

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2011-0029

For

John Curry and Ian Asher
Assessor Parcel Number
019-310-024

Trinity Pines
Trinity County

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

1. Mr. John Curry and Mr. Ian Asher (hereinafter Dischargers) own the parcel of land identified as Trinity County Assessor's Parcel Number 019-310-024 (hereinafter Site). The Dischargers and/or their agents have conducted grading and unauthorized dredge and fill activities within and adjacent to an ephemeral watercourse tributary to Post Creek, which is tributary to Rattlesnake Creek, which is tributary to South Fork Trinity River, a water of the State and the United States. The Dischargers' activities at the Site have resulted in a discharge or threatened discharge of sediment to waters of the South Fork Trinity River watershed.
2. On October 5, 2010, Regional Water Board staff (Staff) inspected the Site with staff from California Department of Forestry and Fire Protection (Cal Fire), and observed the following:
 - a) A culverted stream crossing with bare, loose soil over and around the culvert. It is unknown whether the culvert is properly sized for the crossing, it does not appear that the culvert was properly installed, and soil exposed or moved during culvert installation has not been adequately stabilized.
 - b) Cleared ground through much of the Site to facilitate agricultural activity on the parcel, resulting in a significant amount of bare, erodible soil. Trees and slash cleared from the Site were piled along the sides of the Site.
 - c) Two corrugated standpipes were placed in the channel of the ephemeral watercourse that crosses the parcel, surrounded by soil, and gravel. Staff also observed marijuana plants associated with the agricultural operations placed in the watercourse channel under a makeshift tent.
3. The culverted stream crossing, bare soil, plants, tent, standpipes, and gravel pose or 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 Trinity County District Attorney's office, relative to Forest Practice Rules violations associated with illegal timberland conversion on the Site.

5. Mr. Asher, one of the Dischargers, was present on the Site on the day of the staff inspection (October 5, 2010), and both Dischargers attended a subsequent meeting on October 19, 2010 with Assistant District Attorney Matthew Hudson and staff of Cal Fire and the Regional Water Board. In both instances, Mr. Asher and, in the latter instance, Mr. Curry, as well, expressed willingness to address the identified environmental concerns in a timely manner.
6. On November 18, 2010, November 29, 2010, January 18, 2011, January 23, 2011, and January 31, 2011, respectively, John S. Kessler, Registered Professional Forester #2494 submitted a proposed mitigation plan and revised versions of that plan for the Site, on behalf of the Dischargers. As of January 23, 2011, the plan had been satisfactorily revised to address comments provided by Regional Water Board and California Department of Fish and Game. The plan remains subject to final concurrence by Cal Fire.
7. The South Fork Trinity 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 supply
 - d. Industrial service supply
 - e. Freshwater replenishment
 - f. Water contact recreation
 - g. Non-contact water recreation
 - h. Commercial and sport fishing
 - i. Cold freshwater habitat
 - j. Wildlife habitat
 - k. Migration of aquatic organisms
 - l. Spawning, reproduction, and/or early development
 - m. Aquaculture
8. The South Fork Trinity River and its tributaries are listed on the Clean Water Act section 303(d) list for impairments associated with sediment/siltation and temperature.
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 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.”*
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 Dischargers and/or their agent(s) have cleared soil on the Site and have dredged and filled areas 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 7 above. This deleterious impact is a violation of Prohibitions 1 and 2 in the Action Plan, as described in Paragraph 9, above.
 13. 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."

14. As noted in Finding 9 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. 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.
15. As explained in Finding 13, 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/or 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.
16. 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 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 workplan bear a reasonable relationship to the benefits that will be realized once the workplan is implemented.

17. 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.
18. Failure to comply with the terms of this Order may subject Discharger to an enforcement action under the Water Code, including administrative civil liabilities under 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.
19. 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 of the Regional Water Board 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 the Dischargers choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that the Dischargers must comply with the Order while their request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Dischargers shall provide the following information and perform the following cleanup and abatement actions:

1. Pending final approval by reviewing agencies, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the Trinity County District Attorney's office, Cal Fire, and other involved agencies, the Dischargers shall implement the workplan. All work to restore the Site shall be completed by July 1, 2011.
2. If the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in this Order and/or in the approved workplan, the Dischargers 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 Dischargers 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.

3. 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 California Water Code. This Order may be revised by the Assistant Executive Officer as additional information becomes available.

Ordered by

Luis G. Rivera
Assistant Executive Officer

February 11, 2011

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