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13 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
14 CENTRAL VALLEY REGION

15 TEHAMA MARKET ASSOCIATES, LLC
16 and
17 ALBERT G. GARLAND,
18 Defendants

POINTS & AUTHORITIES
OPPOSING ADMINISTRATIVE
CIVIL LIABILITY COMPLAINT
R5-2006-0525

19 **I. INTRODUCTION**

20 Tehama Market Associates, LLC (“TMA”) owned the Linkside Place Subdivision
21 (“Linkside Place”), a residential subdivision in Oroville, California, where single-family
22 residences are currently under construction, in February of 2004. After two inspections
23 following major rainstorms in February 2004, the Central Valley Regional Water Quality
24 Control Board (“Regional Board”) issued a Notice of Violation (“NOV”) of the National
25 Pollutant Discharge and Elimination System (“NPDES”) General Permit For Storm Water
26 Discharges Associated With Construction Activity (“General Permit”) No. CAS000002 (Order
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1 No. 99-08 DWQ). On October 26, 2006, the Regional Board Executive Officer issued
2 Administrative Civil Liability Complaint No. (“ACLC”) R5-2006-0525 against TMA.

3 II. FACTS

4 Linkside Place is a parcel of real property located on the south side of Highway 162, in
5 Butte County, Assessor Parcel Number 303-260-021. Highway 99 is west of Linkside Place,
6 Highway 70 is east, and the city of Oroville is four miles east northeast. The Table Mountain
7 Golf Course (“Golf Course”) is east of Linkside Place, with the NEXRAD Radar facility
8 access road (“NEXRAD Road”) separating the two properties. (ACLC R5-2006-0525 Staff
9 Report, p1.) The Oroville Municipal Airport (“Airport”) is east of the Golf Course, with
10 Larkin Road, and then the Clay Pit State Vehicular Recreation Area, east of the Airport.
11 Beyond the Clay Pit State Vehicular Recreation Area lies the Feather River. There are two cul-
12 de-sacs on the eastern side of Linkside Place - Logan Court, the northeastern cul-de-sac, and
13 Zachary Court, the southeastern cul-de-sac. (See Attachment 5 - ACLC R5-2004-0541 Staff
14 Report, p18 Figure 3.)Phase I, where 65 single-family residences are planned, constitutes the
15 northern 18.6 acres of Linkside Place. (ACLC R5-2006-0525 Staff Report, p5.)

16 Linkside Place LLC obtained a General Permit on October 23, 2003. (ACLC R5-2006-
17 0525 Staff Report, p1.) Pursuant to the General Permit, Linkside Place LLC prepared a Storm
18 water Pollution Prevention Plan (“SWPPP”). (ACLC R5-2006-0525 Staff Report, p1.) It hired
19 Sean O’Neill, of Genesis Engineering, to prepare the plan. Linkside Place was conveyed to
20 TMA on December 31, 2003. (ACLC R5-2006-0525 Staff Report, p14.) Linkside Place LLC
21 did not notify the Regional Board of the change in ownership and TMA did not obtain a new
22 General Permit. In October 2004, TMA conveyed title of Linkside Place back to Linkside
23 Place LLC. Linkside Place LLC consists of Mr. William Isaac, with Mr. Albert Garland acting
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1 as its agent. (ACLC R5-2006-0525 Staff Report, p3.) TMA consists of Professional Resources
2 Systems International, Inc. (ALCL R5-2006-0525, p3 para. 10.) Mr. Garland is the sole officer
3 of Professional Resources Systems International. (ACLC R5-2006-0525 Staff Report, p3.) Mr.
4 Isaac is uninvolved with Professional Resources Systems International.

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6 Phase I drains in two directions – north and east. Water draining from the north side of
7 Linkside Place flows through two culverts running under Highway 162. Pastureland lies north
8 of Highway 162. (See Attachment 1 - Site Inspection Report (April 7, 2004) Attachment D, p1
9 Pictures 29-30.) The Thermalito Powerhouse Tail Channel, a canal connecting the Thermalito
10 Forebay and Thermalito Afterbay, lies to the north of the pastureland and runs from west to
11 east.

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13 Water draining from the east of Linkside Place drains into a low depression between
14 the eastern border of Linkside Place and NEXRAD Road. (Attachment 1 - Site Inspection
15 Report (April 7, 2004), p2; Attachment 1 - Site Inspection Report (April 7, 2004) Attachment
16 B, p9 Picture 17 and 18, p10 Picture 19; Attachment 1 - Site Inspection Report (April 7, 2004)
17 Attachment D, p9 Picture 45 and 46, p10 Picture 47 and 48.) Water draining into the low
18 depression from the northern portion of Linkside Place, which includes Phase I, moves south,
19 and water draining from the southern portions of Linkside Place, which were not graded in
20 February 2004, flows north into the low depression. (Attachment 1 - Site Inspection Report
21 (April 7, 2004) Attachment D, p9 Picture #45.) When sufficiently high, water in the low
22 depression then flows east through a dual culvert running under NEXRAD Road. (Attachment
23 1 - Site Inspection Report (April 7, 2004) Attachment D, p9 Picture #46.)

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25 Based on his observations, further research, and instructions from Regional Board
26 management, Mr. Zaitz drafted a NOV for Linkside, which was issued on April 7, 2004.
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1 **III. PROCEDURAL HISTORY**

2 ACLC R5-2006-0525 is the third ACLC associated with incidents occurring at the
3 Linkside Place subdivision on February 18 and 25 of 2004.¹ The first complaint, ACLC R5-
4 2004-0541, was issued on November 23, 2004, against Linkside Place LLC. The Regional
5 Board however, decided it had failed to adequately name all of the necessary parties and issued
6 a revised complaint on July 11, 2005 (“ACLC R5-2004-0541 (revised)”), adding Mr. William
7 Isaac. A few weeks later, Regional Board Staff realized that Linkside Place LLC did not own
8 the property when the alleged discharges occurred.
9

10 ACLC R5-2004-0541 was never scheduled for hearing and eventually rescinded with
11 the issuance of ACLC R5-2006-0501 on January 25, 2006, which was scheduled for hearing
12 on at the Regional Board’s meeting on March 16 and 17 or 2006. ACLC R5-2006-0501 named
13 TMA as the discharger and issued against TMA only. (ACLC R5-2006-0501, p1.) Mr. Isaac
14 and Mr. Garland were not named in the new complaint. On March 14, 2006, after briefing had
15 been submitted on behalf of TMA, the Regional Board realized that TMA never obtained a
16 General Permit. Since the allegations in ACLC R5-2006-0501, and the method of calculating
17 damages in particular, were based entirely on violations of the General Permit, the Regional
18 Board doubted the sufficiency of its own complaint and whether it had jurisdiction. (See
19 Attachment 2, Schneider Briefing Request (March 17, 2006).)
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22 To determine whether it had jurisdiction, the Regional Board Chair, Mr. Robert
23 Schneider, requested briefing on the issue of whether the Regional Board could impose civil
24 liability for violating the General Permit when TMA had no General Permit. Since a new
25 ACLC would have to be issued in light of the briefing and no hearing could be held within 90
26

27 ¹ If ACLC R5-2004-0541 (revised) is counted as an additional complaint, then four ACLCs associated with the
28 same incident at Linkside Place have been issued.

1 days of the issuance of ACLC R5-2006-0501, as required by the Water Code, the Mr.
2 Schneider requested that TMA waive its right to a hearing. TMA did not and ACLC R5-2006-
3 0501 was rescinded.

4 After briefing had been submitted however, and just prior to the hearing, Mr. Scott
5 Zaitz and Mr. Jim Pedri, Assistant Executive Director of the Regional Board, conducted a
6 drainage survey at Linkside Place Phase I on March 13, 2006, in order to determine how and
7 where storm water runoff from the site discharges. (Site Inspection Report (March 13, 2006),
8 p1.)

10 On October 26, 2006, the Regional Board Executive Officer issued ACLC R5-2006-
11 0525 against Mr. Garland and TMA. Since briefing in opposition to ACLC R5-2006-0501,
12 ACLC R5-2006-0525 attempted to redress many of the shortcomings of the prior complaint. It
13 alleged that the drainage courses from Linkside Place to Thermalito Afterbay and the Feather
14 River had been “followed and surveyed” and hydrologic connections to waters of the United
15 States had been confirmed. (ACLC R5-2006-0525, p1 para. 2.) ACLC R5-2006-0525 also
16 added a new allegation, that the runoff for February 18 and 25 of 2004 totaled 643,060 gallons.
17 (ACLC R5-2006-0525, p7.) The 644,060 gallons included all of the storm water runoff from
18 Linkside Place and the dewatering pump. (ACLC R5-2006-0525, p6 para.17.) The alleged
19 644,060 gallons of discharge substantially increased the maximum civil liability to over \$6
20 million. (ACLC R5-2006-0525, p7 para. 20.) The prior complaints, by comparison, only
21 alleged a maximum civil liability of \$310,400.² (Attachment 6 - ACLC R5-2004-0541, p5
22 para.11; Attachment 7 - ACLC R5-2006-0501, p8 para. 19.)

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27 ² Including other alleged discharges within the 641,000 gallons directly addressed objections in prior briefing that
28 the alleged discharges from the dewatering pump, culverts, and other areas of Linkside Place counted the same
discharge multiple times in calculating the total volume of pollutants discharged.

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IV. ARGUMENT

A. The Regional Board Cannot Issue ACLC R5-2006-0525, because it Failed to Hear ACLC R5-2006-0501.

Under Water Code §13323(b), a hearing on an administrative civil liability complaint “shall” be held within 90 days of service. As ACLC R5-2006-0501 was served by certified mail on or about January 25, 2005, the ninetieth day for holding a hearing has long passed. The only exception for the 90-day statute of limitations is waiver by the party being served, but TMA did not waive its right to a hearing.

In response to TMA’s briefing, Regional Board Staff conducted a new investigation of the drainage surrounding Linkside Place. (ACLC R5-2006-0525 Staff Report, p6.) Rather than proceed with the hearing on the merits and all other collateral issues, Chairman Schneider sought a hearing to specifically address the issue of jurisdiction in the absence of a permit when the allegations in ACLC R5-2006-0501 were based entirely on violations of the General Permit.³ Although it would have been possible to proceed with a hearing on ACLC R5-2006-0501, the Regional Board instead removed it from the calendar. Furthermore, while a hearing during the next scheduled Regional Board meeting would have exceeded the 90-day statute of limitations, the Regional Board could have noticed an emergency session to hear ACLC R5-2006-0501, but did not.

The allegations in ACLC R5-2006-0525 are the same, the parties, but for the absence of Mr. Isaac in ACLC R5-2006-0525, are identical, and the complaint involves the same occurrence and same core operative facts. ACLC R5-2006-0525 is, for all intents and purposes, an amended, better-drafted version of ACLC R5-2005-0501 that addresses the insufficiencies raised by TMA’s briefing. Once it could chose to issue an ACLC, the Regional

³ Although Chairman Schneider questioned the matter of jurisdiction in the absence of a General Permit, he did not question the matter of jurisdiction despite the expiration of the Construction Storm Water program.

1 Board was required to hold a hearing, absent waiver by TMA. Regional Board Staff drafted
2 and issued ACLC R5-2006-0525 and any deficiencies therein are its own. By continually
3 rescinding and re-issuing ACLCs, the Regional Board circumvented the 90-day statute of
4 limitations contained in Water Code §13323(b) to revise and improve its complaints and
5 gather new evidence to address insufficiencies raised by TMA’s briefing. In so doing, the
6 Regional Board severely abused the process and denied TMA a right to a hearing and speedy
7 resolution of its dispute.
8

9 **B. Anything Not Relevant to the Discharge of Pollutants into Waters of the United**
10 **States Should Be Dismissed and Stricken from the Record.**

11 In an administrative proceeding, “any relevant evidence shall be admitted if it is the
12 sort of evidence on which responsible persons are accustomed to rely in the conduct of serious
13 affairs.” (Government Code §11513(b).) "Relevant evidence" is evidence with any tendency in
14 reason to prove or disprove any disputed fact of consequence in determining the action.
15 (Evidence Code §210.) While relevant evidence shall be admitted, the chairperson of the
16 Regional Board, in its discretion, can exclude evidence if its probative value is substantially
17 outweighed by the probability that admitting the evidence will necessitate an undue
18 consumption of time, create a substantial issue of undue prejudice, or confuse the issues.
19 (Government Code §11513; Evidence Code §352.)
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21 The only issues before the Regional Board are whether it has jurisdiction to impose
22 liability under the General Permit, whether Linkside discharged “material other than storm
23 water” into “waters of the nation” and, if materials other than storm water were discharged into
24 waters of the United States, then how much. No other issues are relevant. Any and all evidence
25 and allegations in the ACLC R5-2006-025 Staff Report, Notice of Violation, and ACLC R5-
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1 2006-0525 related to the dewatering pump should be excluded. (ACLC R5-2006-0525, p4
2 para. 14(a), p6 para.16.)

3 Additionally, facts regarding the adequacy of the SWPPP, the condition of the
4 property, and the implementation of Best Management Practices (“BMPs”), erosion, and
5 sediment controls are irrelevant to establishing jurisdiction or determining whether pollutants
6 were discharged into waters of the United States. Such facts are only relevant as factors the
7 Regional Board may apply in determining the amount of any liability, pursuant to Water Code
8 §13385(e), which requires the Regional Board to consider “the nature, circumstances, extent,
9 and gravity of the violation or violations, whether the discharge is susceptible to cleanup or
10 abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability
11 to pay, the effect on its ability to continue its business, any voluntary cleanup efforts
12 undertaken, any prior history of violations, the degree of culpability, economic benefit or
13 savings, if any, resulting from the violation, and other matters that justice may require.”

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16 The condition of the property, the dewatering pump, and other irrelevant matters say
17 nothing about whether the Regional Board has jurisdiction to impose civil liability pursuant to
18 the General Permit, let alone the Federal Water Pollution Control Act (“Clean Water Act” or
19 CWA”) (33 USCA §1251 et seq.), whether pollutants were discharged from Linkside Place
20 into waters of the United States, and, if so, in what volume. Such matters waste time, prejudice
21 TMA, and create confusion by obscuring the central issues.

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23 **C. The Regional Board Has the Burden to Prove Every Element of its Complaint**
24 **Based on Substantial Evidence.**

25 **1. The Regional Board has the Burden to Prove a Discharge Occurred.**

26 Evidence Code §500, which applies to the Regional Board, charges a party with “the
27 burden of proof as to each fact the existence or nonexistence of which is essential to the claim
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1 for relief or defense that he is asserting”, unless otherwise provided by law. Consequently, the
2 Regional Board has the burden to prove every element of every allegation it makes. It must
3 prove a discharge of pollutants occurred by proving pollutant left Linkside Place and reached
4 either a navigable body of water or a tributary thereto. (Headwaters, Inc. v. Talent Irrigation
5 District (2001) 243 F.3d 526, 5343.) Proving a discharge may have occurred, or could have
6 occurred, is insufficient. (Id.)

8 If the Regional Board proves such a discharge occurred, it may then seek per gallon
9 penalties, but only if it can prove how much pollutant was discharged and entered waters of
10 the United States. (Water Code §13385(c)(2).) The State Water Resources Control Board
11 (“State Board”) recognizes that it and the regional boards have the burden of proof in all
12 enforcement actions by acknowledging in its enforcement policy that “Formal enforcement
13 orders should contain findings of facts that establish all the statutory requirements of the
14 specific statutory provision being utilized.” (23 Cal. Code Regs. §2910, State Board
15 Resolution No. 2002-0040 (February 19, 2002), Water Quality Enforcement Policy, p16.)
16 TMA is not required to prove anything. The burden of proof is on the Regional Board. Any
17 allegation lacking relevant, supporting evidence must be dismissed.

19 **2. An Order Imposing Civil Liability Must Be Based on Substantial Evidence.**

20 Civil liability for violations of Water Code §13385(c) is imposed pursuant to Water
21 Code §13323. Judicial review of proceedings under Water Code §13323 are governed by Civil
22 Code §1094.5. (Water Code §13330.) The inquiry by the reviewing court extends to whether
23 the agency proceeded without, or in excess of, jurisdiction, whether there was a fair trial, and
24 whether there was a prejudicial abuse of discretion. (Civil Code §1094.5(b).) Abuse of
25 discretion is established if the agency failed to proceed in a manner required by law, if the
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1 findings are unsupported by the evidence, or if the order or decision is unsupported by the
2 findings. (Id.) If the issue is whether the findings are supported by sufficient evidence, in all
3 cases other than those in which the reviewing court is authorized to exercise its independent
4 judgment, abuse of discretion is established if, in light of the whole record, the findings are
5 unsupported by substantial evidence. (Civil Code §1094.5(d).) Since the independent judgment
6 test does not apply to orders issued pursuant to Water Code §13323, such orders are reviewed
7 for, and must be supported by, substantial evidence. (Water Code §13330.)

9 “Substantial evidence” is evidence of “ponderable legal significance”, which is
10 “reasonable in nature, credible and of solid value.” (Mohilef v. Janivici (1996) 51 Cal.App.4th
11 267, 305 n28; Newman v State Personnel Bd. (1992) 10 Cal.App.4th 41, 47; Pennel v. Pond
12 Union High School Dist. (1973) 29 Cal.App.3d 832, 837 n2.) Consequently, an order imposing
13 administrative civil liability cannot be based on unreliable evidence or evidence that is not
14 credible, such as unsworn statements or hearsay, or on evidence that is inaccurate and
15 misleading, such as calculations based on faulty assumptions and inaccurate measurements.

17 **D. The Complaint Fails to Establish Jurisdiction.**

18 **1. The Regional Board Lacks the Authority to Use State Water Resources**
19 **Control Board Water Quality Order No. 99-08 DWQ as a Basis for Civil**
20 **Liability.**

21 The General Permit, State Board Water Quality Order No. (“WQO”) 99-08 DWQ was
22 adopted on August 19, 1999. (State Board Water Quality Order No. 99-08 DWQ, p8.) WQO
23 99-08, by its terms and without exception, expired five years from the date of adoption. (Id.,
24 p6 para. 9.) Since then, WQO 99-08 DWQ has been amended by State Board Resolution Nos.
25 2001-0046 (adopted April 26, 2001) and 2004-0039 (adopted June 17, 2004), but neither
26 resolution contained language renewing or otherwise extending WQO 99-08 DWQ.
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1 Additionally, WQO 99-08 DWQ was adopted as an NPDES permit in compliance with
2 §402 of the Clean Water Act. (33 USCA §1342.) The Clean Water Act only grants states
3 authority to issue NPDES permits for fixed terms not exceeding five years. (33 USCA
4 §1342(b)(1)(B).) The State Board therefore lacks the authority to adopt a NPDES permit more
5 than five years duration, irrespective of the language of WQO 99-08 DWQ.
6

7 The allegations contained in ACLC R5-2006-0525 are based on violations of the
8 General Permit, but WQO 99-08 DWQ and the Regional Board’s authority to impose civil
9 liability pursuant thereto, expired on August 19, 2004. Any dispute arising under the General
10 Permit is now moot. ACLC R5-2006-0525 must therefore be dismissed for lack of jurisdiction.
11

12 **2. The Regional Board Lacks Jurisdiction to Impose Civil Liability Based on**
13 **Violations of the General Permit, Because Tehama Market Associates**
14 **Lacked a General Permit.**

15 According to ACLC R5-2006-0525, “The Discharger is alleged to have violated
16 Discharge Prohibition A.3; Receiving Water Limitation B.2; and Special Provisions for
17 Construction Activity C.2 of the General Permit.” (ACLC R5-2006-0525, p4 para. 14.)

18 In order to obtain coverage under the General Permit, and be subject to its terms, an
19 applicant “must submit a [Notice of Intent to Comply With the Terms of the General Permit to
20 Discharge Storm Water Associated With Construction Activity] (“NOI”) with a vicinity map
21 and the appropriate fee to the SWRCB prior to commencement of construction activities.”
22 (State Board WQO 99-08 DWQ, p2 para.4.) The applicant must also develop a SWPPP in
23 accordance with Section A of the General Permit for the project. (Id.)

24 All of the violations alleged by ACLC R5-2006-0525 are of the General Permit, even
25 though TMA never submitted a NOI, vicinity map, or fee. (ACLC R5-2006-0525, p2 para. 7.)
26 TMA therefore never had a General Permit, was not covered by the General Permit, and was
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1 not subject to its terms.⁴ Linkside Place LLC and TMA are not the entity and the sole
2 shareholders are different. Mr. William Isaac is the sole officer of Linkside Place LLC and
3 was, as described in ACLC R5-2006-0525, the property owner. (ACLC R5-2006-0525, p3
4 para.10.) Mr. Garland is the sole officer of Professional Resources Systems International, Inc.,
5 which in turn is the sole shareholder of TMA and was, in turn, the property owner Linkside
6 Place on February 18 and 25 of 2006. (ACLC R5-2006-0525, p3 para.10.) Mr. Isaac is
7 uninvolved with TMA and while Mr. Garland may have acted as the agent for Linkside Place
8 LLC, he was not the property owner. Similarly, after the property was conveyed to TMA, it
9 was owned by TMA, not by Mr. Garland. TMA, not Mr. Garland, was the property owner.
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11 **3. The Allegations in ACLC R5-2005-0525 are Insufficient to Hold Mr.**
12 **Garland Personally Liable.**

13 Mr. Garland’s authority to act as the agent for Linkside Place, LLC, is not disputed,
14 and neither is his authority to act on behalf of TMA. However, holding a corporate entity
15 liable based on the acts of an agent with authority to act on the behalf of the entity is different
16 than holding the agent personally liable.
17

18 Corporations Code §17158(a) provides that “No person who is a manager or officer or
19 both a manager and officer of a limited liability company shall be personally liable under any
20 judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited
21 liability company, whether that liability or obligation arises in contract, tort, or otherwise,
22 solely by reason of being a manager or officer or both a manager and officer of the limited
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24 ⁴ Regional Board authority to inspect facilities derives from Water Code §13267(c), which permits inspections,
25 with the consent of the owner or possessor, in establishing or reviewing any water quality control plan or waste
26 discharge requirement. Absent consent of the owner or possessor, a warrant is required. (Id.) No warrant or
27 consent is necessary in the event of an “emergency affecting the public health or safety. (Water Code §13267(c).)
28 TMA had no General Permit, Mr. Zaitz never had a warrant, and no emergency has been alleged or demonstrated.
(ACLC R5-2006-525.) Mr. Zaitz therefore lacked permission to enter Linkside Place on February 18 and 25 or
2004, or on any other day when he was not specifically given consent. Mr. Zaitz therefore entered the property
unlawfully and has continued doing so on numerous occasions.

1 liability company.” Consequently, directors or officers of a corporation do not incur personal
2 liability for torts of the corporation merely by reason of their official position, unless they
3 participate in the wrong or authorize or direct that it be done. (United States Liability Ins. V.
4 Haidinger-Hayes, Inc. (1970) 1 Cal.3d 586, 594.)

5 “Before a corporation's acts and obligations can be legally recognized as those of a
6 particular person, and vice versa, it must be made to appear that the corporation is not only
7 influenced and governed by that person, but that there is such a unity of interest and ownership
8 that the individuality, or separateness, of such person and corporation has ceased, and that the
9 facts are such that an adherence to the fiction of the separate existence of the corporation
10 would, under the particular circumstances, sanction a fraud or promote injustice.” (Associate
11 Vendors, Inc. v. Oakland Meat Co. (1962) 210 Cal.App.2d 825, 837.) Situations in which
12 corporate entities have been discarded include the commingling personal and corporate assets
13 and fraud. (Id., p383-839.) Furthermore, where corporate officers have been held personally
14 liable for the violation of NPDES permits by a limited liability corporation, the wrongful
15 conduct was intentional, knowing, and fraudulent. (United States v. Cooper (1999) 173 F.3d
16 1192, 1201.) The ACLC however, lacks any allegation of fraud or commingling of personal
17 and corporate assets.
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21 Certification of the NOI makes the owner, but not necessarily the person signing, liable
22 for compliance with the General Permit and for providing assurances that the Notice of Intent
23 and vicinity map were completed in an accurate and complete fashion. (Notice of Intent to
24 Comply With the Terms of the General Permit to Discharge Storm Water Associated With
25 Construction Activity (Water Quality Order No. 99-08-DWQ, Section X.) By its terms, the
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1 certification only holds the person signing personally liable for submitting false information,
2 but no such allegations are made in the ACLC. (Id. Attachment 2, p2.)

3 **4. ACLC R5-2006-0525 Does Not Allege, or Establish, a “Significant Nexus”**
4 **to Waters of the United States.**

5 The Regional Board derives its authority to issue civil penalties for water quality
6 violations from California Water Code §13385(c). Under §13385, the Regional Board may
7 impose civil penalties for violations of either Water Code §§13375 or 13376 or certain
8 provision of the Clean Water Act and of orders and permits, such the General Permit, that
9 regulate compliance with the Clean Water Act. Water Code §13375 prohibits the discharge of
10 radiological, chemical warfare, or biological warfare agents, the discharge of which has not
11 been alleged. Water Code §13376 applies only to discharges of pollutants to waters of the
12 United States.

14 Under Water Code §13373, “discharge”, “navigable waters”, and “pollutant” have the
15 same meaning as in the Clean Water Act. The Clean Water Act defines a “discharge of a
16 pollutant” as “any addition of any pollutant to navigable waters from any point source”. (33
17 USCA §1362(12); 40 CFR §122.1.) “Navigable waters” are waters of the United States. (33
18 USCA §1362(7).) Only waters possessing a “significant nexus” to waters that were or are or
19 were navigable in fact, or that could be so made, constitute “navigable waters.” (Rapanos v US
20 (2006) 126 S.Ct. 2208, 2236.) Absent such a “significant nexus”, jurisdiction under the Clean
21 Water Act is nonexistent. (Id. at 2241.) As described in Justice Kennedy’s concurring opinion
22 in Rapanos⁵:

25 wetlands possess the requisite nexus, and thus come within the statutory
26 phrase “navigable waters,” if the wetlands, either alone or in
27 combination with similarly situated lands in the region, significantly
affect the chemical, physical, and biological integrity of other covered

28 ⁵ Although Justice Kennedy’s opinion was the concurring opinion, his was the deciding vote.

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waters more readily understood as “navigable.” When, in contrast, wetlands' effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the statutory term “navigable waters.”

(Id. at 2248.) Consequently, the Regional Board can only assert jurisdiction under the Clean Water Act or General Permit if the lands possess a “significant nexus” to waters of the United States and can significantly affect water quality in waters of the United States.

ACLC R5-2006-0525 alleges that Linkside Place has a hydrologic connection to waters of the United State, but it does not allege that such a hydrologic connection constitutes a “significant nexus” or that discharges from Linkside Place did, or even could, “significantly affect the chemical, physical, and biological integrity” of the Thermalito Afterbay or the Feather River. Only waters within the borders of Linkside Place or a few feet adjacent thereto were sampled. (ACLC R5-2006-0525 Staff Report, p6-9.) ACLC R5-2006-0525 lacks any allegation and the ACLC R5-2006-0525 Staff Report and site inspection reports lack any evidence or analysis to show that a storm water discharge from Linkside Place caused exceedances of water quality objectives. In fact, there are no allegations and there is no evidence that any water quality objective in any water of the United States was exceeded.

Merely alleging the existence of a hydrologic connection to waters of the United States is insufficient. Absent an allegation and supporting evidence that a “significant nexus” significantly affecting the chemical, physical, and biological integrity exists between Linkside Place and waters of the United States, the ACLC fails to establish jurisdiction under the Clean Water Act and civil liability cannot be imposed.

1 **E. Mr. Montgomery’s Statement Supporting the Volume of Pumped Storm Water**
2 **Discharges is Based on Hearsay and Must Be Excluded.**

3 "Hearsay evidence" is evidence of a statement that was made other than by a witness
4 while testifying at the hearing and that is offered to prove the truth of the matter stated and,
5 except as provided by law, is inadmissible. (California Evidence Code §1200.) Before the
6 Regional Board, "hearsay evidence may be used for the purpose of supplementing or
7 explaining other evidence but shall not be sufficient in itself to support a finding unless it
8 would be admissible over objection in civil actions." (Daniels v. Department of Motor
9 Vehicles (1993) 33 Cal.3d 532, 538.; see also Government Code §11513(d) and Evidence
10 Code §1200..) The purpose of this provision is to free administrative boards from the
11 "compulsion" of technical rules so that the mere admission of matter which would be deemed
12 incompetent in judicial proceedings would not invalidate the administrative order.
13 (Consolidated Edison Co. of New York v. National Labor Relations Board (1938) 305 U.S.
14 197, 339.) However, this assurance of a desirable flexibility in administrative procedure does
15 not justify baseless orders lacking "rational probative force." (Id.) Hearsay statements are not
16 made under oath, the adverse party cannot cross-examine the declarant, and the fact-finder
17 cannot observe the declarant’s demeanor while making the statement. (People v. Duarte (2000)
18 24 Cal.4th 603, 610.)

21 Even when hearsay evidence is admissible, it is not necessarily sufficient to support a
22 finding. "Admissibility is not the equivalent of evaluation; the former makes certain
23 concessions in the interest of full and complete discovery while the latter, in the interest of
24 fairness, withholds legal sanction to evidence found not to be trustworthy." (Daniels, supra, 33
25 Cal.3d at 538 fn3.) "[T]here must be substantial evidence to support such a board's ruling, and
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1 hearsay, unless specially permitted by statute, is not competent evidence to that end." (Furman
2 v. Department of Motor Vehicles (2002) 100 Cal.App.4th 416, 421.)

3 The total volume discharged by the dewatering pump is based on the pumping rate
4 observed by Mr. Zaitz while on site and the length of time the pump operated. (ACLC R5-
5 2006-0525, p6; ACLC R5-2006-0525 Staff Report, p8.) Information regarding the dewatering
6 pump's operating time was obtained through a telephone between Mr. Zaitz and Mr. John
7 Montgomery, of E-Ticket Construction, on February 18, 2004. (ACLC R5-2006-0525, p6;
8 ACLC R5-2006-0525 Staff Report, p8.) Mr. Montgomery's statement was unsworn and he is
9 not subject for cross examination. His statement constitutes hearsay and must therefore be
10 excluded. There is no other evidence of the length of time the dewatering operated. As the
11 Regional Board must prove every assertion it makes, it cannot prove how long the dewatering
12 pump operated and the volume it allegedly discharged must therefore be excluded.
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15 **F. The Regional Board Incorrectly Calculated Civil Penalties.**

16 The method of calculating civil penalties is contained in §13385(c) of the Water Code,
17 which provides that:

18 Civil liability may be imposed administratively by the state board or a
19 regional board pursuant to Article 2.5 (commencing with Section
20 13323) of Chapter 5 in an amount not to exceed the sum of both of...
21 (1) Ten thousand dollars (\$10,000) for each day in which the violation
22 occurs...; and (2) additional liability not to exceed ten dollars (\$10)
multiplied by the number of gallons by which the volume discharged
but not cleaned up exceeds 1,000 gallons.”

23 Based on Water Code §13385(c), the Regional Board calculated Linkside's maximum civil
24 liability at \$6,500,600. (ACLC R5-2006-0525, p7.) The Regional Board erred in calculating
25 this sum, both in the number of violations and in the quantity discharged.
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1. The Regional Board Erred in Calculating Daily Penalties.

The only California court case addressing the issue of penalty calculation under Water Code §13385(c) is State of California v. City and County of San Francisco (1979) 156 Cal.Rptr. 522, 529-530. In City and County of San Francisco, the Attorney General argued that the discharge of raw sewage from five point sources over ten days required a penalty of \$500,000, because each point source constituted a separate violation. (Id.) The black, reeking, turbid discharge discolored the bay, left a large floating sheen, seriously harmed marine life, frightened consumers from buying fish and, as a result, caused fish sales to plummet, sickened several surfers, and led to quarantines and warning signs at numerous beaches. (Id. at 526.)

In interpreting Water Code §13385(c)(1), the court reviewed the Clean Water Act. (Id.) Water Code §13385 implements and is similar to the Clean Water Act. (Id.) Numerous statements made during the legislative history of the Federal Water Pollution Control Act declared that the maximum penalty would be \$10,000 per day. (Id.) Thus, the court held that the maximum daily penalty allowed under §13385(c)(1), similar to the Federal Water Pollution Control Act, was “\$10,000 per day of violation.” (Id.)

The ACLC uses the General Permit’s structure to make up multiple violations and fine Linkside up to \$70,000 per day, even though the magnitude of any violation at Linkside Place was inconsequential compared to the discharge in City and County of San Francisco that led to a multitude of serious impacts throughout the Bay Area. The ACL complains of violations occurring on two days. Therefore, the maximum civil penalty permitted pursuant to §13385(c)(1) is \$20,000.

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2. ACLC R5-2006-0525 Double-Counts Discharge from the Dewatering Pump.

ACLC alleges that a total of 641,000 gallons of storm water from Linkside Place discharged into waters of the United States, but in calculating the per-gallon penalties it added 3,060 gallons from the dewatering pump for a total of 644,060 gallons. (ACLC R5-2006-0525, p7.) If, based on the “rational method” of calculation, only 641,000 gallons of storm water could have left Linkside Place, the 3,060 gallons from the dewatering pump is included therein. By adding the 3,060 gallons from the dewatering pump to the total runoff estimated with the rational method, ACLC R5-2006-0525 imposes a double-fine for volume from the dewatering pump.

3. No Relevant Evidence Supports Any Determination of the Quantity of Pollutant Possibly Discharged From Linkside Place Into Waters of the United States.

a. The Dewatering Pipe Is Irrelevant And Should Be Excluded From the Record.

To impose liability for the dewatering pump, pursuant to Water Code §13385, it must be established that the volume expelled from the dewatering pump discharged into “waters of the United States.” Furthermore, even if TMA were subject to the General Permit, the dewatering only would have been prohibited if it discharged pollutants into waters of the United States. (State Board WQO 99-08 DWQ, p2 para.10.) Therefore, it is the discharge resulting from a dewatering operation, rather than the dewatering operation itself, that constitutes a violation of the General Permit.⁶

⁶ “Discharging sediment-laden water which will cause or contribute to an exceedance of the applicable RWQCB’s Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited.” (General Permit, Section A: Storm water Pollution Prevention Plan, 9. Non-Storm Water Management (emphasis added).)

1 The pump, the pipe, and the dewatering pond were all on the Linkside Place property.
2 (Site Inspection Report (April 4, 2004), Attachment B, Picture #15.) No discharge would have
3 occurred until water from Linkside Place entered a navigable water or tributary. However,
4 since the observations, calculations, and estimates of discharge by Mr. Zaitz and the Regional
5 Board's engineer were all based on measurements made at the end of the dewatering pipe,
6 none of their data represents a discharge. The data, observations, and calculations regarding
7 the dewatering pump are not representative of the water draining from Linkside Place,
8 irrelevant to the discharge of pollutants, should be excluded from the record.
9

10 **4. ACLC R5-2006-0525 Does Not Allege How Much Storm water from**
11 **Linkside Place Actually Discharged into Waters of the United States.**

12 In the drainage survey conducted on March 13, 2006, Mr. Zaitz and Mr. Pedri surveyed
13 the drainage to the north and south/southeast of Linkside Place. (See Attachment 8, Site
14 Inspection Report (March 13, 2006), p1.)

15 To the north, Messrs. Zaitz and Pedri surveyed the ephemeral drainage, but only went
16 as far as "Snake Creek." (Site Inspection Report (March 13, 2006), p2.) Although the
17 conclusion alleges that "unnamed ephemeral drainage and wetlands... are tributary to
18 Thermalito Afterbay via Snake Creek and the Thermalito tailrace," there are no observations,
19 maps, or citations thereto supporting such an allegation. (Site Inspection Report (March 13,
20 2006), p3.) Furthermore, the Site Inspection Report of March 13, 2006 describes multiple
21 wetlands, but only wetlands directly adjacent to waters of the United States fall under Clean
22 Water Act jurisdiction. (33 CFR §328.3; see also Rapanos, *supra* 126 S.Ct. at 2216⁷.) If
23 another wetland intervenes, the jurisdictional connection is broken. (Id.). The Site Inspection
24 Report does not indicate whether the "wetlands" described consist of a single "wetland." (Id.)
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27 ⁷ Application of Clean Water Act jurisdiction to "ephemeral" streams, such as those described by Mr. Zaitz was
28 heavily criticized by Justice Scalia in Rapanos. (Rapanos, *supra* 126 S.Ct. at 2222.)

1 Absent such a connection, the Site Inspection Report for March 13, 2006 fails to establish a
2 hydrologic connection or jurisdiction under the Clean Water Act.

3 Before issuing ACLC R5-2004-0541, Mr. Zaitz contacted Mr. David E. Bird, the
4 General Manager of the Thermalito Irrigation District, and asked that he inspect the
5 pastureland north of Linkside Place, but Mr. Bird found “little evidence of the waters course.”
6 (See Attachment 3, Letter from David E. Bird to Mr. Zaitz, April 2, 2004.) At the request of
7 Mr. Zaitz, Mr. Bird walked the main drainage conduit for the pastureland and examined the
8 culverts that drain water from the north side of Linkside Place to the pastureland, but found no
9 evidence of petroleum or foreign object decay pollution, and concluded the area, “all in all”,
10 was in “good condition.” (Id.)

11
12 Regional Board Staff estimated that 641,000 gallons of storm water runoff left
13 Linkside Place, but it does not indicate how much went north and how much went
14 south/southeast. The Regional Board much prove every allegation it makes, but by failing to
15 allege a complete hydrologic connection to waters of the United States, it is impossible to
16 determine whether all of the runoff discharged into waters of the United States. Absent such an
17 allegation, the allegations and the evidence are insufficient to support the per-gallon penalty of
18 Water Code §13385(c)(2).
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21 **5. The Complaint Does Not Allege and Fails to Establish the Volume of
22 Pollutant Discharging into Waters of the United States.**

23 A “discharge” is an “addition of any pollutant to navigable waters.” (33 USCA
24 §1362(12); 40 CFR §122.1.) ACLC R5-2006-0525 alleges that 681,000 gallons of storm water
25 runoff left the property, but it does not allege, or contain evidence of, how much storm water
26 from Linkside Place entered waters of the United States. The complaint assumes that, with a
27 hydrologic connection having been established by Regional Board Staff, all of the storm water
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1 runoff from Linkside Place entered the Thermalito Afterbay and Feather River. Assumptions
2 however, are insufficient. The ACLC must prove every allegation it makes, and lacking
3 evidence of how much storm water from Linkside Place not only left the property, but also
4 entered waters of the United States, it fails to support any per-gallon penalty calculation.

5 **G. By Using the Average Cost of Compliance, the Regional Board Incorrectly**
6 **Determined the Economic Benefit of Non-Compliance.**

7 In determining civil penalty for violations of the Clean Water Act a court must
8 calculate the economic benefit of non-compliance by using the least costly method of
9 compliance. (U.S. v. Allegheny Ludlum Corp., (2004) 366 F.3d 164.) Additionally, the
10 Regional Board must justify, in the record, its method of determining economic savings, which
11 must account for sums spent on compliance. (In re: Weyrich Development Company (SWRCB
12 2003) Order No. WQO 2003-0004 (2003 WL 21224470), p2-3.) Whether erosion and
13 sediment controls were deployed, properly or otherwise, Genesis Engineering had been hired
14 to develop the SWPPP, but SWPPP development costs were not included in the calculation of
15 economic benefit. (ACLC R5-2006-0525, p6; ACLC R5-2006-0541 Staff Report, p20.)
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18 The economic benefit estimated by the Regional Board, \$2,500 per acre, is based on
19 the “average” cost of “installation and maintenance of typical erosion and sediment controls
20 for the unprotected 90 % of the 18.6 acres prior to the 18 and 25 February 2004 events.”
21 (ACLC R5-2006-0541 Staff Report, p21.) As an “average” cost of compliance, rather than a
22 “minimum”, the estimated compliance cost of \$2,500 per acre is too high. The minimum cost
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1 for typical erosion and sediment controls estimated by the ACLC R5-2006-0541 Staff Report
2 is \$1,500 per acre.⁸ (Id.) For 90% of the 18.6 acres of Linkside Place, this would total \$25,110.

3 Even if use of “average” compliance cost is appropriate, ACLC R5-2006-0525 and the
4 ACLC R5-2006-0541 Staff Report fail to describe how the “average” cost per acre was
5 determined. (ACLC R5-2006-0525, p6; ACLC R5-2006-0541 Staff Report, p21.) The ACLC
6 R5-2006-0541 Staff Report describes “typical costs” in the range of \$1,500 to \$8,000 per acre,
7 depending on slope, soil type, and time of deployment, and \$4,000 to \$8,000 per acre for “late
8 season” erosion and sediment controls, but not how such costs would “average” \$2,500.

9
10 The ACLC R5-2006-0525 Staff Report also lacks any basis or rationale for the
11 projected sale price of each lot. (ACLC R5-2006-0525 Staff Report, p19.) The ACLC R5-
12 2006-0501 Staff Report estimated that the Linkside Place lots could be sold for “\$150,000 or
13 more,” as does the ACLC R5-2006-0525 Staff Report. (Attachment 4 - ACLC R5-2006-0501
14 Staff Report, p15; ACLC Staff Report R5-2006-0541, p19.) Furthermore, the estimated ability
15 of Linkside Place to pay, in both staff reports, is based on the total sale price of each lot, not of
16 the profit that would result. (Attachment 4 - ACLC R5-2006-0501 Staff Report, p15; ACLC
17 R5-2006-0541 Staff Report, p19.) The ability of TMA to pay is therefore much less than that
18 described in the ACLC R5-2006-0541 Staff Report.
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21 V. CONCLUSION

22 ACLC R5-2006-0525 is the Regional Board’s third attempt to impose administrative
23 civil liability for the same event. The complaints have been issued, rescinded, revised, re-
24 issued, and revised after TMA pointed to the glaring errors and insufficiencies or the
25

26 ⁸ This estimated cost of compliance is also inconsistent with the cost estimated in the prior ACLCs, which both
27 estimated costs at only \$2,000 per acre, for a total cost of \$33,480. (ACLC R5-2004-0541, p5; ACLC R5-2006-
28 0501, p8.) The ACLC R5-2006-0501 Staff Report estimated compliance costs at \$4,000 per acre, resulting in a
total cost of \$66,960. (See Attachment 4 - ACLC R5-2006-0501 Staff Report, p16.) The Staff Report provides no
rationale for the differences in costs.

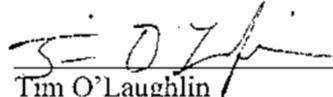
1 allegations. Even now, the only issues are whether the Regional Board has jurisdiction,
2 whether pollutants discharged from Linkside Place to waters of the United States, and, if so, in
3 what quantity. Many of the allegations in the ACLC are prejudicial and irrelevant and must be
4 excluded. The Regional Board has the burden to prove a discharge of a pollutant occurred and
5 how much pollutant was discharged, although Regional Board Staff surveyed the drainage and
6 now alleges a hydrologic connection, ACLC R5-2006-0525 does not allege and provides no
7 evidence that the hydrologic connection constitutes a "significant nexus." The Regional Board
8 has no evidence that proves a discharge of pollutants occurred or, even assuming a discharge
9 did occur, how much pollutant was discharged. TMA accordingly requests that the charges
10 contained in the ACL be dismissed in their entirety.
11

12 Respectfully submitted,

O'LAUGHLIN & PARIS LLP

13
14 Date: December 20, 2007

By:



Tim O'Laughlin

Attorneys for Defendants

Tehama Market Associates, LLC

Albert Garland

ATTACHMENT 1



California Regional Water Quality Control Board

Central Valley Region



erry Tamminen
Secretary for
Environmental
Protection

Redding Office
415 Knollcrest Drive, Suite 100, Redding, California 96002
Phone (530) 224-4845 • FAX (530) 224-4857
<http://www.swrcb.ca.gov/rwqcb5>

Arnold Schwarzenegger
Governor

NOTICE OF VIOLATION

7 April 2004

CERTIFIED MAIL
#7002 2410 0006 85140415

Mr. William Issac
Linkside Place LLC.
2865 Coldwater Canyon Drive
Beverly Hills, CA 90210

LINKSIDE PLACE SUBDIVISION CONSTRUCTION STORM WATER PERMIT VIOLATION, WDID NO. 5R04C324269, OROVILLE, BUTTE COUNTY

Enclosed are the inspection reports for the inspections on the 18th, 23rd, and 25th of February 2004, at Linkside Place Subdivision. During the inspections of your construction site Regional Board staff noted the following violations of the Construction Storm Water Permit (General Permit):

- The discharge of materials other than storm water to waters of the State (Discharge Prohibition A.2),
- The discharge of storm water shall not cause or threaten to cause pollution, contamination, or nuisance (Discharge Prohibition A.3),
- The discharge of storm water causing an exceedance of an applicable water quality standard contained in the Basin Plan (Receiving Water Limitation B.2),
Failure to develop and implement controls to reduce pollutants in storm water discharges from the construction site to the BAT/BCT performance standard (Special Provision C.2),
- Failure to describe in the Storm Water Pollution Prevention Plan (SWPPP) non-storm water discharges and the Best Management Practices (BMPs) appropriate for their control (Special Provision C.3),
- Failure to maintain control measures identified in the SWPPP (Section A: SWPPP, No. 1 Objectives),
- Failure to implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season (Section A: SWPPP, No. 6 Erosion Control); and
- Discharging sediment-laden water from a dewatering site into a receiving water without filtration or equivalent treatment (Section A: SWPPP, No. 9 Non-Storm Water Management).

In response to this Notice of Violation, Linkside Place LLC must immediately do the following:

- Discontinue all discharges of materials other than storm water which are not otherwise authorized by an NPDES permit from Linkside Place.
- Implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season at Linkside Place.

California Environmental Protection Agency

- Maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges from Linkside Place.
- Inspect the construction site regularly to ensure that appropriate and effective sediment and erosion control BMPs are installed and maintained throughout Linkside Place. Inspect the construction site before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. For each inspection, the person identified in the SWPPP shall complete an inspection checklist. At a minimum, the inspection checklist shall include all items listed under Section A: Storm Water Pollution Prevention Plan, No. 11 Maintenance, Inspection, and Repair.
- Ensure that the person(s) responsible for inspections of Linkside Place and subcontractors working on Linkside Place have been trained in storm water management including the effective use of storm water management BMPs and good housekeeping practices for construction sites.

In order to demonstrate compliance with General Permit, we request Linkside Place LLC. submit to the Regional Board by **27 April 2004**:

- A revised SWPPP with map showing the location of all BMPs, photographic evidence of the corrections made and any additional BMPs installed in response to this Notice of Violation.
- A written summary of how Linkside Place LLC will prevent future violations and potential discharges of pollutants to waters of the State.

As the owner of the construction site, you are responsible for complying with all of the conditions of the General Permit. Failure to comply with the General Permit may result in further enforcement actions, which may include, but are not limited to, administrative civil liabilities. Under Section 13385 of the California Water Code, the Regional Board can impose administrative civil liabilities up to ten thousand dollars (\$10,000) per day per violation, and where there is discharge, any portion of which is not acceptable to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons over which the volume discharged but not cleaned up exceeds 1,000 gallons, for violations of the terms and conditions of the General Permit. This matter is being referred to the Executive Officer for consideration of Administrative Civil Liability.

If you have any questions, please contact Scott A. Zaitz of my staff at (530) 224-4784, or the letterhead address.



Mary L. Randall, P.E.
Chief, South Regulatory Unit

✓Z: sae

Encs: Inspection reports, Attachments, Site photographs

See Attached List

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

INSPECTION REPORT

7 April 2004

DISCHARGER: William Isaac, Linkside Place LLC.

LOCATION & COUNTY: Oroville Dam Boulevard (Highway 162 West), Butte County

CONTACT(S): John Montgomery & Debbie Tice (E-Ticket Construction)
and Bert Garlund (Linkside Place LLC. representative)

INSPECTION DATE: 18 and 25 February 2004

INSPECTED BY: Scott A. Zaitz, R.E.H.S.

ACCOMPANIED BY: Unaccompanied

OBSERVATIONS AND COMMENTS:

Background

William Isaac of Linkside Place LLC. (Discharger) is the owner of the Linkside Place Subdivision (LP). On 18 and 25 February 2004, Regional Board staff inspected the LP construction project to evaluate compliance with the General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ (General Permit). LP was issued Waste Discharge Identification Number 5R04C324269 on 23 October 2003. The LP Storm Water Pollution Prevention Plan (SWPPP) was submitted on 5 December 2003.

LP is located on the western side of the Table Mountain Golf Course (golf course). It is on the south side of Highway 162 between Highway 99 to the west and Highway 70 to the east, four miles west-southwest of Oroville, in Butte County, Assessor Parcel Number 030-260-021. The project encompasses 18.6 acres and will be developed for 65 residential housing lots. See Attachment A.

The LP SWPPP states:

- approximately 24,500 cubic yards of soil will be graded and each building pad will be constructed with an average of 1.2 feet of fill above existing ground elevation;
- all vegetative cover will be removed to allow for the construction of building lots and road system;
- the project has been scheduled to begin lot construction in October 2003 and to be completed by December 2003;
- this time period does not coincide with the rainy season;
- that minimum source control Best Management Practices (BMPs) are included in the SWPPP during lot construction;
- if construction occurs during the rainy season, an evaluation of sediment and erosion control BMPs shall be reviewed for additional requirements;

Approved: 

- BMPs shall be evaluated for adequacy and proper implementation and whether additional BMPs are required in accordance with the terms of the General Permit;
- inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible.

The SWPPP lists BMPs that will be used at LP including proper vehicle and equipment fueling, spill prevention, hazardous material management, work scheduling, soil stabilizers, straw bale barriers and storm drain inlet protection. The SWPPP lists BMPs that will not be used at LP: mulching, silt fence, fiber rolls or erosion control blankets deployed, preservation of existing vegetation or temporary seeding/planting, sediment basins nor dewatering performed. Inspection of LP revealed that BMPs listed for use were not deployed and some BMPs listed for non-use were deployed. The Discharger did not follow the BMPs outlined in the SWPPP. The General Permit sets forth requirements for a SWPPP. A SWPPP has two major objectives: (1) to help identify the sources of sediment and other pollutants that affect the quality of storm water discharges and (2) to describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in storm water as well as nonstorm water discharges. The Discharger violated the General Permit because: 1) SWPPP did not include BMPs which address source control, 2) Discharger did not develop and implement a SWPPP that uses appropriately selected, correctly installed and maintained pollution reduction BMPs. The lack of erosion control BMPs throughout the site illustrates that the SWPPP is deficient.

18 February 2004 Inspection

On 18 February 2004 at 1430 hours I arrived at LP to determine compliance with the General Permit. Representative photographs taken during this inspection are presented in Attachment B. Attachment C shows location of sample collection for this inspection date. No one was on site at the time of inspection. The weather conditions at this time were partly sunny, 60 degrees and it was not raining. The rain gage at Sewerage Commission-Oroville Region (SC-OR) recorded 2.20 inches of rain on 17 February and 0.0 inches on 18 February 2004. SC-OR is located 3.5 miles east of LP. The California Department of Water Resources rainfall gage at Oroville Dam recorded 2.00 inches of rain on 17 February and 0.92 inches on 18 February 2004. Oroville Dam is located 8.5 miles east of LP. The rain gage at Feather River Fish Hatchery recorded 1.37 inches of rain on 17 February and 1.48 inches on 18 February 2004. The Feather River Fish Hatchery is located 4.75 miles north and east of LP. Rainfall conditions at Oroville Dam, SC-OR and Feather River Fish Hatchery would be similar to rainfall conditions at LP. No other obvious areas of land disturbance adjacent to LP were observed during the inspection.

LP runoff drains generally from the west to the east and southeast. The mass grading of the site produced a gentle slope from west to east. On the eastern boundary is an ephemeral drainage that bisects LP and the golf course. The ephemeral drainage flows to the south and passes the NEXRAD Radar Facility (NEXRAD facility) to the east. Most of the northern side of LP drains to the south side of Highway 162 to under road culverts that convey the discharge to ephemeral drainages on the north side of Highway 162. The northwest corner of LP drains to the south side of Highway 162 to an under road culvert. The culvert conveys the discharge to an ephemeral drainage on the north side of Highway 162. The northeast corner of LP drains to a roadside culvert that flows to the east under the NEXRAD Radar Facility access road (NEXRAD road) and discharges to the northwest corner of the golf course.

Approved:		
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The northwestern corner of the golf course drains approximately 150' to the east of the NEXRAD road, on the south side of Highway 162 to an under road culvert that discharges to an ephemeral drainage on the north side of Highway 162 (Refer to Attachment A).

LP has two cul-de-sacs on the eastern side (Logan and Zachary Courts). The northern cul-de-sac (Logan Court) had been rough graded and was acting as a storm water retention pond. The storm water in the retention pond was highly turbid and had petroleum hydrocarbon sheen from a leaking dewatering pump at the eastern side. At the time of the inspection Logan Court was being dewatered. Turbid storm water was being pumped through a pipe towards the southeastern corner of LP. The area between the eastern boundary of the cul-de-sac and the eastern boundary of LP was very muddy and saturated with turbid storm water. Turbid storm water was observed running off the site on the eastern boundary into a wetland and ephemeral drainage on the western side of the NEXRAD road. The turbid storm water flows south to a dual culvert that conveys the turbid storm water underneath the NEXRAD road to the east, onto the western boundary of the golf course, north of the NEXRAD facility. The ephemeral drainage continues on the western boundary of the golf course traveling to the south. The ephemeral drainage then passes the NEXRAD facility on the eastern side. The ephemeral drainage also receives storm water from the parcel to the immediate south of LP, (Linkside Place Phase II) south of the NEXRAD facility. This parcel has not been developed and storm water discharging from it was not turbid as it entered the impacted ephemeral drainage on the western boundary of the golf course.

The only BMPs observed at LP were silt fence around the perimeter of the development with the exception of two areas on the eastern boundary where the silt fence had been removed. The site construction entrance had been stabilized with rock. No other sediment control BMPs were observed and no erosion control BMPs were observed at all.

The LP sediment control BMP (silt fence) observed at the northwest corner of the development was failing. Sediment-laden storm water was observed on the outside of the silt fence perimeter (Picture #1). Sediment-laden storm water was observed discharging off of the eastern side LP to the ephemeral drainage on the eastern boundary of the development (Pictures #7, #8, #18, #19, #23, #26). A silt flow was observed at the northwest corner of the development outside of the silt fence perimeter (Pictures #1-#3). Large erosion gullies were observed at the northwest corner and along the northern boundary of the development (Pictures #1-#4). No erosion control BMPs were observed on the development plateau (Pictures #1-#7 and #9). The silt fence sediment control BMP had been removed in two areas of the eastern boundary of LP allowing sediment-laden storm water to discharge off site (Pictures #5, #7, #8 and #12). Dewatering of Logan Court cul-de-sac was observed (Pictures #5, #11, #12, #15, #16, #27 & #28). Two hazardous material mobile tanks (No. 2 diesel fuel) were observed with no secondary containment (SWPPP states that an earthen berm would be constructed) (Picture #9). Petroleum hydrocarbon sheen was observed on the east side of the Logan Court cul-de-sac storm water retention pond (Pictures #12 and #13). The dewatering pump was observed leaking fuel (Picture #14).

To determine the flow quantity from the dewatering operations, a ½ gallon plastic container was used to capture the discharge from the end of the discharge pipe (Pictures #27 and #28). This operation was repeated 10 times while being timed by a wristwatch. Each time the ½ gallon plastic container was filled in 5 seconds or less. The ½ gallon plastic container was placed in the middle of the flow from the discharge pipe, not all of the flow was captured in this process, and so the ½ gallon per 5 seconds (6 gallons/min) is a conservative estimate of the flow.

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At the conclusion of the inspection I telephoned Mr. John Montgomery of E-Ticket Construction. I informed him that I had just concluded my inspection of LP. The inspection verified that the site was not in compliance with the General Permit. Violations of the General Permit included a lack of BMP maintenance, lack of deployment of erosion control measures, sediment discharge to waters of the State and the discharge of unfiltered or untreated dewater from the site to waters of the State. He didn't think that the dewatering operation was a violation of the General Permit. I informed him that he could not discharge dewater that didn't meet water quality standards. He stated that he would be out to the site immediately to remedy the situation.

On 19 February I contacted Mr. Montgomery again and reiterated that LP was not in compliance with the General Permit. I stated that I had observed only two sediment control BMPs deployed at LP and that at a minimum he must use an effective combination of erosion and sediment control BMPs on all disturbed areas during the rainy season. I asked him how long the dewatering pump had been running and he stated that he set up the pump at 8:00 a.m. 18 February and discontinued the pumping operations shortly after our phone discussion at 4:30 p.m. 18 February. He acknowledged that the pump had been running for 8%-hours. Using the conservative estimate of 6 gallons/min the total volume of unfiltered/unfiltered dewater discharged to waters of the State would be 3,060 gallons for the 8%-hour discharge duration.

I told Mr. Montgomery that the pump was leaking fuel and that I had documented petroleum hydrocarbon sheen on the water. He acknowledged that he knew the pump was leaking fuel. I instructed him to deploy some absorbent pads to clean up the spill and to properly dispose of the pads once the spill was cleaned up. I asked him if he had ever obtained coverage under the General Permit before and he stated that this was his first time. I explained to him that he should read the permit to understand what the discharger's responsibilities are, he replied that he would get a copy and read it. I suggested that he might want to employ someone who had worked with the General Permit before to assist him; he stated that he had already contacted a company to help. I requested copies of all inspection reports and that I would send him a copy of my photo log to help him better understand the violations that I observed. I explained that the Regional Board protects wetlands, isolated wetlands and ephemeral drainages even when they are dry. I stated that the discharges of sediment-laden storm water to these types of resources are violations of the Clean Water Act (CWA) and the California Water Code (CWC). I explained to him that the discharger could be liable for an administrative civil liability in the amount of \$10,000/day/violation for violations of the General Permit.

A water sample (Sample No. 1) was taken of the discharge at the end of the dewatering pipe (Picture #16). A water sample (Sample No. 2) was taken of the turbid discharge from LP as it entered the ephemeral drainage on the western boundary of the golf course (Pictures #19, #21 and #22). A water sample (Sample No. 3) was taken of the storm water in an ephemeral drainage located immediately north of the NEXRAD facility. This sample would be representative of background conditions (Pictures #20-#22).

The three water samples were tested for total suspended solids, turbidity and settleable matter by a certified laboratory. The samples were held on ice until they were delivered to the laboratory under chain of custody. The test results follow:

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<u>Sample Location</u>	<u>Total Suspended Solids</u>	<u>Turbidity</u>	<u>Settleable Solids</u>
Sample No. 1 End of dewater pipe on LP (discharge on property)	1,900 mg/L	2,440 NTUs	<0.1 mL/L/hr
Sample No. 2 Dual culvert 100' north of NEXRAD facility (LP discharge into ephemeral drainage on golf course property (discharge off of property))	1,150 mg/L	1,740 NTUs	0.1 mL/L/hr
Sample No. 3 Wet swale adjacent to north side NEXRAD facility (background off of property)	7 mg/L	12.1 NTUs	<0.1 mL/L/hr

Total suspended solids (TSS) is a measure of the undissolved solids that are present in runoff. Sources for TSS would be sediment from erosion of exposed land, and dirt from impervious areas. Sediment by itself can be very toxic to aquatic life because it covers feeding and breeding grounds, and smothers others that may live on the bottom of a water body. Toxic chemicals and other pollutants also adhere to sediment particles. This provides a medium by which toxic or other pollutants enter in our waterways and ultimately in human and aquatic life. TSS levels greater than 30-50 mg/L indicates concern with a possible investigation required. A level greater than 100 mg/L recommends a follow-up investigation.

Turbidity refers to water clarity. Turbidity results are measured in Nephelometric Turbidity Units (NTUs). As TSS increases, clarity decreases resulting in increased turbidity. High concentrations of particulate matter can modify light penetration, cause shallow lakes and bays to fill in faster, and smother benthic habitats - impacting both organisms and eggs. As particles of silt, clay, and other organic materials settle to the bottom, they can suffocate newly hatched larvae and fill in spaces between rocks which could have been used by aquatic organisms as habitat. Fine particulate material also can clog or damage sensitive gill structures, decrease their resistance to disease, prevent proper egg and larval development, and potentially interfere with particle feeding activities. If light penetration is reduced significantly, macrophyte growth may be decreased which would in turn impact the organisms dependent upon them for food and cover. Reduced photosynthesis can also result in a lower daytime release of oxygen into the water.

The Water Quality Control Plan (Basin Plan) for the Central Valley Region outlines water quality objectives for inland surface waters. The Basin Plan states that waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increase in turbidity attributable to controllable water quality factors shall not exceed the following limits:

- Where natural turbidity is between 0 and 5 NTUs, increases shall not exceed 1 NTU
- Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20%
- Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs
- Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10%

Sample No .3-Background

The 7 mg/L TSS of Sample No. 3 (background) is 14 times less than the TSS pollutant benchmark level of 100 mg/L (benchmark). This documents that the wet swale background sample was not impacted by the turbid and sediment-laden discharge from LP. The 12.1 NTU turbidity test result would also be

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representative of background conditions. The Basin Plan allows increases in turbidity attributable to controllable water quality factors from LP to not exceed 20% above natural turbidity. Using Sample No. 3 as background, turbidity discharges from LP shall not exceed 14.5 NTUs.

Sample No. 1-Discharge from dewatering operations

The 1,900 mg/L TSS of Sample No. 1 is 19 times greater than the TSS benchmark. The 2,440 NTU turbidity is 168 times greater than allowed by the Basin Plan. The test results for Sample No. 1 documents that the dewatering operations at LP were creating sediment-laden and turbid water.

Sample No. 2-Discharge from eastern boundary LP to ephemeral drainage western boundary golf course

The 1,150 mg/L TSS of Sample No. 2 is 11.5 times greater than the TSS benchmark. The 1,740 NTU turbidity is 120 times greater than allowed by the Basin Plan. The water in the ephemeral drainage was sediment-laden and turbid. The test results for Sample No. 2 documents that the discharge from LP was impacting water quality and aquatic life in the ephemeral drainage bisecting LP and the golf course.

The unnamed ephemeral drainage is tributary to Thermalito Afterbay, which is tributary to the Feather River. The Basin Plan has designated beneficial uses for surface and ground waters within the Region. Designated beneficial uses of this surface water that could be impacted by a sediment discharge include municipal and domestic supply, agricultural irrigation, contact and non-contact recreation, warm and cold freshwater habitat, warm and cold spawning, and wildlife habitat.

25 February 2004 Inspection

On 25 February 2004 at approximately 1415 hours I arrived at LP to perform a follow-up inspection to evaluate compliance with the General Permit. Representative photographs taken during this inspection are presented in Attachment D. Attachment E shows location of sample collection for this inspection date. No one was on site at the time of inspection. The weather conditions at this time were cloudy, very windy, 56 degrees and it was not raining. The rain gauge at SC-OR recorded 1.00 inches of rain on 24 February and 0.80 inches on 25 February 2004. The California Department of Water Resources rainfall gage at Oroville Dam recorded 0.64 inches of rain on 24 February and 1.40 inches on 25 February 2004. The rain gage at Feather River Fish Hatchery recorded 0.39 inches of rain on 24 February and 0.87 inches on 25 February 2004.

The contractor had deployed multiple layers of silt fence and straw waddle at the northeast corner of LP. Straw had also been broadcast on and around the fill slopes on the northwestern side of LP. Some filter fabric and gravel had been deployed at the northwest corner of LP and straw had been broadcast on the northern side of LP and around and in-between the first two of five layers of silt fence protecting the northeast corner of LP. There were also two hay bales placed in the roadside drainage ditch on the south side of Highway 162 on the west and eastside of the NEXRAD road. Dewatering operations had been discontinued.

These additional erosion and sediment control BMPs were ineffective in stabilizing the site or controlling sediment transport offsite into waters of the State. The multiple silt fence and straw waddle deployed at the northeast corner of LP failed, so sediment-laden and turbid storm water was discharged to the roadside

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drainage ditch on the south side of Highway 162 (Pictures #29, #40-#43). A water sample (Sample No. 8) was collected of the discharge in between the multiple silt fence layers at the northeast corner of LP documenting water quality on the LP site (Picture #59). A water sample (Sample No. 2) was collected as the discharge entered the roadside drain on the westside of the NEXRAD road (Picture #42). The discharge went from the northeastern corner of LP east under the NEXRAD road to the northwest corner of the golf course (Picture #44). A water sample (Sample No. 1) was collected as the discharge entered the golf course property from the roadside drain on the eastside of the NEXRAD road (Picture #43). The sediment-laden and turbid storm water was pooling in the NW corner of the golf course property. The sediment-laden and turbid storm water then discharged to another roadside drain approximately 150 feet east of the NEXRAD road on the golf course property on the south side of Highway 162. This drain conveyed the discharge to the northside of Highway 162 into an ephemeral drainage in pastureland. A water sample (Sample No. 9) was collected of the discharge on the north side of Highway 162 in pastureland (Picture #60). The silt fence at the northwest corner of LP failed, thus sediment-laden storm water was discharged to a roadside drainage ditch on the south side of Highway 162 (Pictures #31 and #32). The discharge then flowed east alongside the south side of Highway 162 to a roadside drain. The drain conveyed the discharge to the northside of Highway 162 into an ephemeral drainage in pastureland. A water sample (Sample No. 10) was collected of the discharge (Pictures #61 and #62). The silt fence on the eastern boundary and at the southeast corner of LP failed, and sediment-laden and turbid storm water discharged to an ephemeral drainage (Pictures #38 and #39). This ephemeral drainage bisects the LP eastern boundary and the western boundary of the golf course. A water sample (Sample No. 5) was collected of the sediment-laden and turbid storm water from LP as it discharged from the NEXRAD road dual culvert into the ephemeral drainage on the western boundary of the golf course (Pictures #45-#48). The silt fence on the northern boundary of LP failed, causing sediment-laden storm water to discharge to the roadside drainage ditch on the south side of Hwy 162, which conveyed the discharge to the north side of Highway 162 (Pictures #30 and #63). No additional sample bottles were available so a water sample of this discharge was not collected.

The straw that had been deployed on the fill slopes at the northwestern corner had failed. Large erosion gullies were visible underneath the straw (Pictures #32-#34). The straw deployed in conjunction with the silt fence and straw waddle at the northeast corner had failed (Pictures #40 and #41). No erosion control BMPs had been deployed on the plateau of the northwestern side of LP (Pictures #32-#34). No erosion control BMPs had been deployed in the middle or southern side of LP (Pictures #35-#37).

Pictures #49 and #50 show the sediment-laden discharge as it enters the ephemeral drainage on the western boundary of the golf course on the north side of the NEXRAD facility. Picture #51 shows the sediment-laden discharge on the south side of the NEXRAD facility receiving a non-sediment-laden discharge from the parcel to the immediate south of LP (Linkside Place Phase II). Picture #52 documents a water sample (Sample No. 6) that was taken from the ephemeral drainage immediately north of the NEXRAD facility. This was the same sample location used for background during the 18 February 2004 LP inspection. The sample results from the two inspections at this location document background water quality immediately north of the NEXRAD facility. Pictures #53 and #54 document the location of another background water quality sample location. This sample (Sample No. 7) location was immediately south of the NEXRAD facility in an ephemeral drainage that was not impacted by LP and feeds the impacted ephemeral drainage. Pictures #55 and #56 document the location of a third background water quality sample location. This sample (Sample No. 3) location was immediately to the west of the NEXRAD facility, on the parcel immediately south of LP (Linkside Place Phase II), approximately 200 feet southeast from the southeast corner of LP, in a wetland ephemeral drainage. Pictures #57 and #58

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document the location of a delineated wetland impacted by sediment-laden and turbid storm water runoff from LP. A water sample (Sample No. 4) was collected of this delineated wetland area. This area is located 75 feet southeast of the southeast corner of LP, west of the NEXRAD road and north of the NEXRAD facility.

A total of ten water samples were taken during the inspection. The samples were tested for total suspended solids, turbidity and settleable matter by a certified laboratory. The samples were held on ice until they were delivered to the laboratory under chain of custody. The test results follow:

Sample location	Total suspended solids	Turbidity	Settleable solids
Sample No. 1 Eastside NEXRAD road, south side Hwy 162, NW corner of golf course property (discharge)	1,640 mg/L	2,590 NTUs	0.1 mL/L/hr
Sample No. 2 Westside NEXRAD road, south Hwy 162, NE corner of LP property (discharge)	1,920 mg/L	1,960 NTUs	0.1 mL/L/hr
Sample No. 3 Parcel south of LP (Linkside Phase II), ephemeral drainage westside NEXRAD facility (background)	10 mg/L	55.6 NTUs	<0.1 mL/L/hr
Sample No. 4 Delineated wetland, westside of NEXRAD road, east of LP property (discharge)	2,300 mg/L	2,770 NTUs	0.1 mL/L/hr
Sample No. 5 Dual culvert discharge from LP to ephemeral drainage western boundary golf course 100' north of NEXRAD facility (discharge)	2,080 mg/L	3,000 NTUs	0.1 mL/L/hr
Sample No. 6 Wet swale ephemeral drainage north side NEXRAD Facility (background)	5 mg/L	10.2 NTUs	<0.1 mL/L/hr
Sample No. 7 Wetland ephemeral drainage 20' south of NEXRAD Facility (background)	8 mg/L	20.9 NTUs	<0.1 mL/L/hr
Sample No. 8 NE corner LP between silt fence barriers (discharge on property)	1,760 mg/L	2,600 NTUs	<0.1 mL/L/hr
Sample No. 9 Northside Hwy 162 150' east of NEXRAD road across from NW corner golf course (discharge)	285 mg/L	925 NTUs	<0.1 mL/L/hr
Sample No. 10 Northside Hwy 162 across from NW corner of LP (discharge)	174 mg/L	305 NTUs	<0.1 mL/L/hr

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Sample Nos. 3, 6 and 7-Background

The 10 mg/L TSS sample result of Sample No. 3 is 10 times less than the TSS pollutant benchmark level of 100 mg/L. The 5 mg/L TSS sample result of Sample No. 6 is 20 times less than the benchmark. The 8 mg/L TSS sample result of Sample No. 7 is 12.5 times less than the benchmark. The test results for Sample Nos. 3, 6 and 7 documents that the areas not receiving a sediment-laden discharge from LP had total suspended solid result from 10-20 times less than the benchmark. This confirms that the ephemeral drainage and wet swale adjacent on the north, south and westside of the NEXRAD facility were not impacted by the LP sediment discharge. Sample Nos. 3, 6 and 7 represent background water quality levels. The 55.6, 10.2 and 20.9 NTU test results would be representative of background conditions. Using the highest background reading of 55.6 NTUs, the Basin Plan would allow increases in turbidity attributable to controllable water quality factors from LP to not exceed 10 NTUs above natural (background) turbidity or 65.6 NTUs.

Sample Nos. 1 and 2-Discharge from NE corner LP to NW corner golf course

The 1,640 mg/L TSS sample result of Sample No. 1 is 16.4 times greater than the benchmark. The 2,590 NTU turbidity test result is 39.5 times greater than allowed by the Basin Plan. The 1,920 mg/L TSS sample result of Sample No. 2 is 19.2 times greater than the benchmark. The 1,960 NTU turbidity test result is 29.9 times greater than allowed by the Basin Plan. The test results for Sample Nos. 1 and 2 document that turbid and sediment-laden storm water was leaving the NE corner of LP and discharging onto the NW corner of the golf course.

Sample No. 9-Discharge from golf course to north side Highway 162

The 285 mg/L TSS sample result of Sample No. 9 is 2.85 times greater than the benchmark. The 925 NTU turbidity test result is 14.1 times greater than allowed by the Basin Plan. These test results document that turbid and sediment-laden storm water was discharging from LP to the golf course to an ephemeral drainage on the north side of Highway 162.

Sample No. 10-Discharge from NW corner LP to north side Highway 162

The 174 mg/L TSS sample result of Sample No. 10 is 1.74 times greater than the benchmark. The 305 NTU turbidity test result is 4.6 times greater than allowed by the Basin Plan. These test results document that turbid and sediment-laden storm water was discharging from the NW corner of LP to an ephemeral drainage on the north side of Highway 162.

Sample Nos. 4 and 5-Discharge from SE corner to delineated wetland & eastern boundary LP to ephemeral drainage western boundary golf course

The 2,300 mg/L TSS sample result of Sample No. 4 is 23 times greater than the benchmark. The 2,770 NTU turbidity test result is 42.2 times greater than allowed by the Basin Plan. These test results document that turbid and sediment-laden storm water was discharging from LP in the delineated wetland adjacent to the SE corner of LP. The 2,080 mg/L TSS sample result of Sample No. 5 is 20.8 times greater than benchmark. The 3,000 NTU turbidity test result is 45.7 times greater than allowed by the Basin Plan. These test results document that turbid and sediment-laden storm water was discharging from the eastern boundary of LP to the ephemeral drainage bisecting LP and the western boundary of the golf course.

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18 and 25 February General Permit Violations

On 18 February 2004 Regional Board staff observed violations of the General Permit, which include inadequate maintenance of BMPs, inadequate implementation of storm water BMPs for erosion and sediment control, discharge of sediment laden non-storm water during dewatering operations, discharge of sediment to waters of the State and exceedance of applicable water quality standards contained in the Basin Plan. The Discharger violated the following sections of the General Permit:

Discharge Prohibition A. 2, which states:

"Discharges of materials other than storm water which are not otherwise authorized by an NPDES permit to waters of the nation are prohibited except as allowed in Special Provisions for Construction Activity C. 3." (18 February)

Discharge Prohibition A. 3, which states:

"Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance." (18 and 25 February)

Receiving Water Limitation B.2, which states:

"The SWPPP developed for the construction activity covered by this 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 exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan." (18 and 25 February)

Special Provision C.2, which states:

"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." (18 February)

Special Provision C.3, which states:

"Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP." (18 February)

Section A: Storm Water Pollution Prevention Plan No. 1, Objectives of the General Permit, which states:

"Maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction." (18 and 25 February)

Section A: Storm Water Pollution Prevention Plan No. 6, Erosion Control of the General Permit, which states:

"At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season." (18 and 25 February)

Section A: Storm Water Pollution Prevention Plan No.9, Non-Storm Water Management, of the General Permit, which states:

"Discharging sediment laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited." (18 February)

The discharge of pollutants to waters of the State has exposed Linkside Place LLC to possible further enforcement action. Under Section 13385 of the CWC, the Regional Board can impose administrative civil liabilities for violations of CWC Section 13376. The maximum administrative civil liability for each day of violation is ten thousand dollars (\$10,000)/day/violation and ten dollars per gallon of polluted storm water discharged in excess of 1,000 gallons for violations of the terms and conditions of the General Permit. This matter is being referred to the Executive Officer for consideration of Administrative Civil Liability.

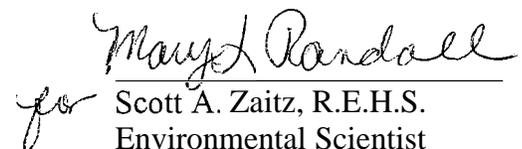
SUMMARY:

Regional Board staff observed violations of the General Permit at LP on 18 and 25 February 2004. These include failure to maintain BMPs to reduce or eliminate pollutants in storm water discharges, failure to adequately implement an effective combination of erosion and sediment control BMPs, failure to filter or use equivalent treatment during dewatering operations, the discharge of sediment to waters of the State and causing an exceedance of an applicable water quality standard contained in the Basin Plan.

On 18 February 2004 the Discharger violated Discharge Prohibitions A.2 and A.3, Receiving Water Limitation B.2, Special Provision C.2 and C.3, Section A: Storm Water Pollution Prevention Plan No.1, No.6, and No.9 of the General Permit.

On 25 February 2004 the Discharger violated Discharge Prohibition A.3, Receiving Water Limitation B.2, Section A: Storm Water Pollution Prevention Plan No.1 and No.6 of the General Permit.

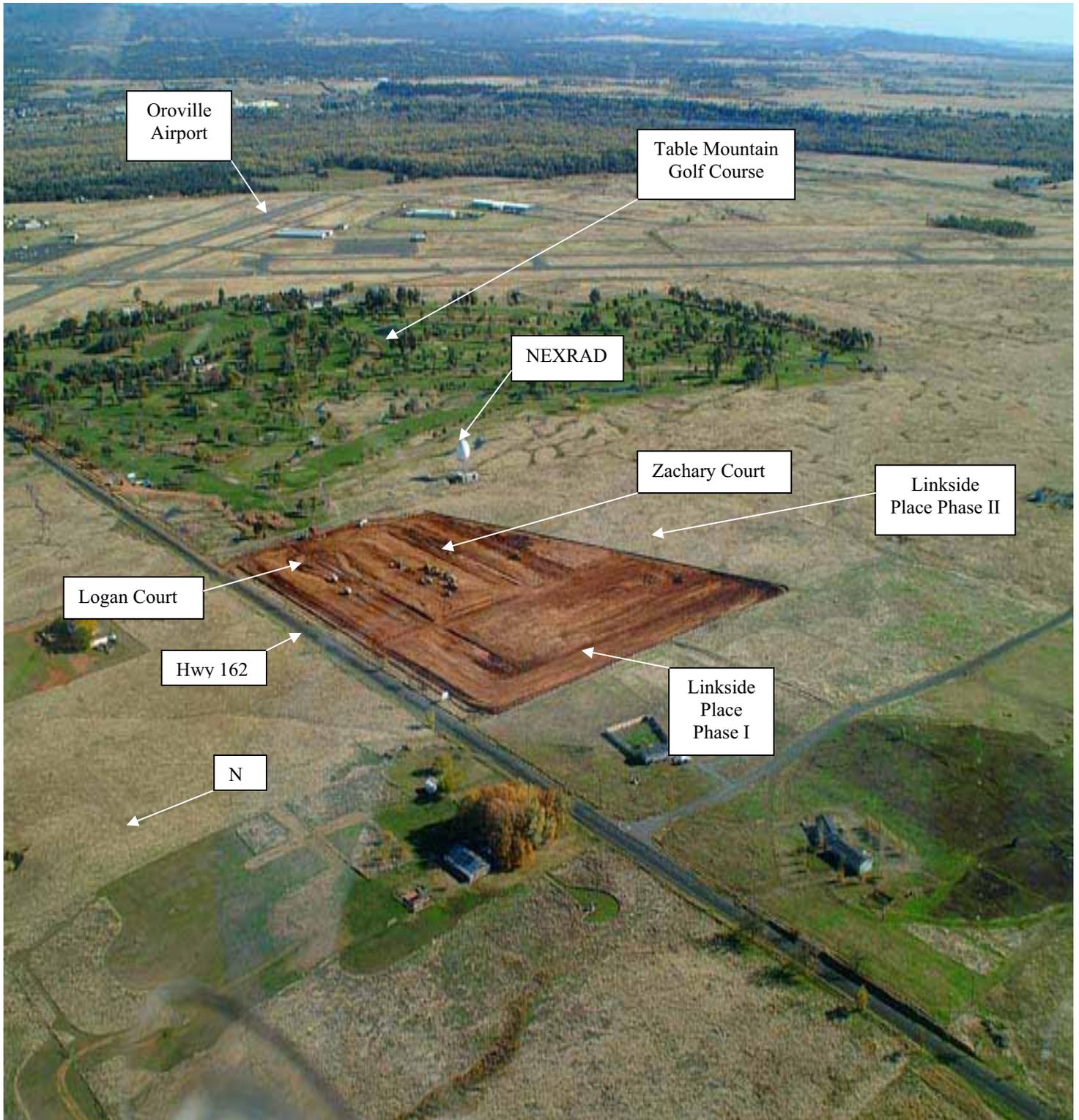
On 18 and 25 February 2004 the Discharger was not in compliance with the General Permit and SWPPP. LP discharged turbid and sediment-laden storm water to ephemeral drainages that are waters of the State. This matter is being referred to the Executive Officer for consideration of Administrative Civil Liability.

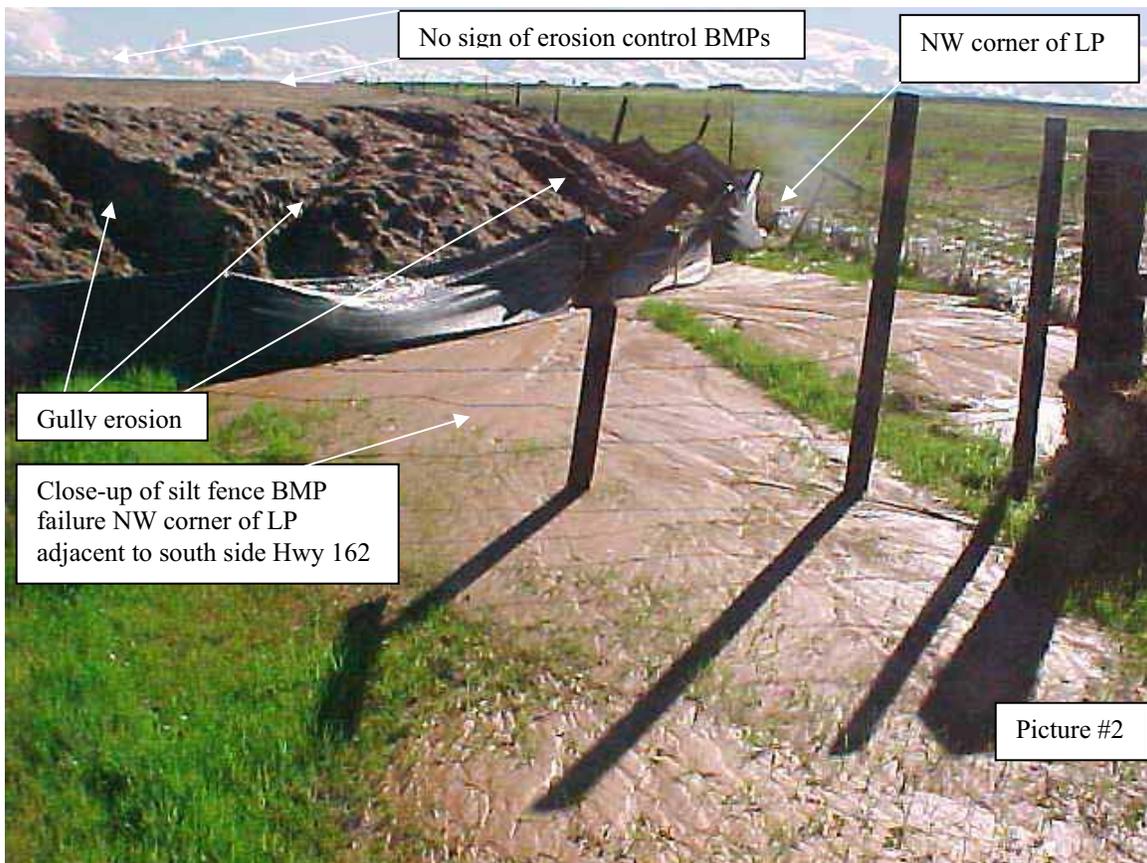
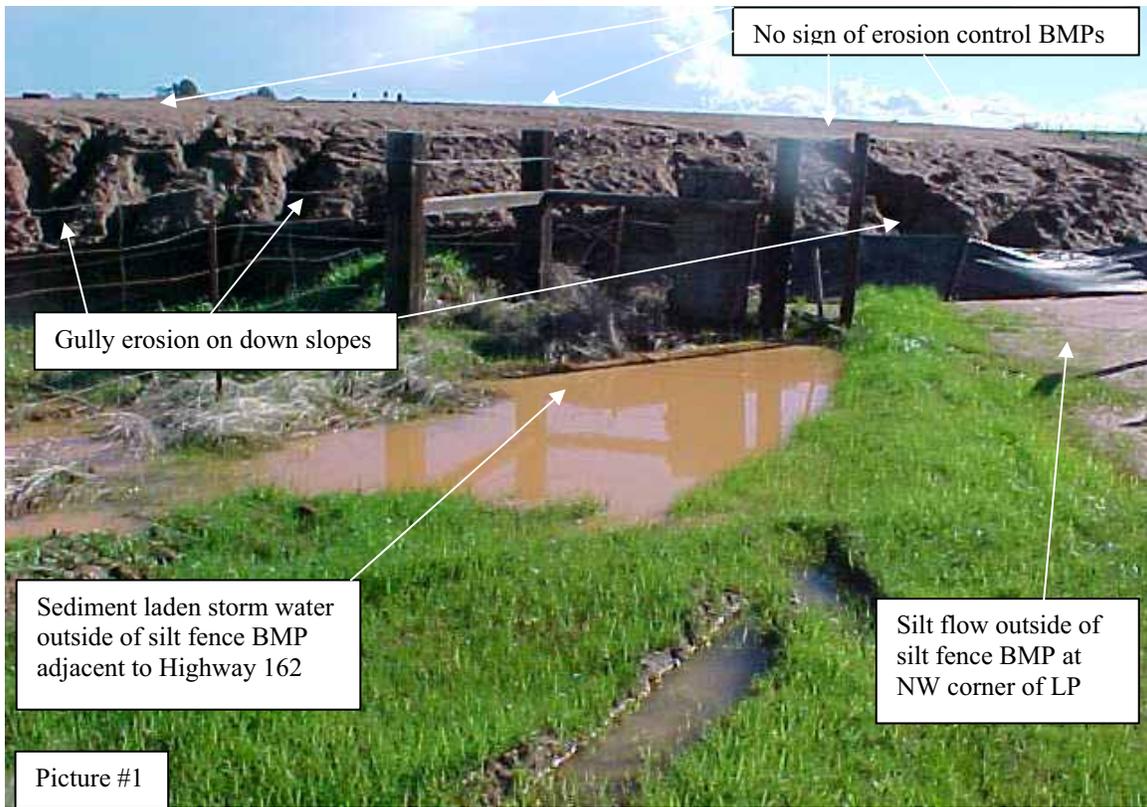

for Scott A. Zaitz, R.E.H.S.
Environmental Scientist

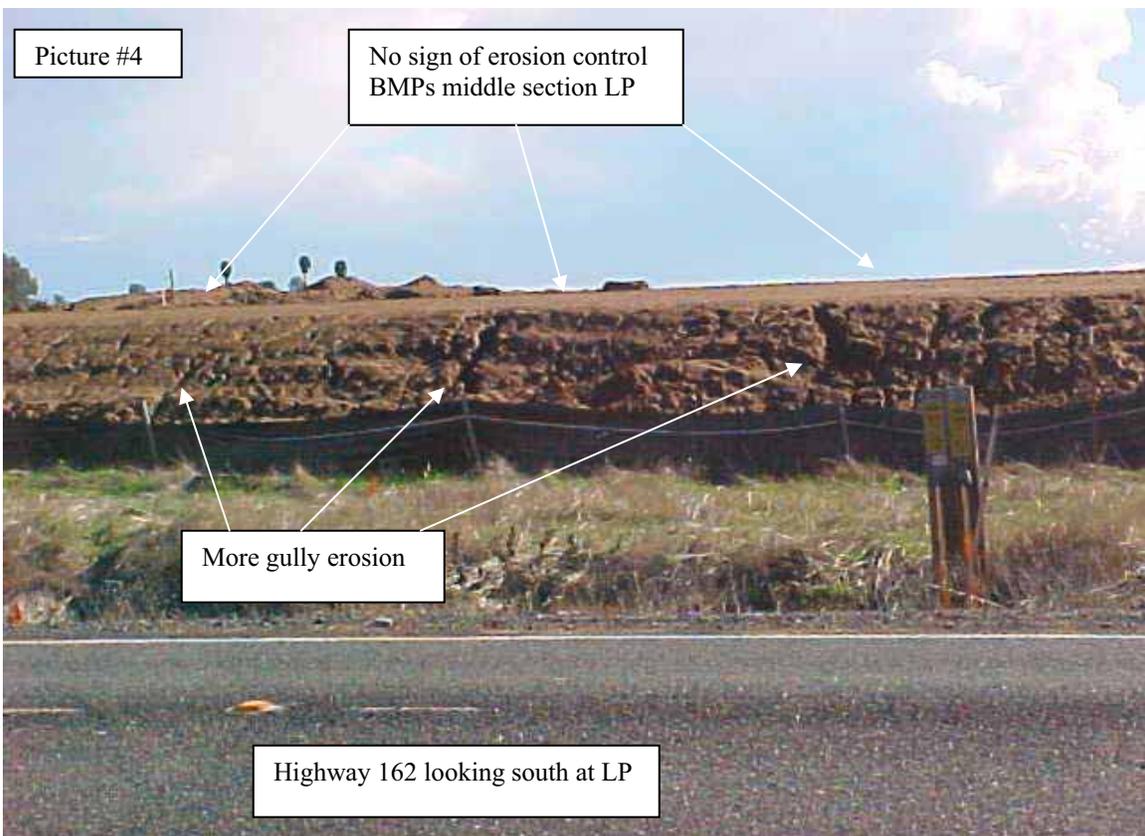
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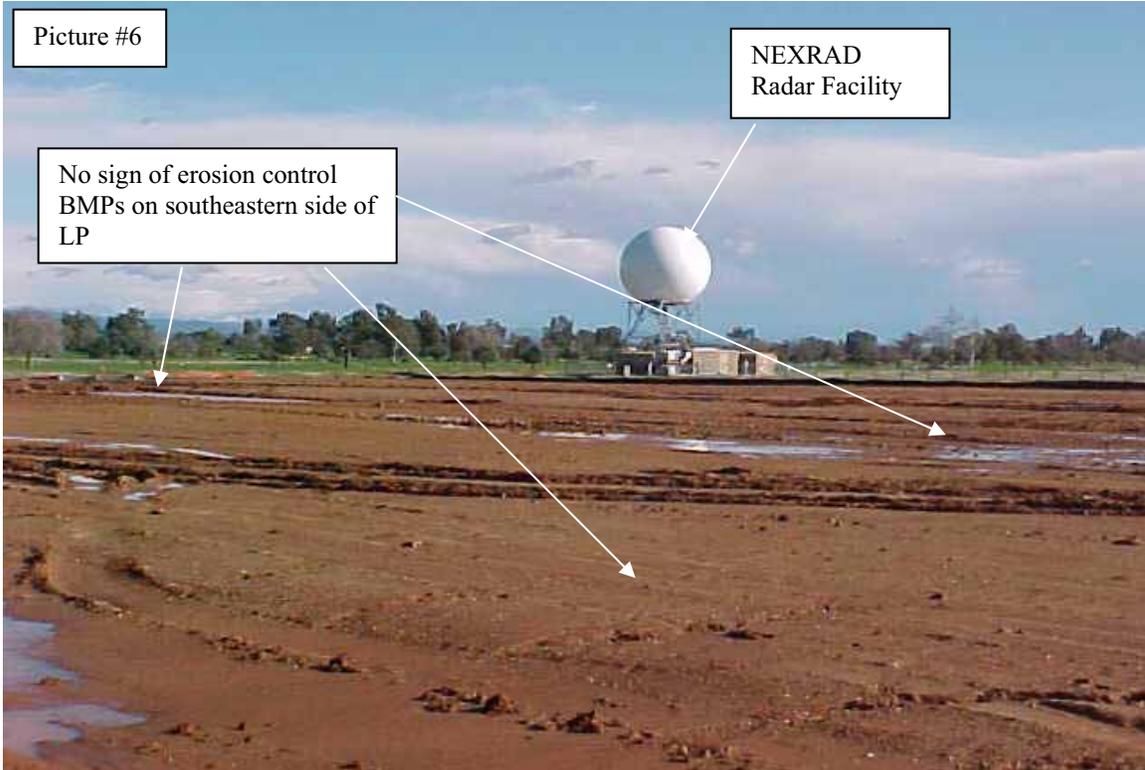
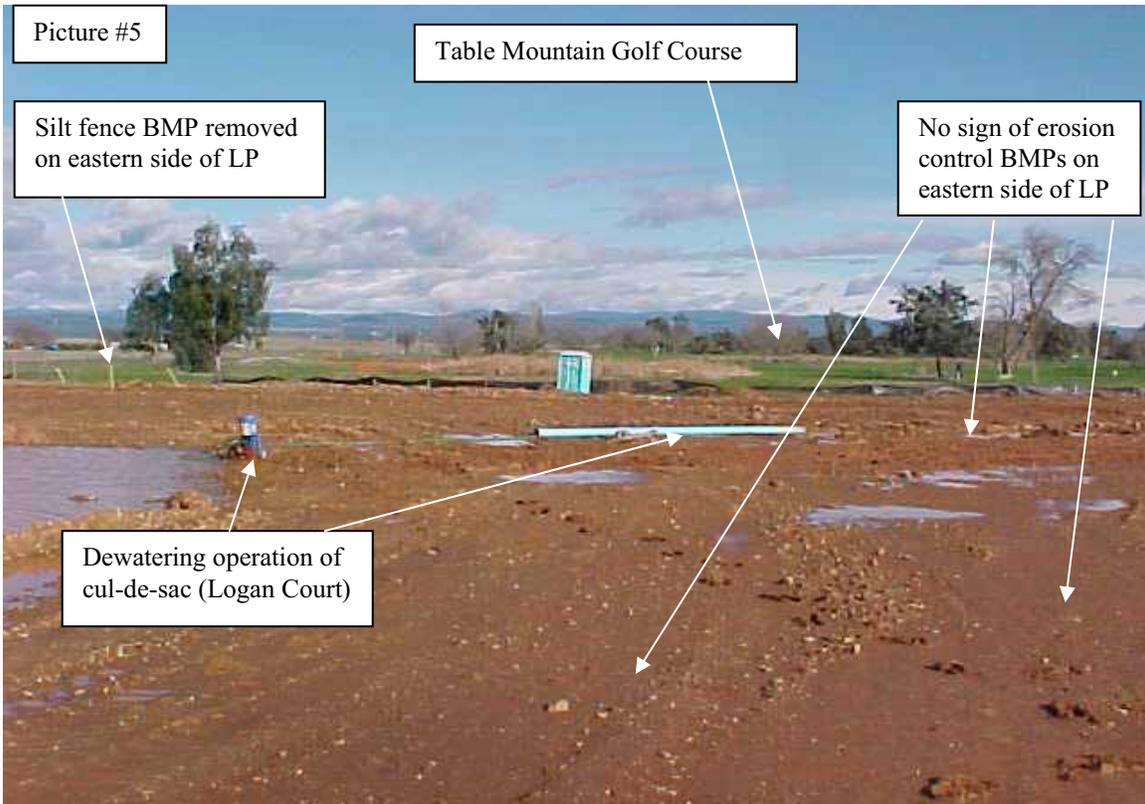
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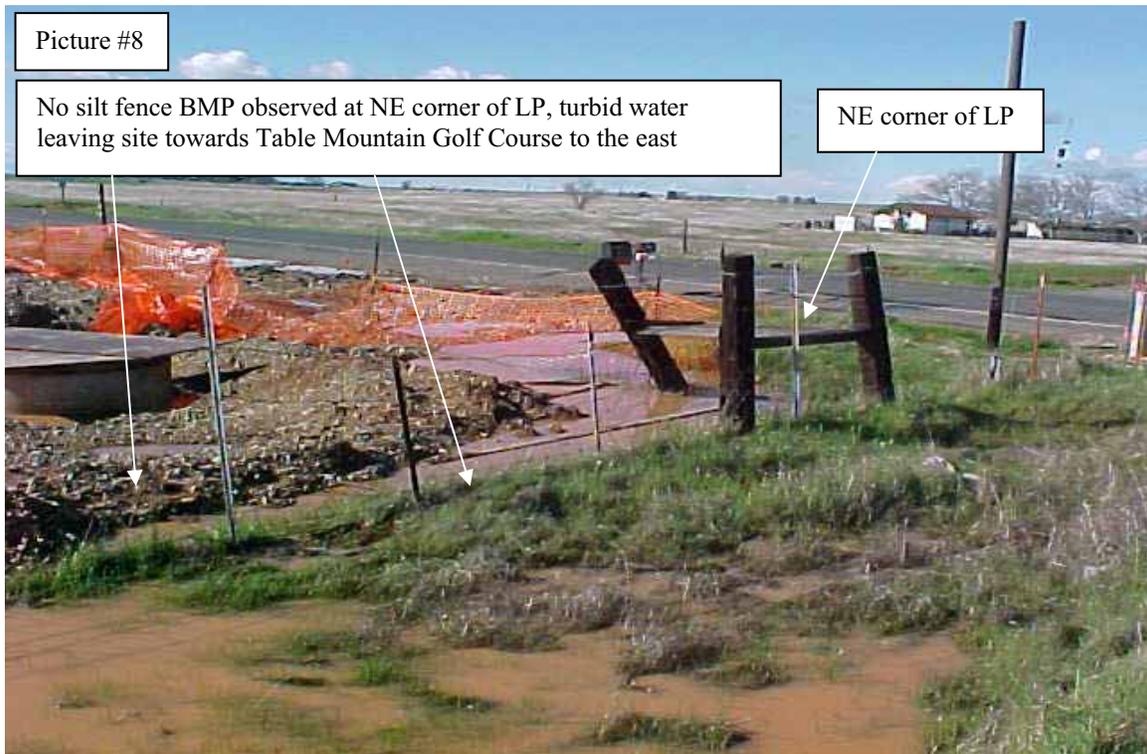
Linkside Place aerial taken 21 November 2003
Attachment A

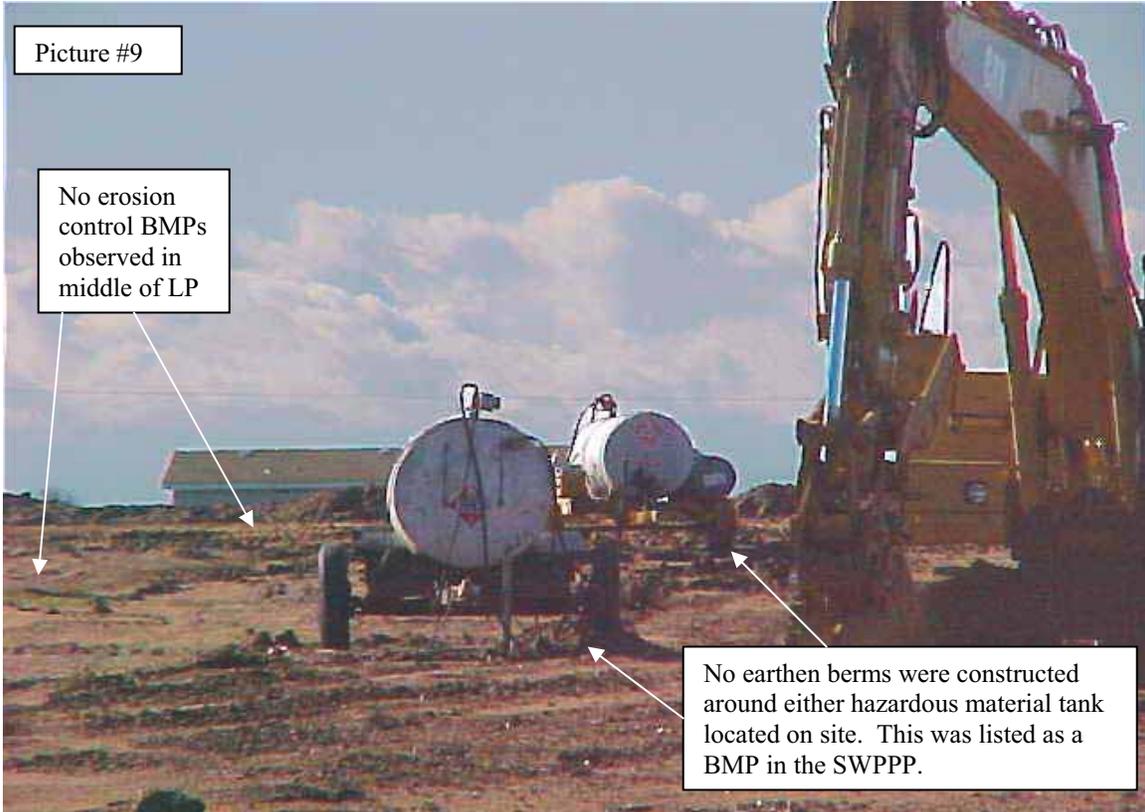


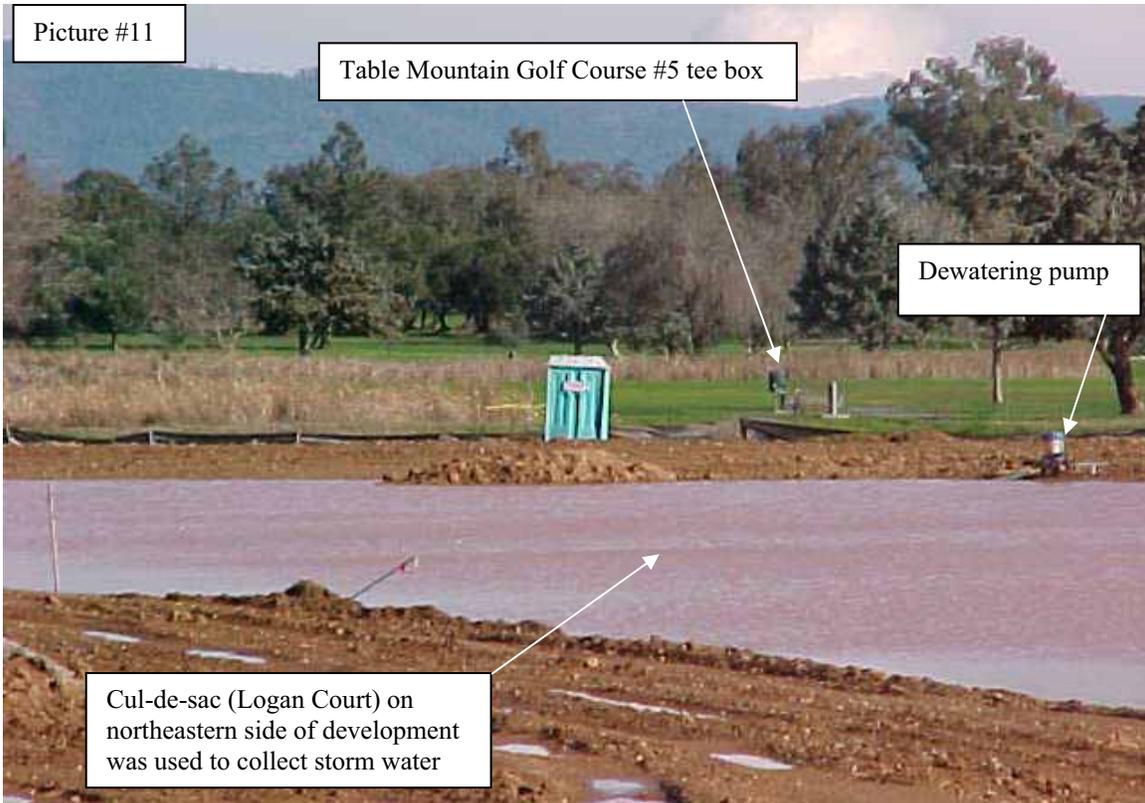








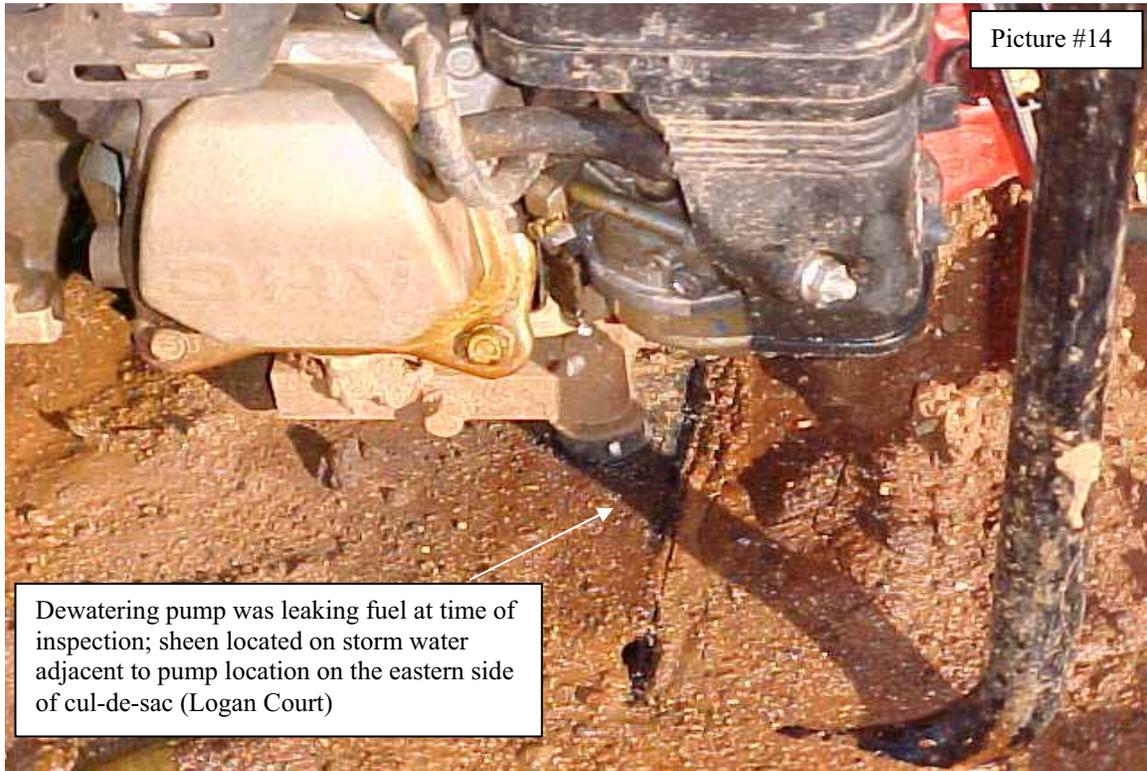






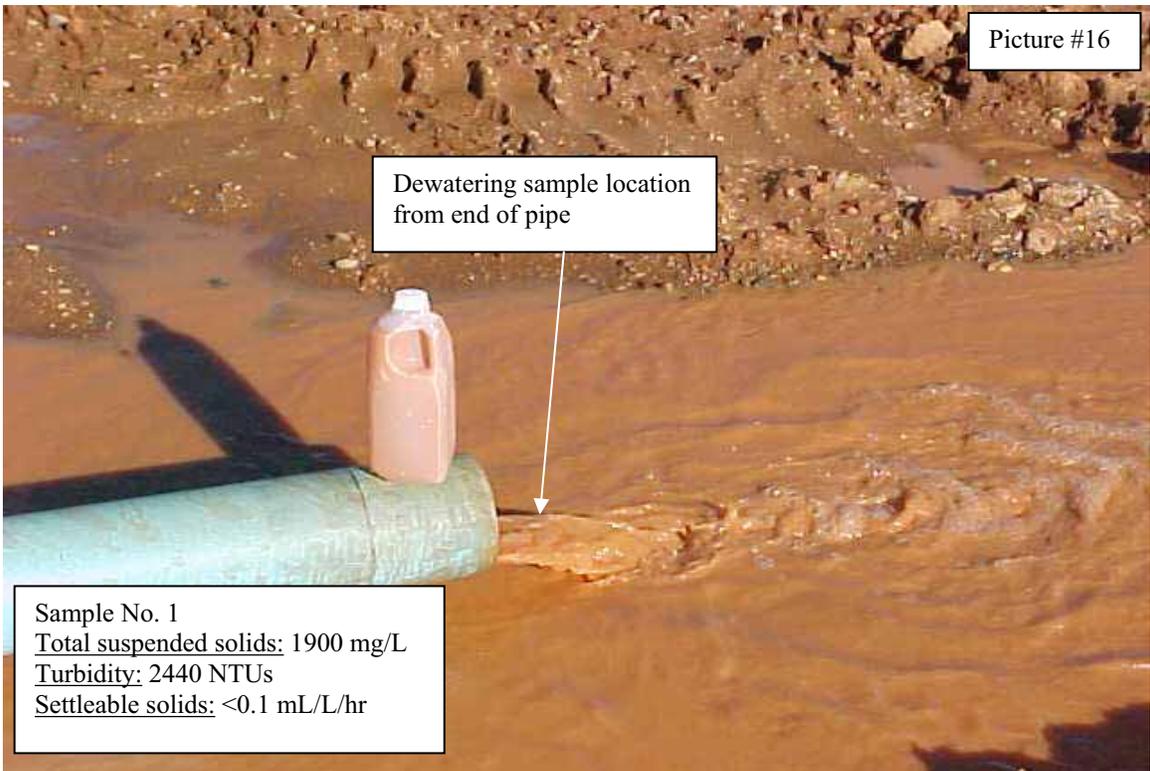
Close-up of petroleum hydrocarbon sheen on turbid storm water in cul-de-sac (Logan Court)

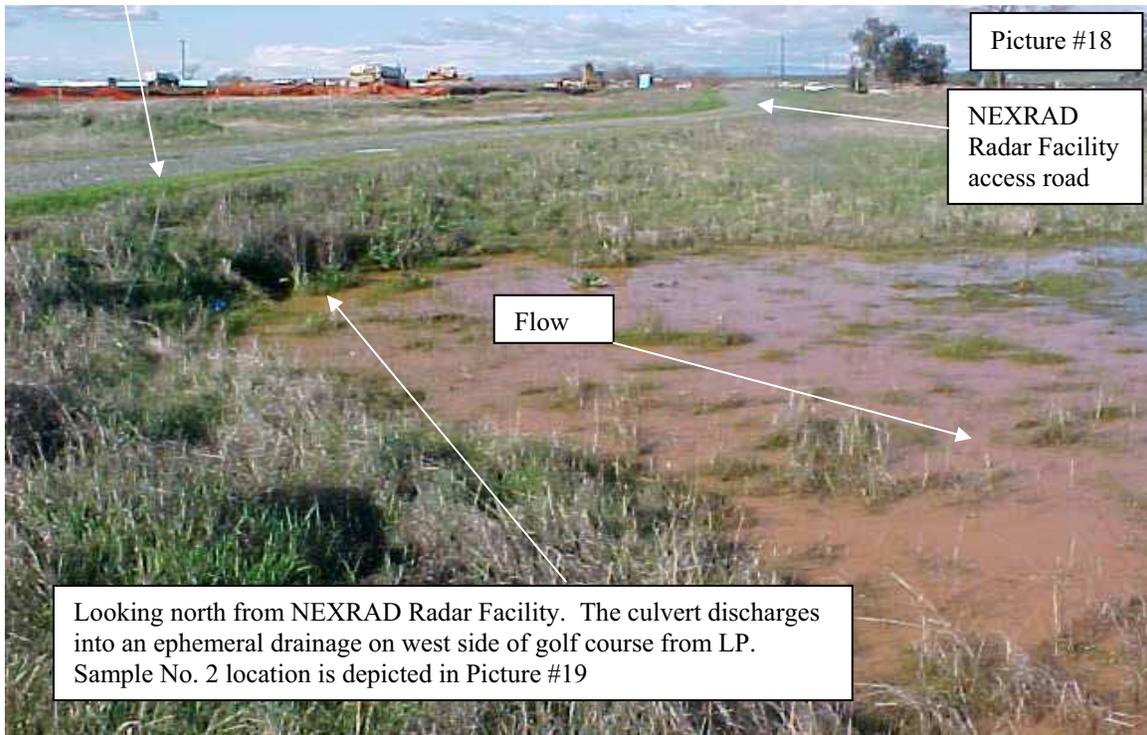
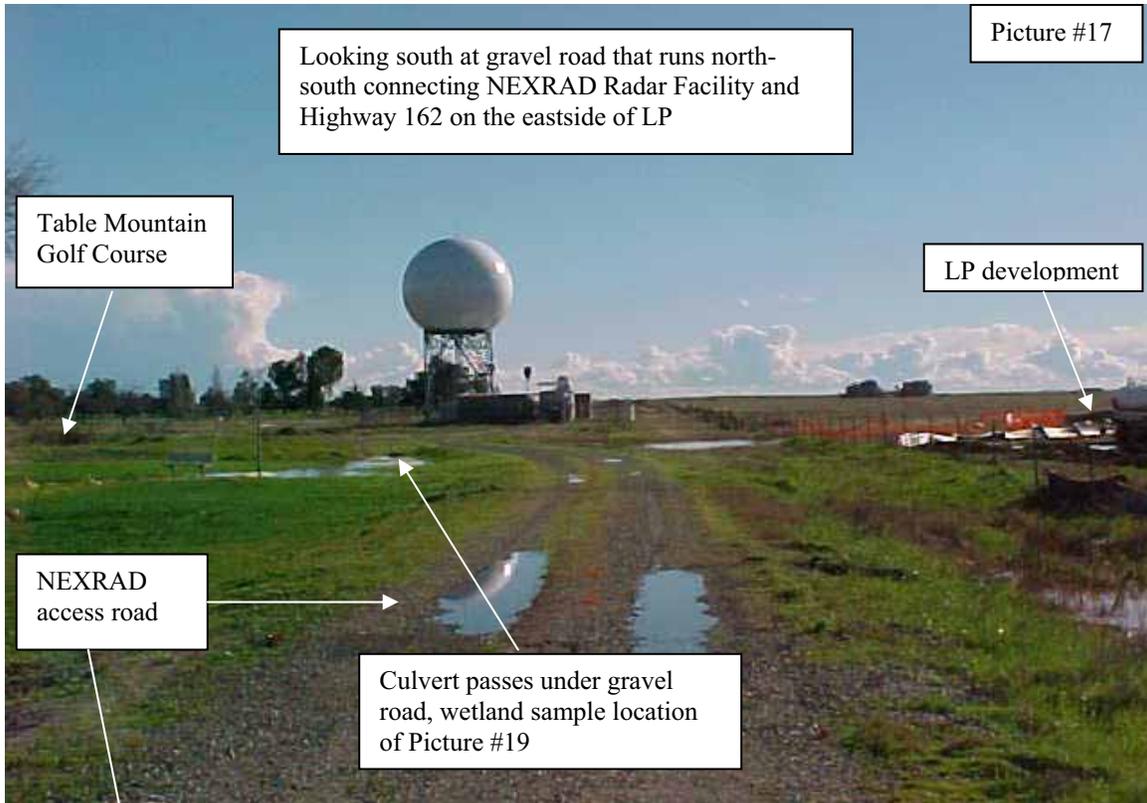
Picture #13

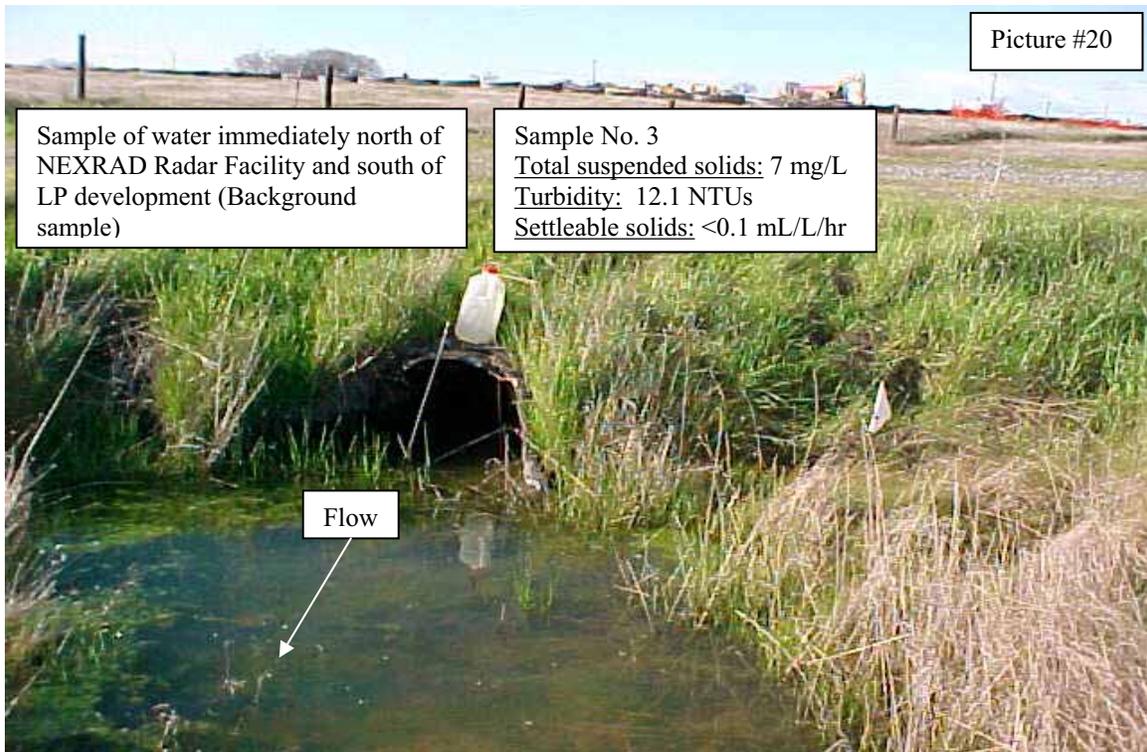


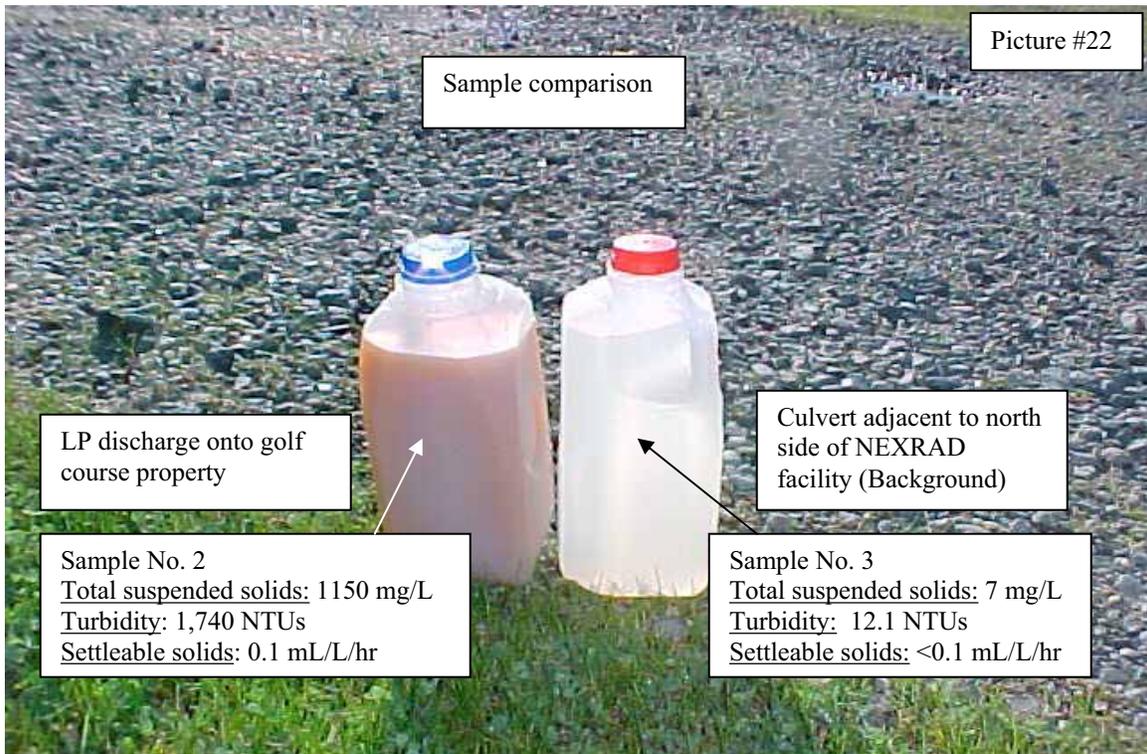
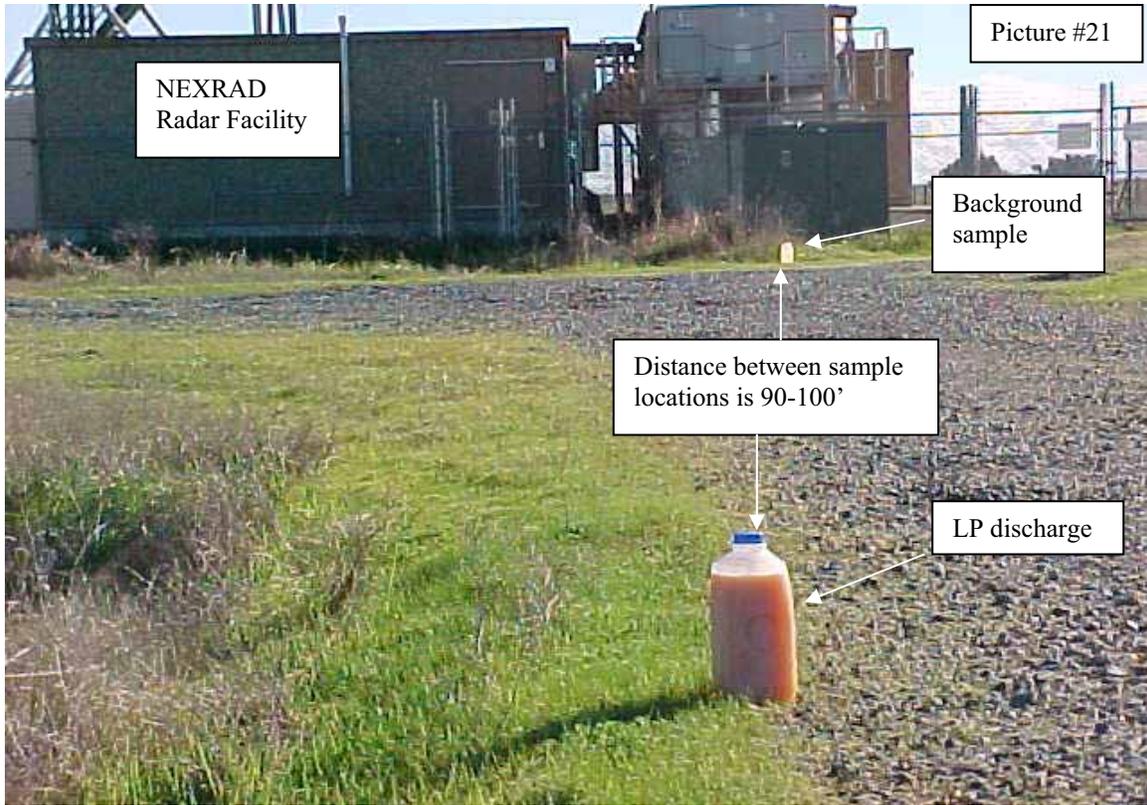
Dewatering pump was leaking fuel at time of inspection; sheen located on storm water adjacent to pump location on the eastern side of cul-de-sac (Logan Court)

Picture #14











Picture of sediment laden storm water bubbling up in wetland area between NEXRAD Radar access road (west side) and LP (eastern boundary)

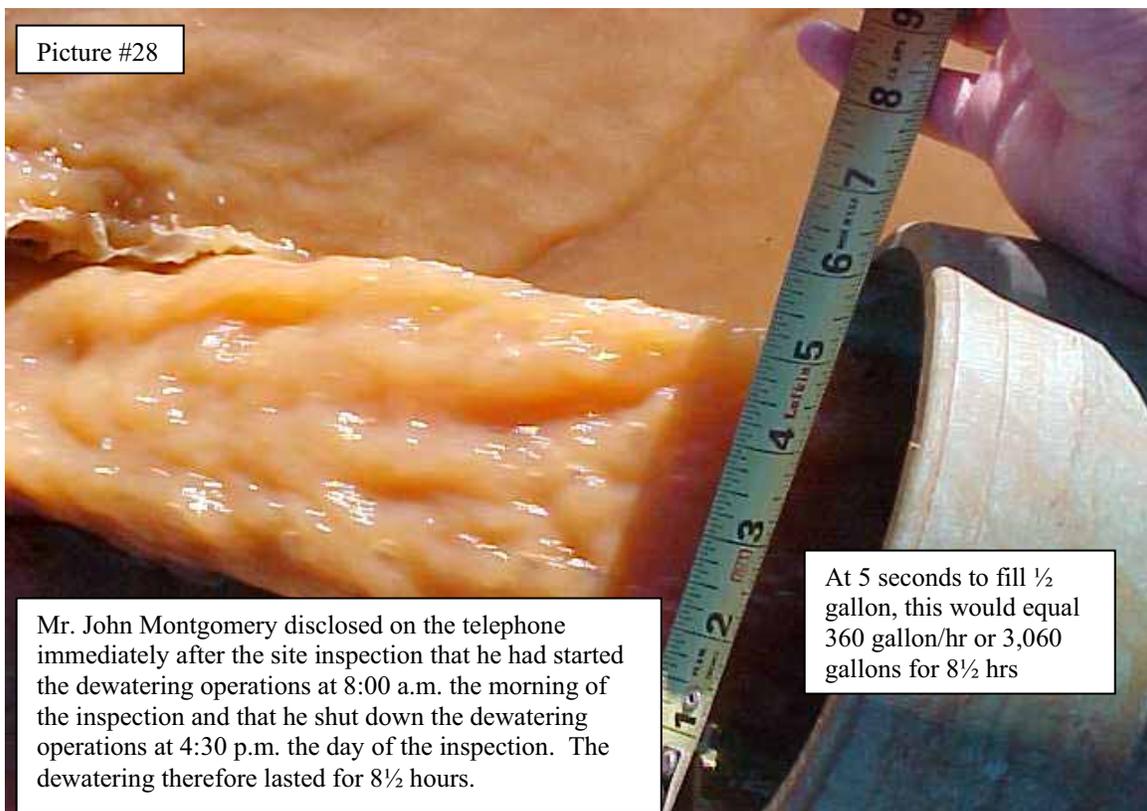
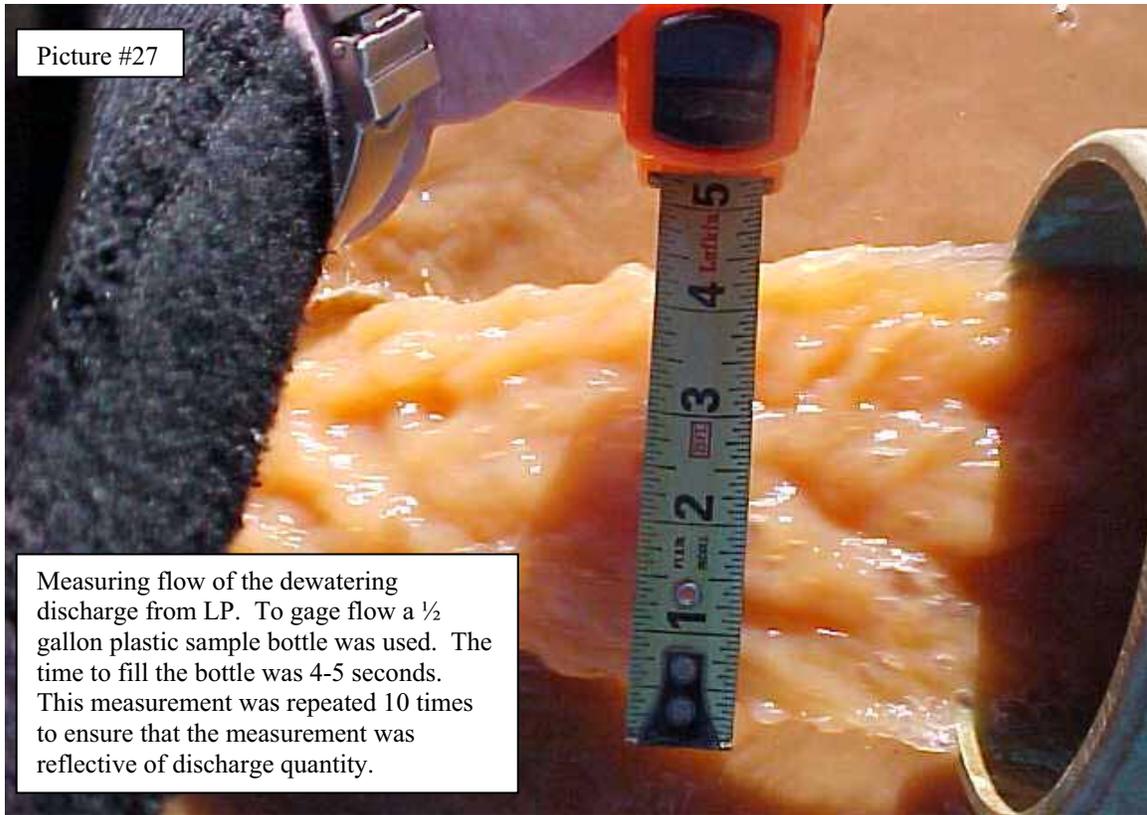
Picture #23



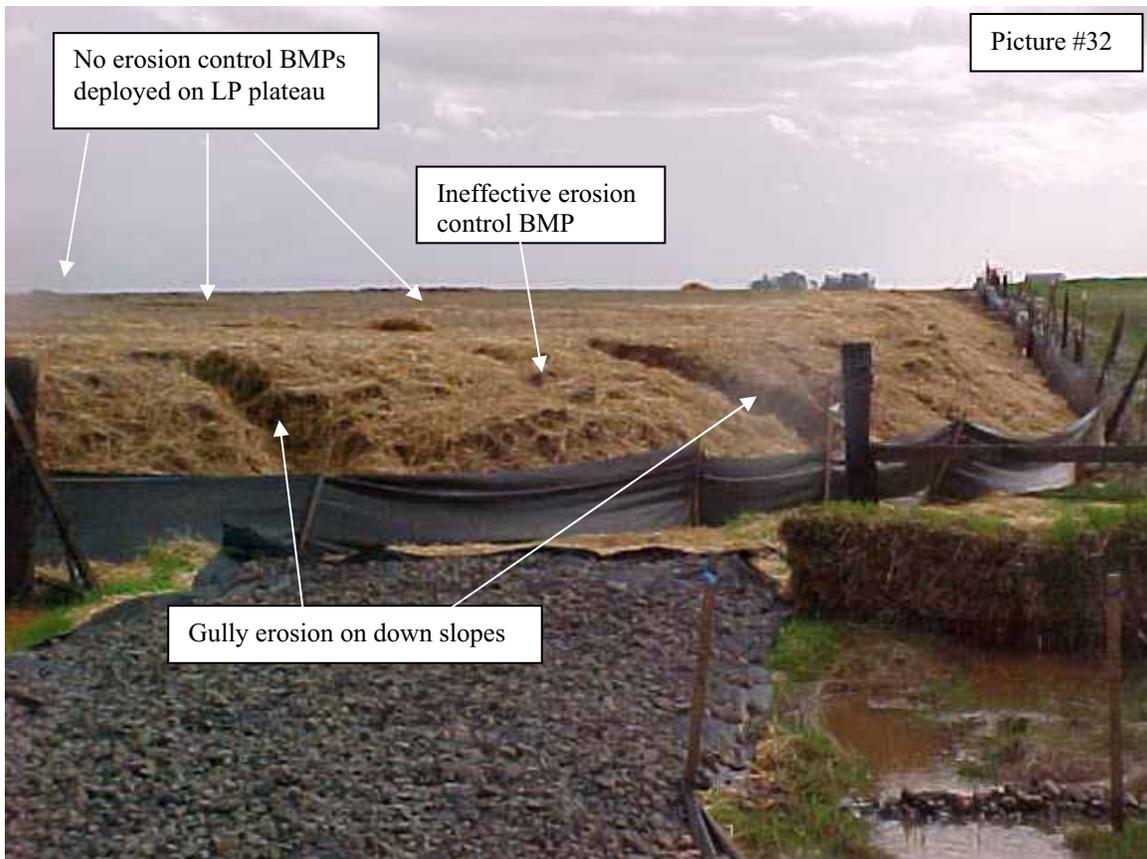
Sediment laden storm water accumulating in grassy wetland on west side of NEXRAD Radar access road south of LP

Picture #24





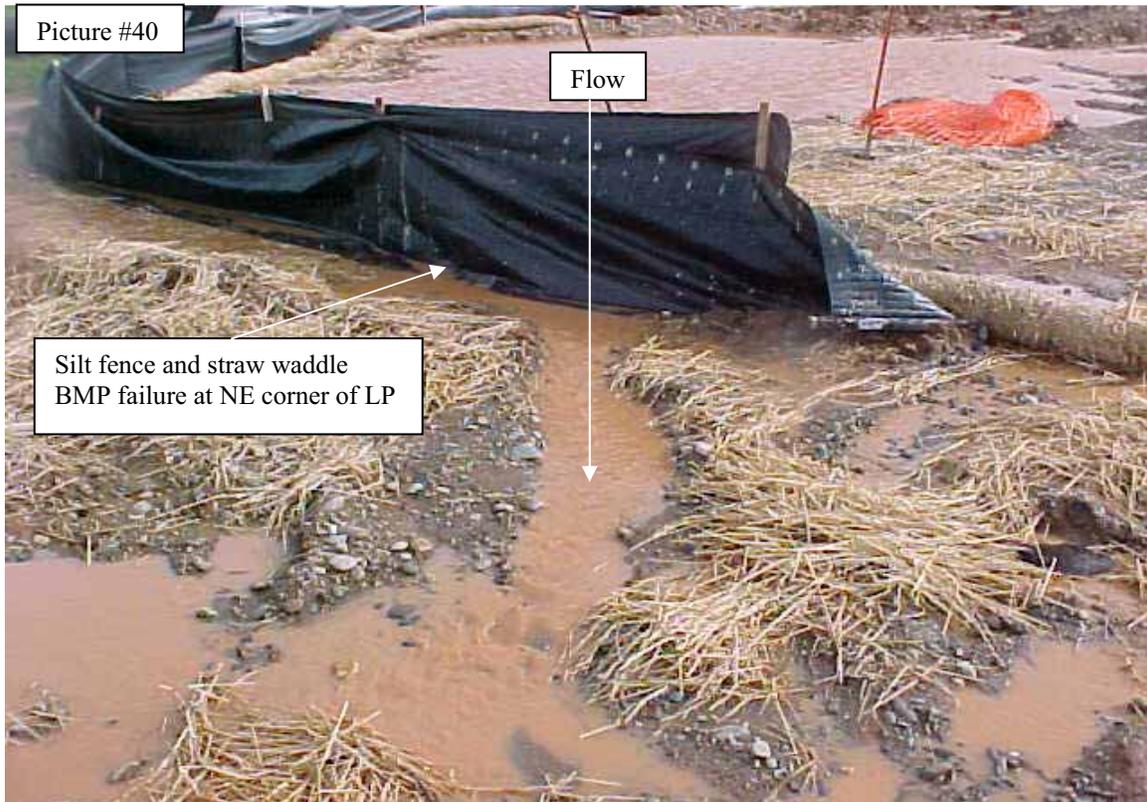
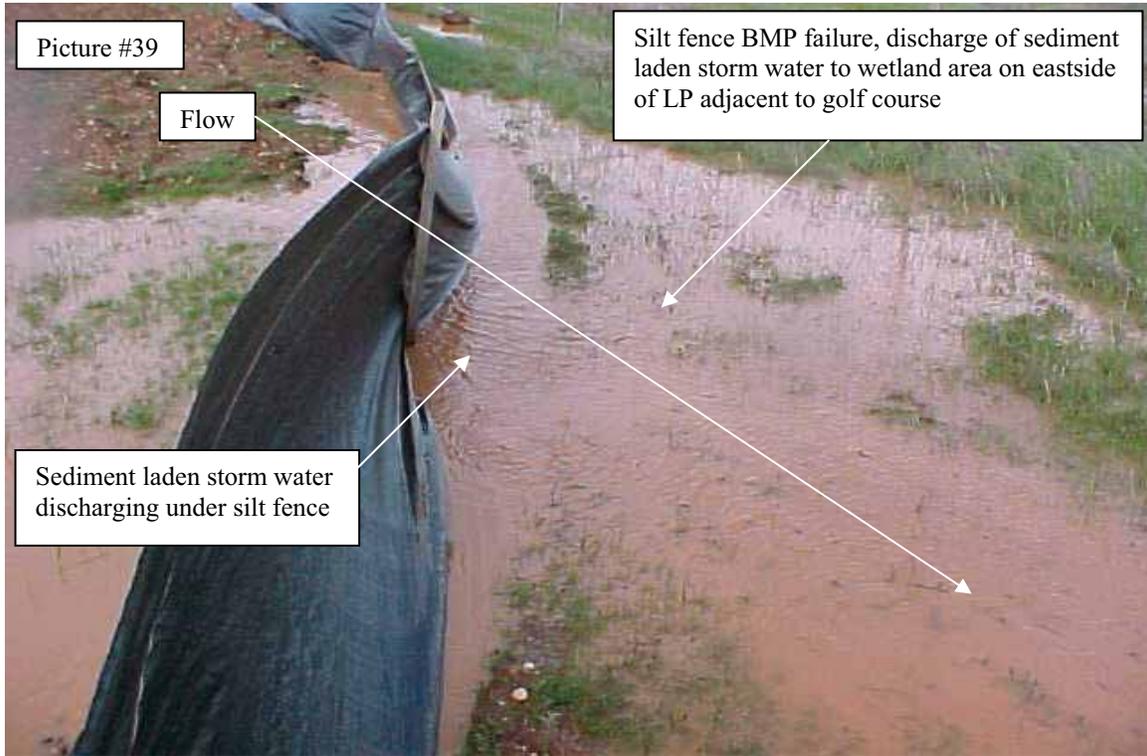


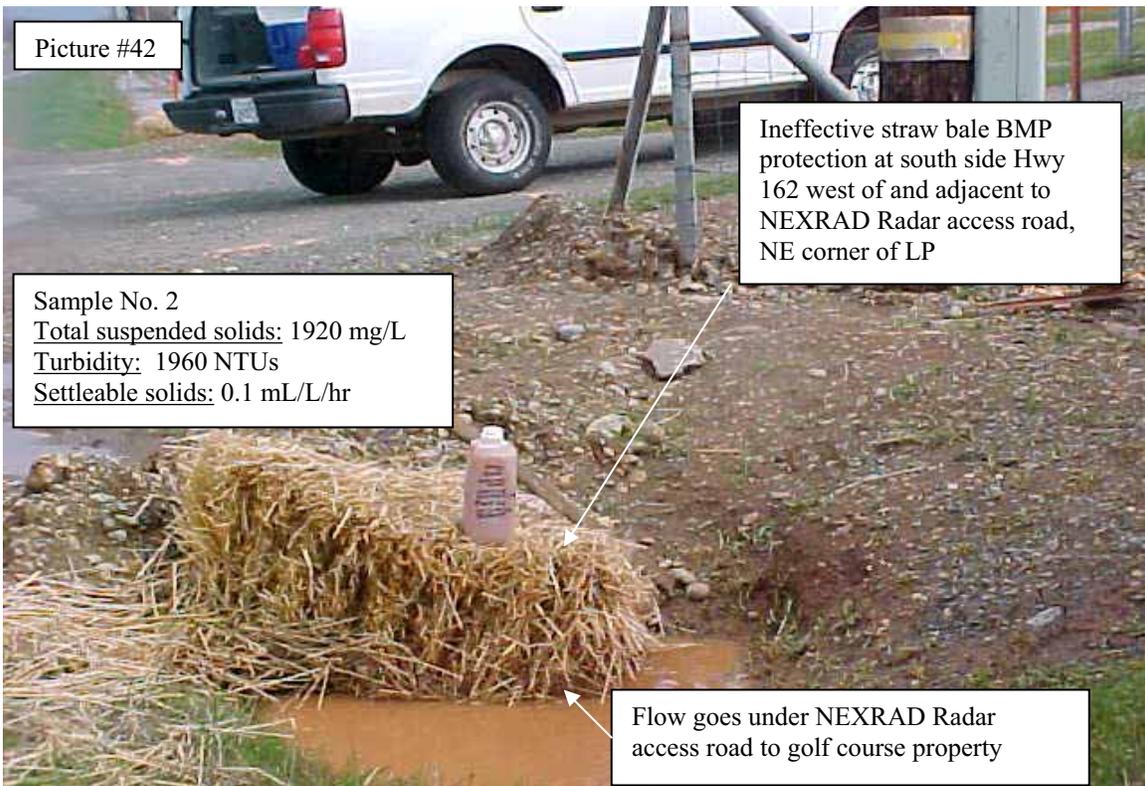


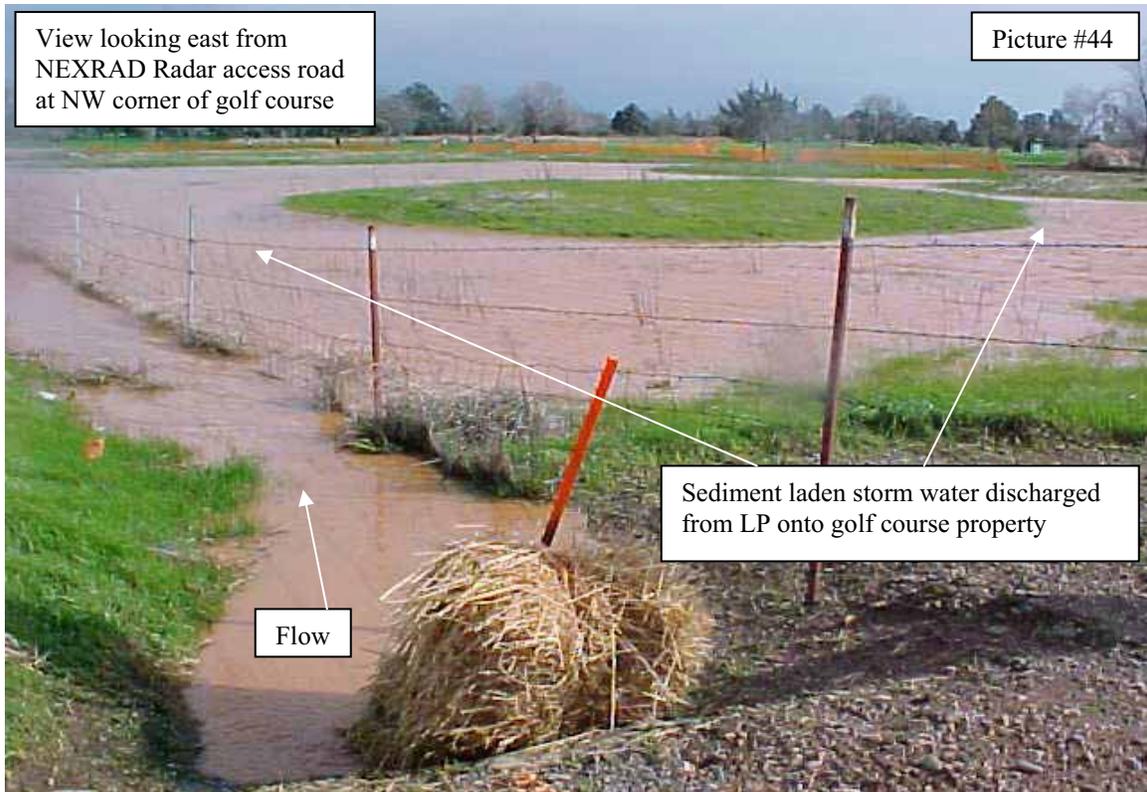


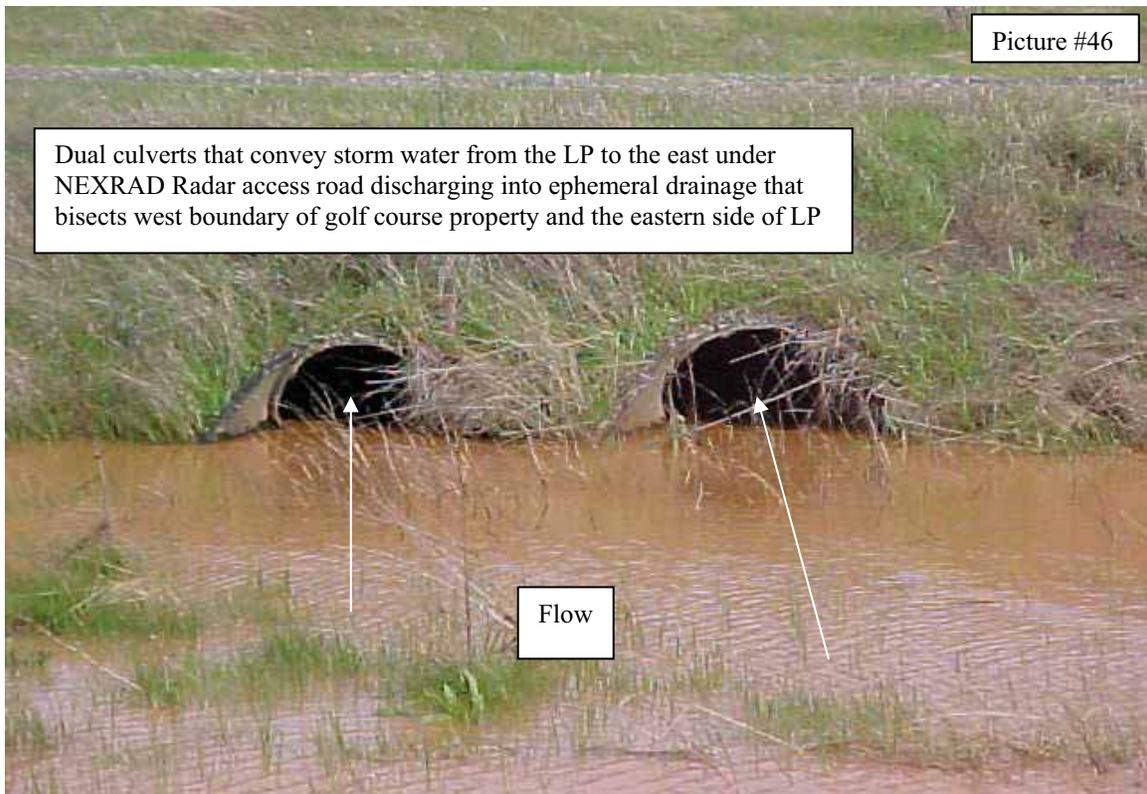
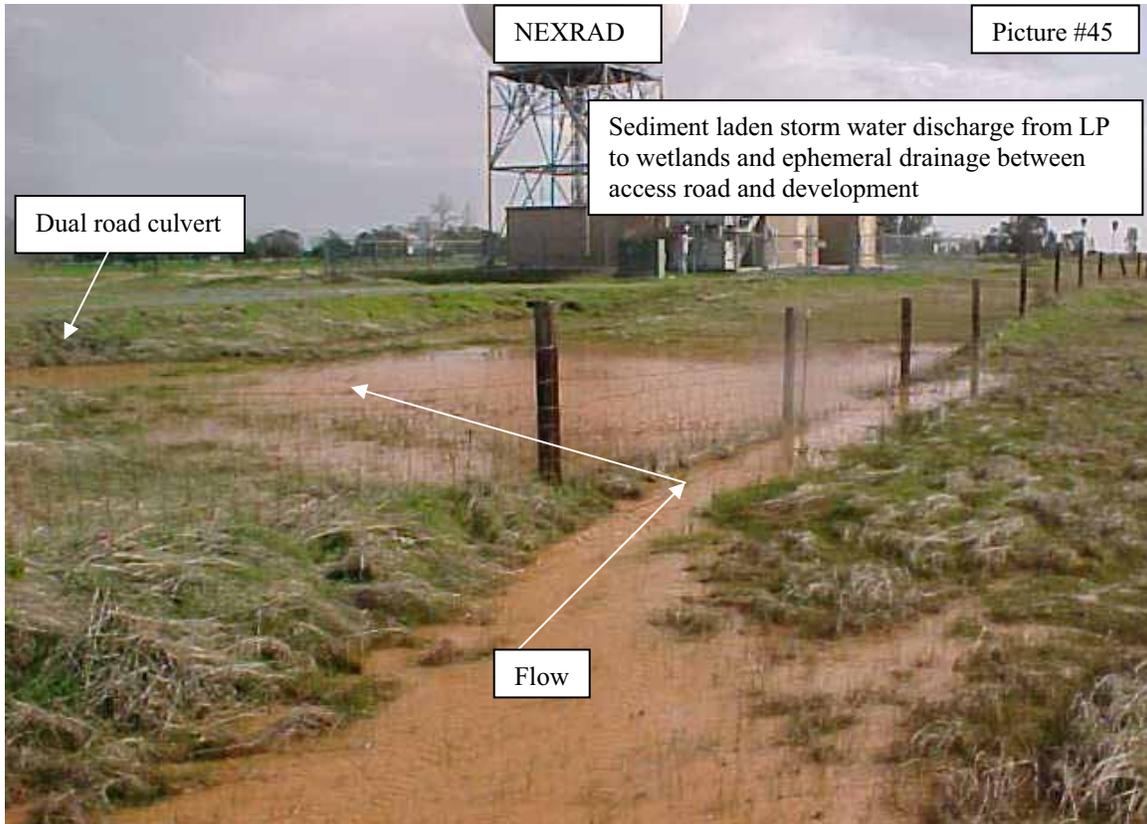








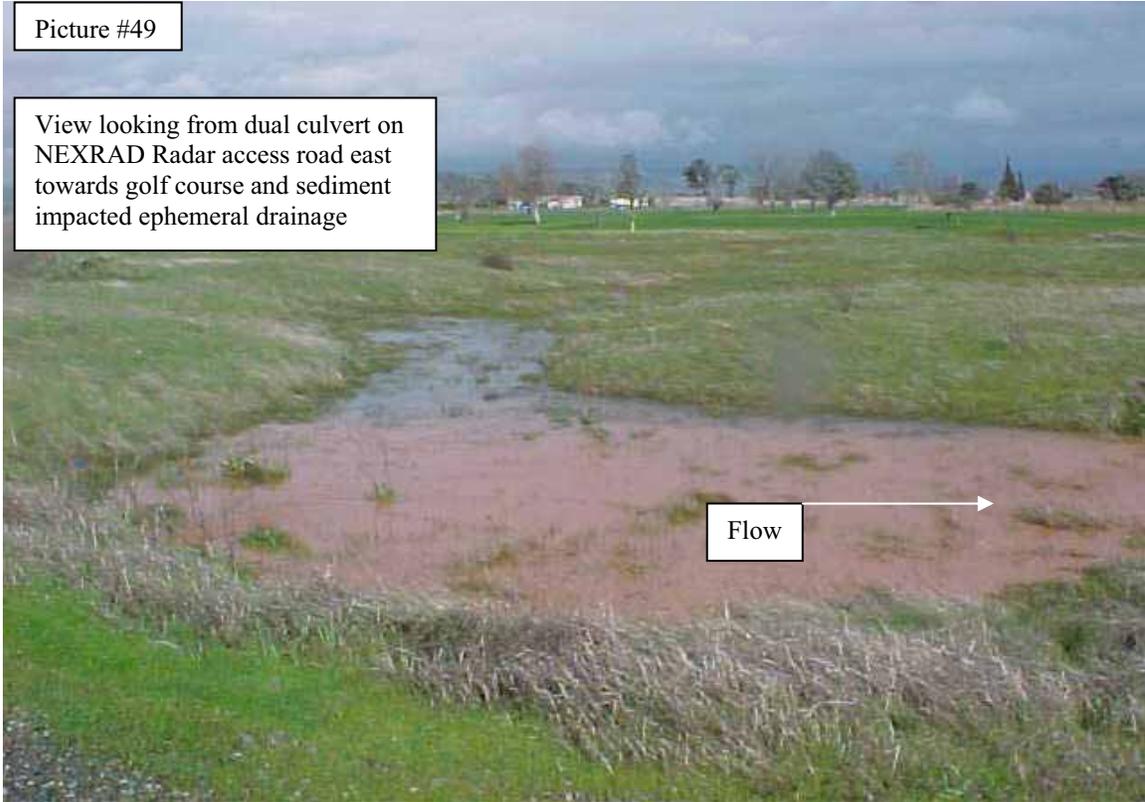






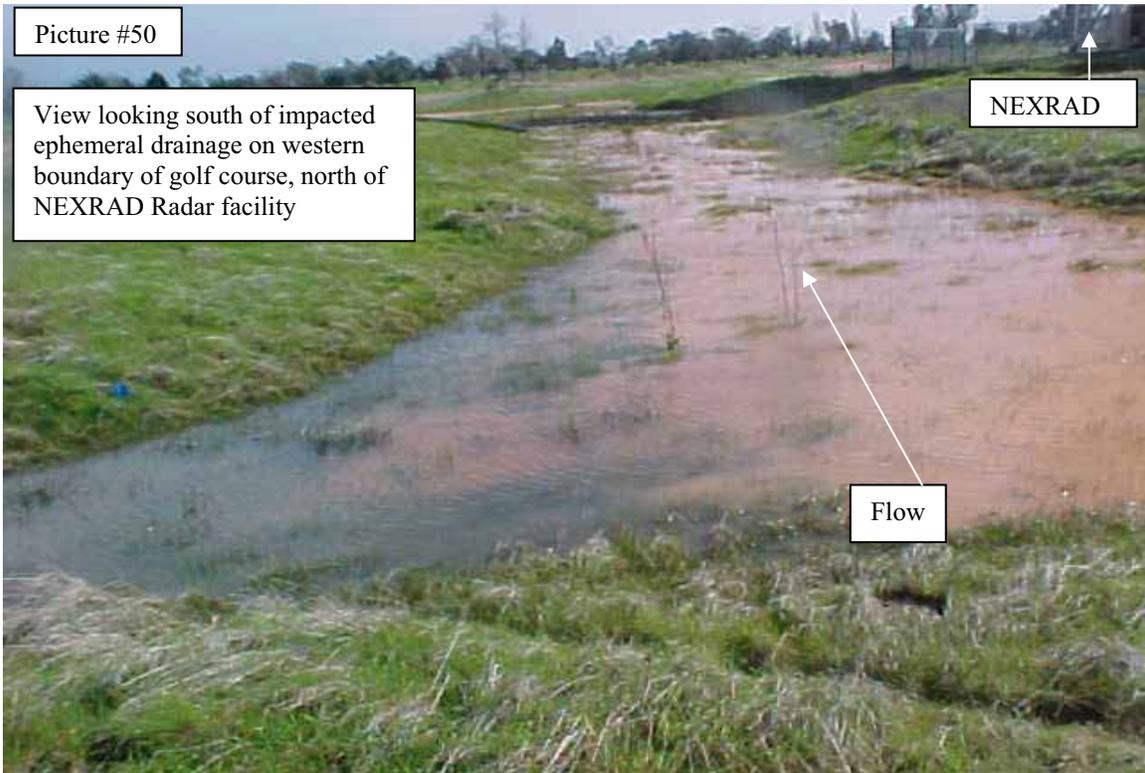
Picture #49

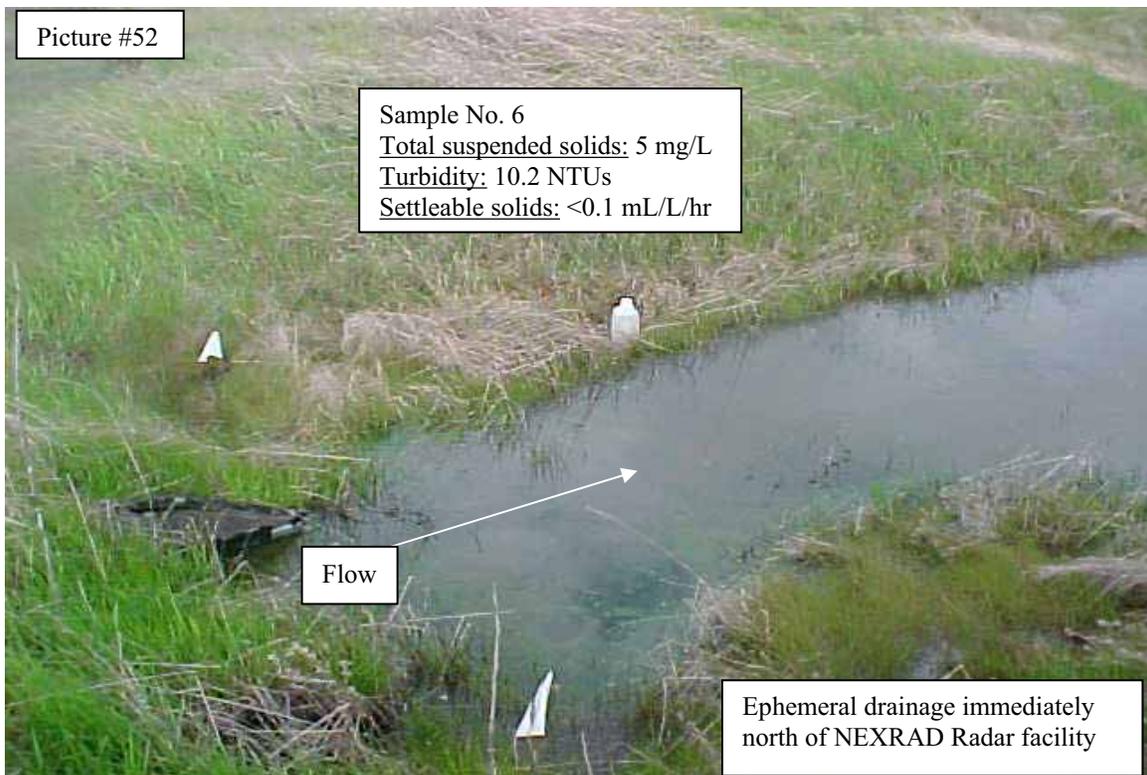
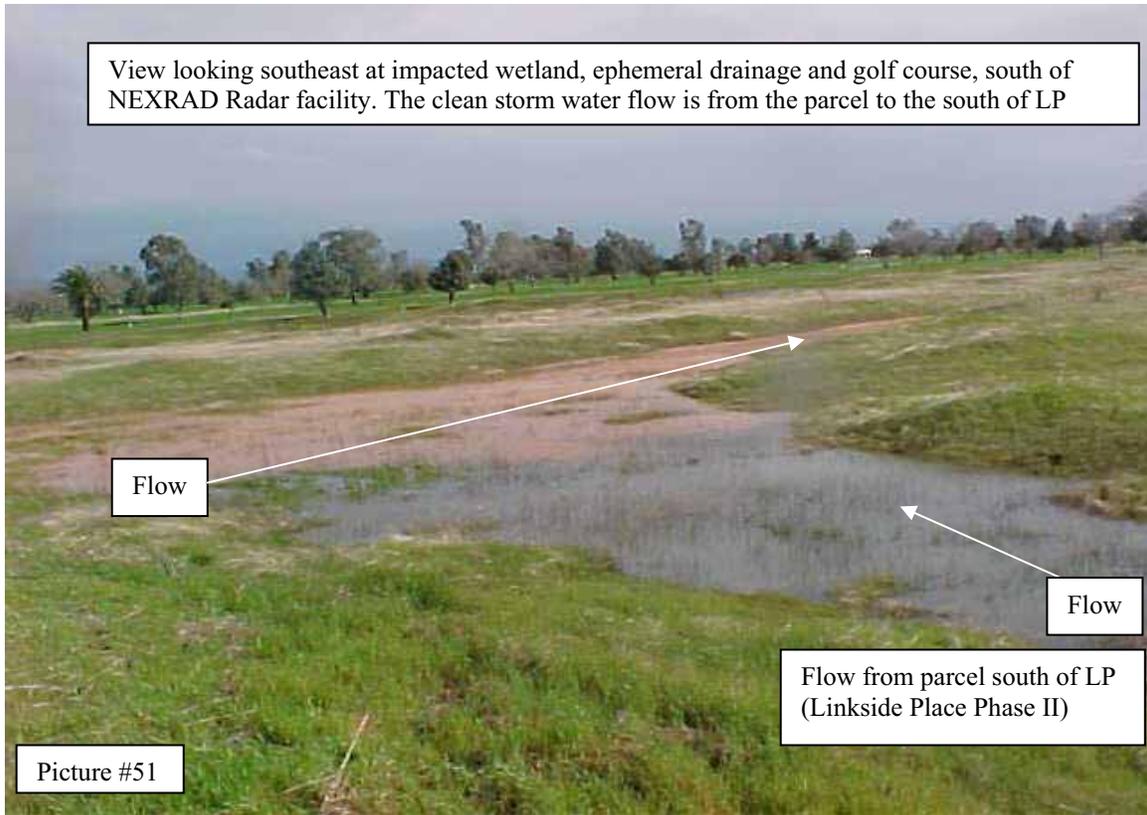
View looking from dual culvert on
NEXRAD Radar access road east
towards golf course and sediment
impacted ephemeral drainage



Picture #50

View looking south of impacted
ephemeral drainage on western
boundary of golf course, north of
NEXRAD Radar facility

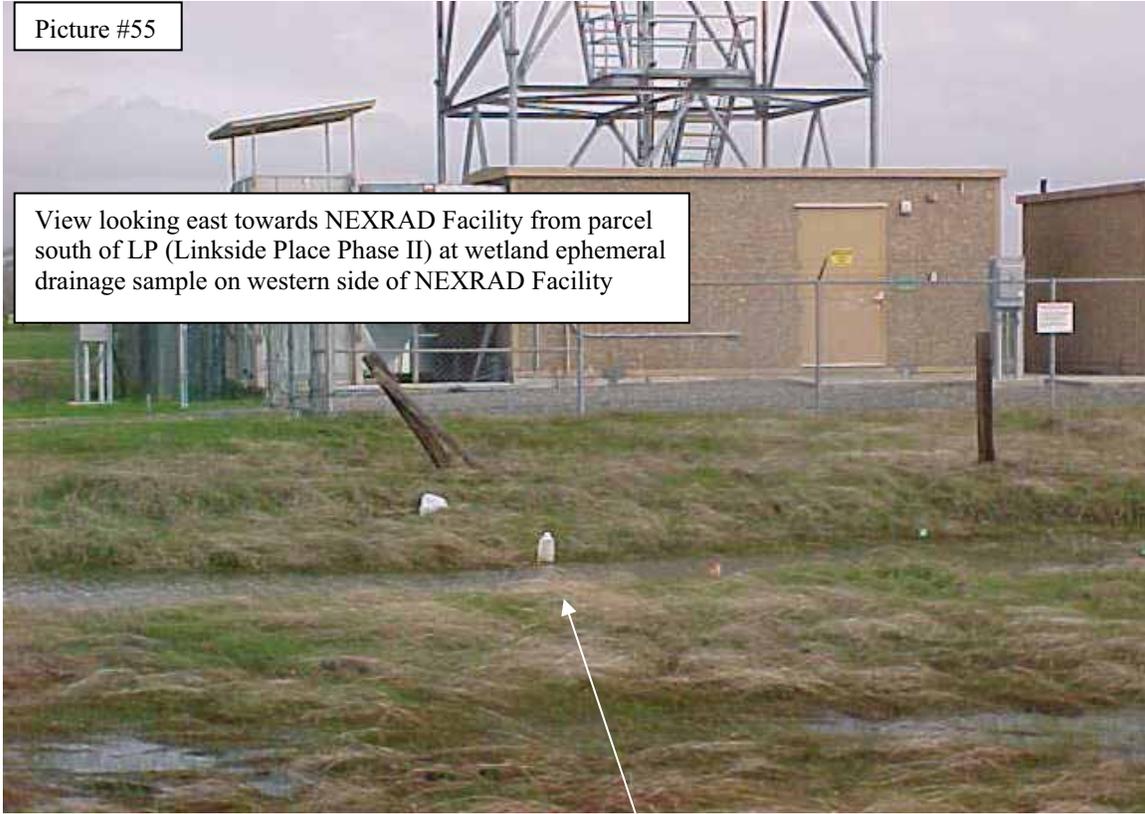






Picture #55

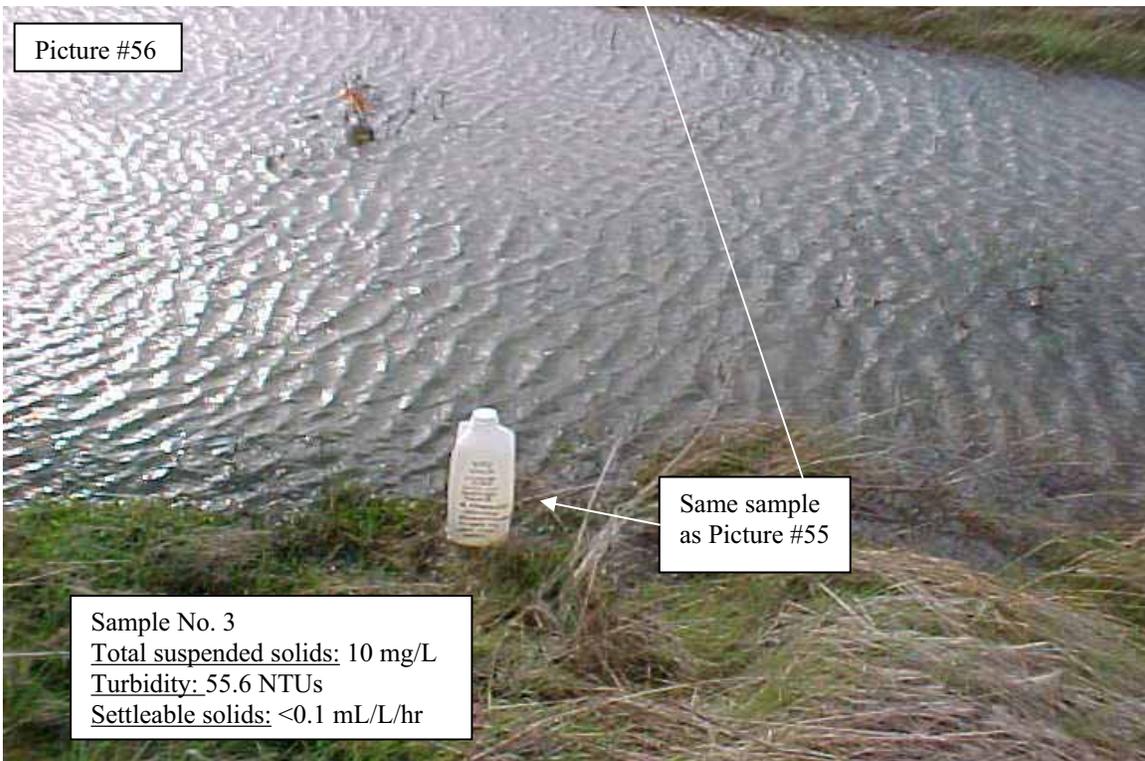
View looking east towards NEXRAD Facility from parcel south of LP (Linkside Place Phase II) at wetland ephemeral drainage sample on western side of NEXRAD Facility

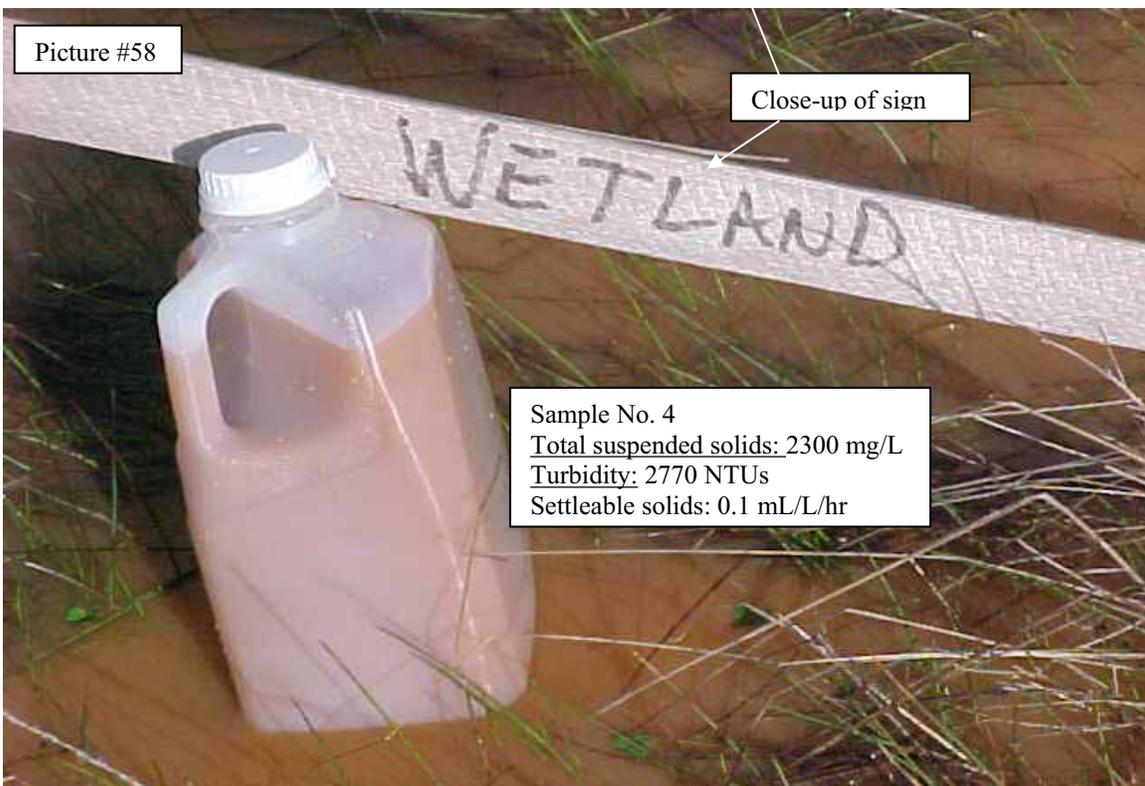
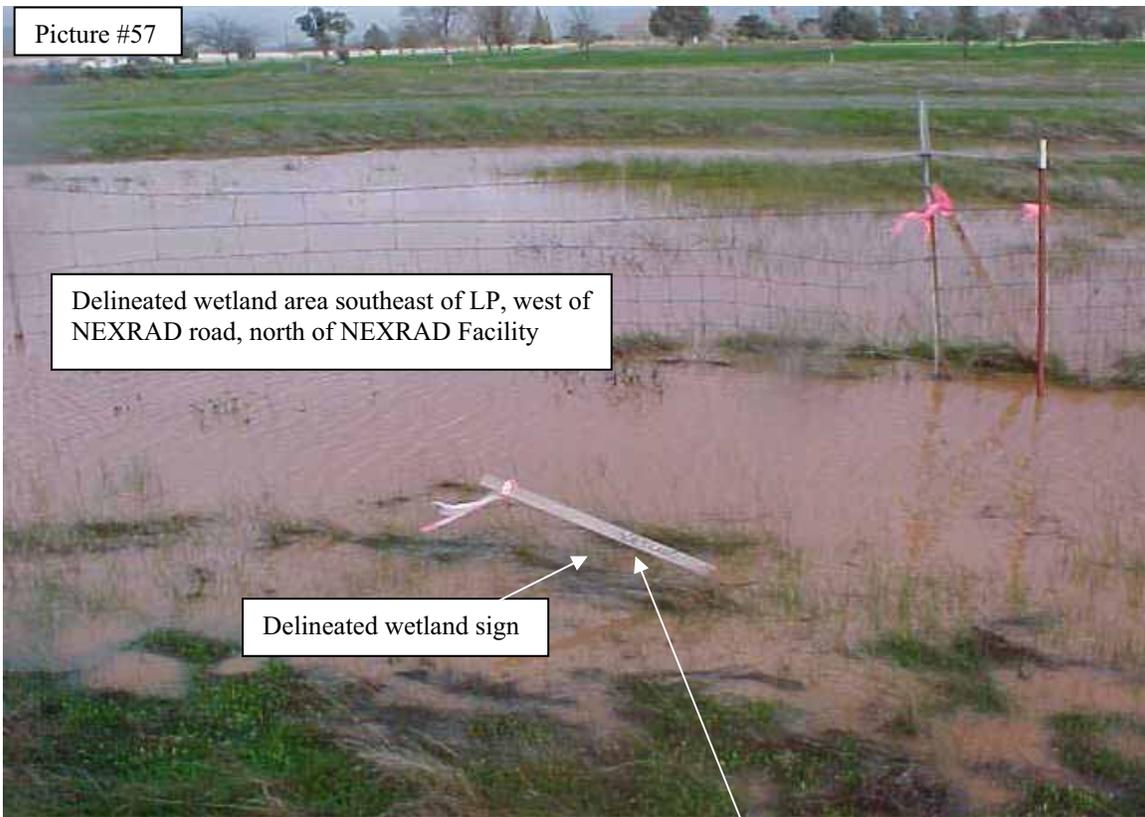


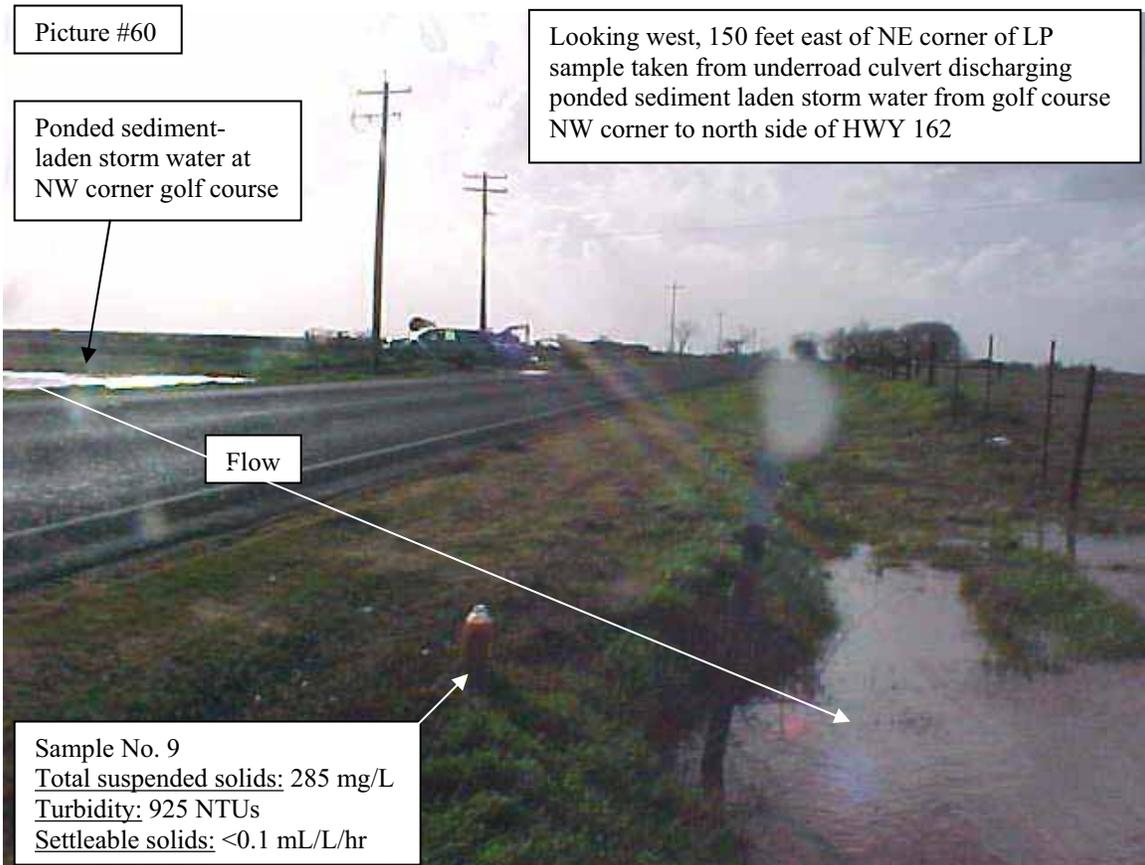
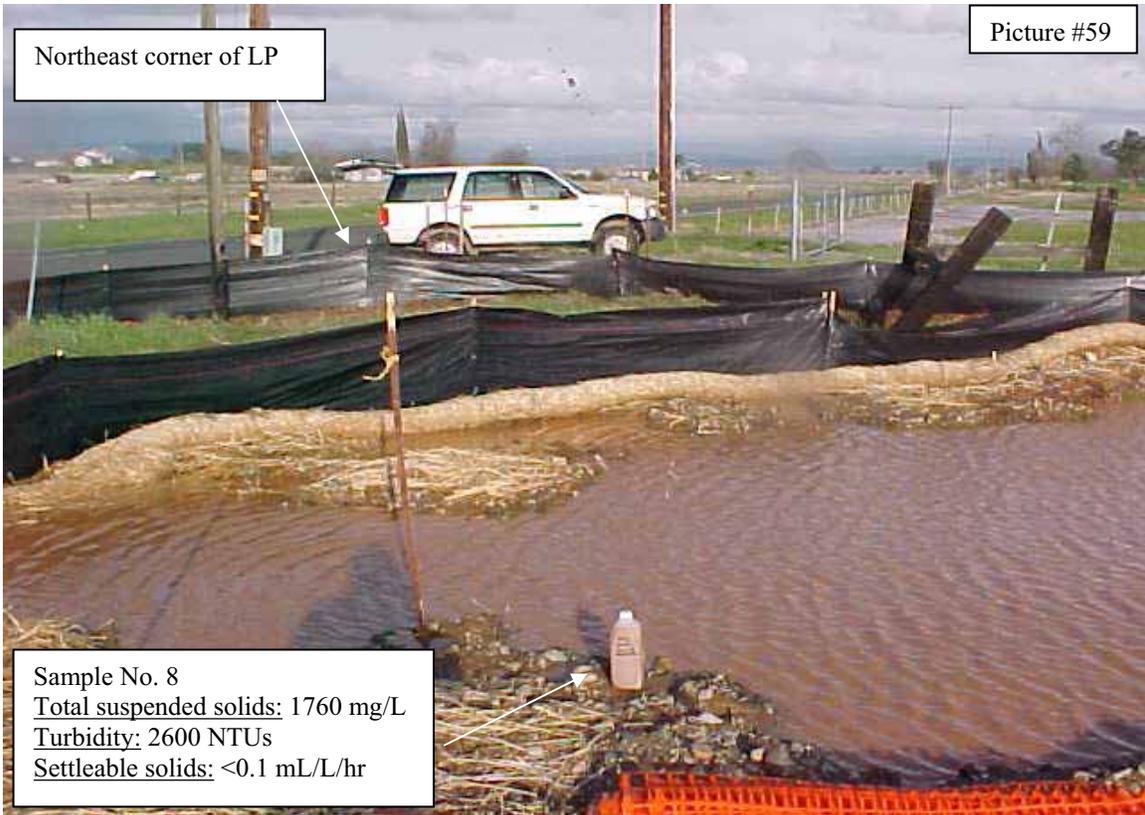
Picture #56

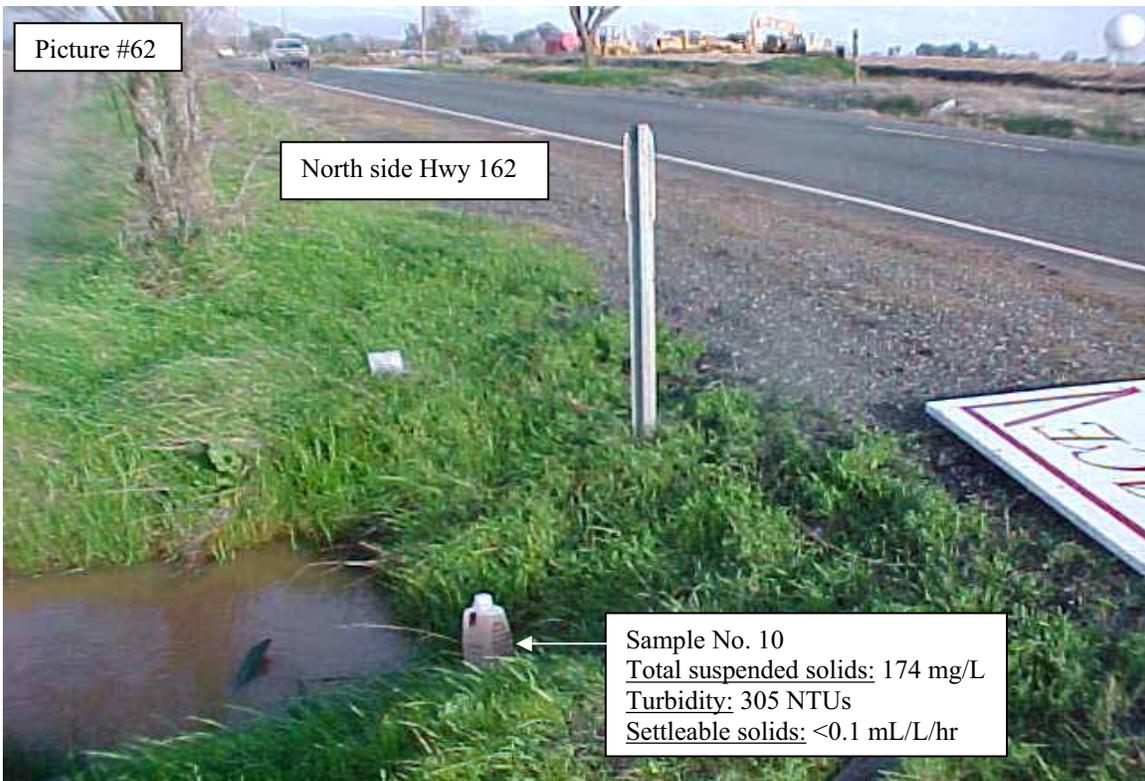
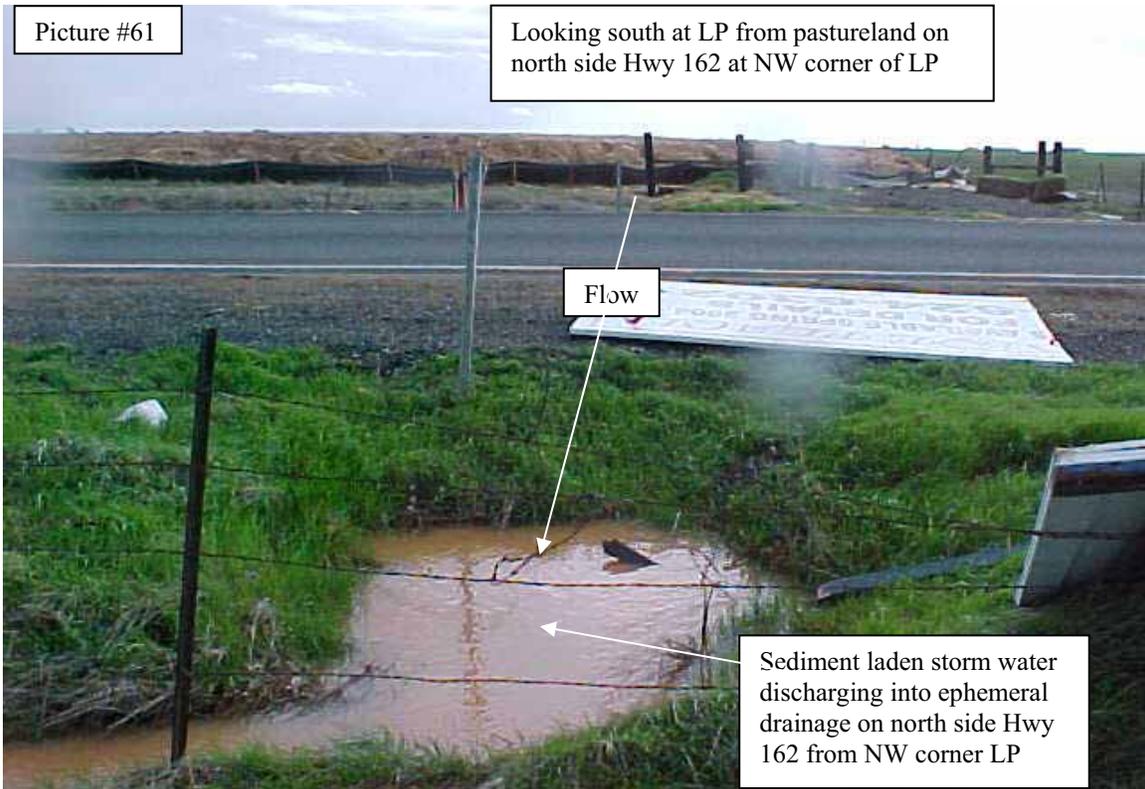
Same sample as Picture #55

Sample No. 3
Total suspended solids: 10 mg/L
Turbidity: 55.6 NTUs
Settleable solids: <0.1 mL/L/hr

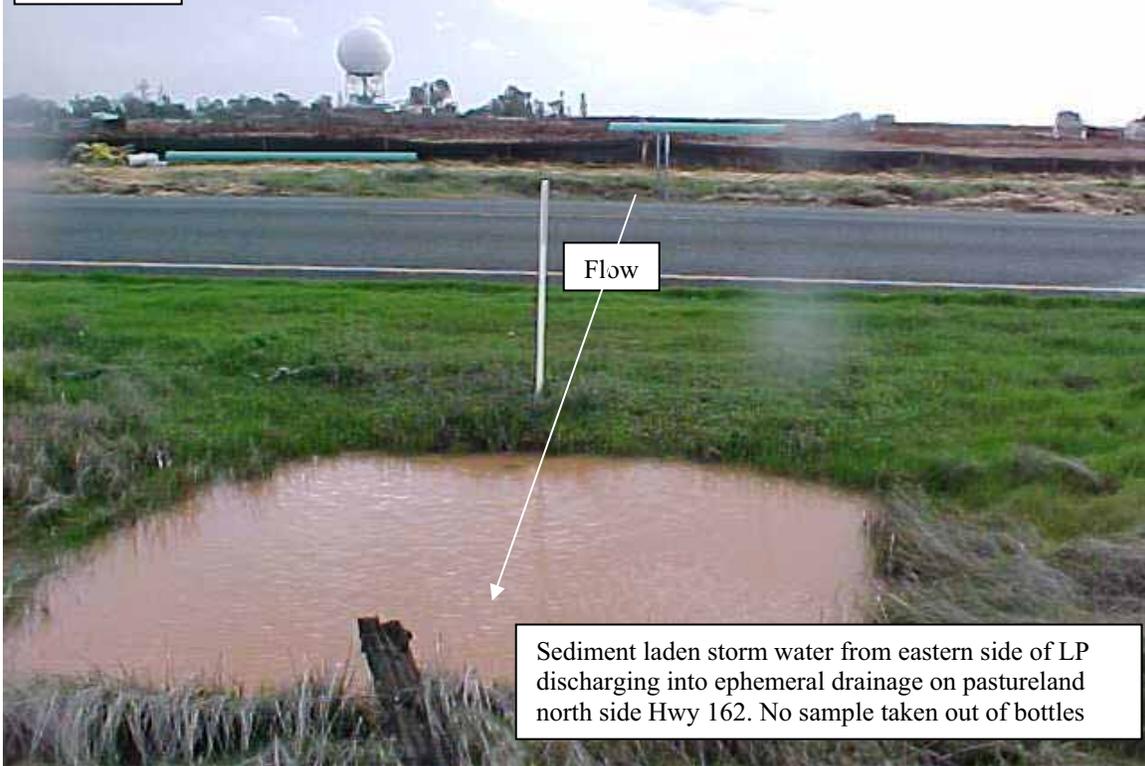








Picture #63



Picture #64

Sediment laden storm water bubbling up in wetland area between westside of NEXRAD Radar access road and eastern boundary of LP. This was also documented in Picture #23 from 18 February 2004 inspection report.



ATTACHMENT 2



California Regional Water Quality Control Board Central Valley Region



Arnold Schwarzenegger
Governor

Alan C. Lloyd, Ph.D.
Agency Secretary

Robert Schneider, Board Chair
11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114
(916) 464-3291
<http://w.waterboards.ca.gov/centralvalley>

March 17, 2006

CERTIFIED MAIL AND VIA EMAIL

Tehama Market Associates
c/o Mr. Tim O'Laughlin
O'Laughlin and Paris, LLP
2580 Sierra Sunrise Terrace, Suite 210
Chico, CA 95928

Mr. Jim Pedri [**via email only**]
Assistant Executive Officer
Central Valley Regional Water Quality
Control Board, Redding Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002

Dear Mr. O'Laughlin & Mr. Pedri:

TEMAMA MARKET ASSOCIATES, LLC LINKSIDE PLACE SUBDIVISION, BUTTE COUNTY, CONSIDERATION OF ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDER; REQUEST FOR BRIEFS

As you know, the above-referenced matter was recently removed from the Central Valley Regional Water Quality Control Board's (Central Valley Water Board or Board) March 16, 2006 meeting agenda.

The purpose of removing the item was to request briefs from the parties on the following issue prior to the Central Valley Water Board's consideration of the matter at an adjudicative proceeding:

Does the proposed ACL Order appropriately allege that Tehama Market Associates (Tehama) violated the terms of the General Storm Water Construction permit No 99-08-DWQ (General Permit), given that the Order states that Tehama did not file an NOI and was not covered by the terms of the General Permit during the time period when the alleged violations occurred?

The issue arose due to confusion as to whether Tehama was covered by the General Permit, or was otherwise subject to the terms of the General Permit. The proposed ACL Order for Tehama provides that, "Although the Discharger (Tehama) owned the Linkside Place Phase I at the time of the alleged violations on 18 February 2004 and 25 February 2004, the Discharger failed to file a Notice of Intent for coverage under the General Permit." However, comments submitted on March 8, 2006 by Mr. Tim O'Laughlin, on

California Environmental Protection Agency



Mr. Tim O'Laughlin, et al.

March 17, 2006

behalf of Tehama, provide on Page 2 that, "TMA (Tehama) obtained a General Permit on October 23,2003. (ACL, p. 13.)"

On March 10, 2006, Mr. David Boyers, counsel for the Central Valley Water Board, sent an email to the designated parties requesting clarification on this issue. On March 13, Mr. George Day of the prosecution staff provided the following response to Mr. Boyers:

"Yes, Tehama Market associates did not obtain coverage under the general permit. Bert Garland acting for William Isaac applied for coverage under the General Permit as Linkside Place LLC. They sold the property to Tehama Market Associates. They (Bert Garland et al) did not terminate or submit a change-of-information (COI). Tehama Market Associates sold the property back to Linkside Place LLC. No COI or termination. Bert Garland was the representative for all transactions and all parties."

Mr. Jim Pedri of the prosecution staff provided an additional response to Mr. Boyers on March 13,2006:

"Mr. O'Laughlin's statement is in error. I believe he, at times, considers Linkside Place, LLC and Tehama Market Associates, LLC the same entity (he has stated to me that the Isaac/Linkside/Tehama Market ownership changes were for tax purposes). The agents for service for both LLC's are the same. The record clearly shows that William Isaac was named as owner on the 2003 CSW permit."

Tehama did not provide a response prior to the item being removed from the Board's agenda, and has still not responded to Mr. Boyers' request.

The issue has not yet been resolved. Therefore, I am requesting that the parties submit briefs addressing the issue described above by **5 pm, April 3,2006** to:

David Boyers, Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812

Once briefs have been submitted, the Central Valley Water Board will reschedule the matter for hearing. Parties will receive notice of the specific time, date and location of the hearing no less than 20 days in advance of the meeting. In addition, a new Notice of

Public Hearing will be sent out in advance of the hearing, providing a new deadline for submission of comments and evidence.

I will also take this opportunity to respond to Mr. O'Laughlin's letter dated March 16, 2006 objecting to the Board's removal of this matter from its March 16, 2006 meeting agenda. Mr. O'Laughlin asserts that Mr. Boyers and the Central Valley Water Board inappropriately advised the prosecution staff that its ACL complaint was insufficient, when Tehama would have raised lack of jurisdiction as a defense at the hearing. Mr. O'Laughlin contends Tehama has been denied a fair and impartial hearing, and requests that Mr. Boyers and the Central Valley Water Board, in its entirety, be recused from this matter.

First, given Mr. O'Laughlin's comments on March 8, 2006 stating that, "TMA (Tehama) obtained a General Permit on October 23, 2003. (ACL, p. 13.)," and his failure to respond to Mr. Boyer's March 10, 2006 email request for clarification on this issue, it appears disingenuous for him to now assert that the Board's continuation of the matter has prevented him from asserting lack of jurisdiction as a defense and has denied Tehama a fair and impartial trial.

Contrary to Mr. O'Laughlin's assertions, the Board has taken measures to assure that Tehama receives a fair and impartial hearing before the Central Valley Water Board. Because the proceedings involve a controversial enforcement action, the Central Valley Water Board separated the functions of staff members presenting evidence for consideration by the Board from those of staff members providing advice to the presiding officer (in this case the Regional Board Chair) and other Central Valley Water Board members prior to scheduling the hearing.

The following staff comprises the "Prosecution Team" and has the responsibility for presenting evidence to the Central Valley Water Board in a prosecutorial manner: Ken Landau and Jim Pedri, Assistant Executive Officers, George Day, Senior Engineer, and Scott Zaitz, Environmental Scientist. Ms. Frances McChesney, Senior Staff Counsel, had been providing legal support to the prosecution staff, but had not appeared in this matter before the Regional Board. Due to a timely objection by Mr. O'Laughlin regarding Ms. McChesney's involvement as an advisor to the Regional Board in unrelated proceedings, Tom Vandenberg, Staff Counsel, was appointed to provide legal support to the prosecution team at the March 16 hearing. Tom Vandenberg has not acted as an advisor to the Central Valley Water Board Members on any matter, past or present. Either Mr. Vandenberg or another attorney who has not acted as an advisor to the Regional Board will provide legal support for the prosecution team at the rescheduled hearing.

The other team, the "Advisory Team", is assisting me with procedural matters and will provide advice to myself and other Board members in their deliberations on the evidence

Mr. Tim O'Laughlin, et al.

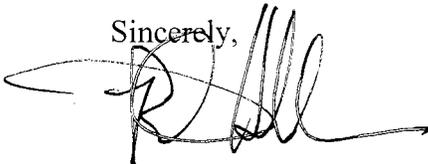
March 17, 2006

presented in the proceedings. The following staff comprises the Advisory Team: Pamela Creedon, Executive Officer and Bill Marshall, Senior Engineer. Mr. Boyers is providing legal support to the Advisory Team. He is being supervised in this function by Phil Wyels, Assistant Chief Counsel. Mr. Wyels is not the supervisor for the prosecution team attorney(s) for this matter.

Consistent with this separation of functions, members of the Prosecution Team have been and will continue to be treated like any other party before the Central Valley Water Board, and should not have any contact with Board members or members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. An "*ex parte* contact" is any written or verbal communication, pertaining to the proposed ACL Order against Tehama, between a member of the Prosecution Team and a Board Member or a staff member of the Advisory Team, unless the communication is copied to all other parties to the proceedings (if written) or made at a proceeding open to all other parties (if verbal). Communications regarding non-controversial procedural matters are not "*ex parte* contacts" and are not restricted.

The communications described above between Mr. Boyers and the Prosecution Team were not inappropriate *ex parte* communications, and do not constitute improper "advice" to the Prosecution Team regarding the merits of the ACL Complaint or the proposed ACL Order. Mr. Boyers will continue to advise the Board as part of the Advisory Team and the Central Valley Water Board will not recuse itself from the hearing on this matter.

Sincerely,



Robert Schneider
Board Chair

cc: Ms. Pamela Creedon [via **email** only]
Executive Officer
Central Valley Regional Water Quality
Control Board
10020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Tom Vandenberg, Esq. [via **email** only]
Office of Chief Counsel
State Water Resources Control Board
10011 Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

California Environmental Protection Agency

ATTACHMENT 3

THERMALITO IRRIGATION DISTRICT

A Public Agency



410 Grand Avenue
Oroville, California 95965
(530) 533-0740
FAX (530) 533-9243

DIRECTORS

Kenneth E. Medford
Division 1

Robert H. Hartshorn
Division 2

Edgar C. Thompson
Division 3

Stanley J. Huston
Division 4

Ernest L. Reynolds
Division 5

David E. Bird
Manager/Secretary

John Jeffrey Carter
Legal Counsel

April 2, 2004

California Regional Water Quality Control Board
Attn: Mr. Scott Zaitz
415 Knoll Crest Drive, Suite 100
Redding, CA 96002

Re: Discharges into Thermalito Power House Tail Channel between Wilber Road,
and Thermalito Power House.

Dear Scott:

After our last conversation regarding the above referenced subject, I walked the Winding Creek in question from the 36 box culvert Item 1, Photo No. 1, to a point due North of the Table Mountain Golf Course, as shown by the red line in Photo No. 2. For lack of a better name, I will call the Winding Creek "Snake Creek", which appears to be the main drainage conduit for approximately 1500 - 2000 acres of mostly unimproved pasture land, both North and South of State Hwy 162. Items 2 thru 7 on Photo No. 1 are various diameter culverts discharging into the Tail Channel and essentially serve localized areas (depression, swale and the like) with the exception of Culvert No. 4 which seems to drain a larger North of the channel area.

Without being certain of what your exact concerns are, I will give you my observations of possible pollutant discharges, related to this area of drainage. Snake Creek winds its way through the lowest part of this terrain. The predominate surface soil make up, is a deep red clay, which has been scoured away along the majority of the creeks banks during periods of high flow. In addition, fresh areas of soil erosion was evident throughout the creeks length. This in itself would introduce very high turbidity waters into Thermalito After Bay via the Power House Tail Channel.

California Regional Water Quality Control Board

Attn: Mr. Scott Zaitz

Page 2

I also noticed excavations and spoil piles of red clay at two (2) residence's which approximate locations are shown as 1 and 2 on Photo No. 2. It is reasonable to surmise that run off fi-om these excavations communicate with Snake Creek. In addition, the entire Snake Creek drainage basin is infested with gophers, generating countless small dirt piles, which to some unknown degree affect water quality, during periods of high runoff.

There is a new Sub-Division (Link Side) being developed on the South Side of Hwy 162 adjacent to the Table Mountain Golf Course's western boundary. I counted four (4) Cal-Trans roadway drainage culverts that pass runoff water from south to north under Hwy 162 along the new Sub-Divisions length. There appears to have been a small amount of red water pass through one of these culverts, I can find little evidence of the waters course beyond the Cal-Trans right-of-way. West, between the Link Side Sub-Division and Wilber Road are several culverts discharging run off storm water from south to north under Hwy 162. These seem to be functioning as designed, and reveal small amounts of soil erosion, generally on ground stirred up by grazing cattle. There is no discernable evidence of petroleum, or foreign object decay pollution that I could find. All in all, the area discussed seems to be in good condition.

I hope this information helps.

Best regards,

A handwritten signature in black ink that reads "David E. Bird". The signature is written in a cursive style with a large, looping initial "D".

David E. Bird
General Manager

DEB:cmp

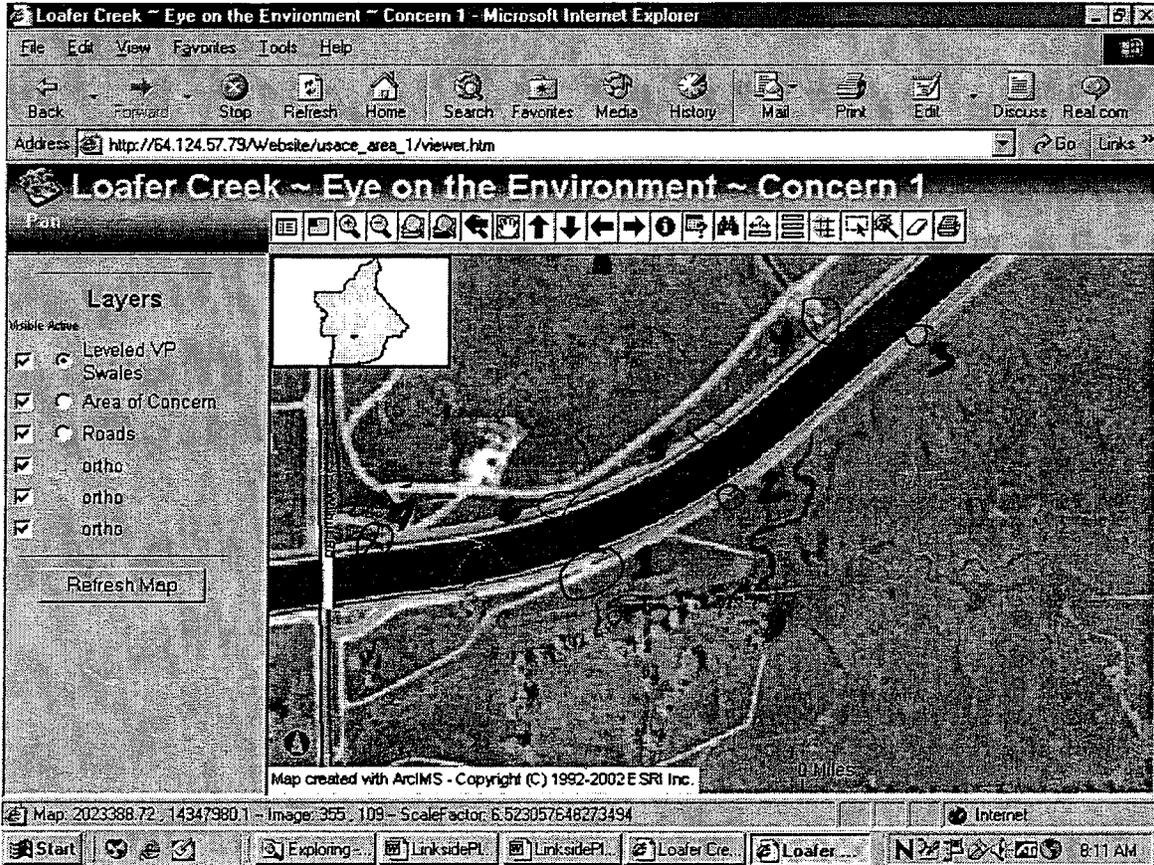


Photo # 1

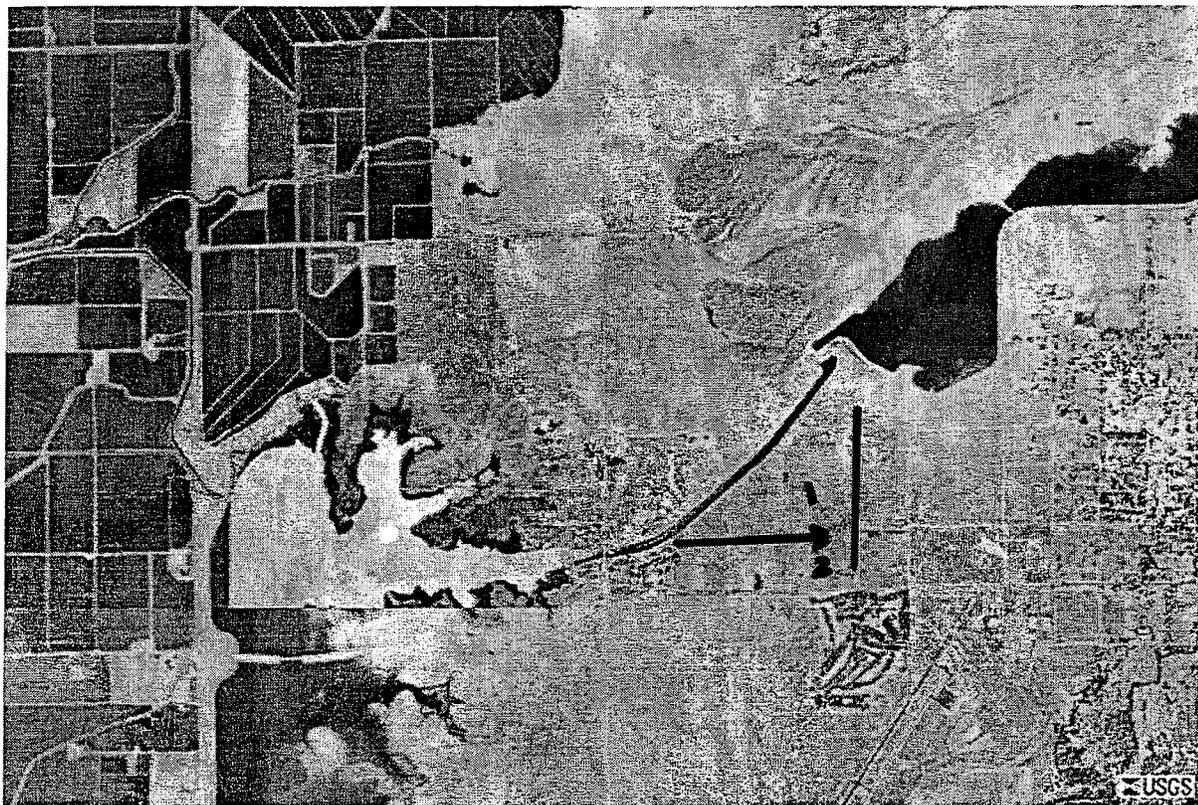


PHOTO # 2

ATTACHMENT 4

STAFF REPORT

ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
TEHAMA MARKET ASSOCIATES, LLC.
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY

SUMMARY

Construction began on the 18.6 acre Linkside Place Subdivision near Oroville in Fall 2003. In response to a citizen complaint, inspections found that inadequate storm water controls allowed turbid water and sediment to be discharged to wetlands and ephemeral drainages during Winter 2003-2004, in violation of the NPDES Permit for Storm Water Discharges Associated with Construction Activities (General Permit). In November 2004 a \$100,000 Administrative Civil Liability Complaint was issued for these violations. Protracted settlement discussions delayed scheduling of a hearing until June 2005. Concerns arose regarding the parties responsible for the site at the time the violations occurred, and the Executive Officer reissued the Complaint in July 2005 to different parties. Following reissuance of the Complaint, additional information on property ownership was found and detailed research into property transfers and the status of various corporations and limited partnerships was conducted. The current Complaint against Tehama Market Associates, LLC, was issued in January 2006.

CASE BACKGROUND

On 14 October 2003 Albert G. Garland signed a Notice of Intent (NOI) for coverage under the General Permit for the construction of 65 residential housing lots on an 18.6-acre site near Oroville, Butte County. Mr. Garland was acting as an agent for Mr. William Isaac who is listed on the NOI as the property owner of Linkside Place Subdivision (Hereafter Linkside Place). Mr. Garland signed the NOI and listed Project owner and manager underneath his signature on the NOI. On 23 October 2003 the State Water Resources Control Board (State Water Board) issued a NPDES general construction storm water permit (Identification Number WDID #5R04C324269). On 5 December 2003 the Central Valley Regional Water Quality Control Board (Water Board), Redding Office received the Linkside Place Storm Water Pollution Prevention Plan (SWPPP). On 31 December 2003 Mr. William Isaac granted the property to Tehama Market Associates, LLC. William Isaac did not document this change by submitting a Change of Information (COI) or Notice of Termination (NOT) form, as required by the General Permit. Tehama Market Associates, LLC did not submit an NOI to obtain coverage under the General Permit.

In late Fall 2003, the site was cleared of vegetation and extensive grading and earthwork activities were conducted throughout the site. Water Board Redding Office staff obtained an aerial photograph of Linkside Place taken on 21 November 2003 (see Figure 3). The aerial photograph shows that no erosion control Best Management Practices (BMPs) were deployed on the site and only a silt fence was deployed around the perimeter. During the winter of 2003-2004 construction activities started and two shallow cul-de-sacs were constructed on the eastern side (Logan and Zachary Courts) to provide storm water detention or treatment. These shallow cul-de-sacs were greatly undersized and therefore inadequate to prevent the discharge of highly turbid water and sediment into nearby wetlands and ephemeral drainages.

The Water Board received a citizen complaint regarding the discharge of sediment laden storm water from Linkside Place. Water Board staff conducted inspections on 18 and 25 February 2004 and noted numerous violations of the General Storm Water Permit. On 7 April 2004 Central Valley Water Board issued a Notice of Violation (NOV) to William Isaac and Linkside Place, LLC. On 23 November 2004 the Central Valley Water Board Executive Officer issued an Administrative Civil Liability Complaint (ACL complaint) No.R5-2004-0541 to Linkside Place LLC, in the amount of \$100,000 for violations of the General Storm Water Permit.

ISSUE

Did the discharger fail to implement adequate soil erosion control or sediment containment/treatment BMPs? Did this failure result in violation of the General Storm Water Permit issued for Linkside Place Subdivision? Should the Water Board adopt the ACL Order naming Tehama Market Associates, LLC in the amount of \$100,000? Or should the Water Board consider another penalty amount?

GENERAL STORMWATER PERMIT BACKGROUND

General Permit

On 16 November 1990, the State Water Board adopted a NPDES Permit for Storm Water Discharges Associated with Construction Activities (General Permit). The General Permit requires the owners of construction projects, which disturb greater than one acre to submit a NOI indicating that they will comply with the General Permit.

The General Permit requires the discharger to implement BAT/BCT to reduce or eliminate storm water pollution. The General Permit authorizes the discharge of storm water to surface waters from construction sites, but it prohibits the discharge of materials other than storm water. The effluent limitations contained in the General Permit are narrative and include the requirement to implement appropriate BMPs. The BMPs must primarily emphasize source controls such as erosion and sediment controls and pollution prevention methods. The General Permit states that erosion control is the most effective way to retain soil and sediment on the construction site and that the most efficient way to address erosion control is to preserve existing vegetation where feasible, to limit disturbance, and to stabilize and revegetate disturbed areas as soon as possible after grading or construction.

The General Permit requires the discharger to prepare a SWPPP. A SWPPP specifies the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. The SWPPP has two major objectives: 1) to help identify the sources of sediment and other pollutants that affect the quality of storm water discharges, and 2) to describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in storm water, as well as non-storm water discharges.

The owner of the property filed a NOI for coverage under the General Permit in October 2003. As discussed above William Isaac was listed as owner of the Linkside Place on the NOI, which was signed by Bert Garland as William Isaac's agent. An initial SWPPP was prepared by a consultant for the project and revised on several occasions. Through further research, it was determined that Tehama Market Associates, LLC was owner of Linkside Place during the period of documented violations. Tehama Market Associates, LLC did not file a NOI for coverage under the General Permit.

Water Quality Objectives

The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) presents water quality objectives for water quality constituents or characteristics to protect beneficial uses of water or prevent nuisance conditions.

The water quality objective for sediment is: *“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 water quality objective for suspended material is: *“Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”*

The water quality objective for turbidity includes both narrative and numeric objectives and states in part, *“Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:*

- *Where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU.*
- *Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.*
- *Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.*
- *Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent. ...”*

The implementation section of the Basin Plan contains a prohibition on the discharge of petroleum hydrocarbon which states: *“The Regional Board has prohibited the discharge of oil or any residuary product of petroleum to the waters of the State, except in accordance with waste discharge requirements or other provisions of Division 7, California Water Code.”*

Benchmarks

Total suspended solids (TSS) include all particles suspended in water that will not pass through a 2.0µm filter. As levels of TSS increase, a water body begins to lose its ability to support a diversity of aquatic life. Some possible sources for TSS can be sediment from erosion of exposed land, and dirt from impervious areas. Sediment by itself can be very toxic to aquatic life because it covers feeding and breeding grounds, and smothers organisms that may live on the bottom of a water body. Toxic chemicals and other pollutants also adhere to sediment particles. This provides a medium for toxic or other pollutants to enter waterways and can ultimately impact human and aquatic life. Elevated TSS concentrations can block light from reaching submerged vegetation. As the amount of light passing through the water is reduced, photosynthesis slows down (reduced rates of photosynthesis causes less dissolved oxygen to be released into the water by plants).

Benchmarks were developed for the General Permit that, in part, covers land disturbance at industrial

facilities where soil erosion may occur as a result of industrial activity or storm water discharges associated with industrial activity. The TSS benchmarks are general guidelines and are not limits and offer guidance in determining whether storm water discharges from an industrial facility may be impacting beneficial uses of surface waters receiving the storm water discharge. The TSS benchmarks would also be relevant in the determination of whether a storm water discharge is having a deleterious impact to a water body for dischargers operating under the General Permit. Based on these benchmarks, TSS concentrations that exceed 30-50 mg/L are cause for concern (with possible investigation), and when TSS concentrations exceed 100 mg/L a follow up investigation is warranted.

WATER BOARD STAFF INSPECTIONS

Site Location and Conditions

Linkside Place is located on the south side of Highway 162 between Highway 99 to the west and Highway 70 to the east, four miles west southwest of Oroville, in Butte County (Assessor Parcel Number 030-260-021). Linkside Place is adjacent to and west of the NEXRAD Radar Facility (NEXRAD). The subdivision will be built out in multiple phases with Phase I consisting of 18 acres (developed into approximately 65 single-family residences with utilities, roads and open space). Table Mountain Golf Course (Golf Course) is on the east side of the NEXRAD (see Figure 1). The mass grading of the site produced a gentle slope from west to east. The majority of runoff from the site discharges to unnamed ephemeral drainages and wetlands shared with the NEXRAD and Golf Course to the east/southeast and flows generally from the north to south. The ephemeral drainages and wetlands then flow to the southeast by the Oroville Airport discharging into the Feather River. Runoff from the northern part of the development discharges north towards Highway 162 and is conveyed under Highway 162 by three roadside drains where it is discharged into ephemeral drainages. The ephemeral drainages are tributary to Thermalito Afterbay, which is tributary to the Feather River.

Soils in the Linkside Place area have high clay content which, when disturbed and exposed to rain and storm water, produce very turbid runoff because of the colloidal suspension of clay particles. These colloidal clays and suspended materials cannot be adequately removed by short term settling alone and such practices do not meet BAT/BCT to reduce or eliminate storm water pollution. Removal of this suspended material by settling requires extended detention times and/or chemical addition and filtration.

Water Board Staff Inspections

In February 2004, Central Valley Water Board staff received a complaint regarding very turbid storm water leaving Linkside Place and entering ephemeral drainages and wetlands on the eastern side of the development. The complainant also indicated that the wetlands in the northwest corner of Table Mountain Golf Course were very turbid.

18 February 2004 Inspection - On 18 February 2004, Central Valley Water Board staff inspected the Linkside Place site. Prior to the inspection, precipitation in the Oroville area had been heavy. Three rain gages located in the Oroville area recorded rainfall between 1.37 and 2.20 inches on 17 February 2004 and between 0.0 and 1.48 inches of rain on 18 February 2004. No one was on site at the time of the inspection. The entire site had been mass graded and there was extensive soil disturbance. There was no erosion control BMPs deployed at the site and the only BMP deployed was the placement of silt fence around the perimeter of the site (except two areas on the eastern boundary

where the silt fence had been removed). The silt fence was in disrepair in numerous locations and did not appear to have been maintained. The entire site was muddy and turbid storm water was discharging from the site at numerous locations. Logan Court was being used as a storm water detention pond.

A dewatering pump was observed actively dewatering the highly turbid and sediment-laden Logan Court detention pond. The dewatering pump was also leaking fuel into the detention pond and there was visible petroleum hydrocarbon sheen in the vicinity of the pump. The pump was discharging the sediment laden and petroleum hydrocarbon polluted dewater off-site into ephemeral drainages and wetlands adjacent to the site. Additional discharges of sediment-laden runoff were being discharged from portions of the site not tributary to the detention pond. These discharges were also into ephemeral drainages and then onto the NEXRAD and Golf Course properties. The ephemeral drainages and wetlands also received run-on from the property directly to the south (this property will eventually be developed as subsequent phases of the Linkside Place development). The run-on was clear (not turbid or sediment-laden). Sample locations for 18 February 2004 are shown in Figure 1. Storm water samples were taken from the end of the pipe of the dewatering operations (Sample No. 1), from the ephemeral drainage on the Golf Course property that was receiving sediment-laden storm water and the dewatering discharge (Sample No. 2) and from a wet swale just over the site property line on the NEXRAD site (Sample No. 3). Sample No. 3 had not been impacted by the Linkside Place storm water discharge and is representative of background conditions.

At the conclusion of the inspection, Central Valley Water Board staff contacted John Montgomery, E-Ticket Construction, and informed him that the site was not in compliance with the General Permit. General Permit violations included a lack of BMP maintenance, lack of deployment of erosion control BMPs, sediment discharge to waters of the State and the discharge of unfiltered or untreated dewater from the site to waters of the State.

Table 1 presents the results of the 18 February 2004 inspection samples documenting the discharge of sediment laden and turbid storm water to surface waters tributary to the Feather River.

Table 1				
Linkside Place Water Analyses for 18 February 2004				
Sample location	Turbidity NTU	Total Suspended Solids (TSS) mg/L	Comparison with TSS Benchmark Value (100 mg/L)	Comparison with BP Turbidity Objective
Sample No. 1 -End of dewater pipe on Linkside Place property (discharge)	2,440	1,900	>19 times	>168 times
Sample No. 2 - Discharge into ephemeral drainage on Golf Course property (discharge)	1,740	1,150	>11 times	>120 times
Sample No. 3 -Wet swale adjacent to north side background)	12.1	BACK 7	GROUND <14 times	--

The Discharger was in violation of the General Permit for exceedance of the narrative water quality objective for sediment and suspended material. The Discharger was in violation of the General Permit for exceedance of the numerical objective for turbidity. The results of the storm water analyses (as shown above in Table 1) indicate that Linkside Place was discharging turbid and sediment-laden storm water to surface waters tributary to Feather River. The turbidity and TSS exceedances shown above for discharges into wetlands and surface waters tributary to Feather River are violations of General Permit Discharge Prohibitions A.2 and A.3, Receiving Water Limitation B.2: Special Provisions C.2 and C.3, and Section A: Storm Water Pollution Prevention Plan A.1.c, A.6 and A.9.

19 February 2004 Telephone Conversation - Water Board staff contacted Mr. Montgomery by phone and stated that: 1) the Discharger needed to comply with the General Permit, and 2) violations of the General Permit could make the Discharger liable for an administrative civil liability of \$10,000/day/violation. When Water Board staff asked about the dewatering operations, Mr. Montgomery stated that he set up the dewatering pump and that the pump only ran on 18 February 2004 from 0800 hours to 1630 hours (8.5 hours). A conservative estimate of the flow was 16 gallons per minute, or 8160 gallons of discharge during the dewatering operation. When Water Board staff discussed the dewatering pump leaking fuel and of the petroleum hydrocarbon sheen on the storm water, Mr. Montgomery acknowledged that he knew the pump was leaking fuel.

23 February 2004 Inspection - On 23 February 2004 Water Board staff inspected Linkside Place and observed that the Discharger had not deployed an effective combination of erosion and sediment control BMPs on all disturbed areas during the rainy season. No one was on site at the time of the inspection. The dewatering operation had been discontinued. It was not raining but it had rained the previous day. The ground was wet and there were numerous puddles of muddy water throughout the project. Although some additional sediment control BMPs were deployed and some recently dug trenches were backfilled with sand and ballast rock, erosion and sediment controls at the site remained inadequate.

25 February 2004 Inspection - On 25 February 2004, Water Board staff again inspected the site. Precipitation in the Oroville area had been heavy prior to the inspection. (Oroville area rain gages recorded between 0.39 and 1.00 inches of rain on 24 February 2004 and between 0.80 and 1.40 inches of rain on 25 February 2004). No one was on site at the time of the inspection. The contractor had deployed silt fence and straw wattle at the northeast corner, straw had been broadcast on and around the fill slopes on the northwestern side and filter fabric and gravel had been deployed at the northwest corner of the site. Two hay bales had been deployed in the roadside drainage ditch on the south side of Highway 162 on the west and eastside of the NEXRAD road. These additional erosion and sediment control BMPs were ineffective in stabilizing the site or controlling sediment transport offsite into waters of the State. No erosion control BMPs had been deployed on the northwestern, middle or southern portions of the site.

A total of ten water samples were taken during the inspection, at locations shown in Figure 2. Three samples (Nos. 3, 6 and 7) were not affected by the Linkside Place storm water discharge and would be representative of background conditions. Two samples were taken on the north side of Highway 162 (Nos. 9 and 10) and were turbid and sediment-laden. Two samples (Nos. 1 and 2) were taken at the northeast corner of Linkside Place as it discharged onto the Golf Course and were turbid and sediment-laden. A sample of a delineated wetland area immediately east of the Linkside Place east property

boundary (Sample No. 4) was turbid and sediment-laden. A sample of an ephemeral drainage on the east side of the NEXRAD road adjacent to the Golf Course (Sample No. 5) was taken and was turbid and sediment-laden. The results of the storm water analyses (as shown below in Table 2) indicate that Linkside Place was discharging turbid and sediment-laden storm water to surface waters tributary to the Feather River. The Discharger was in violation of the General Permit for exceedance of the narrative water quality objective for sediment and suspended material. The Discharger was in violation of the General Permit for exceedance of the numerical objective for turbidity.

Table 2 Linkside Place Water Analyses for 25 February 2004				
Sample Location	Turbidity NTU	Total Suspended Solids (TSS) mg/L	Comparison with TSS Benchmark Value (100 mg/L)	Comparison with BP Turbidity Objective
Sample No. 1 Eastside NEXRAD road & NW corner of golf course property (discharge)	2,590	1,640	>16 times	>39 times
Sample No. 2 Westside NEXRAD road, NE corner of Linkside Place (discharge)	1,960	1,920	>19 times	>29 times
Sample No. 3 South of site, ephemeral drainage Westside NEXRAD facility (background)	55.6	BACK 10	GROUND <10 times	--
Sample No. 4 Delineated wetland, Westside of NEXRAD road, east of site (discharge)	2,770	2,300	>23 times	>42 times
Sample No. 5 Culvert discharge to ephemeral drainage 100' north of NEXRAD facility (discharge)	3,000	2,080	>20 times	>45 times
Sample No. 6 Wet swale ephemeral drainage north side NEXRAD Facility (background)	10.2	BACK 5	GROUND <20 times	--
Sample No. 7 Wetland ephemeral drainage 20' south of NEXRAD Facility (background)	20.9	BACK 8	GROUND <12 times	--
Sample No. 8 NE corner of site between silt fence barriers (discharge on property)	2,600	1,760	>17 times	>39 times
Sample No. 9 Northside Hwy 162 150' east of NEXRAD (discharge)	925	285	>2 times	>14 times
Sample No. 10 Northside Hwy 162 across from NW corner of Linkside Place (discharge)	305	174	>1.7 times	>4 times

The results of samples collected on 18 and 25 February 2004 (excluding background), as shown in Tables 1 and 2 above, document that turbid and sediment-laden storm water was discharged from the site to adjacent properties and surface waters.

The discharge on 25 February 2004 constitute are violations of the General Permit, Discharge Prohibitions A.3; Receiving Water Limitation B.2; Section A: Storm Water Pollution Prevention Plan A.1.c and A.6. These violations were caused by the Discharger's failure to properly implement and maintain effective BMPs using BAT/BCT performance standards, which led to the discharge of pollutants to waters of the United States from the subject construction site.

WATER BOARD STAFF ACTIONS

Issuance of Notice of Violation

Due to the noted violations that occurred on 18 and 25 February 2004, the Discharger was issued a Notice of Violation (NOV) on 7 April 2004 that required the Discharger to: 1) discontinue all discharges of materials other than storm water which are not otherwise authorized by an NPDES permit, 2) implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season, 3) maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges, 4) inspect the construction site regularly to ensure that appropriate and effective sediment and erosion control BMPs are installed and maintained throughout Linkside Place, 5) inspect the construction site before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending on field conditions, 6) for each inspection complete an inspection checklist as listed under Section A: Storm Water Pollution Prevention Plan, No. 11 Maintenance, Inspection and Repair, 7) ensure that the person(s) responsible for inspections are properly trained in storm water management including the effective use of storm water management BMPs and good housekeeping practices for construction sites, and 8) submit by 27 April 2004, a revised SWPPP with map showing the location of all BMPs, photographic evidence of the corrections made and any additional BMPs installed in response to the NOV and to submit a written summary of how the Discharger will prevent future violations and potential discharges of pollutants to waters of the State.

Discharger Response To NOV

A letter dated 21 April 2004 was received from Hanover Environmental stating that the Discharger had retained them to assist in obtaining compliance with the General Permit. On 26 April 2004 Hanover Environmental requested a time extension for the SWPPP submittal from 27 April to 7 May 2004. A revised SWPPP was received in the Redding Water Board Office on 7 May 2004. This SWPPP essentially covered proposed BMP implementation for the following (2005) winter period.

ISSUANCE OF ORIGINAL ACL COMPLAINT BY EXECUTIVE OFFICER

Due to the severity of the violations noted during the February 2004 inspections and the disregard for compliance with the General Storm Water Permit, the Executive Officer, on 23 November 2004 issued an Administrative Civil Liability Complaint (ACL complaint) No.R5-2004-0541 to Linkside Place LLC, in the amount of \$100,000 for violations of the General Storm Water Permit that occurred in the winter

of 2004. Immediately upon issuance of the original ACL complaint, attorneys representing the discharger and the site contractor initiated lengthy and nonproductive settlement discussions.

ORIGINAL ACL COMPLAINT SETTLEMENT DISCUSSIONS

The original ACL complaint gave Linkside Place LLC until 24 December 2004 to sign a waiver for hearing and to pay the \$100,000 liability or to appear at a hearing before the Regional Water Board in accordance with California Water Code (CWC) Section 13323. Following is a chronology of events regarding settlement discussions that ensued after issuance of the original ACL complaint:

- | | |
|-------------------------|---|
| 20 December 2004 | Letter from one of the Discharger's attorney, Mr. Bartley S. Fleharty requesting an extension from 24 December 2004 to 10 January 2005 to determine whether or not to pay \$100,000 penalty. |
| 28 December 2004 | Meeting with Tim O'Laughlin, attorney representing the Discharger and E-Ticket Construction and Hanover Environmental (consulting firm hired to eliminate storm water violations). |
| 28 December 2004 | Water Board letter to the Fleharty granting extension until 10 January 2005 or pay the liability. |
| 12 January 2005 | Letter from O'Laughlin to Water Board requesting another extension to 24 January 2005 to pay liability and to set 19 January 2005 as date to discuss a settlement. (O'Laughlin given lead attorney status by Discharger) |
| 12 January 2005 | Water Board letter to Discharger and O'Laughlin granting payment extension to 24 January 2005 and confirming 19 January 2005 settlement meeting. |
| 19 January 2005 | Settlement meeting. No settlement reached. O'Laughlin stated settlement decision forthcoming. |
| 14 February 2005 | Water Board letter to the Discharger requesting, by 25 February, notification of Discharger's intent regarding settlement of ACLC. (cc to O'Laughlin and Fleharty) |
| 23 February 2005 | Letter from Fleharty requesting a third extension of payment to 25 March 2005. |
| 24 February 2005 | Water Board staff inspection found site to be in compliance with General Permit. Water Board staff telephoned Fleharty requesting payment of liability or request for hearing and indicated that third extension would not be granted. Fleharty stated that the owner and contractor have scheduled a meeting next week to determine whether to pay liability. Staff requested Fleharty notify Water Board of decision. |
| 1 March 2005 | Water Board staff faxed the 24 February 2005 record of communication to Fleharty denying third extension request. |
| 16 March 2005 | Telephone call from Fleharty stating that he had called the Discharger numerous times but had not received a response. Fleharty stated that he did not know dischargers intention but that he advised full payment |
| 12 May 2005 | Water Board staff telephoned Fleharty and informed him that full liability payment must be received in the Redding office by close of business 26 May 2005 or item would be placed on the agenda for the June 2005 Board |

- meeting.
- 23 May 2005** Letter from Executive Officer to Discharger requesting full payment by close of business on 26 May 2005 or the item would remain on June 2005 agenda. Letter further stated that the Central Valley Water Board would consider at the hearing whether to affirm, reject or modify (increase or decrease) the proposed \$100,000 liability, or refer matter to the Attorney General for judicial civil liability with maximum liability at \$310,400.
- 26 May 2005** Telephone call from Fleharty stating he could not reach the discharger regarding payment. **Item placed on June 2005 Water Board Agenda.**
- 7 June 2005** Letter from O’Laughlin stating he was just retained by Discharger. Letter requested delay of hearing until at least 6 September 2005 to allow for discovery, depositions and consultation with experts.
- 9 June 2005** Water Board staff call to O’Laughlin stated extension not likely.
- 13 June 2005** Second letter from O’Laughlin to Executive Officer requesting extension (with list of reasons) to 6 September 2005.
- 13 June 2005** Letter from Executive Officer to O’Laughlin stating request for extension denied.
- 14 June 2005** Third letter from O’Laughlin asking that the Executive Officer reconsider the extension request.
- 14 June 2005** Water Board staff served with a subpoena order to appear for a deposition regarding the Linkside Place ACLC on 21 June 2005.
- 17 June 2005** Water Board Staff Counsel (David Coupe) notified O’Laughlin that Linkside matter was to be removed from the June 2005 Agenda.
- 21 June 2005** Counsel receives a letter from O’Laughlin that deposition of Water Board staff rescheduled to 12 July 2005.

The original ACL complaint was for violations that occurred in February 2004. Erosion control efforts at the Linkside Place site were substantially improved prior to the 2005 rainy season and were found to comply with the General NPDES Permit. No additional violations were noted during the period covered by the above chronology.

The chronology listed above indicates significant confusion regarding legal representation on behalf of the discharger listed on the original ACL complaint and an indication that whoever was actually representing the discharger may not have had direct contact with the proper ownership or representatives thereof.

REVISED ACL COMPLAINT

Water Board staff in an effort to resolve the outstanding ACL penalty decided to reissue the ACL complaint to name the individual listed as owner on the NOI and to include a corporation that staff determined was also a possible the owner of the site. On 11 July 2005 the Executive Officer re-issued ACLC No.R5-2004-0541 (Revised) to William Isaac, Linkside Place, Inc. and Linkside Place LLC, in the amount of \$100,000 for violations of the General Permit. The only revision to the ACL complaint was the inclusion of William Isaac and Linkside Place, Inc. as dischargers.

DISCOVERY OF OWNERSHIP CHANGE

Shortly after issuing the revised ACL complaint, a prospected purchaser of the Linkside Place subdivision contacted Water Board staff. The prospective purchaser indicated that he was considering acquiring the subdivision property from the current owner that it turned out was not one of the parties named in the original or the revised ACL complaints. Based upon this information Water Board staff, with Butte County assistance conducted a title search of the Linkside Place property. Following is a brief summary of the subdivision's ownership:

- Walter & Shirley Brewer granted title to William Isaac on 26 September 2000
- William Isaac granted title to Linkside Place, LLC on 9 April 2002
- Linkside Place, LLC. granted title back to William Isaac on 26 September 2002
(Isaac listed as property owner on NOI submitted to Water Board in September 2003)
- William Isaac granted title to Tehama Market Associates, LLC on 31 December 2003
(Tehama Market Associates, LLC was owner during period of documented violations)
- Tehama Market Associates, LLC granted title back to Linkside Place, LLC on 4 October 2004

In addition to the title search, State Water Board Office of Statewide Initiatives conducted research regarding the status of the limited partnerships and corporations. The Secretary of State offices in California and Nevada were contacted and it was determined that the individuals and limited partnerships listed in the title search appear to be linked as many of the officers are the same individuals. It was also determined that Linkside Place, LLC and Tehama Market Associates, LLC are corporations in good standing. The lengthy title search indicated that Linkside Place, Inc. (one of the parties named in the revised ACL complaint) was **not** a listed owner during the time storm water violations occurred. The title search identified the owner of the Linkside Place property during the noted 2004 violation period as **Tehama Market Associates, LLC.**

FINAL ACL COMPLAINT

Water Board staff prepared another revision of the ACL complaint in September 2005. Discussions between Water Board staff and counsel regarding the final form of the ACL complaint occurred throughout September, October and December 2005. A final determination was made to include only Tehama Market Associates as the named discharger in the final version of the ACL complaint. On 25 January 2006, the Acting Executive Officer issued a new ACL complaint No.R5-2006-0501 to Tehama Market Associates, LLC, as the owner and discharger during the observed violations in February 2004. ACL complaint No. R5-2006-0501 rescinds and replaces ACLC No. R5-2004-0541 and was in the amount of \$100,000. Tehama Market Associates, LLC, nor any representative thereof, submitted a signed waiver or implied any intent to pay the \$100,000 penalty specified in ACL complaint No. R5-2006-0501.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY ORDER

The legal basis for this action is based on violation of the CWA Section 301, CWC Section 13376 and the General Permit. The Discharger is in violation of Section 301 of the CWA and Section 13376 of the

CWC, which prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.

The Discharger is in violation of the General Permit as follows:

1. Discharge Prohibition A.2, which states, *“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, except as allowed in Special Provisions for Construction Activity C.3.”*

Violation is based on the discharge of petroleum hydrocarbon from the leaking dewater pump to waters of the nation on 18 February 2004.

2. Discharge of pollutants (sediment, suspended material, and/or turbidity) to waters of the State is also a violation of Discharge Prohibition A.3 which states, *“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”*

Violations are based on the discharge of pollutants on 2 days (18 and 25 February 2004) which caused or threaten to cause pollution, contamination, or nuisance. Violations are based on exceedances of both numeric and narrative water quality objectives contained in the Basin Plan as documented by Regional Board staff.

3. Sediment, suspended material, and turbidity in the discharges is also a violation of Receiving Water Limit B.2, which states, *“The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB’s Basin Plan.”*

Violations are based on exceedances of both numeric and narrative water quality objectives for sediment, suspended solids, and/or turbidity in the Sacramento River and San Joaquin River Basins. Regional Board staff documented two days of discharge on the following dates: 18 and 25 February 2004.

4. Failure to develop and implement an adequate Storm Water Pollution Prevention Plan (SWPPP) is a violation of Special Provisions of Construction Activity C.2 which states: *“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.”*

Violation is based on the Discharger failing to implement an adequate SWPPP, which led to turbid and sediment-laden water being discharged from the site. Failure to implement BMPs to the BAT/BCT performance standard is a violation of the General Permit. The Discharger failed to comply with Special Provision C.2 on 18 February 2004.

5. Failure to implement appropriate BMPs for non-storm water discharges is a violation of Special Provisions for Construction Activity C.3 which states: *“Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.”*

Violation is based on the Discharger failing to implement any BMPs to reduce pollutants in the non-storm water discharge of turbid, sediment-laden water and petroleum hydrocarbon from the leaking dewater pump. The Discharger's SWPPP stated that no dewatering operations will occur on site. The contractor was aware of the leaking fuel pump but did nothing to stop the petroleum hydrocarbon discharge to waters of the United States. The Discharger did not use any filtration or equivalent treatment, which caused an exceedance of water quality objectives. The implementation section of the Basin Plan contains a prohibition on the discharge of petroleum hydrocarbon that was also violated. The Discharger failed to comply with Special Provision C.3 on 18 February 2004.

6. Failure to maintain control measures identified in the SWPPP is a violation of Section A.1.c. “Storm Water Pollution Prevention Plan. Erosion Control,” which states in part: *“The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives... Identify, construct, implement in accordance with a time schedule, and maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges and authorized storm water discharges from the construction site during construction.”*

Violation is based on the Discharger failing to maintain control measures identified in the SWPPP on at least 2 days. (18 and 25 February 2004).

7. Failure to implement erosion and sediment controls on all disturbed areas during the rainy season is a violation of Section A.6 “Storm Water Pollution Prevention Plan. Erosion Control”, which states in part: *“At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.”*

Violation is based on the Discharger failing to comply with Section A.6 of the General Permit on at least 8 days (18 February through 25 February 2004).

8. Discharging sediment-laden water from a dewatering site into receiving waters without filtration or equivalent treatment is a violation of Section A.9 “Storm Water Pollution Prevention Plan. Non-Storm Water Management”, which states in part: *“Discharging sediment-laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited.”*

Violation is based on the Discharger failing to comply with Section A.9 of the General Permit on 18 February 2004.

CONSIDERATION OF ACL FACTORS

The Water Board may impose an ACL pursuant to CWC Section 13385(a) for the violations of the General Permit. Pursuant to CWC Section 13385(c), the Water Board may impose civil liability in an amount up to \$10,000 for each day in which the violation occurs, and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$10 per gallon multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Pursuant to CWC Section 13385(e), in determining the amount of civil liability imposed, the Water Board 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 benefit or savings, if any, resulting from the violation; and other matters as 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.”

Nature and Circumstances

The Discharger failed to properly implement and maintain effective BMPs using BAT/BCT performance standards, which led to the discharge of pollutants to waters of the United States from the subject construction site. The Discharger failed to consider site-specific conditions when selecting and designing their construction site BMPs to meet BAT/BCT performance standards in their SWPPP. These failures led to the repeated discharge of turbid and sediment-laden storm water to ephemeral drainages and wetlands off of the construction site.

Extent

During February 2004, Water Board staff documented two days of sediment-laden discharge to waters of the State. Water Board staff conservatively estimated the flow from the dewatering operations at 16 gallons per minute (gpm), or 8,160 gallons of discharge during the 8.5 hours of dewatering operation on 18 February 2004. On 18 February 2004 Water Board staff observed sediment-laden storm water discharging offsite from culverts; flow from one culvert was conservatively estimated at 2430 gallons (27 gpm for 1.5 hours). On 25 February 2004, the discharge flow of sediment-laden storm water from two culverts on the east side of Linkside Place was conservatively estimated at 9450 gallons (combined flow of 63 gpm for 2.5 hours). Water Board staff did not estimate the amount of sediment-laden storm water discharge from the site as a whole on either 18 or 25 February 2004. Water Board staff calculated that approximately 20,040 gallons of polluted discharge occurred from the site from the dewatering operations and from one culvert on 18 February 2004 and from two culverts on 25 February 2004.

During the February 2004 inspections, 100 percent of the site (18 acres) had no erosion control BMPs deployed and approximately 90 percent of the site lacked adequate sediment control measures.

Although this ACL addresses storm water violations only for two days documented by Water Board staff inspections, evidence indicates that similar violations probably occurred throughout the 03/04 rainy season. The Discharger obtained coverage under the General Permit on 23 October 2003, rainfall amounts recorded from three rain gages located in the Oroville area show that the first rainfall of the 03/04 rainy season occurred on 30 October 2003. The Water Board has an aerial photograph of Linkside Place taken on 21 November 2003 that shows that the site had been mass graded. The site had no erosion control BMPs deployed and the only BMP deployed was a perimeter silt fence. The failure to provide an effective combination of erosion and sediment controls through the rainy season is a violation of the General Permit.

The first inspection of the site occurred on 18 February 2004. The total rainfall measured at the Oroville rain gages from 30 October 2003 through 17 February 2004 ranged from 22.17 to 23.80 inches. The annual average precipitation for the Oroville area is 27.89 inches as compiled by the Department of Water Resources. The rainfall from 30 October 2003 to 17 February 2004 would represent between 79.4 and 85.3 percent of the total rainfall for an average year.

Gravity

These violations are worthy of an ACL because: (1) unnamed ephemeral drainages and wetlands tributary to the Feather River were impacted by sediment-laden storm water from the site; and (2) site erosion and sediment controls were either not present or inadequate.

Ability to Pay

The Discharger appears to be in good financial standing. The 65 lots are expected to sell for approximately \$150,000 or more. This administrative civil liability should therefore pose no financial hardship on the Discharger.

Cleanup or Abatement Potential

The discharge of sediment-laden storm water from the subject site cannot be cleaned up or abated because any attempts to do so would cause disruption of the ephemeral drainages and wetlands resulting in more silting of these waters.

Degree of Culpability

As the owner and operator of the construction site, the Discharger is responsible for gaining coverage under, and complying with, the General Permit. A NOI was filed for Linkside Place in October 2003, thus demonstrating awareness on the Discharger's part of permit requirements and prohibitions. In addition, the Discharger was warned that the violation exposed them to further enforcement actions, including monetary penalties.

Prior History of Violations

The Discharger does not have a prior history of violations due to the fact that this is the first development in which coverage under the General Permit was required.

ECONOMIC BENEFIT

The Discharger gained an economic benefit by conducting extensive earthwork activities during the rainy season without appropriate erosion and sediment control measures. Scheduling earthwork activities to occur during the dry season is a fundamental BMP for construction activities.

The Discharger gained an economic benefit by not deploying an effective combination of erosion and sediment control BMPs on all disturbed areas during the rainy season. The Discharger did install some sediment controls around the periphery of the construction site. An estimate of the total area where sediment controls were deployed would be 10% of the total area disturbed. The Discharger should have installed, at a minimum, an effective combination of erosion and sediment control on all disturbed areas during the rainy season. Phase 1 of the construction site is approximately 18 acres.

Typical costs for erosion and sediment controls are \$1,500 to \$8,000 per acre depending on slope, soil type and time of deployment. Control measures implemented with sufficient time to achieve vegetative growth for soil stabilization, can reduce costs to the \$1,500 to \$4,000 per acre range. However, implementation of erosion and sediment control measures during or immediately preceding the winter period are much higher as there is insufficient time and adverse climatic conditions to establish vegetative growth. Costs per acre for "late season" erosion and sediment control ranges from \$4,000 to \$8,000 per acre. Linkside Place is a relatively flat site, with only minor slopes. However, the soil contains clays that become colloidal in storm water and are extremely difficult to settle. Therefore, because of the colloidal clays present at the site, typical erosion and sediment controls alone may not assure compliance with the General Permit's requirement for best conventional technology. Flocculation and filtration treatment would meet best conventional technology for sediment-laden water.

Also the Discharger failed to deploy any erosion control measures prior to the rainy season. Deployment of erosion controls after the onset of rain significantly increases the cost to implement effective erosion control measures. Therefore, the cost for installation and maintenance of typical erosion and sediment controls for the unprotected 90 % of the 18 acres prior to the 18 and 25 February 2004 events was estimated at \$4000 per acre, for a total economic benefit of \$64,800.

OTHER FACTORS

Regional Board staff costs are estimated to be \$24,800 (based on estimated staff time of 310 hours at \$80 per hour) to inspect the site, and prepare ACL related documents.

STATUTORY MAXIMUMS AND MINIMUMS

As provided under the CWC Section 13385, the Discharger could be held liable for each violation per day in which the violation of the General Permit occurred, and for discharging pollutants in violation of General Permit prohibitions. The maximum monetary liability that could be imposed under Section 13385(c)(1) & (2) is \$10,000 per violation per day, plus \$10 per gallon for the discharge volume that is not cleaned up, and which exceeds 1,000 gallons. The Discharger was in violation of Section 13385 of the CWC for a total of twelve violations of the General Permit that were observed on 18 and 25 February 2004 at \$10,000 per violation per day (\$120,000). An additional \$190,400 liability is based

on the estimated storm water discharge (20,040 gallons minus 1,000 gallons at \$10 per gallon). The Discharger failed to provide an effective combination of erosion and sediment control between 18 February and 25 February 2004 (6 additional days at \$10,000/day). As such, the maximum liability that could be imposed is \$370,400.

Under CWC Section 13385, an Administrative Civil Liability must recover at least the economic benefit derived from the acts that constitute the violations. The economic benefit calculated by Water Board staff is \$64,800.

PROPOSED CIVIL LIABILITY

ACL Complaint No. R5-2006-0501 proposed an ACL in the amount of \$100,000. This amount would recover economic benefit derived from the acts that constitute the violation and takes into account the other factors to be considered in CWC Section 13385.

SUMMARY AND RECOMMENDATION

Due to the lengthy settlement discussions and frequent changes in ownership of the Linkside Place property, an unusually large amount of staff time on this matter. The total disregard by the discharger of implementing adequate erosion control or storm water containment/treatment BMPs and the resulting violations of the General Storm Water Permit warrants a civil monetary penalty. Staff recommends the Central Valley Water Board adopt the proposed ACL Order in the amount of \$100,000.

ATTACHMENT 5

STAFF REPORT

**ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
WILLIAM ISAAC AND LINKSIDE PLACE, LLC.
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY**

INTRODUCTION

William Isaac and Linkside Place, LLC. are owners and developers (Discharger) of an 109-acre residential development construction project, Linkside Place Subdivision (hereafter Linkside Place). The contractor for the project is E-Ticket Construction. Linkside Place is located on the south side of Highway 162 between Highway 99 to the west and Highway 70 to the east, four miles west southwest of Oroville, in Butte County (Assessor Parcel Number 030-260-021). Linkside Place is adjacent to and west of the NEXRAD Radar Facility (NEXRAD). The subdivision will be built out in multiple phases with Phase I consisting of 18 acres (developed into approximately 65 single-family residences with utilities, roads and open space). Table Mountain Golf Course (Golf Course) is on the east side of the NEXRAD (see Figure 1). The mass grading of the site produced a gentle slope from west to east. The majority of runoff from the site discharges to unnamed ephemeral drainages and wetlands shared with the NEXRAD and Golf Course to the east/southeast and flows generally from the north to south. The ephemeral drainages and wetlands then flow to the southeast by the Oroville Airport discharging into the Feather River. Runoff from the northern part of the development discharges north towards Highway 162 and is conveyed under Highway 162 by three roadside drains where it is discharged into ephemeral drainages. The ephemeral drainages are tributary to Thermalito Afterbay, which is tributary to the Feather River.

In late Fall 2003, the site was cleared of vegetation and extensive grading and earthwork activities were conducted throughout the site. Regional Board staff obtained an aerial photograph of Linkside Place taken on 21 November 2003. The aerial photograph shows that no erosion control Best Management Practices (BMPs) were deployed on the site and only a silt fence was deployed around the perimeter. During the winter of 2003-2004, limited construction activities were conducted. Linkside Place has two cul-de-sacs on the eastern side (Logan and Zachary Courts) that were being used as storm water detention ponds.

Onsite soils have a high clay content, which when disturbed and exposed to rain and storm water, produce very turbid runoff because of the colloidal suspension of clay particles. These colloidal clays and suspended materials cannot be adequately removed by short term settling alone and such practices do not meet Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT) to reduce or eliminate storm water pollution. Removal of this suspended material by settling requires extended detention times and/or chemical addition and filtration.

In response to a citizen complaint, Regional Board staff inspected the site on the 18 and 25 February 2004. During these inspections, Regional Board staff observed storm water containing pollutants (turbidity, suspended material, settleable matter and petroleum hydrocarbons) discharging to surface

waters. These discharges, as well as documented exceedences of water quality objectives, and the failure to implement BMPs are violations of the General Construction Storm Water Permit.

The Executive Officer issued an administrative civil liability complaint in the amount of \$100,000 for these violations. For the reasons discussed below, staff recommends that the Regional Board adopt an Order assessing administrative civil liability (ACL) in the amount of \$100,000.

This staff report describes the history of violations at this site and the basis for the ACL.

BACKGROUND

General Permit

On 16 November 1990, the State Water Resources Control Board (State Board) adopted a National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges Associated with Construction Activities (General Permit). The General Permit (NPDES Permit No. CAS000002, Waste Discharge Requirements (WDR) Order No. 99-08-DWQ) requires the owners of construction projects which disturb greater than one acre to submit a Notice of Intent (NOI) indicating that they will comply with the General Permit.

The General Permit requires the discharger implement BAT/BCT to reduce or eliminate storm water pollution. The General Permit authorizes the discharge of storm water to surface waters from construction site, but it prohibits the discharge of materials other than storm water. The effluent limitations contained in the General Permit are narrative and include the requirement to implement appropriate BMPs. The BMPs must primarily emphasize source controls such as erosion and sediment controls and pollution prevention methods. The General Permit states that erosion control is the most effective way to retain soil and sediment on the construction site and that the most efficient way to address erosion control is to preserve existing vegetation where feasible, to limit disturbance, and to stabilize and revegetate disturbed areas as soon as possible after grading or construction.

The General Permit requires the discharger to prepare a Storm Water Pollution Prevention Plan (SWPPP). A SWPPP specifies the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. The SWPPP has two major objectives: 1) to help identify the sources of sediment and other pollutants that affect the quality of storm water discharges, and 2) to describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in storm water, as well as non-storm water discharges.

The Discharger filed a NOI for coverage under the NPDES General Permit in October 2003 and was issued an identification number, WDID No. 5R04C324269, on 23 October 2003. The Discharger prepared an initial SWPPP for the project and revised the SWPPP on several occasions.

Water Quality Objectives

The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) presents water quality objectives for water quality constituents or characteristics to protect beneficial uses of water or prevent nuisance conditions.

The water quality objective for sediment is: *“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 water quality objective for settleable material is: *“Waters shall not contain substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses.”*

The water quality objective for suspended material is: *“Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”*

The water quality objective for turbidity includes both narrative and numeric objectives and states in part, *“Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:*

- *Where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU.*
- *Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.*
- *Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.*
- *Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent....”*

The implementation section of the Basin Plan contains a prohibition on the discharge of petroleum hydrocarbon which states: *“The Regional Board has prohibited the discharge of oil or any residuary product of petroleum to the waters of the State, except in accordance with waste discharge requirements or other provisions of Division 7, California Water Code.”*

Total suspended solids (TSS) include all particles suspended in water that will not pass through a 2.0µm filter. As levels of TSS increase, a water body begins to lose its ability to support a diversity of aquatic life. Some possible sources for TSS can be sediment from erosion of exposed land, and dirt from impervious areas. Sediment by itself can be very toxic to aquatic life because it covers feeding and breeding grounds, and smothers organisms that may live on the bottom of a water body. Toxic chemicals and other pollutants also adhere to sediment particles. This provides a medium for toxic or other pollutants to enter waterways and can ultimately impact human and aquatic life. Elevated TSS concentrations can block light from reaching submerged vegetation. As the amount of light passing

through the water is reduced, photosynthesis slows down (reduced rates of photosynthesis causes less dissolved oxygen to be released into the water by plants).

Benchmarks were developed for the General Industrial Storm Water Permit that, in part, covers land disturbance at industrial facilities where soil erosion may occur as a result of industrial activity or storm water discharges associated with industrial activity. The TSS benchmarks are general guidelines and are not limits. They were based on data compiled by the National Urban Runoff Program (NURP), USEPA Multi Sector Permit and input from the Urban Runoff Task Force. The TSS benchmarks offer guidance in determining whether storm water discharges from an industrial facility may be impacting beneficial uses of surface waters receiving the storm water discharge. These benchmarks also provide general guidance in the determination of whether a storm water discharge is having a deleterious impact to a waterbody for dischargers operating under the General Industrial Storm Water Permit. The TSS benchmarks would also be relevant in the determination of whether a storm water discharge is having a deleterious impact to a waterbody for dischargers operating under the General Construction Storm Water Permit. Based on these benchmarks TSS concentrations that exceed 30-50 mg/L are cause for concern (with possible investigation), and when TSS concentrations exceed 100 mg/L a follow up investigation is warranted.

Agency Observations and Actions

In February 2004, Regional Board staff received a complaint regarding very turbid storm water leaving Linkside Place and entering ephemeral drainages and wetlands on the eastern side of the development. The complainant also indicated that the wetlands in the northwest corner of the Golf Course were very turbid.

18 February 2004 Inspection

On 18 February 2004, Regional Board staff inspected the Linkside Place site. Prior to the inspection, precipitation in the Oroville area had been heavy. Three rain gages located in the Oroville area recorded between 1.37 and 2.20 inches of rain on 17 February 2004 and between 0.0 and 1.48 inches of rain on 18 February 2004. No one was on site at the time of the inspection. The entire site had been mass graded and there was extensive soil disturbance. There was no erosion control BMPs deployed at the site and the only BMP deployed was the placement of silt fence around the perimeter of the site (except two areas on the eastern boundary where the silt fence had been removed). The silt fence was in disrepair in numerous locations and did not appear to have been maintained. The entire site was muddy and turbid storm water was discharging from the site at numerous locations. Logan Court was being used as a storm water detention pond. A dewatering pump was observed actively dewatering the highly turbid and sediment-laden Logan Court detention pond. The dewatering pump was also leaking fuel into the detention pond and there was a visible petroleum hydrocarbon sheen in the vicinity of the pump. The pump was discharging the sediment laden and petroleum hydrocarbon polluted dewater off-site into ephemeral drainages and wetlands adjacent to the site. Additional discharges of sediment laden runoff were being discharged from portions of the site not tributary to the detention pond. These discharges were also into ephemeral drainages and then onto the NEXRAD and Golf Course properties. The ephemeral drainages and wetlands also received run-on from the property directly to the south (this

property will eventually be developed as subsequent phases of the Linkside Place development). The run-on was clear (not turbid or sediment-laden). Sample locations for 18 February 2005 are shown in Figure 1. Storm water samples were taken from the end of the pipe of the dewatering operations (Sample No.1), from the ephemeral drainage on the Golf Course property that was receiving the dewatering discharge (Sample No.2) and from a wet swale just over the site property line on the NEXRAD site (Sample No.3). Sample No.3 had not been impacted by the Linkside Place storm water discharge and is representative of background conditions. At the conclusion of the inspection, Regional Board staff contacted John Montgomery, E-Ticket Construction, and informed him that the site was not in compliance with the General Permit. General Permit violations included a lack of BMP maintenance, lack of deployment of erosion control BMPs, sediment discharge to waters of the State and the discharge of unfiltered or untreated dewater from the site to waters of the State.

Table 1 presents the results of the 18 February 2004 inspection samples documenting the discharge of sediment laden and turbid storm water to surface waters tributary to the Feather River.

Table 1				
Linkside Place Water Analyses for 18 February 2004				
Sample location	Turbidity NTU	Total Suspended Solids (TSS) mg/L	Comparison with TSS Benchmark Values	Comparison with BP Turbidity Objective
Sample No. 1 -End of dewater pipe on Linkside Place property (discharge)	2,440	1,900	>19 X	>168 X
Sample No. 2 - Discharge into ephemeral drainage on Golf Course property (discharge)	1,740	1,150	>11 X	>120 X
Sample No. 3 -Wet swale adjacent to north side of NEXRAD (background)	12.1	7	<14 X	--

The turbidity and TSS exceedances shown above for discharges into wetlands and surface waters tributary to Feather River are violations of General Permit Discharge Prohibitions A.2 and A.3, Receiving Water Limitation B.2: Special Provisions C.2 and C.3, and Section A: Storm Water Pollution Prevention Plan A.1.c, A.6 and A.9.

19 February 2004 Telephone Conversation

Regional Board staff contacted Mr. Montgomery by phone and stated that: 1) the Discharger needed to comply with the General Permit, and 2) violations of the General Permit could make the Discharger liable for an administrative civil liability of \$10,000/day/violation. When Regional Board staff asked about the dewatering operations, Mr. Montgomery stated that he set up the dewatering pump and that the pump only ran on 18 February 2004 from 0800 hours to 1630 hours (8.5 hours). A conservative estimate of the flow was 16 gallons per minute, or 8160 gallons of discharge during the dewatering

operation. When Regional Board staff discussed the dewatering pump leaking fuel and of the petroleum hydrocarbon sheen on the storm water, Mr. Montgomery acknowledged that he knew the pump was leaking fuel.

23 February 2004 Inspection

On 23 February 2004 Regional Board staff inspected Linkside Place and observed that the Discharger had not deployed an effective combination of erosion and sediment control BMPs on all disturbed areas during the rainy season. No one was on site at the time of the inspection. The dewatering operation had been discontinued. It was not raining but it had rained the previous day. The ground was wet and there were numerous puddles of muddy water throughout the project. The site had some additional sediment control BMPs deployed and some recently dug trenches were backfilled with sand and ballast rock. Erosion and sediment controls at the site remained inadequate.

25 February 2004 Inspection

On 25 February 2004, Regional Board staff again inspected the site. Prior to the inspection, precipitation in the Oroville area had been heavy. The Oroville area rain gages recorded between 0.39 and 1.00 inches of rain on 24 February 2004 and between 0.80 and 1.40 inches of rain on 25 February 2004. No one was on site at the time of the inspection. The contractor had deployed silt fence and straw wattle at the northeast corner, straw had been broadcast on and around the fill slopes on the northwestern side and filter fabric and gravel had been deployed at the northwest corner of the site. Two hay bales had been deployed in the roadside drainage ditch on the south side of Highway 162 on the west and eastside of the NEXRAD road. These additional erosion and sediment control BMPs were ineffective in stabilizing the site or controlling sediment transport offsite into waters of the State. No erosion control BMPs had been deployed on the northwestern, middle or southern portions of the site. A total of ten water samples were taken during the inspection, at locations shown in Attachment 2. Three samples (Nos. 3, 6 and 7) were not affected by the Linkside Place storm water discharge and would be representative of background conditions. Two samples were taken on the north side of Highway 162 (Nos. 9 and 10) and were turbid and sediment-laden. Two samples (Nos. 1 and 2) were taken at the northeast corner of Linkside Place as it discharged onto the Golf Course and were turbid and sediment-laden. A sample of a delineated wetland area immediately east of the Linkside Place east property boundary (Sample No. 4) was turbid and sediment-laden. A sample of an ephemeral drainage on the east side of the NEXRAD road adjacent to the Golf Course (Sample No. 5) was taken and was turbid and sediment-laden. The results of the storm water analyses (as shown below in Table 2) indicate that Linkside Place was discharging turbid and sediment-laden storm water to surface waters tributary to Feather River. The Discharger was in violation of the General Permit for exceedance of the water quality objective for settleable solids, TSS, and turbidity.

Table 2
 Linkside Place Water Analyses for 25 February 2004

Sample Location	Turbidity NTU	Total Suspended Solids (TSS) mg/L	Comparison with TSS Benchmark Values	Comparison with BP Turbidity Objective
Sample No. 1 Eastside NEXRAD road & NW corner of golf course property (discharge)	2,590	1,640	>16 X	>39 X
Sample No. 2 Westside NEXRAD road, NE corner of Linkside Place (discharge)	1,960	1,920	>19 X	>29 X
Sample No. 3 South of site, ephemeral drainage Westside NEXRAD facility (background)	55.6	10	<10 X	--
Sample No. 4 Delineated wetland, Westside of NEXRAD road, east of site (discharge)	2,770	2,300	>23 X	>42 X
Sample No. 5 Culvert discharge to ephemeral drainage 100' north of NEXRAD facility (discharge)	3,000	2,080	>20 X	>45 X
Sample No. 6 Wet swale ephemeral drainage north side NEXRAD Facility (background)	10.2	5	<20 X	--
Sample No. 7 Wetland ephemeral drainage 20' south of NEXRAD Facility (background)	20.9	8	<12 X	--
Sample No. 8 NE corner of site between silt fence barriers (discharge on property)	2,600	1,760	>17 X	>39 X
Sample No. 9 Northside Hwy 162 150' east of NEXRAD (discharge)	925	285	>2 X	>14 X
Sample No. 10 Northside Hwy 162 across from NW corner of Linkside Place (discharge)	305	174	>1.7 X	>4 X

(Note: Background sample results in shaded boxes)

The results of samples collected on 18 and 25 February 2004 (excluding background), as shown in Tables 1 and 2 above, document that turbid and sediment-laden storm water was discharged from the site to adjacent properties and surface waters. These discharges are violations of the General Permit, Discharge Prohibitions A.3; Receiving Water Limitation B.2; Section A: Storm Water Pollution Prevention Plan A.1.c and A.6. These violations were caused by the Discharger's failure to properly implement and maintain effective BMPs using BAT/BCT performance standards, which led to the discharge of pollutants to waters of the United States from the subject construction site.

Due to the noted violations that occurred on 18 and 25 February 2004, the Discharger was issued a Notice of Violation (NOV) on 7 April 2004 that required the Discharger to: 1) discontinue all discharges of materials other than storm water which are not otherwise authorized by an NPDES permit, 2) implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season, 3) maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges, 4) inspect the construction site regularly to ensure that appropriate and effective sediment and erosion control BMPs are installed and maintained throughout Linkside Place, 5) inspect the construction site before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending on field conditions, 6) for each inspection complete an inspection checklist as listed under Section A: Storm Water Pollution Prevention Plan, No. 11 Maintenance, Inspection and Repair, 7) ensure that the person(s) responsible for inspections are properly trained in storm water management including the effective use of storm water management BMPs and good housekeeping practices for construction sites, and 8) submit by 27 April 2004, a revised SWPPP with map showing the location of all BMPs, photographic evidence of the corrections made and any additional BMPs installed in response to the NOV and to submit a written summary of how the Discharger will prevent future violations and potential discharges of pollutants to waters of the State.

Following is a chronology of events that occurred subsequent to issuance of the NOV on 7 April 2004:

21 April 2004 - Regional Board received a letter from Hanover Environmental stating that the Discharger had retained them.

26 April 2004 – Letter from Hanover Environmental requesting a time extension for the SWPPP submittal from 27 April to 7 May 2004.

26 April 2004 - Regional Board staff faxed a time extension letter allowing the extension request.

7 May 2004 – Revised SWPPP for Linkside Place received in Redding Office

23 November 2004 - Discharger was issued Administrative Civil Liability (ACL) Complaint No. 5R-2004-0541 for violations of the Clean Water Act Section 301, California Water Code (CWC) Section 13376 and the National Pollutant discharge Elimination System (NPDES) General Permit No.CAS000002 Order No.99-08-DWQ. The CWC Section 13385 authorizes the Regional Board to impose civil liability on a discharger for such violations.

The Discharger was given until 24 December 2004 to sign a waiver for hearing and to pay a \$100,000 liability, or to appear at a hearing before the Regional Board in accordance with CWC Section 13323.

20 December 2004 - Regional Board received a letter from the Discharger's attorney (Mr. Bartley S. Fleharty of Wells, Small Selke and Graham) requesting an extension from 24 December 2004 to 10 January 2005 to determine whether or not to accept the State's settlement of \$100,000 for the ACL Complaint.

28 December 2004 - Meeting with Tim O'Laughlin (O'Laughlin & Paris LLP) representing the Discharger, John Montgomery and Cliff Fritz (E-Ticket Construction) and Will Bond and Mieke Sheffield (Hanover Environmental).

28 December 2004 - Regional Board staff sent a letter to the Discharger's attorney granting an extension until 10 January 2005 to pay the liability.

12 January 2005 - Tim O'Laughlin (O'Laughlin & Paris LLP) sent a letter to the Regional Board requesting another extension to 24 January 2005 to pay the liability, and to set 19 February 2005 as a date to discuss a settlement at the Regional Board office. O'Laughlin & Paris LLP had been given lead attorney status by the Discharger for the settlement meeting.

14 February 2005 - Regional Board sent a letter to the Discharger requesting, by 25 February 2005, notification in writing of Discharger's intentions regarding settlement of ACL Complaint.

19 February 2005 - Regional Board staff conducted a settlement meeting. No settlement was reached. The Discharger stated that they were going to meet with the site engineering firm and the construction contractor to discuss the settlement of the ACL Complaint and that they would get back to the Regional Board with their decision.

23 February 2005 - Letter received from Bartley S. Fleharty of Wells, Small, Selke & Graham, which included a third request for extension of payment of the \$100,000 liability to 25 March 2005.

1 March 2005 - Regional Board staff faxed a record of communication to Bartley S. Fleharty stating that the request for an additional settlement extension was denied since two prior extensions were granted.

1 March 2005 to Present - No contact from Discharger regarding payment of liability. Regional Board staff attempted on several occasions to contact Discharger's representative (Mr. Garland); no calls returned. Regional Board staff on several occasions contacted Discharger's attorney (Fleharty) whom also did not receive return calls from the Discharger.

ADMINISTRATIVE CIVIL LIABILITY ORDER

The legal basis for this action is based on violation of the Clean Water Act Section 301, CWC Section 13376 and the General Permit. The Discharger is in violation of Section 301 of the Clean Water Act and Section 13376 of the CWC, which prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.

The Discharger is in violation of the General Permit as follows:

1. Discharge Prohibition A.2, which states, *“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, except as allowed in Special Provisions for Construction Activity C.3.”*

Violation is based on the discharge of petroleum hydrocarbon from the leaking dewater pump to waters of the nation on 18 February 2004.

2. Discharge of pollutants (sediment, settleable solids, suspended solids, and/or turbidity) to waters of the State is also a violation of Discharge Prohibition A.3 which states, *“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”*

Violations are based on the discharge of pollutants on 2 days (18 and 25 February 2004) which caused or threaten to cause pollution, contamination, or nuisance. Violations are based on exceedances of both numeric and narrative water quality objectives for the Water Quality Control Plan (Basin Plan) as documented by Regional Board staff.

3. Sediment, settleable material, suspended material, and turbidity in the discharges is also a violation of Receiving Water Limit B.2, which states, *“The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB’s Basin Plan.”*

Violations are based on exceedances of both numeric and narrative water quality objectives for sediment, settleable solids, suspended solids, and/or turbidity in the Sacramento River and San Joaquin River Basins. Regional Board staff documented two days of discharge on the following dates: 18 and 25 February 2004.

4. Failure to develop and implement an adequate Storm Water Pollution Prevention Plan (SWPPP) is a violation of Special Provisions of Construction Activity C.2 which states: *“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.”*

The Discharger failed to implement an adequate SWPPP, which led to turbid and sediment-laden water being discharged from the site. Failure to implement BMPs to the BAT/BCT performance standard is a violation.

5. Failure to implement appropriate BMPs for non-storm water discharges is a violation of Special Provisions for Construction Activity C.3 which states: *“Discharges on non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.”*

The Discharger failed to implement any BMPs to reduce pollutants in the non-storm water discharge of turbid, sediment-laden water and petroleum hydrocarbon from the leaking dewater pump. The Discharger’s SWPPP stated that no dewatering operations will occur on site. The contractor was aware of the leaking fuel pump but did nothing to stop the petroleum hydrocarbon discharge to waters of the United States. The Discharger did not use any filtration or equivalent treatment, which caused an exceedance of water quality objectives. The implementation section of the Basin Plan contains a prohibition on the discharge of petroleum hydrocarbon that was also violated.

6. Failure to maintain control measures identified in the SWPPP is a violation of Section A.1.c. “Storm Water Pollution Prevention Plan. Erosion Control,” which states in part: *“The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives... Identify, construct, implement in accordance with a time schedule, and maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges and authorized storm water discharges from the construction site during construction.”*

The Discharger failed to maintain control measures identified in the SWPPP on at least 2 days (18 and 25 February 2004).

7. Failure to implement erosion and sediment controls on all disturbed areas during the rainy season is a violation of Section A.6 “Storm Water Pollution Prevention Plan. Erosion Control”, which states in part: *“At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.”*

The Discharger failed to comply with Section A.6 of the General Permit on at least 2 days (18 and 25 February 2004).

8. Discharging sediment-laden water from a dewatering site into receiving waters without filtration or equivalent treatment is a violation of Section A.9 “Storm Water Pollution Prevention Plan. Non-Storm Water Management”, which states in part: *“Discharging sediment-laden water*

which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited."

Enforcement Considerations

The Regional Board may impose an ACL pursuant to CWC Section 13385(a) for the violations of the General Permit. Pursuant to CWC Section 13385(c), the Regional Board may impose civil liability in an amount up to \$10,000 for each day in which the violation occurs, and when there is a discharge and the discharge is not susceptible to cleanup or not cleaned up exceeds 1000 gallons, an additional liability not to exceed \$10 per gallon for volume discharges not cleaned up that exceed 1,000 gallons.

Pursuant to CWC Section 13385(e), in determining the amount of civil liability imposed, the Regional Board 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 benefit or savings, if any, resulting from the violation; and other matters as 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."

Nature and Circumstances

The Discharger failed to properly implement and maintain effective BMPs using BAT/BCT performance standards, which led to the discharge of pollutants to waters of the United States from the subject construction site. The Discharger failed to consider site-specific conditions when selecting and designing their construction site BMPs to meet BAT/BCT performance standards in their SWPPP. These failures led to the repeated discharge of sediment-laden storm water to ephemeral drainages and wetlands off of the construction site.

Extent

During February 2004, Regional Board staff documented two days of sediment-laden discharge to waters of the State. Regional Board staff conservatively estimated the flow from the dewatering operations at 16 gallons per minute (gpm), or 8,160 gallons of discharge during the 8.5 hours of dewatering operation on 18 February 2004. On 18 February 2004 Regional Board staff observed sediment-laden storm water discharging offsite from culverts; flow from one culvert was conservatively estimated at 2430 gallons (27 gpm for 1.5 hours). On 25 February 2004, the discharge flow of sediment-laden storm water from two culverts on the east side of Linkside Place was conservatively estimated at 9450 gallons (combined flow of 63 gpm for 2.5 hours). Regional Board staff did not estimate the amount of sediment-laden storm water discharge from the site as a whole on either 18 or 25 February 2004. Regional Board staff calculated that approximately 20,040 gallons of polluted discharge

occurred from the site from the dewatering operations and from one culvert on 18 February 2004 and from two culverts on 25 February 2004.

During the February 2004 inspections, 100 percent of the site (18 acres) had no erosion control BMPs deployed and approximately 90 percent of the site lacked adequate sediment control measures.

The Discharger obtained coverage under the General Permit on 23 October 2003, rainfall amounts recorded from three rain gages located in the Oroville area show that the first rainfall of the 03/04 rainy season occurred on 30 October 2003. The Regional Board has an aerial photograph of Linkside Place taken on 21 November 2003 that shows that the site had been mass graded and had no erosion control BMPs deployed and the only BMP deployed was a perimeter silt fence. The first inspection of the site occurred on 18 February 2004. The total rainfall measured at the Oroville rain gages from 30 October 2003 through 17 February 2004 ranged from 22.17 to 23.80 inches. The annual average precipitation for the Oroville area is 27.89 inches as compiled by the Department of Water Resources. The rainfall from 30 October 2003 to 17 February 2004 would represent between 79.4 and 85.3 percent of the total rainfall for an average year.

Gravity

These violations are worthy of an ACL because: (1) unnamed ephemeral tributaries and wetlands to Feather River were impacted by sediment-laden storm water from the site; and (2) site erosion and sediment controls were either not present or inadequate.

Ability to Pay

The Discharger appears to be in good financial standing. The 65 lots are expected to sell for approximately \$150,000 or more. This administrative civil liability should therefore pose no financial hardship on the Discharger.

Cleanup or Abatement Potential

The discharge of sediment-laden storm water from the subject site cannot be cleaned up or abated because any attempts to do so would cause disruption of the ephemeral drainages and wetlands resulting in more silting of these waters.

Degree of Culpability

As the owner and operator of the construction site, the Discharger is responsible for gaining coverage under, and complying with, the General Permit. A NOI was filed for Linkside Place in October 2003, thus demonstrating awareness on the Discharger's part of permit requirements and prohibitions. In addition, the Discharger was warned that the violation exposed them to further enforcement actions, including monetary penalties.

Prior History of Violations

The Discharger does not have a prior history of violations due to the fact that this is the first development in which coverage under the Construction Storm Water Permit was required.

Economic Benefit

The Discharger gained an economic benefit by conducting extensive earthwork activities during the rainy season without appropriate erosion and sediment control measures. Scheduling earthwork activities to occur during the dry season is a fundamental Best Management Practice for construction activities.

The Discharger gained an economic benefit by not deploying an effective combination of erosion and sediment control BMPs on all disturbed areas during the rainy season. The Discharger did install some sediment controls around the periphery of the construction site. An estimate of the total area where sediment controls were deployed would be 10% of the total area disturbed. The Discharger should have installed, at a minimum, an effective combination of erosion and sediment control on all disturbed areas during the rainy season. Phase 1 of the construction site is approximately 18 acres.

Typical costs for erosion and sediment controls are \$1,500 to \$8,000 per acre depending on slope, soil type and time of deployment. Control measures implemented with sufficient time to achieve vegetative growth for soil stabilization, can reduce costs to the \$1,500 to \$4,000 per acre range. Linkside Place is a relatively flat site, with only minor slopes. However, the soil contains clays that become colloidal in storm water and are extremely difficult to settle. Therefore, because of the colloidal clays present at the site, typical erosion and sediment controls alone may not assure compliance with the General Permit's requirement for best conventional technology. Flocculation and filtration treatment would meet best conventional technology for sediment-laden water.

Also the Discharger failed to deploy any erosion control measures prior to the rainy season. Deployment of erosion controls after the onset of rain significantly increases the cost to implement effective erosion control measures. Therefore, the cost for installation and maintenance of typical erosion and sediment controls for the unprotected 90 % of the 18 acres prior to the 18 and 25 February 2004 events was estimated at \$4000 per acre, for a total economic benefit of \$64,800.

Other Factors

Regional Board staff costs are estimated to be \$16,800 (based on estimated staff time of 210 hours at \$80 per hour) to inspect the site, and prepare ACL related documents.

Statutory Maximums and Minimums

As provided under the CWC Section 13385, the Discharger could be held liable for each violation per day in which the violation of the General Permit occurred, and for discharging pollutants in violation of General Permit prohibitions. The maximum monetary liability that could be imposed under Section

13385(c)(1) & (2) is \$10,000 per violation per day, plus \$10 per gallon for the discharge volume that is not cleaned up, and which exceeds 1,000 gallons. The Discharger was in violation of Section 13385 of the CWC for a total of twelve violations of the General Permit that were observed on 18 and 25 February 2004 at \$10,000 per violation per day (\$120,000). An additional \$190,400 liability is based on the estimated storm water discharge (20,040 gallons minus 1,000 gallons at \$10 per gallon). As such, the maximum liability that could be imposed is \$310,400.

Under CWC Section 13385, an Administrative Civil Liability must recover at least the economic benefit derived from the acts that constitute the violations.

PROPOSED CIVIL LIABILITY

ACL Complaint No. R5-2004-0541 proposed an ACL in the amount of \$100,000. This amount would recover economic benefit derived from the acts that constitute the violation and takes into account the other factors to be considered in CWC Section 13385.

RECOMMENDATION

Staff recommends the Regional Board adopt the proposed ACL Order in the amount of \$100,000.

Highway 162

Figure 1

Linkside Place
18 Feb 2004
Sample Locations

Table Mountain Golf Course

NEXRAD TOWER

Golf Course Cart Path

Ephemeral Drainages

LINKSIDE SUBDIVISION

Sample No. 1

Sample No. 3

Sample No. 2



DIVISION, ND 2

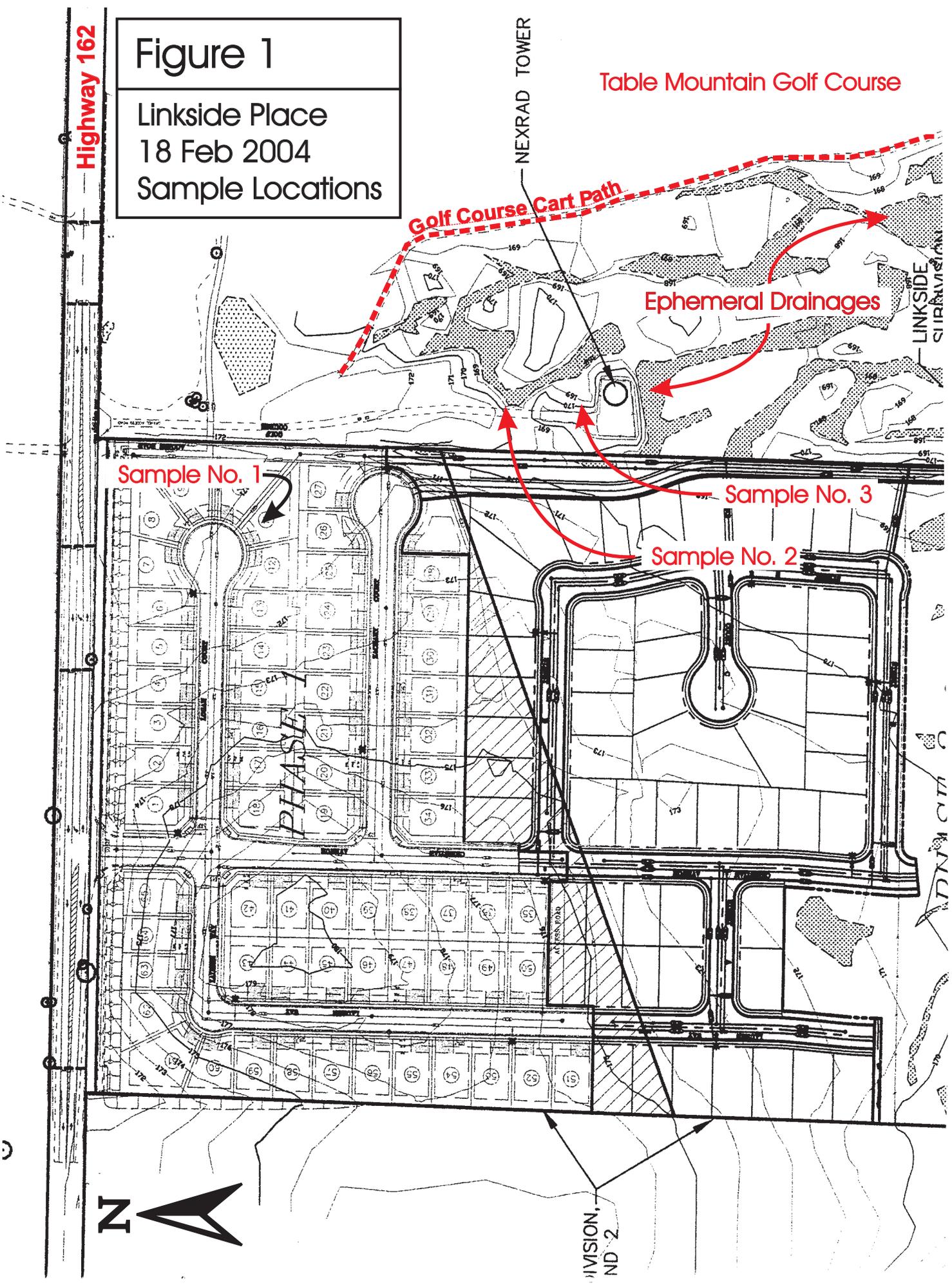


Figure 2
Linkside Place
25 Feb 2004
Sample Locations

Table Mountain Golf Course

Highway 162

NEXRAD TOWER

Golf Course Cart Path

Ephemeral Drainages

LINKSIDE SUBDIVISION

Sample No. 9

Sample No. 6

Sample No. 1

Sample No. 2

Sample No. 5

Sample No. 7

Sample No. 8

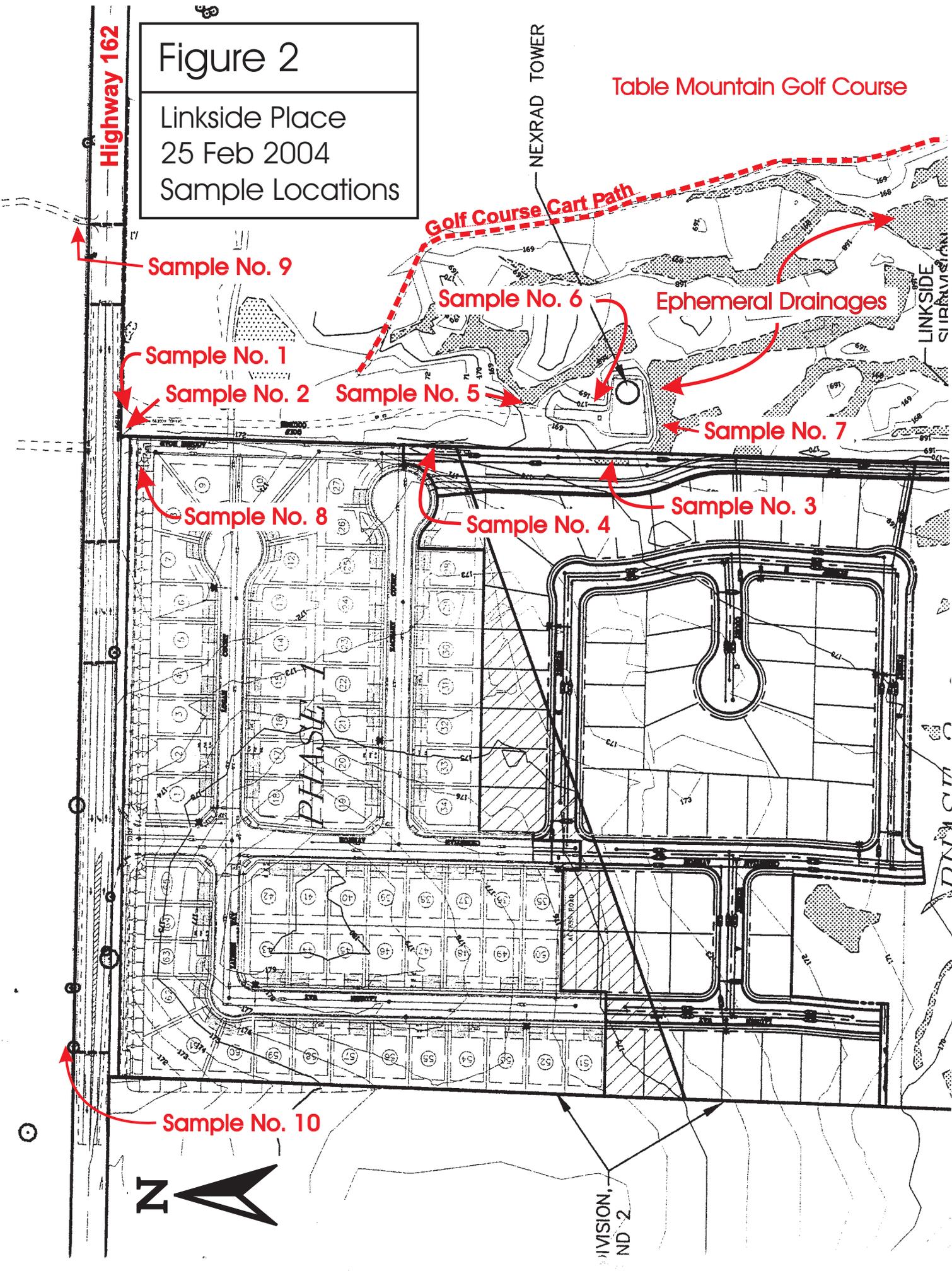
Sample No. 4

Sample No. 3

Sample No. 10



DIVISION,
ND 2



Linkside Place Subdivision aerial taken 21 November 2003 by Loafer Creek LLC.

FIGURE 3



ATTACHMENT 6



California Regional Water Quality Control Board

Central Valley Region



Terry Tamminen
Secretary for
Environmental
Protection

Redding Office
415 Knollcrest Drive, Suite 100, Redding, California 96002
Phone (530) 224-4845 • FAX (530) 224-4857
<http://www.swrcb.ca.gov/rwqcb5>

Arnold Schwarzenegger
Governor

11 July 2005

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7004 0750 0001 7892 9762

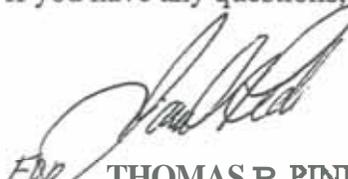
Mr. William Isaac
Linkside Place, LLC.
Linkside Place, Inc.
2865 Coldwater Canyon Drive
Beverly Hills, CA 90210

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 5R-2004-0541, WILLIAM ISAAC, LINKSIDE PLACE, LLC., LINKSIDE PLACE, INC., LINKSIDE PLACE SUBDIVISION, BUTTE COUNTY

Enclosed is a revised Administrative Civil Liability (ACL) Complaint for violations of the Clean Water Act Section 301, California Water Code (CWC) Section 13376 and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ. The CWC Section 13385 authorizes the Regional Water Quality Control Board (Regional Board) to impose administrative civil liability on a discharger for such violations. The only revision is the inclusion of William Isaac and Linkside Place, Inc. as "discharger" in the complaint.

A representative of William Isaac, Linkside Place, LLC and Linkside Place, Inc. may sign the enclosed waiver and pay the one hundred thousand dollar (\$1 00,000) liability, or such representative may appear at a hearing before the Regional Board. As you are aware a hearing has been scheduled for this matter on 4 or 5 August 2005.

If you have any questions, please contact Scott A. Zaitz or James C. Pedri at (53 0) 224-4845.


THOMAS R. PINKOS
Executive Officer

Enclosure: Administrative Civil Liability Complaint No. 5R-2004-0541

cc+encl: See Attached List

California Environmental Protection Agency



Recycled Paper

cc+encl: **Regional Board Members**
Mr. Rick Brausch, U.S. Environmental Protection Agency, Region IX, San Francisco
Mr. Jason Brush, U.S. Environmental Protection Agency, Region IX, San Francisco
Ms. Andrea Jones, U.S. Army Corps of Engineers, Sacramento
California Environmental Protection Agency, Sacramento
Department of Fish and Game, Region 2, Rancho Cordova
Ms. Frances McChesney, Counsel, State Water Resources Control Board, Sacramento
Mr. James Maughan, State Water Resources Control Board, Sacramento
Mr. John Norton, Central Valley Regional Water Quality Control Board, Sacramento
Mr. Bruce Fujimoto, Division of Water Quality, State Water Resources Control
Board, Sacramento
Mr. Vance Severin, Butte County Division of Environmental Health, Oroville
Mr. Michael Crump, Director, Butte County Public Works, Oroville
Ms. Jo Sherman, City of Oroville Planning Department, Oroville
O'Laughlin & Paris, LLP, Chico

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

ACL COMPLAINT NO. 5R-2004-0541

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF**

**WILLIAM ISAAC, LINKSIDE PLACE, LLC. AND LINKSIDE PLACE, INC.
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY**

This complaint is issued to William Isaac, Linkside Place, LLC. , and Linkside Place, Inc. (hereafter Discharger), based on a finding of a violation of the Clean Water Act (CWA) Section 301, California Water Code (CWC) Section 13376, and 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 (ACL), and of CWC Section 13323, which authorized the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereafter Regional 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 18.6-acre residential development known as Linkside Place Subdivision. The site is being developed into approximately 65 single-family residences with utilities, roads and open space located on the south side of Highway 162, four miles west-southwest of Oroville, in Butte County. (Assessor Parcel Number 030-260-021). The contractor for the project is E-Ticket Construction.**
- 2. Runoff from the site discharges to unnamed ephemeral drainages and wetlands that are a tributary to Thermalito Afterbay, which is tributary to the Feather River. The existing beneficial uses of Feather River designated in the Regional Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers-4th Edition 1998 (Basin Plan) are municipal and domestic supply, agricultural irrigation; contact d o n , canoeing and rafting; non-contact recreation; warm and cold freshwater habitat; warm and cold water migration; warm and cold water spawning and wildlife habitat.**
- 3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit For Storm Water Discharges Associated with Construction Activity (General Permit) Water Quality Order No. 99-08-DWQ, 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 (NOT) to obtain coverage under the General Permit, and requires dischargers to implement best management practices (BMPs) to implement Best Available Technology and Best Conventional Pollutant Control Technology (BAT/BCT) to prevent storm water pollution or reduce it to the maximum extent practicable. These BMPs must be effectively implemented to comply with the provisions of the General Permit. Provisions include developing a site-specific Storm Water Pollution Prevention Plan (SWPPP), performing inspections of control devices on BMPs, and preparing an annual certification that the site is in compliance with the General Permit.**

4. The Discharger submitted an NOI for coverage under the General Permit in October 2003 and was issued an identification number, WDID No. 5R04C324269, on 23 October 2003.
5. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under Section 13385(c)(1) and (2) of the CWC.
6. General Order No. 99-08-DWQ states, in part, the following:

"A. DISCHARGE PROHIBITIONS:

2. Discharges of material other than storm water, which is not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.
3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. RECEIVING WATER LIMITATIONS:

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.
3. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.

SECTION A: STORM WATER POLLUTION PREVENTION PLAN

1 Objectives

- c. ...and maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges from the construction site during construction...

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 rainy season.

9. Non-Storm Water Management

...Discharging sediment laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited"

7. Section 301 of the CWA and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
8. The Discharger is alleged to have violated Discharge Prohibitions A.2, A.3; Receiving Water Limitation B.2; Special Provisions for Construction Activity C.2, C.3; and Section A: Storm Water Pollution Prevention Plan A.1.c, A.6 and A.9 of the General Permit. These violations were caused by the Discharger's failure to properly implement and maintain effective BMPs using BAT/BCT performance standards, 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) and (5) civil liability may be imposed based on the following facts:

On 18 February 2004, Regional Board staff observed dewatering operations at the site. The dewatering pump was leaking fuel into the detention pond. The detention pond had a visible petroleum hydrocarbon sheen adjacent to the dewatering pump. The pump was discharging the petroleum hydrocarbon polluted dewater off-site into ephemeral drainages and wetlands adjacent to the site. The discharge of material other than storm water which was not authorized by an NPDES permit is a violation of Discharge Prohibition A.2. Also, the dewatering discharge was sediment laden and highly turbid; the discharge from the dewatering operations into receiving waters without filtration or equivalent treatment caused an exceedance of the Regional Board Basin Plan turbidity water quality objective, which is a violation of Section A: Storm Water Pollution Prevention Plan No. 9 Non-Storm Water Management. After the inspection, Regional Board staff contacted the Discharger's representative, who acknowledged that the pump was leaking fuel and that the discharge occurred from 0800 hours to approximately 1630 hours (8%hours). A conservative estimate of the flow was 16 gallons per minute (gpm), or 8160 gallons of discharge during the dewatering operation.

- On 18 February 2004, Regional Board staff observed the discharge of highly turbid and sediment laden storm water off-site into ephemeral drainages and wetlands adjacent to the site. The failure to implement controls to reduce pollutants in storm water discharges from the construction site to the BAT/BCT performance standard is a violation of Special Provisions for Construction Activity C.2. The discharge caused a violation of the turbidity water quality objective, which is a violation of Special Provisions for Construction Activity C.3.

- On 18 and 25 February 2004, Regional Board staff observed storm water discharges from the site causing or threatened to cause pollution, contamination, or nuisance. Regional Board staff, on 18 February 2004, observed sediment laden storm water discharging offsite from culverts; flow from one culvert was conservatively estimated at 2430 gallons (27 gpm for 1½ hours). On 25 February 2004, the discharge flow of sediment laden storm water from two culverts on the east side of the project was conservatively estimated at 9450 gallons (combined flow of 63 gpm for 2½ hours). These are violations of Discharge Prohibition A.3.
- Other violations observed by Regional Board staff on both 18 and 25 February 2004 (six violations):
 - a) Receiving Water Limitation B.2 violations - the SWPPP was not designed and implemented such that storm water discharges and authorized non-storm water discharges did not cause or contribute to an exceedance of water quality objectives contained in the Regional Board Basin Plan,
 - b) Section A: Storm Water Pollution Prevention Plan No 1 Objectives violations - the BMPs were not being maintained;
 - c) Section A: Storm Water Pollution Prevention Plan No. 6 Erosion Control violations the Discharger had not deployed an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

9. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under CWC Section 13385(c)(2). 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:

(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 Clean Water Act, as amended.”

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

“(e) In determining the amount of any liability imposed under this section, the regional 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."

10. The discharge from the detention pond dewatering was conservatively estimated at 8,160 gallons on 18 February 2004. The discharge of sediment laden storm water off-site on 18 and 25 February 2004 was conservatively estimated at 11,880 gallons. The Discharger has a civil liability of \$190,400 based on the estimated discharge (20,040 gallons minus 1,000 gallons at \$10 per gallon). Twelve violations of the General Permit were observed on 18 and 25 February 2004, resulting in an additional civil liability of \$10,000 per day per violation for \$120,000. Additional days and possible additional locations of discharge most likely occurred based on precipitation data; however, these were not considered in this calculation as staff did not directly observe such discharges or staff was unable to estimate the flow.
11. Pursuant to CWC Section 13385(c), the Discharger has a maximum civil liability of \$310,400 (for each of the General Permit violations and the gallons of polluted water discharged).
12. Regional Board staff spent a total of 150 hours investigating this incident and preparing the Complaint. The total cost for staff time is \$12,000 based on a rate of \$80 per hour including overhead costs.
13. The Discharger did install some sediment controls around the periphery of the construction site. An estimate of the total area where sediment controls were deployed would be 10 percent of the total area disturbed. The Discharger should have installed, at a minimum, an effective combination of erosion and sediment control on all disturbed areas during the rainy season. The construction site is approximately 18.6 acres. Therefore, the estimated economic benefit for not stabilizing the remaining 90 percent of the construction site with an effective combination of erosion and sediment control best management practices is calculated at \$2000 per acre or \$33,480. The total economic benefit for the project is estimated at \$33,480.
14. Issuance of this Order 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.

WILLIAM ISAAC, LINKSIDE PLACE, LLC., AND LINKSIDE PLACE, INC. IS HEREBY GIVEN NOTICE THAT :

- 1 The Executive Officer of the Regional Board proposes the assessment of Administrative Civil Liability in the amount of one hundred thousand dollars (\$100,000). The amount of the liability proposed is based on a review of factors cited in CWC Section 13385 presented in Finding No. 9 above, and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for the 4 or 5 August 2005 Regional 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 Regional 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, in which case, the Regional Board may not hold a hearing. If the Discharger wishes to waive the right to a hearing, sign the attached waiver form and return it with a check made payable to the State Water Resources Control Board in the amount of the civil liability, to the Regional Board Redding office by 29 July 2005. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

 FOR

THOMAS R. PINKOS, Executive Officer

✓ 11 July 2005

(Date)

SAZ: sae

**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 William Isaac, Linkside Place LLC., and Linkside Place, Inc., (Discharger) in connection with Administrative Civil Liability Complaint No. R5-2004-0541 (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 one hundred thousand dollars (\$100,000) by check, which contains a reference to "ACL Complaint No. R5-2004-0541" 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

ATTACHMENT 7



California Regional Water Quality Control Board

Central Valley Region



Alan Lloyd, PhD
Secretary for
Environmental
Protection

Redding Office
415 Knollcrest Drive, Suite 100, Redding, California 96002
Phone (530)221-4845. FAX (530)224-4857
<http://www.swrcb.ca.gov/rwqcb5>

Arnold Schwarzenegger
Governor

25 January 2006

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Tim O'Laughlin
O'Laughlin & Paris LLC
2580 Sierra Sunrise Terrace Suite #210
Chico, CA 95928

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0501, TEHAMA MARKET ASSOCIATES, LLC, LINKSIDE PLACE SUBDIVISION, BUTTE COUNTY

Enclosed is an Administrative Civil Liability (ACL) Complaint for violations of Clean Water Act (CWA) Section 301, California Water Code (CWC) Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ (General Permit). The CWC Section 13385 authorizes the Regional Water Quality Control Board (Central Valley Water Board) to impose administrative civil liability on a discharger for such violations

On 23 November 2004 the Central Valley Water Board issued ACL Complaint No. R5-2004-0541 to Linkside Place LLC for violations of Clean Water Act Section 301, CWC Section 13376, and the NPDES General Permit. Linkside Place LLC was not the property owner at the time of the violations. ACL Complaint No. R5-2006-0501 rescinds and replaces ACL Complaint No. R5-2004-0541.

A representative of Tehama Market Associates, LLC may sign the enclosed waiver and pay the one-hundred thousand dollar (\$100,000) liability, or such representative may appear at a hearing before the Central Valley

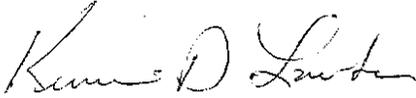
California Environmental Protection Agency



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Water Board. This matter is scheduled to be heard by the Central Valley Water Board, on **16 or 17 March 2006**.

If you have any questions, please contact Scott A. Zaitz or George D. Day at (530) 224-4845



KENNETH D. LANDAU
Acting Executive Officer

Enclosure: Administrative Civil Liability Complaint No.R5-2006-0501

cc+encl: Regional Board Members

Mr. Rick Brausch, U.S. Environmental Protection Agency, Region IX, San Francisco

Mr. Jason Brush, U.S. Environmental Protection Agency, Region IX, San Francisco

Ms. Andrea Jones, U.S. Army Corps of Engineers, Sacramento

California Environmental Protection Agency, Sacramento

Department of Fish and Game, Region 2, Rancho Cordova

Mr. David Coupe, Office of Chief Counsel, State Water Resources Control Board, Sacramento

Ms. Frances McChesney, Office of Chief Counsel, State Water Resources Control Board,
Sacramento

Mr. Bruce Fujimoto, Division of Water Quality, State Water Resources Control
Board, Sacramento

Mr. Vance Severin, Butte County Division of Environmental Health, Oroville

Mr. Michael Crump, Director, Butte County Public Works, Oroville

Ms. Jo Sherman, City of Oroville Planning Department, Oroville

O'Laughlin & Paris, LLP, Chico

E-Ticket Construction: 524 Stimpson Road, Building #A, Oroville, CA 95965

Albert G. Garland, 1802 North Carson Street, Suite #212 Carson City. NV 89701

Michael P. Hays, P.O. Box 379024, Las Vegas, NV 89137

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0501

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

TEHAMA MARKET ASSOCIATES, LLC
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY

This revised complaint is issued to Tehama Market Associates, LLC, based on a finding of a violation of the Clean Water Act (CWA) Section 301, California Water Code (CWC) Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ (General Permit), pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of Administrative Civil Liability (ACL), and of CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

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

1. On 23 November 2004, an Administrative Civil Liability Complaint (ACLC) No. R5-2004-0541 was issued to Linkside Place, LLC in the amount of one hundred thousand dollars (\$100,000) for violations of the CWA Section 301, CWC Section 13776 and the NPDES General Permit No. CAS000002 (Order No. 99-08-DWQ).
2. Central Valley Water Board staff subsequently conducted research of the property ownership of the Linkside Place subdivision and found that the property had changed ownership several times since obtaining coverage under the General Permit and that the original ACL complaint may not have named the appropriate Discharger.
3. Extensive research by staff from the State Water Resources Control Board (SWRCB) and Central Valley Water Board determined that Linkside Place, LLC was not a Discharger. The same research determined that Tehama Market Associates, LLC was the Discharger as title to the subdivision was transferred to Tehama Market Associates, LLC just prior to the period of noted violations subject to this complaint. Tehama Market Associates, LLC retained title to the property until October 2004 at which time title was transferred back to Linkside Place, LLC.
4. A Notice of Intent (NOI) to comply with terms of the NPDES General Permit to discharge stormwater associated with construction activity at the Linkside Place subdivision was submitted on 14 October 2003, by Bert Garland, on behalf of the property owner at that time, William Isaac. They received confirmation and WDID No. 5R04C324269 on 23 October 2003. William Isaac subsequently conveyed the Linkside Place subdivision to Tehama Market Associates, LLC in December 2003. Tehama Market Associates, LLC owned the Linkside Place subdivision at the time of the noted violations on 18 February 2004 and 25 February 2004.
5. Based on, but not limited to Finding Nos. 1-4, Tehama Market Associates, LLC is hereby designated as Discharger.

6. The Discharger was the owner and developer of all 18.6-acre residential development known as Linkside Place subdivision. The site is being developed into approximately 65 single-family residences with utilities, roads and open space located on the south side of Highway 162, four miles west-southwest of Oroville, in Butte County. (Assessor Parcel Number 030-260-021). The contractor for the project is E-Ticket Construction.
7. Runoff from the site discharges to unnamed ephemeral drainages and wetlands that are tributary to Thermalito Afterbay, which is tributary to the Feather River. The existing beneficial uses of Feather River designated in the Regional Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers-4th Edition 1998 (Basin Plan) are municipal and domestic supply, agricultural irrigation; contact recreation, canoeing and rafting; non-contact recreation: warm and cold freshwater habitat; warm and cold water migration; warm and cold water spanning and wildlife habitat.
8. On 19 August 1999, the SWRCB adopted the 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 NOI to obtain coverage under the General Permit, and requires dischargers to implement best management practices (BMPs) to implement Best Available Technology and Best Conventional Pollutant Control Technology (BAT/BCT) to prevent storm water pollution.
9. Although the Discharger owned the Linkside Place subdivision at the time of the noted violations on 18 February 2004 and 25 February 2004, the Discharger failed to file a Notice of Intent for coverage under the General Permit. Bert Garland or William Isaac also failed to file a Change of Information Form or terminate coverage under General permit after conveying the Linkside Place subdivision to the Discharger.
10. CWC Section 13376 states, in part: "Any person discharging pollutants or proposing to discharge pollutants to navigable water of the United States . . . shall file a report of waste discharge in compliance with the procedures set forth in Section 13260 . . ." and "The discharge of pollutants . . . except as authorized by waste discharge requirements [NPDES permit] . . . is prohibited"
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)(1) and (2) of the CWC. These provisions state:

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

12. General Order No. 99-08-DWQ states, in part, the following:

A. DISCHARGE PROHIBITIONS:

2. Discharges of material other than storm water, which is not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.
3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. RECEIVING WATER LIMITATIONS:

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 exceedance 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.
3. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of non-storm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.

SECTION A: STORM WATER POLLUTION PREVENTION PLAN:

1. Objectives

- c. ...and maintain BMPs to reduce or eliminate pollutants in storm water discharges and authorized non-storm water discharges from the construction site during construction...

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 rainy season.

9. Non-Storm Water Management

... Discharging sediment laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited."

13. Section 301 of the CWA and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
14. The Discharger has violated Discharge Prohibitions A.2, A.3; Receiving Water Limitation B.2; Special Provisions for Construction Activity C.2, C.3; and Section A: Storm Water Pollution Prevention Plan A.1.c, A.6 and A.9 of the General Permit. These violations were caused by the Discharger's failure to properly implement and maintain effective BMPs using BATIBCT performance standards, 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) and (a)(5), civil liability may be imposed based on the following facts:
 - (a) On 18 February 2004, Central Valley Water Board staff observed dewatering operations at the site. The dewatering pump was leaking fuel into the detention pond. The detention pond had a visible petroleum hydrocarbon sheen adjacent to the dewatering pump. The pump was discharging the petroleum hydrocarbon polluted dewater off-site into ephemeral drainages and wetlands adjacent to the site. The discharge of material other than storm water which is not authorized by an NPDES permit is a violation of Discharge Prohibition A.2. In addition, the dewatering discharge was sediment laden and highly turbid; the discharge from the dewatering operations into receiving waters without filtration or equivalent treatment caused an exceedance of the Central Valley Water Board Basin Plan turbidity water quality objective, which is a violation of Section A: Storm Water Pollution Prevention Plan No. 9 Non-Storm Water Management. After the inspection, Central Valley Water Board staff contacted the Discharger's representative, who acknowledged that the pump was leaking fuel and that the discharge occurred from 0800 hours to approximately 1630 hours (8% hours). A conservative estimate of the flow was 16 gallons per minute (gpm), or 8,160 gallons of discharge during the dewatering operation.
 - (b) On 18 February 2004, Central Valley Water Board staff observed the discharge of highly turbid and sediment-laden storm water off-site into ephemeral drainages and wetlands adjacent to the site. The failure to implement controls to reduce pollutants in storm water discharges from the construction site to the BATIBCT performance standard is a violation of Special Provisions for Construction Activity C.2. The discharge caused a violation of the turbidity water quality objective, which is a violation of Special Provisions for Construction Activity C.3.
 - (c) On 18 and 25 February 2004, Central Valley Water Board staff observed storm water discharges from the site causing or threatened to cause pollution, contamination, or nuisance. Central Valley Water Board staff, on 18 February 2004, observed sediment laden storm water discharging offsite from culverts; flow from one culvert was conservatively estimated at 2,430 gallons (27 gpm for 1½ hours). On 25 February 2004,

the discharge flow of sediment laden storm water from two culverts on the east side of the project was conservatively estimated at 9,450 gallons (combined flow of 63 gpm for 2 % hours). These discharges are violations of Discharge Prohibition A.3.

- (d) Other violations observed by Central Valley Water Board staff on both 18 and 25 February 2004 (six violations):
- (i) Receiving Water Limitation B.2 violations. The SWPPP was not designed and implemented such that storm water discharges and authorized non-storm water discharges did not cause or contribute to an exceedance of water quality objectives contained in the Central Valley Water Board Basin Plan;
 - (ii) Section A: Storm Water Pollution Prevention Plan No. 1 Objectives violations. The BMPs were not being maintained.
 - (iii) Section A: Storm Water Pollution Prevention Plan No. 6 Erosion Control violations. The Discharger had not deployed an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

15. The Discharger is also subject to administrative civil liability pursuant to CWC Section 13385(a)(5) because the Discharger owned the property at the time of the noted violations on 18 February 2004 and 25 February 2001 and these discharges constitute a violation of Clean Water Act (CWA) Section 301 and CWC Section 13376. Under CWC Section 13385(a)(5), administrative civil liability extends to the violation of any of the requirements of Section 301, 302, 306, 307,308,318, 401, or 405.

16. 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). 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:

(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 Clean Water Act, as amended."

"(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

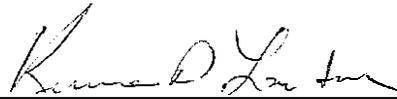
"(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup 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."

17. The discharge from the detention pond dewatering was conservatively estimated at 8,160 gallons on 18 February 2004. The discharge of sediment-laden storm water off-site on 18 and 25 February 2004 was conservatively estimated at 11,880 gallons. The Discharger has a civil liability of \$190,400 based on the estimated discharge (20,040 gallons minus 1,000 gallons at \$10 per gallon).
18. Twelve violations of the General Permit were observed on 18 and 25 February 2004, resulting in an additional civil liability of \$10,000 per day per violation for \$120,000. Additional days and possible additional locations of discharge most likely occurred based on precipitation data. However, these additional days and possible additional locations of discharge were not considered in this calculation as staff did not directly observe such discharges or staff was unable to estimate the flow.
19. Pursuant to CWC Section 13385(c), the Discharger has a maximum civil liability of \$310,400 (for each of the General Permit violations and the gallons of polluted water discharged).
20. Central Valley Water Board staff spent a total of 150 hours investigating this incident and preparing the Complaint. The total cost for staff time is \$12,000 based on a rate of \$80 per hour including overhead costs.
21. The Discharger did install some sediment controls around the periphery of the construction site. Sediment controls were deployed in approximately 10 percent of the total area disturbed. The Discharger should have installed, at a minimum, an effective combination of erosion and sediment control on all disturbed areas during the rainy season. The construction site is approximately 18.6-acres. Therefore, the estimated economic benefit for not stabilizing the remaining 90 percent of the construction site with an effective combination of erosion and sediment control best management practices is calculated at \$2000 per acre or \$33,480. The total economic benefit for the project is estimated at \$33,480.
22. Issuance of this Order 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.

ACL COMPLAINT NO R5-2006-0501
TEHAMA MARKET ASSOCIATES, LLC
LINKSIDE PLACE SUBDIVISION
BUTTE COUNTY

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2004-0541 IS RESCINDED AND
TEHAMA MARKET ASSOCIATES, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes the assessment of Administrative Civil Liability in the amount of **one hundred thousand dollars (5100,000)**. The amount of the liability proposed is based on a review of factors cited in CWC Section 13385 presented in Finding No. 16 above, and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for either **16 or 17 March 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, in which case, the Central Valley Water Board may not hold a hearing. If the Discharger wishes to waive the right to a hearing; sign the attached waiver form and return it with a check made payable to the State Water Resources Control Board, Cleanup and Abatement Account in the amount of the civil liability, to the Regional Board Redding office by **23 February 2006**. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.



KENNETH D. LANDAU, Acting Executive Officer

1-25-2006

(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 Tehama Market Associates, LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint No. R5-2006-0501 (hereafter 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 one hundred thousand dollars (\$100,000) by check, which contains a reference to ACL Complaint No. R5-2006-0501 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

ATTACHMENT 8

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

INSPECTION REPORT

13 March 2006

DISCHARGER: Tehama Market Associates, LLC. & Albert Garland
(Linkside Place Phase I)

LOCATION & COUNTY: Oroville Dam Boulevard (Highway 162 West), Butte County

CONTACT(S): N/A

INSPECTION DATES: 13 March 2006

INSPECTED BY: Scott A. Zaitz, R.E.H.S.

ACCOMPANIED BY: James C. Pedri, P.E., Assistant Executive Office-Central Valley
Regional Water Quality Control Board

OBSERVATIONS AND COMMENTS:

Background

On 13 March 2006, Regional Board staff conducted a drainage survey at Linkside Place Phase I (LP) in order to determine how and where storm water runoff from the site discharges. LP is located on the western side of the Table Mountain Golf Course (golf course). It is on the south side of Highway 162 between Highway 99 to the west and Highway 70 to the east, four miles west-southwest of Oroville, in Butte County, Assessor Parcel Number 030-260-021. The project encompasses 18.6 acres and will be developed for 65 residential housing lots. LP runoff drains generally from the west to the east and southeast. The mass grading of the site produced a gentle slope from west to east. On the eastern boundary is an ephemeral drainage that bisects LP and the golf course. The ephemeral drainage flows to the south and passes the NEXRAD Radar Facility (NEXRAD facility) to the east. Most of the northern side of LP drains to the south side of Highway 162 to under road culverts that convey the discharge to ephemeral drainages on the north side of Highway 162. The northwest corner of LP drains to the south side of Highway 162 to an under road culvert. The culvert conveys the discharge to an ephemeral drainage on the north side of Highway 162.

13 March 2006 Linkside Place North Drainage Survey

On 13 March 2006 at 1415 hours we arrived at LP to conduct the drainage survey. Representative photographs taken during this inspection are presented in Attachment A. The weather conditions at this time were partly cloudy, 50 degrees and it was not raining. Three rain gage readings located at Oroville Dam, Oroville Fish Hatchery and Sewerage Commission-Oroville Region (SC-OR) for 13 March 2006 recorded between 0.12 and 0.90 inches of rain. The ground was wet and saturated. Rainfall conditions at these locations would be similar to rainfall conditions at LP.

Approved:		
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Upon arrival at LP we parked the vehicle on the north side of Highway 162 directly across the highway from the northwest corner of LP (Picture 1). The roadside drainage ditch on the north side of Highway 162 that receives storm water from the northwest corner of LP had turbid and sediment-laden storm water in it (Picture 13). The storm water from the northwest corner of LP is conveyed by an under-road corrugated metal pipe that discharges the storm water into a well defined ephemeral drainage swale in pastureland to the north of Highway 162. We walked due north into this pastureland and observed that the ephemeral drainage swale still had ponded storm water from the past 24 hours of storm events. Pictures 1, 2 and 3 document the ponding of storm water and an obvious greenway of vegetation indicating repeated storm flows providing water for vegetative growth. Pictures 5 through 8 show the path of surface water flow to Snake creek. As we followed the greenway down slope towards Snake Creek we utilized a laser rangefinder to determine distance and a clinometer to determine the slope of the pastureland from Highway 162 to Snake Creek (Pictures 1, 3, 4 & 11). To start our drainage survey Mr. Pedri stood at the top of the pastureland slope, adjacent to Highway 162, and I walked in the pastureland due north down slope (counting my paces) adjacent to the ephemeral drainage swale stopping at approximately 150 yards. A laser rangefinder reading and a clinometer reading were taken and then Mr. Pedri walked (paced) down slope to my location and this process was repeated until we reached Snake Creek. The approximate length of the ephemeral drainage swale was 420 yards from Highway 162 to Snake Creek and the slope of the ephemeral drainage swale was calculated to be 2-3%.

13 March 2006 Linkside Place South/Southeast Drainage Survey

At 1500 hours we continued with the drainage survey on the eastern boundary of LP. There is an ephemeral drainage swale between LP and the golf course (Pictures 14-15) that receives the majority of storm water runoff from LP. At the time of the survey storm water was actively passing through this drainage feature. We walked from north to south along the eastern boundary of LP until the ephemeral drainage swale turned due east onto the golf course property (Picture 16). The storm water is conveyed basically from the west to the east through the golf course by a number of ditches and underground pipes as seen in pictures 16-21. We observed that this entire conveyance through the golf course was actively transporting storm water to the eastern boundary of the golf course where it entered another underground pipe that went underneath the City of Oroville airport western boundary fence (Picture 21). The drainage is conveyed through the airport property and under the airport tarmacs by underground piping. We drove to the east side of the airport property and located the drainage system outfall as it daylighted on the west side of Larkin Road. The drainage is then conveyed under Larkin Road and is then discharged into the Oroville Wildlife Area. We drove into the Wildlife Area and physically walked the drainage as it meandered through the Wildlife Area. The drainage discharges out of the eastern boundary of the Oroville Wildlife Area and eventually reaches the Feather River (Pictures 22-28). We physically walked the entire drainage conveyance system from the eastern boundary of LP to the Feather River with the exception of the City of Oroville Airport property. Aerial photographs verified that the storm water conveyance leaves the eastern side of the golf course and is conveyed through the City of Oroville Airport property ultimately discharging on the eastern side of the airport property into the Larkin Road underground pipe and into the Oroville Wildlife Area.

Approved		
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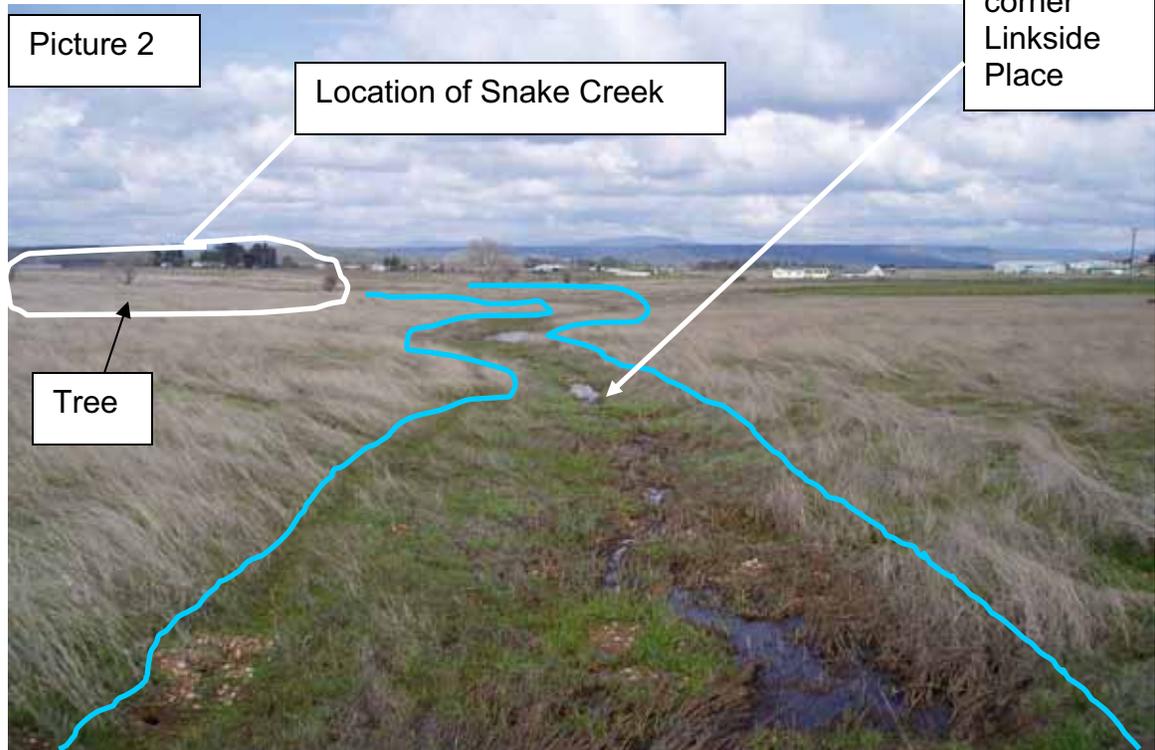
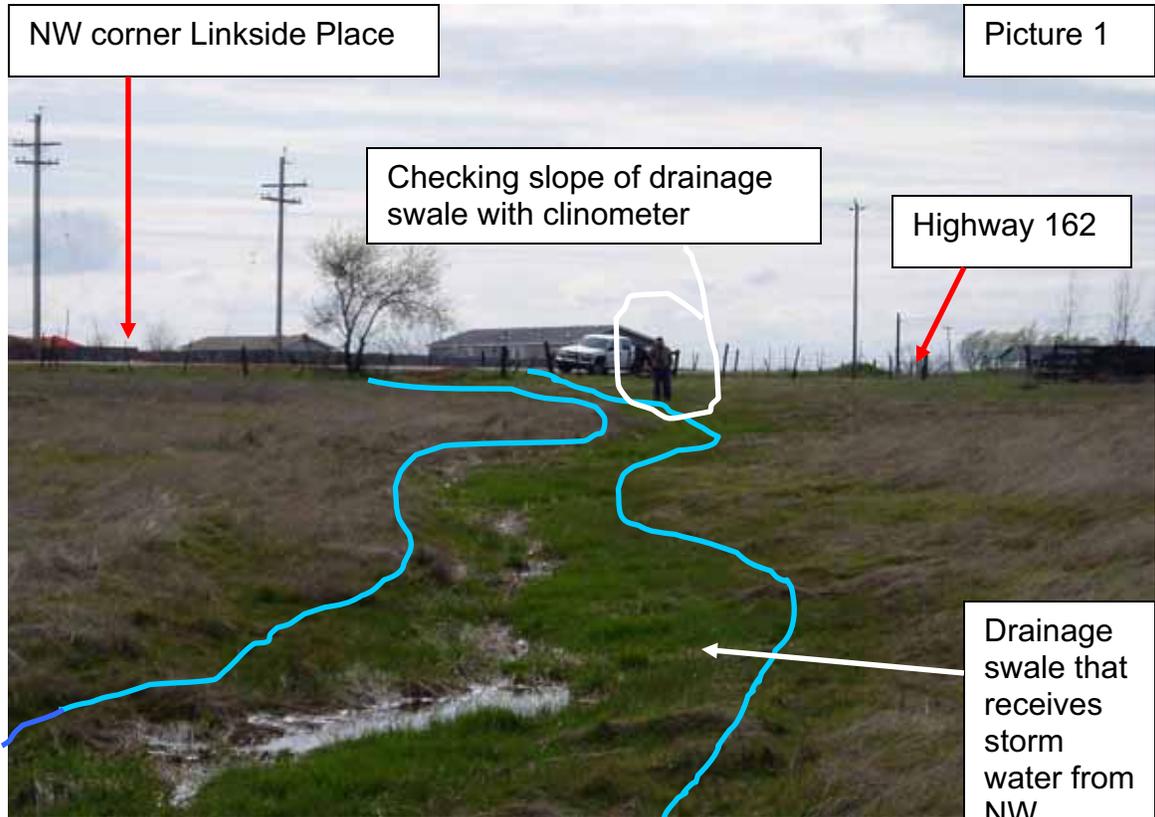
SUMMARY:

Central Valley Water Board staff conducted a drainage survey on both the north side of LP and on the eastern boundary of LP. Central Valley Water Board staff verified that runoff from LP discharges to the north to an unnamed ephemeral drainage and wetlands that are tributary to Thermalito Afterbay via Snake Creek and the Thermalito tailrace. Central Valley Water Board staff verified that runoff from LP also discharges to the south and east through the Table Mountain Golf Course, City of Oroville Airport, Oroville Wildlife Area to the Feather River.

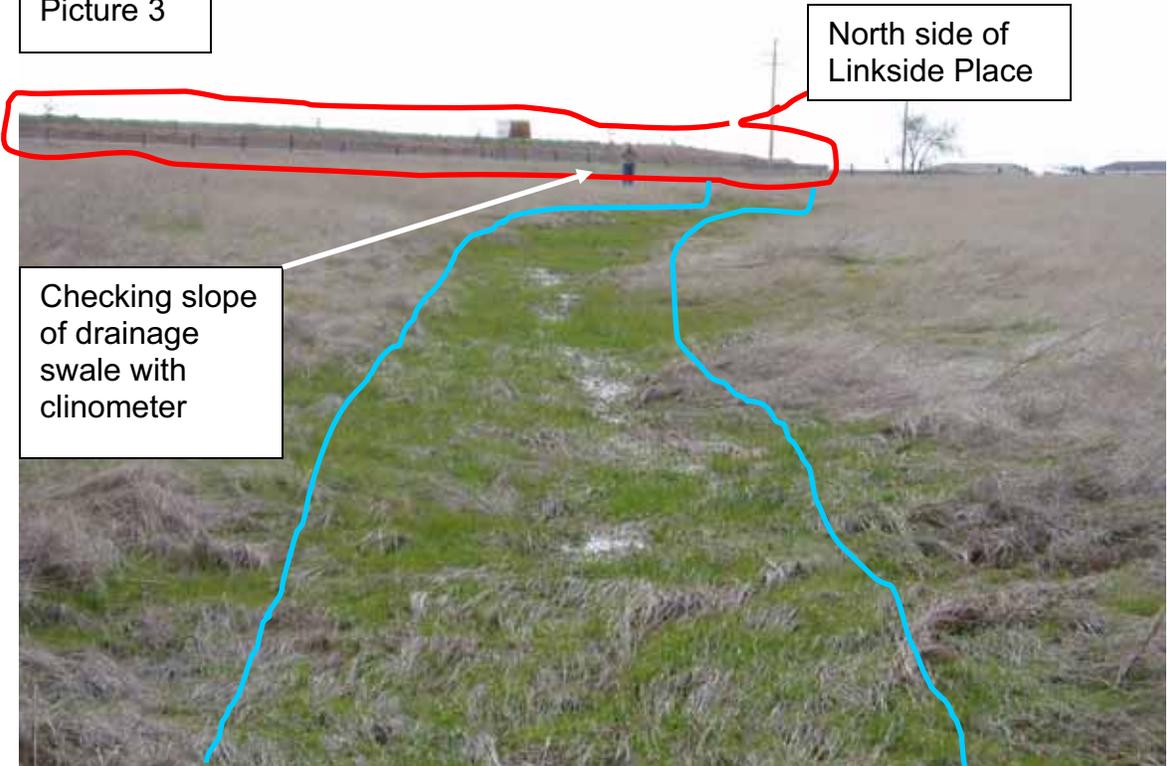
Scott A. Zaitz, R.E.H.S
Environmental Scientist

SAZ: sae

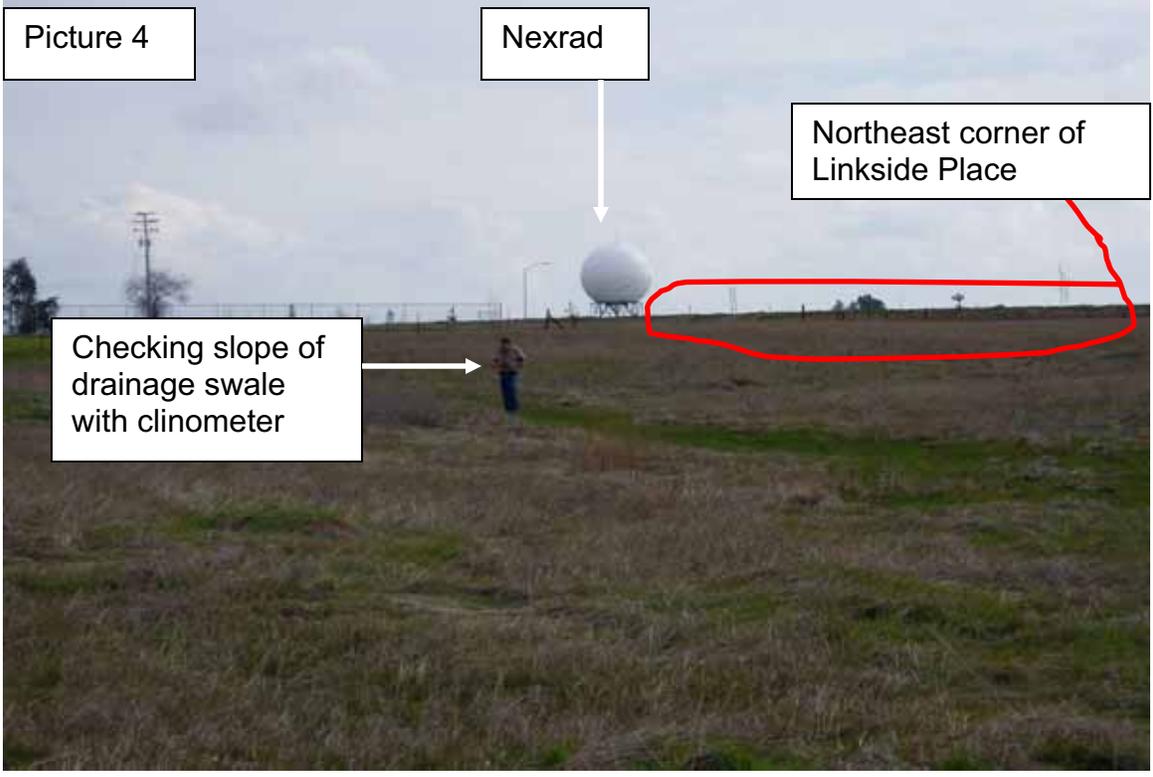
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Picture 3



Picture 4





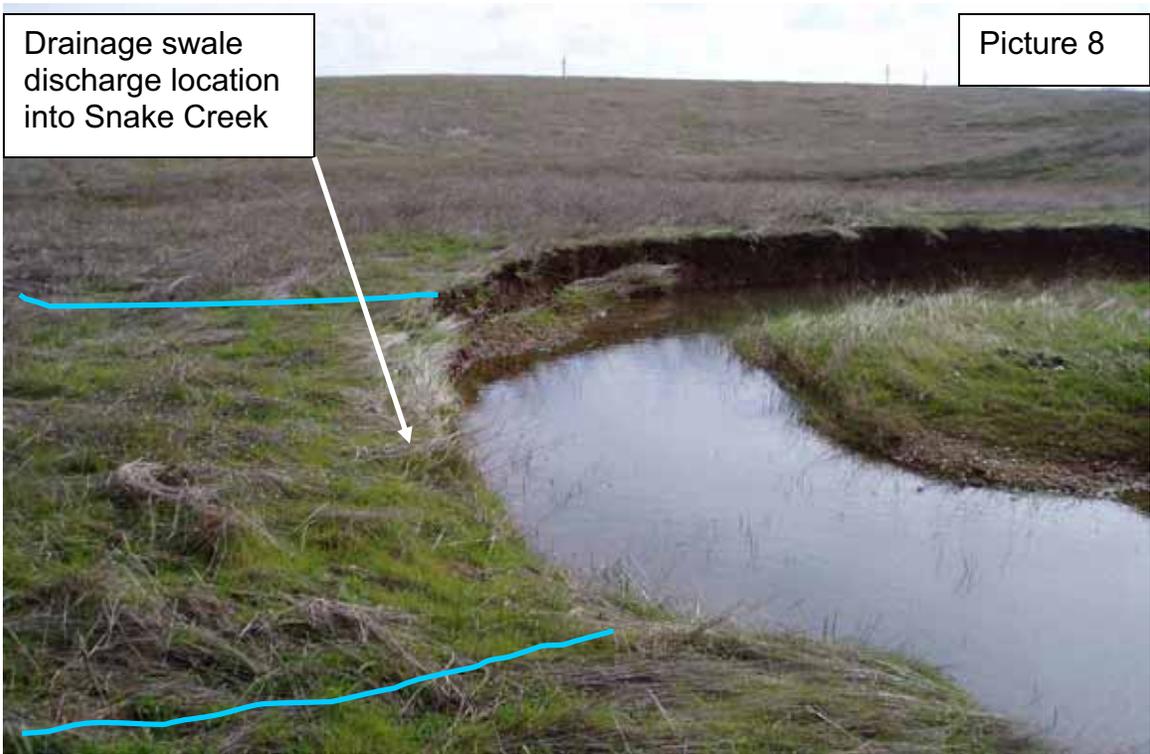
Snake Creek receiving water for storm water runoff from north side of Linkside Place

Picture 5



Picture 6

Dead vegetation matted down from storm water surface flows



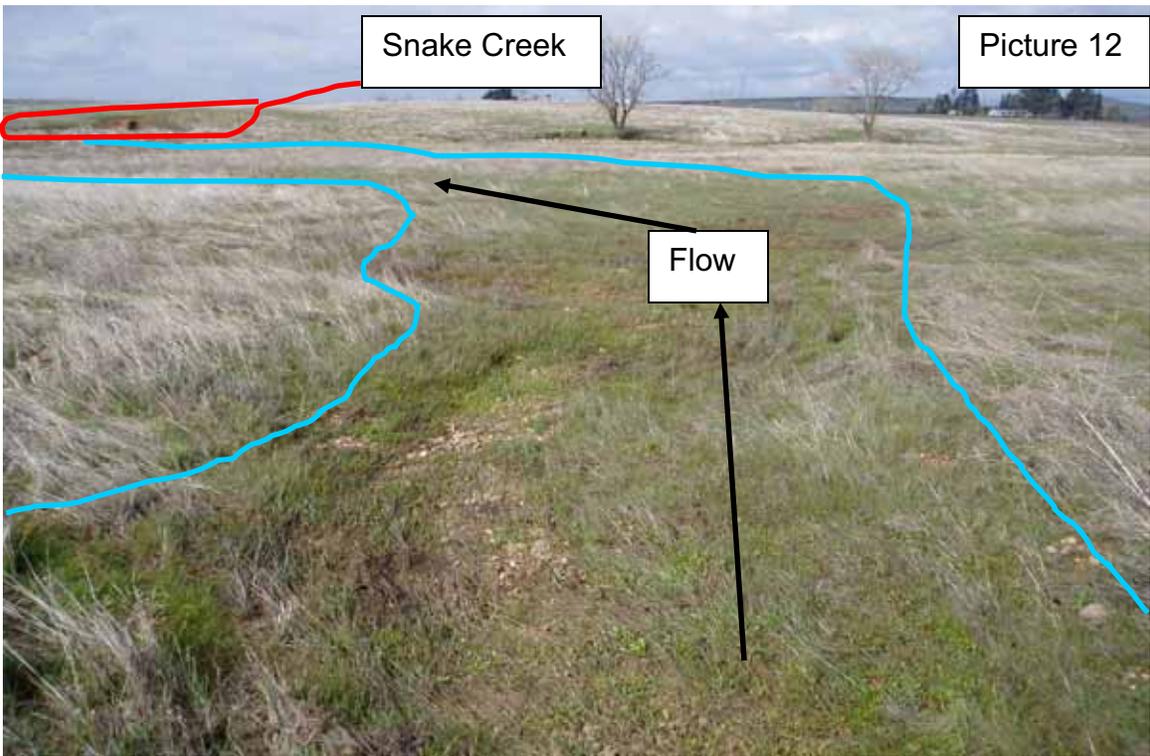


Tree that is seen in Pictures 2, 5, 6 & 7

Picture 9



Picture 10





Ephemeral drainage swale between Linkside and golf course runs north to south and then eventually courses through the golf course in a west to east direction discharging onto the City of Oroville Airport property running underneath the tarmac then under Larkin Road into the Oroville Wildlife Area and then into Feather River

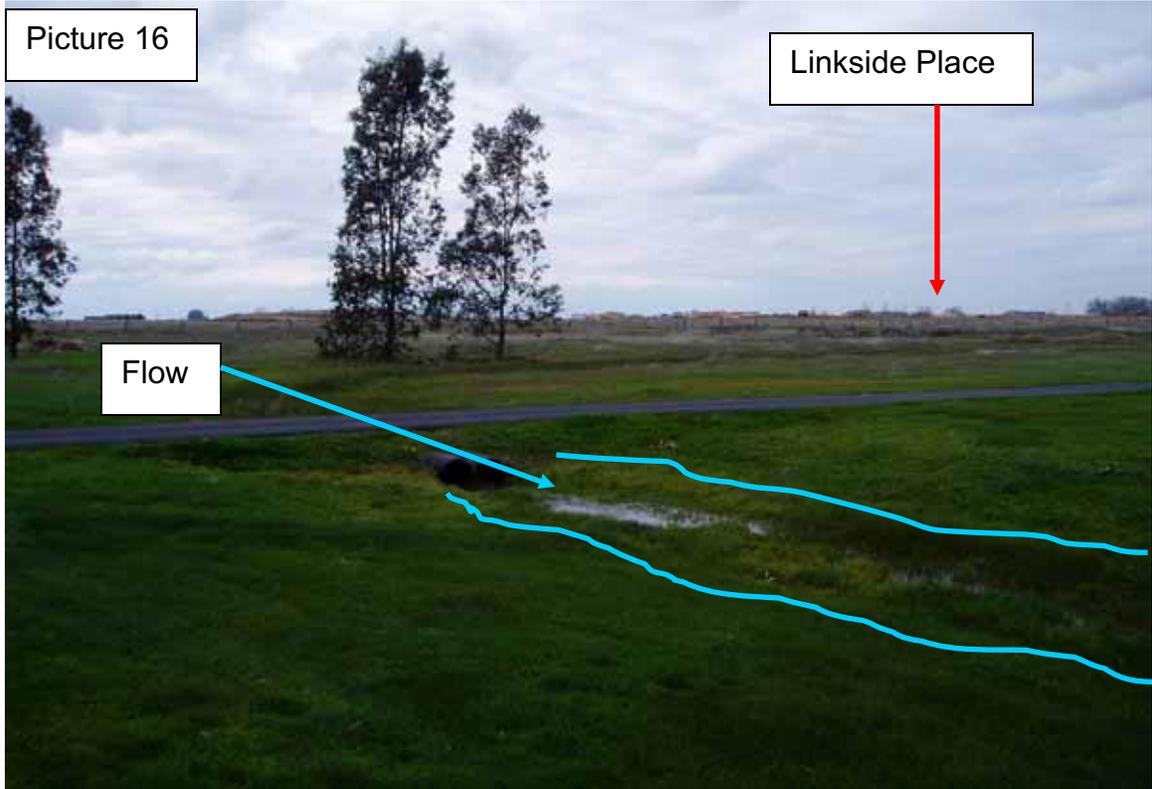
Picture 14



Picture 15

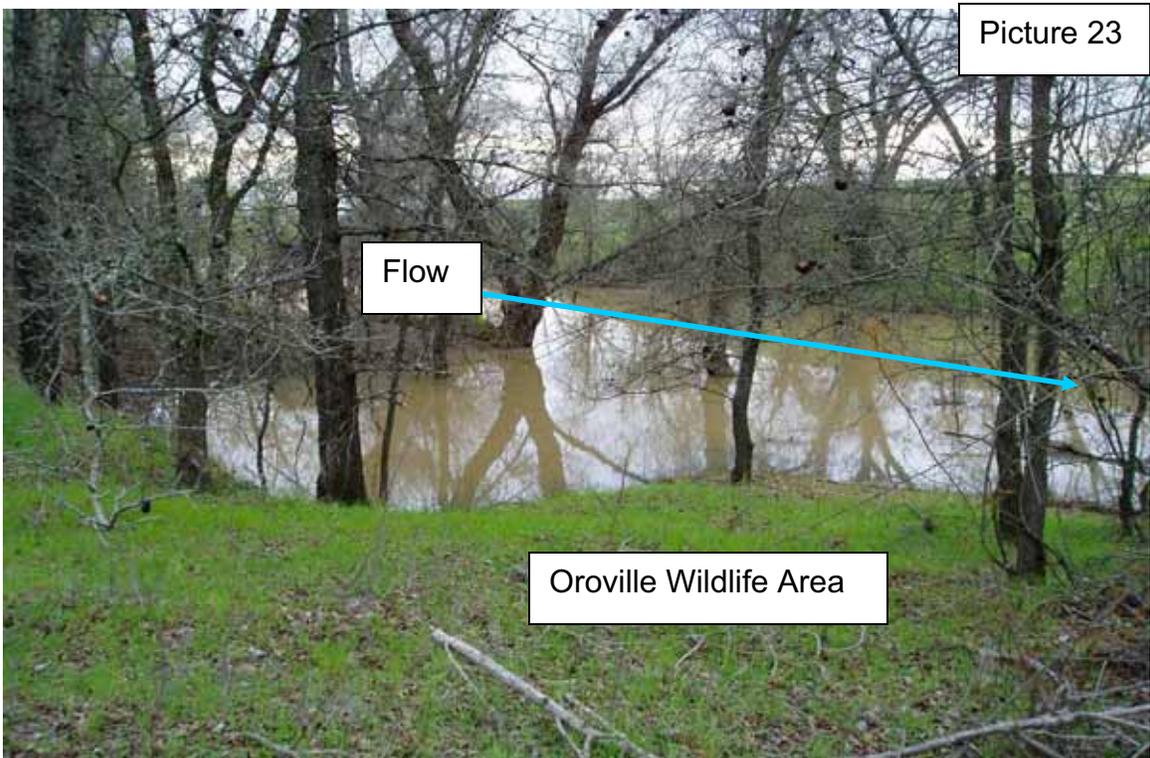
No erosion or sediment control BMPs
deployed at Linkside Place

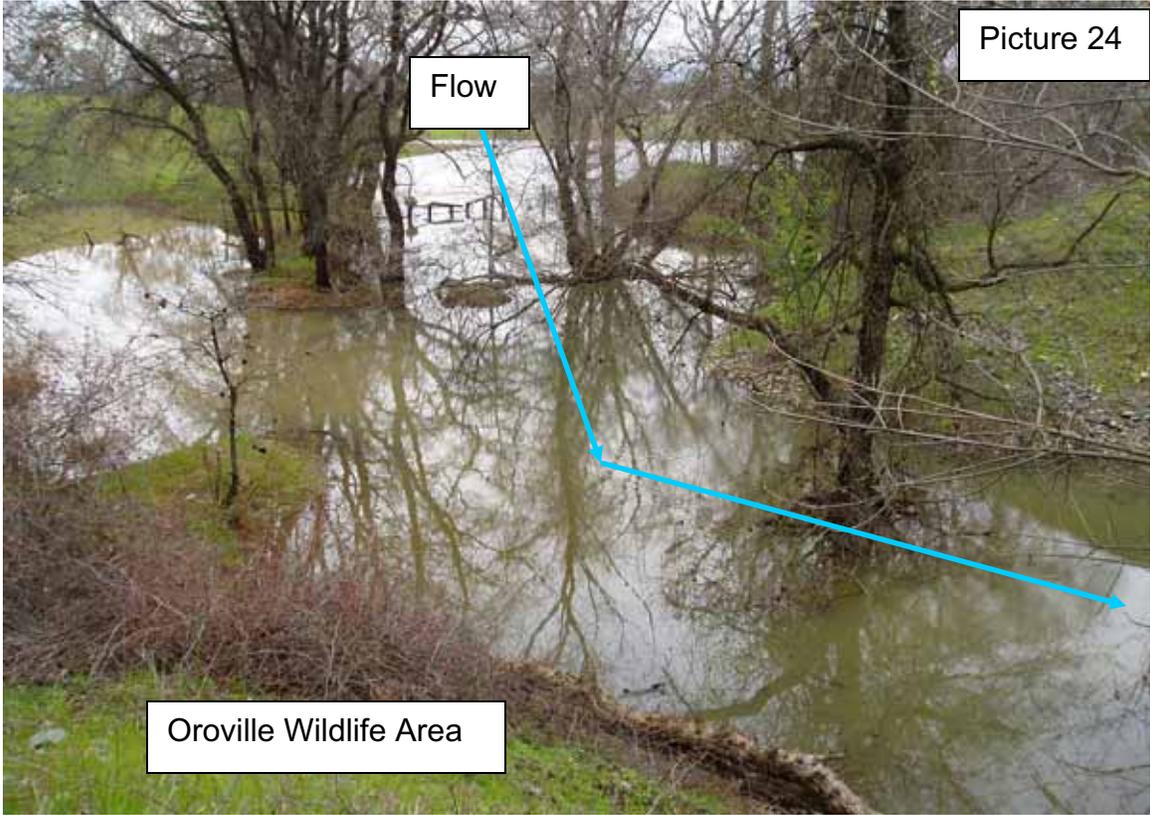
Ephemeral drainage swale on east
side of Linkside and west side of golf
course

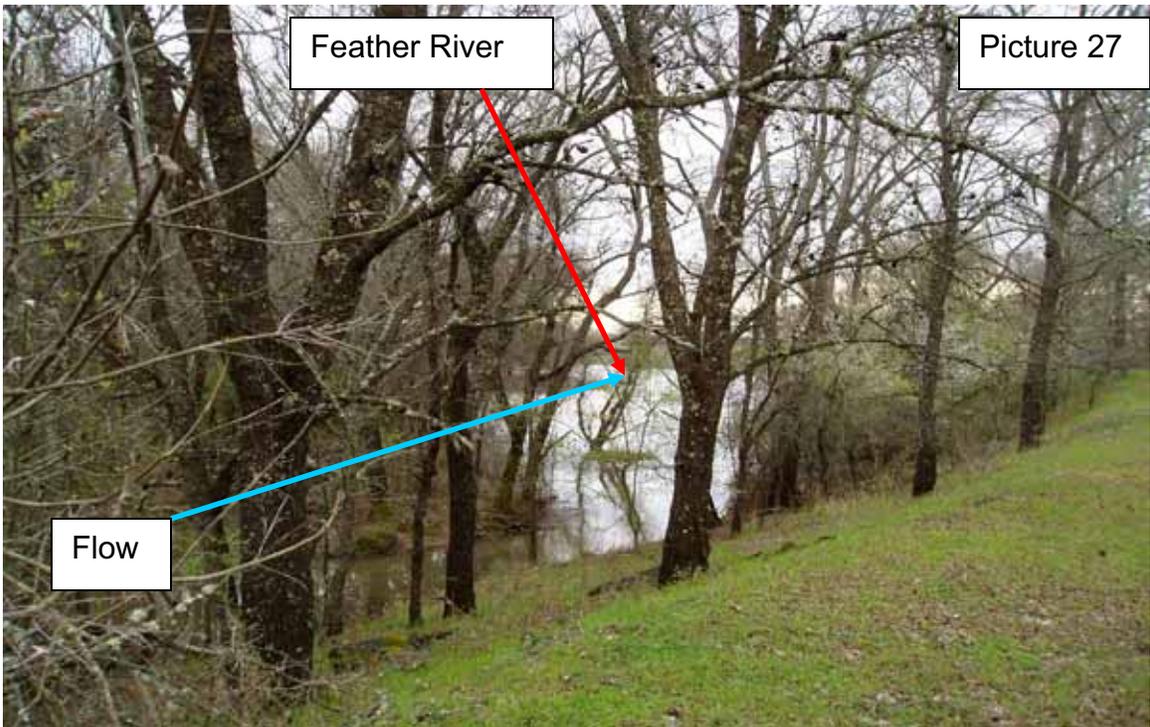












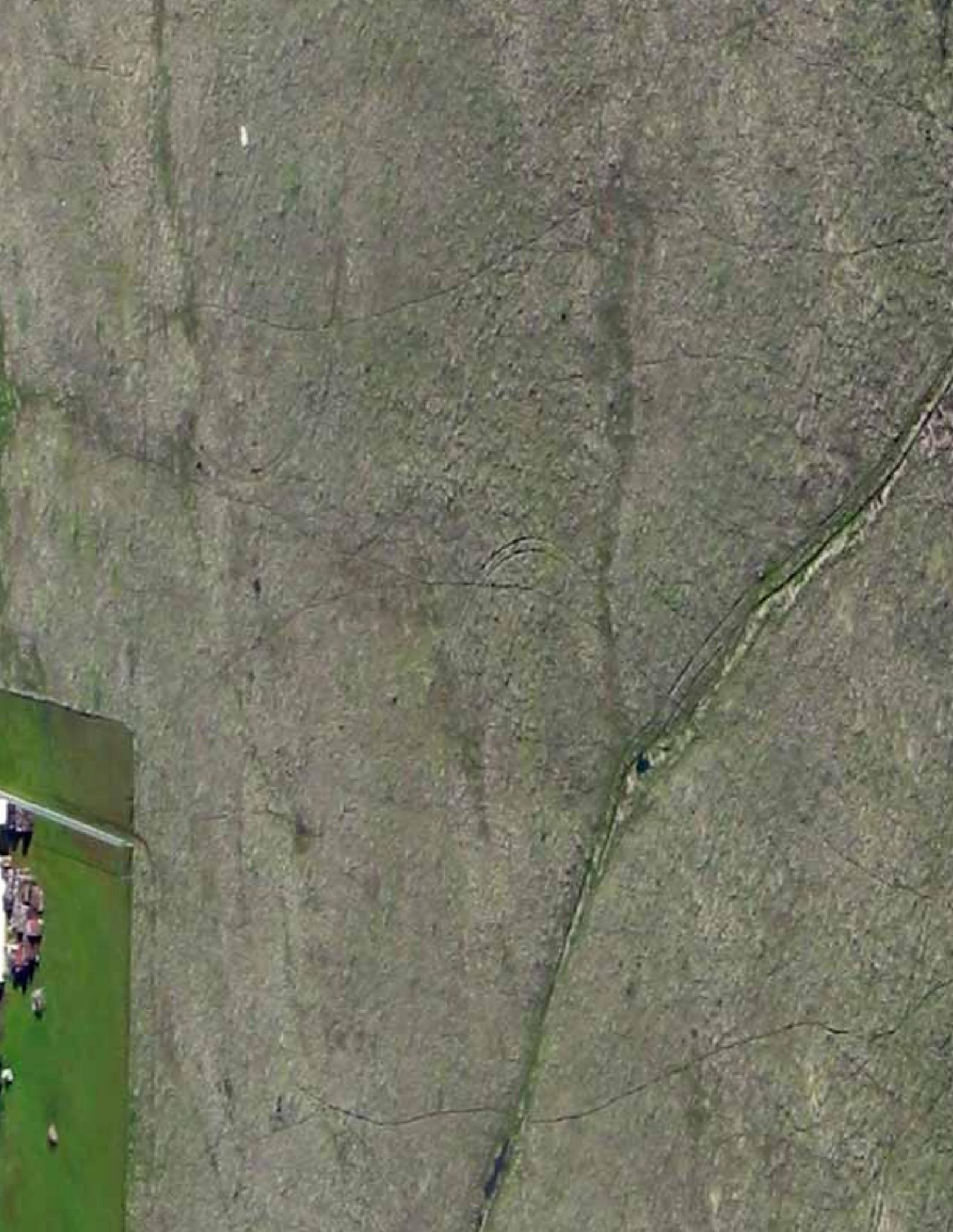


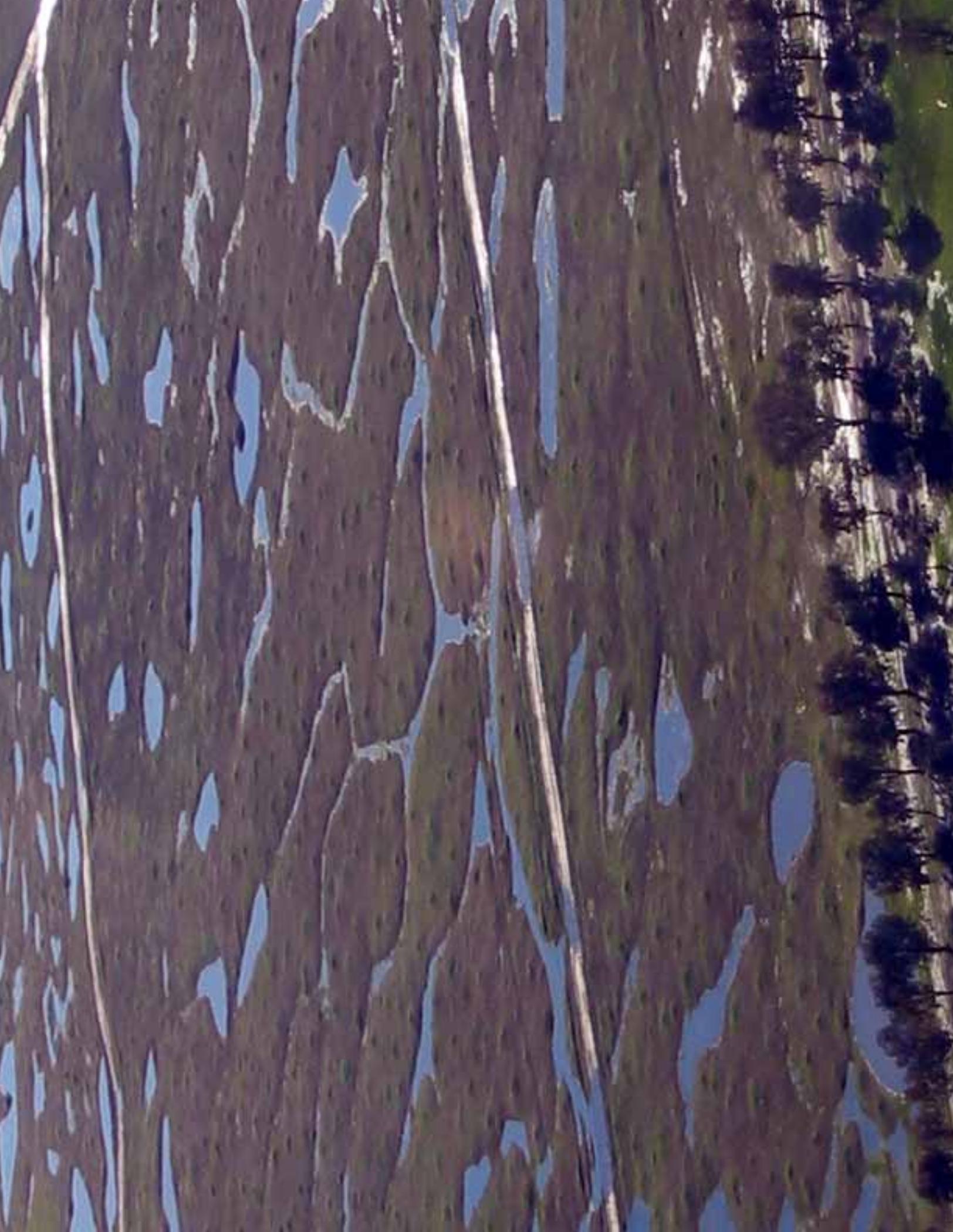
ATTACHMENT 9















3.00 Miles

2.00 Miles

1.00 Mile

