



# California Regional Water Quality Control Board

## San Diego Region

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

February 13, 2012

IN THE MATTER OF: )  
)  
Tricia Napolitano )  
The Burnett Group )  
P.O. Box 391111 )  
Anza, CA 92539 )  
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)

**Certified Mail:**  
7010 1060 0000 4952 9758

**NOTICE OF VIOLATION  
NO. R9-2012-0019**

**In reply refer to:  
770646:dbradford**

**California Water Code Section 13376  
Clean Water Act Section 401  
Water Quality Control Plan for the San Diego Basin  
Waste Discharge Prohibition No.1**

**Subject Sites: Thomas Mountain Ranch, Anza, CA**

**YOU ARE HEREBY NOTIFIED THAT:**

You are in violation of California Water Code (CWC) Sections 13260 for failure to file a Report of Waste Discharge (ROWD) and Section 13376 for failure to file a complete application for an individual Clean Water Act (CWA) Section 401 Water Quality Certification. Furthermore, you are also in violation of CWC Section 13050 for failure to comply with San Diego Basin Plan, Waste Discharge Prohibition No. 1. Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (San Diego Water 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.

During an inspection on December 14, 2011, Mr. Chad Loflen and Mr. Dat Quach of the San Diego Water Board found the construction of a culvert and driveways had resulted in the fill of at least 3 unnamed tributaries to Cahuilla Creek (waters of United States), hereafter referred to as "Unnamed Drainage." The culvert and associated driveways were constructed on the site that is Tentative Parcel Map 36327, generally located on the northeast corner of Bautista Road and Upper Valley Road (see Facility Inspection Report dated December 14, 2011 attached hereto as Exhibit A).

**California Environmental Protection Agency**

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On November 3, 2011, Ms. Rebecca Stewart of the San Diego Water Board also conducted an inspection of the site because San Diego Water Board was contacted by Joanna Gibson of the CA Department of Fish & Game, who stated that construction related activities had been done without 401 Water Quality Certification, Streambed Alteration Agreement, and enrollment under the Storm Water Construction General Permit Order No. 2009-09-DWQ. The November 3rd inspection confirmed that proposed driveways cross waters of the United States, and grading activities were conducted.

On August 25, 2011, the San Diego Water Board received your application for Water Quality Certification for Thomas Mountain Ranch. The application states that the "Unnamed Drainage" is waters of United States. The Burnett Group, as applicant, proposes to permanently discharge fill into 0.1 acres of waters of the United States.

By letter dated September 26, 2011, the San Diego Water Board notified the applicant that the application for 401 Water Quality Certification was deemed incomplete. The San Diego Water Board received a response letter from your consultant (Samuel Reed, TeraCor Resource Management) on November 10, 2011, attempting to address the concerns raised in the Board's September 26, 2011 letter. The response, however, did not adequately demonstrate avoidance and minimization, did not provide sufficient mitigation for project impacts, and did not propose adequate post-construction Best Management Practices (BMPs).

### Summary of Violations:

#### I. FAILURE TO SUBMIT AN APPLICATION FOR CWA SECTION 401 WATER QUALITY CERTIFICATION

##### ➤ Pursuant to CWC Section 13376:

- Any person proposing to discharge dredged or fill material to waters of the United States under permit systems provided by the Federal CWA, must file a report at least 180 days *in advance* of the date on which it is desired to commence the discharge. The discharge of dredged or fill material by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited.

**Observation:** The Burnett Group did not submit a complete application for CWA Section 401 Water Quality Certification for the discharge of fill to the "Unnamed Drainage" associated with construction of the "culvert and associated driveways" at least 180 days in advance of the date on which it commenced the discharge.

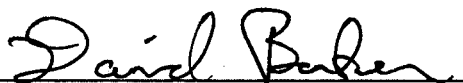
**II. FAILURE TO COMPLY WITH SAN DIEGO BASIN PLAN, WASTE DISCHARGE PROHIBITION NO. 1****➤ Pursuant to Waste Discharge Prohibition No.1 of the Water Quality Control Plan for the San Diego Basin:**

- The discharge of waste into waters of the State in a manner causing, or threatening to cause, a condition of pollution, contamination or nuisance as defined in CWC Section 13050, is prohibited.

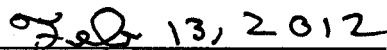
**Observation:** The discharge of fill to streams has the potential to result in alteration or elimination of the Beneficial Uses associated with the water body. The Unnamed Drainage is tributary to Cahuilla Creek. Beneficial Uses assigned to Cahuilla Creek and its tributaries include municipal and domestic supply (MUN), agricultural supply (AGR), industrial service supply (IND), industrial process supply (PROC), groundwater recharge (GWR), non-contact water recreation (REC2), warm freshwater habitat (WARM) and wildlife habitat (WILD). Construction of the Project in and over the "Unnamed Drainage" has eliminated the Beneficial Uses of the "Unnamed Drainage" in that location. Alteration of hydrologic characteristics results in diminished quality of in-stream and riparian habitat for flora and fauna in the "Unnamed Drainage" and downstream. Furthermore, construction of the Project has the potential to result in the discharge of pollutants to the remaining portion of the "Unnamed Drainage", resulting in the degradation of downstream Beneficial Uses.

Questions pertaining to the issuance of this Notice of Violation should be directed to Darren Bradford at (858) 637-7137 ([DBradford@waterboards.ca.gov](mailto:DBradford@waterboards.ca.gov)). Written correspondence pertaining to this Notice of Violation should be directed to the following address:

David Barker, Supervising Engineer  
Attn: Darren Bradford  
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

Attachment: Exhibit A Facility Inspection Report dated December 14, 2011

*California Environmental Protection Agency*