

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2007-0731

FOR
RONALD AND BETTY LOGAN
AND
NORTH CONTINENT LAND AND TIMBER, INC
NEW ERA MINE
BUTTE COUNTY

This Order is issued to Ronald and Betty Logan and North Continent Land and Timber, Inc., owners and operator, respectively, of the New Era Mine in Butte County based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order) and on California Water Code Section 13267, which authorizes the Regional Water Board to require the submittal of technical and monitoring reports.

The Executive Officer of the Regional Board, finds that:

1. Ronald and Betty Logan, 4095 Dry Creek Road, Oroville, California, 95965 own the New Era Mine (Assessor Parcel Number 041-080-027) approximately 10 miles north of Oroville. The mine is operated by North Continent Land and Timber, Inc., 4950 Cohasset Road, Suite 10, Chico, CA 95973. Ronald and Betty Logan, and North Continent Land and Timber, Inc are designated hereafter as Dischargers. The mine comprises approximately 18 acres adjacent to Dry Creek, Butte County in Section 1, T21N, R3E MDB&M. Runoff from the mine drains to Dry Creek, a tributary to Butte Creek and the Sacramento River.
2. On 2 August 2007, Regional Water Board staff, responding to a complaint, inspected the mine and found significant land clearing activities being conducted as part of the mining operation that exposed large areas of bare soil to erosion, with the threatened discharge of waste to Dry Creek which runs immediately adjacent to the cleared area.
3. Regional Water Board staff notified the mine operator of the need for proper erosion and sediment control measures, the high potential for the discharge of sediment to Dry Creek and the requirement that the Dischargers obtain a General Industrial Storm Water Permit (General Permit) and develop a site specific Storm Water Pollution Prevention Plan (SWPPP). The operator submitted a SWPPP to Regional Water Board staff on 13 September 2007 and their Notice of Intent to Comply with the General Industrial Storm Water Permit was received by the State Water Resources Control Board on 31 October 2007.
4. On 5 December 2007, Regional Water Board staff accompanied representatives from Butte County who were performing an inspection of the mine to determine compliance with the Surface Mining and Reclamation Act (SMARA). During this inspection Regional Water Board staff noted extensive and expanded ground disturbance since

the 2 August 2007 inspection. Further, earthen material was pushed over the edge of the bank of Dry Creek to within a few feet of the flowing channel, damaging riparian vegetation including brush and trees. Much of the area did not have any storm water or erosion controls in place. What few erosion control measures were present were minimal and ineffective. Six ponds constructed near the stream were being used for both process water ponds to contain waste from the mining operations and as storm water detention ponds. These ponds are not adequately designed to contain the potential storm water generated at the mine. Further, there was evidence of storm and sediment discharges directly into Dry Creek as indicated by eroding gullies and sediment deposits leading to the creek.

5. Regional Water Board staff observed that the site had been significantly cleared of trees and under story, including damage to significant riparian vegetation which protects the creek. The majority of the site had been graded, and/or impacted with heavy equipment. Grading occurred right up to the bank of Dry Creek, with soil pushed over the edge of the bank. Earthen material had also been pushed into a drainage gully along the south edge of the property.
6. Dry Creek was flowing clear at the time of the each inspection, but staff observed a significant amount of sediment deposits near the creek due to a recent storm event.
7. The exposed soil, sediment, and earthen material moved and deposited adjacent to Dry Creek by the Dischargers constitutes "waste" as defined in California Water Code section 13050. Based on Regional Water Board staff observations, the Dischargers' land clearing and mining activity threatens to result in a discharge of waste, i.e., soil, sediment, and earthen material, directly into surface waters during subsequent storm events. The Discharger, through this activity, has caused waste to be discharged where it may cause a condition of pollution or nuisance by increasing levels of sediment, settleable and suspended material, and turbidity in surface waters.
8. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter 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 Resources Control Board. The beneficial uses of the Sacramento River as identified in Table II-1 of the Basin Plan are municipal and domestic supply; industrial; and agricultural supply; water contact and other non-contact recreation; aesthetic enjoyment; navigation; ground water recharge, fresh water replenishment; and preservation and enhancement of fish, wildlife, and other aquatic resources.
9. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on sediment, settleable and suspended material, and turbidity. The Discharger's activities have resulted in the placement of waste that threatens to discharge into surface water and cause or contribute to exceedences of these limitations.

10. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements 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 limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. 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 the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

11. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”

12. Section 13260(a)(1) of the California Water Code provides that:

“ All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board: (1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state ...”

13. Section 13267(b)(1) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”
14. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with the California Water Code and Basin Plan requirements. The Dischargers are required to submit the technical reports because, as described in Findings 1 through 7, the Dischargers own the property and operate the mine that is the source of the discharges of waste and conducted the activities that are causing the discharges of waste.
15. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
16. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at www.waterboards.ca.gov/centralvalley or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13260, 13267 and 13304 of the California Water Code, Ronald and Betty Logan, and North Continent Land and Timber Inc., shall:

1. Cleanup the waste and abate, forthwith, the soil, sediment, and earthen materials discharged or placed near or into surface waters or surface water drainages or where such material could reasonably be expected to pass into surface waters including the previously identified Dry Creek and the drainage at the south edge of the property in accordance with the schedule in No. 2 below.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:

- (a) By **28 December 2007**, submit an Erosion and Sediment Control Plan prepared by, or under the direction of a California Registered Civil Engineer, a California Certified Engineering Geologist, California Certified Professional in Erosion and Sediment Control, or other California licensed professional experienced and knowledgeable in erosion and sediment controls. The Erosion and Sediment Control Plan must at a minimum include:
 - i. An assessment of the condition of the mine as it relates to erosion and sediment control;
 - ii. A detailed list of recommended site specific erosion and sediment control Best Management Practices (BMPs); and
 - iii. A proposed maintenance and monitoring plan for the site specific erosion and sediment control BMPs implemented to mitigate the threat of continued soil, sediment, and earthen materials discharges from the mine.
 - (b) By **11 January 2008**, complete installation of all erosion and sediment controls to prevent or minimize the discharge of soil, sediment, and earthen materials into surface waters from subsequent storm events.
 - (c) By **8 February 2008**, submit a Report of Waste Discharge and appropriate fees to obtain Waste Discharge Requirements for the operation of the mine. The Report of Waste Discharge shall include all necessary information required by § 22470 *et seq.*, Title 27, California Code of Regulations, applicable to the operation of the mine pursuant to §13260 of the California Water Code.
 - (d) By **1 March 2008**, update the SWPPP to reflect actual site conditions and BMPs shown to be effective for the mine including all provisions required by Section A of the General Permit..
3. If requested, reimburse the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **28 December 2007** submit the name and address to be used for billing purposes for oversight charges.
4. The Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.
5. Failure to comply with a cleanup and abatement order or the dates specified may result in further enforcement actions, including actions under section 13350, 13385, and 13387 of the California Water Code, which allows for administrative civil liability up to a maximum of five thousand dollars (\$5,000) or ten thousand dollars (\$10,000) depending on the section for each day of violation.

6. Compliance with this Order does not relieve the Dischargers of liability for past or ongoing violations of the Porter-Cologne Water Quality Control Act, Water Code § 13000 et seq., the Clean Water Act, 33 USC § 1251 et seq., the General Permit, or other applicable law. Nothing in this Order modifies any compliance dates in the General Permit, including the requirement to develop and implement an effective SWPPP prior to commencement or change of covered activities.

Original signed

JAMES C. PEDRI, Assistant Executive officer

17 December 2007

(Date)

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