

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2007-0057
For

Greg Walkup, Bruce Shoemaker, Phil James and Coy James

Siskiyou County

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

1. Greg Walkup owns approximately 580 acres of land in the Town of Weed. Bruce Shoemaker owns approximately 37 acres of land adjacent to Mr. Walkup's land. Phil and Coy James, owners of a water ditch downstream of the Site, allegedly conducted unauthorized dredging activities on an approximately one mile reach of perennial fish bearing stream and wetlands known as Black Butte Springs Creek (Site), which flows through Mr. Walkup's and Mr. Shoemaker's properties. Greg Walkup, Bruce Shoemaker, Phil and Coy James are hereinafter collectively referred to as the Dischargers. The Site is located in Sections 13, 18, 19 and 24, T41N, R5W, MDBM. The dredging activity constitutes an unauthorized discharge or threatened discharge that could adversely affect water quality in violation of various provisions of the Water Code.
2. On May 9, 2007, Regional Water Board staff (staff) received a report of the dredging activities and conducted an initial inspection of the Site. Staff also met with Mr. Shoemaker. Mr. Shoemaker stated that he reported the dredging to agencies and the Weed Police Department. During the inspection, staff observed that approximately one mile of stream and adjacent wetland habitat had been dredged or excavated. The dredging resulted in the discharge of fine sediment along the entire one mile length of stream. Riparian and wetland vegetation was removed or damaged. Mr. Shoemaker advised staff that three ponds or reservoirs on his property were also drained. After the inspection, staff reported the dredging to the California Department of Fish and Game and United States Army Corps of Engineers. Staff was informed that Dischargers had not sought and received the required authorization under Fish and Game Code section 1600 and section 404 of the Clean Water Act.
3. On May 17, 2007, staff interviewed Mr. Walkup and Mr. Phil James. Mr. Walkup stated that he was unaware of the dredging until after it was complete. Phil James stated that he and his father conducted the dredging and received permission to do so from Mr. Walkup or James Bennett, a former co-owner of Mr. Walkup's portion of the Site. Phil James told staff that he performed the dredging with an excavator in order to increase flows to his father's water ditch downstream.
4. Regional Water Board staff are currently processing an application for water quality certification under section 401 of the Clean Water Act for a proposed road

crossing of Black Butte Springs Creek that will access a proposed development on Mr. Walkup's property; this development will include a large recreational vehicle park, campground and residential development. The processing of this water quality certification is not related to, and does not authorize the activities that are the subject of this Order. The application includes a wetland delineation report. The report states that there are 0.35 acres of jurisdictional stream and 7.97 acres of jurisdictional wetlands at the site. There is also additional stream and wetland habitat on Mr. Shoemaker's property.

5. The perennial intermittent stream and wetlands are tributary to Boles Creek, the Shasta River, and Klamath River, with beneficial uses as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), that include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Hydropower generation
 - h. Water contact recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Warm freshwater habitat
 - l. Cold freshwater habitat
 - m. Rare, threatened, or endangered species
 - n. Wildlife habitat
 - o. Migration of aquatic organisms
 - p. Spawning, reproduction, and/or early development
 - q. Estuarine habitat
 - r. Aquaculture
6. Black Butte Springs Creek is tributary to the Shasta River. The Shasta River is listed under the 303(d) list of the Federal Clean Water Act as impaired with elevated stream temperatures and low dissolved oxygen levels which impact the beneficial uses of water including cold water fish habitat. The Regional Water Board is currently implementing the Shasta River TMDL Action Plan to improve water quality conditions and restore fish habitat in the Shasta River Watershed.
7. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included 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."*
8. The Action Plan states: "where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, the staff shall require the submission of Reports of Waste Discharge."
9. 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 and 3-3.00) 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 back ground 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.
10. As described above, one or more of the Dischargers has dredged or allowed dredging of approximately one mile of perennial stream, impacting the stream and adjacent wetland habitat at the Site, and has caused a discharge of fine sediment into waters of the state. The impacts to stream, riparian and wetland habitat and associated functions and values are deleterious to wildlife and other beneficial uses, and therefore violate Prohibitions 1 and 2 in the Action Plan. Stream habitat and associated riparian and wetland habitat generally consist of

linear habitat that perform important functions related to water quality including but not limited to: providing habitat for aquatic species and wildlife; water quality enhancement; flood peak attenuation and flood water storage; and potential habitat for rare and endangered species. Removal of this habitat through the discharge and threatened discharge of sediment is deleterious to aquatic species and wildlife, as well as to other beneficial uses and users, and therefore violates Prohibitions 1 and 2 in the Action Plan as described in Finding 6 above. These detrimental effects also constitute the creation of pollution or nuisance. The unauthorized dredging activity is therefore subject to cleanup and abatement under California Water Code section 13304.

11. Water Code section 13304, subdivision (a) provides: "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."
12. A restoration workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated and controlled.
13. 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, title 14, sections 15308 and 15321.
14. Failure to comply with the terms of this Order subjects Dischargers to an enforcement action under the Water Code, including an administrative civil liabilities under Water Code section 13350, subdivision (e), of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
15. 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 Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. The State Water Board must receive the petition 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 Executive Officer 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 is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, 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 Water Code section 13304:

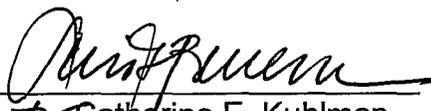
The Dischargers shall perform the following cleanup and abatement actions:

1. Submit a stream and wetland restoration workplan (Workplan) for the Site by **August 15, 2007**. The Workplan shall identify stream, wetland and riparian function and habitats adversely affected at the Site, and identify actions necessary to restore these functions and habitat. The Workplan shall include specific dates by which actions will be completed, and include updates provided to the Regional Water Board on the progress of implementation. The Workplan shall be prepared by a California licensed engineer or hydrologist experienced in stream and wetland restoration.
2. Submit an application for a water quality certification and/or Report of Waste Discharge Requirements for Dredge/Fill Projects (Enclosure), and appropriate processing fees, to the Regional Water Board, for Executive Officer concurrence, to cover activities associated with the Workplan by **August 15, 2007**.
3. Following Executive Officer written concurrence, implement the Workplan. The Workplan shall be implemented during the **summer season of 2007**.

If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in the workplan implementation schedule submitted pursuant to this Order and concurred with by the Executive Officer, the Dischargers may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall 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.

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 Site consistent with the Water Code.

Ordered by


for Catherine E. Kuhlman
Executive Officer

Date July 3, 2007





Examples of damage to Black Butte Springs Creek, stream and riparian habitat . May 9, 2007