California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2000-30

for

Robert L. Hemberger
2146 Montecito Ave.
Santa Rosa, CA 95404

and

Robert L. Figas
dba
Figas Construction Company
115 Redmond Rd.
Eureka, CA 95503

Humboldt County

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

1. Robert L. Hemberger owns properties described by Assessors Parcel numbers 109-131-23, 109-131-22, 109-131-21, and 109-131-19. The properties are located at 20 Wolverine Way in Shelter Cove, Humboldt County, California.

2. Figas Construction Company discharged approximately 5000 cubic yards of earthen fill material on property described in parcel numbers above and in so doing filled approximately 320 linear feet of an unnamed tributary to Telegraph Creek and adjacent wetland. Telegraph Creek discharges directly into the Pacific Ocean. The material was placed in the unnamed tributary without a streambed alteration agreement as required by Section 1603 of the California Fish and Game Code, a permit issued by the US Army Corps of Engineers under Section 404 of the Clean Water Act, waste discharge requirements from the Regional Water Board, or a Clean Water Act Section 401 water quality certification by the State Water Resources Control Board.

3. The placement of the material resulted in diversion of the unnamed tributary around the edge of the fill material, forming a new channel. Water flow in the new channel has eroded about 650 cubic yards of fill material and native soil that was discharged to Telegraph Creek.

4. The placement and ongoing erosion of the fill material constitutes a threat of continued discharge of sediment into Telegraph Creek and the unnamed tributary.

5. The CDFG has previously observed Coho Salmon, a threatened species, in Telegraph Creek.

6. The municipal water supply intake for the community of Shelter Cove is less than one mile downstream from the site of discharge.

7. The existing and potential beneficial uses of Telegraph Creek include:

   a. municipal and domestic supply
   b. agricultural supply
   c. industrial service supply
   d. groundwater recharge
   e. water contact recreation
   f. non-contact water recreation
   g. commercial and sport fishing
   h. cold freshwater habitat
   i. wildlife habitat
   j. fish migration
   k. fish spawning
   l. estuarine habitat
   m. aquaculture

8. The U.S. Army Corps of Engineers has issued a Cease and Desist Order dated February 28, 2000, prohibiting both Mr. Hemberger and Mr. Figas from further activity within the Corps' jurisdiction.

9. The North Coast Regional Water Quality Control Board adopted the Water Quality Control Plan for the North Coast Region on December 9, 1993. The Water Quality Control Plan includes Discharge Prohibitions 1 and 2 of the Action Plan for Logging, Construction, and Associated Activities which states:

   1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from 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.

   2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from 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

10. Section 13304(a) of the Porter-Cologne Water Quality Control Act states:
"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 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 threaten pollution, or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement activities. Upon failure of any 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 any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

11. Pursuant to Sections 15321 and 15308, Title 14, California Code of Regulations, this action is exempt from the California Environmental Quality Act (CEQA, Public Resources Code section 21000 et seq.) as an enforcement action to protect the environment.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13267(b) and 13304, the discharger shall immediately cease discharging waste and cleanup and abate the discharge and threatened discharge and shall comply with the following provisions of this Order:

1. Clean up and abate the effects of earthen fill material discharged to the unnamed tributary to Telegraph Creek, and restore the stream bed and banks back to its original condition.

2. On or before May 15, 2000, the discharger shall submit a workplan to the Executive Officer for concurrence to address cleanup and abatement as specified in paragraph number 1. The workplan shall delineate all intended compliance measures to remove the material, restore the streambed and banks (including native vegetation and original geometry), dispose of the material at an appropriate location, and ensure compliance with the Basin Plan.

3. The cleanup and abatement activities specified in paragraph numbers 1 and 2 above shall begin no later than 60 days after issuance of a Section 404 permit or Voluntary Restoration Order from the U.S. Army Corps of Engineers, a Streambed Alteration Agreement from California Department of Fish and Game, and compliance with all applicable county codes and permit requirements. All work shall be completed no later than October 1, 2000.

4. On or before October 15, 2000, submit a final compliance report that clearly delineates measures taken to comply with paragraph numbers 1, 2, and 3 above.

5. If, for any reason, the discharger is unable to perform any activity or submit any documentation in compliance with the work schedule submitted pursuant to this Order and approved by the Executive Officer, the discharger may request, in writing, an extension of the time as specified. A written extension may be granted for good cause, in which case this Order will be revised accordingly.

Ordered by Lee Michlin

Lee A. Michlin
Executive Officer

April 21, 2000

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