

California Regional Water Quality Control Board  
North Coast Region  
Cleanup and Abatement and 13267 Order No. R1-2013-0039

For  
Liz Seise  
and  
Scott Seise

For  
Discharges and Threatened Discharges of Earthen Material and Woody Debris to  
Unnamed Tributaries to Mill Creek in the Middle Main Eel River watershed  
On and Adjacent to APN 216-381-53

Humboldt County  
WDID# 1B13023CNHU

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

1. Liz Seise is identified in Humboldt County records as the owner of the parcel of land located at Assessor's Parcel Number 216-381-53 in the Rancho Sequoia subdivision south of Alderpoint, CA (hereinafter Site). Scott Seise is the son of Liz Seise (hereinafter Dischargers), and stated during an inspection of the property on January 22, 2013 that he owns the Site. Additionally, Mr. Seise stated during the January 22, 2013 inspection that in 2012, he rented the Site out to other persons who graded soils, constructed a pond, and removed trees and vegetation from 3.85 acres, in order to install greenhouses for marijuana cultivation. These activities included excavation and filling of two streams with earthen and woody debris. The two streams are tributaries of Mill Creek, a tributary of the Middle Main Eel River. The activities of the Dischargers and/or their agents have resulted in discharge, and threatened discharge of sediment and debris, as described herein, to waters of the State and United States.
2. On January 22, 2013, Regional Water Board staff (Staff) inspected the Site in the company of representatives from the California Department of Fish and Wildlife (CDFW), Humboldt County Environmental Health and Code Enforcement, and observed the following:
  - a) An approximately 3.85 acre cleared area, with bare, unstabilized soil placed in and adjacent to stream channels;
  - b) An instream pond with a failing dam;
  - c) Two stream channels completely buried for 1088 feet with earthen and woody debris, with additional sediment impacts through erosion and sediment discharge;
  - d) Sediment deposits in 218 feet of a third stream channel.

3. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates the following beneficial uses for the Middle Main Eel River:
  - a. Municipal and domestic supply
  - b. Agricultural supply
  - c. Industrial process supply
  - d. Groundwater recharge
  - e. Freshwater replenishment
  - f. Navigation
  - g. Water contact recreation
  - h. Non-contact water recreation
  - i. Commercial and sport fishing
  - j. Cold freshwater habitat
  - k. Commercial Sport Fishing
  - l. Wildlife habitat
  - m. Rare threatened or endangered species
  - n. Migration of aquatic organisms
  - o. Spawning, reproduction, and/or early development
  - p. Aquaculture
4. Recently constructed features on the Site have directly affected and threaten to affect the beneficial uses of water because of the negative or potentially negative impacts associated with the introduction of earthen material and sediment directly into a stream that flows to a stream and a river that provide fish habitat for steelhead trout, Coho salmon, and Chinook salmon. The dredging and filling, tree falling, grading, and discharge of earthen and woody debris in significant quantities has potential negative effects on a number of beneficial uses including those related to fish and fisheries, and aquatic habitat.
5. 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 the following 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.”*

6. 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 that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from 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.
7. As described above, the Dischargers and/or their agent(s) have placed earthen materials and debris into and adjacent to three streams where such materials are in and can pass into waters of the State and United States, in quantities likely deleterious to fish, wildlife and other beneficial uses. This discharge violates Prohibitions 1 and 2 in the Action Plan, as described in finding 5 above.
8. 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, in relevant part, : “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.”

9. As stated in finding 5, 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.
10. Pursuant to Water Code §13304 (c)(1), the Regional Water Board is entitled to and can seek reimbursement for reasonable costs incurred to investigate the unauthorized discharge of wastes, to oversee cleanup of the wastes, supervising cleanup and abatement activities, or taking other remedial actions required by this Order.
11. 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 Dischargers to furnish, under penalty of perjury, technical or monitoring program reports. A technical report, and restoration and monitoring work plan 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 technical report and restoration work plan bear a reasonable relationship to the benefits that will be realized once the work plan is implemented.
12. 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.
13. Failure to comply with the terms of this Order may subject the Dischargers to administrative civil liability, pursuant to sections 13350 of the Water Code in an amount of up to five thousand dollars (\$5,000) per day of violation or ten dollars (\$10) per gallon of waste discharged. Failure to provide the technical reports required by this Order may also subject Dischargers' to administrative civil liability in the amount of up to \$1000 per day pursuant to section 13268 of the Water Code.
14. 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. Please note, 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 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 under consideration.

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. Immediately cease all activities that cause or threaten to cause the discharge of sediment and debris to waters of the State or United States located on or downstream of the Site.
2. Retain a California Licensed Professional to develop a stream and slope restoration and monitoring plan (restoration plan) showing all watercourses and existing features and that includes designs and specifications to accomplish the following, consistent with the directives of and in compliance with any necessary approvals and/or permits from Cal Fire, the California Department of Fish and Wildlife, Humboldt County, United States Army Corp of Engineers (USACE) and other agencies: 1) remove all illegally placed earthen material and woody debris from streams, 2) restore the vegetative and hydrological functions of the damaged streams to ensure the long term recovery of the affected streams, 3) restore natural slope contours to ensure dispersed surface flows, 4) re-plant the slopes and stream side areas with native vegetation to prevent erosion and as may be required by CAL FIRE or other agencies, and 5) as necessary to provide stream side protection, provide additional planting of native species to reduce the potential for sediment delivery. The restoration plan must include design and construction standards, and a monitoring plan to accomplish and report upon items 1-5 above and for the following:
  - i. All debris must be disposed of in a proper manner and/or stabilized in a location where there is no potential for discharge. The restoration plan must include the following: dam removal, removal of earthen materials and debris from streams, restoration of natural grade and drainage paths in form and functionality including re-vegetation and hydrologic function, mitigation to control instream erosion and surface erosion from exposed earthen materials prior to construction, during construction, and post construction until vegetation is established.
  - ii. The restoration plan must include: maps at 1:12000 or larger scale (e.g., 1:6000) that delineate existing site conditions including existing and buried stream channels, the projected restored slopes and stream channels, illustrating all restoration plan work points, spoil disposal sites, re-vegetation planting areas, and any other factor that requires mapping or site construction details to complete the

scope of work; design and construction standards for earthen material compaction and stabilization and for re-planting of exposed soils with native vegetation; and erosion control methods and standards for unanticipated precipitation during remediation. To ensure a successful re-vegetation/earthen stabilization effort, site restoration and any necessary plantings shall be monitored and maintained (including irrigation if necessary) for five years. All tree and shrub plantings shall have a minimum of 85% success of thriving growth at the end of five years with a minimum of two consecutive years (two growing seasons) of monitoring after the removal of irrigation. In the event the re-planting fails, re-planting is required and the monitoring shall be extended until the 85% success rate of vegetation re-establishment is accomplished. The discharger is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these goals. In addition, the plan must include a time schedule for completing the work including receiving any necessary permits from State, County and/or federal agencies that may be required.

- iii. A monitoring plan is required for all site remediation to determine the success of stream restoration efforts and re-vegetation. The monitoring plan must include regularly scheduled inspections for five years or until the Site is restored, vegetation is re-established, erosion is no longer ongoing and monitoring is no longer necessary. Each monitoring event must include a report within 30 days that describes the inspection findings, and provides corrective actions for any failures of the Site(s); failures include but are not limited to, erosion controls, and instream work and re-vegetation success. Each year an annual monitoring report shall be submitted documenting verbally and photographically any necessary mitigation and evidence of successful restoration and Site recovery, for five years or until the Site is recovered. We suggest that for the first two winters, a rainfall value trigger monitoring inspections.
3. The Dischargers must submit the entire restoration and monitoring plan to the Regional Water Board by **July 1, 2013** (inclusive of restoration designs, and monitoring and reporting requirements, and time schedules described herein).
  4. Progress reports are due the first of each month starting **June 1, 2013**, until the completion of restoration efforts triggers the required monitoring and reporting program described above.
  5. Following Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the CDFW, and other agencies, the Dischargers shall implement the work plan. The Dischargers must complete all work to restore the site by **October 15, 2013**.
  6. If the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in this Order, the Dischargers may request, in writing to

the Executive Officer, an extension of the time schedule as specified. In the written extension request describe why the delay is beyond the reasonable control of the Dischargers; the request must be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. The Executive Officer, for good cause, may grant an extension.

7. 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:

Original Signed By David Leland For

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Matthias St. John  
Executive Officer

May 17, 2013

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