

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

**CLEANUP AND ABATEMENT ORDER AND
INVESTIGATIVE ORDER NO. R1-2022-0050**

FOR

**Laura Rowland and Robert Gutierrez
Assessor's Parcel Number 507-440-001-000
Humboldt County**

This Cleanup and Abatement Order (hereafter referred to as the Order) is issued to Laura Allison Rowland and Robert Gutierrez (hereafter referred to as the Dischargers) at the property located at Humboldt County Assessor's Parcel Number (APN) 507-440-001-000 (the Property) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order, and California Water Code (Water Code) section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports.

FINDINGS

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

1. Purpose of the Order: This Order requires the Dischargers to clean up and abate the effects of recent unpermitted timber harvesting and grading activities including the placement of slash, stumps, and the felling of trees into and near an unnamed headwater stream, tributary to Mill Creek, which flows to the Mad River. The discharge of fine sediment and organic material into this tributary to Mill Creek, and the near-stream placement of unconsolidated earthen fill and logging debris creates a threat of future sediment discharge into the unnamed stream and Mill Creek. This Order requires investigation and cleanup actions in compliance with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
2. Responsible Parties: The Dischargers, as the Property owners and operators and the persons discharging or creating a threat of discharge, with the legal ability to control the activities on the property that resulted in the discharge and threat of

discharge, are responsible parties for purposes of this Order. This Order finds that Laura Allison Rowland and Robert Gutierrez are the responsible parties, and are jointly and severally liable:

- a. Per records from Humboldt County accessible via Digital Map Products' LandVision service, as of October 19, 2021, Laura Allison Rowland owns Assessor Parcel Number (APN) 507-440-001-000, associated with the address 951 Hunts Drive in McKinleyville.
 - b. During multi-agency inspections on September 27, 2022, and October 21, 2022 Robert Gutierrez was present on the Property, said that he was responsible for performing the work and provided consent to inspect the areas of concern.
 - c. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
3. Property Location and Description: The Property, which is approximately 7.66 acres, is located in a residential community of Humboldt County approximately 2.5 miles Southeast of McKinleyville and contains an unnamed headwater stream tributary to Mill Creek, a tributary to the Mad River, which are both 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
4. Watershed Setting: The discharge and threatened discharge to tributaries of Mill Creek are located within the Blue Lake Hydrologic Area (HA) of the Mad River Hydrologic Unit (HU) (HU/HA 109.10). Adjacent to and downstream of the Property, the unnamed stream is perennial, low gradient, and identified in the California Department of Fish and Wildlife (CDFW) Biogeographic Information and Observation System (BIOS)² as coastal steelhead critical habitat. Habitat upstream of the discharge location is classified by the United States Geologic Survey (USGS) National Wetlands Inventory³ as PEM1B (Freshwater Emergent Wetland). The Basin Plan designates beneficial uses of water within Hydrologic Areas. Attachment 1

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 has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

² <https://wildlife.ca.gov/Data/BIOS>

³ <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>

shows the existing and potential beneficial uses for the of the Blue Lake Hydrologic Area, and it provides information regarding watershed-specific impairments and Total Maximum Daily Loads (TMDLs). The Mad River Watershed is Clean Water Act section 303(d)-listed as impaired due to elevated sedimentation/turbidity. On December 21, 2007, the U.S. Environmental Protection Agency established the TMDL for turbidity and sediment for the Mad River.⁴

5. Property History: There is no record of Regional Water Board regulatory or enforcement history with the Property. Review of aerial imagery available in LandVision, by Regional Water Board staff (Staff) identified that approximately three quarters of the Property was forested as of June 28, 2022. The areas around the residence, driveway, and garden, all located in the northwest portion of the parcel, had been cleared of timber for several years prior to recent grading observed by Staff on September 27, 2022, and October 21, 2022.
6. Factual Basis of Order: The Dischargers' 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 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. The Property drains to an unnamed tributary to Mill Creek, a fish-bearing stream, tributary to the Mad River estuary. The Dischargers disturbed the riparian area and impacted approximately 450 linear feet of Class I stream habitat by pushing sediment, slash, root wads, stumps and other debris into the stream channel, onto the banks, onto near-stream wetlands and to locations where those material could enter the stream, especially upon stormwater runoff events. Discharges from the Property have the potential to impact habitat for native fish and non-fish aquatic habitat, including steelhead trout (*Oncorhynchus mykiss*) and a variety of amphibian and macroinvertebrate communities.
 - b. In response to a complaint, on September 20, 2022, CDFW personnel inspected the Property and identified recent grading and logging along a stream and in riparian areas. On September 27, 2022, Staff attended a follow-up multi-agency inspection of the Property, accompanied by personnel of CDFW, California Department of Forestry and Fire Protection (CAL FIRE), and Humboldt County Code Enforcement. The purpose of Staff's inspection was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state and United States resulting from the unpermitted grading and logging activities.

⁴ https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/mad_river/

- c. On October 6, 2022, Staff transmitted the September 27, 2022, inspection report and Notice of Violation (NOV)⁵ to the Dischargers. On October 12, 2022, Mr. Gutierrez, called Staff via telephone and confirmed that he received the inspection report and NOV. The Dischargers' activities and/or the conditions observed at the Property, as documented in the inspection report, and as detailed below, created, and threaten to create condition of pollution in waters of the United States by unreasonably impacting and threatening water quality and beneficial uses. Staff advised the Dischargers to immediately hire a qualified professional to submit and implement a plan for hand removal of near-stream earthen material and stabilization to prevent additional discharges from near term areas and the Property-wide disturbed areas. Violations identified in the October 6, 2022, NOV include:
- i. Basin Plan Section 4.2.1, Action Plan for Logging, Construction, and Associated Activities, Prohibition 1 for the actual discharge associated with the placement of at least seven stumps and root wads in a watercourse, as well as tree slash in the stream and on the banks;
 - ii. Basin Plan Section 4.2.1, Action Plan for Logging, Construction, and Associated Activities, Prohibition 2 for the unconsolidated fill pushed to top of bank & perched there, threatening discharge to the stream;
 - iii. Water Code Section 13260 for failing to file a report of waste discharge in connection with land disturbing activities conducted at the Property, including placement of earthen fill into the riparian area of the stream, placement of logging debris in and near the stream, resulting in actual and threatened discharge of waste to waters of the state;
 - iv. Water Code Section 13264 (a) for the unauthorized discharge of waste to waters of the state resulting from the placement of at least seven stumps and root wads in a watercourse, as well as tree slash in the stream and on the banks; and
 - v. Clean Water Act Section 301 for the unauthorized discharge of pollutants to waters of the United States resulting from the unauthorized filling of the stream with stumps and root wads in the stream.
- d. On September 28, 2022, Humboldt County Code Enforcement transmitted a Notice to Abate Nuisance to the Dischargers. The Abatement Notice documented violations of County Code sections 314-61.1, 314-62.2, 331-14, and 331-28 and furthermore ordered the Dischargers to abate the nuisance by October 8, 2022. Additionally, an Order to Stop Work was attached to the September 28, 2022, Abatement Notice.

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https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2022/gutierrez_nov.pdf

- e. On October 14, 2022, CDFW Region 1 staff transmitted a NOV of Fish and Game Code sections 1602, 5650, and 5652 to the Dischargers. The NOV documented CDFW staff recommendations during inspections on September 19, 20, and 23, 2022, instructing the Dischargers to cease and desist from all logging, grading, excavating, and/or operating equipment in the stream channel and riparian buffer zone.
- f. On October 11, 2022, Staff was contacted by representatives of SHN Engineers & Geologists, Inc. (SHN) indicating that they had been hired by the Dischargers to assist with emergency erosion and sediment control efforts. On October 14, 2022, SHN provided Staff with an erosion and sediment control plan for work within 150 feet of the stream to include only handwork to remove loose fill and comingled organics, install silt fencing, and apply wood mulch. SHN identified Impact Areas A through F which show both actual and threatened discharge points at the unnamed tributary to Mill Creek. On October 19, 2022, SHN provided a cursory stream impact assessment, based upon observations made walking the stream within the impacted reach on October 14, 2022, and identified new areas of impact, beyond those identified in Staff's September 27, 2022 inspection report. On October 23, 2022, SHN submitted materials, describing that work did not start until October 21, 2022, and as of October 22, 2022, work conducted included pulling loose soil and slash debris from the stream bank using hand tools and installing silt fence at three areas with near stream disturbance (Impact Areas A through C as referenced on a drone-based aerial photo taken by SHN on October 21, 2022), and outlined work proposed for Impact Area D. On October 25, 2022, SHN proposed work at Impact Areas E and F, to include a sequence of hand removal of loose soil, installation of silt fencing, and application of mulch.
- g. On October 19, 2022, CalFire sent a Notice of Violation of Forest Practice Law (CalFire NOV), identifying Laura Rowland in violation of Public Resource Code (PCR) section 4621(a) for failure to file a conversion application to the Board of Forestry, and identifying Robert Gutierrez in violation of PCR section 4571(a), for conducting timber operations without a license from the Board of Forestry, and of PCR section 4581 for conducting timber operations without a timber harvesting plan.
- h. On October 26, 2022, the Regional Water Board transmitted a Notice of Noncompliance (NNC) for Failure to Obtain Coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009 as Amended by 2010-0014-DWQ & 2012-0006-DWQ, NPDES NO. CAS000002 (Construction General Permit)⁶. The Construction General Permit applies to any construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity that results in a land disturbance of equal to or greater than one

⁶ https://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.html

acre, and if the construction activity results in land surface disturbance of less than one acre if the construction is part of larger plan of development or sale of one or more acres of disturbed land surface. The NNC requires enrollment under the Construction General Permit within 30 days of issuance (November 26, 2022).

- i. On October 27, 2022, Staff transmitted a second NOV following an additional inspection accompanied by CDFW personnel on October 21, 2022. During the October 21, 2022, inspection, Staff observed that additional earthwork had been conducted, resulting in additional violations of water quality requirements and regulations. Staff observed that near-stream earthen fill piles observed on September 27, 2022, had been pushed toward the stream and leveled with equipment. Two mounds had been expanded, burying slash and woody debris. A pond had been constructed adjacent to the mounds, approximately 7500 square feet in area and ten feet deep. The stumps previously observed placed in the stream at Impact Area A, had been removed from the stream, impacting the stream channel form and denuding the stream bank. Staff observed new areas of near -stream grading, including at Impact Areas D and F, along with resulting new areas of threatened discharges of waste. In addition, staff observed that earthen fill had been placed in a streamside wetland at Impact Area D. Additionally a log had been bucked and with pieces in the channel at Impact Area D. Staff observed efforts commencing for near-stream stabilization, with no sediment or erosion control measures in place for the recently graded Property. Based upon the observations made by Staff on October 21, 2002, violations identified in the October 27, 2022, NOV include:

- i. Basin Plan Section 4.2.1, Action Plan for Logging Construction and Associated Activities, Prohibition 1 for the actual discharge associated with the placement of bucked logs into the stream;
- ii. Basin Plan Section 4.2.1, Action Plan for Logging Construction and Associated Activities, Prohibition 2 for the unconsolidated fill pushed to top of bank & perched there, threatening discharge to the stream;
- iii. Water Code Section 13260 for failing to file a report of waste discharge in connection with land disturbing activities, including placement of earthen fill into the riparian area of the stream, placement of logging debris in and near the stream, resulting in actual and threatened discharge of waste to waters of the state;
- iv. Water Code Section 13264 (a) for the unauthorized discharge of waste to waters of the state resulting from the placement of earthen fill in a wetland at Impact Area D; and
- v. Clean Water Act Section 301 for the unauthorized discharge of pollutants to waters of the United States resulting from the unauthorized filling of a near-stream wetland at Impact Area D.

7. **Beneficial Uses, Water Quality Objectives, and Basin Plan Prohibitions:** The Water Quality Control Plan for the North Coast Region (Basin Plan) designates

beneficial uses (Chapter 2), establishes water quality objectives (Chapter 3), contains implementation programs for achieving objectives (Chapter 4), and incorporates by reference the plans and policies adopted by the Regional Water Board and State Water Board (Chapter 5). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

- a. Existing and potential beneficial uses for the Mad River (Blue Lake 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).
- b. 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 on rural landscapes 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.”
- c. Chapter 4 of the Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan’s Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):
 - i. Prohibition 1 – “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in

the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”

- ii. Prohibition 2 – “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”

8. Property Features or Conditions Impacting or Threatening to Impact Water Quality and Beneficial Uses:

The Dischargers have caused or allowed the discharge and threatened discharge of waste to receiving waters through excavation, placement of earthen fill, trees, roots, vegetation, and slash into and along the banks of waters of the state as documented in the above-referenced inspection report and NOV's.

- a. Site development activities conducted by the Dischargers include the unauthorized clearing of approximately three acres of trees, roots, vegetation, and topsoil, including 1.5 acres of riparian forest, discharged waste directly into an unnamed headwater tributary to Mill Creek over the length of approximately 500 feet.
- b. The placement of unconsolidated earthen fill material along the channel banks with no erosion control measures in place has resulted in the threatened discharge of fine sediment into the unnamed headwater stream, tributary to Mill Creek.

Earthen material, including sediment, when discharged to waters of the state, is a “waste” as defined in Water Code section 13050, subdivision (d). Furthermore, the sediment discharges and threatened discharges into unnamed tributaries of Mill Creek are in violation of Prohibition 1 and Prohibition 2 of the Action Plan for Logging, Construction, and Associated Activities contained in the Basin Plan.

9. Findings of Pollution: The discharges and threatened discharges described in Findings 6 and 7, above, have altered and threaten to further alter the quality of waters of the United States to a degree that unreasonably affects waters for beneficial uses. Therefore, the discharges and threatened discharges create a condition of pollution subject to this Order in accordance with Water Code section 13304, as follows:

- a. Discharges of sediment and other inert materials alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity,

- accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Sediment-laden storm water discharges to downstream surface waters and the resulting turbidity can affect the recreational and aesthetic enjoyment of those surface waters (Beneficial Uses impacted: REC-1 and REC-2). Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD).
- b. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which requires that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - c. The discharge of organic and earthen material is especially problematic for cold-water fish in water bodies that are listed as impaired under Section 303(d) of the Clean Water Act due to pollutants such as temperature and sedimentation/ siltation. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold-water fish such as spring and fall run Chinook salmon, Coho salmon, and steelhead trout. Impacts include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk).
 - d. Sediment can also physically damage gills causing fish mortality; increase physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature; and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat.
 - e. Sediment is a pollutant that can have substantial biological, chemical, and physical impacts on receiving waters. It should be noted that these water quality impacts occur during both sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).
10. Failure to Obtain Necessary Permits: The Dischargers' activities resulting in the discharge and threatened discharge were conducted inconsistent with, and without

authorization from, applicable federal, state, and local agencies, including coverage under any of the following regulatory permits:

- A Clean Water Act section 401 Water Quality Certification, Waste Discharge Requirements, or a Waiver thereof, from the Regional Water Board.
- A Clean Water Act section 404 permit from the Army Corps of Engineers for dredge and fill activities in waters of the United States;
- Coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009 as Amended by 2010-0014-DWQ & 2012-0006-DWQ, NPDES NO. CAS000002 (Construction General Permit).
- A Timber harvest plan, consistent with the California Forest Practice Rules, from CAL FIRE.
- A Lake and Streambed Alteration Agreement from CDFW for substantial change to bed and banks of streams and obstruction of flow.
- A Grading Permit and a Special Permit for work in a Streamside Management Area from the Humboldt County Planning and Building Department.

11. Legal and Regulatory Authority: 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 an unnamed tributary of the Mad River, which is 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.

12. 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 Clean Water Act occurred at Impact Areas A where the Dischargers placed at least seven large stumps into the stream and then removed them resulting in impacts to stream form, and Impact Area D, where the Dischargers filled a stream-side wetland, as discussed in paragraphs 6 and 9 of this Order. In addition, threatened discharges of waste remain in at least five near-stream areas (Impact Areas A through F), 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, site grading, and inadequate erosion controls or placement of waste from clearing, grubbing, and grading 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.

13. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these technical reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

The technical reports required by this Order pursuant to Water Code section 13267 are necessary to investigate the quality of any water of the state on the Property, assure compliance with this Order, and to protect the waters of the United States.

The technical reports are further necessary to demonstrate that appropriate methods will be used to clean up waste discharged to waters of the United States, to ensure that cleanup complies with Basin Plan requirements and State Water Board Resolution 92-49, and that the Dischargers will implement adequate and effective

best management measures and practices to control and minimize future pollutant discharges from the Property.

In accordance with Water Code section 13267, subdivision (b), the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirements to implement cleanup and abatement activities and submit the reports.

This Order requires four types of technical and monitoring reports, including an immediate workplan, Interim Stabilization Plan (ISP), monthly monitoring reports, and an ISP Completion Report. Staff estimates the range of total costs of preparing the reports to be approximately \$4,440 – \$16,680. The costs of the technical or monitoring reports required by this Order bear a reasonable relationship to the need for these reports and the benefit to be gained by these reports, as discussed below:

- a. The immediate workplan (Workplan) is a technical report that is necessary to assess immediate site conditions to identify the nature and magnitude of sediment discharge to waters of the United States that has occurred, or threatens to occur, from unauthorized timber harvesting and grading activities prior to the submittal and implementation of the ISP described below in Required Action 6 The Workplan requirements (i.e., field inspection and report preparation) are comparable to that of preparing a Site Erosion and Sediment Control Plan as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)⁷, which is estimated to cost between \$1,080 and \$4,760.
- b. The ISP is a technical report that is necessary to gain Executive Officer authorization to conduct work to stabilize the site and prevent further discharges and threatened discharges of waste to waters of the United States. An ISP Completion Report is further necessary to demonstrate all interim stabilization work has been successfully implemented prior to the onset of the rainy season. The ISP requirements (i.e., field inspection and report preparation) are comparable to that of preparing a Site Erosion and Sediment Control Plan as presented 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 \$2,280 to \$7,160.
- c. Monthly monitoring reports are necessary to ensure that the implementation of the ISP appropriately stabilizes and winterize impacted beneficial uses and abate the threat of future impacts to waters of the United States during the

⁷ The 2017 Direct Cost Analysis can be found at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf

upcoming wet weather season. Moreover, these reports provide further benefit by certifying that all applicable best practical treatment or control measures are implemented and properly maintained after the stabilization process. By requiring the Dischargers to monthly annual monitoring reports, the Regional Water Board or its delegated officer can confirm the implemented work adequately remediated site conditions to prevent sediment discharges from further impacting the beneficial uses of sensitive water bodies. The monthly monitoring plan requirements (i.e., field inspection and report preparation) are comparable to that of preparing a Site Closure Report as presented in the 2017 Direct Cost Analysis, which is estimated to cost between \$1,080 and \$4,760. Furthermore, work in surface waters on the Property that is subject to regulation under a section 401 water quality certification, other waste discharge requirements, or waiver thereof, may have comparable annual monitoring and reporting requirements that serve to fulfill this Order's monitoring and reporting requirements here without additional cost. The burden, including costs, of preparing and submitting a Monitoring Report, therefore, bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

The Dischargers named in this Order own and/or operate activities on the Property from which waste was discharged, and thus are appropriately responsible for providing the reports.

14. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed cleanup, abatement or restoration activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the

environment and, if so, in preparing any documents necessary for the Regional Water Board to satisfy its environmental review obligations under CEQA. 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, pursuant to Water Code sections 13267 and 13304, that the Dischargers 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 technical reports and information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. Conduct all work under the direction and oversight of a California professional civil engineer or professional geologist experienced in surface water quality and hydrology, geologic investigation and characterization, earth work and geotechnical investigation, and sediment and erosion control. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional.
2. **Immediately**, the Dischargers shall take all possible steps⁸ to prevent and/or to minimize, to the maximum extent possible, adverse impacts to water quality and beneficial uses associated with sediment discharges to the watercourse. Monitor the effectiveness of the implementation actions and adaptively implement actions. Document actions, including but not limited to notes, photographs, sketches, sampling results, etc. **Beginning the first Monday following issuance of this Order, provide a weekly status report and workplan**, to include:
 - a. A description of work implemented since the last workplan;
 - b. An assessment of the adequacy of the work and identified improvements;
 - c. A description of work proposed for the coming week;
 - d. Characterize the nature and magnitude of any newly observed sediment or other waste discharges and any new impacts to waters of the United States and riparian areas.

⁸ *All possible steps* may be defined as; efforts that prevent further unauthorized and/or threatened discharges of waste to waters of the United States and the acquisition of all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.

3. Coordinate investigation, cleanup, and restoration activities with Staff, CDFW and CAL FIRE personnel, the County of Humboldt, and other regulatory agencies involved in the cleanup.
4. **File a Notice of Intent (NOI) for coverage under the Construction General Permit by November 26, 2022**, the Discharger shall file a Notice of Intent (NOI) for coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009 as amended by 2010-0014-DWQ & 2012-0006-DWQ (Construction General Permit). Information provided to satisfy Order requirement 1.a-e. above shall be included in the Stormwater Pollution Prevention Plan submitted as part of the NOI.
5. **Submit an Interim Stabilization Plan (ISP): Within 14 days of issuance of this Order**, the Dischargers shall submit a proposed Interim Stabilization Plan for approval by the Regional Water Board or its delegated officer. The ISP shall be prepared by an appropriately licensed professional and shall describe immediate cleanup and stabilization measures necessary prevent additional discharge of waste and to minimize additional impacts to receiving waters during the 2022/2023 rainy season, associated with the placement of earthen fill and woody material in and near the watercourse and riparian areas and land disturbance activities on the entire Property. The ISP shall include, at a minimum:
 - a. A site map depicting topography, watercourses, graded/disturbed surfaces, areas of accumulated slash and debris, and areas of earthen fill accumulation;
 - b. Identification of locations of controllable sediment delivery sites⁹ or other sites where waste has discharged or threatens to discharge to waters of the United States, and identification of all areas of immediate concern;
 - c. Proposed cleanup and stabilization measures and a schedule to be implemented at each area of concern;
 - d. Construction oversight by a qualified professional; and
 - e. A monitoring plan, with monthly monitoring reports, and schedule to regularly inspect the Property to determine if actions are being implemented as planned, evaluate the effectiveness of cleanup and stabilization measures and corrective actions, and identify needed improvements.

⁹ Controllable sediment delivery sites are generally areas that are discharging or have the potential to discharge sediment to waters of the state, that are caused or affected by human activity, and may feasibly and reasonably respond to prevention and minimization management measures.

6. The Regional Water Board or a delegated officer will review and approve the ISP, in consultation with other responsible agencies. **The Dischargers shall begin the implementation of the ISP within seven days of concurrence from the Regional Water Board or its delegated officer.**
7. **Complete Implementation of the ISP: Within 30 days** of approval of the ISP by the Regional Water Board or its delegated officer, and **no later than January 6, 2023**, the Dischargers shall have fully completed the work specified in the approved ISP, by stabilizing the Property and conducting initial site cleanup.
8. **Submit monthly Progress Reports:** Submit monthly progress reports beginning the first day of the month following implementation start date of the ISP, through completion of the plan. Include photographs at each photo monitoring point, as depicted on site maps/figures.
9. **Submit Completion Report for ISP:** Within seven days of completion of the work specified in the ISP the Dischargers shall provide a report of completion to the Regional Water Board for approval. This report shall include a written summary and photographs of the completed cleanup and stabilization measures. The Dischargers shall regularly inspect and maintain site stabilization measures implemented in the ISP to ensure they remain functional until the site is fully restored, and all discharges are fully abated in compliance with all terms of this Order.

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 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. Additionally, proposed dredge or fill within waters of the United States requires a Clean Water Act section 404 permit from the US Army Corps of Engineers. Proposed work within waters of the United States or waters of the state require Water Quality Certification or other Waste Discharge Requirements from the Regional Water Board.
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. The Discharger shall enroll in the State Water Board’s Cost Recovery Program managed by the State Water Board for the discharges addressed by this Order and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board pursuant to the procedures established in that program. Pursuant to Water Code section 13304 subdivision (c)(2), any costs not reimbursed constitutes a

lien on the affected property upon the Regional Water Board's serving notice of the lien on the property owner and recordation of the lien.

10. **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 Executive 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.
11. **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 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.
12. **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.
13. **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.
14. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 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.

Cleanup and Abatement Order R1-2022-0050
Humboldt County APN 507-440-001-000

This Order is effective upon the date of signature.

Matthias St. John
Executive Officer

220050_Guttierrez_CAO

Attachment A: 221006_RWB_Gutierrez NOV and Inspection Report

Attachment B: 221021_RWB_Gutierrez NOV2 and Inspection Report