

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2006-0713

FOR
MIKE EARLY
REAM AVENUE PROPERTY
SISKIYOU COUNTY

This Order is issued to Mike Early 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).

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

1. Mike Early, Redding (hereafter Discharger) owns approximately 35-acres of land on Ream Avenue in Mt. Shasta, Siskiyou County. The property consists of two parcels, east of Interstate 5 in Section 21, Township 40 North, Range 4 West, MDB&M. Runoff from the site discharges to Cold Creek, tributary to the Sacramento River. The Discharger owns the property (APNs 057-621-010, and 057-621-030).
2. On 15 May 2006, Regional Water Board staff, responding to a complaint, inspected the property and found significant land clearing activities that had impacted surface waters, including wetland habitat. Heavy equipment was used to clear trees and brush from the site, removing riparian habitat and filling small drainages and wetlands. Along the eastern property boundary, which parallels Ream Avenue, there was a small drainage feature (a water of the state) that had been stripped of vegetation. Trees along the drainage had been ripped out of the ground and/or snapped off at the base, and a lot of the debris had been left in place. The small drainage feature had flowing water during the inspection, with a steady flow of approximately 0.5-1 cubic feet per second. A large quantity of slash and dirt is located within the drainage feature. Regional Water Board staff observed several hydric plants and piles of gleyed soils (hydric soils). The presence of gleyed soils, which develop when anaerobic soil are subject to prolonged periods of waterlogged conditions, indicates that the areas impacted by the Dischargers activities, contained wet and/or wetland habitat.
3. In June 1992, Karen Theiss, of Karen Theiss and Associates, Biological and Environmental Consultants, performed a wetlands delineation for the City of Mt. Shasta. The delineation included portions of the Ream Avenue property, and documented large sections of the property as wetland habitat. The date at the bottom of the delineation map is 17 June 1992.

4. The Corps is in the process of issuing a Cease and Desist Order, for un-permitted impacts to waters of the U.S., requiring the Discharger to cease activities on the site. At this time, the U.S. Army Corps of Engineers (Corps) order requiring the Discharger to cease wetland fill activities, remove fill material and to obtain an “after-the-fact” Section 404 permit for the activities, is pending.
5. 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.
6. The Corps is in the process of issuing a Cease and Desist order, for un-permitted impacts to waters of the U. S., requiring the Discharger to cease activities on the site.
7. On 22 May 2006, the Regional Water Board issued a Notice of Violation to the Discharger for the discharge of fill material to surface waters.
8. Clean Water Act (CWA) Section 404 requires any person proposing to discharge dredged or fill material into navigable 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 (CWC) 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 CWC 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.”

14. 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 the California Water Code and Basin Plan requirements.

15. 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.

16. 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, Mike Early shall:

1. Cease the discharge of 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 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 August 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 August 2006**, submit a wetland delineation of the subject property (APNs 057-621-010, -030) 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 **15 October 2006**, complete the implementation of the Cleanup and Restoration Plan. The Discharger shall provide staff access to areas of the property, as needed.
3. If requested, reimburse the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **15 July 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.

PAMELA C. CREEDON, Executive Officer

(Date)