

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2005-0709
FOR
FRANCIS LEWIS
LEWIS RANCH
EL DORADO COUNTY

This Order is issued to Lewis Ranch and Francis Lewis 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 Regional Board, finds that:

1. Francis Lewis of 3674 Fairway Drive, Cameron Park, CA 95682 (hereafter Discharger) owns approximately 900 acres of land near Greenwood in El Dorado County known as Lewis Ranch. Lewis Ranch is located in the north central part of El Dorado County about 1-2 miles south of the town of Greenwood. The legal description for the property of concern is portions of Sections 18 and 19, Township 12 North, Range 10 East, and portions of Section 24, Township 12 North, Range 9 East. The Lewis Ranch is within the Greenwood Creek sub watershed, and drainage from the property flows into the South Fork of the American River.
2. The Discharger has recently conducted extensive land clearing and road construction activities and has disturbed many ephemeral and intermittent stream crossings that are eroding sediment into the streams. The Discharger installed a 260-foot long, 36-inch diameter culvert in an ephemeral stream for a road crossing without approval by any regulatory agency.
3. On 17 March 2005, Regional Board staff participated in a pre-harvest timber inspection of the property. During the inspection Regional Board staff observed extensive land clearing and an improperly (and unapproved) installed 260-foot culvert which discharges into Greenwood Creek. The Discharger had applied for a Less-Than 3 Acre Timber Conversion Exemption (Conversion) from the California Department of Forestry and Fire Protection (CDF) to construct a road, but had not sought the necessary permits to install the culvert or to clear the land. The Regional Board staff observed that approximately 35 acres was disturbed and resulted in the discharge of sediment to surface waters.
4. On 7 April 2005, the Discharger was cited by El Dorado County Department of Transportation for illegal grading and non-compliance with the County Grading ordinance for failing to obtain a grading permit.
5. On 12 April 2005 Regional Board staff, CDF staff, El Dorado County and the Registered Professional Forester (who represents the Discharger) inspected the site to determine if the road work and other activities (culvert installation) were part of and in accordance with the

Conversion. It was determined that the Discharger had operated outside of the scope of the Conversion. There were approximately 35-acres of soil disturbance, and in many areas, the disturbance had caused sediment to be discharged to waters of the State. The Discharger, through this activity, has caused waste to be discharged where it has caused a condition of pollution by increasing levels of sediment, settleable and suspended material, and turbidity. Continued erosion and sloughing of materials from the disturbed areas continues to threaten water quality.

6. On 14 April 2005 the Discharger and his Licensed Timber Operator (LTO), Jeff Shurtz dba MacGyver Logging were issued a Notice of Violation of Forest Practice Laws by CDF. The Discharger and LTO exceeded the three (3) acre maximum of a Minor Conversion Permit and caused soil from road construction and road fill to be discharged to a Class I watercourse. The Discharger through the LTO was required to mitigate soil discharged from road construction and road fill to surface waters by the installation of erosion control structures at road crossings and on the road.
7. On 22 April 2005, Regional Board staff and California Department of Fish & Game (DFG) staff inspected the site to assess DFG's role in the stream clean up. During the inspection, staff observed that a temporary steel plate stream crossing had been installed at the entrance to the property off Greenwood Road. A second stream location on the property had been disturbed, and sediment had been removed from the flowing stream and placed on the bank. The second stream crossing was the location staff was seeking DFG input with regard to possible clean up activities. Mr. Jeff Shurtz, the Dischargers LTO, was on-site installing erosion protection measures on the road as directed by CDF. Mr. Shurtz informed DFG and Regional Board staff that a crew had been in the creek the previous day, hand shoveling sediment and placing it on the bank. The Discharger did not have the necessary Streambed Alteration Agreement from DFG in order to work within a flowing stream.
8. 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. Greenwood Creek is a tributary to the American River, which is tributary to the Sacramento River. The beneficial uses for Greenwood Creek are: municipal and domestic supply; agriculture; recreation; freshwater habitat; warm water spawning; and wildlife habitat.
9. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include numeric and narrative objectives for sediment, settleable and suspended material, and turbidity. Based on staff observations, the Discharger's excavation and construction activities have resulted in the discharge of waste, e.g. sediment, into surface waters and surface water drainage courses and the placement of waste in areas where it threatens to discharge into surface water drainage courses during subsequent storm events. The discharge of waste to surface waters has created a condition of pollution. It threatens to continue to create a condition of pollution or nuisance because the earthen materials are

likely to be transported in storm water during the rainy season to downstream receiving waters, increasing levels of sediment, settleable and suspended material, and turbidity.

10. This Order requires the Discharger to clean up the waste or abate the effects of the discharges of waste to assure that waste, including sediment and earthen materials, does not enter waters of the state and impact beneficial uses of such waters.

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 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 limited to, overseeing cleanup and abatement efforts.... 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 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.swrcb.ca.gov/rwqcb5 or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, Francis Lewis shall:

1. Clean up, forthwith, the waste, including earthen materials, that has been discharged or placed into surface waters or surface water drainages or where such waste could reasonably be expected to pass into surface waters including the previously identified unnamed drainage tributaries to Greenwood Creek. The cleanup activities must be conducted in accordance with State Water Resources Control Board Resolution 92-49, the Department of Fish and Game regulations and guidelines, and El Dorado County’s ordinances. Abate, forthwith, conditions that could cause such waste to continue to be discharged to waters of the state.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:
 - (a) Stabilize all disturbed areas with proper erosion and sediment controls. Restore all disturbed streams and drainage courses.
 - (b) Comply with all CDF mitigation measures within the area covered by the Conversion.
 - (c) **By 31 May 2005** submit a Sediment and Erosion Control Plan 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 for disturbed areas outside of the Less than Three (3) Acre Maximum Conversion Exemption. The Sediment and Erosion Control Plan must include: (1) an assessment of the adequacy of erosion and sediment controls on the entire 35-acre disturbed site; (2) a detailed list of recommended erosion and sediment control

measures to be immediately implemented at the 35-acre disturbed site after review and comment by Regional Board staff; and (3) a description of monitoring and maintenance activities required to ensure the erosion and sediment control measures remain effective. The erosion and sediment control measures must be adequate to clearly mitigate the threat of continued sediment discharges from the 35-acre disturbed site.

- (d) **By 15 June 2005** complete the implementation of the recommended sediment and erosion control measures. Discharger shall facilitate a subsequent inspection of the 35 acre disturbed site, by Regional Board staff and provide access to areas, as needed.
3. Prior to conducting any future land clearing activities, the Discharger shall submit a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Construction Activity and a complete Storm Water Pollution Prevention Plan detailing the proposed activities and the planned sediment and erosion control measures. Obtain all permits required for this work by El Dorado County, Army Corps of Engineers, California Department of Fish & Game, California Department of Forestry 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.
 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 a cleanup and abatement order or the dates specified may result in further enforcement actions, including actions under section 13268, 13350, 13385, and 13387 of the California Water Code, which allows for administrative civil liability up to a maximum of up to ten thousand dollars (\$10,000) for each day of violation.

Original signature on file

THOMAS R. PINKOS, Executive Officer

(Date)