



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

May 13, 2013

Certified Mail – Return Receipt Requested
Article Number: 7011 0470 0002 8961 6053

Christopher McKinney
Director of Utilities
City of Escondido
201 North Broadway
Escondido, CA 92025

In reply refer to / attn:
788207:amonji

Subject: Notice of Violation No. R9-2013-0063

Mr. McKinney:

Enclosed is Notice of Violation (NOV) No. R9-2013-0063 issued to the City of Escondido (City) for violations of California Water Code (Water Code) Section 13376 for failure to obtain a Clean Water Act section 401 Water Quality Certification and Water Code Section 13050 for failure to comply with Waste Discharge Prohibition No. 1 of the Water Quality Control Plan for the San Diego Basin (Basin Plan). As described in the NOV, the violations are subject to further enforcement pursuant to the Water Code. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law.

Since there is no longer a basis for Water Quality Certification of the Oak Hill Drive Drainage Project, file number R9-2012-0072, the San Diego Water Board will consider the application withdrawn unless the City informs the San Diego Water Board otherwise by June 3, 2013.

In the subject line of any response, please include the reference number 788207:amonji. For questions or comments pertaining to the Notice of Violation, please contact Alan Monji by phone at (858) 637-7140, or by email at amonji@waterboards.ca.gov.

Respectfully,

Kelly Dorsey, P.G.
Senior Engineering Geologist
Regional Water Quality Control Board

KKD:atm

Enclosure:

Notice of Violation R9-2013-0063

cc (email only):

Courtney Steven
U.S. Army Corps of Engineers
Courtney.M.Stevens@usace.army.mil

Kevin Hupf
California Department of Fish and Wildlife
KHupf@wildlife.ca.gov

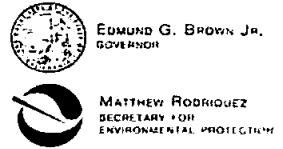
Jeff Warner
City of Escondido
Jwarner@ci.escondido.ca.us

U.S. Department of the Interior
Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011

U.S. EPA, OWOW, Region 9
75 Hawthorne St
San Francisco, CA 94105
R9-WTR8-Mailbox@epa.gov

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
P.O. Box 100
Sacramento, CA 95812-0100
Stateboard401@waterboards.ca.gov

Tech Staff Info & Use	
Reg. Measure ID	388192
Place ID	788207
Party (GT/CIWQS) ID	525283
NOV File No.	R9-2013-0063
WDID	9000002531
Person ID	520570



California Regional Water Quality Control Board, San Diego Region

In reply refer to / attn: 788207:amonji

May 13, 2013

NOTICE OF VIOLATION No. R9-2013-0063

Christopher McKinney
Director of Utilities
201 North Broadway
Escondido, CA 92025

City of Escondido

Oak Hill Drainage Project
File Number R9-2012-0072

Violations of
California Water Code Section 13376
and
Water Quality Control Plan for the San
Diego Basin,
Waste Discharge Prohibition
No.1

The City of Escondido (City) is hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

The City is in violation of the following: California Water Code (Water Code) Section 13376 for failure to obtain a Clean Water Act (CWA) Section 401 Water Quality Certification; and Water Code Section 13050 for failure to comply with Waste Discharge Prohibition No. 1 of the Water Quality Control Plan for the San Diego Basin (Basin Plan).

A. Summary of Violations

1. Failure to Obtain a CWA Section 401 Water Quality Certification

- a. Pursuant to Water Code Section 13376, 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.

- b. The City notified the San Diego Water Board, by letter dated February 21, 2013, that its maintenance staff had initiated and completed vegetation and sediment removal in approximately 270 linear feet of the concrete lined channel between the two schools without obtaining a CWA section 401 Water Quality Certification for the Project (See Attachment). Although the City had filed a Water Quality Certification application with the San Diego Water Board for the Oak Hill Drainage Project (R9-2012-0072), the City was not authorized, by issuance of a CWA Section 401 Water Quality Certification, to discharge dredge or fill material to the "Unnamed Drainage" which is tributary to Escondido Creek.

2. Failure to Comply with the Basin Plan

- a. Pursuant to Waste Discharge Prohibition No.1 of the Basin Plan, 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 Water Code Section 13050, is prohibited.
- b. 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 Drainage" impacted by the City's maintenance staff is tributary to Escondido Creek. Beneficial Uses assigned to Escondido Creek and its tributaries include municipal and domestic supply, agricultural supply, industrial service supply, hydropower generation, contact water recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. Alteration of hydrologic characteristics can result in diminished quality of in-stream and riparian habitat flora and fauna in the "Unnamed Drainage" and downstream. Dredging of the "Unnamed Drainage" has eliminated the Beneficial Uses in that location.

B. Potential Enforcement Actions

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

In the subject line of any response, please include the reference number 788207:amonji. For questions or comments pertaining to this Notice of Violation, please contact Alan Monji by phone at (858) 637-7140, or by email at amonji@waterboards.ca.gov.



Kelly Dorsey, P.G.
Senior Engineering Geologist

KKD:am

Attachment:

Letter from the City of Escondido dated February 21, 2013

Tech Staff Info & Use	
Reg. Measure ID	388192
Place ID	788207
Party (GT/CIWQS) ID	525283
NOV File No.	R9-2013-0063
WDID	9000002531
Person ID	520570

ESCONDIDO
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
City of Choice

Christopher W. McKinney
Director of Utilities
201 N. Broadway, Escondido, CA 92025
Phone: 760-839-4662 Fax: 760-839-4651

2013 FEB 26 PM 2 20

February 21, 2013

Alan Monji
Environmental Scientist
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr. Monji:

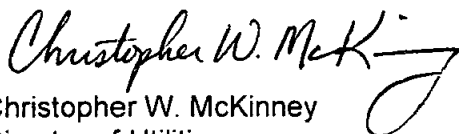
As previously reported via email, on February 14th members of the Environmental Program staff discovered that portions of the Oak Hill Drive drainage area were dredged without proper authorization. The City of Escondido (City) was obtaining all applicable permits for dredging materials from jurisdictional waters of the U.S. To date, the City has obtained a Streambed Alteration Agreement (1602) and a provisional Nationwide permit. The Nationwide permit is pending issuance of a 401 Water Quality Certification. It was previously agreed with the resource agencies that the creation of a pilot channel would serve as an interim solution to allow ponded water to flow, thereby mitigating some of the issues (i.e., vector, flooding, and health and safety concerns).

After investigating the removal of material from the Oak Hill Channel, City Environmental Program staff determined that City Maintenance staff created a pilot channel to address some of the concerns noted above, particularly flooding. However, maintenance staff proceeded with this work without notifying the environmental division. While creating the pilot channel, the root structure along the channel's floor was significantly disturbed and compromised. This disturbance created additional drainage issues that resulted in the crews removing the rest of the material a week later when they discovered it had migrated and caused an imminent flooding issue, with water cresting over the migrated material and threatening nearby structures.

In an effort to fulfill our continuing regulatory obligations, the City is still planning to meet with Regional Board staff next week to discuss issues related to the Oak Hill project and determine how to appropriately proceed. To provide some background for that upcoming meeting, attached is a photo-sheet that depicts the current conditions at Oak Hill Drive.

We appreciate your working with the City on this project and look forward to meeting with you next week.

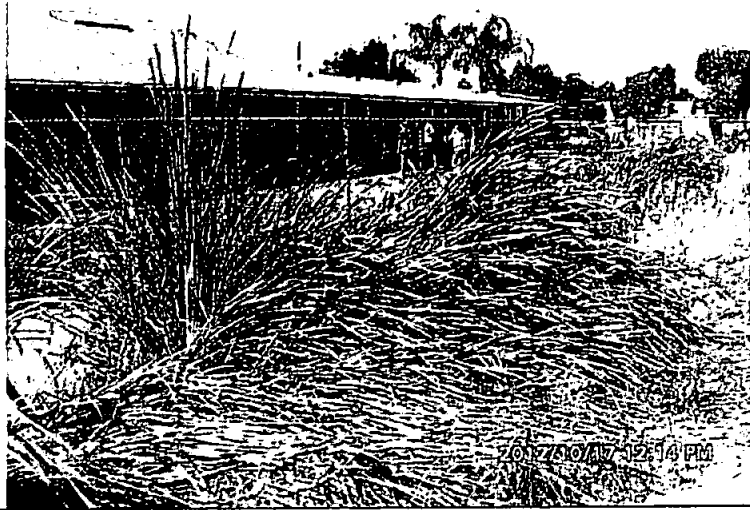
Respectfully,



Christopher W. McKinney
Director of Utilities

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A: 2:20

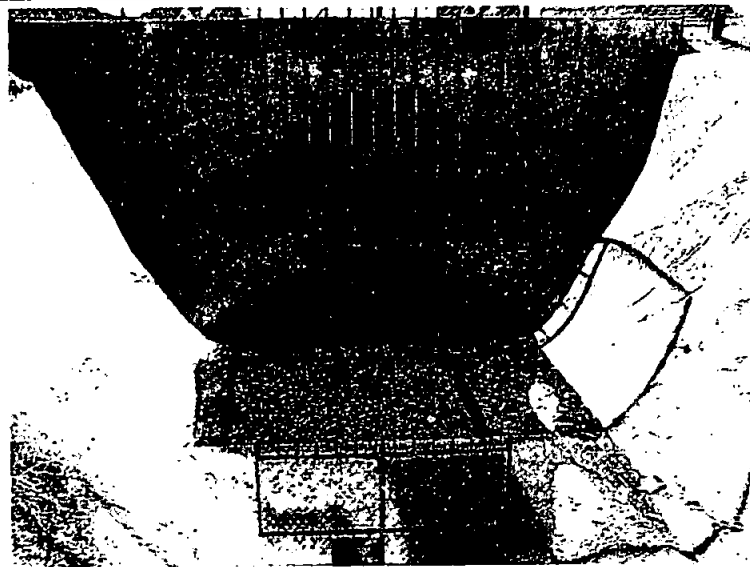
Cc: Kevin Hupf (California Dept. of Fish and Wildlife), and Courtney Stevens (USACE)



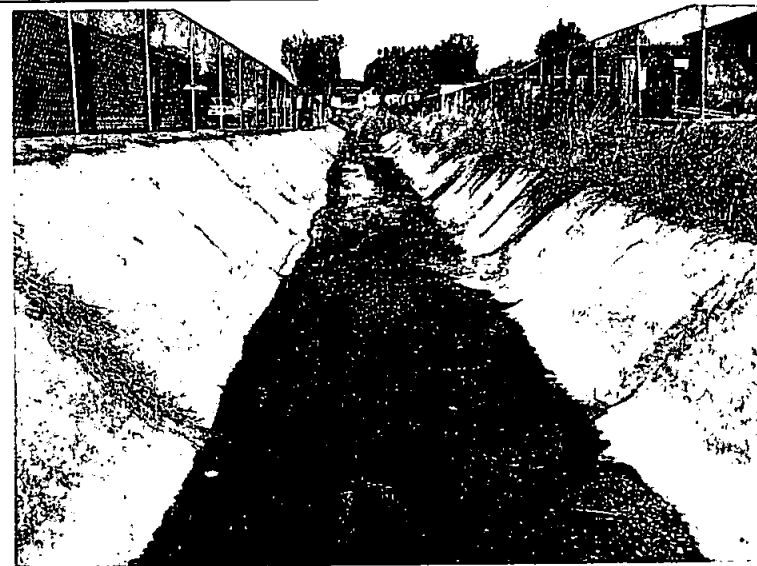
Drainage looking downstream (north) prior to pilot channel construction (10/17/12).



Drainage looking downstream (north) after vegetation removal from pilot channel construction (2/14/13)



Effluent culvert at Oak Hill Drive (2/14/13).



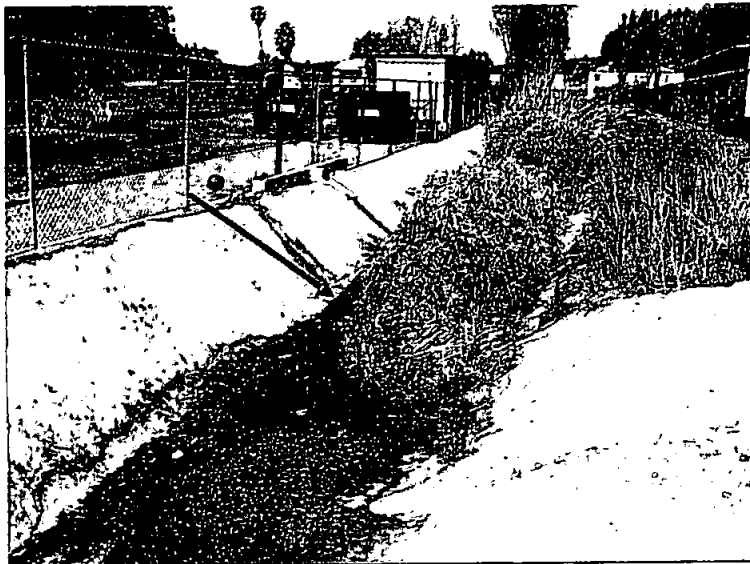
View looking downstream (2/14/13).



Creating the pilot channel along the western sidewall (12/13/12)



Remaining vegetation (that was to remain in the channel) that has floated downstream and has piled up and blocking flow (12/18/12)



Downstream view showing where the pilot channel work had terminated.



Approximately 75 yds. downstream where the pilot channel terminated (note vegetation).