

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2005-0703

FOR
SUNSET RANCHOS INVESTORS, L.L.C.
WHITNEY RANCH
AND
UTILITY PIPELINE PROJECT
PLACER COUNTY

This Order is issued to Sunset Ranchos Investors, LLC based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Board) to issue a Cleanup and Abatement Order (Order).

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, finds that:

1. Sunset Ranchos Investors, LLC (hereafter Discharger) is the owner and developer of an approximately 1296-acre residential development known as Whitney Ranch. The development is on the east side of Highway 65 in the City of Rocklin, Placer County. Runoff from the project site discharges to unnamed tributaries to Orchard Creek and Pleasant Grove Creek. Orchard Creek and Pleasant Grove Creek are tributaries of the Sacramento River.
2. Sunset Ranchos Investors, LLC is also developer of a utility pipeline project adjacent to Whitney Ranch. Runoff from the approximately 51-acre project site discharges to unnamed tributaries of Orchard Creek and Pleasant Grove Creek.
3. This Cleanup and Abatement Order applies to both the Whitney Ranch and the Utility Pipeline sites.
4. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ (General Permit), implementing Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity. The General Permit requires that dischargers of storm water to surface waters associated with construction activity including clearing, grading, and excavation activities file a Notice of Intent (NOI) to obtain coverage under the General Permit, and to implement Best Available Technology Economically Achievable and Best Conventional Control Technology to reduce storm water pollution. The Discharger submitted NOI(s) for coverage under the General Permit in April 2004 and received confirmation and WDID Nos. 5S31C327116 and 5S31C327117 on 20 April 2004.
5. On 16 and 19 October 2004, Regional Board staff inspected the Whitney Ranch construction sites to evaluate compliance with the General Permit. During the inspection,

staff found that the Discharger did not comply with the General Permit and that the site lacked adequate erosion and sediment control best management practices (BMPs).

6. On 25 October 2004, Regional Board staff conducted a follow-up inspection of the Whitney Ranch sites. Staff observed the discharge of concrete washout water from site operations to the City of Lincoln's storm water conveyance system. In addition, staff noted that the Discharger still failed to implement adequate BMPs causing sediment to discharge to tributaries of Orchard Creek and Pleasant Grove Creek.
7. On 28 October 2004, Regional Board staff issued a Notice of Violation (NOV) for the violations observed on 16 and 19 October 2004. The NOV required the Discharger to comply with General Permit requirements, to stabilize the site and install adequate erosion and sediment control BMPs.
8. On 2 November 2004, staff issued another Notice of Violation to the Discharger for continued violations of the General Permit. The NOV specified that in order to comply with General Permit requirements, the Discharger needed to install adequate BMPs, clean up the washout area and ensure that site personnel are trained to implement the SWPPP. The Notice of Violation required the Discharger to submit an updated SWPPP map and training sign-up sheets to the Regional Board by 15 November 2004.
9. On 2 December 2004, Regional Board staff granted the Discharger a time extension until 15 December 2004 to submit the information requested in the 2 November NOV. The extension was granted in response to a request from the Discharger stating that they did not receive the original NOV due to an address change,
10. On 9 December 2004, Regional Board staff performed an aerial inspection of the project sites with local municipal inspectors. During the inspection, staff observed that large disturbed soil areas still had not been stabilized, resulting in the discharge of turbid storm water from the sites to stream channels and preserve areas.
11. On 15 December 2004, the Discharger submitted an updated SWPPP map and documentation of limited contractor training and assured staff that corrective measures had been undertaken to address the violations.
12. On 29 December 2004, staff issued another Notice of Violation to the Discharger for continued violations of the General Permit. Again, staff specified that in order to be come into compliance with the General Permit, the Discharger needed to install adequate erosion and sediment control BMPs. The Notice of Violation specified the discharger develop and implement a storm water monitoring program for sedimentation/siltation and submit monthly reports to the Regional Board.
13. On 30 December 2004 and 5 January 2005, Regional Board staff inspected the sites again and observed that sediment-laden storm water from the sites continued to discharge to the channels and preserve areas.

14. The Regional Board *Water Quality Control Plan, for the Sacramento and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, contains water quality objectives, contains implementation programs to for achieving objectives, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. The Basin Plan identifies the beneficial uses applicable to the Sacramento River and its tributaries. The designated beneficial uses are: municipal and domestic supply; agriculture; industry; recreation; freshwater habitat; warm and cold water migration; spawning; and wildlife habitat.

15. California Water Code Section 13304(a) requires:

” 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 such waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts... Upon failure of any person to comply with such 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 such person to comply therewith. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

16. California Water Code Section 13304(c)(1) states that:

“...the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government 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 actions....”

17. When there is a discharge and a Cleanup and Abatement Order has been issued, California Water Code Section 13350(e) states that:

“The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars

(\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.”

18. California Water Code Section 13267(a)(b)(1) also states:

“(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of 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 discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters 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”.

19. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. Existing data and information about the sites indicate that waste has been discharged or may continue to be discharged from the properties, which are both operated by and one owned by the Discharger named in this Order.
20. The Discharger’s grading activity has discharged earthen materials into surface waters. The activity threatens to cause a condition of pollution or nuisance when earthen materials are transported in storm water to downstream receiving waters. Reports required by this Order are necessary to assure that appropriate actions are taken to clean up the sites and to abate the effects of the sediment discharge.
21. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of Chapter 3 of the California Environmental Quality Act, (CEQA) (Public Resources Code Section 21000 et seq.) pursuant to Section 15321(a), Title 14, California Code of Regulations.
22. This Order does not protect the Discharger from any other enforcement action to address violations caused by the unlawful discharges of waste documented in this Order.
23. This Order does not relieve the Discharger from complying with any applicable local, state or federal laws.

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 pursuant to Sections 13267 and 13304 of the California Water Code, the Discharger shall:

1. Clean up the waste and abate, forthwith, the condition of pollution or nuisance caused by the discharge of waste (i.e., soil materials) to surface waters or surface water drainages or where such material could reasonably be expected to pass into surface waters including the previously identified unnamed drainage tributaries to Orchard Creek and Pleasant Grove Creek.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:
 - (a) Implement effective erosion and sediment controls utilizing Best Available Technology Economically Achievable and Best Conventional Control Technology to reduce storm water pollution throughout the project sites.
 - (b) **By 15 February 2005**, develop and submit a Workplan for the project sites. The Workplan must be prepared by or under the direction of a Registered Civil Engineer, a Certified Professional in Erosion and Sediment Control, or other professional experienced and knowledgeable in sediment and erosion control and must include:
 - 1) The measures proposed to stabilize the project sites and eliminate sediment discharges to tributaries of Orchard and Pleasant Grove Creek. The sediment and erosion control measures must be adequate to abate the threat of continued sediment discharges from the properties.
 - 2) A written monitoring and reporting program for sediment/siltation in storm water discharges. The program shall include monitoring and reporting for turbidity, settleable solids and suspended solids, as detailed in the 29 December 2004 Notice of Violation.
 - 3) A description of monitoring and maintenance activities required to ensure that the sediment and erosion control measures remain effective. The description must include the qualifications of all personnel responsible for site monitoring and a written non-compliance reporting plan.
 - 4) A time schedule for submittal of a final report that addresses the impacts of the discharge, demonstrates completion of the Workplan, and evaluates the effectiveness of the Workplan.

- (c) **By 18 February 2005**, complete the implementation of the Workplan. The Discharger shall provide staff access to areas of the properties, as needed.
3. Obtain all permits for work undertaken pursuant to this Order required by federal, state and local agencies, including but not limited to City of Rocklin, U.S. Army Corps of Engineers, California Department of Fish and Game, and the Regional Board.
 4. If requested, reimburse the Regional Board for reasonable costs associated with oversight of actions taken in response to this Order. By **15 February 2005** submit the name and address to be used for billing purposes for oversight charges.
 5. 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 issue a complaint for Administrative Civil Liability.
 6. Failure to comply with this Order, including the deadlines for specified tasks, may result in further enforcement action, pursuant to California Water Code sections 13268, 13350, 13385, and 13387, which allow for the assessment of civil liability up to a maximum of five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each day of violation.
 7. If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines in the Workplan submitted pursuant to this Order, the Discharger may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall be received by the Regional Board not less than 10 calendar days prior to the deadline sought to be extended. An extension may be granted for good cause, in which case this Order will be accordingly revised.
 8. This Order in no way limits the authority of this Regional Board to institute additional enforcement actions or to require additional investigation and cleanup at the site consistent with California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by: _____
THOMAS R. PINKOS, Executive Officer

(Date)