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8 STATE WATER RESOURCES CONTROL BOARD
9 STATE OF CALIFORNIA

10) Petition No.:
11 In the Matter of)
12) **PETITION FOR REVIEW OF**
13 JACK EITZEN,) **REGIONAL BOARD ACTION**
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Pursuant to California Water Code § 13320 and Title 23 of the California Code of Regulations §§ 2050 et seq., Petitioner Jack Eitzen (“Eitzen”), by and through counsel, hereby petitions the State Water Resource Control Board (“State Board”) for review and modification of orders issued by the Regional Water Quality Control Board, San Diego Region (“Regional Board”), dated October 14, 2011. The orders improperly assess excessive civil liability on Eitzen based upon his construction activities at 38175 Via Vista Grande, Murrieta, California, and 38155 Via Vista Grande, Murrieta, California (collectively the “Site”). The order regarding 38175 Via Vista Grande is attached as Exhibit A, and the order regarding 38155 Via Vista Grande is attached as Exhibit B.

The issues and a summary of the bases for the Petition follow.

1 **1. Name and address of Petitioner**

2 The name and address of Petitioner is:

3 Jack Eitzen

4 PO Box 998

5 Saratoga, CA 95071

6
7 However, all materials in connection with this Petition for Review should also be
8 provided to Mr. Eitzen's counsel at the following address:

9 Paul Cliff

10 Lobb & Cliff, LLP

11 1325 Spruce St.

12 Suite 300

13 Riverside, CA 92507

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15 **2. The Specific Actions of the Regional Board that the State Board is requested to**
16 **review.**

17
18 Petitioner seeks review of Order No. R9-2011-0048, with regard to the property located
19 at 38175 Via Vista Grande, and Order No. R9-2011-0049 with regard to the property located at
20 38155 Via Vista Grande. In particular, with regard to the property located at 38155 Via Vista
21 Grande, Petitioner requests the Board review whether the Regional Board erred when it (A)
22 determined the per day factor for the purported violation was greater than .1; (B) determined
23 Petitioner's culpability factor was 1.5; (C) determined Petitioner's cooperation factor was 1.5;
24 (D) failed to consider Petitioner's inability pay the civil penalties it assessed.

25
26 With regard to the property located at 38175, Petitioner requests the Board review
27 whether the Regional Board erred when it (F) determined the per day factor for the purported
28

1 violation was greater than .1; (G) determined the culpability factor for the purported violation
2 was 1.5; (H) determined Petitioner's cooperation factor was 1.5; (I) failed to consider the
3 Petitioner's inability to pay the civil penalties it assessed.
4

5 **3. The date on which the regional board acted.**

6 The Regional Water Board issued Order No. R9-2011-0048 on October 12, 2011. It also
7 issued Order No. R9-2011-0049 on October 12, 2011.

8 **4. Statement of the reasons the action was inappropriate or improper.**

9 Between two orders, the Regional Board has assessed the Petitioner with nearly \$700,000
10 in civil liability. The Regional Board did not accurately apply the factors enumerated in Water
11 Code section 13327 when assessing this amount; the Regional Board ignored evidence of
12 Petitioner's inability to pay; it ignored Petitioner's attempts to prevent discharge; exaggerated
13 the actual and potential harm of any discharge; and unreasonably imputed a high level of
14 culpability to him.
15

16 **38155 Via Vista Property (Order No. R9-2011-0049)**

17 The Regional Board determined Petitioner's liability for failure to develop and
18 implement an adequate storm water pollution plan (SWPPP) related to the 38155 Via Vista
19 Property was \$297,000. It also determined Petitioner was liable for \$4,950 for staff costs. The
20 Regional Board erred in this assessment, and should have found as follows:
21

22 **A. Petitioner's per day factor was .1 and not .55**

- 23
- 24 1. The degree of deviation from applicable standards of Petitioner's efforts to
25 implement an adequate SWPP was minor and not major.

26 Petitioner went to great lengths to implement an adequate SWPP, as detailed in
27 Petitioner's Required Technical Report and Technical Response ("Technical Report"), which is
28

1 attached as Exhibit E. In summary of that report, Petitioner implemented extensive erosion and
2 sediment control BMPs. He treated graded slopes with hydroseed and bonded fiber matrix. He
3 placed thousands of sand bang chevrons on the road, private drives, and pad areas. He also
4 placed silt fencing at the sites.
5

6 2. The potential for harm factor is minor and not moderate.

7 As discussed in the Technical Report, Petitioner implemented detention basins to control
8 the release of runoff water, substantially reducing the runoff's capability of eroding the
9 downstream channel. Additionally, surface flow from the end of Via Vista Grande enters a
10 twenty four inch culvert, and exits the culvert onto the surface of Claremont, flowing towards the
11 north-east. Even if sediment remained after reaching Claremont, it would have to travel one-half
12 mile to reach Murrieta Creek. Even after the December 15-18 storm, there were no reports of
13 any such sediment in the creek.
14

15 B. Petitioner's culpability factor was .5 and not 1.5

16 As described in subsection (A)(1), above, petitioner went to great lengths to implement a
17 SWPP. The Regional Board apparently ignored Petitioner's efforts when determining his
18 culpability factor was 1.5. Because of petitioner's efforts, his culpability factor should have been
19 0.5.
20

21 C. Petitioner's cooperation factor was 1.0 and not 1.5

22 The sediment deposits at issue resulted from a storm that began December 15, 2008, and
23 ended December 18, 2008. Petitioner began clean-up efforts on December 15, but had not
24 completed them on December 16, when an inspector noticed sediment deposits. As described in
25 the Technical Report, cleanup had already begun upon the inspector's arrival and was nearly
26 complete. It was completed shortly after the inspector's visit.
27
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1 Additionally, as described in subsection (A)(1) above, Petitioner went to great lengths to
2 implement appropriate safeguards.

3 D. Petitioner's liability should be reduced because he lacks the ability to pay the civil
4 liability the Regional Board assessed.

5 Petitioner lacks the ability to pay the civil liability the Regional Board assessed. As his
6 financial statements, attached as Exhibit F, indicate Petitioner's net worth is negative.

7 Additionally, his tax returns, attached as Exhibit G, indicate neither Petitioner's nor his spouse's
8 business has made a profit in the years prior to the assessment. Since Petitioner's income comes
9 solely from these sources, he lacks the ability to pay the assessed amount. The Regional Board
10 failed to consider Petitioner's tax returns and financial statements when it determined Petitioner
11 could pay the civil liability it assessed.

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15 **38175 Via Vista Property (Order No. R9-2011-0048)**

16 The Regional Board determined Petitioner's liability for the first violation for discharge
17 of waste into state waters related to the 38175 Via Vista Property was \$167,400, plus staff costs.
18 In regard to the second violation for discharge of waste to a municipal storm sewer system, it
19 determined Petitioner's was liable for \$6,600 plus staff costs. In regard to the third violation for
20 failure to develop and implement an adequate SWPPP plan, it determined Petitioner's was liable
21 for \$198,000 plus staff costs. The Regional Board erred in making this assessment, and should
22 have found as follows:
23
24

25 E. Petitioner's per day factor was .1 and not .55, .31, or .22

- 26 1. The degree of deviation from applicable standards of Petitioner's efforts to
27 implement an adequate SWPP was minor and not major.
28

1 As regards violation 1, 2, and 3, Petitioner went to great lengths to implement an
2 adequate SWPP, as detailed in Technical Report. In summary, Petitioner implemented extensive
3 erosion and sediment control BMPs. He treated graded slopes with hydroseed and bonded fiber
4 matrix. He placed thousands of sand bang chevrons on the road, private drives, and pad areas.
5 He placed silt fencing at the sites.
6

7 2. The potential for harm factor is minor and not moderate.

8 As regards Violation 1, 2, and 3, the potential for harm was minor. As discussed in the
9 Technical Report, Petitioner implemented detention basins to control the release of runoff water,
10 substantially reducing the runoff's capability of eroding the downstream channel. Additionally,
11 the sedimentation referenced in the initial complaint was either contained by concrete drainage
12 devices in the case of sediment near Montes Court, or not near any drainage area as was the case
13 with sediment deposited near Via Vista Grande. Consequently, the potential harm was
14 substantially limited.
15

16 As stated in the Technical Report, surface flow from the end of Via Vista Grande enters a
17 twenty four inch culvert, and exits the culvert onto the surface of Claremont, flowing towards the
18 north-east. No sediment was detected beyond the Claremont terminus. Additionally, the
19 Petitioner took prompt action to remove any sediment. Even if sediment remained, it would have
20 to travel one-half mile to reach Murrieta Creek. There were no reports of any such sediment in
21 the creek.
22

23 3. The risk or threat of any discharge factor is minor and not moderate.

24 As regards Violation 1, and 2, the risk posed by a discharge in this case was minor. As
25 the Regional Board stated in paragraph 16 of its order, the discharge related to these violations
26 was inert. Consequently, the risk the discharged materials posed was minor, not moderate.
27
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1 F. Petitioner's culpability factor was .5 and not 1.5

2 As regards each violation, petitioner went to great lengths to implement a SWPP, as
3 described in subsection (E)(1), above. The Regional Board apparently ignored Petitioner's
4 efforts when determining his culpability factor was 1.5. Because of petitioner's efforts, his
5 culpability factor should have been 0.5.
6

7 G. Petitioner's cooperation factor was 1.0 and not 1.5

8 The sediment deposits at issue resulted from a storm that began December 15, 2008, and
9 ended December 18, 2008. Petitioner began clean-up efforts on December 15, but had not
10 completed them on December 16, when an inspector noticed sediment deposits. As described in
11 the Technical Report, the inspector cleanup had already begun upon the inspector's arrival and
12 was nearly complete. It was actually completed shortly after the inspector's visit.
13

14 Additionally, Petitioner made extensive efforts to implement safeguards as described in
15 subsection (E)(1) above.
16

17 H. Petitioner's liability should be reduced because he lacks the ability to pay the civil
18 liability the Regional Board assessed.

19 Petitioner lacks the ability to pay the civil liability the Regional Board assessed. As his
20 financial statements, attached as Exhibit F, indicate, Petitioner's net worth is negative.
21 Additionally, his tax returns, attached as Exhibit G, indicate neither Petitioner's nor his spouse's
22 business has made a profit in the years prior to the assessment. Since Petitioner's income comes
23 solely from these sources, he lacks the ability to pay the assessed amount. The Regional Board
24 failed to consider Petitioner's tax returns and financial statements when it determined Petitioner
25 could pay the civil liability it assessed.
26
27
28

1 **5. The manner in which the Petitioner is aggrieved.**

2 Petitioner is harmed because the board assessed civil liability of \$381,450 with regard to
3 Order No. R9-2011-0048, and \$301,950 with regard to Order No. R9-2011-0049. The amount of
4 the civil liability is unjustified and excessive.
5

6 **6. The Specific action by the State or Regional Board that the Petitioner requests.**

7 The Petitioner seeks an order that will reduce the civil liability associated with Order No.
8 R9-2011-0048 to \$12,000 for violation #1, to \$1,000 for violation #2, and to \$8,000 for violation
9 #3. The Petitioner additionally seeks an order that will reduce the civil liability associated with
10 Order No. R9-2011-0049 to \$12,000.
11

12 **7. A Statement of Points and Authoritative in support of legal issues raised in the**
13 **petition.**

14 Petitioner's initial Statement of Points and Authorities appears in section four, above.
15 Petitioner may file an additional Statement of Points and Authorities if the record provided by
16 the Regional Board merits such a statement.
17

18 **8. A list of persons known to have an interest in the subject matter of the Petition.**

19 A list of all persons known to have an interest in this matter is attached to this Petition as
20 Exhibit C.
21

22 **9. A statement that the Petition has been sent to the Regional Board and to the**
23 **Discharger.**

24 A true and correct copy of this Petition was mailed First Class mail to the Regional
25 Water Board and the Discharger as set forth in the Proof of Service below.
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10. A copy of a request to the Regional Board for preparation of the Regional Board record.

Attached as Exhibit D is a copy of the Petitioner's letter requesting the Regional Water Board prepare the administrative record in this matter.

11. Statement that the issues raised in this Petition were raised before the Regional Board.

Each of the substantive issues or objections issues raised in this Petition were raised before the Regional Board.

LOBB & CLIFF, LLP

Dated: November 14, 2011

BY: _____



Paul Cliff
Jason K. Schrader
Attorneys for Petitioner, Jack Eitzen

EXHIBIT "A"

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. R9-2011-0048

ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
JACK EITZEN
38175 VIA VISTA GRANDE, MURRIETA
FOR
VIOLATIONS OF
WATER QUALITY CONTROL PLAN, SAN DIEGO BASIN (BASIN PLAN),
AND STATE BOARD ORDER NO. 99-08-DWQ

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) having held a public hearing on October 12, 2011, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R9-2010-0084, dated September 28, 2010, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability in the amount of \$381,450 finds as follows:

1. Jack Eitzen submitted a Notice of Intent to comply with the requirements of State Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity* on December 21, 2005, for the construction of a single family residence located at 38175 Via Vista Grande in Murrieta, California.
2. Jack Eitzen is required to comply with the requirements of Order No. 99-08-DWQ as well as the Waste Discharge Prohibitions contained in the Basin Plan during construction activities.
3. Waste Discharge Prohibition No. 1 of the Basin Plan states that the discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code section 13050, is prohibited.

4. Waste Discharge Prohibition No. 14 of the Basin Plan states that the discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom depositions, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
5. Discharge Prohibition A.2 of Order No. 99-08-DWQ states that discharge of materials other than storm water which are not otherwise authorized by an NPDES permit to a municipal separate storm sewer system (MS4) or waters of the nation is prohibited, except as allowed in Special Provisions of Construction Activity, C.2.
6. Special Provision for Construction Activity C.2 states that all dischargers shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section a: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the best available technology/best conventional pollutant control technology (BAT/BCT) performance standard.
7. On or before December 16, 2008, Jack Eitzen discharged waste including earthen materials into waters of the state during construction activities. The discharged material remained in state waters through the date the Complaint was issued. The number of days of violation (December 16, 2008 to September 28, 2010) is 645.
8. On January 28, 2008 and December 15, 2008, Jack Eitzen discharged sediment to the County of Riverside MS4 without using BAT/BCT during construction activities. The number of days of violation is 2.
9. Between October 19, 2007 and January 28, 2008 (102 days) and October 30, 2008 and December 16, 2008 (48 days), Jack Eitzen failed to have a SWPPP on site during construction activity and failed to implement adequate best management practices (BMPs) to reduce pollutants in storm water discharges. The number of days of violation is 150.
10. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (pub. Resources Code, § 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

11. Water Code section 13350 provides that any person who violates any waste discharge requirement issued by a Regional Water Board shall be civilly liable. Water Code section 13350(e)(1) provides that civil liability on a per day basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs or ten dollars (\$10) per gallon discharged, but not both. The discharge of waste to waters of the state in violation of Basin Plan Prohibitions 1 and 14 is subject to the provisions of Water Code section 13350.
12. Water Code section 13385 provides that any person who violations any waste discharge requirement issued by a Regional Water Board shall be civilly liable. Water Code section 13385(c)(1) and (2) provides that civil liability on a per day basis may not exceed ten thousand dollars (\$10,000) for each day the violation occurs and/or ten dollars (\$10) per gallon discharged but not cleaned up that exceeds 1,000 gallons. The discharge of sediment to an MS4 and failure to implement an adequate SWPPP in violation of State Board Order No. 99-08-DWQ are subject to the provisions of Water Code section 13385.
13. The amount of discretionary assessment proposed is based upon consideration of factors contained in Water Code section 13327. Section 13327 specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on the ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
14. The penalty calculation methodology within section VI of the Water Quality Enforcement Policy incorporates the factors of Water Code section 13327. An analysis of the penalty calculation methodology for this matter is included in the Technical Analysis for the Complaint, and the Penalty Calculation Methodology is attached to this Order as Exhibit 1. Each of the three violations is calculated individually to determine the total penalty amount.

Violation 1: Discharges of Waste to Waters of the State

15. Step 1 determines the potential for harm from the discharge violation based on (1) the potential for harm to beneficial uses, (2) the degree of toxicity of the discharge, and (3) the discharge's susceptibility to cleanup or abatement. First, the San Diego Water Board finds that discharge of fill and construction materials to waters of the state resulted in major harm or potential harm to the beneficial uses of waters of the state. Therefore, a score of 5 is appropriate for this factor.

16. Second, the San Diego Water Board considered the physical, chemical, biological, or thermal characteristics of the discharge. The materials discharged are inert, however they have diminished the physical quality of in-stream waterways and significantly impacted the existing riparian habitat for flora and fauna. A score of 2, representing a moderate risk or threat, is therefore appropriate for this factor.
17. Third, the susceptibility of the discharge to cleanup is given a score of 0 because the discharged materials remain on site and can be removed. After adding the total from the three factors for Step 1, the total potential for harm is 7.
18. Step 2 of the penalty calculation assesses the base liability amount for the discharge violations. This is determined using the potential for harm, the deviation from the requirement, the total per day factor, the days of violation, and the statutory maximum penalty per day. The potential for harm, as determined in Step 1 and shown in Findings 15-17, is 7.
19. The second factor is the deviation from the requirements, which reflects the extent to which the violation deviates from the specific requirement that was violated. The discharge of waste to waters of the state is a major deviation from the required standards (the Basin Plan Prohibitions). The San Diego Water Board finds that the category of "Major" is appropriate.
20. The Per Day Factor is determined from Table 2 in the Water Quality Enforcement Policy using the Potential for Harm and the Deviation from Requirement, a "7" and a "Major" as described above in Findings 15-17 and 19. Under Table 2, the Per Day Factor for this violation is 0.310.
21. There were 645 days of violation and the statutory maximum penalty per day is \$5,000 under Water Code section 13350(e)(1). The initial base liability is determined by multiplying the total per day factor (0.310) by the number of days of violation (645) by the statutory maximum penalty (\$5,000). Based on this equation, the Initial Base Liability for the discharge of wastes to waters of the state is \$999,750.
22. Step 4 involves adjusting the Initial Base Liability based on the discharger's culpability, the discharger's efforts to cleanup or cooperate, and the discharger's compliance history. First, the San Diego Water Board considered an adjustment factor based on the discharger's culpability. Jack Eitzen intentionally discharged waste to waters of the state while conducting grading activities associated with his parcel on Via Vista Grande. He also intentionally discharged wastes to waters of the state without filing a Report of Waste Discharge with the San Diego Water Board. Therefore, the appropriate adjustment for the culpability factor is 1.5.

23. Second, the San Diego Water Board finds the adjustment with regards to cleanup or cooperation is 1.5 because Jack Eitzen failed to cleanup the discharged sediment and rock and failed to cooperate with the San Diego Water Board. The San Diego Water Board notified Jack Eitzen numerous times of the violations, and he made no attempt to remove the discharged sediment and rock and correct the violations.
24. Third, the San Diego Water Board considered an adjustment factor for Jack Eitzen's history of violations. Jack Eitzen has no history of any violations, and therefore the appropriate adjustment factor is 1.
25. The San Diego Water Board also finds that an adjustment to the Initial Base Liability for the per-day basis for liability is appropriate for violations lasting more than 30 days because the violation resulted in no economic benefit from the illegal conduct that can be measured on a daily basis. Therefore, it is appropriate to use the alternate approach to penalty calculation recommended by the Prosecution Team in the Technical Analysis to assess penalties for a total of 48 days. The number of adjusted days of violation is greater than the minimum adjusted number of days allowed because the minimum number of days is not an adequate deterrent. The appropriate adjusted days of violation is determined by assessing a violation on the first day of the violation, an assessment for each five day period of the violation until the 30th day, and then an assessment for each fifteen (15) days of violation, which totals 48 days of violation.
26. Adjusting the Initial Base Liability as described in Findings 15-25 above, results in a Total Base Liability of \$167,400 for discharges of waste into waters of the state. Exhibit 1 details the calculations that involve the above-discussed factors in determining the Total Base Liability.
27. The record contains sufficient information that Jack Eitzen has the ability to pay the Total Base Liability amount. Therefore, the Total Base Liability is not reduced to reflect an inability to continue in business.
28. Staff costs associated with investigating the violations and preparing the enforcement action for all three violations total \$9,450 and as recommended in the Enforcement Policy, this amount is added to the liability amount. This addition is shown in Step 7 of the penalty calculation methodology in Exhibit 1.
29. The Enforcement Policy directs the San Diego Water Board to consider any economic benefit of the violations to the discharger. The Prosecution Team estimated that the economic benefit to Jack Eitzen for the violation of discharges of waste to waters of the state is \$5,663. This is the amount it

would have cost Jack Eitzen in equipment rental and labor costs to properly transport the sediment and rocks to an appropriate disposal site.

30. The Enforcement Policy also directs the San Diego Water Board to consider any maximum or minimum liability amount associated with a violation and recommends the board recover at least ten percent more than the economic benefit. Water Code 13350 does not require a minimum liability when there is a discharge but no cleanup and abatement order has been issued. The maximum penalty is \$5,000 per day of violation. The violation occurred for 645 days, and so the maximum liability amount is \$3,225,000. The minimum liability is economic benefit plus ten percent, which is \$6,229.
31. The penalty calculation methodology analysis described in the Technical Analysis, and discussed in Findings 15-30 above, together with the evidence received, supports an administrative civil liability against Jack Eitzen for discharging wastes to waters of the state in the amount of \$167,400, plus staff costs.

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

32. Step 1 determined the potential for harm from the discharge violation based on (1) the potential for harm to beneficial uses, (2) the degree of toxicity of the discharge, and (3) the discharge's susceptibility to cleanup or abatement. First, the San Diego Water Board finds that discharge of sediment to the County of Riverside's MS4 tributary to Murrieta Creek resulted in moderate harm or potential harm to beneficial uses. Therefore, a score of 3 or "Moderate" is appropriate for this factor.
33. Second, the San Diego Water Board considered the physical, chemical, biological, or thermal characteristics of the discharge. The discharged suspended sediment can cause a significant risk or threat to aquatic organisms. A score of 2, representing a moderate risk or threat, is therefore appropriate for this factor.
34. Third, the susceptibility of the discharge to cleanup is given a score of 1 because removal of all the discharged sediment is unfeasible since much of it washed away off site. After adding the total from the three factors for Step 1, the total potential for harm is 6.
35. Step 2 of the penalty calculation assesses the base liability amount for the discharge violations. This is determined using the potential for harm, the deviation from the requirement, the total per day factor, the days of violation, and the statutory maximum penalty per day. The potential for harm was determined in Step 1, as shown in Findings 32-34, and is 6.

36. The second factor is the deviation from the requirements, which reflects the extent to which the violation deviates from the specific requirement that was violated. Jack Eitzen's discharges of waste from construction activities to an MS4 tributary to waters of the nation indicated a total disregard for the requirements and renders them ineffective. The San Diego Water Board finds that the category of "Major" is appropriate.
37. The Per Day Factor is determined from Table 2 in the Water Quality Enforcement Policy using the Potential for Harm and the Deviation from Requirement, a "6" and a "Major" as described above in Findings 32-34 and 36. Under Table 2, the Per Day Factor for this violation is 0.220.
38. There were 2 days of violation and the statutory maximum penalty per day is \$10,000 under Water Code section 13385(c)(1) and (2). Therefore the initial liability from Steps 1 and is determined by multiplying the total per day factor (0.220) by the number of days of violation (2) by the statutory maximum penalty (\$10,000). Based on this equation, the Initial Base Liability for the discharge of wastes to waters of the state is \$4,400.
39. Step 4 involves adjusting the Initial Base Liability based on the discharger's culpability, the discharger's efforts to cleanup or cooperate, and the discharger's compliance history. First, the San Diego Water Board considered an adjustment factor based on the discharger's culpability. Jack Eitzen intentionally and repeatedly ignored the County's demands to install adequate BMPs at the construction site while continuing with mass grading activities on a steep slope. Therefore, the appropriate adjustment for the culpability factor is 1.5.
40. Second, the San Diego Water Board finds the adjustment with regards to cooperation is 1.0 because Jack Eitzen did voluntarily cleanup sediment discharged to downstream properties and the exposed portion of the MS4.
41. Third, the San Diego Water Board considered an adjustment factor for Jack Eitzen's history of violations. Jack Eitzen has no history of any violations, and therefore the appropriate adjustment factor is 1.
42. The Prosecution Team only had evidence indicating two days of discharges of sediment from the construction site, and so the reduction for multiple days of violation does not apply to this violation.
43. Adjusting the Initial Base Liability as described in Findings 32-42 above, results in a Total Base Liability of \$6,600 for discharges of sediment to a MS4 tributary to waters of the nation. Exhibit 1 details the calculations that involve the above-discussed factors in determining the Total Base Liability.

44. The record contains sufficient information that Jack Eitzen has the ability to pay the Total Base Liability amount. Therefore, the Total Base Liability is not reduced to reflect an inability to continue in business.
45. Staff costs associated with investigating the violations and preparing the enforcement action for all three violations total \$9,450 and as recommended in the Enforcement Policy, this amount is added to the liability amount. This addition is shown in Step 7 of the penalty calculation methodology in Exhibit 1.
46. The Enforcement Policy directs the San Diego Water Board to consider any economic benefit of the violations to the discharger. The Prosecution Team determined that Jack Eitzen derived no economic benefit from discharging sediment to an MS4 tributary to waters of the nation.
47. The Enforcement Policy also directs the San Diego Water Board to consider any maximum or minimum liability amount associated with a violation and recommends the board recover at least ten percent more than the economic benefit. There is no minimum penalty since there was no economic benefit derived from discharging the sediment to the MS4 tributary to waters of the nation. The maximum penalty is \$10,000 per day of violation. The violation occurred for 2 days, and so the maximum liability amount is \$20,000.
48. The penalty calculation methodology analysis described in the Technical Analysis, and discussed in Findings 32-47 above, together with the evidence received, supports an administrative civil liability against Jack Eitzen for discharging sediment to the MS4 tributary to waters of the nation in the amount of \$6,600, plus staff costs.

Violation 3: Failure to Develop and Implement an Adequate
Storm Water Pollution Protection Plan (SWPPP)

49. As shown in the penalty calculation methodology, Steps 1 and 2 of the Analysis do not apply to the failure to develop and implement an adequate SWPPP because they are non-discharge violations.
50. In determining Step 3, the San Diego Water Board considered the potential for harm and the deviation from requirements to determine the total per day factor. First, the potential for harm is "moderate" because failure to develop and implement a SWPPP caused at least two massive discharges of sediment to the MS4 tributary to waters of the nation. The impacts to beneficial uses from the discharge and deposition of large amounts of sediment can be substantial.

51. Second, the deviation from requirements is "Major" in this case. Order No. 99-08-DWQ requires all dischargers to develop and implement a SWPP and failure to implement an adequate SWPP is a significant deviation from the requirement.
52. Based on the potential for harm as "moderate" and the deviation from requirements as "major," Table 3 in the Water Quality Enforcement Policy states that the per day factor is 0.55. Using the per day factor of 0.55 multiplied by the total days of violation (150 days), multiplied by the statutory maximum liability of \$10,000 per day of violation, the Initial Base Liability under Step 3 of the Analysis is \$825,000.
53. Step 4 involves adjusting the Initial Base Liability based on the discharger's culpability, the discharger's efforts to cleanup or cooperate, and the discharger's compliance history. First, the San Diego Water Board considered an adjustment factor based on the discharger's culpability. Jack Eitzen began mass grading operations at a construction site located on a steep slope at the beginning of the rainy season with inadequate BMPs and failed to comply with repeated directives to implement adequate and effective BMPs. Therefore, the appropriate adjustment for the culpability factor is 1.5.
54. Second, the San Diego Water Board finds the adjustment with regards to cooperation is 1.5 because Jack Eitzen failed to comply with repeated directives by the County and San Diego Water Board to install and maintain adequate BMPs for effective sediment and erosion control.
55. Third, the San Diego Water Board considered an adjustment factor for Jack Eitzen's history of violations. Jack Eitzen has no history of any violations, and therefore the appropriate adjustment factor is 1.
56. The San Diego Water Board also finds that an adjustment to the Initial Base Liability for the per-day basis for liability is appropriate for violations lasting more than 30 days because the violation resulted in no economic benefit from the illegal conduct that can be measured on a daily basis. Therefore, it is appropriate to use the alternate approach to penalty calculation recommended by the Prosecution Team in the Technical Analysis to assess penalties for 16 days of violation for failing to develop and implement an adequate SWPP rather than 150 days.
57. Adjusting the Initial Base Liability as described in Findings 49-56 above, results in a Total Base Liability of \$198,000 for failure to develop and implement an adequate SWPP. Exhibit 1 details the calculations that involve the above-discussed factors in determining the Total Base Liability.

58. The record contains sufficient information that Jack Eitzen has the ability to pay the Total Base Liability amount. Therefore, the Total Base Liability is not reduced to reflect an inability to continue in business.
59. Staff costs associated with investigating the violations and preparing the enforcement action for all three violations total \$9,450 and as recommended in the Enforcement Policy, this amount is added to the liability amount. This addition is shown in Step 7 of the penalty calculation methodology in Exhibit 1.
60. The Enforcement Policy directs the San Diego Water Board to consider any economic benefit of the violations to the discharger. The total economic benefit to Jack Eitzen is estimated at \$45,000. The Prosecution Team calculated that adequate BMPs on the three-acre site would have been \$15,000 a year, and that the construction site lacked adequate BMPs for two years, bringing the total cost for BMPs to \$30,000. Because of the unusually steep slopes at the site, BMPs would be more extensive and expensive than a typical construction site, and so an adjustment factor of 1.5 is appropriate, making the total economic benefit that Jack Eitzen received by not implementing appropriate and adequate BMPs to control erosion and sediment \$45,000.
61. The Enforcement Policy also directs the San Diego Water Board to consider any maximum or minimum liability amount associated with a violation and recommends the board recover at least ten percent more than the economic benefit. The maximum liability for failure to develop and implement an adequate SWPPP for 150 days is \$1,500,000. The minimum liability is the estimated economic benefit discussed in Finding 60, plus ten percent, which is \$49,500.
62. The penalty calculation methodology analysis described in the Technical Analysis, and discussed in Findings 49-61 above, together with the evidence received, supports an administrative civil liability against Jack Eitzen for failure to develop and implement an adequate SWPPP in the amount of \$198,000, plus staff costs.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13350 and 13385, that civil liability be imposed upon Jack Eitzen in the amount of \$381,450 for the discharge of earthen material into waters of the state between December 16, 2008 and September 21, 2010, the discharge of sediment to an MS4 on January 8, 2008 and December 15, 2008, and failure to develop and implement an adequate SWPPP between October 19, 2007 and January 28, 2008, and October 30, 2008 and December 16, 2008.

1. Jack Eitzen shall submit a check to the San Diego Water Board in the amount of three hundred eighty one thousand four hundred fifty dollars (\$381,450) payable to the "State Water Resources Control Board" for deposit into the Waste Discharge Permit Fund and Cleanup and Abatement Account within thirty (30) days of adoption of this Order.
2. Fulfillment of Jack Eitzen's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2010-0084.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if Jack Eitzen fails to comply with payment of the liability as detailed in paragraph 1.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region October 12, 2011.



DAVID W. GIBSON
Executive Officer

Exhibit 1: Penalty Methodology Decisions for ACL Order No. R9-2011-0048

Place ID: 755683
Reg. Msr: 402035
SMARTS AppID: 288214
SMARTS Enf. ID: 402035

Step 1: Potential Harm Factor				
Violations	Harm/Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Violation 1-Discharge of fill to waters of the state	5	2	0	7
Violation 2-Discharge of sediment to MS4	3	2	1	6
Violation 3-Failure to implement adequate SWPPP				

Step 2: Assessments for Discharge Violations-No Per Gallon Discharge Violations					
Violations	Per Day Factor				Statutory Max per Day [section 13xxx]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Violation 1	7	Major	0.31	645	\$5,000
Violation 2	6	Major	0.22	2	\$10,000

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

Initial Liability From Steps 1 - 3	
Violation 1: $(.31) \times (645) \times (5,000) =$	\$999,750
Violation 2: $(0.22) \times (2) \times (\$10,000) =$	\$4,400
Violation 3: $(0.55) \times (150) \times (\$10,000) =$	\$825,000

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Violation 1	1.5	1.5	1	n/a	48
Violation 2	1.5	1	1	n/a	n/a
Violation 3	1.5	1.5	1	n/a	16

Step 5: Total Base Liability Amount	
(Per day Factor x statutory maximum) x (Step 4 Adjustments)	
Violation 1: $(0.31) \times (\$5,000) \times (1.5) \times (1.5) \times (1) \times (48) =$	\$167,400
Violation 2: $(0.22) \times (\$10,000) \times (1.5) \times (1) \times (1) \times (2) =$	\$6,600
Violation 3: $(0.55) \times (\$10,000) \times (1.5) \times (1.5) \times (1) \times (16) =$	\$198,000

Step 6: Ability to Pay / Continue in Business	
[Yes, No, Partly, Unknown]	
Yes	

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement	Other
\$9,450	n/a

Step 8: Economic Benefit	
Violation 1: \$5,663	
Violation 2: \$0	
Violation 3: \$46,000	

Step 9: Maximum and Minimum Liability Amounts		
	Minimum	Maximum
Violation 1	\$6,229	\$3,225,000
Violation 2	\$0	\$20,000
Violation 3	\$49,500	\$1,500,000

Step 10: Final Liability Amount	
(total base liability) + (other factors)	
$(\$372,000) + (\$9,450) =$	
\$381,450	

EXHIBIT "B"

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. R9-2011-0049

ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
JACK EITZEN
38155 VIA VISTA GRANDE, MURRIETA
FOR
VIOLATIONS OF
STATE BOARD ORDER NO. 99-08-DWQ

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) having held a public hearing on October 12, 2011, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R9-2010-0104, dated November 15, 2010, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability in the amount of \$301,950 finds as follows:

1. Jack Eitzen submitted a Notice of Intent to comply with the requirements of State Board Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity* on December 21, 2005, for the construction of a single family residence located at 38155 Via Vista Grande in Murrieta, California.
2. Jack Eitzen is required to comply with the requirements of Order No. 99-08-DWQ during construction activities.
3. Special Provision for Construction Activity C.2 states that all dischargers shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section a: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the best available technology/best conventional pollutant control technology (BAT/BCT) performance standard.

4. Between January 2, 2008 and March 13, 2008 (72 days), September 24, 2008 and December 23, 2008 (91 days) and February 11, 2010 and March 30, 2010 (48 days) Jack Eitzen failed to have a SWPPP on site during construction activity and failed to implement adequate best management practices (BMPs) to reduce pollutants in storm water discharges. The number of days of violation is 211.
5. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (pub. Resources Code, § 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
6. Water Code section 13385 provides that any person who violates any waste discharge requirement issued by a Regional Water Board shall be civilly liable. Water Code section 13385(c)(1) and (2) provides that civil liability on a per day basis may not exceed ten thousand dollars (\$10,000) for each day the violation occurs and/or ten dollars (\$10) per gallon discharged but not cleaned up that exceeds 1,000 gallons.
7. The amount of discretionary assessment proposed is based upon consideration of factors contained in Water Code section 13327. Section 13327 specifies the factors that the San Diego Water Board shall consider in establishing the amount of discretionary liability for the alleged violations, which include: the nature, circumstance, extent, and gravity of the violations, the ability to pay, the effect on the ability to continue in business, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
8. The penalty calculation methodology within section VI of the Water Quality Enforcement Policy incorporates the factors of Water Code section 13327. An analysis of the penalty calculation methodology for this matter is included in the Technical Analysis for the Complaint, and the Penalty Calculation Methodology is attached to this Order as Exhibit 1. As shown in the penalty calculation methodology, Steps 1 and 2 of the Analysis do not apply to the failure to develop and implement an adequate SWPP because it is a non-discharge violation.
9. In determining Step 3, the San Diego Water Board considered the potential for harm and the deviation from requirements to determine the total per day factor. First, the potential for harm is "moderate" because the failure to develop and implement a SWPP posed a substantial threat to beneficial uses

Jack Eitzen

38155 Via Vista Grande, Murrieta

due to the lack of adequate erosion and sediment control BMPs on disturbed areas of the construction site during consecutive rainy seasons. The impacts to beneficial uses from the discharge and deposition of large amounts of sediment can be substantial.

10. Second, the deviation from requirements is "Major" in this case. Order No. 99-08-DWQ requires all dischargers to develop and implement a SWPP and failure to implement an adequate SWPP is a significant deviation from the requirement.
11. Based on the potential for harm as "moderate" and the deviation from requirements as "major," Table 3 in the Water Quality Enforcement Policy states that the per day factor is 0.55. Using the per day factor of 0.55 multiplied by the total days of violation (211 days), multiplied by the statutory maximum liability of \$10,000 per day of violation, the Initial Base Liability under Step 3 of the Analysis is \$1,160,500.
12. Step 4 involves adjusting the Initial Base Liability based on the discharger's culpability, the discharger's efforts to cleanup or cooperate, and the discharger's compliance history. First, the San Diego Water Board considered an adjustment factor based on the discharger's culpability. Jack Eitzen began mass grading operations at a construction site located on a steep slope at the beginning of the rainy season with inadequate BMPs and failed to comply with repeated directives to implement adequate and effective BMPs. Therefore, the appropriate adjustment for the culpability factor is 1.5.
13. Second, the San Diego Water Board finds the adjustment with regards to cleanup or cooperation is 1.5 because Jack Eitzen failed to comply with repeated directives by the County and San Diego Water Board to install and maintain adequate BMPs for effective sediment and erosion control.
14. Third, the San Diego Water Board considered an adjustment factor for Jack Eitzen's history of violations. Jack Eitzen has no history of any violations, and therefore the appropriate adjustment factor is 1.
15. The San Diego Water Board also finds that an adjustment to the Initial Base Liability for the per-day basis for liability is appropriate for violations lasting more than 30 days because the violation resulted in no economic benefit from the illegal conduct that can be measured on a daily basis. Therefore, it is appropriate to use the alternate approach to penalty calculation recommended by the Prosecution Team in the Technical Analysis to assess penalties for 24 days of violation for failing to develop and implement an adequate SWPP rather than a total of 211 days: 72 days from January 2, 2008 to March 13, 2008, 91 days from September 24, 2008 to December 23, 2008, and 48 days from February 11, 2010 to March 30, 2010.

16. Adjusting the Initial Base Liability as described in Findings 8-15 above, results in a Total Base Liability of \$297,000 for failure to develop and implement an adequate SWPP. Exhibit 1 details the calculations that involve the above-discussed factors in determining the Total Base Liability.
17. The record contains sufficient information that Jack Eitzen has the ability to pay the Total Base Liability amount. Therefore, the Total Base Liability is not reduced to reflect an inability to continue in business.
18. Staff costs associated with investigating the violation and preparing the enforcement action total \$4,950 and as recommended in the Enforcement Policy, this amount is added to the liability amount. This addition is shown in Step 7 of the penalty calculation methodology in Exhibit 1.
19. The Enforcement Policy directs the San Diego Water Board to consider any economic benefit of the violations to the discharger. The total economic benefit to Jack Eitzen is estimated at \$15,000. The Prosecution Team calculated that adequate BMPs on the one-acre site would have been \$5,000 a year, and that the construction site lacked adequate BMPs for two years, bringing the total cost for BMPs to \$10,000. Because of the unusually steep slopes at the site, BMPs would be more extensive and expensive than a typical construction site, and so an adjustment factor of 1.5 is appropriate, making the total economic benefit that Jack Eitzen received by not implementing appropriate and adequate BMPs to control erosion and sediment \$15,000.
20. The Enforcement Policy also directs the San Diego Water Board to consider any maximum or minimum liability amount associated with a violation and recommends the board recover at least ten percent more than the economic benefit. The maximum liability for failure to develop and implement an adequate SWPPP for 211 days is \$2,110,000. The minimum liability is the estimated economic benefit discussed in Finding 19, plus ten percent, which is \$16,500.
21. The penalty calculation methodology analysis described in the Technical Analysis, and discussed in Findings 8-20 above, together with the evidence received, supports an administrative civil liability against Jack Eitzen for failure to develop and implement an adequate SWPP in the amount of \$301,950.

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that civil liability be imposed upon Jack Eitzen in the amount of \$301,950 for failure to develop and implement an adequate SWPPP between January 2, 2008 and

March 13, 2008, September 24, 2008 and December 23, 2008, and February 11, 2010 and March 30, 2010.

1. Jack Eitzen shall submit a check to the San Diego Water Board in the amount of three hundred one thousand nine hundred fifty dollars (\$301,950) payable to the "State Water Resources Control Board" for deposit into the Cleanup and Abatement Account within thirty (30) days of adoption of this Order.
2. Fulfillment of Jack Eitzen's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2010-0104.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if Jack Eitzen fails to comply with payment of the liability as detailed in paragraph 1.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region on October 12, 2011.



DAVID W. GIBSON
Executive Officer

Exhibit 1: Penalty Methodology Decisions for ACL Order No. R9-2011-0104

SMARTS App ID: 288215
SMART Enf. ID: 402985

Exhibit No. 1
Discharger: Mr. Jack Eitzen

Penalty Methodology Decisions
ACL Order No. R9-2011-0049

Step 1: Potential Harm Factor

Violations	Harm/Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
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No Discharge Violations

Step 2: Assessments for Discharge Violations

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

No Discharge Violations

Violations	Per Day Factor				Statutory Max per Day [section 13xxx]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	

No Discharge Violations

Step 3: Per Day Assessments for Non-Discharge Violations

Violations	Per Day Factor				Statutory/ Adjusted Max [section 13xxx]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Violation 1	Moderate	Major	0.55	211	\$10,000

Initial Liability From Steps 1 - 3

Violation 1: (.55) x (211) x (\$10,000) = \$1,160,500

Step 4: Adjustments

Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Violation 1	1.5	1.5	1	n/a	24

Step 5: Total Base Liability Amount

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

Violation 1: (0.55) x (\$10,000) x (1.5) x (1.5) x (1) x (24) = \$297,000

Step 6: Ability to Pay / Continue in Business

[Yes, No, Partly, Unknown]

Yes

Step 7: Other Factors as Justice May Require

Costs of Investigation and Enforcement	Other
\$4,950	n/a

Step 8: Economic Benefit

\$15,000

Step 9: Maximum and Minimum Liability Amounts

	Minimum	Maximum
Violation 1	\$16,500	\$2,110,000

Step 10: Final Liability Amount

(total base liability) + (other factors)

(\$297,000) + (\$4,950) = \$301,950

EXHIBIT "C"

Jack Eitzen
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Saratoga, CA 95071

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EXHIBIT "D"

LOBB & CLIFF, LLP
LAWYERS

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WRITER'S E-MAIL:
pcliff@lobbcliff.com

November 14, 2011

David W. Gibson
Executive Officer
Regional Water Quality Control Board
9174 Sky Park, Suite 100
San Diego, CA 92123-4353

**Re: Request for Preparation of Administrative Record
For Orders Nos. R9-2011-0048 and R9-2011-0049
Our File No.: 7676.000**

Dear Mr. Gibson:

On November 14, 2011, Jack Eitzen filed a Petition for Review with the California State Water Resources Control Board ("State Board") requesting that the State Board review the actions of the California Regional Water Quality Control Board, San Diego Region. ("Regional Board") related to the assessment of civil liability in the above-referenced Orders.

With this letter, Mr. Eitzen respectfully requests that, pursuant to 23 CCR § 2050.5(a) the Regional Board prepare and deliver the administrative record of proceedings related to the assessment of liability against Mr. Eitzen to the State Board. Mr. Eitzen requests notification by the Regional Board at the time the administrative record is lodged with the State Board. Notices may be sent to the undersigned at the addresses listed above.

Mr. Eitzen requests that the record regarding the assessment of civil liability be organized chronologically, paginated consecutively, using Bates stamping or similar means of identification, and indexed so that each document may be clearly identified as to its contents and source.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Cordially,



Paul Cliff
Lobb & Cliff, LLP

PC:JS:alm

David W. Gibson
November 14, 2011
Page 2

cc: David M. Boyers – *via email* – dboyers@waterboards.ca.gov

EXHIBIT "E"



May 18, 2010
W.O. 2340

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

Attention: Mr. Jack Eitzen

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

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

INTRODUCTION

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

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

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

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

Item 1

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

Response to Item 1- IMMEDIATE ACTIONS SECTION

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

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

Table 1- Rainfall Data Summary

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

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

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

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

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

Via Vista Grande Erosion Control Work

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

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

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

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

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

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

Item 2

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

Response to Item 2

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

Item 3

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

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

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

Response to Item 3- SWPPP Status Report

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

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

- d) Annual Compliance Certifications were not completed in 2008 or 2009. The HOA is in the process of obtaining copies of Annual Compliance Certifications for each of the WDID holders for 2010.
- e) The required SWPPP Signatory Pages are included in the copies of the various SWPPP reports submitted by Fairway Hills Estates HOA under separate cover.
- f) Copies of the SWRCB Receipts for NOIs are presented in Appendix D.
- g) As discussed with Mr. Tony Felix on the phone, a copy of the "SWPPP and Monitoring Program Review Sheet" was not enclosed with the NOV as strated in this comment. Per Mr. Felix's request, in reply to this item we have included herein in Appendix F (not Attachment A) a copy of the *BMP Implementation Schedule* and *BMPs Maintenance Inspection and Repair* sheets from the SWPPP for Fairway Hills Estates HOA prepared by RenCivil dated April 30, 2008. A full copy of the SWPPP signed and certified is being submitted by the HOA to RWQCB under separate cover.

Item 4

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

Response to Item 4

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

Item 5

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

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

Response to Item 5

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

Item 6

A Pollutant Sampling Program Section including the following:

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

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

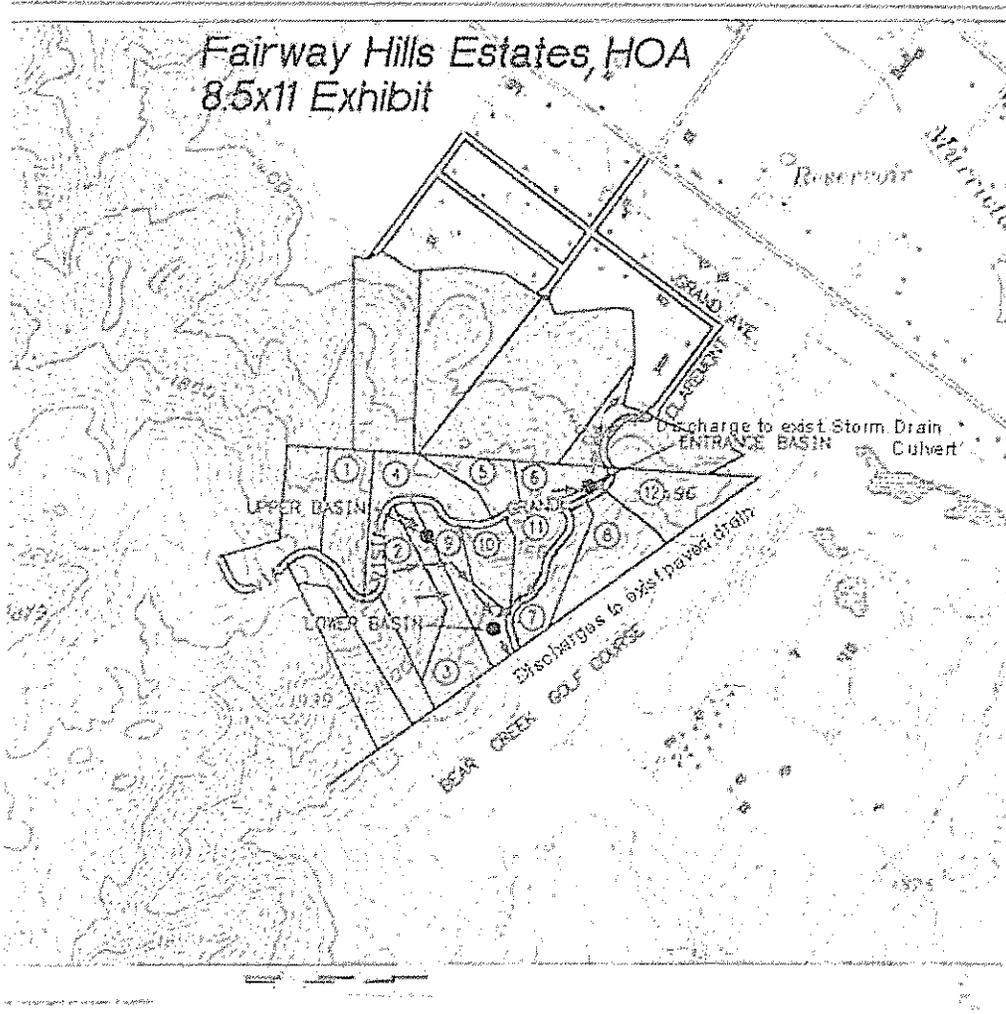
Response to Item 6

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

Item 7

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

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



- | | | | |
|---|--------------------------------|---|------------------------|
| ① | MANEZ WDID 933C349905 | ⑩ | PETROL (NO GRADING) |
| ② | RAGSDALE WDID 933C338874 | ⑪ | FRIESTEDI (NO GRADING) |
| ③ | EITZEN WDID 933C335575 | ⑫ | ADAMS (NO GRADING) |
| ④ | STEVE MAGOULAS WDID 933C350455 | | |
| ⑤ | STEVE MAGOULAS WDID 933C350455 | | |
| ⑥ | STEVE MAGOULAS WDID 933C350453 | | |
| ⑦ | PALL MAGOULAS WDID 933C357730 | | |
| ⑧ | PALL MAGOULAS WDID 933C357733 | | |
| ⑨ | JEFF FRIESTEDI WDID 933C357764 | | |

Site Map- Figure 1

Response to Item 7

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

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

Item 8

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

Response to Item 8

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

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

Item 9

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

Response to Item 9

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

Item 10

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

Response to Observation 10

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

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

Part II. TECHNICAL RESPONSE TO NOTICE OF VIOLATION

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

Violations:

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

Response to Observation A.I

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

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

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

Response to Observation A.II

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

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

Response to Observation A.III

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

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

IV. Observation(s):

- (a) Your site lacked the appropriate and necessary erosion and sediment controls for most disturbed areas. Your site lacked sediment controls (i.e. silt fences or fiber rolls) for the outside slopes (see photos 06, 09, 10, 11, 12, 13, 18, and 26).
- (b) There was no SWPPP available for inspection to review to insure there was a specific construction phase/ BMP sequencing schedule
- (c) Three sediment basins at the site lacked the proper design and placement requirements. One had failed resulting in a discharge and the other two were placed directly within waters of the State (see photos 12, 13, 14, 17, 21, 22, and 23).
- (d) Your vehicle and equipment and storage area lacked the proper controls to minimize the exposure of spilled oil, grease, and other vehicle maintenance fluids to stormwater (see photos 27 and 28).
- (e) Your site had inadequately maintained entrance/exit BMPs, which caused significant sediment tracking at the Claremont Street entrance/exit (see photo 04).

Response to Observation A.IV (a)

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

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

Response to Observation A.IV (b)

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

Response to Observation A.IV (c)

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

Response to Observation A.IV (d)

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

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

Response to Observation A.IV (e)

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

B. Summary of Clean Water Act Section 401 Violations:

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

Response to Observation B.I

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

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

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

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

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

Response to Observation B.II

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

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

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

Response to Observation B.III

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

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

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

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

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

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

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

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

OWNER'S CERTIFICATION

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



Jack Eitzen, Fairway Hills Estates HOA Representative

LIMITATIONS

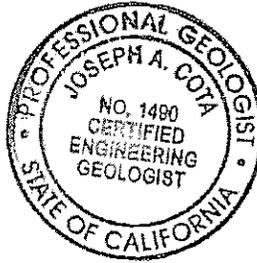
The findings, conclusions, and recommendations contained in this report are based on our visual site observations, review of SWPPP and Erosion Control Plans prepared by others, data included in the project NOIs and Grading Permits, and other information about past site conditions and grading events provided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

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

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

Very truly yours,

EARTH RESOURCES, INC.



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

Encl: References

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

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

Earth Resources, Inc.

EXHIBIT "F"

Jack Eitzen Net Worth

Assets

2002 Chevy Impala	4,000.00
California Valley Lots, four lots valued \$3,000-\$5,000	20,000.00
Via Vista Grande Lot	60,000.00
House in Lathrop	175,000.00
Equipment	5,000.00
Total Assets	264,000.00

Liabilities

Mortgage Value on House in Lathrop	(175,000.00)
Citibank #998XXX	(50,000.00)
Wells Fargo #XXXX3611	(15,000.00)
Home Depot	(5,000.00)
Via Vista Grande Lot	(90,000.00)
Lowes	(5,000.00)
Loan from Mary Eitzen: Associated Recovery Systems #XX2232	(5,717.50)
FCC Financing on Equipment	(7,500.00)
Temecula Erosion Control, Lake Elsinore	(6,000.00)
Riverside County Taxes	(2,500.00)
La Cresta HOA Dues: Notice of Lien	(1,000.00)
Medical Bills	(1,000.00)
CMRE Financial Services #9405XXXX	(1,025.00)
Bank of America, Financial Recovery Services #9186XXXX	(2,800.00)
Midland Credit Management #8532824XXX	(2,000.00)
Mr. Crummie Debt on Property in California Valley	(8,000.00)
Jose Olivia	(1,800.00)
San Luis Obispo Tax Collector Default (coming due)	(7,500.00)

Total Liabilities (298,000.00)

Net Worth (34,000.00)

I certify under penalty of perjury under the laws of the state of California that this accurately states the nature and value of all my assets and liabilities as of April 8, 2011.

Jack Eitzen 

EXHIBIT "G"

Label Use the IRS label. Presidential Election Campaign

Top section of the form containing taxpayer information: KENNETH J. EITZEN, CAROLINE COZZIARDI, H.O. BOX 999, SARATOGA, CA 95070. Includes Social Security numbers and filing status options.

Filing Status section with options: 1 Single, 2 Married filing jointly (checked), 3 Married filing separately, 4 Head of household, 5 Qualifying widow(er).

Exemptions section. Includes checkboxes for 'Youself' and 'Spouse' (both checked). Includes a table for dependents with columns for name, social security number, relationship, and age.

Income section. Lists various income sources (7-22) and tax amounts (23-36). Includes a large handwritten note: 'Jack Eitzen 2008 Taxes'.

Adjusted Gross Income section. Lists adjustments to income (23-37) and the final adjusted gross income amount (37) of -474,033.

SCHEDULE A
(Form 1040)

Itemized Deductions

OMB No. 1545-0047

2008

Expires on December 31, 2007

Department of the Treasury
Internal Revenue Service (43)

▶ Attach to Form 1040.
▶ See instructions for Schedule A (Form 1040).

Name (Print or type) Form 1040

KENNETH J DITZEN AND CAROLINE COCCIANI

Your social security number
560-86-9004

Medical and Dental Expenses		1	2	3	4
1 Caution: Do not include expenses reimbursed or paid by others.					
2 1 Medical and dental expenses (see instructions)					
3 2 Free amount from Form 1040, line 26					
4 3 Multiply line 2 by 7.5% (0.075)					
5 4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-					0.
Taxes You Paid		5	6	7	8
5 State and local (check only one box):					
a <input type="checkbox"/> Income taxes					
b <input checked="" type="checkbox"/> General sales taxes					
6 Real estate taxes (see instructions)					280.
7 Personal property taxes					3,646.
8 Other taxes. List type and amount ▶					78.
9 Add lines 5 through 8					
10 Home mortgage interest and points reported to you on Form 1098		10			
11 Home mortgage interest not reported to you on Form 1098. If paid for the person for whom you bought the home, see instructions and show that person's name, identifying number, and address. ▶					
12 Points not reported to you on Form 1098. See instructions for special rules.					
13 Qualified mortgage insurance premiums (see instructions)					
14 Investment interest. Attach Form 4952 if required (See notes)					
15 Add lines 10 through 14					12,985.
Gifts to Charity		16	17	18	19
16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions.					
17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500.					
18 Carryover from prior year					
19 Add lines 16 through 18					
Casualty and Theft Losses		20			
20 Casualty or theft loss(es). Attach Form 4684 (see instructions)					0.
Job Expenses and Certain Miscellaneous Deductions		21	22	23	24
21 Unreimbursed employee expenses - job travel, union dues, job education, etc. Attach Form 2107 or 2108-EZ if required (see instructions) ▶					
22 Tax preparation fees					
23 Other expenses - investment, safe deposit box, etc. List type and amount ▶					
24 Add lines 21 through 23					
25 Free amount from Form 1040, line 26					
26 Multiply line 25 by 2% (0.02)					
27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-					
28 Add lines 15 through 27					0.
Other Miscellaneous Deductions		29			
29 Other miscellaneous deductions. List type and amount ▶					
Total Itemized Deductions		30			
30 Total itemized deductions. Add lines 4, 15, 19, 24, 27, and 29. Do not include the amount on line 28.					16,566.
31 If you paid a home deduction for taxes, they are a floor that you cannot deduct, check box ▶					

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

SCHEDULE C
(Form 1040)

Profit or Loss From Business
(Sole Proprietorship)

2008
Additional instructions
page 3 of 3

Partnerships, joint ventures, etc. generally must file Form 1065 or 1065-B. Attach to Form 1040, 1040NR, or 1041. See instructions for Schedule C (Form 1040).

KENNETH J FITZEN

Social security number (SSN)

560-86-9004

LAND DEVELOPMENT & SALES

Enter code from instructions

531390

Employer ID number (EIN) if any

Business address (including suite or apartment #)

Accounting method (1) Cash (2) Accrual (3) Other (specify)

Did you materially participate in the operation of this business during 2008? If No, see instructions for limitations on losses. Yes No

Part I Income

- 1 Gross receipts or sales. **Caution.** See the instructions and check the box if:
 - * This income was reported to you on Form W-2 and the 'Statutory employer' box on that form was checked; or
 - * You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see instructions for limit on losses.
- 2 Returns and allowances
- 3 Subtract line 2 from line 1
- 4 Cost of goods sold (from line 42 on page 2)
- 5 **Gross profit.** Subtract line 4 from line 3
- 6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)
- 7 **Gross income.** Add lines 5 and 6

1	327,000.
2	
3	327,000.
4	315,027.
5	11,973.
6	
7	11,973.

Part II Expenses. Enter expenses for business use of your home only on line 30

- 8 Advertising 4,980.
- 9 Car and truck expenses (See instructions)
- 10 Commissions and fees 10,732.
- 11 Contract labor (see instructions)
- 12 Depreciation
- 13 Depreciation and section 179 expense deduction not included in Part III (see instructions) 15,480.
- 14 Employee benefit programs (other than on line 19)
- 15 Insurance (other than health)
- 16 Interest:
 - a Mortgage (not to banks, etc.)
 - b Other 500.
- 16a 1,732
- 16b 300.
- 17 Legal & professional services
- 18 Office expense 6,967.
- 19 Pension and profit-sharing plans
- 20 Rent or lease (see instructions):
 - a Vehicles, machinery, and equipment
 - b Other business property
- 21 Repairs and maintenance 5,970.
- 22 Supplies (not included in Part II)
- 23 Taxes and licenses 603.
- 24 Travel, meals, and entertainment:
 - a Travel 7,996.
 - b Deductible meals and entertainment (see instructions) 1,963.
- 25 Utilities 1,963.
- 26 Wages (not employment credits)
- 27 Other expenses (from line 42 on page 2) 42,600.

18	6,967.
19	
20a	
20b	
21	5,970.
22	603.
23	1,824.
24a	7,996.
24b	1,963.
25	
26	
27	42,600.
28	11,287.
29	4,314.
30	
31	4,314.

28 **Total expenses** before expenses for business use of home. Add lines 8 through 27

29 Tentative profit or (loss). Subtract line 28 from line 7

30 Expenses for business use of your home. Attach Form 8829

31 **Net profit or (loss).** Subtract line 30 from line 29

* If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13, or on Form 1041, line 3, the amount of net profit or (loss) from this business and other sources.

* If a loss, you must file Form 31.

32 If you checked box 32a, you must file Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13, or on Form 1041, line 3, the amount of net profit or (loss) from this business and other sources.

* If you checked box 32b, you must attach Form 6199. Your 28a may be limited.

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

32a I checked

32b I did not check

SCHEDULE C
(Form 1040)

Profit or Loss From Business
(Sole Proprietorship)

2008

* Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B.
* Attach to Form 1040, 1040NR, or 1041. * See instructions for Schedule C (Form 1040).

KENNETH J BITTERN

Employer identification number (EIN)

560-86 9004

VINEYARD

Enter code from instructions

311900

JACK'S CELLARS

Employer ID number (EIN), if any

City, town or address on building, except in case of:

City, town or address, state, and ZIP code

Accounting method: (1) Cash (2) Accrual (3) Other (specify):

Did you materially participate in the operation of this business during 2008? If No, see instructions for limit on losses. Yes No

Part I Income

1	Gross receipts or sales. Caution: See the instructions and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or you are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see instructions for limit on losses.	
2	Returns and allowances	
3	Subtract line 2 from line 1	
4	Cost of goods sold (from line 42 on page 2)	
5	Gross profit. Subtract line 4 from line 3	
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	
7	Gross income. Add lines 5 and 6	

Part II Expenses

8	Advertising	5	18	Office expense	18
9	Car and truck expenses (see instructions)	9	19	Pension and profit sharing plans	19
10	Commissions and fees	10	20	Rent or lease (see instructions)	20
11	Contract labor (see instructions)	11	a	Vehicles, machinery, and equipment	20a
12	Depletion	12	b	Other business property	20b
13	Depreciation and section 179 expense deduction (not included in Part III. See instructions)	13	21	Repairs and maintenance	21
14	Employer benefit programs (other than on line 10)	14	22	Supplies (not included in Part III)	22
15	Insurance (other than on line 10)	15	23	Taxes and licenses	23
16	Interest	16	24	Travel, meals, and entertainment	24
a	Mortgage (not on line 10)	16a	a	Travel	24a
b	Other	16b	b	Deductible meals and entertainment (see instructions)	24b
17	Legal & professional services	17	25	Utilities	25
28	Total expenses before expenses for business use of home. Add lines 8 through 27		26	Wages (less employment credits)	26
29	Tentative profit or (loss). Subtract line 28 from line 7		27	Other deductions from line 42 on page 2	27
30	Expenses for business use of your home. Attach Form 8829		28		948.
31	Net profit or (loss). Subtract line 30 from line 29		29		-948.
			30		
			31		948.

BAE For Paperwork Reduction Act Notice - see Form 1040 instructions.

32a All expenses are for the business.
32b Some expenses are for the business.

Form 1040-SS (2008)

SCHEDULE C
(Form 1040)

Profit or Loss From Business
(Sole Proprietorship)

2008
Schedule C (Form 1040) 09

Partnerships, joint ventures, etc. generally must file Form 1065 or 1065-B. Attach to Form 1040, 1040NR, or 1041. See instructions for Schedule C (Form 1040).

CAROLINE COCCIANDI

Social Security number (SSN)

512-66-1673

DOCUMENTARY PRODUCER

Enter code from instructions

512100

JC PRODUCTIONS

Employer ID number (EIN), if any

Business address (including suite or room no.)

City and state and ZIP code

Accounting method: (1) Cash (2) Cost of Sales (3) Other (specify)

Did you materially participate in the operation of this business during 2008? If No, see instructions for limit on losses. Yes No

If you started or acquired this business during 2008, check here

Part I Income

1	Gross receipts or sales. Caution: See the instructions and check the box if: • This income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, or • You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see instructions for limit on losses.	1	7,500.
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	7,500.
4	Cost of goods sold (from line 42 on page 2)	4	
5	Gross profit. Subtract line 4 from line 3	5	7,500.
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	Gross income. Add lines 5 and 6	7	7,500.

Part II Expenses. Enter expenses for business use of your home only on line 32

8	Advertising	8		18	Office expense	18	
9	Car and truck expenses (see instructions)	9		19	Pension and profit sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions)	20a	
11	Contract labor (see instructions)	11		20b	a Vehicles, machinery, and equipment	20b	1,593.
12	Depreciation	12		21	b Other business property	21	
13	Depreciation and Section 179 expense deduction (not included in Part III) (see instructions)	13	4,123.	22	Repairs and maintenance	22	
14	Employer benefit programs (other than on line 15)	14		23	Supplies (not included in Part III)	23	
15	Interest (other than health)	15		24	Taxes and licenses	24	
16	Interest	16a		24a	Travel, meals, and entertainment	24a	9,156.
16b	a Mortgage interest	16b		24b	a Travel	24b	
16c	b Other	16c		24b	b Deductible meals and entertainment (see instructions)	24b	1,747.
17	Legal & professional services	17		25	Utilities	25	
18				26	Wages (less employment credits)	26	
19				27	Other expenses (from line 48 on page 2)	27	1,606.
20				28	Total expenses before expenses for business use of home. Add lines 8 through 27	28	16,226.
21				29	Voluntary profit-sharing. Subtract line 29 from line 28	29	10,726.
22				30	Expenses for business use of your home. Attach Form 8829	30	
23				31	Net profit or (loss). Subtract line 30 from line 29	31	10,726.

If you checked 30, you must attach Form 8829. See instructions for details.
If you checked 31, you must attach Form 1040, line 12, and Schedule SE, line 2, or Form 1040NR, line 15, and Form 1041, line 3, or Form 1041, line 3. Estates and trusts file Form 1041, line 3.

If you checked 30, you must attach Form 6792. See instructions for details.

For Paperwork Reduction Act Notice, see Form 1040 instructions.

30a Add voluntary profit-sharing
30b Subtract voluntary profit-sharing from net profit
31a Add net profit or loss
31b Subtract net profit or loss from net profit

Form **1040** U.S. Individual Income Tax Return **2009**

Department of the Treasury - Internal Revenue Service

(99) Use this only if you are an eligible filer.

For the year Jan 1 - Dec 31, 2009, or other tax year beginning on 2009, and ending on 2009.

Label (See instructions.)
 Your first name: **KENNETH J EITZEN**
 Last name: **EITZEN**

Use the IRS label. (Otherwise, please print or type.)
 If a joint return, spouse's first name: **CAROLINE COCCIARDI**
 Last name: **EITZEN**

Home address (number and street). If you have a P.O. box, see instructions.
P.O. BOX 998
 City, town or post office. If you have a foreign address, see instructions.
SARATOGA, CA 95070

Over the last 12 months:
 Your social security number: **560-86-9004**
 Spouse's social security number: **572-66-1673**

Check here if you, or your spouse if filing jointly, want \$3 to go to the fund? (See instructions.)
 You Spouse

Filing Status

1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately (file spouse's SSN above & full name here.)
 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter the child's name here.
 5 Qualifying widow(er) with dependent child (see instructions)

Exemptions

6a Yourself. If someone can claim you as a dependent, do not check box 6a.
 b Spouse

Dependent's name (if first)	Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> Qualifying child for child tax credit (see instructions)	No. of children on 6c who:
			<input checked="" type="checkbox"/> live with you	2
			<input type="checkbox"/> live with you but in divorce or separation (see instructions)	
			<input type="checkbox"/> dependent on 6c not entered above	
d Total number				2

Income

7 Wages, salaries, tips, etc. **7**

8a Taxable interest **8a**

8b Tax-exempt interest **8b**

9a Ordinary dividends **9a**

9b Qualified dividends **9b**

10 Taxable refunds, tax credits, etc. (including tax-exempt interest and local income taxes) (see instructions)

11 Alimony received

12 Business income or (loss). Attach Schedule C or C-EZ

13 Capital gain or (loss). Attach Schedule D or G-EZ

14 Other gains or (losses). Attach Form 4797

15a IRA distributions **15a**

15b Taxable amount (see instructions) **15b**

16a Pensions and annuities **16a**

16b Taxable amount (see instructions) **16b**

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E

18 Farm income or (loss). Attach Schedule F

19 Unemployment compensation in excess of \$2,400 per recipient (see instructions)

20a Social security benefits **20a**

20b Taxable amount (see instructions) **20b**

21 Other income: **NET OPERATING LOSS CARRYOVER**

22 Add the amounts in the far right column for lines 7 through 21. This is your total income. **22 -524,482.**

Adjusted Gross Income

23 Educator expenses (see instructions)

24 Certain business expenses of reservists, performing artists, and fee-based government officials. Attach Form 2106 or 2106-EZ

25 Health savings account deduction. Attach Form 8889

26 Moving expenses. Attach Form 3903

27 One-half of self-employment tax. Attach Schedule SE

28 Self-employed SEP, SIMPLE, and qualified plans

29 Self-employed health insurance deduction (see instructions)

30 Penalty on early withdrawal of savings

31a Alimony paid **31a**

31b Recipient's SSN **31b**

32 IRA deduction (see instructions)

33 Student loan interest deduction (see instructions)

34 Tuition and fees deduction. Attach Form 8917

35 Domestic production activities deduction. Attach Form 8503

36 Add lines 23 - 31a and 32 - 35 **36 2,168.**

37 Subtract line 36 from line 22. This is your adjusted gross income. **37 -526,650.**

Tax and Credits

38 Amount from line 37 (adjusted gross income) 38 -526,650

39 a Check You were born before January 2, 1945, Blind Total boxes checked = 39 a
 b Spouse was born before January 2, 1945, Blind 39 b

b If your spouse remarries on a separate return, or you were a dual-status alien, see instructions and check here 39 b

40 a Itemized deductions (from Schedule A) or your standard deduction (see left margin) 40 a 11,400
 b If you are increasing your standard deduction by certain tax credits, the energy vehicle loan, or a net disaster loss, attach Schedule L and check here (see instructions) 40 b

41 Subtract line 40a from line 38 41 -538,050

42 Exemptions. If line 26 is \$125,000 or less and you did not provide housing to a Midwestern displaced individual, multiply \$3,650 by the number on line 6d. Otherwise, see instructions 42 7,300

43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- 43 0

44 Tax (see instrs). Check if any tax is from: a Form(s) 8814 b Form 4372 44 0
 45 Alternative minimum tax (see instructions). Attach Form 6251 45 0
 46 Add lines 44 and 45 46 0

47 Foreign tax credit. Attach Form 1116 if required 47
 48 Credit for child and dependent care expenses. Attach Form 2441 48
 49 Education credits from Form 8853, line 29 49
 50 Retirement savings contributions credit. Attach Form 8880 50
 51 Child tax credit (see instructions) 51
 52 Credits from Form: a 8836 b 8835 c 5695 52
 53 Other crs from Form: a 3800 b 8801 c 5695 53

54 Add lines 47 through 53. These are your total credits. 54

55 Subtract line 54 from line 46. If line 54 is more than line 46, enter -0- 55 0

Other Taxes

56 Self-employment tax. Attach Schedule SE 56

57 Unreported social security and Medicare tax from Form: a 4137 b 8919 57

58 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required 58

59 Additional taxes: a AEIC payments b Household employment taxes. Attach Schedule H 59

60 Add lines 55-59. This is your total tax. 60 0

Payments

61 Federal income tax withheld from Forms W-2 and 1099 61

62 2009 estimated tax payments and amount applied from 2009 return 62

63 Making work pay and government retiree credit. Attach Schedule M 63

64 a Earned income credit (EIC) 64 a
 b Non-taxable combat pay election = 64 b

65 Additional child tax credit. Attach Form 8812 65

66 Refundable education credit from Form 8853, line 16 66

67 First-time homebuyer credit. Attach Form 5405 67

68 Amount paid with request for extension to file (see instructions) 68

69 Excess social security and tier 1 RRTA tax withheld (see instructions) 69

70 Credits from Form: a 2439 b 4136 c 8801 d 8805 70

71 Add lines 61-63, 64a, & 65-70. These are your total pmts. 71 0

Refund

72 If line 71 is more than line 60, subtract line 60 from line 71. This is the amount you overpaid 72 0

73 a Amount of line 72 you want refunded to you. If Form 8888 is attached, check here 73 a
 b Routing number Type: Checking Savings
 c Account number

74 Amount of line 72 you want applied to your 2010 estimated tax 74

Amount You Owe

75 Amount you owe. Subtract line 71 from line 60. For details on how to pay, see instructions. 75 0

76 Estimated tax penalty (see instructions) 76

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? Yes. Complete the following No

Designee's name: **TIM KEHL CPA** Phone: **408-998-1040** Personal identification number (PIN): **53940**

Sign Here

Under penalties of perjury, I declare that I prepared this return and accompanying schedules and statements, and to the best of my knowledge and belief they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature: _____ Date: _____ Your occupation: **CONTRACTOR** Daytime phone number: _____

Spouse's signature (if a joint return, both must sign): _____ Date: _____ Spouse's occupation: **DESIGNER**

Paid Preparer's Use Only

Preparer's signature: **TIM KEHL CPA** Date: _____ Preparer's EIN or PTIN: **559-15-9405**

Firm's name (or yours if self-employed): **TIM KEHL, CPA** Check if self-employed

Address (street, city, state, ZIP code): **950 S. BASCOM AVE., STE. 1113 SAN JOSE, CA 95128** EIN: **77-0560928**

Preparer's phone number: **(408) 998-1040**

SCHEDULE C
(Form 1040)

Profit or Loss From Business
(Sole Proprietorship)

OMB No. 1545-0047

2009

Department of the Treasury
Internal Revenue Service (99)

* Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B.
* Attach to Form 1040, 1040NR, or 1041. * See instructions for Schedule C (Form 1040).

Attachment
Sequence No. **09**

Name of proprietor

KENNETH J EITZEN

Social security number (SSN)

560-86-9004

A Principal business or profession, including product or service (see instructions)

LAND DEVELOPMENT & SALES

B Enter code from instructions

531390

C Business name, if no separate business name, leave blank

D Employer ID number (EIN) if any

E Business address (including suite or room no.) *

City, town or post office, state, and ZIP code

F Accounting method: (1) Cash (2) Accrual (3) Other (specify) *

G Did you 'materially participate' in the operation of this business during 2009? If 'No,' see instructions for limit on losses. Yes No

H If you started or acquired this business during 2009, check here

Part I **Income**

1 Gross receipts or sales. **Caution.** See the instructions and check the box if:

- * This income was reported to you on Form W-2 and the 'Statutory employee' box on that form was checked, or
- * You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see instructions for limit on losses.

2 Returns and allowances

3 Subtract line 2 from line 1

4 Cost of goods sold (from line 42 on page 2)

5 **Gross profit.** Subtract line 4 from line 3

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

7 **Gross income.** Add lines 5 and 6

1	55,070.
2	
3	55,070.
4	50,103.
5	4,967.
6	
7	4,967.

Part II **Expenses.** Enter expenses for business use of your home **only** on line 30.

8 Advertising	8		18 Office expense	18	
9 Car and truck expenses (see instructions)	9	2,257.	19 Pension and profit-sharing plans	19	
10 Commissions and fees	10		20 Rent or lease (see instructions):		
11 Contract labor (see instructions)	11		a Vehicles, machinery, and equipment	20a	
12 Depletion	12		b Other business property	20b	
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	4,233.	21 Repairs and maintenance	21	6,000.
14 Employee benefit programs (other than on line 19)	14		22 Supplies (not included in Part III)	22	
15 Insurance (other than health)	15	500.	23 Taxes and licenses	23	
16 Interest:			24 Travel, meals, and entertainment:		
a Mortgage (paid to banks, etc)	16a		a Travel	24a	3,600.
b Other	16b	1,132.	b Deductible meals and entertainment (see instructions)	24b	
17 Legal & professional services	17		25 Utilities	25	
28 Total expenses before expenses for business use of home. Add lines 8 through 27	28		26 Wages (less employment credits)	26	
29 Tentative profit or (loss). Subtract line 28 from line 7	29		27 Other expenses (from line 48 on page 2)	27	13,201.
30 Expenses for business use of your home. Attach Form 8829	30				
31 Net profit or (loss). Subtract line 30 from line 29	31				
<p>* If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2 or on Form 1040NR, line 13 (if you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3.</p> <p>* If a loss, you must go to line 32.</p>					
<p>32 If you have a loss, check the box that describes your investment in this activity (see instructions).</p> <p>* If you checked 32a, enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3.</p> <p>* If you checked 32b, you must attach Form 6198. Your loss may be limited.</p>					

32a All investment is at risk
32b Some investment is not at risk

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

FD-2012-00000

Schedule C (Form 1040) 2009

Part III Cost of Goods Sold (see instructions)

33	Method(s) used to value closing inventory: a <input type="checkbox"/> Cost b <input type="checkbox"/> Lower of cost or market c <input type="checkbox"/> Other (attach explanation)	
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation	<input type="checkbox"/> Yes <input type="checkbox"/> No
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35 598,112.
36	Purchases less cost of items withdrawn for personal use	36 98,168.
37	Cost of labor. Do not include any amounts paid to yourself	37
38	Materials and supplies	38
39	Other costs	39
40	Add lines 35 through 39	40 696,280.
41	Inventory at end of year	41 646,177.
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42 50,103.

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562

- 43 When did you place your vehicle in service for business purposes? (month, day, year) * _____
- 44 Of the total number of miles you drove your vehicle during 2009, enter the number of miles you used your vehicle for:
 a Business _____ b Commuting (see instructions) _____ c Other _____
- 45 Was your vehicle available for personal use during off-duty hours? Yes No
- 46 Do you (or your spouse) have another vehicle available for personal use? Yes No
- 47a Do you have evidence to support your deduction? Yes No
 b If "Yes," is the evidence written? Yes No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30

INTERNET	7,201.
LICENSE	600.
SOFTWARE	300.
TELEPHONE	3,600.
TOOLS	1,500.
48 Total other expenses. Enter here and on page 1, line 27	48 13,201.

1325 SPRUCE STREET, SUITE 300
RIVERSIDE, CALIFORNIA 92507

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 1325 Spruce Street, Suite 300, Riverside, California 92507.

On November 14, 2011, I served the foregoing documents **PETITION FOR REVIEW OF REGIONAL BOARD ACTION** by placing a true copy thereof enclosed in a sealed envelope and addressed as stated below:

California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

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

X (By Mail) I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Riverside, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— (By Facsimile) I served the above-described document on the interested parties in this action by sending a true copy thereof by facsimile transmission pursuant to *California Rules of Court*, Rule 2008, from facsimile machine number (909) 788-0766. The facsimile machine I used complied with *California Rules of Court*, Rule 2008, and no error was reported by the machine. Pursuant to Rule 2008(e)(3), I caused the machine to print a transmission record of the transmission.

— (By Overnight Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery of documents. Under that practice it would be delivered to an authorized agent or driver of Federal Express with the fees paid or provided for on the date of service and delivered the next day.

— (By Personal Service) I caused such envelope to be hand delivered to the offices(s) of the addressee(s).

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


LISA MATHEWS