

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT AND WATER CODE 13267 ORDER NO. R1-2018-0031
FOR

Kevin McKenny
Assessor Parcel Number 015-111-009
Humboldt County

This Order is issued to Kevin McKenny (hereafter referred to as the Discharger) 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 request for the preparation and submittal of technical and monitoring reports (Order).

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

1. **Site Conditions:** Third Slough is a water of the state, as well as water of the United States (references hereafter to waters of the United States are also waters of the state).¹ Portions of the floodplain adjacent to Third Slough supports wetland conditions and are waters of the state. The Discharger has caused or allowed the discharge and threatened discharge of waste to receiving waters at 2725 Lucas St., Humboldt County, through installation of subdrains and pipes with outfalls to waters of the state, grading of wetlands, and removal of riparian habitat. The Discharger's activities, which resulted in unpermitted discharges and wetland impacts, 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 Discharger to eliminate the threat of future discharges and clean up and abate the effects of riparian and wetland vegetation removal, wetland grading, waste and slash disposal in riparian areas, and placing pipes and subdrains into Third Slough, the Third Slough floodplain, and adjacent wetlands. 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*

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." 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.

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.

- a. **Responsible Parties:** The Discharger, as the property owner and/or operator and the person 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, is a responsible party for purposes of this Order. This Order finds that Kevin McKenny is the responsible party pursuant to records from the Humboldt County Assessor-Recorder's Office, which indicate that Kevin McKenny owns approximately 4.5 acres, identified as Assessor Parcel Number (APN) 015-111-009-000 (hereafter Property).
 - b. The Regional Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
3. **Property Location and Description:** The Property is located at 2725 Lucas Street near the city of Eureka, in Humboldt County. The Property is an undeveloped parcel consisting of a higher elevation area that is at grade with Lucas Street; this higher area slopes down at varying grades to a lower level area adjacent to Third Slough. Grading, fill, and other impacts to waters of the state occurred within and adjacent to Third Slough, in the vicinity of latitude 40.793230 and longitude -124.137260.
 4. **Property History:** The Regional Water Board issued a Notice of Violation on January 9, 2018, to Mr. McKenny for work performed within waters of the State without Regional Water Board authorization.
 5. **Factual Basis of Order:** The Discharger's activities and/or the conditions observed at the Property, as documented in the Regional Water Board Notice of Violation and inspection report (Attachment 1), and as detailed below, created and/or threaten to create condition of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.
 - a. Third Slough is a tributary of Eureka Slough. Third Slough meets Eureka Slough approximately 4,000 feet upstream from Eureka Slough's confluence with Humboldt Bay. Humboldt Bay is listed as impaired under section 303(d) of the Clean Water Act for dioxin and polychlorinated biphenyls (PCBs).
 - b. Regional Water Board staff received correspondence from California Department of Fish and Wildlife (CDFW) staff on September 6, 2017, indicating disturbance to waters of the state from earth-moving activities at the Property. CDFW subsequently issued a Notice of Violation on September 22, 2017, for unpermitted grading of state waters in violation of Fish and Game Code sections 1602 and 5650.

- c. On October 4, 2017, staff of the Regional Water Board and U.S. Army Corps of Engineers (Corps) inspected the Property. Regional Water Board produced an inspection report and issued a Notice of Violation to the Discharger on January 4, 2017 (Attachment 1). Observations by Regional Water Board staff during the October 4, 2017 inspection included: evidence of grading on the Third Slough floodplain; removal of riparian vegetation; slash and waste piled in riparian areas; underdrains and pipes that had been installed in the Third Slough floodplain; and a drainage outfall that had been placed into the Third Slough channel. The United States Fish and Wildlife (USFWS) National Wetlands Inventory (NWI) identifies a portion of the disturbed Third Slough floodplain as freshwater emergent wetland.
 - d. Grading and disturbance of floodplain soils in conjunction with removal of riparian vegetation significantly increases the threat of sediment discharge to receiving waters. Grading of soils will destabilize soil particles and removal of riparian vegetation will prevent dissipation of raindrop energy and capture of sediment.
6. **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. Beneficial uses of any specifically identified water body generally apply to all of its tributaries. Third slough is a tributary to Eureka Slough and Humboldt Bay. Existing and potential beneficial uses for Humboldt Bay include Municipal & Domestic Supply (MUN), Agricultural Supply (AGR); Industrial Service Supply (IND), Industrial Process Supply (PRO), Freshwater Replenishment (FRSH), Navigation (NAV), Water Contact Recreation (REC-1), Non-Contact Recreation (REC-2), Commercial and Sport Fishing (COMM), Cold Freshwater Habitat (COLD), Rare, Threatened, or Endangered Species (RARE), Marine Habitat (MAR), Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN), Shellfish Harvesting (SHELL); Estuarine Habitat (EST), Aquaculture (AQUA); Native American Culture (CUL); and Wildlife Habitat (WILD). Additionally, wetland beneficial uses include, Water Quality Enhancement (WQE), Flood Peak Attenuation/Flood Water Storage (FLD), and Wetland Habitat (WET).
 - 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 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.”
 - v. Temperature: “Temperature objectives for COLD interstate waters, WARM interstate waters, and Enclosed Bays and Estuaries are as specified in the ‘Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California’ including any revisions thereto...In addition, the following temperature objectives apply to surface waters: 1. The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses. 2. At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature. 3. At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature.”
- 7. **State Water Board Resolutions and Executive Order**: 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. Additionally, Executive Order W-59-93, also referred to as the "No Net Loss Policy," which has been incorporated into the Basin Plan, acknowledges the environmental and economic benefits of wetlands to the people of this state and identifies three primary objectives, including protection against net loss and an aim for long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California.

8. **Failure to Obtain Necessary Permits:** Regional Water Board staff has determined that placing pipes in Third Slough and adjacent wetlands, grading, and removal of riparian habitat at the Property occurred without coverage under any of the following regulatory permits:
- Clean Water Act (CWA) section 404 permit from the U.S. Army Corps of Engineers;
 - CWA section 401 water quality certification from the Regional Water Board;
 - National Pollutant Discharge Elimination System (NPDES) permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities;
 - NPDES permit for direct discharges to surface waters;
 - California Department of Fish and Wildlife Streambed Alteration Agreement;
 - Humboldt County grading permit; and
 - Humboldt County Special Permit for work within streamside management area.

9. **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. Construction debris and sediment, when discharged to waters of the state, is a "waste" as defined in Water Code section 13050. The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to Third Slough and adjacent wetlands, both considered waters 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 waters of the state for beneficial use or facilities which serve these beneficial uses.
 - i. Erodible soils from graded surfaces on property owned and/or used by the Discharger has the potential to discharge sediment and other waste into Third Slough 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. 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).

- iii. 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).

10. **Cleanup and Abatement Action Necessary:** Cleanup and abatement is necessary to ensure that the existing conditions of pollution are cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, that 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.
11. **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 Discharger 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 Discharger named in this Order owns and/or operates the Property from which waste was discharged, and thus is appropriately responsible for providing the reports.

12. 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 Discharger 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 Discharger's 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. 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 Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that the Discharger 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. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. **Within 30 days from issuance of this Order**, the Discharger shall submit a written report providing:
 - a. Dates and a description of all activities performed at the Property since December 8, 2015. Activities include grading, placement of pipes, vegetation removal, and debris pile placement. Describe precisely how pipes were installed, including excavation methods, depth, and types of backfill materials;
 - b. Reasons for all activities performed at the Property since December 8, 2015;
 - c. A detailed site map accurately depicting topography, all graded/disturbed surfaces, waste and debris piles, roads, surface watercourses, and surface water drainages;
 - d. A characterization of all debris piles, including volume and detailed characterization of debris; and
 - e. Identification of all locations where pipes have been lain. Identify pipe type, size, and length. Include a map showing pipe locations.

2. **Within 60 days from issuance of this Order**, the Discharger shall submit an **Interim Cleanup, Stabilization, and Conduit Remediation Plan** (hereafter Interim Plan) for the completion of cleanup and stabilization measures necessary to remove all pipes and to prevent erosion and discharge of sediment and other pollutants to Third Slough and adjacent wetlands to the Regional Water Board or a delegated officer for approval. The Interim Plan shall be prepared by an appropriately licensed professional. The Interim Plan shall include, but not be limited to, the following:
 - a. A plan to remove all pipes, underdrains, and any other drainage related structures and debris placed within ten feet of pipe outfalls. The plan shall include a detailed proposal to ensure that the pipe trenches do not become preferential pathways for conveyance of ground or surface waters. Such a design may involve low-porosity trench plugs made from bentonite and low-density concrete.
 - b. Using the information provided above in item number 1, identify proposed cleanup and stabilization measures that are necessary to contain and/or stabilize any disturbed areas on the Property. Cleanup and stabilization measures shall include, but not be limited to:
 - i. Stabilize all disturbed areas with erosion control mulches, blankets, mats, tarps, berms or other erosion controls to protect the disturbed areas from the forces of rain drop impact and overland flow; and
 - ii. Provide sediment controls in any areas where sediment may enter waters of the state.

- c. A method to estimate the volume and areal extent of non-native material placed within the Property since December 8, 2015. Once approved by the Regional Water Board, this method shall be used to comply with Order item 7.b.
3. No later than 48 hours prior to implementation of the Interim Plan, the Discharger shall notify Regional Water Board staff of the proposed work commencement.
4. **Within 60 days from issuance of this Order**, the Discharger shall file a Notice of Intent (NOI) for coverage under the *National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order No. 2009-0009² (Construction General Permit). Information provided to satisfy Order requirement 2.b above shall be included in the Stormwater Pollution Prevention Plan submitted as part of the NOI.
5. **Within 60 days from the date of approval of the Interim Plan**, the Discharger shall have completed the work specified in the approved Interim Plan.
6. **Within 30 days from completion of Interim Plan implementation**, the Discharger shall provide a report of completion of the Interim Plan to the Regional Water Board for approval. This report shall include a summary and photographs of the completed cleanup and stabilization measures. The report shall include before and after photographs. The report shall report the volume of material removed, and show a map detailing the areal extent of removed material.
7. **By July 30, 2018**, the Discharger shall submit the following information for the Property:
 - a. A jurisdictional wetland delineation performed in accordance with the United States Army Corps of Engineers May 2010 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (version 2.0)*. This delineation shall be conducted through forensic historical ecology by a wetland professional, subject to prior acceptance by Regional Water Board staff;
 - b. A forensic wetland delineation to determine the extent and types of wetlands and waters that existed on December 8, 2015, prior to Discharger construction activities. This delineation shall be conducted through forensic historical ecology by a wetland professional, subject to prior acceptance by Regional Water Board staff. The delineation shall also include all waters that are “waters of the state” as defined in Water Code section 13050, subdivision (e);
 - c. A forensic vegetation delineation identifying areas and types of vegetation that existed on the Property on December 8, 2015, but prior to vegetation removal. The delineation shall include a map showing locations where vegetation was removed after December 8, 2015. The delineation shall be conducted through forensic

² as Amended by 2010-0014-DWQ & 2012-0006-DWQ

historical ecology by a wetland professional, subject to prior acceptance by Regional Water Board staff.

- d. Volume, area, and map of all non-native material³ and debris piles placed at the Property since December 8, 2015. Non-native material includes pipes and drain-rock; and
 - e. A hydrologic report summarizing topography, vegetation, soil types, drainage and runoff patterns, and flooding patterns.
8. **No later than 60 days from Regional Water Board approval of Order Required Action No. 7**, the Discharger shall submit a **Restoration Mitigation and Monitoring Plan (RMMP)** to restore the property to pre-disturbance conditions and to mitigate for temporal and permanent losses to state waters and their function and values. The Discharger shall use information submitted pursuant to Order Required Action No. 7 to develop the RMMP. The RMMP shall be subject to Regional Water Board approval and shall include:
- a. An implementation timeline for restoration actions, including a time schedule for submitting permit applications to all applicable local, state, and federal agencies, and detailed project milestones to fulfill the Order requirements once those permits are obtained;
 - b. A proposal to monitor the success of restoration actions for a period of not less than five years. The monitoring plan shall include performance criteria and a description of monitoring protocol; and
 - c. A proposal to submit annual mitigation performance reports to the Regional Water Board no later than January 31 following the respective monitoring period.
9. **No later than 60 days from completion of restoration implementation**, the Discharger shall submit a **RMMP Completion Report** for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built drawings of all completed restoration construction and/or abatement measures to demonstrate the RMMP has been fully implemented. The Completion Report shall also establish and utilize photo points that shall be used for pre- and post-construction photographs. The photo points shall be depicted on site maps and/or figures.
10. Upon approval of the **RMMP Completion Report**, the Discharger shall 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

³ Non-native material refers to material, including but not limited to, earthen material, construction debris, and trash (e.g., treated wood, untreated wood, manufactured wood product, plastic, cement, etc.), that did not historically exist in its current footprint and was placed as a result of construction or other development activities.

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 Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers 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 Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Discharger 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 Discharger, 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 Discharger may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Brendan Thompson at 707-576-2699.

4. **Notice of Change in Ownership or Occupancy:** The Discharger 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 Discharger 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.

All monitoring reports, technical reports or notices required under this Order shall be submitted to:

- a. Assistant Executive Officer – Joshua Curtis
Joshua.Curtis@waterboards.ca.gov
 - b. Brendan Thompson, Environmental Scientist
Brendan.Thompson@waterboards.ca.gov
 - c. 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 Discharger 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 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 restoration action, required by this Order. The Discharger shall enroll in the State Water Board's Cost Recovery Program managed by the State Water Board for the discharges addressed by this Order and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board pursuant to the procedures established in that program.
 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 Assistant Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer.


9. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or 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.

This Order is effective upon the date of signature.


Digitally signed by
Matthias St. John
Date: 2018.04.30
16:09:26 -07'00'



Matthias St. John,
Executive Officer

Date

Attachment 1: January 4, 2017 Notice of Violation and Inspection Report