

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

NORTH COAST REGION

Cleanup and Abatement and 13267 Order No. R1-2019-0045

for

Hugh Reimers and Krasilisa Pacific Farms LLC

Assessor Parcel Numbers 115-200-002-000, 115-210-002-000, 116-240-006-000, 117-260-002-000, 117-260-001-000, 117-270-002-000, 117-270-003-000, 117-270-006-000

Sonoma County

This Order is issued to Hugh Reimers and Krasilisa Pacific Farms LLC (hereafter collectively 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.

Findings

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

1. **Site Conditions:** Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, and their unnamed tributaries, are waters of the state, as well as waters of the United States (references hereafter to waters of the United States are also waters of the state).¹ The Dischargers have caused or allowed the discharge and threatened discharge of waste to receiving waters through site development, including clearing, grading, and deep ripping, without adequate drainage,

¹ The Regional Water Board administers and enforces the federal 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.

erosion, or sediment control features. The Dischargers' activities resulting in the discharge were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of unauthorized excavation and fill of surface waters and of discharging waste earthen material into Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, tributaries thereto, 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.
3. **Responsible Parties:** The Dischargers, as the property owners and/or operators and the persons and/or entities responsible for causing the discharge of waste or creating a threat of discharge, with the legal ability to control the activities on the property that resulted in the discharge and/or threat of discharge, are responsible parties for purposes of this Order. This Order finds that Hugh Reimers and Krasilsa Pacific Farms LLC are the responsible parties and are jointly and severally liable:
 - a. Information available from Sonoma County accessed by Regional Water Board staff via Digital Map Products' Land Vision service shows that approximately 2,278 acres, identified as Sonoma County Assessor's Parcel Numbers (APNs) 115-200-002-000, 115-210-002-000, 116-240-006-000, 117-260-002-000, 117-260-001-000, 117-270-002-000, 117-270-003-000, 117-270-006-000 (hereafter Property) were transferred by Hilary Farms Limited Partnership to Krasilsa Pacific Farms LLC on September 15, 2017.
 - b. Information available from the California Secretary of State accessed by Regional Water Board staff via the Secretary of State's website shows that the most recent Statement of Information for Krasilsa Pacific Farms LLC filed with the California Secretary of State on March 28, 2018, lists Hugh Reimers as the manager of and agent for service of process for Krasilsa Pacific Farms LLC, with a principal office address of 7030 Faught Road, Santa Rosa, CA, 95403.
 - c. Per records from the Sonoma County, as presented in Digital Map Products' Land Vision service, Krasilsa Pacific Farms LLC owned the

Property when Regional Water Board staff inspected the Property on January 14, 2019, and all times relevant herein.

- d. During the January 14, 2019, inspection of the Property, Hugh Reimers reported that he had directed his agent(s) to perform the land development on the Property.
 - e. 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 the mountains 2.5 miles east of Cloverdale along Shellenger Road, in Sonoma County. Riparian tree removal, grading, ripping and fill activities occurred in and adjacent to tributaries to Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, in the vicinity of latitude 38° 48' N and longitude 122° 58' W.
 5. **Property History:** The Property has no prior regulatory oversight or history with the Regional Water Board.
 6. **Factual Basis of Order:** The Dischargers' activities and/or the conditions observed at the Property, as documented in the Regional Water Board Notice of Violation (Attachment 1) and inspection report (Attachment 2), and as detailed below, have caused or permitted to cause and threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into unnamed tributaries to Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, and created and/or threaten to create a condition of pollution by unreasonably impacting water quality and beneficial uses.
 - a. **Receiving Waters:** Little Sulphur Creek is a tributary to Big Sulphur Creek, which is in the Sulphur Creek Hydrologic Subarea. Both Big Sulphur Creek and Crocker Creek, which is in the Geyserville Hydrologic Subarea, are tributary to the Russian River in the Middle Russian River Hydrologic Area. Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, tributaries thereto, and the Russian River are waters of the state, as well as waters of the United States. The Big Sulphur Creek and Crocker Creek Hydrologic Subareas are Clean Water Act section 303(d)-listed as impaired due to sediment/siltation and high-water temperature.
 - b. **Observations:** On January 14, 2019, staff of the Regional Water Board, and Sonoma County Agricultural Commissioner's office inspected the subject Property. The attached Notice of Violation (Attachment 1) and inspection report (Attachment 2) document and discuss the water quality concerns and violations that staff observed on the Property.

7. **Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:**

The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the State Water Board.

- a. **Beneficial Uses:** Existing and potential beneficial uses for the Russian River, specifically Sulphur Creek Hydrologic Sub Area include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge (GWR); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare Threatened or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). The Geyserville Hydrologic Sub Area has the same beneficial uses with the addition of FRSH and SHELL. Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
- b. **Basin Plan Prohibitions:** 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. **Basin Plan Objectives:** 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 activities include the following:

- i. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - iii. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - iv. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”
8. **Regional Water Board Resolutions:** 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. To address sources of elevated water temperature to reduce impairments to waters of the state and prevent further impairment, the Regional Water Board adopted the Policy for Implementation of the Water Quality Objective for Temperature in the North Coast Region (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provides shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.

9. **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 68-16). Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.
10. **Failure to Obtain Necessary Permits:** Regional Water Board staff has reviewed available records and determined that grading, clearing, road construction, and dredge and/or fill within waters of the state have occurred at the Property without necessary regulatory coverage, including Clean Water Act section 401 Water Quality Certification from the Regional Water Board.
11. **Legal Authority to Require Cleanup and Abatement:** Water Code section 13304, subdivision (a) states, in relevant part:

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

- a. **Waste:** "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.

- b. **Sediment and Organic Debris (Slash):** Both sediment and organic material, when discharged to waters of the state, are “wastes” as defined in Water Code section 13050. The Dischargers caused or permitted waste to be discharged or deposited where it is, will be, or has the potential to be, discharged to tributaries of Little Sulphur Creek, Big Sulphur Creek, Crocker Creek, and subsequently the Russian River and the Pacific Ocean, which are considered waters of the state, and waters of the United States.
- c. **Pollution:** “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 land clearing, deep ripping, and grading by or directed by the Dischargers, has discharged, and still has the potential to discharge, sediment and other waste into Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek 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. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).

- iii. The discharge of organic and earthen material in the Russian River watershed 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 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 (Beneficial Uses impacted: SPWN and MIGR).
- iv. 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).

- d. **Nuisance:** "Nuisance" is defined by Water Code section 13050, subdivision (m) as anything that meets all of the following requirements: (1) is injurious to health, indecent or offensive to the senses, or is an

obstruction to the free use of property, such that it interferes with the comfortable enjoyment of life or property; (2) affects, at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage may vary between individuals; and (3) occurs during, or as a result of, the treatment or disposal of wastes.

- i. An increase in sedimentation, turbidity, and excess nutrients has the potential to affect a considerable number of persons by impacting the taste and odor of water supplied to the community, by resulting in flooding, and/or by producing toxic algal blooms that can raise costs for water treatment plants and contribute to harmful byproducts when treated. Sediment discharges from the Property are a potential nuisance if the threats to water quality documented on the Property and discussed herein are not addressed.

12. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

13. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and to ensure that cleanup complies with Basin Plan requirements and State Water Board Resolution 92-49. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers 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 Dischargers named in this Order own and/or operate the Property from which waste was discharged, and thus are 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 and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The 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 that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall submit technical and monitoring reports described below, 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. Submit an Interim Plan:** Within 30 days of the effective date of this Order, the Dischargers shall submit an Interim Cleanup and Stabilization Plan (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of cleanup and stabilization measures necessary to clean up wastes, and to prevent further erosion and discharge of sediment to Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, and their unnamed tributaries during the

2019/2020 wet weather period. The Interim Plan shall include, but not be limited to, the following:

- a. Measures to prevent and minimize sediment discharges to waters of the state.
 - b. Implementation schedule.
 - c. Monitoring and reporting plan.
2. **Submit a timeline of land disturbance:** Within 30 days of the effective date of this Order, the Dischargers shall submit a timeline describing the approximate dates that each stage of land disturbance activities began (e.g. the initiation dates of clearing/grubbing, mass grading, etc.) and information about the individuals and/or companies that conducted the work.
3. **Complete Interim Plan:** By October 15, 2019, the Dischargers shall have completed the work specified in the approved Interim Plan, cleaning up and stabilizing the Property for the 2019-2020 winter wet-weather period.
4. **Submit report of completion of the Interim Plan:** Within 30 days from completion of the Interim Plan, the Discharger shall provide a report of completion of the Interim Plan to the Regional Water Board for approval. This report shall include a summary and photographs of the completed cleanup and stabilization measures.
5. **Submit a Restoration Mitigation and Monitoring Plan:** By April 15, 2020, the Dischargers shall submit to the Regional Water Board a proposed Restoration Mitigation and Monitoring Plan (RMMP) acceptable to the Regional Water Board or its delegated officer. The RMMP shall include but not be limited to:
 - a. An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, rivers, streams, seeps, springs, bogs, and wetlands, caused by the unauthorized activities, including all areas that have been developed or disturbed; and identify controllable sediment sources requiring restoration. The assessment shall be completed by an appropriately qualified professional, and must at a minimum address surface water hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, encroaching reservoirs, active or potential erosion and sedimentation sites, stability of graded and disturbed features, culverts, and other stream crossings, as well as roads and all disturbed areas on the Property. The assessment shall include aerial photographs and/or satellite images, photographs,

wetland delineation reports², topographic maps, or drawings, etc., of Property conditions prior to and after conducting the unauthorized activities, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, all waters of the state and waters of the United States, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings before and after the unauthorized activities shall serve as the basis for the RMMP;

- b. A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted by the unauthorized activities, including Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, and their unnamed tributaries, and any springs, seeps, bogs, or wetlands;
- c. A proposal to provide mitigation to compensate for any temporal and/or permanent impacts to wetlands and other waters of the state that resulted from unauthorized activities on the Property. Compensatory mitigation shall comply with the state's No Net Loss Policy. The proposal shall: (1) describe existing site conditions at the proposed mitigation site; (2) describe implementation methods used to provide compensatory mitigation; (3) include monitoring that will be conducted and performance criteria that will be used to evaluate the success of the compensatory mitigation; and (4) include an implementation schedule;
- d. Best management practices to be applied to all current and planned work associated with construction activities on the Property impacting, or having the potential to impact, Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, and their unnamed tributaries. The RMMP shall contain, at a minimum, design specifications for roads, any water crossing, in-stream structure and for riparian and aquatic habitat restoration, surface drainage controls, erosion and sedimentation controls, an implementation schedule, a monitoring and reporting plan, and success criteria for restoration and compensatory mitigation;
- e. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary and, detailed project milestones to fulfill the requirements of

² A wetland delineation acceptable to the Executive Officer that is developed by a professional wetland specialist with experience in wetland delineation; pursuant to the methodology described in the US Army Corps of Engineers Wetlands Research Program Technical Report Y-87-1, Section F. Atypical situations (pages 73-83).

this Order once those permits are obtained and a deadline for having fully implemented and completed the RMMP.

6. **Implement the RMMP:** No more than 30 days after approval of the RMMP by the Regional Water Board or its delegated officer, the Dischargers shall implement the RMMP.
7. **Modifications to the approved RMMP:** The Dischargers shall notify and provide rationale to the Regional Water Board staff and obtain approval at least 60 days prior to making any modifications to the approved RMMP.
8. **Monthly Progress Reports:** Submit monthly progress reports beginning the first day of the month following implementation start date of the RMMP, through completion of cleanup, stabilization, restoration, and mitigation work. Include photographs at each photo monitoring point, as depicted on site maps/figures.
9. **Complete the RMMP:** By the deadline in the approved RMMP or October 15, 2020, whichever day is sooner, the Dischargers shall fully implement and complete the RMMP.
10. **Completion Report for the RMMP:** No more than **60 days** after fully completing the RMMP, the Dischargers shall submit a Completion Report for the RMMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built designs of all completed restoration construction and/or abatement measures included in the approved RMMP to restore Little Sulphur Creek, Big Sulphur Creek, and Crocker Creek, and their unnamed tributaries to demonstrate the RMMP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.
11. **Annual Monitoring Reports:** Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by January 31 of each year for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the RMMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether they 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.”
3. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Brian Fuller at (707) 576-2806.
4. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

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

By email (preferred) to:

Brian Fuller, Engineering Geologist
Brian.Fuller@waterboards.ca.gov

And to:

NorthCoast@waterboards.ca.gov

Or by mail to: NCRWQCB, Attn: Brian Fuller, 5550 Skylane Blvd, Suite A, Santa Rosa, CA 95403

6. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: (1) substantially diverting or obstructing the natural flow of a river, stream, or lake; (2) substantially changing the bed, channel, or bank of a river, stream, or lake; (3) using any material from the bed, channel, or bank of a river, stream, or lake; or (4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
7. **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 Regional Water Board or its delegated 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 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 Dischargers and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.
8. **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 of up to \$10,000 per violation per day, and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code

section 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.

9. **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.
10. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
11. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional 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: [Link to Water Quality Petitions web page \(http://www.waterboards.ca.gov/public_notices/petitions/water_quality\)](http://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

Attachments:

1. June 6, 2019, Notice of Violation.
2. Water Quality Report of January 14, 2019, Inspection.