

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
LAKE ARROWHEAD COMMUNITY SERVICES)
DISTRICT)
For Review of Administrative Civil)
Liability Order No. 6-87-147 of the)
California Regional Water Quality)
Control Board, Lahontan Region.)
Our File No. A-520.)

ORDER NO. WQ 88-10

BY THE BOARD:

On November 13, 1987 the Regional Water Quality Control Board, Lahontan Region (Regional Board) adopted Administrative Civil Liability Order No. 6-87-147 (the Order). The Order imposed administrative civil liability in the amount of \$5,000 against the Lake Arrowhead Community Services District (the District) for violation of Waste Discharge Requirements Order No. 6-83-103 and for violation of a discharge prohibition in the Water Quality Control Plan for the South Lahontan Basin. The District has petitioned the State Board for review of the Order, requesting that it be set aside.

I. BACKGROUND

The District operates a domestic wastewater treatment plant. The plant discharges secondary-level effluent to a 10-mile outfall line which conveys it to a 210 acre site where it is used for spray irrigation of alfalfa. The discharge is regulated

under Waste Discharge Requirements Order No. 6-83-103 (the WDR's) which prohibits discharge of wastewater except to designated disposal sites.¹ In addition, the Water Quality Control Plan for the South Lahontan Basin (Basin Plan) contains a discharge prohibition which prohibits the discharge of waste in the Deep Creek Watershed above an elevation of 3,200 feet.

On August 20, 1987, District staff informed Regional Board staff that its effluent outfall line would need to be shut down on August 26 for installation of a valve assembly for construction of the outfall line for a new treatment plant. On August 26, 1987, Regional Board staff received an anonymous report that wastewater from a District outfall line had been discharged to the ground surface.

The Regional Board record reveals the following information regarding the discharge:

Approximately 5,000 gallons of chlorinated secondary effluent had been collected in an unlined pit constructed for the valve installation. The District had a tank truck on site to collect the effluent and carry it to an approved disposal location. Nonetheless, District consultant, Ralph Wagner, who is

¹ The pertinent provisions of the WDR's are:

"A.3. The discharge of wastewater except to the designated disposal sites is prohibited.

"D.1. There shall be no discharge, bypass or diversion of raw or partially treated sewage, sewage sludge, grease or oils from the collection, transport, treatment or disposal facilities to adjacent land areas or surface waters."

also a member of the Regional Board, advised District staff to pump the effluent through a drainage channel to a nearby meadow. Based on Wagner's advice, District staff did so. The meadow was located at an elevation above 3,200 feet.

The Regional Board found that the District had violated Waste Discharge Requirements Order No. 6-83-103 and the prohibition in the Basin Plan. They ordered the District to pay administrative civil liability in the amount of \$5,000 under Water Code Section 13350.

II. CONTENTIONS AND FINDINGS

1. Contention: The District contends that administrative civil liability may not be imposed in this case unless the Regional Board proves that the discharge caused a "condition of pollution or nuisance". (Water Code Section 13350(a).) The Regional Board record contains no evidence of "condition of pollution or nuisance".

Finding: There is no doubt the District violated its waste discharge requirements and the Basin Plan. The District representatives intentionally discharged effluent to the ground in clear violation of the WDR's and contrary to a discharge prohibition in the Basin Plan. Declarations submitted by the District indicate that its staff and management knew that such discharge was improper. However, based upon the specific record

before us, administrative civil liability is not a remedy available in this case.

The pertinent provisions of Water Code Section 13350 provide:

"(a) Any person who ... (2) in violation of any waste discharge requirement or other order or prohibition issued, reissued, or amended by a regional board or the state board intentionally or negligently discharges waste, or causes or permits water to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance ... may be liable civilly in accordance with subdivision (d), (e) or (f)."

Section 13350 requires that two conditions must be met before administrative civil liability may be imposed. First, there must be a discharge in violation of waste discharge requirements or a prohibition. Second, the discharge must create a condition of pollution or nuisance. As discussed above, the first requirement has been established here. The second has not.

The Regional Board record does not contain evidence showing that the discharge created a condition of pollution (there is no claim that there was no condition of nuisance).

Water Code Section 13050(1) defines "pollution" as:

"An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses...."

While it is likely that the effluent reached ground water, there is no evidence that it unreasonably affected the water for beneficial use.

Soils in the area of the discharge consist of fine- to medium-grained decomposed granite. The soil is underlain by fractured granite. The percolation rate is approximately 2.1 minutes per inch. There are no physical data that establish whether the wastewater reached ground water. Depth to ground water is uncertain. However, because of the importance of macropore transport in fractured granite systems, it is reasonable to conclude that at least some of the wastewater reached groundwater.

Nonetheless, the record does not contain any specific chemical analysis of the wastewater. Typically, chlorinated secondary effluent discharge from the District's outfall contains approximately 35 mg/l BOD, 63 mg/l COD, 26 mg/l total organic carbon, and 21 mg/l nitrate plus kjeldahl nitrogen. The only one of these parameters for which a drinking water standard exists is nitrate nitrogen with a drinking water standard of 10 mg/l. Even if one assumes the discharge was the same as the typical secondary effluent discharged by the District, there is not sufficient evidence on the record to establish that it unreasonably affected the groundwater for beneficial use.

Absent evidence on the record that the discharge caused a condition of pollution, there is no authority to impose administrative civil liability under Section 13350. It may be argued that there should be a remedy for this intentional

violation of a Regional Board order and the Basin Plan, but the Legislature has not provided one.²

III. CONCLUSIONS

After review of the record and consideration of contentions of the petitioner, and for the reasons discussed above, we conclude:

1. There is not sufficient evidence on the record to show that the discharge caused a "condition of pollution or pollution".

2. Water Code Section 13350 does not authorize imposing administrative civil liability in this case.

² It will not be necessary to discuss other contentions raised by The District because of the decision here. For the same reason, there is no need to address the District's request to admit evidence not admitted into the Regional Board record.

IV. ORDER

IT IS HEREBY ORDERED that Administrative Civil Liability Order No. 6-87-147 of the California Regional Water Quality Control Board, Lahontan Region is vacated.

CERTIFICATION

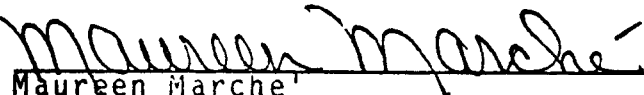
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 22, 1988.

AYE: W. Don Maughan
Edwin H. Finster
Eliseo M. Samaniego

NO: None

ABSENT: Darlene E. Ruiz
Danny Walsh

ABSTAIN: None



Maureen Marche
Administrative Assistant to the Board

