

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

PROPOSED RESOLUTION NO. R3-2023-0030

**AUTHORIZING REFERRAL TO
THE OFFICE OF THE ATTORNEY GENERAL
FOR JUDICIAL CIVIL ENFORCEMENT OF ALLEGED VIOLATIONS OF
WASTE DISCHARGE REQUIREMENTS ORDER NO. 97-26,
CLEANUP AND ABATEMENT ORDER NO. R3-2022-0077,
WATER CODE SECTION 13260 DIRECTIVE, AND
WATER CODE SECTION 13267 REPORTING REQUIREMENTS**

- A. WHEREAS, Big Basin Water Company, Inc. (Big Basin Water Company) and Thomas James Moore (Mr. Moore) (collectively, Dischargers) are the owner and operator of the Big Basin Woods Subdivision wastewater treatment plant (WWTP) located at Highway 236 and Fallen Leaf Drive, Boulder Creek, Santa Cruz County, California, Assessor's Parcel Number 083-293-01 (Site).
- B. WHEREAS, the WWTP collects and treats wastewater from the Big Basin Woods Subdivision and the nearby fire station, located approximately 2.5 miles north of Boulder Creek on Big Basin Way (Highway 236) in Santa Cruz County. According to data provided by Santa Cruz County, the WWTP could service up to 30 residential properties and the fire station.
- C. WHEREAS, the waste discharges from the WWTP is regulated by Central Coast Regional Water Quality Control Board (Central Coast Water Board) Order No. 97-26, *Waste Discharge Requirements for Big Basin Water Company, Inc., Big Basin Woods Subdivision, Santa Cruz County* (Permit), as amended by Resolution No. R3-2013-0052 (Resolution) and Revised Standard Provisions and Reporting Requirements (Revised Standard Provisions) adopted therein. The WWTP system consists of an activated sludge treatment plant and a leachfield disposal system. The treated wastewater is pumped to the leachfield for disposal approximately one-half mile south and uphill of the WWTP.
- D. WHEREAS, a significant portion of the residential homes served by the WWTP and portions of the WWTP were damaged or destroyed in the CZU lightning complex wildfire in August 2020 (2020 wildfire). The WWTP suffered a long-term loss of power, and several vital pieces of process and transmission equipment were destroyed. After the 2020 wildfire, Mr. Moore informed Central Coast Water Board staff that the WWTP was without power and could not operate. Mr. Moore stated that collected wastewater would be pumped from the WWTP and properly disposed of while the electrical system was being repaired.

- E. WHEREAS, the WWTP has and continues to receive wastewater from surviving and/or rebuilt homes in the community and a nearby fire station since the 2020 wildfire.
- F. WHEREAS, the Central Coast Water Board issued a [directive](#)¹ pursuant to California Water Code (Water Code) section 13260 requiring Big Basin Water Company to submit a report of waste discharge by June 20, 2022, to enroll in the *State Water Resources Control Board General Waste Discharge Requirements for Small Domestic Wastewater Treatment Systems*, Order WQ 2014-0153-DWQ, and update the WWTP's regulatory coverage. Central Coast Water Board staff documented Big Basin Water Company's failure to submit the report of waste discharge in a [January 19, 2023 notice of violation](#) (NOV)². To date, Big Basin Water Company has not submitted the report of waste discharge.
- G. WHEREAS, Santa Cruz County Mosquito and Vector Control Division inspected the WWTP on August 30, 2022, and observed dense breeding of mosquitos in the basins at the WWTP.
- H. WHEREAS, Central Coast Water Board staff inspected the WWTP on September 22, 2022, and observed that the WWTP was inoperable and that the WWTP basins were full of raw sewage. Central Coast Water Board staff documented Permit violations in a [November 10, 2022 NOV](#)³ issued to Big Basin Water Company, including but not limited to, unauthorized discharges of waste to areas not designated by the Permit, creation of a nuisance, failure to prevent the formation of habitat for carriers of pathogenic microorganisms, failure to properly operate and maintain the WWTP, failure to have a stand-by generator at the Site, failure to submit required reports, failure to have necessary safeguards in place, and failure to have an appropriately certified operator operating the WWTP.
- I. WHEREAS, Central Coast Water Board staff coordinated and met with Santa Cruz County Department of Public Works (DPW) staff on October 24, 2022, to discuss the condition of the WWTP. On the day of the October 24, 2022 meeting, Central Coast Water Board staff learned that Santa Cruz County DPW had visited the WWTP on September 15, 2021, and at that time Santa Cruz County DPW staff had observed raw sewage overflowing onto the ground from one of the WWTP basins.

¹ The May 20, 2022 directive to submit a report of waste discharge can be found here:

[https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/9857831656/Big Basin Woods Subdivision 13260.pdf](https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/9857831656/Big%20Basin%20Woods%20Subdivision%2013260.pdf)

² The January 19, 2023 notice of violation for failure to submit a report of waste discharge can be found here:

https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/3129529654/Big%20Basin%2013260%20NOV.pdf

³ The November 10, 2022 notice of violation for permit violations can be found here:

[https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2583234488/11_10_2022_WDR_Big Basin Woods Nov.pdf](https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2583234488/11_10_2022_WDR_Big%20Basin%20Woods%20Nov.pdf)

- J. WHEREAS, the Dischargers have generally been unresponsive to Central Coast Water Board staff's requests for documentation and the Dischargers continue to be out of compliance with Central Coast Water Board directives.
- K. WHEREAS, Big Basin Water Company has failed to submit all self-monitoring reports required by the Permit pursuant to Water Code section 13267 since a quarterly self-monitoring report was submitted on October 20, 2019. Central Coast Water Board staff documented Big Basin Water Company's failure to submit quarterly self-monitoring reports in NOVs issued to Big Basin Water Company on [May 31, 2022](#)⁴, and [November 10, 2022](#)⁵.
- L. WHEREAS, Mr. Moore is operating the WWTP without certification from the State Water Board Office of Operator Certification. Since 2013, Mr. Moore has operated the WWTP under an expired grade II operator certification. A grade III certified operator must operate the WWTP as of October 2022.
- M. WHEREAS, the State Water Board Office of Enforcement issued a [January 9, 2023 NOV](#)⁶ to the Dischargers determining that Big Basin Water Company is in violation of Wastewater Operator Certification Regulations by failing to maintain a Chief Plant Operator at the correct grade level, employing operators without a valid certificate, and willfully or negligently violating waste discharge requirements.
- N. WHEREAS, the Central Coast Water Board is a state agency whose primary authority under the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.) is regulating, enforcing, and ensuring the quality of the waters of the state.
- O. WHEREAS, groundwater underlying and near the WWTP are waters of the state. An unnamed ephemeral watercourse is located approximately 70 feet south of the WWTP basins. The unnamed ephemeral watercourse is a tributary to Boulder Creek, located approximately 170 feet east and across Highway 236 from the WWTP basins. The ephemeral watercourse and Boulder Creek are waters of the state. Boulder Creek is also a water of the United States.

⁴ The May 31, 2022 notice of violation for failure to submit reports can be found here: [https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2393857657/Big Basin Water Non-Reporting NOV Letter.pdf](https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2393857657/Big_Basin_Water_Non-Reporting_NOV_Letter.pdf)

⁵ The November 10, 2022 notice of violation for permit violations including failure to submit reports can be found here: https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2583234488/11_10_2022_WDR_Big_Basin_Woods_Nov.pdf

⁶ The January 9, 2023 notice of violation of Wastewater Operator Certification Regulations can be found here: [https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8545377433/3_Enclosure\(1\).pdf](https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/8545377433/3_Enclosure(1).pdf)

- P. WHEREAS, raw sewage contains pollutants that could cause or contribute to exceedances of water quality standards when introduced to receiving waters.
- Q. WHEREAS, by receiving wastewater into a nonfunctioning wastewater treatment system and allowing raw sewage to overflow the WWTP basins onto the ground, the Dischargers are causing or threatening to create a condition of pollution because the overflowing raw sewage is altering or may alter the water quality to a degree that unreasonably affects the beneficial uses of the groundwater underlying and near the WWTP, the unnamed ephemeral watercourse, and Boulder Creek. The Dischargers are causing, or threatening to cause, a condition of nuisance by allowing the stagnant WWTP basins to become a mosquito breeding habitat, which poses an imminent threat to public health.
- R. WHEREAS, the Central Coast Water Board's Executive Officer issued [Cleanup and Abatement Order No. R3-2022-0077](#)⁷ (CAO) pursuant to California Water Code (Water Code) section 13304 to the Dischargers on November 21, 2022, requiring the Dischargers to: (1) immediately reduce wastewater levels in all the WWTP basins so that at all times there is a minimum of two feet of freeboard and more if necessary to prevent basin overflow(s) and to not create a condition of pollution or nuisance; (2) not accept any additional wastewater from properties other than the properties currently sending wastewater to the WWTP as of November 21, 2022, until the WWTP is in compliance with Permit conditions or an alternative plan for the treatment and/or disposal of wastewater from the subdivision has been approved by the Central Coast Water Board; (3) abate any and all conditions that enable mosquito breeding; and (4) pursuant to Water Code section 13267, submit weekly technical reports starting on Friday, November 25, 2022, and every Friday thereafter, on the status of cleanup and abatement, including, at a minimum: (a) daily influent flow to the WWTP, (b) photo documents of wastewater levels in all WWTP basins, (c) freeboard measures from all WWTP basins, (d) pumping records from the pumping service provider, (e) actions taken to prevent mosquito breeding habitat, (f) weekly rain totals received and predicted for the following week, and (g) photos and freeboard measurements before, during, and after rain events.
- S. WHEREAS, to date, the Dischargers have failed to comply with the CAO. Based on information provided by the Dischargers and other public agencies, the Dischargers have violated CAO Requirement 1. Due to the Dischargers failure to comply with CAO Requirement 1, raw sewage has overflowed the WWTP basins on numerous occasions. The Dischargers have also violated CAO Requirement 4, by failing to submit complete and timely weekly technical reports as required pursuant to Water Code section 13267.⁸ Central Coast Water Board staff

⁷ Cleanup and Abatement Order No. R3-2022-0077 can be found here: https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2813908219/Big_Basin_Water_Company_Inc_CAO_final.pdf

⁸ Mr. Moore has submitted three incomplete and late reports for the November 25, 2022; March 3, 2023; and March 17, 2023 weekly report submittal requirements.

documented CAO violations in NOVs issued to the Dischargers on [November 29, 2022](#)⁹, and [January 19, 2023](#)¹⁰.

- T. WHEREAS, Water Code section 13261 specifies potential consequences for the failure to furnish a report or pay a fee required under Water Code section 13260.
- U. WHEREAS, Water Code section 13262 allows the Central Coast Water Board to request that the Office of the Attorney General (Attorney General) petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with Water Code section 13260 to comply therewith.
- V. WHEREAS, Water Code section 13268 specifies potential consequences for the failure to submit technical reports as required by Water Code section 13267, subdivision (b).
- W. WHEREAS, Water Code section 13304, subdivision (a), allows the Central Coast Water Board to request that the Attorney General petition the superior court to issue an injunction to compel dischargers to comply with an order issued pursuant to Water Code section 13304.
- X. WHEREAS, Water Code section 13350, subdivision (d), allows the court to impose civil liability up to fifteen thousand dollars (\$15,000) for each day the violation of a cleanup and abatement order issued pursuant to Water Code section 13304 occurs. Water Code section 13350 also allows the Central Coast Water Board to request that the Attorney General petition the superior court to impose, assess, and recover administrative civil liability for violations of cleanup and abatement orders issued pursuant to Water Code section 13304.
- Y. WHEREAS, Water Code section 13361 requires the Attorney General, at the request of the Central Coast Water Board, to bring every civil action brought under the provisions of Water Code Division 7 in the name of the people of the State of California and any of those actions relating to the same discharge may be joined or consolidated.
- Z. WHEREAS, all enforcement options other than referral to the Attorney General and any resulting judicial relief have been considered. Given the failing condition of the WWTP and the Dischargers history of noncompliance with numerous administrative enforcement actions and regulatory requirements issued by the

⁹ The November 29, 2022 notice of violations of the cleanup and abatement order can be found here: https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/2921613395/4_Enclosure.pdf

¹⁰ The January 19, 2023 notice of violation for violations of the CAO can be found here: https://documents.geotracker.waterboards.ca.gov/regulators/deliverable_documents/4099210441/BigBasin CAO NOV 2.pdf

State Water Board and Central Coast Water Board, judicial enforcement of the Water Code is the most appropriate and efficient option. Judicial enforcement of the Water Code allows for the assessment of higher maximum civil liabilities, if appropriate, as well as injunctive relief, the appointment of a receiver, and the issuance of a consent judgment that can contain broader and more specific requirements than an administrative enforcement action and/or settlement. The ability to pursue injunctive relief, receivership, and/or a consent judgment would allow the Central Coast Water Board, through the Attorney General, to place the Dischargers under a judicially enforceable timeline to comply with the CAO, the Water Code section 13260 Directive, and Permit requirements. Judicial enforcement will also allow the Central Coast Water Board, through the Attorney General, to coordinate with the State Water Board if and/or when the State Water Board files its own lawsuit for violations associated with Big Basin Water Company's public drinking water system.

AA. WHEREAS, Water Code section 13350, subdivision (g), requires the Central Coast Water Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Attorney General to petition a court to impose civil liability under Water Code section 13350. On March 28, 2023, notice was given to the Dischargers regarding this hearing and were given a chance to comment on the proposed Resolution in writing in advance of the hearing. On April 20, 2023, the Central Coast Water Board held such a hearing in compliance with Water Code section 13350, subdivision (g).

NOW THEREFORE BE IT RESOLVED THAT:

1. The Central Coast Water Board hereby authorizes the Executive Officer to request that the Office of the Attorney General seek civil liabilities and costs under the Water Code, including, but not limited to, Water Code sections 13261, 13268, 13304, and 13350, bring other applicable causes of action, and/or seek other relief including an injunction under Water Code sections 13304 or appointment of a receiver pursuant to Code of Civil Procedure section 564, as may be appropriate against Big Basin Water Company and/or Thomas J. Moore.
2. The Central Coast Water Board hereby authorizes the Executive Officer, Assistant Executive Officer and Central Coast Water Board staff and its attorneys to participate in any settlement discussions regarding the resolution of the violations at issue. The Central Coast Water Board retains its authority to approve any proposed settlement of the alleged violations.

I, Matthew T. Keeling, Executive Officer, hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, at its regular meeting on April 20-21, 2023.

Matthew T. Keeling
Executive Officer