

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2008-0703

FOR
MACY MAK, MICHAEL CHAN, BELINDA LAU
WILLIAMSON NUMBER 1 DAM AND RESERVOIR
EL DORADO COUNTY

This Order is issued to Macy Mak, Michael Chan and Belinda Lau based on provisions of California Water Code (CWC) section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order), CWC section 13267, which authorizes the Regional Water Board to require the submittal of technical and monitoring reports, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer.

The Assistant Executive Officer of the Regional Water Board finds that:

1. Macy Mak, Michael Chan and Belinda Lau (hereafter Dischargers) are the owners of Williamson Number 1 Dam, Reservoir and surrounding property. The Dischargers have cleared and/or graded over 10 acres of land surrounding the reservoir, causing erosion into the reservoir and the discharge of sediment-laden water into an unnamed tributary to Weber Creek which discharges to the South Fork of the American River. The property is in Section 35, Township 11 North, Range 9 East, MDB&M. The Dischargers own the property (Assessor Parcel Numbers 105-290-55, 105-209-56, 105-290-57, 105-290-58, 105-290-59, 150-290-60).
2. On 18 March 2008, El Dorado County Department of Transportation staff informed Regional Water Board staff of the clearing and grading activities on the Dischargers' property. On 19 March 2008, Regional Water Board staff inspected the site and verified that clearing and grading had occurred on the Dischargers' property. Inspection photographs of the cleared and graded areas are included as Attachment A to this Order. The photographs show large exposed areas surrounding the reservoir and disturbances downstream of the Dam, which include a recently graded road and excavation for a discharge pipe from the reservoir to the creek.
3. On 27 March 2008, California Department of Fish and Game (DFG) staff inspected the site. In a 2 April 2008 email to Regional Water Board staff, DFG staff stated that the grading and clearing activities have created the potential for increased sedimentation in the lake, and potential for increase downstream sedimentation and nutrient loading. DFG staff stated that the dam and operations of the dam at this site have caused water quality and habitat alteration below the dam. DFG staff further determined that stabilization and restoration of the exposed areas along with a Dam Operations Plan would be necessary to protect water quality and beneficial uses.

4. Regional Water Board staff determined that the grading and clearing activities at the Dischargers' property occurred without coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ (General Permit) or any other NPDES permits. The Dischargers also did not obtain a Clean Water Act (CWA) section 404 permit from the Army Corps of Engineers or a CWA section 401 Water Quality Certification from the Regional Water Board. Nor did the Dischargers obtain a DFG Streambed Alteration Agreement or an El Dorado County Grading Permit.
5. Sediment, when discharged to waters of the state, is a "waste" as defined in CWC section 13050. The Dischargers have discharged waste directly into surface waters which are tributary to the American River
6. 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 programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. Weber Creek is a tributary to the South Fork of the American River. The existing and potential beneficial uses of the American River are municipal and domestic water supply, agricultural supply, hydropower generation, water contact recreation, non-contact water recreation, cold and warm fresh water habitat, cold water spawning, and wildlife habitat.
7. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on increased temperature, sediment, settleable and suspended material, and turbidity.
8. CWA section 402 requires an NPDES permit for storm water discharges associated with activities where clearing, grading, and excavation results in land disturbance of one or more acres.
9. CWA section 404 requires any person proposing to discharge dredged or fill material into navigable waters of the United States to obtain a Section 404 permit prior to such discharge. CWA section 401 requires that any person obtaining a Section 404 permit obtain water quality certification from the State in which the discharge occurs. CWC section 13376 requires 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.
10. CWC section 13304(a) provides that:

"Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements 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 limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. 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 fact may warrant.”

11. The Dischargers' clearing and grading activities have resulted in the discharge of waste into surface waters, which have created, or threaten to create, a condition of pollution or nuisance.

12. CWC section 13304(c)(1) provides 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 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 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.”

13. CWC section 13267(b)(1) provides that:

“In conducting an investigation specified in subdivision (a), 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 of the state 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.”

14. 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 necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with Basin Plan requirements. The Dischargers named in this Order own and operate the site from which waste was discharged, and thus are appropriately responsible for the reports.
15. Issuance of this Cleanup and Abatement Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
16. Any person adversely affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at www.waterboards.ca.gov/centralvalley or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to CWC sections 13267 and 13304, Macy Mak, Michael Chan and Belinda Lau shall:

1. Immediately take all actions to cease the discharge or threat of discharge of sediment and other wastes to waters of the state, including but not limited to Weber Creek and its tributaries.
2. By **30 May 2008**, submit appropriate application forms to obtain permits and certifications from the Regional Water Quality Control Board (Construction Storm Water General Permit and Water Quality Certification), California Department of Fish and Game (Streambed Alteration Agreement), El Dorado County (Grading Permit), and Army Corps of Engineers (CWA Section 404 Permit). Copies of all application forms shall be submitted to the Regional Water Board by **30 May 2008**.
3. Immediately clean up and abate the sediment discharged to surface waters in accordance with the following minimum schedule:
 - (a) By **30 May 2008**, submit and immediately implement a *Stabilization, Cleanup and Revegetation Plan* (Plan). The Plan must include a map and details of the stabilization measures to be implemented and information regarding areas to be

revegetated including the type of plants to be used and density of planting. The Plan must satisfy the vegetation requirements of the Department of Fish and Game. The Plan must include a Dam Operation Plan/, a schematic for the dam, and the design and repair requirements of the Division of Safety of Dams. The Plan must also include information on the new drainpipe installation, requirements for the pipe, and energy dissipation measures at the pipe discharge location to prevent scouring of the creek. The Plan must include a proposed timeline for all work items and must not extend beyond **15 August 2008**. The Plan must be prepared by a professional knowledgeable and experienced in environmental restoration, including erosion and sediment control measures to make sure that all work will be done properly to prevent further damage to natural resources. The Plan shall be subject to approval by the Regional Water Board, and failure to submit an acceptable Plan by the aforementioned deadline may result in the imposition of administrative civil liability.

- (b) By **1 September 2008**, submit a *Completion Report* describing in detail how the *Stabilization, Cleanup and Revegetation Plan* has been implemented, and showing that the site and all impacted areas have been fully remediated (disturbed areas stabilized and riparian areas revegetated) and that dam operations will not impact downstream water quality. The Dischargers shall provide staff access to areas of the property, as needed.
- (c) If requested, reimburse the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **15 July 2008**, submit the name and address to be used for billing purposes for oversight charges.

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."

As required by Business and Professions Code sections 6735, 7835, and 7835.1, all technical reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed by the registered professional.

If, in the opinion of the Executive Officer, the Dischargers fail 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 up to \$10,000 per day of violation pursuant to CWC sections 13350, 13385, and/or

13268. The Regional Water Board reserves its right to take any enforcement actions authorized by law.

This Order is effective upon the date of signature.

JACK E. DEL CONTE, Assistant Executive Officer

7 May 2008
(Date)

Attachment A: 15 inspection pictures