

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0518

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

AL NATICCHIONI AND KEN KNIGHTEN
DEER CREEK MANOR SUBDIVISION
SHASTA COUNTY

This complaint is issued to the Al Naticchioni and Ken Knighten, (hereafter Discharger), based on a finding of violations of Clean Water Act Section 301, California Water Code (CWC) Section 13376, the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ, pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of Administrative Civil Liability.

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

1. The Discharger is the owner and developer of an approximately 90-acre construction project known as Deer Creek Manor Subdivision. The site is located southwest of the intersection of Pine Grove Boulevard and Cascade Avenue in the City of Shasta Lake, Shasta County. The site is relatively steep with some slopes exceeding 30 percent. This is a phased project, which will be developed into a 146-lot residential subdivision with utilities, roads, detention pond, and homes. The eastern 43 acres of the site (Phases I-IV) are currently under construction and will include 88 homes. Most of the storm water runoff from the east side of the site runoff discharges to Salt Creek. The western 47 acres of the site (Phases V-VII) has been cleared of brush and most trees; however, it is not currently under construction except for the construction of a dirt road. Most of the storm water runoff from the west side of the site discharges to Churn Creek.
2. The Discharger's general contractor for site construction is S-n-J Engineering and Construction (General Contractor) and the earthwork contractor is Hoy and Sons Construction (Earthwork Contractor).
3. Salt Creek and Churn Creek are tributaries to the Sacramento River. The existing beneficial uses of Salt Creek, Churn Creek and the Sacramento River, as designated in the Central Valley Water Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers-4th Edition 1998 (Basin Plan) are municipal, industrial, and agricultural supply; recreation; aesthetic enjoyment; navigation; groundwater recharge, fresh water replenishment; warm and cold freshwater habitat, warm and cold migration and spawning and wildlife habitat.
4. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ (General Permit), implementing

the Waste Discharge Requirements for storm water discharges associated with construction activity. The General Permit requires that dischargers of storm water to surface waters associated with construction activity, including clearing, grading, and excavation activities, file a Notice of Intent (NOI) to obtain coverage under the NPDES General Permit, and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Control Technology (BCT) to prevent storm water pollution or reduce it to the maximum extent practicable.

5. The Discharger obtained coverage under the General Permit and was assigned WDID No. 5R45S318416, on 2 July 2002.
6. The Discharger is alleged to have violated provisions of law for which the Central Valley Water Board may impose liability under CWC Section 13385(c)(2).
7. General Order No. 99-08-DWQ states, in part, the following:

“A. DISCHARGE PROHIBITIONS:

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

“B. RECEIVING WATER LIMITATIONS:

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

“C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

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

5. All dischargers shall comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under their jurisdiction...”

“Section A: STORM WATER POLLUTION PREVENTION PLAN

6. Erosion Control

... At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the wet season.

8. Section 301 of the Clean Water Act and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
9. The Discharger is alleged to have violated Discharge Prohibitions A.3; Receiving Water Limitation B.1 and B.2; Special Provisions for Construction Activity C.2 and C.5 of the General Permit, and Storm Water Pollution Prevention Plan, Section A.6. These violations were caused by the Discharger's failure to properly implement and maintain effective Best Management Practices (BMPs), which led to the discharge of pollutants to waters of the United States from the subject construction site. Pursuant to CWC Section 13385 (a)(2), civil liability may be imposed based on the following facts:
 - a. Central Valley Water Board staff notified the Discharger in writing of their responsibility to comply with the General Permit annually (September 2002, September 2003, September 2004 and September 2005). The Discharger began extensive clearing of the 90-acre property in April 2004. Extensive earthwork and grading of the eastern 43 acres was initiated in late August 2004.
 - b. Between **22 September 2004 and 20 October 2004**, Central Valley Water Board staff inspected the site four times and observed inadequate erosion and sediment control measures each time. On two of those inspections, Central Valley Water Board staff observed sediment-laden discharges to Salt and/or Churn Creeks. The amount of sediment in the discharge and the lack of erosion and sediment controls indicated a significant sediment discharge in violation of Discharge Prohibition A.2, A.3, Receiving Water Limitation B.1, and Special Provisions C.2 of the General Permit. Central Valley Water Board staff issued a Notice of Violation (NOV) to the Discharger on 21 October 2004, for violations observed in September and October. The NOV required corrective actions and warned of the consequences of General Permit violations.
 - c. On **21 October 2004** the City of Shasta Lake staff sent the Discharger a Notice of Violation for violations of the grading permit. The unauthorized discharge was in violation of Special Provision C.5 of the General Permit.
 - d. Between **8 November 2004 and 7 February 2005**, Central Valley Water Board staff inspected the site six more times and observed inadequate erosion and sediment control measures each time, as well as the discharge of sediment-laden water to Salt Creek. The City of Shasta Lake staff documented sediment-laden discharges from the detention pond on 8 December 2004. Central Valley Water Board staff issued a second NOV to the Discharger on 21 January 2005 for additional violations of Discharge Prohibition A.2, A.3, Receiving Water Limitation B.1, and Special Provisions C.2 of the General Permit observed in November 2004, December 2004, and January 2005.

- e. On **8 December 2004**, Central Valley Water Board staff collected water quality data from an unregulated discharge from the detention pond. The discharge increased the turbidity and Total suspended solids (TSS) of Salt Creek by 35 and 33 percent respectively.
- f. On **8 April 2005 and 11 May 2005**, Central Valley Water Board staff inspected the site and observed inadequate erosion and sediment control measures each time, as well as the discharge of sediment-laden water to Salt Creek.
- g. On **18 May 2005**, Central Valley Water Board staff inspected the site and observed pumping from the storm water retention pond, inadequate erosion and sediment control measures, as well as the discharge of sediment-laden water to Salt Creek. Collected water quality data from the discharge indicated an increased in turbidity and TSS of Salt Creek by 16 and 11 percent respectively.
- h. On **18 October 2005**, prior to any fall rains, Central Valley Water Board staff conducted an aerial inspection of the site. It appeared that most of the site had erosion control measures in place (straw mulch, bonded fiber matrix, straw netting). Erosion control blankets (straw within netting) were installed on a few slopes. Silt fence was constructed along the toe of the slopes adjacent to the creek. However, the roads were not stabilized (i.e., bare soil) and required additional stabilization.
- i. On **7 November 2005**, Central Valley Water Board staff inspected the site and observed pumping from the storm water retention pond, inadequate erosion and sediment control measures, as well as the discharge of sediment-laden water to Salt Creek. Collected water quality data from the discharge indicated an increased in turbidity and TSS of Salt Creek by 40 and 56 percent respectively.
- j. On **8 November 2005**, the City of Shasta Lake staff sent the Discharger a Notice of Violation for failing to comply with their grading permit, the discharge of sediment-laden storm water, and the observed erosion and sediment control problems on-site.
- k. On **21 December 2005**, Central Valley Water Board staff inspected the site and observed pumping from the storm water retention pond, inadequate erosion and sediment control measures, as well as the discharge of sediment-laden water to Salt Creek. Collected water quality data from the discharge indicated an increased in turbidity and TSS of Salt Creek by 65 and 80 percent respectively.
- l. On **28 February 2006**, Central Valley Water Board staff inspected the site and observed pumping from the storm water retention pond, inadequate erosion and sediment control measures, as well as the discharge of sediment-laden water to Salt Creek. Collected water quality data from the discharge indicated an increased in turbidity and TSS of Salt Creek by 195 and 129 percent respectively.

10. As discussed above, the Discharger failed to implement and maintained controls to reduce pollutants in storm water discharges from their construction site to the BAT/BCT performance standards resulting in the repeated discharges of sediment-laden storm water into surface waters.

11. The Discharger is alleged to have violated provisions of law for which the Central Valley Water Board may impose liability under Section 13385(c)(2) of the CWC. Section 13385 of the CWC states, in part:
 - “(a) Any person who violates any of the following shall be liable civilly in accordance with this section:
 - (1) Section 13375 or 13376
 - (2) Any waste discharge requirements or dredged and fill material permit.*

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

 - “(c) Civil liability may be imposed administratively by the State Board or a Central Valley Water Board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the... following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.*

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

12. The quantity of sediment-laden storm water discharged from the subject site for seven separate days that a discharge was directly observed was conservatively estimated at 5,920,000 gallons. Runoff from the site for each day of discharge was estimated using the rational method ($Q=CIA$), with a low runoff coefficient of 0.40, rainfall data collected at the site, Shasta Dam and the City of Redding Fire Station was averaged and divided by 24, and a watershed area of 40 acres. Additional days of discharge most likely occurred based on precipitation data; however, these days were not considered in the calculation. During the rainy season of 04/05 and 05/06 there were 31 rainfall events that exceeded 0.5 inches of precipitation. These events would have resulted in discharges from the site. Of the 31 rainfall events staff only sampled 7 events.

13. The economic benefit for failure to comply with General Permit requirements is estimated at \$278,500. This estimate is based upon typical costs for erosion and sediment controls for: 1) a relatively steep, 43-acre site at \$4,000 per acre (\$172,500), 2) a partially treated 47-acre site at \$1,500 per acre (\$70,500), and 3) the added cost of treating stormwater runoff with flocculation and filtration equipment at \$18,000 per month for October and November 2004 (\$36,000). The proposed assessment exceeds the economic benefit to the discharger.
14. Pursuant to CWC Section 13385(c), the Discharger has a total maximum civil liability of \$59,350,000, which includes daily discharge violations and the volume of discharge. The daily discharge violations include 18 days of observed permit violation (18 days at \$10,000 per day = \$180,000). An additional \$59,170,000 liability is based on the estimated storm water discharge (5,918,000 gallons minus 1,000 gallons at \$10 per gallon) for the seven days of sediment-laden storm water discharges observed by staff.
15. Central Valley Water Board staff spent a total of 200 hours investigating the site and preparing this Complaint. The total cost for staff time is \$16,000 based on the rate of \$80 per hour.
16. The Discharger eventually installed erosion and sediment control measures at the site, as well as a treatment system. The Discharger should have installed these BMPs prior to the rainy season. The Discharger stated that \$680,000 was spent on erosion and sediment controls and on storm water treatment from the site over the last two years.
17. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14 of the California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

AL NATICCHIONI AND KEN KNIGHTEN ARE HEREBY GIVEN NOTICE:

1. The Executive Officer of the Central Valley Water Board proposes the assessment of Administrative Civil Liability in the amount of **six hundred thousand dollars (\$600,000)**, which includes \$ 16,000 in staff cost and \$278,500 to recover the economic benefit derived from the acts that constitute violations. The amount of the proposed liability is based on a review of the factors cited in Water Code Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for the 26/27 October 2006 Central Valley Water Board meeting unless the Discharger agrees to waive a hearing and pay the proposed civil liability in full.

3. If a hearing in this matter is held, the Central Valley Water Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing. If you wish to waive the hearing, you must **within 30 days of this complaint**, sign and return the waiver to the Central Valley Water Board's Redding office with a check in the amount of the civil liability made payable to the "State Water Pollution Cleanup and Abatement Account". Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

signed

PAMELA C. CREEDON, Executive Officer

15 August 2006

Date

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

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

1. I am duly authorized to represent Al Naticchioni and Ken Knighten (hereinafter Discharger) in connection with Administrative Civil Liability Complaint No. R5-2006-0518 (hereinafter the "Complaint").
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint.
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region.
4. I understand that I am giving up the Discharger's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed.
5. I agree to remit payment for the civil liability imposed in the amount of six hundred thousand dollars (\$600,000) by check, which contains a reference to "ACL Complaint No. R5-2006-0518" and is made payable to the "State Water Resources Control Board Cleanup and Abatement Account."
6. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
7. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
8. 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.

Date	Name and Title (Print)	Signature
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Date	Name and Title (Print)	Signature
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