

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

In the matter of:

**KB Home
Settler's Point Project, Lakeside Ca
Unauthorized Discharge of Fill to Waters of
the U.S./State**

PIN: SM-453268

**COMPLAINT NO. R9-2016-0092
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Noncompliance with
California Water Code § 13376,**

and

Clean Water Act § 301

April 22, 2016

KB HOME IS HEREBY GIVEN NOTICE THAT:

1. KB Home (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to California Water Code (Water Code) section 13385.
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

Background

3. In May 2014, the Discharger began purchase negotiations for the Settler's Point property, located in Lakeside California in the eastern portion of the County of San Diego (Assessor Parcel Nos. 397-210-17, 397-212-01, 397-290-04, 397-291-01 and 397-291-03). The Discharger closed escrow on the property on September 2, 2014.
4. Directly adjacent and to the northwest of the Settler's Point property is the Brightwater Ridge property, currently under the ownership of Pulte Home Corporation. This undeveloped 76.23 acre property contains five unnamed ephemeral streams that, after passing through an existing County-owned storm drain system, drain to Los Coches Creek, a water of the U.S. in the San Diego Hydrologic Unit, Lower San Diego Hydrologic Area, Coches Hydrologic Subarea (907.14).
5. In August 2008, at the request of the County of San Diego, an offsite addition was made to the Settler's Point project. The County requested a "temporary street knuckle" to be constructed at the northwest corner of the Settler's Point project to provide secondary access to the Settler's Point project and connect the proposed onsite road to Wellington Hills Drive.

6. On December 5, 2014 the Discharger began grading activities that included the offsite street knuckle portion of the project. The grading activity resulted in the unauthorized discharge of fill and other construction material into waters of the U.S./State. The discharge of fill continued until final curb, gutter and paving for the street knuckle were completed on May 14, 2015. This constitutes an active discharge period of 161 days.
7. On March 10, 2015 Pulte Home Corporation submitted a Clean Water Act (CWA) Section 401 Water Quality Certification application package for the Brightwater Ranch project to the San Diego Water Board, to build a 66-unit, single-family residential subdivision, with four Homeowner Association maintained lots, and 41.8 acres of open space. The application package included a preliminary jurisdictional delineation indicating the presence of waters of U.S./State in the street knuckle footprint.
8. The preliminary jurisdictional delineation was conducted by Helix Environmental Planning Inc. on November 7, 2014 and concluded that the site had 0.05 acre (685 linear feet) of waters of the U.S. and State (ephemeral dry wash) under the jurisdiction of the U.S. Army Corps of Engineers (USACE), San Diego Water Board, and California Department of Fish & Wildlife (CDFW). The preliminary delineation identified an additional 0.12 acre (3,710 linear feet) of non-federal waters of the State onsite. The 76.23 acre site contains five unnamed ephemeral drainages that are tributary to Los Coches Creek (Hydrologic sub area 907.14).
9. In April 2015, during an initial San Diego Water Board review of the Pulte Home Corporation certification application, Google Earth aerial imagery revealed that grading had been conducted offsite of the Settler's Point project boundary, and had impacted jurisdictional waters on the Brightwater Ranch Project.
10. On July 1, 2015 staff from the USACE, San Diego Water Board, KB Home, Helix Environmental Planning, and County of San Diego met onsite to inspect the impacts and to verify the jurisdictional delineation. Results of the inspection confirmed that KB Home had not obtained any authorizations or permits from State (401 certification, Waste Discharge Requirements and Streambed Alteration Agreement) and Federal (404 permit) regulatory agencies prior to discharging fill into the ephemeral streams on the Brightwater property.
11. On July 7, 2015 KB Home's environmental consultant reported to the San Diego Water Board that the grading operations associated with construction of the offsite street knuckle impacted approximately 0.018 acre (278 linear feet) of jurisdictional waters of the U.S. and State.
12. On August 18, 2015 the discharger reported that an estimated 350 cubic yards of fill were used for construction of the off-site street knuckle. That equates to the discharge of 70,691 gallons of fill to waters of the U.S. and State.

13. The Water Quality Control Plan for the San Diego Basin (Basin Plan) designates the following beneficial uses for surface waters in Los Coches Creek and its tributaries:

Industrial Service Supply (IND)
Contact Water Recreation (REC-1)
Non-contact Water Recreation (REC-2)
Warm Freshwater Habitat (WARM)
Wildlife Habitat (WILD)
14. On August 13, 2015 the San Diego Water Board issued Notice of Violation No. R9-2015-0154 to the Discharger for the unauthorized discharge of fill to waters of the U.S./State.

ALLEGED VIOLATIONS

15. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code Section 13376 prohibit the discharge of pollutants to surface water except in compliance with a permit for dredged and fill material.
16. The San Diego Water Board Prosecution Team alleges that the Discharger violated Section 301 of the Clean Water Act and Water Code Section 13376 for a period of 161 days for the active discharge of fill material into Waters of the U.S. and State without a permit or Clean Water Act Section 401 water quality certification. The unauthorized activity resulted in the discharge of approximately 70,691 gallons (or 350 cubic yards) of sediment and construction materials to Waters of the U.S./State.
17. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

18. Pursuant to Water Code section 13385, subdivision (a), a person who violates either Water Code section 13376, a waste discharge requirement, a basin plan prohibition, or a requirement of section 301 of the federal Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c)

*...in an amount not to exceed the sum of both of the following:
(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.*

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

19. Pursuant to Water Code Section 13385 subdivision (c), and as detailed in the attached Technical Analysis, the maximum administrative civil liability for the alleged violation of Section 301 of the Clean Water Act and Water Code Section 13376 is **\$2,306,910**.

MINIMUM LIABILITY


20. Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The State Water Board Enforcement Policy (Enforcement Policy) further instructs the Regional Water Boards to assess liability against a violator at least ten percent higher than the economic benefit realized from the violation, such that liabilities are not construed as the cost of doing business, and provide a meaningful deterrent to potential violators.
21. As detailed in the accompanying Technical Analysis, and based on a calculated economic benefit of **\$38,601**, the minimum liability amount the San Diego Water Board may assess the Discharger is **\$42,461**.

PROPOSED LIABILITY ASSESSMENT

22. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under Water Code section 13385(c), the San Diego Water Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge; and with respect to the Discharger, the ability to pay, the effect on the Discharger's ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
23. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in the Technical Analysis.

April 22, 2016

24. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, the Prosecution Team recommends that the San Diego Water Board impose civil liability against the Discharger in the amount of **\$875,166** for the violations alleged herein and set forth in full in the accompanying Technical Analysis.
25. The assessed amount includes **\$16,996** for **299.75** hours of San Diego Water Board staff time to investigate and prepare the enforcement documents. Should this matter proceed to hearing, the San Diego Water Board may choose to increase the recommended liability to recover additional necessary staff costs accrued after this Complaint is issued and through the hearing.



JAMES G. SMITH
Assistant Executive Officer

Signed pursuant to the authority delegated by the Executive Officer to the Assistant Executive Officer.

Attachment: Technical Analysis and Appendices

Party ID: 358094
CIWQS Place ID: CW-826199
SMARTS ID: SM-453268
Violation IDs: 994273
WDID No: 9 37C0552
Enforcement ID: 405422