

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2015-XXXX  
FOR

CHRISTOPHER CORDES, JOHANN AND CARMEN ULRICH, EDDIE AXNER  
CONSTRUCTION INC., AND EDDIE AXNER

ASSESSOR PARCEL 041-300-035-000  
SHASTA COUNTY

This Order is issued to Christopher Cordes, Johann and Carmen Ulrich, Eddie Axner, and Eddie Axner Construction Inc. (hereafter collectively referred to as "Dischargers") based on provisions of Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board ("Regional Water Board") to issue a Cleanup and Abatement Order ("Order"), and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports.

The Assistant Executive Officer finds with respect to the Dischargers' acts, or failure to act, the following:

- Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharges of soil and rock into unnamed tributaries to Doby and Duckett Creeks, perennial tributaries of the North Fork of Cottonwood Creek which is a tributary to Sacramento River (Unnamed Tributaries) and eliminate the threat of future discharges. The Unnamed Tributaries are considered waters of the state, as well as, waters of the United States. (references hereafter to waters of the United States are inclusive of waters of the state)<sup>1</sup> The Dischargers graded watercourse channels and adjacent hillsides and filled waters of the United States from June 2013 to June of 2014, without authorization from applicable federal, state, and local agencies, including the Regional Water Board. The work was performed to create an area for a residence and to cultivate marijuana. This Order requires investigation and cleanup in compliance with the Water Code, the Basin Plan, Resolution 92-49, and other applicable Regional Water Board plans, policies, and regulations.
- Responsible Parties:** The Dischargers, as the property owner and/or persons discharging or creating a threat of discharge, are responsible parties for purposes of this Order. This

<sup>1</sup> The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those waters as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne Water Quality Control Act provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Water Code § 13260.) The term "water of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code § 13050(3).) All waters of the United States that are within the boards of California are also waters of the state for purposes of the Porter-Cologne.

Cordes' purchase, the Site was mostly undeveloped with only a firebreak. The firebreak was littered with abandoned cars and appliances along the ridgeline. The Site has no prior regulatory oversight or history with the Regional Water Board.

5. **Basis of Order:** The Discharger's activities detailed below created and/or threaten to create, conditions of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.
  - a. The natural topography of the Site is steep with 30 to 50 percent slopes. Soils on site are coarse sandy loams and coarse sandy silts, which are highly friable and erodible when disturbed, interpreted to be decomposed granite. There are numerous Class III (intermittent) watercourses and at least one Class II (aquatic life bearing) watercourse which begin on or adjacent to the Site, that discharge to Doby or Ducket Creeks, perennial tributaries to North Fork Cottonwood Creek.
  - b. On 7 October 2014, Mr. John Tomasello from the Shasta County Department of Resource Management alerted the Regional Water Board that a large grading project had been conducted without permits off of Baker Ridge Road, east of Rainbow Lake in Ono, Shasta County. The Regional Water Board was advised that this illegal grading, which included unpermitted road construction and terracing, was conducted to establish a large marijuana growing operation.
  - c. On 27 October 2014, Regional Water Board staff obtained an inspection warrant granting access to the Site. As documented in the attached 28 October Baker Ridge Inspection Report (Addendum, Appendix D), on 28 October 2014, Regional Water Board staff inspected the Site and observed several areas where significant amounts of sediment from graded surfaces on the Site had discharged to the Unnamed Tributaries of North Fork Cottonwood Creek. Specifically, Staff took photographs of a rill through dumped potting soil on the fill/side slope of the lower terrace leading directly to a watercourse and a photo of the perlite, a component of potting soil, entrapped on the banks of the watercourse. Staff also took photographic evidence of large scale rill erosion on the south and west fill/side slopes of the lower terrace.
  - d. During the 27 October 2014 inspection, Staff also found a recently or newly constructed road with an un-culverted, non-armored watercourse crossing that was constructed by placing more than 3,840 cubic feet of native rock and soil in a streambed and adjacent riparian areas. Staff also noted that the watercourse crossing located at the entrance to the property was in-sloped with no outlets. All storm water runoff from that section of the road discharges directly to the watercourse on the upstream side of the crossing. During the inspection, the crossing's culvert was more than 50 percent plugged and staff found areas along the banks of the watercourse where sediment from the road had discharged to the watercourse and a layer of sediment within the watercourse, 34 inches thick, directly below the discharge point.
  - e. On 19 November 2014, Regional Water Board staff conducted a follow up inspection of the Site (Follow Up Inspection) with permission from Mr. Cordes which was granted through his consultant as documented in the attached report (Addendum, 19 November Baker Ridge Inspection Report). During the Follow Up Inspection, the weather was cloudy with rain and there was evidence that it had rained overnight and that morning. Staff found another un-culverted, non-armored watercourse crossing that was constructed by placing more than 5,610 cubic feet of native rock and soil into a

element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

7. **Failure to Obtain Necessary Permits:** Central Valley Water Board staff determined that the grading and clearing activities at the Site occurred without coverage under any of the following regulatory permits:

- a National Pollutant Discharge Elimination System (NPDES) permit;
- a Clean Water Act (CWA) section 404 permit from the Army Corps of Engineers
- a CWA section 401 Water Quality Certification from the Regional Water Board;
- a Department of Fish and Wildlife Streambed Alteration Agreement; nor
- a grading permit from Shasta County.

8. **Clean Water Act Violations:** The Clean Water Act prohibits certain discharges of storm water containing pollutants except in compliance with a NPDES permit. Discharges to surface waters comprised of storm water associated with construction activity, including clearing, grading, excavation, and other land disturbance activities (except operations that result in disturbance of less than one acre of total land area and which are not part of a larger common plan of development or sale), are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 2009-0009-DWQ (General Permit). Furthermore, CWA section 404 requires any person proposing to discharge dredge or fill material into navigable water of the United States to obtain a Section 404 permit prior to such discharge. CWA section 401 requires that any person obtaining a Section 404 permit, obtain water quality certification from the State in which the discharge occurs.

- a. Staff documented multiple areas on the Site where sediment-laden storm water runoff from disturbed surfaces had discharged to the Unnamed Tributaries.
- b. The dischargers are responsible for approximately 3.8 acres of clearing, grading, excavation, and/or land disturbance on the Site.
- c. More than 9,450 cubic feet of fill material was placed in Unnamed Tributaries at two watercourse crossings on the Site.

9. **Water Code Violations:** The discharge of potting soil and sediment during clearing, grading and road construction activities, and the placement of fill into the Unnamed Tributaries to create watercourse crossings, are discharges of waste to waters of the state in violation of Water Code sections 13260<sup>2</sup> and 13376<sup>3</sup>.

<sup>2</sup> Pursuant to Water Code section 13260 (a)(1) "[a]ny person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge. The Regional Board has not received a 401 application or report of waste discharge for wastes discharged at the Site.

<sup>3</sup> Pursuant to Water Code section 13376 "[a]ny person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report need be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended."

perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic flora by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which concludes that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters. These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation of bottom dwelling (benthic) organisms. Sediment can also physically clog gills causing fish mortality; reduce reproduction; impair commercial and recreational fishing resources; increase water temperature, and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with "clean" sediment, sediment is also an excellent transport mechanism for toxics (i.e. metals and synthetic organics), which bind to sediment particles (REC-1, REC-2, WARM and WILD).

10. **Cleanup and Abatement Action Necessary:** Untreated storm water from property owned and/or operated by the Dischargers has discharged, and still has the potential to discharge, sediment and other wastes into Unnamed Tributaries. Erosion control measures implemented by the Dischargers have not and will not fully protect disturbed areas of the Site from further erosion. More than 9,450 cubic feet of fill material remains in Unnamed Tributaries to North Fork Cottonwood Creek. Cleanup and abatement action is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges from the Site are prevented, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board.
11. **Technical Reports Required:** Water Code section 13267(a) provides that the Regional Water Board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267 (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. 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 further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to surface waters and surface water drainage courses and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267(b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement clean up and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate the site from which waste was discharged, and thus are appropriately responsible for providing the reports.
12. **California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional 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

- a. An assessment of the impacts to the Unnamed Tributaries to Doby an Ducket Creeks, perennial tributaries of the North Fork of Cottonwood Creek from the unauthorized activities to be completed by the appropriate qualified professional, and must at a minimum, address channel hydrology, bank erosion, riparian habitat and loss thereof, channel and hillslope stability, and locations where fill material has been placed or discharged; and shall include aerial photographs and/or satellite images, photographs, reports, topographic maps or drawings, etc., of Site conditions prior to conducting the un-permitted activities. Assessment findings shall serve as the basis for the Restoration, Mitigation, and Monitoring Plan.
  - b. The RMMP shall include plans for Site restoration and proposed mitigation to restore beneficial uses by restoring the channel to pre-discharge conditions and to compensate for and minimize any further impacts to the Unnamed Tributaries. Best management practices shall be applied to all current and planned work associated with construction activities on the Site impacting, or having the potential to impact, the Unnamed Tributaries. The RMMP shall contain, at a minimum, design specifications and drawings, an implementation schedule, and a monitoring plan. The RMMP shall incorporate use of appropriate native or endemic species in all re-vegetation efforts.
3. **By 1 September 2015**, begin implementation of the Restoration, Mitigation, and Monitoring Plan.
  4. **By 1 November 2015**, complete all approved restoration and mitigation measures described in the proposed RMMP.
  5. **By 1 January 2016**, submit a **Completion Report** for the Restoration, Mitigation, and Monitoring Plan. The Completion Report shall accurately depict all construction and/or mitigation measures and document that the above plan to restore, compensate for, and minimize any further impacts to the Unnamed Tributaries of North Fork Cottonwood Creek has been fully implemented.
  6. **By October 1 of each year** (starting 1 October 2016) submit an annual monitoring report. The Annual Monitoring Report shall summarize monitoring results of RMMP and shall continue until at least five years after successful completion of the RMMP, or until a report, acceptable to the Assistant Executive Officer, is submitted showing the dischargers have met the requirements of the RMMP.

#### **GENERAL REQUIREMENTS AND NOTICES**

7. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans, and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Assistant Executive Officer.

15. **Potential Liability:** If the Dischargers fails to comply with the requirements of this Order, this matter may be referred 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 up to \$10,000 per violation per day, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including but not limited to , violation of the terms and condition of this Order.
16. **No Limitation of Water Board Authority.** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Site consistent with the Water Code. This Order may be revised as additional information becomes available.
17. **Modifications.** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
18. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. 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 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](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.

\_\_\_\_\_  
Clint E. Snyder, Assistant Executive Officer

\_\_\_\_\_  
(Date)



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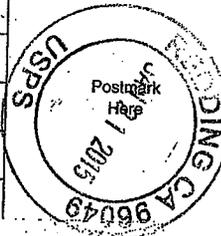
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1. Article Addressed to: TS

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