

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2012-0900

CALIFORNIA WATER CODE SECTION 13308 TIME SCHEDULE ORDER

REQUIRING

NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT
NAPA COUNTY
TO COMPLY WITH A TIME SCHEDULE ORDER TO COMPLY WITH
CEASE AND DESIST ORDER R5-2010-0101 AND
WASTE DISCHARGE REQUIREMENTS ORDER 95-173

This Order is issued to Napa Berryessa Resort Improvement District (hereinafter "District" or "Discharger") and is based on provisions of California Water Code (Water Code) section 13308 which authorizes the Regional Water Quality Control Board, Central Valley Region (hereinafter "Central Valley Water Board") to issue a Time Schedule Order.

The Assistant Executive Officer of the Central Valley Water Board finds that:

1. The District owns and operates a wastewater collection, treatment, and disposal system ("WWTF" or "facility") that currently serves homes at the Berryessa Highlands subdivision. Prior to October 2009, the WWTF also accepted wastewater from the former Steele Park Resort (now known as Lupine Shores), which is located on land owned by the United States Bureau of Reclamation (Reclamation). It is expected that the WWTF will accept wastewater from Lupine Shores in the future.
2. Wastewater is conveyed to the WWTF by gravity sewers, lift stations, and force mains. The WWTF is an extended aeration activated sludge plant consisting of two aeration basins, two clarifiers and three effluent holding basins. All of the basins are lined with either concrete or synthetic liners. Secondary treated disinfected wastewater is pumped to a 50,000 gallon storage tank located on a hillside at the remote effluent disposal site. The storage tank is used to gravity feed a spray irrigation system, which consists of four adjacent areas totaling approximately 60 acres. Some of the tailwater from the sprayfields drains to a tailwater pond; a pump station recycles tailwater from the pond back up to the storage tank.
3. On 23 June 1995, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 95-173, which prescribe 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.

4. Specifically, WDRs Order 95-173 Discharge Prohibition No. 1 states, “Discharges of wastes to surface waters or surface water drainage courses is prohibited.”
5. On 20 September 1996, the Central Valley Water Board issued Cease and Desist Order 96-232 (the 1996 CDO) in response to numerous wastewater spills to surface waters of Lake Berryessa. The 1996 CDO required the Discharger to make certain improvements to the wastewater treatment facility, the most important and relevant of which was to increase its storage and disposal capacity by 15 September 2000.
6. On 26 October 2006, the Board issued CDO R5-2006-0113 (the 2006 CDO). Due to the substantial and ongoing discharges of wastewater to Lake Berryessa and the failure to make the improvements required by the 1996 CDO, the 2006 CDO included a sewer connection restriction for the homes in the Berryessa Highlands. The 2006 CDO required the Discharger to complete several studies, submit reports and make the necessary improvements to reduce inflow/infiltration (I/I) and increase the Facility’s storage and disposal capacity. The Discharger submitted the reports required by the 2006 CDO. However, the Discharger failed to make any of the physical improvements by the required deadline, including the improvements needed to reduce inflow/infiltration and those needed to increase storage and disposal capacity.
7. On 23 September 2010, the Board issued CDO R5-2010-0101 (the 2010 CDO) to, in part, address substantial and ongoing discharges of wastewater to Lake Berryessa, and for the failure to construct the Facility upgrades required by both the 1996 and the 2006 CDOs. The 2010 CDO requires the Discharger to complete several tasks, to submit technical reports, and to complete the necessary improvements to address the longstanding inflow/infiltration and capacity issues. In addition, the CDO expands the connection restriction to include both the Berryessa Highlands subdivision and the Lupine Shores resort. Attachment A to this Order is the 2010 CDO that describes the tasks the District is required to complete and the relevant deadlines for their completion.
8. The Board issued the 1996, 2006, and 2010 CDOs upon a finding, among others, that a discharge of waste was taking place in violation of Discharge Prohibition No. 1 of WDRs Order 95-173.
9. The 1996, 2006, and 2010 CDOs require the District to “immediately comply with all aspects of WDRs Order 95-173 (or subsequent WDRs that rescind and replace Order 95-173).”

VIOLATIONS OF THE 2010 CEASE AND DESIST ORDER

10. On 31 December 2010, the Central Valley Water Board staff issued a Notice of Violation to the District for a spill of secondary treated wastewater to Lake Berryessa that began on 20 December 2010 when the District began operating the Zone 3 effluent sprayfield without capturing the wastewater runoff in the tailwater control pond. The decision to begin land application of wastewater without tailwater collection was due a combination of excessive I/I and insufficient wastewater storage and disposal capacity. The District reported approximately 385,824 gallons of wastewater discharged through the sprayfield as of 29 December 2010.
11. On 17 May 2012, the District submitted a letter accounting for the amount of wastewater discharged through the use of the sprayfield during the period of 17 March 2012 through 23 April 2012. As of 3 May 2012, the total amount of wastewater discharged was approximately 1.730 million gallons.
12. The Central Valley Water Board understands that until the tasks related to reducing I/I and increasing storage and capacity in the 2010 CDO are completed and the required facility upgrades are completed and WWTP is fully operational, the unauthorized discharges to Lake Berryessa will continue to occur during the winter and early spring, when secondary treated wastewater is applied to the effluent disposal sites and the tailwater control pond has insufficient capacity to contain runoff from the sprayfields.

REGULATORY CONSIDERATIONS

13. Water Code section 13308 states, in relevant part, “[i]f the regional board determines there is a threatened or continuing violation of any...cease and desist order...the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule.”
14. Water Code section 13308 subdivision (b) states, in relevant part, “[t]he amount of the penalty may not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.”
15. As a result of the events discussed in this Order, the Central Valley Water Board finds that there is a threatened and continuing violation of the 2010 CDO by the District.
16. The penalties provided under Water Code section 13308 subdivision (b) are specified below for the tasks required to achieve accelerated compliance with the tasks and facility improvements required by the 2010 CDO. The specified penalty of ten thousand dollars (\$10,000) per day for each day in which the

violation occurs has been stipulated to by the District and is not intended to punish nor redress previous violations.

17. The Central Valley Water Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition (Basin Plan) designated 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.
18. The Basin Plan designates the beneficial uses of Lake Berryessa as 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 of warm freshwater aquatic organisms; and wildlife habitat.
19. By requiring the District to comply with the 2010 CDO through an accelerated time schedule, the Central Valley Water Board staff estimates that accelerated compliance by 30 November 2013 will prevent millions of gallons of wastewater from being discharged to Lake Berryessa, providing a substantial benefit to water quality and protecting designated beneficial uses.
20. Water Code section 13267, subdivision (b) states, "[i]n 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 the 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 these 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."
21. The Discharger owns and operates the wastewater treatment facility and sprayfields. Monitoring reports and other technical reports are necessary to determine compliance with the terms of this Order, the 2010 CDO, and the WDRs. Technical or monitoring reports required by this Order and the 2010 CDO shall be submitted to the Central Valley Water Board pursuant to the requirements of Water Code section 13267.

22. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from provisions of the California Environmental Quality Act, pursuant to Section 15321 subdivision (a)(2), Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to sections 13308 and 13267 of the Water Code and all applicable laws, the Napa Berryessa Resort Improvement District, its agents, successors, and assigns shall, in accordance with the following tasks, implement the following outstanding measures and facility improvements yet to be completed and originally required in Cease and Desist Order R5-2010-0101 pursuant to the accelerated time schedule described below in Table 1. Each document shall contain the information required in the applicable paragraph of CDO R5-2010-0101.

Table 1 – Accelerated Time Schedule for CDO No. R5-2010-0101

Task	Original Date in 2010 CDO	Accelerated Date in TSO
1. <i>Final Revised I/I Assessment Report</i> (CDO R5-2010-0101 p. 15, para. 5)	1 November 2012	1 July 2012
2. <i>I/I Correction Project Completion Report</i> (CDO R5-2010-0101 p. 16, para. 6)	1 October 2014	1 October 2013
3. <i>Final Revised Wastewater Facilities Plan</i> (CDO R5-2010-0101 p. 16, para. 7)	1 November 2012	1 July 2012
4. <i>Final Collection System Improvement and Wastewater Facilities Financing Plan</i> (CDO R5-2010-0101 p. 17, para. 8)	1 November 2012	1 August 2012
5. <i>Submit Report of Waste Discharge for Revised WDRs</i> (CDO R5-2010-0101 p. 17-18, para. 9)	1 April 2013	1 July 2012
6. <i>Certify that Project Documents have been issued for bidding by prospective contractors</i> (CDO R5-2010-0101 p. 18, para. 10)	1 January 2014	1 September 2012
7. <i>Submit copy of Notice of the Award of construction contract</i> (CDO R5-2010-0101 p. 18, para. 11)	1 May 2014	1 November 2012
8. <i>Certify that Phase I construction has been completed and start-up testing started</i> (CDO R5-2010-0101 p. 18, para. 12)	1 October 2015	1 October 2013
9. <i>Certify that start-up testing completed and new WWTP is fully operational</i> (CDO R5-2010-0101 p. 18, para. 13)	1 December 2015	30 November 2013

23. All technical reports required herein that involve planning, investigation, evaluation, design, or other work requiring the proper application of engineering or geologic sciences, shall be prepared by, or under the supervision of, a California Registered Engineer or Registered Geologist (as applicable) pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1, and shall be signed by a registered professional.

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."

24. In accordance with Water Code section 13308 subdivision (c), if the Executive Officer determines that the Discharger has failed to comply with the final 30 November 2013 accelerated deadline in this Order, the Executive Officer may issue a complaint pursuant to Water Code section 13323 imposing the stipulated penalty amount described above in Paragraph 16 of this Order.
25. In the event that compliance with the final 30 November 2013 accelerated deadline in this Order becomes impossible, despite the timely good faith efforts of the District, due to circumstances beyond the control of District or its agents, employees, contractors, consultants and any other person acting on the District's behalf, and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence by the District, the District shall notify the Assistant Executive Officer in writing within thirty (30) days of the date that the District first knew of the event or circumstance that caused or would cause a violation this Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the District to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The District shall adopt all reasonable measures to avoid and minimize such delays. The determination as to whether the circumstances were beyond the reasonable control of the District and its agents will be made by the Assistant Executive Officer. Where the Assistant Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the District, due to circumstances beyond the control of the District that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the District, a new final compliance deadline shall be established. Where the Assistant Executive Officer does not concur that compliance was or is

impossible, the matter will be scheduled for hearing before the Regional Water Board and no penalty imposed pursuant to Paragraph 24 unless the Regional Water Board upholds the Assistant Executive Officer's determination. The District acknowledges that this provision does not apply to any failure by the District residents to approve an assessment and/or tax.

26. Except for the accelerated time schedule above, nothing in this Order supersedes or amends the requirements of CDO R5-2010-0101.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date that this Order is adopted, except that if the thirtieth day following the date that this Order is adopted falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control 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_notice/petitions/water_quality
or will be provided upon request.

This Order is final upon signature.

Original signed by

KENNETH D. LANDAU, Assistant Executive Officer

20 August 2012

Date