

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2019-0025

For

Richard Davis-Lowell, Tr., William J. Lowell Tr., and William J. Lowell Tr., et al  
Assessor Parcel Numbers 107-090-002-000 and 107-090-007-000  
Sonoma County

This Order is issued to Richard Davis-Lowell, Tr., William J. Lowell, Tr., and William J. Lowell Tr., et al (hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

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

1. **Site Conditions:** Austin Creek is a water of the state and a water of the United States (references hereafter to waters of the United States are also waters of the state).<sup>1</sup> The Dischargers have caused or allowed the discharge and threatened discharge of waste into Austin Creek through the unmitigated installation of rock and mixed size aggregate within waters of the state for bank stabilization. The receiving waters are located at 19779 & 20675 King Ridge Road, in Cazadero, California. The Dischargers' activities resulting in the discharge were conducted in violation of conditions of a September 22, 2016, Clean Water Act Section 401 Water Quality Certification (401 Certification).

**Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharging rock and mixed size aggregate into Austin Creek and to eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

2. **Responsible Parties:** The Dischargers are the property owners, operators, or both the property owners and operators and the person(s) discharging or creating a threat of discharge. They have the legal ability to control the activities on the property that resulted in the discharge, threat of discharge, or both discharge and threat of discharge and are

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<sup>1</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 water 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 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 Water Quality Control Act.

therefore responsible parties for purposes of this Order. This Order finds that Richard Davis-Lowell, Tr., William J. Lowell, Tr., and William J. Lowell Tr., et al are the responsible parties:

- a. Per records from the Sonoma County Assessor-Recorder's Office, Lowell William J TR & Davis Richard T TR owns approximately 0.253 acres, identified as Assessor Parcel Number (APN) 107-090-002-000 and Lowell William James TR et al owns approximately 0.224 acres, identified as Assessor Parcel Number (APN) 107-090-007-000 (hereafter Property).
  - b. Richard Davis-Lowell (also known as/nee Richard Thomas Davis) identified himself as the Applicant and homeowner for the purposes of an application for 401 Certification for the project described further below.
  - c. The Regional Board reserves the right to amend this Order to add additional responsible parties if those parties are identified.
3. **Property Location and Description:** The Property is in Sonoma County at 19779 & 20675 King Ridge Road, Cazadero. It consists of two parcels. Each parcel has residential structure along the bank of Austin Creek. The Dischargers, their agents, or both the Dischargers and their agents placed rock and mixed size aggregate along the bank and in the channel of Austin Creek below the residential structures in the vicinity of latitude 38.560769°N and longitude 123.102602°W.
4. **Property History:** The Regional Water Board issued Richard Thomas Davis a 401 Certification on September 22, 2016. The Regional Water Board first encountered the Property and exercised regulatory oversight when the Discharger applied for the 401 Certification. The Discharger subsequently perpetrated several violations of the 401 Certification. The Regional Water Board issued Mr. Davis a Notice of Violation on July 19, 2018.
5. **Factual Basis of Order:** The Dischargers' activities, the conditions staff observed at the Property on May 10, 2018, or both the Dischargers' activities and the conditions staff observed at the Property on May 10, 2018, created, threaten to create, or both created or threaten to create, conditions of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.
- a. Austin Creek is a tributary to the lower Russian River (Hydrologic Sub-Area 114.12). The Russian River is listed as impaired under section 303(d) of the Clean Water Act for sedimentation/siltation and temperature. Austin Creek is designated critical habitat to federally endangered Central California Coast coho salmon (*Oncorhynchus kisutch*) and federally threatened Central California Coast steelhead (*O. mykiss*) and Central California Coast Chinook salmon (*O. tshawytscha*).
  - b. On September 22, 2016, Regional Water Board staff issued the 401 Certification to Richard Thomas Davis for his King Ridge Road Bank Stabilization project (Project). The proposed Project consisted of placing rock rip rap, live plant poles and planting tubes through the rip rap, and top of bank plantings along a 60-foot and a 14-foot section of eroding bank along the east side of Austin Creek immediately downslope of a residence. No rip rap would be placed into the watercourse channel. Between

- the two sections would be an approximately 50-foot section of stream bank that would not be altered. A 196-square-foot area above the 14-foot section of bank would be planted with native tree species. Heavy equipment would have accessed the work site by traversing a slope through the northern part of the property. The Project would have been self-mitigating “due to the incorporation of bioengineering practices,” and required no compensatory mitigation for temporal or permanent impacts to stream/riparian function and value.
- c. On May 10, 2018, in response to a termination request received from the Discharger, staff inspected the Property and observed that the completed Project and associated site disturbance was significantly different from that authorized through the 401 Certification. Specifically, staff observed:
- rock and mixed size aggregate placed included smaller-diameter material unsuitable for rip rap and susceptible to erosion and delivery into Austin Creek; staff observed smaller-diameter material that had migrated downslope to the watercourse, into the watercourse, or into and to the watercourse.
  - rock and mixed size aggregate placed in a section approximately 50-feet long in between the 14 and 60-foot sections authorized for rip rap placement.
  - a heavy equipment access route at a location other than that authorized under the 401 Certification and still in place, causing continuing impacts to riparian function and value.
  - the Project area was devoid of vegetation.
  - the few planting tubes placed in the Project area were incorrectly installed and embedded in rock where plants would be unable to establish, thrive, or both establish and thrive.
  - the toe of the rock and mixed size aggregate extended 3-6 feet into the watercourse channel.
- d. On July 19, 2018, the Regional Water Board issued a Notice of Violation and Request for Technical Information to Mr. Davis-Lowell, requiring him to provide a narrative description of the built project; a report evaluating the pre-project site conditions, approved project, and built project; and a discussion of mitigation concepts.
- e. On October 10, 2018, Mr. Davis-Lowell provided information responding to the July 19, 2018, request for technical information. The response included narrative information from environmental consultant, Lucy Macmillan, and technical information from Adobe Associates, Inc. and RGH Consultants. The information provided demonstrated the extent and composition of the unauthorized fill.
6. **Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference plans and policies adopted by the State Water Resources Control Board (State Water Board).
- a. Beneficial uses of any specifically identified water body generally apply to all its tributaries. The existing and potential beneficial uses of waters of the North Coast Region are outlined in Table 2-1 of the Basin Plan. Austin Creek is a tributary of the Russian River. The Austin Creek Hydrologic Subarea, which encompasses Austin

- Creek, is in the Russian River Hydrologic Unit. Existing and potential beneficial uses for the Austin Creek Hydrologic Subarea of the Russian River Hydrologic Unit include the following: Agricultural Supply (AGR), Aquaculture (AQUA), Cold Freshwater Habitat (COLD), Commercial and Sport Fishing (COMM), Groundwater Recharge (GWR), Industrial Service Supply (IND), Migration of Aquatic Organisms (MIGR), Municipal and Domestic Supply (MUN), Navigation (NAV), Hydropower Generation (POW), Industrial Process Supply (PRO), Water Contact Recreation (REC-1), Non-Contact Water Recreation (REC-2), Spawning, Reproduction, and/or Early Development (SPWN), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE).
- b. The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):
- i. Prohibition 1 – “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”
  - ii. Prohibition 2 – “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
- c. Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives considered particularly important for protecting beneficial uses from unreasonable effects of waste discharges from land development include the following:
- i. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
  - ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
  - iii. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
  - iv. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”

- v. **Temperature:** “Temperature objectives for COLD interstate waters, WARM interstate waters, and Enclosed Bays and Estuaries are as specified in the ‘Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays of California’ including any revisions thereto...In addition, the following temperature objectives apply to surface waters: 1. The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses. 2. At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature. 3. At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature.”

7. **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 Sediment TMDL Implementation Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

To address sources of elevated water temperature, reduce impairments to waters of the state, and prevent further impairment, the Regional Water Board adopted the *Policy for Implementation of the Water Quality Objective for Temperature in the North Coast Region* (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the Temperature Implementation Policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provides shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.

8. **State Water Board Resolutions and Orders:** State Water Board Resolution 92-49 sets forth the policies and procedures used during an investigation and cleanup of a polluted site and requires cleanup levels 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 reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review

for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup. Additionally, Executive Order W-59-93, also referred to as the “No Net Loss Policy” and incorporated into the Basin Plan, acknowledges the environmental and economic benefits of wetlands to the people of this state and identifies three primary objectives, including protection against net loss and an aim for long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California.

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

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

“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.

“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. Rock, mixed size aggregate, and sediment, when discharged to waters of the state, is a “waste” as defined in Water Code section 13050. The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to Austin Creek, a tributary of the Russian River, which is considered a water of the state
- ii. Rock, mixed size aggregate, and sediment on property owned and/or used by the Discharger has discharged, and still has the potential to discharge, sediment and other waste into Austin Creek and its tributaries in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan, and creates or threatens to create a condition of pollution subject to this Order in accordance with Water Code section 13304.

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

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

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

10. **Cleanup and Abatement Action Necessary:** Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized

discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

11. **Technical Reports Required:** Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and ensure 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 regarding the need for remedial action and reports and identify the evidence supporting the requirement to implement cleanup and abatement activities and submit the reports. The Discharger named in this Order owns, operates, or owns and operates the Property from which waste was discharged, and thus is appropriately responsible for providing the reports.
12. **Electronic Reporting Requirements:** To effectively carry out the state's No Net Loss Policy, the State must closely track both aquatic habitat losses and mitigation/restoration project success. Therefore, we require that the Dischargers provide project information related to impacts and mitigation/restoration measures to EcoAtlas using the Project Tracker website, <http://ptrack.ecoatlas.org>. Instructions and how to request a user name and password can also be found at the Project Tracker website. More information about EcoAtlas can be found at: [www.ecoatlas.org](http://www.ecoatlas.org).
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 at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment, is an activity that cannot possibly have a significant effect on the environment, or will not cause a direct or indirect physical change in the environment and 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 insufficient information concerning the Discharger's proposed cleanup, abatement or restoration activities and possible associated environmental impacts. This Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15304. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Discharger will bear the costs,

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

### REQUIRED ACTIONS

**IT IS HEREBY ORDERED** that, pursuant to Water Code sections 13267 and 13304, that the Discharger shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. **Within 90 days from issuance of this Order**, the Discharger shall submit to the Regional Water Board a **Restoration, Mitigation, and Monitoring Plan** (hereafter "RMMP") acceptable to the Regional Water Board or its delegated officer. The RMMP shall include but not be limited to:
  - a. A plan for:
    - Removal of all material placed along the bank and within Austin Creek as part of the built Project.
    - Removal of access route that is at or near the top of the bank that should be replanted as part of the riparian zone.
    - Restoration, to pre-project conditions, of the impacted stream channel and those portions of the stream bank impacted between and beyond the approved 60-foot and 14-foot sections of eroding bank approved for stabilization in the September 22, 2016, 401 Certification.
    - Implementation of the approved bank stabilization project or an alternative or modified bank stabilization project for stabilization of the 60-foot and 14-foot sections of eroding bank.
  - b. A proposal to provide compensatory mitigation to compensate for any temporal impacts, permanent impacts, or temporal and permanent impacts to wetlands and other waters of the state that resulted from unauthorized activities on the Property. The proposal shall identify the mitigation ratio as determined using the U.S. Army Corps of Engineers, South Pacific Division, 12501-SPD Regulatory Program Standard Operating Procedure for Determination of Mitigation Ratios. The proposal shall:
    - (1) describe existing site conditions at the proposed mitigation site; (2) describe implementation methods used to provide compensatory mitigation; (3) include monitoring that will be implemented and performance criteria that will be used to evaluate the success of the compensatory mitigation; and (4) include an implementation schedule.
  - c. Best management practices applied to all current and planned work associated with construction activities on the Property impacting, or having the potential to impact, Austin Creek. The RMMP must incorporate use of appropriate native or endemic species in any re-vegetation efforts;

- d. 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. **Prior to October 15, 2019**, after approval of the RMMP by the Regional Water Board or its delegated officer, the Discharger shall completely implement site restoration and implementation of the mitigation project(s).
3. **Within 30 days of completion of the restoration and mitigation work**, submit a **Completion Report** for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built of all completed restoration construction and abatement measures included in the approved RMMP to restore Austin Creek and to demonstrate the RMMP has been fully implemented. This report shall also include pre-construction and post-construction photographs taken at each photo point, as depicted on-site maps and figures.
4. Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by **January 31** of each year for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the RMMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, and a description of any locations where restoration is failing or needs to be corrected to achieve the success criteria.

### GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities.

The Discharger shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.

2. **Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or by 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 or she will implement the recommendations, proposals, or recommendations and proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

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

3. **Notice of Onsite Work:** The Discharger, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Discharger may contact the Regional Water Board at the general phone line at (707) 576-2220.
4. **Notice of Change in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
5. **Reasonable Access:** The Discharger shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Submissions:** Within 14 days from RMMP approval, the Discharger is required to upload the RMMP and complete all information fields required by EcoAtlas, including a map (either using upload or draw polygon features) to the following website: <http://ptrack.ecoatlas.org/>. All monitoring reports associated with the restoration and mitigation shall be uploaded on EcoAtlas (using the "Files and Links" tab under "Projects" in EcoAtlas) or submitted as specified in Provision 7, below, by January 31 of each year for 5 years.

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

- a. Assistant Executive Officer – Joshua Curtis  
[Joshua.Curtis@waterboards.ca.gov](mailto:Joshua.Curtis@waterboards.ca.gov)
  - b. Kaete King, Environmental Scientist  
[Kaete.King@waterboards.ca.gov](mailto:Kaete.King@waterboards.ca.gov)
  - c. By email to: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) (preferred)  
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; 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.
8. **Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee, supervise, or oversee and supervise the cleanup of such waste or of other restoration action required by this Order. The Discharger shall enroll in the State Water Board's Cost Recovery Program managed by the State Water Board for the discharges addressed by this Order and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board pursuant to the procedures established in that program.
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 Assistant Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer.
10. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, the Regional Water Board may pursue any available remedy, including, but not limited to, referral to the Attorney General for judicial enforcement or issuing a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability, pursuant to California Water Code sections 13268, 13350, or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, enforcement 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 or its delegated officer 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 no later than 5:00 pm 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request or 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/)

This Order is effective upon the date of signature.

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Matthias St. John,  
Executive Officer

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