

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906**

**ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2004-0110**

Issued to:

**David Pierson
San Luis Obispo County**

The California Regional Water Quality Control Board, Central Coast Region, finds:

1. David Pierson (hereafter Discharger) owns 635 acres of land in the Creston area of San Luis Obispo County.
2. During the summer of 2002, the Discharger altered approximately 39 of the 635 acres by removing most all of the vegetation, constructing a 1330-foot dirt road, and reestablishing an existing dirt road. The altered 39-acre area will hereafter be referred to as the Site.
3. The Discharger disturbed the Site by removing vegetation without completing soil-disturbing activities by implementing any effective Best Management Practices (BMPs) to prevent soil erosion and the discharge of sediments to waters of the state.
4. The Discharger failed to stabilize the disturbed soils for a period of at least 185 days, from September 1, 2002, when removal of vegetation was completed, until at least March 4, 2003, when Regional Board staff documented that the soils were partially stabilized. It is unknown at what precise time the soils became extensively stable because after March 4, 2003, when soils were still eroding and being discharged to state waters. Water Board staff's next inspection of the Site wasn't until September 19, 2003, and at that time the soils were considered extensively stable.
5. The Site drains to an unnamed "blue line" stream that is tributary to Huerhuero Creek, both of which are waters of the state. Huerhuero

Creek is tributary to the Salinas River. The Water Quality Control Plan, Central Coast Region (Basin Plan) designates both recreation and aquatic habitat as beneficial uses of the blue line stream, among other uses and the beneficial uses of Huerhuero Creek to include municipal and domestic water supply, agricultural supply, ground water recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, rare, threatened, or endangered species, and commercial and sport fishing.

6. On November 8, 2002, December 20, 2002, and February 3, 2003, Regional Board staff witnessed and documented discharges of eroded soil from the Site to waters of the state.
7. The Basin Plan contains several Land Disturbance Prohibitions in Chapter 4., Implementation Plan, page IV-70. The Discharger violated the following prohibition:

**VIII.E.1. LAND DISTURBANCE
PROHIBITIONS**

The discharge or threatened discharge of soil, silt, bark, slash, sawdust, or other organic and earthen materials into any stream in the basin in violation of best management practices for timber harvesting, construction, and other soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses is prohibited.

8. The Discharger discharged and threatened discharge of soil, silt, and other organic and earthen materials into the blue line stream and Huerhuero Creek in violation of best

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management practices for soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses. The Discharger violated this prohibition by removing most of the existing vegetation from the Site without implementing best management practices (BMPs) to eliminate or minimize erosion and sediment discharges. The Site qualifies as a "severe erosion hazard" as established by the Resource Conservation District.

9. Pursuant to California Water Code Sections 13350(e)(1), the Central Coast Water Board may impose civil liability up to \$5,000 per day for each day a violation occurs. The Discharger violated a Basin Plan prohibition for a total of at least 185 days. The maximum liability that may be imposed is \$925,000 (nine hundred twenty-five thousand dollars).
10. As required by California Water Code Section 13327, the Regional Board considered:
 - a. nature, circumstances, extent, and gravity of the violations
 - b. discharge susceptibility to cleanup or abatement
 - c. discharge toxicity
 - d. ability to pay and the effect on ability to continue in business
 - e. voluntary cleanup efforts undertaken
 - f. violation history
 - g. degree of culpability
 - h. economic benefit or savings (if any), and
 - i. other matters as justice may require.

Nature, circumstances, extent, and gravity of the violation or violations

In early 2001, the Discharger pursued subdivision of the 653 acre parcel, including the Site. As part of project review, the Resource Conservation District (RCD) prepared a report addressing the proposal. The RCD determined that the soil at the Site was a severe erosion hazard stating, "Surface runoff is very rapid and hazard of water erosion is very high" and describing the soil as being "fragile and any disturbance can cause severe erosion." The report included best management practices to be included in soil disturbance activities to address the erosion hazards associated with removing vegetation, and the potential for sediments impacting Huerhuero Creek. The RCD report was included in San Luis Obispo County's draft mitigated negative

declaration for the subdivision project. The Discharger also signed a developer's statement agreeing to implement the best management practices described in the mitigated negative declaration. Despite the RCD determination that the Site was an area of severe erosion hazard, the Discharger removed most of the vegetation at the Site during the summer of 2002, without implementing any best management practices to prevent or minimize erosion from occurring and sediments from entering waters of the state. The subdivision was never approved. However, it is clear that the Discharger knew that the Site was a severe erosion hazard and that best management practices needed to be implemented.

On September 20, 2002, Central Coast Water Board staff inspected the Site. The Discharger's representative proposed to seed the site as a means of erosion control. The discharger did not propose any other BMP. Staff sent a letter dated October 10, 2002, addressing the proposed management practices, stating:

"...applying seed alone is not a sufficient erosion control measure. Established vegetation is a means of erosion control; thus, the seed must be nurtured into vegetation before runoff occurs to be effective erosion control."

During the fall of 2002, Central Coast Water Board staff sent letters dated October 10, November 12, and November 25, 2002, urging the Discharger to provide effective erosion and sedimentation controls for the Site. Although the Discharger made some efforts to prevent erosion and the discharge of sediments, the Discharger failed to comply with the best management practices prescribed by the RCD and by Central Coast Water Board staff. Although the Central Coast Water Board staff made repeated efforts to convince the Discharger that effective BMPs were essential to prevent erosion and the discharge of sediment, the Discharger's efforts remained ineffective. The Discharger's efforts in part consisted of spreading loose straw on the Site. However, the Discharger did not apply a tackifier to make the straw cohesive or crimp the straw into the soil to prevent it from being mobilized by rain and wind, thus rendering the straw ineffective. Fiber rolls or straw wattles were placed on some slopes, but the distance between them was too

great to reduce runoff velocities and eliminate erosion or trap sediments. Hay bales were used in some areas, in an apparent attempt to trap sediments, but were installed improperly; flush with the ground surface rather than recessed below the surface, and with up-gradient drainage areas too great for the bales to be effective. The piles of cleared vegetation that were left at the base of some slopes were purported by the Discharger's consultant to be functioning as sediment controls or barriers, however they were largely ineffective because the vegetation consisted mostly of lightweight brush that was lying loosely on the ground surface. The steep grades and large up-gradient areas resulted in storm water runoff volumes and velocities that rendered the brush ineffective. Existing erosion rills compounded the ineffectiveness of these efforts. No attempt was made to eliminate the rills, either prior to the installation of the BMPs, or later following rain events, and as a result, the rills became more pronounced as the rainy season progressed.

From the beginning of the project, the discharger violated the prohibition by threatening the discharge in violation of best management practices. In addition, sediment discharges occurred periodically throughout the entire rainy season of 2002-2003, and receiving water beneficial uses were adversely affected. Thus, the discharge constituted a condition of pollution as defined by the California Water Code section 13050(1).

Because the Discharger removed most of the vegetation from the 39-acre Site, there was a major threat of larger discharges that would have more severely impaired beneficial uses. Larger quantities of sediment would have been discharged from the Site if storms had been more intense or more frequent.

Because the blue line stream is tributary to Huerhuero Creek and no sediments discharged to the blue line stream were recovered, most of the sediments discharged to the blue line stream migrated to Huerhuero Creek. Soil sediments are known to be deleterious to fish, wildlife and other beneficial uses of surface waters. The following excerpt is from the US Environmental Protection Agency document titled "Protocol For Developing Sediment TMDLs, First Edition:

IMPACTS OF SEDIMENTS ON DESIGNATED USES

Aquatic life and fisheries

Excessive sediments deposited on streams and lake bottoms can choke spawning gravels (reducing survival and growth rates), impair fish food sources, fill in rearing pools (reducing cover from prey and thermal refugia), and reduce habitat complexity in stream channels. Excessive suspended sediments can make it more difficult for fish to find prey and at high levels can cause direct physical harm, such as clogged gills. In some waters, hydrologic modifications (e.g., dams) can cause sediment deficits that result in stream channel scour and destruction of habitat structure.

After describing past damage done to Huerhuero Creek by erosion and other landowners, the RCD Report states,

"Consequently it is critical, at this time, that proper erosion and sediment control be exercised throughout the watersheds draining into Huerhuero Creek to preclude further damage to or elimination of remaining vegetation in the creek. This would include all work done on the applicant's property. Similar measures should be underwritten for other development being proposed in this region of the county."

The sediment discharges adversely affected beneficial uses, and the RCD warned that threatened future discharges would be deleterious to fish, wildlife and other beneficial uses. The Discharger violated the Discharge Prohibition for the entire rainy season of 2002-2003. Also, because such a large area of high-erosion-hazard soil was cleared, there was a significant threat of large discharges. Finally, Central Coast Water Board staff communicated numerous times regarding its concerns and the BMP requirements. To a large degree, the Discharger ignored these communications. As a result, a significant amount of liability is justified. Maximum liability is not justified, however, because the discharges were not toxic, and the violations were not the most harmful nor the most extensive violations covered by Water Code section 13350.

Consideration of this factor justifies assessment of civil liability that is significant, but **less than the maximum.**

Whether the discharge is susceptible to cleanup or abatement

Although it is possible that at least some of the discharged sediments could have been cleaned up, it was probably not prudent to do so because doing so can often be more damaging than if the sediments are left in place. As a result, a significant amount of liability is justified. Maximum liability is not justified, however, because the discharges were not toxic, and the violations were not the most harmful nor the most extensive violations covered by Water Code section 13350.

Consideration of this factor justifies assessment of civil liability that is significant but **less than the maximum**.

The degree of toxicity of the discharge

There is no reason to believe that the discharged sediments were toxic.

Consideration of this factor justifies assessment of civil liability that is **less than the maximum**.

With respect to the violator, the ability to pay, the effect on ability to continue in business

The Central Coast Water Board has no evidence regarding the Discharger's financial resources or ability to stay in business.

Consideration of this factor **does not affect the amount of liability** assessed.

Any voluntary cleanup efforts undertaken

The Discharger never proposed or initiated any efforts to remove the discharged sediments from waters of the state. However, Central Coast Water Board staff would probably have discouraged such efforts as being impractical because efforts to remove the sediments in this case could have been more damaging than if they were left in place.

Consideration of this factor justifies assessment of civil liability that is significant but **less than the maximum**.

Any prior history of violations

The Central Coast Water Board has no evidence of any prior violations of environmental laws by the Discharger.

Consideration of this factor justifies assessment of civil liability that is **less than the maximum**.

The degree of culpability

The Discharger knew from the RCD Report and Draft Negative Declaration, and communications with Central Coast Water Board staff, that the Site was a severe erosion hazard, and that all discharges of eroded material would adversely affect beneficial uses of the watershed of Huerhuero Creek. In fact, in 2001 the discharger signed an acknowledgment that he needed to implement erosion control measures because of the severe erosion hazard of clearing vegetation on his site. Because the Discharger removed most of the vegetation from an area known for severe erosion risk, the Discharger knew that these land disturbance activities threatened to discharge quantities of soil and silt in amounts deleterious to fish, wildlife and beneficial uses of the blue line stream and Huerhuero Creek. Even after Central Coast Water Board staff instructed the Discharger that, to be an effective BMP, seeding must include **nurturing seed into vegetation** as a means of erosion control, the Discharger did nothing to prevent the seed from being washed away by storm water run-off. The Discharger failed to implement this best management practice throughout most of the Site for the entire rainy season of 2002-2003. The Discharger failed to implement effective best management practices despite repeated visits, discussions and warnings from Central Coast Water Board staff.

The Discharger's failure to comply over an entire rainy season despite knowledge of the environmental consequences and opportunities to come into compliance indicates a high level of culpability. Consideration of this factor **justifies assessment of a significant portion of the maximum liability**.

Economic benefit or savings, if any, resulting from the violation

The Discharger realized some economic savings from not having implemented timely and adequate BMPs. Because of the steepness of the terrain and erosive nature of the soil, in order to prevent erosion and allow seeds to mature into vegetation, Central Coast Water Board staff feels that the vast majority of the Site needed to be covered with erosion mats. The steep terrain would have also

made installation of the mats labor intensive. The cost of purchasing, installing, and maintaining erosion mats would have substantially increased the Discharger's BMP expenditures.

Consideration of this factor **justifies assessment of a significant portion of the maximum liability.**

Other matters that justice may require

The actions and inactions of the Discharger are by themselves deserving of strong, decisive enforcement. Enforcement is also necessary to deter others from doing as the Discharger has done.

During the past three years, Central Coast Water Board staff has spent an extensive amount of time addressing water quality concerns on the Discharger's property. Using conservative estimates, staff has spent 374 hours on the matter at a cost of \$28,050 (Twenty-Eight Thousand Fifty Dollars) (Hourly Rate = \$75).

Consideration of this factor justifies assessment of civil liability that is not less than **\$28,050 (Twenty-Eight Thousand Fifty Dollars).**

11. On May 10, 2005, after consideration of the above-listed factors, the Executive Officer of the Regional Board issued Complaint No. R3-2005-0024 in the amount of \$125,000 (one Hundred twenty-five thousand dollars). The Regional Board has considered the analysis of these factors set forth in the "Proposed Civil Liability" section of the Complaint, and all comments, evidence and testimony received.

12. This enforcement action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.

13. A hearing on this matter was held before the Regional Board on July 8, 2005, at 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Discharger, or the Discharger's representative(s), had the opportunity to be heard and to contest the allegations in the Complaint No. R3-2005-0024, which recommended the imposition of civil liability by the Regional Board.

14. Following completed testimony on July 8, 2005, the hearing was closed and the Regional Board deliberated. This Administrative Civil Liability Order No. R3-2005-0024 is adopted based upon the evidence and arguments presented at the hearing and relevant evidence in the Regional Board files and upon consideration of the factors mandated by Water Code section 13327.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13350, David Pierson is assessed a total civil liability of \$125,000 (one Hundred twenty-five thousand dollars) to be delivered to the Regional Water Quality Control Board at the letterhead address by August 9, 2005. The check is to be made payable to the State Water Resources Control Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Regional Water Quality Control Board on July 8, 2005.

Roger W. Briggs, Executive Officer

Date