



# California Regional Water Quality Control Board Central Valley Region

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10 July 2008

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Bob Bridge  
Darkhorse Golf Club, LLC  
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**REVISED TENTATIVE ORDER AMENDING  
WASTE DISCHARGE REQUIREMENTS ORDER NO. R5-2002-0076  
FOR  
DARKHORSE SUBDIVISION  
DARKHORSE, LLC, DARKHORSE GOLF CLUB, LLC, AND ED FRALICK  
WASTEWATER TREATMENT FACILITY  
NEVADA COUNTY**

**TO ALL CONCERNED PERSONS AND AGENCIES:**

Enclosed for your review is the revised tentative Order amending Waste Discharge Requirements Order No. R5-2002-0076 for the Darkhorse Subdivision Wastewater Treatment Facility. This revised tentative Order will be considered at the 31 July/1 August 2008 meeting of the Regional Water Board.

Public comments were received from Vicki Hawkins (Homeowner, Nevada County Sanitation District (NCSD) No. 1, and Diepenbrock Harrison representing Darkhorse Golf Club, LLC. Copies of the comments are available on the Regional Board's web site at [http://www.waterboards.ca.gov/rwqcb5/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/rwqcb5/board_decisions/tentative_orders/index.shtml) under the heading of "Discharger-Specific Orders for Future Board Meetings. These comments were considered in preparing the revised tentative Order. Responses to those comments are enclosed.

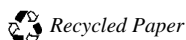
Should you intend to contest the revised tentative Order before the Regional Water Board, please contact Guy Childs at (916) 464-4648 by 21 July 2008.

STEVE E. ROSENBAUM  
Senior Engineering Geologist  
Compliance and Enforcement  
Title 27 and Non15 Programs

Enc: Revised Tentative Order Amending WDRs Order R5-2002-0076  
Response to Public Comments

cc: see page 2:  
Distribution List:

***California Environmental Protection Agency***



cc: w/enc: Mark Miller, Nevada County Sanitation District, Nevada City  
Andrew P. Taurianinen, Esq. Diespenbrock Harrison, Sacramento  
Vicki Hawkins, Homeowner, Auburn

cc w/o enc.: Lori Okun, State Water Resources Control Board, Sacramento  
Gordon Innes, State Water Resources Control Board, Sacramento  
Department of Health Services Office of Drinking Water, Sacramento  
Department of Water Resources, Sacramento  
Department of Fish and Game, Rancho Cordova  
Sue Horne, Nevada County Board of Supervisors, Nevada City  
Daniel Chatigny, Nevada County Planning, Nevada City  
Gordon Plantenga, Nevada County Sanitation District, Nevada City  
Curtis Zumwalt, Nevada County Depart of Environmental Health, Nevada City  
Bob Bridge, Owens Financial Group, Walnut Creek  
Eric Harvey, Darkhorse Homeowners Association, Auburn  
Gary Davis, Darkhorse Homeowners Association, Auburn  
Jerry Waren, Homeowner, Auburn  
Holly Stryker-Katz, Homeowner, Auburn

gjc: 10 July 2008

Regional Water Quality Control Board  
Central Valley Region  
Board Meeting – 31/1 August 2008  
Response to Comments for Darkhorse Subdivision Wastewater Treatment Facility  
Tentative Order to Amending Waste Discharge Requirements Order No. R5-2002-0076

The tentative Order amending Waste Discharge Requirements (WDRs) Order No. R5-2002-0076 was transmitted for public review on 23 May 2008. Comments were received from Vicki Hawkins (Homeowner, Darkhorse Subdivision), Nevada County Sanitation District (NCSD) No. 1, and Diepenbrock Harrison representing Darkhorse Golf Club, LLC. The comments were received by 30 June 2008, following an extended comment period. Copies of the comment letters are available on the Regional Water Board's web site at [http://www.waterboards.ca.gov/rwqcb5/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/rwqcb5/board_decisions/tentative_orders/index.shtml) under the heading of "Discharger-Specific Orders for Future Board Meetings.

Regional Water Board staff accommodated all of Vicki Hawkins' and NCSD's requests for changes to the findings and the "*It is Hereby Ordered Section*" of the tentative Order. Comments from Darkhorse Golf Club, LLC are discussed below:

### **Darkhorse Golf Club, LLC Comments**

**Comment No. 1:** Darkhorse Golf Club, LLC indicates that the title to the golf course and the Wastewater Treatment Facility (WWTF) was obtained on 17 August 2007, immediately after foreclosure.

**Response:** Finding No. 3 has been revised to clarify that the title was transferred on 17 August 2007.

**Comment No. 2:** Darkhorse Golf Club, LLC indicates that the statement regarding the golf course kitchen discharging wastewater to the WWTF is incorrect.

**Response:** Finding No. 6 has been revised to indicate that the wastewater from the golf course restrooms is discharged to the WWTF.

**Comment No. 3:** Darkhorse Golf Club, LLC requests that the findings in the Tentative Order be revised to reflect the fact that neither Owens Financial Investment Fund nor Darkhorse Golf Club maintained any operational control or administrative control over the WWTF prior to 17 August 2007.

**Response:** Finding No. 3 has been revised to indicate that neither Owens Mortgage Investment Fund nor Darkhorse Golf Club, LLC exercised control over the WWTF prior to 17 August 2007.

**Comment No. 4:** Darkhorse Golf Club, LLC states that since the foreclosure on 17 August 2007 that they have been operating and maintaining the WWTF at a significant cost without seeking or receiving any assistance from Nevada County or the homeowners. In addition, Darkhorse Golf Club, LLC states that Nevada County is in control of the construction schedule to complete the WWTF, and is unwilling to involve Darkhorse Golf Club, LLC.

**Response:** Comment noted.

**Comment No. 5:** Darkhorse Golf Club, LLC requests that the phrase “WWTF or sanitary sewer system” in Item No. 2 of the “IT IS HEREBY ORDERED” section of the tentative Order be clarified. In addition, Darkhorse Golf Club, LLC is uncertain if the Tentative Order covers facilities other than WWTF.

**Response:** The WWTF or sanitary sewer system includes the wastewater collection, treatment and disposal system as described in Finding No. 16 of the WDRs.

**Comment No. 6:** Darkhorse Golf Club, LLC requests that the phrase “sanitary sewer system” in Item No. 2 of the “IT IS HEREBY ORDERED” section of the tentative Order which states: “*Notwithstanding this prohibition...*” be removed.

**Response:** The sanitary sewer system is used to collect the wastewater. Therefore, it is not appropriate to make the requested change.

**Comment No. 7:** Darkhorse Golf Club, LLC is concerned that Nevada County has provided no assurance that they will cease granting occupancy permits to homes in the subdivision during the period that the WWTF is being completed.

**Response:** If Nevada County allows additional sanitary sewer connections then it would be permitting discharges in violation of the WDRs.

**Comment No. 8:** Darkhorse Golf Club, LLC requests that Item No. 5 of the “IT IS HEREBY ORDERED” section of the tentative Order regarding the submittal of quarterly progress reports be deleted. This request is because Darkhorse Golf Club, LLC has no control over the timelines to complete the WWTF.

**Response:** Item No. 5 of the “IT IS HEREBY ORDERED” section of the tentative Order has been revised to allow the Discharger some flexibility in completing the quarterly progress reports with the understanding that Nevada County controls the schedule. The quarterly progress reports are necessary to keep staff informed as to the progress of completing the WWTP.

**Comment No. 9:** Darkhorse Golf Club, LLC requests that the tentative Order list both Nevada County and the homeowners as responsible parties. Darkhorse Golf Club, LLC states that they are working with Nevada County and the homeowners to reach an agreement regarding sharing of the financial responsibilities and liability of the WWTF. Finally, Darkhorse Golf Club, LLC requests that this tentative Order be deferred to a later meeting of the Regional Water Board until an agreement is reached regarding the sharing of the financial responsibilities and liability of the WWTF.

**Response:** Section 13263(a) prevents the Regional Water Board from issuing WDRs to persons who discharge into a “community sewer system.” The Water Code does not define “community sewer system.” Since the County or other entity has not commenced operation of the WWTF, it is unclear whether the current collection system constitutes a “community sewer system.” The legislative history of the predecessor to Section 13263 suggests that dischargers to a community system could be held responsible in the event a public entity failed to provide treatment and there was an imminent public health threat. However, the homeowners have no control over the WWTF. In addition, regulating each individual homeowner and the WWTF operator in a single order would increase the complexity of regulating this facility. The modified WDRs are intended to be temporary only, while the County completes the WWTF. Therefore, staff is not recommending naming the homeowners in the WDRs.

In addition, if homeowners discharge into the community system in a manner that threatens to create pollution or nuisance and that is likely to discharge to waters of the State, the Regional Water Board may consider issuing cleanup and abatement orders to the homeowners under Water Code Section 13304.

Since the foreclosure in August 2007, the existing Order for the Darkhorse WWTF has not named the current owner/operator, and the discharges into the WWTF violate the existing WDRs. The Resolution was proposed and expedited in part to address concerns that the temporary arrangement puts the current owner in violation of the WDRs. As the commenter points out, the County is unwilling to take over operations until the WWTF is complete. The County is unlikely to complete the WWTF during the next few meeting cycles. A financial arrangement with the homeowners and/or the County would provide a funding mechanism to the owners, but would not change the requirements of the Order. Therefore, Regional Water Board staff is not recommending deferral of this tentative Order to a later meeting of the Regional Water Board.

gjc: 10 July 2008