

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2016-0047

FOR

JOEL T. MCDONOUGH AND DENNIS ALLEN CHASE JUNIOR

ASSESSOR PARCEL 211-374-014-000
HUMBOLDT COUNTY

This Order is issued to Joel T. McDonough and Dennis Allen Chase Jr. (hereafter referred to as Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

- 1. Site Conditions:** Elk Creek is a water of the state, as well as a water of the United States (references hereafter to waters of the United States are inclusive of waters of the state)¹. The Dischargers constructed private roads on Humboldt County Assessor's Parcel Number (APN) 211-377-014-000 (hereafter Property) lacking adequate stream crossings and erosion control or sediment containment features. The Dischargers own and/or lease the Property and also developed and/or used several clearings for cannabis cultivation and associated activities on the Property. The Dischargers also excavated two watercourses on the Property to create reservoirs. The roads and clearings, created without authorization from applicable federal, state, and local agencies, including the Regional Water Board, represent controllable sediment discharge sites. It is likely that runoff from these sites will transport and deliver sediment to Elk Creek, a water of the United States. The operation of heavy equipment in the watercourses and the lack of or inadequate stream crossings, represent a direct and unauthorized discharge to tributaries to Elk Creek. The failure of one of the reservoirs, which has been subsequently reconstructed, resulted in the placement of a large pile of earthen spoils in a wetland and the discharge of the turbid water to tributaries of the Elk Creek.

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those waters as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne Water Quality Control Act (Porter-Cologne) provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code, § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code, § 13050, subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

- 2. Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharges of sediment-laden stormwater from graded/disturbed areas and uncontrolled drainage from private roads into Elk Creek, a Class I watercourse, and to eliminate the threat of future discharges. This Order also requires the Dischargers to restore the impacted wetland to its original state. Investigation and cleanup work required by this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (“Resolution 92-49”), and other applicable State and Regional Water Board plans, policies, and regulations.
- 3. Responsible Parties:** The Dischargers, as the property owners and/or operators and the persons discharging or creating a threat of discharge, with the legal ability to control the activities on the Property that resulted in the discharge and/or threat of discharge, are the responsible party for purposes of this Order. This Order finds that Joel T. McDonough and Dennis Allen Chase Jr. (Dischargers) are the responsible parties:

 - a. Per records from the Humboldt County Assessor-Recorder’s Office, Joel T. McDonough transferred APN 211-374-014-000 to Joel T. McDonough 2011 Trust on April 6, 2011.
 - b. According to and documented in a May 19, 2016 email from California Department of Fish and Game (CDFW) Warden Brendan Lynch, who interviewed the individuals on the Property during a May 17, 2016 inspection/search, Dennis Allen Chase Jr. has an owner-will-carry contract with Joel T. McDonough. Dennis Allen Chase Jr. also stated that he conducted the grading activities and heavy equipment operations himself.
 - c. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
- 4. Property Location and Description:** The Property consists of one parcel located at 510 Brown Road in Myers Flat. The Property is located in the Elk Creek watershed, east of State Highway 101 in central southern Humboldt County.

 - a. The parcel on the Property lies within Section 23, Township 2S, Range 3E, Humboldt Base and Meridian (HB&M). The centroid of 211-374-014-000 lies approximately at latitude 40°17’1.247”N and longitude 123°48’50.683”W. Grading and road construction activities have occurred throughout the Property.
- 5. Property History:** There is no record of the Property having prior regulatory oversight or history with the Regional Water Board. There is no record of any person obtaining

coverage under Regional Water Board Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operation with Similar Environmental Effects (Waiver)*. If the Dischargers and/or any tenant(s) or lessee(s) wish to continue cultivation, coverage under this Waiver or under individual waste discharge requirements is required.

- 6. Factual Basis of Order:** The Dischargers' activities and conditions observed onsite, as detailed below, created and/or threaten to create, conditions of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.

Three unnamed tributaries to Elk Creek, a perennial Class I watercourse tributary to South Fork Eel River, are located on the Property and carry stormwater runoff and road surface runoff to unnamed tributaries to Elk Creek. South Fork Eel River is listed as impaired due to sediment and temperature pursuant to Clean Water Act section 303(d). On December 16, 1999, the United States Environmental Protection Agency approved a Total Maximum Daily Load (TMDL) for sediment and temperature that indicates "Cold Water Fishery" as a beneficial use currently impaired in the watershed. The TMDL also indicated that major sources of sediment impairment in the South Fork Eel watershed are road-related and acknowledges the connection between anthropogenic sediment inputs and increases in stream temperatures.

On May 17, 2016, Water Board staff inspected the Property and observed poorly constructed and poorly maintained roads. In some places, the roads cut through watercourses without constructed crossings, and in other places the roads had undersized and/or failing crossings, lacked proper drainage and sediment control features, and displayed evidence of erosion. Staff also estimated 1 million gallons of earthen material was deposited in streambeds and wetlands. Below is a table of fill volumes at different locations throughout the site. The attached staff inspection report describes and documents the basis of the estimates.

Table of Fill Volumes

Site	Average Depth (feet)	Area (acres)	Average Width (feet)	Length (feet)	Diameter (feet)	Total Volume (cubic feet)	Total Volume (Gallons)
Pools in Watercourse 1*	1	N/A	N/A	N/A	1.5	41	306
Wetland fill from pond failure (S2 on Figure 1)	1.5	0.1	N/A	N/A	N/A	6,207	46432
Wetland fill from development of grow pads (Graded area in wetland on Figure 1)	4	0.5	N/A	N/A	N/A	87,120	651703
Watercourse 2 - upper channel (from C3 to the reservoir)	4	N/A	50	250	N/A	8,000	59844
Watercourse 2 - Lower fill from reservoir (see Table 2 below)	4.7	N/A	41	208	N/A	40081	299827
Watercourse 3 (starting at point C4 and continuing to the southwest property boundary)	0.125	N/A	3	740	N/A	277	2072
Total				1198		141726	1,060,184

The Dischargers directly placed earthen fill into tributaries to Elk Creek during the construction of two reservoirs on the Property. This earthen fill will likely further impair water quality and aquatic life. The poor condition of the private roads, particularly the undersized and failing stream crossings, has resulted in discharge and a further threat of discharge of sediment-laden stormwater to the unnamed tributaries that drain into Elk Creek. The excavation conducted directly in the watercourse has contributed a substantial amount of sediment to Elk Creek, as evidence by the sediment deposition along the entire length of the channel. The lack of adequate erosion and sediment controls within the graded areas on the Property and the poorly maintained roads, together with unstable reservoirs, threaten future sediment discharge from uncontrolled stormwater runoff, erosion, and slope failure into Elk Creek.

- 7. Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Board. Elk Creek is tributary to South Fork Eel River. Existing and potential beneficial uses for the Weott Hydrologic Subarea of the South Fork Eel River include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge(GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Commercial and Sport Fishing (COMM); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2);

Cold Freshwater Habitat (COLD); Rare, Threatened, or Endangered Species (RARE); Aquaculture(AQUA); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Warm Freshwater Habitat (WARM); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

- a. 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 two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan)
 - i. 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.”
 - ii. 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.”
- b. Section 3 of the Basin Plan contains water quality objectives 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 waste discharges from land development and cannabis cultivation activities include the following:
 - i. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - iii. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - iv. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”
 - v. Temperature: “Temperature objectives for COLD interstate waters, WARM interstate waters, and Enclosed Bays and Estuaries are as specified in the ‘Water

Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California' including any revisions thereto. A copy of this plan is included verbatim in the Appendix Section of this Plan. In addition, the following temperature objectives apply to surface waters:

- a. The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses.
- b. At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature.
- c. At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature."

8. State Water Board Resolutions: The State Water Board has adopted Resolution No. 92-49. Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* ("Resolution 68-16"). Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. "[A]ny such alternative cleanup level shall: (1) Be consistent with 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 Water Quality Control Plans and Policies adopted by the State and Regional Water Boards[.]" Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

9. Failure to Obtain Necessary Permits: Regional Water Board staff determined that the grading and clearing activities at the Property occurred without coverage under any of the following regulatory permits:

- a. National Pollutant Discharge Elimination System (NPDES) permit for land disturbance of an acre or more (Construction General Permit Order no. 2009-0009-DWQ);
- b. Clean Water Act (CWA) section 404 permit from the Army Corps of Engineers;
- c. CWA section 401 Water Quality Certification from the Regional Water Board;

- d. Application for coverage under Regional Water Board Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operation with Similar Environmental Effects.*
- e. Department of Fish and Wildlife Streambed Alteration Agreement; or
- f. Grading permit issued by Humboldt County.

10. Legal Authority to Require Cleanup and Abatement: Water Code section 13304, subdivision (a) states, in relevant part:

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 the 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.... Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. "Waste" is defined by Water Code section 13050, subdivision (d) as,
sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of 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.
- b. Earthen fill, sediment, and sediment-laden runoff when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050. The Dischargers caused or permitted waste to be discharged or deposited into unnamed tributaries to Elk Creek or where it will be, or has the potential to be, discharged to surface waters draining to Elk Creek, which is considered a water of the state.
- c. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as,

an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- (A) The waters for beneficial uses;*
- (B) Facilities which serve these beneficial uses.*

- d. The construction of unauthorized reservoirs, the discharge of fill directly into watercourses, and the clearing and grading activities conducted by the Dischargers have resulted in the unauthorized discharge and threat of continued discharge of wastes into waters of the state in violation of Water Code sections 13260² and 13376³ and has created, or threatens to create, a condition of pollution by unreasonably affecting the beneficial uses of Elk Creek. Several watercourses on the Property drain into Elk Creek, a tributary to the South Fork Eel River. The beneficial uses of the South Fork Eel River discussed in Finding 7 also apply to Elk Creek and all of its tributaries.
 - i. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (AGR and MUN). Sediment-laden stormwater discharges to surface waters and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (REC-1 and REC-2).
 - ii. The discharge of organic and earthen material in the South Fork Eel River watershed is especially problematic because, as noted above, the South Fork Eel River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation and temperature. The sources of the impairment are identified in the TMDL road-related as well as episodic inputs from washouts and mass wasting. Road-related sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run chinook salmon and steelhead trout.
 - iii. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which requires that the

2. Pursuant to Water Code section 13260, subd. (a)(1), “[a] person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state...” shall file a report of waste discharge.

3. Pursuant to Water Code section 13376, “[a] person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into 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 Water Code section 13260. Unless required by the state board or a regional board, a report need not be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended.”

suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters. These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature, and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

11. Cleanup and Abatement Action Necessary: The construction of unauthorized reservoirs, the discharge of fill directly into watercourses, and the clearing and grading activities, which contribute untreated stormwater from the Property has discharged, and threatens to discharge, sediment into watercourses from the Property to Elk Creek. conducted by the Dischargers have The Property lacks constructed stream crossings and has several undersized and inadequate stream crossings and poorly designed roads, leaving high potential for further sediment discharge to the watercourses during wet weather events. Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges to waters of the state originating from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a Class II violation, as outlined in the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board.

12. Technical Reports Required: 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 dischargers to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to ensure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to surface waters and surface water drainage

courses and to ensure that cleanup complies with Basin Plan requirements and State Water Board Resolution No. 92-49. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial actions and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate the site from which waste was discharged, and thus is appropriately responsible for providing the reports.

13. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement and restoration activities at the site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in 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 Dischargers' proposed remedial activities and possible associated environmental impacts. To the extent that the Order requires earth disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers 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 handing any documents necessary for environmental review. If necessary, the Dischargers 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.

REQUIRED ACTIONS

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that Joel T. McDonough and Dennis Allen Chase Jr. (Dischargers) shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and shall provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. **By October 15, 2016**, the Dischargers shall stabilize the Property to prevent erosion and discharge of sediment to Elk Creek and its tributaries during the 2016-2017 wet weather period. The stabilization shall be based on an **Interim Erosion and Sediment Control Plan** (hereafter "Interim Plan") prepared by an appropriately licensed professional. The Interim Plan shall include, but not be limited to, the following:
 - a. Identification of all locations where sediment has discharged to waters of the state;
 - b. Using the above information, identify all areas of immediate concern, implement interim measures at each area of concern necessary to stabilize the Property during the 2016-2017 wet weather period. Measures to be included, but not limited to:
 - i. Install an adequate number of water breaks designed to reduce road surface erosion by diverting stormwater runoff from the road surface and directing it to a safe discharge area;
 - ii. Disconnect road drainage from Elk Creek and its unnamed tributaries; and
 - iii. Stabilize all disturbed areas with erosion control mulches, blankets, mats, tarps, walls or other erosion controls to protect the disturbed soil surface from the forces of rain drop impact and overland flow.
3. **By November 15, 2016**, the Dischargers shall provide a report of completion for approval by the Assistant Executive Officer of the Regional Water Board. This report shall include a summary and photographs of the completed erosion and sediment control measures.
4. **By January 15, 2017**, the Dischargers shall propose a **Restoration and Monitoring Plan** (hereafter "RMP"). The RMP shall include but not be limited to:
 - a. An assessment of the impacts to Elk Creek, its unnamed tributaries, and the wetland area from the unauthorized activities on the Property, including all areas that have been developed or disturbed, and identify controllable sediment sources requiring cleanup and abatement. The assessment shall be completed by

- an appropriately qualified professional, and must at a minimum address channel hydrology, bank erosion, riparian habitat and loss thereof, channel and slope stability, locations where fill material has been placed or discharged, active or potential erosion and appropriate sizing and installation of culverts to carry the 100-year predicted flow and debris for all stream crossings and roads on the Property, and the surface drainage of roads and other graded areas. The assessment shall include aerial photographs and/or satellite images, photographs, reports, topographic maps, or drawings, etc., of Property conditions prior to conducting the unauthorized activities, and include a detailed map of existing features accurately depicting topography, all graded surfaces, watercourses, drainages, and stream crossings, instream structures. Assessment findings shall serve as the basis for the RMP;
- b. A proposal for Property restoration including how long-term impacts from the roads and site runoff will be abated (i.e. re-grading and reengineering, graveling or paving road surface, etc.), as well as a plan to remove the instream reservoirs and restore all wet meadows, wetlands and to the unnamed tributaries to Elk Creek to conditions prior to the Dischargers' unauthorized activities.
 - c. A proposal to provide compensatory mitigation to compensate for any temporal and permanent impacts to wet meadows, wetlands, and to unnamed tributaries to Elk Creek that resulted in from unauthorized activities;
 - d. Best management practices to be applied to all current and planned work associated with unauthorized activities on the Property impacting, or having the potential to impact, Elk Creek and its unnamed tributaries. The RMP shall contain, at a minimum, design specifications and/or designs for stream restoration, surface drainage controls, erosion control methods throughout restoration, compaction standards, an implementation schedule, a monitoring and reporting plan, and success criteria meeting the requirements specified herein. The RMP shall incorporate use of appropriate native or endemic species in any revegetation efforts; and
 - e. An implementation schedule that includes detailed project milestones that includes a time schedule for submitting applications for all applicable local, state, and federal permits necessary to fulfill the requirements of this Order and time period for completing implementation once those permits are obtained.
5. **No more than 60 days** after approval of the RMP by the Regional Water Board Assistant Executive Officer, begin implementation of the RMP.
 6. **By August 31, 2017**, the Dischargers shall fully implement and complete the RMP.
 7. **By September 30, 2017**, submit a **Completion Report** for the RMP for approval by the Assistant Executive Officer of the Regional Water Board. The Completion Report shall include accurate depictions of all completed construction and/or abatement

measures and documentation included in the RMP to restore and prevent any further impacts to the Elk Creek and its unnamed tributaries to demonstrate the RMP has been fully implemented. This report shall include as-built drawings, prepared, signed and stamped by a licensed professional and will clearly show any changes to the original construction specifications.

GENERAL REQUIREMENTS AND NOTICES

8. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans, and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professionals as otherwise required by law.
9. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Discharger(s), or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state whether they agree with any recommendations/proposals and whether they approve implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
10. **Notice of Onsite Work:** The Dischargers or their authorized agent(s) shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Office of Enforcement using the general phone line at (916) 341-5272 or contact the person listed below.

11. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the State or Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

12. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted to:

Ms. Erin Mustain, P.E.
1001 I Street, 16th Floor
Sacramento, CA 95814
(916) 445-9379
Erin.Mustain@waterboards.ca.gov

13. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify California Department of Fish and Wildlife (CDFW) before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.

14. **Cost Recovery:** Pursuant to Water Code section 13304, the State or Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs investigating and abating the effects of the unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the State or Regional Water Board.

15. **Delayed Compliance:** If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to grant an extension request.

- 16. Potential Liability:** If the Dischargers fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$10,000 per violation per day, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including but not limited to, violation of the terms and condition of this Order.
- 17. No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
- 18. Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.

Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality, or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St. John
Executive Officer

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Attachment 1 –May 17, 2016, McDonough Property Inspection Report