

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION

In the Matter of:	)	
	)	Order No. R1-2014-0005
TRINITY DAM MOBILE HOME PARK	)	
ADMINISTRATIVE CIVIL LIABILITY	)	for
COMPLAINT NO. R1-2013-0035	)	
TRINITY COUNTY	)	Administrative Civil Liability
_____	)	

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds the following:

1. This matter comes before the Regional Water Board from an Administrative Civil Liability Complaint R1-2013-0035 dated May 24, 2013 (Complaint) issued to Larry and Margaret Barcellos (hereinafter Dischargers). The Complaint alleged violation of Cleanup and Abatement Order No. R1-2011-0045 and proposed an administrative civil liability in the amount of one hundred sixty five thousand nine hundred dollars (\$165,900) pursuant to California 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 were subject to the prohibition on ex parte communications with the members of the Regional Water Board or the Advisory Team, just like other Parties.

**BACKGROUND**

3. The Regional Water Board issued Cleanup and Abatement Order No. R1-2011-0045 (CAO) on April 7, 2011. A copy of that CAO is in the record, and the findings contained therein are incorporated here by reference, including but not limited to the following:
  - a. Dischargers own the Trinity Dam Mobile Home Park located at 4720 Trinity Dam Boulevard in Lewiston (hereinafter the 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.
  - b. 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. Domestic water supply is provided by Lewiston Valley Mutual Water Company. 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.

- c. On January 6, 2011, Regional Water Board staff (hereinafter Staff) inspected the Park with staff of 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.
  - d. Current sewage disposal practices have caused and may continue to cause the surfacing of sewage and potential discharges to the adjacent property, intermittent streams and the Trinity River, adversely impacting water quality and beneficial uses, and violating provisions of the California Water Code. In addition, these conditions constitute a threat to public health and safety.
  - e. 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.
4. The CAO requires (starting on page 4) that:
- 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.
5. The Dischargers did not contest or seek review of the CAO, and the period for doing so expired on or around May 11, 2011. (Water Code § 13320, subd. (a).).
  6. On April 26, 2011, the Discharger submitted a request for an extension to the deadline for completing the tasks in the CAO. The record contains a copy of this letter. The 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.
  7. On July 22, 2011, the Regional Water Board received an email including an attached letter dated May 19, 2011. Regional Water Board had not received this May 19, 2011 letter or a copy thereof prior to July 22, 2011. Copies of the email and letter are included in the record. The letter advised that the Discharger's civil engineer would inspect the mobile home park and prepare a response to the CAO. The Regional Water Board did not receive any follow-up communication.
  8. On September 27, 2011, after the last of the CAO deadlines had passed without communication or response from the Discharger, the Regional Board advised the Discharger that failure to comply with the CAO could result in administrative civil liability pursuant to California Water Code section 13350. A copy of the letter sent by the Regional Water Board is included in the record.
  9. On August 29, 2012, 456 days after the May 31, 2011, submittal deadline, the Discharger's consulting engineer submitted a workplan describing two optional disposal systems as well as an application for waste discharge. A copy of the August 29, 2012, workplan is included in the record. On September 26, 2012, Regional Water Board 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. A copy of the September 26, 2012 letter is included in the record. To date, the Discharger has not responded to that letter and, further the Discharger has not complied with any of the CAO deadlines.

10. Regional Water Board staff attempted to work with the Discharger to address the issues raised in the September 26, 2012, letter, but to no avail. The Prosecution Team issued Administrative Civil Liability Complaint R1-2013-0045 on May 24, 2013, with hearing originally scheduled for August 22, 2013. The Discharger submitted a hearing waiver in order to engage in settlement discussions. The settlement discussions were not successful, and on November 14, 2013, the Prosecution Team placed the matter back on calendar for hearing January 30, 2014.

#### **VIOLATION**

11. The Dischargers violated the CAO by submitting an incomplete workplan and report of waste discharge application on August 29, 2012, 456 days late.

#### **DETERMINATION OF LIABILITY**

12. 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).
13. Water Code section 13350, subdivision (e), provides that the state board or regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.
14. Water Code section 13350, subdivision (e)(1), provides that the civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.
15. Water Code section 13350, subdivision (e)(1)(B), provides that when there is no discharge and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the cleanup and abatement order is violated.
16. Water Code section 13350, subdivision (f), provides that a regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified unless the regional 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.
17. 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.

18. On November 17, 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11709.pdf).

### CALCULATION OF PENALTY

19. **Maximum Penalty Amount:** The maximum liability that may be imposed under Water Code section 13350 is \$2,280,000. This is based on the maximum liability of \$5,000 per day for 456 days of violation.
20. **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, the minimum liability is \$45,600 (\$100 \* 456 days). Additionally, 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. The Discharger's estimated economic benefit plus 10 percent is \$631.75. Because the statutory minimum amount is higher than the adjusted economic benefit, the minimum liability here is \$45,600.
21. The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachment F to Administrative Civil Liability Complaint R1-2013-0035, which is incorporated here by reference. As shown in Attachment F, the total final liability amount is \$160,650 + staff costs (\$5,250) = \$165,900.

### ADMINISTRATIVE CIVIL LIABILITY

22. 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 Discharger in the amount of **\$165,900**.
23. 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.
24. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).
25. 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

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

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 filling petitions will be provided upon request, and may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/)

**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 **one hundred sixty five thousand nine hundred dollars (\$165,900)**.
2. 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.

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.

---

Matthias St. John  
Executive Officer

14\_0005\_Trinity\_Dam\_MHP\_ACL