



San Diego Regional Water Quality Control Board

March 16, 2023

In reply refer to: SM-908545:FMelbourn

Rob Haskell, Vice President
Surf Cup Sports, LLC
2037 Park Dale Lane
Encinitas, California 92024-4325

GSL Tracking No. 558982750

Rob Haskell, Manager
Surf Del Mar One, LLC
3382 Calle Tres Vistas
Encinitas, California 92024-6679

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Rob Haskell, Agent for Service of Process
Surf Real Estate, LLC
2037 Park Dale Lane
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Notice of Violation No. R9-2023-0060 to Surf Cup Sports, LLC; Surf Del Mar One, LLC; and Surf Real Estate, LLC, for Violations of federal Clean Water Act §§ 301 and 401, California Water Code § 13376 and Water Quality Control Plan for the San Diego Basin Waste Discharge Prohibition Nos. 1, 3, 6, 7, 8 and 14 San Diego County APNs 302-090-31-00 & 302-090-32-00

Rob Haskell:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) hereby issues Notice of Violation No. R9-2023-0060 to Surf Cup Sports, LLC (SCS); Surf Del Mar One, LLC (SDMO); and Surf Real Estate, LLC (SRE) (collectively Dischargers) for violations of federal Clean Water Act (Clean Water Act) sections 301 and 401, California Water Code (Water Code) section 13376 and Water Quality Control Plan for the San Diego Basin (Basin Plan) Waste Discharge Prohibition Nos. 1, 3, 6, 7, 8 and 14. Additionally, Investigative Order No. R9-2023-0061 (Investigative Order), separately and concurrently issued, requires the Dischargers to submit a technical report containing information on activities at San Diego County Assessor Parcel Numbers (APNs) 302-090-31-00 and 302-090-32-00¹ (collectively Site) within 180-days of the Investigative Order.

¹ See Exhibit 13, Site Satellite Image with APNs.

Background

SRE purchased the Site on April 1, 2022.² SDMO purchased the Site from SRE on December 21, 2022, and is the current owner.³ Agents and employees of SCS conduct daily activities on the Site and have done so since 2016.⁴ As detailed below, alleged violations began on or about September 2022 through present. SDMO owns, and SRE owned the Site during alleged violations and are each named as a Discharger because they had knowledge of the activities that resulted in the discharges and the legal ability to prevent the discharges. SCS is named as a Discharger because it caused discharges of waste to waters of the United States (U.S.).

The San Diego Water Board received complaints concerning activities on the Site from members of the public, the City of San Diego (City), and the 22nd District Agricultural Association (22nd DAA).⁵ San Diego Water Board staff visited the Site on January 5,⁶ 10,⁷ and 19,⁸ 2023, and communicated with the complainants and you concerning the activities. Based on the information collected, San Diego Water Board staff allege that the Dischargers have violated state and federal law as described below.

Summary of Alleged Violations

1. **Unpermitted Discharge of a Pollutant to Waters of the U.S. in violation of Clean Water Act section 301, Water Code section 13376, and Basin Plan Prohibitions.**
 - a. **Clean Water Act section 301 and Water Code section 13376**
 - i. Clean Water Act section 301 and Water Code section 13376 prohibit the discharge of pollutants to waters of the U.S. except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

² Exhibit 1, Grant Deed, dated April 1, 2022.

³ Exhibit 2, Westlaw Property Transaction Report for December 21, 2022.

⁴ Exhibit 3, January 19, 2023, Site Inspection Report; and Exhibit 4, October 6, 2022, City Civil Penalty Notice and Order.

⁵ Exhibit 5, Public Complaint; Exhibit 4, October 6, 2022, City Civil Penalty Notice and Order; and Exhibit 6, DOJ Cease and Desist Letter for 22nd DAA.

⁶ Exhibit 7, January 5, 2023, Site Inspection Report.

⁷ Exhibit 8, January 10, 2023, Site Inspection Report.

⁸ Exhibit 3, January 19, 2023, Site Inspection Report.

- ii. Observation: On January 5, 2023, San Diego Water Board staff observed and documented pumping of highly turbid ponded storm water runoff from APN 302-090-31-00 to APN 302-090-32-00 (wetland waters of the U.S.⁹). Staff also observed the conveyance of highly turbid ponded storm water runoff from the Site via a constructed trench to APN 302-090-33-00, which is owned by the State of California, 22nd DAA, and is a wetland water of the U.S. hydrologically connected to the San Dieguito River.¹⁰ The highly turbid nature of the storm water runoff indicates the presence of sediment, a pollutant. Ponded storm water runoff was also pumped from APN 302-090-31-00 to APN 302-090-32-00 in December 2022 by SCS staff.¹¹ Additionally given the historical use of APN 302-090-31-00 as a vehicle parking lot,¹² the storm water runoff for the parcel likely contains pollutants such as metals and vehicle fluids like fuel and lubricants. The San Diego Water Board received complaints concerning these discharges from members of the public on January 4, 2023, and from the 22nd DAA via the California Department of Justice on January 6, 2023.

b. Basin Plan Prohibition No. 1

- i. Prohibition No. 1 states that “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Code section 13050, is prohibited.”

⁹ U.S. Fish and Wildlife Service, National Wetlands Inventory as of January 6, 2023, <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>; Exhibit 9, draft Helix Environmental Planning, Inc. June 2021, Biological Technical Report for Hacienda del Mar Project; and Exhibit 10, Glenn Lukos August 2012 Preliminary Jurisdictional Delineation.

¹⁰ U.S. Fish and Wildlife Service, National Wetlands Inventory as of January 6, 2023, <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> and Exhibit 7, January 5, 2023, Site Inspection Report.

¹¹ Exhibit 3, January 19, 2023, Site Inspection Report

¹² Exhibit 3, January 19, 2023, Site Inspection Report; Exhibit 10, Glenn Lukos August 2012 Preliminary Jurisdictional Delineation; and Exhibit 11, October 6, 2022, Drone photograph 10.9.2022.Surf Cup.ECNL.drone0127.jpg taken during 2022 Surf Cup.

- ii. Observation: On January 5, 2023, San Diego Water Board staff observed the direct discharge of polluted storm water runoff from APN 302-090-31-00 to APN 302-090-32-00 via a pump and through a trench from the Site to APN 302-090-33-00, waters of the U.S. and state.¹³ The discharge of turbid storm water (a waste) pollutes surface waters, adversely affects aquatic life, and obstructs the aesthetic enjoyment of surface waters. The discharge of turbid storm water to APN 302-090-33-00 threatened to unreasonably affect beneficial uses of San Dieguito River, waters of the U.S. and state, and downstream waters, including habitat and ecosystem-related beneficial uses, and caused or contributed to pollution or nuisance conditions. Based on these observations, the Dischargers failed to prohibit the discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance.
- c. Basin Plan Prohibition No. 3**
- i. Prohibition No. 3 states that “[t]he discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in Water Code section 13376) is prohibited.”
 - ii. Observation: San Diego Water Board staff observed turbid storm water runoff discharging through a cut trench on the Site to APN 302-090-33-00, waters of the U.S. and state.¹⁴ The Dischargers’ representative during the Site visit, Rob Haskell, stated that the Dischargers dug the trench on the Site to drain ponded storm water runoff.¹⁵ On January 5 and 10, 2023, San Diego Water Board staff observed spoils from the dug trench on both sides of the trench in a manner where the spoils discharged and/or threatened to discharge into waters of the U.S. and/or likely to be discharged to waters of the United States.¹⁶ APNs 302-090-32-00 and 302-090-33-00 contain waters of the U.S. Additionally, the trench was cut through previously documented areas containing sensitive wetland plant species, Estuary Seablite (*Suaeda esteroa*), Coastal salt marsh, and Diegan coastal sage scrub vegetation.¹⁷

¹³ Exhibit 7, January 5, 2023, Site Inspection Report.

¹⁴ Exhibit 7, January 5, 2023, Site Inspection Report; and Exhibit 8, January 10, 2023, Site Inspection Report.

¹⁵ Exhibit 3, January 19, 2023, Site Inspection Report.

¹⁶ Exhibit 7, January 5, 2023, Site Inspection Report; and Exhibit 8, January 10, 2023, Site Inspection Report.

¹⁷ Exhibit 9, draft Helix Environmental Planning, Inc. June 2021, Biological Technical Report for Hacienda del Mar Project.

d. Basin Plan Prohibition No. 6

- i. Prohibition No. 6 states that “[t]he discharge of waste in a manner causing flow, ponding, or surfacing on lands not owned or under the control of the discharger is prohibited, unless the discharge is authorized by the Regional Board.”
- ii. Observation: Based upon observations of San Diego Water Board staff on January 5 and 10, 2023, and statements from the Dischargers’ representative on January 19, 2023, Dischargers’ agents or employees pumped and dug a trench that resulted in discharges of turbid ponded storm water runoff to APN 302-090-33-00 owned by the State of California.¹⁸ Additionally, on January 6, 2023, the 22nd DAA sent a Cease and Desist letter to SCS to cease the pumping and redirecting of storm water from the Site into APN 302-090-33-00.¹⁹

e. Basin Plan Prohibition No. 7

- i. Prohibition No. 7 states that “[t]he dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board.”
- ii. Observation: On January 5, 2023, San Diego Water Board staff observed the direct discharge of polluted storm water runoff from APN 302-090-31-00 to APN 302-090-32-00, waters of the U.S. and state, via a pump and through a trench from the Site to APN 302-090-33-00, waters of the U.S. and state.²⁰

f. Basin Plan Prohibition No. 8

- i. Prohibition No. 8 states that ‘[a]ny discharge to a storm water conveyance system that is not composed entirely of "storm water" is prohibited unless authorized by the Regional Board. [The federal regulations, 40 CFR 122.26 (b) (13), define storm water as storm water runoff, snow melt runoff, and surface runoff and drainage. 40 CFR 122.26 (b) (2) defines an illicit discharge as any discharge to a storm water conveyance system that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.] [Section 122.26 amended at 56 FR 56553, November 5, 1991; 57 FR 11412, April 2, 1992].’

¹⁸ Exhibit 3, January 19, 2023, Site Inspection Report; Exhibit 7, January 5, 2023, Site Inspection Report; and Exhibit 8, January 10, 2023, Site Inspection Report.

¹⁹ Exhibit 6, , DOJ Cease and Desist Letter for 22nd DAA.

²⁰ Exhibit 7, January 5, 2023, Site Inspection Report.

- ii. Observation: On January 5, 2023, San Diego Water Board staff observed the direct discharge of polluted storm water runoff from APN 302-090-31-00 to APN 302-090-32-00 via a pump and through a trench from the Site to APN 302-090-33-00.²¹ APN 302-090-33-00 contains a storm water conveyance system operated by the 22nd DAA and permitted under the California State Water Resources Control Board's (State Water Board's) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems under Order No. 2013-0001-DWQ (Statewide Small MS4 Permit, or Phase II MS4 Permit) overseen by the San Diego Water Board.
- g. Basin Plan Prohibition No. 14**
- i. Prohibition No. 14 states that “[t]he discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.”
 - ii. Observation: On January 5, 2023, San Diego Water Board staff observed the direct discharge of polluted storm water runoff from APN 302-090-31-00 to APN 302-090-32-00, waters of the U.S. and state, via a pump and through a trench from the Site to APN 302-090-33-00, waters of the U.S. and state, which is hydrologically connected to San Dieguito River, waters of the U.S. and state.²² The discharge of turbid storm water from the Site indicated that the discharge contained a significant amount of sediment that threatens to cause or contribute to deleterious bottom deposits, excessive turbidity, and discoloration in San Dieguito River and downstream waters, and unreasonably affect habitat and ecosystem-related beneficial uses.

²¹ Exhibit 7, January 5, 2023, Site Inspection Report.

²² Exhibit 7, January 5, 2023, Site Inspection Report.

2. **Unauthorized discharge of storm water runoff from construction activities in violation of Clean Water Act section 301, Water Code section 13376, and Basin Plan Prohibition Nos. 1, 3, 6, 7, 8 and 14 for the failure to obtain coverage under the statewide Construction Storm Water Permit.**
 - a. **See 1 above.**
 - i. State Water Board Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Storm Water Permit) authorizes discharges of storm water associated with construction activity so long as the discharger complies with all requirements, provisions, limitations, and prohibitions in the permit. Pursuant to section I.B.18 “[a]ny construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity that results in a land disturbance of equal to or greater than one acre” must be covered by the Construction Storm Water Permit by submitting a Notice of Intent (NOI) to comply with the State Water Board.
 - ii. Observation: The City observed on September 7, 2022, that unpermitted grading altered the topography and leveled areas of the Site, including the placement of gravel.²³ The City issued a Civil Penalty Notice and Order to SRE on October 6, 2022, after its inspection.²⁴ The Civil Penalty Notice and Order stated that approximately 18.3 acres of grading occurred that altered the topography of the Site and affected the drainage patterns on the Site without required permits. Additionally, the Dischargers’ representative, Rob Haskell, stated that in October 2022, SCS spread a half of an inch of topsoil over one-and-a-half-acre area on the Site.²⁵ Based upon a search of the State Board’s Stormwater Multiple Application and Report Tracking System (SMARTS) on January 18, 2023, the Dischargers have not filed an NOI to obtain coverage for this work. The Dischargers knew that this type of activity required coverage under the Construction Storm Water Permit because a Dischargers’ entity, “SD Surf Cup Sports,” submitted an NOI (WDID No. 9 37C384718) on September 26, 2018, for a project to enhance City of San Diego trails on APN 302-261-01-00 (soccer fields property owned by the City and leased to SCS).

²³ Exhibit 12, September 26, 2022, City Memorandum by Anita Eng.

²⁴ Exhibit 4, October 6, 2022, City Civil Penalty Notice and Order.

²⁵ Exhibit 3, January 19, 2023, San Diego Water Board Site Inspection Report, at p. 3, 3rd ¶.

3. **Failure to obtain Waste Discharge Requirements for the filling of wetlands in violation of Clean Water Act section 401 and Water Code section 13376.**
- a. The State of California largely relies on Clean Water Act section 401 (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the U.S. and/or state. Clean Water Act section 401 requires an applicant to obtain “water quality certification” from the state that the project will comply with state water quality standards before certain federal licenses or permits may be issued. The permits subject to Clean Water Act section 401 include permits for the discharge of dredged or fill materials (Clean Water Act section 404 permits) issued by the U.S. Army Corps of Engineers.
 - b. Observation: See 2.a.ii. Available evidence²⁶ indicates that there are wetland waters of the U.S. on the Site that meet the federal wetlands definition. Based upon this evidence, the City’s observation that greater than 18 acres of the Site was graded, and SCS representatives’ statement that topsoil was spread over one and a half acres of land, the Discharger(s) failed to obtain a Clean Water Act section 404 permit and a water quality certification under Clean Water Act section 401 for their grading activities at the Site.

Summary of Potential Enforcement Options

The violations alleged above may subject the Dischargers to additional enforcement actions by the San Diego Water Board, as described below:

Other Potential Enforcement Options	Applicable Water Code Section
Investigative Order	13267, 13383
Cleanup and Abatement Order	13304
Administrative Civil Liability	13350, 13385

The San Diego Water Board may also consider referring the matter to other agencies, the State Attorney General for injunctive relief, and/or the municipal or District Attorney.

The San Diego Water Board reserves the right to take any enforcement action authorized by law. In making the determination of whether and how to proceed with further enforcement, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

²⁶ [U.S. Fish and Wildlife Service National Wetlands Inventory Wetlands Mapper](#); Exhibit 9, Section 3.4 page 13 of Helix Environmental Planning Draft Biological Technical Report for Hacienda del Mar, June 2021; Exhibit 10, Section VI.A. page 24 of August 22, 2012, Glenn Lukos Associates Jurisdictional Delineation Report; and Exhibit 12, September 26, 2022, City Memorandum by Anita Eng.

In the subject line of any response, please include the reference code SM-908545:FMelbourn. Please contact Frank Melbourn by telephone at (619) 521-3372, or via email at Frank.Melbourn@waterboards.ca.gov if you have any questions.

Respectfully,

KELLY K. DORSEY
Assistant Executive Officer

KKD:cmc:ftm

Supporting exhibits can be found on the San Diego Water Board File Transfer Protocol (FTP) site at <https://ftp.waterboards.ca.gov>. Contact Frank Melbourn to obtain specific instructions for accessing the exhibits.

Technical Staff Information and Use

Violation IDs	1113142, 1113143, 1113144, and 1113145.
Regulatory Measure ID	451139 NOV No. R9-2023-0060
SMARTS Place ID	SM-908545
CIWQS Place ID	885967
Party IDs	555661 Surf Cup Sports, LLC 637247 Surf Del Mar One, LLC 637248 Surf Real Estate, LLC