

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2008-0713
FOR

STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION
AND
SAN FRANCISCO PUBLIC UTILITIES COMMISSION, HETCH HETCHY WATER AND POWER
MITCHELL RAVINE
ALAMEDA COUNTY

This Order is issued to the State of California, Department of Parks and Recreation and the San Francisco Public Utilities Commission, Hetch Hetchy Water and Power based on provisions of California Water Code (CWC) section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region, (hereafter Central Valley Water Board) to issue a Cleanup and Abatement Order (CAO), and CWC section 13267, which authorizes the Central Valley Water Board 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 California Department of Parks and Recreation (State Parks) is owner of the Carnegie State Vehicular Recreation Area (SVRA) in Alameda County. Hetch Hetchy Water and Power, a department of the San Francisco Public Utilities Commission, has an easement through a portion of the Carnegie SVRA property.
2. For purposes of this Order, Hetch Hetchy Water and Power is considered primarily responsible for cleanup activities. This is due to the fact that it implemented the construction activities that led to the water quality concerns described herein, and these activities occurred on an easement owned by Hetch Hetchy Water and Power. State Parks is named in this Order due to its ownership of the land upon which the construction activities took place. Both may be considered Dischargers pursuant to the CWC.
3. Mitchell Ravine is a watershed within the Carnegie SVRA. Mitchell Ravine is tributary to Corral Hollow Creek and the Sacramento-San Joaquin River Delta, a water of the US.
4. The Discharger has an easement parallel to Mitchell Ravine that allows the Discharger to service a water tunnel shaft and allows it to conduct general road maintenance. In June 2008, the Discharger graded about 2.5 acres of Mitchell Ravine, purportedly to maintain the road. The grading activities significantly impacted Mitchell Ravine and the biological resources in the area. The grading activities have created conditions, which if unabated, will move a significant amount of sediment downstream and impact water quality in lower Mitchell Ravine and Corral Hollow Creek.
5. The grading occurred on two parcels with the following Assessor's Parcel Numbers: APN 099A-2220-001-19 in Section 30, T3S, R4E, MDB&M and APN 099A-2200-001-036 and -37 in Section 31, TS, R4E, MDB&M.

6. On 30 June 2008, staff from State Parks inspected the site and observed heavy equipment grading in and around Mitchell Ravine. This grading activity took place without prior notification to State Parks. State Parks also determined that the Discharger failed to obtain the necessary permits or provide adequate notification to federal or state resource agencies. State Parks staff wrote an Engineering Incident Report in July 2008 regarding this incident (found as Attachment A, a part of this Order).
7. On 4 September 2008, Department of Fish and Game staff met with staff from State Parks and the Discharger to discuss the grading activities at Mitchell Ravine. Department of Fish and Game staff requested the Discharger submit a streambed alteration permit application and both short-term and long-term stabilization plans for the site.
8. On 15 September 2008, Central Valley Water Board staff inspected the construction activities at Mitchell Ravine. Staff identified that construction activity, including clearing and grading, had occurred at that location in violation of state and federal laws. Both the CWC and the federal Clean Water Act require coverage under the Construction Storm Water General Permit for construction activities where there is grading of over an acre. Staff took photographs of the site and wrote an inspection report (found as Attachment B, a part of this Order).
9. On 17 September 2008, staff from Department of Fish and Game and the US Fish and Wildlife Service met with the Discharger and State Parks at the site to assess impacts to listed species and habitat. US Fish and Wildlife Service requested that the Discharger and State Parks have their hydrologists assess the site and make recommendations for immediate temporary stabilization of the site.
10. On 22 September 2008, Central Valley Water Board staff issued a Notice of Noncompliance (NONC) to the Discharger and State Parks for failure to comply with the CWC and the federal Clean Water Act (found as Attachment C, a part of this Order). The following violations were cited:
 - Failure to obtain coverage under the Construction Storm Water General Permit for clearing, grading, and excavation results in land disturbance of one or more acres.
 - Violation of CWC section 13376, which requires that any person 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 NONC required the Discharger to file a Notice of Intent requesting coverage under the Construction Storm Water General Permit, submit a Storm Water Pollution Prevention Plan (SWPPP) and submit a Section 401 Water Quality Certification application no later than 22 October 2008. The documents have not yet been submitted.

11. On 9 October 2008, Central Valley Water Board staff met with Department of Fish and Game, US Fish and Wildlife Service, and State Parks to address the grading done at the Mitchell Ravine road. During the meeting, the agencies discussed the impacts to Mitchell

Ravine and possible remedies to protect both water quality and biological resources. All agencies agreed that the Discharger's maintenance activities impacted biological resources and has potentially impacted water quality in the work area. In addition, the Discharger's grading will create significant impacts to the resources downstream of the impacted zone if soil stabilization measures are not put in place to stabilize the disturbed soil. This is a significant issue because of the steep gradient of the stream channel and the type of rock and soil in the area, as well as the fact that wetlands exist a few miles downstream. Both immediate temporary stabilization measures are required to protect the site during the upcoming wet-season, and more permanent measures are required to protect the area in the long-term.

12. On 10 October 2008, the Discharger emailed a draft SWPPP to the agencies for review. The Discharger stated that the draft SWPPP was for "short term erosion control." Central Valley Water Board staff has reviewed the SWPPP and has found it to be inadequate. The SWPPP does not meet the requirements of Construction Storm Water General Permit. Specifically, the Best Management Practices (BMPs) do not meet the Best Available Technology standard required by the Permit, as it does not include a combination of erosion and sediment control BMPs. The Discharger must revise the SWPPP to meet the conditions of the Permit and to adequately protect water quality. The Discharger must also immediately implement the revised SWPPP.
13. The Discharger's activities have impacted Mitchell Ravine. These impacts will accelerate if the site is not immediately stabilized and a long-term solution to the down-slope sediment migration is not implemented.

REGULATORY CONSIDERATIONS

14. The Discharger, by failing to file for the proper permits prior to grading activities and not stabilizing the site after the activities occurred, has caused or permitted, or threatens to cause or permit, waste to be discharged in such a manner that it threatens to cause or create a condition of pollution or nuisance. Therefore, the Discharger is subject to this Order pursuant to CWC section 13304.
15. 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 plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Board.
16. Surface water drainage at the site is to Corral Hollow Creek, which flows into the Sacramento-San Joaquin River Delta. The beneficial uses of the Delta are municipal and domestic supply; agricultural supply; industrial supply; water contact recreation; non-contact water recreation; warm and cold freshwater habitat; warm and cold migration of aquatic organisms; spawning, reproduction, and/or early development; wildlife habitat; and navigation.

17. CWC section 13304(a) provides that: *“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement 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 not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the 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 facts may warrant.”*
18. CWC section 13267(b) 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 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. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”*
19. The technical reports required by this Order are necessary to ensure compliance with this CAO and to ensure the protection of water quality. The Discharger’s actions created the conditions which have led to issuance of this Order.
20. 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 California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED that, pursuant to CWC sections 13304 and 13267, Hetch Hetchy Water and Power shall cleanup and abate the impacts to Mitchell Ravine caused by its June 2008 grading actions in accordance with the scope and schedule set forth below.

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."

1. **Effective immediately**, and continuing until this Order is rescinded, the Discharger shall submit monitoring reports prior to and after any rain events. These reports will be submitted monthly by the **10th day of the following month** (e.g. the October monthly report is due by 10 November). These reports must include the results of site monitoring, as required by the Construction Storm Water General Permit, in the form of both written inspection reports and photographs.
2. As soon as possible, but in no event later than **27 October 2008**, the Discharger shall file a Notice of Intent requesting coverage under the Construction Storm Water General Permit and submit a Section 401 Water Quality Certification application.
3. As soon as possible, but in no event later than **27 October 2008**, the Discharger shall submit a revised SWPPP in compliance with the Construction Storm Water General Permit. The revised SWPPP shall include a short-term stabilization plan for the site. This plan must include full stabilization of both the roadway and the creek channel in areas that were impacted by the June 2008 grading event. In addition, the plan must address how the installed erosion and sediment control BMPs will be maintained and upgraded if necessary during the upcoming wet season.
4. The revised SWPPP shall be implemented as soon as possible after approval by Central Valley Water Board staff, and in a time period to ensure compliance with Item No. 5, below.
5. By **20 November 2008**, the Discharger shall submit a report showing that all erosion and sediment control BMPs installed throughout the impacted areas. Prior to implementation of the BMPs, the Discharger must receive approval from all of the resource agencies noted below. All erosion and sediment control BMPs must be wildlife friendly and not create entrapment issues.
6. By **15 December 2008**, the Discharger shall submit a long-term stabilization plan, which includes long-term stabilization of the rock and sediment that is migrating downstream in the watercourse as a result of the June 2008 grading event. The plan must clearly describe the permits that will be needed from the resources agencies noted below and the timeline for the Discharger to submit permit applications in time to receive the permits in time to comply with Item No. 8.
7. The long term stabilization plan shall be implemented as soon as possible after approval by Central Valley Water Board staff and after all necessary permits have been obtained, and in

a time period to ensure compliance with Item No. 8, below.

8. By **15 September 2009**, the Discharger shall fully implement the approved long term stabilization plan, and by **20 September 2009**, shall submit a report documenting that the approved stabilization plan has been fully implemented.
9. The Discharger must submit all required reports and permit applications to the resource agencies, including at a minimum, the California Department of Fish and Game, US Fish and Wildlife Service, US Army Corps of Engineers, and State Parks.
10. Should Hetch Hetchy Water and Power fail to comply with this Order, then the Executive Officer may notify State Parks that they must take all actions necessary to come into compliance with the Order within 30 days of receipt of this notification. Such notification would not shield Hetch Hetchy Water from any enforcement action that may be brought against it by the State or Regional Water Boards for failure to comply with the terms of this Order, or any action for contribution brought by State Parks to recover costs incurred pursuant to this Order. Enforcement actions that may be initiated by the Central Valley Water Board include the issuance of Administrative Civil Liability penalties for failure to comply with the deadlines specified herein.
11. The Discharger shall comply with all applicable provisions of the California Water Code that are not specifically referred to in this Order. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed by the registered professional.

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 of this Order, except that if the thirtieth day following the date of this Order 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.

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 of up to \$10,000 per violation per day, pursuant to the CWC sections 13268, 13350, and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

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ALAMEDA COUNTY

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This Order is effective upon the date of signature.

PAMELA C. CREEDON, Executive Officer

15 October 2008

(Date)

Attachment A: State Parks Engineering Incident Report
Attachment B: Central Valley Water Board staff inspection report
Attachment C: 28 September 2008 Notice of Non Compliance

RWM: 14-Oct-08