

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

**Cleanup and Abatement and
Investigative Order No. R1-2023-0054
for
Sexton Properties, LLC
Assessor Parcel Number 217-391-007-000
Humboldt County**

This Order is issued to Sexton Properties, LLC (hereafter referred to as the Discharger) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a cleanup and abatement order, and Water Code section 13267, which authorizes the Regional Water Board to issue investigative orders requiring the preparation and submittal of technical and monitoring reports (collectively, the Order).

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

PURPOSE OF THE ORDER

1. This Order requires the Discharger to clean up and abate the effects of unauthorized grading, road building, construction of a stream crossing, and excavation and altering of watercourses on Humboldt County Assessor's Parcel Number (APN) 217-391-007-000 (hereafter Property) to eliminate the threat of future discharges to tributaries of Larabee Creek. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

Property Location and Description

2. The Property is located at 29211 Alderpoint Road, Blocksburg, in Humboldt County. This location is approximately one mile northwest of the town of Blocksburg. An unnamed tributary located on the south portion of the Property flows east to Larabee Creek located along the east side of the Property. Larabee Creek, and its unnamed tributaries, are waters of the state, as well as waters of the United States (references hereafter to waters of the United States are also waters of the state).¹ Larabee Creek is a tributary to the Eel River, located in the

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

Larabee Creek Hydrologic Subarea of the Lower Eel River Hydrologic Area. The lower Eel River is Clean Water Act section 303(d)-listed as impaired due to sediment/siltation and high-water temperature. On December 18, 2007, the U.S. Environmental Protection Agency approved Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Lower Eel River and its tributaries. The TMDLs indicate that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. As such, protection of this beneficial use is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation.

Responsible Party

3. This Order finds that the Discharger is a responsible party based on the following:
 - a. Parcel information available from the Humboldt County Assessor's Office, as accessed via Digital Map Products' LandVision™ online service, indicates that the Property was purchased by Dobrev Capital, LLC on November 11, 2019. Dobrev Capital, LLC owned the Property during State Water Board staff's inspections in 2020 and 2021. Per records from the Humboldt County Assessor's Office, accessed via LandVision, Dobrev Capital, LLC transferred the Property to Sexton Properties, LLC on August 1, 2022. Sexton Properties, LCC is the current owner of the Property.
 - b. The Regional Water Board previously issued Cleanup and Abatement and 13267 Order No. R1-2021-0029 to Dobrev Capital, LLC. Order No. R1-2021-0029 remains in effect. Issuance of this Order to Sexton Properties, LLC does not conflict with, nor affect Dobrev Capital LLC's responsibility to comply with Order No. R1-2021-0029. Likewise, this Order does not alter the days of violation that Dobrev Capital, LLC has accrued, and may continue to accrue, for any failure to comply with Order R1-2021-0029 nor does it preclude the Regional Water Board's ability to pursue enforcement against Dobrev Capital, LLC for violation of Order No. R1-2021-0029.

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.

- c. For purposes of this Order, the Regional Water Board is naming Sexton Properties, LLC as a responsible party on the basis that it currently owns the Property, that ongoing discharges or threatened discharges are occurring on the Property, that it knows or should know of the conditions resulting in the discharges or threatened discharges, and that it has the legal ability to prevent additional discharges.
- d. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.

Factual Basis of Order

- 4. On March 9, 2020, staff of the State Water Board and California Department of Fish & Wildlife (CDFW) inspected the Property, executing a search warrant obtained by the CDFW from Humboldt County Superior Court. The attached Notice of Violation, dated August 4, 2020, and associated report of the March 9, 2020 inspection (Water Quality Inspection Report) document the water quality concerns and violations that staff observed on the Property, including the following:
 - a. Recently constructed large-scale (greater than one acre in total) graded earthen flats on slopes, draining towards watercourses, with insufficient erosion and sediment controls in place.
 - b. Constructed stream crossing of an unnamed Class II (intermittent) watercourse with insufficient erosion and sediment controls.
 - c. Placement of earthen fill material and discharge of sediment to an unnamed Class II watercourse.
 - d. Alteration of an unnamed Class II watercourse by construction of a stream crossing.
 - e. Alteration of two unnamed Class III (ephemeral) watercourses by construction of graded earthen flats and roads.
 - f. Slope instability of a graded earthen flat.
 - g. Discharging and/or proposing to discharge waste without obtaining regulatory coverage.
- 5. On August 18, 2020, Dobrev Capital, LLC applied for regulatory coverage under State Water Board Order No. WQ 2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation* (Cannabis General Order), as amended by Order No. WQ 2019-0001-DWQ; however, Dobrev Capital, LLC did not complete the enrollment process to gain coverage under the Cannabis

General Order.

6. Dobrev Capital, LLC's consultant submitted an Interim Winterization and Erosion Control Plan and a Maintenance and Monitoring Plan, which were approved by State Water Board staff on November 17, 2020. Winterization and erosion control measures were implemented pursuant to the plans, with confirmation of completion provided to State Water Board staff on January 18, 2021.
7. On March 23, 2021, the Regional Water Board sent a draft Cleanup and Abatement and 13267 Order (draft Order) to Dobrev Capital, LLC for comment. The draft Order proposed required actions to clean up and abate the discharges and threatened discharge of fill material and sediment to unnamed watercourses tributary to Larabee Creek that were observed during the March 9, 2020, inspection. Dobrev Capital, LLC did not submit any comments on the draft Order.
8. On March 26, 2021, State Water Board staff and CDFW, accompanied by Dobrev Capital, LLC's consultants, inspected the Property to assess site conditions, effectiveness of winterization and interim erosion control measures, and an onstream pond. The attached Water Quality Inspection Report documents the water quality concerns that staff observed at the Property, including the following:
 - i. Substantial slope failures of graded cut-slopes and fill-slopes since the March 2020 inspection. Cut-slope toe drainage ditches that discharge to watercourses were overwhelmed by slump material.
 - ii. Failure of access road upslope of graded area cut-slope.
 - iii. Tension cracks in surface of graded flat near edge of fill-slope.
 - iv. Ineffective and unmaintained stabilization and erosion control measures for cut-slopes, fill-slopes, and slope toe-drain ditches.
 - v. Uncontrolled and unutilized discharge of water to the ground from groundwater well.
 - vi. Dam and impoundment of unnamed Class II watercourse.
9. On May 21, 2021, the Regional Water Board Executive Officer issued Cleanup and Abatement and 13267 Order R1-2021-0029 to Dobrev Capital, LLC requiring cleanup and abatement of the water quality threats and impacts of unauthorized grading, road building, construction of a stream crossing, and excavation and alteration of watercourses, to eliminate the threat of future discharges to tributaries of Larabee Creek. Order R1-2021-0029 required the preparation and

submittal of technical and monitoring reports by specific deadlines.

10. On October 5, 2021, Dobrev Capital, LLC's consultant requested an extension of the deadline to comply with Required Action No. 4 of Order R1-2021-0029, which required complete implementation of an approved Restoration, Mitigation, and Monitoring Plan (RMMP) by October 31, 2021. Additionally, Dobrev Capital, LLC's consultant requested that implementation of the RMMP be conducted in two phases over a period of two years.
11. On January 12, 2022, the Executive Officer of the Regional Water Board issued a letter modifying Order R1-2021-0029, which extended the deadline for Required Action No. 4 to require Dobrev Capital, LLC to complete implementation of Phase 1 of the RMMP by October 15, 2022, and complete implementation of the entire RMMP, including Phase 2, by October 15, 2023.
12. On March 7, 2022, the Regional Water Board issued a letter approving the RMMP and a Restoration Plan, dated January 27, 2022, proposed by Dobrev Capital, LLC.
13. On June 21, 2022, August 25, 2022, and October 20, 2022, State Water Board staff contacted Dobromir Dobrev to inquire about the status of implementation of Phase 1 of the RMMP. On October 21, 2022, Mr. Dobrev informed State Water Board staff that Dobrev Capital, LLC no longer owned the Property and provided documentation of the transfer. Mr. Dobrev did not provide any information regarding the status of the implementation of the RMMP.
14. On October 21, 2022, State Water Board staff sent an email to Fritz Sexton, owner of Sexton Properties, LLC, regarding the notification from Mr. Dobrev of the transfer of ownership of the Property to Sexton Properties, LLC. Additionally, staff provided Mr. Sexton a copy of Order R1-2021-009 that had been issued to Dobrev Capital, LLC. State Water Board and Regional Water Board staff have not received any communication from Mr. Sexton.
15. On February 14, 2023, the State Water Board issued a Notice of Violation to Dobrev Capital, LLC for failure to implement Phase 1 of the RMMP by October 15, 2022, and for failure to submit monthly progress reports as required by Order R1-2021-0029.

Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives

16. 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 Board.

- a. Existing and potential beneficial uses for the Larabee Creek Hydrologic Subarea within the Eel River Hydrologic Unit include the following: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO) Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Hydropower Generation (POW), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial or Sport Fishing (COMM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all its tributaries.
- b. The Basin Plan (https://www.waterboards.ca.gov/northcoast/water_issues/programs/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 (See section 4.2.1 of the Basin Plan):
 - i. Prohibition 1 – “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”
 - ii. Prohibition 2 – “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
- c. 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 include the following:
 - i. 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.”

- 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. Suspended Material: “Waters shall not contain suspended material in concentrations that 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.”

Regional Water Board and State Water Board Resolutions

17. As part of the Regional Water Board’s efforts to control sediment waste discharges and restore sediment-impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.
18. To address sources of elevated water temperature to reduce impairments to waters of the state and prevent further impairment, the Regional Water Board adopted the *Policy for Implementation of the Water Quality Objective for Temperature in the North Coast Region* (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provide shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.
19. State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the

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

Legal Basis of the Order

20. Water Code section 13304, subdivision (a), states, in relevant part, “any 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.”
21. “Waste,” as defined by Water Code section 13050, subdivision (d), includes “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purpose of, disposal.” Earthen material, including sediment, when discharged to waters of the state, is a “waste” as defined in Water Code section 13050, subdivision (d). The Discharger has caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to tributaries of Larabee Creek.
22. “Pollution” is defined in Water Code section 13050, subdivision (l)(1), as an alteration of the quality of the waters of the state by waste to a degree that unreasonably affects either the waters for beneficial use, or facilities which serve these beneficial uses. Earthen material from construction of a stream crossing and

onsite roads, land clearing and grading within or adjacent to watercourses, and the erodible soils from roads and graded areas on the Property has discharged, and still has the potential to discharge, into unnamed watercourses tributary to Larabee Creek, creating or threatening to create a condition of pollution by unreasonably affecting the beneficial uses of waters of the state.

- a) Discharges of sediment and other inert material 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. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).
- b) The discharge of organic and earthen material in the Eel River watershed is especially problematic because, as noted above, the Lower Eel River is listed as an impaired water body under Section 303, subdivision (d), of the Clean Water Act due to several pollutants, including sedimentation/siltation and high-water temperatures. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold-water fish.
- c) Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes and 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. Suspended sediment can result in (1) increased turbidity (loss of clarity) resulting in 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). 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. These water quality impacts occur both during sediment transport and sediment deposition.

- d) Sediment is also a known transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses impacted: REC1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

23. Cleanup and abatement is necessary to ensure that any existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. 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 and State Water Board.

Technical Reports Required

24. Water Code section 13267, subdivision (a), provides that the Regional Water Board, "in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division [Division 7], may investigate the quality of any water of the state within its region." 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. Staff estimate the total cost of technical reports required by this Order to be approximately \$12,080 to \$35,960². The costs of the technical or monitoring reports required by this Order bear a reasonable

² The State Water Board considered the estimated costs associated with various technical reports regarding site characterization, stabilization, and restoration during the adoption and amendment of the Cannabis Cultivation Policy and General Order. Estimated costs for technical reports were presented in the [State Water Board's 2017 Direct Cost Analysis For the Proposed Cannabis Cultivation Policy \(2017 Direct Cost Analysis\)](#)

(www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf). The costs to develop the technical reports required in this Order are anticipated to be comparable to the preparation of reports presented in the 2017 Direct Cost Analysis, as detailed in Paragraph 24, subparagraphs a-d.

relationship to the need for these reports and the benefit to be gained by these reports, as discussed below:

- a. The Restoration, Monitoring, and Mitigation Plan (RMMP) is a technical report that is necessary to assess impacts to waters of the state resulting from the unauthorized land disturbance activities and to determine the appropriate restoration and abatement work to correct those impacts. By requiring the Discharger to submit an RMMP, the Regional Water Board or its delegated officer has the opportunity to review and approve the scope of the proposed restoration and corrective 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. As previously mentioned, the lower Eel River is Clean Water Act section 303(d)-listed as impaired 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 and associated costs to prepare an RMMP (i.e., field inspection and report preparation) are comparable to that of preparing a combined Site Management Plan and Disturbed Area Stabilization Plan as presented in the 2017 Direct Cost Analysis, which is estimated to cost between \$3,660 and \$11,720. An RMMP was proposed by Dobrev Capital, LLC and approved by the Regional Water Board so there would be no additional cost of Required Action No. 1 should the Discharger choose to implement the already approved RMMP. After consideration of these factors, staff has determined that the burden, including costs, of submitting the RMMP bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
- b. The Monthly Progress Reports are periodic reports that the Discharger must prepare to demonstrate and communicate progress on implementation of the RMMP. Monthly Progress Reports are necessary to ensure that the restoration and corrective actions are being performed consistent with the approved RMMP and that implementation of the RMMP will be completed by the deadline contained in this Order. Timely implementation is crucial to ensure the Property is restored and erosion control measures are in place prior to the next winter season to prevent discharges of sediment into waters of the state. The cost of preparing a Monthly Progress Report is based on the cost estimated in the 2017 Direct Cost Analysis for report production of a Site Closure Report which is estimated to cost \$120 an hour. Staff has estimated that it will take 4-8 hours to prepare a Monthly Progress Report, resulting in a cost between \$480 and \$960 per report, for a total cost between \$3,360 and \$6,720 to prepare seven monthly reports during the period of April through October when on-site restoration activities are authorized. After consideration of these factors, staff has determined that the burden, including costs, of submitting the Monthly Monitoring Reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

- c. The RMMP Completion Report is a report that demonstrates to the Regional Water Board or its delegated office that the restoration and corrective actions contained in the approved RMMP have been fully implemented. By requiring the Discharger to submit documentation of the corrective actions, including pre- and post-construction photographs, staff can confirm the RMMP has been fully implemented and that the erosion control measures are adequate to prevent future discharges of sediment into waters of the state. The cost to prepare an RMMP Completion Report is comparable to the report preparation component of a combined Site Management Plan and Disturbed Area Stabilization Plan as presented in the 2017 Direct Cost Analysis, which is estimated to cost between \$2,900 and \$8,000. After consideration of these factors, staff has determined that the burden, including costs, of submitting the RMMP Completion Report bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
 - d. Annual Monitoring Reports are necessary to document the long-term stability of restored areas, to identify any areas where restoration is failing or needs improvement, and to demonstrate the effectiveness of erosion control measures in preventing sediment discharges to waters of the state. Given the condition of the Property as a result of the unauthorized land disturbance activities, including extensive grading and placement of fill, subsequent failure of an access road, and sediment discharge to waters of the state, a yearly report for a minimum of two years will enable staff to confirm that the completed restoration and corrective actions documented in the RMMP Completion Report continue to be effective. The cost to prepare an Annual Monitoring Report is comparable to producing a Site Closure Report as presented in the 2017 Direct Cost Analysis, which is estimated to cost between \$1,080 and \$4,760 per report, for a total of \$2,160 to \$9,520 for two annual reports. After consideration of these factors, staff has determined that the burden, including costs, of submitting the Annual Monitoring Reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
25. The Discharger named in this Order currently owns the Property and thus is appropriately named a responsible party for providing the reports.

California Environmental Quality Act

26. Issuance of this Order is an enforcement action by a regulatory agency to enforce the regulatory provisions of the Basin Plan, and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307) and an action by a regulatory agency for the protection of

the environment (Cal. Code Regs., tit. 14, § 15308). To the extent that the Order requires earth-disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, such actions are exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. Should additional environmental review be required by the Regional Water Board in connection with future discretionary regulatory actions at the Property, the Regional Water Board may recover the costs associated with preparing and processing environmental documents from the Discharger (Pub. Resources Code, § 21089).

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.

1. **Within 90 days of the effective date of this Order**, the Discharger shall do one of the following:
 - a. Submit a written statement acknowledging intent to utilize and fully implement the RMMP previously proposed by Dobrev Capital, LLC, submitted pursuant to Order R1-2021-0029, that was approved by the Regional Water Board on March 7, 2022.³ Additionally, the statement of intent must be signed by the qualified professional responsible for implementing the RMMP; or
 - b. Submit a new proposed RMMP acceptable to the Regional Water Board or its delegated officer. The RMMP shall include, but not be limited to:
 - i. An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, rivers, streams, seeps, springs, bogs, and wetlands, caused by the unauthorized activities, including all areas that have been developed or disturbed; and identification of controllable sediment sources requiring restoration. The assessment shall include all disturbed areas located within the riparian setbacks from

³ The March 7, 2022 approved plan is comprised of the RMMP, dated September 8, 2021, and the Restoration Plan, dated January 27, 2022. Although the Discharger may elect to implement the cleanup, restoration, and mitigation measures contained in the previously approved plan, implementation of those measures must adhere to the deadlines contained in this Order and will require a new implementation schedule. Dobrev Capital LLC remains responsible for compliance with Order R1-2021-0029, and nothing in this Order precludes the responsible parties from working together to comply with their respective Orders.

watercourses, wetlands and springs. The assessment shall be completed by an appropriately qualified professional, and at a minimum, address surface water hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, reservoirs and their effects on water quality, active or potential erosion and sedimentation sites, stability of graded and disturbed features, culverts and other stream crossings, as well as roads and all disturbed areas on the Property. The assessment shall include aerial photographs and/or satellite images, photographs, topographic maps, or drawings, etc., of Property conditions prior to and after conducting the unauthorized activities, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, delineation of riparian setbacks from surface water features, delineation of all waters of the state and waters of the United States, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings before and after the unauthorized activities shall serve as the basis for the RMMP;

- ii. A plan for Property restoration, including a description of how short-term and long-term impacts from erosion and sedimentation sources will be abated (e.g. immediate implementation of erosion and sediment controls and re-grading and re-engineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted by the unauthorized activities, including unnamed tributaries of Larabee Creek, and any springs, seeps, bogs, or wetlands;
- iii. Best management practices to be applied to all current and planned work associated with construction activities on the Property impacting, or having the potential to impact, Larabee Creek and its unnamed tributaries. The RMMP shall contain, at a minimum, design specifications for roads, any stream crossing, in-stream structure; and for riparian and aquatic habitat restoration, surface drainage controls, and erosion and sedimentation controls; an implementation schedule; a monitoring and reporting plan; and success criteria for restoration and compensatory mitigation; and
- iv. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary, and detailed project milestones to fulfill the requirements of this Order once those permits are obtained.

2. **By October 31, 2023**, the Discharger shall implement winterization measures at the Property to prevent discharges of sediment and sediment-laden stormwater to waters of the state, and submit documentation of completed implementation of winterization measures. Winterization measures implemented shall be the functional equivalent of the control measures presented in the Updated Revised Interim Winterization and Erosion Control Plan, dated September 22, 2021.
3. **By May 15, 2024**, the Discharger shall begin implementation of an RMMP approved by the Executive Officer (either the March 7, 2022 RMMP or another approved RMMP) in accordance with an approved implementation schedule.
4. The Discharger shall submit monthly progress reports beginning **the first day of the month** following the start of implementation of the RMMP through completion of cleanup, stabilization, restoration, and mitigation work. The monthly progress reports shall include photographs at each photo monitoring point, as depicted on site maps/figures.
5. **By October 31, 2024**, the Discharger shall complete implementation of the restoration and mitigation measures contained in the RMMP.
6. Within 60 days after fully completing implementation of the RMMP, **but no later than December 30, 2024**, the Discharger shall submit an RMMP Completion Report for approval by the Regional Water Board or its delegated officer. The RMMP Completion Report shall include accurate depictions, documentation, and as-built designs of all completed restoration construction and/or abatement measures included in the approved RMMP to demonstrate the restoration and mitigation measures contained in the RMMP have been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.
7. Upon completion of the restoration and mitigation measures contained in the RMMP, the Discharger shall submit annual monitoring reports by **January 31** of each year for at least two years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria identified in the RMMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photographs of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that identifies 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 Onsite Work:** The Discharger, or a duly authorized agent, shall notify State Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers shall contact Gary Dickenson at (916) 341-5424 or by email Gary.Dickenson@waterboards.ca.gov.
4. **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 submitted to State Water Board staff no later than 30 days prior to a planned change and shall reference the number of this Order.
5. **Reasonable Access:** The Discharger shall allow the State Water Board and 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.

6. **Submissions:** The RMMP and all monitoring reports, technical reports, or notices required under this Order shall be submitted to State Water Board staff at the addresses provided below. State Water Board staff will coordinate with the Regional Water Board or its delegated officer to obtain approval of the required submittals.

By email (preferred) to:

Gary Dickenson, Engineering Geologist
Gary.Dickenson@waterboards.ca.gov

Or by mail to:

State Water Resources Control Board – Office of Enforcement
Attn: Gary Dickenson
801 K St., Suite 2300
Sacramento, CA 95814

7. **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.
8. **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. If requested by the Regional Water Board or State Water Board, the Discharger shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the State Water Board and Regional Water Board.
9. **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 Regional Water Board or its delegated 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 or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.

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.
11. **Enforcement Authority:** 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/or up to \$10 per gallon when the violation results in the discharge of waste, pursuant to Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and conditions 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 modified if additional information becomes available.
13. **Requesting Review by the State Water Board:** Any person aggrieved by this 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 seq. 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:
(https://www.waterboards.ca.gov/public_notices/petitions/water_quality/)
or will be provided upon request.

This Order is effective upon the date of signature.

Valerie Quinto
Executive Officer

Attachments: Attachment 1 - August 4, 2020, Notice of Violation and Water Quality
Inspection Report
Attachment 2 - April 20, 2021, Water Quality Inspection Report