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Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

May 29, 2008

**IN THE MATTER OF:**

**Mr. Dennis Chapman  
Brookfield Land Company, Inc.  
1522 Brookhollow Drive, Suite 1  
Santa Ana, CA 92075**

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**NOTICE OF VIOLATION  
NO. R9-2008-0068**

**WDID NO.**

**9 00000985**

**In reply refer to:  
NWU:02C-056:mmills**

**Clean Water Act Section 401 Water Quality Certification No. 02C-056**

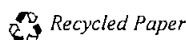
**Subject Sites: Wallach Property/Morningstar Ranch, Riverside County, CA**

**YOU ARE HEREBY NOTIFIED THAT:**

You are in violation of Clean Water Act Section 401 Water Quality Certification No. 02C-056 (Certification) for the Wallach Property, now known as Morningstar Ranch, in unincorporated Riverside County, CA. Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board (Regional Board), including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

On January 22, 2008 the Regional Board received a request from PCR Services Corporation (PCR), on behalf of Brookfield Land Company, Inc., to amend the Certification in two areas. First, to allow the Riverside County Flood Control and Water Conservation District (RCFCWCD) to conduct unmitigated routine and emergency maintenance of the onsite channel, which contains a compensatory mitigation area. Second, to clarify that Brookfield Land Company, Inc. and its successors will be responsible for implementing the *Habitat Mitigation and Monitoring Plan for the Wallach Property*, prepared by PCR, dated January 2004. While reviewing the amendment request and project file, it was discovered that Brookfield Land Company, Inc. has failed to submit several documents required by the Certification. These documents are now substantially overdue. Please note that flood control maintenance within the mitigation

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area is prohibited by the Certification and it is unlikely that the Certification will be amended to allow unmitigated maintenance within the mitigation area.

### Summary of Violations:

#### I. **FAILURE TO SUBMIT A CONSERVATION MECHANISM**

##### ➤ **Pursuant to Condition 12 of the Certification:**

- Brookfield Land Company, Inc. shall submit, within 90 days of the issuance of this certification, a draft conservation easement or deed restriction that prohibits development within, mowing, and/or other activities that would result in permanent or temporary disturbance of the 60-foot-wide mitigation zone. No maintenance, except for the removal of exotic and diseased vegetation shall be permitted within this area. The remainder of the channel may be maintained for flood control purposes, but shall be protected from development and further channelization. Brookfield Land Company, Inc. shall submit proof of a completed conservation easement or deed restriction 30 days prior to grading, filling, or otherwise impacting the existing drainage.

**Observation:** According to the *As-Built Report: Wallach Property Riverside County, California* by PCR Services Corporation dated November 2005, the impacts to Drainage A began in June 2004 with the construction of the pilot channel for the flood control/mitigation channel. Brookfield Land Company, Inc. did not submit a conservation mechanism prior to initiating impacts. To date, the Regional Board has not received a draft or a final conservation mechanism for the project.

#### II. **FAILURE TO SUBMIT THE FINAL REQUIREMENTS THAT RCFCWCD HAS PLACED ON THE PROJECT**

##### ➤ **Pursuant to Condition 16 of the Certification:**

- Prior to the initiation of construction in waters of the U.S., Brookfield Land Company, Inc. shall submit to the Regional Board any final requirements the RCFCWCD has placed on the project. This certification does not allow additional impacts to waters of the U.S. based upon any RCFCWCD requirement other than those specifically authorized. Should the RCFCWCD require additional impacts to waters of the U.S., Brookfield Land Company, Inc. must reapply for a Section 401 Water Quality Certification.

**Observation:** Construction was initiated in waters of the U.S. in June of 2004. Brookfield Land Company, Inc. did not submit the final requirements prior to impacts. To date, the Regional Board has not received the final requirements that RCFCWCD has placed on the project.

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As noted above, the documents required pursuant to Conditions 12 and 16 of the Certification are significantly overdue. Brookfield Land Company, Inc. is strongly encouraged to submit the documents as soon as possible to bring the project into compliance with the Certification. Further enforcement action, as described above, can be assessed from the first date of non-compliance.

Questions pertaining to the issuance of this Notice of Violation should be directed to Mariah Mills at 858-627-3977 or [mmills@waterboards.ca.gov](mailto:mmills@waterboards.ca.gov). Written correspondence pertaining to this Notice of Violation should be directed to the following address:

David Barker, Supervising Engineer  
Attn: Mariah Mills  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340



David Barker  
Supervising Engineer

May 29, 2008  
DATE

cc by e-mail:

Stephanie Gasca, PCR Services Corporation, [s.gasca@pcrnet.com](mailto:s.gasca@pcrnet.com)  
Robert Freese, PCR Services Corporation, [r.freese@pcrnet.com](mailto:r.freese@pcrnet.com)  
Teresa Tung, Riverside County Flood Control and Water Conservation District ,  
[TTung@co.riverside.ca.us](mailto:TTung@co.riverside.ca.us)

CIWQS:

NOV: 345661

Violations: 755851, 755852

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