

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2009-0703

CLEANUP AND ABATEMENT ORDER
FOR
MADERA COUNTY RESOURCE MANAGEMENT AGENCY,
MADERA COUNTY ROAD DEPARTMENT
MADERA COUNTY

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board or Board) finds that:

1. The Madera County Resource Management Agency, Madera County Road Department (hereafter Madera County or County) began construction on Phase I of the Road 200 Widening Project from Spring Valley School to Leprechaun Lane (hereafter Project) on 7 July 2008 and continued during the summer and fall of 2008. The site is in the Sierra foothills approximately 30 miles from the city of Madera, and 2 miles northeast of the intersection of State Highway 41 and Road 200, along a 3.4 mile long section of Road 200. The site is within Sections 16, 21, and 29 of Township 9 South, Range 21 East, and Section 14 of Township 9 South, Range 21 East, MDBM. The Project is comprised of an 80-foot wide right-of-way with a 40-foot paved section, for a total of 34 acres including approximately 16 acres of soil disturbed during construction activities. The Project crosses numerous tributaries to Willow Creek, which drains to Millerton Lake, an impoundment of the San Joaquin River.
2. The County circulated a Draft Mitigated Negative Declaration for the Project to comply with the California Environmental Quality Act (CEQA) in 2002. The Mitigated Negative Declaration includes an estimate of waters of the U.S., identifying 0.46 acres. By letter dated 17 April 2002, the Central Valley Water Board commented on the Mitigated Negative Declaration, stating its opinion that the County needed to obtain coverage under and comply with the *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity, Water Quality Order No. 99-08-DWQ* (General Permit), and also needed to obtain a federal Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) for temporary and permanent impacts to waters of the U.S. within the Project site. On 28 October 2002, the County approved the Mitigated Negative Declaration with mitigation measures indicating it would obtain coverage under the General Permit and would obtain a Water Quality Certification.
3. On 1 August 2008, Board staff, responding to a complaint, inspected the Project and observed construction activity taking place, which included filling and excavation activities in various surface waters within the work area. Findings of the inspection are documented in a 7 August 2008 Facilities Inspection Report. In short, staff observed that several hundred feet of tributary drainages had been excavated, filled, re-routed, or otherwise disturbed. Several acres of graded slopes adjacent to drainages were vulnerable to erosion. Board staff did not observe soil stabilization measures or other storm water Best Management Practices (BMPs) implemented on disturbed areas of the

site. At the time, the County had yet to obtain coverage under the General Permit for storm water discharges and a Water Quality Certification for site dredge and fill activities. Board staff instructed the County to obtain coverage under the General Permit and apply for Water Quality Certification.

4. On 14 August 2008, the County obtained coverage under the General Permit.
5. On 26 August 2008, Board staff sent a Notice of Violation (NOV) to the County transmitting the 1 August 2008 inspection findings and directing the County to submit by 26 September 2008 an application for Water Quality Certification and evidence that storm water BMPs were installed throughout the Project site to prevent erosion and sedimentation.
6. On 11 September 2008, the County submitted an application for Water Quality Certification. The application stated that there were no permanent or temporary impacts to waters of the U.S. The statement contradicted Board staff observations documented in the 7 August 2008 Facilities Inspection Report. On 3 October 2008, Board staff notified Madera County by letter that its Water Quality Certification application was incomplete because it did not: identify permanent or temporary impacts to waters of the U.S., include a map illustrating waters of the U.S. to be permanently or temporarily impacted; and include the required fee. The letter also notified Madera County that the Central Valley Water Board could not issue a Water Quality Certification until it received evidence of compliance with CEQA.
7. On 4 November 2008, Board staff re-inspected the Project after a rain event. Findings of the inspection are documented in a 5 November 2008 Facilities Inspection Report. Board staff observed straw wattles buried in sediment, straw wattles placed longitudinally in drainages, six to ten foot sections of silt fence that appeared to be randomly placed on-site, and many slopes without erosion protection. There were slopes adjacent to waters with erosion rills, sediment laden water discharging off-site, and sediment deposited in the waters downstream of ineffective BMPs. Board staff also observed areas where fill had been discharged into waters of the U.S. without appropriate Water Quality Certification. During the inspection, Board staff notified County personnel that the County was in violation of the federal Clean Water Act for failing to obtain a Water Quality Certification for the Project, and that the County was in violation of the General Permit for failing to implement an effective combination of erosion and sediment control storm water BMPs. Board staff instructed the County to stabilize the site, comply with the General Permit, and obtain Water Quality Certification for the Project.
8. On 25 November 2008, Board staff transmitted a NOV to the County with the results of the 4 November 2008 inspection. The NOV informed the County it was in violation of Clean Water Act Section 401 for dredging and placing fill in waters of the U.S. without a Section 401 Water Quality Certification; and California Water Code section 13376 for failing to comply with General Permit Sections A.2 (which prohibits discharges of material other than storm water) and Section C.2 (which requires implementation of controls to reduce pollutants in storm water discharges from construction sites to the

standards of Best Available Technology Economically Achievable for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology for conventional pollutants). The NOV directed the County to immediately stabilize all disturbed areas prior to the next storm event; and to submit by 29 December 2009:

- a) Evidence that all areas of disturbed soil have been stabilized against erosion and sedimentation; and
 - b) A restoration plan for all realigned and re-constructed tributary waters of the U.S., including mitigation measures to ensure no net loss of wetland functions, and a description of measures to be taken to ensure the exposed and disturbed bed and bank of tributary waters are stabilized to prevent erosion and sedimentation.
9. On 16 January 2009, in response to the 25 November 2008 Notice of Violation, the County's consultant (Live Oak Associates) submitted photographs of the Project and text from a contract section pertaining to water pollution control.
 10. On 20 January 2009, Board staff advised Live Oak Associates that the photographs submitted did not show evidence that all areas of disturbed soil had been stabilized against erosion and sedimentation, and the text from the contract section did not constitute a restoration plan as required in the 25 November 2008 Notice of Violation.
 11. On 17 February 2009, Board staff re-inspected the "completed" Project site during a storm event. The inspection findings are documented in an 18 February 2009 Facilities Inspection Report. Board staff observed sediment-laden water discharging off the site and many erosion rills on unstabilized slopes. BMPs such as silt fencing and straw wattles were compromised and/or buried in several areas. Board staff measured up to six inches of sediment accumulated on the bed of tributary drainages, and measured erosion gullies that exceeded two feet in depth and width. Disturbed areas of the Project site, comprising approximately 16 acres, were unstabilized and threatened to continue discharges of sediment off site and to waters of the State and waters of the U.S.

On 3 April 2009, 29 April 2009, and 24 June 2009, Board staff re-inspected the Project site to see how it was affected by the late spring rains. Board staff observed that disturbed areas of the site were still unstabilized and still threatened to continue discharges of sediment off site and to waters of the State and waters of the U.S. Areas that had previously been dredged and/or filled remained in need of assessment and remediation.
 12. The soil, sediment, and earthen material transported by erosion and discharged to the tributaries of Willow Creek by the County constitute "waste" as defined in CWC section 13050. Based on Board staff observations, the County's construction activities discharged waste, i.e., soil, sediment, and earthen material, directly into surface waters. The County, through this activity, has caused waste to be discharged, and continues to threaten to discharge, where it caused a condition of pollution or nuisance, and

continues to threaten to cause a condition of pollution or nuisance, by increasing levels of sediment, settleable materials, suspended material, and turbidity in surface waters.

13. The *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin, Fourth Edition, Revised October 2007*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. Drainages and waters of the U.S. within the Project site are tributaries to Millerton Lake, an impoundment of the San Joaquin River. The beneficial uses of the San Joaquin River above Millerton Lake as identified in Table II-1 of the Basin Plan are: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.
14. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on sediment, settleable materials, suspended material, and turbidity. The County's activities have resulted in the placement of waste into surface water and caused or contributed to exceedances of these limitations.
15. California Water Code (CWC) section 13304(a) states, in relevant part:

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.

16. CWC section 13304(c)(1) states that:

If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to

the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

17. CWC section 13267(b)(1) states, in relevant part:

...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...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.

18. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are also necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with the California Water Code and Basin Plan requirements. The County is required to submit the technical reports because, as described in Findings 1 through 12, the County conducted the activities that caused the discharge of waste.
19. Issuance of this Order does not preclude the Central Valley Water Board from taking additional enforcement actions against Madera County for the actions described herein. Additional enforcement actions may include the issuance of an Administrative Civil Liability Complaint imposing monetary sanctions for water quality and/or permitting violations.
20. The issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, section 21000 et seq.), in accordance with California Code of Regulations, title 14 section 15321(a)(2).

IT IS HEREBY ORDERED that, pursuant to California Water Code sections 13304 and 13267, Madera County shall clean up the waste and abate forthwith the existing and threatened effects of waste discharged at the site. "Forthwith" means as soon as reasonably possible, but in any event no later than the compliance dates below. More specifically, the County shall:

1. Complete corrective actions necessary to minimize erosion and the discharge of sediment, including, but not limited to, the following:
 - a) By **21 August 2009**, repair eroded areas and install an effective combination of temporary and permanent erosion and sediment control BMPs throughout the Project site to control the discharge of sediment off the Project site. Commence to inspect BMPs for effectiveness in accordance with the proposed schedule contained in the Post-Construction BMP Maintenance Plan in b) below.

- b) By **8 September 2009**, provide a written Post-Construction BMP Maintenance Plan for approval by the Central Valley Water Board's Executive Officer. The plan shall provide photo-documentation demonstrating completion of and compliance with item (a) above and shall describe how, for a period of one year, the County will conduct weekly inspections of all erosion and sediment control BMPs, and will conduct additional inspections prior to a forecasted rain event, after a rain event, and daily during extended rain events to ensure that all erosion and sediment control BMPs are properly maintained and fully functional. The plan must include a sampling and analysis plan to sample upstream and downstream tributary surface waters and drainages to demonstrate compliance with Basin Plan water quality objectives for sediment, settleable materials, suspended material, and turbidity, as described in Finding No. 14 of this Order. The plan must provide a budget and provide a description of the source of funds to be utilized to complete this scope of work. Upon approval by the Central Valley Water Board Executive Officer, the County must implement the plan.
 - c) By **8 September 2009**, submit a Cleanup and Restoration Plan for approval by the Central Valley Water Board's Executive Officer. The Cleanup and Restoration Plan must describe how the impacts of the discharge will be abated and resolved, how the cleanup and restoration will be completed, and how the effectiveness of the cleanup and restoration efforts will be evaluated (i.e. monitoring, maintenance, and reporting). The Cleanup and Restoration Plan is to be prepared by a professional knowledgeable and experienced in wetlands and surface drainage restoration. The County must demonstrate it has obtained permission from owners of affected properties to access all downstream reaches of surface waters and tributary drainages affected by the sediment discharge.
 - d) By **9 November 2009**, implement the approved Cleanup and Restoration Plan.
 - e) By **23 November 2009**, submit to the Central Valley Water Board, a final report, including photo documentation, detailing compliance with the Order.
2. If requested, reimburse the Central Valley Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **3 August 2009**, submit the name and address to be used for billing purposes for oversight charges.

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

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control 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 Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or State holiday, the petition must be received by

the State Water Resources Control 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.

This Order is effective upon the date of signature.

PAMELA C. CREEDON, Executive Officer

30 June 2009



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold
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30 June 2009

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Madera County Road Department
2037 W. Cleveland Avenue, MS "D"
Madera, CA 93637

CLEANUP AND ABATEMENT ORDER NO. R5-2009-0703, PHASE I OF THE ROAD 200 WIDENING PROJECT FROM SPRING VALLEY SCHOOL TO LEPRECHAUN LANE, MADERA COUNTY ROADS DEPARTMENT, MADERA COUNTY

Enclosed is a copy of Cleanup and Abatement (C&A) Order R5-2009-0703 issued to the Madera County Resource Management Agency, Madera County Road Department (hereafter Madera County or County) pursuant to California Water Code section 13304. The C&A Order has been issued due to the failure of Madera County to follow applicable environmental regulations during the construction of a road widening project.

The C&A Order directs Madera County to cleanup, abate, and stabilize soil, sediment, and earthen materials discharged into surface waters and surface water drainage courses, or where such materials could reasonably be expected to pass into surface waters. The C&A Order does not excuse Madera County from the past violations documented in inspections by Central Valley Water Board staff. The Central Valley Water Board retains the right to take additional enforcement actions, including the issuance of an Administrative Civil Liability Complaint, against Madera County for these violations.

Also enclosed are Central Valley Water Board staff's Facilities Inspection Reports for inspections conducted on 17 February 2009, 3 April 2009, 29 April 2009, and 24 June 2009.

For any questions, please contact Bridget Supple at (559) 445-5919 or by email to bsupple@waterboards.ca.gov.

LONNIE M. WASS
Supervising Engineer

Enclosures: Cleanup and Abatement Order No. R5-2009-0703
Facilities Inspection Report, 17 February 2009
Facilities Inspection Report, 3 April 2009
Facilities Inspection Report, 29 April 2009
Facilities Inspection Report, 24 June 2009

California Environmental Protection Agency

cc: Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Dave Smith, USEPA, Region 9, San Francisco
Ms. Kathleen Dadey, U.S. Army Corps of Engineers, Sacramento
Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Ken Landau, Central Valley Water Board, Rancho Cordova
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Mr. Greg Gearheart, Division of Water Quality, SWRCB, Sacramento
Mr. Bill Orme, Division of Water Quality, SWRCB, Sacramento
Mr. W.E. Loudermilk, California Department of Fish and Game, Fresno