

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2007-0501

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
IN THE MATTER OF

ROSEVILLE / FIDDYMENT LAND VENTURE LLC  
FIDDYMENT RANCH  
PLACER COUNTY

This complaint is issued to Roseville / Fiddymment Land Venture LLC. (hereafter Discharger) based on a finding of violations of Clean Water Act section 301, California Water Code section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ, pursuant to the provisions of California Water Code section 13385, which authorizes the imposition of an Administrative Civil Liability.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region, (Regional Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is the original landowner of the Fiddymment Ranch, a 1678-acre construction project in Placer County. Runoff from the site discharges to multiple locations and enters Kaseburg Creek, which is a tributary to Pleasant Grove Creek, or discharges directly into Pleasant Grove Creek. Vernal pool and other preserves are located throughout the Fiddymment Ranch project.
2. Pleasant Grove Creek is a tributary to the Sacramento River. The existing beneficial uses of Pleasant Grove Creek are municipal and domestic supply; agriculture; industry; recreation; freshwater habitat; warm and cold water migration; spawning; and wildlife habitat.
3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ (General Permit), implementing the Waste Discharge Requirements for storm water discharges associated with construction activity.
4. The General Permit requires that dischargers of storm water to surface waters associated with construction activity file a Notice of Intent (NOI) to obtain coverage under the General Permit and to use best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce storm water pollution.

5. The Clean Water Act and California Water Code require that dischargers obtain coverage under the General Permit prior to commencement of construction activities. Developers of Fiddymment Ranch obtained coverage under the General Permit and were assigned WDID Nos. 5S31C327216, 5S31C337625, 5S31C337188, 5S31C337627, 5S31C336401, 5S31C336719, 5S58C335690, and 5S31C336720.
6. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose liability under California Water Code Section 13385(c)(2).
7. General Order No. 99-08-DWQ states, in part, the following:

"A. DISCHARGE PROHIBITIONS:

\*\*\*\*\*

3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

\*\*\*\*\*

"B RECEIVING WATER LIMITATIONS

\*\*\*\*\*

1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.
2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in the Statewide Water Quality Control Plan and/or applicable RWQCB Basin Plan.

"C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

\*\*\*\*\*

2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The Discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.

\*\*\*\*\*

Section 301 of the Clean Water Act and Section 13376 of the California Water Code prohibits the discharge of pollutants to surface waters except in compliance with an NPDES permit.

8. The Discharger is alleged to have violated Discharge Prohibition A.3, Receiving Water limitations B.1 and B.2 and Special Provisions C.2 of the General Permit. These violations were caused by the Discharger's failure to implement an effective combination of sediment and erosion control Best Management Practices (BMPs).
9. Pursuant to California Water Code Section 13385 (a)(2), civil liability may be imposed for the following violations:
  - a. On 30 December 2004, Regional Water Board staff inspected the Discharger's construction site and observed a significant amount of sediment-laden storm water discharging into a vernal pool preserve and Pleasant Grove Creek. This sediment-laden discharge was due to inadequate erosion and sediment control BMPs on the construction site.
  - b. On 7 January 2005, Regional Water Board staff inspected the site and observed that additional BMPs had been added. The effectiveness of these BMPs could not be determined at the time of the inspection, and City of Roseville inspectors were contacted to follow up on the project.
  - c. On 10 January 2005, a Notice of Violation (NOV) was issued to the Discharger for violations of the General Permit.
  - d. On 2 December 2005, City of Roseville staff observed the discharge of sediment-laden storm water from the Discharger's storm drain system into Pleasant Grove Creek.
  - e. On 7 December 2005, Regional Water Board staff inspected the site and observed the discharge of sediment-laden storm water from the Discharger's storm drain system into both Pleasant Grove Creek and Kaseburg Creek. In addition, another outfall area to Pleasant Grove Creek was found to be unprotected and a significant amount of rilling was observed on the banks of that outfall.
  - f. On 8 December 2005, an NOV was issued to the Discharger for violations of the General Permit.
  - g. On 19 December 2005, City of Roseville staff observed the discharge of sediment-laden storm water from the construction site at two locations into Pleasant Grove Creek.
  - h. On 20 December 2005, City of Roseville staff observed the discharge of sediment-laden storm water from the construction site into Pleasant Grove Creek, Kaseburg Creek and the vernal pool preserve.
  - i. On 21 December 2005, Regional Water Board staff inspected the site and observed the discharge of sediment-laden storm water from the construction site into Pleasant

Grove Creek and Kaseburg Creek. The Discharger failed to implement controls to reduce pollutants in storm water discharges from the construction site to the BAT/BCT performance standard.

- j. On 22 December 2005, City of Roseville staff inspected the site and observed the discharge of sediment laden storm water from the construction site into Pleasant Grove Creek, Kaseburg Creek.
  - k. On 23 December 2005, an NOV was issued to the Discharger for violations of the General Permit.
  - l. On 27 December 2005, Regional Water Board staff inspected the construction site and observed the discharge of sediment-laden storm water from the construction site into Pleasant Grove Creek at two locations and Kaseburg Creek at one location. Despite a pumping operation to move water back to an on-site basin, the Discharger failed to implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.
  - m. On 28 December 2005, City of Roseville staff inspected the construction site and observed the discharge of sediment-laden storm water from the construction site into Pleasant Grove Creek, Kaseburg Creek and the vernal pool preserve.
  - n. On December 29 2005, City of Roseville staff inspected the construction site and observed the discharge of sediment laden storm water from the construction site into Pleasant Grove Creek.
  - o. On 4 April 2006, Regional Water Board staff inspected the construction site and observed sediment laden storm water discharging into the vernal pool preserve.
10. As discussed above, Discharger failed to implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard, resulting in the repeated discharges of sediment-laden storm water into nearby surface waters. The discharger also failed to implement an effective combination of sediment and erosion control BMPs throughout the development for much of the wet season.

11. Section 13385 of the California Water Code states, in part:

*“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:*

*(1) Section 13375 or 13376*

*(2) Any waste discharge requirements or dredged and fill material permit.*

\*\*\*\*\*

*(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act as amended.”*

\*\*\*\*\*

“(c) *Civil liability may be imposed administratively by the State Board or a Regional Board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the... following:*

(1) *Ten thousand dollars (\$10,000) for each day in which the violation occurs.*

(2) *Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”*

\*\*\*\*\*

“(e) *In determining the amount of liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”*

12. Pursuant to California Water Code Section 13385(c), the Discharger has a maximum civil liability of \$2,080,224. The maximum liability is based on 11 observed days of violations and the number of gallons discharged from the site. The 12 days of violation include 30 December 2004; 2, 7, 19, 20, 21, 22, 27, 28, 29 December 2005 and 4 April 2006. Gallons discharged from the site were calculated using the float method.
13. The Discharger saved approximately \$240,000 by not implementing adequate erosion and sediment control BMPs, for not maintaining the BMPs that were implemented, and for not properly training site employees. Based on a survey of consultants, approximately \$2000 to \$6000 per acre is needed to provide the minimum erosion and sediment control measures for construction sites depending on the soil type. The soil on the site has relatively high clay content; therefore, an effective combination of both erosion and sediment control BMPs is required to protect the site. The discharger did install a treatment system; however, the system was not installed until after significant discharges were observed on multiple occasions by both Regional Water Board and City of Roseville staff. Since there were some BMPs installed at this site, the cost of installing and maintaining an effective combination of erosion and sediment control BMPs at this site was estimated to be \$1500 per acre. The Discharger states in their NOI that 1678 acres will be disturbed. During the 2005-06 rainy season, an estimated 160 acres were disturbed. The economic savings was obtained by multiplying 160 acres by \$1500 per acre.

14. Regional Water Board staff spent a total of 120 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$9600 based on a rate of \$80 per hour.
15. Issuance of this Administrative Civil Liability Complaint to enforce California Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).
16. On 18 August 2006, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2006-0519 to the Discharger in the amount of six hundred thousand dollars (\$600,000) for violations of the Clean Water Act section 301, California Water Code section 13376, and the NPDES General Permit No. CAS000002 Order No 99-08-DWQ, pursuant to provisions of California Water Code section 13385.
17. Following the issuance of ACL Complaint No. R5-2006-0519, the Discharger and the Executive Officer conferred for the purpose of settling this matter and the allegations herein. After arm's-length negotiations, the Discharger and the Executive Officer arrived at a mutually acceptable resolution of the proposed administrative civil liability based on information contained in the record of the Regional Water Board. The Discharger and the Executive Officer have agreed to settle the administrative civil liability for three hundred and seventy five thousand dollars (\$375,000), pending a public comment period.
18. The Executive Officer accordingly now issues ACL Complaint No. R5-2007-0501, with a proposed administrative civil liability of three hundred and seventy five thousand dollars (\$375,000). This Complaint rescinds and replaces ACL Complaint No. R5-2006-0519.
19. If the Discharger fails to pay the assessment described in paragraph 2, below, within thirty (30) days, the Executive Officer may reissue ACL Complaint R5-2006-0519 and proceed to a hearing.

ROSEVILLE / FIDDYMENT LAND VENTURE LLC IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint No. R5-2006-0519 is hereby rescinded and replaced with this Complaint.
2. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an administrative civil liability of three hundred and seventy five thousand dollars (**\$375,000**), payable to the “**State Water Pollution Cleanup and Abatement Account.**” The Executive Officer alternatively proposes that the three hundred and seventy five thousand dollars (\$375,000) administrative civil liability may be resolved as follows: Fifty thousand dollars (\$50,000) payable to the “State Water Pollution Cleanup

and Abatement Account” and the remaining three hundred and twenty five thousand dollars (\$325,000) payable to “Placer Land Trust” for vernal pool habitat management and upland, riparian and wetland habitat acquisition projects. This proposed assessment includes \$9600 in staff cost and \$240,000 to recover the economic benefit derived from the acts that constitute the violations. The amount of the proposed liability is based on a review of the factors cited in Water Code Section 13385 and the State Water Resources Control Board’s Water Quality Enforcement Policy.

3. The Discharger has stated that it will waive its right to a hearing. Therefore, the Discharger must **within 30 days of this complaint**, sign and return the waiver to the Regional Water Board’s office with payment as provided in paragraph 2, above. The waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

*original signed by*

\_\_\_\_\_  
PAMELA CREEDON, Executive Officer

\_\_\_\_\_  
20 February 2007

Date

**WAIVER OF HEARING FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the Roseville / Fiddymment Land Venture LLC. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0501 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **three hundred and seventy five thousand dollars (\$375,000)** by check, which contains a reference to "ACL Complaint No. R5-2007-0501" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Alternatively, the Discharger may satisfy the Complaint by paying an administrative civil liability of **fifty thousand dollars (\$50,000)** and paying **three hundred and twenty five thousand dollars (\$325,000)** to Placer Land Trust.
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to terminate this proposed settlement based upon comments received during the public comment period.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

---

(Print Name and Title)

---

(Signature)

---

(Date)