

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2006-0728

FOR
HARVEY GOODMAN
OAK RUN PROPERTY
SHASTA COUNTY

This Order is issued to Harvey Goodman based on provisions of 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 issue an order requiring submittal of monitoring and technical reports.

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

1. Harvey Goodman, PO Box 94, Oak Run, CA 96069 (hereafter Discharger) owns approximately 40-acres of land on Frontier Road above Mill Creek in Oak Run, Shasta County. The property (APN 098-260-023) is east of Frontier Road in Section 6, Township 33 North, Range 1 East, MDB&M. Surface water run off is to an unnamed tributary to Mill Creek (an anadromous fish spawning stream).
2. On 5 July 2006, Regional Water Board staff and Department of Fish and Game (DFG) staff conducted a timber harvest plan (THP) pre-consultation meeting with the Discharger (property buyer), Registered Professional Forester (RPF) John Kessler, real estate agent Pam Giacomini and the property seller. Of concern was the easement to the property that required a road constructed adjacent to the unnamed tributary from Frontier Road. Several mitigation measures were developed including the use of rock filled gabions to support several sections of the road prism and reduce the fill that would be exposed near the unnamed tributary, hydro mulching, and the planting of native riparian vegetation such as willows. DFG staff also advised the Discharger to obtain a streambed alteration agreement (Section 1602 agreement) from the DFG. At that time the RPF indicated that a THP would be developed in order to aid the Discharger once he had purchased the property. Road mitigations and construction would be handled through the THP process.
3. In late August 2006, the Discharger constructed a road to gain access to his property without permits or approvals from Shasta County, the DFG, the California Department of Forestry and Fire Protection (CDF), Regional Water Board or the adjacent property owner. In addition, the road was constructed without the mitigation measure developed during the 5 July 2006 THP pre-consultation meeting and was constructed on property not owned by the discharger and outside of the road easement.

4. On 13 October 2006, Regional Water Board staff conducted a THP preharvest Inspection (PHI) with the Discharger, the Discharger's RPF, DFG, CDF, and California Geologic Survey (CGS) staff. It was evident during the inspection that the Discharger had not waited for the approval of a THP or any other permitting document to build the road. Heavy equipment was used to create a seasonal road, clearing trees and brush from the site, which in turn resulted in the removal of critical vegetation that acts as a filter strip, slowing down water and catching sediment before it travels into the surface waters. The road was approximately 12 feet wide and is slightly out-sloped for the first 100 feet where it then turns south and southeast and travels for approximately 1200 feet more to the discharger's residence. The road surface was not compacted and had approximately 2 to 4 inches of loose soil and fine sediment on the surface which is readily mobile and easily transported during storm events. At the time of the inspection there was no erosion or sediment controls constructed or installed to prevent water from causing erosion. The Discharger had applied a very small amount of straw mulch (erosion control best management practices (BMPS)) on some areas of exposed soil within the easement, which will have very little effect to reduce or stop erosion due to the limited amount, or lack of straw mulch applied. There is an immediate threat to surface water quality from accelerated road degradation and erosion without the implementation of adequate and effective erosion and sediment control BMPs. During the PHI we were also made aware that the Discharger had gone outside of the easement for approximately 40 feet of the 100-foot easement and trespassed on to the adjacent landowners property.
5. The discharge of earthen material, soil and sediment into waters of the state constitute "waste" as defined in California Water Code section 13050. The Discharger, who owns the site, has caused waste, e.g., earthen material, soil, and sediment, to be deposited where it threatens, and probably will be discharged 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 will very likely cause a condition of pollution or nuisance by increasing levels of sediment, settleable and suspended material, and turbidity.
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. 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.

7. 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 road building activities have resulted in the placement and disturbance of sediment and soil, where it threatens to discharge into surface water drainage courses during rainstorm events. The discharge of waste 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, and turbidity.
8. 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.”
9. As described in Findings 1 through 4, the Discharger is subject to an Order pursuant to Water Code section 13304 because the Discharger owns the property and took the actions that result in the threat of discharges of waste to waters of the State.
10. 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.”

11. 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.”

12. As described in Findings 1 through 4 above, the Discharger is subject to an Order pursuant to Water Code section 13267 because he took the actions that have resulted in the threatened discharge of waste to waters of the State. The reports required by this Order are necessary to assure that the work required is completed in compliance with applicable state law and requirements to protect the beneficial uses of waters of the State.

13. 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.

14. Any person adversely affected by this action of the Regional 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, Harvey Goodman shall cleanup and abate the discharge and threatened discharge of earthen materials, soil, and sediment to waters of the state as follows:

1. Complete, forthwith and in no event later than **15 November 2006**, corrective actions necessary to minimize erosion and the discharge of sediment, including but not necessarily be limited to, the following:
 - (a) Install, where necessary, an adequate number of waterbars designed to reduce road surface erosion by diverting storm water runoff from the road surface and directing it to a safe discharge area.
 - (b) Re-contour or out-slope back to original grade of the hillside all cutbenches and/or fillslopes created during the construction of the road.
 - (c) Stabilize all disturbed areas with seed, erosion control mulches, blankets, mats or other accepted erosion control equipment in sufficient quantities to protect the disturbed soil surface from the forces of rain drop impact and overland flow.
 - (d) Place large boulders sufficient to restrict all vehicular traffic at the intersection of Frontier Road and the newly decommissioned road.
 - (e) Provide Regional Water Board staff access to areas of the property, as needed during and after the implementation of this project for the purpose of monitoring.
2. Submit by **1 November 2006**, a Cleanup and Restoration Plan describing specific actions taken to comply with No. 1, above and how the long-term impacts and discharges from the road will be abated. The Cleanup and Restoration Plan is to be prepared by a professional knowledgeable and experienced in forest and surface drainage restoration, and shall be approved by the Regional Water Board Assistant Executive Officer.
3. Reimburse, if requested, the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **15 November 2006** submit the name and address to be used for billing purposes for oversight charges.
4. The Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.

5. 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.

James C. Pedri, P.E.
Assistant Executive Officer

18 October 2006
(Date)
