

CALIFORNIA CODE OF REGULATIONS  
TITLE 23. WATERS  
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL  
WATER QUALITY CONTROL BOARDS  
CHAPTER 6. REVIEW BY STATE BOARD OF ACTION OR FAILURE TO ACT BY  
REGIONAL BOARD

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." Russell Lee*

**s 2050. Petition for Review by State Board.**

We respectfully submit this Petition with the expectation that the Board will reconsider it's actions of October 26 regarding the Cease and Desist Order pertaining to the Napa Berryessa Resort Improvement District and it's non-compliance with the required standards. We absolutely respect the efforts of the Board to impose restrictions on the system, but with due consideration of hardship to the innocent landowners who have already substantially complied with the building permit process, having spent considerable sums of money on land and design fees that could be rendered useless if the Board does not reconsider its actions. It appears as though both the Board, the staff and the County Board of supervisors are not entirely innocent in this matter (as was openly expressed in the hearing meeting) and it is hoped that the Board will not allow innocent parties to such actions to suffer as a result.

We have followed the format of your Petition Instructions and show our responses in Blue, below:

(a) Any petition by an aggrieved person to the state board for review under Water Code section 13320(a) of an action or failure to act by a regional board shall be submitted in writing and received by the state board within 30 days of any action or failure to act by a regional board. The petition shall contain the following:

(1) Name, address, telephone number and email address (if available) of the petitioner.

Name: Mr. & Mrs. Russell Lee  
Address: 5758 Fairway Knoll Court  
Santa Rosa, CA 95403  
Mobile/Office Phone: (707) 888-8791  
Email: [russlee@pacbell.net](mailto:russlee@pacbell.net)

(2) Name, address, telephone number and email address (if available) of the petitioner's agent.

Name: Mr. David D. Horobin  
Address: 254 Circle Oaks Drive  
Napa, CA 94558  
Office Phone: (707) 251-9677  
Email: [dhorobin@earthlink.net](mailto:dhorobin@earthlink.net)

(3) The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement shall be included giving the reason(s) for not including the order or resolution.

[Napa Berryessa Resort Improvement District Wastewater Treatment System Violation and Cease and Desist Order 95-173 \(Final C&D Order R5-2006-0113, Dated October 26, 2006\)](#)

1. Because the Discharger has consistently violated the flow limit as required by Discharge Specification No. B.1 of the WDRs, this Order prohibits new connections to the WWTP. This prohibition is also necessary because new connections are being added to the WWTP even though the Discharger has violated its flow requirement in the WDRs.
2. Due to the fact that the Discharger is unable to comply with the Waste Discharge Requirements, the Revised Monitoring and Reporting Program, and the CWC 13267 Order, it is appropriate to issue another Cease and Desist Order.

Process of Hearing:

During my architect's presentation, he was interrupted by a Board member who seemed to feel as though she knew everything that he was going to say because of the letters we had submitted prior to the hearing. He was not allowed the full 3 minutes that each speaker was allotted. Not only that, but as the discussion continued, both Staff and NBIIRD Staff were allowed further comment. Despite standing and attempting to be allowed to speak, Mr. Horobin was ignored and the decisions were made. This is contrary to standard procedure.

(4) The date on which the regional board acted or refused to act or on which the regional board was requested to act.

[October 26, 2006](#)

(5) A full and complete statement of the reasons the action or failure to act was inappropriate or improper.

(6) The manner in which the petitioner is aggrieved.

(7) The specific action by the state or regional board which petitioner requests.

(8) A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing where appropriate.

[Statement from Russell Lee, Petitioner regarding \(5\), \(6\), \(7\) & \(8\), above:](#)

My name is Russel J. Lee, owner of lot 191 Woodhaven Ct APN # [019-504-009-000](#) (also known as letter 6). I finalized my purchase of this lot on 7/31/06. During the purchase process we performed all of the due-diligence possible at the time, including several conversations with the NBRID staff regarding "any issues that could possibly affect the development of the relevant property. It has since been brought to our attention that the California Regional Water Quality Control Board Central Valley Region had under consideration a possible C&D order for over a year. No public notice was ever given about this pending action. We were going into the building department to submit just as the C&D order was put into effect. At the time we were not even allowed to submit all of our completed plans and drawings to the building department because the order had just gone into effect. After the CRWQCB hearing we insisted on submitting our plans and the building department has accepted them into their process. This shows "substantial compliance with the building permit process" as the County has a checklist of submitted items that are needed, otherwise they will not accept the application. This application was accepted on November 17 at the Planning /Development counter. It had been stated at the Board Meeting by one of the Board Members that they felt as though the Board should show consideration for those who had "substantially complied with the building permit process". The building permit process starts the minute consultants such as soils and structural engineers, as well as architects were hired and money was spent on their work. ALL this work had been completed prior to the Board hearing, but was rejected.

Because no notice was given I purchased the property with full intent of building my new home with the full confidence that there would be no hold ups on my project. I used cash funds and reserves to finance the purchase the lot knowing that my construction loan would pay me back for all cost out of pocket. This was to be a short-term solution only because I had to close escrow due to the Sellers demands and the excessive amount of time we were in escrow. I now have no cash reserves left and am living on borrowed money. This is an extreme hardship. The actions of the Board, along with the irresponsible inactions of the NBRID have now caused this property to be substantially devalued and may cause me to go into bankruptcy

I have reviewed all of the documentation in regards to Order #R5-2006-0113. What I present to you is that the California Regional Water Quality Control Board Central Valley Region made an error in issuing the temporary C&D order.

On page 12 of Order #R5-2006-0113 it states that the order was issued pursuant to section 13301 and 13267. This is clearly an error because 13301 (attachment A) clearly states "Cease and desist orders may be issued directly by a board, after notice and hearing." This is backwards to what happened. Had the Board followed 13301 and had a notice and hearing first I would have known and avoided closing escrow on a property that I might not be able to build on for years. It should also be noted that 13267 refers back to 13263 (attachment 5) which states "13263. (a) the regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge". 13244 (attachment 2) also states that no plan will be put in to place unless a hearing is held first. With over a year of study in place it would have been easy to hold a hearing before any C&D order was made. 13244 also states that Section 6061.3 (attachment 3) of the Government Code be used for any hearing in these matters. Throughout my research the common theme is notice, hearing, then action.

It was stated at the hearing in October 2006 that the California Regional Water Quality Control Board Central Valley Region is concerned with only water quality issues. According to 13000 (Attached 1) of the Water Code the Boards must also consider the welfare of the people of the State along with water quality. It need to be noted that 13241(Attachment 4) of the Water Code also directs the Water Boards to take into account economic considerations as well as the need for developing housing.

I know that if the Water Board had acted as prescribed by its code and guide lines I would not have spent my financial reserves on a dream that could not come true. I would have had the information required to make an informed decision. Had the Water Board and its staff not acted out of fear (as stated by staff) and held their hearings, I would have found another location for my dream retirement home. I would not have spent my retirement on this folly. With all that said, I again ask the Board to grant my request to allow my permit to move forward. Our "complete" set of drawings, reports and application have been submitted to the County of Napa.

Here is the most important point: Had what we believe to be the correct process, as defined below and above, been followed, we would probably not have had an issue. If the decision to impose a C&D Order been brought to the October meeting and a decision been made at that point by the Board, we would, most likely, have had our permit issued prior to the October Meeting. It is highly likely that the permit could have been issued within 6 weeks because 75% of the house is a modular unit (factory made) where the actual inspection of the entire dwelling unit is inspected in the factory. This considerably lessens the plan-check time at the County and it is highly likely that would have been completed within the 6-week timeframe. Based on the fact that we were not allowed to submit plans before the hearing (according to Napa County), we now realize that if correct procedures had been followed, we would have been in exactly the same position as the 5 people whose permits were released at the October hearing. Please recall that we were number 6 on their list and we believe that we should be included as number 6 permit allowed to be issued.

## Attachments Relevant to the Above Statement

### Attachment A

13301. When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or © in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to that system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing.

### Attachment 1

13000. The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by

*interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.*

#### *Attachment 2*

*13244. The regional boards shall not adopt any water quality control plan unless a public hearing is first held, after the giving of notice of such hearing by publication in the affected county or counties pursuant to Section 6061 of the Government Code. When the plan proposes to prohibit discharges of waste pursuant to Section 13243, similar notice shall be given by publication pursuant to Section 6061.3 of the Government Code.*

#### *Attachment 3*

*6061.3. Publication of notice pursuant to this section shall be for three successive times.*

#### *Attachment 4*

*13241. Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:*

- (a) Past, present, and probable future beneficial uses of water.*
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.*
- © Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.*
- (d) Economic considerations.*
- (e) The need for developing housing within the region.*

*(f) The need to develop and use recycled water.*

#### Attachment 5

*13263. (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.*

*(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.*

*(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.*

*(d) The regional board may prescribe requirements although no discharge report has been filed.*

*(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.*

*(f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.*

*(g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.*

*(h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.*

*(i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:*

*(1) The discharges are produced by the same or similar operations.*

*(2) The discharges involve the same or similar types of waste.*

*(3) The discharges require the same or similar treatment standards.*

*(4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.*

*(j) The state board, after any necessary hearing, may prescribe waste discharge requirements in accordance with this section.*

(8) A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.

I, Russell Lee, of Santa Rosa, California, do hereby declare that this petition is submitted to the CCVRWQCB by email (with prior agreement) on November 27, 2006 (within the 30 day requirement for Petitions to be submitted)

(9) A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why the petitioner was not required or was unable to raise these substantive issues or objections before the regional board.

As stated above, my architect was unable to complete his statement because of interruption as well as being denied "further comment" as was allowed for both Staff and NBRI D.

(b) Service of a petition may be made by U.S. mail, by hand delivery, by facsimile with hard copy to follow, or via e-mail by prior arrangement. [In the case of service by facsimile, only the petition itself shall be sent. All exhibits shall be included with the hard copy.] The petition must be received by the state board no later than 5:00 p.m. 30 days following the date of the action or inaction by the regional board, except that if the thirtieth day following the date of the action or inaction falls on a Saturday, Sunday, or state holiday, the petition must be received by the state board no later than 5:00 p.m. on the first business day following.

(c) If the action or inaction that is the subject of the petition was taken by the regional board after notice and opportunity to comment, the petition to the state board shall be limited to those substantive issues or objections that were raised before the regional board.

Thank you,  
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