

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0538
IN THE MATTER OF
LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
WASTEWATER TREATMENT FACILITY
NAPA COUNTY

This Administrative Civil Liability Order is issued to Lake Berryessa Resort Improvement District (hereafter "Discharger") pursuant to California Water Code ("CWC") sections 13350 and 13385, which authorize the imposition of administrative civil liability, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Order memorializes a mutual settlement reached between the Central Valley Water Board's Prosecution Team and the Discharger for the violations alleged in Administrative Civil Liability ("ACL") Complaint R5-2010-0516, which was issued by the Executive Officer on 17 May 2010. The Complaint alleged that the Discharger violated provisions of Waste Discharge Requirements ("WDRs") Order R5-2008-0068.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board ("Central Valley Water Board" or "Board") finds the following:

Background

1. The Discharger owns and operates a wastewater collection, treatment and disposal system, referred to as a wastewater treatment facility or WWTF that currently serves 187 existing single-family dwellings at the Berryessa Estates Subdivision. There are a total of 339 available service connections at full build-out.
2. On 25 April 2008, the Board issued WDRs Order R5-2008-0068, which prescribed requirements for the discharge of domestic wastewater from the Discharger's WWTF. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
3. Wastewater from the community flows via gravity to three lift stations where it is pumped to a 91,000-gallon aboveground holding tank and a 21,000-gallon overflow tank. From the tanks, the wastewater is pumped approximately 1.2 miles through a six-inch diameter force main into a manhole. A flow meter is located within the force main. From the manhole, wastewater gravity flows through a 10-inch pipeline to a manually-operated distribution box and to three treatment ponds that are connected in series. From the third pond, wastewater gravity flows into two other ponds. A portable effluent pump is used to transfer wastewater from these ponds to the two remaining ponds (Pond Nos. 6 and 7). The wastewater in Pond No. 7 is then disinfected using sodium hypochlorite tablets to maintain a chlorine residual of at least 0.3 mg/L and a total coliform organism concentration of less than 23 MPN/100 mL. Wastewater from this pond is then applied via spray irrigation to three separate land application areas totaling approximately six acres. Runoff from

the sprayfield is collected via a tailwater collection ditch and returned to Pond No. 7 via a pump system.

Chronology of Previous Major Enforcement Items

4. The Discharger has had a long history of sewage spills at this facility. On 28 December 1995, the Executive Officer issued ACL Complaint 95-516. The ACL Complaint was for a raw sewage spill to Putah Creek estimated at approximately 50,000 gallons and was in the amount of \$25,000. In addition to the monetary penalty, the Discharger was required, pursuant to CWC section 13267, to submit a plan to complete improvements to the system to prevent future unauthorized discharges of wastewater. The ACL Complaint was withdrawn in January 1996 following submittal of a revised compliance schedule.
5. In April 1996, the Discharger submitted a report titled "*Capacity Study for the Wastewater Treatment and Disposal Facilities for Lake Berryessa Resort Improvement District.*" In summary, the report concluded that the infiltration/inflow (I/I) issues at the wastewater collection system were a serious problem and could overwhelm the system's storage and disposal capacity. The report included recommendations for studies to identify sources of I/I and to determine additional methods of wastewater disposal, such as additional ponds and sprayfields.
6. On 20 September 1996, the Board issued Cease and Desist Order (CDO) 96-233. The CDO reflected the Discharger's revised compliance schedule (the document upon which the withdrawal of the ACL Complaint 95-516 was based) and required the Discharger to: begin an I/I study, establish a financial plan, select and design an upgrade to the wastewater facility, complete construction of the project, and submit quarterly progress reports. The final upgrade was to have been completed by 15 September 2001, and was to have resulted in compliance with the WDRs. The Discharger did not comply with the CDO. The only items submitted were an I/I study plan and a five-year financial plan, which were submitted in 1996.
7. On 4 March 2005, the Executive Officer issued ACL Complaint R5-2005-0507 to the Discharger, charging the Discharger with liability in the amount of \$400,000. The Complaint resulted from the Discharger's violations of its WDRs and CDO, with the most significant violation being the months-long discharge of approximately 4.1 million gallons of wastewater into Stone Corral Creek, a tributary of Lake Berryessa, which started on 11 January 2005. Following a hearing, the Central Valley Water Board issued ACL Order R5-2005-0072 on 29 April 2005 in the amount of \$400,000. The matter was also referred to the Attorney General for additional discharges to surface waters. The Discharger then petitioned the ACL Order to the State Water Board, and, following its dismissal, filed suit in Court. Following several months of negotiations between the Discharger, Board staff, and the Attorney General's office, the Central Valley Water Board agreed to the settlement described in Finding No. 10, below.

8. On 24 January 2007, Board staff issued a Notice of Violation (“NOV”) for a controlled discharge of partially treated wastewater to an unpermitted temporary sprayfield. The discharge totaled approximately 5.5 million gallons and occurred over a period of 52 days during March, April, May, and June 2006. Of this, an unknown volume flowed over vegetated land and then entered Stone Corral Creek, Putah Creek, and ultimately Lake Berryessa. The volume of the discharge was based on monthly discharge summary reports provided by the Discharger. The Discharger indicated that the controlled discharge to the unpermitted sprayfield was necessary because of excessive rainfall and the lack of capacity in the wastewater ponds, and to avoid a possible overflow or breach in a pond berm.
9. On 16 May 2007, Board staff issued an NOV for a discharge of wastewater estimated at approximately 7,500 gallons that occurred on 13 April 2007. The spill resulted from a break in the 10-inch gravity sewer pipeline that runs from the main sewage collection tank to the wastewater ponds. The Discharger reported that none of the wastewater entered surface waters.
10. On 13 July 2007, the Executive Officer signed a Stipulated Judgment regarding Case Nos. 6CS00256 and 06AS01602 on behalf of the Central Valley Water Board. On 7 September 2007, the Stipulated Judgment was issued by the Superior Court. The terms of the Stipulated Judgment included: (a) by 10 August 2007, the Discharger must submit a complete RWD to operate a permanent sprayfield; (b) by 31 January 2008, the Discharger must submit a report showing that three of the lift stations had been upgraded; (c) by 1 March 2008, the Discharger must submit a report showing that several sewer line sections have been replaced or repaired; (d) the Discharger must pay the \$400,000 liability beginning 1 August 2009, in monthly installments of \$3,333.33 over a 10 year period; (e) by 30 August 2009, the Discharger must replace the water treatment plant to be in compliance with applicable California Department of Public Health requirements, (f) comply fully with all monitoring and reporting aspects of Revised MRP No. 96-223 or subsequent MRPs, and (g) prevent any future discharges of wastes to surface waters. The Stipulated Judgment also settled the violations noted in Findings 8 and 9.
11. As of the date of this ACL Order, compliance with the Stipulated Judgment is as follows:
 - a. On 27 April 2007, the Discharger submitted the RWD. Supplemental information was received on 7 August 2007, and WDRs Order R5-2008-0068 was adopted by the Central Valley Water Board on 25 April 2008.
 - b. On 30 January 2008, the Discharger documented that upgrades to the three lift stations were completed, including new motors and pumps, control systems, and a mobile backup generator.

- c. On 29 February 2009, the Discharger submitted the Sewer Line Rehabilitation Report showing that the sections of sewer pipeline identified in the Stipulated Judgment, along with additional sections, had been either repaired or replaced.
- d. Since September 2009, the Discharger has been paying the \$400,000 liability in monthly installments of \$3,333.33.
- e. A time extension for the Discharger to replace the water treatment plant as described in the Stipulated Judgment is under consideration at this time. Replacement of the water treatment plant will significantly reduce the volume of backwash water discharged to the wastewater collection system.
- f. The Discharger has not prevented discharges of wastes to surface waters, as described in the Findings below, in violation of the Stipulated Judgment.

Chronology of Violations Since Stipulated Judgment

- 12. On 18 February 2009, Board staff issued an NOV for an unauthorized discharge of wastewater, estimated at approximately 8,000 gallons, which occurred on 7 January 2009. The spill resulted from a break in the 10-inch gravity sewer pipeline that runs from the main sewage collection tank to the wastewater ponds. The spill entered a drainage swale but did not enter surface waters. The Discharger estimated that between 5,000 and 6,000 gallons of sewage were contained and pumped back into the wastewater treatment ponds.
- 13. On 17 February 2009, an estimated 20,000 gallons of raw sewage spilled from the 21,000-gallon overflow tank. The spill resulted from excessive infiltration and inflow within the collection system due to a rainstorm. The effluent pump was unable to keep up with the increased flow rate. The main sewer collection tank spilled into the overflow tank and then onto the ground. The raw sewage flowed into a drainage swale, across a gravel/dirt access road, across some natural vegetation, and into Putah Creek. The spill was stopped after the Discharger rented a portable diesel pump and connected it to the collection system. The Discharger reported that the portable pump would remain onsite during the rainy season to ensure that this type of spill did not occur again.
- 14. From 26 February through 5 March 2009, an unauthorized controlled discharge of approximately 1,630,000 gallons of partially treated wastewater occurred at the WWTF. The discharge occurred from the treatment plant's chlorine contact basin that serves the sprayfield. A portion of the discharge also occurred through the sprayfields. The Discharger stated that the wastewater was dechlorinated prior to being discharged. Runoff from the discharge entered an unnamed creek, then flowed to Stone Coral Creek, Putah Creek, and ultimately to Lake Berryessa. The Discharger stated that the controlled discharge was necessary to avoid a possible overflow or a breach in a pond berm. In addition, the Discharger stated that

approximately 147,000 gallons of wastewater was removed from the main collection tank and transported to the Napa Sanitation District Wastewater Treatment Facility for disposal prior to the unauthorized discharge. The Discharger estimated that trucking this wastewater cost about \$30,000. The Discharger stated that some factors that may have contributed to the discharge include: (a) the inability to adequately dispose of the wastewater prior to the rainy season because the new sprayfields approved by WDRs R5-2008-0068 were not completed and approved until the end of August 2008, and (b), additional inflow and infiltration (I/I) issues existed within the collection system that were not identified during the Sewer Line and Lift Station Rehabilitation Project that was completed in March 2008. Finally, the Discharger stated that it will continue to inspect and repair the sewer line to address any newly identified I/I issues.

15. On 9 June 2009, Board staff issued an NOV for the wastewater spills that are described in Findings 13 and 14. The Notice of Violation requested that the Discharger submit a workplan that described proposed measures to be taken to reduce the I/I.
16. On 30 July 2009, the Discharger submitted a workplan stating that they would continue assessing the wastewater collection system zones that continue to exhibit the most I/I and will prioritize the most problematic areas for repairs. Specifically, the Discharger stated that the entire collection system would be video surveyed by 30 September 2009, and that inspection of manholes would be completed and a report submitted by 1 October 2009. In addition, the Discharger stated that the manholes in need of immediate repair were to be repaired by 31 October 2009.
17. On 10 May 2010, Board staff issued an NOV for a controlled discharge of treated wastewater from the spray irrigation field tailwater collection ditch into an unnamed creek, then to Stone Corral Creek, Putah Creek and ultimately into Lake Berryessa. The estimated volume of wastewater released to the creek from the tailwater control ditch since the discharge began on 9 February 2010 was approximately 2,184,500 gallons. This volume is based on 35 days of discharge with the assumption that 85 percent of the total amount of wastewater that was applied to the sprayfields entered the tailwater collection ditch. The Discharger stated that the discharge was necessary because the level of wastewater in four of the seven wastewater ponds was above the minimum two-foot freeboard required by the WDRs. The Discharger stated that trucking the wastewater to an offsite wastewater disposal facility was considered, however, because there was at least two additional months of wet weather remaining, the discharge could not be prevented by trucking the wastewater to an offsite disposal facility. Finally, the Discharger stated that they needed to conserve funds for additional collection system improvements.
18. To summarize, since issuance of the Stipulated Judgment on 7 September 2007, the Discharger has reported spills of 8,000 gallons of raw sewage; 20,000 gallons of raw sewage; 1,630,000 gallons of partially treated wastewater; and most recently

2,184,500 gallons of partially treated wastewater. Of these spills, an estimated 3,834,500 gallons entered surface waters tributary to Lake Berryessa. Central Valley Water Board staff issued Notices of Violation for all of the spills.

REGULATORY CONSIDERATIONS

19. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
20. Surface water drainage from the site is to Stone Corral Creek, which flows in to Putah Creek and is a tributary to Lake Berryessa.
21. The Basin Plan designates the beneficial uses of Lake Berryessa as municipal and domestic supply (MUN); agricultural supply (AGR); power generation (POW); water contact recreation (REC-1); noncontact water recreation (REC-2); warm freshwater habitat (WARM); cold freshwater habitat (COLD); spawning, reproduction and/or early development of warm freshwater aquatic organisms (SPWN); and wildlife habitat (WILD).
22. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
23. On 17 November 2009, the State Water Resources Control Board adopted a new Water Quality Enforcement Policy. However, at the time ACL Complaint R5-2010-0516 was issued, the new policy had not yet been approved by the State Office of Administrative Law. Therefore, the Water Quality Enforcement Policy adopted on 19 February 2002 is the controlling policy for the purposes of resolving ACL Complaint R5-2010-0516.

Violations under CWC section 13350

24. Administrative civil liability may be imposed for violations of WDRs Order R5-2008-0068 pursuant to CWC section 13350(a) which states, in relevant part,
 - (a) Any person who ... in violation of any waste discharge requirement ... or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

25. CWC section 13350(e) states, in relevant part,

(e) The state board or a regional board may impose civil liability administratively ... either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

26. Discharge Prohibition A.2 of Order No. R5-2008-0068 states "Bypass or overflow of untreated or partially treated waste is prohibited."

27. The 8,000 gallon raw sewage spill that occurred on 7 January 2009 from the broken 10-inch gravity sewer pipeline (as described in Finding 12) is a violation of Discharge Prohibition No. A.2 of the WDRs.

28. **Maximum Civil Liability for Discharge to Land:** Pursuant to CWC section 13350(e), up to ten dollars (\$10) for each gallon of waste discharged may be assessed. Therefore, the maximum penalty for this 8,000 gallon spill under section 13350 is **eighty thousand dollars (\$80,000)**.

Violations under CWC section 13385

29. CWC section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

...

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

30. Discharge Prohibition A.1 of WDRs Order R5-2008-0068 states "Discharge of wastes to surface waters or surface water drainage courses is prohibited."

31. The spills to surface water described in Findings Nos. 13, 14, and 17 are a violation of Discharge Prohibition. A.1. In addition, WDRs Order R5-2008-0068 does not authorize the discharge of waste to surface waters. Any discharge of waste to surface waters, except those that are in accordance with an NPDES permit, is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.
32. **Maximum Civil Liability for Discharge to Surface Waters:** Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The Discharger spilled 20,000 gallons of raw sewage to surface waters on 17 February 2008, and 1,630,000 gallons of wastewater to surface waters over an eight day period from 26 February through 5 March 2009. In addition, over a 35 day period beginning on 9 February 2010, the Discharger spilled an estimated 2,184,500 gallons of wastewater to surface waters. Of the 3,834,500 gallons that spilled, a total of 3,826,500 gallons were discharged in excess of 1,000 gallons per spill event over a 44 day period. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallon, and at \$10,000 per day for each day of the discharge, the maximum liabilities are \$38,265,000 and \$440,000. Adding these maximum liability amounts together, the total amount of penalties that may be assessed pursuant to section 13385 is **thirty eight million seven hundred and five thousand dollars (\$38,705,000)**.
33. **Minimum Civil Liability for Discharge to Surface Waters:** Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefits are discussed in Finding No. 37, below.

Total Maximum Penalty

34. Adding together the total maximum penalties that could be assessed under sections 13350 and 13385 (described in Findings 28 and 32), the maximum penalty for the discharge is **thirty eight million seven hundred and eighty five thousand dollars (\$38,785,000)**.

Settlement Liability Amount

35. On 17 May 2010, Executive Officer Pamela Creedon issued Administrative Civil Liability Complaint R5-2010-0516 to the Discharger. The Complaint proposed three hundred and seventy five thousand dollars (\$375,000) in civil liability pursuant to CWC sections 13350, 13268, and 13385. The amount of the proposed liability was established based on a review of the factors cited in CWC sections 13327 and 13385.
36. Following issuance of the ACL Complaint, the Discharger and the Board's Prosecution Team conferred for the purpose of settling the violations. On

24 November 2010, following negotiations, the Discharger submitted a proposal to settle the ACL Complaint. This settlement proposal was accepted by the Executive Officer, acting as head of the Board's Prosecution Team.

37. CWC sections 13327 and 13385(e) both specify that, in determining the amount of liability imposed under CWC sections 13350 and 13385, the Regional Water Boards shall take into account, "the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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 violation, and other matters that justice may require." CWC section 13385(e) also adds that, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The following is a discussion of these factors:
- a. *Nature and Extent:* The Discharger has violated WDRs Order R5-2008-0068 by discharging 3.8 million gallons of raw sewage and partially treated wastewater to surface waters, and by discharging 8,000 gallons of raw sewage that did not reach surface waters. The Discharger violated Discharge Prohibition Nos. A.1 and A.2 of its WDRs. In addition to the WDR violations, the Discharger also violated the September 2007 Stipulated Judgment that required the Discharger to, among other things, prevent any future discharges of waste to surface waters.
 - b. *Circumstances:* For the larger spills totaling 3.8 million gallons, the Discharger was aware of the potential to spill because it knew it had not achieved adequate storage capacity in its pond system prior to the 2008/2009 rainy season. The Discharger had completed its Sewer Line Rehabilitation Project in 2008, but additional improvements to the collection system were needed to reduce the inflow and infiltration (I/I). The Discharger stated that the most reasonable action to reduce I/I was to continue to evaluate the collection system and conduct the necessary repairs. The Discharger completed additional I/I work in the fall of 2009, and provided a water balance showing that it had enough capacity to store all wastewater and I/I generated during a 50-year annual rainfall year. However, the winter of 2010 was less than a 5-year annual return event, and the Discharger spilled almost 2.2 million gallons. Therefore, the Discharger's I/I problem is much worse than was assumed. The Discharger was also required by the Stipulated Judgment to replace its drinking water plant by August of 2009. If it had replaced this plant in a timely manner, it would have significantly reduced the volume of backwash water discharged to the wastewater treatment plant, thereby allowing more capacity for domestic wastewater.
 - c. *Gravity of the Violations:* The Discharger failed to prevent the discharge of waste to highly accessible surface waters and creeks which are tributaries to Lake Berryessa, which supports sensitive beneficial uses, including domestic water

supply and recreation. Potential health risks from bacteria and viruses resulting from raw or inadequately treated wastewater are a serious concern for humans and wildlife habitat. In addition, the Discharger violated the Stipulated Judgment issued in 2007 for similar spills.

- d. *Susceptibility of the Discharge to Cleanup*: Due to the circumstances of the spills, once the larger spills entered surface waters, there was no practical way to clean up to avoid water quality impacts or impacts to beneficial uses. The smaller spill was contained to land and was cleaned up.
- e. *Toxicity*: The 3.8 million gallons of partially-treated wastewater that spilled into surface waters was partially dechlorinated prior to the discharge, and the 20,000 gallons of raw sewage flowed into surface waters during a rainstorm. No fish kills were reported, and Lake Berryessa itself would be expected to provide some additional dilution. Although these were large spills, the degree of toxicity from these discharges appears to be low.
- f. *Ability to Pay/Ability to Continue Business*: In contrast to many larger dischargers, Lake Berryessa Resort Improvement District serves only 187 homes. The District's operating revenue is derived solely from the rates, property taxes, and standby charges received from its 187 customers. The Napa County Board of Supervisors serves as the Resort Improvement District's Board of Directors. Because the Discharger has a limited income base, in the past it has issued bonds and been loaned money by Napa County to make improvements to the treatment facility and the collection system. The Discharger recently received an American Recovery and Reinvestment Act (ARRA) grant for the full cost to replace the drinking water treatment plant. While the District has a limited ability to pay any fines imposed, the District should be able to pay this penalty and stay in business.
- g. *Voluntary Cleanup/Degree of Cooperation*: The Discharger has been cooperative in providing required spill reports per the WDRs and the Standard Provisions and Reporting Requirements. In general, written spill reports have been complete and submitted in accordance with requirements set forth in the Standard Provisions and Reporting Requirements. The Discharger notified Central Valley Water Board staff, Napa County Environmental Management and the California Emergency Management Agency of the spills. The Discharger provided appropriate notification of the spills in accordance with the Standard Provisions and Reporting Requirements, and has been cooperative with subsequent investigations.
- h. *Prior History of Violations*: There have been four recent major wastewater spill events to Lake Berryessa: 4.1 million gallons of partially treated wastewater spilled 2005, 5.5 million gallons of partially treated wastewater spilled in 2006, 1.6

million gallons of partially treated wastewater spilled in 2009, and approximately 2.2 million gallons of treated wastewater spilled in 2010.

- i. *Degree of Culpability.* The Discharger was aware of the prohibition against discharges to surface waters. The Discharger has been pursuing rate and tax increases, assessments, and bonded capital improvement projects since 2006. Although the Discharger replaced or rehabilitated 8,000 feet of collection pipeline in 2007-2008, this action was not sufficient to reduce inflow/infiltration to the level needed to prevent spills. . The Discharger is aware of the potential penalty for wastewater system spills, as it was issued an ACL Order in 2005 in the amount of \$400,000 for wastewater spills. It appears that the only immediate action that the Discharger took prior to the 1.6 million gallon spill that occurred during the spring of 2009 was remove approximately 147,000 gallons of wastewater from the main collection tank and transport it to the Napa Sanitation District Wastewater Treatment Facility for disposal at a cost estimated at approximately \$30,000. The Discharger elected not to transport any wastewater to the Napa Sanitation District during the 2010 spills because it determined that only a limited volume of sewage could be transported, and at significant expense.
- j. *Economic Benefit.* Pursuant to under CWC section 13385(e), the minimum liability is equal to the economic benefits that the Discharger received from the acts that constitute the violation. The 2002 *Water Quality Enforcement Policy* requires that economic benefit calculations include consideration of both delayed and avoided costs. Although the Discharger has issued bonds in September 2007 to upgrade its facilities, it has yet to construct sufficient improvements to prevent further spills. The economic benefit that inured to the Discharger can be estimated based upon the cost of delaying the expansion of the sprayfields and/or making collection system improvements to decrease I/I. The existing data do not specify an exact cost of the needed repairs. Typically, for municipalities that rely on bond funding (as the Discharger has in the past), the delayed cost of performing needed upgrades can be estimated on the basis of the amount that the municipality would have to pay to service municipal bonds debt in a time period equivalent to the delay. As of November 2010, the Bloomberg average yield on a 5-year municipal bond is 1.72%. Therefore, by delaying issuance of enough bonds to fund all necessary improvements by three years (two years from the original violations that occurred in the rainy season of 08-09, and adding an additional year because improvements will not be in place for the 10-11 rainy season), the Discharger saved approximately \$21,000 in bond service payments (interest compounded monthly) by delaying the needed improvements. The Discharger also accrued avoided costs during the 2010 spill event; for example the Discharger determined it was not viable to transport wastewater to the Napa Sanitation District. The potential cost of transportation and disposal of some volume of the spilled wastewater is an avoided cost. The total administrative civil liability imposed by this Order is above this estimated cost of delayed and avoided actions.

- k. *Other Matters That Justice May Require - Staff Costs:* Staff costs to generate and process the ACL Complaint are estimated to be \$150 x 130 hours = \$19,500. An estimated additional 50 hours (\$7,500) have been spent to settle the Complaint and develop this Order.
38. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.
39. This Order constitutes a settlement of the violations cited herein. Notice of this settlement was posted on the Central Valley Water Board's website, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired. Comments were received from the Discharger and have been addressed.
40. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), on accordance with California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED THAT:

1. Lake Berryessa Resort Improvement District is hereby assessed administrative civil liability in the amount of three hundred and seventy-five thousand dollars (\$375,000).
 - a. Eight thousand three hundred dollars (\$8,300) is to be submitted in the form of two checks made payable to the *State Water Pollution Cleanup and Abatement Account* and remitted to the Central Valley Regional Water Quality Control Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, 95670. The two checks shall be submitted in accordance with the separate Payment Schedule letter.
 - b. Six thousand seven hundred dollars (\$6,700) is hereby credited to the District for the emergency actions it has undertaken in the fall of 2010, as described in Attachment A to this Order.
 - c. The remaining liability of three hundred and sixty thousand dollars (\$360,000) shall be permanently suspended pending timely submittal of the reports described below and subsequent completion of the tasks to be proposed in

these reports.

The end result of a-c, above, will be the expenditure by the Lake Berryessa Resort Improvement District of three hundred and seventy-five thousand dollars (\$375,000) on a combination of penalty payments and collection system or WWTF improvements.

2. By **30 September 2011**, Lake Berryessa Resort Improvement District shall submit a an *Inflow/Infiltration (I/I) Capacity Evaluation Report* which shall include the following:
 - a. Results of the 2010/2011 inflow/infiltration evaluation from the Berryessa Estates collection system, including flow monitoring and inspection data.
 - b. Design long-term (at least 15 year) sustainable I/I flow rates for the Berryessa Estates subdivision in terms of peak monthly I/I and total annual I/I that will be used as the design basis for capacity improvements, and to determine the I/I correction work that must be completed to reduce I/I flows to the design level.
 - c. Water balances for the WWTF that quantify the treatment, storage, and disposal capacity deficit for current development and projected 2025 development at the design long-term I/I rate. The water balances shall be prepared for both the average rainfall year and the 100-year return period total annual precipitation using the I/I rates proposed above. The I/I evaluation and water balance shall provide the basis for proposed infrastructure improvements.

3. By **30 September 2011**, Lake Berryessa Resort Improvement District shall submit a *Final Wastewater Facilities Improvements Plan* (the "Plan"). The Plan shall define all sewer system repairs, retrofits, and replacements that must be completed to reduce I/I in the Berryessa Estates subdivision collection system to the design long-term I/I rate. In addition, the plan shall describe all improvements, upgrades, and expansions of the wastewater ponds and sprayfields in order to prevent bypass of waste or spills to surface waters. The Plan shall include timelines to complete the improvements, and projected costs associated with the improvements. The Plan shall reflect all necessary improvements to:
 - a. Increase the overall storage and disposal capacity as necessary to accommodate design average dry weather flows and design long-term I/I flows during the 100-year, 365-day precipitation event.
 - b. Provide sufficient wastewater storage and disposal capacity for current connections and projected growth within the Berryessa Estates subdivision.
 - c. Ensure that the freeboard in the wastewater ponds is not less than than two feet.

- d. Prevent sanitary sewer overflows due to capacity-related issues under a 100-year annual precipitation event.
4. By **1 January 2012**, Lake Berryessa Resort Improvement District shall reach agreement with the Board in regard to a schedule for implementing the actions specified in the Plan. In no event shall the schedule extend beyond **1 January 2014**. When approved by the Central Valley Water Board, this schedule will become an enforceable part of this ACL Order. As the individual actions called for in the schedule are completed by the Lake Berryessa Resort Improvement District, the Board will permanently suspend the portion of the suspended \$360,000 liability that is associated with the completed action. Should the Lake Berryessa Resort Improvement District expend less than \$360,000 to complete all tasks called for under the Plan, the remaining balance shall be due to the Central Valley Water Board within 30 days of completion of the last task specified in the Plan. If the Central Valley Water Board and the Lake Berryessa Resort Improvement District fail to reach agreement by the above deadline regarding a reasonable schedule for implementing the actions required in the Plan, along with their associated costs, the entire suspended amount of three hundred and sixty thousand dollars (\$360,000) will become due on **31 January 2012**.
5. **Beginning 1 April 2011**, and quarterly thereafter, (i.e., on 1 January, 1 April, 1 July, and 1 October of each year) the Discharger shall submit progress reports describing the work completed to date regarding the two reports (Items 2 and 3, above) or the individual actions (Item 4, above).
6. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed and stamped by the registered professional.
7. If the Assistant Executive Officer determines that the I/I Capacity Evaluation Report, the Plan, or the individual tasks are not satisfactorily completed by their respective due dates (including any extensions approved by the Assistant Executive Officer), the Assistant Executive Officer may demand payment of the suspended liability amount still outstanding.
8. If the Discharger fails to make the payments or take any of the above actions, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order.
9. This Order is final, and shall be effective immediately upon signature.

The Assistant Executive Officer may extend the deadlines contained in this Order if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines

and makes the extension request at least 30 days in advance of the expiration of the deadline. The Discharger shall make any deadline extension request in writing. Any request for an extension not responded to in writing by the Central Valley Water Board shall be deemed denied. The Discharger must obtain written approval from the Assistant Executive Officer for any significant departures from the tasks described in the Order. Failure to obtain written approval for any significant departures will result in the assessment of the actual cost difference between the portion of the task completed in conformity with the tasks described in the ACLO and the total amount of the suspended penalty.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final 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 may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

Original signed by

KENNETH D. LANDAU, Assistant Executive Officer

24 March 2011

Date

Attachment A: Credit for Emergency Actions

gjc/alo/wsw: 23 March 2011

ATTACHMENT A

Liability Credit for Emergency Actions

Task Descriptions	Liability Credits
Turbo-mist Evaporator Motor Replacement	\$2,400
Fuel for Operation of Turbo-mist Evaporator	\$1,930
Battery for Turbo-mist Evaporator	\$125
Hose for Temporary Sprayfield	\$215
Pipe and Fittings for Temporary Sprayfield	\$390
Labor for Repair of Turbo-mist Evaporator and Setup of Temporary Sprayfield	\$1,640
Total Costs	\$6,700



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown, Jr.
Governor

24 March 2011

Donald Ridenhour
Napa County Department of Public Works
1195 Third Street, Room 201
Napa, CA 94559-3092

PAYMENT SCHEDULE FOR ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0538, LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT, NAPA COUNTY

Pursuant to Administrative Civil Liability Order R5-2011-0538 (Order), you are ordered to pay \$375,000 to the State Water Resources Control Board Cleanup and Abatement Account. Payment will resolve the violations alleged in Administrative Civil Liability Complaint R5-2010-0516. However, the Central Valley Water Board will permanently suspend collection of \$360,000 of the civil liability if the District complies with the "Hereby Ordered" section of the Order. The Order also requires payment of \$15,000 in administrative civil liability, of which \$6,700 has already been credited for emergency disposal actions. The remaining \$8,300 shall be remitted in the following manner:

The Discharger agrees to pay \$8,300 in two payments of \$4,150 each over a two month period beginning in April 2011. Each payments shall be in the form of a check made payable to the *State Water Pollution Cleanup and Abatement Account* and shall contain a reference to "ACL Order R5-2011-0538". The checks shall be remitted to the Central Valley Regional Water Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670. The first payment is due on **29 April 2011** and second payment is due on **30 May 2011**.

This letter memorializes and accepts the above payment schedule on the following conditions. If Lake Berryessa Resort Improvement District fails to make the payments in accordance with the specified deadlines without obtaining explicit approval from the Assistant Executive Officer, the Assistant Executive Officer shall demand that the remaining unpaid balance of the \$8,300 be paid with 30 days of notification of such failure. Alternatively, the Assistant Executive Officer may refer this matter to the California Attorney General to obtain compliance with the terms of this Order.

If you have any questions, please contact Wendy Wyels at (916) 464-4835.

Original signed by

KENNETH D. LANDAU
Assistant Executive Officer

cc: see next page

California Environmental Protection Agency

cc w/o enc: Russell B. Hildreth, Office of the Attorney General, Sacramento
Kenneth Greenberg, USEPA, Region 9, San Francisco
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Diane Dillon, Napa County Board of Supervisors, Napa
Steve Lederer, Napa County Department of Environmental Management, Napa
Robert Westmeyer, Napa County District Counsel, Napa
Helene Franchi, Principal Management Analyst, Napa County, Napa
Bill Jennings, California Sportfishing Protection Alliance, Stockton
Roberta Larson, Somach Simmons & Dunn, Sacramento

gjc/wsw



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown, Jr.
Governor

24 March 2011

Donald Ridenhour
Napa County Department of Public Works
1195 Third Street, Room 201
Napa, CA 94559-3092

CERTIFIED MAIL
7010 1670 0002 0652 3286

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0538, LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT, NAPA COUNTY

Enclosed for your information is Administrative Civil Liability (ACL) Order R5-2011-0538. This Order assesses three hundred and seventy five thousand dollars (\$375,000) in civil liabilities for violations of Waste Discharge Requirements (WDRs) Order R5-2008-0068.

The Order settles the \$375,000 liability as follows:

- Payment of \$15,000, of which \$6,700 has been credited for the District's emergency wastewater disposal improvements. The remaining \$8,300 may be paid in two equal installments on 30 April 2011 and 30 May 2011.
- The outstanding \$360,000 will be permanently suspended pending completion of an Inflow/Infiltration Analysis and a final Wastewater Facilities Improvement Plan, and subsequent completion of the tasks proposed in those reports. These two documents will be submitted by 30 September 2011, and will be accompanied by the District's proposal to apply the \$360,000 to specific projects designed to prevent future wastewater spills.

In order to conserve paper and reduce mailing costs, paper costs of the Order and Payment Schedule have been sent to the Discharger only. The full text versions of the documents are available on the Central Valley Water Board's website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/

If you have any questions or comments regarding the Order, or would like a paper copy, please contact Guy Childs at 916-464-4648 or at gchilds@waterboards.ca.gov.

Original signed by

WENDY WYELS, Supervisor
Compliance and Enforcement Section

Enclosure: ACL Order R5-2011-0538
Payment Schedule Letter

cc list: see next page

cc w/o enc: Russell B. Hildreth, Office of the Attorney General, Sacramento
Kenneth Greenberg, USEPA, Region 9, San Francisco
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Diane Dillon, Napa County Board of Supervisors, Napa
Steve Lederer, Napa County Department of Environmental Management, Napa
Janice Killion, Napa County Assistant Counsel, Napa
Helene Franchi, Principal Management Analyst, Napa County, Napa
Bill Jennings, California Sportfishing Protection Alliance, Stockton
Roberta Larson, Somach Simmons & Dunn, Sacramento