

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION  
ORDER NO.

CEASE AND DESIST ORDER NO. R5-2005-0002  
REQUIRING  
MR. NICK PETSAS AND LAKE BERRYESSA ENTERPRISES, INC. II  
THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION  
dba PUTAH CREEK RESORT  
NAPA COUNTY

TO CEASE AND DESIST  
FROM DISCHARGING CONTRARY TO REQUIREMENTS

The Regional Water Quality Control Board, Central Valley Region, (hereafter referred to as “Regional Board”) finds that:

1. Mr. Nick Petsas and Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort, operates the concession known as the Putah Creek Resort). The resort is at 7600 Knoxville Road in Napa County. The United States Department of the Interior, Bureau of Reclamation administers the public lands upon which the Putah Creek Resort concession exists.
2. Mr. Nick Petsas, Lake Berryessa Enterprises, Inc. II, and the United States Department of the Interior, Bureau of Reclamation are hereafter jointly referred to as “Discharger”.
3. Waste Discharge Requirements (WDRs) Order No. 5-00-020, adopted by the Regional Board on 28 January 2000, prescribes requirements for the treatment, storage and disposal of domestic wastewater at the facility.

**Wastewater System**

4. The wastewater system serves the resort, which consists of approximately 150 mobile homes, a 27-unit motel, 80 campsites, a store, a restaurant, a boat launch, and dock facilities.
5. Wastewater is flows into a collection system, and then is pumped to three evaporation/percolation ponds. The ponds have a total volume of approximately 1.7 million gallons at two-feet of freeboard. Each of the ponds contain in-pond spray emitters that provide additional evaporation.
6. The WDRs allow for an average monthly dry weather inflow of 0.030 million gallons per day (mgd) and a maximum daily inflow not to exceed 0.10 mgd.

**Previous Enforcement**

7. The Discharger has had a long history of violations of its WDRs. These violations include lack of submittal of self-monitoring reports and technical reports, wastewater discharges and overflows to Lake Berryessa and surface water drainage courses, and failure to implement system upgrades and measures to ensure compliance with the WDRs.

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8. On 13 July 1998, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. 98-505 for several wastewater overflows to surface waters and for failure to submit technical and monitoring reports required by Section 13267 of the CWC. The overflows to surface waters were associated with the collection, treatment and disposal system and occurred during the months of January, February, April, May, and June 1998. As a result of the ACLC, the Discharger paid \$10,500 to the State Water Resources Control Board Cleanup and Abatement Account.
9. On 24 December 1998, the Executive Officer issued Cleanup and Abatement Order (CAO) No. 98-736 to address the issues identified in the 13 July 1998 ACLC, as well as the integrity of the berm between Pond Nos. 1, 2, and 3, the headworks (pump house and septic tanks), and the exposed collection pipeline as identified in a 3 December 1998 inspection.
10. The CAO required a series of technical reports leading to the submittal of a Report of Waste Discharge (RWD). Based on that RWD, the Regional Board adopted updated WDRs in January 2000. The WDRs state that the Discharger plans to build a fourth wastewater pond to provide an additional 570,000 gallons of treatment and storage capacity, and that the WDR flow limit is based on this additional pond. However, the Discharger never constructed the fourth pond.
11. On 6 June 2002, the Regional Board adopted ACL Order No. R5-2002-0087 for discharges of wastewater to a surface water drainage course. The Discharger paid \$23,500 to the State Water Resources Control Board Cleanup and Abatement Account.
12. On 30 July 2004, the Executive Officer issued a California Water Code (CWC) 13267 Order requiring the Discharger to submit a number of reports, including a water balance. Because four of the five reports were not submitted by their due dates, on 22 October 2004, the Executive Officer issued ACLC No. R5-2004-0539 for \$15,000 to the Discharger. The Discharger subsequently requested a hearing, which will be completed at the 27 January 2005 Regional Board meeting.

#### **Basis for Cease and Desist Order**

13. The Discharger submitted a revised water balance on 2 December 2004. As requested by staff, the balance evaluates inflows (wastewater, inflow/infiltration, and direct precipitation) and outflows (evaporation due to natural conditions, evaporation due to the in-pond evaporators, and percolation) on a month-by-month basis for a one-year period. The water balance is used to determine whether there is adequate capacity in the pond system for each month during the year.
14. Staff requested that the water balance contain the actual measured wastewater inflows for the period of October 2003 to September 2004; these measured flows include any contribution from inflow/infiltration. To mimic the maximum condition allowed by the WDRs, the direct precipitation value was that for a 100-year return period, distributed monthly in accordance with historical rainfall patterns.
15. The water balance contains an appropriate value for the maximum capacity of the three ponds (1.7 million gallons), at the two-foot of freeboard required by the WDRs. The Discharger estimated the volume of assisted evaporation and has not provided any supporting data to validate the numbers.

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16. The Discharger states that the water balance shows that the pond system contains adequate capacity during a 100-year rainfall event, while using actual inflows from October 2003 to September 2004.
17. Staff evaluated the water balance by reviewing the Discharger's monthly self-monitoring reports for the time period of October 2003 to September 2004. In particular, staff reviewed the reported freeboard measurements for each of the three ponds. Specification No. B.11 states "*A minimum 2.0 feet of freeboard shall be maintained in the ponds at all times.*"
18. Because wastewater can be pumped from one pond to another, staff consider the two-foot (24 inch) freeboard limitation to be violated if the total freeboard in the three ponds is less than 72 inches. The self-monitoring reports submitted by the Discharger show that the cumulative freeboard requirement was violated a total of 39 days during the months of February, March, and April 2004. Therefore, the water balance over-estimates the volume of waste percolated/evaporated from the ponds. A more conservative value would have shown that the ponds did not have enough capacity for the October 2003 to September 2004 flows, especially considering that the actual rainfall during this period was substantially less than the 100-year return period value used in the water balance (23 inches versus 56 inches).
19. By calibrating the water balance against actual data, it can be shown that the Discharger did not have adequate capacity for the wastewater flows generated during the period of October 2003 to September 2004. During this time period, average monthly flows ranged from 10,000 to 18,000 gpd, with an average for the entire year of 14,000 gpd.
20. Discharge Specification No. B.4 of the WDRs states "*The monthly average dry weather discharge flow shall not exceed 0.030 million gallons per day.*" As described in the Findings of the WDRs, this flow limit was based on the Discharger's proposal to build a fourth wastewater pond. However, that pond was never constructed. The recent water balance, when calibrated against actual data, shows that the Discharger does not have enough capacity to allow a flow of 30,000 gpd and meet all its permit conditions, especially the requirement to maintain two feet of freeboard and not discharge to surface waters. Therefore, it is appropriate to restrict the flows at this facility until a fourth pond has been constructed.
21. It is appropriate to restrict the Discharger to a monthly average flow of 14,000 gpd, the same value as was generated during the period modeled by the water balance. Unlike a housing development with year-round residents, the Discharger operates a marina, campground, and motel, and has the ability to either not use these facilities or install portable toilets. The 150 mobile homes are considered second homes, and according to the lease agreement, are not to be occupied more than six months each year.
22. Depending on the amount of rainfall during a year, the water balance shows that the pond system may not have enough capacity for a monthly average flow of 14,000 gpd. The Discharger is still expected to maintain two-feet of freeboard in its ponds, and in a wet year, will need to voluntarily restrict flows further or will need to implement a contingency plan. In the recent past, the Discharger has rented Baker tanks to temporarily store excess wastewater and has trucked excess waste to another permitted wastewater treatment facility.

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### **Regulatory Considerations**

23. As a result of the events and activities described in this Order, the Regional Board finds that the Discharger has caused or permitted waste to be discharged in such a manner that it has created, and continues to threaten to create, a condition of pollution or nuisance. The Regional Board also finds that the Discharger has discharged, and has the potential to discharge, waste in violation of WDRs No. 5-00-020.
24. Surface water drainage from the wastewater system is to Lake Berryessa. The beneficial uses of Lake Berryessa, as stated in the Basin Plan, are municipal and domestic supply; agricultural supply; power generation; water contact recreation; noncontact water recreation; warm freshwater habitat; cold freshwater habitat; spawning, reproduction and/or early development; and wildlife habitat.
25. Section 13301 of the California Water Code states in part: "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 (c) in the event of a threatened violation, take appropriate remedial or preventive action."
26. Section 13267(b) of the California Water Code states: " In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."
27. The technical reports required by this Order are necessary to assure compliance with WDR Order No. 5-00-020 and to assure protection of public health and safety. The Discharger operates the facility that discharges the waste subject to this Order.
28. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
29. On 27 January 2005, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Regional Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order.
30. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA, 95812-0100, within 30 days of the date on which the Regional Board action took place. Copies of the law and regulations applicable to

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filing petitions are available at [www.swrcb.ca.gov/water\\_laws/index.html](http://www.swrcb.ca.gov/water_laws/index.html) and also will be provided upon request.

**IT IS HEREBY ORDERED** that pursuant to Sections 13301 and 13267 of the California Water Code, Mr. Nick Petsas, Lake Berryessa Enterprises, Inc. II, and the United States Department of the Interior, Bureau of Reclamation, dba Putah Creek Resort, their agents successors, and assigns, shall comply with the following to ensure long-term compliance with WDRs No. 5-00-020, or any revisions to those WDRs.

Any person signing a document submitted under this Order shall make the following certification:

*“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.”*

1. With the exception of Discharge Specifications Nos. B.4, the Discharger shall **immediately** comply with all aspects of WDRs Order No. 5-00-020.
2. Discharge Specification No. B.4 shall be replaced with the following: *The average monthly dry weather inflow to the pond system shall not exceed 14,000 gallons per day (gpd)*. This flow limit may be increased incrementally by the Executive Officer upon the submittal and approval of a technical report showing the improvements completed to increase storage and disposal capacity. The report shall contain a water balance supporting the requested flow increase.
3. Beginning **immediately**, the Discharger shall continue to perform *daily inspections* of the ponds that include daily freeboard measurements from lowest point of overflow in each of the ponds, and daily inflow measurements to the pond system. Daily inspection reports must be faxed to the Regional Board office, attention Guy Childs (916) 464-4780, at the beginning of each week following the inspections.
4. By **1 March 2005**, the Discharger shall submit a *Contingency Plan* describing the steps it will take if the evaporation/percolation wastewater ponds encroach within two foot of freeboard. The plan shall consider any and all steps necessary to prevent wastewater overflows including restricting water usage, hauling wastewater to another facility, and shutting down portions of the resort. This Contingency Plan shall be implemented whenever wastewater levels encroach within two foot of freeboard in the wastewater ponds. The Discharger shall immediately notify staff when the Contingency Plan has been implemented.

In addition to the above, the Discharger shall comply with all applicable provisions of the California Water Code that are not specifically referred to in this Order. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all technical reports shall be prepared by, or under the supervision of, a California Registered Engineer or Registered Geologist and shall be signed by the registered professional.

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If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

Failure to comply with this Order may result in the assessment of an Administrative Civil Liability up to \$1,000 or up to \$10,000 per day of violation, depending on the violation, pursuant to the California Water Code, including sections 13268, 13350, and 13385. The Regional Board reserves the right to take any enforcement actions authorized by law.

I, THOMAS R. PINKOS, 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, Central Valley Region, on 27 January 2005.

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THOMAS R. PINKOS, Executive Officer

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**Wastewater System**

4. The wastewater system serves the resort, which consists of approximately 150 mobile homes, a 27-unit motel, 80 campsites, a store, a restaurant, a boat launch, and dock facilities.
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#### **Basis for Cease and Desist Order**

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21. It is appropriate to restrict the Discharger to a monthly average flow of 14,000 gpd, the same value as was generated during the period modeled by the water balance. Unlike a housing development with year-round residents, the Discharger operates a marina, campground, and motel, and has the ability to either not use these facilities or install portable toilets. The 150 mobile homes are considered second homes, and according to the lease agreement, are not to be occupied more than six months each year.
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### **Regulatory Considerations**

23. As a result of the events and activities described in this Order, the Regional Board finds that the Discharger has caused or permitted waste to be discharged in such a manner that it has created, and continues to threaten to create, a condition of pollution or nuisance. The Regional Board also finds that the Discharger has discharged, and has the potential to discharge, waste in violation of WDRs No. 5-00-020.
24. Surface water drainage from the wastewater system is to Lake Berryessa. The beneficial uses of Lake Berryessa, as stated in the Basin Plan, are municipal and domestic supply; agricultural supply; power generation; water contact recreation; noncontact water recreation; warm freshwater habitat; cold freshwater habitat; spawning, reproduction and/or early development; and wildlife habitat.
25. Section 13301 of the California Water Code states in part: "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 (c) in the event of a threatened violation, take appropriate remedial or preventive action."
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27. The technical reports required by this Order are necessary to assure compliance with WDR Order No. 5-00-020 and to assure protection of public health and safety. The Discharger operates the facility that discharges the waste subject to this Order.
28. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
29. On 27 January 2005, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Regional Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order.
30. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA, 95812-0100, within 30 days of the date on which the Regional Board action took place. Copies of the law and regulations applicable to

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**IT IS HEREBY ORDERED** that pursuant to Sections 13301 and 13267 of the California Water Code, Mr. Nick Petsas, Lake Berryessa Enterprises, Inc. II, and the United States Department of the Interior, Bureau of Reclamation, dba Putah Creek Resort, their agents successors, and assigns, shall comply with the following to ensure long-term compliance with WDRs No. 5-00-020, or any revisions to those WDRs.

Any person signing a document submitted under this Order shall make the following certification:

*“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.”*

1. With the exception of Discharge Specifications Nos. B.4, the Discharger shall **immediately** comply with all aspects of WDRs Order No. 5-00-020.
2. Discharge Specification No. B.4 shall be replaced with the following: *The average monthly dry weather inflow to the pond system shall not exceed 14,000 gallons per day (gpd)*. This flow limit may be increased incrementally by the Executive Officer upon the submittal and approval of a technical report showing the improvements completed to increase storage and disposal capacity. The report shall contain a water balance supporting the requested flow increase.
3. Beginning **immediately**, the Discharger shall continue to perform *daily inspections* of the ponds that include daily freeboard measurements from lowest point of overflow in each of the ponds, and daily inflow measurements to the pond system. Daily inspection reports must be faxed to the Regional Board office, attention Guy Childs (916) 464-4780, at the beginning of each week following the inspections.
4. By **1 March 2005**, the Discharger shall submit a *Contingency Plan* describing the steps it will take if the evaporation/percolation wastewater ponds encroach within two foot of freeboard. The plan shall consider any and all steps necessary to prevent wastewater overflows including restricting water usage, hauling wastewater to another facility, and shutting down portions of the resort. This Contingency Plan shall be implemented whenever wastewater levels encroach within two foot of freeboard in the wastewater ponds. The Discharger shall immediately notify staff when the Contingency Plan has been implemented.

In addition to the above, the Discharger shall comply with all applicable provisions of the California Water Code that are not specifically referred to in this Order. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all technical reports shall be prepared by, or under the supervision of, a California Registered Engineer or Registered Geologist and shall be signed by the registered professional.

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Failure to comply with this Order may result in the assessment of an Administrative Civil Liability up to \$1,000 or up to \$10,000 per day of violation, depending on the violation, pursuant to the California Water Code, including sections 13268, 13350, and 13385. The Regional Board reserves the right to take any enforcement actions authorized by law.

I, THOMAS R. PINKOS, 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, Central Valley Region, on 27 January 2005.

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THOMAS R. PINKOS, Executive Officer