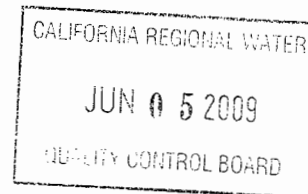


May 30, 2009

Keith Lichten  
California Regional Water Quality Control Board  
San Francisco bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612



SUBJECT: Administrative Civil Penalty No. R2-2009-0017, Wilder Project, Orinda, Contra Costa County

Dear Mr. Lichten;

I am commenting on the Complaint for administrative civil liability against OG Property Owner, LLC of the Wilder development in Orinda, California; however, do not object to the proposed action. If OG Property Owner, LLC **does not waive** its right to a hearing and does not agree to make the payment then I encourage the Regional Board:

- Increase the civil liability to the maximum of \$3,097,460. This increase is justified because the discharge was to San Pablo Creek and San Pablo Reservoir which is a terminal drinking water supply for EBMUD's Sobrante water treatment plant; because of reoccurring NPDES permit violations dating back to 2006; and, the complaint does not provide a rationale for reducing the liability by over 2/3. Indeed the maximum liability would add less than 0.4% to the cost of homes suggesting the dischargers actions or failure to act were only considered a cost of doing business.
- Consider referring the case to the State Attorney General pursuant to Section 13387 of the California Water Code because of the intentional and negligent actions by OG Property Owner, LLC cited in the complaint.

I conducted inspections of Brookside Creek at Brookside Road during October, November and December 2006 and again in October 2007 following concerns of an adjacent property owner about discoloration and sediment in the creek. The attached memorandum describing my observations, analysis of creek samples and photographic evidence were forwarded to the Regional Board staff in November 2007. The staff was also notified of the conditions in 2006. Photos DSC04351 – DSC00469 taken in 2006 document that this site has been an ongoing source of pollution during rainfall events.

If OG Property Owner, LLC proposes a supplemental environmental project I urge that you investigate and consider the removal of the structure in San Pablo Creek in North Orinda that precludes the migration of fish from San Pablo Reservoir into the San Pablo Creek watershed. If this project is not feasible an alternative project would be to provide funding to the Orinda Union School District's science and environmental education programs including the Wagner Ranch nature area.

I also urge that that the balance of the civil liability be appropriated from the CAO fund and allocated to the City of Orinda, Caltrans and BART for the installation of full capture devices to remove gross pollutants including trash and sediments in storm water runoff from Orinda's commercial area, Highway 24 and the BART parking lot. Runoff from these areas is to a very sensitive water body - San Pablo Creek and San Pablo Reservoir.

Sincerely,

Roger B. James  
23829 NE Greens Crossing Road  
Redmond, WA 98053