California Regional Water Quality Control Board
North Coast Region

Complaint No. R1-2002-0062

For
Administrative Civil Liability

In the matter of

Sonoma County Water Agency
For Violations of Waste Discharge Requirements
State Water Board Order No. 99-08DWQ
WDID No. 149S314031

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. On September 18, 2000, the Sonoma County Water Agency (SCWA) was issued a notice of permit coverage under the statewide General National Pollutant Discharge Elimination System construction storm water permit, Water Quality Order 99-08-DWQ, ID No. 149S314031, for the construction of a 110 million gallon effluent storage reservoir, to be located on a 38-acre site on Mark West Station Road, Sonoma County, California (Site).

2. Reservoir construction commenced in September 2000. The construction project involved extensive site grading and soil movement. Regional Water Board staff raised concerns about the risks of constructing such a large project during the winter season. On several occasions during the period September-December 2000, Regional Water Board and SCWA staff discussed the vulnerability of the Site to erosion, due to its size, slope, soil erodibility and the complexity of project construction. Regional Water Board staff emphasized the need for the installation of adequate Best Management Practices (BMPs) in order to prevent sediment discharges and the need for frequent inspection and maintenance of the BMPs throughout the winter season.

3. During the period from December 11-13, 2000, Regional Water Board staff inspection of the Site revealed that recent rains had caused significant erosion of soils. These soils filled the drainage ditch along Mark West Station Road with silt. The SCWA was warned that erosion controls on-site were inadequate given the amount of disturbed soils and the complexity of drainage patterns.

4. A January 10-11, 2001, staff inspection of the reservoir construction Site revealed serious off-site discharges of sediment laden runoff. This runoff entered both the large wetlands located to the south and southeast of the Site, and into Windsor Creek, located east of the wetlands. Erosion controls on the eastern side of the Site, including all of the exterior face of the reservoir embankment, were either inadequate or non-existent. The reservoir embankment had obvious rills and gullies indicative of soil erosion. Perimeter sediment controls were being overwhelmed by sediment flows originating from uncontrolled interior areas. An on-site delineated wetland, cordoned off with orange caution fencing, had no

erosion controls around its perimeter, resulting in inundation by turbid runoff. The Executive Officer of the Regional Board directly communicated these concerns to SCWA.

5. Several days later, the SCWA installed jute matting, silt fencing and large rock check dams on portions of the eastern perimeter and eastern embankment. Jute matting was not placed on embankment sections facing north and northeast.

6. A February 20, 2001, staff inspection revealed that the erosion control effort was in danger of failure. The jute netting was being severely undercut, silt fencing and hay bales were buried, being undermined, or stressed to the point of breaking. Sections of the on-site wetland were buried under two feet of eroded sediment, off-site drainage ditches were filled with up to three feet of eroded sediment which resulted in runoff sheet-flowing across Mark West Station Road. This sheet flow resulted in the deposition of a fine layer of mud, up to ¼ inch in depth, on portions of the southbound traffic lane. A culvert draining this section of road was plugged with sediment. Runoff from upgradient of the construction Site was short-circuiting into one of the two detention ponds, helping to eliminate it as an effective settling basin.

7. A February 21, 2001, staff inspection revealed no attempts by SCWA to address the problems staff observed on-site. Regional Water Board staff contacted SCWA personnel to discuss the discharges and to recommend meeting on-site.

8. On February 22, 2001, SCWA met with Regional Water Board staff and began the process of controlling turbid discharges by committing to cleaning out ditches and culverts, maintaining existing BMPs, installing interior controls and rerouting runoff away from the active construction area.

9. During the period from December 2000 through February 2001, Regional Water Board staff have received numerous complaints from the public, and from other Regional Water Board staff, regarding the severe erosion problems that have been occurring at the Site.

10. During the period from November 2001 through early January 2002, due to sustained periods of heavy precipitation, additional severe erosion occurred at the Site. This resulted in additional significant discharges of sediment-laden storm water to adjacent wetlands and to Windsor Creek.

11. During the period from mid-January through mid-February 2002, the SCWA placed permanent stabilization measures in all of the drainageways that serve the Site. Additionally, extensive temporary erosion control measures were installed on all areas that had previously remained exposed.

The following facts are the basis for the alleged violations in this matter:

a. On three occasions Regional Water Board staff have communicated to the SCWA the public safety issue related to plugged drainage ditches and culverts, resulting in standing turbid water covering a blind 90 degree turn on Mark West Station Road.

b. On seven separate occasions Regional Water Board staff have noted highly turbid runoff entering the wetlands adjacent to this project Site, and twice have visually noted significantly higher turbidity levels in Windsor Creek downgradient of the project Site relative to turbidity levels noted upgradient of the project Site.

c. On Thursday, January 11, 2001 Regional Water Board staff took runoff samples from three distinct off-site drainage ditches that lead from the Site. The runoff occurring on this date was significantly less than runoff occurring the two prior days. Sample analyzes revealed extreme levels of turbidity and settleable solids as follows:

Sample ID	Location	Turbidity (NTU's)	Settleable Solids
1A	Offsite-Upstream of site drainage-Northeast section	127	
1B	Offsite-Combined flow of site drainage and upgradient drainage Northeast section	2150	
1C	Onsite-Site drainage prior to commingling with upgradient drainage- Northeast section	4110	
2A	Offsite-East side of Mark West Station Road, immediately downgradient of culvert-East section	8380	
1 liter glass	Onsite-downgradient of rock check dams, upgradient of haybales, prior to discharge to culvert-East section		1 mg/l
3A	Offsite-East side of Mark West Station road, just downgradient of culvert-East section	9530	
4A	Offsite-East side of Mark West Station Road, just downgradient of culvert-Southeast section	8530	
1 liter glass	Onsite-upgradient of delineated wetland area-Southeast section		1 mg/l

d. Photographs contained in Regional Water Board files note Site conditions during the period December 2000 through February 2001. During the first part of December, on-site erosion and sediment controls were inadequate to prevent turbid runoff. In early January, erosion coming off unprotected embankment slopes, some as steep as 45 degrees, overwhelmed perimeter controls. Jute matting was added to the slopes in mid-January, however existing deep gullies within the embankment, along with the wide spacing inherent with jute matting, made this effort only marginally effective. Additional significant erosion occurred on the berms during the February 20, 2001 storm event. All turbid discharges observed entering state waters during the period

December 2000-February 2001 far exceeded the Regional Water Board Basin Plan standard that allows for a 20 percent increase in turbidity relative to background levels.

e. The SCWA took direct action to control erosion on February 22, 2001 by maintaining existing erosion controls and installing additional controls. The SCWA has committed to maintaining a presence on-site to ensure that turbid runoff will be held to an absolute minimum, and that an immediate response would be made to address any future precipitation events that produce turbid runoff.

f. Turbid runoff from the Site discharged through four culverts. One culvert directly discharged into a small wetland directly south of the Site. Three culverts discharged though drainage swales located on a dairy farm directly east of the Site, and eventually into a large wetland and Windsor Creek. The volume of turbid discharges resulting from inadequate erosion and sediment control from this Site could not be calculated. This was due to the wide range in rainfall intensities noted during field inspections, and the fact that the dairy farm fields acted to settle out some fraction of the sediments prior to the discharges entering state waters.

g. Water Quality Order No. 99-08-DWQ, applicable to this project, contains the following Discharge Prohibition:

"A.3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

And the following Receiving Water Limitations:

"B.1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.

B.2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board Basin Plan.

B.3. Should it be determined by the discharger, State Water Board, or Regional Water Board that storm water discharges and/or authorized nonstorm water discharges are causing or contributing to an exceedance of an applicable water quality standard, the discharger shall:

a. Implement corrective measures immediately following the discovery that water quality standards were exceeded, followed by notification to the Regional Water Board by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14-calendar days to the appropriate

Regional Water Board, unless otherwise directed by the Regional Water Board, describing (1) the nature and cause of the water quality standard exceedance; (2) the BMPs currently being implemented; (3) any additional BMPs which will be implemented to prevent or reduce pollutants that are causing or contributing to the exceedance of water quality standards; and (4) any maintenance or repair of BMPs. This report shall include an implementation schedule for corrective actions and shall describe the actions taken to reduce the pollutants causing or contributing to the exceedance."

h. SCWA violated Water Quality Order 99-08-DWQ, Section A.3. by discharging storm water runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.

i. SCWA violated Water Quality Order 99-08-DWQ, Section B.2. by discharging storm water runoff to state waters that exceeded applicable water quality standards contained in the Regional Water Board Basin Plan.

j. Conditions observed by staff on at least seven specific days of inspection confirmed that conditions of pollution and/or nuisance were occurring as a result of sediment-laden storm water runoff discharged from this facility. SCWA violated Water Quality Order 99-08-DWQ, Section B.3.a. by not implementing corrective measures immediately following discovery that water quality standards had been exceeded, and by not notifying the Regional Water Board within 48 hours of discovery of such exceedences.

12. The Executive Officer of the Regional Water Board issued Administrative Civil Liability No. R1-2001-74 on July 6, 2001. After receipt, the SCWA requested that a portion of the civil liability be directed to a Supplemental Environmental project. Regional Water Board staff worked with the SCWA to define an appropriate project. This complaint is intended to replace ACL Order No. R1-2001-74. This complaint is similar to ACL Order R1-2001-74, except it allows for a portion of the civil liability to go towards a Supplemental Environmental project. Due to additional significant sediment discharges that occurred during the period November 2001-January 2002, the Executive Officer of the Regional Water Board increased the Administrative Civil Liability amount by $10,000 and added additional requirements related to site cleanup and employee training.

PROPOSED CIVIL LIABILITY

Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to California Water Code Section 13243 or Article 1 of Chapter 5. As detailed above, SCWA violated the discharge prohibitions and requirements of Water Quality Order No. 99-08-DWQ. Section 13385(c)

provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is $10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed $10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against SCWA in this matter is calculated as follows:

Six days of observed discharge violations that occurred on December 11 and 12, 2000, January 10, 11, February 20 and 21, 2001.

Six days of discharge times $10,000 per day = $60,000

One day of observed discharge violations that occurred on January 5, 2002.

One day of discharge times $10,000 per day = $10,000

Total Potential Civil Liability: $70,000

A significant volume of turbid storm water runoff discharged from the Site into state waters. However, the discharge volume associated with these violations cannot be accurately determined.

1. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board took into account the nature, circumstances, extent, and gravity of the violation; and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board also considered the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

   a) Nature, circumstances, extent and gravity of the violation: During much of the construction period SCWA erosion and sediment control efforts on-site were inadequate. Controls were incomplete, undersized and/or non-existent. Post storm-event response was not adequate, twice occurring only after being prompted by Regional Water Board staff's concern for public safety. Turbidity readings taken during a period of moderate sustained rainfall were extremely high. Sediment discharges from this project filled drainage areas and entered state waters. High turbidity and excessive sediment deposition affects aquatic organisms and their habitat.

   b) Violator's ability to pay: The Regional Water Board has no information to indicate that the violator would be unable to pay any imposed administrative civil liability.

   c) Prior history of violations: The Regional Water Board has no prior history of similar violations related to SCWA construction projects.

d) Degree of culpability: SCWA is the construction stormwater permit holder and developer of the project and, as such, they are responsible for permit compliance. The SCWA was both generally unresponsive to concerns raised by Regional Water Board staff about the adequacy of its erosion control facilities, and was slow to repair and/or maintain existing erosion controls following significant rainfall events. Had the SCWA been more timely with the installation and maintenance of erosion controls, off-site discharges to receiving waters could have been significantly minimized.

e) Economic benefit: Economic benefit derived from avoiding the installation of adequate erosion and sediment controls can be approximated by addressing the labor and material costs avoided. For a project of this size and complexity, containing highly erosive soils, a conservative estimate of costs for the required erosion and sediment control is $15,000-$20,000.

f) Other matters that may justice may require: The fact that a federal permit to allow a small on-site wetland to be filled was delayed, and resulted in a greatly exacerbated erosion scenario. SCWA could not close off the full length of the reservoir embankment on the Site's east flank due to this outstanding permit issue. Winter rains planned to be retained behind the full length of embankment, poured out through the embankment opening. SCWA contends that the U.S. Army Corps of Engineers had communicated that permit issuance would be forthcoming some time last fall, and that they began the project with that understanding. However, erosion and sediment controls should have been installed to prevent violations at all times during construction, regardless of delays in scheduled construction.

2. The issuance of this complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).

3. Based on a review of the facts and the required factors, the Executive Officer of the Regional Water Board is issuing this Complaint with a proposed Administrative Civil Liability in the amount of $70,000 dollars. Of this amount, $30,000 is due and payable within 30 days of the date of this Complaint. Due to the additional significant erosion that occurred during the 2001-2002 winter rainfall events, the Executive Officer of the Regional Water Board is requiring that the following compliance project be undertaken:

a. SCWA shall provide evidence that at least one of its employees has become trained as a certified professional erosion and sediment control specialist (CPESC). The CPESC program involves a formalized training and licensing process. Information regarding this program will be forwarded to SCWA.

b. SCWA shall insure that removal of sediments in the wetland immediately adjacent (south) of the Site be undertaken to re-establish the wetland hydrology that existed prior to reservoir construction. At present, sediments have built up to the point where flow from the culvert that drains the main drainage channel along the Site's southern boundary is prevented from discharging to the wetland. It is critical that this flow regime be restored.

SUPPLEMENTAL ENVIRONMENTAL PROJECT AND COMPLIANCE PROJECT

The Executive Officer of the Regional Water Board is issuing this Complaint with a proposed Administrative Civil Liability to the Sonoma County Water Agency for violations of Waste Discharge Requirements in the amount of $70,000. Thirty thousand dollars is due and payable within 30 days of issuance of this Complaint. The remaining $40,000 is suspended contingent upon the Sonoma County Water Agency's contribution towards timely completion of the following Supplemental Environmental Project (SEP) and Compliance Project, to the Executive Officer's satisfaction.

Supplemental Environmental Project Description:

Topography restoration of a portion of braided stream channel and associated habitats of the Laguna de Santa Rosa, as described in September 21 and October 23, 2001, Laguna Foundation letters to the Regional Water Board. The restoration project is scheduled to commence some time during August 2002. The Laguna Foundation estimates a project completion date of no later than September 30, 2002. Periodic progress reports regarding project construction are expected. Submittal of proof of payment to the Laguna Foundation of $30,000 for the construction of the described restoration project, by July 31, 2002, along with written proof of project completion by the Laguna Foundation, by December 31, 2002, will constitute compliance with this SEP requirement unless other dates are approved by the Executive Officer If the SEP project is not completed by the applicable date, $30,000 of the suspended ACL will be automatically imposed.

Compliance Project Description:

In addition, the Discharger shall implement a program to fully train a designated staff person as a CPESC, and to remove accumulated sediments in the adjacent wetland to the south of the Site. The CPESC-trained staff person shall be available as an in-house reference for technical erosion and sediment control assistance. Furthermore, all staff with responsibility in designing, constructing or providing oversight of construction projects shall receive annual training in

proper construction techniques and Best Management Practice design and installation, with summaries of such training submitted annually to the Regional Water Board. Proof of training at least one staff person as a CPESC must be submitted to the Executive Officer no later than November 30, 2002. SCWA must continue thereafter to employ a CPESC trained staff person.

Removal of sediment from the wetland shall be completed according to a workplan approved by the Executive Officer. The general content and schedule for submittal of the workplan will be

specified in an order to be issued by the Executive Officer under Section 13267 of the California Water Code.

Failure to complete the approved sediment removal workplan by the schedule specified by the Executive Officer and/or to license as a CPESC at least one SCWA employee by November 30, 2002, will result in the automatic imposition of $10,000 of the suspended ACL.

Ordered by _____

Susan A. Warner
Executive Officer

May 22, 2002

(sonwaterreservoirdaclsep)