CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT AND 13267 ORDER NO. R1-2016-0036

FOR

MENDOCINO RAILWAY
SKUNK TRAIN
West Portal of Tunnel No. 1
39.4468°, -123.7629°

MENDOCINO COUNTY

This Order is issued to Robert Jason Pinoli, Owner and Operator of the Skunk Train (hereinafter referred to as Discharger) based on provisions of Water Code[1] section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order (Order).

The Assistant Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. **Purpose of the Order:** This Order requires the Discharger clean up and abate the effects of the discharges of sediment and earthen material into Pudding Creek and to eliminate the threat of future discharges. The Discharger's actions associated with construction repair activities at the collapsed western portal of the Discharger's railway tunnel, Tunnel No. 1 (hereinafter referred as Site), have resulted in the unauthorized discharge of sediment and other pollutants and have created, and threaten to create, a condition of pollution and/or nuisance by unreasonably affecting the beneficial uses of waters of the state. Continuing discharges, from unprotected stockpiles, unstabilized slopes, inadequately sized and maintained sediment basins, and lack of effective erosion and sediment controls, violate provisions of the Basin Plan, the Porter-Cologne Water Quality Control Act, and the Federal Clean Water Act (33 U.S.C. § 1251 et seq.). These conditions threaten to continue unless the discharge or threatened discharge is permanently cleaned up and abated.

2. **Responsible Parties:** The Discharger, as the owner and operator and/or persons discharging or creating a threat of discharge, is the responsible party for purposes of this Order.

[1] Unless otherwise indicated, all references to the "Water Code" refer to the California Water Code.

3. **Site Location and Description:** The Skunk Train is a scenic historic passenger railway that runs approximately 40 miles between Fort Bragg and Willits. The railway passes along the Pudding Creek estuary and through two tunnels: Tunnel No.1 and Tunnel No. 2. The Site is located on the western portal of Tunnel No. 1. The approximate map coordinates of the Site are latitude 39.4468° north and longitude 123.7629° west, approximately 2.5 miles east of Fort Bragg.

4. **Site History:** The hillside surrounding the western portal of the Skunk Train's Tunnel No. 1 is reportedly unstable, and in February 2015, the portal collapsed. Subsequent to the collapse, the Discharger began efforts to repair the damaged tunnel. The Discharger ceased repair work sometime in June, reportedly as a result of lack of funds. The total acreage of land disturbance associated with the repair work is about 1.7 acres.

5. **Case Background**:

   A. On October 23, 2015, Regional Water Board staff (Staff) received a complaint which included photographic documentation depicting conditions at the Site. The photographs revealed exposed soil stockpiles and hillslopes abutting both banks of Pudding Creek without any erosion or sediment controls.

   B. On October 28, 2015, Staff inspected the Site. During the inspection, Staff observed the conditions noted below, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

      1. Unstabilized earthen materials on steep hillslopes above, and adjacent to, the western portal of Tunnel No. 1.
      2. Evidence of equipment tracking and terracing on the slopes associated with construction activities.
      3. Exposed stockpiles of bare soil/spoils generated during construction activities on the west and east banks of Pudding Creek.
      4. Uncontained bags of Quikrete Shotcrete that had ripped and spilled concrete onto exposed soil on the east bank of Pudding Creek.
      5. A lack of erosion and sediment controls to prevent discharge to Pudding Creek.

   C. At the conclusion of the October 28, 2015, inspection, Staff verbally requested that the Discharger submit a short-term erosion control plan and implementation schedule.

   D. On November 4, 2015, the Discharger submitted a document titled "Temporary Erosion Control Plan" to the Regional Water Board. The document was determined to be inadequate by Staff due to the lack of detail of best

management practice (BMP) implementation and maintenance, and an implementation schedule.

E. On November 13, 2015, the Regional Water Board issued a Requirement for Information Pursuant to California Water Code 13267 to the Discharger requiring the submission of the following information:

1. By November 20, 2015, the Discharger shall submit an emergency short-term erosion control plan.
2. By December 11, 2015, the Discharger shall submit a long-term erosion control plan.
3. Starting on November 30, 2015, the Discharger shall submit monthly progress reports. To date, the Discharger's compliance with the monthly progress report requirement is as follows:

    a. November 2015 report: Not submitted
    b. December 2015 report: Received January 4, 2016, four (4) days late.
    c. January 2016 report: Received February 2, 2016, two (2) days late.
    d. February 2016 report: Received February 29, 2016, on time.
    e. March 2016 report: Received March 31, 2016, on time.
    f. April 2016 report: Received April 29, 2016, on time.
    g. May 2016 report: Received May 31, 2016, on time.
    h. June 2016 report: Received June 30, 2016, on time.

F. On November 13, 2015, the Discharger submitted an erosion control plan titled "Construction Erosion Control Plan" (CECP), which was determined to be inadequate by Staff, as documented in a Notice of Violation (NOV) dated February 1, 2016. For example, section 3.1 of the CECP states that BMPs "[g]enerally will be deployed whenever excavation and grading expose soils. BMPs shall be modified, as necessary, and maintained throughout the duration of construction activities. Modification of the BMPs should be based on the phases of construction." While this section mentions a general implementation plan, it does not discuss the controls that will be implemented, as required by Requirement A.4 of the November 13, 2015, 13267 Order.

G. On December 16, 2015, the Regional Water Board issued a Notice of Noncompliance (NNC) to the Discharger for failure to obtain Construction Storm Water General Permit (CGP) coverage. Pursuant to California Water Code section 13399.30 (a), the NNC required the Discharger to submit a Notice of Intent (NOI) to obtain CGP coverage within 30 days from the date of the NNC.

H. On December 17, 2015, Staff inspected the Site. During the inspection, Staff observed conditions, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

I. On December 18, 2015, the Discharger created a Storm Water Multiple Application and Report Tracking System (SMARTS) account to obtain coverage under the CGP, but did not submit any of the required Permit Registration Documents (i.e., NOI, Storm Water Pollution Prevention Plan [SWPPP], Site Map, a Risk Assessment, an Annual Fee, and a Signed Certification Statement).

J. On January 14, 2016, pursuant to California Water Code section 13399.30 (b), the Regional Water Board issued a Second Notice of Noncompliance (Second NNC) for failure to obtain CGP coverage within the 30-day deadline set forth in the NNC.

K. On February 1, 2016, Staff conducted a joint-inspection of the Site with State Water Resources Control Board (State Water Board) staff and California Department of Fish and Wildlife staff. During the inspection, Staff observed conditions which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution.

L. On February 16, 2016, 60 days from the date the Regional Water Board issued the NNC, Staff verified that the Discharger had not submitted an NOI to obtain coverage under the CGP.

M. On February 19, 2016, the Regional Water Board issued an NOV for unauthorized discharges to Pudding Creek on December 17, 2015, and February 1, 2016, and for failure to submit reports required by the November 13, 2015, Requirement for Information Pursuant to California Water Code 13267. The NOV required the Discharger to take the following actions:

1. Submit a revised short-term erosion control plan that addresses the deficiencies summarized in the NOV.
2. Submit the long-term erosion control plan that was required by the November 13, 2015, Requirement for Information Pursuant to California Water Code 13267.
3. Submit monthly progress reports in accordance to the revised requirements set forth in the NOV and in a timely manner.
4. Submit an update on the status of the Site's enrollment for coverage under the CGP and the implementation of a SWPPP.

N. On May 6, 2016, the Discharger submitted an NOI to obtain CGP coverage, 112 days past the deadline January 15, 2016 in the NNC.

6. **Current Water Quality Threats:**

On February 1, 2016, Staff inspected the Site and observed the conditions noted below, which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and the United States and creates, or threatens to create, a condition of nuisance and pollution. To date, these conditions remain water quality threats.

A. The collapsed and disturbed hillside area, estimated to be around 70 feet long and 23 feet wide, remains unstable and continues to slump downslope towards the sediment basins and Pudding Creek.

B. On the southern slope of the bank of Pudding Creek, sediment deposits and flattened and eroded vegetation on the water line indicate recent discharges of sediment. The discharge passed through the straw bale "barrier" and silt fence intended to contain sediment-laden runoff from the Site (see Photos 20 and 21 of the Seidner and Elder February 1, 2016, Inspection Report, pp.18-19). This indicates that straw bales are not an effective BMP to prevent discharges of sediment to Pudding Creek. To date, the straw bales are implemented as sediment control.

C. Plastic sheeting applied to the disturbed hillside areas was not installed to specification and requires maintenance, rendering it ineffective to control erosion (see Seidner and Elder February 1, 2016 Inspection Report, p. 12). Additionally, coverage of the slopes with sheeting is incomplete when compared to the CECP, which required complete coverage. Partial installation of plastic sheeting on slopes in this area has concentrated runoff, increasing its velocity, and funneling it into the downslope portions not covered by sheeting, which are the most heavily eroded and steepest portions of the Site.

D. BMPs located at the toe areas or perimeters of the soil stockpiles are improperly installed and inadequate to contain the stockpiled soil and prevent sediment discharges or threatened discharges. Staff observed sediment deposits beyond the perimeter BMPs demonstrating evidence of sediment-laden runoff discharges around, under or through BMPs and down the banks into Pudding Creek (see Photos 19-25 of Seidner and Elder February 1, 2016, Inspection Report, pp. 17-20).

E. Staff observed a surface sheen on pooled water at the Site, warranting evaluation for other potential pollutants, and additional BMPs (see Photo 13 of Seidner and Elder February 1, 2016, Inspection Report, p. 12).

F. Three sediment basins were installed on the south bank of Pudding Creek. The largest sediment basin extended into the collapsed tunnel to an unknown distance; the approximate volume of the basin was estimated at 136,000 gallons. The intermediate and smallest sediment basins were estimated at 32,000 gallons and 3,000 gallons, respectively. Staff noted in the February 1, 2016, Inspection Report that the sediment basins were at or near capacity and threaten to discharge sediment if not properly managed.

7. Unauthorized Discharges <u>Reported in Monthly Progress Reports:</u>

Inadequate sediment basin design, ineffective BMPs, and lack of BMP maintenance on the Site have continued to result in unauthorized discharges of sediment to Pudding Creek, a water of the state and the United States, in violation of Basin Plan prohibitions. The monthly progress reports include a summary of activities on the Site, photographs, and inspection forms from Site inspections. Photographs depict that water samples were taken, but there is no indication that water quality testing was conducted to verify the effectiveness of the BMPs at sediment control, the quality of the discharge, or the impacts to Pudding Creek. The following unauthorized discharges were reported by Ms. Teri Jo Barber, the Discharger's appointed Qualified Storm Water Practitioner (QSP), in the monthly progress reports required by the November 13, 2015, 13267 Order.

A. <u>January Monthly Report</u>

1. On January 7, 2016, a discharge from the Site to Pudding Creek occurred. The discharge seeped through the geotextile-lined sediment basin to underneath the bridge and into the creek (p. 9).

2. On January 14, 2016, a sediment plume in Pudding Creek was photo-documented. The discharge was a result of seepage through the sediment basins (p.10).

3. Ms. Barber included two photos from her January 21, 2016, inspection that indicate recent discharges of sediment to Pudding Creek from the Site. Evidence of sediment discharging to the Pudding Creek from the south bank of the creek was documented in both of the photos (pp. 14-15).

B. <u>February Monthly Report</u>

1. On February 8, 2016, spring water seeped through BMPs and discharged to Pudding Creek (page 33).

2. On February 16, 2016, evidence of a discharge from the primary and secondary sediment basins to Pudding Creek was documented (page 36).

C. March Monthly Report

1. On March 3, 2016, a discharge occurred from the northwestern corner of the secondary sediment basin to Pudding Creek (page 13).

2. On March 5, 2016, a discharge occurred from the Site to Pudding Creek. The collapsed area of the tunnel was the source of the plume of sediment underneath the bridge (pages 16, 17, and 21).

3. On March 6, 2016, the Site was inundated by Pudding Creek during a large rain event, resulting in the discharge of sediment from the southern and northern stockpiles (page 24).

4. On March 8, 2016, a discharge occurred from the primary and secondary basins to Pudding Creek. Water seeped through the straw bale barrier, through an opening in the geotextile material, and discharged to the creek (page 26).

5. On March 10, 2016, the primary sediment basin overflowed, but that the water was successfully routed to the secondary sediment basin. However, a photo depicts discharge located beyond the secondary sediment basin on the bridge and adjacent to Pudding Creek, indicating that a discharge likely occurred (page 35).

6. On March 15, 2016, a discharge occurred from the primary sediment basin to Pudding Creek (page 68).

7. On March 22, 2016, material from the southern stockpile seeped through the straw bale barrier. Photos depict deposited sediment and standing sediment-laden water that had penetrated the straw bale barrier, providing evidence of a previous discharge (page 53).

5. Factual Basis of Order: As noted above, the Discharger owns and operates the Skunk Train and its railway. The Discharger's construction repair activities and/or the conditions revealed at the Site through investigations, and as detailed above, have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into Pudding Creek and creates, or threatens to create, a condition of nuisance and pollution by unreasonably impacting water quality and the beneficial uses of Pudding Creek. Pudding Creek is tributary to the Pacific Ocean; both are waters of the state and the United States. (References hereinafter to waters of the United States are inclusive of waters of the state.)[2] The construction activities at the Site have discharged sediment-

[2] The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those waters as "waters of the United States." Waters of the United States have been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters

(footnote continued on next page)

laden storm water into Pudding Creek and continue and/or threaten to discharge sediment-laden storm water thereby creating a condition of nuisance and pollution to the beneficial uses of Pudding Creek in violation of section 301 of the federal Clean Water Act, section 13376 of the California Water Code, and the Basin Plan.

6. **Beneficial Uses and Water Quality Objectives:** The 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 (State Water Board).

   A. The existing and potential beneficial uses of waters of the North Coast Region are outlined in Table 2-1 of the Basin Plan. Pudding Creek is within the Noyo River Hydrologic Area (HA). The existing beneficial uses of the Noyo River HA are: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non –Contact Water Recreation (REC2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Estuarine Habitat (EST); and Aquaculture (AQUA). The sole potential beneficial use is Industrial Process Supply (PRO).

   B. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions (page 4-29.00) as follows:

   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.*

(footnote continued from previous page)
and their tributaries. (40 C.FR. 122.2) The Porter-Cologne Water Quality Control Act (Porter Cologne) provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Water Code § 13260.) The term "water of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code § 13050(3).) All waters of the United States that are within the boundaries of California are also waters of the state for purposes of Porter-Cologne.

C. 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 that staff believes are of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from construction activities include, but are not limited to, the following:

1. Color: "Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses."

2. Suspended Material: "Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."

3. Settleable Material: "Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses."

4. Sediment: "The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."

5. Turbidity: "Turbidity shall not be increased more than 20 percent above naturally occurring back ground levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof."

6. Biostimulatory Substances: "Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect the beneficial uses."

7. Oil and Grease: "Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in visible film or coating on the surface of water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses."

8. Floating Material: "Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses."

D. The State Water Board has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution No. 92-49). Resolution No. 92-49 sets forth the policies and procedures for investigation and cleanup and abatement of discharges under Water Code section 13304, and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution No. 68-16), which is included as Appendix 6 of the Basin Plan. Thus, Resolution No. 92-49 requires the

waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board.

7. Legal Authority to Require Cleanup and Abatement:

A. Water Code section 13304, subdivision (a) states, in relevant part:

A 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…Upon failure of a 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 facts may warrant.

B. "Waste" is defined by Water Code section 13050, subdivision (d) as,

Sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing , or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

C. Sediment, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050. The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to surface waters draining to Pudding Creek, a water of the state.

D. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as,

An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

i. The waters for beneficial uses;
ii. Facilities which serve these beneficial uses

E. "Nuisance" is defined by Water Code section 13050, subdivision (m) as,

i. Injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;
ii. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal;
iii. Occurs during, or as a result or, the treatment or disposal of wastes.

8. **Cleanup and Abatement Action Necessary:** Cleanup and abatement action is necessary to ensure that, any current discharges and associated pollution and/or nuisance to Pudding Creek is cleaned up and abated and that any threatened unauthorized discharges of waste to Pudding Creek are prevented, and any impacts to beneficial uses are mitigated. Issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board and necessary for the protection of water quality.

9. **Technical Reports Required:** Water Code section 13267(a) provides that the Regional Water Board may investigate the quality of any water 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. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained. *Id*. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the United States. The technical reports are further necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and surface water drainage courses and to ensure that cleanup complies with Basin Plan requirements. Some of the technical reports required by this Order are also necessary to evaluate the appropriate erosion and sediment control measures to control construction storm water runoff from the Site. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for the reports and identify the evidence that supports the requirement to implement cleanup and abatement activities. The Discharger named in this Order owns the site from which waste was discharged, and thus is appropriately responsible for providing the reports.

10. **California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061 (b) (3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for Executive Officer review and approval prior to implementation of cleanup and

restoration activities at the site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Discharger shall eliminate the threat of future discharges, and clean up and abate the effects of any past discharges, of sediment and miscellaneous debris into Pudding Creek. The Discharger shall clean up and abate the impacts to water quality in accordance with the scope and schedule set forth below, and implement the actions herein. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. In addition to the Risk Level III CGP *Rain Event Action Plan* (REAP) requirements, the Discharger is required to submit all REAPs whenever they are developed pursuant to CGP requirements (page 8 of Attachment E) to SMARTS and include the additional information as follows:

    a. A map depicting the locations of active and inactive construction sites and BMPs at each of the locations.
    b. A summary describing the function of each BMP, including whether it is a stand-alone control, or is dependent on the effectiveness of other controls to function properly.
    c. A summary describing the condition of each BMP, including the date that it was last maintained, its current condition, and whether it requires maintenance to function properly.
    d. A summary of how any equipment onsite will be protected to ensure that it will not be exposed to precipitation.

2. The Discharger is required to submit all visual inspection-related records pursuant to CGP requirements (page 12, I.3.h of Attachment E), including, but not limited to, weekly inspection reports, visual inspection reports from pre-, during, and post-rain events,

and inspection checklists, within 72 hours of the visual inspections conducted to SMARTS.

3. **Immediately** ensure that discharges from the Site to Pudding Creek are in compliance with the CGP Risk Level III requirements[3].

4. **Immediately** ensure that stockpiles are contained and maintained in compliance with CGP Risk Level III Requirements[3]. The stockpiles must be protected and/or located[4] such that discharges to Pudding Creek are eliminated. It is recommended that any waste material that will not be used in the project be removed from the Site by September 1, 2016.

5. **By no later than August 22, 2016,** submit all previously conducted water quality sampling test results.

6. **By no later than August 22, 2016**, submit volume estimates for all previous discharges reported in monthly progress reports. For future monthly progress reports, the Discharger is required to include a volume estimate of any discharges from the Site.

7. **By no later than September 16, 2016**, identify and implement source control measures to stabilize the collapsed hillside area.

8. **By no later than September 16, 2016**, sediment basins must be re-designed and configured so that they are in compliance with CGP Risk Level III, Requirement E, Sediment Controls[5].

9. **By no later than October 14, 2016**, submit a *long-term stabilization plan*[6] **.** This plan must be reviewed and approved by the AEO and shall include an implementation schedule and:

    A. Maps and figures at 1:12000 scale or larger (e.g., 1:6000)

        1. A map of the site including areas of operations, roads, water bodies, all cleared areas, water diversions and/or sediment traps or storage features, all structures, water crossings, and general drainage patterns and directions. This map will be used as the Base Map.

[3] For CGP Risk Level III requirements, refer to Attachment 1, *CGP Attachment E- Risk Level III Requirements,* link on page 17.

[4] Prior to disturbance of any riparian vegetation or dredge and fill activities in waters of the state, consultation with the Regional Water Board is required to determine if any additional permits are necessary.

[5] For CGP risk Level III sediment basin requirements, refer to Attachment 2, *CASQA Excerpt Fact Sheet SE-2, Sediment Basin,* link on page17.

[6] This *long-term stabilization plan* supersedes the *long-term erosion control plan* required by the November 13, 2015, 13267 Order, except for enforcement purposes as the *long-term erosion control plan* has not yet been submitted.

2. Site figure using the Base Map showing locations of rubbish, waste, fuel storage and other pollutants including equipment stored, piled, or placed at locations on the Site where the materials or their contents are exposed to rainfall and/or runoff, or where they can enter or leach into surface water or groundwater. Identify locations where soil or water pollution is apparent based on site observations (visual and/or odor).

3. Site figure using the Base Map showing locations or areas with a potential for slope instability, erosion and sediment delivery into surface waters. These may include but are not necessarily limited to roads at stream crossings, fill prisms located in or adjacent to watercourses, and cleared or disturbed, erodible soil areas that drain into surface waters.

B. Design drawings that delineate existing site conditions including existing surface waters, projected restored hillslopes, spoil disposal sites, equipment storage sites, water diversion pipes, permanent hillslope stabilization features, replanting areas, photo monitoring points for construction and post-construction monitoring, and any other features or site construction details to complete the scopes of work; design and construction standards for stabilization and for replanting of exposed soils with native vegetation; design and construction standards for each of the three sediment basins; and erosion and sediment control methods and standards for unanticipated precipitation during remediation.

C. An inventory and assessment of constructed features or placed material (such as earthen dams or sediment traps, fill material piled on the stream bank or stockpiled material, or other erosion control features near or in watercourses or other surface waters) that will remain in place or be removed and provide an appropriate plan to stabilize or remove those features.

D. Design details and schedule to stabilize hillslopes, streamside areas or areas that have been disturbed. List all permits (e.g., Water Quality Certification, Lake and Streambed Alteration Agreement) required and/or obtained for this work.

10. **By no later than October 14, 2016**, submit a *bioassessment monitoring and reporting work plan* and implementation schedule for review and approval by the Executive Officer of the Regional Water Board. Bioassessment Monitoring is required to assess the effect of the discharges from the Site on the biological integrity of Pudding Creek: The bioassessment shall include the collection and reporting of specified instream biological data and physical habitat data upstream and downstream of the Site using the Surface Water Ambient Monitoring Program (SWAMP) protocol[7].

[7] For SWAMP protocol, refer to Attachment 3, *Standard Operating Procedures (SOP) for the Collection of Field Data for Bioassessments of California Wadeable Streams: Benthic Macroinvertebrates, Algae, and Physical Habitat* on page 17 and Attachment 4, *Supplemental Guidance for the SWAMP Bioassessment Field Protocol*, on page 18.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that plans, and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

2. **Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his or her knowledge, the report is true, complete, and accurate. The Discharger shall also state if he agrees with any recommendations/proposals and whether he approves implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

   I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

3. **Notice of Change 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. **Submissions:** All monitoring reports, sampling reports, technical reports or notices required under this Order shall be submitted to Shin-Roei Lee, the Assistant Executive Officer, and Devon Jorgenson, Engineering Geologist for the Construction Storm Water Program, either by email or mail:

   Shin-Roei Lee, *Assistant Executive Officer*
   Shin-Roei.Lee@waterboards.ca.gov

   Devon Jorgenson, *Engineering Geologist*
   Devon.Jorgenson@waterboards.ca.gov

   By email to: NorthCoast@waterboards.ca.gov (preferred)
   By mail to: NCRWQCB, 5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403

5. **Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.

6. **Cost Recovery:** Pursuant to Water Code section 13304, the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs 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.

7. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.

8. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of administrative civil liability up to the following maximum liability amounts: $1,000 per violation per day pursuant to Water Code section 13268, $5,000 per violation per day pursuant to Water Code section 13350, and/or $10,000 per violation per day pursuant to Water Code section 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including but not limited to, violation of the terms and condition of this Order.

9. **No Limitation of Water Board Authority.** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised as additional information becomes available.

10. **Modifications.** Any modification to this Order shall be in writing and approved by the Executive Officer of the Regional Water Board, including any potential extension requests.

11. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board 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 must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St.John
Digitally signed by Matthias St.John
Date: 2016.08.03 09:31:26 -07'00'
Water Boards

Matthias St. John
Executive Officer

16_0036_Skunk_Train_CAO

Referenced Documents:
1. CGP Attachment E- Risk Level III Requirements: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_att_e.pdf

2. CASQA Excerpt Fact Sheet SE-2, Sediment Basin: https://www.casqa.org/sites/default/files/downloads/fact_sheet_se-02_rev2.pdf

3. Standard Operating Procedures (SOP) for the Collection of Field Data for Bioassessments of California Wadeable Streams: Benthic Macroinvertebrates, Algae, and Physical Habitat http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/combined_sop_2016.pdf

4. Supplemental Guidance for the SWAMP Bioassessment Field Protocol http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/guidance_doc_v4_0516.pdf

5. Seidner and Elder February 1, 2016, Inspection Report

Certified Return Receipt Requested

cc: Angela Liebenberg
California Department of Fish and Wildlife
Angela.Liebenberg@wildlife.ca.gov
Vanessa Young
State Water Resources Control Board
Vanessa.Young@waterboards.ca.gov