

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2015-0740

ISSUED TO

SOPER FAMILY 2004 TRUST
LAKE COUNTY

This Order is issued to the Soper Family 2004 Trust pursuant to Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue Cleanup and Abatement Orders, and Water Code section 13267, which authorizes the Board to require the submittal of technical and monitoring reports.

The Assistant Executive Officer of the Central Valley Water Board finds that:

1. The Soper Family Trust (hereafter Discharger) is the owner of three parcels in Lake County (APN 009-019-05, 009-019-06, and 009-020-13) (collectively, the "Property"). The Property previously contained a walnut orchard, which was removed in winter of 2014/15 with stumps left in place. There is no cover crop or other well-established vegetation cover. The Property has a steep grade with drainage to Clear Lake. APN 009-019-05 and 009-019-06 extend to the edge of Clear Lake, while APN 009-020-13 does not, but is immediately uphill.
2. On 16 June 2015, the Lake County Department of Water Resources notified Central Valley Water Board staff of erosive activities at the Property and expressed concerns about site conditions that had already led to sediment-laden discharges and deposition on the road downslope of the Property. On 24 August 2015, Board staff inspected the Property from surrounding roads and concluded there was potential for erosion and sediment impacts to Clear Lake. The Board's Inspection Report is attached hereto as Attachment A, incorporated by reference.
3. Sediment, when discharged to waters of the state, constitutes as a "waste" as that term is defined in Water Code section 13050. Due to the sloped topography and exposed nature of the disturbed soil at the Property, there is a risk of significant erosion and sediment runoff and discharge into Clear Lake, if adequate mitigation practices are not installed prior to rain events.
4. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (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 Resources Control Board.
5. The beneficial uses of Clear Lake, as identified in Table II-1 of the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; spawning, reproduction, and/or early development of aquatic organisms; and wildlife habitat.
6. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on increased temperature, sediment, settleable and suspended material, and turbidity.

7. Water Code section 13304(a) states, in relevant part, that:

Any person who ... 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.

There is a significant probability that the Discharger's walnut orchard removal activities, conducted on sloped topography, will result in the discharge of wastes to surface waters, which will create, or threaten to create, a condition of pollution or nuisance. Two of the three parcels extend to the edge of Clear Lake, with a vegetated area adjacent to the lake. All three parcels drain to the lake. In its present condition, with the magnitude of the slope and spatial extent of the cleared areas, the Site has significant potential to have increased runoff and erosion, and to discharge sediment into Clear Lake during the next rain event. Site conditions, and their potential to discharge sediment into surface waters, are described in the Board's Inspection Report (Attachment A).

8. Water Code section 13267(b)(1) states, in relevant part, that:

In conducting an investigation ... 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 ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.

The technical reports required by this Order, including a Sediment and Erosion Control Plan and a Completion Report, are necessary to ensure that the Discharger will implement appropriate measures to protect waters of the state and to verify that those measures were installed. These reports would ordinarily be prepared before conducting any activities to ameliorate significant threats to water quality, even if such activities were not mandated by the Central Valley Water Board. As such, the burden of preparing the report bears a reasonable relationship to the benefits of such reports, which include the protection of watercourses utilized for recreation, freshwater habitat, and the spawning, reproduction, migration and/or early development of aquatic organisms, all of which could be impacted by sediment discharges from the Property. The Discharger is hereby being required to submit these reports because it is the owner of the Property and is responsible for the grading activities conducted at the Property.

9. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Central Valley Water Board as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup and restoration activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed remedial activities and possible associated environmental impacts. **To the extent that the Order requires earth disturbing and re-vegetation activities exceeding five acres in size, and to assure restoration of stream and lake habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333.** If the Board determines that implementation of any plan required by this Order will have a significant effect on the environment

that is not otherwise exempt from CEQA, the Central Valley Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The Discharger will bear the costs, including the Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handing any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

IT IS HEREBY ORDERED THAT, pursuant to Water Code sections 13267 and 13304, Soper Family 2004 Trust shall:

1. Immediately take all actions to prevent the discharge of sediment and other wastes to waters of the state, including but not limited to Clear Lake.
2. Immediately clean up and abate conditions which threaten to cause or permit wastes (soil and sediment) to be discharged or deposited to waters of the state, including Clear Lake. The Discharger shall comply with this directive in accordance with the following schedule:
 - (a) The Discharger shall immediately begin implementing best management practices for soil stabilization and erosion control.
 - (b) By **31 October 2015**, the Discharger shall submit a ***Sediment and Erosion Control Plan*** to the Central Valley Water Board for approval by the Assistant Executive Officer.
 - i. The *Sediment and Erosion Control Plan* shall describe all actions that the Discharger has taken to stabilize soil and to implement erosion control measures, and shall describe all additional actions that shall be undertaken by the Discharger to stabilize the Property to prevent future discharges of sediment and all other wastes.
 - ii. The Plan shall include an implementation time schedule for the additional work that shall not extend beyond **30 November 2015**.
 - iii. The *Sediment and Erosion Control Plan* shall contain contingency plans that describe how the Discharger will clean up or mitigate any sediment discharges to surface waters, should they occur, and shall include timelines for long-term monitoring to assess the effectiveness of the sediment and erosion control efforts.
 - (c) By **20 December 2015**, the Discharger shall submit a ***Completion Report*** to the Board for approval by the Assistant Executive Officer describing how the Sediment and Erosion Control Plan has been implemented. The *Completion Report* shall include photos showing the management practices that have been implemented for erosion and sediment control.
3. The *Sediment and Erosion Control Plan* and *Completion Report* shall be written, amended, and certified by a qualified professional possessing one of the following registrations or certifications, and appropriate experience with erosion issues: California registered professional civil engineer, geologist, engineering geologist, or landscape architect; NRCS Certified Conservation Planner; professional hydrologist registered through the American Institute of Hydrology; certified soil scientist registered through the American Society of Agronomy; Certified Professional in Erosion and Sediment Control (CPSEC)TM/Certified Professional in Storm Water Quality (CPSWQ)TM

registered through EnviroCert International, Inc.; or a professional in erosion and sediment control registered through the National Institute for Certification in Engineering Technologies (NICET).

4. 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."

5. All monitoring and technical reports required under this Order shall be submitted to:

California Regional Water Quality Control Board, Central Valley Region
Attn: Rajmir Rai
Nonpoint Source, Planning and Assessment Unit
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

6. If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the due dates set forth in order paragraph 2, above, or in compliance with any work time schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Discharger may request an extension of the time specified. The extension request shall be in writing and include justification for the delay. The Discharger shall submit any extension request as soon as the situation is recognized and no later than the compliance date. An extension may be granted by revision of this Order or by letter from the Assistant Executive Officer. Extension requests not approved in writing by the Assistant Executive Officer with reference to this Order are denied.

If, in the opinion of the Assistant Executive Officer, the Discharger fails to comply with the provisions of this Order, the Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability of up to \$5,000 per violation, per day, pursuant to Water Code sections 13350 or 13268. Actual unauthorized discharges may subject the Discharger to liability up to \$10,000 per violation, per day, and \$10 per gallon discharged over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

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 Water Code 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.

This Order is effective upon the date of signature.

Original signed by:

ANDREW ALTEVOGT, Assistant Executive Officer

5 October 2015

(Date)

Attachment: 24 August 2015 Inspection Report

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Inspection Report

INSPECTION DATE:	24 August 2015
LOCATION & COUNTY:	7405 Soda Bay Road, Kelseyville, Lake County (Clear Lake Watershed) APN 009-019-05, 009-019-06, and 009-020-13
SITE TYPE:	Private land
INSPECTED BY:	Rajmir Rai, Holly Grover, Michelle Wood, and Terry Bechtel Central Valley Water Board
REPORT DATE:	10 September 2015
PREPARED BY:	Rajmir Rai

INTRODUCTION

On 24 August 2015, Central Valley Water Board staff (Staff) visited a property (APN 009-019-05, 009-019-06, and 009-020-13) located at 7405 Soda Bay Road, Kelseyville, in the Clear Lake Watershed in Lake County. The property is owned by the Soper Family 2004 Trust, and is herein referred to as the Soper Property. The Soper Property is immediately uphill of Clear Lake and is intersected by Soda Bay Road, a county road.

The purpose of this site visit was to follow up on a complaint that walnut orchard removal activities on the Soper Property uphill (south) of Soda Bay Road resulted in extensive bare dirt, soil erosion, and sediment-laden discharges from the Soper Property that deposited material on Soda Bay Road during storm events in 2014 and 2015. The complainant submitted photographs and video documenting the sediment-laden discharges and material deposited from the Soper Property to Soda Bay Road. In addition, the complainant stated that walnut orchard removal activities on the Soper Property downhill (north) of Soda Bay Road (on the lake side of the property) have continued with no erosion controls (e.g., no cover crop) and the property will experience erosion and discharge sediments to Clear Lake during the next storm.

This site visit marked the first inspection by Water Board staff of this area and served as a preliminary inspection of both the Soper Property and adjacent properties in the Clear Lake watershed to determine potential contributors to sediment-laden discharges.

OBSERVATIONS AND COMMENTS

To first view the Soper Property, Staff walked along Soda Bay Road, a public right of way. In addition, Staff drove west on Soda Bay Road and navigated public roads uphill in an attempt to assess potential contributors to sediment-laden discharges. Staff drove south on Marina View Drive and then east on Riviera Heights Drive. Staff observed the area uphill and downhill of Riviera Heights Drive and then proceeded north on Eastridge Drive and west on Evergreen Drive, a loop road. After observation of properties surrounding Evergreen Drive, Staff identified the Soper Property to likely be the largest single potential contributor to sediment-laden discharges.

Staff took photos of the Soper Property from Marina View Drive (photos 1 and 3) and from Soda Bay Road (photos 2, 4, 5, 6, 7, and 8). Several acres of the Soper Property north and south of Soda Bay Road consisted of bare ground and tree stumps, with no cover crop or other well-established vegetation cover. There were very few and inadequately installed Best Management Practices (BMPs) (e.g. straw wattle in photo 5 and silt fences in photos 6 and 8). There was evidence of soil erosion along the edge of the property adjacent to Soda Bay Road (photo 4), an indication of ineffective or inadequate BMPs. In contrast, the grounds of neighboring properties visible from public roads were vegetated.

Staff did not observe any stormwater runoff originating from the Soper Property at the time of inspection; this finding is not unexpected given no rain occurred on 24 August 2015 or preceding days. However, Staff observed evidence of soil erosion from prior runoff. In addition, Staff observed inadequate and ineffective BMPs in place to prevent potential stormwater runoff and soil erosion associated with walnut orchard removal activities. Based on this inspection, Staff recommends contacting the property owners to request improved BMP installation and/or installation of additional BMPs to prevent further soil erosion. Staff also recommends having a discussion with Central Valley Water Board management to determine if enforcement should result from this inspection.

SUMMARY:

- After observation of the Soper Property and neighboring properties visible from public roads, Staff identified the Soper Property to likely be the largest single contributor to sediment-laden water discharges that deposited material on Soda Bay Road
- Staff identified areas of bare ground, soil erosion, and inadequate installation of BMPs, which indicates the property's susceptibility to potentially discharge sediment and associated pollutants into Clear Lake during a rain event
- Staff recommends contacting the property owners to request improved BMP installation and/or installation of additional BMPs to prevent further stormwater runoff and soil erosion
- Staff also recommends having a discussion with Central Valley Water Board management to determine if enforcement should result from this inspection.

Original signed by:

Rajmir Rai
Environmental Scientist
Nonpoint Source, Planning and Assessment Unit

Approved:	M.L. Wood	9/12/2015
-----------	-----------	-----------



Photo 1. View of the Soper Property from Marina View Drive on 24 August 2015. This view depicts the southwestern side of the property, which is the portion of the property furthest from Clear Lake.



Photo 2. Alternate view of the Soper Property south (uphill) of Soda Bay Road. This view from Soda Bay Road depicts a portion of the property closer to Clear Lake (and depicts an opposite view of Photo 1).



Photo 3. Another view of the southwestern portion of the Soper Property. This photo indicates that a portion of the property has been cleared and graded.



Photo 4. View of soil erosion features on the Soper Property uphill (south) of Soda Bay Road.



Photo 5. View of a straw wattle (indicated by yellow arrow), hay bales, and soil erosion features on the northeastern portion of the Soper Property downhill (north) of Soda Bay Road.



Photo 6. View of Clear Lake from Soda Bay Road. The yellow arrow indicates a failed silt fence on the Soper Property.



Photo 7. A view of Soda Bay Road on the left and the Soper Property on the right, downhill (north) of Soda Bay Road.



Photo 8. View of another failed silt fence on the northeastern portion of the Soper Property. This picture is taken from Soda Bay Road.