

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

REVISED CLEANUP AND ABATEMENT ORDER R5-2008-0713-R01
FOR
STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION
AND
SAN FRANCISCO PUBLIC UTILITIES COMMISSION, HETCH HETCHY WATER AND POWER
MITCHELL RAVINE
ALAMEDA COUNTY

This Order is issued to the State of California, Department of Parks and Recreation (State Parks) and the San Francisco Public Utilities Commission, Hetch Hetchy Water and Power (Hetch Hetchy), based on provisions of California Water Code (CWC) section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (CAO), and CWC section 13267, which authorizes the Central Valley Water Board to require the submittal of technical reports.

The revisions to this Order are based on the Board's recognition that remediation activities must include the stabilization of upstream waste rock piles (the "Waste Rock Site") that were not included in the original Order.

The Executive Officer of the Central Valley Water Board finds the following:

1. State Parks is the owner of the Carnegie State Vehicular Recreation Area (SVRA) in Alameda County. Hetch Hetchy is a department of the San Francisco Public Utilities Commission.
2. Mitchell Ravine is a watershed within the SVRA. Mitchell Ravine is tributary to Corral Hollow Creek which flows into the Sacramento-San Joaquin River Delta, a water of the United States.
3. Hetch Hetchy owns the road and has a road easement parallel to Mitchell Ravine, within State Parks property. Hetch Hetchy uses this road easement to access Hetch Hetchy-owned property south of the SVRA to service a water tunnel shaft and to conduct general road maintenance. In June 2008, Hetch Hetchy graded about 2.5 acres of Mitchell Ravine, purportedly to maintain the road (the "Road Grading Site"). These grading activities significantly impacted Mitchell Ravine and the biological resources in the area. The grading activities at the Road Grading Site have created conditions which, if unabated, will allow a significant amount of sediment to move downstream and will impact water quality in lower Mitchell Ravine and Corral Hollow Creek.
4. The grading occurred on two parcels with the following Assessor's Parcel Numbers: APN 099A-2220-001-19 in Section 30, T3S, R4E, MDB&M and APN 099A-2200-001-036 and -37 in Section 31, TS, R4E, MDB&M.
5. For purposes of this Order, Hetch Hetchy is considered primarily responsible for cleanup activities. This is due to the fact that Hetch Hetchy's construction activities caused the

water quality concerns described herein at the Road Grading Site. State Parks is named in this Order because it owns the land within Mitchell Ravine on which the construction activities took place. Both are considered dischargers with an obligation to clean up or remediate the effects of the wastes pursuant to CWC section 13304.

6. On 30 June 2008, staff from State Parks inspected the Road Grading Site and observed heavy equipment grading in and around Mitchell Ravine. This grading activity took place without prior notification to State Parks. State Parks also determined that Hetch Hetchy failed to obtain the necessary permits or provide adequate notification to federal or state resource agencies. State Parks staff wrote an Engineering Incident Report in July 2008 regarding this incident (found as Attachment A, a part of this Order).
7. On 4 September 2008, Department of Fish and Game staff met with staff from State Parks and Hetch Hetchy to discuss the grading activities at the Road Grading Site. Department of Fish and Game staff requested that Hetch Hetchy submit a streambed alteration permit application and both short-term and long-term stabilization plans for the site.
8. On 15 September 2008, Board staff inspected the construction activities at the Road Grading Site. Board staff identified that construction activity, including clearing and grading, had occurred at that location in violation of state and federal laws. Both the CWC and the federal Clean Water Act require coverage under the Construction Storm Water General Permit for construction activities where there is grading of over an acre. Board staff took photographs of the Road Grading Site and wrote an inspection report (found as Attachment B, a part of this Order).
9. On 17 September 2008, staff from Department of Fish and Game and the US Fish and Wildlife Service met with Hetch Hetchy and State Parks at the Road Grading Site to assess impacts to listed species and habitat. US Fish and Wildlife Service requested that Hetch Hetchy and State Parks have their hydrologists assess the site and make recommendations for immediate temporary stabilization of the site.
10. On 22 September 2008, Central Valley Water Board staff issued a Notice of Noncompliance (NONC) to Hetch Hetchy and State Parks for failure to comply with the CWC and the federal Clean Water Act (found as Attachment C, a part of this Order). The following violations were cited:
 - Failure to obtain coverage under the Construction Storm Water General Permit for clearing, grading, and excavation results in land disturbance of one or more acres.
 - Violation of CWC section 13376, which requires that any person proposing to discharge pollutants or dredged or fill material into waters of the state to submit a report of waste discharge pursuant to CWC section 13260 prior to such discharge.

The NONC required Hetch Hetchy and/or State Parks to file a Notice of Intent requesting coverage under the Construction Storm Water General Permit, submit a Storm Water Pollution Prevention Plan (SWPPP) and submit a Section 401 Water Quality Certification

application no later than 22 October 2008. The documents were submitted in October and November 2008 by Hetch Hetchy.

11. On 9 October 2008, Board staff met with Department of Fish and Game, US Fish and Wildlife Service, and State Parks to address the grading done at the Road Grading Site. During the meeting, the agencies discussed the impacts to Mitchell Ravine and possible remedies to protect both water quality and biological resources. All agencies agreed that Hetch Hetchy's maintenance activities impacted biological resources and have potentially impacted water quality in the work area. In addition, Hetch Hetchy's grading will create significant impacts to the resources downstream of the impacted zone if soil stabilization measures are not put in place to stabilize the disturbed soil. This is a significant issue because of the steep gradient of the stream channel and the type of rock and soil in the area, as well as the fact that wetlands exist a few miles downstream. Immediate temporary stabilization measures are required to protect the site during the upcoming wet-season, and more permanent measures are required to protect the area in the long-term.
12. On 10 October 2008, Hetch Hetchy emailed a draft SWPPP to the agencies for review. Hetch Hetchy stated that the draft SWPPP was for "short term erosion control." Board staff reviewed the SWPPP and found it to be inadequate. The SWPPP did not meet the requirements of Construction Storm Water General Permit. Specifically, the Best Management Practices (BMPs) did not meet the Best Available Technology standard required by the Permit, as it did not include a combination of erosion and sediment control BMPs. Hetch Hetchy was required to revise the SWPPP to meet the conditions of the Permit and to adequately protect water quality. Hetch Hetchy was also required to immediately implement the revised SWPPP.
13. Hetch Hetchy's activities at the Road Grading Site and Waste Rock Site have impacted Mitchell Ravine. These impacts will accelerate if the site is not immediately stabilized and a long-term solution to the down-slope sediment migration is not implemented.
14. During work required under the original Cleanup and Abatement Order, the Board concluded that the Waste Rock Site upstream of the Road Grading Site and above the Mitchell Ravine channel pose a continuing threat of sediment discharge through erosion and slope failure, and that remediation activities to address the impacts of the downstream grading activities would not fully address the water quality impacts unless the waste rock piles at the Waste Rock Site were also stabilized. The waste rock piles were created circa 1930 during construction of the Coast Range Tunnel, part of the Hetch Hetchy aqueduct. The Waste Rock Site is located on lands owned by both Hetch Hetchy and State Parks.
15. Hetch Hetchy and State Parks anticipate that waste rock stabilization at the Waste Rock Site, and channel restoration work at the Road Grading Site, including environmental compliance, final technical analysis, regulatory permitting, and construction activities will occur between 1 March 2010 and 31 October 2010. However, this schedule depends on the availability of a construction contractor with specific expertise and/or equipment to perform work at the Waste Rock Site. If contractor availability or unforeseen circumstances delay the work at the Waste Rock Site beyond 31 October 2010, Hetch Hetchy and/or

State Parks will install BMPs at the Waste Rock Site to control erosion during the 2010-2011 wet season. BMPs will be installed in accordance with an approved revised SWPPP. These BMPs would be intended to temporarily stabilize the critically unstable areas of the waste rock piles and minimize the threat of episodic waste rock failure to the completed channel restoration at the Road Grading Site downstream. Stabilization of the Waste Rock Site will then be completed by 31 October 2011.

REGULATORY CONSIDERATIONS

16. Hetch Hetchy, by failing to file for the proper permits prior to grading activities and not stabilizing the site after the activities occurred, has caused or permitted, or threatens to cause or permit, waste to be discharged in such a manner that it threatens to cause or create a condition of pollution or nuisance. Therefore, Hetch Hetchy is subject to this Order pursuant to CWC section 13304. State Parks, as the underlying fee owner of the land where the discharges are occurring, is also subject to this Order pursuant to CWC section 13304.
17. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Board.
18. Surface water drainage at the site is to Corral Hollow Creek, which flows into the Sacramento-San Joaquin River Delta. The beneficial uses of the Delta are municipal and domestic supply; agricultural supply; industrial supply; water contact recreation; non-contact water recreation; warm and cold freshwater habitat; warm and cold migration of aquatic organisms; spawning, reproduction, and/or early development; wildlife habitat; and navigation.
19. CWC section 13304(a) provides that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. ... Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.
20. CWC section 13267(b) provides that:

In conducting an investigation ... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of

perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

The technical reports required by this Order are necessary to ensure compliance with this CAO and to ensure the protection of water quality. Evidence in the Central Valley Water Board's files indicate that Hetch Hetchy's actions created the conditions which have led to issuance of this Order, which is why Hetch Hetchy is required to submit the reports. State Parks owns the land where the discharges of sediment are occurring, and is also subject to this Order pursuant to CWC section 13267.

21. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED that, pursuant to CWC sections 13304 and 13267, Hetch Hetchy Water and Power shall cleanup and abate the impacts to Mitchell Ravine at the Road Grading Site and at the Waste Rock Site in accordance with the scope and schedule set forth below.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

1. **Effective immediately**, and continuing until this Order is rescinded, Hetch Hetchy shall ensure that monitoring reports are submitted prior to and after any rain events. These reports will be submitted monthly by the **10th day of the following month** (e.g. the October monthly report is due by 10 November). These reports must include the results of site monitoring, as required by the Construction Storm Water General Permit, in the form of both written inspection reports and photographs.
2. **Effective immediately**, and continuing until notified by the Executive Officer, Hetch Hetchy shall submit monthly progress reports describing its progress toward compliance with this Order. The reports shall provide a cumulative listing of completed tasks. The reports are due on the **10th day of the month** following the reporting period. The first report shall cover March 2010 and is due **10 April 2010**.
3. Hetch Hetchy shall maintain coverage under the Construction Storm Water General Permit and shall implement the 401 Water Quality Certification requirements until the stabilization and restoration project is fully complete and this Order is rescinded.

4. The SWPPP developed for the project shall be fully implemented until the project is complete and this Order is rescinded. If any changes other than minor revisions or modifications are made to the SWPPP, then the revisions or modifications shall be submitted and approved by the regulatory agencies prior to implementation.
5. Hetch Hetchy shall maintain storm water management BMPs on the entire project until the construction is complete and the project has been permanently stabilized. All erosion and sediment control BMPs must be wildlife friendly and not create entrapment issues.
6. By **30 April 2010**, Hetch Hetchy shall submit a long-term stabilization plan, which includes long-term stabilization of the rock and sediment that is migrating downstream in the watercourse as a result of the June 2008 grading event at the Road Grading Site. The long-term stabilization plan shall include the Waste Rock Site located upstream of the Road Grading Site. The plan must clearly describe the permits that will be needed from the resources agencies noted below and the timeline for Hetch Hetchy to submit permit applications in time to receive the permits necessary to comply with Item 7, below.
7. The long term stabilization plan shall be implemented as soon as possible after approval by Central Valley Water Board staff and after all necessary permits have been obtained, and in a time period to ensure compliance with Item 7, below.
8. By **31 October 2010**, Hetch Hetchy shall fully implement the approved long term stabilization plan for the Road Grading Site and the Waste Rock Site. If the waste rock piles cannot be stabilized in accordance with the long-term plan by **31 October 2010**, Hetch Hetchy shall be subject to the requirements in Item 8, below.
9. If Hetch Hetchy determines it cannot complete its work at the Waste Rock Site by 31 October 2010, then by **1 September 2010**, Hetch Hetchy shall submit a written request for a time extension describing the cause of the delay, the scope of work remaining to be completed, and the estimated completion date. Hetch Hetchy shall also provide a revised SWPPP in accordance with Item 3, above, addressing BMPs to stabilize critical areas of the waste rock piles through the 2010-2011 wet season. If the time extension is approved, the long-term Waste Rock Site stabilization work shall be completed as soon as possible and no later than **31 October 2011**.
10. By **1 December 2010**, Hetch Hetchy shall submit a Long-Term Stabilization Completion Report documenting that the approved stabilization plan for the Road Grading Site and the Waste Rock Site has been implemented. If a time extension for completion of work at the Waste Rock Site is approved, the report shall also describe the work remaining to be completed and temporary stabilization efforts at the Waste Rock Site in accordance with the approved revised SWPPP. Hetch Hetchy shall then submit a Waste Rock Site Stabilization Completion Report **30 days** after field work is completed and no later than **1 December 2011**.

11. Hetch Hetchy must submit all required reports and permit applications to the resource agencies, including at a minimum, the California Department of Fish and Game, US Fish and Wildlife Service, US Army Corps of Engineers, and State Parks.
12. Should Hetch Hetchy fail to comply with this Order, then the Executive Officer may notify State Parks that they must take all actions necessary to come into compliance with the Order, including all remaining tasks and deadlines, within 30 days of receipt of this notification. Such notification would not shield Hetch Hetchy from any enforcement action that may be brought against it by the State or Regional Water Boards for failure to comply with the terms of this Order, or any action for contribution brought by State Parks to recover costs incurred pursuant to this Order. Enforcement actions that may be initiated by the Central Valley Water Board include the issuance of Administrative Civil Liability penalties for failure to comply with the deadlines specified herein.

Hetch Hetchy shall comply with all applicable provisions of the California Water Code that are not specifically referred to in this Order. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed by the registered professional.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

If, in the opinion of the Executive Officer, Hetch Hetchy and/or State Parks fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

Failure to comply with this Order may result in the assessment of an Administrative Civil Liability of up to \$10,000 per violation per day, pursuant to the CWC sections 13268, 13350, and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

This Order is effective upon the date of signature.

Original signed by Wendy Wyels for

PAMELA C. CREEDON, Executive Officer

26 February 2010

(Date)

Attachment A: State Parks Engineering Incident Report
Attachment B: Central Valley Water Board staff inspection report
Attachment C: 28 September 2008 Notice of Non Compliance

RWM: 26-Feb-2010