 30 days from the date this Order is issued, Dischargers may submit an ECA proposal to the Executive Officer to suspend a portion of the penalty assessed, not to exceed one half of the amount assessed in this Order. The EO shall approve the ECA only if it meets the criteria contained in the Enforcement Policy on page 30. If the initially proposed ECA is not acceptable, the EO may allow Dischargers an additional 30 days to submit a new or revised ECA proposal for approval. If the Executive Officer rejects the proposal, Dischargers shall pay the suspended penalty in full within 30 days.

I, Matthias St. John, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on January 30, 2014.

Original Signed By

Matthias St. John
Executive Officer

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