

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2017-0024

for

Michael Griffin,

Gayle Griffin,

and

Helen Lin

ASSESSOR PARCEL 222-071-025

HUMBOLDT COUNTY

ASSESSOR PARCELS 052-020-14 AND 052-020-15

MENDOCINO COUNTY

This Order is issued to Michael Griffin, Gayle Griffin, and Helen Lin (hereafter referred to as Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

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

- 1. Site Conditions:** Jones Creek is a water of the state, as well as a water of the United States (references hereafter to waters of the United States are inclusive of waters of the state)<sup>1</sup>. The Dischargers constructed private roads on Humboldt County Assessor's Parcel Number (APN) 222-071-025 and on Mendocino County APN 052-020-14 and 052-020-15 (hereafter Property) lacking adequate stream crossings and erosion control or sediment containment features. The Dischargers also developed and/or utilized three (3) clearings for cannabis cultivation and associated activities, and created or failed to address the direct discharge of household waste into Jones Creek and its tributaries through broken wastewater pipes. The roads and clearings, created without authorization from applicable federal, state, and local agencies, including the Regional Water Board, represent controllable sediment discharge sites. It is likely that runoff from these sites will transport and deliver sediment to Jones Creek, a water of the United States. The residential structure's broken pipes on APN 052-020-015 represent a direct and unauthorized discharge to a tributary to Jones Creek.
- 2. Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharges of sediment-laden storm water from graded/disturbed areas and uncontrolled drainage from private roads into Jones Creek, a Class I tributary to Indian Creek, and to eliminate the threat of future discharges. Investigation and cleanup work required by this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code §13000 et seq.), the *Water Quality Control Plan for the North Coast Region* (Basin Plan),

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<sup>1</sup> 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 has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 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." (Wat. Code, § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code, § 13050, subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

State Water Resources Control Board (State Water Board) Resolution 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

- 3. Responsible Parties:** The Dischargers, as the property owners and/or operators and the persons discharging or creating a threat of discharge, with the legal ability to control the activities on the Property that resulted in the discharge and/or threat of discharge, are the responsible parties for purposes of this Order. This Order finds that Michael Griffin, Gayle Griffin, and Helen Lin (Dischargers) are the responsible parties:
- a. Per records from the Humboldt County Assessor-Recorder's Office, Michael Griffin and Gayle Griffin acquired APN 222-071-025 on August 17, 2001.
  - b. Per records from the Mendocino County Assessor-Recorder's Office, Michael and Gayle Griffin acquired APN 052-020-15 on May 10, 2012.
  - c. Per records from the Mendocino County Assessor-Recorder's Office, Michael and Gayle Griffin purchased APN 052-020-014 on May 15, 2012 and sold the property on December 17, 2015, to Helen Lin. Michael and Gayle Griffin act as private party lenders for the parcel.
  - d. During an inspection on May 27, 2015, which is further detailed in Finding 6 below, staff met with Michael Griffin, who, at the time of inspection, confirmed that he owned all three subject parcels (APNs 052-020-14, 052-020-15, and 222-071-025), confirmed that he did not reside on any of the three parcels and confirmed that he was aware his tenants were cultivating cannabis on the Property. The 3 parcels are contiguous in the north-south direction.
  - e. On August 1, 2016, staff from the California Department of Fish and Wildlife (CDFW) conducted an inspection of APN 052-020-14 and observed additional grading and threats to water quality.
  - f. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
- 4. Property Location and Description:** The Property is accessed by gate on the northernmost of the three parcels<sup>2</sup> using Oak Rock Road. The Property is located in the northwest portion of the Indian Creek watershed, southwest of Garberville, California in southeastern Humboldt County and northeastern Mendocino County.
- a. APN 222-071-025 lies in southeastern Humboldt County on its border with Mendocino County, within Sections 20, 21, and 22, Township 5S, Range 3E, Humboldt Base and Meridian (HB&M), and, at its centroid, at latitude 40°0'10"N and longitude

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<sup>2</sup> Figure 1 of the attached inspection report shows the parcel boundaries as provided by Humboldt and Mendocino counties. These are approximate and are not intended for project use.

- 123°50'27"W. Grading and road construction activities have predominantly occurred in the central portion of this APN.
- b. APN 052-020-14 lies in northeastern Mendocino County within Sections 21 and 28, Township 5S, Range 3E, HB&M, and, at its centroid, at latitude 39°59'57"N and longitude 123°50'27"W. The clearings and graded areas and infrastructure associated with cannabis cultivation are along its northern border and in the southern portion of the APN between Jones Creek and its tributary.
  - c. APN 052-020-15 lies in northeastern Mendocino County within Section 28, Township 5S, Range 3E, HB&M, and, at its centroid, at latitude 39°59'38"N and longitude 123°50'12"W. Much of the developed area on this parcel is less than 50 feet of Jones Creek and its tributary.
- 5. Property History:** There is no record of the Property having prior regulatory oversight or history with the Regional Water Board. There is no record of any person obtaining coverage under Regional Water Board Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operation with Similar Environmental Effects* (Waiver). If the property owner and/or any tenant(s) or lessee(s) wish to continue cultivation, coverage under this Waiver is required.
- 6. Factual Basis of Order:** The Dischargers' activities and conditions observed onsite, as detailed below, created and/or threaten to create, conditions of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.

Jones Creek, a perennial Class I watercourse tributary to Indian Creek, which in turn is tributary to the South Fork Eel River, is located on the Property. An unnamed Class II tributary to Jones Creek is located on the Property as well as several Class III drainages that carry storm water runoff and road surface runoff to Jones Creek and its unnamed tributary. South Fork Eel River is listed as impaired due to sediment and temperature pursuant to Clean Water Act section 303(d). On December 16, 1999, the United States Environmental Protection Agency approved Total Maximum Daily Loads (TMDL) for temperature and sediment that indicate "Cold Water Fishery" as the most sensitive of beneficial uses in the watershed. Protection of this beneficial use is presumed to protect all beneficial uses that might be harmed by sedimentation or increased temperature. The TMDL also indicates that major sources of sediment impairment in the South Fork Eel River watershed are road-related and acknowledges the connection between anthropogenic sediment inputs and increases in stream temperatures.

The Property has contributed these pollutants and will likely further impair water quality and aquatic life. Cultivation activities occurring within 50 feet of the unnamed tributary to Jones Creek threaten the transport of soil amendments and sediment from runoff. The poor condition of the private roads, particularly the undersized and failing stream crossings, has resulted in discharge and a further threat of discharge of sediment-laden storm water to unnamed watercourse that drain into Jones Creek and its unnamed tributary. The lack of adequate erosion and sediment controls within the graded areas on the Property and along the

poorly maintained road, together with steep slopes, continue to cause threat of future sediment discharge from uncontrolled storm water runoff and erosion of the road surface into Jones Creek.

- a. On May 27, 2015, staff from the State Water Board obtained verbal permission from Michael Griffin for the State Water Boards and the Department of Fish and Wildlife to inspect the Property in the Indian Creek watershed wherein staff believed there may be conditions of, and/or threatened conditions of, pollution or nuisance resulting from discharges of waste to waters of the state resulting from the cultivation of cannabis and associated activities.
- b. On May 27, 2015, Water Board staff conducted an inspection of the Property and observed poorly constructed and poorly maintained roads. In some places, the roads cut through watercourses without adequate crossings, and in other places the roads had undersized and/or failing crossings, lacked proper drainage and sediment control features, and displayed evidence of erosion. Water Boards staff also observed a leaking water storage bladder, large amounts of potting soil placed less than 50 feet from Jones Creek, and a residence with wastewater pipes draining to an unnamed tributary to Jones Creek.
- c. During the May 27, 2015 inspection, Michael Griffin informed State Water Board staff that when a culvert needed to be replaced, he waited until it “blew out” (failed entirely) before commencing with the installation of a new culvert.

**7. Beneficial Uses, Basin Plan Prohibitions, 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 Board. Jones Creek is a tributary to Indian Creek, which in turn is tributary to South Fork Eel River. Existing and potential beneficial uses for the Benbow Hydrologic Subarea of the South Fork Eel River include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Commercial and Sport Fishing (COMM); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Rare, Threatened, or Endangered Species (RARE); Aquaculture (AQUA); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

- a. 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 waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan).
  - i. 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.”

- ii. 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.”
  
- b. Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development and cannabis cultivation activities include the following:
  - i. Color: “Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.”
  - ii. Floating Material: “Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.”
  - iii. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
  - iv. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
  - v. 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.”
  - vi. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background 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.”
  - vii. 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 beneficial uses.”
  - viii. Bacteria: “The bacteriological quality of waters of the North Coast Region shall not be degraded beyond natural background levels. In no case shall coliform concentrations in waters of the North Coast Region exceed the following: In waters designated for contact recreation (REC-1), the median fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 50/100 ml, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 ml (State Department of Health Services).”

- ix. Temperature: "Temperature objectives for COLD interstate waters, WARM interstate waters, and Enclosed Bays and Estuaries are as specified in the 'Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California' including any revisions thereto. A copy of this plan is included verbatim in the Appendix Section of this Plan. In addition, the following temperature objectives apply to surface waters:
1. The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses.
  2. At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature.
  3. At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature."

#### **8. State Water Board Resolutions**

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 92-49). Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution 68-16). Resolution 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 which is reasonable if background levels of water quality cannot be restored. "[A]ny such alternative cleanup level shall: (1) Be consistent with 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 Water Quality Control Plans and Policies adopted by the State and Regional Water Boards[.]" Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

#### **9. Failure to Obtain Necessary Permits:** Regional Water Board staff determined that the grading and clearing activities at the Property occurred without coverage under any of the following regulatory permits:

- a. a Clean Water Act (CWA) section 404 permit from the Army Corps of Engineers;
- b. a CWA section 401 Water Quality Certification from the Regional Water Board; and
- c. a Department of Fish and Wildlife Streambed Alteration Agreement.

Additional permits may have been required for construction of residential structures and/or human waste disposal by Humboldt and/or Mendocino County.

**10. Legal Authority to Require Clean up and Abatement:** 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.*

- a. "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.*

- i. Sediment, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050. The Dischargers 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 Jones Creek, which is tributary to Indian Creek, which in turn is considered a water of the state.

- b. "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:*

- (A) *The waters for beneficial uses;*  
(B) *Facilities which serve these beneficial uses.*

The discharge of sediment-laden storm water and untreated wastewater is a discharge of waste to waters of the state, which creates a condition of pollution subject to this Order in accordance with Water Code section 13304.

The clearing and grading activities conducted by the Dischargers in addition to improper storage of fertilizers, soil amendments, and other waste materials have

resulted in the unauthorized discharge or threat of discharge of wastes into waters of the state and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of Jones Creek. Several watercourses on the Property drain into Jones Creek, a tributary to Indian Creek, which in turn is tributary to the South Fork Eel River. The beneficial uses of the South Fork Eel River discussed above in Finding 7 also apply to Jones Creek and all of its tributaries.

Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species (RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (AGR and MUN). Sediment-laden storm water discharges to surface waters and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (REC-1 and REC-2).

The discharge of organic and earthen material in the South Fork Eel River watershed is especially problematic because, as noted above, the South Fork Eel River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation. The sources of the impairment are identified in the TMDL as road-related as well as episodic inputs from washouts and mass wasting. Road-related sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run Chinook salmon and steelhead trout.

Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which requires that 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. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters. These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature, and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic

organics), which bind to sediment particles (REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

Discharge of excess nutrients, especially nitrate and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase for biochemical oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms which create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife (RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (REC-1, REC-2, and MUN).

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

*Anything which meets all of the following requirements:*

- (A) 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;*
- (B) 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;*
- (C) Occurs during, or as a result of, the treatment or disposal of wastes.*

Discharge of bacteria from the untreated human sewage directly into the watercourse can impair the municipal water supply and impact primary contact recreation, such as swimming or water-skiing where ingestion of, or immersion in, the watercourse occurs. The discharge of untreated human sewage introduces fecal pathogens capable of causing gastrointestinal illnesses; respiratory infections; and skin, eye, ear, nose, and throat irritation and infections. (REC-1 and MUN).

**11. Cleanup and Abatement Action Necessary:** Untreated storm water and wastewater from the Property has discharged, and threatens to discharge sediment and untreated human sewage into watercourses from the Property to Jones Creek. The Property has several undersized and inadequate stream crossings and poorly designed roads, leaving high potential for further sediment discharge to the watercourses during wet weather events. Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges to waters of the state originating from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a Class II violation, as outlined in the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board.

- 12. Technical Reports Required:** Water Code section 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. Water Code section 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 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 further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial actions and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate the Property from which waste was discharged, and thus is appropriately responsible for providing the reports.
- 13. 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 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, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement 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. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. To the extent that the Order requires earth disturbing and re-vegetation 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 implementation of the applicable plan. The Dischargers 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 handing any documents necessary for environmental review. If necessary, the Dischargers 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**, pursuant to Water Code sections 13267 and 13304, that Michael Griffin, Gayle Griffin, and Helen Lin (Dischargers) shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and shall provide the following information. Helen Lin's obligations under this Order are limited to Mendocino County APN 052-020-014. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. **Within 30 days from issuance of this Order** the Dischargers shall submit an **Interim Erosion and Sediment Control Plan** (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of stabilization efforts necessary to prevent erosion and further discharge of sediment to Jones Creek and its tributary during the 2016-2017 wet weather period. The Interim Plan shall include, but not be limited to, the following:
  - a. A detailed Site/Property map accurately depicting topography, graded/disturbed surfaces, earthen side cast material, and all watercourses/drainages. This includes an assessment of current conditions and all new work that has been done since the May 27, 2015 inspection;
  - b. Identification of all locations where sediment has discharged to waters of the state;
  - c. Using the above information, identify all areas of immediate concern, along with proposed interim emergency measures to be implemented at each area of concern necessary to stabilize the Property during the 2016-2017 wet weather period. Recommendations to be included:
    - i. Install an adequate number of water breaks designed to reduce road surface erosion by diverting storm water runoff from the road surface and directing it to a safe discharge area;
    - ii. Disconnect road drainage from Jones Creek and its unnamed tributaries;
    - iii. Stabilize all disturbed areas with erosion control mulches, blankets, mats, tarps, walls or other erosion controls to protect the disturbed soil surface from the forces of rain drop impact and overland flow;
    - iv. Ensure the proper storage and containment of soil amendments and fertilizers to avoid accidental release into surface waters. This includes proper disposal of empty or partially used containers per manufacturer and waste disposal guidelines;
    - v. Prevent leaks from water storage tanks and bladders from carrying sediment and stagnant water to surface waters.

State Water Resources Control Board (State Water Board) staff and/or Regional Water Board staff will review the Interim Plan in consultation with the Dischargers or their authorized agent(s) and other regulatory agencies immediately upon receipt. Once approved by the Executive Officer of the Regional Water Board, work to implement the Interim Plan shall begin immediately, but no later than 10 business days.

2. **By no later than 21 days after receiving approval of the Interim Plan**, the Dischargers shall have completed work in the approved Interim Plan, stabilizing the Property for the 2016-2017 winter wet-weather period.
3. **By no later than 45 days after receiving approval of the Interim Plan**, the Dischargers shall provide a report of completion of the Interim Plan for approval by the Executive Officer of the Regional Water Board. This report shall include a summary and photographs of the completed erosion and sediment control measures.
4. **By May 1, 2017**, the Dischargers shall provide a proposed **Restoration and Monitoring Plan** (hereafter RMP). The RMP shall include but not be limited to:
  - a. An assessment of the impacts to Jones Creek and its unnamed tributaries from the Property and the unauthorized activities, including all areas that have been developed or disturbed (this includes all current conditions on the Property and all work that has been done since the May 27, 2015 inspection), and identify controllable sediment sources requiring remediation. The assessment shall be completed by an appropriately qualified professional, and must at a minimum address channel hydrology, bank erosion, riparian habitat and loss thereof, channel and slope stability, locations where fill material has been placed or discharged, active or potential erosion and appropriate sizing and installation of culverts to carry the 100-year predicted flow and debris for all stream crossings and roads on the Property, and the surface drainage of roads and other graded areas. The assessment shall include aerial photographs and/or satellite images, photographs, reports, topographic maps, or drawings, etc., of Property conditions prior to conducting the un-permitted activities, and include a detailed map of existing features accurately depicting topography, all graded surfaces, watercourses, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings shall serve as the basis for the RMP;
  - b. A plan for Property restoration including a description of how long-term impacts from the road and site runoff will be abated (i.e. re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses and to prevent any further impacts to Jones Creek and its unnamed tributaries;
  - c. Best management practices to be applied to all current and planned work associated with construction activities on the Property impacting, or having the potential to impact, Jones Creek and its unnamed tributaries. The RMP shall contain, at a minimum, design specifications and/or designs for stream restoration, surface drainage controls, erosion control methods and standards for unanticipated precipitation during restoration, compaction standards, an implementation schedule, a monitoring and reporting plan, and success criteria meeting the requirements specified herein. The RMP shall incorporate use of appropriate native or endemic species in any re-vegetation efforts;
  - d. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary and

detailed project milestones to fulfill the requirements of this Order once those permits are obtained.

5. **No more than 60 days** after approval of the RMP by the Regional Water Board Executive Officer and obtaining necessary permits, begin implementation of the RMP.
  - a. The Dischargers shall notify and provide rationale to the Regional or State Water Board staff and obtain approval at least **60 days** prior to making any modifications to the approved RMP.
6. **By October 1, 2017**, the Dischargers shall fully implement and complete the RMP.
7. **By December 1, 2017**, the Dischargers shall submit a **Completion Report** for the RMP for approval by the Executive Officer of the Regional Water Board. The Completion Report shall include accurate depictions of all completed construction and/or abatement measures and documentation included in the RMP to restore and prevent any further impacts to the Jones Creek and its unnamed tributaries to demonstrate the RMP has been fully implemented. This will include as-built drawings, prepared by the person(s) who did the work and will clearly show any changes to the original construction specifications.

#### **GENERAL REQUIREMENTS AND NOTICES**

8. **No Apportionment of Liability:** Nothing in this Order is intended to nor shall be interpreted as limiting the Dischargers ability to seek contribution and/or reimbursement from each other or other responsible third parties.
9. **Duty to Use Qualified Professionals:** The Dischargers 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 Dischargers shall include a statement of qualification and registration numbers, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professionals as otherwise required by law.
10. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Discharger(s), or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state whether they agree with any recommendations/proposals and whether they approve 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.”*

11. **Notice of Onsite Work:** The Dischargers or their authorized agent(s) shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the State Water Board using the contact information and person listed below.
12. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property'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.
13. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted to:  
  
Erin Mustain  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 445-9379  
[Erin.Mustain@waterboards.ca.gov](mailto:Erin.Mustain@waterboards.ca.gov)
14. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify California Department of Fish and Wildlife (CDFW) before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
15. **Cost Recovery:** Pursuant to Water Code section 13304, and consistent with other statutory and regulatory requirements, including but not limited to Water Code section 13365, the State or Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs investigating and abating the effects of the unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the State or Regional Water Board.
16. **Delayed Compliance:** If for any reason, the Dischargers are 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 Dischargers 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. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to grant an extension request.

17. **Potential Liability:** If the Dischargers fail 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 an administrative civil liability up to \$10,000 per violation per day, pursuant to California Water Code sections 13268, 13350, and/or 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.
18. **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 Property consistent with the Water Code. This Order may be revised as additional information becomes available.
19. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
20. **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 California Code of Regulations, title 23, 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](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.

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Matthias St. John  
Executive Officer

17\_0024\_Griffin&Lin\_CAO

Attachment: May 27, 2015, Griffin Property Inspection Report