
North Coast Regional Water Quality Control Board

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2022-0028

for

KEN BAREILLES

Assessor Parcel Number:
110-190-001-000

SONOMA COUNTY

This Cleanup and Abatement Order for Long-Term Restoration and Monitoring (Long-Term CAO, or Order) is issued to Ken Bareilles (landowner, hereafter referred to as the Discharger) based on provisions of Water Code section 13304, which authorize the North Coast Regional Water Quality Control Board (Regional Water Board or RWB) 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. The Long-Term CAO is issued following the Regional Water Board's prior issuance of Order No. R1-2022-0009 (referred to as the Emergency Order). The Long-Term CAO is intended for the purpose of addressing site conditions that were not addressed during the winter period or when saturated soil conditions exist. The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. Site Conditions: Felta Creek and unnamed tributaries to the Russian River located on the property 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 Discharger has caused or allowed the discharge and threatened discharge

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States includes all traditionally navigable waters and tributaries as defined in 40 C.F.R. section 122.2. The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260.) The term "waters of the state"

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of waste to receiving waters in violation of the *Water Quality Control Plan for the North Coast Region* (Basin Plan) and Regional Water Board Order No. R1-2014-0011, *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region* (Categorical Waiver) by operating heavy equipment in saturated soil conditions, failing to construct an appropriate drainage structure to convey stream flow across a native surfaced road and failing to implement standard erosion control measures as required under the Categorical Waiver. In addition, the Discharger installed a bridge on a fish-bearing stream, including operating heavy equipment in the channel. These activities resulted in a discharge, and/or threatened discharge, of waste, including soil, sediment, and other earthen material, to waters of the state. The Discharger's activities resulting in discharges, or threatened discharges, to waters of the state, were conducted in violation of applicable state regulations, including water quality requirements.

2. Purpose of the Order: This Order requires the Discharger to clean up and abate the effects of discharging soil, sediment, and other earthen materials into Felta Creek and unnamed tributaries of the Russian River and eliminate the threat of future discharges to waters of the state. Investigation and cleanup actions required under this Order shall be conducted in accordance with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the Basin Plan, State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

3. Responsible Parties: The Discharger is the property owner and is the person responsible for discharging waste in violation of the Basin Plan and the Categorical Waiver. The Discharger is also responsible for causing or permitting, and threatening to cause or permit, waste to be discharged where it is or probably will be discharged to waters of the state, and for creating or threatening to create a condition of pollution or nuisance. The Discharger had the ability to control the activities on the property, and logging area, that resulted in the discharge and threat of discharge of waste. This Order finds that Ken Bareilles is the responsible party for purposes of this Order and is liable:

- a. Per records from the Sonoma County Assessor-Recorder's Office, Ken Bareilles owns approximately 160 acres, identified as Assessor Parcel Number (APN) # 110-190-001-000 (hereafter Property).
- b. The Regional Board reserves the right to amend this Order to add additional responsible parties if those parties are identified.

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.

4. Property Location and Description: The Property is located in Sonoma County approximately 3.5 miles southwest of the City of Healdsburg. The 160-acre parcel is located on hillslopes above both banks of Felta Creek, a fish-bearing tributary to the Russian River. Small unnamed headwater streams on the southern portion of the property do not drain to Felta Creek and are tributaries to the Russian River. Much of the property is forested with a mix of conifer and hardwood species. Elevations on the property range from 250 to 680 feet above sea level with hillslope gradients generally less than 65 percent. The activities described in above in “**1. Site Conditions**”, occurred above and on Felta Creek and the unnamed tributaries to the Russian River, approximately three and a half miles southwest of the City of Healdsburg.

5. Property History: The Discharger filed a “*Notice of Emergency Timber Operations*” (Emergency Notice) with the California Department of Forestry and Fire Protection (CAL FIRE), which was accepted on October 21, 2020. The Emergency Notice, which covers 106 acres of the 160-acre parcel, was given the number 1-20EM-00125 SON. Notices of Emergency Timber Operations are covered by the Categorical Waiver. Emergency Notices are in affect for one year, and therefore, 1-20EM-00125 SON expired on October 21, 2021.

On December 15, 2021, the Discharger submitted an amendment to CAL FIRE requesting an extension of the plan. On December 16, 2021, CAL FIRE determined that the amendment conformed to the applicable Forest Practice Rules and the plan was extended to no later than October 21, 2022.

6. Factual Basis of Order: The Discharger’s activities and the conditions observed at the Property, as documented in the Regional Water Board inspection reports (Attachments A and B), and as detailed below, 1) caused discharges of waste into waters of the state in violation of the Basin Plan and Categorical Waiver, and 2) threatens to cause or permit waste to be discharged where it is, or probably will be, discharged to waters of the state, and creates or threatens to create a condition of pollution or nuisance.

- a. Watercourses within and adjacent to the plan area and appurtenant road system drain into fish and non-fish bearing tributaries of the Russian River. The Emergency Notice is located in the Felta Creek (1114.240602) and Adam and Eve Redwoods (1114.110104) CALWATER planning watersheds. Potential downstream Beneficial Uses of Water (BUs) affected include those associated with spawning and rearing habitat for listed anadromous salmonids (COLD)(RARE)(MIGR) for steelhead trout (*Oncorhynchus mykiss*), coho salmon (*Oncorhynchus kisutch*), Domestic Water Supplies (DWS) and aquatic habitat for a variety of amphibian and macroinvertebrate communities (WILD). Potentially affected onsite BUs include impacts to habitat for non-fish aquatic dependent species.
- b. On June 30, 2021, CAL FIRE inspector Kim Sone informed Regional Water Board staff of an unpermitted bridge installation associated with Emergency

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Notice timber operations. On July 8, 2021, RWB staff attended an inspection of this site. On September 16, 2021, and October 15, 2021, RWB staff attended follow-up inspections of this site focusing on bridge removal and mitigation measures to prevent or minimize impacts to Felta Creek from installation and removal of the bridge. The bridge location is outside of the area of the Emergency Notice, and therefore, the installation is not permitted under either the FPRs or the Categorical Waiver. On August 13, 2021, CAL FIRE issued a Notice of Violation for unauthorized timber operations.

- c. On October 24 and 25, 2021, a storm system dropped an estimated eight to ten inches of rain in the area of the Emergency Notice, and on October 28, 2021, Kim Sone of CAL FIRE contacted RWB staff to inform them of sediment deposits in the Watercourse and Lake Protection Zone of Felta Creek due to inadequate installation of required erosion control on an adjacent road. Ms. Sone's email included photographs depicting fresh sediment deposits on the watercourse bank. October 29, 2021, CAL FIRE issued a Notice of Violation (NOV) for failure to install erosion control as required by the FPRs.
- d. In response to the October 29, 2021, NOV, the landowner, who is a Licensed Timber Operator (LTO) (although not the LTO of record listed on the Emergency Notice), began installing erosion control measures until directed to stop work by CAL FIRE because he was not the LTO of record. He conducted the work with heavy equipment in saturated soil conditions, in violation of the FPRs. (Cal. Code Regs., tit. 14 § 923.6(g). Operating heavy equipment in saturated soil conditions loosened soil particles and created ruts, which functioned as conduits for sediment laden storm runoff to transport and discharge sediment into a watercourse. In addition, at one location, at the confluence of two Class III streams, a dirt-surfaced road crosses the channel without an appropriately constructed watercourse crossing.
- e. On November 4 and 9, 2021, RWB staff inspected the Property subject to the Emergency Notice to further investigate the discharges of waste to waters of the state. During these inspections, Regional Water Board staff observed other threats to water quality documented in Attachment A.
- f. During the inspections from July 8, 2021, through November 9, 2021, RWB staff identified four sites in or near the Emergency Notice area where the discharges and/or threatened discharges of waste were observed. Each of these sites summarized below are referred to as "Map Points" in Attachment A.
 - i. Map Point 1
 - a. The Discharger constructed an unpermitted bridge across Felta Creek without authorization and operated heavy equipment in the watercourse channel, which threatened to cause discharges to the watercourse.

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- b. As of the October 15, 2021, inspection, it appeared the Discharger had adequately addressed the threatened discharges associated with the bridge construction.
 - ii. Map Point 2
 - a. The Discharger failed to construct adequate erosion controls on a haul road uphill from, and adjacent to, Felta Creek resulting in sediment discharge to the watercourse.
 - b. Sediment runoff from the haul road was also deposited on banks above Felta Creek, which threatens to discharge into Felta Creek. In addition, stabilization of road surface and implementation and/or maintenance of erosion controls are required to address threatened discharges to Felta Creek.
 - iii. Map Point 3
 - a. At a segment of haul road that crossed at the confluence of two Class III watercourses, the Discharger failed to construct adequate erosion controls and improperly placed waste from road reconstruction adjacent to, and within, a watercourse crossing, resulting in sediment discharges to the watercourses.
 - b. The lack of erosion controls and the placement of waste from road reconstruction onto steep slopes leading directly to the watercourse less than 20 feet below, resulted in discharge of waste to the Class III watercourse downstream from the confluence of the two Class III watercourses referred to above.
 - iv. Map Point 4
 - a. At a segment of haul road uphill from a Class III watercourse, the Discharger failed to construct adequate erosion controls, resulting in sediment discharges to a Class III watercourse.
 - b. In addition, the Discharger used heavy equipment during saturated soil conditions, which exacerbated sediment discharge from this area by further concentrating runoff and loosening soil particles from the road surface, which were transported by runoff and discharged to the nearby watercourse.
 - c. The lack of adequate erosion controls threatens to discharge sediment to a Class III watercourse.
- g. On January 10, 2022, the Regional Water Board issued the Emergency Order requiring immediate evaluation of site conditions and a proposal for treatment to minimize additional sediment discharges during the current winter period. The

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Emergency Order required the Discharger to submit a plan (Interim Plan) to address these conditions by January 25, 2022, for review, comment, and approval prior to implementation.

- h. The Discharger failed to submit the Interim Plan required in the Emergency Order by the January 25, 2022, due date. Beginning on January 27, 2022, Regional Water Board staff made several telephone calls to the Discharger, finally speaking with him on February 2, 2022. Regional Water Board staff explained to the Discharger the nature of the Emergency Order and the specific requirements and deliverables it established. The outcome of that conversation was that the Discharger assured Regional Water Board staff that he would direct his consulting forester to prepare and submit the Interim Plan. Subsequent conversations between the consulting forester and Regional Water Board staff confirmed that he had been directed to develop the plan and he sought guidance regarding the objectives of the plan.
- i. On March 3, 2022, the Regional Water Board issued a Notice of Violation to the Discharger for failure to furnish a technical report (the Interim Plan) to comply with Cleanup and Abatement and Water Code Section 13267 Order No. R1-2022-0009.
- j. On March 4, 2022, the Regional Water Board received the Interim Plan from the Discharger's consulting forester and began reviewing the submittal and scheduling a site-visit to field verify the adequacy of the work proposed in the Interim Plan. On March 28, 2022, Regional Water Board conducted the site visit, accompanied by a CAL FIRE inspector Kim Sone and representatives of the Discharger's consulting forester (See Regional Water Board staff inspection memo, Attachment B).
- k. During the March 28, 2022, inspection, Regional Water Board staff evaluated the proposed cleanup and stabilization work and, with the inclusion of two site-specific recommendations, determined the plan was adequate to meet the objectives of the Emergency Order.
- l. During the March 28, 2022, inspection, Regional Water Board staff identified two additional sites where discharges and/or threatened discharges of waste were observed. Each of these sites summarized below are referred to as "Map Points" in Attachment B.
 - i. Map Point 5
 - a. A segment of road near the top of a ridge above Felta Creek was inadequately storm-proofed and several gullies six to twelve inches deep were formed in the road surface, incising a gully in places further downslope before discharging into Felta Creek.

- b. The lack of adequate erosion controls in this area threatens to further discharge sediment to Felta Creek.
- ii. Map Point 6
 - a. Large waterbars on a segment of road that were present during previous inspections had been completely removed. The consulting RPF's Environmental Analyst, who participated in the field work to prepare the Interim Plan, informed Regional Water Board staff that on February 14, 2022, the waterbars had already been removed. As a result, perched sidecast material is present on the steep slopes above the head of a Class III watercourse directly below the road. The material is in a position where it threatens to discharge to the watercourse because of concentrated runoff from the road.
 - m. As the discharger did not submit the Interim Plan until 38 days after the due date and timber operations under the extension have commenced, cleanup and stabilization work required by the Emergency Order did not occur during the 2021-2022 winter period; therefore, the requirements and timelines specified in the Emergency Order are no longer applicable. As such, the Long-Term CAO updates Regional Water Board requirements to ensure that following completion of timber operations, the Discharger will clean up and abate the effects of discharging soil, sediment, and other earthen materials into Felta Creek and unnamed tributaries of the Russian River and eliminate the threat of future discharges to waters of the state.
 - n. Following new ground disturbance resulting from the Discharger's resumption of timber operations, additional, or modified measures may be warranted to ensure adequate cleanup and site stabilization. This will likely be accomplished by a combination of site stabilization requirements from the Forest Practice Rules and implementation of measures from the Interim Plan that has been updated to address site conditions following timber operation. The Long-Term Order specifies information in paragraph 1 of **Required Actions** below that must be included in a Long-Term Restoration and Monitoring Plan.

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 Regional Water Boards.

- a. Existing and potential beneficial uses for the Russian River (Warm Springs Hydrologic Subarea) include the following: Water Contact Recreation (REC-1) & Other Non-Contact Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Wildlife (Wild); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN)

and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all its tributaries.

- b. The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions in section 4.2.1:
 - 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.

Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development and timber harvest 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. State Water Board Resolutions and Orders: State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California*. Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored.

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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 practicable, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

9. Failure to Comply with Applicable Requirements: The Discharger's timber operations are covered by the Basin Plan, including the section 4.2.1 waste discharge prohibitions stated in paragraph 7 of this Order above, and the conditions of the Categorical Waiver.

The Discharger filed a "*Notice of Emergency Timber Operations*" (Emergency Notice) with CAL FIRE, which was accepted on October 21, 2020. The Emergency Notice was given the number 1-20EM-00125 SON. Emergency Notices are automatically covered by the Categorical Waiver once CAL FIRE has accepted the landowner's Emergency Notice for the project.

Section I of the Categorical Waiver describes General Conditions that apply to all enrolled projects that landowners and their consultants should be aware of, including the following:

1. The landowner shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board;
2. The landowner shall conduct timber harvest activities and erosion control maintenance in compliance with the FPRs. In addition, FPRs and THP conditions (including but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required by CAL FIRE) that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

Since compliance with the Basin Plan is required as a General Condition of the Categorical Waiver, any violations of the Basin Plan discharge prohibitions are also violations of Section I (1) of the Categorical Waiver.

As described in paragraph 6 of this Order and Attachments A and B, RWB staff identified areas where the Discharger caused waste to discharge into waters of the state in violation of the Basin Plan and/or the Categorical Waiver:

- a. The failures to construct or maintain erosion control measures in the areas of Map Points 2, 3, 4, and 5 were violations of Basin Plan section 4.2.1 and Categorical Waiver section I (1) because they resulted in discharges of soil, silt,

bark, slash, sawdust, or other organic and earthen material in quantities deleterious to fish, wildlife, and other beneficial uses. The failure to implement these measures were also violations of Categorical Waiver section I (3) because adequate erosion control measures are required to comply with FPR sections 914.6 and 923.5.

- b. The placement of waste from road reconstruction adjacent to, and within, a Class III watercourse crossing in the area of Map Point 3, were violations of Basin Plan section 4.2.1 and Categorical Waiver section I (1) because it resulted in discharges of soil, silt, bark, slash, sawdust, or other organic and earthen material in quantities deleterious to fish, wildlife, and other beneficial uses.

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

A person who has discharged or discharges waste into 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" is defined by Water Code section 13050, subdivision (d) to include, sewage and any other waste substances, whether liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers prior to, and for purposes of, disposal.
 - i. Sediment, when discharged to waters of the state, is a "waste" as defined in Water Code section 13050.

The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to Felta Creek, and unnamed tributaries of the Russian River, which are considered waters of the state.

- b. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which

unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.

11. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that discharges of waste to waters of the state in violation of Regional Water Board orders or Basin Plan prohibitions, and/or discharges or threatened discharges of waste to waters of the state creating a condition of pollution, are appropriately cleaned up, that background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. Discharges in violation of the Basin Plan and/or Categorical Waiver occurred in at least five areas (Map Points 1 through 5) where the Discharger conducted timber operations, as discussed in paragraphs 6 and 9 of this Order. In addition, threatened discharges of waste remain in at least five areas (Map Points 2 through 6), as discussed in paragraph 6 of this Order, where there is a substantial probability of additional waste, including soil and sediment, discharging to watercourses from logging roads as a result of inadequate erosion controls or placement of waste from road reconstruction near a watercourse. The threatened discharges would alter the quality of waters of the state to a degree which would unreasonably affect waters of the state for beneficial uses. The current condition of pollution is a violation of applicable water quality regulations 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.

12. 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 burden, including costs, of preparing these reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. This Order requires two types of technical reports. Staff estimate the cost of the reports to range between approximately \$3,840 to \$14,680 total. This analysis is discussed further below within subparagraphs (a) and (b)

- a. The Long-Term Restoration and Monitoring Plan (Plan) is a technical report that is necessary to: (1) assess site conditions to identify where sediment discharge to waters of the state has occurred, or threatens to occur, from logging roads, skid trails and watercourse crossings with insufficient erosion control measures and sediment control devices to prevent erosion and rutting; (2) determine the appropriate cleanup and restoration work to prevent or minimize sediment discharge; and (3) create a plan along with an implementation schedule that will guide the scope of work to clean up and abate the discharges and threats of discharge on the Property. The anticipated benefits from the Plan include restoration of road and skid trail drainage and protection from actual and threatened waste discharges that impact beneficial uses and water quality objectives. In addition, by requiring the Discharger to submit the Plan, the Regional Water Board or its delegated officer will have the opportunity to review

and approve the scope of the proposed cleanup and restoration actions to confirm the proposed work will adequately remediate site conditions and prevent sediment discharges from further impacting the beneficial uses of sensitive water bodies. The Russian River is a Clean Water Act section 303(d)-listed impaired water body due to sediment/siltation and high-water temperature, thereby heightening the need for this technical report in order to reduce further impairment to waters of the state. The Plan requirements (i.e., field inspection and report preparation) are comparable to that of preparing an Erosion Control Plan as required in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis), which is estimated to cost between \$2,760 and \$9,920. The burden, including costs, of preparing and submitting the Plan therefore bears a reasonable relationship to the need for this planning and assessment report to restore the Property to conditions that will prevent further erosion and sedimentation of sensitive water bodies.

- b. A Completion Report is necessary to demonstrate that the Discharger has successfully implemented and completed the Plan activities in a timely manner in accordance with the implementation schedule set forth in the Plan and this Order. The benefit derived from a Completion Report is documented evidence that remedial activities and best management practices were implemented to ensure that stabilization and abatement activities adequately prevent further erosion and discharge of sediment to Felta Creek and unnamed tributaries to the Russian River. The scope of a Completion Report (i.e., field inspection and report preparation) is comparable to that of preparing a Site Closure Report as described in the 2017 Direct Cost Analysis, which is estimated to cost between \$1,080 and \$4,760. The burden, including costs, of preparing and submitting a Completion Report bears a reasonable relationship to the need for the report as assurance to demonstrate remedial actions and restoration are accomplished as proposed in the Plan to ensure the protection of water quality.

13. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan.

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

REQUIRED ACTIONS

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

IT IS FURTHER ORDERED that except for the purposes of enforcement, Order No. R1-2022-0009 is hereby rescinded.

1. **Within 30 days of the issuance of this Order**, the Discharger shall submit to the Regional Water Board a proposed **Long-Term Restoration and Monitoring Plan** (hereafter "Plan") acceptable to the Regional Water Board or its delegated officer. The Plan shall be prepared by an appropriately licensed professional and shall include but not be limited to:
 - a. A detailed site map accurately depicting topography, roads and skid trails, watercourses, and watercourse road crossings;
 - b. A plan for long term cleanup and restoration of the Property, including a description of feasible and effective corrective actions proposed for each sediment discharge or potential discharge site identified in 1.b above. The plan should identify how long-term impacts from erosion and sedimentation will be abated as well as a proposal to restore any waters of the state on the Property that were adversely impacted by Emergency Timber Operations. Cleanup and restoration measures included in the plan shall include, but not be limited to:
 - i. Roads, skid trails and other areas with disturbed soils where mobilized earthen material could discharge to waters of the state. The Plan shall propose how these vulnerable areas will be stabilized or hydrologically disconnected from watercourses by diverting storm water runoff and directing it to a stable discharge area;
 - ii. Roads should be hydrologically disconnected from watercourses to the extent feasible, reshaped as needed to minimize concentration of runoff by outsloping, construction of rolling dips, installation of drainage facilities where appropriate or other methods as site conditions warrant;

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- iii. Watercourse crossings should be treated as needed to stabilize earthen material in order to prevent erosion of road fill material, channel destabilization, stream blockage, stream diversion, or flow across the road surface to the extent feasible;
- c. A description of proposed site monitoring, including a proposed monitoring checklist to confirm that long-term cleanup and restoration measures have been implemented as designed, assess their long-term effectiveness, and to identify areas requiring repair or improvement. Monitoring shall be conducted by the 15th of each month, beginning no later than October 15, 2022, following completion of cleanup and restoration work, and shall continue monthly thereafter for the remainder of the winter period (through May 15, 2023) provided no additional work is necessary. The Discharger shall submit a written summary of the previous monitoring inspection by the 30th of each month that an inspection has been conducted. The monitoring summary shall include, at a minimum, the following information:
 - i. Date of the inspection;
 - ii. Name of the person conducting the inspection;
 - iii. Rainfall totals for the current water year (beginning October 1, 2022);
 - iv. Description of site observations, including at each map point described in Attachments A and B and any new sediment discharge, or potential discharge sites, as well as general site conditions with respect to erosion and sediment mobilization and discharge;
 - v. Photographs of each site at which cleanup and restoration work has been conducted to document conditions at the time of the inspection; and
 - vi. Description of any corrective action conducted during the past month or needed to ensure cleanup and restoration measures are functioning as designed.

The final monitoring report, due May 30, 2023, shall provide a summary of the overall effectiveness of the work. Following submittal of the May monitoring summary report, Regional Water Board staff will have the opportunity to conduct a site visit to verify conditions described in the site summary. If Regional Water Board staff determine that additional work or continued monitoring is warranted, they shall provide this information in writing to the discharger, including observed conditions that require ongoing monitoring and any additional work deemed necessary for the cleanup and restoration work to be considered complete.

- 2. **Within 60 days from the day the Regional Water Board approves the Long-Term Restoration and Monitoring Plan**, the Discharger shall have completed the

work specified in the approved Plan, implementing all cleanup and restoration measures included in the approved plan.

3. **Within 15 days from completion of the work in the Plan**, the Discharger shall provide a report of completion of the Plan to the Regional Water Board for approval. This report shall include a summary and photographs of the completed cleanup and restoration measures. Include photographs of all areas where corrective action has taken place, clearly keyed to site map(s).

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or 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 Discharger shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

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

3. **Notice of Change in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
4. **Reasonable Access:** The Discharger shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and

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any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.

5. **Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
6. **Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order.
7. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order approved by the Executive Officer or the Executive Officer's delegee.
8. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. 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 sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.
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 or its delegated officer including any potential extension requests.

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11. Requesting Review by the State Water Board: Any person aggrieved by any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions 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

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Attachment A: Regional Water Board staff Emergency Notice Inspection Report
1-20EM-00125-SON

Attachment B: Regional Water Board staff March 28, 2022, Interim Plan Inspection
Report