

California Regional Water Quality Control Board
North Coast Region

TIME SCHEDULE ORDER NO. R1-2000-21

For

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

U.S. DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
SHASTA-TRINITY NATIONAL FORESTS

DARK CANYON CREEK
EAST FORK OF SOUTH FORK, TRINITY RIVER

Trinity County

WHEREAS, the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), finds that:

- 1) On December 22, 1999, the Regional Water Board issued Cleanup and Abatement Order (CAO) No. 99-77. This CAO required the U.S. Forest Service (hereinafter the USFS) to cleanup and abate the discharge of earthen material from the Dark Canyon Creek culvert replacement project into Dark Canyon Creek and East Fork of the South Fork, Trinity River. The CAO required the USFS to submit a workplan for cleanup and abatement activities to the Regional Water Board by January 14, 2000, and required that immediate cleanup and abatement activities be completed by January 22, 2000.
- 2) This road culvert replacement project commenced in July, 1999. It is located on the Wild Mad Road in Section 26, T28N, R11W, HB&M. The project will upgrade an existing 7 foot diameter metal pipe culvert to a 20 foot diameter, 120 foot long, bottomless arch metal culvert. This involves the removal and subsequent replacement of approximately 15,000 cubic yards of earthen fill material for the road crossing. The project was not completed by winter, and the site was not adequately winterized to prevent large scale erosion of earthen material into Dark Canyon Creek and East Fork of the South Fork, Trinity River. This included stockpiling 15,000 cubic yards of earthen material on steep slopes with direct access to the Trinity River. There remains a high threat of failure and significant discharge of stockpiled earthen material downslope directly into the East Fork of the South Fork, Trinity River.

- 3) On January 14, 2000, and at the request of the USFS, the Regional Water Board amended CAO No. 99-77 to extend the required workplan submittal and cleanup compliance dates. The workplan submittal date was amended to be February 1, 2000, and the immediate cleanup and abatement activities completion date was amended to be February 8, 2000.
- 4) The following sections of amended CAO No. 99-77 were violated:
 1. "Clean up and abate the effects of waste earthen materials discharges to Dark Canyon Creek and East Fork of the South Fork, Trinity River.
 2. Clean up and abate the effects of waste earthen materials deposited where they probably will be discharged to Dark Canyon Creek and the East Fork of the South Fork, Trinity River.
 3. On or before February 1, 2000, submit to the Executive Officer for concurrence a workplan, prepared by a California registered professional engineer or geologist, for cleanup and abatement as specified in provisions 1 and 2 above. The workplan shall also include a comprehensive time schedule for implementation of immediate and long term cleanup and abatement activities. Immediate cleanup and abatement activities shall be completed by February 8, 2000, and long term abatement activities shall be completed in accordance with the proposed time schedule. The workplan shall also include an emergency contingency plan for cleanup and control of discharges to downstream waters should the stock piled fill material fail downslope and discharge into waters of the State prior to its cleanup and abatement.
 4. The workplan shall also specify a site inspection schedule, and a water quality monitoring plan by the discharger. The site inspection schedule shall be of sufficient timing, at least monthly, or weekly during periods of thaw and high runoff, through the winter and spring period to ensure timely action should additional water quality problems result from winter runoff. The water quality monitoring plan shall include, but not be limited to, stream channel habitat typing surveys, channel cross sections, stream bed gravel composition analyses, pool size and depths, and sediment related water column analyses. Reference channel cross sections and pool depths, immediately above and below the construction site, shall be conducted prior to February 8, 2000, given safe weather conditions. The remaining monitoring shall begin when stream conditions allow, and continue until the construction project is successfully completed.
 5. The cleanup and abatement activities specified above shall be supervised on the ground by the licensed or certified professional who prepared the plan."

- 5) The following sections of the Water Quality Control Plan for the North Coast Region (Basin Plan) have also been violated:

Section 4. IMPLEMENTATION PLANS

ACTION PLAN FOR LOGGING, CONSTRUCTION, AND ASSOCIATED
ACTIVITIES DISCHARGE PROHIBITIONS:

- "1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
 2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."
- 6) The USFS failed to submit an adequate workplan signed by a California registered professional engineer or geologist, or a federal employee with equivalent expertise exempt from state licensing statutes, by February 1, 2000 as required by amended CAO No. 99-77.
- 7) On February 24, 2000 the USFS submitted to the Regional Water Board a workplan signed by a California registered professional engineer.
- 8) On March 1, 2000, Regional Water Board staff reinspected the construction site, and found ongoing discharges and threatened discharges of sediment that had not been addressed by the workplan. The workplan was inadequate to abate the ongoing discharges and threatened discharges of earthen material to Dark Canyon Creek and East Fork of the South Fork, Trinity River. The workplan shall not be considered adequate until it is revised to mitigate the discharges and threatened discharges observed on March 1, 2000, and include a schedule for completion of final erosion control measures no later than August 1, 2000. This completion date will help ensure that the permanent erosion control measures are finished in a timely manner.
- 9) The USFS actions continue to result in violations and threatened violations of amended CAO No. 99-77.
- 10) Under Section 13308(b) of the California Water Code, the Regional Water Board may impose a civil penalty for violations of the time schedule based on the amount reasonably necessary to achieve compliance, not to include any amount intended to punish or redress previous violations and not to exceed ten thousand dollars (\$10,000)

for each day in which the violation occurs. The civil penalties prescribed in this Order are reasonably necessary to achieve compliance with this Order, based on the USFS response to CAO No. 99-77, and the continued waste discharges and threatened discharges in violation of Basin Plan waste discharge prohibitions and CAO No. 99-77.

- 11) If the USFS fails to comply with the Time Schedule contained in this Order, a complaint may be issued pursuant to Water Code Section 13323(a) alleging the violation(s) of the Time Schedule Order and setting forth the amount of civil liability due under this Order. The amount of the civil liability may be reduced based on consideration of the specific factors in Water Code Section 13327.
- 12) The USFS has jurisdiction over this construction project, and over the land on which this project is constructed, and is engaged in an activity that is resulting, or may result, in the discharge or runoff of pollutants. Congress has therefore waived the USFS' sovereign immunity from compliance with CAO No. 99-77 and this Time Schedule Order, pursuant to Clean Water Act section 313(a), 33 U.S.C. Section 1323(a).
- 13) The adoption of a Time Schedule Order for Administrative Civil Liability is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).

THEREFORE, IT IS HEREBY ORDERED that the USFS shall complete the following tasks in accordance with the following due dates. Administrative Civil Liability shall be imposed for violation of tasks A through C in accordance with the following schedule:

- A. An acceptable workplan shall be submitted by March 23, 2000 to the Regional Water Board Executive Officer for approval. To be acceptable for approval by the Executive Officer, the workplan shall include plans and a time schedule to adequately mitigate the discharges observed on March 1, 2000, include a schedule with completion of final erosion control measures no later than August 1, 2000, and otherwise contain the workplan elements specified in CAO 99-77. The civil penalty for not submitting an adequate workplan by March 23, 2000 shall be \$10,000. The penalty assessment date shall be March 24, 2000.

The civil penalty for not completing the final erosion control measures by August 1, 2000 shall be \$10,000 per day. The penalty assessment date(s) shall commence August 2, 2000.

- B. The USFS shall cleanup and abate all waste discharges to Dark Canyon Creek and the East Fork of the South Fork, Trinity River. This shall begin immediately. Commencing two (2) days following the date of this Order, the civil penalty for waste discharges to receiving waters shall be \$2,000 per cubic yard (approximately \$10 per gallon) of earthen material, to a maximum of \$10,000 per day.
- C. Beginning March 16, 2000 the USFS shall maintain a written daily log that details whether any discharge has occurred, and, if so, the volume amount of the discharge. Beginning March 20, 2000 the USFS shall report by telephone and in writing on Monday of each week the contents of the previous week's daily logs. The penalty for not submitting the weekly report shall be \$1,000 per day. On those days when a discharge occurs, or on those days when there has been at least 0.5 inches of rain recorded at the USFS Harrison Gulch Ranger Station, then the USFS shall also report by telephone no later than the following day to the Regional Water Board. The civil penalty for not reporting under this daily schedule shall be \$1,000 per day. The penalty assessment date shall be the day following each violation of this reporting schedule.

If there are violations beyond the dates specified above, the discharger is liable for \$1000 for each additional day in which the violation occurs. In no case will the discharger be liable for more than \$10,000 for any single day.

Ordered by _____

Lee A. Michlin
Executive Officer

March 15, 2000

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