

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2018-0036

FOR

CLAY K. TUCKER, ERIKA TUCKER, INDEPENDENCE CORPORATE OFFICES INC., RINCON LAND HOLDINGS LLC, MATTHEW TELLES, WANDERLUST HEALING RETREAT LLC, DAVID K. JENSEN, MARIO RODRIGUEZ, MICHAEL LINARTE, VADA TROTT, HORACIO CUFRE-URRUTIA, THUNDERBIRD LAND MANAGEMENT LLC, JOHN KIMBALL, AND EDNA KIMBALL, FOR SHARED ACCESS ROAD ON

ASSESSOR PARCEL NUMBERS 015-170-07-00, 015-170-27-00, 015-170-29-00, 015-170-31-00, 015-170-32-00, 015-170-34-00, 015-170-39-00, 015-170-40-00, 015-180-06-00, AND 015-180-38-00.

TRINITY COUNTY

This Order is issued to Clay K. Tucker, Erika Tucker, Independence Corporate Offices Inc. (ICO), Rincon Land Holdings LLC (Rincon), Matthew Telles, Wanderlust Healing Retreat LLC, David K. Jensen, Mario Rodriguez, Michael Linarte, Vada Trott, Horacio Cufre-Urrutia, Thunderbird Land Management LLC, John R. Kimball, and Edna Kimball, (hereafter referred to as Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

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

- 1. Site Conditions:** Frietas Gulch, Mule Gulch, Indian Creek, and their tributaries are waters of the state, as well as a water of the United States (references hereafter to waters of the United States are inclusive of waters of the state)¹. The Dischargers constructed private roads or allowed private roads to be constructed on Trinity County Assessor's Parcel Numbers (APNs) 015-170-07-00, 015-170-27-00, 015-170-29-00, 015-170-31-00, 015-170-32-00, 015-170-34-00, 015-170-39-00, 015-170-40-00, 015-180-06-00, and 015-180-38-00, (hereafter Property) lacking adequate stream crossings and erosion control or sediment containment features. (see Attachment A - Parcel Maps.) These roads, created without authorization from applicable federal and state agencies, including the Regional Water Board, represent controllable sediment discharge sites. Collectively these roads, as identified in red on the map attached hereto as Attachment B, are referred to hereafter as the Access Road. It is likely that runoff from these sites will transport and deliver sediment to Frietas Gulch, Mule Gulch and Indian Creek and their tributaries, all waters of the United States.

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 Water Quality Control Act (Porter-Cologne) provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code, § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code, § 13050, subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

- 2. Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharges of sediment-laden storm water from uncontrolled drainage from shared private access roads into Frietas Gulch, Mule Creek, and Indian Creek and to eliminate the threat of future discharges. Investigation and cleanup work required by this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code §13000 et seq.), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), 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. Individual parcels of the Property may have additional conditions that present a threat to water quality, some of which are identified in the attached inspection reports, individual property owners are responsible for correcting those conditions and the Regional Water Board reserves the right to address any additional threats to water quality on the properties in future enforcement actions separately from this order which is directed specifically at the Access Road.
- 3. Responsible Parties:** The Dischargers, as the property owners with the legal ability to control activities on the Property that resulted in the discharge and/or threat of discharge and/or as the persons discharging or creating a threat of discharge, are the responsible parties for purposes of this Order. This Order finds that Clay K. Tucker, Erika Tucker, ICO, Rincon, Matthew Telles, Wanderlust Healing Retreat LLC, David K. Jensen, Mario Rodriguez, Michael Linarte, Vada Trott, Horacio Cufre-Urrutia, Thunderbird Land Management LLC, John R. Kimball, and Edna Kimball (Dischargers) are the responsible parties:

 - a. Per records from the Trinity County Assessors-Recorder's Office between 2011 and 2013, Clay Tucker, Erika Tucker, ICO, and Rincon owned at least nine parcels of land in the Indian Creek Watershed including parcel numbers 015-170-07-00, 015-170-24-00, 015-170-27-00, 015-170-29-00, 015-170-31-00, 015-170-32-00, 015-170-34-00, 015-170-39-00, and 015-170-40-00.
 - b. On or about October 3, 2011, John Kimball granted an access easement in favor of Clay and Erika Tucker and Rincon. This easement was for the benefit of numerous parcels, including 015-170-07-00, 015-170-39-00, and 015-170-40-00. The easement was re-recorded with respect to several parcels on or about March 27, 2012.
 - c. On or about February 16, 2012, a road easement on parcel numbers 015-170-39-00 and 015-170-40 was granted to Clay Tucker.
 - d. On or about May 25, 2012, a road easement on parcel numbers 015-170-24-00, 015-170-27-00, 015-170-29-00, 015-170-32-00, 015-170-34-00, 015-170-39-00, and 015-170-40-00, was granted from ICO to Clay Tucker and Rincon.
 - e. On or about April 5, 2013, Rincon granted an access easement benefiting several parcels, including 015-170-07-00, 015-170-24-00, 015-170-27-00, 015-170-29-00, 015-170-32-00, 015-170-34-00, 015-170-39-00, and 015-170-40-00. The three easements identified in this grant were built into the extensive road system observed during the April 2015, inspections of parcel numbers 015-170-07-00, 015-170-39-00, and 015-170-40-00.

- f. On or about July 7, 2011, Clay Tucker submitted a Notification of Lake or Streambed Alteration to the California Department of Fish and Game (2011 Application). In the 2011 Application, Mr. Tucker indicated he was an easement holder and would be performing approximately 2 days of emergency repair work on a failing drainage crossing in the Frietas Gulch Road System. Mr. Tucker indicated that he would replace an 18" culvert with a 54" half round-bottomless culvert with angle footer and provided specifications and plans for installation and backfill of the project.²
- g. Sometime between July 2010 and July 2012, Clay and Erika Tucker on behalf of Independence Corporate Offices Inc, and/or Rincon Land Holding LLC, personally conducted, supervised, and/or directed road building, grading, widening and road improvement activity to create the Access Road and provide access to the Properties. The same parties may have conducted additional roadwork and maintenance after July 2012. This road and site development activities caused and/or threatens to cause unpermitted discharge of sediment into numerous watercourses creating a condition or threatening to create a condition of pollution. Accordingly, Clay and Erika Tucker, as individuals and as corporate officers of ICO, ICO and Rincon are responsible parties.
- h. Per records from the California Secretary of State, Clay K. Tucker is the Agent for Service of Process, the Chief Executive Officer and Chief Financial Officer of ICO. Erika Tucker is also identified as an Officer of ICO.
- i. Per records from the Arizona Corporation Commission, Barnett S. Brenner is the Agent for Service and Manager for Rincon.
- j. Per records from the Trinity County Assessor-Recorder's Office, Matthew Telles is the current owner of record for APN 015-170-07-00 via a purchase of the property from Rincon on December 30, 2013. Mr. Telles was the owner during the April 9 and 10, 2015, inspection and was present on April 10, 2015. Mr. Telles, as the current owner of property served by the access road and the person legally responsible for the current condition of the property, is a responsible party.
- k. Per records from the Trinity County Assessor-Recorder's Office, Mario Rodriguez is the current owner of record for APN 015-170-27-00. Mr. Rodriguez purchased the property from David K. Jensen on April 18, 2018. During the time of inspection, RNC Holdings LLC was the owner; David K. Jensen acted as the lender for the RNC Holdings LLC mortgage. David K. Jensen obtained the property through foreclosure on November 7, 2016. David K. Jensen owned the property during the period when the Access Road was constructed and he either commissioned or permitted its construction. David K. Jensen

² The segment of roadway associated with this Notification of Lake or Streambed Alteration is not included in the "Access Road" as defined for purposes of this order because the current owner of the property where that portion of the road is located, Mr. Mansor Shokohi, has enrolled under Regional Water Board Order No. 20015-0023 *Waiver of Waste Discharge Requirements 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 or Regional Order) and has expressed a willingness to comply with requirements of that Regional Order which included addressing any water quality threats associated with the roads on that property. The Regional Board reserves the right to add additional responsible parties to this clean up and abatement order or otherwise bring formal enforcement for all violations and any other authorized enforcement in the future.

had notice of that the Regional Board was considering adopting this Order prior to selling the property to Mario Rodriguez. Mario Rodriguez, as the current owner of property served by the access road and the person legally responsible for the current condition of the property, is a responsible party.

- l. Per records from the Trinity County Assessor-Recorder's Office, Wanderlust Healing Retreat LLC is the current owner of APN 015-070-29-00. Wanderlust Healing Retreat LLC purchased APN 015-170-29-00 on May 17, 2016, from Shahin Memari. On October 7, 2015, when State and Regional Water Board staff conducted an inspection of APNs 015-170-29-00, 015-170-32-00, 015-170-34-00, Shahin Memari owned all three parcels. Mr. Memari was present during that inspection. Wanderlust Healing Retreat LLC, as the current owner of property served by the access road and the entity legally responsible for the current condition of the property, is a responsible party.
- m. Per records from the Trinity County Assessor-Recorder's Office, Michael A. Linarte is the current owner of APN 015-170-31-00. On December 11, 2015, Mr. Linarte purchased APN 015-170-31-00 from ICO. Michael A. Linarte, as the current owner of property served by the Access Road and the person legally responsible for the current condition of the property, is a responsible party.
- n. Per records from the Trinity County Assessor-Recorder's Office, Wanderlust Healing Retreat LLC purchased APN 015-170-32-00 and APN 015-170-34-00 on May 17, 2016, from Shahin Memari. Wanderlust Healing, as the current owner of properties served by the access road and the party legally responsible for the current condition of the properties, is a responsible party.
- o. Per records from the California Secretary of State, Shanti Zarcufsky is a Manager/Member of and the Agent for Service of Process for Wanderlust Healing Retreat LLC.
- p. Per records from the Trinity County Assessor-Recorder's Office, Vada P. Trott and Horacio Cufre-Urrutia purchased APN 015-170-39-00 on May 17, 2017, from Rama Zarcufsky and are the current owners of record for this parcel. At the time of the April 9, 2015, inspection, Rama Zarcufsky was the owner. Mr. Zarcufsky was not present during the inspection. Vada P. Trott and Horacio Cufre-Urrutia, as the current owners of the property served by the access road and the persons legally responsible for the current condition of the property, are responsible parties.
- q. Per records from the Trinity County Assessor-Recorder's Office, Thunderbird Land Management LLC is the current owner of record for APN 015-170-40-00 via a purchase from Jace Richter on July 20, 2016. At the time of the April 9, 2015, inspection, Jace Richter was the owner and was present during the inspection. Thunderbird Land Management LLC, as the current owner of property served by the access road and the entity legally responsible for the current condition of the property, is a responsible party.
- r. Per records from the California Secretary of State, Jace Richter is the Manager/Member of Thunderbird Land Management LLC. Maureen McCready is the Agent for Service of Process for Thunderbird Land Management LLC.

- s. Per records from the Trinity County Assessor-Recorder's Office, John R. Kimball and Edna L. Kimball own parcels 015-180-06-00 and 015-180-38-00 as trustees. John R. Kimball and Edna L. Kimball are the current owners/trustees of the property served by the access road and the persons legally responsible for the current condition of the properties and, are responsible parties.
 - t. Pursuant to California Civil Code section 845, the owner of an easement, or of any land to which any such easement is attached shall maintain it in repair. If the easement is owned by more than one person, or it is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.
 - u. 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 near Douglas City and consists of the following APNs: 015-170-07-00, 015-170-24-00, 015-170-27-00, 015-170-29-00, 015-170-31-00, 015-170-32-00, 015-170-34-00, 015-170-39-00, 015-170-40-00, 015-180-06-00, and 015-180-38-00. (see Attachment A.) The private access road system begins at Indian Creek Road east of Frietas Gulch and west of Mule Gulch Road. The Property is located in eastern Trinity County, south of California State Route 299. The Property lies within Sections 24 and 25, Township 32N, Range 9W, Mount Diablo Base and Meridian (MDB&M).
- 5. Property History:** There is no record of the Property having prior regulatory oversight or history with the Regional Water Board.
- 6. Factual Basis of Order:** The Dischargers' activities and conditions observed onsite, as detailed below, created and/or threaten to create, conditions of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.

In addition to the headwater of Frietas Gulch, which lie on the Property, there are three unnamed tributaries to Mule Gulch, which in turn is tributary to Indian Creek located on the Property. The tributaries are Class III drainages that carry stormwater runoff and road surface runoff to Indian Creek. Also on the Property are two unnamed tributaries that connect directly to Indian Creek. One of these had water flowing during the April 9 and 10, 2015, inspections and appeared to be Class II watercourse. It in turn has at least five unnamed Class III watercourses that drain into it.

Indian Creek is a perennial Class I watercourse and tributary to Middle Fork Trinity River. Middle Fork Trinity River is listed as impaired due to sediment pursuant to Clean Water Act section 303(d). On December 20, 2001, the United States Environmental Protection Agency approved a Total Maximum Daily Load (TMDL) for sediment that indicates "Cold Water Fishery" as a beneficial use currently impaired in the watershed. Protection of this beneficial

use is presumed to protect all beneficial uses that might be harmed by sedimentation. The TMDL also indicates that populations of several anadromous salmonid species present in the Trinity River and its tributaries are in severe decline. The population of coho salmon (*Oncorhynchus kisutch*) is listed as threatened under the federal Endangered Species Act. Habitat degradation, exacerbated by human activities, has contributed to a dramatic decline in the populations of coho, chinook, and steelhead from historical levels. The Middle Fork Trinity River supports numerous beneficial uses associated with both human activities and wildlife habitat, including, but not limited to habitat for threatened and endangered species.

The Property has and it is likely to continue to contribute sediment and further impair water quality and aquatic life. Grading and road construction activities on 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 condition of the Access Road has resulted in discharge and a further threat of discharge of sediment-laden stormwater to Frietas Gulch, Mule Gulch, Indian Creek and their unnamed tributaries. The lack of adequate erosion and sediment controls along the poorly maintained road, together with steep slopes, continue to cause threat of future sediment discharge from uncontrolled stormwater runoff and erosion of the road surface into Frietas Gulch and the tributaries to Mule Gulch and Indian Creek.

- a. On April 8, 2015, staff from the State Water Board obtained inspection warrants from the Trinity County Superior Court to inspect Trinity County Assessor's Parcel Numbers (APNs) 015-170-07-00, 015-170-24-00, 015-170-39-00, 015-170-40-00 in the Indian Creek watershed wherein staff believed there to be conditions of, and/or threatened conditions of, pollution or nuisance resulting from discharges of waste to waters of the United States resulting from the cultivation of cannabis and associated activities.
- b. On April 9 and 10, 2015, staff from the Regional Water Board and State Water Board (collectively, Water Boards) inspected the four parcels for which warrants had been obtained on April 8, 2015, and observed a system of poorly designed and constructed roads, with visible rutting and erosion, several missing, undersized, or improperly installed, and/or poorly maintained watercourse crossings along private roads throughout the property. For details, including Photographs, refer to the April 9-10, 2015, Inspection Report of Telles et al., which includes APNs 015-170-07, 015-170-39, and 015-170-40; and the April 10, 2015, Inspection Report of RNC Holdings LLC Property, APN 015-170-24-00. (Attachments C & D.)
- c. During the April 10, 2015, inspection staff from the Water Boards also collected measurements and documentation of parts of the access roads that were necessary to cross in order to inspect parcels identified in the April 8, 2015, warrants. This included APNs 015-180-06-00 and 015-180-38-00 which are part of the October 3, 2011, Easement Agreement between Clay K. Tucker and Erika Tucker and John R. Kimball and Edna L. Kimball. Staff also observed APNs 015-170-27-00 and 015-170-31-00, which provided access to APN 015-170-24-00, for which they had a warrant. The details of the access road observations can be found in the April 10, 2015, and October 7, 2015, Inspection Report of Access Roads. (Attachment E.)

- d. On October 5, 2015, staff from the State Water Board obtained inspection warrants from the Trinity County Superior Court to inspect three additional parcels in the Indian Creek watershed (APNs 015-170-29-00, 015-170-32-00, and 015-170-34-00), wherein staff believed there may be conditions of, and/or threatened conditions of, pollution or nuisance resulting from discharges of waste to waters of the United States resulting from the cultivation of cannabis and associated activities. Details for this inspection can be found in the October 7, 2015, Inspection Report of Memari Property. (Attachment F.)
- e. On October 7, 2015, staff from the Water Boards inspected the three parcels specified in the October 5, 2015, warrants APNs 015-170-29-00, 015-170-32-00, and 015-170-34-00 and again observed a system of poorly designed and constructed roads, with visible rutting and erosion, and several missing, undersized, or improperly installed and/or poorly maintained watercourse crossings along private roads throughout the property. Photographs included in the inspection report provide evidence of conditions on the Property. Details of the property conditions observed during this inspection, including photographs, can be found in the October 7, 2015, Inspection Report of Memari Property. (Attachment F.)

7. Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives: The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Board. Indian Creek is a tributary to Middle Fork Trinity River. Existing and potential beneficial uses for the Douglas City Hydrologic Subarea of the Upper Middle Trinity River include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge(GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Aquaculture(AQUA); Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

- a. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan).
 - i. Prohibition 1: "The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."
 - ii. Prohibition 2: "The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."

- b. Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development and cannabis cultivation activities include the following:
 - i. Color: “Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.”
 - ii. Floating Material: “Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.”
 - iii. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - iv. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - v. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - vi. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”
- 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.
- 9. **State Water Board Resolutions:** The State Water Board has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49). Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution 68-16). Resolution 92-49

requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. "[A]ny such alternative cleanup level shall: (1) Be consistent with maximum benefit to the people of the state; (2) Not unreasonably affect present and anticipated beneficial use of such water; and (3) Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards[.]" Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

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

- a. a National Pollutant Discharge Elimination System (NPDES) permit for land disturbance of an acre or more (Construction General Permit Order No. 2009-0009-DWQ);
- b. a Clean Water (CWA) section 404 permit from the Army Corps of Engineers; and,
- c. a CWA section 401 Water Quality Certification from the Regional Water Board.

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

A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. "Waste" is defined by Water Code section 13050, subdivision (d) 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 deemed a "waste" as defined in Water Code section 13050. The Dischargers caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to

surface waters draining to Frietas Gulch, Mule Creek, Indian Creek and their tributaries, which are 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. The discharge of sediment-laden storm water is a discharge of waste to waters of the state, which creates a condition of pollution subject to this Order in accordance with Water Code section 13304.
 - ii. The clearing and grading activities conducted by the Dischargers to construct the roads has resulted in the unauthorized discharge or threat of discharge of wastes into waters of the state and has created, or threatens to create, a condition of pollution by unreasonably affecting the beneficial uses of Indian Creek. The beneficial uses of the Indian Creek discussed above in Finding 7 also apply to Frietas Gulch, Mule Gulch and all of their tributaries.
 - 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 habitat for aquatic species (RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (AGR and MUN). Sediment-laden storm water discharges to surface waters and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (REC-1 and REC-2).
 - iv. The discharge of organic and earthen material in the Middle Trinity River watershed is especially problematic because, as noted above, the Middle Trinity River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation. The sources of the impairment are identified in the TMDL as road-related as well as inputs from timber harvesting, mining, and natural sources. Road-related sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run Chinook salmon and steelhead trout.
 - 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 and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which requires that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As

stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters. These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature, and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

12. Cleanup and Abatement Action Necessary: Untreated storm water from the Property threatens to discharge sediment into watercourses from the Property into Frietas Gulch, Mule Gulch, Indian Creek, and their tributaries. The Access Road on the Property contain bare, erosive soils on steep slopes that are unprotected from weathering, leaving high potential for further sediment discharge to the watercourses during wet weather events. Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges to waters of the state originating from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution on the Property is a violation for which the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Regional Water Board.

13. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial actions and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate the Property from which waste was discharged, and thus is appropriately responsible for providing the reports.

14. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This

Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement and restoration activities at the site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handing any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, Clay K. Tucker, Erika Tucker, Independence Corporate Offices Inc. (ICO), Rincon Land Holding LLC (Rincon), Matthew Telles, Wanderlust Healing Retreat LLC, David K. Jensen, Mario Rodriguez, Michael Linarte, Vada Trott, Horacio Cufre-Urrutia, Thunderbird Land Management LLC, John R. Kimball and Edna Kimball, (Dischargers) shall submit information, 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. **Thirty (30) days after issuance of this Order**, the Dischargers shall provide a proposed **Restoration and Monitoring Plan** (hereafter RMP) focused on the shared access road system. The RMP shall include but not be limited to:
 - a. A list of interim erosion control measures that will be implemented prior to the rainy season (**October 15, 2018**);
 - b. An assessment of the impacts to Frietas Gulch, Mule Gulch, Indian Creek, and their unnamed tributaries shall be completed by an California licensed professional experienced in road assessment, construction and geologic evaluation and shall address: 1) the condition of all watercourses on the property (channel hydrology, riparian habitat, channel and slope stability, placement of instream fill material), and 2) the condition of the roads that may contribute pollutants to watercourses (active or potential erosion, surface drainage from roads, and an evaluation of all crossing/culverts that includes whether they can carry the 100-year predicted flow and debris). The assessment shall include a detailed map of watercourses, drainages, stream crossings, and other areas of the road system subject to cleanup. Assessment findings shall serve as the basis for the RMP;
 - c. A plan for Access Road restoration including a description of how long-term impacts of runoff from the road will be abated (i.e. re-grading and reengineering, graveling

or paving road surface, etc.), to prevent any further impacts to Frietas Gulch, Mule Gulch, Indian Creek and their unnamed tributaries. The plan shall include an inventory of all locations where instream resources have been affected by fill placement or road construction. The inventory shall; (1) assess and quantify cubic yards of material placed in stream channels and the square footage of the stream affected by the Access Road development; and (2) identify opportunities to decommission unnecessary roads, and locations where instream restoration is necessary to mitigate for the temporal and permanent loss of habitat associated with the illegal development of roads;

- d. Best management practices to be applied to all current and planned work associated with Access Road repair, construction or maintenance activities on the Property impacting, or having the potential to impact, Frietas Gulch, Mule Gulch, Indian Creek, and their unnamed tributaries. The RMP shall contain, at a minimum, design specifications and/or designs for stream restoration, surface drainage controls, erosion control methods and standards for unanticipated precipitation during restoration, compaction standards, an implementation schedule, a monitoring and reporting plan, and success criteria meeting the requirements specified herein. The RMP shall incorporate use of appropriate native or endemic species in any re-vegetation efforts; and,
 - 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.
2. **No more than 60 days** after approval of the RMP by the Assistant Executive Officer of the Regional Water Board or a delegated officer thereof, begin implementation of the RMP:
 - a. A week prior to commencement of any construction activities, submit by email a notice so that the Regional Board may, if our time permits, inspect the site during construction to evaluate progress and conformance to plan specifications in the RMP. This notice shall be submitted by email to Adona.White@waterboards.ca.gov.
 - b. At the end of each week of construction, the overseeing qualified professional shall submit a signed report summarizing the work accomplished in the previous week and stating that all work was conducted in accordance with plans and specifications in the RMP. This report shall be submitted by email to Adona.White@waterboards.ca.gov.
 - c. The Dischargers shall notify and provide rationale to the Regional or State Water Board staff and obtain approval at least **60 days** prior to making any modifications to the approved RMP.
3. **By October 15, 2019**, the Dischargers shall fully implement and complete the RMP.
4. **By December 31, 2019**, the Dischargers shall submit a **Road Completion Report** for the RMP for approval by the Regional Water Board or its delegated officer. The Completion

Report shall include accurate depictions of all completed construction and/or abatement measures and documentation included in the RMP to restore and prevent any further impacts to Frietas Gulch and its unnamed tributaries to demonstrate the RMP has been fully implemented. This will include as-built drawings, prepared by the person(s) who did the work and will clearly show any changes to the original construction specifications.

GENERAL REQUIREMENTS AND NOTICES

1. **Manner/Scope of Compliance:** The Dischargers may choose to coordinate their compliance with this order for efficiency and economy, or may choose to address portions of the road system for which they have ownership and/or legal responsibility separately.
2. **No Apportionment of Liability:** Nothing in this Order is intended to nor shall be interpreted as limiting the Dischargers ability to seek contribution and/or reimbursement from each other or other responsible third parties.
3. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans, and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professionals as otherwise required by law. An appropriately qualified professional with expertise in stabilization of earthen material and restoration shall oversee all construction activity planned and proposed in the RMP.
4. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Discharger(s), or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state whether they agree with any recommendations/proposals and whether they approve implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

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

5. **Notice of Onsite Work:** The Dischargers or their authorized agent(s) shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring,

maintenance, or inspection. The Dischargers may contact the State Water Board using the contact information and person listed below.

6. **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.
7. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted to:

Ms. Adona White
Water Resource Control Engineer
North Coast Regional Water Quality Control Board
5500 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Email: Adona.White@waterboards.ca.gov
8. **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.
9. **Delayed Compliance:** If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to grant an extension request.
10. **Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$10,000 per violation per day, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including but not limited to, violation of the terms and condition of this Order.

11. **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.
12. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
13. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: 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.

Matthias St. John
Executive Officer

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Attachments: A. Parcel Maps
B. Access Road Map
C. April 9-10, 2015 Inspection Report of Telles Et. Al.
D. April 10, 2015 Inspection Report of RNC Holdings LLC Property
E. April 10, 2015 and October 7, 2015 Inspection Report of Access Roads
F. October 7, 2015 Inspection Report of Memari Property