

CLEANUP AND ABATEMENT ORDER NO. R1-2007-0090

FOR

Robert Dreifuss
6401 Canyon Road
Willits

Mendocino County

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

1. Robert Dreifuss (hereinafter the "Discharger"), is the listed landowner for Parcel #108-132-07, 6401 Canyon Road, Willits, CA ("Site"). Mailing address for the Discharger is P.O. Box 835 Spring Valley, CA 91976-0835.
2. The 10 acre Site is located in the Upper Main Eel River Watershed in Mendocino County, in the Northwest Quarter of the Northwest Quarter of Section 12, Township 18 North, and Range 13 West.
3. Water from the Site flows to an unnamed tributary to Little Creek, thence to Tomki Creek, and thence to the Eel River (Cal Water version 2.2 1111.620102).
4. On September 14, 2007, Regional Water Board staff received a complaint from the California Department of Forestry and Fire Protection (CAL FIRE). The complaint indicated that the Discharger was moving earth and removing trees in a manner likely to affect public health and safety and to cause a discharge of sediment to waters of the state should rainfall occur.
5. On September 14, 2007, Regional Water Board staff received a complaint from the California Geological Survey (CGS) indicating that the road building, clearing, and grading activities conducted at the Site could affect public health and safety and water quality due to the potential for significant erosion of bare, exposed soils. The bare, exposed soils are located on slopes, which are situated such that delivery of sediment to waters of the state is likely to occur.
6. On September 14, 2007, Regional Water Board staff received notification from CAL FIRE of a meeting with the Discharger scheduled for September 21, 2007, 10:00 am at the CAL FIRE Howard Forest Resource Management Office.
7. On September 14, 2007, Regional Water Board staff drove by the Site in response to the complaints received from CAL FIRE and CGS. The photos provide documentation of the condition of the Site, as seen from Canyon Road. The photos are part of the record that supports the concerns raised that a discharge is likely to occur should rainfall occur. The observed placement of

organic and earthen material from the road building, grading and clearing activities in locations where the material could pass into the nearby watercourse is a violation of the Water Quality Control Plan for the North Coast Region ("Basin Plan") Action Plan for Logging, Construction, and Associated Activities - Prohibition 2.

8. On September 19, 2007, at approximately 8:45 am Regional Water Board staff had a telephone conversation the Discharger. The conversation included discussion of Regional Water Board staff attendance at the meeting scheduled for September 21, 2007 at the CAL FIRE Howard Forest Resource Management Office. The Discharger indicated that he was fine with Regional Water Board staff attendance, and that he would like to work toward a resolution of the problems informally. In addition, the Discharger indicated that an inspection of his property after the meeting would be allowed.
9. On September 21, 2007 Regional Water Board staff participated in a meeting with the Discharger and CAL FIRE and CGS representatives at the CAL FIRE Howard Forest Resource Management Office. CAL FIRE representatives conducted the interview with the Discharger. During the meeting, the Discharger was informed by Regional Water Board staff of violations of Basin Plan prohibitions and that a Cleanup and Abatement Order would be forthcoming. The Discharger was cooperative during the meeting, but did not allow a site inspection after the meeting.
10. The Basin Plan, which describes present and probable future beneficial uses of the North Coast region's surface and ground water and contains specific water quality objectives for protecting those beneficial uses and existing high quality waters of the State, also contains several Action Plans for protecting beneficial uses and high quality waters from nonpoint sources of pollution, including the Action Plan for Logging, Construction, and Associated Activities ("Action Plan"). The Action Plan contains 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."*

Regional Water Board staff conclude that the Discharger is violating Prohibition 2 of the Action Plan.

11. Fish that could be deleteriously affected by discharges of organic and earthen material to streams or watercourses include steelhead trout, and Chinook salmon, which are listed as threatened under the federal Endangered Species Act for the California Coastal Evolutionarily Significant Unit, (ESU). The Upper Main Eel River watershed and Tomki Creek provide habitat for these species.
12. Other beneficial uses of Eel River and its tributaries which could be deleteriously affected by discharges of organic and earthen material include:
 - a. Domestic water supply
 - b. Agricultural water supply
 - c. Groundwater recharge
 - d. Navigation
 - e. Water recreation
 - f. Non-contact water recreation
 - g. Commercial and sport fishing
 - h. Cold water fish habitat
 - i. Wildlife habitat
 - j. Rare, threatened or endangered species
 - k. Migration of aquatic organisms
 - l. Spawning, reproduction, and/or early development
 - m. Estuarine habitat.
13. Section 3 of the Basin Plan contains water quality objectives that set limitations for certain water quality parameters. The water quality objectives (page 3-2.00-3.00) that are considered of particular importance in protecting beneficial uses from discharges from logging, construction, or associated activities include the following:
 - a. Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - b. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - c. Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - d. 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.
 - e. 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.
 - f. Temperature: The natural receiving water temperatures shall not be altered unless it can be demonstrated to the satisfaction of the Regional

Water Board that such alteration does not adversely affect beneficial uses.

At no time or place shall the temperature of any COLD (water with a beneficial use of cold freshwater habitat) be increased by more than 5°F above natural receiving water temperatures.

14. The discharge of organic and earthen material in the Eel River watershed is especially problematic because the Eel River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation and temperature. Water quality problems cited under the listing include sedimentation, threat of sedimentation, impaired spawning and rearing habitat, increased rate of reduction in cold water, and increased rate of reduction of cold water habitat available for refugia.
15. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to require persons suspected of violating Basin Plan objectives to take various actions, including providing technical or monitoring program reports and cleaning up and abating the discharge:
 - 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.”

- *Section 13304 (c) (1) “If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter’s contribution to the clean up costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”*

16. Issuance of this Cleanup and Abatement Order pursuant to Water Code 13304(a) is proper because recent activities on the Project area are causing a violation of the Basin Plan prohibitions contained in the Action Plan for Logging Construction and Associated Activities. In addition, the Discharger has caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and where it creates, or threatens to create, a condition of pollution or nuisance. Pollution is defined in Water Code section 13050(l) as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects the waters for beneficial uses. Earthwork activities on the Site have placed organic and earthen material near a watercourse where it has the potential to be discharged into tributaries of the Eel River, unreasonably affecting beneficial uses.
17. The technical reports and inspections required by this Order are necessary to ensure that the threats to water quality created by the discharges described above are properly abated and controlled. The burden of such technical reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
18. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
19. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil

liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to clean up or abate threatened or actual discharges as required by this Order may be, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

20. 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 California Water Code section 13320 and Title 23, California Code of Regulations, 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 a hearing with the Executive Officer or the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Executive Officer or 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 California Water Code Sections 13267(b) and 13304, the Discharger shall:

- A. Submit, by October 15, 2007, a short-term erosion control plan (Short Term Plan) to the Regional Water Board Interim Executive Officer. The Short Term Plan shall be developed by a licensed professional experienced in erosion control. The Short Term Plan shall describe the methods that will be used to stabilize disturbed organic and earthen material on hill slopes with the potential to deliver to streams, stabilize inside ditch drainage and culvert inlets and outlets to prevent and minimize the potential for erosion, and provide for erosion control on all exposed soils within 50 feet of the watercourse channel. A map shall be included that identifies specific mitigation points and the applicable mitigation to stabilize exposed soils. The map shall be of sufficient detail to direct a licensed equipment operator in the completion of the specified mitigation.
- B. Submit, by January 1, 2008, a Long Term Erosion Control Plan (Long Term Plan), to the Regional Water Board Interim Executive Officer. The Long Term Plan shall be developed by a licensed professional experienced in erosion control. The Long Term Plan shall identify and describe long term erosion control maintenance for bare exposed hill slopes with the potential to deliver to a watercourse, provide for erosion control on all exposed soils within 50 feet of the watercourse channel, and maintenance and management of drainage facilities such as inside ditches and culverts. The Long Term Plan must include a map of the Site and identify areas requiring long term erosion

control, drainage facilities requiring maintenance. The map shall be of sufficient detail to direct a licensed equipment operator in the completion of the specified mitigation.

- C. Upon the Regional Water Board Interim Executive Officer's approval of the Short Term Plan, perform the clean up and restoration work as detailed in that plan. All work shall be completed by November 15, 2007, to avoid sediment discharges resulting from winter rains.
- D. Upon the Regional Water Board Interim Executive Officer's approval of the Long Term Plan, perform the long term erosion control maintenance for soil and hill slope stabilization, and maintain the drainage facilities to prevent and minimize sediment discharge.
- E. The Discharger, or its duly authorized representative, shall contact Regional Water Board staff upon completion of the Short Term Plan to schedule a mutually agreeable date for a site inspection of the completed work. Regional Water Board staff shall determine if the work has been accomplished according to the designs submitted to, and approved by, the Interim Executive Officer.
- F. Annually, prior to October 1 of each year, the Discharger shall contact Regional Water Board staff to set up a mutually agreeable inspection date to evaluate the Long Term Plan maintenance. Regional Water Board staff shall determine if the work has been accomplished according to the designs submitted to, and approved by, the Interim Executive Officer.

Ordered by _____

Robert Klamt
Interim Executive Officer

September 27, 2007