

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATERQUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 6, 2004**

Prepared on January 15, 2004

**ITEM: 20**

**SUBJECT: Summary, Conclusion, and Recommendation Regarding Pierson and Kelegian Properties**

**SUMMARY OF PIERSON SITE**

Land disturbances at the Pierson property included grubbing (removal of brush), clearing all vegetation from approximately 39 acres (according to the Storm Water Notice of Intent) of hillside and hilltop land, and road grading. The end result was steep hillsides completely denuded of all vegetation or other soil cover, with widespread erosion during rain events and extensive sediment deposition into Huer Huero Creek during the 2002-2003 rainy season.

Grading preceded the July 20, 2002 Highway 58 fire, and appears to have been complete by September 30, 2002, when Ryan Lodge of our staff visited the site. The actual grading and grubbing extended well beyond the scope of the Mitigated Negative Declaration prepared by San Luis Obispo (SLO) County Planning and Building, which included only subdividing (paper record) for the purpose of building residences, and widening existing roads. The Mitigated Negative Declaration and the accompanying Resource Conservation District (RCD) report state that the land is extremely vulnerable to erosion and that land disturbance would result in sedimentation to Huer Huero Creek. The RCD recommended sediment and erosion control measures be used throughout the project area. The project proponent did not implement the Conditions of Approval required by the Mitigated Negative Declaration, including explicit requirements for erosion and sediment controls on roadway grading.

The Mitigated Negative Declaration says site slopes average 30%. The Pierson Storm

Water Pollution Prevention Plan (SWPPP) describes the site as “generally hilly, with slopes in excess of 30%”. The RCD report says the slopes range from 30% to 75%. The Central Coast Water Quality Control Plan (Basin Plan) prohibits disturbance of slopes greater than 30% unless an erosion and sediment control plan is developed and “will be enforced” (Section VIII.E.1). The RCD provided recommendations for the CEQA-approved project, described as “subdividing 675 acres of land into 5 separate parcels, and constructing an all-season road to access them.” The RCD report did not consider a clearing project of the magnitude that was conducted on the Pierson property. According to Keith Miller, SLO County Environmental Division, and Harley Voss, SLO County Code enforcement, the planner overseeing the CEQA process is responsible for seeing that the erosion and sediment control plan is followed. It appears that the planner did not verify that the required erosion and sediment mitigation measures were implemented. The County did not initiate any enforcement for CEQA violations (although the County did open an enforcement case for illegal road grading).

Regional Board staff conducted multiple site visits with the site owner’s representative, issued four Notice of Violation letters, and two Cleanup and Abatement Orders for violations including lack of sediment and erosion controls. The site was seeded, and appeared to be relatively vegetated and stable by September 19, 2003.

## **CONCLUSION REGARDING PIERSON SITE**

The evidence points strongly toward the conclusion that the Pierson site was, at all times, intended to be subdivided and cleared for home sites and future construction. Pierson obtained a Storm Water General Construction Permit after initial land disturbance, yet later claimed that the site was intended for agricultural purposes.

Pierson had been made aware of the highly erodible nature of the soils, and the potential for sediment discharge into Huer Huero Creek. Pierson was informed of the sediment and erosion control requirements (per Mitigated Negative Declaration Conditions of Approval, and later per Storm Water Construction Permit) for land disturbance at the site, but did not implement those controls. The result was extensive erosion, and sediment deposition into Huer Huero Creek and its tributaries. Huer Huero Creek is a sand-bottom, meandering stream system with vegetation tenuously established on the stream banks and bottom. Sediment deposited in the creek system from the site has buried existing vegetation and could, in all likelihood, be remobilized in future flow events until vegetation reestablishes itself. Despite the impact of the sediment in the stream system, staff believes removing the sediment would be more detrimental overall, due to the impact to the stream bed and banks during the sediment removal process. The current condition of the land does not further threaten water quality.

Past events indicate a high degree of culpability by Pierson, and Regional Board staff could pursue an Administrative Civil Liability for past violations (e.g. Basin Plan violations).

## **SUMMARY OF KELEGIAN SITE**

Land disturbances at the Kelegian property included grubbing (removal of brush) and clearing the land of all vegetation across approximately 50% of the 412-acre site (according to the Notice of Intent). Subsequent rain events caused widespread erosion and sediment deposition in Huer

Huero Creek and its tributaries. Regional Board staff has recently inquired as to whether a CEQA document was prepared for the Kelegian project from SLO County staff. As of this writing, no definitive answer has been provided.

The Kelegian site is nearly identical in slope (at least 30%) and soil types (highly erodible) to the Pierson site. The Kelegian and Pierson sites are contiguous and have no obvious geologic or other natural features to distinguish one site from the other.

Regional Board staff conducted multiple site visits with the site owner's representative, issued one Notice of Violation letter, one Administrative Civil Liability Complaint, and one Cleanup and Abatement Order for violations including lack of sediment and erosion controls. The Regional Board legal counsel recommended withdrawing the Administrative Civil Liability due to a new understanding of the Storm Water General Construction Permit. A second ACL was written and prepared for mailing on March 27, 2003. The second ACL was intended to rescind the first, however, the second ACL was never sent (the first ACL needs to be formally withdrawn). The site was seeded, and appeared to be relatively vegetated and stable by September 19, 2003.

## **CONCLUSION REGARDING KELEGIAN SITE**

Based on the information provided by an olive tree consultant (see below), Regional Board staff conclude that the Kelegian property was cleared, at least in part, in preparation for future home construction. The evidence is not substantiated by written documentation. The site is currently being leased for cattle grazing, and was fenced by the lessee. It is evident, however, that land clearing led to widespread erosion and sedimentation into Huer Huero Creek and its tributaries during the 2002-2003 rainy season. As stated above in the Pierson conclusion, Regional Board staff does not believe that the benefits of removing the excess sediment from the creek and tributaries, outweighs the impacts that will result from the removal process.

**ADDITIONAL INFORMATION,  
APPLICABLE TO BOTH SITES**

A representative for Pierson, and through context of conversation, also for Kelegian, contacted an olive grower and requested a proposal for purchase and installation of a low density of olive trees; The grower stated that the low density, and “huge spaces between the trees” was desirable because the trees were intended for aesthetics, rather than olive oil production. Soil samples were not provided to the consultant putting together the olive tree order. The landowner did not, and still does not, know an existing groundwater well’s safe yield, therefore an irrigation system was never designed. The site representative stated that they did not pursue growing olive trees with the grower, or any other consultant.

Without an in-depth investigation, it is difficult to predict the volume of erosion that may have left either site and entered the Huer Huero Creek or its tributaries. Regional Board staff spoke at length with RCD staff regarding this issue. RCD staff summarized that it was highly reasonable to expect there would have been “one to two orders of magnitude of increased soil loss” given the land clearing, as “compared to the native setting”.

Regional Board staff know the sites were cleared of vegetation prior to the August 20, 2002 Highway 58 fire, and the August 2003 CAO’s issued to each site indicate that the sites were still without erosion controls and a threat to water quality at that time. Days of actual discharge are unknown. Potential discharge periods could be correlated with months when rainfall was recorded at the Paso Robles airport (NOAA station, data available on the website. Assume one-day discharge for each month rainfall was measured.).

Soil loss models (USLE or Russell 2) are available, and are useful for comparing expected erosion from sites given differing land use scenarios (in this case: native land cover versus bare soil). The soil loss models require detailed information on slope lengths and runs, native vegetation percent cover, soil type, rainfall events, and infiltration rates. This information can be obtained or

reasonably estimated, and staff is available to pursue this option if needed. One caveat regarding the soil loss models is that they have been designed and calibrated based on agricultural practices. The clearing operations done on the Pierson and Kelegian properties were likely not done using agriculture equipment, thus the resulting soil characteristics may not mirror those on agriculture lands, and the soil models may not yield as precise a prediction of soil erosion rates or volumes.

**RECOMMENDATION FOR BOTH SITES**

Regional Board staff has pursued informal (Notice of Violation letters, site visits, etc.) and formal enforcement (Cleanup and Abatement Orders and an Administrative Civil Liability), which prompted additional work on both sites, with a satisfactory end result in the land condition at both sites. The current condition of both properties does not threaten water quality. Staff believes that further enforcement for past violations could be merited at both sites. Staff concurs with comments at the October board meeting that the agricultural exemption from NPDES permit requirements cannot be used as a shield for construction activities. However, staff time is limited due to the current budget status, so the Board should consider whether these sites warrant allocation of additional staff resources to pursue further enforcement. The Board may direct staff to pursue additional enforcement (the only additional enforcement would likely be an Administrative Civil Liability). The extensive “informal” and “formal” enforcement actions already taken have prompted the additional work necessary to protect water quality. Staff believes this outcome is an adequate conclusion to these cases.

**ATTACHMENTS**

1. Summary of Kelegian Activities.
2. Summary of Pierson Activities.
3. December 12, 2003 letter from Jeffrey J. Emrick with attachments. Regarding Goldie Lane Property.

4. December 12, 2003 letter from William S. Walter. Regarding Pierson Property.
5. December 12, 2003 letter from Jeffrey J. Emrick, regarding Kelegian Property.

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