

ITEM: 7

SUBJECT: Tehama Market Associates, LLC, and Albert Garland, Linkside Place Subdivision, Butte County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order*

BACKGROUND: Tehama Market Associates, LLC (hereafter Discharger) was the owner and developer of a 109-acre residential development known as Linkside Place. Linkside Place is located on the south side of Highway 162 between Highway 99 to the west and Highway 70 to the east, four miles west southwest of Oroville.

Runoff from the site discharges to the north to unnamed ephemeral drainages and wetlands that are tributary to Thermalito Afterbay, which is tributary to the Feather River and to the south to unnamed ephemeral drainages and wetlands that are tributary to the Feather River. Central Valley Water Board staff have followed and surveyed the drainages courses from the construction site to Thermalito Afterbay and the Feather River, and confirmed that ephemeral drainages and wetlands into which the site drains are hydraulically connected to waters of the United States. Therefore, an NPDES Permit is required by the CWA for discharge of storm water from the construction site into the ephemeral drainages and wetlands.

In the Fall of 2003 the Discharger mass graded 18.6-acres of the site to create 65 residential lots. In February 2004 responding to citizen complaints, Water Board staff inspected the site. Water Board staff found discharges of storm water in violation of the General Permit. The quantity of sediment in the discharge was very high due to the lack of any erosion control or soil stabilization measures.

On 24 November 2004, the Executive Officer issued an Administrative Civil Liability Complaint (ACLC) Order Number R5-2004-0541, proposing that William Isaac, and Linkside Place, LLC pay \$100,000 to the State's Cleanup and Abatement account for violation of the General Permit.

As property owner, William Isaac filed for coverage under the General Permit on 23 October 2003. However William Isaac sold the property to the Tehama Market Associates, LLC on 31 December 2003. Tehama Market Associates, LLC sold the property to Linkside Place, LLC on 4 October 2004. William Isaac, and Linkside Place, LLC through their attorneys requested numerous delays in taking this matter before the Board. In August 2005 Water Board staff conducted exhaustive research determining ownership of the property at the time of the observed violations.

On 25 January 2006, the acting Executive Officer rescinded and replaced ACLC Order Number R5-2004-0541 with ACLC Order Number R5-2006-0501 issued to Tehama Market Associates, LLC as owner of the project during the period of observed violations. The matter was scheduled to go before the Board on 16 March 2006.

Prior to the hearing objections were raised by the adjudicatory team, and the item was removed at the request of the Central Valley Water Board chair from the March 2006 agenda. On 10 April 2006, ACL complaint No. R5-2006-0501 was rescinded because the Central Valley Water Board had been unable to hold a hearing within 90 days of the date the complaint was served as required by CWC section 13323..

Central Valley Water Board staff prepared another revision of the ACL complaint including Tehama Market Associates, LLC, as the owner and discharger during the observed violations in February 2004 and Albert Garland as the responsible corporate officer. Albert Garland is the responsible corporate officer of Tehama Market Associates, LLC. Albert Garland is the sole officer of Professional Resources Systems International, Inc., the manager of Tehama Market Associates, LLC. In his capacity, Mr. Garland had the ability to control activities at the site and Mr. Garland did, in fact, exercise control and oversight of the development activities at the Linkside Place subdivision. In this role, Mr. Garland had the responsibility to ensure that the work conducted at Linkside Place adhered to applicable laws, including the General Permit. He could have exercised sufficient control to prevent the violations of the General Permit, but failed to do so.

On 26 October 2006, the Assistant Executive Officer issued a new ACL complaint No. R5-2006-0525 to Tehama Market Associates, LLC, and Albert Garland for observed storm water violations in February 2004. Neither Tehama Market Associates, LLC, nor Albert Garland submitted a signed waiver or payment of the \$100,000 penalty proposed in ACL complaint No. R5-2006-0525 and preparation was made to hear the matter before the Board in January 2007.

On 21 December 2006, in response to the hearing notice the Discharger, through their legal counsel, submitted points & authorities opposing administrative civil liability complaint R5-2006-0525. In the response to the complaint, the tentative ACL order and staff report they argued that the Water Board can not issue a complaint based on violations of the General Construction storm water permit when their client did not file a "Notice of Intent" or obtained coverage under the General Permit. Based upon the admission that the Discharger discharged storm water from the construction site into waters of the United States and its tributaries without an NPDES Permit in violation of CWA Section

301 and CWC Section 13376 and failed to obtain coverage under the NPDES General Permit No. CAS000002 Order No. 99-08-DWQ. ACLC R5-2006-0525 was rescinded and replaced with ACLC R5-2007-0500 for discharging storm water with out a permit.

ISSUES:

Did Tehama Market Associates, LLC, and Albert Garland discharge storm water with out a NPDES permit in violation of the CWA? Is \$150,000 the appropriate amount of civil liability to assess for the violations?

RECOMMENDATION:

Adopt the proposed ACL Order.

Mgmt. Review_____

Legal Review_____

21/22 June 2007

11020 Sun Center Dr., #200

Rancho Cordova, CA 95670