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## North Coast Regional Water Quality Control Board

March 21, 2012

Mr. John Wieczorek  
3690 Brookwood Drive  
Bayside, CA 95521

Dear Mr. Wieczorek:

**Subject:** NOTICE OF VIOLATION: Unauthorized Activities Involving Excavation in Stream Channels, Clearing Riparian Vegetation, and Discharge of Dredged and/or Fill Materials into Surface Waters

**File:** Water Quality Certification – General Correspondence  
Wieczorek, John

North Coast Regional Water Quality Control Board (Regional Water Board) staff are investigating reports of unauthorized excavation, riparian vegetation clearing, and fill activities that you and/or your agents have conducted on your property located off Brookwood Drive (APNs 501-28-110 and 501-8-104) in Bayside, Humboldt County. The investigation was prompted by our receipt of a Notice of Violation (NOV) letter from the Department of Fish and Game (DFG) and a letter from the U.S. Army Corps of Engineers regarding unauthorized excavation and discharge of earthen materials into waters of the State and/or United States associated with an unnamed tributary to Jacoby Creek and Jacoby Creek.

Regional Water Board staff confirmed that excavation and fill activities occurred within the bed and banks of Jacoby Creek and an unnamed tributary, and that soil, sediment, and other earthen materials have been discharged into the waters of the State and/or the United States in violation of the Clean Water Act, Porter-Cologne Water Quality Control Act (California Water Code), and the Water Quality Control Plan for the North Coast Region (Basin Plan).

### California Water Code Violation

The discharge of sediment and placement of fill into waters of the State and/or United States, without required permits, is a violation of the California Water Code, and the Basin Plan. Dischargers are required to submit a Report of Waste Discharge describing the discharge, prior to initiating a discharge to waters of the State and/or the United States in accordance with Water Code sections 13260 and 13264. Water Code section 13264 provides the following:

*“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:...”*

#### Federal Clean Water Act Violation

Dredge and fill activities within waters of the United States require authorization from the U.S. Army Corps of Engineers under the Clean Water Act section 404 and issuance of a state water quality certification by the Regional Water Board under Clean Water Act section 401. According to the U.S. Army Corps of Engineers' letter (File No. 2012-00060) your work may be within their jurisdiction and a permit may be required for your project. As we have no record of such permits for your activities you may be in violation of the Clean Water Act sections 404 and 401. Water Code section 13776 provides the following:

*“Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state...shall file a report of the discharge in compliance with the procedures set forth in Section 13260...”*

#### Basin Plan Prohibitions and Objectives

The Basin Plan contains an Action Plan for Logging, Construction, and Associated Activities (Action Plan, page 4-26.00) which includes two prohibitions that apply to the discharge of earthen materials or debris to surface waters:

- 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.”*

The Basin Plan also contains specific narrative and numeric water quality objectives for inland surface waters of the North Coast Region (pages 3-3.00 – 3-11.00). The objectives include limitations on sediment, floating material, suspended material, color, and turbidity.

The materials and debris removed from and placed within and adjacent to Jacoby Creek and unnamed tributary constitute waste, as defined by the California Water Code section 13050. The unregulated excavation and/or placement of earthen material or debris violates Prohibitions 1 and 2 of the Basin Plan, and creates or threatens to create a condition of pollution or nuisance by increasing or potentially increasing levels of

sediment, turbidity, floating, and suspended materials in violation of the Basin Plan's water quality objectives.

For the reasons stated above, Regional Water Board staff direct you to immediately cease any activities that involve the excavation or discharge of material into waters of the state in violation of Prohibition 1 of the Basin Plan, or placement of material where it may eventually be discharged into waters of the state in violation of Prohibition 2 of the Basin Plan. In addition, consider this formal notice of the requirements of Water Code section 13260 and section 13264, which require that a report of waste discharge be filed with the Regional Water Board, prior to the initiation of a discharge.

Please be advised that, as set forth above, you are currently discharging without a permit in violation of state and federal law and are currently subject to administrative civil liability pursuant to Water Code section 13385 in the amount of up to \$10,000 per day of violation.

This Notice of Violation serves as a notice to correct the above violations. No later than April 13, 2012, please contact Dean Prat of the Regional Water Board staff at (707) 576-2801 or by email at [dprat@waterboards.ca.gov](mailto:dprat@waterboards.ca.gov), who can assist you in determining the best course of action to resolve this Notice of Violation.

Sincerely,

Matt St. John  
Chief, Timber Harvest and Non-Point Source Division

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Certified Mail

cc: Mr. Scott Bauer, Department of Fish and Game, 619 Second Street, Eureka, CA 95501

Mr. Kelley Reid U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive, Box 14, Eureka, CA 95501

cc via email:

Laurie. A. Monarres, U.S. Army Corps of Engineers  
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