

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION– OFFICE OF CHIEF COUNSEL
SEPTEMBER 4, 2007

ITEM 8

SUBJECT

CONSIDERATION OF THE PETITION OF CITY OF SANTA CRUZ (DE LAVEAGA GOLF COURSE FOR REVIEW OF ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2005-0067 CENTRAL COAST WATER BOARD. SWRCB/OCC FILE A-1712

DISCUSSION

This order remands to the Central Coast Water Board an Administrative Civil Liability Order issued in 2005 to the City of Santa Cruz. The Central Coast Water Board and the City of Santa Cruz have agreed on a settlement of the dispute involved in this matter and the Central Coast Water Board wishes to revise its order. That can only occur if the matter is remanded by the State Water Board.

POLICY ISSUE

Should the State Water Board remand the Administrative Civil Liability Order to the Central Coast Water Board?

FISCAL IMPACT

Minimal. The Central Coast Water Board will have to place this matter on its agenda for a vote.

REGIONAL BOARD IMPACT

The Central Coast Water Board will be able to amend its Administrative Civil Liability Order to reflect the terms of its settlement agreement with the City of Santa Cruz.

STAFF RECOMMENDATION or ADVISE OF STAFF ACTION

The State Water Board should:

1. Adopt the proposed order.

DRAFT

July 26, 2007

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2007-

In the Matter of the Petition of

CITY OF SANTA CRUZ

For Review of Administrative Civil Liability Order No. R3-2005-0067 for City of Santa Cruz

DeLaveaga Golf Course

Issued by the

California Regional Water Quality Control Board,
Central Coast Region

SWRCB/OCC FILE A-1712

NON-PRECEDENTIAL

BY THE BOARD:

On July 11, 2005, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) issued Order No. R3-2005-0067 (Order) to the City of Santa Cruz (City) assessing administrative civil liability in the amount of \$130,500 for violations of the statewide construction storm water permitting program in its operation of the DeLaveaga Golf Course facility. The City requested a modification of the Order to allow the City to fund a supplemental environmental project (SEP) in lieu of payment of a portion of the assessed liability. The Central Coast Water Board declined to modify the Order.

The City filed a timely petition with the State Water Resources Control Board (State Water Board). Thereafter, the City and the Central Coast Water Board entered into settlement discussions concerning the Order. The City and the Central Coast Water Board have signed a settlement agreement (a copy of which is attached) in which they have agreed to a Supplemental Environmental Project in lieu of payment of a portion of the assessed liability. The terms of the settlement agreement are self-explanatory and will not be repeated in this order. The settlement agreement is contingent on the State Water Board vacating and remanding the Order, and both parties have requested that the State Water Board take such action. This order vacates the Order and remands the matter to the Central Coast Water Board, without prejudice.

BACKGROUND

The City operates the DeLaveaga Golf Course. State Water Resources Control Board Order No. 99-08-DWQ established the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit). On March 12, 2004, the City filed a Notice of Intent for the DeLaveaga Golf Course construction site with the State Water Board and obtained coverage under the Permit. The Order finds that the City violated provisions of the Permit during construction activities at the Site, for which the Central Coast Water Board imposed total civil liability in the amount of \$130,050 pursuant to section 13385 of the Water Code.

Although the Petition indicates that the City provided a list of candidate SEPs prior to the hearing on the Order, Central Coast Water Board staff and City representatives did not select a SEP or agree to an amount of liability to recommend to the Board at the hearing. As a result, the Central Coast Water Board did not specifically consider inclusion of a SEP when it considered and adopted the Order. The City filed its petition asserting that the Central Coast Water Board failed to consider requiring a SEP before issuing the Order. This settlement agreement resolves the issue by allowing the City to complete a specified SEP, in partial satisfaction of the Order. The Central Coast Water Board now agrees to inclusion of the SEP in the Order.

Because of the way the civil liability statute is phrased, the Central Coast Water Board does not have jurisdiction to modify the Order after its issuance. (Wat. Code, § 13323, subd. (d).) The timely filed petition, however, means that the State Water Board retains administrative jurisdiction to overturn or modify the order. (See *also*, State Water Board, *Water Quality Enforcement Policy* (2002), pp. 24, 44, 48.) In order to effectuate the settlement, the City and the Central Coast Water Board have requested that the State Water Board vacate the Order and remand it to the Central Coast Water Board for further consideration, in accordance with the settlement agreement.

In cases where both the discharger and a regional water board have asked that administrative civil liability orders be revisited, the State Water Board has cooperated with such requests. (See, *Petition of City of Pismo Beach*, Order No. WQ 2004-0016; *Petition of City of San Diego*, Order No. WQ 88-9.)

///

///

///

D R A F T

July 26, 2007

ORDER

IT IS HEREBY ORDERED that Order No. R3-2005-0067, issued by the Central Coast Water Board assessing administrative civil liability to the City, is hereby vacated and remanded to the Central Coast Water Board, without prejudice, for further consideration consistent with the terms of the parties' settlement agreement.

CERTIFICATION

The undersigned, Acting Clerk 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 4, 2007.

Jeanine Townsend
Acting Clerk to the Board