



California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties

Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA



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<http://www.waterboards.ca.gov/sandiego>

October 20, 2009

IN THE MATTER OF:)

Rebecca Soto, CCAM, CMCA)
Senior Community Manager)
4S Ranch Master Association)
The Prescott Companies)
16880 W. Bernardo Drive, Suite 200)
San Diego, CA 92127)

NOTICE OF VIOLATION
NO. R9-2009-0173

CIWQS Place No. 745631

Certified Mail
7009 1410 002 2347 5746

YOU ARE HEREBY NOTIFIED OF:

VIOLATIONS FOR UNAUTHORIZED CHANNEL CLEARING IN WATERS OF THE STATE

You are in violation of the Federal Clean Water Act, California Water Code, and the Water Quality Control Plan, San Diego Basin- Region 9 (i.e. Basin Plan), for the unauthorized clearing of vegetation in Artesian Creek, near Camino San Thomas, as described below. Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional Board). Pursuant to California Water Code (CWC) Section 13385, any person who violates any waste discharge requirements or dredged and fill material permit or any water quality certification issued pursuant to Section 13160, shall be liable civilly in accordance with the section. Pursuant to CWC Section 13385 the maximum civil liability that the Regional Board may assess is ten thousand dollars (\$10,000) per day of violation (per violation). CWC Section 13385(e) requires that, when pursuing civil liability under CWC Section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation."

Summary of Violations:

I. FAILURE TO OBTAIN NECESSARY PERMITS

➤ Pursuant to Section 401 of the Federal Clean Water Act:

Any applicant (for a federal license or permit) wishing to conduct an activity which may result in a discharge into navigable waters shall provide a certification from the State in which the discharge will originate, that the discharge will comply with the applicable water quality provisions.

California Environmental Protection Agency

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Violation: The subject perennial stream may be determined to be waters of the US. The United States Army Corps of Engineers is the lead Federal agency with jurisdiction to issue Clean Water Act Section 404 permits to allow short term and long term impacts to waters of the U.S. A search of the Regional Board certification database indicates that Newland Communities/Kellwood General Partners had applied for certification of vector control/clearing activities in Lusardi Creek/Lake (HSA 905.12, 03C-112), but no applications were received proposing activities at the subject site. No certifications for any channel clearing activities in the HA have been issued.

- **Pursuant to Section 13260(a) of the California Water Code (Water Code):** Any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, shall file a report of waste discharge (ROWD).

Violation: Regardless of the Federal jurisdictional determination, the perennial stream is also a water of the State, as defined by Section 13050(e) of the California Water Code (Water Code). The discharge of dredged or fill material, in the form of disturbed soil from mechanical clearing activities and soil/debris stockpiles, constitutes a discharge of waste that could affect the quality of waters of the State. To date, the Regional Board has not received a ROWD for the subject activity.

II. UNAUTHORIZED DISCHARGE OF POLLUTANTS

- **Pursuant to Waste Discharge Prohibition Nos. 1, 3, and 14 of the Water Quality Control Plan, San Diego Basin- Region 9 (i.e. Basin Plan):**

"1. 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;"

"3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) is prohibited;" and

"14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited."

Violation: The discharge of waste and sediment at and from the Site causes and threatens to cause a condition of pollution by directly affecting waters used for beneficial uses. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of the stream channel by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics.

You must take all actions necessary to prevent any additional unauthorized discharges to avoid further enforcement. Questions pertaining to the issuance of this Notice of Violation should be directed to Chiara Clemente at 858-467-2359 or cclemente@waterboards.ca.gov. Written correspondence pertaining to this Notice of Violation should be directed to the following address:

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



David Barker
Supervising Engineer



DATE

Enclosure: 10/8/09 Facility Inspection Report

cc: via e-mail
Marilyn Fluharty, CDFG
Therese O'Rourke, U.S. Army Corps of Engineers
Nancy Barber, County of San Diego