

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

**STAFF REPORT FOR REGULAR MEETING OF APRIL 20-21, 2023**

Prepared on March 27, 2023

**ITEM NUMBER:** 6

**SUBJECT:** PROPOSED RESOLUTION TO REFER BIG BASIN WOODS SUBDIVISION WASTEWATER TREATMENT PLANT MATTER FOR FORMAL ENFORCEMENT TO THE CALIFORNIA ATTORNEY GENERAL

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**ACTION:** Adopt Proposed Resolution No. R3-2023-0030

**SUMMARY**

This staff report provides background and a summary of various noncompliance issues associated with the operation of the Big Basin Woods Subdivision wastewater treatment plant (Big Basin Woods Subdivision WWTP or WWTP) and includes a recommendation from Central Coast Regional Water Quality Control Board (Central Coast Water Board) Prosecution staff<sup>1</sup> to adopt the proposed Resolution No. R3-2023-0030 (Resolution) authorizing referral to the Office of the Attorney General of the State of California (Attorney General). Adoption of the proposed Resolution authorizes the Attorney General to pursue judicial enforcement against Big Basin Water Company, Inc. (Big Basin Water Company) and Thomas James Moore (Mr. Moore) for alleged violations of waste discharge requirements, a cleanup and abatement order, a California Water Code (Water Code) section 13260 directive, and various Water Code section 13267 reporting requirements. Central Coast Water Board Prosecution staff recommends referral to the Attorney General to address ongoing unauthorized discharges of waste via judicial enforcement because the Attorney General has a wider range of enforcement mechanisms to address the noncompliance. The Central Coast Water Board Prosecution staff also recommends the Attorney General seek a civil liability that provides a meaningful deterrent to future violations by Big Basin Water Company and

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<sup>1</sup> Prosecution staff consists of staff from the Central Coast Water Board enforcement program, Central Coast Water Board Waste Discharge Requirements program, and State Water Board Office of Enforcement.

Mr. Moore and the regulated community for failing to comply with regulatory requirements issued by the Central Coast Water Board.

## **DISCUSSION**

### **Background**

Big Basin Water Company and Mr. Moore (collectively, Dischargers) are the owner and operator of the Big Basin Woods Subdivision WWTP located at Highway 236 and Fallen Leaf Drive, Boulder Creek, Santa Cruz County. The waste discharge from the privately-owned-for-profit WWTP is regulated by Central Coast Water Board Waste Discharge Requirements Order No. 97-26, *Waste Discharge Requirements for Big Basin Water Company, Inc., Big Basin Woods Subdivision, Santa Cruz County* (Permit). The WWTP collects and treats wastewater from the Big Basin Woods Subdivision and a nearby fire station. According to data provided by Santa Cruz County, the WWTP could service up to 30 residential properties and the fire station. As of the date of this staff report, the WWTP currently handles wastewater from three homes and the nearby fire station.

The WWTP is permitted to treat and dispose up to 7,000 gallons of treated wastewater per day. The WWTP system consists of an activated sludge treatment plant and a leachfield wastewater disposal system on a 2.5-acre disposal area. The WWTP is designed for treated wastewater to be pumped to the leachfield for disposal approximately one-half mile south and uphill of the WWTP.

A significant portion of the homes in the Big Basin Woods Subdivision served by the WWTP and portions of the WWTP were damaged or destroyed in the CZU lightning complex wildfire in August 2020 wildfire. The WWTP has and continues to receive wastewater from surviving and/or rebuilt homes in the community and the nearby fire station since the August 2020 wildfire. The Dischargers are collecting untreated wastewater at the WWTP, providing no treatment, and the WWTP basins have overflowed on numerous occasions and are posing an imminent threat to waters of the state and waters of the United States. Additionally, the Dischargers are causing, or threatening to cause, a condition of nuisance because stagnant wastewater becomes a mosquito breeding habitat, which also poses an imminent threat to public health.

### **Summary of Noncompliance**

Big Basin Water Company has failed to meet numerous Permit requirements, including but not limited to, unauthorized discharges of untreated 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 on site, failure to have an appropriately certified operator operating the WWTP, and failure to submit required quarterly self-monitoring reports. Additionally, Big Basin Water Company has failed to submit a required permit application for enrollment in the statewide general permit for small domestic wastewater treatment systems. Big Basin Water Company needs to enroll in the statewide general permit since the Permit issued in 1997 needs to be updated to

ensure operation of the WWTP is more protective of water quality. Additionally, Mr. Moore is currently operating the WWTP without an operator certification from the State Water Resources Control Board (State Water Board) Office of Operator Certification.

To address the imminent threat to human health and water quality, and abate the condition, or threatened condition, of pollution or nuisance, the Central Coast Water Board's Executive Officer issued an emergency cleanup and abatement order (CAO) in November 2022, to prevent the accumulation and unauthorized discharges of raw sewage. The CAO includes requirements to maintain a minimum level of freeboard in the WWTP basins and for the Dischargers to submit weekly reports. Since the issuance of the CAO, the WWTP basins have continued to overflow on numerous occasions and the Dischargers have failed to submit timely and complete weekly reports since CAO issuance (18 weekly reports as of March 27, 2023)<sup>2</sup>.

Over the past year, Central Coast Water Board and State Water Board staff have documented multiple Water Code violations in notices of violation issued to Big Basin Water Company and/or Mr. Moore. Big Basin Water Company also owns and operates a public drinking water system located in Boulder Creek, Santa Cruz County, that is regulated by the State Water Resources Control Board (State Water Board), Division of Drinking Water (Division of Drinking Water). Big Basin Water Company provides drinking water to approximately 1,120 people through 482 service connections, including the residents in the Big Basin Woods Subdivision. The State Water Board Division of Drinking Water has issued several enforcement actions and fines against Big Basin Water Company since 2019 for various violations associated with the drinking water system. The State Water Board Division of Drinking Water is recommending appointment of a receiver to assume control over the drinking water system due to the continued failure of Big Basin Water Company to properly operate the drinking water system. The enforcement actions to address Big Basin Water Company's noncompliance with the drinking water system and WWTP are separate actions. This staff report and proposed Resolution is associated with WWTP noncompliance issues only.

### **Inter and Intra Agency Coordination**

The Central Coast Water Board and State Water Board have and continue to closely coordinate with Santa Cruz County (various County staff and with Supervisor McPherson) and the California Public Utilities Commission regarding the WWTP deficiencies. All the agencies have the shared goal to reach a solution within each entities' respective areas of authority to appropriately treat and dispose of wastewater from current and future occupants of homes and the fire station in the Big Basin Woods Subdivision.

Central Coast Water Board Prosecution staff have coordinated with Santa Cruz County and the California Department of Fish and Wildlife to share findings from inspections of

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<sup>2</sup> Mr. Moore submitted three incomplete and late reports for the November 25, 2022, March 3, 2023, and March 17, 2023 reporting requirements.

the WWTP, including observations of unauthorized discharges of raw sewage overflowing from the WWTP basins on multiple occasions. In December 2022 and January 2023, Santa Cruz County and California Office of Emergency Services conducted some emergency pumping of the wastewater in the full WWTP basins due to the significant rain events. Central Coast Water Board staff also received two pumping records that show the Big Basin Water Company removed approximately 10,000 gallons of wastewater on March 2-3, 2023; and approximately 2,000 gallons on March 24, 2023. However, the volumes of wastewater pumped out of the WWTP basins were not conducted on a regular basis to prevent overflows on numerous occasions.

### **Outreach to Big Basin Woods Subdivision Community**

Central Coast Water Board program staff conducted a virtual public meeting on December 7, 2022, to property owners of the Big Basin Woods Subdivision, CalFire, and Boulder Creek Fire Department. Supervisor Bruce McPherson was also present at the public meeting and provided opening remarks and provided his support to address the WWTP issues. Central Coast Water Board staff provided an overview of the various agency roles that were in attendance including County of Santa Cruz, California Public Utilities Commission, and Division of Drinking Water. Central Coast Water Board staff also shared information on the WWTP overflows and risks, what authorities the Central Coast Water Board has to regulate wastewater, actions that had been taken to date at the WWTP, and what short-term and long-term solutions could be implemented to address the community's wastewater needs. The Central Coast Water Board also provided contact information to provide ongoing access for members of the public to ask questions and express concerns to our staff.

### **Referral for Enforcement to California Attorney General**

Central Coast Water Board Prosecution staff have dedicated significant staff resources to address the noncompliance issues associated with the WWTP operations. At this time, Central Coast Water Board Prosecution staff is recommending a referral to the Attorney General to prevent future unauthorized discharges and violations that impair the Central Coast Water Board's ability to perform its statutory or regulatory functions, seek a civil liability that provides a meaningful deterrent to future violations by the Dischargers and regulated community, and to ensure that no competitive economic advantage is attained through noncompliance.

Adoption of the proposed Resolution, included as Attachment 1 to this staff report, approves a formal referral to the Attorney General to pursue judicial enforcement, including, but not limited to, imposition of penalties and costs pursuant 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 Mr. Moore.

Water Code sections 13350 specifies civil liabilities for violations of a cleanup and abatement order. Prior to requesting the Attorney General to petition the superior court

to impose civil liability pursuant to Water Code section 13350, the Central Coast Water Board must first hold a public hearing with due notice of the hearing given to all affected persons. On March 28, 2023, notice was given to the Dischargers regarding the April 20-21, 2023, Central Coast Water Board hearing in Watsonville and were given a chance to submit written comments on the proposed Resolution in advance of the hearing. The Central Coast Water Board can file a lawsuit that includes imposition of judicial liability or a consent judgment seeking the appointment of a receiver for the WWTP, after the Central Coast Water Board provides notice and holds a public meeting.

### **Analysis and Basis for Recommendation**

Given the failing condition of the WWTP and the Dischargers' noncompliance with numerous enforcement actions by the Central Coast Water Board and State Water Board, the Dischargers are either unwilling or unable to run the WWTP in compliance with their statutory and regulatory obligations. Judicial enforcement will be more effective than administrative enforcement for the following reasons:

#### *Judicial Enforcement Allows More Appropriate Maximum Civil Liability Limits*

Judicial enforcement allows greater penalties to be imposed under Water Code sections 13261, 13268, 13304, and 13350. For example, for each day a violation of a cleanup and abatement order issued pursuant to Water Code section 13304 occurs, Water Code section 13350 allows the Central Coast Water Board to impose civil liability up to five thousand (\$5,000) for each day and allows the court to impose civil liability up to fifteen thousand dollars (\$15,000) for each day.

Central Coast Water Board Prosecution staff believes that the imposition of higher civil liabilities through judicial enforcement is warranted for the following reasons: (1) the Dischargers are causing or threatening to create a condition of pollution or nuisance despite the Central Coast Water Board's issuance of a cleanup and abatement order; (2) overflowing raw sewage is altering or may alter water quality to a degree that unreasonably affects the beneficial uses of waters of the State, is causing or threatening to cause a condition of nuisance that poses an imminent threat to public health; (3) Big Basin Water Company is willfully and/or negligently violating Permit requirements; (4) Big Basin Water Company is willfully and/or negligently violating a directive to submit an application for enrollment under a more updated permit; (5) Mr. Moore is willfully and/or negligently operating the WWTP without certification from the State Water Board Office of Operator Certification; and (6) provides a meaningful deterrent to future violations by the Dischargers and the regulated community and ensures that no competitive economic advantage is attained through noncompliance.

The State Water Board [2017 Water Quality Enforcement Policy](#)<sup>3</sup> seeks to establish both specific and general deterrence. Central Coast Water Board Prosecution staff believes that higher civil liability, if warranted, will specifically deter the Dischargers from: causing future unauthorized discharges; continuing to violate the CAO; continuing to operate the WWTP without proper operator certification; continuing to violate Permit requirements; and failing to apply for coverage under an updated permit. Higher civil liabilities will also encourage the Dischargers to take the necessary steps and incur the necessary expenses to prevent future unauthorized discharges and to operate the WWTP in accordance with the Permit. Additionally, Central Coast Water Board Prosecution staff believes a higher civil liability than the Central Coast Water Board can impose administratively will send the appropriate message to compliant dischargers that those who are noncompliant will not gain a competitive economic advantage.

#### *Judicial Enforcement Allows Injunctive Relief and Consent Judgment Options*

Judicial enforcement of the Water Code allows for injunctive relief and the issuance of a consent judgment. Injunctive relief is a remedy which restrains a person from doing certain acts or requires a person to act in a certain way (i.e., comply with a cleanup and abatement order) and prevents future noncompliance. Violations of certain judicially imposed injunctions can be punished as contempt of court. A consent judgment is a judgment issued by a judge based on an agreement between the parties to a lawsuit; a judge therefore effectively approves the parties' settlement. Any settlement considered by the Central Coast Water Board resolves only administrative civil liability for Water Code violations. In contrast, a consent judgment can contain broader and more specific terms to which the parties agree (i.e., the appointment of a receiver or suspended penalties that will be judicially imposed if a party fails to comply with the agreement). The ability to pursue injunctive relief 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 to submit a permit application, and Permit requirements.

#### *Judicial Enforcement Allows for Potential Appointment of Receiver*

Judicial enforcement of the Water Code allows for the potential appointment of a receiver, a person appointed by a judge to take charge of and manage a company on a temporary basis. During receivership, Big Basin Water Company would continue to own the company, but the judge appoints a receiver to run all or a part of the company's business under the judge's supervision until Big Basin Water Company comes into compliance. For example, the Attorney General could file a lawsuit seeking, among other remedies, appointment of a receiver to take charge of and manage WWTP assets and operations until the WWTP can function in compliance with requirements issued by the Central Coast Water Board.

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<sup>3</sup> State Water Board, 2017 Water Quality Enforcement Policy, effective October 5, 2017, [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

*Judicial Enforcement Allows Better Opportunity for Inter-Agency Coordination*

Judicial enforcement of the Water Code provides additional inter-agency coordination opportunities and potential consolidation of cases. For example, if the Attorney General files a lawsuit at the request of the State Water Board for the drinking water side of Big Basin's business, the Attorney General could seek consolidation of the Central Coast Water Board's case with the State Water Board's Division of Drinking Water case. Consolidation could be an effective and efficient option, particularly if the remedies sought involve application for receivership because the same judge could appoint one receiver to manage and control all of Big Basin Water Company's operations.

**Alignment with Enforcement Program and Central Coast Water Board Priorities**

This action to refer the Big Basin Woods Subdivision WWTP matter to the Attorney General aligns with [Central Coast Water Board enforcement priorities](#)<sup>4</sup> because it addresses violations that pose an immediate and significant threat to water quality and have the potential to result in significant detrimental impacts to human health and the environment and addresses violations involving noncompliant dischargers that may realize a significant competitive economic advantage over compliant members of the regulated public.

*Human Right to Water and Environmental Justice*

The Big Basin Woods subdivision is not considered a disadvantaged community and is not located in an area with a low pollution burden. The Big Basin Water Company is privately owned and not considered disadvantaged.

*Climate Change*

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. Sanitary sewer systems are subject to increased infiltration and inflow due to larger and/or higher-intensity storm events as a result of climate change. Specifically, Santa Cruz mountains, in the recent months, have experienced multiple high-intensity storm events. Therefore, proper operation and maintenance of the WWTP and compliance with updated permit requirements is a necessity to better protect human health and the environment.

Additionally, the Central Coast is seeing more frequent wildfires resulting from climate change. The Big Basin Woods Subdivision and WWTP were impacted by the CZU lightning complex wildfire in August 2020. The Big Basin Woods Subdivision community members are wildfire victims and faced with the challenge of rebuilding their homes and community. The community members need a properly functioning WWTP to address

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<sup>4</sup> Central Coast Water Board enforcement priorities are at the following web address: [https://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/enforcement/](https://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/) and the staff report that describes the annual update of the Central Coast Water Board enforcement program priorities is available at: [https://www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2021/oct/item9\\_stfrpt](https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2021/oct/item9_stfrpt)

wastewater treatment and disposal as additional homes become occupied in the Big Basin Woods Subdivision.

### **Notification of Hearing and Opportunity to Comment**

On March 29, 2023, notice was given to interested persons<sup>5</sup> regarding the April 20-21, 2023 Central Coast Water Board hearing in Watsonville, and were given a chance to submit written comments on the proposed Resolution in advance of the hearing.

### **CONCLUSION**

The recommendation to refer the Big Basin Woods Subdivision WWTP matter to the Attorney General aligns with Central Coast Water Board enforcement priorities and State Water Board 2017 Water Quality Enforcement Policy. Additionally, judicial enforcement will be more effective than administrative enforcement. This action will support an effective solution to protect water quality and public health and is necessary to achieve the general deterrence needed to encourage the regulated community to anticipate, identify, and correct potential noncompliance issues before they occur.

### **RECOMMENDATION**

The Central Coast Water Board has the following options in consideration of this item:

1. Adopt proposed Resolution and refer matter to the Attorney General for judicial enforcement.
2. Reject proposed Resolution and direct the Central Coast Water Board Assistant Executive Officer to pursue administrative civil liability to resolve violations of the CAO, Permit requirements, and/or other related violations pursuant to the authority provided by the Water Code.
3. Reject proposed Resolution and direct Central Coast Water Board program staff to continue to work with the Dischargers to come into compliance with Permit requirements and other regulatory requirements issued by the Central Coast Water Board.
4. Direct Central Coast Water Board enforcement and program staff to pursue both options 2 and 3.
5. Direct Central Coast Water Board staff to minimize efforts on Big Basin Water Company noncompliance issues to work on other high priority work.

Central Coast Water Board Prosecution staff recommends that the Central Coast Water Board choose option 1 to adopt the proposed Resolution referring Big Basin Water Company's and Mr. Moore's violations to the Attorney General for judicial enforcement. Administrative civil liabilities for violations of the CAO, Permit, and/or other related violations will result in assessment of penalties but limit the Central Coast Water

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<sup>5</sup> Property owners in the Big Basin Woods Subdivision, CalFire, Boulder Creek Fire Department, Santa Cruz County, California Department of Fish and Wildlife, City of Santa Cruz, California Public Utilities Commission, and other known interested parties.



Board's ability to address the ongoing violations and the potential for appointing a receiver to properly manage the WWTP.

**ATTACHMENT**

Proposed Resolution No. R3-2023-0030

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