

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2009-0707

FOR
GERALD FLAKE
GERALD FLAKE ALMOND ORCHARD
STANISLAUS COUNTY

This Order is issued to Gerald Flake (hereafter Discharger) based on provisions of California Water Code (CWC) sections 13304 and 13267, which authorize the Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board), to issue a Cleanup and Abatement Order (Order) and to require the submittal of technical reports.

The Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger has graded over 76 acres of land on his property in Stanislaus County, causing significant discharges of sediment into an unnamed tributary to Peaslee Creek and to Peaslee Creek. The property is in Sections 1 to 3, Township 4 South, Range 13 East MDB&M (APNs 020-008-033 and 020-008-035), near 25287 Lake Road in Stanislaus County.
2. On 31 January 2009, the California Department of Fish and Game (DFG) staff informed Board staff of the grading activities on the Discharger's property. On 3 February 2009, Board staff inspected the site and observed significant water quality issues. On 10 February 2009, Board and DFG staff inspected the site and met with the Discharger. During the inspection, staff observed evidence of sediment discharge into an unnamed tributary to Peaslee Creek. Board staff walked along the unnamed tributary and observed sediment deposited in the channel all the way to Peaslee Creek and within Peaslee Creek, as described in the 10 February 2009 inspection report, included as Attachment A to this Order. The report includes photographs showing large exposed areas and eroding slopes as well as sediment discharges to surface waters.
3. Sediment, when discharged to waters of the state, constitutes as a "waste" as defined in CWC section 13050. The Discharger has discharged waste directly into an unnamed tributary to Peaslee Creek and to Peaslee Creek, both of which are tributary to the Tuolumne River
4. 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 Tuolumne River, as identified in Table II-1 of

the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development of aquatic organisms; and wildlife habitat.

5. 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. The significant volume of sediment deposited in the channel and Peaslee Creek from the grading activity likely caused violations of the Basin plan's objective for turbidity.

6. CWC section 13050 states, in relevant part:

(l)(1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

...

7. CWC section 13304(a) states that:

Any person ... 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. ... 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.

8. The Discharger's grading activities have resulted in the discharge of waste into surface waters, which has created, or threatens to create, a condition of pollution or nuisance.

9. 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 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.

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

... 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.

11. 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 Discharger is subject to this Order because it owns and operates the site from which waste was discharged.

12. The issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED THAT, pursuant to CWC sections 13267 and 13304, Gerald Flake shall:

1. Take all reasonable steps to stabilize the Almond Orchard and cease the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek and its tributaries. Compliance with this directive shall include, but not be limited to, immediately cleaning up and abating the sediment that has been discharged to surface waters in accordance with the following minimum schedule:

- (a) By **1 July 2009**, the Discharger shall submit a *Stabilization and Cleanup Plan* (Plan) for approval by the Board's Executive Officer. The Plan must describe how the entire Almond Orchard will be stabilized to prevent future discharges of sediment and all other wastes, and must give a proposed timeline for the work. The timeline shall not extend beyond **1 September 2009**. The Plan must describe how the sediment-impacted tributary to Peaslee Creek will be cleaned up, as appropriate, and must include timelines and visual long-term monitoring to assess the effectiveness of the stabilization and cleanup efforts. The Plan must be prepared by a professional knowledgeable and experienced in erosion and sediment control measures.
- (b) By **1 July 2009**, the Discharger shall have applied for all required federal, state and local permits needed to conduct the clean-up work in the unnamed tributary to Peaslee Creek.

(c) By **1 October 2009**, the Discharger shall submit a *Completion Report* describing in detail how the *Stabilization and Cleanup Plan* has been implemented, and how the site and impacted surface waters have been fully remediated. The report shall include photographs of the site and unnamed tributary to Peaslee Creek prior to and after stabilization and cleanup. The Discharger shall provide staff access to areas of the property as needed.

2. If requested, the Discharger shall reimburse the Central Valley Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **1 July 2009**, submit the name and address to be used for billing purposes for oversight charges with a statement that the Discharger is willing to pay for the oversight.

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, Professional Geologist and signed by the registered professional.

If, in the opinion of the Executive Officer, the Discharger fails 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 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 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 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 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 CREEDON, Executive Officer

8 June 2009

(Date)

Attachment A: Central Valley Water Board staff 10 February 2009 Inspection Report
RWM: 2-June-09