

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement and Water Code Section 13267 Order
No. R1-2009-0106

For

Nancy Woodward
P.O. Box 541, Blue Lake, CA 95525
Humboldt County

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

1. Ms. Nancy Woodward (hereinafter Discharger) owns land adjacent to an unnamed tributary to Reas Creek, in the Salt River watershed. The property is accessed via Oeschger Road near Ferndale, Calif. (hereinafter referred as the Reas Creek Site).
2. Surface runoff from the Reas Creek Site discharges into an unnamed tributary to the Salt River drainage. The Salt River is located in the Ferndale Hydrologic Subarea 111.11, as defined within the *Water Quality Control Plan for the North Coast Region* (Basin Plan), both of which are waters of the State.
3. On or about April 3, 2009, a variety of earth moving activities were conducted at the Reas Creek Site. These activities included: land grading, new road construction, new watercourse crossing construction, hillslope grading, stream channelization, dam construction, riparian vegetation removal, and water supply development activities.
4. The Discharger's activities at the Reas Creek Site have resulted in discharges, and threatened discharges, of sediment and earthen materials to waters of the State, including the unnamed tributary, Reas Creek, and the Salt River.
5. On April 3, 2009, Regional Water Board staff (RB staff) inspected the Reas Creek Site along with the Department of Fish and Game (DFG) area Warden and technical staff, and California Department of Forestry and Fire Protection (CalFIRE) area inspector (see Attachment No. 2). RB staff observed that:
 - a. extensive cutslope and fillslope road work had been performed on the Reas Creek Site;
 - b. several stream crossings had been improperly installed, one of which was used to impound the unnamed tributary to Reas Creek;

- c. grading had occurred for several hundred feet within and parallel to the riparian corridor of Reas Creek without application of any appropriate erosion control measures;
 - d. based on the presence of saturated soil-induced fill failure and sediment transport along the roads and graded areas at the Reas Creek Site, it was evident that at least one significant rain event had occurred since the grading which caused overland flow and sediment discharge into the unnamed tributary to Reas Creek, and;
 - e. the areal extent of the grading, stream alteration, and disturbed soils exceeds two acres as well as several hundred linear feet of disturbance to the stream channel.
6. The Discharger has not submitted a Report of Waste Discharge and did not obtain any approvals, Waste Discharge Requirements (WDRs), permits, or licenses from the Regional Water Board, that are required for conducting these activities. Typical WDRs or permits required to be obtained for the type of grading and stream alterations conducted by the Discharger include a *Construction General Permit* and a *401 Certification*. Permits and approvals from other agencies that would likely be required include a *Streambed Alteration Agreement* from the Department of Fish and Game (DFG) and a *Grading Permit* from Humboldt County. Other agencies may require other permits.
7. Dischargers whose projects disturb one or more acres of soil are required to obtain coverage under the *General Permit for Discharges of Storm Water Associated with Construction Activity* (Statewide General Construction Permit, Order No. 99-08-DWQ). Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation.
8. Failure to file a Notice of Intent to comply with the *Statewide General Construction Permit* or notice of non-applicability that specifies the basis for not needing to obtain coverage under an NPDES permit, may subject the owner of the Reas Creek Site to mandatory penalties prescribed in California Water Code section 13399.33.
9. Regardless of the acreage of disturbance, exposed soil at the Reas Creek Site resulting from grading and filling is not adequately stabilized to prevent or minimize erosion and sediment discharges from continuing to occur. At a minimum, adequate erosion and sediment control best management practices are necessary to prevent and reduce discharges from the Reas Creek Site.
10. The unnamed tributary to Reas Creek may be determined to be jurisdictional waters of the United States. The United States Army Corps of Engineers is the lead Federal agency with jurisdiction to issue Clean Water Act Section 404 permits for short term and long-term dredge and fill activities in waters of the United States.

11. The discharge of waste and sediment at and from the Reas Creek Site causes and threatens to cause a condition of pollution by directly affecting beneficial uses of waters of the State. Discharges of soil, rock, sediment and other earthen material may alter the hydrologic and sediment transport regimes of the stream channel by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics.
12. The discharge of waste threatens the Beneficial Uses of the Salt River and its tributaries as designated in the Basin Plan¹, which includes municipal and domestic supply (MUN) and agricultural supply (AGR).
13. The Basin Plan's *Action Plan for Logging, Construction and Associated Activities* (Action 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."*
14. The *Guidelines for Implementation and Enforcement of Discharge Prohibitions Relating to Logging, Construction or Associated Activities* (Guidelines) set forth within 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." (Basin Plan, Ch. 4, Implementation Plans, Action Plan for Logging, Construction, and Associated Activities, Investigation and Coordinating Activities, § B, at 4.28.00.)
15. The Discharger discharged sediment and placed sediment where it could enter into an unnamed tributary to Reas Creek, Reas Creek, and the Salt River, violating both Prohibitions 1 and 2 in the Action Plan by causing a condition of nuisance and pollution. This includes potential impacts to fish migration, spawning and rearing habitat during the rainy season.

¹ The Salt River is located in the Ferndale Hydrologic Subarea 111.11 as defined within the Basin Plan.

16. Water Code Section 13050(l) defines "pollution" as an alteration of the quality of the waters of the State by waste to a degree that unreasonably affects the waters for beneficial uses. The potential for additional sediment discharges from the Reas Creek Site grading activities to waters of the State threaten to create a condition of pollution and are therefore subject to cleanup and abatement under California Water Code section 13304.
17. 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."
18. Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (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. A restoration workplan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that future threat to water quality created by activities on the Reas Creek Site, which resulted in the potential discharges described above, are properly assessed, abated and controlled.
19. Because cleanup and abatement activity will occur within the stream, best management practices (erosion and sediment controls) are necessary to prevent and reduce erosion from the Reas Creek Site and ameliorate the conditions that threaten beneficial uses of the water. In addition to plans submitted to the Regional Board for the cleanup and restoration efforts, permits from other agencies may be required. It is the responsibility of the Discharger to obtain those permits.
20. Pursuant to Water Code Section 13304, the Regional Board is entitled to, and may seek reimbursement for all reasonable cost it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
21. This is an enforcement action taken by a regulatory agency 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.

22. Failure to comply with the terms of this Order may subject the Discharger to an enforcement action under the Water Code, including administrative civil liabilities under Water Code section 13350, in an amount not to exceed the sum of five thousand dollars (\$5,000) per day and ten dollars (\$10) per gallon of waste discharged.
23. 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.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions at the Reas Creek Site:

I. Immediate Actions:

1. Cleanup and abate the effects of any past and threatened discharges of earthen materials, soil, and sediment that can result in violations of Water Quality Objectives to waters of the State, including the unnamed tributary and Reas Creek.
2. On or before **October 1, 2009**, prepare a cleanup and abatement plan for the Reas Creek site and submit to the satisfaction of the Regional Water Board Executive Officer. The cleanup plan should include development of a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the State Water Board's Statewide General Construction Permit, showing all temporary best management practices that will be implemented on the Reas Creek Site to prevent sediment discharges from all potential sediment sources to the unnamed tributary, Reas Creek, and the Salt River prior to and during the 2009/2010 rain season.

The plan must include, at a minimum, measures to either remove or stabilize the earthen dam, and soil stabilization measures that can be implemented immediately for the remainder of the disturbed areas.

3. By no later than **October 15, 2009**, unless specifically directed otherwise, the Discharger shall implement and complete all activities specified in the cleanup and abatement plan.

II. Long-term Actions:

4. On or before **October 1, 2009**, submit a Restoration Work Plan (Restoration Plan) to the satisfaction of the Regional Water Board Executive Officer, that includes the following:
 - a. A description and details of how the Discharger proposes to permanently stabilize all graded, filled, and disturbed areas at the Reas Creek Site. The plan shall contain, but may not necessarily be limited to the following:
 - an engineering design for hydrological restoration components,
 - a county approved site drainage plan,
 - a time schedule for restoration activities,
 - criteria to judge the success of the restoration project, and
 - a water quality monitoring plan to evaluate whether the restoration is successful.

Furthermore, the Restoration Plan must include complete removal of the earthen dam, stream bank stabilization and riparian revegetation for the entire section of creek that has been channelized.

5. Unless specifically directed otherwise, the Discharger shall implement and complete the Restoration Plan by **September 15, 2010**.
6. All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger or by a duly authorized representative of the Discharger and submitted to the Regional Water Board. A person is a duly authorized representative only if: 1) the authorization is made in writing by the Discharger; and 2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
7. Include the following signed certification with all reports submitted pursuant to this Order:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the-possibility of fine and imprisonment for knowing violations."

8. The Discharger shall submit both electronic and paper copies of all workplans, technical reports, and monitoring reports required under this Cleanup and Abatement Order. Electronic submission shall be in PDF format, and include the signed transmittal letter and professional certification.
9. All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, Ca 95430
Attn: Timber and Nonpoint Source Division

10. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions and/or to require additional investigation and cleanup at the Reas Creek Site consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by

Catherine Kuhlman
Executive Officer
September 10, 2009