



# California Regional Water Quality Control Board San Diego Region



Linda S. Adams  
Secretary for  
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Edmund G. Brown, Jr.  
Governor

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(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

April 6, 2011

**Certified Mail – Return Receipt Requested**  
Article Number: 7009 1410 0002 2347 3964

Mr. William T. Ostrem  
President  
Black Mountain Ranch, LLC  
16010 Camino del Sur  
San Diego, CA 92127

**In reply refer to:**  
CIWQS Place ID: 9 37C328390: carias

Dear Mr. Ostrem:

**Subject: Notice of Violation No. R9-2011-0042, Del Sur/Unit 14 Construction Site**

Enclosed is Notice of Violation (NOV) No. R9-2011-0042 issued to Black Mountain Ranch, LLC, for violations of Order No. 2009-0009-DWQ, issued by the State Water Resources Control Board and enforced by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). As described in the NOV, the violations are subject to further enforcement pursuant to the California Water Code. The San Diego Water Board reserves the right to take any enforcement action authorized by law.

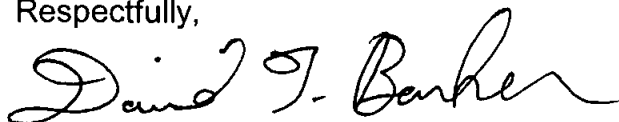
As described in the NOV, the violations are for failure to implement requirements associated with Risk Level 2 construction sites, as directed in correspondence from the San Diego Water Board on January 25, 2011. Order No. R9-2009-0009 gives the San Diego Water Board the authority to require an updated Risk Level determination in advance of the default implementation date of September 2, 2011. We have reviewed your letters dated Feb 25, 2011 and March 1, 2011, and disagree with assertions that Black Mountain Ranch, LLC does not have to implement requirements associated with Risk Level 2 construction sites at this time.

Because Black Mountain Ranch has failed to comply with the requirements of Order No. 2009-0009-DWQ and implementation of Risk Level 2 construction site requirements, Black Mountain Ranch, LLC is in violation of Water Code section 13385, and continues to accrue potential civil liability in the amounts of up to \$10,000 per day. In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider both the time it takes to correct the identified violations and the sufficiency of the corrections.

**California Environmental Protection Agency**

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. For questions pertaining to the subject matter, please contact Christina Arias at (858) 627-3931 or [carias@waterboards.ca.gov](mailto:carias@waterboards.ca.gov).

Respectfully,



DAVID T. BARKER, P.E.  
Supervising Water Resource Control Engineer  
Surface Waters Basins Branch

Signed under the authority delegated by the Executive Officer

DTB:esb:cma

Enclosures:

1. Notice of Violation No. R9-2011-0042

Cc via email: (w/encl.)

Kurt Bruskotter, Black Mountain Ranch, LLC  
Wayne Rosenbaum, Foley & Lardner LLP  
Joan Brackin, City of San Diego

SMARTS Entries:

SMARTS Entries:	Tech Staff Info & Use
Place/WDID	9 37C328390
Enf ID	404829
NPDES No.	CAS000002
Violation ID	844081



# California Regional Water Quality Control Board

## San Diego Region



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Black Mountain Ranch LLC

Del Sur/Unit 14

WDID No.: 9 37C328390: carias

### NOTICE OF VIOLATION

No. R9-2011-0042

Violations of Order No. 2009-0009-DWQ

April 6, 2011

BLACK MOUNTAIN RANCH LLC is hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

BLACK MOUNTAIN RANCH LLC is in violation of State Water Resources Control Board Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*.

#### A. Summary of Violations

##### 1. Failure to Comply with Conditions for Permit Coverage

- a. **Pursuant to Provision II B.4.b of Order No. 2009-0009-DWQ:** ...All existing dischargers shall be exempt from the risk determination requirements in Section VIII of this General Permit until two years after permit adoption. All existing dischargers are therefore subject to Risk Level 1 requirements regardless of their site's sediment and receiving water risks. **However, a Regional Board retains the authority to require an existing discharger to comply with the Section VIII risk determination requirements** (emphasis added).
- b. **Pursuant to Provision VIII of Order No. 2009-0009-DWQ:** The discharger shall calculate the site's sediment risk and receiving water risk during periods of soil exposure and use the calculated risks to determine a Risk Level(s) using the methodology in Appendix 1...The discharger shall notify the State Water Board of the site's Risk Level determination(s) and shall include this determination as part of submitting the Permit Required Documents (PRDs).

- c. **Pursuant to Provision XV of Order No. 2009-0009-DWQ:** In the case where the Regional Water Board does not agree with the discharger's self-reported risk level (e.g., they determine themselves to be a Level 1 Risk when they are actually a Level 2 Risk site), Regional Water Boards may either direct the discharger to reevaluate the Risk Level(s) for their site or terminate coverage under this General Permit.
- d. **Observations:** In response to a letter from the San Diego Water Board dated January 25, 2011 directing Black Mountain Ranch, LLC (Discharger) to reevaluate the Risk Level and implement the appropriate requirements immediately, the Discharger conducted a Risk Level Analysis but refused to implement the requirements of the updated Risk Level. Additionally, the Discharger failed to notify the State Water Board of the site's updated Risk Level determination.

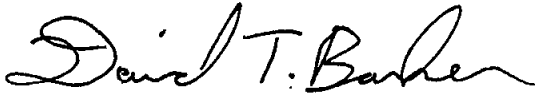
## 2. Failure to Comply with Permit Requirements

- a. **Pursuant to Provision X of Order No. 2009-0009-DWQ:** Risk Level 2 Dischargers shall comply with the requirements included in Attachment D of this General Permit.
- b. **Observations:** In letters dated February 25, 2011, and March 1, 2011, the Discharger stated that the results of the Risk Determination Analysis indicated the construction site is a Risk Level 2 site, but would not implement the requirements until September 2, 2011 (the default date whereby all construction sites must implement updated Risk Level requirements). The instructions from the San Diego Water Board were to implement the new requirements immediately upon completion of the Risk Determination Analysis, pursuant to Provisions II B.4.b, VIII, and XV of Order No. 2009-0009-DWQ.

## B. Summary of Potential Enforcement Options

These violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13385). In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and referral to the municipal or District Attorney for criminal prosecution.

Questions pertaining to this Notice of Violation should be directed to Christina Arias at 858-627-3931 or [carias@waterboards.ca.gov](mailto:carias@waterboards.ca.gov).



DAVID T. BARKER, P.E.  
Supervising Water Resource Control Engineer  
Surface Waters Basins Branch

SMARTS Entries  
WDID ID: 9 37C328390  
Enf. ID: 404829  
Violation ID: 844081

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Article Addressed to:

William Ostrem  
Black Mtn Ranch, LLC  
6010 Camino del Sur  
San Diego, CA 92127

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

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Agent

Addressee

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Article Number

(Transfer from service label)

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4-c

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C. Arias

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Street, Apt. No., or PO Box No.

16010 Camino del Sur

City, State, ZIP+4

San Diego CA 92127

PS Form 3800, August 2006

See Reverse for Instructions