

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2006-0723

FOR
LARRY EBERLE
ALBERT ROAD, ANDERSON
SHASTA COUNTY

This Order is issued to Larry Eberle based on provisions of California Water Code Division 7, including in particular California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order), and California Water code section 13267, which authorizes the Regional Water Board to require submittal of technical and monitoring reports.

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

1. Larry Eberle, 2070 Barney Street, Anderson, CA 96007 (hereafter Discharger) owns property on Albert Road, adjacent to Anderson Creek, in the City of Anderson, Shasta County (APN 202-170-012). The property is approximately 15-acres, and contains a significant amount of wetland and riparian habitat, much of which has already been filled and/or removed, and Anderson Creek, tributary to the Sacramento River.
2. On 10 July 2006, Regional Water Board staff, responding to a complaint, conducted a site inspection of the property with staff of the California Department of Fish and Game (DFG), and verified that land clearing, riparian removal, creek discharges, side-casting, and placement of fill material had been conducted within waters of the U.S. and/or state and found fill material consisting of dirt, soil, earthen materials and concrete rubble had been discharged into wetland swales impacting wetland habitat.
3. On 13 July 2006, a follow-up inspection by Regional Water Board and DFG staff revealed additional grading and filling activities of the site.
4. On 26 August 2006, DFG Lieutenant Scott F. Willems responded to a call regarding a violation in progress in Anderson Creek at the Site. Anderson Police Department (APD) Officer Nevens contacted the Discharger and Arthur Koon operating a backhoe in the flood plain of Anderson Creek. Mr. Koon was driving the backhoe and being directed by the Discharger. APD was aware of previous violations by the Discharger regarding the creek and contacted the DFG for assistance. In a DFG Memo dated 28 August 2006, Lieutenant stated it appeared that additional dirt fill had been delivered to the site, and that the fill was being pushed into the wetland area adjacent to the creek.

5. The City of Anderson has issued repeated citations and a Cease and Desist to the Discharger for grading and filling on this property.
6. The discharge of soil and sediment deposited into waters of the state constitute "waste" as defined in California Water Code section 13050. The Discharger, who owns and operates the site, has discharged waste, i.e., earthen material, soil, and sediment, directly into surface waters, which are waters of the state and waters of the United States. The Discharger, through this activity, has caused waste to be discharged where it has caused a condition of pollution or nuisance by increasing levels of sediment, settleable and suspended material.
7. On 17 July 2006, the Regional Water Board issued a Notice of Violation to the Discharger for the discharge of fill material to surface waters, including wetlands.

AUTHORITY – LEGAL REQUIREMENTS

8. The federal Clean Water Act (CWA) Section 404 requires any person proposing to discharge dredged or fill material into 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 must also obtain water quality certification from the State in which the discharge occurs. California Water Code Section 13376 requires, that any person who is proposing to discharge pollutants or dredged or fill material into waters of the state to submit a report of waste discharge pursuant to California Water Code Section 13260 prior to such discharge. The Discharger failed to obtain a Section 404 permit and, a Section 401 Water Quality Certification and failed to file a Report of Waste Discharge.
9. 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. The beneficial uses of the Sacramento River as identified in Table II-1 of the Basin Plan are municipal and domestic supply; industrial; and agricultural supply; water contact and other non-contact recreation; aesthetic enjoyment; navigation; ground water recharge, fresh water replenishment; and preservation and enhancement of fish, wildlife, and other aquatic resources.
10. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on sediment, settleable and suspended material, and turbidity. Based on staff observations, the Discharger's dredge and fill activities have resulted in the discharge of waste, e.g., sediment and soil, into surface waters and surface water drainage courses and placed waste in areas where it threatens to discharge into surface water drainage courses during subsequent storm events. The discharge of waste and pollutants to surface waters has created a condition of

pollution and threatens to continue to create a condition of pollution or nuisance when earthen materials are transported in storm water during the rainy season to downstream receiving waters increasing levels of sediment, settleable and suspended material.

11. Section 13304(a) of the California Water Code 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.”

12. Section 13304(c)(1) of the California Water Code 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. Section 13267(b)(1) of the California Water Code 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. 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.”

14. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.
15. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the State Water Board’s Policy for managing contaminated sites. This Policy is based on California Water Code Sections 13000 and 13304, Title 27, Division 2, Subdivision 1 regulations, and State Water Board Resolution Nos. 68-16 and 92-49. The Policy addresses site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of cleanup levels.

DISCHARGER LIABILITY

16. As described in Findings 1 through 6, the Discharger is subject to an order pursuant to California Water Code Section 13304 because the Discharger has caused or permitted waste (soil, sediment, earthen materials and concrete rubble) to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup or abatement order pursuant to California Water Code Section 13304 is appropriate and consistent with policies of the Central Valley Water Board.

17. This Order requires investigation and cleanup of the site in compliance with the California Water Code, the applicable Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.
18. The Discharger is subject to an order pursuant to Water Code section 13267 to submit technical reports because existing data and information about the site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is owned and/or operated by the Discharger, Larry Eberle. The technical reports required by this Order are necessary to assure compliance with this Order and Section 13304 of the California Water Code, including, to adequately investigate and cleanup the site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment. 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 the California Water Code and Basin Plan requirements.
19. 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 Section 15321(a)(2), Title 14, California Code of Regulations.
20. The Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
21. If the Discharger violates this Order, then the Discharger may be liable civilly in a monetary amount provided by the California Water Code.
22. Any person adversely affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board 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 Sections 13267 and 13304, of the California Water Code, and Resolution 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, and with the Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*; Larry Eberle 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 Discharger shall:

1. Cease the discharge of concrete rubble, earthen materials, soil, and sediment to waters of the state and clean up and abate, in accordance with the schedule in No. 2 below, the condition of concrete rubble, earthen materials, soil, and sediment discharged or placed into wetlands, surface waters and surface water drainage courses.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:
 - (a) By **1 October 2006**, submit a Cleanup and Restoration Plan. The Cleanup and Restoration Plan must describe how the impacts of the discharge will be resolved, demonstrate how the cleanup and restoration will be completed, and evaluate the effectiveness of the cleanup and restoration. The Cleanup and Restoration Plan is to be prepared by a professional knowledgeable and experienced in wetlands and surface drainage restoration, and shall be approved by the Regional Water Board Assistant Executive Officer.
 - (b) By **1 October 2006**, submit a wetland delineation of the subject property (APN 202-170-012) prepared by a certified professional wetland delineator.
 - (c) Clean up all earthen materials, soil and sediment discharged to wetlands, surface waters and surface water drainages in accordance with the Cleanup and Restoration Plan as approved by the Assistant Executive Officer.
 - (d) Restore and stabilize the affected area to its natural condition prior to the unauthorized dredge and fill activities.
 - (e) By **31 October 2006**, complete the implementation of the Cleanup and Restoration Plan. The Discharger shall provide staff access to areas of the property, as needed, and submit to the Regional Water Board, a final report, including photo documentation, detailing compliance with the Order.
3. If requested, reimburse the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **1 October 2006** submit the name and address to be used for billing purposes for oversight charges.
4. By **1 October 2006**, submit a Notice of Intent (NOI) to the State Water Resources Control Board for coverage under the General Construction Storm Water Permit (Order 99-08-DWQ) for all cleanup activities on the site.
5. The Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.

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6. Failure to comply with a cleanup and abatement order or the dates specified may result in further enforcement actions, including actions under section 13350, 13385, and 13387 of the California Water Code, which allows for administrative civil liability up to a maximum of five thousand dollars (\$5,000) for each day of violation.

PAMELA C. CREEDON, Executive Officer

7 September 2006

(DATE)

GD/AJ: amm
8/31/06