

California Regional Water Quality Control Board  
North Coast Region  
Cleanup and Abatement and 13267 Order No. R1-2013-0064

For  
Becki J. Rodriguez  
And  
Mario T. Apostolov  
For

Discharges and Threatened Discharges of Earthen Material and Woody Debris to  
Unnamed Tributaries and Mattole Canyon Creek in the Mattole River watershed  
On and Adjacent to APN 221-111-15  
9444 Upper Mattole Canyon Road  
Humboldt County  
WDID No. 1B13096CNHU

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

1. On March 13, 2013, Regional Water Board staff (Staff) inspected property located at 9444 Upper Mattole Canyon Road, near Ettersburg, identified as Humboldt County Assessor's Parcel Number 221-111-15 (hereinafter "Site."), accompanied by representatives from the California Department of Fish and Wildlife, Humboldt County Environmental Health and Code Enforcement, and observed the following:
  - a) Two large clearings, one approximately 3.96 acres, the other approximately 2.25 acres, with no apparent erosion or sediment controls in place; the latter clearing included unstable earthen fills perched above a Class I watercourse tributary to Mattole Canyon Creek;
  - b) An instream pond and earthen dam without a stable spillway/overflow structure, located at the head of a watercourse;
  - c) 1300+ feet of access road to the smaller clearing, showing evidence of chronic erosion and sediment delivery to Mattole Canyon Creek;
  - d) Approximately 2300 feet of poorly constructed and maintained road between the two clearings, lacking proper drainage controls or features, with failing culverts, and evidence of altered or diverted stream flows caused by plugged or undersized culverts, and resulting in sediment delivery to tributaries of Mattole Canyon Creek.
  - e) Approximately 600-900 feet of watercourse(s) that have either been filled in or that show evidence of impacts from sediment discharges or hydro-modification associated with site development.
2. Assessor records indicate that Mr. Apostolov became the Site owner of record as of June 5, 2013. Humboldt County Assessor records identify Becki J. Rodriguez as the previous owner of the Site, owner of record at the time that staff identified the subject violations,

and owner of record at the time that site activities leading to the violations occurred. Aerial photography analysis suggests that some or all of the conditions observed on the ground in March 2013 occurred between 2010 and present. In that time period, Ms. Rodriguez or her agents removed trees, graded the Site, constructed roads and ponds, filled watercourses, and built structures, causing discharge and threatened discharge of earthen materials and woody debris to streams on the Site. There are at least five watercourses on the Site that flow to Mattole Canyon Creek, a tributary to the Mattole River.

3. As discussed below, this Order describes water quality violations identified in March 2013, prior to Mr. Apostolov's ownership. Earthen materials located within or where they can enter waters of the State continue to represent violations of the Basin Plan. The Basin 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. Ms. Rodriguez's activities on the Site violated both of these prohibitions, and if conditions created by Ms. Rodriguez remain uncorrected, Mr. Apostolov is permitting waste to be discharged or deposited where it is or probably will be discharged into waters of the State, creating or threatening to create a condition of pollution or nuisance; therefore, both Ms. Rodriguez and Mr. Apostolov are subject to this Order pursuant to Water Code section 13304, and are responsible and identified as Dischargers through the remainder of this Order.
4. On August 15, 2013, the Regional Water Board issued a draft Order providing an opportunity for comment. Manhard Consulting, LTD sent a letter dated September 11, 2013, signed by Mario Apostolov stating his willingness to comply with the Order. The Regional Water Board received no response from Becki J. Rodriguez.
5. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates the following beneficial uses for the Mattole River:
  - 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. Hydropower generation
  - i. Water contact recreation
  - j. Non-contact water recreation
  - k. Commercial and sport fishing

- l. Warm freshwater habitat
  - m. Cold freshwater habitat
  - n. Commercial Sport Fishing
  - o. Wildlife habitat
  - p. Rare threatened or endangered species
  - q. Migration of aquatic organisms
  - r. Spawning, reproduction, and/or early development
  - s. Estuarine
  - t. Aquaculture
6. 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 onsite streams that are tributary to watercourses 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 to a number of beneficial uses including those related to fish and fisheries, and aquatic habitat.
7. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the State, including actions intended to meet water quality objectives and to protect beneficial uses. 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."*
8. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded because 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.
9. As described above, Ms. Rodriguez or her agent(s) have placed earthen materials and debris into and adjacent to 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 6 above. Under Mr. Apostolov's present ownership, with earthen materials located within or where they can enter waters of the State, they continue to represent violations of the Basin Plan.
10. The conditions on the Site are therefore subject to cleanup and abatement under 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."
11. Pursuant to Water Code section 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.
12. 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.

13. 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.
14. To the extent that a federal license or permit is required to conduct the cleanup and abatement work described herein, pursuant to section 401 of the federal Clean Water Act, this Order shall constitute water quality certification because it contains requirements that are equal to or more stringent than those that would be contained in any separate and subsequent certification order. This Order requires the restoration of all streams and wetlands, and therefore complies with Executive Order W-59-93 that establishes the policy of no net loss of wetland habitat.
15. Permits and approvals from other local, state and/or federal agencies may be necessary to perform the work required under this CAO.
16. 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.
17. 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. Note that filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if a Discharger files a petition with the State Water Board, the Discharger must comply with the Order while his/her 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. Retain a California Licensed Professional to develop an interim erosion control plan to control erosion from the Site, monitor the roads and watercourse crossings, and develop an inspection and reporting schedule that is triggered by rainfall through the winter period of October 15, 2013 through May 1, 2014. Dischargers shall submit the plan to the Regional Water Board Executive Officer for review and approval by **October 10, 2013**. Upon approval, dischargers shall implement the interim erosion control plan no later than **October 21, 2013**.
2. Retain a California Licensed Professional to develop a stream and slope restoration and monitoring plan (Plan) showing all watercourses and existing features and including designs and specifications to accomplish the following: 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) replant the slopes and stream side areas with native vegetation to prevent erosion, and 5) to provide streamside protection, replant streamside areas with 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 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 revegetation and hydrologic function, mitigation to control instream erosion and surface erosion from exposed earthen materials before, during, and following restoration plan implementation, and until vegetation is established.
  - ii. The Plan must include: maps at 1:12000 or larger scale (e.g., 1:6000) that delineate existing site conditions including existing slopes and buried stream channels, and projected restored slopes and stream channels, illustrating all restoration plan work points, spoil disposal sites, revegetation planting areas, and any other factor that requires mapping or site construction details to complete the scope of work. In addition the Plan must include design and construction standards for: 1) earthen material compaction and stabilization; 2) replanting of exposed soils with native vegetation; and 3) erosion control methods and standards for unanticipated precipitation during remediation. To ensure a successful revegetation/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 that initial revegetation efforts fail, replanting is required, and post-project monitoring shall be continued until revegetated areas show an 85% success rate. The Dischargers are responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other appropriate measures 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 federal agencies that may be required.

The Plan must include monitoring and reporting, which is required for all site remediation to determine the success of stream restoration efforts and revegetation. The monitoring plan must include regularly scheduled inspections for five years or until the Site is restored, vegetation is reestablished, erosion is no longer ongoing and monitoring is no longer necessary. Each inspection/monitoring event must include a report submitted within 30 days following the inspection that describes the inspection findings, and provides corrective actions for any identified failures of restoration features/measures; features to be assessed for success/failure include but are not limited to, erosion controls, instream work, and revegetation efforts. Each year an annual monitoring report shall be submitted by **December 31**, documenting narratively and photographically any necessary mitigation and evidence of successful restoration and Site recovery. The monitoring component of the Plan should include a rainfall value that will serve as a trigger for site inspections over the first two winters. The Dischargers must submit the entire restoration and monitoring plan required under Item 2 above, to the Regional Water Board by **December 31, 2013** (inclusive of restoration designs, and monitoring and reporting requirements, and time schedules described herein).

3. Progress reports are due the first of each month starting **October 1, 2013**, until the completion of restoration efforts triggers the required monitoring and reporting program described above.
4. 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 1, 2014**.
5. 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.

6. 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

**September 30, 2013**

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