



August 20, 2020

Ken DaRosa, Acting Director
California Department of
Resources, Recycling and
Recovery
1001 "I" Street
Sacramento, CA 95814

Rhonda J. Johnson, CEO
Pacific Bell Telephone
Company
430 Bush Street
San Francisco, CA 94108

Proposition 65 Enforcement
Reporting
Attention Prop 65 Coordinator
1515 Clay St., Suite 2000
Oakland, CA 94612

Andrew R. Wheeler,
Administrator
U.S. EPA
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

John Busterud, Regional
Administrator
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

CT Corporation System
Registered Agent for
Pacific Bell Telephone Company
818 West Seventh St., Ste 930
Los Angeles, CA 90017

District Attorney
El Dorado County
778 Pacific Street
Placerville, CA 95667

Douglas A. Cannon, CEO
Sierra Pacific Power Company
6100 Neil Road
Reno, NV 89511

Corpservices Company
Registered Agent for
Sierra Pacific Power Company
8301 Florence Ave, #201
Downey, CA 90240

District Attorney
Placer County
10810 Justice Center Dr.,
#240
Roseville, CA 95678

Ian Robertson, CEO
Liberty Utilities (CalPeco
Electric) LLC
345 Davis Rd. Suite 100
Oakville L6J 2X1
ON, Canada

CT Corporation System
Registered Agent for Liberty
Utilities (CalPeco Electric) LLC
818 West Seventh St. Ste 930
Los Angeles, CA 90017

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

**Re: Notice of Violations of Federal Law and Notice of Intent to Begin Citizen
Enforcement Action**

Greetings:

I write on behalf of the California Sportfishing Protection Alliance (hereinafter, "CSPA")
to notify you of violations of federal and California law caused by four submerged cables (the

“Cables”) that lie abandoned in Lake Tahoe’s Emerald Bay and along the west shore of Lake Tahoe. Three of these Cables are submarine telecommunications cables; the other is a submarine power cable. Lake Tahoe is located in the California counties of Placer and El Dorado. These violations have been, and are continuing to be, committed by the “Noticed Parties” described in Section II, below, and, more fully, as the private entities in the attached Service List.

CSPA has conducted an investigation of the Cables, including having divers swim above them and photograph them, to determine the extent to which they discharge lead into Lake Tahoe. Lake Tahoe is an existing source of domestic and municipal drinking water. The Cables vary in size and length with three of them, two telecommunications and one power, crossing along the bottom near the mouth of Emerald Bay, and another one approximately five and a half miles traveling along the west shore of the lake. All of the Cables are damaged and discharging lead into Lake Tahoe.

The Cables are as follows:

Cable A.

Cable A is approximately 2000 feet long, submerged in Emerald Bay. The latitude and longitudinal coordinates for the southern endpoint is 38.96421504N -120.08144917W and 38.96482016N -120.08359610W for the northern endpoint. A visual inspection shows that Cable A is a submarine telecommunications type with an outer layer of jute impregnated with bitumens/tar, which covers steel rods that protect the interior of Cable A. Under the steel rods is a thick lead sheath that surrounds strands of copper wrapped in paper. This cable has been cut at both ends. An analysis of the piece of the cut end of Cable A reveals that the Cable contains per foot, 3.39 pounds of lead, 4.15 pounds of steel, 0.71 pounds of petroleum-based tar-impregnated jute and 0.77 pounds of copper. Accordingly, in its 2,000-foot length, Cable A contains approximately 6,780 pounds of lead. A visual inspection of Cable A reveals that not only is the Cable cut at one end, so obviously it is not in working condition, but the Cable is damaged at various places along its length, by boat anchors and in other ways, such that, in these damaged portions, the tar-impregnated jute covering no longer prevents water intrusion into the interior of the Cable.

Cable B.

Cable B is approximately five and a half miles long. It is submerged along the west shore of Lake Tahoe with the latitude and longitudinal coordinates for the southern end point of 38.94396945N -120.06913414W and 39.00944887N -120.11311122W for the northern endpoint. Cable B appears on close visual inspection to be of the same size, type and character as Cable A. At various points along its more than 5.5-mile length, Cable B has been damaged by boat anchors and has frayed on submerged rocks to the point that the lead sheath is directly exposed

to lake water. Based on an estimated 3.39 pounds per foot, the submerged portion of Cable B contains approximately 89,500 pounds of lead.

Cable C.

Cable C is approximately 2,000 feet long and submerged in Emerald Bay with latitude and longitudinal coordinates of 38.96105015N -120.08387085W for the southern end point and 38.96478251N -120.09067881W for the northern endpoint. A close visual inspection reveals that the Cable is a telecommunication cable of a submarine type. At various points it has been damaged by boat anchors and has frayed on submerged rocks to the point that the lead sheath is directly exposed to lake water. It appears to be unworkable and abandoned. Cable C is smaller in diameter than Cable A or Cable B. Nevertheless, it is estimated that the submerged portion of Cable C contains thousands of pounds of lead.

Cable D.

Cable D is approximately 2,000 feet long and submerged in Emerald Bay with latitude and longitudinal coordinates for the southern end point of 38.96125614N -120.08451815W and 38.96439289N -120.09007347W for the northern endpoint. A close visual inspection of Cable D reveals that it is a power cable and it is cut at both ends with the ends pulled away from the shore and left in deeper water. The GPS coordinates for the northern cut-end are 38.964735N -120.09058444W. The cable is also severely damaged at several places along its length and, thus, is no longer being used. Cable D is a submarine power cable with a lead sheath surrounding the inner core of copper wire. The Cable is approximately the same diameter as Cables A and B. Based upon this and visual inspection of Cable D, it is estimated that Cable D also contains approximately 3.39 pounds of lead per foot. Accordingly, it is estimated that the submerged portion of Cable D contains 6,780 pounds of lead.

CSPA submerged a sample of Cable A in a plastic container filled with Lake Tahoe water. After 24 hours, a sample was taken of the water and sent to a state-certified laboratory for analysis, which showed that enough lead had leached from the piece of the Cable to bring the concentration of lead in the water to 650 micrograms per liter. After seven days, another sample of the water was taken and sent to the same laboratory for analysis, which showed that the concentration of lead in the water had risen to 1,500 micrograms per liter. This is evidence that lead is leaching from the Cables into Lake Tahoe. Since the Cables have similar composition, based on these findings, it is reasonable to infer that they are all presently discharging lead into Lake Tahoe well beyond established limits for safety.

Lead is a substance that causes neurodevelopmental toxicity, reproductive toxicity (including sterility and delayed onset of puberty in females) and cancer in humans and other animals. Lead is known, pursuant to 27 Cal. Code Regs. section 27001, subsections (b) and (c), to cause cancer developmental and reproductive toxicity in both males and females. This letter

begins the process by which CSPA will seek available remedies under the federal Resource Conservation and Recovery Act (“RCRA”) and California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”). CSPA will pursue these remedies to have the abandoned/discarded Cables removed from Lake Tahoe and disposed of in a way that they may no longer pose an imminent danger of substantial harm to human health, the health of other animals and the environment. Removal will prevent the ongoing discharge and release of lead into the waters of Lake Tahoe, a source of drinking water. CSPA will further seek civil penalties for Proposition 65 violations.

I. The Noticing Party

CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters of Lake Tahoe. CSPA’s main office is at 3536 Rainier Avenue, Stockton, California, 95204. CSPA’s telephone number is (209) 464-5067. In addition to other California counties, members of CSPA reside in Placer and El Dorado Counties. CSPA members utilize the waters of Lake Tahoe for recreation and work in, on and around Lake Tahoe. Members of CSPA drink water that comes from Lake Tahoe.

II. The Noticed Parties

Pacific Bell Telephone Company (“Pac Bell” or “Noticed Party”) is a corporation that provides telecommunication services in California. Pac Bell at one time had the telecommunications Cables A, B and C (including their lead components) installed in Lake Tahoe. Pac Bell owned and operated the Cables A, B and C as part of its business providing telecommunication services. Cables A, B and C are no longer used. Pac Bell abandoned the Cables A, B and C in place on the bottom of Lake Tahoe and had at least one of these Cables cut at both ends in Lake Tahoe as part of that abandonment. For each of these three Cables, this Notice pertains to the Cables themselves, their lead sheathing, and the lead that dissolves off the sheathing and is discharged and released into the water of Lake Tahoe. Pac Bell is in violation of the Resource Conservation and Recovery Act (“RCRA”) and the discharge to drinking water provisions of Proposition 65.

Sierra Pacific Power Company (“NV Energy” or “Noticed Party”) provides electrical power to consumers in East Central California and Nevada. As part of its electrical utility service, Sierra Pacific Power Company owned and operated Cable D, and had it installed in Lake Tahoe. Later it had both ends of the cable cut and moved to a deeper portion of Emerald Bay where they could not be as easily seen. In this manner, Sierra Pacific abandoned/discarded/disposed of the cable leaving it to leach lead into Emerald Bay. This Notice pertains to Cable D itself, its lead sheathing, and the lead that dissolves off the sheathing and is discharged and released into the water of Lake Tahoe. NV Energy is in violation of the RCRA and the discharge to drinking water provisions of Proposition 65.

Liberty Utilities (CalPeco Electric), LLC is an electric utility company. In 2011, NV Energy assigned its lease for Cable D to California Pacific Electric Company, LLC (“CalPeco Electric”). CalPeco Electric was acquired by Liberty Utilities, LLC in 2012 and is now named, Liberty Utilities (CalPeco Electric), LLC (a “Noticed Party”). As part of its business of holding the lease from the State Lands Commission for Cable D, Liberty Utilities, LLC is thus responsible for the abandonment and discard of Cable D on the bottom of Lake Tahoe, is continuing its abandonment of Cable D on the bottom of Lake Tahoe, and continues to discharge and release lead from Cable D into Lake Tahoe waters. Liberty Utilities (CalPeco Electric) has been doing so each day for at least the past five years and will continue to do so each day into the future until Cable D is removed from the bottom of Lake Tahoe is disposed of properly. Liberty Utilities (CalPeco Electric), LLC is in violation of the RCRA and the discharge to drinking water provisions of Proposition 65.

III. Factual Background: The Problem with Abandoning the Cables in Lake Tahoe

As discussed above, the submerged Cables have been cut or damaged, which has allowed water to intrude into the Cables. In addition, inspection of the submerged part of the Cables shows that as part of the damage to the Cables, sections of the tar-impregnated jute have virtually disappeared, leaving the steel protective rods exposed, and in some places severed. This means that in sections of the Cables that have been damaged in this way, lake water intrudes into the Cables and contacts the lead sheathing. It has been shown that when Lake Tahoe water contacts the lead sheathing in the Cable, the water dissolves lead from the sheathing. This lead-laden water then mingles with the larger body of Lake Tahoe water, polluting it with lead. Because the Noticed Parties have discarded/abandoned and disposed of the Cables in the manner they have, the Cables continuously discharge and release lead – a toxic heavy metal – into the local aquatic environment, which is a source of drinking water within the meaning of California Health & Safety Code section 25249.5.

The disposal and abandonment of the Cables in Lake Tahoe, and the subsequent and continuing discharge of lead from the Cables into Lake Tahoe poses a significant threat to the health of persons and to the local environment, including fish and wildlife. Not only is lead toxic to humans, it is also toxic to birds, fish and mammals. Numerous members of the public are exposed daily to lead from the Cables when they swim, boat and dive in Lake Tahoe and when they drink water drawn from Lake Tahoe, or eat fish caught in Lake Tahoe. The lead also increases the body burdens of lead in the fish, birds and mammals that live in or on Lake Tahoe and/or feed on prey that live in or on Lake Tahoe. These increased lead body burdens cumulatively subject humans and animals to significant health risks.

IV. Specific Permits, Standards, Regulations, Conditions, Requirements or Orders Violated

A. RCRA Standard Violated

With regard to RCRA, this Notice pertains to the Noticed Parties' violations of 42 U.S.C. § 6972(a)(1)(B), which provides that:

Any person may commence a civil action on his own behalf – against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

For purposes of RCRA, the Noticed Parties have contributed and are contributing to the past, present and future storage and disposal of solid waste, to wit the Cables and their lead sheathing, in a way that may present an imminent and substantial endangerment to health and the environment.

B. Provisions of Proposition 65 that are Being Violated

With regard to Proposition 65, this Notice pertains to the Noticed Parties' violations of Cal. Health & Saf. Code § 25249.5, which provides that:

No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

The Noticed Parties cut the Cables and abandoned them, and left damaged Cables in Lake Tahoe. They did this as part of their business selling telecommunication services and electrical utility service in California and Nevada. As the Cables sit abandoned on the bottom of Lake Tahoe, they continuously discharge and release lead – a chemical known to the State of California to cause cancer and reproductive toxicity – into the waters of Lake Tahoe. Each Noticed Party employs ten or more persons and is thus a “person in the course of business” for purposes of California Health & Safety Code section 25249.11(b).

Pursuant to the Basin Plan for the Lahontan Region, Lake Tahoe has been designated an existing source of domestic and municipal water supply. As such, Lake Tahoe is a source of

drinking water within the meaning of California Health & Safety Code section 25249.11(d). The Noticed Parties' business practice of leaving the Cables abandoned on the bottom of Lake Tahoe is thus a continuous violation of California Health & Safety Code section 25249.5 because the Cables continuously discharge and release lead into Lake Tahoe waters.

C. The Activity that Constitutes the Violations

This notice of intention to file a citizen suit pertains to the Cables, which lie discarded, abandoned and disposed of on the bottom of Lake Tahoe in Placer and El Dorado Counties, California. The Cables continuously discharge and release lead into the waters of Lake Tahoe. Humans and wildlife utilize Lake Tahoe and, in doing so, are exposed to the lead that the abandoned Cables discharge and release into the waters of Lake Tahoe.

Lead has long been known to be a potent neurotoxin. There is an extensive toxicological literature that demonstrates that exposure to lead causes sterility in male humans and other mammals. There is an extensive toxicological literature that demonstrates that exposure to lead delays the onset of puberty in female humans and other mammals. Exposure to lead has been shown to kill aquatic bird life. Lead is toxic to fish and, basically, any animal that has a central nervous system. There is an extensive toxicological literature that demonstrates that pre-natal exposure to lead impairs the development of the central nervous systems of humans and other animals. Lead does this at levels of exposure as low as can be measured. Lead's toxic effect on the developing nervous system does so according to a supralinear curve, which means that lower levels of exposure do proportionately more harm to the developing nervous system than higher levels of exposure. There is an extensive toxicological literature that demonstrates that for each one microgram per deciliter rise in the concentration of lead in blood of a human between conception and six years of age, there is a corresponding loss of approximately one IQ point. There is no level of exposure to lead known to science that does not cause harm to humans and other animals.

V. The Persons Responsible for Violating RCRA and Proposition 65

The Noticed Parties are each responsible for violating RCRA and Proposition 65 as further described in this letter.

A. Dates of Violation of RCRA, 42 U.S.C. § 6972(a)(1)(B)

Lead has been discharged and released from the lead sheathing of the Cables into the waters of Lake Tahoe every day since the Noticed Parties cut the Cables and abandoned them on the bottom of Lake Tahoe and left them damaged on the bottom knowing they were damaged. Lead will continue to be discharged and released from the lead sheathing of the Cables into the waters of Lake Tahoe, thus presenting an imminent and substantial endangerment to health and the environment that has occurred every day for at least the past five years and will continue every day into the future until the Noticed Parties remove the Cables from Lake Tahoe and properly dispose of them. Accordingly, the Noticed Parties have been violating this RCRA

provision continuously for at least the past five years. Thus, the dates of violation to which this Notice pertains are each and every single day dating back at least five years from the date of this letter and continuing each day into the future until the abandoned Cables have been removed from Lake Tahoe and disposed of in a responsible manner.

B. Dates of Violation of Proposition 65

The Cables have discharged and released lead into the waters of Lake Tahoe every day for at least the past year preceding the date of this Notice letter. The Cables will all continue to discharge and release lead into the waters of Lake Tahoe each and every day into the future until the Noticed Parties remove the Cables from Lake Tahoe and properly dispose of them. The dates of violation of Health and Safety Code section 25249.5 are each day over at least the past year, plus every day into the future until the abandoned Cables have been removed from Lake Tahoe.

VI. Full Name, Address and Telephone Number of the Person Giving Notice

The full name, address and telephone number of the person providing this Notice is:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainer Avenue
Stockton, CA 95204
(209) 464-5067

VII. Name, Address and Telephone Numbers of Noticing Party's Counsel

William Verick
Klamath Environmental Law
Center
1125 16th Street, Suite 204
Arcata, CA 95521
(707) 630-5061

Brian Acree
Law Offices of Brian Acree
331 "J" Street, Suite 200
Sacramento, CA 95814
(916) 505-6861

Andrew Packard
William Carlon
Law Offices of Andrew L.
Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
(707) 782-4060

Kirk Boyd
Law Offices of Kirk Boyd
548 Market Street, Suite 1300
San Francisco, CA 94104
(415) 440-2500

CSPA would be happy to discuss effective remedies for the violations referenced in this Notice. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate these discussions immediately so that a resolution may be reached before the end of the

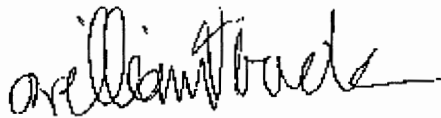
CSPA RCRA & P65 Notice of Violations and Intent to Sue

August 5, 2020

Page 9

60-day notice period (for the Proposition 65 violations alleged here) and 90-day notice period (for the RCRA violations alleged here). Please contact counsel if you have any questions or would like more information

Cordially,

A handwritten signature in black ink, appearing to read "William Verick", with a long horizontal flourish extending to the right.

William Verick