

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

NORTH COAST REGION

Cleanup and Abatement Order No. R1-2021-0023

for

**Reservation Ranch, a General Partnership, Robert L. Westbrook Jr., and
Steven B. Westbrook**

**Assessor Parcel Numbers 102-010-049-000, 102-010-050-000, 102-020-040-000,
103-010-001-000, 103-010-002-000, 103-010-012-000, 103-020-056-000, and
103-020-074-000**

Del Norte County

This Order is issued to Reservation Ranch, a general partnership co-owned by the Robert L. Westbrook Grantor Trust (99%) and Steven B. Westbrook (1%); Robert L. Westbrook Jr., as trustee of the Robert L. Westbrook Grantor Trust; and Steven B. Westbrook, as general partner and operator of Reservation Ranch (collectively, Dischargers), based on provisions of California Water Code (Water Code) sections 13304 and 13267, which authorize the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and 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:** Islas Slough, Main Fork of Tillas Slough, East Fork of Tillas Slough, and West Fork of Tillas Slough,¹ are waters of the state and

¹ For purposes of this Order, "Main Fork of Tillas Slough" refers to the water body segment between the confluence of Tillas Slough and the Smith River, at approximate latitude/longitude 41.938600, -124.196262, and the confluence of the East and West Fork of Tillas Slough, at approximate latitude/longitude 41.933966, -124.192388. "East Fork of Tillas Slough" refers to the water body segment between the confluence of the East and West Fork of Tillas Slough at the downstream extent, and terminating upstream at approximate latitude/longitude 41.919965, -124.177942. "West Fork of Tillas Slough" refers to the water body segment between the confluence of the East and West Fork of Tillas Slough at the downstream extent, and terminating upstream at approximate latitude/longitude 41.922972, -124.187032.

waters of the United States² (U.S.), and tributaries to the Smith River, that flow through a dairy and agricultural land located at 370 Sarina Road, Smith River, Del Norte County, Assessor's Parcel Numbers (APNs) 102-010-049-000, 102-010-050-000, 102-020-040-000, 103-010-001-000, 103-010-002-000, 103-010-012-000, 103-020-056-000 and 103-020-074-000 ("Property"³). The Dischargers' dumping of cow manure and organic material and discharge of fresh water in an estuarine slough on the Property are discharges of waste to waters of the state in violation of a waste discharge requirement or prohibition issued by the Regional Water Board.

2. **Purpose of the Order:** This Order requires the Dischargers to:
- a. Clean up and abate the effects of unauthorized fill to Islas Slough.
 - b. Abate the discharge of fresh water in the East Fork of Tillas Slough.
 - c. Abate the effects of unauthorized fill to the Main, West, and East Forks of Tillas Slough.
 - d. Clean up and properly dispose of solid waste stored on APN 103-010-001-000.

Investigation and cleanup actions required under this Order shall comply with the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), the 2018 Water Quality Control Plan for the North Coast Region (Basin Plan) and any amendments thereto, 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 any other applicable State and Regional Water Board plans, policies, and regulations.

² The Regional Water Board administers and enforces the federal Water Pollution Control Act (Clean Water Act). The Clean Water Act regulates discharges of pollutants into "waters of the United States," which include all traditionally navigable waters and their tributaries. (40 C.F.R. §§ 120.2, 122.2.) The Porter-Cologne Water Quality Control Act also authorizes the Regional Water Board to regulate discharges of waste into "waters of the state." (Wat. Code, § 13260.) "Waters of the state" means "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.

³ The APNs that make up the "Property" are all owned by Reservation Ranch. Reservation Ranch also leases the following APNs in Del Norte County: 102-020-039, 103-020-066, 103-020-067. (See Reservation Ranch's Notice of Intent for coverage under R1-2019-0001.)

3. **DISCHARGERS:** Each of the persons to whom this Order is issued is a Discharger with joint and several liability⁴ for the following reasons:
- a. Reservation Ranch, a general partnership, owns the Property. All general partners (or co-owners) of Reservation Ranch are jointly and severally liable for Reservation Ranch's liabilities.⁵
 - b. The general partners (or co-owners) of Reservation Ranch are the Robert L. Westbrook Grantor Trust (99%) and Steven B. Westbrook (1%).
 - c. Robert L. Westbrook Jr. is trustee of the Robert L. Westbrook Grantor Trust, a general partner of Reservation Ranch.
 - d. Steven B. Westbrook is a general partner of Reservation Ranch, operates and/or manages the facility, and is the person responsible for causing the discharge and/or threatened discharge of waste to waters of the state.
 - e. The Dischargers have the legal ability to control the activities on the Property that caused the discharge and/or threatened discharge of waste to waters of the state.

The Regional Water Board reserves the right to amend this Order to add additional responsible parties when and/or if those parties are identified.

4. **Property Location and Description:** The Property is approximately 1,062 acres and located in the Smith River Plain hydrologic subarea of the Lower Smith River hydrologic area, and consists of low-elevation floodplain intersected at various locations by estuarine sloughs (i.e., Main, East, and West Forks of Tillas Slough, Islas Slough, and an unnamed tributary to the Smith River at approximate latitude/longitude 41.924013, -124.178531). The Property land use is agriculture and is primarily managed for cow grazing and irrigated dairy cow forage.

This Order mentions four water crossings located on Reservation Ranch:

- a. Crossing 1 is in the Main Fork of Tillas Slough at approximate latitude/longitude 41.935438, -124.195414.
- b. Crossing 2 is in the East Fork of Tillas Slough at approximate latitude/longitude 41.933503, -124.190800, approximately 1,000 feet downstream of Crossing 3.

⁴ The State Water Board has determined that liability under Water Code section 13304 is joint and several. (See State Water Board Order No. WQ-90-2.)

⁵ Corp. Code, § 16306

- c. Crossing 3 is in the East Fork of Tillas Slough at approximate latitude/longitude 41.932154, -124.187356.
 - d. Crossing 4 is a gravel low tide cattle crossing at approximate latitude/longitude 41.928754, -124.189099 in the West Fork of Tillas Slough.
5. **Regulatory History:** Reservation Ranch was enrolled under *Conditional Waiver of Waste Discharge Requirements, Order No. R1-2012-0003 for Existing Cow Dairies In the North Coast Region* (Conditional Waiver), between July 6, 2012 and December 31, 2019. On August 15, 2019, the Regional Water Board adopted General Waste Discharge Requirements for Dairies Within the North Coast Region, Order No. R1-2019-0001 (General WDR). The General WDR rescinded the Conditional Waiver except for enforcement purposes on December 31, 2019. On December 2, 2019, the Regional Water Board received a Notice of Intent enrolling Reservation Ranch for coverage under the General WDR. On March 2, 2020, Regional Water Board staff sent Mr. Westbrook a letter acknowledging enrollment of coverage under the General WDR for a maximum of 1,000 mature dairy animals.

On January 9, 2017, the Regional Water Board issued a Notice of Violation and Water Code section 13267 Order to Reservation Ranch (January 2017 Order). The January 2017 Order cited violations for and required reports detailing unauthorized waste discharges to Islas Slough, unpermitted dredging of the East Fork of Tillas Slough, and unauthorized storage of solid waste. Specifically, the January 2017 Order required Reservation Ranch to submit the following reports no later than April 6, 2017: a Wetlands and Waters Delineation and Hydrology Report to identify the existing and historical extent of waters of the U.S. in the vicinity of Islas Slough; a workplan to estimate the volume of non-native materials placed in Islas Slough; and a description and volume estimate of trash placed on APN 103-010-001-000.

On April 17, 2017, the Regional Water Board issued a second Notice of Violation to Reservation Ranch for failure to provide several reports required by the January 2017 Order, including a wetland and waters delineation and hydrology report; a workplan to estimate volume of non-native material volume and its placement history; an inventory and characterization of trash placement; a map showing the current and historical extent of animal carcass disposal; technical information on levee construction; and technical information on dredging in the East Fork of Tillas Slough.

On July 11, 2017, the Regional Water Board issued a third Notice of Violation to Reservation Ranch for failure to submit reports required by the January 2017 Order and failure to submit an adequate workplan to estimate the volume of non-native materials placed in Islas Slough. Staff had determined that the workplan was inadequate because Reservation Ranch did not provide sufficient detail

about the methodology proposed to be used to calculate non-native material volume as required by the January 2017 Order.

On August 11, 2017, the Regional Water Board conditionally approved the final workplan to estimate the volume of non-native materials placed in Islas Slough.

On March 8, 2018, the Regional Water Board issued a fourth Notice of Violation to Reservation Ranch for failure to provide the following reports required by the January 2017 Order: a jurisdictional wetland delineation; an inventory and characterization of trash volume, type, and placement timeline; a workplan to estimate volume of non-native material volume and its placement history; an inventory and characterization of trash placement; technical information on levee construction; and a technical information on dredging in the East Fork of Tillas Slough. In response, the Dischargers submitted the outstanding reports; the Regional Water Board received the final required report on March 14, 2018.

On December 11, 2018, the Regional Water Board issued a second Water Code section 13267 Order to Reservation Ranch (December 2018 Order). The December 2018 Order identified unpermitted slough crossings and unauthorized discharges of waste into state waters associated with the discharge and storage of fresh water in the East Fork of Tillas Slough. The December 2018 Order required Reservation Ranch to submit a Water Crossing Description Report; a Hydrology, Water Storage, and Pump Operations Report; and a Road Development Report, by April 10, 2019. Reservation Ranch provided all required reports on April 10, 2019.

6. **Factual Basis of Order:** The Dischargers' activities and/or the conditions observed at the Property that resulted in discharges and/or threatened discharges of waste into waters of the state were as follows:
 - a. On September 21, 2016, Regional Water Board staff inspected the Property and observed dirt, trash, and manure deposited within Islas Slough on and adjacent to APNs 103-010-001-000 and 103-010-002-000, in the vicinity of latitude/longitude 41.92, -124.196. Reservation Ranch's responses to the January 2017 Order confirmed the placement/discharge of dirt, trash, and manure into Islas Slough, filling approximately 1.61 acres of Islas Slough.
 - b. Reservation Ranch's response to the December 2018 Order explained that Reservation Ranch pumps fresh water from the Smith River via a 75-horsepower pump adjacent to the southern boundary of APN 103-020-074-000 at approximate latitude/longitude 41.913513, -124.171302, and discharges the water into a series of ditches on APNs 103-020-074-000 and 103-010-001-000. The fresh water is then pumped and discharged into the upstream end of the East Fork of Tillas Slough via three 60 horsepower pumps at two locations on APN 103-010-001-000 at

approximate latitudes/longitudes 41.919846, -124.178051, and 41.924059, -124.178583.

- c. The Dischargers have installed and/or maintained four crossings in waters of the U.S., in the Main, East, and West Forks of Tillas Slough.
 - d. The Dischargers have seasonally placed an 8-foot by 8-foot, one-inch thick metal plate to block tidal flow into the East Fork of Tillas Slough at the upstream end of the Crossing 3 culvert, at approximate latitude/longitude 41.933539, -124.190844.
 - e. A rock livestock crossing was placed in the West Fork of Tillas Slough at approximate latitude/longitude 41.928754, -124.189099.
 - f. The Dischargers have placed or piled solid waste consisting of furniture, construction debris, and other items along an approximately 465 linear-foot segment on APN 103-010-001-000, between approximate latitudes/longitudes 41.921305, -124.190496 and 41.920483, -124.189206.
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:** Beneficial uses of any specifically identified water body generally apply to all of its tributaries. Existing and potential beneficial uses for the Smith River, specifically the Smith River Plain Hydrologic Sub Area, include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Freshwater Replenishment (FRSH); Navigation (NAV); Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare Threatened or Endangered Species (RARE); Marine Habitat (MAR); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN), Estuarine Habitat (EST); Aquaculture (AQUA), Native American Culture (CUL), Flood Peak Attenuation/Flood Water Storage (FLD); Water Quality Enhancement (WQE); and Wetland Habitat (WET).
 - 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.

Basin Plan section 4.1.1.1.3 prohibits point source waste discharges in the Smith River and its tributaries.

Basin Plan section 4.2.1 prohibits waste discharges pertaining to logging, construction, and associated activities in the North Coast Region as follows:

- 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. **Conditional Waiver Prohibitions:** The Conditional Waiver included, in part, the following prohibitions:
 - i. The collection, treatment, storage, discharge, or disposal of wastes at an existing dairy that results in (1) discharge of waste constituents in a manner which could cause degradation of surface water or groundwater except as allowed by this Order, (2) contamination or pollution of surface water or groundwater, (3) a condition of nuisance (as defined by the California Water Code Section 13050), or (4) exceedance of groundwater and surface water quality objectives due to the discharge of manure, production area wash water, or dairy feeding and housing area wash water, is prohibited.
 - ii. The discharge of wastes not disclosed by the [d]ischarger, or not within the reasonable contemplation of the Regional Water Board, is prohibited.
 - iii. Discharges of manure, process water, or other wastes to surface waters or groundwater, or discharges that do not comply with the requirements in this Order are prohibited.
- d. **Basin Plan Objectives:** Chapter 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. Dissolved Oxygen: "[T]he dissolved oxygen concentration of enclosed bays and estuaries shall not be depressed to levels adversely affecting beneficial uses as a result of controllable water quality factors."
- 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. Temperature: "Temperature objectives for COLD 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:

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.

At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature."

8. **Regional Water Board Resolutions:** 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 and Executive Order:** State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution 68-16). Resolution 92-49 requires waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state, (2) not unreasonably affect present and anticipated beneficial use of such water, and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

Additionally, Executive Order W-59-93, also referred to as the “No Net Loss Policy,” which is 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.

10. **Failure to Obtain Necessary Permits:** Regional Water Board staff have reviewed available records and determined that the discharge of waste and dredge and/or fill within waters of the state has occurred at the Property without necessary regulatory coverage, including the following (the regulatory requirements discussed below that do not involve the Regional Water Board may also apply):
 - a. Clean Water Act section 404 permit from the Army Corps of Engineers and an associated Clean Water Act section 401 water quality certification from the Regional Water Board.

- b. NPDES permit for point source discharges of pollutants to surface waters from the Regional Water Board.
- c. California Department of Fish and Wildlife Streambed Alteration Agreement.
- d. California Coastal Commission Coastal Development Permit.
- e. Appropriative water rights permit from the California Department of Water Rights.

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 waste⁶ 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 pollution⁷ 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.

The Dischargers have discharged waste into waters of the state in violation of waste discharge requirements or prohibitions issued by the Regional Water Board, and/or have caused or permitted, cause or permit, or threaten to cause or permit, waste to be discharged to waters of the state and create, or threaten to create, a condition of pollution, as explained below.

⁶ “Waste” includes “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.” (Wat. Code, § 13050, subd. (d).)

⁷ “Pollution” means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either the waters for beneficial uses or facilities which serve these beneficial uses. (Wat. Code, § 13050, subd. (f).)

- a. According to Reservation Ranch's response to the January 2017 Order, approximately 1.61 acres of dirt, trash, and manure were discharged to Islas Slough below the estimated historical ordinary high-water mark.

Additionally, an unknown area of dirt, manure, and trash was also placed adjacent to and above the estimated ordinary high-water mark where it has the potential to discharge to Islas Slough. The discharges violate the following:

- i. Clean Water Act section 401 and/or Water Code section 13264 for discharges of fill material and/or waste to waters of the U.S. without filing a Report of Waste Discharge pursuant to Water Code section 13260;
- ii. Conditional Waiver Prohibitions for discharging wastes, including earthen material, manure, and trash; and
- iii. Basin Plan section 4.2.1, Prohibition 2 for placement of organic and earthen material at locations where it could pass into Islas Slough and the Smith River.

Additionally, the discharge of dirt, trash, and manure to Islas Slough has also created, or threatens to create, a condition of pollution through habitat displacement and alteration of the Islas Slough hydrologic regime. This condition of pollution directly impacts beneficial uses, including those that support wildlife habitat and aquatic species. Specifically, the impacted beneficial uses include RARE, MIGR, SPWN, COLD, EST, FLD, RARE, WET and WILD.

- b. According to Reservation Ranch's response to the December 2018 Order, Reservation Ranch discharges water stored in ditches to the East Fork of Tillas Slough (see Finding 6.b). These discharges violate the following:
 - i. Water Code section 13376 for discharges of pollutants to waters of the U.S. without filing a Report of Waste Discharge pursuant to Water Code section 13260; and
 - ii. The Basin Plan Prohibition for unpermitted point source discharges of wastes to the Smith River.

Water pumped from the Smith River and stored in ditches is subject to temperature and oxygen alterations and is exposed to potential waste inputs mobilized from and/or contained within irrigation and stormwater runoff. The discharge of stored ditch water to the East Fork of Tillas Slough, an estuarine slough, is a discharge and/or threatened discharge of waste into waters of the state that creates, or threatens to create, a

condition of pollution due to the stored ditch water's potential elevated temperature, depressed dissolved oxygen, pathogens, and altered salinity concentrations relative to the receiving water.

These conditions create and/or threaten to create a condition of pollution that directly impact beneficial uses, including SPWN, COLD, EST, RARE, WET and WILD.

- b. According to Reservation Ranch's response to the December 2018 Order, Crossing 2 was rebuilt in 1972 and consists of dirt, rock, and two 10-foot-diameter, 70-foot-long railroad tanker cars with both ends removed. Reservation Ranch's response to the December 2018 Order also notes that the rubber seals on the tide gates were replaced in the early 1980s. Replacement of the tide gate's rubber seals is a discharge of fill material to the Main Fork of Tillas Slough and violates the following:
 - i. Clean Water Act section 401 and/or Water Code section 13264 for discharges of fill material and/or waste to waters of the U.S. without filing a Report of Waste Discharge pursuant to Water Code section 13260.

Additionally, the presence of tide gates at Crossing 2 has the potential to block tidal flows within the East Fork of Tillas Slough, threatening to create a condition of pollution through habitat alteration, habitat displacement and alteration of the East Fork of Tillas Slough hydrologic regime. This condition of pollution may directly impact beneficial uses, including those that support wildlife habitat and aquatic species including, RARE, MIGR, SPWN, COLD, EST, RARE, WET, and WILD.

- e. According to Reservation Ranch's response to the December 2018 Order, Crossing 3 was rebuilt in 1972 and consists of dirt, rock, and one 8-foot-diameter, 38-foot-long railroad tanker car with both ends removed, serving as a culvert. Reservation Ranch's response to the December 2018 Order also notes that a metal frame is welded to the upstream end of the culvert to hold an 8-foot by 8-foot, 1-inch thick metal plate that is used to block tidal flow from the East Fork of Tillas Slough. Placement of the metal plate into the East Fork of Tillas Slough is a discharge of fill material, and violates the following:
 - i. Clean Water Act section 401 and/or Water Code section 13264 for discharge of fill material and/or waste to waters of the U.S. without filing a Report of Waste Discharge pursuant to Water Code section 13260.

Additionally, discharge of the metal plate to the East Fork of Tillas Slough has created a condition of pollution through habitat alteration, habitat

displacement and alteration of the East Fork of Tillas Slough hydrologic regime. This condition of pollution directly impacts beneficial uses, including those that support wildlife habitat and aquatic species (Beneficial Uses impacted include: RARE, MIGR, SPWN, COLD, EST, RARE, WET, and WILD).

- e. According to Reservation Ranch's response to the December 2018 Order, there is a rock livestock crossing in the West Fork of Tillas Slough at Crossing 4. Photographs included in the response to the December 2018 Order indicate that the crossing is maintained and confirm that the rock associated with this crossing is a waste and that it violates the following:
 - i. Clean Water Act section 401 for discharges of fill material to waters of the U.S. without filing a Report of Waste Discharge pursuant to Water Code section 13260.

Additionally, the discharge of rock to the West Fork of Tillas Slough has created, or threatens to create, a condition of pollution through habitat and hydrologic regime alteration. This condition of pollution directly impacts beneficial uses, including those that support wildlife habitat and aquatic species. Specially, the beneficial uses impacted include RARE, MIGR, SPWN, COLD, EST, RARE, WET, and WILD).

- f. According to Reservation Ranch's response to the January 2017 Order, the Dischargers placed solid waste along an approximately 465 linear-foot segment of roadway on the Property, violating Conditional Waiver Prohibitions for discharge of wastes, including trash.

Additionally, the solid waste/trash is uncovered, and has been placed at a location where it may enter or be transported into receiving waters, and where it can come into contact with and contaminate stormwater that drains to waters of the state, creating or threatening to create a condition of pollution.

12. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing conditions of pollution are cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, that background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The 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 or any other plan or requirement authorized by Division 7 of the Water

Code. In conducting a water quality investigation, Water Code section 13267, subdivision (b) authorizes the Regional Water Board to require any person to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.

Regional Water Board staff estimate that the costs for producing the technical or monitoring reports required by this Order could range between \$34,000 and \$97,000, considering potential hourly rate(s) for appropriately qualified and licensed professional(s). The technical or monitoring reports required by this Order are necessary to assure compliance with this Order and to protect waters of the state from degradation. The technical or monitoring 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 the cleanup complies with Basin Plan requirements and State Water Board Resolution 92-49. The Dischargers own and/or operate the Property and are responsible for causing the unauthorized and/or threatened discharges of waste to waters of the state that are the subject of this Order. For the above reasons, the burden, including costs, of the reports bear a reasonable relationship for the need for the reports and the benefits to be obtained from the reports.

15. **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 this 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 the technical or monitoring reports described below and shall clean up wastes and abate the associated 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. Freshwater Discharge and Unpermitted Blockage of Tidal Flows

Requirements 1A and 1B address removal of tidal flow restrictions and ceasing freshwater discharge into the East Fork of Tillas Slough.

1A. CEASE AND DISCONTINUE THE UNPERMITTED BLOCKAGE OF TIDAL FLOWS IN AND FRESHWATER PUMPING AND DISCHARGE INTO THE EAST FORK OF TILLAS SLOUGH

COMPLIANCE DATE: NOVEMBER 1, 2021

On or before November 1, 2021, the Dischargers shall discontinue freshwater pumping and discharge into the East Fork of Tillas Slough and permanently discontinue the historic and unpermitted practice of using a barrier to block tidal flows into and out of the East Fork of Tillas Slough.⁸

1B. SUBMIT FINAL REPORT

COMPLIANCE DATE: NOVEMBER 15, 2021

On or before November 15, 2021, the Dischargers shall submit a final report certifying that 1) freshwater pumping and discharge into the East Fork of Tillas Slough and 2) use of a barrier to block tidal flows into and out of the East Fork of Tillas Slough is presently and permanently discontinued. The final report shall include a photograph of the upstream culvert at Crossing 3 accompanied by the date and time the photograph was taken.

⁸ Including crossings located at 41.933478, -124.190825, and 41.924020, -124.178463.

2. Solid Waste Disposal

Requirements 2A-2C address removal of the solid waste identified in Finding 6.f above.

2A. OBTAIN PROPER PERMITS FOR ONSITE SOLID WASTE DISPOSAL OR REMOVE SOLID WASTE

COMPLIANCE DATE: APRIL 21, 2022

On or before April 21, 2022, the Dischargers shall either (1) obtain and submit copies of the appropriate permit(s) for storage and/or disposal of all solid waste material on the Property, or (2) remove and dispose of all solid waste at an appropriate off-site solid waste disposal facility.

2B. PROVIDE WASTE MANIFESTS

COMPLIANCE DATE: Weekly during off-site waste disposal operations

If the Dischargers elect to dispose of solid waste off-site, then the Dischargers shall use waste manifests to document solid waste disposal. The Dischargers shall submit weekly waste manifests during off-site waste removal and disposal operations that include:

- i. Description of the waste;
- ii. Weight and/or volume of the waste;
- iii. Date of removal from the site;
- iv. Final disposition of the waste; and
- v. Signature of the person overseeing waste removal.

2C. FINAL WASTE REMOVAL REPORT

COMPLIANCE DATE: 30 days from completion of off-site waste removal operations

If solid waste is disposed of off-site, the Dischargers shall submit a final report, with photographs, certifying complete removal of waste no later than 30 days after completion of waste removal.

3. Fish Passage Assessment and Remediation

Requirements 3A-3C ensure fish passage through existing crossings.

3A. SUBMIT FISH PASSAGE ASSESSMENTS FOR FOUR CROSSINGS

COMPLIANCE DATE: APRIL 21, 2022

On or before April 21, 2022, the Dischargers shall submit a Fish Passage Assessment acceptable to the Regional Water Board's Executive Officer (Executive Officer) for each of the four crossings identified in Finding 4 above.

Each Fish Passage Assessment shall consider the life cycles of tidewater goby and salmonids under all seasonal flow conditions. If any crossings are found to be a potential fish passage impediment, then the assessment shall include plans to remove, replace, or redesign the respective crossings to provide free fish passage consistent with applicable Fish and Game Code requirements.

3B. IMPLEMENT FISH PASSAGE REMEDIATION

COMPLIANCE DATE: 365 days from approval of Fish Passage Assessment

The Dischargers shall fully implement the approved fish passage remediation plan(s) no later than 365 days after the date of the Executive Officer's approval of the Fish Passage Assessment(s).

3C. SUBMIT A COMPLETION OF FISH PASSAGE REMEDIATION REPORT

COMPLIANCE DATE: 60 days from completion of fish passage remediation

The Dischargers shall submit a Completion of Fish Passage Remediation Report acceptable to the Executive Officer that includes as-built plans, photographs, and a narrative description of completed fish passage remediation activities no later than 60 days after completion of the fish passage remediation.

4. Islas Slough Restoration

Requirements 4A-4C address the discharge of waste into Islas Slough identified in Finding 6.A above and mitigation measures for the associated impacts to beneficial uses.

4A. Submit a Waste Material Excavation Plan

COMPLIANCE DATE: OCTOBER 18, 2021

On or before October 18, 2021, the Dischargers shall submit a Waste Material Excavation Plan acceptable to the Executive Officer that includes a plan to

remove waste material (e.g., bedding materials, manure, non-native soil) from areas within and adjacent to Islas Slough. Waste material shall be removed from 1) the area designated as “Filled Waters Of The State,” in Figure 5B of the December 2017 Reservation Ranch Forensic Wetland and Waters Report,⁹ and 2) the areas upgradient of “Filled Waters Of The State” and marked “Fill Prism-Deep,” and “Fill Prism-Shallow” to the extent necessary to accomplish the objective described in Requirement 4A.ii.

The plan shall include the following:

- i. A description of the method(s) of waste removal;
 - ii. A proposal, including engineered design drawings, to restore a low-gradient elevation transition between the boundary of “Filled Waters Of The State” and adjacent upland areas. A uniform slope shall be provided between the boundary of Filled Waters Of The State and:
 - a. The base of the road prism, where the adjacent upland area is bordered by a road; or,
 - b. For areas not bordered by a road, the elevation hinge point of the adjacent upland area, as it existed before the placement of waste material. In no case shall the design slope be steeper than a 4:1 (horizontal:vertical) slope.
- Typical cross-sections and a plan view map with conform line shall be provided to indicate the proposed design slopes, elevations and locations where fill removal meets the natural grade.
- iii. An implementation timeline for waste removal;
 - iv. A plan to dispose of excavated waste material at an appropriate upland location;
 - v. Details regarding planned best management practices (BMPs) for all waste excavation work, including, at a minimum, identification of staging areas and haul and access roads, housekeeping BMPs, and erosion, sedimentation, and run-on controls. These items do not need to be provided in the Waste

⁹ SHN Engineers & Geologists prepared the December 2017 Reservation Ranch Forensic Wetland and Waters Report for Reservation Ranch in response to the January 2017 Order. Subsequent references to “Filled Waters Of The State,” “Fill Prism-Deep,” and “Fill Prism-Shallow” all refer to Figure 5B of the December 2017 Reservation Ranch Forensic Wetland and Waters Report.

Material Excavation Plan if the waste excavation activities will be covered under the Construction General Permit¹⁰;

- vi. A plan to revegetate all areas of waste removal above mean high water. Revegetation shall only utilize site-appropriate native vegetation; and
- vii. A map identifying all access roads to be used for waste hauling.

4B. IMPLEMENT WASTE MATERIAL EXCAVATION PLAN

COMPLIANCE DATE: The Discharger shall fully implement the approved Waste Material Excavation Plan no later than 365 days after the date of the Executive Officer's approval.

4C. SUBMIT A COMPLETION OF WASTE MATERIAL EXCAVATION REPORT

COMPLIANCE DATE: 60 days from completion of waste material excavation and site restoration.

The Dischargers shall submit a Completion of Waste Material Excavation Report acceptable to the Executive Officer that includes as-built plans, documentation of waste material disposal locations(s), photographs, and a narrative description of waste material excavation and restoration activities no later than 60 days after completion of waste material excavation and site restoration.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** All plans and reports required under this Order shall be prepared under the direction of appropriately qualified professionals. As required by 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.

¹⁰ State Water Resources Control Board Order No. 2009-0009-DWQ [As Amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ], National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements For Discharges Of Storm Water Runoff Associated With Construction And Land Disturbance Activities.

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 Brendan Thompson at (707) 407-0036.

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:

Brendan Thompson, Environmental Scientist
Brendan.Thompson@waterboards.ca.gov

and

NorthCoast@waterboards.ca.gov

Or by mail to:

NCRWQCB, Attn: Joshua Curtis, 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:
- a. State Water Resources Control Board Construction General Permit coverage for land disturbance activities exceeding one acre;
 - b. Clean Water Act section 401 Water Quality Certification and/or Waste Discharge Requirements from the Regional Water Board for dredge and/or fill activities that may result in a discharge of fill material and/or waste to waters of the U.S. and/or waters of the state;
 - c. Clean Water Act section 404 requires permits for dredge and/or fill activities in non-tidal waters and section 10 of the Rivers and Harbors Act requires permits for dredge and/or fill activities in tidal water;
 - d. Fish and Game Code section 1602 requires a person or entity to notify the California Department of Fish and Wildlife 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 Fish and Game Code section 1602; and
 - e. California Coastal Commission requires Coastal Development Permits for development activities in the Coastal Zone.
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 the Regional Water Board's Assistant Executive Officer 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 wastes and/or pollutants 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, actions that enforce violations of the terms and conditions 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 Executive Officer, 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 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:
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