

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2008-0011
For

Jorge Saldana
16790 Armstrong Woods Road
APNs 069-150-034 and 069-160-015
Guerneville

Sonoma County

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

1. Jorge Saldana (hereinafter Discharger), graded, or caused to be graded, more than one acre of land and graded, or caused to be graded, through a perennial stream or springs on parcel(s) (APNs 069-150-034 and 069-160-015) (Sonoma County), at 16790 Armstrong Woods Road (hereinafter Site), without the following permits required by the Regional Water Board:
 - a) permit coverage under the Statewide General Permit for Discharges of Storm Water from Construction Activities (Construction General Permit Order No. 99-08-DWQ);
 - b) Clean Water Act Section 401 Certification (Water Quality Certification for the filling and or dredging of streams or wetlands).

Note that other permits, such as a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers, a section 1603 streambed alteration agreement from the California Department of Fish and Game, and a grading permit from the Sonoma County Permit and Resource Management Department also may be required. You should contact those agencies for further information.

2. The Construction General Permit contains enforceable requirements intended to control the discharge of pollutants from construction projects. Additionally, the Water Quality Certification contains conditions that the Project is expected to comply with to protect water quality. These requirements are necessary to prevent discharges of sediment from construction projects that can cause or contribute to violations of applicable water quality standards.
3. On November 6, 2007, Regional Water Board staff (staff) received a report of the grading and filling of waters of the State that were conducted on the Discharger's Site. Regional Water Board and California Department of Fish and Game staff inspected the property located at 16790 Armstrong Woods Road on November 7,

2007, and informed the workers on-site to notify Mr. Saldana to contact Regional Water Board staff for instructions on how to proceed with cleanup and erosion control work required to limit discharges of sediment to waters of the State. To date, the Discharger has not contacted the Regional Water Board. To our knowledge, adequate best management practices for erosion control have not been installed, thus leading to the discharge or threatened discharge of sediment into waters of the State.

4. Staff investigated the Site again on December 26, 2007, and on January 9, 2008. It appeared that no work had been done to remedy the erosion problems. Additionally, there was evidence of discharge of sediment from the Site into waters of the State. (See attached photographs).
5. Erosion control and drainage practices employed during the construction activities at this Site are inadequate and have resulted in discharges to waters of the State, and without implementation of appropriate controls, the conditions at the Site threaten to further impact water quality and beneficial uses. These present and threatened future discharges constitute violations of the *Water Quality Control Plan for the North Coast Region*.
6. The impacted waters of the State are tributary to Fife Creek and Russian 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 process supply
 - e. Freshwater replenishment
 - f. Groundwater recharge
 - g. Navigation
 - h. Hydropower generation
 - h. Water contact recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Aquaculture
 - l. Warm freshwater habitat
 - m. Cold freshwater habitat
 - n. Rare, threatened, or endangered species
 - o. Wildlife habitat
 - p. Migration of aquatic organisms
 - q. Spawning, reproduction, and/or early development
 - r. Shellfish harvesting
 - s. Estuarine habitat

7. The Russian River and its tributaries are listed under the 303(d) list of the Federal Clean Water act as impaired for sediment and temperature. Sediment and temperature in excess amounts can impact the beneficial uses of water.
8. In light of the Discharger's construction project and staff observations that measures and practices employed at the Site are inadequate to prevent further sediment discharges at the Site, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.
9. 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."*
10. 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."
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 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 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.
12. As described above, the Discharger filled waters of the State, impacting the creek at the Site. The impacts to creek, 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. Creek 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 9 above. These detrimental effects also constitute the creation of pollution or nuisance. The unauthorized filling activity is therefore subject to cleanup and abatement under California Water Code section 13304.
13. 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."
14. 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.
15. 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.

16. Failure to comply with the terms of this Order subjects the Discharger to an enforcement action under the Water Code, including 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.
17. 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 Discharger shall perform the following cleanup and abatement actions:

1. Cease the discharge of earthen materials, soil, and sediment to waters of the State and clean up and abate, in accordance with requirement no. 2 below, the condition of earthen materials, soil, and sediment discharged or placed into waters of the State.
2. Submit a work plan prepared by an environmental consultant or other professional with experience in road construction, grading, proper use of erosion control practices and techniques, and environmental restoration to the Regional Water Board, for Executive Officer concurrence, on or before February 8, 2008, that includes the following:
 - a. How sidecast fill material will be removed and stabilized;
 - b. How all bare soils will be drained and protected against rainfall;
 - c. How all runoff will be controlled as part of a plan to prevent sediment discharge into streams;
 - d. A plan for removing the discharged sediment from impacted waters of the State; and

- e. A detailed restoration plan, for Executive Officer approval, that addresses the timely restoration of the waters of the State affected by the filling activity. The plan shall contain a time schedule for restoration activities, criteria to judge the success of the restoration project, and a monitoring proposal to evaluate whether the restoration is successful. Alternatively, the Discharger may submit a 401/Waiver of Waste Discharge Requirements application including adequate mitigation for the loss of waters of the State and beneficial uses.
3. Submit a report by February 8, 2008, that includes the following:
 - a. A schedule to complete and submit an analysis of the area impacted, including the volume of fill added and delineation of impacted waters;
 - b. Information on agencies and personnel contacted regarding the unauthorized fill activities and copies of any related correspondence and communications;
 - c. An investigation into and chronology of events related to the unauthorized fill activities; and
 - d. Identification of erosion and sediment transport control best management practices (BMPs) that are being implemented on the Site to prevent further discharge to wetlands or streams.
 4. Following Executive Officer written concurrence, implement the work plan. All work to remove the fill, restore the affected waters of the State, and mitigate for total impacts shall be completed before further construction activities commence, except for continuing monitoring requirements.

If, for any reason, the Discharger is 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 Discharger 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.

The Regional Water Board or any other governmental agency involved with overseeing this cleanup and abatement project may recover its costs associated therewith. Water Code section 13304, subsection (c)(1) states: 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 cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

This Cleanup and Abatement Order (CAO) in no way limits the authority of this 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 CAO may be revised by the Executive Officer as additional information becomes available.

Ordered by _____

Robert R. Klamt
Interim Executive Officer

January 23, 2008

ATTACHMENT 1



January 9, 2008, Active erosion and discharge in creek



December 26, 2007, Discharge to creek.



November 7, 2007, Disturbance through spring



November 7, 2007, Material sidecast into creek