North Coast Regional Water Quality Control Board

February 4, 2021

Mr. Thomas Dols
Green Diamond Resource Company
PO Box 245
Orick CA, 95555

Dear Mr. Dols:

Subject: **Notice of Violation** of the *Water Quality Control Plan for the North Coast Region* by Green Diamond Resource Company

File: Green Diamond Resource Company MT-10, MT-420, and MT-800 Road Reconstruction
1-20EM-00126DEL (CW-870135)

Green Diamond Resource Company (GDRC or Discharger) is hereby given notice that it is in violation of the *Water Quality Control Plan for the North Coast Region* (Basin Plan) administered by the North Coast Regional Water Quality Control Board (Regional Water Board). Specifically, the Discharger is in violation of Basin Plan Prohibitions 1 and 2 of the Action Plan for Logging, Construction, and Associated Activities.

This NOV applies to the areas affected by reconstruction of the MT-10, MT-420, and MT-800 roads (Project), documented in Addendum 6 & 7.1 to the GDRC 2020 Annual Work Plan for the Master Agreement for Timber Operations and Road Management Waste Discharge Requirements (Annual Work Plan) (Attachments A and B). The Project area is approximately 22 miles northeast of Gasquet, California. The Project includes approximately one mile of road reconstruction and the associated reconstruction of three Class I, seven Class II, and two Class III previously decommissioned watercourse crossings. The streams are in the Elk Creek watershed, which is tributary to the Illinois River, which is tributary to the Rogue River which drains into the Pacific Ocean.

This NOV requires that the Discharger shall provide the Regional Water Board with episodic inspection reports that document the condition of Road Point (RP) 1 as referenced and described in detail in this NOV. The reports shall be required until Regional Water Board staff determines the threatened discharge of pollutants to Elk Creek and its tributaries is eliminated and notifies the Discharger in writing that the requirement for storm monitoring reports is terminated. Monitoring and inspection reports shall occur after every storm event that produces at least two inches of rain in a 24-hour period.

This NOV further requires that the conditions of RP1 be inspected by Regional Water Board staff at the conclusion of the wet weather period. At a minimum, the inspection will determine if scour occurred behind the rock armor and if the rock armor significantly narrowed the channel

width. Rock armor that is not keyed into place may adjust during high flow events which could result in slumping. The inspection will occur at a mutually agreeable time and the participation of CAL FIRE, California Department of Fish and Wildlife (CDFW) and California Geological Survey (CGS) will be requested.

This NOV is supported by observations made by Regional Water Board, CAL FIRE, CGS, and CDFW staff. Supporting documentation for this NOV is contained in seven attachments.

- Attachment A is the GDRC Annual Work Plan Revision 6.
- Attachment B is the GDRC Annual Work Plan Revision 7.1.
- Attachment C is the Regional Water Board Staff Inspection Report from the inspection conducted on October 28.
- Attachment D is the CDFW Bridge Evaluation from the inspection conducted on November 10th.
- Attachment E is the CGS Memo from the Site Inspection for Road Point 1 conducted on November 10th.
- Attachment F is the Regional Water Board Staff Inspection Report from the inspection conducted on November 18th.
- Attachment G is a collection of emails exchanged between Regional Water Board, CAL FIRE, CDFW, and CGS staff and GDRC regarding the stability and permit coverage of the bridge installation.

I. Introduction

GDRC revised its Annual Work Plan on September 28, 2020 and October 12, 2020 to allow access for salvage harvesting of an area severely burned by the 2020 Slater Fire. Revision #6 (Attachment A) to the Annual Road Plan included reconstructing three decommissioned watercourse crossings on roads MT-10 and MT-800. Revision #7.1 (Attachment B) included reconstruction of nine additional decommissioned watercourse crossings on roads MT-10 and MT-400.

The Annual Work Plan is a requirement of the Aquatic Habitat Conservation Plan (AHCP) that was established for compliance with incidental take requirements for the US Fish and Wildlife Service and National Marine Fisheries Service. The AHCP is geographically specific, including watersheds where GDRC owned property at the time of the AHCP approval, and does not include the Project area.

In 2010 the Regional Water Board issued *Waste Discharge Requirements for Discharges Related to Road Management and Maintenance Activities Conducted Pursuant to the Green Diamond Resource Company Aquatic Habitat Conservation Plan in the North Coast Region,* Order R1-2010-0044 (GDRC Roads WDR) for programmatic coverage for GDRC road construction and maintenance that is implemented in the AHCP area. The Project is located outside of the AHCP area and is therefore not eligible for enrollment under the GDRC Roads WDR.

GDRC also relies on the AHCP and the associated Annual Work Plan to comply with the Master Agreement for Timber Operations (MATO), which is the compliance document for GDRC activities in place of project-by-project issuance of CDFW Lake and Streambed Alteration Agreements. Unlike the AHCP or the Regional Water Board WDRs for GDRC, the MATO extends coverage to all GDRC lands. Both the AHCP and the MATO contain prescriptive language for acceptable road and crossing construction. GDRC provided Annual Work Plan

Revisions 6 and 7.1 to CDFW for conformance with the MATO and were approved on September 28, 2020 and October 12, 2020, respectively.

The violations documented in this NOV are located within the 4,995-acre Moore Tract, which is a portion of the GDRC ownership that is outside of the area covered by the AHCP. As a result, the work referenced in Attachments A and B was not covered by the GDRC Roads WDR. GDRC did not apply for any other Regional Water Board permit coverage for any of the work conducted within the Project area.

On October 28, 2020, Regional Water Board staff inspected the Project area. The inspection focused on 12 stream crossing sites that GDRC reconstructed to access the active timber operations. Two sites were identified as active or threatened discharges to waters of the state in violation of the sediment waste discharge prohibitions included in the Basin Plan:

- Regional Water Board staff inspected the culvert installation at Road Point (RP) 7, identified that the culvert was not installed to grade, and recommended that rock armoring be installed at the outlet.
- Regional Water Board staff evaluated the permanent bridge installation at RP 1 and identified that bridge abutments were not armored and were very steep (Figure 1). Further, Regional Water Board staff identified that the crossing, as installed, constituted a potential threat to discharge sediment into waters of the state and required major improvements.

Figure 1: Looking upstream at the abutment on the north side of RP 1. Photo taken during the Regional Water Board staff inspection conducted on October 28, 2020.

From pages two and three of the October 28, 2020 Regional Water Board Inspection Report (Attachment C):

> *RP1 is a reconstructed Class I watercourse bridge crossing on GDRC Road MT-10. The running surface of the bridge is comprised of two railroad flatcars with earthen abutments and pre-formed concrete footings (Figure 1). We observed that the abutment fill slopes were steep and unarmored, and the footings were placed on loose fill near the top edge of the abutments. The unprotected abutment fill was exposed to the outside, scouring edge of a curve in the stream. Additionally, disturbed soil from site grading was left bare, the road approaches on both sides were not hydrologically disconnected, and a temporary construction access road was not treated with erosion control measures, creating a sediment source that was directly connected to the creek. This access road was approximately 300 feet long at a grade of approximately 15%, with a surface of bare loosely compacted soil. The access road would receive run-on from the MT-10 road.*
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> *We discussed options for repair of RP1 with Mr. Dols on the inspection. Mr. Dols agreed that the road was not satisfactorily constructed and committed to addressing* Regional Water Board *staff's concerns as soon as practicable.*

After the inspection, Regional Water Board staff expressed concern about the permanent bridge installation at RP1 to CDFW, CGS, and CAL FIRE. Between the first Regional Water Board inspection on October 28, 2020 and a follow-up inspection by CDFW and CGS on November 10, 2020, GDRC had placed rock armor and straw on the bridge abutment fill slopes at RP1. During their November 10, 2020 inspection, CDFW and CGS staff determined that the armor placement on the bridge abutment fill slopes was insufficient to remove the threat of discharge of sediment.

The CGS report of the inspection (Attachment D) states that the fillslopes were steeper than allowed under the Forest Practice Rules and that the fillslopes do not appear sufficiently armored with rock. Further, the CGS report stated that the abutments may be undercut by erosion of the unstable fillslope. CGS recommended that the crossing should be closely monitored, and use should be suspended if any erosion is observed. CGS also recommended that the bridge installation be considered temporary until it is brought up to Forest Practice standards.

The CDFW report of the inspection (Attachment E) states that the site is at risk of violating the MATO because of a failure to properly armor the fillslope of a permanent drainage structure (Figure 2). CDFW recommended that the site be closely monitored, and temporary erosion control measures should be added if the bank needs reinforcement. CDFW further recommended that the site be re-assessed in the spring to determine if additional armoring is needed.

Figure 2: Abutment on the north side of RP1. Photo taken during the CDFW inspection conducted on November 10, 2020. Note log buried in the fill, outlined in red.

On November 18, 2020, Regional Water Board staff conducted a follow-up inspection of the Project area and documented the measures taken by GDRC to stabilize RP1. Regional Water Board staff concurred that the fillslope armor for the bridge installation at RP1 was not of sufficient size or quantity to protect the banks during a high flow event. The November 18, 2020 Regional Water Board staff inspection report (Attachment F) proposed that GDRC should be required to provide photo documentation of the fillslopes and that follow-up inspections should be conducted by Regional Water Board staff. The Inspection Report further recommended that Regional Water Board issue a staff enforcement letter or Notice of Violation to GDRC for failing to adequately implement erosion control measures.

On January 14, 2021, Regional Water Board staff requested GDRC to inspect the RP1 abutment fillslopes after a storm event. The GDRC AHCP Roads Supervisor conducted an inspection that week and documented that some of the smaller rock armor placed before the inspection that occurred on November 10, 2020, but after the inspection that occurred on October 28, 2020, had become dislodged and transported downstream. Approximately one cubic yard of erosion was estimated by analysis of the photographic documentation (Figure 3). The GDRC road contractor replaced the rip rap that had slumped with larger rock.

Figure 3: Abutment on the north side of RP1, showing erosion after storm damage (note exposed log outlined in red, also outlined prior to erosion on Figure 2). Photo taken by GDRC on January 21, 2021.

II. Chronology

September 29, 2020 – GDRC informed Regional Water Board staff that the first Moore Tract Emergency Notice (EN) operation was starting. Regional Water Board staff replied with an intent to schedule an inspection.

October 11, 2020 – GDRC communicates to Regional Water Board that Revision 7 to the Annual Work Plan would include crossing reconstruction to access Moore Tract emergency timber operations. Regional Water Board staff replied with a request to inspect the site.

October 28, 2020 - Regional Water Board staff participated in an inspection of the completed road work with Tom Dols. RP1 was inspected, and staff observed that the bridge abutments were poorly constructed and unarmored, and thus had the potential to discharge sediment during a high runoff event. Tom Dols was issued a warning that RP1 improvements needed to be installed before the onset of wet weather.

November 3, 2020 – Regional Water Board staff initiated an email conversation with CAL FIRE, CGS and CDFW regarding the substandard construction of the bridge at RP1 and whether or not the road work was part of the project approved in the ENs. CDFW and CGS were

concerned about the construction practices and requested a site inspection with GDRC. CDFW noted that the crossing construction was approved by CDFW through the MATO.

November 10, 2020 – Staff from CDFW and CGS met with GDRC to inspect the bridge site. Both agencies' inspection memos noted that subsequent work had been completed at the bridge site RP1, but that the work done was insufficient to eliminate the potential for fill failure and discharge of sediment during a high flow event.

November 18, 2020 - Regional Water Board staff conducted a second inspection of the bridge site and other road points. Like the November 10, 2020 inspection by CDFW and CGS, Regional Water Board staff noted that while work had been conducted at RP1, it still presented the potential to discharge sediment during a high flow event.

January 14, 2021- Regional Water Board staff requested that GDRC inspect the bridge abutments at RP1 for signs of erosion following a storm event. The GDRC AHCP Roads Supervisor inspected the site and provided photo documentation on January 21, 2021. The photographs showed that minor erosion had occurred and that GDRC subsequently installed heavy armoring to protect the abutment fill slopes.

III. Applicable Requirements:

A. Basin Plan

The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed below. The Basin Plan's *Action Plan for Logging, Construction and Associated Activities* prohibits the following:

> **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.*
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> **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 that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. This includes water quality objectives regarding color, suspended material, settleable material, sediment, turbidity, biostimulatory substances, oil and grease, and floating material.

The existing and potential beneficial uses of waters of the North Coast Region are outlined in Table 2-1 of the Basin Plan. Elk Creek is located within the Illinois River Hydrologic Area. Existing and potential beneficial uses for the Illinois River Hydrologic Area potentially affected by the activities described herein include the following:

Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC1); Non–Contact Water Recreation (REC2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); and Spawning, Reproduction, and/or Early Development (SPWN). The potential beneficial uses are Industrial Process Supply (PRO) and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

IV. Alleged Violations and Findings

A. The Discharger failed to construct the bridge at RP1 on road MT-10 to a standard that was protective of water quality. During a Regional Water Board staff inspection conducted after the wet period date, Regional Water Board staff identified that RP1 had the potential to discharge sediment during a high flow event. The fill slopes were steep and unarmored.

   The insufficiently stabilized fill slopes constitute placement of earthen material at a location where it could pass into a stream in quantities to be deleterious to fish, wildlife and beneficial uses. GDRC received a verbal warning at the initial field inspection that the bridge construction was unacceptable and could be subject to corrective action.

B. After the initial Regional Water Board inspection, GDRC implemented stabilization measures that were insufficient to address the threatened discharge of waste to waters of the state. In subsequent inspections by CDFW and CGS, the discharger was warned that the crossing had the potential to deliver sediment into the stream when CDFW and CGS prepared written reports stating that the crossing construction failed to meet standards in the FPRs and the MATO. The follow-up repairs were conducted so late in the season that additional mitigations were not possible until the end of the wet season in spring 2021.

C. A GDRC inspection revealed that the undersized armor slumped during a storm flow event in January 2021. Photographic documentation of the abutment fill slopes showed a void space where undersized armor and loose fill used to be. The void space and adjacent fillslopes were armored with additional, larger material, however the installation occurred while the deck was still on the bridge, so properly keying in the armor would have been difficult. Improperly placed armor may destabilize when fine material is winnowed away from behind the rock.

V. Basis for Requirements in this Letter

The Regional Water Board reserves its rights to take any enforcement action authorized by law, such as issuing a cleanup and abatement order, a cease-and-desist order, time schedule order, administrative civil liabilities, and referral to the State Attorney General.

Pursuant to California Water Code sections 13385(a)(4) and (c), the Regional Board may impose administrative civil liability for a violation of the Basin Plan prohibition up to $10,000 a day for each of violation, and up to $10 per gallon discharged over 1,000 gallons not cleaned up. Pursuant to Water Code section 13350, the Regional Board may impose administrative civil

liability for a violation of the GWDR up to $5,000 a day for each day of violation, or up to $10 per gallon of waste discharged. Failure to comply with this NOV may subject the Discharge to $1,000 for each violation, each day pursuant to Water Code section 13268.

Should you have any questions regarding this matter, please contact me at Forest.Fortescue@waterboards.ca.gov or Chad Johnson of my staff at Chad.Johnson@waterboards.ca.gov.

Sincerely,

Forest Q Fortescue

Digitally signed by Forest Q Fortescue
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Forest Fortescue, PG
Senior Engineering Geologist
Northern Nonpoint Source & Forestry Unit
North Coast Regional Water Quality Control Board

Attachments: Attachment A: September 28, 2020 GDRC Annual Work Plan Revision 6
Attachment B: October 12, 2020 GDRC Annual Work Plan Revision 7.1
Attachment C: October 28, 2020 Regional Water Board Inspection Report
Attachment D: November 10, 2020 CDFW Inspection Report
Attachment E: November 10, 2020 CGS Inspection Report
Attachment F: November 18, 2020 Regional Water Board Inspection Report
Attachment G: October 2, 2020 – December 1, 2020 Email communication between GDRC, CDFW, CGS and Regional Water Board.

cc: Jeremy Wright, GDRC
Nicholas Simpson, CDFW
Richard Klug, CDFW
Sara Gallagher, CGS
John Oswald, CGS
Brandon Rodgers, CAL FIRE
Chris Curtis, CAL FIRE