

**15/16 October 2020 BOARD MEETING
CONTESTED AGENDA ITEM**

Note: This document has been prepared by the Central Valley Water Board's Prosecution Team

AGENDA ITEM: 11

SUBJECT:

Hanover Properties, LLC

BOARD ACTION:

Consideration of an Administrative Civil Liability (ACL) Order

BACKGROUND:

Hanover Properties, LLC (Discharger) acquired Butte County Assessor Parcel 061-540-052-000 and 061-540-060-000 (Site), located near Berry Creek and Lake Oroville, in April of 2013. Based on Google Earth imagery, shortly after the Discharger acquired the Site, grading, clearing, and road expansion activities were conducted.

On 7 April 2015, staff from the Central Valley Regional Water Quality Control Board (Central Valley Water Board), in conjunction with California Department of Fish and Wildlife (CDFW), inspected the Site and observed discharges of sediment laden stormwater to Canyon Creek, a Class I watercourse. Staff documented an access road and illegal grading to support cannabis cultivation activities as the source of sediment discharges.

Due to the Site conditions noted during the 7 April 2015 inspection, the Assistant Executive Officer of the Central Valley Water Board issued a draft Cleanup and Abatement Order (CAO) on 17 September 2015. The draft CAO included a comment period that ended on 9 October 2015.

On 15 October 2015, after receiving no comments on the draft CAO, the Executive Officer of the Central Valley Water Board issued CAO R5-2015-0741 to the Discharger. The CAO required, in part, that the Discharger submit an Interim Erosion Control Plan (Interim Plan) by 9 November 2015 and complete implementation of the Interim Plan by 15 December 2015. The CAO also required the Discharger to submit a proposed Restoration Monitoring and Mitigation Plan (RMMP) by 1 March 2016 and complete implementation of the approved RMMP by 15 October 2016.

On 29 February 2016, staff inspected the Site with consent from the Discharger. Staff determined additional erosion and sediment controls were needed to address drainage issues at the Site. Due to the deficiencies noted, a Notice of Violation (NOV) was issued on 4 May 2016 that required the Discharger to address the deficiencies and submit an Interim Plan completion report by 20 May 2016. On 20 May 2016, staff received a completion report that identified the corrective actions taken in response to the NOV, fulfilling the requirements for implementation of the Interim Plan under the CAO.

On 1 March 2016, staff received a request for extension to the 1 March 2016 deadline for submission of the RMMP. On 24 March 2016, the Assistant Executive Officer of the Central Valley Water Board granted the request and extended the Discharger's deadlines. The extension letter provided that the RMMP was to be submitted to the Central Valley Water Board by 31 May 2016 and that implementation of the RMMP should begin immediately following approval of the RMMP, but no later than 1 July 2016.

On 8 June 2016, the Dischargers consultant submitted a draft RMMP to staff with the acknowledgement that the submitted RMMP was incomplete and still in development.

Due to the Discharger's non-compliance with the CAO, the Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2017-0544 (2017 Complaint) to the Discharger on 25 July 2017.

Throughout August 2017 and September 2017, the Discharger took steps to come into compliance with the CAO. As such, the Prosecution Team rescinded the 2017 Complaint in September 2017 and approved the Discharger's RMMP, conditioned upon the Discharger obtaining a grading permit from Butte County prior to implementation of the RMMP.

Between December 2017 and June 2018, the Discharger lost ownership of Assessor Parcel 061-540-060-000 due to foreclosure.

On 28 June 2018, the Discharger confirmed that it had regained ownership of Assessor Parcel 061-540-060-000 and would work with Butte county to obtain a grading permit.

Due to the Discharger's failure to implement all work contained in the RMMP, staff issued an NOV on 3 May 2019. The NOV requested the

Discharger provide the status of the required actions in the CAO, including that of the Butte County grading permit. The Discharger responded via email on 3 May 2019, suggesting staff contact Butte County, stating the county's approval of its grading plan had been impacted by the Discharger losing ownership of the property.

On 19 August 2019, Butte County contacted Central Valley Water Board staff to relay that the Dischargers' grading permit was approved and in effect.

On 22 August 2019, staff sent a letter to the Discharger approving the 27 September 2017 RMMP and directing the Discharger to immediately begin implementation of the approved RMMP.

Between August 2019 and January 2020, staff made multiple attempts to contact the Discharger to no avail.

On 23 January 2020, staff conducted a flyover and took aerial photos of the Site. During the overflight, and upon review of the photos, staff determined that the Site conditions had not been corrected as required of the CAO and that the RMMP had not been implemented.

On 4 February 2020, the Prosecution Team issued a letter inviting the Discharger to discuss compliance efforts prior to issuance of an administrative civil liability complaint for failure to comply with the CAO. The letter gave the Discharger until 4 March 2020 to contact the Prosecution Team.

On 18 February 2020, the Prosecution Team received an email from the Discharger, stating access to the Site was feasible and that required work could begin. Staff responded on 19 February 2020, stating the Discharger should begin work pursuant to the approved RMMP as soon as feasible and reiterated the deadline to contact the Prosecution Team to schedule a meeting to discuss the alleged violations prior to issuance of an administrative civil liability complaint.

On 3 March 2020, the Discharger emailed staff and agreed to a meeting with the Prosecution Team to discuss potential settlement negotiations and to provide an update on the status of compliance with the final CAO. The meeting was held on 6 March 2020.

To date, the Discharger has failed to fully comply with requirements of the CAO, including failure to complete implementation of the RMMP.

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT:

On 9 March 2020, the Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2020-0505 (ACL Complaint) to Hanover Properties, LLC for violation of Cleanup and Abatement Order R5-2015-0741. The ACL Complaint alleges two violations and proposes administrative civil liability in the amount of \$193,088. Violation 1 alleges a violation of Water Code section 13267 for failure to submit an RMMP by the required deadline. The Prosecution Team alleges the Discharger submitted the RMMP 484 days after the extended deadline of 31 May 2016. Violation 2 alleges a violation of the CAO for failure to complete all approved restoration and mitigation measures described in the approved RMMP by the required deadline. The Prosecution Team alleges 201 days of violation for Violation 2.

The minimum liability for Violation 1, in accordance with the 2010 Enforcement Policy, is \$595.10, which is equal to the economic benefit of the violation plus ten percent. The statutory maximum liability amount, pursuant to Water Code section 13268(b)(1), is \$485,000.

The minimum liability for Violation 2, in accordance with the 2017 Enforcement Policy, is \$4,797.10. However, pursuant to Water Code section 13350 subdivision (e)(1)(B), the statutory minimum liability amount is \$20,100. The statutory maximum penalty for Violation 2, pursuant to Water Code section 13350 subdivision (e)(1), is \$1,005,000.

SUMMARY:

The ACL Complaint alleges two violations of CAO R5-2015-0741 for not submitting an RMMP by the required deadline and for failing to complete all restoration and mitigation measures described in the approved RMMP by the required deadline. Central Valley Water Board staff have received very little communication from the Discharger regarding compliance with the CAO or the ACL Complaint, despite numerous attempts by Central Valley Water Board staff to engage with the Discharger.

ACLO RECOMMENDATION:

The Prosecution Team recommends that the Board adopt the Administrative Civil Liability Order for \$193,088 as proposed.

REVIEWS:

Management Review:	
Legal Review:	

BOARD MEETING LOCATION:

Central Valley Regional Water Quality Control Board meeting
11020 Sun Center Dr. #200
Rancho Cordova, CA 95670

Internet Zoom Meeting