

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

CLEANUP AND ABATEMENT ORDER NO. R2-2013-1029

**CRISTINA FAMILY LLC
FOR THE PROPERTY LOCATED WITHIN HENRY COE STATE PARK
APPROXIMATELY 10 MILES EAST OF MORGAN HILL
SANTA CLARA COUNTY**

This Cleanup and Abatement Order (“Order”) is issued to Cristina Family LLC (“Discharger”) for the discharge of fill material into waters of the United States and State, pursuant to provisions of California Water Code (“Water Code”) sections 13304 and 13267.

The San Francisco Bay Regional Water Quality Control Board (“Regional Water Board”) hereby finds the following:

1. **Purpose of Order:** This Order requires the Discharger to abate the effects of the discharge of soil and rock into an unnamed tributary of the East Fork of Coyote Creek. The Discharger graded stream channels and adjacent hillsides and filled waters of the United States and the State during May and June 2013 without authorization from applicable federal, State, and local agencies, including the Regional Water Board. The Discharger has stated that the work was performed to construct a dam and reservoir for livestock watering and recreation.
2. **Discharger:** The Discharger is the responsible party. It owns the property identified in Santa Clara County records as Assessor’s Parcel Number 627-21-001 where the work occurred, and it directed the grading and infill activities to construct the dam.
3. **Site Location and Description:** The Discharger’s property is surrounded by public land of Henry Coe State Park. Grading and fill activities occurred on an unnamed, non-perennial stream tributary to East Fork of Coyote Creek in the vicinity of latitude 37.192350 and longitude -121.459200. This location is approximately 1600 feet upstream of the tributary’s confluence with the East Fork of Coyote Creek, all within waters of the United States and the State. This area will be referred to herein as the “Site.”
4. **Beneficial Uses and Water Quality Objectives:** The Water Quality Control Plan for the San Francisco Bay Basin (“Basin Plan”) identifies beneficial uses and water quality objectives for waters within Regional Water Board jurisdiction. The water quality objectives listed in Chapter 3 of the Basin Plan define the acceptable level of environmental quality needed to support beneficial uses. Water quality objectives likely exceeded as a result of the earth moving activities include population and community ecology, sediment, settleable material, and suspended material.
 - a. Beneficial uses for Coyote Creek include the following: groundwater recharge, commercial and sport fishing, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation. Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
 - b. The water quality objectives for population and community ecology states the following: *All waters shall be maintained free of toxic substances in concentrations that are lethal to or that*

produce significant alterations in population or community ecology or receiving water biota. In addition, the health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors shall not differ significantly from those for the same waters in areas unaffected by controllable water quality factors.

- c. The water quality objectives for sediment states in part as follows: *The suspended sediment load and suspended sediment discharge rate shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.*
- d. The water quality objectives for settleable material and suspended material states in part as follows, respectively:
 - *Water shall not contain substances in concentrations that results in deposition of material that cause nuisance or adversely affect beneficial uses.*
 - *Water shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.*

5. **Site History and Regulatory Status:** The Site has no prior regulatory oversight or history with the Regional Water Board.

6. **Basis of Order:** The Discharger's activities created, and threaten to create, conditions of pollution in State waters and negatively impact water quality and beneficial uses. This Order, therefore, contains tasks to stabilize disturbed areas and restore beneficial uses of the stream system.

- a. Regional Water Board staff received an investigation report dated June 23, 2013, from California Department of Fish and Wildlife staff after the discovery of grading and fill during a reconnaissance flight over Henry Coe State Park by Santa Clara County Sheriff's officers.
- b. On July 5, and August 9, 2013, Regional Water Board staff called the Discharger to request access to the Site. On August 15, 2013, the Discharger granted permission to access the Site. As documented in the attached August 19, 2013, Inspection Report (Attachment 1), Regional Water Board staff inspected the Site and observed a newly constructed earthen dam that is approximately 80 feet in width (across the stream channel), 120 feet in length, and 10 feet high. In total, about 3,556 cubic yards of native rock and soil was moved from the streambed and adjacent hillslopes and used to fill the stream channel to construct the dam. The earth moving activities dislodged soil and rock that is now in a loose, unconsolidated state and more susceptible to erosion. The earth moving and clearing of vegetation activities will continue to impact reaches of the creek if corrective action is not immediately taken to protect beneficial uses against sediment discharge and dam failure.
- c. On September 20, 2013, Regional Water Board staff issued a Notice of Violation to the Discharger. The violations cited include the following federal Clean Water Act and Water Code violations.
 - Failure to apply for and obtain a Clean Water Act sections 301 and 404 permit from the U.S. Army Corps of Engineers for placing fill material into water of the United States.
 - Failure to apply for and obtain waste discharge requirements pursuant to Water Code section 13376 for discharge of fill material that could affect waters of the United States.

- d. On September 26, 2013, the State Water Resources Control Board's ("State Water Board") Division of Water Rights notified the Discharger that storage of stream water in the reservoir created by the dam without a water right would be an unauthorized diversion of water.
7. **Technical Reports Required:** Water Code section 13267(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(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.
8. **CEQA:** This action is an order to enforce the laws and regulations administered by the Regional Water Board. This is also a minor cleanup action taken to prevent, minimize, stabilize, mitigate or eliminate the threat of a release of substances that would be detrimental to beneficial uses. The agency is taking action to assure the restoration of a natural resource and protection of the environment, specifically habitat for fish, plants, and wildlife. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to sections 15321, 15330, and 15333 of the Resources Agency Guidelines in Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13304 and 13267, that the Discharger, or its agents, successors, or assigns, shall provide the following information and perform the following cleanup and abatement actions. **The Discharger shall obtain all necessary permits for the activities required in this Order.**

A. PROHIBITIONS

1. 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.
2. Discharge of sediment-laden runoff to surface waters is prohibited.
3. Discharge of silt, sand, clay, or other earthen materials from any activity, in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses is prohibited.

B. CLEANUP AND ABATEMENT TASKS

1. INTERIM CORRECTIVE ACTION

COMPLIANCE DATE: November 1, 2013

In consultation with Regional Water Board staff, the Discharger must, by the compliance date, have prepared and started to implement an Interim Corrective Action Plan that is certified by a qualified and licensed professional (as appropriate) and is acceptable to the Regional Water Board's Executive Officer. The Interim Corrective Action Plan shall describe work to prevent, to the maximum extent practicable, adverse impacts during the 2013-2014 wet weather season

resulting from the illegal infill of the streambed and from grading of the hillslopes and streambed. It shall describe measures that, at a minimum, achieve or are consistent with the following:

- a. Stream flow shall not be diverted and stored. Consistent with the September 26, 2013, Division of Water Rights letter, the Discharger cannot impound and store water without the benefit of a water right unless a permit authorizing the diversion and storage of water is obtained from the State Water Board.
- b. Disturbed earth shall be stabilized such that there is no unauthorized discharge violating the sediment, settleable material and suspended material water quality objectives in the Basin Plan. This includes storm runoff from graded slopes and locations where fill material has been placed. Disturbed earth and stockpiles of material more susceptible to erosion shall be protected using best management practices (erosion and sediment controls) and engineered remedies as appropriate. Future sediment discharges that violate water quality standards, including any impacts that occur as a result of dam failure, will constitute violations of the Clean Water Act and Water Code above and beyond the violations cited in the Notice of Violation and herein.
- c. Design and maintenance of erosion and sediment control structures shall follow accepted engineering practices, such as those identified in the Association of Bay Area Governments' 1995 "Manual of Standards for Erosion and Sediment Control Measures."

2. COMPLETION OF INTERIM CORRECTIVE ACTION and SUBMITTAL OF TECHNICAL REPORT

COMPLIANCE DATE: December 16, 2013

The Discharger shall complete work described in the Interim Corrective Action Plan, as approved, and submit a technical report, acceptable to the Executive Officer, to the Regional Water Board. This technical report shall include a description of the corrective actions taken and documentation (including photographs and maps) showing current Site conditions and conditions following implementation of corrective actions.

3. RESTORATION, MITIGATION, AND MONITORING PLAN

COMPLIANCE DATE: January 6, 2014

A Restoration, Mitigation, and Monitoring Plan shall be submitted to the Regional Water Board, acceptable to the Executive Officer, which includes the following:

- a. An assessment of the impacts to the unnamed tributary of the East Fork of Coyote Creek from the unauthorized activities. This assessment shall be completed by a professional geologist or civil engineer and shall, at a minimum, address channel hydrology, bank erosion, riparian habitat and loss thereof, channel and hillslope stability, and locations where fill material have been placed; and shall include aerial photographs, photographs, reports, topographic maps or drawings, etc., of Site conditions prior to conducting the unpermitted activities. Assessment findings shall serve as the basis for the Restoration, Mitigation, and Monitoring Plan.

- b. Plans for Site restoration and proposed mitigation to restore beneficial uses by restoring the channel to pre-discharge conditions and to compensate for and minimize any further impacts to the unnamed tributary of the East Fork of Coyote Creek. Best management practices shall be applied to all current and planned work associated with construction activities on the Site impacting, or having the potential to impact, the unnamed tributary. This Plan shall contain, at a minimum, design specifications and drawings, interim and final performance criteria (used to assess the success of the stream restoration project), a proposed implementation schedule, and a monitoring plan for the following:
 - i. Revegetating all disturbed areas on the Site; and,
 - ii. A mitigation proposal for restoration or enhancement of degraded aquatic habitats, on the Site, or nearby, as compensation for the temporal and permanent habitat value and function impacts to unnamed tributary of the East Fork of Coyote Creek.

The Plan shall incorporate use of appropriate native or endemic species.

4. COMPLETION OF RESTORATION AND MITIGATION AND SUBMITTAL OF TECHNICAL REPORT

COMPLIANCE DATE: August 1, 2014

The Discharger shall complete work described in the Restoration, Mitigation and Monitoring Plan, as approved, and submit a technical report to the Regional Water Board documenting that the above plan to restore, compensate for, and minimize any further impacts to the unnamed tributary of the East Fork of Coyote Creek has been fully implemented, in accordance with Task 3 above.

5. ANNUAL MONITORING REPORT

COMPLIANCE DATES: October 1, 2014, and yearly on October 1 for five years or until approved final performance criteria are achieved

Submit an annual monitoring report to the Regional Water Board as required as part of the Restoration, Mitigation and Monitoring Plan. Monitoring shall continue until at least five years after successful completion of the work described in the Restoration, Mitigation, and Monitoring Plan, or at least two years after any irrigation of revegetation plantings has ceased, whichever is longer. Alternatively, monitoring shall continue until a report, acceptable to the Executive Officer, is submitted showing final performance criteria have been achieved.

C. Notifications and Provisions

1. **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 discharge wastes, including the Discharger, interested members

of the public, and other regulatory agencies. If the Discharger 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.

2. **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.
3. **Report Any Changes in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Site's ownership or occupancy. 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.
4. **Delayed Compliance:** The Discharger shall notify the Regional Water Board Assistant Executive Officer (currently, Dyan Whyte) if it is delayed, interrupted, or prevented from meeting any of the compliance dates specified in this Order or a key milestone in an approved plan required by the Order (i.e., the Restoration, Mitigation and Monitoring Plan). The Discharger may request in writing an extension for compliance dates; such request shall state the basis for its request and what new compliance dates it is requesting.
5. **Good Operation and Maintenance:** The Discharger shall maintain in good working order and operate as efficiently as possible any facility or control system, including best management practices and post-construction permanent control measures installed, to achieve compliance with the requirements of this Order.
6. **Reporting of Hazardous Substance Release:** If any hazardous or toxic substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Discharger shall report such discharge to the Regional Water Board (in addition to reporting to the California Emergency Management Agency at (800)852-7550, pursuant to the California Health and Safety Code). To report to the Regional Water Board, call (510) 622-2369 during regular office hours and file a written report within five working days.
7. **Enforcement:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement. 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 13385 and/or 13268. The Regional Water Board reserves its right to take any enforcement actions authorized by law.
8. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with Water Code section 13320 and Title 23,

California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m., 30 days after the date this Order becomes final (if the thirtieth day falls on a weekend or State holiday, the petition must be received by the next business day). This Order is effective October 10, 2013.

9. **Periodic Review:** The Regional Water Board may review this Order periodically and may revise it when necessary.

Ordered by

Bruce W. Wolfe
Executive Officer

Attachment 1 – August 19, 2013, Inspection Report

San Francisco Bay Regional Water Quality Control Board

Inspection Report

Subject: Fill and Grading of Non-Perennial Tributary to East Fork of Coyote Creek, Santa Clara County

Date/Time of

Inspection: August 19, 2013
1:00 p.m. to 4:30 p.m.

Prepared by: David Williams
Environmental Scientist
NPDES DIVISION – ENFORCEMENT SECTION

Date

prepared: September 17, 2013

I inspected the subject site in response to a notification from Warden Tyson Quintal of the California Department of Fish and Wildlife of a streambed alteration that the Santa Clara County Sheriff's Office discovered during a reconnaissance flight over Henry Coe State Park. Warden Quintal sent the Regional Water Board his Investigation Report, dated June 23, 2013, along with a Narrative/Supplemental, dated June 29, 2013, and two photographs taken at the site during his investigation.

To obtain site access, I had contacted the Cristina family multiple times to try and schedule a site inspection. I left Richard Christina a message on July 5, 2013, and left both Richard Christina and Barry Cristina messages on August 9, 2013, requesting access for a site inspection. On August 15, 2013, I was able to contact Richard Cristina to schedule the inspection. Richard Cristina granted me permission to the property, and he provided detailed directions to the site and the code for passing through a locked gate.

I inspected the site on August 19, 2013. The site is located on an unnamed, non-perennial tributary, and is approximately 1600 feet upstream of the tributary's confluence with the East Fork of Coyote Creek (Photograph 1). I used the global positioning system to provide a reference point for the site at latitude 37.192350 and longitude -121.459200. I will refer to the vicinity around this reference point, where grading and fill activities occurred, as the "Site." Warden Quintal's report indicated the Site is owned by Richard and Barry Cristina. Property surrounding the Site is public land of Henry Coe State Park. For example, the confluence of the unnamed tributary and the East Fork of Coyote Creek is located within Henry Coe State Park.

Richard Cristina stated during a telephone call with me on August 15, 2013, that the intent of the earthmoving was to create a dam to store water and make a reservoir for livestock watering and recreation. He stated that he wanted to build a new reservoir instead of "repairing" an existing stock pond previously constructed at the Site (Photograph 2). The stock pond is located

approximately 250 feet downstream of the newly constructed dam, and while not successfully functioning as a reservoir, it is supporting a wetland in an otherwise dry environment (Photograph 2).

Upon entering the Site, I observed the relatively dry stock pond surrounded by cattails, and I observed the following equipment and materials:

- a Caterpillar D6C bulldozer parked next to the creek channel and wetland (Photograph 2),
- Seven 55-gallon drums used to store diesel fuel (Photograph 3). The drums were sitting on plywood adjacent to the wetland on a ledge cut into the road side. The drums were exposed with no secondary containment, and three of the seven drums were full of diesel fuel.

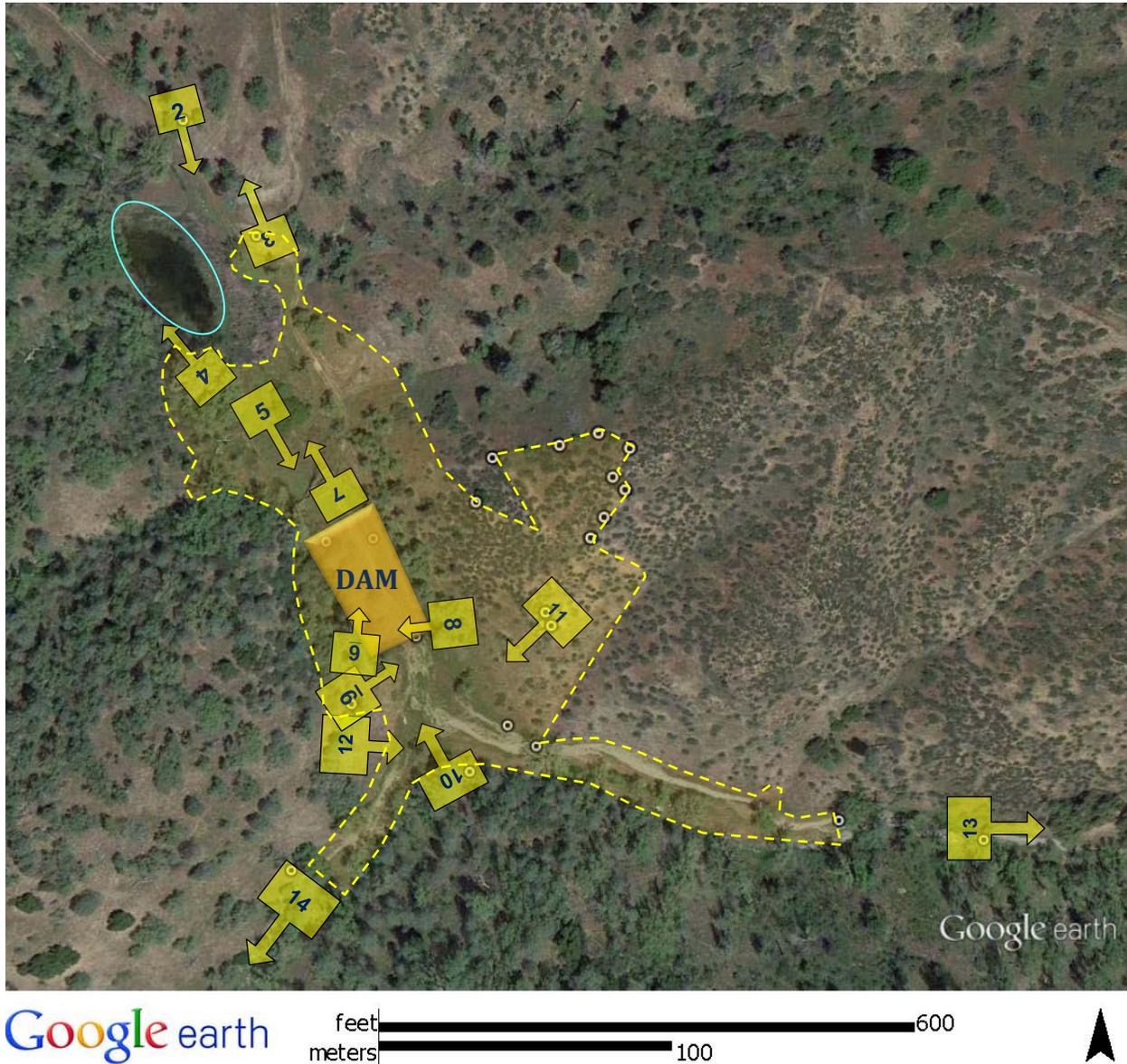
There was an excavation near the upstream margin of the wetland that was roughly 8 feet in diameter and approximately 8 feet deep (Photograph 4). A water pump, commonly referred to as a “trash pump,” and a hose were next to the excavation, with the hose extending from the excavation up to the location of the newly constructed dam. There was standing water in the excavation and a bullfrog.

As I drove further onto the Site, I observed the newly constructed dam. It is located approximately 250 feet upstream of the stock pond wetland. The dam completely obstructs the stream channel and is about 80 feet wide (Photograph 5). The dam was constructed like a small mesa, with a flat top that extends along the stream channel for about 120 feet (Photograph 6), and short steep front and back faces which are approximately 10 feet high. In total, the dam was made up of about 3,556 cubic yards of rock and soil in the streambed.

I observed a significant amount of grading around the new dam, presumably done to generate the material to construct the dam. The entire streambed between the wetland and the dam has been graded (Photograph 7), the hillsides above both banks of the channel were also graded (Photographs 8, 9 and 10), and the streambeds of two tributaries upstream of the dam were graded (Photographs 11 and 12). The ground surface where grading activities have occurred has dislodged soil and rock, and much of it is now loose and unconsolidated.

I checked the stream channels outside of the grading activities for a comparison to native conditions (i.e., how the stream channels would look if the Site had not been graded). Photographs 13 and 14 show the condition of two tributaries (also unnamed) upstream of the new dam.

Attachments – Inspection photographs
Figure 1



Photograph 1 – Aerial view from May 5, 2012, of the Site from Google Earth. Additions to the photograph include the location of stock pond (circled with the solid line at the top left of image), the dam, approximate extent of the grading (outlined in dashed line), the confluence at box number 10, and approximate directions and locations where photographs (photograph numbers in boxes) were taken.



Photograph 2 – Bulldozer parked next to the wetland just off the access road that runs along the unnamed, non-perennial tributary to the East Fork of Coyote Creek. The photograph was taken looking upstream to the south. To the right of the road is an earthen impoundment (dashed line) for a stock pond. The impoundment was not retaining surface water, but appeared to be supporting wetland vegetation including cattails. An erosional channel is forming along the east side of the impoundment allowing water to flow past this diversion (see arrow).



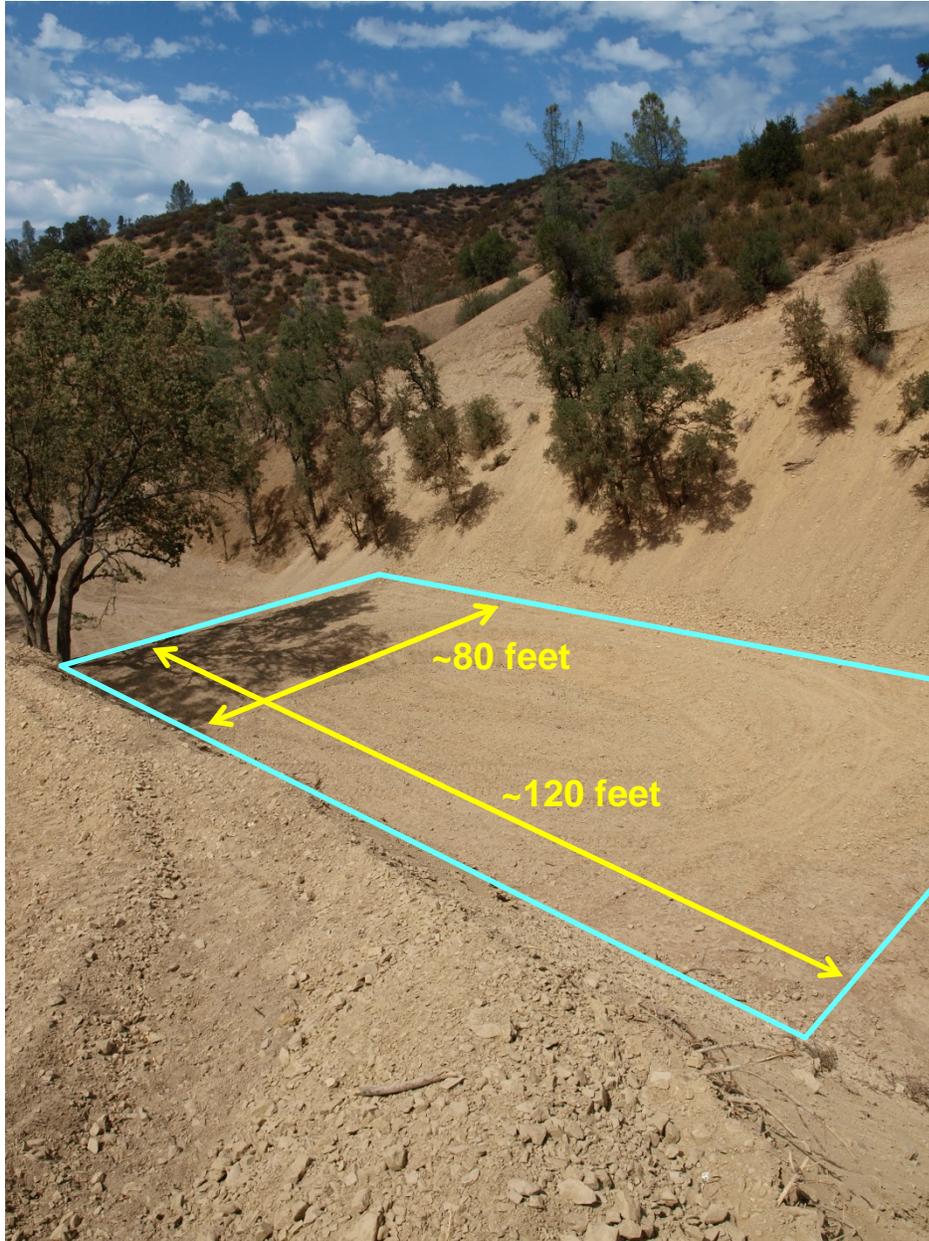
Photograph 3 – Exposed 55-gallon drums sitting on a road-cut ledge, adjacent to where the bulldozer is parked. Three of the seven drums were full of diesel fuel. There was no secondary containment for the drums.



Photographs 4 – Excavation near the perimeter of a wetland (delineated by the dashed line). The excavation was roughly circular, about eight feet in diameter, and approximately eight feet deep. A “trash” pump is sitting next to it, and the hose at the bottom of the photograph leads back upstream to the dam Site. Photograph was taken looking downstream to the northwest.



Photograph 5 – Dam constructed across the unnamed stream, completely obstructing the stream channel. It is located approximately 250 feet upstream of the stock pond impoundment, and it is approximately 80 feet wide. Photograph was taken looking upstream to the south at approximately the center of the unnamed stream channel, which has been obscured by grading activities.



Photograph 6 – Dam constructed across the unnamed stream (approximately 80 feet). The top of the dam extends for about 120 feet along the channel. Photograph was taken from the west bank looking across the dam (downstream) to the north.



Photograph 7 – Streambed between the stock pond and the dam has been graded. Photograph was taken from the top of the dam looking downstream, to the north.



Photograph 8 – Graded hill side, outlined in double lines, on west bank overlooking dam. Photograph was taken looking at west bank from east bank (at streambed) across upstream face of the dam. Dam is outlined in the solid line.



Photograph 9 – Graded hill side, outlined in double lines, on east bank above dam. Photograph was taken looking from hillside on west bank to the east. Dam is outlined in solid line.



Photograph 10 – Dam, outlined in solid line, and graded hill sides and stream channel. Photograph was taken looking downstream to the north at dam from the center of the upstream edge of the confluence of the two unnamed tributaries above the dam.



Photograph 11 – Graded stream channel, outlined in double lines, at confluence of the two unnamed tributaries above dam. Photograph was taken looking upstream to the southwest at the south fork tributary from hilltop on the east bank above the dam.



Photograph 12 – Graded stream channel, outlined in double lines, at confluence of the two unnamed tributaries above dam. Photograph was taken looking upstream to the east at the east fork tributary from the hillside on the west bank above the dam.



Photograph 13 – Undisturbed stream channel above the dam Site on the east fork tributary. Photograph was taken looking to the east (upstream) from the center of the channel.



Photograph 14 – Undisturbed stream channel above the dam Site on the south fork tributary. Photograph was taken looking to the southwest (upstream) from the center of the channel.

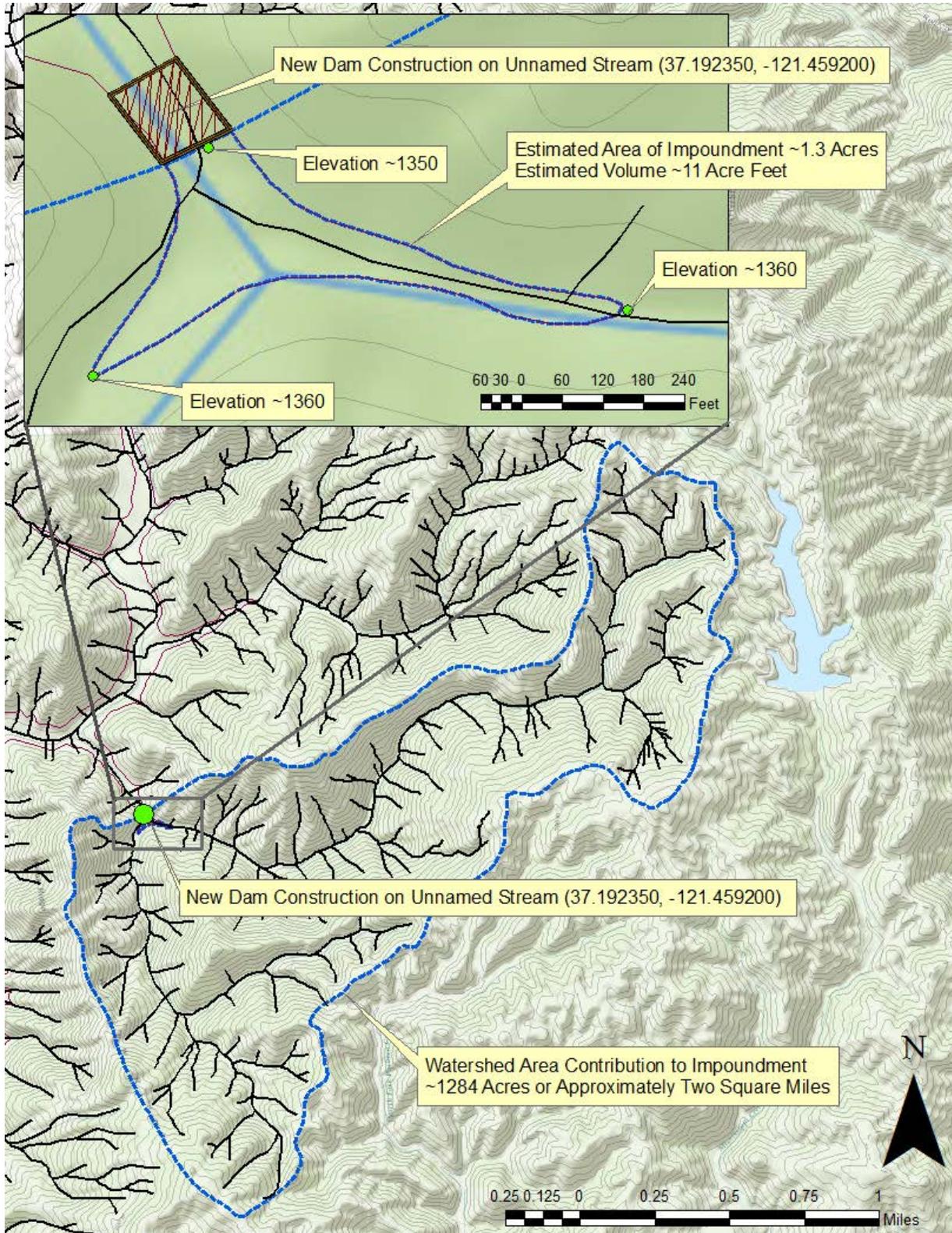


Figure 1: Estimated watershed with runoff that will contribute to storage behind the newly constructed dam. Inset is the estimated storage capacity of the impoundment at full stage.