
North Coast Regional Water Quality Control Board

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION

CLEANUP AND ABATEMENT AND WATER CODE SECTION 13267 ORDER NO. R1-2017-0052 FOR

DARRYL CRAWFORD AND BLACK MOUNTAIN DEVELOPERS, LLC
COLD CREEK RANCH
7205 GEYSERS ROAD
ASSESSOR PARCEL NUMBERS 131-010-011-000,
131-010-012-000, 141-060-018-000 & 141-060-012-000
SONOMA COUNTY
WDID NO. 1B161782CSON

This Order is issued to Darryl Crawford and Black Mountain Developers, LLC (hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order, and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports.

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

- 1. Site Conditions:** Cold Springs and its unnamed tributaries are waters of the state, as well as waters of the United States (references hereafter to waters of the United States are also waters of the state).¹ The Dischargers have caused or allowed the discharge and threatened discharge of waste to receiving waters through site development and cannabis cultivation activities performed at the property without adequate erosion and

¹ 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." The term "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 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.

sediment controls. The Dischargers' activities, resulting in the discharge and threatened discharge of earthen materials, were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

- 2. Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharging earthen materials into Cold Springs and unnamed tributaries of Cold Springs, and eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall 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), 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 owner(s) and/or operator(s) and the person(s) and/or entity(ies) 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 responsible parties for purposes of this Order. This Order finds that Darryl Crawford and Black Mountain Developers, LLC are the responsible parties:
 - a. Black Mountain Developers, LLC own approximately 226.5 acres, identified as Assessor Parcel Number (APN) 131-010-011-000; 40 acres, identified as APN 131-010-012-000; 7.77 acres, identified as APN 141-060-018-000; and 57.8 acres, identified as APN 141-060-012-000 (all APNs hereafter referred to as Property).
 - b. Based on statements made during the site inspections and per records from the Sonoma County Assessor-Recorder's Office, Darryl Crawford is an owner of Black Mountain Developers, LLC and therefore, by reason of his position in the company and his ability to control activities on the Property, is a responsible party.
 - c. 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 located at 7205 Geysers Road, Geyserville in Sonoma County. Grading, clearing, filling and stream diversion activities occurred at the Property and on the unnamed tributaries to Cold Springs, a tributary of Little Sulfur Creek, Big Sulfur Creek and the Russian River, in the vicinity of latitude 38.7530N and longitude 122.8266W.
- 5. Property History:** The Property has no prior regulatory oversight or history with the Regional Water Board. There is also no record of any person obtaining coverage under the 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 Operations with

Similar Environmental Effects (Waiver) for activities occurring at the Property. If the Dischargers and/or any tenant(s) or lessee(s) wish to continue cannabis cultivation, coverage under this Waiver or under individual waste discharge requirements is required.

- 6. Factual Basis of Order:** The Dischargers' activities and/or the conditions observed at the Property, as documented in the Regional Water Board inspection reports (Attachments A, B, C and D), and as detailed below, created and/or threaten to create a condition of pollution and nuisance in waters of the state by unreasonably impacting water quality and beneficial uses.
- a. Cold Springs is a tributary of the Little Sulfur Creek, Big Sulfur Creek, and subsequently the Russian River and the Pacific Ocean. The Russian River is federal Clean Water Act section 303(d)-listed as impaired due to sediment and temperature.
 - b. The Property has and is likely to continue to contribute sediment pollutants and further impair water temperature, water quality and aquatic life. Grading, clearing, diverting water and other unauthorized activities associated with cannabis cultivation at the Property have stripped the ground surface of vegetation and the upper soils, leaving bare, disturbed soils vulnerable to wind and water erosion. The poor construction of new roads and maintenance of existing roads has resulted in discharge and a continuing threat of discharge of sediment-laden storm water to Cold Springs, Little Sulfur Creek, and ultimately the Russian River. The lack of adequate erosion and sediment controls within the graded areas on the Property and along the poorly constructed new and existing roads, together with steep slopes, continues to cause threat of future sediment discharge from uncontrolled storm water runoff and erosion of the road surface into Cold Springs.
 - c. Staff from the Regional Water Board and the California Department of Fish and Wildlife (CDFW) have documented the conditions of the Property on five separate occasions. The observations made by staff are as follows:
 - i. On Monday, July 26, 2016, staff participated in a multiagency inspection of APNs 131-010-011-000 and 131-010-012-000 (Attachment A). At that time, staff observed stockpiled and side-cast earthen materials in close proximity to and along the bank of Cold Springs without implementation of best management practices (BMPs); construction of roads, clearings, and cannabis grow sites with no sediment and erosion control measures; fertilizer and/or top soil that was placed and stored in locations and in a manner where such materials could be delivered to surface waters; and construction of a water diversion system that diverted water from Cold Springs into four separate 10,000 gallon tanks for use in irrigating cannabis without appropriate authorization from applicable agencies and in a manner that threatens the beneficial uses of Cold Springs. At the time of this inspection the Dischargers were not enrolled in the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities,

- Order No. 2009-0009-DWQ (CGP), or the 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 under Regional Water Board Order No. R1-2015-0023. Notice letters informing the Dischargers of the need to obtain coverage under the CGP were sent on August 5, 2016, and September 12, 2016, requiring electronic filing of a Notice of Intent (NOI) by October 4, 2016. The Dischargers enrolled in the CGP on October 4, 2016.
- ii. On October 20, 2016, Regional Water Board staff participated in another multi-agency inspection of the Property (Attachment B) following several rain events. Staff observed significant sediment, over twelve inches deep, had been deposited in the outlet pool of a 4-foot concrete culvert located under Geysers Road, which receives runoff from the Property; additional earthwork had been done since a July 2016 Stop Work Order was issued by Sonoma County PRMD, including three newly graded and extended roads (Roads 1 & 2 and the Upper Road) with no sediment and erosion control measures in place on Road 2 or the Upper Road; the existing main road had not been designed by an engineer and had not been rocked or otherwise protected from erosion, thereby resulting in poor drainage and significant soil erosion; and the trailer and storage areas were unprotected earthen pads with exposed surfaces, displaying evidence of soil erosion and sediment discharges.
 - iii. On December 15, 2016, Regional Water Board staff conducted water quality sampling and photographed storm water runoff from the Property during a significant storm event (Attachment C). The samples revealed that water flowing off of the Property had elevated levels of turbidity that exceeded the Numeric Action Level for turbidity under the Construction General Permit Order No 2009-0009-DWQ (CGP), as well as the water quality objective for turbidity in the Basin Plan. The photographs taken by staff further showed a significant increase in turbidity and sediment-laden runoff discharging from the Property into Cold Springs.
 - iv. On January 12, 2017, while returning from an unrelated inspection nearby, Regional Water Board staff observed new clearing and grading activities on the south side of Little Sulphur Creek Canyon, located on the portion of the Property identified as APN 141-060-012-000.
 - v. Warden James Reed, of the Department of Fish and Wildlife, took photographs of the conditions of the Property on January 24, 2017, from which Regional Water Board staff determined that additional clearing and grading activities for roads and an equipment storage area had been conducted with inadequate erosion and sediment control measures, resulting in significant soil erosion along the new roads, cut banks, fills, and clearing on the Property.

- d. Additionally, the Dischargers are required to perform monitoring and sampling consistent with the Construction Storm Water Pollution Prevention Plan (SWPPP) for the Property. Reported observations made by the Dischargers' SWPPP consultant during December 2016 and January 2017 storm events indicated that the Property required numerous repairs to erosion and sediment control measures which were functioning inadequately, and that sediment-laden runoff was leaving the Property. Water quality samples taken by the Dischargers' SWPPP consultant during these inspections revealed elevated turbidity (>1000 NTU) on each inspection day exceeding the Numeric Action Level of the CGP as well as the Basin Plan objective for turbidity.

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 the plans and policies adopted by the State Water Board.

- a. Existing and potential beneficial uses for the Russian River, specifically Sulfur Creek Hydrologic Area include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge (GWR); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); 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), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
- 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 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.”

- c. 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. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - iii. 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.”
 - iv. 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.”

8. Regional Water Board Resolutions: As part of Regional Water Board’s efforts to control sediment waste discharges and restore sediment impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment. To address sources of elevated water temperature to reduce impairments to waters of the state and prevent further impairment, the Regional Water Board adopted the *Policy for Implementation of the Water Quality Objective for Temperature in the North Coast Region* (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provides shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.

9. State Water Board Resolutions: State Water Board 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 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. 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.

10. Failure to Obtain Necessary Permits: Regional Water Board staff has determined that grading, clearing, road construction, and water diversion activities occurred at the Property without coverage under any of the following regulatory permits:

- a. National Pollutant Discharge Elimination System (NPDES) permit for land disturbance of one or more acres (Construction General Permit Order No. 2009-0009-DWQ);
- b. Clean Water Act (CWA) section 404 permit from the Army Corps of Engineers;
- c. CWA section 401 Water Quality Certification, or, waste discharge requirements, or waiver thereof from the Regional Water Board;
- d. CDFW Streambed Alteration Agreement;
- e. 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 under Regional Water Board Order No. R1-2015-0023; or
- f. Grading Permit issued from Sonoma County.

11. Legal Authority to Require Cleanup and Abatement: Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition

issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, 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 any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the 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.*

Sediment, when discharged to waters of the state, is 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 Cold Springs, a tributary of Little Sulfur Creek, Big Sulfur Creek, and subsequently the Russian River and the Pacific Ocean, which are considered waters of the state, and waters of the United States.

- 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 waters of the state for beneficial use or facilities which serve these beneficial uses.
 - i. Earthen material from onsite roads, cultivation areas located within or adjacent to watercourses, erodible soils on road and cultivated surfaces, and improperly contained garbage, debris, fuels, and chemicals on the Property owned and/or used by the Dischargers has discharged, and still has the potential to discharge, sediment and other waste into Cold Springs and its tributaries in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan, and creates or threatens to create a condition of pollution subject to this Order in accordance with Water Code section 13304.
 - ii. Site development activities conducted by the Dischargers, their agents, and/or tenants, in addition to inadequate maintenance or pollution control efforts on existing site features, improper storage of fertilizers, soil amendments and other waste materials, and inadequate human waste handling/disposal features have

- resulted in the unauthorized discharge or threat of discharge of waste into surface water, and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state.
- iii. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters. 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 wildlife habitat and aquatic species (Beneficial Uses impacted: 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 (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).
 - iv. The discharge of organic and earthen material in the Russian River watershed is especially problematic because, as noted above, the Russian River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to several pollutants, including sedimentation/siltation. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run Chinook salmon, Coho salmon, and steelhead trout (Beneficial Uses impacted: SPWN and MIGR).
 - v. 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 in 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 (Beneficial Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).
- vi. Discharge of excess nutrients, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase for dissolved 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 that may consume aquatic fauna (Beneficial Uses impacted: 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 (Beneficial Uses impacted: REC-1, REC-2, and MUN).
 - c. "Nuisance" is defined by Water Code section 13050, subdivision (m) as anything that meets all of the following requirements: (1) is injurious to health, indecent or offensive to the senses, or is an obstruction to the free use of property, such that it interferes with the comfortable enjoyment of life or property; (2) affects, at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage may vary between individuals; and (3) occurs during, or as a result of, the treatment or disposal of wastes.
 - i. An increase in sedimentation, turbidity, and excess nutrients has the potential to affect a considerable number of persons by impacting the taste and odor of water supplied to the community, by resulting in flooding, and/or by producing toxic algal blooms that can raise costs for water treatment plants and contribute to harmful byproducts when treated. Sediment discharges from the Property are a potential nuisance if the threats to water quality documented on the Property and discussed herein are not addressed.

12. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state 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 priority violation and the

issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

- 13. Technical Reports Required:** Water Code section 13267, subdivision (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, 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 and State Water Board Resolution 92-49. 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 action 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 are appropriately responsible for providing the reports.
- 14.** To effectively carry out the State's Wetlands Conservation Policy of no net loss to wetlands, the State needs to closely track both aquatic habitat losses and mitigation/restoration project success. Therefore, we require that the Dischargers provide project information related to impacts and mitigation/restoration measures (See Required Actions) to EcoAtlas using the Project Tracker website, <http://ptrack.ecoatlas.org>. Instructions and how to request a user name and password can also be found at the Project Tracker website. More information about EcoAtlas can be found at: www.ecoatlas.org.
- 15. 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, 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 Property. 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 that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall submit technical and monitoring reports described below, clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. The Dischargers shall continue to comply with CGP until all land disturbance activities are ceased including restoration related construction activities.
2. **By October 5, 2017**, the Dischargers shall submit an application for a Tier 3 enrollment in the Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation. If the Dischargers intend to continue to cultivate, the Dischargers must enroll in both Tier 2 and Tier 3.
3. **By October 13, 2017**, the Dischargers shall submit the following:
 - a. A timeline describing the approximate dates that each stage of land disturbance activities began (e.g. the initiation dates of clearing/grubbing, mass grading, etc.).
 - b. A description and chronology of erosion and sediment controls that have been implemented to prevent the discharge of sediment to surface waters since the date initial land disturbance began (e.g. clearing/grubbing) to the date of submittal of this information in response to this Order. This shall include, but is not limited to, the following:
 - i. The approximate date, location, and purpose of each specific BMP that was applied to control erosion and/or sediment and other pollutants, and to prevent pollutants from discharging from the Property;

- ii. A summary of inspections and/or monitoring activities conducted by the Dischargers and/or their contractors or consultants to assess the effectiveness of each BMP; and
 - iii. A summary of maintenance and/or repair activities conducted on each BMP.
- c. A summary of each qualifying rain event² that has occurred since initial land disturbance began to the date of submittal of this information in response to this Order. This shall include, but is not limited to, the following:
- i. Date of rain event;
 - ii. Duration of rain event;
 - iii. Amount of precipitation (in inches);
 - iv. Location and description of rain gage used to obtain the above information;
 - v. Approximate area (in acres) of disturbed land at the Property during each rain event; and
 - vi. A topographic map and description of all erosion and sediment controls deployed on the Property prior to each rain event.
- d. A summary of results and a location map of all water quality samples obtained during each qualifying rain event that has occurred since initial land disturbance began to the date of submittal of this information in response to this Order. If samples were not collected during a qualifying rain event or at individual sampling locations, the Dischargers shall provide a detailed justification.
- e. An estimate of the number of days that sediment or other pollutants discharged from the Property into surface waters, beginning from the date of initial land disturbance to the date of submittal of this information in response to this Order.
- 4. By October 13, 2017**, the Dischargers shall submit an estimate of the total volume discharged to surface waters for each of the qualifying rain events identified in Condition 3(c) above. The submittal shall include, at a minimum, the following information:
- a. Estimated Volume of Runoff: The estimated volume of runoff shall include, at a minimum, the following information:

² The Construction General Permit defines *Qualifying Rain Event* as any event that produces 0.5 inches or more precipitation with a 48 hour or greater period between rain events.

- i. A topographic site map describing drainage flow pathways, any detention ponds, sediment traps, permanent drainage systems, and final outfalls to Cold Spring, its tributaries and Little Sulfur Creek.
 - ii. Engineering methods, diagrams, models, calculations and assumptions used to estimate the total volume including the following at a minimum:
 - (1) Project area run-on and direct precipitation volume;
 - (2) Surface infiltration/evaporation volume;
 - (3) Design, capacity and estimated efficiency of detention ponds/sediment traps, including an explanation of whether such structure are designed according to the method in California Stormwater Quality Association (CASQA) construction BMP Guidance Handbook;
 - (4) Other surface features that would have retained storm water to the Property;
 - (5) Volume of runoff discharge to reach surface water from the Property.
- 5. By October 27, 2017**, the Dischargers shall submit a **Restoration and Monitoring Plan (RMP)** with time schedules acceptable to the Regional Water Board or its delegated officer. The RMP shall include but not be limited to:
- a. Existing Site Conditions: An assessment of the impacts to Cold Springs and its unnamed tributaries from the Property and the unauthorized activities, including all areas that have been developed or disturbed, and identify controllable sediment sources requiring remediation. An inventory and assessment of wetlands and other waters of the state, including any pre-existing wetlands, streams, seeps and/or springs prior to any of the unauthorized activities, and current conditions on the Property. The assessment and inventory 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. The assessment shall include aerial photographs and/or satellite images, photographs, reports, topographic maps, or drawings, etc., of Property conditions and the natural hydrology including delineated wetlands, seeps, springs, streams and surface drainage, and include a detailed map of existing features accurately depicting topography, all graded surfaces, streams, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings prior to the unauthorized activities shall serve as the basis for the RMP;
 - b. Roads, Stream Crossings and Cultivation Areas: An inventory and assessment of all roads, stream crossings, and cultivation areas on the entire Property, including design details and an implementation schedule to conduct work necessary to restore hydrologic function and improve roads and stream crossings identified as controllable sediment sources or in need of repair or replacement. Identify

decommissioning opportunities for unnecessary, or poorly designed or constructed roads and stream crossings to restore ecological function and beneficial uses. The inventory shall include design and performance standards for the 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.

- c. Restoration Plan: A restoration plan to restore natural hydrology and ecological functions of wetlands and other waters of the state, and the designated beneficial uses of the water bodies where illegal fill and/or development in wetlands or other waters of the state has occurred. Where necessary, identify constructed features and/or placed material that must be removed (such as fill material piled on the stream banks or cultivation areas constructed on/in streams or other waters of the state) and provide an appropriate plan to remove those features. The Restoration Plan shall include detailed designs and success criteria.
 - d. Monitoring and Reporting: The Dischargers shall monitor and report annually for a minimum of five years to document completion of cleanup and restoration measures, on-going repair or maintain as necessary, and to document success of restoration. Monitoring and reporting can include photographs at established photo documentation points, as depicted on site maps/figures.
 - e. Implementation Schedule: A schedule for submitting permit applications to all applicable local, state, and federal agencies necessary.
- 6. No more than 30 days** after approval of the RMP by the Regional Water Board or its delegated officer, the Dischargers shall begin implementation of the RMP.
- a. Within 2 weeks after the RMP is approved by the Regional Water Board or its delegated officer, the Dischargers are required to upload the restoration information (all information fields required by EcoAtlas), including a project map (either using upload or draw polygon features) to the following website: <http://ptrack.ecoatlas.org/>. Monitoring reports associated with the Project shall be uploaded to EcoAtlas (using the "Files and Links" tab under "Projects" in EcoAtlas) by January 31 of each year for 5 years.
- 7. Within 60 days of completing the construction of restoration, submit a Completion Report** for the RMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include as-built including accurate depictions of all completed cleanup, abatement, construction and restoration measures to restore and prevent any further impacts to Cold Springs and its unnamed tributaries to demonstrate the RMP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.

GENERAL REQUIREMENTS AND NOTICES

1. **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 professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, 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/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether they will implement the recommendations/proposals provided in the report. 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 Onsite Work:** The Dischargers, or a duly authorized agent, 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 Regional Water Board using the general phone line at (707) 576-2220 or contact Cecile Morris at (707) 576-2347.
4. **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.
5. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted to:

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

Cecile Morris, Water Resource Control Engineer
Cecile.Morris@waterboards.ca.gov

By email to: NorthCoast@waterboards.ca.gov (preferred)

By mail to: NCRWQCB, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403

6. **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 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.
7. **Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate and abate the effects of 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 and Regional Water Board.
8. **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 Regional Water Board or its delegated 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 only be granted by modification 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 exercise its enforcement authority.
9. **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 of up to \$10,000 per violation per day, and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code section 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.

10. **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.
11. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
12. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional 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 or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St. John, Executive Officer

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Attachments:

- A. July 26, 2016 Inspection Form by Devon Jorgensen
- B. Oct. 20, 2016 Complaint Inspection Memo by Scott Gergus
- C. Dec. 28, 2016 Site Inspection Memo by Scott Gergus
- D. Jan. 13, 2017 (Amended Jan. 27, 2017) Inspection Memo by Scott Gergus