California Regional Water Quality Control Board

San Diego Region

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http:// www.waterboards.ca.gov/sandiego

September 28, 2010

Certified Mail – Return Receipt Requested
Article Number: 7009 1410 0002 2347 5432

Mr. Jack Eitzen
P.O. Box 998
Saratoga, California 95071

In reply refer to:
App. ID No. 288214
Place ID No. 755683

Dear Mr. Eitzen:

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2010-0084 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST MR. JACK EITZEN FOR VIOLATIONS OF BASIN PLAN PROHIBITIONS 1 AND 14 AND ORDER NO. 99-08-DWQ FROM CONSTRUCTION ACTIVITIES AT 38175 VIA VISTA GRANDE, MURRIETA, CALIFORNIA

Enclosed find Complaint No. R9-2010-0084 (Complaint) for Administrative Civil Liability against Mr. Jack Eitzen (Discharger) for $381,450 for violation of Prohibitions contained in the Water Quality Control Plan, San Diego Basin (9), (Basin Plan) and State Water Resources Control Board Order No.99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity. The Discharger is in violation by discharging waste to waters of the state, discharging sediment to a separate storm sewer system tributary to waters of the United States, and failing to develop and implement an adequate Storm Water Pollution Prevention Plan. The violations are described in the Complaint and the attached Technical Analysis to the Complaint. To further assist you in understanding this administrative process, an Administrative Civil Liability Complaint Fact Sheet is attached.

Waiver of Hearing

Pursuant to Water Code section 13323, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) will hold a hearing on the Complaint no later than ninety (90) days after it is issued. You may elect to waive your right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of $381,450 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of your right to a public hearing, you must submit the following to the San Diego Water Board by 5 p.m., **October 28, 2010.**

1. The enclosed waiver form signed by an authorized agent of Mr. Jack Eitzen; and

2. A check for the full amount of civil liability of $381,450 made out to the "State Water Resources Control Board"

Public Hearing
Alternatively, if you elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board meeting on **December 8, 2010**. The meeting is scheduled to convene at the San Diego Water Board office, located at 9174 Sky Park Court, San Diego, California and the meeting will begin at 9 a.m. At that time, the San Diego Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed are recommended procedures for the San Diego Water Board to follow in conducting the hearing. Please note that comments on the proposed procedures are due by **October 8, 2010**, to the San Diego Water Board's advisory attorney, Catherine Hagan at the address indicated in the hearing procedures.

Please contact Rebecca Stewart of my staff at (858) 467-2966 or by e-mail at rstewart@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a San Diego Water Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the San Diego Water Board pertaining to this matter.

Respectfully,

JAMES G. SMITH
Assistant Executive Officer

JGS:jch:rls

Enclosures
1. Complaint No. R9-2010-0084
2. Technical Analysis
3. Administrative Civil Liability Complaint Fact Sheet
4. Waiver of Public Hearing Form
5. Proposed Hearing Procedures

cc via email (w/enclosures):

David Gibson, San Diego Water Board, dgibson@waterboards.ca.gov

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Anna Milloy, California Department of Fish and Game, amilloy@dfg.ca.gov

cc via U.S Mail (with enclosures):

Mr. Anton Dahlgren, 22387 Stanley Lane, Wildomar, CA 92595

Mr. and Mrs. Ifti Kazmi, 22408 Montes Court, Murrieta, CA 92562

CIWQS & SMARTS Entries	
CIWQS Place ID	755683
CIWQS Violation ID	878075
CIWQS Party ID	524003
SMARTS App ID	288214
SMARTS Violation IDs	841134, 841297, 841299
SMARTS Enf. ID	402035

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:	COMPLAINT NO. R9-2010-0084 FOR ADMINISTRATIVE CIVIL LIABILITY
JACK EITZEN 38175 VIA VISTA GRANDE MURRIETA, CALIFORNIA	VIOLATIONS OF BASIN PLAN PROHIBITIONS 1 & 14 AND ORDER NO. 99-08-DWQ
App. ID No. 288214 Place ID No. 755683	September 28, 2010

JACK EITZEN IS HEREBY GIVEN NOTICE THAT:

1. Jack Eitzen (hereinafter Discharger) has violated Water Quality Control Plan, San Diego Basin (Basin Plan), Waste Discharge Prohibition Nos. 1 and 14, for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to Water Code section 13350(e)(1).

    a. Waste Discharge Prohibition No. 1 states that the discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code section 13050, is prohibited.

    b. Waste Discharge Prohibition No. 14 states that the discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

2. The Discharger has violated Discharge Prohibition A.2 and Special Provision for Construction Activity C.2 of Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity, for which the San Diego Water Board may impose civil liability pursuant to Water Code section 13385(c)(1).

    a. Discharge Prohibition A.2 states that discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a municipal separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.2.

b. Special Provision for Construction Activity C.2 states that all dischargers shall develop and implement a Storm Water Pollution Prevention Plan (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 best available technology/best conventional pollutant control technology (BAT/BCT) performance standard.

3. On December 21, 2005, the Discharger submitted a Notice of Intent (NOI) for coverage of construction activities conducted at 38175 Via Vista Grande, Murrieta, California, pursuant to the requirements of Order No. 99-08-DWQ.

4. The Discharger is the owner and general contractor of the property located at 38175 Via Vista Grande, Murrieta, California, APN 928-230-015.

5. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

VIOLATIONS SUBJECT TO THIS COMPLAINT

6. Unauthorized Discharges of Waste to Waters of the State
The Discharger violated Waste Discharge Prohibition Nos. 1 and 14 when he discharged waste including earthen materials into waters of the state during construction activities. The discharged material remains in state waters, therefore the violation continue. To date the days of violation are 645 (December 16, 2008 to September 21, 2010) and counting.

7. Discharges of Sediment to a Municipal Storm Sewer System (MS4) Tributary to Waters of the Nation
The Discharger violated Prohibition A.2 of Order No. 99-08-DWQ when he allowed the discharge of sediment from the construction site to the County of Riverside MS4 without using the Best Available Technology to prevent the discharge. The discharges occurred on January 28, 2008 and December 15, 2008; therefore the days of violation are 2.

8. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan (SWPPP)
The Discharger violated Special Provision For Construction Activity C.2 of Order No. 99-08-DWQ when he failed to have a SWPPP on site during construction activity and when he failed to implement adequate best management practices (BMPs) to reduce pollutants in storm water discharges. The violations occurred between October 19, 2007 and January 28, 2008 (102 days) and October 30, 2008 through December 16, 2008 (48 days); therefore the days of violation are 150.

MAXIMUM AND MINIMUM CIVIL LIABILITY

9. Pursuant to Water Code section 13350(e)(1), the maximum civil liability that the San Diego Water Board may impose for a violation of a Basin Plan prohibition is five thousand dollars ($5,000) for each day the violation occurs or ten dollars ($10) per gallon discharged, but not both.

10. Pursuant to Water Code section 13385(c)(1) and (2), the maximum civil liability that the San Diego Water Board may impose for a violation of an NPDES Permit is ten thousand dollars ($10,000) for each day the violation occurs and/or ten dollars ($10) per gallon discharged but not cleaned up that exceeds 1,000 gallons.

11. Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, at a minimum, at least ten percent more than the calculated Economic Benefit for each violation must be recovered. The maximum and minimum liabilities that may be imposed by the San Diego Water Board for the violations alleged in this Complaint are summarized in Table 1.

Alleged Violation	Days of Violation	Minimum Civil Liability (based on Economic Benefit + 10%)	Maximum Civil Liability	Statutory Authority (Water Code Section)
Discharges of Waste to Waters of the State	645	$6,229	$3,225,000	13350
Discharges of Sediment to an MS4 Tributary to Waters of the Nation	2	$0	$20,000	13385
Failure to Develop and Implement an Adequate SWPPP	150	$49,500	$1,500,000	13385
	Total	**$55,729**	**$4,745,000**	

Table 1. Minimum and Maximum Liability

PROPOSED CIVIL LIABILITY

15. The amount of discretionary assessment proposed is based upon consideration of factors described in Water Code sections 13327 and 13385(e) as applied to the violations and described further in the technical analysis.

16. Based on the penalty calculation methodology within Section VI of the Water Quality Enforcement Policy, civil liability should be imposed on the Discharger by the San Diego Water Board as detailed in Table 2 below.

Violation	Days of Violation	Adjusted Days of Violation	Liability Per Adjusted Days of Violation	Total Liability
Discharges of Waste to Waters of the State	644	48	$3,487.50	$167,400
Discharges of Sediment to an MS4 Tributary to Waters of the Nation	2	n/a	$3,300	$6,600
Failure to Develop and Implement an Adequate SWPPP	150	16	$12,375	$198,000
PROPOSED CIVIL LIABILITY				$372,000
Staff Costs to Date				**$9,450**
TOTAL PROPOSED LIABILITY				**$381,450**

Table 2. Total Proposed Liability

17. The Enforcement Policy also provides under "Other Factors as Justice May Require" that the cost of investigation and enforcement should be added to the liability amount. Over the course of trying to resolve this matter with the Discharger, the San Diego Water Board Prosecution Team invested 63 hours to investigate, prepare enforcement documents, and consider this action. The total investment of the San Diego Water Board to date is $9,450. Adding staff costs of $9,450 to the proposed liability of results in a total liability of **$381,450**.

    The proposed civil liability will permit the recovery of costs incurred by San Diego Water Board staff in investigating the claims and in pursuing this enforcement action.

Dated this 28th day of September 2010.

JAMES G. SMITH
Assistant Executive Officer

Signed pursuant to the authority delegated by the Executive Officer to the Assistant Executive Officer.

CIWQS Place ID: 755683 SMARTS App ID: 288214
CIWQS Violation ID: 878075 SMARTS Violation IDs: 841134, 841297, 841299
CIWQS Party ID: 524003 SMARTS Enf. ID: 402035

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TECHNICAL ANALYSIS

Proposed Administrative Civil Liability
Contained in Complaint No. R9-2010-0084
Mr. Jack Eitzen
38175 Via Vista Grande
Murrieta, California

Noncompliance with

Water Quality Control Plan, San Diego Basin (9), (Basin Plan)
Waste Discharge Prohibition Nos. 1 and 14
and
Order No. 99-08-DWQ

September 28, 2010

by

Rebecca Stewart
Sanitary Engineering Associate
Compliance Assurance Unit

A. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence supporting administrative assessment of civil liability proposed in Complaint No. R9-2010-0084 in the amount of $381,450 against Jack Eitzen (hereinafter Discharger) pursuant to California Water Code sections 13350 and 13385 for violations of Water Quality Control Plan, San Diego Basin (9), (Basin Plan) Waste Discharge Prohibition Nos. 1 and 14 and Order 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity.

On December 21, 2005, the Discharger submitted a Notice of Intent (NOI) (WDID No. 9 33C33875) for coverage of construction activities conducted at 38175 Via Vista Grande, Murrieta, California pursuant to the waste discharge requirements of Order No. 99-08-DWQ **(Exhibit 1, Notice of Intent)**. The parcel is part of a proposed development known as Fairway Hills Estates. Fairway Hills Estates is an approximately 120 acre site made up of twelve separate parcels. NOIs on file with the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) indicate that the Discharger is the owner and developer/contractor of record on two of the twelve parcels, including 38175 Via Vista Grande.

B. VIOLATIONS ADDRESSED IN THE COMPLAINT

The following allegations against the Discharger are the basis for assessing administrative civil liability as proposed in Administrative Civil Liability Complaint No. R9-2010-0084.

1. Discharges of Waste to Waters of the State

The Discharger violated Basin Plan Waste Discharge Prohibition Nos. 1 and 14 on or before December 16, 2008 when he allowed waste including earthen materials to be discharged to waters of the state causing a condition of pollution, contamination and/or nuisance. The discharged material remains in waters of the state, therefore the violations continue and the number of days of violation is 645 (December 16, 2008 to September 21, 2010) and counting.

2. Discharges of Sediment to a Municipal Storm Sewer System (MS4) Tributary to Waters of the Nation

The Discharger violated Discharge Prohibition A.2 of Order No. 99-08-DWQ when he allowed sediment to be discharged to an MS4 tributary to waters of the United States on January 28, 2008 and December 15, 2008. The number of days for this violation is 2.

3. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan (SWPPP)

The Discharger violated Special Provision For Construction Activity C.2 of Order No. 99-08-DWQ from October 19, 2007 through January 28, 2008 (102 days) and October 30, 2008 through December 16, 2008 (48 days) when he failed to develop and implement an adequate SWPPP during construction activities at 38175 Via Vista Grande. The number of days of violation is 150.

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to Water Code section 13350, any person who discharges waste into waters of the state in violation of a prohibition issued by a regional board shall be liable civilly.

Pursuant to Water Code section 13350(e), the maximum civil liability that the San Diego Water Board may impose for a violation of a Basin Plan prohibition is five thousand dollars ($5,000) for each day the violation occurs or ten dollars ($10) for each gallon discharged, but not both.

Water Code section 13327 specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

Pursuant to Water Code section 13385, any person who violates waste discharge requirements issued pursuant to Chapter 5.5 of the Water Code (i.e., NPDES Permits) shall be liable civilly.

Pursuant to Water Code section 13385(c), the maximum civil liability that the San Diego Water Board may impose for a violation of an NPDES permit is ten thousand dollars ($10,000) for each day the violation occurs and/or ten dollars ($10) per gallon discharged but not cleaned up that exceeds 1,000 gallons.

Water Code section 13385(e) specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations. These factors include: "…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 benefit 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."

The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), provides a penalty calculation methodology for Water Boards[1] to use in administrative civil liability cases. The penalty calculation methodology enables the Water Boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

Pursuant to the Enforcement Policy, when there is a discharge, Water Boards shall determine an initial liability factor based on the Potential for Harm score and the extent of Deviation from Requirements for the violation. Water Boards shall calculate the Potential for Harm by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement. These factors will be used to determine a per day factor using the matrix set forth in the Enforcement Policy that is multiplied by the maximum per day amount allowed under the Water Code. If applicable, the Water Board shall also determine an initial liability amount on a per gallon basis using the Potential for Harm score and the extent of Deviation of Requirement of the violation.

For each non-discharge violation Water Boards shall calculate an initial liability factor, considering the Potential for Harm and extent of Deviation from Requirements. Water Boards shall use the matrix set forth in the Enforcement Policy that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories.

[1] "Water Boards" refers to the State Water Resources Control Board and the Regional Water Quality Control Boards.

Pursuant to the Enforcement Policy, Water Boards shall use three adjustment factors for modification of the initial liability amount. These factors include: culpability, cleanup and cooperation, and history of violation. After each of the factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation. Additional adjustments may be used regarding multiple violations resulting from the same incident and multiple day violations.

1. Violation: Discharges of Waste to Waters of the State

Step 1 – Potential for Harm for Discharge Violations

Factor 1 – Harm or Potential Harm to Beneficial Uses

The discharge of fill and construction materials to waters of the state resulted in major harm or potential harm to the beneficial uses of waters of the state. Accordingly, a score of 5 out of 5 is assigned to Factor 1 of the penalty calculation. The Enforcement Policy defines major for discharge violations as:

> *"Major –high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial use (e.g., more than five days), high potential for chronic effects to human or ecological health)."*

On December 16, 2008, the County of Riverside (County) and San Diego Water Board conducted a joint inspection of the Fairway Hills Estates Development **(Exhibit 2, San Diego Water Board December 16, 2008 Inspection Report)**. During the inspection it was documented that the Discharger caused and/or permitted the discharge of sediment and large rocks into an unnamed ephemeral stream tributary to Murrieta Creek. The discharge resulted from the grading of a new road which was used to dump large rocks to create a detention basin in waters of the state as seen in Figures 1 and 2.

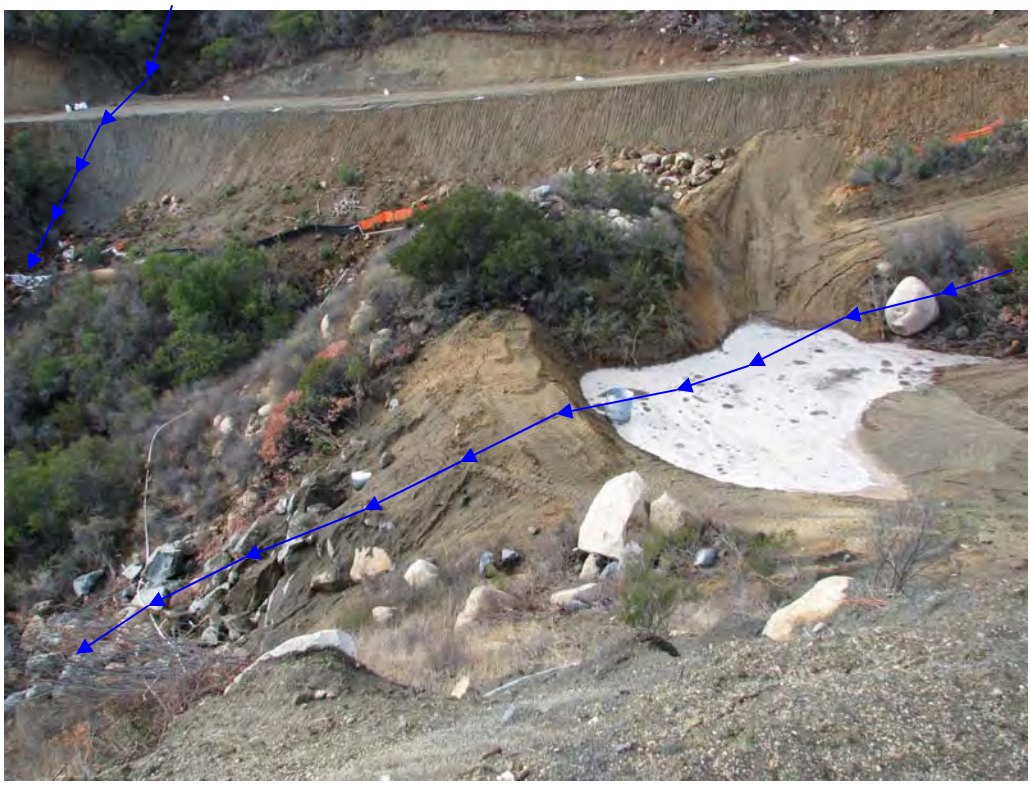

Figure 1. Photo of construction wastes/fill (sediment, silt, rocks, and boulders) discharged and detention basin construction in waters of the state. (IMG-081.JPG taken by San Diego Water Board during December 16, 2008 inpsection.)

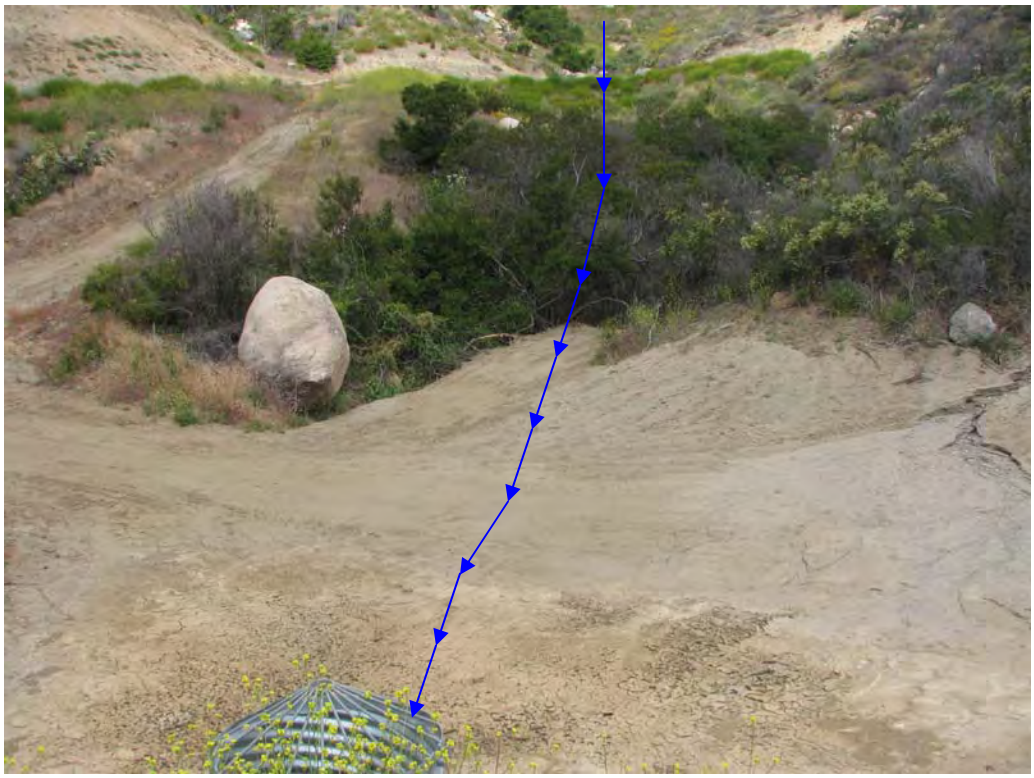

Figure 2. Photo from detention basin looking upstream. Blue arrow represents stream path. (IMP_0991.JPG taken by San Diego Water Board during May 11, 2010 inspection.)

In addition to the detention basin being constructed within waters of the state, the construction of the access road to 38175 Via Vista Grande also resulted in the discharge of waste to waters of the state and eliminated natural drainages which have fragmented the upstream and downstream reaches and altered hydrologic characteristics contributing to erosion throughout the construction site as seen in Figure 3.

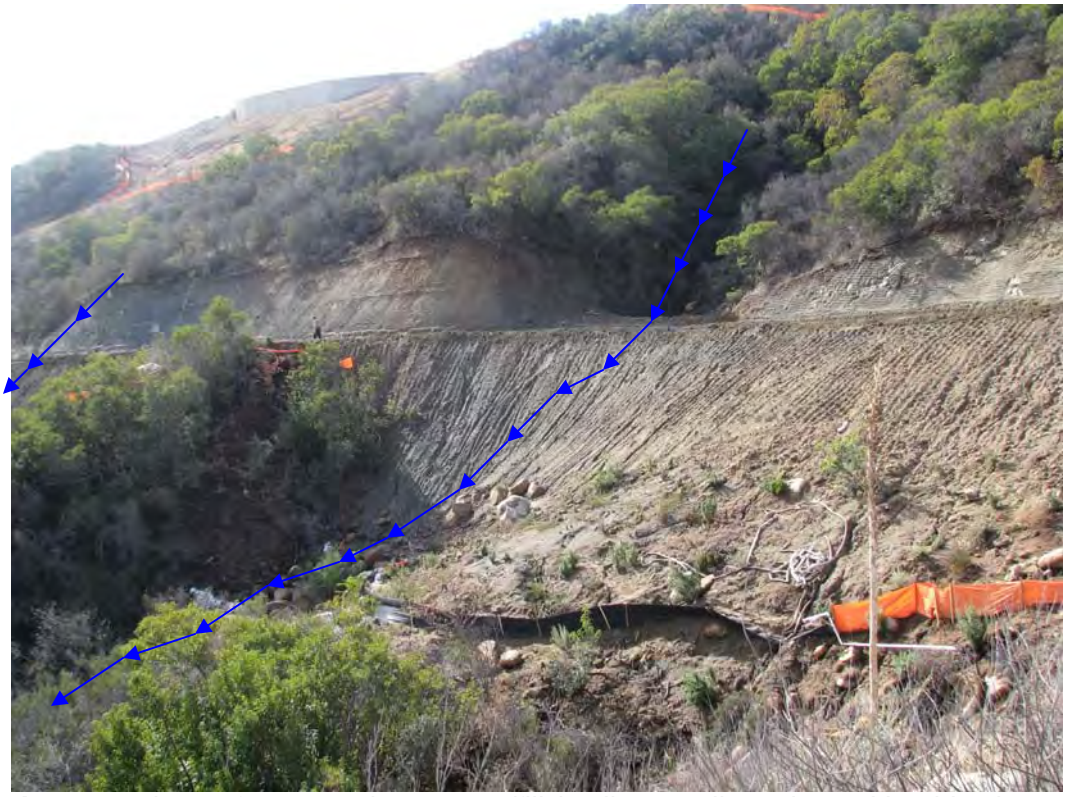

Figure 3. Photo of construction wastes/fill (sediment, silt, rocks and boulders) discharged into waters of the state from construction of the access road. (IMG_0293.JPG taken by San Diego Water Board during December 23, 2008 inspection.)

The discharge of rocks and sediment from construction activities at the site causes and threatens to cause a condition of pollution by directly affecting waters used for beneficial uses. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of the stream channels by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of adjacent channel bed or banks, and localized accumulation of deleterious materials. In addition, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics. The discharged material remaining in place for over 645 days has caused long term restrictions on beneficial uses and has a high potential for chronic effects to the ecological health of the affected waterways.

Factor 2 – Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of the discharged material pose a moderate risk or threat to potential receptors. Accordingly, a score of 2 out of 4 is assigned to Factor 2 of the penalty calculation. The Enforcement Policy defines moderate as:

> *"Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).*

The materials discharged are considered inert (i.e., sediment, rocks, vegetation); however, the materials discharged have diminished the physical quality of in-stream waterways and significantly impacted the existing riparian habitat for flora and fauna, which has affected the quality of on-site water and the ability to support the beneficial uses of the receiving waters.

Factor 3 – Susceptibility to Cleanup or Abatement

Pursuant to the Enforcement Policy a score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup and abatement. A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement.

The San Diego Water Board Prosecution Team has assigned a score of 0 to Factor 3 because the materials discharged into waters of the state remain on site and can be removed and are therefore susceptible to cleanup.

Final Score – "Potential for Harm"

Based on the above determinations, the Potential for Harm final score for these violations is 7.

Step 2 – Assessments for Discharge Violations

Water Code section 13350(e) states that a regional board may impose civil liability on either a daily basis or on a per gallon basis, but not both. Based on the materials discharged to waters of the state, (i.e., sediment, rocks, and vegetation), a per gallon assessment is not preferred; therefore, civil liability will be calculated on a per day basis for this violation.

Per Day Assessments for Discharge Violations

Pursuant to the Enforcement Policy, Water Boards shall determine an initial liability factor per day based on the "Potential for Harm" score (step 1) and the extent of "Deviation from Requirement" of the violation.

Deviation from Requirement

The discharge of waste to waters of the state is a major deviation from the required standards (Basin Plan Prohibitions).

The penalty calculation methodology defines a major deviation as:

> *"The requirement has been rendered ineffective (e.g., discharger disregarding the requirement, and/or the requirement is rendered ineffective in its essential functions.)"*

The Basin Plan was adopted by the San Diego Water Board on September 8, 1994. Waste Discharge Prohibition No. 1 states that the discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in Water Code section 13050, is prohibited. Water Code section 13050 defines "pollution" as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (a) the waters for beneficial uses or (b) facilities which serve these beneficial uses. Water Code section 13050 defines "waters of the state" as any surface water or groundwater within the boundaries of the state.

Waste Discharge Prohibition No. 14 states that the discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of 7 and "Deviation from Requirement" factor of "Major", the "Per Day Factor" is determined to be 0.31 in Table 2 of the Enforcement Policy. Calculating the Per Day Assessment is achieved by multiplying:

(Per Day Factor) x (Statutory Maximum Liability) =
(0.31) x ($5,000) = $1,550

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 does not apply to discharge violations.

Step 4 – Adjustment Factors

Culpability

For culpability, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. The culpability multiplier of 1.5 has been selected for the unauthorized discharge of waste to waters of the state.

The Discharger intentionally discharged waste to waters of the state while conducting grading activities associated with his parcel on Via Vista Grande. The Discharger discharged large amounts of sediment and rocks into waters of the state without regard to alteration of the hydrologic and sediment transport regimes of the stream channel by affecting the flow of water and establishment of vegetation.

The Discharger also intentionally discharged waste to waters of the state without filing a Report of Waste Discharge with the San Diego Water Board in application of waste discharge requirements, which is also a violation of Water Code section 13260 and exhibits a high degree of culpability.

Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation and the higher multiplier where this is absent. For these violations, a cleanup and cooperation multiplier of 1.5 has been selected as described below.

The sediment and rock discharged to waters of the state remains in place, even after the San Diego Water Board and County notified the Discharger on numerous occasions that the discharge was in violation of the Basin Plan. The San Diego Water Board verbally notified the Discharger of the violations during site inspections in December 2008 and January 2009. The San Diego Water Board again notified the discharger in March 2010 through the issuance of a Notice of Violation. To date, the Discharger has made no attempt to remove the fill and correct the violations. As a result, the adjustment factor for this violation with regards to cleanup and cooperation is 1.5.

History of Violation

For history of violation the Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.

The San Diego Water Board has no information that suggests that the Discharger has any previous history of violations; therefore the adjustment factor with regards to history of violation is 1.

Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the daily assessment can be less than the calculated daily assessment provided that it is no less than the per day economic benefit, if any, resulting from the violation and the Water Board can make one of the following findings:

- The violation is not causing daily detrimental impacts to the environment or the regulatory program;
- The violation results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- The violation occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

Upon review of the findings necessary to invoke the Enforcement Policy's Multiple Day Violations reduction, the second finding can be made for the alleged violations and therefore, an adjustment can be made to reduce the days of violation for the purpose of calculating liability.[2] The finding on point states that the alleged violation "[r}esults in no economic benefit from the illegal conduct that can be measured on a daily basis." In this case, the Discharger saved money by not properly disposing of excavated materials from construction activities, thus gaining an economic advantage over builders that exercise proper disposal methods. The money saved on the dates of noncompliance can be compounded to reflect its current day worth. However, the Discharger is not benefiting daily from the existence of the fill material in waters of the state. Therefore, Finding No. 2 can be made.

[2] Page 18 of the Enforcement Policy states "In these cases [Multiple Day Violations], the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation."

The Enforcement Policy's formula to collapse multiple day violations depicts the maximum possible reduction a Water Board can take if it finds that a reduction is appropriate. The San Diego Water Board Prosecution Team has determined that the maximum possible reduction is not an adequate deterrent for similar conduct in this instance and has therefore determined that it is appropriate to assess the Initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of the violation until the 30th day, plus an assessment for each fifteen (15) days of violation. This methodology proposes to reduce the number of days of violation, for penalty calculation purposes, from six hundred forty five days (645) to forty eight days (48).

The table below displays the Adjusted Days of Violation pursuant to the Enforcement Policy:

Alleged Violation	Days of Violation	Proposed Adjusted Days of Violation	Minimum Adjusted Days of Violation
Discharge of Waste to Waters of the State	645	48	27

Step 5 - Determination of Base Liability Amount

The Base Liability amount for this violation of $167,400 is determined by multiplying the Per Day Assessment by the Adjusted Days of Violation to determine the Initial Amount of Liability and then applying the adjustment factors calculated as follows:

(Per Day Assessment) x (Adjusted Days of Violation) =
($1,550) x (48) = $74,400

(Initial Liability Amount) x (Culpability) x (Cleanup) x (History of Violations) =
($74,400) x (1.5) x (1.5) x (1) = $167,400

Step 6 - Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if a Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, the Total Base Liability amount may be adjusted to address the ability to pay or to continue in business.

In this case, San Diego Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability. The Discharger is the principal of Eitzen Construction, and owns numerous parcels of land, listed below:

Assessor's Parcel Number	County	Property Address	Assessed Total Value	Assessment Year
082-281-037	San Luis Obispo	Great Falls Road	$19,483	2009
082-121-008	San Luis Obispo	N/A	$5,620	2009
082-201-068	San Luis Obispo	Dorris Road	$17,991	2009
082-191-007	San Luis Obispo	11180 Crannel Trail	$19,872	2008
082-211-005	San Luis Obispo	Grassland Road	$25,000	2009
082-281-051	San Luis Obispo	Gleason Road	$18,399	2009
082-201-033	San Luis Obispo	11320 Del Rosa Road	$19,872	2009
083-461-004	San Luis Obispo	Arrowbear Trail	$4,496	2009
082-291-076	San Luis Obispo	Greybriar Trail	$19,483	2009
082-281-007	San Luis Obispo	Greybriar Trail	$19,483	2009
083-451-041	San Luis Obispo	Lake Road	$11,243	2009
082-211-006	San Luis Obispo	N/A	$25,000	2009
082-181-044	San Luis Obispo	14155 Diamond Springs Road	$18,766	2008
928-230-015	Riverside	38175 Via Vista Grande (check this on Westlaw)	$108,242 (value based on vacant lot prior to development)	2008
928-230-016	Riverside	38155 Via Vista Grande	$108,242 (value based on vacant lot prior to development)	2008
		TOTAL	$441,192	

Given the above assets, which do not include the value of improvements that have since been made to the properties at 38175 and 38155 Via Vista Grande, it appears the Discharger has the capacity to pay the proposed liability.

Step 7 - Other Factors as Justice May Require

The Enforcement Policy provides that if a Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision "other factors as justice may require," if express findings are made to justify this. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The San Diego Water Board has incurred $9,450 to date in staff costs associated with investigating the violations and preparing the enforcement action. The total liability proposed in Complaint No. R9-2010-0084 includes the addition of these identified staff costs.

No other factors are being considered in the determination of the proposed liability amount for these violations.

Step 8 - Economic Benefit

The Enforcement Policy requires a Water Board to determine any economic benefit of the violations based on the best available information, and suggests that the amount of administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The San Diego Water Board Prosecution Team estimates the economic benefit enjoyed by the Discharger from these violations to be approximately $5,663. This amount is based on the additional equipment rental and labor costs associated with properly transporting sediment, rocks and boulders to an appropriate disposal site, which could presumably be found on the 120 acre development, instead of dumping the material into jurisdictional waters.

Step 9 - Maximum and Minimum Liability Amounts

Pursuant to California Water Code section 13350 the maximum civil liability that the San Diego Water Board may assess for this violation is either ten dollars ($10) per gallon discharged or five thousand dollars ($5,000) per day of violation but not both. A per day assessment is preferable for the discharge of construction waste (sediment, rocks, boulders, etc.) to waters of the state because the volume of waste discharged is difficult to quantify. Therefore, the maximum liability the San Diego Water Board may assess for these violations is three million two hundred twenty five thousand dollars ($3,225,000).

Water Code section 13350 does not require a minimum liability when there is a discharge but no cleanup and abatement order has been issued. The Enforcement Policy requires that:

> *"The adjusted Total Base Liability shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations."*

Therefore, the minimum liability amount the San Diego Water Board may assess is six thousand two hundred twenty nine dollars ($6,229). The recommended liability falls within the allowable statutory range for minimum and maximum amounts.

Step 10 - Proposed Civil Liability

Based on the penalty calculation methodology within Section VI of the Enforcement Policy, the proposed civil liability for the unauthorized discharge of waste to waters of the state in violation of the Basin Plan's Waste Discharge Prohibition Nos. 1 and 14 between December 16, 2008 and September 21, 2010 is one hundred sixty seven thousand four hundred dollars ($167,400) plus staff costs.

2. Violation: Discharges of Sediment to a Municipal Storm Sewer System (MS4) Tributary to Waters of the Nation

Step 1 – Potential for Harm for Discharge Violations

Factor 1 – Harm or Potential Harm to Beneficial Uses

The discharge of sediment to the County of Riverside's MS4 tributary to Murrieta Creek resulted in moderate harm or potential harm to beneficial uses. Accordingly, a score of 3 out of 5 is assigned to Factor 1 of the penalty calculation. The Enforcement Policy defines moderate for discharge violations as:

> *"Moderate – moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects)."*

The Discharger discharged sediment to an unnamed ephemeral tributary to an MS4 and Murrieta Creek, a water of the United States, on January 28, 2008 see Figures 4 and 5).

Figure 4. Photo of sediment discharge in unnamed tributary to MS4 and Murrieta Creek. (IMG_007.JPG taken by County of Riverside on January 29, 2008).

Figure 5. Photo of sediment discharge into MS4 tributary to Murrieta Creek. (IMG_005.JPG taken by County of Riverside on January 29, 2008.)

The County inspected the site on January 29, 2008 and documented the discharge of massive amounts of sediment. The discharge was caused by the Discharger's failure to implement adequate BMPs at 38175 Via Vista Grande. Specifically, large graded slopes were protected by only a single, two foot high silt fence that was improperly installed, the graded slopes had no erosion control devices and evidence of severe erosion was present, as shown in Figure 6.

Figure 6. Photo of failed silt fence, and inadequately protected large graded slopes with numerous erosion rills. (Photo IMG_010.JPG taken by County of Riverside on January 29, 2008.)

The San Diego Water Board and County inspected the site on December 16, 2008 in response to a complaint of sediment discharges from the development. The San Diego Water Board observed that a portion of the Discharger's graded slope had failed during the previous day's rain as seen in Figure 7.

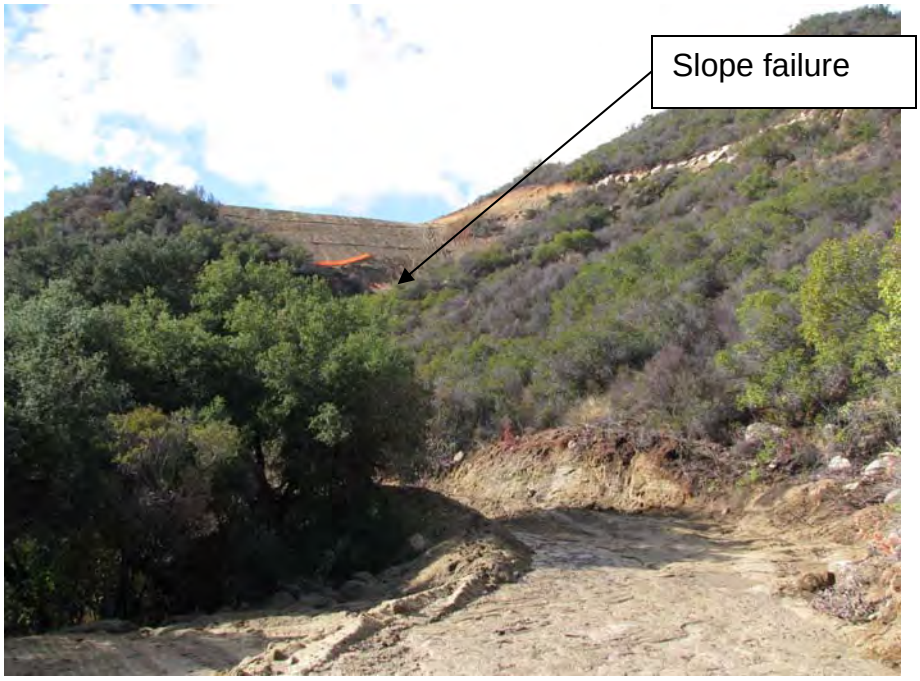

Figure 7. Photo of failed slope at 38175 Via Vista Grande. (IMG_060.JPG taken by San Diego Water Board on December 16, 2008.)

The slope failure resulted in another discharge to the MS4 tributary to Murrieta Creek as seen in Figure 8.

Figure 8. Photo of sediment discharge to MS4 tributary to Murrieta Creek.(IMG_0273.JPG taken by San Diego Water Board on December 23, 2008)

Figure 9. Photo of MS4 tributary to Murrieta Creek after cleanup. (Photo IMG_019.JPG taken by San Diego Water Board on January 28, 2009.)

Factor 2 – Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The characteristics of the discharges of sediment warrant a score of "Moderate." Using the value associated with a "Moderate" determination in the Enforcement Policy, the discharges are assigned a score of 2 out of 4.

Suspended sediment in surface waters can cause a significant risk or threat to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic flora by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which concludes that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

The beneficial uses for Murrieta Creek and tributaries in the affected Hydrologic Subarea are as follows:

(a) Municipal and Domestic Supply
(b) Agricultural Supply
(c) Industrial Service Supply
(d) Industrial Process Supply
(e) Contact Water Recreation (Potential)
(f) Non-contact Water Recreation
(g) Warm Freshwater Habitat
(h) Wildlife Habitat

Factor 3 – Susceptibility to Cleanup or Abatement

The San Diego Water Board Prosecution Team has assigned a score of 1 out of either 0 or 1 to Factor 3. While removal of the discharged sediment that remained in the open MS4 culvert behind Montes Court was susceptible to cleanup, removal of all of the sediment discharged to waters of the state by the Discharger was infeasible to cleanup since much of it washed away off site. Based on this, it is estimated that far less than 50 percent of the materials discharged would be susceptible to cleanup.

Final Score – "Potential for Harm"

Based on the above determinations, the Potential for Harm final score for discharges of sediment to an MS4 tributary to waters of the United States is 6.

Step 2 – Assessments for Discharge Violations

Water Code section 13385 states that a regional board may impose civil liability on a daily basis, a per gallon basis, or both. Due to the difficulty in accurately determining the volume of sediment discharged during the two documented discharge events, civil liability will be calculated on a per day basis for these violations.

Per Day Assessments for Discharge Violations

Pursuant to the Enforcement Policy, Water Boards shall determine an initial liability factor per day based on the "Potential for Harm" score and the extent of "Deviation from Requirements" of the violation.

Deviation from Requirement

Order No. 99-08-DWQ prohibits the discharge of material other than storm water to an MS4 or waters of the United States unless otherwise authorized by an NPDES permit.

The widespread and large discharges of waste from construction activities in this case to an MS4 tributary to waters of the United States indicates a total disregard for the requirements and renders them ineffective. Accordingly, the Discharger's Deviation from Requirement score is determined to be "Major."

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of 6 and "Deviation from Requirement" factor of "Major, the "Per Day Factor" for discharging sediment to an MS4 tributary to waters of the United States is 0.220 in Table 2 of the Enforcement Policy. Calculating the Per Day Assessment is achieved by multiplying:

(Per Day Factor) x (Statutory Maximum Liability) =
(0.220) x ($10,000) = $2,200

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 does not apply to discharge violations.

Step 4 – Adjustment Factors

Culpability

The San Diego Water Board Prosecution Team has selected a culpability multiplier of 1.5 out of a range from 0.5 to 1.5 for these violations because the Discharger intentionally and repeatedly ignored the County's demands to install adequate BMPs at the construction site while continuing with mass grading activities on a steep slope. By filing a NOI for coverage under Order No. 99-08-DWQ, the Discharger accepted the responsibility for knowing that the discharge of sediment off the construction site and into the MS4 and/or waters of the United States is a violation of the General Permit.

Cleanup and Cooperation

The San Diego Water Board Prosecution Team has selected a cleanup and cooperation multiplier of 1.0 from a range of .75 to 1.5 for these violations because the Discharger did voluntarily cleanup sediment discharged to downstream properties and the exposed portion of the MS4.

History of Violation

The San Diego Water Board has no information that suggests that the Discharger has any previous history of violations; therefore the adjustment factor with regards to history of violation is 1.

Multiple Day Violations

At this time the San Diego Water Board Prosecution Team only has evidence indicating discharges of sediment from the construction site occurred on two days; therefore, a reduction for multiple days of violation does not apply to these violations.

Step 5 - Determination of Initial Amount of Liability

The Base Liability amount for this violation of $6,600 is determined by multiplying the Per Day Assessment by the Days of Violation to determine the Initial Amount of Liability and then applying the adjustment factors calculated as follows:

(Per Day Assessment) x (Days of Violation) =
($2,000) x (2) = $4,400

(Initial Liability Amount) x (Culpability) x (Cleanup) x (History of Violations) =
($4,400) x (1.5) x (1.0) x (1.0) = $6,600

Step 6 - Ability to Pay and Ability to Continue in Business

As described previously, the San Diego Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability.

Step 7 - Other Factors as Justice May Require

The San Diego Water Board has incurred approximately $9,450 in staff costs associated with the investigating the violations and preparing the enforcement action. The total liability proposed in Complaint No. R9-2010-0084 includes the addition of these identified staff costs.

No other factors are being considered in the determination of the proposed liability amount for these violations.

Step 8 - Economic Benefit

The San Diego Water Board has determined that the Discharger has derived no economic benefit from discharging sediment to an MS4 tributary to waters of the United States. While the discharges occurred because of the Discharger's failure to implement adequate BMPs, that economic benefit has been applied to the violations associated with failure to development and implement an adequate SWPPP.

Step 9 - Maximum and Minimum Liability Amounts

Pursuant to California Water Code section 13385 the maximum civil liability that the San Diego Water Board may assess for this violation is (a) ten thousand dollars ($10,000) per day of violation (per violation); and (b) ten dollars ($10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. Water Code section 13385(e) requires that when pursuing civil liability under California Water Codes section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." If no economic benefit was derived from the violation, there is no minimum liability requirement.

Only the per day assessment is appropriate for the discharge of sediment to an MS4 tributary to waters of the United States because the amount of sediment discharged is difficult to quantify.

The Discharger discharged sediment to an MS4 tributary to waters of the United States on December 15, 2008 and January 28, 2008. Therefore, the maximum civil liability that could be assessed for this violation is twenty thousand dollars ($20,000). The minimum liability amount is zero dollars ($0) because the Discharger derived no economic benefit from these violations.

Step 10 - Proposed Civil Liability

Based on the penalty calculation methodology within Section VI of the Enforcement Policy, the proposed civil liability for discharging sediment to an MS4 tributary to waters of the United States in violation of Discharge Prohibition A.2 of Order No. 99-08-DWQ on two days is six thousand six hundred dollars ($6,600) plus staff costs.

3. Violation: Failure to Develop and Implement an Adequate Storm Water Pollution Protection Plan

Step 1 – Potential for Harm for Discharge Violations

Step 1 does not apply to this non-discharge violation.

Step 2 – Assessments for Discharge Violations

Step 2 does not apply to this non-discharge violation.

Step 3 – Per Day Assessments for Non-Discharge Violations

Pursuant to the Enforcement Policy, Water Boards shall calculate an initial liability factor for each non-discharge violation. The calculation shall consider the violation's potential for harm, and extent to which the violation deviates from applicable requirements.

Potential for Harm

The failure to implement an adequate SWPPP resulted in at least two massive discharges of sediment to the MS4 tributary to waters of the United States. Although sediment is not categorized as toxic, the impacts to beneficial uses from the discharge and deposition of large amounts of sediment can be categorized as substantial. Accordingly, the "Potential for Harm" is determined to be "Moderate". The Enforcement Policy defines moderate for non-discharge violations as:

> *"Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm."*

Multiple inspections at the construction site by the San Diego Water Board and County of Riverside have documented a minimum of 150 days (October 19, 2007 – January 28, 2008 and October 30, 2008 – December 16, 2008) of violations of Special Provisions for Construction Activity C.2 of Order No. 99-08-DWQ.

According to the Discharger, construction activities began at 38175 Via Vista Grande in March 2007. The County inspected the site on October 19, 2007 and documented that grading activities had commenced without the installation of erosion control BMPs. The County also noted that graded slopes, internal flow lines, and natural drainage channels had no BMPs and there was no SWPPP on site **(Exhibit 3, October 19, 2007 Inspection Report).**[3] The Discharger was notified of the violations by letter dated October 30, 2007 **(Exhibit 4, October 30, 2007 letter)**. A follow-up inspection on January 2, 2008 revealed that none of the previously identified BMP violations had been corrected prompting the County to notify the Discharger again by letter dated January 22, 2008, and warn that continued violation of BMP requirements could result in the construction site being shut down **(Exhibit 5, January 22, 2008 Letter)**.

On January 28, 2008, the County responded to the report of a massive sediment discharge from the construction site to the MS4 tributary to waters of the United States that also caused damage to a downstream property. The County documented that the discharge occurred because of the Discharger's continued failure to implement adequate erosion and sediment control BMPs and issued a Stop Work Order on January 30, 2008. The Order required the Discharger to cease all construction activities until a verification inspection determined that adequate protections were in place **(Exhibit 6, January 30, 2008 Stop Work Order)**.

The Stop Work Order remained in effect while the County conducted its first inspection of the 2008/2009 rainy season on October 30, 2008. The County observed that the bags stockpiled on site were inappropriately filled with sand or decomposed granite. The County notified the Discharger that its regulations require all bags to be filled with only gravel because of the additional sediment load caused by degraded or damaged sand bags. The County also notified the Discharger that there were still no plans or SWPPP on site, BMPs were not effective and that there was the potential for non-storm water discharges. The County categorized the site as being in gross non-compliance and did not lift the Stop Work Order **(Exhibit 7, October 30, 2008 Inspection Report)**.

[3] The County's inspection report dated October 19, 2007 indicates a site address of 38155 Via Vista Grande, also owned by Mr. Eitzen; however, the next inspection dated January 2, 2008 indicates that the October 19 inspection was conducted at the wrong location. The County confirmed by telephone that the actual site address was 38175 Via Vista Grande. The confusion was due to the Discharger's failure to provide adequate identification of the parcel through address sign or having plans or a SWPPP on site.

On December 16, 2008, the San Diego Water Board and County conducted a joint inspection in response to a complaint of sediment discharges from the development the previous day. The inspection revealed a failure in a silt fence at 38175 Via Vista Grande due to its improper installation and significant erosion rills in the large graded slope. It was also noted that a portion of the graded slope had failed as seen in Figure 10.

Figure 10. Photo of failed silt fences and erosion rills from 38175 Via Vista Grande. (IMG_077.JPG taken by San Diego Water Board on December 16, 2008.)

The County issued the Discharger a Notice of Violation and second Stop Work Order during the December 16, 2008 inspection **(Exhibit 8, December 16, 2008 Stop Work Order)**. The San Diego Water Board conducted a follow-up inspection on December 23, 2008 which verified that no corrections to the BMP violations had occurred **(Exhibit 9, San Diego Water Board December 23, 2008 Inspection Report)**. The County's Stop Work Order stayed in effect until the grading permit expired on April 30, 2009.

The construction site remained inactive through all of 2009. On March 24, 2010, the San Diego Water Board issued Notice of Violation R9-2010-0059 and required a technical report under Water Code section 13267 **(Exhibit 10, NOV R9-2010-0059 and Request for Required Technical Report)**. The Notice of Violation addressed violations at the entire Fairway Hills Estates development. The Discharger submitted the Required Technical Report on May 18, 2010 **(Exhibit 11, Required Technical Report)**.

In February 2010 the Discharger began BMP installation. The County notified the San Diego Water Board that the construction site appeared to have adequate BMPs installed on March 31, 2010. The stabilization of a large graded slope is shown in Figure 11.

Figure 11. Photo of installation of proper erosion control at 38175 Via Vista Grande. (Photo IMG_040.JPG taken by County of Riverside on March 31, 2010.)

A follow-up inspection by the County on April 12, 2010 confirmed that a SWPPP was on site and the site continued to be in compliance with the BMP requirements of Order 99-08-DWQ **(Exhibit 12, April 12, 2010 Inspection Report)**.

Deviation from Requirement

Order No. 99-08-DWQ requires all dischargers to develop and implement a SWPPP that emphasizes the use of appropriately selected, correctly installed and properly maintained pollution reduction BMPs that address source control of pollutants during changing construction activities. A copy of the SWPPP is required to be on the construction site from the beginning of construction until coverage under the General Permit is terminated.

The failure to implement an adequate SWPPP is a significant deviation from the requirements of Order No. 99-08-DWQ. As a result, the "Deviation from Requirement" is determined to be "Major."

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of "Moderate" and "Deviation from Requirement" factor of "Major", the "Per Day Factor" for failing to develop and implement an adequate SWPPP in Table 3 of the Enforcement Policy is 0.55. Calculating the Per Day Assessment is achieved by multiplying:

(Per Day Factor) x (Statutory Maximum Liability) =
(0.55) x ($10,000) = $5,500

Step 4 – Adjustment Factors

Culpability

The adjustment factor for this violation with regards to culpability is 1.5 out of a range from 0.5 to 1.5 because the Discharger began mass grading operations at a construction site located on a steep slope at the beginning of the rainy season with woefully inadequate BMPs. The Discharger was repeatedly warned by the County that the site was not prepared for the rainy season. The Discharger failed to comply with the County's directives to implement adequate and effective BMPs. Therefore, it is presumed that the Discharger intentionally violated the terms of the General Permit and consequently bears a high degree of culpability.

Cleanup and Cooperation

The adjustment factor for this violation with regards to cooperation is 1.5 out of a range from 0.75 to 1.5 because the Discharger failed to comply with the County's repeated directives to install and maintain adequate BMPs for effective sediment and erosion control.

History of Violation

The San Diego Water Board Prosecution Team has no information that suggests that the Discharger has any previous history of violations; therefore the adjustment factor with regards to history of violation is 1.

Multiple Day Violations

Upon review of the findings necessary to invoke the Enforcement Policy's Multiple Day Violations reduction, an adjustment can be made to reduce the days of violation for the purpose of calculating liability. In this case, the Discharger saved money by delaying the development and implementation of an adequate SWPPP and the money saved because if this delay can be compounded to reflect its current day worth; however, there is no daily benefit from the Discharger's noncompliance.

The table below displays the Adjusted Days of Violation pursuant to the Enforcement Policy:

Alleged Violation	Days of Violation	Adjusted Days of Violation
Failure to Develop and Implement an adequate SWPPP	150	16

Step 5 - Determination of Base Liability Amount

The Base Liability amount for failure to develop and implement an adequate SWPPP of $198,000 is determined by multiplying the Per Day Assessment by the Adjusted Days of Violation to determine the Initial Amount of Liability and then applying the adjustment factors as calculated as follows:

(Per Day Assessment) x (Adjusted Days of Violation) =
($5,500) x (16) = $88,000

(Initial Amount of Liability) x (Culpability) x (Cleanup) x (History of Violation) =
($88,000) x (1.5) x (1.5) x (1.0) = $198,000

Step 6 - Ability to Pay and Ability to Continue in Business

As described previously, the San Diego Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability.

Step 7 - Other Factors as Justice May Require

The San Diego Water Board has incurred approximately $9,450 in staff costs associated with investigating the violations and preparing the enforcement action. The total liability proposed in Complaint No. R9-2010-0084 includes the addition of these identified staff costs.

No other factors are being considered in the determination of the proposed liability amount for these violations.

Step 8 - Economic Benefit

The San Diego Water Board has determined that the Discharger has derived economic benefit from failing to implement an adequate SWPPP. The San Diego Water Board has calculated that the cost of providing adequate erosion and sediment controls per acre on a construction site is approximately $5,000.[4] Based on the County's inspection reports, there were three acres of disturbed area at the construction site. Based on this information, the cost of adequate BMPs at the site would be $15,000 per year.

The County's inspection reports indicate that the Discharger's construction site lacked adequate BMPs for two rainy seasons, which would bring the average cost for adequate BMPs for a three acre construction site to $30,000.

Because of the unusually steep slopes associated with this site, it is reasonable to assume that more protections would be necessary at this site than at a typical construction site; therefore, an adjustment factor or 1.5 is appropriate. Therefore the total estimated economic benefit for this violation is $45,000.

Step 9 - Maximum and Minimum Liability Amounts

Pursuant to Water Code section 13385 the maximum civil liability that the San Diego Water Board may assess for this violation is (a) ten thousand dollars ($10,000) per day of violation (per violation); and (b) ten dollars ($10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. The maximum liability for failure to develop and implement an adequate SWPPP for 150 days is one million five hundred thousand dollars ($1,500,000).

[4] $5,000 per acre for adequate BMP implementation for construction sites is based on the San Diego Water Board's previous enforcement action contained in ACL Order No. R9-2008-0021

Water Code section 13385(e) requires that when pursuing civil liability under section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The Enforcement Policy requires that the adjusted Total Base Liability shall be at least ten percent higher than the Economic Benefit Amount, Therefore, the minimum liability for these violations is calculated by the San Diego Water Board to be forty nine thousand five hundred dollars ($49,500)**.**

Step 10 - Proposed Civil Liability

Based on the penalty calculation methodology within Section VI of the Enforcement Policy, the proposed civil liability for failure to develop and implement an adequate SWPPP in violation of Special Provision for Construction Activity C.2 of Order NO. 99-08-DWQ is one hundred ninety eight thousand dollars ($198,000) plus staff costs.

D. TOTAL PROPOSED CIVIL LIABLITY

The total proposed civil liability recommended in ACL Complaint No. R9-2010-0084 is three hundred eighty one thousand four hundred fifty dollars ($381,450). A summary of the methodology used by the San Diego Water Board to calculate the proposed civil liability is summarized in **Exhibit 13, Penalty Methodology Decision, ACL Complaint No. R9-2010-0084.** The civil liability for each violation addressed in ACL Complaint R9-2010-0084 is summarized in Table 1 below.

Violation	Days of Violation	Adjusted Days of Violation	Liability Per Adjusted Days of Violation	Total Liability
Discharges of Waste to Waters of the State	645	48	$3,487.50	$167,400
Discharges of Sediment to an MS4 Tributary to Waters of the United States	2	n/a	$3,300	$6,600
Failure to Develop and Implement an Adequate SWPPP	150	16	$12,375	$198,000
Staff Costs to Date				$9,450
TOTAL PROPOSED CIVIL LIABILITY				**$381,450**

Table 1. Total Proposed Liability

Exhibit 1

State Water Resources Control Board

NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE
GENERAL PERMIT TO DISCHARGE STORM WATER
ASSOCIATED WITH CONSTRUCTION ACTIVITY (WQ ORDER No. 99-08-DWQ)

I. NOI STATUS (SEE INSTRUCTIONS)

MARK ONLY ONE ITEM 1. ☐ New Construction 2. ☐ Change of Information for WDID# 9 33C338575

II. PROPERTY OWNER

Name	Contact Person		
Jack Eitzen	Jack Eitzen		
Mailing Address: PO Box 998	Title:		
City: Saratoga	State: CA	Zip: 95071	Phone: 408-656-2009

Owner Type (*check one*) 1.[ ] Private Individual 2.[ ]Business 3.[ ]Municipal 4.[ ]State 5.[ ]Federal 6.[x]Other

III. DEVELOPER/CONTRACTOR INFORMATION

Developer/Contractor	Contact Person		
Jack Eitzen	Jack Eitzen		
Mailing Address: PO Box 998	Title:		
City: Saratoga	State: CA	Zip: 95071	Phone: 408-656-2009

IV. CONSTRUCTION PROJECT INFORMATION

Site/Project Name	Site Contact Person		
SFR	Jack Eitzen		
Physical Address/Location	Latitude: ____°	Longitude: ____°	County: Riverside
City (or nearest City): Murrieta	Zip: 92562	Site Phone Number: 408-656-2009	Emergency Phone Number:

A. Total size of construction site area: _____ Acres

B. Total area to be disturbed: 3 Acres (% of total 29)

C. Percent of site imperviousness (including rooftops):
Before Construction: 0 %
After Construction: 11 %

D. Tract Number(s): 19367 , _____

E. Mile Post Marker: _____

F. Is the construction site part of a larger common plan of development or sale?
☐ YES ☐ NO

G. Name of plan or development: Residential Grading Plan

H. Construction commencement date: 05/30/2006

I. % of site to be mass graded: _____

J. Projected construction dates:
Complete grading: 07/15/2006 Complete project: 12/31/2006

K. Type of Construction (Check all that apply):
1. ☐ Residential 2. ☐ Commercial 3. ☐ Industrial 4. ☐ Reconstruction 5. ☐ Transportation
6. ☐ Utility Description: _____ 7. ☐ Other (Please List): _____

V. BILLING INFORMATION

SEND BILL TO:	Name	Contact Person	
☐ OWNER (as in II. above)	Jack Eitzen	Jack Eitzen	
☐ DEVELOPER (as in III. above)	Mailing Address: PO Box 998	Phone/Fax: 408-656-2009	
☐ OTHER (enter information at right)	City: Saratoga	State: CA	Zip: 95071

VI. REGULATORY STATUS

A. Has a local agency approved a required erosion/sediment control plan? ☐ YES ☐ NO

Does the erosion/sediment control plan address construction activities such as infrastructure and structures? ☐ YES ☐ NO

Name of local agency: _____ Phone: _____

B. Is this project or any part thereof, subject to conditions imposed under a CWA Section 404 permit of 401 Water Quality Certification? ☐ YES ☐ No

If yes, provide details: _____

VII. RECEIVING WATER INFORMATION

A. Does the storm water runoff from the construction site discharge to (Check all that apply):

1. ☐ **Indirectly to waters of the U.S.**
2. ☐ **Storm drain system - Enter owner's name:** _____
3. ☐ **Directly to waters of U.S. (e.g. , river, lake, creek, stream, bay, ocean, etc.)**

B. Name of receiving water: (river, lake, creek, stream, bay, ocean): _____

VIII. IMPLEMENTATION OF NPDES PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)

☐ A SWPPP has been prepared for this facility and is available for review: Date Prepared: 05/30/2006 Date Amended: _____

☐ A SWPPP will be prepared and ready for review by (enter date): _____

☐ A tentative schedule has been included in the SWPPP for activities such as grading, street construction, home construction, etc.

B. MONITORING PROGRAM

☐ A monitoring and maintenance schedule has been developed that includes inspection of the construction BMPs before anticipated storm events and after actual storm events and is available for review.

If checked above: A qualified person has been assigned responsibility for pre-storm and post-storm BMP inspections to identify effectiveness and necessary repairs or design changes ☐ YES ☐ NO

Name: _____ Phone: _____

C. PERMIT COMPLIANCE RESPONSIBILITY

A qualified person has been assigned responsibility to ensure full compliance with the Permit, and to implement all elements of the Storm Water Pollution Prevention Plan including:

1. Preparing an annual compliance evaluation ☐ YES ☐ NO

Name: _____ Phone: _____

2. Eliminating all unauthorized discharges ☐ YES ☐ NO

IX. VICINITY MAP AND FEE (must show site location in relation to nearest named streets, intersections, etc.)

Have you included a vicinity map with this submittal? ☐ YES ☐ NO

Have you included payment of the annual fee with this submittal? ☐ YES ☐ NO

X. CERTIFICATIONS

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. In addition, I certify that I have read the entire General Permit, including all attachments, and agree to comply with and be bound by all of the provisions, requirements, and prohibitions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."

Printed Name: Donna McCullough

Signature: _____ **Date:** 12/15/2005

Title: Executive Administrator

Exhibit 2

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED MANAGEMENT PROGRAM

FACILITY INSPECTION REPORT

INSPECTION DATE: December 16, 2008 TIME: 09: 05 AM WDIDs: 9 33C338575/ 9 33C338574/9 33C350456/9 33C350455/ 9 33C350453/ 9 33C349965/ 9 33C350xxx

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: None

Fairway Hills Estates LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Jack Eitzen, 408-656-2009
OWNER CONTACT NAME AND PHONE #

Jack Eitzen Construction
FACILITY OR DEVELOPER NAME (if different from owner)

Jack Eitzen, 408-656-2009
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

38500 Via Vista Grande
FACILITY STREET ADDRESS

Murrieta, CA 92562
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- ☐ MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- X GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 – CONSTRUCTION
- ☐ GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- ☐ GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- ☐ GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- ☐ SECTION 401 WATER QUALITY CERTIFICATION
- ☐ CWC SECTION 13264

INSPECTION TYPE (Check One)

A1 ____ "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)

B1 X "B" type compliance--A routine nonsampling inspection. (EPA Type C)

02 ____ Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.

03 ____ Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.

04 X Complaint--Inspection made in response to a complaint.

05 ____ Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.

06 ____ No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.

07 ____ Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).

08 ____ Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

Yes Were violations noted during this inspection? (Yes/No/Pending Sample Results)

No Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY: In February 2008, the California Regional Water Quality Control Board, San Diego Water Board received a telephone complaint from Gertie Kazmi of 22408 Montes Court, Murrieta of sediment discharged to her backyard from recent heavy rains (see Attachment 2). The deposited sediment originated from upgradient construction activity at Fairway Hills Estates LLC (hereinafter Hillcrest). Cleanup of the sediment was almost completed upon my arrival at the site.

In January 2008, Phil Broesamle, Riverside County Department of Building and Safety (Riverside County) inspector, complained to the San Diego Water Board of repeated construction stormwater ordinance violations by Hillcrest from their construction activities.

In December 2008, a neighbor located downgradient at the Claremont Road entrance to the site, complained to the City of Wildomar and Riverside County of large quantities of sediment encroaching unto his fence along Claremont Street.

Based on the complaints and their routine inspections, the County of Riverside has attempted to bring Hillcrest into compliance with the requirements of the County of Riverside construction ordinances. Riverside County had issued Stop Work Orders in an attempt to bring the site into compliance with their Water Quality Ordinances.

In December 2008, Roger Miller of the County of Riverside referred the site to me through Ben Neill of the San Diego Water Board.

Background:

Fairway Hills Estates LLC (hereinafter Hillcrest) consists of twelve distinct single-family residence construction projects. Each project is about ten acres in size and they are owned by various individuals, including Jack Eitzen, the contractor. The twelve parcels are a joint limited partnership made up of approximately six different owners. Known owners are Jack Eitzen, Rudy Nunez, and Paul and Steve Margoulas. Jack Eitzen Construction is the principal contractor for the Hillcrest project, which stretches along the 38500 section of Via Vista Grande to Claremont Road in the City of Wildomar next to the Riverside County boundary. The 120-acre parcel extends from the west overlooking the Bear Creek Golf and Country Club to the City of Wildomar to the northeast (see location map). Known access to the site are northeast from Claremont Road and from the north via Via Vista Grande from the La Cresta community.

On December 16, 2008, at 09:05 a.m., Ben Neill, Chad Loflen, Phil Broesamle and Tony Felix conducted a joint inspection a few days after the area had received heavy rains (about 9 inches). The inspection was conducted in response to those complaints and to assess compliance with the construction storm water permit (Order No. 99-08-DWQ).

II. FINDINGS:

We entered the site for inspection at the Claremont Street entrance (in Wildomar) and noted and photo-documented the following Water Quality violations:

A. Construction Stormwater Permit, Order No. 99-08-DWQ:

1. The Stormwater Pollution Prevention Plan (SWPPP) was unavailable for inspection review;
2. Of the twelve construction projects, only six had Notices of Intent (NOI) for construction activities;
3. Some construction projects were underway without the necessary plan checks approvals by Riverside County;
4. The access road at the Claremont Street entrance, an existing fire road, was regraded without the proper construction general permit;
5. The site entrance lacked best management practices (BMPs) or controls to prevent offsite discharge of sediment;

6. The main access road leading to Via Vista Grande, access laterals, and the inside slopes along the roads lacked appropriate erosion and sediment controls;
7. The outside slopes along the access roads lacked the necessary erosion and sediment controls to reduce or prevent erosion;
8. Two sediment basins constructed for upgradient runoff treatment purposes, lacked the proper design and placement requirements;
9. Lack of BMPs at the vehicle storage and service area to contain generated pollutants;
10. Hydromodification impacts to downgradient structures (neighboring home and fence) and to the hardened channel, tributary to Murrieta Creek, along the Bear Creek Community; and
11. After weeks of requests (from February 2008 to the present) for copies of plan checks, NOIs, and the grading permit for road construction, Jack Eitzen is unable to produce those documents.

B. 401 Water Quality Certification:

1. Filling of natural waterways- excavated dirt and rocks from construction activities were sidescaped into natural waterways or waters of the State;
2. Stream bed alteration of natural waterways caused by the excavation of dirt and rocks resulted in natural flow disturbance;
3. Removal of native plants and trees in and around natural waterways;
4. Disturbance of the ecosystem along the Riparian corridors;
5. Grading for road access across natural waterways; and
6. Using a natural waterway as a best management practice.

C: Summary:

The extent of Water Quality violations were discussed with Rudy Nunez, site project engineer and Jack Eitzen. They were informed that all construction activities should cease, except for installing, repairing, and maintaining BMPs since we were still in the wet season.

The San Diego Water Board issues Notice of Violation No. R9-2010-0059 and Investigative Order pursuant to California Water Code, Division 7, Section 13267 prescribing corrective measures to achieve compliance with the construction general permit.

III. SIGNATURE SECTION

Tony Felix		12/16/08
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE

IV. (For internal use only)

Reviewed by Supervisor: _____ Date _____

cc: See distribution list

Enclosures: (1) December 16, 2008 Inspection photos

SMARTS-2 Entries

WDID	App. ID	Inspection ID	Violation ID	Enforcement ID
9 33C338575	288214	2002520	841134	401312
9 33C338574	288215	2002521	841135	401313
9 33C350456	339509	2002523	841136	401314
9 33C350455	339514	2002524	841137	401315
9 33C350453	339510	2002525	841138	401316
9 33C349965	337595	2002526	841139	401317
9 33C350XXX*	-	-	-	-

* WDID No. received via e-mail from Jack Eitzen

Enclosure: December 16, 2008 Inspection Photos

JS:esb:aaf

WDIDs: 933C38575, 933C338574, 933C350456, 933C350455, 933C349965, 933C350XXX. Inspectors: Ben Neill, Chad Loflen and Tony Felix (San Diego Water Board); Phil Broesamle (Riverside County Building & Safety. Site Contact: Jack Eitzen 408-656-2009

Photo 01: Site entrance at Claremont Street shows inadequate BMP to prevent erosion

Photo 02: Shows fire-road with significant erosion at site entrance

Photo 03: In certain areas erosion was down to the bedrock

Photo 04: Erosion gullies along fire-road

Photo 05: Erosion gullies leading to Claremont site entrance

Photo 06: Erodible slopes and sediment buildup on fire-road from recent rains

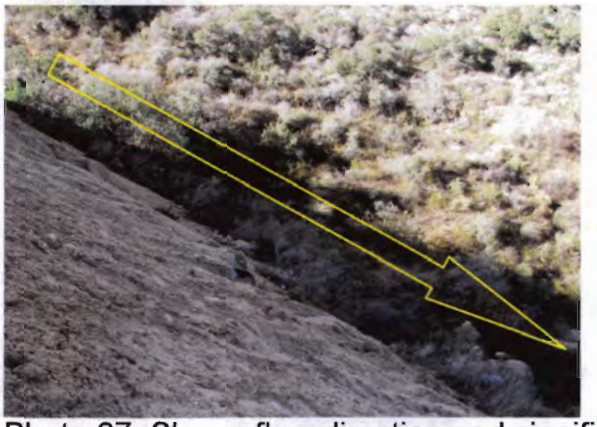

Photo 07: Shows flow direction and significant sediment loads sidescaped into natural waterway

Photo 08: Outside slope not stabilized, discharge of fill (rocks, boulders, and vegetation) in waterway

Photo 09: Unstabilized slopes and access road, breached sediment basin allowed sediment discharge (insert) in waterway

Photo 10: Failed slope along access road

Photo 11: Construction fill (sediment, silt, rocks, and boulders) dumped in waterway (two inspectors are standing waterway)

Photo 12:

Photo 13: Shows severe erosion along access road leading to middle basin

Photo 14: Looking downhill along access road shows erosion gullies

Photo 15: Sediment, silt and rocks are sidescaped into riparian corridor just downgradient from middle sediment basin

Photo 16: Shows erodible slopes leading to sediment basin

Photo 17: Shows significant sediment and silt in sediment basin

Photo 18: Construction wastes or fill (boulders, rocks, shrubs) sidescaped in waterway

Photo 19: Close-up of fill in waterway

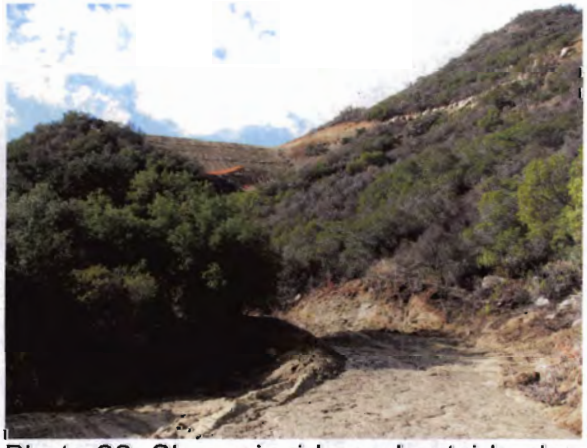

Photo 20: Shows inside and outside slopes (in fore and backgrounds) lack the proper BMPs to reduce erosion

Photo 21: Close-up of erosion rills on slope shown in photo 20

Photo 22: Construction wastes littered along fire-road

Photo 23: Rocks, sediment and silt deposited in natural drainage

Photo 24: Construction wastes or fill (rocks, trash, and debris) deposited in waterway downgradient from the sediment basin. This sediment basin connects to the sediment basin shown in photos 17 and 18

Exhibit 3

COUNTY OF RIVERSIDE
TRANSPORTATION AND LAND MANAGEMENT AGENCY

Building and Safety Department

NPDES Compliance Verification Sheet

Tract/Plot Plan No: APN 928-230-016 SFR
1. A) Grading Permit No: BGR051518
B) WDID Number: 933C338574
Size/Site (Acres Disturbed):
Thomas Brothers Coordinates: 927, C-3

Date Verification: 10/19/07
By: Mike Malone
APN: 928-230-016
Weather Condition: clear, mild

Site Inspection Priority Level*:
[] Low [x] Med [] High

Jobsite Needs Immediate County/Owner Attention-Action: [ ]

Project Owner/Applicant: Jack Eitzen / Caroline Cocciardi
P.O. Box 998
Saratoga, CA 95071
(408) 656-2009
Site Address: 38155 Via Vista Grande, Murrieta
Contact Person for Emergencies:
Contact Person 24-Hour Phone Number:

Yes	No	
		2. Storm Water Pollution Prevention Plan:
___	x	A) SWPPP found on site?
___	___	(1) Does it appear that SWPPP documents have been prepared, however were not found on jobsite?
___	___	(2) Does the verifier have prior knowledge of existing SWPPP documents on jobsite?
___	___	B) SWPPP is being installed according to actual construction progress?
___	___	C) SWPPP includes sufficient BMPs to ensure erosion and sediment will be realistically controlled?
		3. Best Management Practices:
___	___	A) BMPs installed per the site SWPPP?
___	___	B) BMPs in place for various subcontractor trades, PCC cleanout, material storage, waste storage.
___	x	C) Overall are site BMPs effective?
___	x	D) Effective combination of erosion and sediment controls on site?
___	x	E) BMPs installed per construction progress?
		4. Site Erosion Control Measures:
x	___	A) Erosion manufactured and/or denuded natural slopes?
___	___	B) Erosion control BMPs installed in accordance with the site SWPPP?
		5. Site Sediment Control Measures:
___	___	A) Construction site sediment present outside the permit site or present on the site in an area that requires protection?
___	___	B) Evidence of construction site sediment buildup on County maintained streets, downstream storm drains and/or drainage ways?
___	___	C) Evidence of track out observed on surface streets adjoining the project site?
___	___	D) Sediment controls installed and maintained in accordance with the site SWPPP?
		6. Illegal/Illicit Discharges:
___	___	A) Evidence that structural controls are breached or failed under storm events of minor intensity?
___	___	B) Evidence that active non-storm water discharges or potential illicit connections or illegal discharges to the street or storm drains?
		7. Per RWQCB requirements Applicant, Contractor, Developer, Property Owner NPDES Training:
___	___	A) Onsite contractors and subcontractors receive construction activity water quality impact training.
___	x	B) Documentation noted and/or included in SWPPP that NPDES education/training is being conducted for staff and contractors?

8. Site Violation(s) Notification:

A. Verbal By: ___ Date/Time Issued: ___
B. Written By: ___ Date/Time Issued: ___
C. Notice of Violation By: ___ Date/Time Issued: ___
D. Stop Work Order By: ___ Date/Time Issued: ___
E. Other Action: ___ Date/Time Taken: ___
Comments: ___

9. Date Regional Water Board Notified: 10/30/07

Rev. 10-06 COMPLY

(See Sheet 2 for General Comments)

NPDES Compliance Inspection Sheet- Continued
Tract/Plot Plan No: APN 928-230-016 SFR
Grading Permit No: BGR051518
Date/Inspection: 10/19/07
By: Mike Malone

Inspection Comments

1) First visit to jobsite this season. New permit list.
2) No contact person found at jobsite – no address sign to confirm proper location of jobsite – no grading or construction work currently ongoing – some mass/rough grading previously partially accomplished.
3) No SWPPP/EC documents found at jobsite.
4) No SWPPP/EC devices currently installed.
5) Most larger natural and graded slopes are currently grass/weed covered, but some erosion is evident – some larger natural and graded slopes appear to need proper protections and existing erosion needs repairs prior to installations of protections.
6) All internal flow lines (natural and graded), including ingress/egress driveways, need proper protections.
7) Adjacent natural drainage channels may need protections.
8) Residence builder and contractors may benefit from proper NPDES training.

Estimate Erosion Control Protection – Percentage Complete: 0%

10. * Site Inspection Priority Level Justification: (Indicate "Site Inspection Priority Level" shown on top right of Sheet One. High Priority Level sites- inspected every two weeks: Medium inspected at least three times during the wet season and Low Priority inspected on an as-needed basis).

Y	N	
___	x	A. Site is 50 acres or more of disturbance.
___	x	B. Site disturbs greater than one (1) acre and is tributary (within 200') to a CWA Section 303(d) sediment impaired water body.
___	x	C. Site disturbs greater than one(1) acre and is directly adjacent or discharging to a CWA 303(d) sediment impaired water body and/or to a receiving water within an Environmental Sensitive Area.
___	x	D. Site determined by County or a RWQCB to be a significant thrat to water quality.

Exhibit 4

COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

Building and Safety Department

Nick Anderson
Director

October 30, 2007

Mr. Jack Eitzen
P.O. Box 998
Saratoga CA 95071

Re: WDID: 933C338574
APN 928-230-016 SFR (BGR051518) NPDES Field Verification
Located at: 38155 Via Vista Grande, Murrieta

Dear Mr. Eitzen,

Your immediate attention is called to an NPDES (National Pollutant Discharge Elimination System) Field Verification conducted on October 19, 2007 for this site. During the verification it was noted that your site lacked the installation of required BMPs (Best Management Practices).

Per Riverside County Code 15.12.020, your site is in violation of County NPDES requirements. You are hereby notified to engage the assistance of the site engineer-of-record within 24 hours of receipt of this letter. The engineer-of-record shall supervise the implementation, inspection and reporting of the site SWPPP (Storm Water Pollution Prevention Plan) for this project.

The San Diego Regional Water Quality Control Board will be informed that your site is not in compliance with NPDES requirements. Be advised that costs associated with verifying compliance will be charged against the grading permit for the site. **A continual violation may result in the construction site being shut down and/or having grading and building inspections being denied until compliance is met.**

Implementation documentation, reporting information and requests for re-inspection, shall be forwarded directly to this office. Please refer to the attached sheet that provides the location and telephone number for the San Diego Water Quality Control Board. If you have any questions or concerns, please contact me at (951) 955-0886. Thank you for your attention regarding this very important matter. A copy of the NPDES Field Verification form is provided for your information.

Sincerely,

DEPARTMENT OF BUILDING AND SAFETY

Roger L. Miller
Senior Building Inspector

cc: San Diego Region Water Quality Control Board
Attachments

Exhibit 5

Felix

COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

Building and Safety Department

Nick Anderson
Director

January 22, 2008

Mr. Jack Eitzen
P.O. Bob 998
Saratoga CA 95071

Re: WDID: 933C338575
APN 928-230-007 SFR (BGR051516) NPDES Field Verification
Located at: 38175 Via Vista Grande, Murrieta

Dear Mr. Eitzen,

Your immediate attention is called to an NPDES (National Pollutant Discharge Elimination System) Field Verification conducted on January 02, 2008 for this site. During the verification it was noted that your site lacked the installation of required BMPs (Best Management Practices).

Per Riverside County Code 15.12.020, your site is in violation of County NPDES requirements. You are hereby notified to engage the assistance of the site engineer-of-record within 24 hours of receipt of this letter. The engineer-of-record shall supervise the implementation, inspection and reporting of the site SWPPP (Storm Water Pollution Prevention Plan) for this project.

The San Diego Regional Water Quality Control Board will be informed that your site is not in compliance with NPDES requirements. Be advised that costs associated with verifying compliance will be charged against the grading permit for the site. **A continual violation may result in the construction site being shut down and/or having grading and building inspections being denied until compliance is met.**

Implementation documentation, reporting information and requests for re-inspection, shall be forwarded directly to this office. Please refer to the attached sheet that provides the location and telephone number for the San Diego Water Quality Control Board. If you have any questions or concerns, please contact me at (951) 955-0886. Thank you for your attention regarding this very important matter. A copy of the NPDES Field Verification form is provided for your information.

2008 JAN 28 P 1:3
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

Sincerely,

DEPARTMENT OF BUILDING AND SAFETY

Roger L. Miller
Senior Building Inspector

cc: San Diego Region Water Quality Control Board
Attachments

Exhibit 6

Tony Felix

COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

Building and Safety Department

Nick Anderson
Director

2008 FEB -4 A 10:35
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

January 30, 2008

Jack Eitzen & Caroline Cocciardi
P.O.Box 998
Saratoga CA 95071

** Stop Work Order-NPDES Violation**

Re: WDID: 933C338574
APN928-230-016SFR&APN928-230-01 SFR(BGR051518/BGR051516)NPDES Field Verification
Located at: 38155 & 38175 Via Vista Grande, Murrieta

Dear Mr. Jack Eitzen,

Your immediate attention is called to the NPDES (National Pollutant Discharge Elimination System) Field Verification conducted on January 28, 2008 for this site. During the verification it was noted that your site lacked the installation and/or maintenance of required BMPs (Best Management Practices). The need for installation of the BMPs was originally called to your attention during the initial NPDES Field Verification.

Per Riverside County Code 15.12.020, your site is in violation of County NPDES requirements. **No grading and/or building inspections will be scheduled until your site is brought into conformance with your site Storm Water Pollution Prevention Plan (SWPPP) and receives an acceptable compliance percentage rate based on a re-verification of the site by this Department.** Additionally, the appropriate Regional Water Quality Control Board will be informed that your site is out of compliance with NPDES requirements and of the action taken by this Department.

Please contact me at (951) 955-0886 if you have any questions or to arrange for a follow-up field verification of the site. Thank you for your immediate attention regarding this very important matter. A copy of the NPDES Field Verification form is provided for your information, reference and action.

Sincerely,

DEPARTMENT OF BUILDING AND SAFETY

Roger L. Miller
Senior Building Inspector

2008 FEB -4 A 10:35
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

cc: Dianna Ross - Regional Office Manager
San Diego Regional Water Quality Control Board

Attachment

Exhibit 7

County of Riverside
Environmental Compliance Division
NPDES Construction Inspection Form

Tract/Plot/APN No: APN 928-230-015 SFR
Grading Permit No: BGR 051516
WDID Number: **UNKNOWN**
Site Address: 38175 Via Vista Grande, Murrieta
Owner/Applicant: Jack Eitzen
Address: P.O. Box 998
Saratoga, CA 95071

Date: 10/30/08 **ECI**: P. Broesamle
Thomas Bros: 927, C-3
Weather Condition: Clear
Contact Person: Jack Eitzen
Phone Number: 408.656.2009
Email:
Area Disturbed: 127,195 Sq. Ft.

Site Priority Level			Revised Priority Level			Inactive	Active
☐ Low	☒ Medium	☐ High	☐ Low	☐ Medium	☒ High	☐	☒

Yes	No	
		1 Storm Water Pollution Prevention Plan:
☐	☒	A) Current SWPPP document on job site?
		2. Best Management Practices:
☐	☒	A) Erosion Control BMPs installed, maintained and effective?
☐	☒	B) Sediment Control BMPs installed, maintained and effective?
☐	☒	C) Wind Erosion Control BMPs installed, maintained and effective?
☐	☒	D) Tracking Control BMPs installed, maintained and effective?
☐	☒	E) Non-Stormwater Management BMPs installed, maintained and effective?
☐	☒	F) Waste management and materials pollution BMPs installed, maintained and effective?
		3. Non-Stormwater Discharges:
☐	☒	A) Is the site free from evidence of nonstorm water discharges?
☐	☒	B) Is the site free from the potential to create a nonstorm water discharge?
☐	☒	C) Is there an effective combination of BMPs installed?

Enforcement:

In Compliance	Non-Compliance	Gross Non-Compliance
☐	☐	☒

☒ Verbal ☒ Written ☐ NOV ☐ Stop Work Order ☐ RWQCB Notified

**This inspection is based solely upon the observations made by the inspector at the time of the inspection.*

Comments: 1st verification of the season. All bags stockpiled are D/G, must be gravel. No plans on site. Provide a copy of SWPPP on site.

**See back for additional comments.*

R.M. Date: Action:

Exhibit 8

COUNTY OF RIVERSIDE
ENVIRONMENTAL COMPLIANCE DIVISION

NPDES Construction Inspection Form

Tract/Plot/APN No.: APN 928-230-015 **DATE:** 12/16/08 **ECI:** P. Broesamle

GRADING PERMIT No.: BGR051516 **Thomas Bros Page:**

WDID NO.: REQUIRED **APN:** 928-230-015 **Weather Condition:**

SITE Address: 38175 Via Vista Grande **Contact Person:** Jack Eitzen

Contact Phone No.: **Email:**

Owner/Applicant: Jack Eitzen **Phone No.:** 408-656-2009
Address: PO Box 998
Saratoga Ca 95071 **Area Disturbed:** 127,195sqft

Site Priority Level	Revised Priority Level	Inactive	Active
☐ Low ☐ Medium ☒ High	☐ Low ☐ Medium ☒ High	☐	☒

Yes	No	
		1. Stormwater Pollution Prevention Plan:
☐	☒	A) Current SWPPP document on job site?
		2. Best Management Practices:
☐	☒	A) Erosion Control BMP's installed, maintained and effective?
☐	☒	B) Sediment Control BMP's installed, maintained and effective?
☐	☒	C) Wind Erosion Control BMP's installed, maintained and effective?
☐	☒	D) Tracking Control BMP's installed, maintained and effective?
☐	☒	E) Non-Stormwater Management BMP's installed, maintained and effective?
☐	☒	F) Waste management and materials pollution BMP's installed, maintained and effective?
		3. Non-Stormwater Discharges:
☐	☒	A) Is the site free from evidence of non-stormwater discharges?
☐	☒	B) Is the site free from the potential to create a non-stormwater discharge?
☐	☒	C) Is there an effective combination of BMP's installed?

In Compliance	Non-Compliance	Gross Non-Compliance
☐	☐	☒

☐ Verbal ☒ Written ☒ NOV ☒ Stop Work Order ☒ RWQCB Notified

**This inspection is based solely upon the observations made by the inspector at the time of inspection*

Comments: Fourth verification of season- Failure in silt fence, new road graded to dump large rocks to create dam in natural run-off canyon. BMP's not working in storm (Rain) event. **Developer must correct the situation found on site and request and receive an acceptable re-verification prior to the resumption of grading and building inspections.**

**See back for additional comments*

Exhibit 9

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED MANAGEMENT PROGRAM

FACILITY INSPECTION REPORT

INSPECTION DATE: December 23, 2008 TIME: 09: 45 AM WDIDs: 9 33C338575/ 9 33C338574/9 33C350456/9 33C350455/ 9 33C350453/ 9 33C349965/ 9 33C350xxx

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: Jack Eitzen and Rudy Nunez

Fairway Hills Estates LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

Jack Eitzen, 408-656-2009
OWNER CONTACT NAME AND PHONE #

Jack Eitzen Construction
FACILITY OR DEVELOPER NAME (if different from owner)

Jack Eitzen, 408-656-2009
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

38500 Via Vista Grande
FACILITY STREET ADDRESS

Murrieta, CA 92562
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- ☐ **MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766**
- X **GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 – CONSTRUCTION**
- ☐ **GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS**
- ☐ **GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS**
- ☐ **GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS**
- ☐ **SECTION 401 WATER QUALITY CERTIFICATION**
- ☐ **CWC SECTION 13264**

INSPECTION TYPE (Check One)

A1 ____ "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)

B1 X "B" type compliance--A routine nonsampling inspection. (EPA Type C)

02 ____ Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.

03 ____ Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.

04 X Complaint--Inspection made in response to a complaint.

05 ____ Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.

06 ____ No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.

07 ____ Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (**Type, NOT I or NOT C - circle one**).

08 ____ Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

Yes Were violations noted during this inspection? (Yes/No/Pending Sample Results)

No Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY: In February 2008, the California Regional Water Quality Control Board, San Diego Water Board received a telephone complaint from Gertie Kazmi of 22408 Montes Court, Murrieta of sediment discharged to her backyard from recent heavy rains. The deposited sediment originated from upgradient construction activities at Fairway Hills Estates LLC (hereinafter Hillcrest).

In January 2008, Phil Broesamle, Riverside County Department of Building and Safety (Riverside County) inspector, complained to the San Diego Water Board of repeated construction stormwater ordinance violations by Hillcrest from their construction activities.

In December 2008, a neighbor located downgradient at the Claremont Road entrance to the site, complained to the City of Wildomar and Riverside County of large quantities of sediment encroaching unto his fence along Claremont Street.

Based on the complaints and their routine inspections, the County of Riverside has attempted to bring Hillcrest into compliance with the requirements of the construction stormwater permit. In December 2008, Roger Miller of the County of Riverside referred the site to me through Ben Neill of the Regional Board.

Background:

Fairway Hills Estates (hereinafter Hillcrest) consists of twelve distinct single-family residence construction projects. Each project is about ten acres in size and they are owned by various individuals, including Jack Eitzen, the contractor. The twelve parcels are a joint limited partnership made up of approximately six different owners with two unknown owners. Known owners are Jack Eitzen, Rudy Nunez, and Paul and Steve Margoulas. Jack Eitzen Construction is the principal contractor for the Hillcrest project, which stretches along the 38500 section of Via Vista Grande to Claremont Road in the City of Wildomar next to the Riverside County boundary. The 120-acre parcel extends from the west overlooking the Bear Creek Golf and Country Club to the City of Wildomar to the northeast (see location map). Known access to the site are northeast from Claremont Road and from the north via Via Vista Grande from the La Cresta community.

On December 23, 2008, at 09:45 a.m., Brett Farlow and Phil Broesamle of Riverside County; Mike Horn, Anna Milloy, and Mike Forez of California Dept. of Fish & Game; and Tony Felix conducted a joint followup inspection to the December 16, 2008 inspection. The purposes of the followup inspection were 1) to evaluate compliance with the construction general permit, and 2) to assist the San Diego Water Board in making a jurisdictional determination of whether fill or construction wastes were discharged into waters of the State. No corrective measures were taken by the discharger to correct the findings of the December 16, 2009 inspection.

II. FINDINGS:

We entered the site for inspection at the Claremont Street entrance (in Wildomar) and noted and photo-documented the following Water Quality violations:

A. Construction Stormwater Permit, Order No. 99-08-DWQ:

1. The Stormwater Pollution Prevention Plan (SWPPP) was unavailable for inspection review;
2. Of the twelve construction projects, only six had Notices of Intent (NOI) for construction activities;
3. Some construction projects were underway without the necessary plan checks approvals by Riverside County;
4. The access road at the Claremont Street entrance, an existing fire road, was regraded without the proper construction general permit;
5. The site entrance lacked best management practices (BMPs) or controls to prevent offsite discharge of sediment;

6. The main access road leading to Via Vista Grande, access laterals, and the inside slopes along the roads lacked appropriate erosion and sediment controls;
7. The outside slopes along the access roads lacked the necessary erosion and sediment controls to reduce or prevent erosion;
8. Two sediment basins constructed for upgradient runoff treatment purposes, lacked the proper design and placement requirements;
9. Lack of BMPs at the vehicle storage and service area to contain generated pollutants;
10. Hydromodification impacts to downgradient structures (neighboring home and fence) and to the hardened channel, tributary to Murrieta Creek, along the Bear Creek Community; and
11. After weeks of requests (from February 2008 to the present) for copies of plan checks, NOIs, and the grading permit for road construction, Jack Eitzen is unable to produce those documents.

B. 401 Water Quality Certification:

1. Filling of natural waterways- excavated dirt and rocks from construction activities were sidescaped into natural waterways or waters of the State;
2. Stream bed alteration of natural waterways caused by the excavation of dirt and rocks resulted in natural flow disturbance;
3. Removal of native plants and trees in and around natural waterways;
4. Disturbance of the ecosystem along the Riparian corridors;
5. Grading for road access across natural waterways; and
6. Using a natural waterway as a best management practice.

After the inspection, it was understood that the other participating regulatory agencies would independently pursue enforcement actions in accordance with their regulations or ordinances.

C: Summary:

The extent of Water Quality violations were discussed with Rudy Nunez, site project engineer, Jack Eitzen, and later via telephone with Paul Margoulas, an owner. They were informed that all construction activities should cease, except for installing, repairing, and maintaining BMPs since we were still in the wet season.

Riverside County in accord with the San Diego Water Board has agreed to withdraw all grading permits for the project. No construction activities are currently occurring at the site.

The San Diego Water Board issues Notice of Violation No. R9-2010-0053 and Investigative Order pursuant to California Water Code, Division 7, Section 13267 prescribing corrective measures to achieve compliance with the construction general permit.

In addition, the San Diego Water Board will pursue further enforcement actions in accordance with the California Water Code to abate the impacts to water quality from construction activities at Hillcrest Estates.

FACILITY: Fairway Hills Esta. (WDID) Listed above (6) INSPECTION DATE: December 23, 2008

III. SIGNATURE SECTION

Tony Felix — STAFF INSPECTOR | SIGNATURE | 12/23/08 — INSPECTION DATE

IV. (For internal use only)

Reviewed by Supervisor: _____ Date _____

cc: See distribution list

Enclosures: December 23, 2008 Inspection Photos

SMARTS-2 Entries

WDID	App. ID	Inspection ID	Violation ID	Enforcement ID
9 33C338575	288214	2003007	841297	401312
9 33C338574	288215	2003013	841135	401313
9 33C350456	339509	2003016	841298	401314
9 33C350455	339514	2003025	841137	401315
9 33C350453	339510	2003027	841138	401316
9 33C349965	337595	2003029	841139	401317
9 33C350XXX*	-	-	-	-

WDID No. received as-is via e-mail from Jack Eitzen

Enclosure: December 23, 2008 Inspection Photos

JS:esb:aaf

Photo 01: Looking west- site entrance at Claremont Street, Wildomar.

Photo 02: Sediment and silt are deposited along brow ditch along Claremont Street. Insert shows utility vault covered with sediment and silt.

Photo 03: Looking east-shows the extent of offsite sediment discharge reaches along Claremont Street.

Photo 04: Looking east along Clairemont Street-site entrance/exit lacks tracking control. Insert shows point of sediment discharge under road crossing.

Photo 05: Close up of fire road shows extent of erosion-down to the bedrock

Photo 06: Erosion gullies along the fire road leading to Fairway Hills Estates site.

Photo 07: Inappropriate BMPs (hay bales and sand bags) are unable to contain and abate the high, concentrated flows causing rills and gullies.

Photo 08: Erosion gullies were caused by high, concentrated storm water flows and failed BMPs.

Photo 09: The fire road leading to the site was regraded w/o the approval of the proper permits from the County of Riverside.

Photo 10: Evidence of recent grading of the fire road shows graded dirt was sidescaped down embankment towards natural waterway.

Photo 11: Rocks and boulders were sidescaped into the natural drainage area along the fire road. The caked sediment is evidence of flow blockage.

Photo 12: Failed sediment basin is unable to capture sediment-laden runoff from surrounding building pad.

Photo 13: This area lacks erosion and sediment controls as significant quantities of dirt is placed alongside a natural waterway.

Photo 14: This sediment basin captures runoff from the fire road and upgradient construction activities. The basin is built directly in a natural waterway, shown in background.

Photo 15: Rocks and dirt are sidescaped into a natural waterway (Water of the State). Discharge is to the hardened channel flowing to Bear Creek.

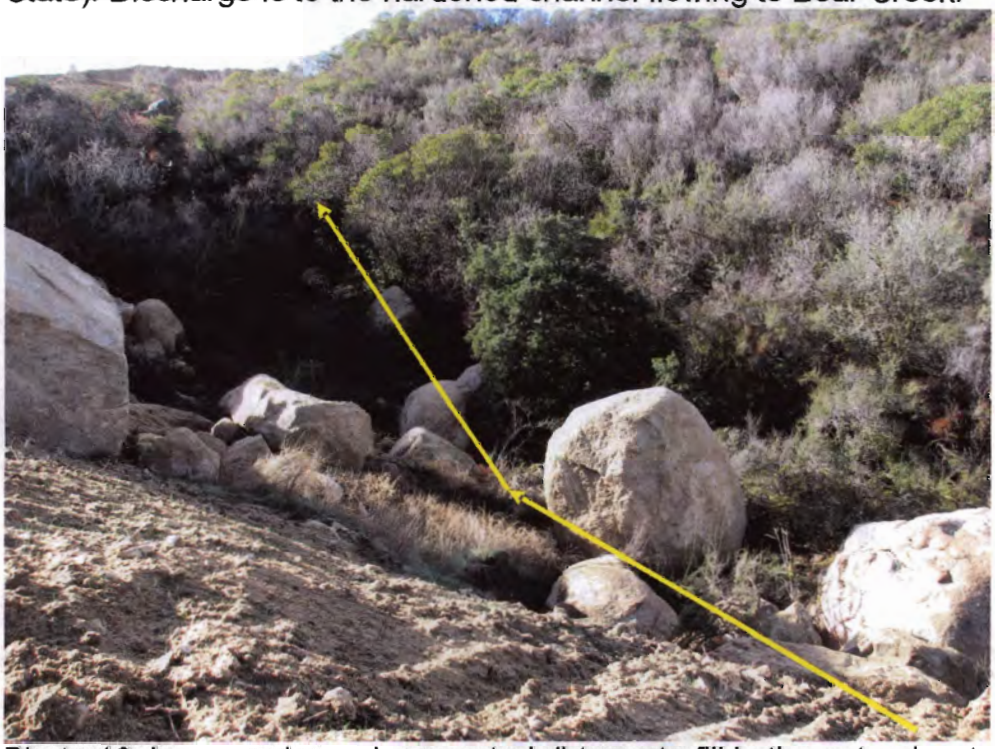

Photo 16: Large rocks and excavated dirt create fill in the natural waterway interrupting natural flow and destroying native habitat.

Photo 17: BMP (sediment basin) is placed within a natural waterway. Native riparian vegetation is destroyed by rocks and excavated dirt, impacting ecosystem.

Photo 18: Road leading to basin is heavily eroded. The slopes along the roads are not stabilized to prevent erosion.

Photo 19: Failed BMPs on slopes; silt fence does not follow contour.

Photo 20: The road was constructed (w/o proper permit) directly across a natural waterway. Erosion effects can be seen across the road.

Photo 21: Third basin is built in a natural waterway or water of the State. Flow from this basin connects with the previous basin shown in photo 17.

Photo 22: More fill of rocks and excavated dirt were sidescaped into natural waterway.

Photo 23: Natural waterway is used as a BMP. Native vegetation (Oak and some Willows) were uprooted for basin placement.

Photo 24: Fill in a natural waterway or water of the State is used as a BMP.

Photo 25: Close up of the stream bed alteration (lateral cuts against natural flow direction).

Photo 26: No slope stabilization and building pad is not covered or stabilized.

Photo 27: No BMPs to minimize exposure of mechanical construction wastes to stormwater or to potential accidents.

Photo 28: Construction vehicles are improperly stored with no drip pans to capture spill or leaks.

Photo 29: More spills or leaks from construction vehicle.

Exhibit 10

California Regional Water Quality Control Board
San Diego Region
Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Linda S. Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

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(858) 467-2952 • Fax (858) 571-6972
http:// www.waterboards.ca.gov/sandiego

March 24, 2010

VIA CERTIFIED MAIL
7006 0810 0000 6389 0466

Mr. Jack Eitzen
22631 Mount Eden Road
Saratoga, CA 95070

In reply refer to:
App. IDs: 288214, 288215, 339509, 339514, 337595

RE: **NOTICE OF VIOLATION NO. R9-2010-0059 & REQUIRED TECHNICAL REPORT**

SUBJECT SITE: **Fairway Hills Estate LLC, La Cresta Hillcrest Estates, 38500 Via Vista Grande, Murrieta, CA 92562**

Dear Mr. Eitzen:

Enclosed is **Notice of Violation (NOV) No. R9-2010-0059** for the subject site in Riverside County, CA. The alleged violations specified were identified during a site inspection on December 16, 2008 and subsequent follow-up inspections. Corrective measures and Best Management Practices (BMPs) should be implemented immediately to address these violations.

Pursuant to California Water Code (CWC) section 13267 and 13383, the California Regional Water Quality Control Board (San Diego Water Board) directs you to submit a **Required Technical Report (RTR)** received at the San Diego Water Board no later than **5:00 PM, May 1, 2010**. The RTR is required due to the alleged violations noted in the enclosed NOV. The RTR will be reviewed to assess the need for further enforcement actions. The RTR shall include the following Sections:

1. An Immediate Actions Section describing the reasons for the discharge of sediment from the site into the Municipal Separate Storm Sewer System and/or waters of the United States and State, and what immediate steps were taken to stop the illegal discharge.

2. Provide verification of all documents for construction activities that required permit enrollment with the State Water Resources Control Board (State Water Board).

3. A Storm Water Pollution Prevention Plan (SWPPP) Status Report Section including:

a) An 8.5" x 11" Site Map boldly indicating all flow lines, storm water inlets and outfalls (designate active or inactive), and direct discharge (if applicable) to a water of the State.
b) A statement giving the exact date construction began.
c) Photocopies of all BMP implementation/maintenance/inspection records (to date).
d) Photocopies of all annual Compliance Certifications (to date).
e) A photocopy of the SWPPP Signatory Requirement page.
f) If necessary, copies of newly completed Notices of Intent (NOIs). **Please note:** If any information provided on the current NOIs has changed, a NOI change of information, filed with the State Water Board in Sacramento, is required.
g) A completed "SWPPP and Monitoring Program Review Sheet" (copy enclosed), with preparer's name, included in the RTR as attachment A.

4. A Site Status Report Section including photo-documentation of implementation of the SWPPP, including proper installation of BMPs addressing, but not limited to, those specific violations indicated in the attached NOV.

5. A Hydrologic Study Section certified by a Registered Civil Engineer, for each sediment basin serving any tributary area as erosion control. Include:

a) Site Map delineating topographic tributary area (scaled) with flowlines.
b) Basin dimensions and calculated maximum volume.
c) Outlet and filtration calculations and specifications.
d) Hydrologic calculations based on one of the prescribed methods specified in Order No. 99-08-DWQ.
e) All supporting documentation.

6. A Pollutant Sampling Program Section including the following:

a) Site Map delineating topographic tributary area (scaled with flowlines) of area(s) to be sampled for pollutants and area(s) to be sampled as background (free of pollutants).
b) A list of all pollutants to be tested which are not visually detectable in storm water discharges as specified in Section B.8 of the permit.
c) Copies of all qualifications and training certifications for the laboratory or staff who will be sampling.
d) A copy of all protocol measures to be employed, including, at a minimum, Quality Assurance/Quality Control (QA/QC) and Chain of Custody.

Additionally, to satisfy the 401 Certification for dredge or fill violations the RTR shall include the following Sections:

7. A discussion of the filling of all unnamed drainages within the subject site including, at minimum, the following:

a) A full delineation of the entire subject site, including a map, depicting all on-site waters of the United States and/or State.
b) The amount and locations of fill placed in waters of the State and, where appropriate, waters of the United States. Fill must be reported in acres and linear feet.
c) A timeline of activities related to the fill placement into each drainage.
d) A full description of the pre-construction condition of the drainages.
e) Proposing to discharge waste or fill to waters of the State requires the filing of Waste Discharge Requirements containing the information required by the appropriate Water Board.

8. A list of all applicable federal, State and local permits, licenses and agreements that were obtained for fill activities to waters of the United States and/or State.

9. The status of the California Environmental Quality Act (CEQA) review for the work that resulted in the discharges of fill and, if available, a copy of the final or draft CEQA document.

10. A time schedule and an implementation and monitoring plan for the restoration of all impacted waters of the State on-site.

The submitted Required Technical Report shall include the following signed certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Failure to submit the above information by the date requested may result in the imposition of administrative civil liability pursuant to CWC sections 13268 and 13385.

Note: All documents requiring signature shall be signed per the General Construction Permit, Water Quality Order No. 99-08, Section C.9.a (1&2), as follows:

"For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor, respectively."

Questions pertaining to this Required Technical Report and the enclosed Notice of Violation should be directed to Mr. Tony Felix at 858-636-3134 or via e-mail at TFelix@waterboards.ca.gov. Written correspondence should be directed to the following address listed in the heading.

The heading portion of this letter includes a San Diego Water Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the San Diego Water Board pertaining to this matter.

James G. Smith
Assistant Executive Officer

Attachments: Notice of Violation R9-2010-0059
December 16, 2008 Facility Inspection Report w/ Photos
December 23, 2008 Facility Inspection Report w/ Photos
January 28, 2009 Facility Inspection Report w/ Photos
Location Map
Gertie Kazmi's Photo Document
Distribution List

SMARTS-2 Entries

WDIDs	App. ID	Inspection ID	Violation ID	Enforcement ID
9 33C338575	288214	2002520	841134	401312
9 33C338574	288215	2002521	841135	401313
9 33C350456	339509	2002523	841136	401314
9 33C350455	339514	2002524	841137	401315
9 33C350453	339510	2002525	841138	401316
9 33C349965	337595	2002526	841139	401317
9 33C350XXX*	-	-	-	-

* WDID no. submitted as-is by Jack Eitzen

S:\Surface Waters Basins Branch\Northern Watershed Unit\Tony\Storm Water Program\Construction SW\Inspections\Riverside County Inspections\Riverside County\La Cresta 12-16-08 Inspection\Enforcement\La Cresta NOV13267 New letterhead.doc

California Regional Water Quality Control Board
San Diego Region
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Secretary for Environmental Protection

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Governor

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http:// www.waterboards.ca.gov/sandiego

March 24, 2010

IN THE MATTER OF

Mr. Jack Eitzen
22631 Mount Eden Road
Saratoga, CA 95070

NOTICE OF VIOLATION
NO. R9-2010-0059

WDID NOs.
9 33C338575, 9 33C338574,
9 33C350456, 9 33C350455,
9 33C349965 and 9 33C350XXX

NPDES Construction General Permit No. CAS000002, SWRCB Order 99-08-DWQ and California Water Code Section 13260 & 13050, Clean Water Act Section 401

Subject Site: Fairway Hills Estate LLC, La Cresta Hillcrest Estate, 38500 Via Vista Grande, Murrieta, CA 92562

YOU ARE HEREBY NOTIFIED THAT:

You are in violation of waste discharge requirements contained in State Water Resources Control Board, Water Quality Order No. 99-08-DWQ, of the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity. Also, you are in violation of California Water Code (CWC) Section 13260 for failure to file a Report of Waste Discharge (RoWD) and Section 13376 for failure to file an application for an individual Clean Water Act (CWA) Section 401 Water Quality Certification. Furthermore, you are in violation of CWC Section 13050 for failure to comply with Waste Discharge Prohibition No. 1. Such violations subject you to enforcement action by the California Regional Water Quality Control Board (San Diego Water Board) including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to $10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

On December 16, 2008 Chad Loflen (Environmental Scientist), Ben Neill and Tony Felix (Water Resource Control Engineers) of the San Diego Water Board conducted an inspection of the subject site and observed, documented and photo-documented evidence of specific violations indicated in the attached Facility Inspection Report (FIR) incorporated herein by reference. No one from your staff was present during the inspection.

A. Summary of NPDES General Permit No. CAS000002, SWRCB Order 99-08-DWQ Violations:

I. FAILURE TO FILE NOTICE OF INTENT (NOI)

➢ **Pursuant to Water Quality Order No. 99-08-DWQ C.1:**

- All dischargers shall file an NOI and pay the appropriate fee for construction activities conducted at each site...

Observation: You failed to file a NOI for new grading of the fire road. Additionally, six of the construction projects do not have NOIs for coverage under the statewide General Construction Permit, Order No 99-08-DWQ.

II. FAILURE TO PREVENT PROHIBITED DISCHARGES

➢ **Pursuant to Water Quality Order No. 99-08-DWQ Section A.2:**

- Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited...

Observation: We photo-documented large quantities of sediment and silt which were deposited at the Claremont Street entrance, into waters of the State, and the hardened channel which abuts the Bear Creek Community (photos 03 and 04).

III. FAILURE TO FURNISH STORM WATER POLLUTION PREVENTION PLAN

➢ **Pursuant to Water Quality Order No. 99-08-DWQ Orders C.2, C.4 & C.6 and Section A.3:**

- All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan.
- All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements.
- All dischargers shall comply with the standard provisions and reporting requirements contained in Section C: Standard Provisions.
- The SWPPP shall remain on the construction site while the site is under construction...

Observation: From the time of the initial inspection to the present you have not produced a SWPPP that complies with the General Construction Permit requirements, including a fully developed monitoring program for pollutants not visually detectable in storm water.

IV. FAILURE TO IMPLEMENT / MAINTAIN BEST MANAGEMENT PRACTICES

➢ **Pursuant to Water Quality Order NO. 99-08, Section A.6 & A.8:**

- At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season. These disturbed areas include rough graded roadways, slopes, and building pads.

Observation: Your site lacked the appropriate and necessary erosion and sediment controls for most disturbed areas. Your site lacked sediment controls (i.e. silt fences or fiber rolls) for the outside slopes (see photos 06, 09, 10, 11, 12, 13, 18, and 26).

➢ **Pursuant to Water Quality Order NO. 99-08, Section A.6 & A.8:**

- The SWPPP shall include a description of the erosion control practices, including a time schedule, to be implemented during construction to minimize erosion on disturbed areas of a construction site... ...These disturbed areas include rough graded roadways, slopes, and building pads... ...A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP.

Observation: There was no SWPPP available for inspection review to insure there was a specific construction phase / BMP sequencing schedule. This sequencing schedule must be developed and implemented to insure that all areas of the site are sufficiently protected and will not result in illegal discharges. Your site had disturbed areas under active construction with no scheduled BMP implementation strategy to protect these areas prior to a rain event. This schedule must be reasonable and implementable with sufficient BMPs stockpiled to protect your site prior to a rain event.

➢ **Pursuant to Water Quality Order NO. 99-08, Section A.8:**

- ...sediment basins shall, at a minimum, be designed and maintained as follows: Option 1, 2, 3, or 4 (abbr.).

Observation: Three sediment basins at the site lacked the proper design and placement requirements. One had failed resulting in a discharge and the other two were placed directly within waters of the State (see photos 12, 13, 14, 17, 21, 22, and 23).

➢ **Pursuant to Water Quality Order NO. 99-08, Section A.5.b.4 & b.5, Section B 8:**

- (Provide) ...areas designated for the (a) storage of soil or waste, (b) vehicle storage and service areas, (c) construction material loading, unloading, and access areas, (d) equipment storage, cleaning, and maintenance areas. (Implement) ...BMPs designed to minimize or eliminate the exposure of storm water to construction materials, equipment, vehicles, waste storage areas, or service areas. Any breach, malfunction, leakage, or spill observed which could result in the discharge

of pollutants to surface waters that would not be visually detectable in storm water shall trigger the collection of a sample of discharge.

Observation: Your vehicle and equipment storage area lacked the proper controls to minimize the exposure of spilled oil, grease, and other vehicle maintenance fluids to stormwater (see photos 27 and 28).

- **Pursuant to Water Quality Order NO. 99-08, Section A.8:**
  - BMPs to reduce the tracking of sediment onto public or private roads at all times.

Observation: Your site had inadequately maintained entrance/exit BMPs, which caused significant sediment tracking at the Claremont Street entrance/exit (see photo 04).

B. **Summary of Clean Water Act Section 401 Violations:**

I. **FAILURE TO FILE A ROWD FOR WASTE DISCHARGE REQUIREMENTS**

- **Pursuant to CWC Section 13260:**
  - Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State shall file with the appropriate water board a report of the discharge, containing the information required by the San Diego Water Board.

Observation: The San Diego Water Board to date has not received a RoWD for the discharge of fill to the unnamed drainages associated with construction of the subject site and associated (access) roads (see photos 11, 13, 15, 16, and 17).

II. **FAILURE TO SUBMIT AN APPLICATION FOR CWA SECTION 401 WATER QUALITY CERTIFICATION**

- **Pursuant to CWC Section 13376:**
  - Any person proposing to discharge dredged or fill material to waters of the United States under permit systems provided by the Federal CWA, must file a report at least 180 days *in advance* of the date on which it is desired to commence the discharge. The discharge of dredged or fill material by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited.

Observation: The San Diego Water Board to date has not received an application for CWA Section 401 Water Quality Certification for the discharge of fill to any unnamed drainages that are waters of the United States associated with the subject site and associated roads (see photos 15, 16, and 17).

III. FAILURE TO COMPLY WITH WASTE DISCHARGE PROHOBITION NO. 1

- **Pursuant to Waste Discharge Prohibition No.1 of the Water Quality Control Plan for the San Diego Basin:**
  - The discharge of waste into waters of the State in a manner causing, or threatening to cause, a condition of pollution, contamination or nuisance as defined in CWC Section 13050, is prohibited.

Observation: The discharge of fill to streams has the potential to result in alteration or elimination of the Beneficial Uses associated with the water body. The unnamed drainages within the Project areas are tributary to Murrieta Creek. Beneficial Uses assigned to Murrieta Creek and its tributaries include MUN, AGR, IND, PROC, GWR, REC2, WARM and WILD. Construction of the Project in and over the unnamed drainages has eliminated the Beneficial Uses of these drainages in each location. The fill of each unnamed drainage has fragmented upstream and downstream reaches and was observed to have resulted in alteration of the hydrologic characteristics of each drainage, which has led to erosion throughout the property. Alteration of hydrologic characteristics results in diminished quality of in-stream and riparian habitat for flora and fauna in the unnamed drainages and downstream. Furthermore, construction of the Project has resulted in the discharge of pollutants to the remaining portion of the unnamed drainages, resulting in the degradation of downstream Beneficial Uses.

Questions pertaining to the issuance of this Notice of Violation should be directed to Mr. Tony Felix at 858-636-3134 or via e-mail at TFelix@waterboards.ca.gov.

James G. Smith
Assistant Executive Officer

Exhibit 11

EARTH RESOURCES INC

May 18, 2010
W.O. 2340

Fairway Hills Estates HOA
22631 Mount Eden Road
Saratoga, CA 95070

Attention: Mr. Jack Eitzen

Subject: **Required Technical Report (RTR) and Technical Response**
Notice of Violation No. R-9-2010-0059
by SWRCB San Diego Region 9 dated March 24, 2010
Fairway Hills Estates HOA
Via Vista Grande Road westerly of Claremont St.
Murietta, California 92562

Reference: **App. IDs: 288214, 288215, 339509, 339514, 337595**

INTRODUCTION

As requested, Earth Resources, Inc. has prepared this technical response to the subject Notice of Violation No. R-9-2010-0059 (NOV) issued by the San Diego Region of the California Regional Water Quality Control Board to Fairway Hills Estates, dated March 24, 2010. The purpose of this response was to assist Fairway Hills Estates HOA in complying with SWPPP issues identified by an inspector for the Regional Board site visits on December 16, 2008, December 23, 2008, and January 28, 2009. A copy of the NOV is included in Appendix A of this report for convenience of reference. This technical response to the NOV constitutes the Required Technical Report (RTR) and should be considered as an amendment to each of the SWPPPs for the Fairway Hills Estates HOA. This RTR is organized in two parts. Part I addresses items in the Water Board's Request for RTR (cover

letter for the NOV) and Part II addresses specific issues identified in the NOV Summary of NPDES and SWRCB Violations.

Part I. REQUIRED TECHNICAL REPORT and TECHNICAL RESPONSE TO NOTICE OF VIOLATION

The following is an itemized Technical Report addressing the issues identified in the NOV.

Item 1

An Immediate Actions Section describing the reasons for the discharge of sediment from the site into the Municipal Separate Storm Sewer System and/or waters of the United States and State, and what immediate steps were taken to stop the illegal discharge.

Response to Item 1- IMMEDIATE ACTIONS SECTION

The County of Riverside Flood Control maintains rainfall records from automated rain gauges in proximity to the Fairway Hills Estates HOA properties. Mr. Robert Lagg of the Riverside County Flood Control provided rainfall records for the three automated rain gauges closest to the site for the period of July 2008 through June 2009. The data indicates that a very intense, multi-day storm event impacted the region during the four day period from December 15-18, 2008.

The total rainfall recorded from this storm event at each of the nearby stations was 4.54 inches to 4.9 inches. This single event represents over one third the total rainfall for the 2008-2009 rain season. The rainfall was particularly intense during the morning of December 15, the day prior to Mr. Felix's site inspection. Available hourly rainfall data from approximately 6:30 AM until 12:30 PM on December 15, 2008 shows that 1.59 inches to 2.06 inches of precipitation recorded at these three stations. The average rainfall intensity for this 6-hour peak storm period was 0.255 to 0.344 inches per hour. A summary of the available rainfall records is presented in Table 1 below.

Table 1- Rainfall Data Summary

Station and elevation	Direction and Distance from site	Season Total for Station (inches)	Date of Selected Storm event	Rainfall amount During storm event (inches)	Rainfall intensity (inches/hr for 6-hr peak period)	Storm event percentage of season total for station
Wildomar No. 246 1230' MSL	0.8 miles north	11.8"	12/15-18/08	4.61"	0.265 in/hr (on 12/15)	39%
La Cresta No. 274 2305' MSL	2.1 miles west-northwest	13.0"	12/15-18/0	4.54"	0.255 in/hr (on 12/15)	35%
Sylvan Meadows No. 326 1881' MSL	3.6 miles south	14.9"	12/15-18/0	4.9"	0.344 in/hr (on 12/15)	33%

Immediate actions taken by the contractor-both during and following- this storm event included cleanup of the sediment from the pavement at the end of Claremont Street, cleanup of the concrete drainage structure above 22408 Montes Court, and placement/replacement of sand bags.

As indicated in the Facility Inspection Report (FIR) by the Regional Board Inspector dated December 16, 2008 the inspection was initiated by a telephone complaint by Gertie Kazmi of 22408 to the Regional Board. Reference is also made regarding a complaint made to the City of Wildomar and Riverside County to a complaint by a resident at the Clairmont Road entrance to the project, also in December 2008.

The December 16, 2008 FIR states the following "cleanup of the sediment was almost completed upon my arrival at the site", providing evidence that immediate corrective actions were indeed taken by the contractor during the December 15-18 storm event. In addition to cleanup of the sediment from the intense storm event, the Contractor implemented additional erosion control measures. A bulldozer, loader, and water truck were rented on December 19 and December 20 for cleanup and repair of the erosion on Via Vista Grande. Receipts for this work are included in Appendix C. Slopes along Via Vista Grande and elsewhere throughout the site were hydroseeded with bonded fiber matrix and native seed mix on October 31, 2008, November 3, 2008, January 1, 2009, and April 17, 2009. Receipts for this work and other erosion control work from September 2008 through December 2008 are also included in Appendix C.

The following is a summary provided by the Fairway Hills Estates HOA of erosion control and SWPPP BMP work conducted from the months prior to the December 2008 storm event through the present 2009-2010 rain season:

Via Vista Grande Erosion Control Work

12-10-04	Kazmi Clean –up **This work was prior to Fairway Hills grading**	$10,000.00
12-6-07	Erosion/Road	$3,500.00
12-21-07	gravel bags slit fence	$610.00
12-22-07	gravel bags slit fence	$532.50
1-2-08	Kazmi clean up labor	$3,000.00
1-28-08	Kazmi clean up	$10,500.00
1-26-08	Corrected all Erosion	4-4-08 PD
1-27-08	Reestablish correct drainage	4-4-08 PD
2-1-7-08	County approved Erosion (Zack Zachos)	$342.50
2-1-08	Installed additional Erosion Wattles	$2,408.75
2-4-08	Maintain Road /	$1,500.00
2-4-08	Maintain Road gravel Bags (150 man hrs)	$1,500.00
2-5-08	EMC Erosion supplies	$3,551.25
2-5-08	Meet County Michael Malone inspector	
2-7-08	Meet County Michael Malone	
2-9-08	HOA Via Vista Erosion Control	$3,000.00
2-19-08	Maintain Rd. Access during rainy period 4-4-08 PD	
2-20-08	County Approved installed erosion measures	
4-4-08	HOA Paid Erosion	$30,900.00
4-17-08	install slit fence 2 lots	$400.00
5-15-08	Magoulas slit fence	$1,500.00
6-10-08	Magoulas slit fence	$1,400.00
6-18-08	FST Sand & Gravel, rock gravel bags	$1,200.00
7-15-08	Chris Zachos Erosion monitors	$150.00
8-14-08	Ethan Archbold V ditch Work	$897.28
8-27-08	Via Vista Erosion, / paid labor	$700.00
9-22-08	BCB Erosion	$5,000.00
9-25-08	Retention pond pipe	$3,026.52
9-30-08	Via Vista Erosion, Gravel bags/ paid	$400.00
10-10-08	Ron Erosion work	$60.00
10-10-08	BCB erosion	$1,000.00
10-21-08	BCB retention ponds	$8,400.00
10-31-08	Creative Hydro 65,340 sq ft	$1,960.20
11-3-08	Creative Hydro 21,780 sq ft	$653.40
11-5-08	Creative Hydro 108,900 sq ft	$3,136.32
11-6-08	Creative Hydro 43,560 sq ft	$1,306.80
11-25-08	Via Vista Erosion, Gravel bags/ paid	$900.00
12-9-08	Ron Erosion work	$820.00
12-18-08	Ron Erosion work Labor	$1220.00
12-19-08	BCB Equipment	$3,800.00
12-23-08	White Capp Black Plastic/Jute	$784.45

1-5-09	Creative Hydro seed 65,000 sq. ft	$1,872.00
1-6-09	Ron Erosion work	$140.00
1-19-09	Erosion Control	$5,000.00
1-30- 09	HOA Erosion	$3,000.00
2-12-09	BCB invoice Erosion	$1,958.90
4-15-09	4 rolls jute net	$1,055.95
4-16-09	Hydro seed 20,000 sq ft.	$600.00
4-17-09	Hydro seed 129,360 sq. ft	$3,725.00
4-17-09	HOA Group Erosion	$5,000.00
5-4-09	HOA Group Check	$2,200.00
5-4-09	Horizon 4,000 sq ft jute Neting	$289.00
4-8-09	BCB invoice Erosion work	$1,951.52
5-28-09	Gravel Bags 1000	$1,400.00
6-2-09	Horizon Jute net/stakes	$1,372.50
6-9-09	FST delivered 300 ton Rock	$6,000.00
6-15-09	BCB invoice Erosion/Rock/Rd	$$5,350.00
6-19-09	HOA paid Erosion	$2,200.00
619-09	Horizon Jute net/stakes	$2,268.00
6-22-09	BCB invoice Erosion/Rock/Rd	$$2,400.00
6-25-09	Rolls jute net	$1,160.00
10-22-09	FST rock 175 ton	$2,028.87
11-13-09	FST rock 225 tons	$3,276.71
12-25-09	FST ¾ rock 25 ton	$411.12
3-11-10	Temecula Valley Erosion Coco Mat	$ 940.00
3-15-10	HOA Paid Inland Erosion work	$56,000.00
3-15-10	Erosion work on 8 Lots	$35,000.00
3-31-10	Creative Hydro seed	$1,254.53

It should be noted that since the initial sedimentation that occurred in December 2008, there have been no additional releases of sediment beyond the project boundary. The Lower basin that was under construction during the December 2008 has now been completed. The slopes are presently protected with Visqueen plastic and permanent landscaping of the disturbed areas with approved native vegetation mix is scheduled to be conducted this spring.

A letter from Mr.& Mrs. Kazmi dated April 30, 2010 states that the V-ditch behind their house was cleaned of sediment and sandbags replaced as necessary to their satisfaction

and that they have experienced no further sediment problems in the ditch behind their house. A copy of the Kazmi letter is also included in Appendix C. Photos of this area were taken on April 28, 2010 (see Photos 1 and 2 in Appendix B, the Photos section of this report)

Since the December 2008 rains, extensive erosion control BMPs and drainage corrections have been implemented on Via Vista Grande and the slopes along its alignment. Sandbag chevrons and crushed rock have been placed to minimize erosion potential until the roadway has been paved. A rock and rumble-plate Stabilized Construction Entrance have been constructed where the gravel road meets the pavement at Claremont Street (see Photos 3 and 4 in Appendix B).

Item 2

Provide verification of all documents for construction activities that required permit enrollment with the State Water Resources Control Board (State Water Board).

Response to Item 2

Grading permits for work done on the site for various owners are presented in Appendix D. The grading of these sites done for the various owners required filing of Notices of Intent (NOIs). Copies of the Receipts for the NOIs issued by the SWRCB are also included in Appendix D.

Item 3

A Storm Water Pollution Prevention plan (SWPPP) Status Report Section including:

a) **an 8.5 X 11 Site Map boldly indicating all flow lines, storm water inlets and outfalls (designate active or inactive), and direct discharge (if applicable) to a water of the state**
b) **A statement giving the exact date construction began.**

c) **Photocopies of all BMP implementation/maintenance/inspection records (to date).**
d) **Photocopies of all annual Compliance Certifications.**
e) **A Photocopy of the SWPPP Signatory Requirement Page.**
f) **If necessary, copies of newly completed Notices of Intent (NOIs). Please note: if any information provided on the current NOIs has changed, a NOI change of information, filed with the State Water board in Sacramento, is required,**
g) **A completed "SWPPP and Monitoring program Review Sheet" (copy enclosed), with preparers name, included in the RTR as Attachment A.**

Response to Item 3- SWPPP Status Report

a) The requested 8.5 X 11 Site Map is presented herein as Figure 1. A copy of this Site Map is also included in the Sampling and Analysis Plan prepared for this project by ERI under separate cover.
b) Construction of various pad areas for individual homeowners began at different times under individual grading permits. Based on these permits, grading for parcels owned by Eitzen and Ragsdale began in March 2007. Grading for parcels owned by Magoulas began in April 2008. Grading of the Nunez property began in May 2008. Improvements to Via Vista Grande began in June 2007. The County did not require a grading permit for Via Vista Grande improvements.
c) Records of site BMP maintenance prior to April 28, 2010 consist of receipts for work done by various subcontractors, such as sand bag placement, hydro mulching/bonded fiber matrix, equipment rental for erosion and drainage corrections, etc. similar to those presented in Appendix C. Beginning April 28, 2010 a Construction Site Self Inspection Checklist was completed by Mr. Rudy Nunez. A copy of the completed Inspection Checklist, as well as, a blank Inspection Checklist to be copied for future use by the HOA and its members are presented in Appendix E. The Checklist will be used to record future site BMP inspections and maintenance. Similar blank Inspection Checklists are also contained in the SWPPPs

for each of the sites prepared by others. Copies of future completed Checklists will be kept on site with the project SWPPP documents.

d) Annual Compliance Certifications were not completed in 2008 or 2009. The HOA is in the process of obtaining copies of Annual Compliance Certifications for each of the WDID holders for 2010.

e) The required SWPPP Signatory Pages are included in the copies of the various SWPPP reports submitted by Fairway Hills Estates HOA under separate cover.

f) Copies of the SWRCB Receipts for NOIs are presented in Appendix D.

g) As discussed with Mr. Tony Felix on the phone, a copy of the "SWPPP and Monitoring Program Review Sheet" was not enclosed with the NOV as strated in this comment. Per Mr. Felix's request, in reply to this item we have included herein in Appendix F (not Attachment A) a copy of the ***BMP Implementation Schedule*** and ***BMPs Maintenance Inspection and Repair*** sheets from the SWPPP for Fairway Hills Estates HOA prepared by RenCivil dated April 30, 2008. A full copy of the SWPPP signed and certified is being submitted by the HOA to RWQCB under separate cover.

Item 4

A Site Status Report Section including photo-documentation of implementation of the SWPPP, including proper installation of BMPs addressing, but not limited to, those specific violations indicated in the NOV.

Response to Item 4

The status of each violation is addressed herein, on an individual basis, in the order in which they are presented in the NOV. Photos of the implementation of the SWPPP BMPs to correct violations, as well as, overall site photos showing BMP conditions are presented in Appendix B of this report.

Item 5

A Hydrologic Study Section certified by a Registered Civil Engineer, for each sediment basin serving any tributary area as erosion control. Include:

a) **Site Map delineating topographic tributary area (scaled) with flowlines.**
b) **Basin dimensions and calculated maximum volume.**
c) **Outlet and filtration calculations and specifications.**
d) **Hydrologic calculations based on one of the prescribed methods specified in order No, 99-08-DWQ.**
e) **All supporting documentation.**

Response to Item 5

RENCivil has prepared a hydrology study for the project titled ***Hydrology Study for the Via Vista Grande Road Construction project Detention/Desilting Basins***. This report is signed and stamped by a Registered Civil Engineer and included the Site Map, basin dimensions, calculations, and specifications as outlined in the request. This report covers the three detention/desilting basin design and construction. These are permanent structures which will remain following completion of construction. A copy of the RENCivil hydrology report has been submitted to Mr. Felix via email, and a printed copy is being submitted by to RWQCB by the Fairway Hills Estates HOA under separate cover.

Item 6

A Pollutant Sampling Program Section including the following:

a) **Site map delineating topographic tributary area (scaled with flowlines) of area(s) to be sampled for pollutants and area(s) to be sampled as background (free of pollutants).**
b) **A list of all pollutants to be tested which are not visually detectable in storm water discharges as specified in Section B.8 of the permit.**
c) **Copies of all qualifications and training certifications for the laboratory or staff who will be sampling.**

d) **A copy of all protocol measures to be employed, including, at a minimum, Quality Assurance/Quality Control (QA/QC) and Chain of Custody.**

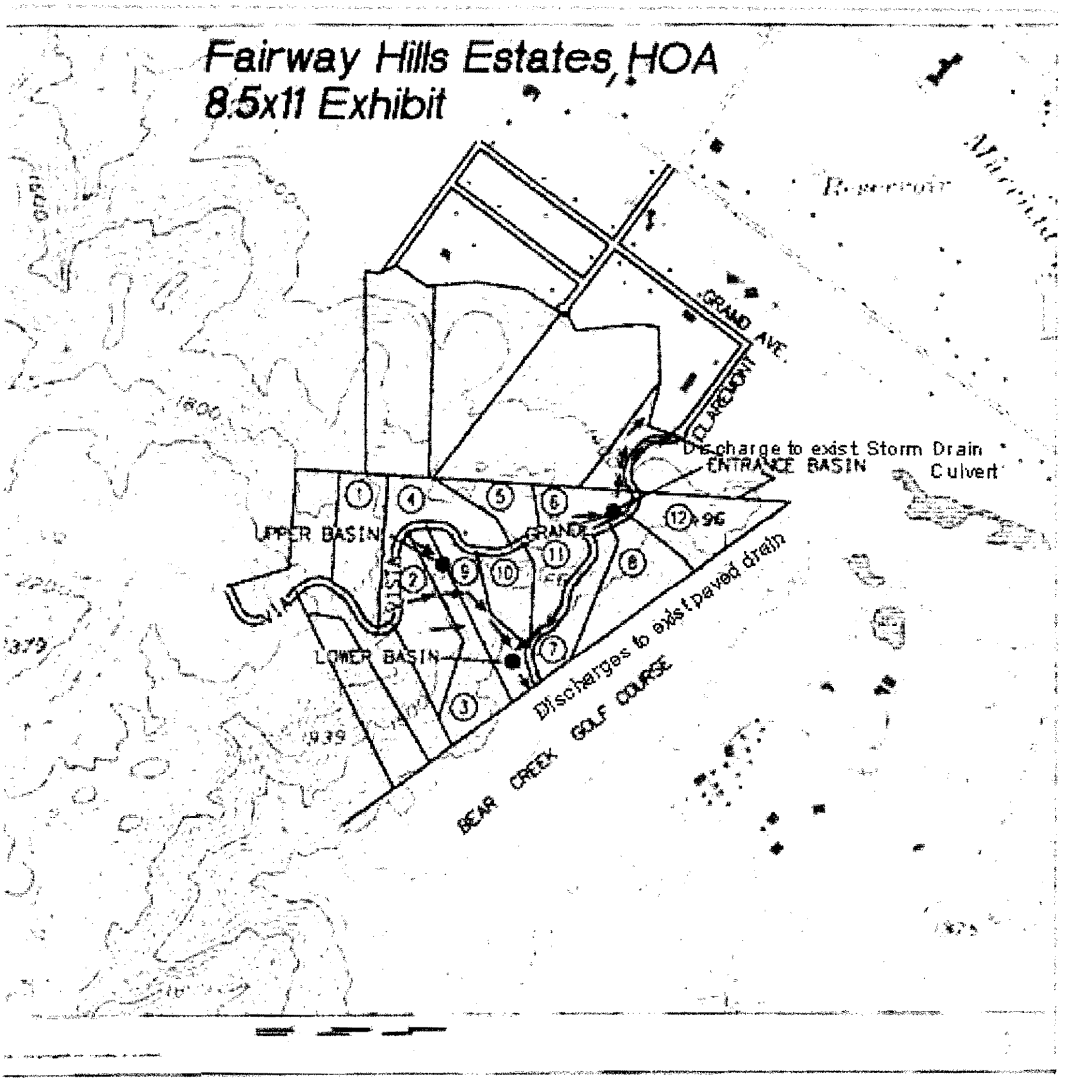
Response to Item 6

Earth Resources Inc. has prepared a ***Storm Water Sampling and Analysis Plan for the Fairway Hills HOA*** dated May 3, 2010. This SAP was prepared by a Certified Engineering Geologist and Registered Environmental Assessor and applies to all of the parcels located within the HOA. The SAP is intended to be an amendment to each of the existing SWPPPs for the various members of the HOA. The SAP was submitted to Mr. Felix for review by ERI via email on May 5, 2010. A printed copy will be submitted to RWQCB under separate cover by the HOA at the time this RTR and technical response is submitted to the Regional Board.

Item 7

A discussion of the filling of all unnamed drainages within the subject site including, at a minimum, the following:

a) **A full delineation of the entire subject site, including a map, depicting all on-site water of the United States and/or State.**
b) **The amount and locations of fill placed in waters of the State and, where appropriate, waters of the United States. Fill must be reported in acres and linear feet.**
c) **A timeline of activities related to fill placement into each drainage.**
d) **A full description of the pre-construction condition of the drainages.**
e) **Proposing to discharge waste or fill to waters of the State requires the filing of Waste Discharge Requirements containing the information required by the appropriate Water Board.**



1. NUNEZ #DID 933C349965
2. RAGSDALE #DID 933C338574
3. EITZEN #DID 933C338575
4. STEVE MAGOULAS #DID 933C350456
5. STEVE MAGOULAS #DID 933C350455
6. STEVE MAGOULAS #DID 933C350453
7. PAUL MAGOULAS #DID 933C357730
8. PAUL MAGOULAS #DID 933C357733
9. JEFF FRIESTEDT #DID 933C357764
10. PETROL (NO GRADING)
11. FRIESTEDT (NO GRADING)
12. ADAMS (NO GRADING)

Site Map- Figure 1

Response to Item 7

As discussed with Mr. Felix on the phone, there are no USGS "blue-line" streams on the site, and site drainage does not directly discharge to a USGS "blue-line" stream (see Site Map, Figure 1). It is our understanding that it is the responsibility of the local agency, in this case the County of Riverside, to notify a developer during the environmental screen check and/or plan check process whether or not a project will modify or impact jurisdictional waters of the United S5ates and whether or not a wetlands delineation study will be required required. Typically, if a project is found to have an impact to waters of the United States, an Army Corps of Engineers 404 permit will be requested by the local agency, and that, in turn, will typically trigger a SWRCB 401 permit requirement. The County or Riverside has reviewed and approved the grading and drainage plans for pad and driveway grading of the parcels as indicated by the Grading Permits (copies included herein in Appendix D). A grading permit was not required by the County for the improvements to the pre-existing dirt road, Via Vista Grande. Grading for the basins is in plan check. Therefore it appears at this time that neither a 401 nor a 404 permit was required. A wetland delineation study for the site has not been requested by the County.

Additional information regarding the hydrology, size and shape of the basins, description of the pre- and post-construction drainage conditions, etc. are included in the RenCivil Hydrology Study submitted under separate cover.

Item 8

A list of all applicable federal, State and local permits, licenses and agreements that were obtained for fill activities to waters of the United States and/or State.

Response to Item 8

As indicated in Item 7 above, 401 and 404 permits were not required by the County or SWRCB at the time the Grading permits were approved and the WDID numbers for each of

the projects were designated. Copies of the Grading Permits and receipts of Notices of Intent are presented in Appendix D.

Item 9

The status of the California Environmental Quality Act (CEQA) review for the work that resulted in the discharges of fill and, if available. A copy of the final or draft CEQA document.

Response to Item 9

To the best of our knowledge, there was no CEQA document required by the County or prepared for these projects. It is unknown to ERI at this time whether or not the County of Riverside staff has conducted any internal CEQA review for these projects.

Item 10

A time line and an implementation and monitoring plan for the restoration of all impacted waters of the State on-site.

Response to Observation 10

Based upon the County of Riverside's approval of the grading and road improvements, it is doubtful that they consider the project as having a significant environmental impact to waters of the State. However, the Fairway Hills Estates HOA plans to re-vegetate the graded slope areas of the three detention/desilting basins with a native seed mix prior to the next rainy season.

Note: as requested, the owner certification and signature page is present at the end of this report.

Part II. TECHNICAL RESPONSE TO NOTICE OF VIOLATION

A. Summary of NPDES General Permit No. CASoooooo2, SWRCB Order 99-08-DWQ Violations:

I. Observation: You failed to file a NOI for new grading of the fire road. Additionally, six of the construction projects do not have NOIs for coverage under the statewide general Construction permit, Order No. 99-08-DWQ.

Response to Observation A.I

It is presumed that the "the fire road" refers to Via Vista Grande, a pre-existing private dirt access road to the site. Via Vista Grande is a 2900 lineal feet private access road, a segment of which traverses each of 12 existing parcels within the Fairway Hills Estates HOA (i.e. the road is commonly owned by each of the 12 property owners but is collectively maintained by the HOA). It is our understanding that the County of Riverside did not require a grading permit for the roadway improvements. Therefore, the Fairway Hills Estates HOA has not filed a NOI for the road improvements, but rather has filed NOIs for each of the lots. Via Vista Grande also passes through several of the properties that have not yet been graded and the area of roadway through these lots is less than one acre.

The Fairway Hills Estates HOA consists of 12 privately-owned, irregularly-shaped hillside parcels ranging from approximately 5 to 10 acres in size. Some of the owners own more than one parcel. The locations of each parcel are shown on the attached Site Map, Figure 1. As of the date of this report, eight of the parcels have been rough graded and have active WDID numbers. Building pads for three of the parcels have not been graded and do not have WDID numbers. These are parcels 10, 11 and 12 as shown on the Site Map, Figure 1 below. A NOI was submitted to SWRCB for parcel 9 on March 15, 2010 but has not yet been assigned a WDID number. Copies of the receipts for the 8 active NOIs, as well as, the NOI submittal form and copy of the submittal fee check for parcel 9, are included herein in Appendix D.

II. **Observation: We photo-documented large quantities of sediment and silt which were deposited at the Claremont Street entrance, into waters of the State, and the hardened channel which abuts the Bear Creek Community.**

Response to Observation A.II

Acknowledged. As explained in Item I of the RTR above, this sediment was the result of very intense rainfall which occurred during the grading of the road improvements and construction of the Lower Basin. Those areas were immediately cleaned up and as stated in the RWQCB, the cleanup had been mostly completed by December 13, when the RWQCB inspector visited the site. The Lower Basin has been completed and effective erosion and sediment control BMPs for Via Vista Grande have been implemented. Since December 2008 there has been a lack of sediment in these areas. Photos of these areas taken on April 28 are included in Appendix B (see Photos 1, 2, 3, and 4).

III. **Observation: From the time of the initial inspection to the present you have not produced a SWPPP that complies with the General Construction Permit requirements, including a fully developed monitoring program for pollutants not visibly detectable in storm water.**

Response to Observation A.III

SWPPPs for the various projects have been developed by RENCivil and CLE Engineering Inc. Copies of these SWPPPs are being submitted to RWQCB by the HOA. A copy of the ***BMP Implementation Schedule*** and ***BMPs Maintenance Inspection and Repair*** sheets from the SWPPP for Fairway Hills Estates HOA prepared by RENCivil dated April 30, 2008 is included herein in Appendix F. Earth Resources Inc. has prepared a Sampling and Analysis Plan for non-visible pollutants covering all of the construction sites within the HOA

as discussed in Item 6 of the RTR above. The SAP was emailed to Mr. Felix for review on May 5, 2010 and a printed copy is submitted herewith under separate cover.

IV. Observation(s):

(a) Your site lacked the appropriate and necessary erosion and sediment controls for most disturbed areas. Your site lacked sediment controls (i.e. silt fences or fiber rolls) for the outside slopes (see photos 06, 09, 10, 11, 12, 13, 18, and 26).

(b) There was no SWPPP available for inspection to review to insure there was a specific construction phase/ BMP sequencing schedule

(c) Three sediment basins at the site lacked the proper design and placement requirements. One had failed resulting in a discharge and the other two were placed directly within waters of the State (see photos 12, 13, 14, 17, 21, 22, and 23).

(d) Your vehicle and equipment and storage area lacked the proper controls to minimize the exposure of spilled oil, grease, and other vehicle maintenance fluids to stormwater (see photos 27 and 28).

(e) Your site had inadequately maintained entrance/exit BMPs, which caused significant sediment tracking at the Claremont Street entrance/exit (see photo 04).

Response to Observation A.IV (a)

Extensive erosion and sediment control BMPs have been implemented throughout all graded areas of the site following the intense storm of December 2008. The attached Master Erosion Control Plan for the Fairway Hills Estates HOA by RENCivil (included herein as Plate 1) shows the locations of the BMPs implemented to improve erosion and sediment control. Graded slopes have been treated with hydroseed, bonded fiber matrix and

hydroseed. Thousands of sand bag chevrons have been placed on the road, private drives, and pad areas. Silt fencing has been placed in appropriate areas. A partial list of BMPs implemented both before and after the December 2008 storm event provided by the HOA representative is presented above in "Response to Item 1", pages 5 and 6. Representative photos of the improved site BMPs are presented in Appendix B.

Response to Observation A.IV (b)

As previously mentioned, copies of the SWPPPs for the various projects and the road are being provided to RWQCB for review. Additionally a Master Erosion Control Plan covering the entire site and roadway has been prepared by RENCivil (see Plate 1). Site construction is presently idle. When construction resumes on any of the sites, the appropriate SWPPP for that active WDID number will be kept in the construction site trailer and/or a designated mailbox-type lock box during construction. The name, phone number, and contact information for the responsible SWPPP contact person will be displayed in a prominent location so that subcontractors and County or State inspectors may review the SWPPP documents upon request.

Response to Observation A.IV (c)

The sediment basins were under construction at the time. Since then, these basins have been completed. Photos of the completed basins are presented in Appendix B. The basins were designed by RENCivil for a 100 year storm event. The hydrology study by RENCivil is presented under separate cover as discussed in Item 5 of the RTR above.

Response to Observation A.IV (d)

Rough grading has been completed and equipment required for erosion and sediment control BMP maintenance is generally brought on the site on an as-needed basis. If equipment is to be parked on the site, the presently designated area is the graded pad on building pad 5. Drip pans under equipment should be used to collect any oil, grease, or hydraulic fluids. When construction is resumed on any of the lots, the SWPPP shall be amended to show the appropriate locations for hazardous construction materials storage,

equipment parking/staging/fueling area, concrete washout area, portable toilets, and trash collection areas. Appropriate BMPs for each activity which could potentially cause non-visible pollutants should be shown accordingly on the amended SWPPP map. The locations of these areas and BMPs may change as necessary throughout the duration of the project, but changes must accordingly be made to the SWPPP.

Response to Observation A.IV (e)

A stabilized construction entrance consisting of 1" to 3" crushed rock over filter fabric and a steel rumble plate have been added to the entrance where Via Vista Grande meets the existing end of the Claremont Street asphalt. See Photos 3 and 4 in Appendix B.

B. Summary of Clean Water Act Section 401 Violations:

I. **Observation: The San Diego Water Board to date has not received a RoWD for the discharge of fill to the unnamed drainages associated with construction of the subject site and associated (access) roads (see photos 11, 13, 15, 16, and 17).**

Response to Observation B.I

It appears that the referenced photos 11, 17, and 18 are photos of the Lower basin under construction, and not fill dumped into a water course. It is out opinion that the compacted earthen fill structure to create the three basins constitutes planned grading, and not "dumped fill". Recent photos of the completed basins are presented in Appendix B.

Referenced photos 15 and 16 appear to show sediment within or behind the sediment basins. The main purpose of construction of the basins is to collect sediment and detain surface runoff to minimize the potential for sediment to migrate from the site. It should be noted that the canyon in which the Lower Basin has been constructed is a steep natural canyon that has a long history of erosion and sediment deposition before any present site grading occurred. It is our understanding that the Kazmi property at 22408 Montes Court experienced sedimentation, similar to that which occurred in December 2008, in 2004 and

in previous years. The 2004 sedimentation was cleaned up at the expense of the Fairway Hills Estates property owners. Therefore it was the decision and engineering judgment of the project Civil Engineer to design a detention/desilting basin in this canyon, as well as to the areas of the site to protect downstream properties.

Since the completion of the designed Lower Basin construction, the Kazmi's have not experienced additional sedimentation problems (see Kazmi letter dated April 30, 2010 in Appendix C.

II. **Observation: The San Diego Water Board to date has not received an application for CWA Section 401 Water QWuality Certification for the discharge of fill to any unnamed drainages that are waters of the United States associated with the subject site and associated roads (see photos 15, 16, and 17).**

Response to Observation B.II

As noted in the item B.1 response above, it does not appear that referenced photos 15, 16, and 17 depict discharge of fill into the water course. To the contrary, photos 15 and 16 appear to show sediment in the canyon behind the Lower Basin, and design and construction of this basin is intended to intercept this sediment and prevent it from impacting the paved swale behind the Kamzi Residence. Referenced photo 17 appears to depict the initial grading for the lower basin. Recent photos of the canyon both above and below the Lower Basin are presented in Appendix B.

III. **Observation: The discharge of fill to streams has the potential to result in alteration or elimination of the beneficial Uses associated with the water body. The unnamed drainages within the project area are tributary to Murrieta Creek. Beneficial Uses assigned to Murrieta Creek and its tributaries include MUN [municipal and domestic supply], AGR [irrigation, agricultural supply], IND [industrial service supply], PROC [industrial**

processes], GRW, REC2 [other non-contact recreation], WARM [freshwater habitat-warm] and WILD [wildlife habitat]. Construction of the project in and over the unnamed drainages has eliminated the Beneficial Uses of these drainages in each location. The fill of each unnamed drainage has fragmented upstream and downstream reaches and was observed to have resulted in alteration of the hydrologic characteristics of each drainage, which has led to erosion throughout the property. Alteration of hydrologic characteristics results in diminished quality of in-stream and riparian habitat for flora and fauna in the unnamed drainages and downstream. Furthermore, construction of the Project has resulted in the discharge of pollutants to the remaining portion of the unnamed drainages, resulting in the degradation of downstream Beneficial Uses.

Response to Observation B.III

Grading for the house pads, access road, and private driveways was approved by the County of Riverside. These types of approved development activities typically increase the quantity of runoff water during storm events. Increased runoff is known to generally result in increased channel erosion in many instances, which presents the potential to degrade downstream waters. It is standard engineering practice to construct detention basins to hold and collect increase in runoff water due to site development and then release it slowlyin a controlled manner to simulate the natural flows within a waterway. Detention basins generally do not prevent the downstream flow of water, but rather slows it down to protect against downstream channel erosion.

While erosion of poorly protected slopes may have occurred during the intense December 2008 storm event, it is our professional opinion that the construction of the basins did not lead "to erosion throughout the property" as alleged, especially in the reaches above these basins. Erosion experienced on the then recently-graded slopes, building pads, access road, and driveways are unrelated to construction of the basins. The Project Civil Engineer

designed these basins to mitigate the increased flow from the approved development as outlined in the RENCivil hydrology report.

It is our professional opinion, that it is very unlikely that "construction of the Project has resulted in the discharge of pollutants to the remaining portion of the unnamed drainages, resulting in the degradation of downstream Beneficial Uses" as stated in the NOV for the following reasons.

The sediment at two specific locations was the main source of the initial complaint.

The first location is the existing concrete drainage swale behind the Kazmi Residence. This structure includes a paved drainage swale and concrete block debris wall (see Photo 1 in Appendix B). This structure is obviously a debris protection device constructed during the development of the Bear Creek Community to protect the homes along Montes Court from water, sediment, and debris potential from the natural canyons and slopes to the north. It has been documented by both the RWQCB and the homeowners that the sediment that was deposited during this December 2008 storm event was quickly removed by Fairway Hills Estates HOA. Therefore, it is apparent that the concrete drainage device performed satisfactorily for its intended purpose and no degradations of downstream waters appears to have resulted. The Lower Basin, now completed, provides additional protection for the homes on Montes Court.

The second location is at the end of Via Vista Grande, where the road meets the pavement at the end of Claremont Street. The sediment at this location was deposited onto the pavement. Vehicle tracking of mud onto the pavement was also noted. The sediment removal, implementation of erosion control BMPs for the roadway and associated slopes, and placement of a stabilized construction entrance was expedited by the HOA and its contractor. It is apparent that the sedimentation observed at this location is not within any of the drainage areas of the three basins in question, and therefore is not a result of construction of these basins.

The surface flow from the end of Via Vista Grande enters an existing 24" culvert for a private driveway, then exits the culvert and flows along the surface, following Claremont Street toward the northeast. Sediment beyond the terminus of Claremont was not noted, except for the aforementioned vehicle tracking. Because the sediment was removed by the HOA, it is highly unlikely that the sediment could have resulted in degradation of the beneficial uses of Murrieta Creek, which is located more than one-half mile down gradient of the terminus of Claremont Street. There were no reports of sedimentation of Murrieta Creek from this event.

OWNER'S CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Jack Eitzen

Jack Eitzen, Fairway Hills Estates HOA Representative

LIMITATIONS

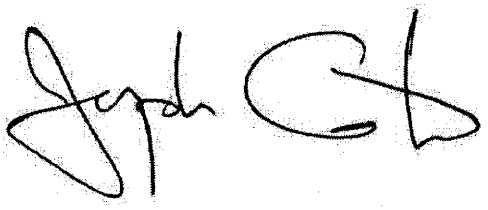
The findings, conclusions, and recommendations contained in this report are based on our visual site observations, review of SWPPP and Erosion Control Plans prepared by others, data included in the project NOIs and Grading Permits, and other information about past site conditions and grading events provided by the Client. The information is relevant to the date of our site visit and should not be relied on to represent conditions at any later date. The opinions and conclusions expressed herein are based on information obtained during our investigation and on our experience and current standards of technical practice. Earth Resources, Inc. makes no other warranties, either express or implied, concerning the completeness of the data furnished to us. Earth Resources, Inc. cannot be responsible for conditions or consequences arising from relevant facts that were omitted, concealed, withheld, or not fully disclosed at the time our investigation was undertaken.

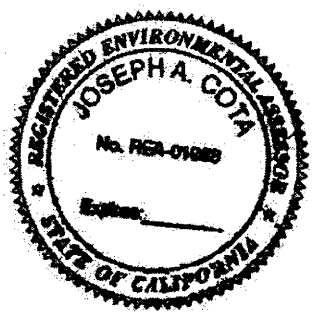
This report has been prepared for the exclusive use of Fairway Hills Estates HOA and its members for their specific projects, and should not be used by other parties without the written consent of Earth Resources, Inc.

We appreciate this opportunity to be of service to you. If you have any questions, or if we may be of further assistance to you, please do not hesitate to contact us.

Very truly yours,

EARTH RESOURCES, INC.





JOSEPH A. COTA
Principal Geologist
CEG 1490, REA I No. 1938 (exp. 6-1-10)

Encl: References
Plate 1, Master Erosion Control Plan by RENCivil
Appendix A, Notice of Violation
Appendix B, Site Photographs
Appendix C, Kazmi Letter and Receipts for Erosion and Sediment Control BMPs
Appendix D, Grading Permits and Receipts for NOIs
Appendix E, Construction Site Self-inspection Checklist
Appendix F, BMP Implementation Schedule and BMP Maintenance, Inspection, and Repair Checklist

cc: (1) Addressee
(1) Mr. Tony Felix via email

REFERENCES

1. State Water Resources Control Board Resolution No. 2001-046 Adopted April 26, 2001.

2. California Storm Water Quality Association, dated 2003, "Stormwater Best Management Practice Handbook-Construction."

3. California Department of Transportation (CalTrans), dated July 2000, "Guidance Manual: Storm Water Monitoring Protocols" Second Edition.

4. Riverside County Flood Control Automated Rain Gauge Daily Rainfall Summary

6. RENCivil, April 30, 2008, "Storm Water Pollution Prevention Plan, for Fairway Hills Estates HOA'

7. RENCivil, April 2010, "Hydrology Study for Via Vista Grande Road Construction Project Detention/desilting Basins"

8. RENCivil, April 2010, "Master Erosion Control Plan for Fairway Hills Estates Home Owner's Association"

9. Earth Resources, Inc. May 3, 2010, "Stormwater Sampling and Analysis Plan, Fairway Hills Estates HOA, Via Vista Grande, East of Claremont Street, Murrieta, Riverside County, CA 92562"

Exhibit 12

COUNTY OF RIVERSIDE
ENVIRONMENTAL COMPLIANCE DIVISION

NPDES Construction Inspection Form

Tract/Plot/APN No.: APN 928-230-015 **DATE:** 4/12/10 **ECI:** R. CARRERA

GRADING PERMIT No.: BGR 090250 **Thomas Bros Page:** 927, C-3

WDID NO.: **APN:** **Weather Condition:**

SITE Address: 38175 VIA VISTA GRANDE **Contact Person:**

Contact Phone No.: **Email:**

Owner/Applicant: Jack Eitzen **Phone No.:** 408.656.2009
Address: P.O. Box 998
Saratoga, Ca 95071 **Area Disturbed:**

Site Priority Level	Revised Priority Level	Inactive	Active
☐ Low ☐ Medium ☐ High	☐ Low ☐ Medium ☐ High	☐	☐

Yes	No	
		1. Stormwater Pollution Prevention Plan:
☒	☐	A) Current SWPPP document on job site?
		2. Best Management Practices:
☒	☐	A) Erosion Control BMP's installed, maintained and effective?
☒	☐	B) Sediment Control BMP's installed, maintained and effective?
☒	☐	C) Wind Erosion Control BMP's installed, maintained and effective?
☒	☐	D) Tracking Control BMP's installed, maintained and effective?
☒	☐	E) Non-Stormwater Management BMP's installed, maintained and effective?
☒	☐	F) Waste management and materials pollution BMP's installed, maintained and effective?
		3. Non-Stormwater Discharges:
☒	☐	A) Is the site free from evidence of non-stormwater discharges?
☒	☐	B) Is the site free from the potential to create a non-stormwater discharge?
☒	☐	C) Is there an effective combination of BMP's installed?

In Compliance	Non-Compliance	Gross Non-Compliance
☒	☐	☐

☐ Verbal ☒ Written ☐ NOV ☐ Stop Work Order ☐ RWQCB Notified

**This inspection is based solely upon the observations made by the inspector at the time of inspection*

Comments: Unable to access. Too musch erosion on main road and do not have 4X4. Soil is too wet and soft. All chevrons at main access road are ok.

**See back for additional comments*

Appendix 13

Exhibit No. 13
Discharger: Mr. Jack Eitzen

Penalty Methodology Decisions
ACL Complaint No. R9-2010-0084

Step 1: Potential Harm Factor

Violations	Harm/Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Violation 1	5	2	0	7
Violation 2	3	2	1	6
Violation 3				

Step 2: Assessments for Discharge Violations

Violations	Per Gallon Factor					Statutory or Policy Max per Gallon [$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	High Volume Discharges [yes / no]	Gallons Discharged	Total Per Gallon Factor	

No Per Gallon Discharge Violations

Violations	Per Day Factor				Statutory Max per Day [section 13xxx]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Violation 1	7	Major	0.31	645	$5,000
Violation 2	6	Major	0.22	2	$10,000

Step 3: Per Day Assesments for Non-Discharge Violations

Violations	Per Day Factor				Statutory/ Adjusted Max [section 13xxx]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Violation 3	Moderate	Major	0.55	150	$10,000

Initial Liability From Steps 1 - 3

Violation 1: (.31) x (645) x (45,000) = $999,750
Violation 2: (0.22) x (2) x ($10,000) = $4,400
Violation 3: (0.55) x (150) X ($10,000) = $825,000

Step 4: Adjustments

Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Violation 1	1.5	1.5	1	n/a	48
Violation 2	1.5	1	1	n/a	n/a
Violation 3	1.5	1.5	1	n/a	16

Step 5: Total Base Liability Amount

(Per day Factor x statutory maximum) x (Step 4 Adjustments)

Violation 1: (0.31) x ($5,000) x (1.5) x (1.5) x (1) x (48) = $167,400
Violation 2: (0.22) x ($10,000) x (1.5) x (1) x (1) x (2) = $6,600
Violation 3: ((0.55) x ($10,000) x (1.5) x (1.5) x (1) x (16) = $198,000

Step 6: Ability to Pay / Continue in Business

[Yes, No, Partly, Unknown]

Yes

Step 7: Other Factors as Justice May Require

Costs of Investigation and Enforcement	Other
$9,450	n/a

Step 8: Economic Benefit

Violation 1: $5,663
Violation 2: $0
Violation 3: $45,000

Step 9: Maximum and Minimum Liability Amounts

	Minimum	Maximum
Violation 1	$6,229	$3,225,000
Violation 2	$0	$20,000

Step 10: Final Liability Amount

(total base liability) + (other factors)

($372,000) + ($9,450) = $381,450

Administrative Civil Liability Complaint

Fact Sheet

The State Water Resources Control Board and the nine Regional Boards are authorized to issue complaints for civil liabilities under Water Code section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. I**f you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you**. The complaint is accompanied by a letter of transmittal, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Board or State Board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Board (nine Governor appointed members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the prosecution team nor the discharger or his/her representatives are permitted to communicate with the board members or the advisory team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

<u>Withdrawal</u> may result if the discharger provides information to the Prosecution Staff that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the discharger of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Board's Enforcement Policy, which is available at the State Board's website at: www.swrcb.ca.gov/plans_policies/docs/wqcp.doc.

Hearing: If the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the Board Members will deliberate to decide the outcome. The Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors That Must Be Considered By the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Board is required to consider several factors specified in the Water Code, including nature, circumstance, 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to

establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
    a. IRS Form 1120 for C Corporations
    b. IRS Form 1120 S for S Corporations
    c. IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
1. The following information can be substituted if income tax returns cannot be made available:
    a. Audited Financial Statements for last three years;
    b. A list of major accounts receivable with names and amounts;
    c. A list of major accounts payable with names and amounts;
    d. A list of equipment acquisition cost and year purchased;
    e. Ownership in other companies and percent of ownership for the last three years;
    f. Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
   a. City/Town/Village;
   b. County;
   c. Municipality with enterprise fund;
   d. Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
   a. Population;
   b. Number of persons age 18 and above;
   c. Number of persons age 65 and above;
   d. Number of Individual below 125% of poverty level;
   e. Median home value;
   f. Median household income.
3. Current or most recent estimates of:
   a. Population;
   b. Median home value;
   c. Median household income;
   d. Market value of taxable property;
   e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding your financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Board issues an order requiring payment, the discharger may challenge that order by filing a petition for review with the State Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions. An order of the State Board, including its ruling on a petition from a Regional Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Regional or State Board may seek an order of the Superior Court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

I am duly authorized to represent Mr. Jack Eitzen (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2010-0084 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)***

a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.

b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **three hundred eighty one thousand four hundred fifty dollars ($381,450)** by check that references "ACL Complaint No. R9-2010-0084." made payable to the *"State Water Resources Control Board"*. Payment must be received by the San Diego Water Board by **October 28, 2010** or this matter will be placed on the San Diego Water Board's agenda for a hearing as initially proposed in the Complaint.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. 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.

☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the San Diego Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the San Diego Water Board to approve the extension.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

PROPOSED DRAFT

HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2010-0084
ISSUED TO

MR. JACK EITZEN
38175 VIA VISTA GRANDE
MURRIETA, CALIFORNIA

SCHEDULED FOR DECEMBER 8, 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Sections 13350 and 13385 (CWC) against Mr. Jack Eitzen (Discharger) alleging that he has violated Water Quality Control Plan, San Diego Basin (9), (Basin Plan) Waste Discharge Prohibition Nos. 1 and 14 by discharging waste into waters of the state, Discharge Prohibition A.2 of Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity by discharging sediment to a separate storm sewer system tributary to waters of the nation, and Special Provision for Construction Activity C.2 of Order No. 99-08-DWQ by failing to develop and implement an adequate Storm Water Pollution Prevention Plan. The Complaint proposes that administrative civil liability in the amount of $381,450 be imposed as authorized by CWC sections 13350 and 13385. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of December 8, 2010, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on December 8, 2010, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board Office at 9174 Sky Park Court, Suite 100, in San Diego. An agenda for the

meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at http://www.waterboards.ca.gov or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN OCTOBER 8, 2010, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

(1) San Diego Water Board Prosecution Staff

(2) Mr. Jack Eitzen

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already be listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **October 18, 2010**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **October 28, 2010**. The parties will be notified by 5 p.m. on **November 8, 2010** as to whether the request has been granted or denied.

Contacts

Advisory Staff:

Catherine Hagan (George)
Senior Staff Counsel
Regional Water Quality Control Board, San Diego Region
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CHagan@Waterboards.ca.gov

David W. Gibson, Executive Officer
Regional Water Quality Control Board, San Diego Region
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Prosecution Staff:

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State Water Resources Control Board
Office of Enforcement
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James Smith, Assistant Executive Officer
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9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Jeremy Haas
Senior Environmental Scientist of the Compliance Assurance Unit
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Rebecca Stewart
Sanitary Engineering Associate
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Discharger:

Mr.Jack Eitzen
P.O. Box 998
Saratoga, CA 95071

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the Regional Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: David Boyers, Senior Staff Counsel, James Smith, Assistant Executive Officer, Jeremy Haas, Senior Environmental Scientist of the Compliance Assurance Unit, and Rebecca Stewart, Sanitary Engineering Associate.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not ex parte contacts.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received (**December 6, 2010**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit two hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **November 8, 2010.**

The remaining designated parties shall submit 20 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **November 24, 2010**.

In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **November 24, 2010**, prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing[1] for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **November 22, 2010**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **December 1, 2010** to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. This file shall be considered part of the official administrative record

[1] Each Regional Board may choose to require earlier submission of all visual aids by all parties. OE prefers early submission of visual aids, so that they have time to confirm that the aids do not go beyond the scope of previously-submitted evidence.

for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

IMPORTANT DEADLINES

September 28, 2010	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
October 8, 2010	Objections due on proposed Hearing Procedure
October 14, 2010	Advisory Team issues Hearing Procedure
October 18, 2010	Deadline for submission of request for designated party status.
October 28, 2010	Deadline for opposition to request for designated party status.
October 28, 2010	Discharger's deadline for waiving right to hearing.
November 8, 2010	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
November 8, 2010	Advisory Team issues decision on requests for designated party status, if any.
November 24, 2010	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
November 22, 2010	All Designated Parties' deadline for submission of request for pre-hearing conference.
December 1, 2010	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
December 8, 2010	Hearing

_____
David W. Gibson
Executive Officer

_____
DATE