

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order and Water Code Section 13267  
Order R1-2015-0064

for  
Ernest Glenn Ungewitter  
401 Wilson Road, Sebastopol  
WDID 1B15022WNSO

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

1. Ernest Glenn Ungewitter, (hereinafter Discharger) owns land located at 401 Wilson Road in Sebastopol, identified as Sonoma County Assessor's Parcel Number 077-140-008 (hereinafter Site).
2. The Discharger has conducted the unauthorized dredge and fill activities in wetlands, a water of the State, adjacent to Jonive Creek, which is tributary to the Lower Russian River (114.11) via Atascadero Creek and Green Valley Creek, a water of the State and water of the United States. The unauthorized dredge and fill activities occurred in or around September or October of 2014.
3. Unauthorized dredge and fill activities consist of the removal of riparian vegetation along Jonive Creek, grading or grubbing within a riparian zone and a wetland, and piling of debris within a wetland.
4. On February 18, 2015, Regional Water Board staff was contacted by Tom Billeter of Atterbury and Associates, requesting agency guidance in response to a Sonoma County Grading and Illegal Use Violation.
5. **Unauthorized Activities:** On March 4, 2015, Regional Water Board staff performed an inspection of the Site. There was evidence of vegetation removal and grubbing within the riparian zone of Jonive Creek, including work within a wetland. Jonive Creek is currently subject to a 200-foot streamside conservation area per the Sonoma County Riparian Corridor Ordinance adopted in November 2014. The vegetation removal occurred in an undeveloped part of the property that has in the past served as a pasture. The homeowner was concerned about overgrowth and so used a borrowed tractor to perform the work himself. Himalayan blackberry, willow, and ash trees have been removed by the roots using a tractor. The work was performed in September or October 2014. The debris was placed in piles across the property. The work area covers approximately 1 acre, almost if not entirely within the 200-foot streamside conservation area boundary. Vegetation removal was performed right up to the edge of

the bank of Jonive Creek. Additionally, there was observed wetland habitat within the work area. Debris piles are located within the wetland, the tractor had apparently been driven through the wetland, and vegetation may have been removed from the wetland.

### **Legal and Regulatory Authority**

6. This Order conforms to, and implements policies and requirements of, the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including: (1) Water Code sections 13267 and 13304; (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the Water Quality Control Plan for the North Coast Region, (hereafter "Basin Plan") adopted by the Regional Water Board including beneficial uses, water quality objectives, and implementation plans; (5) State Board policies and regulations, including State Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) (Resolution 68-18), and Resolution No. 92-49 (Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code section 13304) (Resolution 92-49).
7. Resolution 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and mandates that existing high quality waters be maintained unless the State finds that any change in quality is "consistent with [the] maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies." (Resolution No. 68-16 at p 1.) Second, if an activity results in the discharge of waste into existing high quality waters, the activity must meet requirements that "will result in the best practicable treatment or control of the discharge." (Resolution No. 68-16 at p 2.)
8. Governor's Executive Order W-59-93, the "California Wetland's Policy" requires that there be "no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property".
9. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background water quality, or if background levels cannot be restored, the best water quality which is reasonable, considering the demands and values involved on those waters in accordance with California Code of Regulations, title 23, section 2550.4 . Any cleanup level alternative to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

10. **Basin Plan.** The wetland and Jonive Creek are tributary to the Lower Russian River, all of whose beneficial uses are designated in the Water Quality Control Plan for the North Coast Region (Basin Plan). The potential and existing beneficial uses identified in the Basin Plan for the Guerneville Hydrologic Subarea of the Russian River (114.11) and for freshwater wetland include:

- a. Municipal and domestic supply (MUN)
- b. Agriculture (AGR)
- c. Industrial (IND)
- d. Industrial Process Supply (PRO)
- e. Groundwater recharge (GWR)
- f. Freshwater Replenishment (FRSH)
- g. Navigation (NAV)
- h. Hydropower Generation (POW)
- i. Water contact recreation (REC1)
- j. Non-contact water recreation (REC2)
- k. Commercial and sport fishing (COMM)
- l. Warm freshwater habitat (WARM)
- m. Cold freshwater habitat (COLD)
- n. Wildlife habitat (WILD)
- o. Rare and endangered species (RARE)
- p. Migration of aquatic organisms (MIGR)
- q. Spawning, reproduction, and/or early development (SPWN)
- r. Shellfish Harvesting (SHELL)
- s. Estuarine Habitat (EST)
- t. Aquaculture (AQUA)
- u. Flood Peak Attenuation/Flood Water Storage (FLD)
- v. Wetland Habitat (WET)
- w. Water Quality Enhancement (WQE)

11. Beneficial uses of any specifically identified water body generally apply to all its tributaries and hydrologically connected wetlands, which are critical habitat and important filtering systems for removing pollutants in stormwater runoff. The beneficial uses of state waters have been unreasonably affected by the unauthorized activities on the Site, including removal of riparian vegetation, grading or grubbing within a riparian zone and a wetland, and piling of debris in a wetland. The wetland and Jonive Creek are tributary to the Lower Russian River (114.11) via Atascadero Creek and Green Valley Creek. The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, total maximum daily loads (TMDLs) have not been established for this water body. Removal of riparian vegetation and disturbing soil in the riparian zone can create erosive conditions that can contribute to the sediment impairment. The removal of riparian vegetation can contribute to temperature impairment. Grubbing within a wetland results in the temporary or permanent loss of wetlands.

12. Jonive Creek and Atascadero Creek are part of a stream, riparian, floodplain, and wetland complex that filters and infiltrates runoff, buffers flood volume, improves water quality, provides siltation control, forms habitat and passage corridor for a wide variety of wildlife, and contains native wetland plant species. Atascadero Creek supports the listed fish species, steelhead trout (*Oncorhynchus mykiss*) and coho salmon (*Oncorhynchus kisutch*).
13. Water Code section 13304, subdivision (a), provides: “A 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. 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 unreasonable affects . . . the waters for beneficial uses.” Additionally, sediment, when discharged to waters of the state, constitutes a “waste” as defined in the Water Code section 13050. Waste “includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.”
15. Observations made by Regional Water Board staff during the March 4, 2015, inspection confirm that the Discharger created, or threatened to create, a condition of pollution or nuisance. Removing riparian vegetation, grubbing within the riparian zone and wetland, and piling debris piles in a wetland, all have created or threaten to create a condition of pollution that unreasonably affects the beneficial uses of the Jonive Creek and the wetland. All of these activities have the potential to displace and/or eliminate aquatic habitats. Removing riparian vegetation exposes Jonive Creek to additional sunlight, possibly affecting stream temperature. Removing riparian vegetation also eliminates streamside habitat for wildlife. Grubbing within the riparian zone disturbs soils and can create a condition of increased sediment erosion and reduce filtering of runoff to the stream. Grubbing within a wetland can compact soils, change hydrology, and destroy wetland habitat. Placing debris piles in wetlands can, by filling them, result in the temporary or permanent loss of wetlands and can damage the wetland soils should the piles be burned. In sum, the Discharger’s activities have unreasonably affected beneficial uses and therefore, created a condition of pollution. Accordingly, the Discharger is subject to this Order pursuant to section 13304 of the Water Code.

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. The reports and workplans required by this Order, pursuant to Water Code section 13267, are necessary to ensure that the prior harm and future threat to water quality created by activities on the Site, which resulted in 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 the requested reports and work plans bear a reasonable relationship to the benefits that will be obtained from having the necessary information for the Regional Water Board to properly regulate and monitor the activities that have caused or have threatened to cause a condition of pollution.
  
17. Issuance of this Order is being taken by a regulatory agency for the protection of the environment and as such 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. This Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup and abatement activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change to the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed remedial activities and possible associated environmental impacts from those activities. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Regional Water Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment, and if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

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

1. Prohibitions

- a. Removal of vegetation within waters of the State, or within riparian areas that provide benefit to these waters, without authorization from the Regional Water Board and other applicable resource agencies is prohibited.
- b. Discharge of sediment-laden runoff to wetlands and other surface waters is prohibited.
- c. Discharge of settleable material that causes waters of the State to contain substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses is prohibited.

2. Cleanup and Abatement Tasks

a. **Baseline Information**

**Compliance Date:** January 1, 2016

The Discharger shall submit a technical report, assessing the impacts from the unauthorized activities, including but not limited to the activities outlined in Findings 3 and 5 of this Order. The assessment shall include the following:

- i. A full, technically accurate description of the activity and associated environmental impacts and chronology of actions taken.
- ii. An analysis of the affected area, including a determination of the extent of wetland and riparian impacts. The analysis of impacts should include the volume and type, acreage, and linear feet of impact; the types of vegetation and wildlife in the area; and the extent of impacts to those species.
- iii. A list and description of erosion control best management practices employed to avoid and minimize impacts to waters of the state.
- iv. A list and description of other projects implemented within the past 5 years or planned within the next 5 years that are related to the proposed project, or that may impact the same watershed.

b. **Restoration Plan**

**Compliance Date:** February 1, 2016

The Discharger shall submit a restoration plan to the Regional Water Board, acceptable to the Executive Officer, which includes the following:

- i. A detailed description of how the Discharger proposes to restore wetland and riparian function to all affected waters of the state impacted by unauthorized activities. The restoration plan must address the temporal loss of beneficial uses as a result of the unauthorized activities (i.e. increase the ratio of restored to impacted area).
- ii. A wetland delineation of waters of the state and U.S. impacted by the unauthorized activities.
- iii. A biological design for all restoration components. Restoration must use a mix of native plants referenced on what is growing locally in the Jonive Creek and Atascadero Creek Corridor and nearby surrounding area. Invasive species management should be incorporated and any restoration planting areas must be fenced from livestock.
- iv. A time schedule for restoration activities.
- v. Criteria to judge the success of the restoration project.
- vi. A monitoring proposal to evaluate whether the restoration is successful.

**c. Completion of Restoration and Submittal of Technical Reports**

**Compliance Date:** 180 days after the Executive Officer concurs with the Restoration Plan

Following the Executive Officer's written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and other agencies, the Discharger shall implement the Restoration Plan. Upon completion of the work and no later than 180 days after Executive Officer concurrence with the Restoration Plan, the Discharger shall submit a technical report to the Regional Water Board documenting full implementation and compliance, in accordance with Task b. above.

**d. Annual Monitoring Reports**

**Compliance Date:** January 31, each year

The Discharger shall submit an annual monitoring report to the Regional Water Board as required as part of the Restoration Plan. Monitoring shall continue until at least five years after successful completion of the work described in the Restoration Plan. Alternatively, monitoring shall continue until a report,

- acceptable to the Executive Officer, is submitted showing final performance criteria have been achieved.
3. **Compliance Dates Extension Request:** If the Discharger is delayed, interrupted, or prevented from meeting any compliance dates specified in this Order or as specified in an approved plan required by this Order, the Discharger may request in writing an extension for compliance dates to the Executive Officer. The written extension request shall explain the basis for its request and what new compliance dates it is requesting. The extension request must be received by the Regional Water Board no less than **15 calendar days** prior to the respective deadline.
  4. **Contractor/Consultant Qualifications:** The Discharger's reliance on qualified professionals promotes proper planning, implementation, and long-term cost effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgment be performed by or under the direction of licensed professionals. Wetland delineation and determination of waters of the state shall be conducted by a professional experienced in these fields, and may be subject to review and approval by the Executive Officer.
  5. **Report Any Changes in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Site's ownership. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
  6. **Cost Recovery:** The Discharger is and shall be liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board and associated agencies to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, work to complete the directives specified in this Order, and communications between Regional Water Board staff and parties associated with the cleanup and abatement of the discharged waste, including the Discharger, interested members of the public, and other regulatory agencies. If the Discharge is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Discharger over reimbursement amounts or methods used in that program shall be resolved consistent with the dispute resolution procedures for that program.
  7. Failure to comply with the terms of this Order may subject the Discharger to administrative civil liability up to \$10,000 per violation per day in addition to ten dollars (\$10) per gallon of waste discharged but not cleaned up exceeding 1,000

gallons, pursuant to Water Code section 13385. Failure to provide the technical reports required by this Order may also subject the Discharger to administrative civil liability in the amount of up to one thousand dollars (\$1,000) per day pursuant to section 13268 of the Water Code.

8. 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 California Code of Regulations, title 23, 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.
9. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions for past violations or to require additional investigation and cleanup at the Site consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.
10. The Regional Water Board may review this Order and may revise when necessary.

Ordered by:

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Matthias St. John  
Executive Officer

September 17, 2015