

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF December 2, 2004**

Prepared on November 10, 2004

**ITEM: 4**

**SUBJECT: Administrative Civil Liability Order No. R3-2004-0110; David Pierson**

**KEY INFORMATION**

Discharger: David Pierson  
Location: Creston, San Luis Obispo County  
Discharge Type: Non-Point Source (sediment)  
Existing Order: None

**SUMMARY**

David Pierson (hereafter Discharger), owner of land in the Creston area, is alleged to have violated Prohibitions of the California Regional Water Quality Control Board (Regional Board) for which the Regional Board may impose civil liability pursuant to California Water Code 13350.

The Discharger disturbed severe erosion hazard soils resulting in the discharge of eroded sediments to waters of the state.

On July 16, 2004, the Regional Board Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R3-2004-0110 in the amount of twenty-five thousand five hundred dollars (\$25,500).

**DISCUSSION**

**Background**

The Discharger is the owner of 635 acres of land in the Creston area of San Luis Obispo County. The specific location is Section 36, Township 28 South, Range 14 East, Mount Diablo Base, and Meridian (35° 27' - Latitude, 120° 25' - Longitude).

The property has on occasion been referred to as Goldie Lane Properties, and Huerhuero Ranch.

During the summer of 2002, the Discharger altered approximately 39 of the 635 acres by removing most of the vegetation, constructing a 1330-foot dirt road, and reestablishing an existing dirt road. The altered 39-acre area will hereafter be referred to as the Site.

The Site drains to an unnamed "blue line" stream that is tributary to Huerhuero Creek, both of which are waters of the state. Huerhuero Creek is tributary to the Salinas River. The Water Quality Control Plan, Central Coast Basin-Region 3 (Basin Plan) designates both recreation and aquatic life as beneficial uses of the blue line stream, among other uses and the beneficial uses of Huerhuero Creek to include municipal and domestic water supply, agricultural supply, ground water recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, rare, threatened, or endangered species, and commercial and sport fishing.

The Discharger disturbed soils on the Site by removing vegetation without completing soil-disturbing activities by implementing any effective Best Management Practices (BMPs) to prevent soil erosion and the discharge of sediments to waters of the state. The Discharger failed to stabilize soils for a period of at least 185 days, from September

1, 2002, when removal of vegetation was completed, until at least March 4, 2003, when Regional Board staff documented that the soils were partially stabilized. The precise time in which the soils became extensively stable is unknown because on March 4, 2003, soils were still eroding and being discharged to state waters. The next inspection wasn't until September 19, 2003, and at that time the soils were considered extensively stable.

On November 8, 2002, December 20, 2002, and February 3, 2003, Regional Board staff witnessed and documented discharges of eroded soil from the Site to waters of the state.

**History of Regional Board inspections, correspondence, and enforcement actions and Discharger's failure to stabilize soils, which caused discharges to surface water**

August 23, 2002 - In response to the Discharger's proposal to subdivide the Site, the County of San Luis Obispo issued a Mitigated Negative Declaration & Notice of Determination that included a Supplemental report by the Resource Conservation District. The documents (included in Attachment A) make numerous referrals to the erodible nature of the Site due to the soil type and steep terrain, and also reference the need to provide erosion and sedimentation controls in order to protect Huerhuero Creek and unnamed "blue line" streams. The Discharger later apparently quit pursuing approval for the subdivision, however the documents were still relevant as a source of information and guidance for the Discharger concerning the high erosion hazard at the Site and any activity involving land disturbance.

September 20, 2002 - Regional Board staff inspected the Site and found that it had been grubbed of all vegetation, and was without any form of erosion and sedimentation controls. A consultant, representing the discharger, stated that the grubbed areas would be seeded to prevent erosion. Staff told the consultant that seeding alone would likely not be adequate and additional erosion and sediment controls were necessary.

October 10, 2002 - A letter (included in Attachment A) from Regional Board staff was sent to the Discharger confirming the findings of the

September 20, 2002 inspection and reiterating the concern for the lack of erosion and sediment controls, and the need for more than the proposed seeding. The letter stated, "applying seed alone is not a sufficient erosion control measure. Established vegetation is a means of erosion control; thus seed must be nurtured into vegetation before runoff occurs to be effective erosion control." This statement explained to the Discharger what comprised the Best Management Practice for soil stabilization using seeding, a BMP that the Discharger's consultant said they planned to implement. Potential Regional Board enforcement actions were discussed, and the Discharger was told to submit a detailed erosion and sedimentation control plan by October 21, 2002.

October 17, 2002 - Regional Board staff sent a letter (included in Attachment A) to the discharger that addressed errors in the October 10<sup>th</sup> letter, and extended the deadline for submitting the erosion and sedimentation control plan until October 25, 2002.

October 22, 2002 - Staff of the Regional Board received the erosion and sedimentation control plan.

November 8, 2002 - Regional Board staff inspected the Site and found that even though it was raining there were no erosion and sedimentation controls in place. This was contrary to the promise by representatives of the Discharger to have erosion and sediment controls in place prior to any rains. Extensive erosion was occurring, and eroded sediments from the Site were being conveyed by storm water to the unnamed "blue line" stream.

November 12, 2002 - Regional Board staff sent a letter (included in Attachment A) to the Discharger telling him that the referenced erosion and sedimentation control plan was inadequate and again explained that seeding alone would not be effective in preventing erosion, that additional erosion controls would have to be implemented. This letter reiterated that "Established vegetation is a means of erosion control; thus, the seed must be nurtured into vegetation before runoff occurs to be effective erosion control." The letter continued, "Additional erosion control measures must be implemented to avoid widespread erosion and

sediment loss, and to reduce potential surface water impacts.”

A staff review sheet regarding the plan was provided with instructions to address all noted inadequacies and to have a revised erosion and sedimentation control plan at the Site for review.

November 25, 2002 - Notice of Violation (included in Attachment A) from Regional Board staff was sent to the Discharger confirming the findings of the November 8, 2002 inspection, including photographs depicting extensive erosion and threatened impacts on receiving waters. The Discharger was told that he had failed to provide effective erosion and sedimentation controls, and was reminded of the possibility of the Regional Board imposing monetary civil liability.

December 20, 2002 – Regional Board staff inspected the Site and found it lacking effective erosion and sedimentation controls, and there was evidence that eroded sediments had entered the unnamed “blue line” stream and flowed to Huerhuero Creek.

January 23, 2003 – The Regional Board Executive Officer issued Cleanup and Abatement Order No. R3-2003-0021 to the Discharger for failing to provide effective erosion and sedimentation controls, and discharging pollutants to state waters.

February 3, 2004 – Staff of the Regional Board inspected the Site and found that although some improvements had occurred, the erosion and sedimentation controls were incomplete; a violation of Order No. R3-2003-0021.

February 13, 2003 – In Response to Order No. R3-2003-0021 a consultant, on behalf of the Discharger, submitted a revised erosion and sedimentation control plan.

February 21, 2003 – Staff of the Regional Board sent a Notice of Violation (included in Attachment A) to the Discharger for not complying with Order No. R3-2003-0021 by failing to provide effective erosion and sedimentation controls, and failure to submit a complete erosion and sedimentation control plan. The Discharger was reminded of the possibility of the imposition of monetary civil liability.

February 28, 2003 – Staff of the Regional Board inspected the Site and found it lacked erosion controls, widespread erosion had occurred, and sediment controls that had been overwhelmed with sediments.

March 7, 2003 - Staff of the Regional Board sent a letter (included in Attachment A) to the Discharger’s consultant in response to letters dated February 25, 2003, and March 3, 2003, from the Discharger’s consultant. The letters from the consultant (included in Attachment A) in part dispute the presence of evidence of erosion reaching receiving waters, and claim effective erosion controls are in place. The letter from the Regional Board staff references existing correspondence sent to the consultant and the Discharger that document the lack of adequate erosion and sediment controls, and the resulting discharge of sediments to state waters.

March 11, 2003 – Regional Board staff sent the Discharger a Notice of Violation (included in Attachment A), with descriptive photographs, confirming the findings of the February 18, 2003, inspection. The Discharger was told to submit a revised erosion and sedimentation control plan.

March 17, 2003 – The Executive Officer for the Regional Board issued Cleanup and Abatement Order No. R3-2003-0062, and rescinded Cleanup and Abatement Order No. R-3-2003-21. The intent of the Cleanup and Abatement Orders was to bring about stabilization of Site soil and eliminate discharges to state waters. The related transmittal letter (included in Attachment A) with descriptive photographs made reference the findings of the February 28, 2003 inspection, and reminded the Discharger of the possibility of the imposition of monetary civil liability. Following the issuance of the second order rains diminished. A September 19, 2004 Regional Board staff inspection found the grubbed areas of the Site revegetated, for the most part, stable and no longer susceptible to erosion. Therefore, Order No. R-3-2003-0062 was not violated.

April 1, 2004 – Regional Board staff prepared an Internal Memo titled “Assessment of Sediment Conditions and Possible Impacts to Beneficial Uses from Sediment on the Kelegian and Pierson Properties” (included in Attachment A). This

memo was taken into account in determining the amount of the assessed liability.

by the Executive Officer of the Regional Board.

### Basin Plan Prohibitions and Violations

The referenced disturbed soils and related discharges were in violation of Prohibitions contained in the Water Quality Control Plan for the Central Coast Region (Basin Plan), Chapter 4., Implementation Plan. The violated Prohibitions are as follows:

#### First Prohibition Violated

#### VIII.E.1. LAND DISTURBANCE PROHIBITIONS

Soil disturbance activities not exempted pursuant to Regional Board Management Principles contained in Chapter Five are prohibited:

3. On soils rated a severe erosion hazard by soil specialists (as recognized by the Executive Officer) where water quality may be adversely impacted;

Unless,

- a. In the case of agriculture, operations comply with a Farm Conservation or Farm Management Plan approved by a Resource Conservation District or the USDA Soil Conservation Service;
- b. In the case of construction and land development, an erosion and sediment control plan or its equivalent (e.g., EIR, local ordinance) prescribes best management practices to minimize erosion during the activity, and the plan is certified or approved, and will be enforced by a local unit of government through persons trained in erosion control techniques; or,
- c. There is no threat to downstream beneficial uses of water, as certified

### Explanation of First Prohibition Violation

The Discharger violated this Prohibition because he disturbed soils rated a severe erosion hazard by soil specialists recognized by the Executive Officer, where water quality may be adversely impacted and failed to complete soil disturbing activities by implementing BMPs. The Executive Officer recognizes the Resource Conservation District (RCD) and the United States Department of Agriculture, Soil Conservation Service, presently known as United States Department of Agriculture, Natural Resources Conservation Service (NRCS) as being entities that specialize in evaluating soils and determining if soils are a severe erosion hazard. This recognition is supported by the specific reference to both agencies in the Land Use Disturbance portion in the Basin Plan, Chapter 4. Implementation Plan.

The NRCS co-produced the "Soil Survey of San Luis Obispo County, California – Paso Robles Area" (Soil Survey). In summary, the Soil Survey describes the area of the Site as hilly with steep to very steep slopes of 30 – 75 %, and having coarse sandy loam soils of 6 – 12 inches overlying weathered granite rock. Surface runoff is very rapid, and the hazard of erosion is very high. The Soil Survey also references the soil as being "fragile and any disturbance can cause severe erosion". Additionally, in August 2001 the RCD performed a study that included the Site (RCD Report). The RCD report not only identified the severe soil erosion hazard at the Site but also noted that runoff of eroded soils from the Site could adversely affect water quality. Regional Board staff visiting the Site also determined there was a severe erosion hazard that could adversely affect water quality. Sediment discharges adversely affect water quality and unreasonably affect beneficial uses by causing excess turbidity, burying riparian vegetation, impairing flow and by covering creek bottoms. Increased turbidity, vegetation destruction and sedimentation can deplete food and habitat availability to zooplankton, insects, freshwater mollusks, and fish.

The three exemption criteria (a., b., and c. in allegation 5.) associated with the prohibition are

not applicable because (a.) the Discharger never filed a farm plan with or received approval from the RCD or the NRCS, (b.) the land disturbance was not related to construction or land development and was not subject to an erosion control plan that was enforced by a local government, and (c.) no certification regarding threat to beneficial uses was applied for or issued by the Executive Officer.

Regional Board Management Principles in Chapter Five of the Basin Plan contain exemptions that are referenced in the Land Disturbance Prohibitions. The exemptions are as follows:

- Emergency projects undertaken or approved by a public agency and necessary to prevent or mitigate loss of, or damage to, life, health, property, or essential public services from an unexpected occurrence involving a clear and imminent danger are exempt from this chapter providing such exemption is in the public interest.
- Regulation of sediment discharges from routine annual agricultural operations, such as tilling, grazing, and land grading and from construction of agricultural buildings is waived except where such activity is causing severe erosion and causing, or threatening to cause, a pollution or nuisance.
- Regulation of discharges from State and Federal lands managed by agencies operating in accordance with approved management agency agreements is waived except where such activity is causing, or threatening to cause, a pollution or nuisance.

The Discharger's soil disturbance activities were not an emergency project, do not qualify as a part of a routine annual agricultural activity, and did not involve State or Federal lands. Therefore the referenced exemptions are not applicable.

The Discharger disturbed severe erosion hazard soils in violation of a Regional Board issued prohibition. The soils remained disturbed for at least 185 days (September 1, 2002 – March 4, 2003) during which time there were occasions when eroded soil sediments from the Site were discharged to waters of the state.

### **Second Prohibition Violated**

#### **VIII.1. LAND DISTURBANCE PROHIBITIONS**

The discharge or threatened discharge of soil, silt, bark, slash, sawdust, or other organic and earthen materials into any stream in the basin in violation of best management practices for timber harvesting, construction, and other soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses is prohibited.

#### **Explanation of violations of second Prohibition**

The Discharger discharged and threatened discharge of soil, silt, and other organic and earthen materials into the blue line stream and Huerhuero Creek in violation of best management practices for soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses. The Discharger violated this prohibition by removing most all vegetation from a Site that has a severe erosion hazard, without implementing effective BMPs to eliminate or minimize erosion and sediment discharges. Regional Board staff in letters and in person had instructed the Discharger as to correct implementation of soil stabilization BMPs and the Discharger did not follow that instruction.

#### **CIVIL LIABILITY**

##### **Recommended Liability**

After considering factors specified in California Water Code Section 13327, the Regional Board Executive Officer recommended a liability of twenty-five thousand five hundred dollars (\$25,500).

### Maximum Liability

Pursuant to California Water Code Sections 13350(e)(1), the Regional Board may impose civil liability up to \$5,000 per day for each day each violation occurs. The Discharger violated two Basin Plan prohibitions for a total of at least 185 days each. The maximum liability that may be imposed is \$925,000 (nine hundred twenty-five thousand dollars) per violated prohibition. The total Maximum Liability that can be imposed for violating both prohibitions is \$1,850,000 (one million eight hundred fifty thousand dollars).

In determining the amount of civil liability the California Water Code requires the Regional Board consider the following factors as specified in Section 13327:

- nature, circumstances, extent, and gravity of the violations
- discharge susceptibility to cleanup or abatement
- discharge toxicity
- ability to pay and the effect on ability to continue in business
- voluntary cleanup efforts undertaken
- violation history
- degree of culpability
- economic benefit or savings (if any), and
- other matters as justice may require.

Staff considered these factors when drafting the complaint and staff's analysis is set forth in the complaint. It is also set forth in the draft Order recommended for the Board's adoption with one change. That change is under the category of other matters as justice may require and addresses the correspondence submitted on behalf of Discharger regarding amounts the Discharger allegedly spent for erosion controls at the site.

### Minimum Liability

California Water Code Section 13350(e)(1) has no minimum liability provision that is applicable in this matter.

### ACTIVITIES FOLLOWING ISSUANCE OF COMPLAINT NO. R3-2003-0110

July 26, 2004 – Regional Board staff received a letter dated July 23, 2004, from the discharger's attorney requesting a copy of the complete Regional Board file as it pertains to this matter.

On or about August 12, 2004 – Staff, of the Regional Board provided the Dischargers attorney with a copy of the Regional Board files that pertain to this matter.

August 20, 2004 – The counsel for the Regional Board received a letter from the attorney for the Discharger waiving the Discharger's right to have a hearing within ninety days of the issuance of Complaint No. R3-2004-0110, and asking that the hearing be continued until December 3, 2004.

August 12, 2004 – Counsel for the Regional Board sent a letter to the Discharger's attorney granting the request for a continuation of the hearing until December 3, 2004.

October 22, 2004 – The Discharger's attorney submitted a letter (included in Attachment B) to Regional Board staff that summarized expenses totaling \$82,616.94. There were no invoices, receipts, or any other similar documents submitted to support or substantiate the claimed expenses. The letter in part states, "Mr. Pierson has reviewed his expenditures in trying to meet the requirements of your staff. The following information for your review is submitted in mitigation of the proposed penalties:" "In view of the extent to which money was expended to comply with your staff's requests, Mr. Pierson feels that the arbitrary fine is unwarranted. In behalf of our clients, we respectfully request that you review the basis for your stated fine, as I believe it is unwarranted or at least excessive." Discharger's suggestion that these expenditures cure or invalidate his liability are incorrect. The violations of the prohibition are based on the disturbance of 39 acres of highly erosive soils and failure to implement effective Best Management Practices to stabilize the

disturbed soils and discharge of soils to surface waters. Accepting the argument that Discharger spent a lot of money after the initial soil disturbance might affect Dischargers economic savings, it does not invalidate the fact that the Discharger violated the Prohibitions. Regardless of the amount spent, it never resulted in effective erosion and sedimentation controls. The eventual stabilization of Site soil in the Spring of 2003, was probably as much the result of naturally occurring revegetation, as it was the establishment of vegetation from the aerial seeding that was initiated in the Fall of 2002, since due to a lack of erosion control, rains would have washed away much of the seed.

### **RECOMMENDATION**

Regional Board staff recommends assessment of \$25, 500 (Twenty Five Thousand Five Hundred Dollars) for the Dischargers violations of two Basin Plan Prohibitions from September 1, 2002 through March 3, 2003.

### **ATTACHMENTS**

- A. 8/23/02 Resource Conservation District Report
- 10/11/02 Regional Board staff letter
- 10/17/02 Regional Board staff letter
- 11/12/02 Regional Board staff letter
- 11/25/02 Regional Board staff letter
- 2/21/03 Regional board staff letter
- 3/7/03 Regional Board staff letter, and related letters from the Dischargers consultant
- 3/11/03 Regional Board staff letter
- 3/17/03 Regional Board staff letter
- 4/1/04 Regional Board staff Internal Memo
  
- B. 10/22/04 letter from Dischargers attorney
  
- 1. Administrative Civil Liability Complaint No. R3-2004-0110
  
- 2. Administrative Civil Liability Order No. R3-2004-0110