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## North Coast Regional Water Quality Control Board

October 2, 2013

Donald and Rogie Shutt  
P.O. Box 160  
Smith River, CA 95567

Subject: **Notice of Violation** - Cleanup and Abatement and §13267/Order No. R1-2013-0050

File: Donald and Rogie Shutt, Gilbert Creek, Del Norte County,  
WDID No. 1A13014CNDN

On February 27, 2013, the Executive Officer on behalf of the North Coast Regional Water Quality Board (Regional Water Board) issued a draft Cleanup and Abatement Order to you via certified mail. Our records show that you received this draft order on March 4, 2013. On July 8, 2013, the Regional Board issued to you, via certified mail, the final order, Cleanup and Abatement and Water Code §13267 Order No. R1-2013-0050 (Cleanup and Abatement Order). The Post Office returned this correspondence, as you did not sign the certified mail return receipt and pick up the mail from your postal service. Subsequently, on August 9, 2013, you were served the subject Cleanup and Abatement Order by a process server. To date, we have had no response to these correspondences.

By this Notice of Violation letter, you are hereby notified that as of August 15, 2013, you are in violation of the subject Cleanup and Abatement Order. Please be advised that both the failure to comply with the Cleanup and Abatement Order and the initial discharge violations may subject you to substantial civil liability.

Present outstanding violations of the Cleanup and Abatement Order consist of the following:

Directive 2 (page 7):

2. Develop and submit a technical report that includes the following details on instream construction no later than **August 15, 2013**:
  - A list of all contractors and/or operators that worked on the instream construction;
  - A list of all parties responsible for directing, hiring, and supervising the instream work on Gilbert Creek;
  - A list of the equipment (trucks, excavators, etc.) used to divert Gilbert Creek and construct the berm;

- Receipts for all equipment, including excavators, bulldozers, and trucks used by the Dischargers and any other contractors involved;
- Copies of any and all plans or as built or diagrams used to guide instream construction;

Directive 3 (pages 7-8):

3. Retain a qualified licensed professional experienced in wetland, stream and aquatic restoration, erosion control, and design and construction of engineered fills, to develop a restoration plan to remove all illegally placed earthen material and restore the functionality of the damaged stream. The plan must include design and construction standards, and a monitoring plan for the following:
  - a. Removal and stabilization of earthen, rock, woody debris and other wastes, and restoration of the affected instream habitat. All debris must be disposed of in a proper manner and/or stabilized in a location where there is no potential for discharge. Stream restoration must include: restoration of natural grade and drainage paths in form and functionality including re-vegetation as necessary, mitigation to control instream erosion of gravels, and treating erosion from exposed soils during construction and until vegetation is established.
  - b. The restoration plan must include: a map(s) at 1:12000 or larger scale (e.g., 1:6000) 1) delineating existing and restored stream channels, 2) illustrating all restoration plan work points, spoil disposal sites, re-vegetation planting area, and any other factor that requires mapping or site construction details to complete the scope of work; design and construction standards for earthen material and rocky debris stabilization; soil compaction; restoration of the instream channel roughness; re-planting of exposed soils; and erosion control for unanticipated precipitation during remediation.
  - c. 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 conducted by experienced professionals 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 narratively and photographically any necessary mitigation and evidence of successful restoration and Site recovery, for five years or until the Site is recovered.
  - d. A description of proposed interim measures and/or practices to be used to control erosion from roads and road-related sediment sources on the property until these features can be removed. The plan for temporary erosion control must include a monitoring and reporting

plan including regular inspections through the winter period, with a report due to the Regional Water Board within 30 days of each inspection. A rainfall related trigger for inspections is suggested.

- e. A monitoring plan for all site remediation activities and features, to assess and demonstrate the success of sediment remediation 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 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. A rainfall related trigger for inspections is suggested for the first two years following restoration.

Directive 4 (page 9):

4. The Dischargers must submit the entire restoration and monitoring plan to the Regional Water Board by **August 15, 2013** (inclusive of restoration designs, and monitoring and reporting requirements, and time schedules described herein).

Directive 5 (page 9):

5. Progress reports are due the first of each month starting **September 1, 2013**, until the completion of restoration efforts triggers the required monitoring and reporting program described above.

As of **October 1, 2013**, you are **47 days** in violation in complying with Directives 2, 3 and 4, and **31** days in violation in complying with Directive 5.

The Regional Water Board may issue administrative civil liability of up to \$5,000 *per day for each individual violation* pursuant to Water Code section 13350 and/or up to \$1,000 for each day you fail to furnish a required technical report under Water Code section 13268.

You may also be subject to up to \$10,000 and \$10 per gallon of earthen materials discharged and not cleaned up over 1,000 gallons for the actual discharges into Gilbert Creek pursuant to Water Code section 13385. The Regional Board may refer the matter to the Office of the Attorney General for enforcement. The Regional Board reserves the right to take any enforcement action authorized by law.

Due to the nature and circumstances surrounding this matter, including your failure to comply with the Cleanup and Abatement Order or to communicate with staff, enforcement staff will draft an administrative civil liability complaint recommending that the Regional Water Board assess liability. Please be aware that your cooperation or lack thereof will be a factor we consider in recommending an amount of liability. I encourage you to contact staff to schedule a meeting to discuss your plans to comply with the Cleanup and Abatement Order.

If you have any questions or would like to discuss the required restoration and monitoring plans and progress reports, please contact Stormer Feiler of my staff by email at [stormer.feiler@waterboards.ca.gov](mailto:stormer.feiler@waterboards.ca.gov), or by phone at (707) 543-7128. To discuss the legal procedure, please contact Laura Drabandt, staff counsel, at (916) 341-5180 or by email at [laura.drabandt@waterboards.ca.gov](mailto:laura.drabandt@waterboards.ca.gov).

Sincerely,

David F. Leland, P.E.  
Acting Assistant Executive Officer

131002\_NOV\_CAO\_Shutt

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cc by email:

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