

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2005-0122

FOR

MIDSTREAM PARTNERS LLC

Mendocino County

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

1. Mid Stream Partners LLC, 1200 E Ennis Court, La Center, Washington (hereinafter the “Discharger”), is the listed timberland owner(s) for timber harvest plan (THP) 1-05-008 MEN. The THP was approved by the California Department of Forestry and Fire Protection (CDF) on May 31, 2005. On July 18, 2005, the Discharger submitted to CDF an amendment to the THP. The amendment included a Sediment Prevention Plan to meet the requirements of Regional Water Board Order No. 1-2004-0016 *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region* (Categorical Waiver).
2. Eric da Rosa (a partner in Mid Stream Partners LLC) is the Registered Professional Forester (RPF) for the THP. The RPF filed a certification notice with the Regional Water Board for coverage under the Categorical Waiver prior to the start of timber operations on the THP.
3. The THP is located in the coastal area of Mendocino County, approximately five miles east of the Pacific Ocean and the town of Albion, California. The THP is comprised of approximately 41 acres in Section 31, Township 16 North, Range 16 West, Mount Diablo Base and Meridian, Calwater Number 1113.400005. It is located in the Big Salmon Creek watershed.
4. On October 11 and 17, 2005, staff from the Regional Water Board received a complaint from concerned citizens that timber operations at THP 1-05-008 MEN would result in a sediment discharge to Big Salmon Creek in Mendocino County.
5. On October 19, 2005, staff from the Regional Water Board, the California Department of Fish and Game (DFG) and the CDF inspected the THP site along with the Discharger and contractors. The review team participants inspected seasonal roads, skid trails, landings and watercourses within the complaint area from Albion Ridge Road to the southeast corner of the THP. Ineffective erosion control and perched soil piles were observed within 50-feet of a mis-mapped Class III watercourse (Exhibit 1: THP Maps, map point WQ-1). Soil had been pushed over the edge of roads and skid trails throughout the southeast quarter of the THP. The soil grading occurred within 50-feet of the Class III watercourse that flows into Big Salmon Creek.
6. On October 27, 2005, Regional Water Board staff re-inspected recent erosion control work in the southeastern portion of the THP (Exhibit 2: Regional Board Inspection Memo). CDF staff and a landowner representative were also present. The soil that had previously been observed near the Class III watercourse had been pulled back and placed on the inside edges of the seasonal road. The waterbars had been deepened, widened, straw mulched, and had new, clean straw bales placed along the inside edge of each waterbar to trap potential

sediment flowing towards the Class III watercourse. Grass seed previously planted prior to the October 19, 2005 inspection had begun to sprout. Short-term erosion control measures appeared to be fully implemented in the disturbed THP area along the seasonal road and around the newly mapped Class III watercourse.

7. On October 31, 2005, Clare Golec of DFG submitted an Active Inspection Memo to CDF outlining DFG's observations and concerns noted during her August 5, 2005 and October 19, 2005 inspections of THP 1-05-008 MEN (Exhibit 3: DFG memo). The memo states that: "The implementation of this plan has resulted in: a) excessive disturbed and perched soil along roads, skid trails and landings; b) poor and inadequate drainage structures, and c) damage to sensitive plants. The massive amount of disturbed and perched soil generated during the timber harvesting operations is indicated by the many large dirt mounds placed against road and skid trail banks that resulted from the remedial measures taken..." Photos and written examples of adverse impacts to the resources are listed throughout the Active Inspection Memo.
8. On September 28, 2005 the plan submitter and RPF, Eric da Rosa, submitted a "Timber Operations Work Completion and/or Stocking Report" to the California Department of Forestry. The CDF inspected the logging area on October 4, 2005 and issued a Notice of Violation of 14 CCR 914.6(f) Waterbreaks, and 14CCR 923.4 Road Maintenance, to the Licensed Timber Operator (LTO), Brian Clark, who conducted timber operations at the site (Exhibit 4: CDF Violation Report). The Notice of Violation required that waterbreaks and soil stabilization be brought to the standards of the Forest Practice Rules by October 15, 2005. Further, CDF and agency inspectors suggested additional mitigation measures be implemented to ensure compliance with the Forest Practice Rules and Basin Plan standards. The completion report was not approved and is being held by CDF pending further inspection.
9. The THP is within the Big Salmon Creek watershed, which provides habitat for steelhead trout and coho salmon, listed as endangered under the federal Endangered Species Act. The beneficial uses of Salmon Creek and its tributaries, as designated in the Basin Plan, include:
 - a) Domestic supply
 - b) Agricultural supply
 - c) Groundwater recharge
 - d) Navigation
 - e) Water recreation
 - f) Non-contact water recreation
 - g) Commercial and sport fishing
 - h) Cold water fish habitat
 - i) Wildlife habitat
 - j) Rare, threatened or endangered species
 - k) Migration of aquatic organisms
 - l) Spawning, reproduction, and/or early development
 - m) Estuarine habitat
10. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
 - 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.”

- *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.”*
11. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (page 3-2.00-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effect due to discharges from logging, construction, or associated activities, include the following:
- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring back ground levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
12. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to make the following requirements for persons suspected of violating the applicable Basin Plan objectives:
- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
 - Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
 - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13*

(commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”

- Section 13304(a) - *“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 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.”*
13. Recent activities on the THP have violated the Basin Plan prohibitions contained in the Action Plan. Specifically, the Dischargers have: 1) caused or permitted waste to be placed where it has or probably will be discharged to waters of the State and where it threatens to create a condition of pollution or nuisance, as a result of grading/earthwork and road construction activities, and placement of earthen material adjacent to watercourses that threaten to cause a discharge of approximately 10 cubic yards into tributaries of Big Salmon Creek. The recent activities also constitute a threatened sediment discharge in violation of provisions contained in the Categorical Waiver.
 14. All of the technical reports required by this Order are necessary to ensure that the threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board’s public file on this matter.
 15. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
 16. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to clean up or abate threatened or actual discharges as required by this Order is, pursuant to Water Code Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
 17. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code Section 13320 and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request a hearing with the Executive Officer or the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought,

filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13267(b) and 13304, the Discharger shall:

A. Short-term Erosion Control Completion Report

By **January 3, 2006**, submit a Short-term Erosion Control Completion Report (STCR) to the Regional Water Board Executive Officer. The STCR shall fully document the implementation of specific short-term erosion control measures, describe the specific locations of those measures, and identify the locations on a USGS topographic map at a scale of not less than 1:6000. The STCR shall be prepared and signed by an RPF, or professional engineer or geologist licensed in the State of California (licensed professional) with experience in erosion control. The STCR shall list the sites that will be routinely inspected and maintained throughout the winter and spring period from now until June 1, 2006, to prevent sediment delivery to waters of the State.

B. Long-Term Erosion Control Plan:

The primary purpose of this Long-Term Erosion Control Plan (ECP) is to identify all potential sediment delivery sites (such as landings and roads) and significant features in the area (such as springs and watercourses), and to stabilize, correct, or eliminate delivery sites.

1. By **April 3, 2006**, the Discharger shall submit a Long-term Erosion Control Plan (ECP) for review and approval by the Regional Water Board Executive Officer (Executive Officer). The Long-term ECP shall identify all potential sediment delivery sites to waters of the State including those near Class I, II, III watercourses, wet areas, and springs associated with the entire THP. The Long-term ECP shall be prepared and signed by an RPF, or licensed professional with experience in erosion control. The Long-term ECP shall include an inventory of all sediment delivery sites and a plan to stabilize, eliminate, or otherwise correct each of these sources of sediment.
2. The Long-term ECP shall include an inventory and a map of the sediment delivery sites using a USGS topographic map at a scale of not less than 1:6000. The map shall identify all roads, landings, clearings, watercourses, wet areas, springs, watercourse crossings, skid trails, off-road trails, and all recent grading activity within the THP area.
3. The Long-term ECP shall include a plan to stabilize, eliminate, or otherwise correct each of the inventoried sediment delivery sites. The Long-term ECP shall identify the locations of any permanent erosion control measures already installed and those to be completed in 2006.
4. The Long-term ECP shall be fully and adequately implemented by **August 15, 2006**. The RPF or licensed professional shall prepare, sign and submit a Completion Report of all implemented remedial work contained in the Long-Term ECP to the Executive Officer by **September 15, 2006**. Regional Water Board staff will review the completed work to determine if it has been implemented adequately in order to protect waters of the State.

C. Monitoring and Reporting

1. The RPF or qualified representative, or licensed professional shall monitor the THP area near watercourses, wet areas, and springs, including all inventoried sediment delivery sites, during or after a significant rainfall of 1-inch or more in a 24-hour period as recorded at the nearest official precipitation station. No more than one monitoring inspection needs to be conducted within any given month. Monitoring shall include evaluation of erosion control effectiveness and performance of corrective action where necessary to prevent a sediment discharge to waters of the State. Each monitoring visit shall be documented in an inspection log and include the inspector's name, site location, date, observations, and detailed corrective action taken to prevent a sediment discharge at each site location. If complete corrective action cannot be taken at a site due to the need for heavy equipment during wet conditions, then temporary erosion controls shall be performed and a description of the more permanent work shall be added to the Long-term Erosion Control Plan. Monitoring shall be done from **January 1, 2006 through May 30, 2006 and November 1, 2006 through May 30, 2007.**
2. By the fifteenth day of each calendar month (February through May 2006, and December 2006 through May 2007), the Discharger shall submit to the Executive Officer a monthly monitoring report with the information contained in the inspection log described in C.1 above. The monthly monitoring report shall be signed by the RPF or licensed professional, reviewing the erosion control performance, remedies taken, and effectiveness in preventing sediment discharges to waters of the State.

Ordered by _____

Catherine Kuhlman
Executive Officer

December 15, 2005