

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order No. R1-2004-0081

For

Don Soberg and Daniel Austin  
Soberg Property  
15025 River Road, Guerneville, CA

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Don Soberg of 40 Marigold Lane, Forestville, California, owns property located at 15025 River Road in Guerneville, California. The property fronts the Russian River approximately one mile east of the town of Guerneville, CA. Mr. Soberg entered into an agreement to lease a commercial establishment on the property to a Mr. Daniel Austin. Mr. Soberg and Mr. Austin are hereinafter collectively referred to as “the Discharger.”
2. On July 6, 2004, the Regional Water Board received a call from a California Department of Fish and Game warden, with information regarding alleged unauthorized grading activities that had been occurring within the banks of the Russian River at Mr. Soberg’s River Road property. Sonoma County is the local government with regulatory jurisdiction over the property’s land use.
3. On July 13, 2004, Regional Water Board staff inspected property located at 15025 River Road, Guerneville, to determine whether unauthorized grading had occurred and, if so, what impact it might have on water quality of the Russian River. Staff met with California Department of Fish and Game personnel, Mr. Soberg, Mr. Austin and other interested persons.
4. Mr. Soberg stated that a contractor, hired by Mr. Austin, was apparently instructed to clear some brush and perform some minor grading work. Apparently, the contractor proceeded to do major grading work and tree removal directly adjacent to the Russian River. This grading work included the construction of a boat ramp on a steep portion of riverbank, and the expansion of an existing boat ramp by significantly grading the riverbank. Additional grading work was performed along approximately 100 feet of riverbank.
5. The grading work has resulted in several deep cuts into the riverbank, and has left a significant volume of unconsolidated sediments directly adjacent to the low flow channel of the river. Due to the low river level at the time of this activity, no sediments were discharged into the river. However, the cuts and unconsolidated sediments constitute a threatened discharge of waste to the Russian River
6. This work was done without appropriate federal, state or county permits, all of which may be necessary for this type of activity.

7. Regional Water Board staff inspection of this property have shown a threatened discharge of sediments that poses a threat to adversely impact surface water quality of the Russian River.
8. The beneficial uses of the Russian River, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
  - a. Municipal and domestic supply
  - b. Agricultural supply
  - c. Industrial supply
  - d. Industrial service supply
  - e. Groundwater recharge
  - f. Navigation
  - g. Water contact recreation
  - h. Non-contact water recreation
  - i. Warm freshwater habitat
  - j. Cold freshwater habitat
  - k. Rare, threatened, or endangered species
  - l. Migration of Aquatic Organisms
  - m. Spawning, Reproduction and/or Early Development
  - n. Wildlife habitat
  - o. Estuarine habitat
9. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (which includes construction related materials) in the Basin Plan includes two prohibitions:
  - Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
  - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
10. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste dischargers, the staff shall require the submission of Reports of Waste Discharge.”
11. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00, 3-3.00 and 3-11.00) that are considered of particular

importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:

- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
- Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
- Chemical Constituents: Groundwaters used for domestic or municipal supply shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Division 4, Chapter 15, Article 4, Section 64435 Tables 2 and 3, and Section 64444.5 (Table 5) and listed in Table 3-2 of the Basin Plan.

12. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:

- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
- Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
- Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or*

*possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*

- *Section 13304(a) - “Any person who has discharged or discharges waste into the 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 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 not limited to, overseeing cleanup and abatement efforts.”*
13. As explained above, grading work performed at 15025 River Road, Guerneville, has placed sediments where they threaten to discharge into waters of the state, and has created the possibility of severe flow-related erosion for streambank areas. Sediments can have a direct and deleterious impact to fish spawning areas, can impact fish gills impairing respiration, and can make it difficult for fish to locate food. Sediment loads can also result in negative impacts to invertebrates and other aquatic organisms.
  14. The quantity and manner in which grading work has been performed, and associated sediments discharged to the ground has created a threatened discharge of sediments to the Russian River which, unless removed, will prove deleterious to fish and other aquatic organisms, and the direct loss of other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the concrete waste materials is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.
  15. The workplan required by this Order is necessary to ensure that the future threat to water quality created by the grading work and associated waste material placement described above, or any other pollutant discharges, are properly abated and controlled. More detailed information is available in the Regional Water Board’s public file on this matter.
  16. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.
  17. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day.

18. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Discharger shall cleanup and abate the above discharges by complying with the following requirements:

1. Immediately cease activities that result in threatened discharges of sediments to surface waters. Submit<sup>1</sup> a restoration workplan to the Regional Water Board, for Executive Officer concurrence, on or before **October 15, 2004**, that includes the following: (a) a plan to identify and remove unconsolidated sediments from areas where they can easily wash into the Russian River; (b) a plan to restore riverbank stability in areas disturbed by construction activity and prevent discharges to waters of the state via high river flows or storm water runoff; and (c) a list of all necessary permits from federal, state or local oversight agencies, including but not limited to the U.S. Army Corps of Engineers, Department of Fish and Game, Sonoma County Permit and Resource Management Department and the Regional Water Board.
2. Following Executive Officer written concurrence, implement the workplan. All work to ensure that erosion and sediment control pollution reduction practices are implemented, by temporary and/or permanent measures, must be completed before November 15, 2004. This work shall be limited to sediment removal and restoration of disturbed areas to conditions that represent those existing prior to grading activities. Permanent measures will likely be delayed until after the 2004/2005 rain season, given the typical time period needed to design the remediation project and obtain all necessary federal, state and local permits.
3. If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines for the above tasks or in the workplan implementation schedule submitted pursuant to this Order and concurred with by the Executive Officer, the Discharger may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall

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<sup>1</sup> The word "submit," as used in this Order, means that document(s) must be actually received by the Regional Water Board by the applicable deadline.

be received by the Regional Water Board not less than 15 calendar days prior to the deadline sought to be extended. An extension may be granted for good cause, in which case this Order will be accordingly revised.

4. 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 at the facility consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by \_\_\_\_\_

Catherine E. Kuhlman  
Executive Officer

September 9, 2004