

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order
No. R1-2010-0050

For

Philbrick Family Partnership
APN # 125-280-72

Mendocino County

This Cleanup and Abatement Order (Order) is issued to Philbrick Family Partnership, (hereafter Discharger), based on provisions of California Water Code (CWC) §13304, which authorizes the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) to issue a Clean and Abatement Order, and CWC §13267, which authorizes the Regional Water Board to require preparation and submittal of technical and monitoring reports.

The Executive Officer of the Regional Water Board finds that:

1. The Discharger owns land located at 25830 Comptche-Ukiah Road, Comptche, in Mendocino County, identified as Mendocino County Assessor's Parcel Number (APN) 125-28-072 (Site). The Site is situated within the Navarro River watershed. Drainage from the Site discharges to an unnamed tributary to Johnson Creek. Johnson Creek is tributary to John Smith Creek, which flows to the Navarro River.
2. On November 23, 2009, the Regional Water Board received a complaint from CAL FIRE, reporting that a recent timber-related inspection of the Site revealed that extensive earthwork activities had been performed on the Site that appeared to have created or resulted in water quality violations.
3. On January 14, 2010, staff from the Regional Water Board, CAL FIRE, National Oceanographic Atmospheric Administration (NOAA), Department of Fish and Game (DFG), California Geologic Survey (CGS), Mendocino County Air Quality Control Management District (AQ) and the Discharger's representative inspected the Site. Staff observed the following:
 - a. Earthen fill has recently been deposited within the banks of an unnamed tributary to Johnson Creek, apparently with the intent to impound water. The fill appeared to be poorly compacted with numerous tension cracks throughout and loose soils at the impoundment edges. In addition, the earthen fill materials were observed to be eroding and slumping into the unnamed tributary. The earthen fill impoundment is conservatively estimated to include about 360 cubic yards of earthen material, based on estimated dimensions of 75' length, 18.5' average width, and 7' height.
 - b. Recent roadwork on an existing rural ranch road accessing the site included installation of an inside ditch that extended approximately 2600 feet with only two drainage break points draining to the flood plain of the adjacent stream. One of the delivery points on the Site drains directly to an unnamed

ephemeral stream that leads to the previously described unnamed tributary to Johnson Creek.

4. Sediment, when discharged to waters of the state, constitutes a “waste” as defined in Water Code section 13050.
5. The *Water Quality Control Plan for the North Coast Region*(January 2007), (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 for the Navarro River Hydrologic Area ¹, as identified in Table 2-1 of the Basin Plan are:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Navigation
 - h. Water contact recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Cold freshwater habitat
 - l. Rare, threatened, or endangered species (RARE)
 - m. Wildlife habitat
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
6. The Discharger’s activities, as described in Paragraph 3, above, have resulted in the discharge of waste into surface waters, which have created, or threaten to create, a condition of pollution or nuisance by altering the quality of waters in the Navarro River watershed to a degree that unreasonably affects their beneficial uses.
7. The Basin Plan’s Action Plan for Logging, Construction, and Associated Activities (Action 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*

¹ Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."

8. The Discharger's activities, as described in Paragraph 3, above, have resulted in the discharge of waste into surface waters in violation of the Basin Plan Prohibitions set forth above.

9. CWC §13304, subdivision (a) provides:

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 threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

10. CWC §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. CWC §13267, subdivision (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. The burden of these technical reports shall bear a reasonable relationship to the need for these reports and the benefits to be obtained from them.
11. CWC §13050(l) defines "pollution" as an alteration of the quality of the waters of the state by waste to a degree that unreasonably affects the waters for beneficial uses.
12. As described in findings 3 through 8, the Discharger is subject to an Order pursuant to CWC §13304 because the Discharger has caused or permitted waste to be discharged or deposited where it has discharged to waters of the state in violation of a prohibition issued by the Regional Water Board and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup and abatement order pursuant to CWC §13304 is appropriate and consistent with policies of the Water Board.
13. Pursuant to CWC §13304 (c)(1), the Regional Water Board is entitled to and can seek reimbursement for reasonable costs incurred to investigate the unauthorized discharge of wastes, to oversee clean up of the wastes, supervising clean up and abatement activities, or taking other remedial actions required by this order.
14. The technical reports required pursuant to this Order are needed to provide information to the Regional Water Board regarding the condition of pollution caused or contributed by the Discharger's activities to waters of the state. The benefits to be obtained from a technical report include enabling the Regional Water Board to determine the impacts of the condition of pollution on beneficial uses and to provide information that will be used to determine what corrective actions are

necessary to assess, abate, and control the pollution. Based on the nature and possible consequences of the discharges, the burden of providing the required reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

15. This is an enforcement action taken by a regulatory agency for the protection of the environment and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§21000 *et seq.*), in accordance with California Code of Regulations, title 14, §§15308 and 15321.
16. Failure to comply with the terms of this Order may subject the Discharger to an enforcement action under the Water Code, including administrative civil liabilities under CWC §13350, in an amount not to exceed the sum of five thousand dollars (\$5,000) per day and ten dollars (\$10) per gallon of waste discharged in excess of 1,000 gallons.
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 CWC §13320 and title 23, California Code of Regulations, §§2050-2068. The State Water Board must receive the petition 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 Water Board, any person affected by this Order may request the Executive Officer to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order.
18. Note that even if reconsideration is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if the Discharger chooses to request reconsideration of this Order or file a petition with the State Water Board, the Discharger is hereby advised that it must comply with the Order while its request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC §§13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Submit an Erosion Control Plan for road related erosion by **June 18, 2010** that includes the following:
 - a. Inventory of existing and potential sediment sources,
 - b. Design and construction standards for corrective work on inventoried sediment sources,
 - c. Design and construction standards for correction of the inside ditch drainage on the access road,
 - d. A Time Schedule for repair of sediment sources,

- e. A map of the road system and property identifying the location of sites requiring corrective action.
2. By **June 18, 2010**, submit a work plan to the Regional Water Board, for Executive Officer concurrence, that includes the following:
 - a. A restoration plan that describes and shows in detail how the Discharger proposes to completely remove the earthen impoundment from the Class II watercourse. The plan shall contain a description of how the earthen materials will be removed and where and how the spoils will be safely disposed.
 - b. A plan including design and construction standards for stream restoration, design standards for post construction native vegetation planting, a time schedule for restoration activities, criteria to judge the success of the restoration project, and a monitoring proposal to evaluate whether the stream restoration is successful. The restoration plan must be prepared by a licensed professional experienced in stream restoration and must be approved by the Executive Officer.
3. By **June 18, 2010**, submit a Monitoring and Reporting Plan to the Regional Board Executive Officer, that includes:

Monthly Progress reporting on restoration, clean up, and road work due on **July 1, 2010, August 1, 2010, September 1, 2010, and October 1, 2010**, until conclusion of cleanup and abatement activities.
4. By **August 1, 2010**, submit a Restoration Monitoring Plan for review and concurrence, to be implemented following restoration activities to assess and document successful abatement of sediment from the site and/or identify problems that develop subsequently and require further work. Reports must be submitted three times per year until the restoration is completed to the satisfaction of the Regional Water Board. Reports are due **December 31, March 31, and June 30**.
5. Submit the following information by **June 18, 2010**:
 - a. List of employees, contractors, and/or subcontractors involved with the design, grading, and filling of the stream. Include all contact information such as telephone numbers, mailing addresses, and professional license numbers.
 - b. Copies of any permits, engineering design, installation, and construction details used to create the impoundments, type of equipment used, and any photographs or other documents to support the information.
 - c. Dates grading occurred and waste, earthen materials, soil, and rock was discharged into the stream to form the impoundments of water
 - d. Description of any erosion and sediment control used during the implementation of soil removal, excavation of riparian vegetation and filling the Class II watercourse,

- e. Cubic yards volume estimate of the impoundment materials.
6. Following Executive Officer written concurrence, the Discharger shall implement and fully complete all necessary long term cleanup and abatement work including: 1) correction of road related erosion, 2) removal of the impoundment on the Site, 3) restoration of the stream channel, 4) stabilization of the restored areas with plantings of native vegetation, and 5) Monitoring and Reporting as required above.
 7. All work to remediate site grading activities and to restore all affected areas at the Site shall be completed, with the exception of continuing monitoring requirements, prior to **October 15, 2010**.
 8. By **November 15, 2010**, submit a report summarizing and confirming completion of all cleanup and abatement work.
 9. If the Discharger is unable to perform any activity or to submit any documentation in compliance with the deadlines in this Order, the Discharger may submit a written request to the Executive Officer for an extension of the time schedule. The written extension request shall explain why the delay is beyond the reasonable control of the Discharger and must be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. An extension may be granted by the Executive Officer, for good cause, in which case this Order will be accordingly revised.
 10. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by

Catherine Kuhlman
Executive Officer

May 19, 2010