

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. 2001-173

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
ENCINITAS RANCH, L.L.P.
NONCOMPLIANCE WITH ORDER NO. 99-08-DWQ**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds the following:

1. Encinitas Ranch, L.L.P. discharged waste (storm water runoff containing sediment) and pollutants from a sedimentation basin to Cottonwood Creek in violation of Prohibition A.2 of Waste Discharge Requirements Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System Permit (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity (General Permit)* on February 12, 27, and 28, 2001 for a total of 3 days.
2. Encinitas Ranch, L.L.P. violated Provision C.2 of Waste Discharge Requirements Order No. 99-08-DWQ by failing to develop and implement an adequate Storm Water Pollution Prevention Plan (SWPPP) from December 1, 2000, through March 26, 2001, for a total of 115 days.
3. In *Complaint No. 2001-154 for Administrative Civil Liability* the Executive Officer recommended imposition of civil liability in the amount of \$301,800 for the violations alleged in Complaint No. 2001-154.
4. Encinitas Ranch, L.L.P. has proposed the following settlement terms:
 - a) Total civil liability in the amount of \$ 105,575, to be assessed as follows:
 - i) 3 days of discharge at \$10,000 per day (total \$30,000),
 - ii) discharge of 13,583 gallons of storm water runoff consisting of or containing sediments and other wastes and pollutants at \$0.30 per gallon (total \$4,075), and
 - iii) failure to develop and implement an adequate SWPPP for a period of 115 days at \$621.74 per day (total \$71,500).
 - b) Encinitas Ranch, L.L.P. shall waive the right to request a hearing on this matter before the Regional Board, and waive the right to petition the State Water Resources Control Board on this matter.

- c) Encinitas Ranch, L.L.P. shall pay \$50,000 to the **State Water Pollution Cleanup and Abatement Account** and shall pay an additional \$55,575 for two Supplemental Environmental Projects.
 - i) Encinitas Ranch, L.L.P. shall pay \$41,575 to the City of Encinitas to develop a **Cottonwood Creek Urban Runoff Assessment and Action Plan** as detailed in the Attachment of the letter dated August 3, 2001, from the Regional Board Executive Officer to Encinitas Ranch, L.L.P.
 - ii) Encinitas Ranch, L.L.P shall pay \$14,000 for providing a minimum of eight storm water workshops, as more fully described in the letter dated August 3, 2001, from the Regional Board Executive Officer to Encinitas Ranch, L.L.P.
5. The Regional Board gave notice of Encinitas Ranch, L.L.P.'s settlement proposal to the public for a comment period of at least 30 days and held a hearing to solicit public participation in this matter, and considered the comments of interested persons regarding acceptance of the settlement offered by Encinitas Ranch, L.L.P.
6. The settlement offer by Encinitas Ranch, L.L.P. as proposed in Finding No. 4 is an appropriate resolution of the violations alleged in Complaint No. 2001-154 because of the following reasons:
 - a. Encinitas Ranch, L.L.P. waives its right to a hearing and waives its right to petition the State Board for review under California Water Code Section 13320.
 - b. Encinitas Ranch, L.L.P. took immediate actions to achieve compliance.
 - c. The settlement of \$105,575 is a sufficient amount of liability to deter Encinitas Ranch, L.L.P. and other dischargers from non-compliance.
 - d. The settlement of \$105,575 is still consistent with the State Board enforcement assessment matrix for violations characterized as Major compliance significance and Major environmental significance.
 - e. The City of Encinitas was fully engaged with the Regional Board staff before and during enforcement efforts, and the City of Encinitas does not object to the settlement for an amount less than the original recommended amount.
 - f. Settlement allows the Regional Board to redirect formal enforcement resources to other high priority violations.
7. The Regional Board incurred costs totaling \$25,000, which includes field investigations, preparation of enforcement documents, and public hearings.
8. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section

21000 et seq.) in accordance with Section 15308, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to Section 13385 of the California Water Code, that civil liability is imposed on Encinitas Ranch, L.L.P. in the amount of one hundred-fifty thousand five hundred seventy-five dollars (\$105,575), and that

- 1) Encinitas Ranch, L.L.P. shall pay fifty thousand dollars (\$50,000) by November 10, 2001 to the State Water Pollution Cleanup and Abatement Account.
- 2) Payments of the remaining portion of the civil liability, fifty-five thousand five hundred seventy-five dollars (\$55,575) shall be suspended on condition that Encinitas Ranch, L.L.P. completes the two supplemental environmental projects listed below successfully.
 - a) Encinitas Ranch, L.L.P shall provide \$41,575 to the City of Encinitas by October 17, 2001, for the development of a Cottonwood Creek Urban Runoff Assessment and Action Plan. If, upon completion of the project, the total project cost of the project is not expended, the remainder of the monies allocated for that project shall be paid to the State Water Pollution Cleanup and Abatement Account.
 - i) This supplemental environmental project shall be completed as described in the Supplemental Environmental Project Application Form as submitted by the City of Encinitas dated July 26, 2001. Any deviation from the Supplemental Environmental Project Application Forms must receive prior written approval by the Regional Board.
 - ii) Encinitas Ranch, L.L.P. shall submit written verification, executed by City of Encinitas, that each task has been completed and an exact accounting of monies spent on each task to the Regional Board within 30 days of completion of the task.
 - b) Encinitas Ranch, L.L.P. shall provide not less than \$14,000 to provide a minimum of eight storm water workshops by January 15, 2002, as described in finding 4. c) ii) of this Order.
 - i) Any deviation from the Supplemental Environmental Project must receive prior written approval by the Regional Board.
 - ii) Encinitas Ranch, L.L.P. shall submit a final status report by February 15, 2001, to the Regional Board. The status report shall contain an audit of expenditures of the allocated \$14,000.
 - iii) If, upon completion of the eight workshops, the total project cost is not expended, the remainder of the monies allocated for that project shall be paid to the State Water Pollution Cleanup and Abatement Account.

- iv) If all eight of the workshops are not satisfactorily completed by January 15, 2001, the full \$14,000 shall be paid to the State Water Pollution Cleanup and Abatement Account.
- 3) All projects must be completed by the completion dates listed above. Failure to complete projects, late or inadequate completion of projects shall cause the total project cost to become due and payable, for the specific project in question, to the State Water Pollution Cleanup and Abatement Account.
- 4) Each Supplemental Environmental Project shall be identified by Encinitas Ranch, L.L.P. as a project that has been funded by order of the California Regional Water Quality Control Board, San Diego Region through the adoption of Administrative Civil Liability Order No. 2001-173, dated October 10, 2001, for violations of the California Water Code and the Clean Water Act.

I, John H. Robertus, Executive Officer, do hereby certify 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 10, 2001.

JOHN H. ROBERTUS
Executive Officer