

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION

CLEANUP and ABATEMENT and 13267 ORDER No. R1-2018-00XX  
for

Rhys Vineyards- Kevin Harvey

ASSESSOR PARCEL NUMBERS 014-300-18, 015-050-50, 014-300-11, 014-300-19, 015-050-51, 014-420-59, 015-050-52, 014-420-60, 015-050-53, 014-420-61, 014-430-64, 014-420-62, 014-430-65, 015-050-54, 015-060-49, 015-050-48, 015-050-56, 015-050-57, 015-050-58, 015-050-59, 015-050-50, 015-050-60, 015-050-61, 015-050-63, 015-110-46, 015-050-64, 015-110-47, 105-110-48, 015-050-65, 015-110-49, 015-050-66, 015-110-50, 015-110-51, 015-120-37, 015-110-52, and 015-120-38

WDID 1B15139CNME

Mendocino COUNTY

This Order is issued to Rhys Vineyards and Kevin Harvey (hereinafter referred to as the Discharger) based on provisions of Water Code<sup>1</sup> section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order (Order) for cleanup and remediation of environmental damages affecting or potentially effecting water quality, and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports.

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

- 1. Site Conditions:** The project site is located on the Clarke Ranch (Property), which straddles the divide between the South Fork Eel River and the Ten Mile River watersheds. The South Fork Eel River and the Ten Mile River and their respective tributaries are waters of the state, as well as waters of the United States (references hereinafter to waters of the United States are inclusive of waters of the state)<sup>2</sup>. The Discharger has caused or allowed the discharge and threatened discharge of waste to receiving waters through: (1) improper installation and/or maintenance of roads and stream crossings; (2) the construction of on stream ponds, and 3) the grading and development of wetlands in multiple locations for viticulture and associated activities on the site. The Discharger's activities resulting in the discharge were conducted without authorization from any applicable federal, state, and local agencies, including the Regional Water Board.

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<sup>1</sup> Unless otherwise indicated, all references to the "Water Code" refer to the California Water Code.

<sup>2</sup> The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those waters as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne Water Quality Control Act (Porter-Cologne) provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260). The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050(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 Discharger to eliminate the threat of future discharges and to clean up and abate the effects of discharges of soil and other materials into wetlands, and the South Fork Eel River and Ten Mile River and respective tributaries. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
- 3. Responsible Parties:** The Discharger, as the current property owner and/or operator and the person discharging or creating a threat of discharge, with the legal ability to control the activities that resulted in the discharge and/or threat of discharge, is the responsible party for purposes of this Order. This Order finds that Rhys Vineyards is the responsible party:
  - a. Per records from Westlaw, Rhys Vineyards acquired the Clarke Ranch on January 8, 2015 with a closing date of January 20, 2015. The Clarke Ranch includes a number of Mendocino County Assessor Parcels (APNs) as follows: APN's 014-300-18, 015-050-50, 014-300-11, 014-300-19, 015-050-51, 014-420-59, 015-050-52, 014-420-60, 015-050-53, 014-420-61, 014-430-64, 014-420-62, 014-430-65, 015-050-54, 015-060-49, 015-050-48, 015-050-56, 015-050-57, 015-050-58, 015-050-59, 015-050-50, 015-050-60, 015-050-61, 015-050-63, 015-110-46, 015-050-64, 015-110-47, 105-110-48, 015-050-65, 015-110-49, 015-050-66, 015-110-50, 015-110-51, 015-120-37, 015-110-52, and 015-120-38, hereafter referred to as the Property.
  - b. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
- 4. Property Location and Description:** The Property is located in Mendocino County off Branscomb Road at 6501 Branscomb Road. There are several access points to the Property via dirt roads adjoining with Branscomb Road.
- 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 Discharger's activities and/or the conditions observed on the Property, as documented in the Regional Water Board inspection report(s) (Attachment A and B), and as detailed below, create and/or threaten to create, conditions of pollution in the South Fork Eel River and Ten Mile River and their attendant tributaries, by unreasonably impacting water quality and beneficial uses.

The Property feeds to numerous small named and unnamed streams in the South Fork Eel River and Ten Mile River Watersheds, which are tributary to the Pacific Ocean. The South Fork Eel River and the Ten Mile River are federal Clean Water Act section 303(d)-listed for sediment and temperature impairments. The Clarke Ranch is located within the Laytonville Hydrologic Subarea of the South Fork Eel River, and the Ten Mile River

Hydrologic Subarea is within the Mendocino Coast Hydrologic Unit. The United States Environmental Protection Agency approved the Ten Mile River Sediment TMDL on December 16, 1999, and the South Fork Eel River temperature and sediment TMDL in December of 2000. The TMDLs both indicate that the following beneficial uses are currently impaired in the watershed: cold freshwater habitat; rare, threatened, and endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development of fish; commercial and sport fishing; and contact and non-contact water recreation. The designated beneficial uses associated with the cold freshwater salmonid fishery are the designated beneficial uses most sensitive to the water quality impairments of the South Fork Eel River and Ten Mile River. As such, protection of these beneficial uses is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation or increased temperature.

- a. The Discharger's grading, road construction, and active use of the Property have caused discharges of earthen and woody materials at numerous stream crossings, increased hillslope instability and filled wetlands increasing soil exposure to erosion. Areas that the Discharger developed for access to and to conduct viticulture and associated activities were constructed adjacent to and in wetlands and streams.

Roads and developed areas on the property do not have adequate erosion or sediment controls, and these conditions are made worse by the continued use of the Property for access, viticulture and associated activities.

Streams show evidence of damage and chronic erosion. These conditions represent controllable sediment sources, each threatening chronic delivery of sediment and other earthen materials to receiving waters.

- b. On September 29, 2015 and on January 13, 2017, staff from the Regional Water Board, the State Water Board's Office of Enforcement and Division of Water Rights, Army Corps of Engineers (on September 29, 2017 only) and California Department of Fish Wildlife (DFW) conducted consent inspections on the Property.
- c. On September 29, 2015, Regional Water Board staff inspected the Property and observed the following, as documented in the Regional Water Board inspection report (Attachment 1):
  - i. 15+ acres of cleared/graded area with no apparent erosion/drainage controls;
  - ii. 1480-1650 feet of fill in a stream channel in the graded area;
  - iii. Ten locations where stream channels had been filled in as part of road construction/reconstruction;
  - iv. Undersized and buried culverts;
  - v. Several road segments with loose fill perched directly above watercourse channels;

- vi. Poorly installed and/or maintained outfalls from the two existing instream ponds, with erosion and sediment delivery in the downstream watercourse channels;
- vii. Unpermitted pond construction;
- viii. Existing ponds on streams and springs without adequate erosion controls on outfalls;
- ix. Eroded earthen materials from spillways of existing older ponds

**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.

- A. The South Fork Eel River and Ten Mile River have the same existing and potential beneficial uses of water attributed to their respective watersheds with the exception of Estuarine (EST), which is applied only to the Ten Mile River. The applicable beneficial uses to these watersheds are as follows: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Commercial and Sport Fishing (COMM); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Rare, Threatened, or Endangered Species (RARE); Aquaculture (AQUA); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Estuarine (EST); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
- B. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):
  - i. Prohibition 1 - "The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."
  - ii. Prohibition 2 - "The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."
- c. Section 3 of the Basin Plan contains water quality objectives not to be exceeded because 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 activities include the following:

- i. Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- ii. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- iii. Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- iv. 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.
- v. 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.
- vi. Biostimulatory Substances: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect the beneficial uses.
- vii. Floating Material: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
- viii. Bacteria: The bacteriological quality of waters of the North Coast Region shall not be degraded beyond natural background levels.
- ix. Temperature: "Temperature objectives for COLD interstate waters, WARM interstate waters, and Enclosed Bays and Estuaries are as specified in the 'Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California' including any revisions thereto. A copy of this plan is included verbatim in the Appendix Section of this Plan. In addition, the following temperature objectives apply to surface waters:
  1. The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses.
  2. At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature.

3. At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature.”

**8. State Water Board Resolutions:** 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 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.

**9. Failure to Obtain Necessary Permits:** Regional Water Board staff determined that the Discharger’s development of the Property, including site clearing for viticulture and road construction/reconstruction, and disturbance to or placement of fill in streams and wetlands, occurred without coverage under any of the following regulatory permits:

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

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

*order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.*

- a. "Waste" is defined by Water Code section 13050, subdivision (d) as,

*sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.*

Sediment, when discharged to waters of the state, is deemed 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 surface waters, including the South Fork Eel River and Ten Mile River and their tributaries, which in turn are considered waters of the state and United States.

- b. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.

- i. Earthen material from onsite roads, graded areas located within or adjacent to watercourses and wetlands, and erodible soils on road and cultivated surfaces on property owned and/or used by the Discharger, has discharged, and still has the potential to discharge, sediment and other waste into the South Fork Eel River and Ten Mile River and their tributaries in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan, and creates or threatens to create a condition of pollution subject to this Order in accordance with Water Code section 13304.
- ii. Site development activities conducted by the Discharger, his agents, and/or his tenants, in addition to inadequate maintenance or pollution control efforts on existing site features, soil amendments and other waste materials, and apparent lack of human waste handling/disposal features have resulted in the unauthorized discharge or threat of discharge of waste into surface water and groundwater, and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. The South Fork Eel River and Ten Mile River and tributaries flow through the Property with many features of concern located adjacent to or draining into the creeks and/or tributaries thereto.
- iii. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and

WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment-laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).

- iv. The discharge of organic and earthen material in the watersheds is especially problematic because, as noted above, the watersheds are listed as impaired water bodies under Section 303(d) of the Clean Water Act due to several pollutants, including sedimentation/siltation. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run Chinook salmon, coho salmon, and steelhead trout.
- v. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment, which requires that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters.

These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increase physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors; increase water temperature; and fill in estuaries and tidal wetlands converting them from aquatic to terrestrial habitat, resulting in impacts to commercial and recreational fishing resources.

It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

- vi. Discharge of excess nutrients, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase for oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms, which create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses

impacted: RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (Beneficial Uses impacted: REC-1, REC-2, and MUN).

- 11. Cleanup and Abatement Action Necessary:** Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges of waste to waters of the state originating 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 policies of the Regional Water Board.
- 12. Technical Reports Required:** Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to clean up 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.
- 13. California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board 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 on 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 remedial activities and possible associated environmental impacts. To the extent that the Order requires earth disturbing and revegetation 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 approval 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, 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 shall provide the following information. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. **47 days from the date of this Order**, the Discharger shall submit a geologic investigation report of the access roads identified in inspection reports and used to access the vineyard. The Geologic review must be conducted by a geologist licensed in the State of California. The geologic review must recommend mitigations for restoration of unstable cut banks and slopes associated with road reconstruction and construction.
2. **32 days from the date of this Order**, the discharger shall elaborate upon and clarify how the fill volumes reported in the LACO Hydrology report conclusions, received on June 30, 2017, have been derived including establishing your assumptions and calculations.
3. **32 days from the date of this Order**, the Discharger shall provide alternatives analysis analyzing all access roads accessing the Property based upon the roads short and long-term threat to water quality and the beneficial uses of water.
4. **32 days from the date of this Order**, the discharger shall provide a complete itemized summary of all roadwork or site development anticipated or proposed in existing permits or plans or plans under development for future projects on the Property.
5. **90 days from the date of this Order**, the Discharger shall submit to the Regional Water Board a proposed **Cleanup, Restoration, and Monitoring Plan (CRMP)** acceptable to the Regional Water Board or its delegated officer. The CRMP shall include but not be limited to:

A. Cleanup, Restoration, Mitigation, and Monitoring, Planning

- i. Site Map - Develop a map of the Property accurately depicting, at a minimum the following features: property boundaries; site topography including native slopes and graded, terraced, and disturbed surfaces; locations of roads, clearings, and developed areas; locations of earthen side cast material;

perimeters of viticulture areas; stormwater flow paths; and all areas of concentrated water drainage, surface watercourses and wetlands; unstable areas, controllable sediment discharge sites and other areas of potential waste discharge.

- ii. Identify permanent and temporary impacts to watercourses from unauthorized waste discharges and propose compensatory mitigation at a 3:1 ratio to compensate for any temporal and permanent impacts to wetlands, South Fork Eel River and Ten Mile River, and their attendant tributaries. Develop Restoration and mitigation plan and designs and proposed mitigation at a 3:1 ratio of surface water and wetland impacts from waste discharges. The assessment shall include: identification and characterization of impacts to the South Fork Eel River and Ten Mile River and their unnamed tributaries and wetlands from the unauthorized activities on the Property; identification of all areas that have been developed or disturbed and are prone to erosion, transport, and delivery of waste to surface waters and wetlands. The restoration plan and designs shall be completed by an appropriately licensed professional and must identify, plan, design and schedule to accomplish the following: restore and mitigate all impacts or threatened impacts to 1) hydrology, 2) aquatic habitat, 3) observable channel and bank deposition and erosion, 4) alteration and loss of riparian habitat and natural shade on watercourses, 5) areas of channel and slope instabilities, 6) locations where fill material has been placed or discharged, 7) active or potential erosion, 8) surface drainage of roads and other graded areas, 9) size, type, and condition of all road and stream crossings relative to the 100-year predicted flow and debris for all stream crossings and roads on the Property. The assessment shall include aerial photographs and/or satellite images, photographs, reports, topographic maps, or drawings, etc., of Property existing conditions and conditions prior to conducting the unauthorized activities. Conditions prior to the unauthorized activities shall serve as the basis for the CRMP.
- B. Restoration Requirements: Provide a decommissioning plan for the access road reconstructed illegally without permits described in attachment 1 include a time schedule for project implementation and procuring required permits. Prioritize the decommissioning to complete the highest threats to water quality first. The decommissioning plan must restore hydrologic function to affected streams.
- i. Propose a workplan for the property to improve roads and stream crossings identified as controllable sediment discharge sites or in need of repair or replacements. When conducting the road assessment, assess roads and streams on the property for opportunities for road decommissioning, instream restoration and water quality habitat enhancement or restoration.
- C. Storage and Disposal of Waste: Propose a plan for how waste on the Property will be handled.

- i. Identify locations where dirt to be removed from streams and stream banks (i.e. spoils) will be placed, spread, planted, or otherwise disposed of on the Property so that it cannot enter surface waters.
  - ii. Identify disposal or storage locations for any refuse, waste, equipment, structures, or other features that are to be moved or removed as part of the restoration.
  - iii. Confirm that current human waste disposal practices on the Property do not represent a threat to surface or groundwater or propose a method, manner, and schedule to ensure that human waste generated on the Property will meet applicable County health standards, local agency management plans and ordinances, and/or the Regional Water Board's Onsite Wastewater Treatment System (OWTS) policy, and shall not represent a threat to surface water or groundwater.
- D. Restoration: Develop the CRMP to restore slope contours, stream and wetland ecological functions and the designated beneficial uses of the water bodies where illegal fill and development in wetlands or streams has occurred. The plan for restoration shall provide design details and a schedule to replant slopes and streamside areas identified as controllable sediment sources, or that have been disturbed, with native vegetation to increase shading, prevent erosion and sedimentation, and protect streambeds and banks. The planting area density shall be adequate to provide ground cover to prevent surface erosion and requires 85% survival over five years with monitoring and reporting required for the five year period. The Discharger is responsible for replacement planting, additional watering, weeding, invasive/exotic eradication, or any other appropriate measures to achieve the success criteria.
- E. Best Management Measures and Practices:
  - i. Construction: Provide drawings, figures, and/or text describing all best management measures and/or practices to be used during and following implementation of the CRMP to minimize pollutant discharges to receiving waters and impacts to water resources or beneficial uses, including those measures or practices to be used for site winterization to minimize erosion and sediment delivery over winter periods and/or during unanticipated precipitation events during construction.
  - ii. Post-construction site stabilization: Provide design and construction standards for earthen material compaction and stabilization, for replanting of exposed soils with native vegetation, and for post-construction erosion control.
- F. Implementation Schedule: Provide an implementation schedule that includes detailed project milestones, including a time schedule for submitting applications for all applicable local, state, and federal permits necessary to fulfill the requirements of this Order and a schedule for completing implementation including receiving the necessary permits.

- G. **Inspections and Monitoring**: Describe site inspections, and monitoring to be conducted during, and following the implementation of the CRMP. The inspection and monitoring shall document restoration and cleanup implementation, to assess effectiveness of site cleanup and restoration measures, to identify areas requiring repair or improvement, and to document long term performance of restoration and cleanup measures relative to the proposed success criteria. The proposed inspections and monitoring shall include an inspection and monitoring schedule and shall include methods for making and documenting site observations and taking photographs at established photo points as depicted on site maps/figures.
- i. During implementation of the site cleanup activities in the CRMP, the inspections and monitoring shall be documented in monthly activity reports and certified as described in Item 3 under General Requirements and Notices below.
  - ii. Following the completion of the site restoration in the CRMP, the inspections and monitoring shall include at a minimum site inspections to be conducted once at the end of the operational year in October, prior to rain events, to identify if any erosion controls or measures are necessary to control sediment discharge, once during the winter period (December – March following a rain event of 2 inches or greater in 24 hours) in order to assess performance of drainage and erosion control measures, and once during the summer period (June-September) in order to assess the success and performance of the revegetation efforts. Results of the post completion inspections and monitoring shall be documented in an annual report described in Item 5 below and shall include, at a minimum, inspection summary notes or a checklist, photo points of areas restored, a description of any locations where restoration or cleanup work is failing and/or needs to be repaired to control or prevent transport of pollutants to receiving waters, and a description of actions taken to repair the failing locations identified and the success of the repairs.
6. **Upon Executive Officer approval of the required plans and reports**, begin implementation of the approved CRMP.
  7. **Submit monthly activity reports 32 days from the date of this Order** through completion of restoration and cleanup work. Include a description of activities associated with the CRMP development and a discussion of permits applied for and their status.
  8. **By October 15, 2019**, the Discharger shall complete all site restoration pursuant to the CRMP and begin monitoring.
  9. **By December 15, 2018**, submit a Cleanup and Restoration **Summary Report** for the CRMP work conducted in the 2018 work season including an as-built report signed and stamped by an appropriately licensed professional. The Summary Report shall accurately depict and document all cleanup, restoration, and mitigation measures and shall include a certification that the required CRMP has been implemented as described

and designed. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.

**10. By December 15, 2019**, submit a Cleanup and Restoration **Completion Report** for the CRMP work conducted in the 2018 and 2019 work season(s) including an as-built report signed and stamped by an appropriately licensed professional. The Completion Report shall accurately depict and document all cleanup, restoration, and mitigation measures and shall include a certification that the required CRMP scope of work has been implemented as described and designed. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.

**11. Beginning May 1, 2019 and annually thereafter on May 1**, submit a **Post Construction Annual Monitoring Report**. The Annual Monitoring Report will reflect the results of biannual monitoring per Item 5. E and 5. H. i. and 5. H. ii above. The monitoring shall continue for at least five years or until the Executive Officer approves a request to discontinue monitoring. Such a request may be submitted when the revegetation requirement in 5. E., above has been met, and shall include supporting information to demonstrate successful revegetation. The Executive Officer will also consider requests to reduce the scope of monitoring over time as restored areas recover and are demonstrated to no longer pose a threat to water quality.

### **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 appropriately qualified/licensed professionals as otherwise required by law must implement the required activities.
- 2. Waste Discharge Prohibitions and Controllable Factors :** All work conducted pursuant to this Order, including cleanup, restoration, mitigation and monitoring activities shall be in conformance with the Basin Plan water quality objectives and action plans, including the Action Plan for Logging, Construction and Associated Activities (Action Plan) discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan) and the "controllable water quality factors" provision (Page 3-1.00 of the 2011 Basin Plan):

Action Plan 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."

Action Plan 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."

Controllable Water Quality Factors Provision - "Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled."

- 3. 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 or 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. 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."*

- 4. Notice of Onsite Work:** The Discharger or his 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 Discharger may contact the Regional Water Board or contact Stormer Feiler at (707) 543-7128 or via email at [Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov).
- 5. 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.
- 6. Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted to Joshua Curtis, the Assistant Executive Officer, and Stormer Feiler, Environmental Scientist, either by email or mail:

Assistant Executive Officer – Joshua Curtis  
[Joshua.Curtis@waterboards.ca.gov](mailto:Joshua.Curtis@waterboards.ca.gov)

Stormer Feiler, Environmental Scientist  
[Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov)

By email to: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov)

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

- 7. 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; and/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 constituted a violation of the FGC section 1602.
- 8. Cost Recovery:** Pursuant to Water Code section 13304, the State or Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste or other remedial action, required by this Order.
- 9. Delayed Compliance:** If, for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.
- 10. 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 the Regional Board may issue a complaint for administrative civil liability. Failure to comply with this Order may result in additional enforcement actions, including but not limited to, assessment of administrative civil liabilities for discharge violations and violations of Order directives up to \$10,000 per violation per day and 10.00 per gallon of waste discharged, pursuant to 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 Executive Officer of 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/](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.

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Matthias St. John  
Executive Officer

DATE