

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2011-0014

For

Patricia Plowright and Thomas Rider Plowright III
Assessor Parcel Number
026-234-05

Mendocino County

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

1. Patricia Plowright and Thomas Rider Plowright (hereinafter Dischargers) own the parcel of land identified as Mendocino County Assessor's Parcel Number 026-234-05 (hereinafter Site). The Dischargers and/or their agents have conducted grading and bulldozing of earthen materials in and adjacent to Little Mill Creek, a watercourse tributary to Mill Creek that is on the Site and is tributary to the Navarro River, a water of the State and the United States. The Dischargers' activities at the Site have resulted in a discharge and threatened discharge of sediment to waters of the Navarro River watershed.
2. On May 4, 2010 and August 3, 2010, Regional Water Board staff (Staff) inspected the Site with staff from California Department of Fish and Game (CDFG). Staff also briefly visited the Site with staff from CDFG on July 13, 2010. During the inspections and site visit, Staff observed the following:
 - a) Earthen materials placed with heavy equipment into and adjacent to Little Mill Creek. Cleared ground around the cabin site to facilitate access to the parcel, resulting in a significant amount of bare, erodible soil. Trees and slash pushed into Little Mill Creek along with earthen materials.
 - b) Two culvert stream crossings with bare soil over and around the culvert. It is unknown whether the culverts are properly sized for the crossing; it does not appear that the culverts are properly installed, and soil exposed or moved during culvert installation has not been adequately stabilized.
 - c) During the May 4, 2010 inspection, Staff also observed a caterpillar tractor stuck in the middle of Little Mill Creek on the private road below the entrance gate to the subject property. The landowner was attempting to remove the tractor from the stream. On the July 13, 2010 site visit, CDFG staff advised Staff that the owner of the tractor had been identified and recently notified of the location of his tractor, and was visiting the Site that day intending to remove the tractor from the watercourse. CDFG staff also indicated that they had received emergency funds to help pay for the tractor removal and some post-removal stream restoration work. On the August 3, 2010 inspection, Staff confirmed that the tractor had been removed, but that there were still unstabilized earthen fill materials at the site where the tractor had been stuck.

3. The culvert stream crossings, bare soils on the Site, and un-stabilized fill material at the Site where the tractor had been stuck are discharging sediment and are likely to result in ongoing threatened discharges of sediment and debris to waters of the State and United States.
4. The Site is the subject of an active criminal case with the Mendocino County District Attorney's office, relative to California Department of Fish and Game violations associated with the deposition of earthen materials and operations of heavy equipment in and adjacent to Little Mill Creek.
5. The Navarro River has beneficial uses designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), including:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Navigation
 - h. Water contact recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Cold freshwater habitat
 - l. Rare, threatened, or endangered species (RARE)
 - m. Wildlife habitat
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
6. The discharge of organic and earthen material in the Navarro River watershed is especially problematic because, as noted above, the Navarro River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation and temperature. The sources of the impairment are identified in the Navarro River Total Maximum Daily Load (TMDL) as road related erosion, legacy road erosion, landslide, vineyard erosion, and harvest related surface erosion. These sources can affect beneficial uses of water through sedimentation, threat of sedimentation, impaired spawning and rearing habitat, and reduction in cold water and available cold water habitat.
7. The activities conducted on the Site increase the potential for impacts to the beneficial uses of water through sediment introduction directly into a stream that flows to fish bearing habitat approximately ½ mile downstream.

8. 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 Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions (Page 4-26 of the 2007 Basin Plan):
 - 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."*
9. 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."
10. 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.

11. As described above, the Dischargers and/or their agent(s) have cleared soil on the Site and operated heavy equipment within a watercourse channel. This caused soil to be discharged into a watercourse and to be placed where it could pass into that watercourse and thence, to higher order watercourses downstream, in quantities deleterious to fish, wildlife and other beneficial uses as described in Finding 5 above. This deleterious impact is a violation of Prohibitions 1 and 2 in the Action Plan, as described in Paragraph 8, above.
12. The conditions on the Site are therefore subject to cleanup and abatement under California Water Code (Water Code) section 13304. 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."
13. As noted in Paragraph 8 above, the Basin Plan's Action Plan contains two separate prohibitions against the discharge or placement 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. As explained herein, the Dischargers' activities on the Site have violated both of these prohibitions; therefore, the Dischargers are subject to this Order pursuant to Water Code section 13304.
14. As explained in Paragraph 12, Water Code section 13304 authorizes the Regional Water Board to issue a Cleanup and Abatement Order to any person 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." Section 13050 of the Water Code defines the term "pollution" to include "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects the waters for beneficial uses." Additionally, sediment, when discharged to waters of the state, constitutes a "waste" as defined in Water Code section 13050. As explained herein, the Dischargers' activities on the Site have caused or permitted, cause or permit, and threaten to cause or permit a condition of pollution, as well as a discharge of waste, because these activities either have, or threaten to, violate water quality objectives and negatively impact beneficial uses as defined in the Basin Plan.
15. Water Code section 13267, subdivision (a) authorizes the Regional Water Board to 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 the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing a restoration work plan bear a reasonable relationship to the benefits that will be realized once the work plan is implemented.

16. 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.
17. Failure to comply with the terms of this Order may subject Dischargers to future enforcement actions under state law, including administrative civil liabilities pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of ten thousand dollars (\$10,000) per day and ten dollars (\$10) per gallon of waste discharged in excess of 1,000 gallons.
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 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 reconsideration of this Order by the Executive Officer of the Regional Water Board. To be timely, such request must be made in writing within 30 days of the date of this Order. Please note that even if reconsideration by the Executive Officer 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 sections 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Immediately cease all activities that cause or threaten to cause the discharge of sediment to Little Mill Creek and any other waters of the State or United States (or tributaries thereto) which exist on the Site.

2. Under the direction of a qualified licensed professional experienced in erosion control and in stream restoration, develop a plan to restore the streams at the site of the stuck tractor and at Plowright Property cabin site. The restoration plan must include design and construction standards, and a monitoring plan for the following:
 - a. The removal and stabilization of excess earthen fill materials and woody debris; all excess fill materials and woody debris must be stabilized in a location where there is no potential for discharge.
 - b. A plan for restoration of the stream segments impacted with sediment and woody debris; the plan must include a map (1:12000 or larger scale the map must illustrate all restoration plan work points, all roads, unstable features, unstable fills, spoil disposal sites, impoundments, restoration planting and any other factor required to complete the scope of work) design and construction standards for stream bank stabilization, stream bed stabilization, clear water diversion of flows during restoration construction work, and riparian re-planting of exposed soils.
 - c. A monitoring plan for all restored areas that evaluates the restoration to determine the success of restoration plantings, and sediment remediation efforts. The monitoring plan must include regularly scheduled inspections after each rain event of greater than 1 inch in a 48 hour period. Each monitoring event must be followed by a report that describes the inspection findings, and provides corrective actions for any failures of the restoration site(s); failures are including but not limited to, failures in planting success and in sediment stabilization.
 - d. The entire plan must be submitted to the Regional Water Board by April 15, 2011 (inclusive of all restoration designs and monitoring and reporting requirements described herein). Progress reports are due the first of each month starting March 1, 2011 until the completion of restoration efforts triggers the required monitoring and reporting program described above.
3. Following Assistant Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the Mendocino County District Attorney's office, CDFG, and other involved agencies, the Discharger shall implement the work plan. All work to restore the site shall be completed by October 15, 2011.
4. If the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines in this Order, the Discharger may request, in writing to the Assistant Executive Officer, an extension of the time schedule as specified. The written extension request shall describe how the delay is beyond the reasonable control of the Discharger and shall be received by the Regional Water

Board no less than 15 calendar days prior to the respective deadline. An extension may be granted by the Assistant Executive Officer, for good cause, in which case this Order will be accordingly revised.

5. This Order 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 Site consistent with the Water Code.

Ordered by

Luis G. Rivera
Assistant Executive Officer

January 18, 2011