

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2018-0027

FOR

THOMAS HARWOOD
TINA HARWOOD

3845 THOMAS ROAD
MIRANDA, CA 95553
ASSESSOR PARCEL NUMBER 221-021-008
HUMBOLDT COUNTY

CIWQS PLACE ID NUMBER 825028

This Order is issued to Thomas Harwood and Tina Harwood (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 investigative order, 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:** The Dischargers caused or allowed the discharge and threatened discharge of earthen waste to surface waters from a recently constructed earthen pond at 3845 Thomas Road, Humboldt County, APN 221-021-008 (hereinafter "Property"). The pond was built on top of a class III watercourse and seeps, adjacent to a class II watercourse which enters Salmon Creek, Class I tributary to the South Fork Eel River. This activity was performed at the Property in October and November 2017, after the start of the rainy season, by an unlicensed contractor, without applicable permits for the land clearing and grading and instream work. The interior and exterior slopes of the unlined, earthen pond had slope failures resulting in actual and threatened sediment discharges to surface waters. The Dischargers' activities resulting in the waste discharges to receiving waters were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board. The actual and threatened discharges of earthen waste threaten Salmon Creek and an unnamed Class II tributary watercourse; both watercourses are waters of the state, as well as waters of the United States.¹

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 water as "waters of the United States." Waters of the United

2. **Purpose of the Order:** This Order requires the Dischargers to immediately begin to clean up and abate the effects of discharging earthen material, including fine sediment, and sediment-laden water from the Property to the waters of Salmon Creek and its unnamed tributaries, and to eliminate the threat of future discharges. Investigation and cleanup actions required under 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), 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), Regional Water Board Order No. R1-2015-0023, and other applicable State and Regional Water Board plans, policies, and regulations.
3. **Property Description:** The actual and threatened sediment discharges occurred at the property located at 3845 Thomas Road, in rural Humboldt County, near the town of Miranda. The property is also identified as Humboldt County Assessor Parcel Number (APN) 221-021-008. The pond, located in the vicinity of latitude 40.2344° and longitude -123.9365 is discharging to an unnamed Class II watercourse that flows south to north along the eastern property boundary, and is tributary to upper mainstem Salmon Creek, which flows west to east approximately 200' north of the northern property boundary.
4. **Responsible Parties:** The Dischargers, as the Property owners with the legal ability to control the activities on the Property that resulted in the discharge, are responsible parties for purposes of this Order. This Order finds that Thomas and Tina Harwood are the responsible parties and are jointly and severally liable.
 - a. Per records from the Humboldt County Assessor-Recorder's Office, Thomas and Tina Harwood own the Property.
 - b. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
5. **Property History:**
 - a. In 2015, Cal Fire issued a less than 3-acre exemption on the property (1-15EX-130H) to convert land from forest to another use for an area that is now used for outdoor cultivation. In 2016, this area was cleared of trees and stumps, graded, terraced and cultivated thereafter. The area where the pond was constructed was not included in the conversion area.

States has been interpreted 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.

- b. In 2016, the Discharger submitted a grading application to Humboldt County but have not yet received an approved grading permit.
 - c. There is no record of the Dischargers obtaining coverage under the National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges associated with land disturbance of an acre or more (Construction General Permit Order No. 2009-0009-DWQ as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ).
 - d. The Dischargers enrolled the Property for coverage under Regional Water Board Order No. R1-2015-0023 through Timberland Resource Consultants (WDID No. 1B16460CHUM) with an effective enrollment date of April 1, 2016. The Notice of Intent and Water Resource Protection Plan are provided as attachments to this CAO.
 - e. No evidence of a California Department of Fish and Wildlife (CDFW) section 1600 notification/authorization for streambed alteration work, Army Corps of Engineers section 404 permit for dredge and fill activities, or Water Board issued section 401 Water Quality Certification application or approval for instream work.
6. **Factual Basis of Order:** The Dischargers' activities, including actions taken on the Dischargers' behalf, and the conditions at the Property, as documented in the Regional Water Board's inspection report (Attachment 1), are in violation of Order No. R1-2015-0023 and have created and threaten to create a condition of pollution in waters of the state by unreasonably impacting surface water quality and beneficial uses. The factual allegations detailed below provide additional context to the Discharger activities, site conditions, and interactions between the Discharger, Discharger's consultants and agents, and regulatory oversight agencies.
- a. In 2016 the Dischargers submitted separate applications to Humboldt County Building Department for a grading permit and a commercial cannabis cultivation permit. The grading application was for proposed grading of 19,240 yd³ of fill and construction of two ponds. The County postponed issuance of the grading permit pending consideration of the Dischargers' cultivation application.
 - b. Mr. Harwood hired Brett Gratzel, an unlicensed contractor paid by the hour, to build the pond. On or about October 17, 2017, Mr. Gratzel and his crew began clearing trees for the pond, and working with two excavators, a roller, and three dump trucks, constructed the pond. On March 27, 2018, during an in-person interview, Mr. Gratzel told CDFW Warden Josh Zulliger that he got started on the job later in the season than was planned but believed that there was an approved grading permit for the pond construction.
 - c. On October 24, 2017, in response to a complaint, CDFW conducted an overflight of the Property and observed the late season grading and pond construction underway.

- d. On November 2, 2017, Regional Water Board and Humboldt County Code Enforcement staff inspected the site, with the consent of and inspection participation by Mr. Harwood. During the site inspection, staff observed construction occurring in the rain. Mr. Gratzel was onsite overseeing the construction operations. Inspecting agency personnel advised Mr. Gratzel and Mr. Harwood that operations were being conducted without a grading permit issued by the county. Mr. Harwood and Mr. Gratzel informed agency personnel that they were following the engineering designs but they were unable to provide a copy of the designs. During the November 2, 2017, site visit Regional Water Board staff provided a verbal directive to cease additional construction operations, stabilize the site with erosion control measures, provide as-built designs of the pond, closely monitor the pond stability, monitor and document overflows, and document and report sediment discharges to waters of the state from the pond.
- e. During the March 27, 2018 interview, Mr. Gratzel told Warden Zulliger that although Regional Water Board staff had provided direction to cease construction on the pond on November 2, 2017, he had continued construction until about November 7, 2017 because he believed that continuing the earthwork would avoid additional sediment discharges from occurring. Mr. Gratzel stated that during a November 19, 2017 site visit, he discovered that the pond was leaking below the toe of the dam on the downhill side. He further stated that on unknown dates, he responded by installing drain pipes in the berm and tarps on the berm. The berm continued to fail, partially covering the drain pipes and plastic tarps with eroded fine sediment rendering them ineffective in controlling pond leakage and sediment discharges.
- f. On January 26, 2017, Regional Water Board staff spoke to Mr. Harwood in person and asked about the condition of the pond. Mr. Harwood stated that there had been a cut bank failure into the pond, but that he had been pumping out of the pond into storage and there had not been overflow from the pond. Mr. Harwood did not mention the leaking berm or associated berm failure or any other concerns about the pond.
- g. On March 27, 2018, staff from the Regional Water Board participated in an inspection of the Property along with CDFW and TRC. The primary purpose of the inspection was to evaluate conditions of the pond and impacts/threatened impacts to receiving waters. Staff observed that the pond berm had failed since last observed in November 2017, and staff observed that sediment had flowed from the pond to a nearby Class II watercourse and observed that turbid water was actively flowing from the pond into to the Class II watercourse. Salmon Creek is located approximately 160 feet downstream of the discharge point. Inspection observations indicated that the pond poses an immediate and substantial threat to water quality and beneficial uses of water and immediate measures must be taken to prevent and minimize additional sediment discharges and hazards. Additionally, it appears that numerous seeps and

associated watercourses emerge along a similar elevation contour and are interacting with developed features on the Property, including a Class III watercourse entering the pond from the upslope area, so the pond is collecting and will continue to collect surface flows as well as rainfall. Regional Water Board staff recommended that the Dischargers immediately engage a Registered Geologist or Certified Engineering Geologist with geotechnical expertise and immediately implement measures to prevent and minimize additional sediment discharges to surface waters from the pond.

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 Regional Water Boards.
 - a. The Property drains to Salmon Creek, which is a tributary to South Fork Eel. The existing beneficial uses of the Weott Hydrologic Subarea of the South Fork Eel Hydrologic Area, as set forth and defined in the Basin Plan, include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial or 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). Potential beneficial uses include Industrial Process Supply (PRO), Hydropower Generation (POW), 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 and Orders:** 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 discharges 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.

On August 13, 2015, the Regional Water Board adopted a regulatory order to address waste discharges from cannabis and other similar operations: Order No. R1-2015-0023 *General Waiver of Waste Discharge Requirements and General Water Quality Certification and Monitoring and Reporting Program for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Order R1-2015-0023). The Order establishes water resource protection requirements, provides a mechanism for water quality compliance, and enables the Regional Water Board to better focus its enforcement resources on environmentally damaging operations.

As of April 1, 2016, the Property was and still is enrolled under Tier 2 of Order R1-2015-0023; enforceable protection and mitigation measures therein developed to prevent and reduce environmental impacts were violated by the site conditions identified in the Water Quality Inspection Report, including:

- a. The Discharger failed to do the corrective action work on road drainage and Class III watercourse crossings according to the schedule identified in the Water Resource Protection Plan.
 - b. The pond was built in part within the setback of a Class II watercourse in violation of Standard Conditions.
 - c. Instream work occurred without authorization under section 401 of the Clean Water Act.
 - d. The pond was constructed in the winter period without a winter operations plan as required by Appendix B.
 - e. The pond was constructed without applicable local, state, and federal permits.
 - f. The pond was sited and constructed in a manner that did not ensure containment integrity, in violation of Standard Conditions.
 - g. The Discharger disturbed more than an acre of land without first obtaining coverage under the General Permit for Discharges of Stormwater Associated with Construction Activities (Construction General Permit Order No. 2009-0009-DWQ as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ), in violation of the General Terms and Provisions of Order R1-2015-0023.
 - h. The Discharger failed to comply with applicable water quality standards requirements and prohibitions specified in the Basin Plan in violation of the General Terms and Provisions of Order R1-2015-0023.
 - i. The Discharger is in violation of the General Prohibitions for actual and threatened discharge of waste with the construction and failure of the pond.
9. **State Water Board Resolutions and Orders:** 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 the construction of the pond on the Property, including vegetation removal and soil disturbance, and instream disturbance and placement of fill in watercourses occurred without coverage under any of the following regulatory permits:

- a. Cal Fire timber harvest permit or exemption for timber harvesting;
- b. National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges associated with land disturbance of an acre or more (Construction General Permit Order No. 2009-0009-DWQ as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ);
- c. CWA section 401 Water Quality Certification from the Regional Water Board or CWA section 404 dredge and fill permit from the Army Corps of Engineers;
- d. Department of Fish and Wildlife section 1600 Lake and Streambed Alteration Agreement for substantial alteration to bed, bank, and hydrology of watercourses; and
- e. Grading permit from Humboldt County Building and Planning Department for grading of more than 50 yd³ and within a streamside management area.

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) to include, sewage and any other waste substances, whether 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 prior to, and for purposes of, disposal.
 - i. Sediment, when discharged to waters of the state, is a "waste" as defined in Water Code section 13050. The Dischargers caused or permitted waster to be discharged or deposited where it will be, or has the potential to be, discharged to Salmon Creek, tributary to the South Fork Eel River, which 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 the waters for beneficial uses or the facilities which serve these beneficial uses.
 - i. Earthen material from construction of the pond in and near watercourses on property owned and/or used by the Dischargers has discharged, and still has the potential to discharge, sediment waste into Salmon Creek 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 and/or their agents, including timing of construction activities, has resulted in the unauthorized discharge or threat of discharge of waste into surface water and groundwater, and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. Tributaries of Salmon Creek pass through the Property with features of concern located adjacent to or draining into the creeks and/or their tributaries including a failing onstream earthen dam and water impoundment.
 - iii. 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 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 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 several pollutants, including temperature and 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 and wildlife habitat including for rare, threatened and endangers species and other aquatic life.
- 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).

- c. "Nuisance" is defined by Water Code section 13050, subdivision (m) to mean anything which meets all of the following requirements:
- i. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - ii. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - iii. Occurs during, or as a result of, the treatment or disposal of wastes.

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, or the best water quality that can be attained is 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 burden of preparing the reports required by this Order bear a direct relationship for the need for the reports and the benefits to be obtained from the 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 soil and groundwater and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267(b), the findings in this Order provide the Discharger with a written explanation with regard to the need for investigation and reports and identifies the evidence that supports the requirement to implement clean up and abatement activities and submit the reports.

14. Electronic Reporting Requirements: Sampling data, reports, and plans shall be submitted to the Regional Water Board via the State Water Resources Control Board's Geographic Environmental Information Management System database (GeoTracker) as specified in Title 23, Division 3, Chapter 30, Article 2, Sections 3890-3895 of the California Code of Regulations.

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 cleanup, abatement or restoration 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. In addition, actions required under this Order are exempt from CEQA pursuant to 15269 as actions necessary to prevent or mitigate an emergency. 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 handling 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 clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information.

1. **Immediately**, the Dischargers shall take all possible steps to prevent pond failure and/or to minimize to the maximum extent possible adverse impacts to water quality and beneficial uses associated with water and sediment releases from the pond. Monitor the effectiveness of the implementation actions and adaptively implement actions. Document actions including but not limited to notes, photographs, sketches, sampling results, etc. Characterize the magnitude (including sediment discharge volume and concentration) and extent of sediment discharges to waters of the state. **Beginning April 16, 2018**, provide weekly monitoring reports regarding the actions

taken and the results. Following the approval of the Interim Cleanup and Stabilization Plan, the monitoring and reporting schedule contained therein shall replace this weekly requirement.

2. Conduct all work under the direction of a California professional civil engineer or professional geologist experienced in surface water quality and hydrology, geologic investigation and characterization, earth work and geotechnical investigation, and sediment and erosion control. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional.
3. Coordinate investigation, cleanup, and restoration activities associated with site conditions and surface waters with Regional Water Board staff, California Department of Fish and Wildlife, California Department of Forestry and Fire Protection, Division of Water Rights, the County of Humboldt, and other regulatory agencies involved in the cleanup.
4. **By April 11, 2018**, the Dischargers shall have conducted a preliminary assessment of the pond and associated receiving waters assessed by appropriately qualified and licensed geologist and engineers. The Dischargers shall submit the site characterization **by April 16, 2018**.
5. **By April 23, 2018**, the Dischargers shall submit an **Interim Cleanup and Stabilization Plan** (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of cleanup and stabilization measures necessary to clean up wastes and trash, and to prevent further erosion and discharge of sediment and other pollutants to Salmon Creek and its tributaries during the remainder of the 2017/2018 wet weather period. The Interim Plan shall include, but not be limited to, the following:
 - a. Whatever actions are necessary to ensure that the pond does not fill up or over top and further destabilize due to internal pressure on compromised facility for the remainder of the 2017/2018 rainy season. Any water that enters the pond should be conveyed out of the pond via stable conveyance so that it does not cause erosion or transport any pollutants to downstream receiving waters.
 - b. Measures to prevent and minimize sediment discharges to waters of the state, including discharges of water removed from the pond.
 - c. Implementation schedule
 - d. Monitoring and reporting plan
 - e. A scope of work for developing the Restoration Mitigation and Monitoring Plan.
6. The Dischargers shall begin implementation of the Interim Plan **within 24 hours of concurrence** from the Regional Water Board Executive Officer or his delegee.

7. **By May 15, 2018**, the Dischargers shall submit to the Regional Water Board a proposed **Restoration Mitigation and Monitoring Plan** (hereafter "RMMP") acceptable to the Regional Water Board or its delegated officer. The RMMP shall include but not be limited to:
- a. An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, seeps, springs, bogs, and wetlands, caused by the unauthorized activities, including all areas that have been developed or disturbed, and identify controllable sediment sources requiring restoration. The assessment shall be completed by an appropriately qualified professional, and must at a minimum address channel hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, instream reservoirs, active or potential erosion and sedimentation sites, culverts, and other stream crossings, as well as roads and all disturbed areas on the Property. The assessment shall include aerial photographs and/or satellite images, photographs, delineation reports, topographic maps, or drawings, etc., of Property conditions prior to and after conducting the unauthorized activities, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, all waters of the state and waters of the United States, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings before and after the unauthorized activities shall serve as the basis for the RMMP;
 - b. A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted by the unauthorized activities, including Salmon Creek and their unnamed tributaries, and any springs, seeps, bogs, or wetlands;
 - c. A proposal to provide compensatory mitigation to compensate for any temporal and/or permanent impacts to wetlands and other waters of the state that resulted from unauthorized activities on the Property. Compensatory mitigation shall comply with the State's No Net Loss Policy. The proposal shall (1) describe existing site conditions at the proposed mitigation site; (2) describe implementation methods used to provide compensatory mitigation; (3) include monitoring that will be implemented and performance criteria that will be used to evaluate the success of the compensatory mitigation; and (4) include an implementation schedule;
 - d. 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, Salmon Creek and unnamed tributaries. The RMMP shall contain, at a minimum, design specifications for roads, any water crossing, in-stream structure and for riparian and aquatic habitat restoration, surface drainage controls, erosion and sedimentation controls, an implementation schedule, a monitoring and reporting plan, and success criteria for restoration and compensatory mitigation;

- e. 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.
8. **No more than 60 days** after approval of the RMMP by the Regional Water Board or its delegated officer, the Dischargers shall fully implement the RMMP.
 - a. The Dischargers shall notify and provide rationale to the Regional [or State] Water Board staff and obtain approval at least **14 days** prior to making any modifications to the approved RMMP.
 9. **By September 15, 2018**, submit a **Completion Report** for the RMMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built of all completed restoration construction and/or abatement measures included in the approved RMMP to restore Salmon Creek and unnamed tributaries to demonstrate the RMMP 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.
 10. Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by **January 31** of each year for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the RMMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

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 he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. 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.
- 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. Reasonable Access:** The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
Submissions: All monitoring reports, technical reports or notices required under this Order shall be submitted to:

Executive Officer – Matt St. John: Matt.St.John@waterboards.ca.gov

and Adona White, Water Resource Control Engineer:
Adona.White@waterboards.ca.gov

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

By mail to: NCRWQCB, 5550 Skylane Blvd. 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.
7. **Cost Recovery:** Pursuant to Water Code section 13304, the State or Regional Water Board is entitled to all reasonable costs it incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The State Water Board's Site Cleanup Program Cost Recovery Program was established through the authorities of Water Code sections 13267, 13304, and 13365. The Dischargers shall pay all cost recovery invoices within 30 days of issuance of the invoice.
8. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and 5 days prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer.
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 a complaint for administrative civil liability may be issued by the Regional Water Board. 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 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.
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 or its delegated officer 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 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 no later than 5:00 p.m., 30 days following 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

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

or will be provided upon request.

Ordered by: _____
Matthias St. John
Executive Officer

April 9, 2018