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BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

JON AND DEANN GREEN)	
)	
Petitioner,)	PETITION FOR REVIEW BY THE
and)	CALIFORNIA STATE WATER
)	RESOURCES CONTROL BOARD
CALIFORNIA REGIONAL WATER)	
QUALITY CONTROL BOARD - NORTH)	[Cal. Water Code §13320]
COAST REGION)	
)	
Respondent.)	

 This petition for review is submitted on behalf of Jon and Deann Green ("Petitioners") pursuant to California Water Code ("WC") §13320 for review of Cleanup and Abatement Order No. R1-2010-0071 ("CAO") issued by the California Regional Water Quality Control Board - North Coast Region ("Regional Board") on December 2, 2009.

I. Name and Address of Petitioners

- 1) Jon and Deann Green
PO Box 643
Willits, CA 95490

With copy to Petitioners' Counsel:

- 2) Carter & Momsen, LLP
Matisse M. Knight
444 North State Street
Ukiah, CA 95482

II. Regional Board Action for Review

Petitioners request that the California State Water

1 Resources Control Board ("SWRCB") review the CAO issued by the
2 Regional Board on August 6, 2010. A copy of the CAO is attached
3 hereto as Exhibit A.

4
5 **III. Date of Regional Board's Action.**

6 The Regional Board issued the CAO on August 6, 2010.

7
8 **IV. Statement of Reasons Why Regional Board's Action Was
9 Inappropriate or Improper.**

10 Petitioners believe that the CAO inappropriately and
11 improperly characterizes grading and engineering work performed
12 by Petitioners on Petitioners' real property as necessitating an
13 additional CAO over one previously issued on or around December
14 3, 2002. Petitioners believe the CAO constitutes a prejudicial
15 abuse of discretion for several reasons including, but not
16 limited to, the following:

17 1) Recent work has been performed on Petitioners' property
18 to reduce the potential that sediment may enter unnamed
19 tributaries on Petitioners' property.

20 2) Petitioners have not introduced Waste into a Stream or
21 Watercourse as those terms are defined in the Regional Board's
22 Basin Plan.

23 3) " New road construction" of a road referred to in the CAO
24 merely involved the clearing of an existing trail and was done
25 for fire protection purposes, pursuant to a Mendocino County
26 Building Permit. It did not involve placement of fill or "waste"
27 into a stream or watercourse as prohibited by the Regional
28 Board's Basin Plan.

1 4) Any "discharge" of any substance - or potential discharge
2 - was not in an amount that could be considered deleterious to
3 fish, wildlife or other beneficial use of a stream or
4 watercourse.

5 5) The time-line stated for completion of certain phases in
6 the CAO, including some requirements for completed actions within
7 25 days of issuance of the CAO, is not supported by findings and
8 upon substantial evidence, is unduly burdensome and not capable
9 of being completed within such stringent parameters.

10 6) The issuance of this CAO also follows issuance of a
11 fifteen count criminal complaint - including multiple felonies -
12 by the Mendocino County District Attorney's Office for alleged
13 violations of the Water Code, Fish and Game Code and Public
14 Resources Code related to the alleged activity in the CAO.
15 Petitioners have been embroiled in defending those charges -
16 which carry potential sentences involving multiple years in state
17 prison - and have expended significant time, money and other
18 resources therein. Piling on with the CAO, at a time when
19 Petitioners are economically and emotionally at their weakest,
20 violates due process of law.

21
22 **V. How Petitioners Are Aggrieved**

23 The CAO issued by the Regional Board could result in the
24 imposition of significant fines and penalties and requires that
25 Petitioners expend significant time and money to remedy the
26 alleged violations. Therefore, if adopted as is, the CAO stands
27 to put a ruinous burden - both financially and as property owners
28 - on Petitioners.

1 In conjunction with the criminal prosecution related to the
2 alleged activities in the CAO, issuance of the CAO can be seen as
3 nothing more than attempt to bankrupt Petitioners, in both
4 economically and emotionally, and drive them from their land
5 without due process of law and in violation of their right to
6 equal protection of the law.

7
8 **VI. Actions Petitioners Request the SWRCB to Take**

9 The SWRCB should look at the "whole picture" and realize
10 that the State's priorities herein have been misguided - focusing
11 on pressuring the Petitioners to first defend against onerous
12 criminal charges and raking Petitioners through the local press
13 rather than focusing on correcting any issues actually present on
14 the ground. The SWRCB should order the Regional Board to
15 reconsider the CAO and provide more realistic and beneficial
16 corrective orders and a time line thereto.

17 In addition, Petitioners believe that it would be
18 appropriate for the SWRCB to coordinate with the Mendocino County
19 District Attorney's Office and weigh in on the criminal complaint
20 filed in this county. The Regional Board has completely ignored
21 Petitioners' similar requests to do so. This criminal complaint
22 has done nothing but allege specious felony charges and caused
23 Petitioner to divert significant resources from what should be
24 the SWRCB's and Regional Board's primary concern - ensuring that
25 if there are any actual water quality issues on Petitioners'
26 property, they get fixed.

27 Petitioners specifically request a hearing before the SWRCB
28 on the matters stated herein.

1 The issues outlined herein notwithstanding, Petitioners
2 request that this review be held in abeyance pending Petitioners
3 current attempts to resolve this matter with the Regional Board.
4 Petitioner would appreciate, however, the SWRCB's weighing in
5 with the Mendocino County District Attorney's Office and the
6 criminal complaint filed by that office which is diverting
7 substantial resources away from any remediation that may be
8 necessary.

9
10 **VII. Statement of Points and Authorities**

11 The following is a brief statement of points and authorities
12 related to the issues of this petition.

13
14 **A. The Actions Complained of in the CAO Do Not**
15 **Sufficiently State A Complaint for Violations of the**
16 **Regional Board's Basin Plan.**

17 The CAO alleges that activities upon the Petitioners'
18 property have violated two prohibitions of the Regional Board's
19 Basin Plan:

20 "Prohibition 1 - 'The discharge of soil, silt,
21 bark, slash, sawdust, or other organic and earthen
22 material from any logging, construction, or associated
23 activity of whatever nature into any stream or
24 watercourse in the basin in quantities deleterious to
25 fish, wildlife, or other beneficial uses is
26 prohibited.'"

27 Prohibition 2 - 'The placing or disposing of
28 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.'"

 To support issuing a CAO based upon alleged violations of
the above referenced prohibitions, the CAO merely asserts that

1 "Dischargers logging, grading and road construction
2 activities caused waste, including but not limited to
3 soil and earthen material, to be discharged or
4 deposited into waters fo the State or permitted such
5 waste to be placed where it is or probably will be
6 discharged to waters fo the State, which violates the
7 waste discharge prohibitions contained in the Action
8 Plan for Logging, Construction, and Associated
9 Activities. The Dischargers' logging, grading and road
10 construction activities also created a condition of
11 pollution or nuisance and continue to threaten to
12 created a condition of pollution or nuisance." (CAO
13 ¶31.)

14 The CAO, however, does not attempt to quantify any amount of
15 sediment discharged such that it can be determined whether it was
16 "deleterious to fish, wildlife or other beneficial uses" - a
17 requirement to show a violation of either prohibition listed
18 above.

19 Additionally, the Basin Plan specifically defines a stream
20 or watercourse - as used in the above referenced prohibitions -
21 as a "[n]atural watercourse as designated by a solid line or dash
22 and three dots symbol shown in blue on the largest scale United
23 States Geological Survey Topographic Map most recently
24 published." (Basin Plan 4-27.00.) However, nowhere does the CAO
25 consider whether the "unnamed tributaries" - or Scott Creek for
26 that matter - fall within this specific definition - which
27 Petitioners believe they do not.

28 In other words, the prohibitions apply to "streams or
watercourses" as defined in the Basin Plan and it is such a
stream where considerations of whether a discharge was
"deleterious to fish, wildlife or other beneficial uses" must be
made. The CAO therefore inappropriately and improperly assesses
the amount of sediment discharge and its location.

1 **B. The CAO Inappropriately and Improperly**
2 **Characterizes the Construction of a Fire Road on the**
3 **Petitioners' Property.**

4 The Regional Board's staff alleges that, in many areas, new
5 road construction does not comply with general engineering
6 practices for such construction or state permitting requirements.
7 (CAO ¶¶20 and 21.) However, the CAO simply refers to
8 "observations" of some staff members and makes no reference to
9 actual facts, measurements or testing performed by any staff
10 member to support such allegations.

11 **C. The CAO Does Not Identify How The Significant Work**
12 **Performed by Petitioners was Insufficient and the CAO**
13 **Fails to Provide Sufficient Guidance on Compliance**

14 The CAO does not acknowledge the work already performed by
15 Petitioners to address the Regional Board's concerns or the
16 hundreds of thousands of dollars already paid by Petitioners in
17 fines, attorneys fees, construction costs and consultant fees
18 attempting to comply with the Regional Board's requirements.
19 Furthermore, the CAO does not acknowledge remediation plans
20 submitted previously by petitioner, and the work done in
21 accordance therewith, and how any such plans and work was
22 actually deficient. In other words, the Regional Board fails to
23 provide sufficient guidance to Petitioners on how the previous
24 work might have been unsatisfactory and to give any actual
25 guidance on how Petitioners can properly move forward - a
26 fundamental duty of state agencies such as the Regional Board.

27 **VIII. Statement of Service Upon Regional Board**

28 Petitioners are serving a copy of this Petition upon the
 Regional Board along with a request that the Regional Board

1 prepare its record for this Petition concurrently with the
2 submission of this petition to the SWRCB.


3

4 **VII. Conclusion**

5 The Regional Board has doggedly pursued Petitioners,
6 preferring that Petitioners be sent to prison rather than fix any
7 problems that may actually be on the ground. This must cease.
8 The Regional Board has lost sight of what's important and the
9 mandated responsibilities it has to the citizens of this state.
10 The Regional Board should be providing guidance, not embarking on
11 egotistical, personal pursuits of this state's citizens.
12 Petitioners therefore request that the issuance of the CAO by the
13 Regional Board be reviewed by the SWRCB.

14

15 DATED: September 7, 2010


CARTER & MOMSEN, LLP

16

By: Matisse M. Knight
Attorneys for Petitioners
JON and DEANN GREEN

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EXHIBIT A



**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**



Linda S. Adams
Secretary for
Environmental Protection

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold
Schwarzenegger
Governor

August 6, 2010

Jon and Deann Green
P.O. Box 643
Willits, CA 95490

Dear Mr. and Mrs. Green:

Subject: Cleanup and Abatement Order No. R1-2010-0071

File: Jon and Deann Green Grading Project, Willits, California

Enclosed is Cleanup and Abatement Order (CAO) No. R1-2010-0071, issued by the North Coast California Regional Water Quality Control Board (Regional Board) to you, JCG Constructors, and Green Right O'Way Constructors (Dischargers) pursuant to California Water Code section 13267 and 13304. The Order requires the Dischargers to clean up and abate the continued and threatened discharges of sediment to several unnamed tributaries, and Scott and Tomki Creeks that originated from your property located at 22341 Tomki Road (site), Willits and to submit a number of technical reports to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled, cease to cause and/or threaten to cause conditions of pollution, and to restore beneficial uses of the affected waters.

Please note the deadlines contained with the CAO. Failure to comply with the requirements of this Order may subject the Dischargers to enforcement action, including but not limited to imposition of administrative civil liability, or referral to the Attorney General for injunctive relief or civil or criminal liability.

Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with California Water Code Section 13320 and Title 23, California Code of Regulations, Section 2050. The State Water Board must receive the petition within 30 days of the date of the Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal

California Environmental Protection Agency

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rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

If you have any questions, please contact Cecile Morris of my staff by email at cmorris@waterboards.ca.gov or phone at (707) 576-2347 or her supervisor, Diana Henrioulle by email at dhenrioulle@waterboards.ca.gov or phone at (707) 576-2350.

Sincerely,



Catherine Kuhlman
Executive Officer

Enclosure: CAO No. R1-2020-0071, w/attachments

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Cc: Jared Carter, Carter & Momsen, LLP, P.O. Box 1709, Ukiah, CA 95482
Matisse Knight, Carter & Momsen, LLP, P.O. Box 1709, Ukiah, CA 95482
Pat Conway, PJC and Associates, Inc., 706 Portal St., Suite B, Cotati, CA 94931
Jan Zabriskie, Deputy Attorney General, California Attorney General's Office,
P.O. Box 944255, Sacramento, CA 94244-2550
Jose Cross, Environmental Circuit Prosecutor, California District Attorneys
Association, 921 11th Street, Suite 300, Sacramento, CA 95814
Derek Roy, National Marine Fisheries Service, 777 Sonoma Ave., Room 203,
Santa Rosa, CA 95404
Jeanette Pederson, California Department of Forestry, 17501 North Highway
101, Willits, CA 95490
Warden Cindy Pourroy, California Department of Fish and Game, P.O. Box 47,
Yountville, CA 94599
Chris Warrick, Building Official, Mendocino County Building Department, 501
Low Gap Road, Room 1140, Ukiah, CA 95482

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2010-0071

FOR

JON AND DEANN GREEN
JCG CONSTRUCTION
AND
GREEN RIGHT O'WAY CONSTRUCTORS, INC.

22341 Tomki Road Willits
APN Numbers 108-191-11-00 and 108-192-11-00
Eight Miles East of Willits

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Jon and Deann Green are the landowners of approximately 520 acres of land located at 22341 Tomki Road approximately eight miles east of Willits in Mendocino County (Sections 7, 8, and 9, Township 18 North, Range 12 West) (hereinafter "Site").
2. The Site is situated in former timberland and/or oak, brush, and grassland areas on a ridge top and descends from the ridge down into Scott and Tomki Creek watersheds. The Site drains into the Scott and Tomki Creek watersheds, both tributary to the Eel River watershed. Scott Creek, Tomki Creek, and the Eel River provide habitat for Steelhead trout, Chinook salmon, and Coho salmon, which are listed as threatened under the Endangered Species Act.
3. Jon Green is the owner of JCG Construction, a sole proprietorship. Green Right O'Way Constructors, Inc. is an active California Corporation. Jon Green is the responsible managing officer, president, and/or chief executive officer of Green Right O'Way Constructors, Inc. Deann Green is an officer and/or treasurer and secretary of Green Right O'Way Constructors, Inc. Both JCG Construction and Green Right O'Way Constructors are listed as licensed California contractors with a Class A General Engineering License. JCG Construction's license is expired as of April 30, 2006. A general engineering contractor conducts business in connection with fixed works requiring specialized engineering knowledge and skill, including but not limited to drainage, river control, land leveling and earthmoving projects, excavating, grading, and trenching. For the purposes of this Order, Jon and Deann Green, JCG Construction and Green Right O'Way Constructors, Inc., are hereinafter referred to as the "Dischargers."

BACKGROUND

4. In response to a report of possible logging and land clearing without an approved Timber Harvest Plan or Timberland Conversion permit, Regional Water Board staff (Staff) inspected the Site with representatives from the California Department of Forestry and Fire Protection (hereinafter "CalFire") on May 18, 2001. Staff observed extensive evidence of heavy equipment operations including logging,

Jon and Deann Green, JCG Construction and
Green Right O'Way Constructors, Inc.

land clearing, grading, and grubbing throughout the Site. The Dischargers had not installed erosion control measures nor had they developed drainage or grading plans for the Site.

5. On June 12, 2001, the Regional Board Executive Officer issued a CWC Section 13267(b) Order (hereinafter "June Order"), attached hereto as Attachment "A" and incorporated herein by this reference.
6. On July 26, 2002, Staff conducted another inspection of the site where they observed evidence of extensive earthwork and/or grading activities that were not observed during the previous June 12, 2001 inspection. At least eight large (up to 50 feet deep), earthen fills were constructed at the heads of eight Class III watercourses. Staff observed evidence of extensive erosion and sediment discharge into three watercourses that drain from the Site. During the inspection, the Dischargers presented Staff with a drainage plan dated August 8, 2002 and titled "Preliminary Erosion Control Plan," developed by Center Line Engineering.
7. On September 27, 2002, Staff conducted another inspection of the Site. Staff observed extensive sediment deposition in three watercourses that drain from the Site and followed the sediment deposits downstream for approximately 2,000 feet to Scott Creek, a fish bearing stream. Staff walked Scott Creek downstream for approximately 3,000 feet to the confluence of Tomki Creek where they observed extensive sediment deposition in Scott Creek as well as a few juvenile steelhead trout. The Dischargers had made some progress toward installing drainage and sediment control structures; however, a considerable amount of work remained to stabilize the Site and prevent additional sediment discharges.
8. During another inspection of the Site on November 14, 2002, Staff observed that additional sediment had discharged to Scott Creek and several watercourses that drain from the Site. Scott Creek, a Class II watercourse, was buried in several inches of fine sediment for much of its 3,000-foot length from downstream of the main Class III watercourse that drains from the Site to the confluence of Tomki Creek.
9. On December 3, 2002, due to the Dischargers' failure to comply with the June Order and based on the conditions observed by Staff at the Site, the Executive Officer issued Cleanup and Abatement Order (hereinafter "CAO") No. R1-2002-0103 pursuant to CWC Sections 13304 and 13267, which is attached hereto as Attachment "B" and incorporated herein by this reference.
10. On May 27, 2004, the Executive Officer issued Administrative Civil Liability (hereinafter "ACL") Complaint No. R1-2004-0045, which was superseded and replaced by ACL Complaint No. R1-2004-0105 issued on October 29, 2004. Both complaints alleged that the Dischargers failed to submit technical reports required by the June Order, failed to comply with CAO No. R1-2002-0103, and violated Waste Discharge Prohibitions contained in the Water Quality Control Plan for the North Coast Region (hereinafter "Basin Plan") during the period from September 15, 2001 to May 1, 2004.
11. On November 8, 2004, the Dischargers submitted an emergency control plan prepared by Pacific Watershed Associates, and PJC and Associates titled "Progress Report #1 for Jon and Deann Green Property, Willits, California: Winterization Plan and Recommended Emergency Erosion Control Activities" to the Regional Water Board. The November 8, 2004 Emergency Erosion Control Plan contained emergency erosion control measures and included a proposal to

Jon and Deann Green, JCG Construction and
Green Right O'Way Constructors, Inc.

submit a long-term plan in the spring of 2005. The Dischargers implemented portions of the plan during late October and early November of 2004, but failed to implement all of the measures proposed in the plan, and failed to submit a long-term plan.

12. On November 29, 2004, following a public hearing regarding ACL Complaint No. R1-2004-0105, the Regional Water Board adopted ACL Order No. R1-2004-0084, which required the Dischargers to pay an administrative civil liability in the amount of \$250,000. The Dischargers appealed the Order and, ultimately, in late 2007, the California Office of the Attorney General negotiated a reduced penalty amount of \$150,000 along with a payment schedule. This reduced penalty was contingent upon timely payment per the schedule. The Dischargers have not fully paid the renegotiated penalty amount and are currently out of compliance with the payment schedule.
13. On August 23, 2005, Pacific Watershed Associates prepared and submitted a progress report on behalf of the Dischargers titled "Progress Report #2 – Status of Erosion Control Efforts for Jon and Deann Green Property, Willits, California and Revised Time Line, NRWQCB Cleanup & Abatement Order & Request for Technical Reports #R1-2002-0103". The report described the work completed by the Dischargers in accordance with the November 8, 2004 Emergency Erosion Control Plan, indicated that a significant amount of work and corresponding reports remained to be completed and/or submitted, proposed a schedule for completing prioritized work during 2005 and 2006, and requested an extension to April 1, 2006 to develop a time schedule to complete the remaining work. The proposed erosion control work contained in this report was not significantly different from that proposed in the November 8, 2004 Emergency Erosion Control Plan. The report was submitted via email, without a licensed stamp or signature delineating that it was prepared by a civil or geotechnical engineer licensed in California, although this is typically required under Regional Water Board Orders, including Cleanup and Abatement Order R1-2002-0103.
14. During the winter season of 2005-2006 and again in June of 2006, Staff inspected the Site, documenting, primarily with photographs, the catastrophic failure of one of the constructed fill slope prisms on the Site, referenced in the Progress Reports as Fill Slope Site #8. Staff also observed and documented continuing sediment discharge and further erosion on other fill slopes.
15. On October 17, 2008, Staff inspected the Site documenting further erosion from the failed Fill Slope Site #8, failure to maintain existing sediment control structures and failure to implement further erosion control measures, and continuing erosion throughout the Site as well as on other fill prisms.
16. In response to anonymous complaints received on or around February 2, 2009 reporting new road construction activities on the Site, CDFG and National Marine Fisheries Service (hereinafter "NMFS") staff inspected the Site on February 26, 2009. NMFS staff inspected the Site again on March 3, 2009 to view the new road construction project and reported observing surface erosion and slope failure along the new road construction project, and potential and actual sediment discharges to an adjacent watercourse that flows to Scott Creek.
17. Staff contacted the Mendocino County Planning and Building Department (hereinafter "County") and learned that the Dischargers had applied for and obtained a County grading permit on June 5, 2008 for the new road construction project. Staff reviewed the Dischargers' grading permit application, compared the

Jon and Deann Green; JCG Construction and Green Right O'Way Constructors, Inc.

scope of work stated in the application with field observations reported by CDFG and NMFS, and concluded that the permit application did not accurately reflect the extensive road construction work and movement of large volumes of earthen and other material observed on the Site. On November 17, 2009, County staff advised Staff that the County had revoked the Dischargers' grading permit, and was requiring the Dischargers to submit specific information including engineered plans in order to obtain a new permit.

18. On February 26, 2009, Regional Water Board staff met with Deann Green (hereinafter "Mrs. Green") to discuss the new road construction project, the Dischargers' noncompliance status with Regional Water Board Orders, and the Dischargers' plans for erosion control work during the summer of 2009. As a result of the February 26, 2009 meeting, Mrs. Green submitted a letter dated April 6, 2009 to Staff stating that the Dischargers would implement a portion of the November 8, 2004 Emergency Erosion Control Plan beginning in June of 2009 and complete this work by September 15, 2009. Mrs. Green also indicated that this work would include activities on the failed Fill Slope Site #8, and that staff of either PJC Associates or Pacific Watershed Associates would oversee the work.
19. On March 11, 2009, the Regional Water Board Assistant Executive Officer issued a Notice of Violation (hereinafter "NOV") to the Dischargers (attached hereto as Attachment "C" and incorporated herein by this reference) reminding them of continued obligations under the Orders issued by the Regional Water Board and advising them that they are subject to potential future enforcement action and penalties. The NOV specifically stated that the Dischargers failed to fully or adequately implement a short-term erosion control plan, failed to submit and implement a long-term erosion control plan, and failed to provide any engineering information certifying that the constructed fills are stable, all of which was required by the CAO No. R1-2002-0103.
20. On March 26, 2009, Staff and NMFS representatives inspected the unnamed tributary adjacent to the new road construction activities on the Site. Staff observed sediment deposits along the bottom of the tributary located adjacent to the new road and evidence of erosion from the new road construction activities. At one point, the tributary was blocked by and flowed around the side of earthen material extending down from a failed section of the new road, and turbid water was backed up about 30 feet behind the blockage. Staff observed sediment deposits along the tributary down to its confluence with Scott Creek and in Scott Creek downstream of the confluence.
21. On September 25, 2009, Regional Water Board staff inspected the Site, including the new road construction activities, with representatives from CalFire, NMFS, CDFG, California Geologic Survey, and California Department of Toxic Substance Control, in order to observe existing and new erosion control measures, and to assess overall site conditions. Staff observed that the new road construction activities had resulted in unstable slopes, inadequate drainage, and discharges and threatened discharges of earthen material to State waters. Additionally, Staff observed work underway on Fill Slope Site #8. As noted in Finding 20 above, the Discharger had proposed in an April 6, 2009 letter to start this work in June 2009, but had reportedly delayed the start of work until the end of August 2009. Consequently, the work was only partially completed, the work area was not prepared for oncoming winter rains and, given the rate of work, it did not appear that the work would be completed prior to the onset of winter rains. Staff also noted that the Fill Slope Site #8 undergoing work was an area that had failed since development of the November 8, 2004 Emergency Erosion Control Plan. Rather

Jon and Deann Green, JCG Construction and
Green Right O'Way Constructors, Inc.

than removing the failed material and restoring it to the original watershed area, the Dischargers appeared to be rebuilding a failed fill prism. The Discharger's consultant (a licensed geotechnical engineer) informed Staff that the work on Fill Slope Site #8 was overseen by him and that it was done according to the November 8, 2004 Emergency Erosion Control Plan. Finally, staff observed that previously constructed and documented sediment sources at the Site continued to discharge and to threaten to discharge substantial volumes of soil into State waters.

22. On December 2, 2009, the Regional Water Board Assistant Executive Officer issued a NOV to (1) remind the Dischargers of their continued obligations under Orders issued by the Regional Water Board; (2) advise the Dischargers that they may be subject to future enforcement action and penalties for their continued failure to comply with those obligations, and for the continuing threats and impacts to water quality associated with uncontrolled sediment discharges from the Site; and (3) inform the Dischargers that earthen fill material from the new road construction activities had discharged and threatens to discharge into State waters, violating waste discharge prohibitions contained in the Basin Plan, and that the road was constructed in a manner that violated the Basin Plan, CWC, and the Federal Clean Water Act. Further, pursuant to CWC section 13267(b), the Assistant Executive Officer required the Dischargers to submit technical information regarding new sources of waste discharge resulting from the new road construction activities at the Site and emergency erosion control measures for the new road construction activities by December 31, 2009. To date, the Dischargers have not submitted the required information.
23. On December 7, 2009, the Mendocino County District Attorney filed a criminal complaint for two felony and eight misdemeanor counts (Case No. 94124) against Jon and Deann Green in the Superior Court of California, County of Mendocino. The criminal complaint is attached hereto as Attachment "D" and incorporated herein by this reference. A preliminary hearing for this case was held on July 7, 2010. The Judge requested that the Deputy District Attorney and the Dischargers submit further briefs prior to making a determination that Jon Green should be tried for the felonies charged in the criminal complaint.
24. On December 29, 2009, the Dischargers' counsel filed a petition with the State Water Resources Control Board (hereinafter "State Water Board") to review the issuance of the December 2, 2009 13267(b) Order, and to stay enforcement of the Order. The petition also requested that the matter be held in abeyance for an unspecified period of time. On January 4, 2010, the State Water Board agreed to hold the matter in abeyance for two years from the date the petition was filed.

REGULATORY AND LEGAL AUTHORITY

25. The beneficial uses of Scott Creek, Tomki Creek and the Eel River, as designated in the Basin Plan, include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Groundwater recharge
 - e. Navigation
 - f. Hydropower generation
 - g. Water recreation
 - h. Non-contact water recreation

Joni and Deann Green, JCG Construction and
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- i. Commercial and sport fishing
 - j. Warm water fish habitat
 - k. Cold water fish habitat
 - l. Wildlife habitat
 - m. Rare, threatened or endangered species
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
26. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction, and Associated Activities (hereinafter "Action Plan") included in the Basin Plan includes two prohibitions:
27. 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."
28. 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."
29. The Action Plan states: "where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, the staff shall require the submission of Reports of Waste Discharge."
30. Chapter 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. The water quality objectives (page 3-2.00-3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effect due to discharges from logging, construction, or associated activities, include the following:
- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

- Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring back ground levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
31. The Discharger's logging, grading, and road construction activities caused waste, including but not limited to soil and earthen material, to be discharged or deposited into waters of the State or permitted such waste to be placed where it is or probably will be discharged to waters of the State, which violates the waste discharge prohibitions contained in the Action Plan for Logging, Construction and Associated Activities. The Dischargers' logging, grading, and road construction activities also created a condition of pollution or nuisance and continue to threaten to create a condition of pollution or nuisance.
 32. Basis for Cleanup and Abatement Order: Water Code section 13304 contains the cleanup and abatement authority of the Regional Water Board. Water Code section 13304 requires a person to clean up waste or abate the effects of the waste discharge if so ordered by a regional water board in the event there has been a discharge in violation of waste discharge requirements, or if a person has caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates or threatens to create a condition of pollution or nuisance. Therefore, based on the previous findings the Regional Water Board is authorized to order the Dischargers to cleanup and abate the effects of the waste discharge(s).
 33. Basis for Requiring Reports: Water Code section 13267 provides that the Regional Board may require dischargers, past dischargers, or suspected dischargers to furnish those technical or monitoring reports as the Regional Board may specify, provided that the burden, including costs, of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring the reports, the Regional Board must provide the person with a written explanation with regard to the need for the reports, and identify the evidence that supports requiring that person to provide the reports.
 34. Need for Technical and Monitoring Reports: The condition of Site has changed considerably since the issuance of CAO No. R1-2002-0103 and submission of the Dischargers' November 8, 2004 Emergency Erosion Control Plan. The technical reports required by this Order are necessary to ensure that the prior harm and future threat to water quality created by the discharges described herein are properly abated and controlled and cease to cause and/or threaten to cause conditions of pollution and to restore beneficial uses of water. For example, a new or revised erosion control plan is necessary to evaluate the Site conditions to determine adequate erosion control measures, a drainage plan, and slope stabilization measures. This is particularly important with respect to the new road construction activities that have not yet been evaluated.
 35. California Environmental Quality Act (CEQA) Compliance: The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of CEQA pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in significant physical impacts to the environment that must be evaluated under

Jon and Deann Green, JCG Construction and
Green Right O'Way Constructors, Inc.

CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.

THEREFORE, IT IS HEREBY ORDERED that pursuant to California Water Code sections 13267(b) and 13304, the Discharger shall comply with the following:

1. By **August 31, 2013**, clean up and abate the effects of earthen materials that threaten to be discharged into tributaries of Scott Creek, Tomki Creek, and the Eel River. This includes implementing emergency as well as long-term erosion control, drainage, and slope stabilization measures. These measures shall be performed under the supervision of a California licensed civil engineer or engineering geologist experienced in erosion control, road, fill, and earthen embankment construction and design.

2. Emergency Erosion Control Plan (hereinafter "EECP"):

By **August 31, 2010**, submit an EECP for approval by the Executive Officer of the Regional Water Board to stabilize all exposed soil, all roads, and all earthen fills and embankments on the Site to prevent the discharge of additional sediment to waters of the State. This includes, but is not limited to emergency erosion control, drainage and slope stabilization measures such as application or installation of seed, mulch, straw wattles, silt fences, rock cover, plastic cover, water bars, placement of energy dissipaters and/or downspouts and other drainage measures, that can be accomplished without the use of heavy equipment during the rainy season (October 15 through June 1 of each year).

3. Implementation of EECP and Monthly Progress Reports:

By **September 15, 2010**, following approval of the EECP by the Executive Officer, apply for and obtain all necessary permits and authorizations required to implement the EECP, and begin implementation of the EECP. The EECP must comply with, including but not limited to, CDFG Streambed Alteration Agreement (Fish & Game Code § 1602 *et seq.*) and Mendocino County grading and drainage requirements.

The Dischargers shall submit monthly progress reports that fully document the implementation of specific EECP measures, describe the specific locations of those measures, and identify the locations including photographs, descriptions, and mapped locations of all erosion control measures that have been implemented to control sediment delivery to waters of the State from the Site and new road construction project. The first monthly progress report shall be due by the 15th day of the month that follows the date the Dischargers began to implement the EECP. Subsequent monthly progress reports shall be submitted by the 15th of each month thereafter and continue until all long-term erosion control measures have been completed and approved by the Regional Water Board.

4. All EECP measures shall be inspected at least once a month throughout the winter period (October 15 thru April 15 of each year) to provide adequate functional protection to waters of the State. The Dischargers, in the monthly progress report, shall report observations during these inspections and any work performed.

5. Engineering Certification:

By **August 31, 2010**, submit an engineering certification that states either that the earthen fill and embankments located on the Site are constructed to proper engineering standards or that proposes erosion control work to stabilize or remove unstable fills to prevent the discharge of additional sediment to waters of the State.

6. Long-Term Erosion Control Plan (hereinafter "LTECP"):

By **March 15, 2011**, submit a LTECP for approval by the Executive Officer of the Regional Water Board that includes the following:

- A. A detailed plan that includes the following:
 - i. A plan to maintain implemented erosion control measures on the Site;
 - ii. A plan to add or modify erosion control measures to be implemented on the Site as necessary, e.g., in the event that monitoring shows that the success criteria are not being met;
 - iii. A time schedule for all proposed erosion control measures on the Site;
 - iv. Criteria to judge the success of the overall work performed on the Site (hereinafter "success criteria"); and
 - v. A monitoring plan designed to evaluate whether the success criteria are being met.
- B. A map of the Site that identifies all existing and newly constructed and/or reconstructed roads, cut and fill slopes, clearings, watercourses, direction of drainage and drainage areas, watercourse crossings, skid trails, and all recent or proposed grading activity. That map shall identify all specific unstable areas and the applicable erosion control measures, and shall be of sufficient detail to direct a licensed equipment operator and/or contractor in the completion of the specified erosion control measures.

Complete implementation of the LTECP shall require the Dischargers to accomplish the following:

- A. Remove or stabilize all unstable and eroding earthen cuts or fills on the Site to prevent the discharge of additional sediment to waters of the State;
- B. Stabilize, eliminate, or otherwise correct each of the sources of sediment on the Site;
- C. Properly drain, cover, and stabilize all exposed and/or graded soils on the Site to prevent the discharge of additional sediment to waters of the State; and
- D. Design all sediment basins and drainage structures on the Site to withstand a 100-year storm event.

7. Implementation of the LTECP and Biannual Progress Reports:

By **May 1, 2011**, following approval of the LTECP by the Executive Officer apply for and obtain all necessary permits and authorizations required to implement the LTECP. The LTECP must comply with all CDFG Streambed Alteration Agreement (CDFG Code 1603) and Mendocino County grading and drainage requirements. The plan must include a proposal to restore to natural conditions, as feasibly as possible, all watercourses and natural drainages that may have been filled in by the Dischargers without permitting.

By **June 15, 2011** and upon approval by the Executive Officer of the Regional Board, begin implementing the LTECP. Subsequent to implementation of the LTECP, the Discharger shall submit biannual progress reports that shall fully document the specific LTECP measures implemented during the reporting period; describe the specific locations of those measures; and document and identify all measures that have been implemented to control sediment delivery to waters of the State from the Site and their locations with photographs, descriptions, and a map of their location on the Site. Biannual progress reports shall also present any data, including but not limited to water quality monitoring data, used to evaluate the success of the erosion control measures (as described in Requirement 6.A.5. above) and a summary analysis as to whether or not the criteria are being met (Requirement 6.A.iv. above). If the criteria are not being met, the biannual progress report shall contain a plan and schedule to add or modify measures as described in Requirement 6.A.ii., above.

All LTECP measures shall be maintained to provide adequate functional protection to waters of the State as described in Requirement 6.A.ii. above. The monitoring and maintenance plans described in Requirement 6.A. above, shall be implemented during any work performed pursuant to the LTECP and shall continue at least three full years (including three winter seasons from October 15 thru April 15 of each year) beyond final completion of that work. Following the completion of the measures performed pursuant to the LTECP and after receiving approval by the Regional Water Board Executive Officer of those measures and the adequacy of the work performed, the Regional Water Board Executive Officer may consider revising the reporting requirements and/or frequency set forth in paragraph 7.

8. By **August 30, 2013**, the LTECP must be fully and adequately implemented. Staff will review the completed work to determine if it has been implemented adequately in order to protect waters of the State.
9. If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the deadlines set forth herein or in compliance with any deadlines specified in a work schedule submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request, in writing, an extension of time specified. The extension request must be submitted at least five days prior to the specified deadline and shall include justification for the delay including a description of good faith efforts performed to achieve compliance with the deadline. The extension request shall also include a proposed time schedule with new performance dates for the deadlines in question and all dependent dates.

The Regional Water Board's Executive Officer may grant an extension for good cause, in which case this Order shall be revised and/or amended accordingly.

NOTIFICATIONS:

1. Prior Orders Superseded: Except for enforcement purposes, CAO No. R1-2002-0103 issued on December 3, 2002 and any subsequent amendments thereto, the Investigative Order (June Order) issued on June 12, 2001, and the Investigative Order issued on December 2, 2009 are superseded and replaced with this Cleanup and Abatement Order.
2. Duty to Use Qualified Professionals: The Dischargers shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals, i.e. a California licensed civil engineer or engineering geologist experienced in erosion control, road, fill, and earthen embankment construction and design. California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Dischargers shall include a statement of qualifications and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.
3. Enforcement Actions: The Regional Water Board reserves its right to take any enforcement action authorized by law.
4. Applicability: Requirements established pursuant to California Water Code Sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the Regional Water Board.
5. Potential Liability: Failure to comply with the requirements of this Order may subject the Dischargers to enforcement action, including but not limited to imposition of administrative civil liability pursuant to the California Water Code sections listed below, or referral to the Attorney General for injunctive relief or civil or criminal liability.

Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount that shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred (\$500), for each day in which the cleanup and abatement order is violated.

Pursuant to California Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by Section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Pursuant to California Water Code section 13385, any person who unlawfully discharges pollutants to navigable waters of the United States may be liable civilly in an amount that shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs plus ten dollars (\$10) per gallon discharged but not cleaned up that exceeds one thousand (1,000) gallons.

Jon and Deann Green, JCG Construction and
Green Right O'Way Constructors, Inc.

6. **Cost Recovery:** Pursuant to California Water Code section 13304, and consistent with other statutory and regulatory requirements, including not but limited to Water Code section 13365, the Regional Water Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

7. **Requesting Administrative Review by the State Water Board:** Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with California Water Code Section 13320 and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board (Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812) within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

Ordered by



Catherine Kuhlman
Executive Officer

August 6, 2010



California Regional Water Quality Control Board

North Coast Region



Winston H. Hickox
Secretary for
Environmental
Protection

Daniel F. Crowley, Chairman

Gray Davis
Governor

Internet Address: <http://www.swrcb.ca.gov/~rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: 1 (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

June 12, 2001

Mr. Jon Green
P.O. Box 1119
Willits, CA 95490

Dear Mr. Green

Subject: New Vineyard Development
File: Jon Green Vineyard Development, Tomki Road, Willits

In response to a report from the California Department of Forestry (CDF), staff from the North Coast Regional Water Quality Control Board (Regional Water Board), inspected your new vineyard development on May 18, 2001. The vineyard is located off of Tomki Road approximately 8 miles east of Willits. CDF is investigating your vineyard development for violations of the Forest Practice Act and failure to obtain a Timber Harvest Plan and Timberland Conversion Permit. Regional Water Board staff is investigating your vineyard development for potential violations of the Water Quality Control Plan for the North Coast Region.

Our investigation revealed that your vineyard is approximately 65 acres in size and located along a ridge. You began the project earlier this year. Work included tree and vegetation removal, grubbing, and road construction. You informed our staff that you plan to re-contour the vineyard area by excavating a portion of the ridge and placing the excavated material in a deep ravine and Class III watercourse. You plan to construct an earthen fill embankment in the ravine which will be approximately 50 feet high with 2 to 1 fill slope. We roughly estimate that 70,000 to 140,000 cubic yards of earthen material will be placed in the ravine and/or discharged into the watercourse. You do not have an engineered plan for earthwork, fill embankment construction, drainage system design, and erosion control. We are concerned about the threatened discharges associated with the project and the long-term erosion potential of the project.

The Action Plan for Logging, Construction, and Associated Activities contained in the Basin Plan states: "The placing or the disposal of soil, silt, 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."

California Environmental Protection Agency



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June 12, 2001

Mr. Jon Green

- 2 -

Accordingly, pursuant to Section 13267(b) of the California Water Code you are hereby required, within 30 days of receipt of this letter, to provide the Regional Water Board the following information in a technical report:

1. Engineering plans for the design of the proposed earthen fill embankment(s), including criteria to achieve optimum soil compaction, fill slope design, drainage system design, and erosion control. The amount of earthwork and fill should be minimized.
2. Verification from the California Department of Forestry, California Department of Fish and Game, Mendocino County Permit and Resource Management Department, and United States Army Corp of Engineers that all required permits from those agencies are obtained.
3. A vineyard drainage and erosion control plan.
4. Documentation that all drainage and erosion control devices have been designed to withstand 100-year storm events.

The required technical report shall be prepared by a California Registered Engineer experienced in vineyard design and erosion control.

Be advised that failure to timely submit complete and adequate information in the technical report may constitute a misdemeanor and may subject you to administrative civil liabilities of up to \$1,000 per day pursuant to Section 13268 of the California Water Code.

If you have questions or comments contact our staff, William Winchester at (707) 576-2682 or Andrew Baker at (707) 576-2690.

Sincerely,



Lee A. Michlin
Executive Officer

ARB:tab/jongreen.doc

Certified-Return Receipt Requested

cc: Jim Wright, CDF, Willits, 17501 North Highway 101, Willits, CA 95490
Yuri Won, SWRCB, Office of Chief Counsel

California Environmental Protection Agency



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California Regional Water Quality Control Board

North Coast Region

William R. Massey, Chairman



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-887-721-9203 Office (707) 576-2220 FAX (707) 523-0135

Gray Davis
Governor

Attachment B

December 3, 2002

Mr. Jon Green
P.O. Box 1119
Willits, CA 95480

Dear Mr. Green:

Subject: Cleanup and Abatement Order No. R1-2002-0103

File: Jon Green Vineyard Development, Willits, California

Enclosed is Cleanup and Abatement Order No. R1-2002-0103. The Order contains specific provisions directing you to take action to cleanup and abate the discharge and threatened discharge of earthen material to waters of the State.

Also enclosed is a copy of the appeal process. Please note, however, that if you choose to appeal the enclosed Cleanup and Abatement Order, you must comply with the terms of the Order while your appeal is being considered.

If you have any questions or comments, please call William Winchester (707) 576-2682, Scott Gergus (707) 576-2685, or Andrew Baker (707) 576-2690 of our staff.

Sincerely,

Susan A. Warner
Executive Officer

ARB:tmk\GreenCAOCoverletter.doc

Certified-Return Receipt Requested

Enclosures:

Cleanup and Abatement Order No. R1-2002-0103

cc: Sheryl Freeman, Erik Spiess, SWRCB, Office of Chief Council
Christa Shaw, Office of Attorney General, P.O. Box 944255, Sacramento, CA 94244-2550
Jim Wright, CDF, 17501 N. Highway 101, Willits, CA 95490
Genevra Chandler, P.O. Box 720, Ukiah, CA 95482
Dan Torquemada, NMFS, 777 Sonoma Avenue, Room 203, Santa Rosa, CA 95404
John Mullin, CDFG, P.O. Box 106, Potter Valley, CA 95469

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: www.swrcb.ca.gov."

California Environmental Protection Agency

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CLEANUP AND ABATEMENT ORDER NO. R1-2002-0103

FOR

Jon Green
Deann Green
and
Green Right O'Way Constructors
22341 Tomki Road, Willits
APN Numbers 108-191-11-00 and 108-192-11-008 Miles East of Willits

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Jon and Deann Green own approximately 520 acres of land located approximately 8 miles east of Willits in Mendocino County, Sections 7, 8, and 9, Township 18 North, Range 12 West. Jon and Deann Green also own and operate Green right O'Way Construction, which includes use of heavy equipment for developing roads and vineyards, and related activities. Jon and Deann Green and Green Right O'Way Constructors (hereinafter Discharger) began developing a vineyard on approximately 60 acres of his land (hereinafter Site), sometime during the winter or spring of 2001. The site address is 22341 Tomki Road, Willits, and consists of three contiguous Assessor Parcel Numbers (APN) 108-191-11-00, 108-192-11-00, and 108-193-13-00. The vineyard development is located on APN 108-191-11-00 and possibly 108-192-11-00.
2. On June 12, 2001, Regional Water Board staff first inspected the site with representatives from the California Department of Forestry and Fire Protection (CDF). The inspection was in response to a report from CDF of possible logging and land clearing without an approved Timber Harvest Plan or Timberland Conversion permit. During the inspection, Regional Water Board staff observed extensive evidence of heavy equipment operations including logging, land clearing, grading, and grubbing throughout the Site. Staff inspected watercourses downstream of the site and determined that the Discharger's activities were a threatened discharge to waters of the Region because the Discharger had not installed erosion control measures or have drainage or grading plans developed for the Site, and disturbed soil would erode into watercourses without use of sound erosion control measures.
3. On June 12, 2001, the Executive Officer of the Regional Water Quality Control Board issued a California Water Code (CWC) Section 13267(b) Order, requiring the Discharger to submit a technical report by July 12, 2001. The technical report was required to contain the following information:
 - a) Engineering plans for the design of the proposed earthen fill embankments(s) including criteria to achieve optimum soil compaction, fill slope design, drainage system design, and erosion control. The amount of earthwork and fill should be minimized.

- b) Verification from the California Department of Forestry, California Department of Fish and Game, Mendocino County Permit and Resource Management Department, and United States Army Corp of Engineers that all required permits from those agencies were obtained.
 - c) A vineyard drainage and erosion control plan.
 - d) Documentation that all drainage and erosion control devices have been designed to withstand 100-year storm events.
4. On June 28, 2001, the Discharger sent a letter to the Executive Officer requesting a time extension, until September 15, 2001, for submittal of the required technical report.
 5. On July 20, 2001, the Executive Officer sent the Discharger a letter granting him a time extension for submittal of the required technical report, until September 15, 2001. The extension was contingent on postponing the extensive earthwork for the proposed vineyard development until the following year and implementing adequate erosion control measures prior to October 15, 2001, which is considered the beginning of the rainy season. The Discharger has not yet submitted the required technical report and is therefore out of compliance with CWC Section 13267(b). Had the Discharger complied with the CWC Section 13267(b) Order, the discharge described in Findings 7, 8 and 9 could have been avoided. The Discharger is subject to administrative civil liabilities of up to \$1,000 per day, pursuant to CWC Section 13268, for failure to submit the required technical report.
 6. On March 28, 2002, the Director of CDF issued a Complaint and Proposed Order for Administrative Civil Penalties, against the Discharger, in the amount of \$15,000, for failure to obtain an approved Timber Harvest Plan and Timberland Conversion Permit. The Discharger paid the penalty on August 30, 2002.
 7. On June 21, 2002, representatives from CDF and the California Attorney General's Office again inspected the Site and reported back to Regional Water Board staff that there were potential impacts to water quality from the Site. The June 21, 2002, CDF Notice of Inspection states that LTO (Licensed Timber Operator) Green stated that he had retained an engineer to prepare an erosion control plan.
 8. On July 26, 2002, staff from Regional Water Board and Office of Chief Counsel-State Water Resources Control Board inspected the Site along with the Discharger and the Discharger's attorney, Ms. Geneva Chandler. During the inspection Regional Water Board staff observed evidence of extensive earthwork or grading activities that were not observed during the previous inspection on June 12, 2001. At least eight large (up to 50 feet deep) earthen fills were constructed at the heads of eight Class III watercourses. Staff observed evidence of extensive erosion and sediment discharge into three watercourses that drain from the Site. During the inspection, the Discharger presented staff with a drainage plan, dated August 8, 2002, and titled "Preliminary Erosion Control Plan," developed by Center Line Engineering. Regional Water Board staff recommended the Discharger work with his engineer to implement the preliminary erosion control plan and develop and implement a plan for final erosion control and fill stabilization measures, prior to the rainy season October 15, 2002. The Discharger and his attorney agreed to cooperate with the

staff request. Staff determined another Site inspection was required to more completely evaluate impacts to waters of the state.

9. On September 27, 2002, staff from the Regional Water Board, California Department of Fish and Game (CDFG), and National Marine Fisheries Service (NMFS) inspected the Site to further evaluate impacts to downstream fisheries resources, and the Discharger's progress toward stabilizing the site and implementing erosion control measures. Staff observed extensive sediment deposition in three watercourses that drain from the Site and followed the sediment downstream for approximately 2,000 feet to Scott Creek, a fish bearing stream. Staff walked Scott Creek downstream for approximately 3,000 feet to the confluence of Tomki Creek. Staff observed extensive sediment deposition in Scott Creek as well as a few juvenile steelhead trout. Staff also observed a marked difference in conditions in Scott Creek between upstream of the discharges and downstream of the discharges. Staff observed that conditions in Scott Creek upstream of the discharges did not show extensive fine sediment deposition in Scott Creek, and which indicated that the sediment in Scott Creek originated from the Site. The CDFG reported that the fish habitat was impacted from the sediment deposits that originated from the Site. The Discharger had made some progress toward installing drainage and sediment control structures. However, considerable additional work remained to stabilize the Site and prevent additional sediment discharges.
10. On November 14, 2002, staff from the Regional Water Board, NMFS, and CDFG again inspected the Site to evaluate implementation of erosion control measures, and additional impacts that occurred following the first rains of the season. Approximately 6.44 inches of rain fell over a seven-day period from November 6 through November 12, 2002, recorded by the California Department of Water Resources at the Howard Ranger Station located in Willits, Mendocino County. During the inspection, staff observed that erosion control measures were not installed or were inadequate to prevent additional erosion. Additional erosion was observed throughout the Site, which resulted in the discharge of large amounts of additional sediment to Scott Creek and several watercourses that drain from the Site. Scott Creek was buried in several inches of fine sediment for much of its 3,000-foot length from downstream of the main Class II watercourse that drains the Site to the confluence of Tomki Creek. Numerous fish rearing pools and potential fish spawning gravel beds were completely buried in fine sediment that eroded from the Site.
11. Scott Creek, Tomki Creek and the Eel River provide habitat for steelhead trout, chinook salmon, and coho salmon, which are listed as threatened under the Endangered Species Act.
12. The Site is located in the Scott and Tomki Creek watersheds, which are tributary to the Eel River watershed. The beneficial uses of Scott Creek, Tomki Creek and the Eel River, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Groundwater recharge


- e. Navigation
 - f. Hydropower generation
 - g. Water recreation
 - h. Non-contact water recreation
 - i. Commercial and sport fishing
 - j. Warm water fish habitat
 - k. Cold water fish habitat
 - l. Wildlife habitat
 - m. Rare, threatened or endangered species
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
13. The Discharger's logging, vineyard development, and road construction activities have resulted in the discharge and threat of further discharge of earthen waste into waters of the State, in violation of the waste discharge prohibitions contained in the Action Plan for Logging, Construction and Associated Activities contained in the Basin Plan. The Discharger caused or permitted waste to be discharged or deposited into waters of the state and cause a condition of pollution or nuisance and caused or permitted waste and to be placed where it is or probably will be discharged to waters of the state and threatens to create a condition of pollution or nuisance.
14. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13267(b) and 13304, the Discharger shall:

1. By January 2, 2003, cleanup and abate the effects of earthen materials that are threatened to be discharged into tributaries of Scott Creek, Tomki Creek and the Eel River. This includes emergency erosion control measures such as application or installation of seed, mulch, straw wattles, silt fences and waterbars, that can be accomplished without use of heavy equipment during the rainy season October 15th through June 1. These measures shall be done under the supervision of a California licensed engineer or geologist experienced in erosion control.
2. By January 2, 2003, submit an emergency erosion control plan to stabilize all exposed soil, all roads, all earthen fills, and earthen fill embankments at the Site to prevent the discharge of additional sediment to waters of the state.
3. By January 2, 2003, submit plans for longer-term erosion control, grading and drainage for the Site, which accomplish the following:
 - a) Remove or stabilize all unstable and eroding earthen fills to prevent the discharge of additional sediment to waters of the state.

- b) Properly drain and stabilize all roads to prevent the discharge of additional sediment to waters of the state.
 - c) Properly drain and stabilize all exposed and/or graded soils to prevent the discharge of additional sediment to waters of the state.
 - d) All drainage structures shall be designed to withstand the 100-year storm event.
4. By January 2, 2003, submit engineering certification that all earthen fill and earthen fill embankments are constructed to proper engineering standards to prevent the discharge of additional sediment to waters of the state.
 5. The above required erosion control, grading and drainage plans, and engineering certifications shall be prepared by a California licensed civil engineer or engineering geologist experienced in erosion control, road, fill and earthen embankment construction and design.
 6. 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 concurred on by the Executive Officer, the Discharger may request, in writing, an extension of time specified. The extension request must be submitted at least five days in advance of the due date and shall include justification for the delay including a description of good faith efforts performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all dependent dates. An extension may be granted for good cause, in which case this Order will be revised accordingly.

Ordered by



Susan A. Warner
Executive Officer

December 3, 2002



**California Regional Water Quality Control Board
North Coast Region**

Geoffrey M. Hales, Acting Chairman



**Arnold
Schwarzenegger
Governor**

**Linda S. Adams
Secretary for
Environmental Protection**

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

December 2, 2009

Attachment C

Jon and Deann Green
P.O. Box 643
Willits, CA 95490

Dear Mr. and Mrs. Green,

Subject: Notice of Violation for Failure to Comply with Active Regional Board Orders and for New Basin Plan violations, and Order Requiring Technical Reports Investigating New Sources of Waste Discharge pursuant to California Water Code (Water Code) Section 13267(b)

File: Jon and Deann Green Grading Project, Willits, California

The purpose of this letter is to 1) remind you of your continued obligations under Orders issued by this office, 2) advise you that you are subject to potential future enforcement action and penalties for failure to comply with those obligations and for the continuing threats and impacts to water quality associated with uncontrolled sediment discharges from their property at 22341 Tomki Road (site), Willits, and 3) inform you that earthen fill material from the road you recently constructed on your property has discharged and threatens to discharge into State waters, violating waste discharge prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan). Furthermore, the new road was constructed in a manner that violates the Basin Plan, California Water Code, and the Federal Clean Water Act.

Noncompliance with June 12, 2001 Water Code section 13267(b) Order and Cleanup and Abatement Order (CAO) No. R1-2002-0103

On December 3, 2002, the Regional Water Quality Control Board (Regional Water Board) Board Executive Officer issued Cleanup and Abatement Order Number R1-2002-0103, requiring you to submit and implement various plans and pollution control/abatement measures. In the years since we issued that Order, you have created new sediment sources, made numerous, but inadequate, efforts to control erosion on the site, submitted various partial or incomplete plans which you have partially implemented or not implemented at all, and failed to maintain most of the erosion and sediment controls which you installed on the site over the years. With respect to specific requirements of the Cleanup and Abatement Order, you have: 1)

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Mr. and Mrs. Green

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December 2, 2009

failed to fully or adequately implement a short term erosion control plan, 2) failed to submit and implement a long term erosion control plan, and 3) failed to provide any engineering information certifying that constructed fills, including the fills constructed since issuance of the CAO, are designed and constructed in conformance with standard engineering practice, and are stable.

In addition, site conditions have changed significantly since you submitted the October 13, 2004 Progress Report #1 (which included temporary erosion control measures and is referred to as the Short-term Erosion Control Plan) to the Regional Water Board, rendering that Plan obsolete.

Regional Water Board staff inspections of the site in June 2006, October 2008, and, more recently, on September 25, 2009 (September 2009 inspection reports attached), confirmed that you installed plastic sheets over two fill slopes, partially implementing the Short-Term Erosion Control Plan. However, that plastic has deteriorated and moved or transported in pieces to the bottom of the slopes and/or into downstream watercourses. You have reported periodic efforts to clean out accumulated sediment in sediment settlement areas on the inside of the perimeter road, and, as observed on our September 2009 inspection, you have made recent efforts to control the sources of sediment on the south end of the site (Watercourse Site #8). The current erosion control efforts consist of replacing fill material in a failed fill slope, compacting the filled material, and constructing a bench at mid-slope. My staff observed during the September 2009 site visit that the erosion control work was partially completed, with fill material placed on the failed slope and construction of the bench. You indicated in an April 6, 2009 letter that you had planned to begin this work in June 2009; however, you apparently delayed starting this work until August/September 2009. On September 25, 2009, staff observed that the failed slope repair and erosion control work had not been completed, the site was not prepared for oncoming winter rains and, given the rate of work, it did not appear that the erosion control work on watershed site #8 could be completed before the onset of winter rains. At this time, previously constructed and documented sediment sources on your site continue to discharge and to threaten to discharge substantial volumes of soil into waters of the State and the United States and violates CAO directives requiring cleanup and abatement of these discharge sources. Consequently, substantial potential liability for these violations continues to accrue due to your failure to comply with the Cleanup and Abatement Order.

In order to reduce the total liability and avoid further imposition of penalties, which are adding up by the day, with each violation as well as each discharge event, we recommend that you comply with the CAO, and that you take the following short-term measures:

- Winterize and/or stabilize any currently placed fill material at watershed site #8 (current area of erosion control work) at the south end of the Site;

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Mr. and Mrs. Green

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December 2, 2009

- Prioritize all existing sediment sources at the Site including the new road (discussed below), and take steps to winterize the Site to control existing sediment sources starting with the highest priority sources;
- Submit/comply with outstanding provisions of Cleanup and Abatement Order Number R1-2002-0103, including submitting and implementing an updated and/or new Erosion Control Plan, prepared and overseen by a licensed civil engineer or geologist. Site conditions have changed considerably; the Erosion Control Plan should consider/reflect these changes. Potential penalties will continue to accrue until you fully comply with the provisions of the Orders we have issued and the features constructed by you on the property no longer pose a threat to water quality.

Notice of Violation Associated with Discharges that Violate the Waste Discharge Prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan), Section 13267(b) Order

Based on observations made by my staff during the September 25, 2009 site visit, as well as observations and sampling conducted previously by my staff and/or staff of other environmental protection agencies, the recently constructed road on your property has discharged and threatens to discharge earthen fill material into State waters, specifically into an unnamed tributary and ultimately to Scott Creek and Tomki Creek. The new road was constructed in a manner that violates waste discharge prohibitions contained in the Basin Plan.

The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state in order to provide for the beneficial uses. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions:

- 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."*
- 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."*

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. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular

importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:

- **Color:** Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- **Suspended Material:** Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- **Settleable Material:** Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- **Sediment:** The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
- **Turbidity:** Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

Sections 13267(a) through (c), and section 13304(a) of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste.

The quantity and manner in which earthen fill material was placed and the manner in which the new road was constructed has caused waste earthen material to discharge and threaten to discharge into the unnamed tributary along the bottom of the slope below the road, and thence into Scott Creek and Tomki Creek. Unless the earthen fill material is removed, the road cut and fill areas stabilized, and improvements made to the new road including construction of adequate, stable drainage features, uncontrolled discharges of sediment from the new road will prove deleterious to fish including Coho Salmon, a threatened species, and other aquatic organisms, and may cause the direct loss of other beneficial uses, in violation of Prohibitions 1 and 2 of the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the earthen fill material is therefore subject to cleanup and abatement under California Water Code section 13304, and technical reporting requirements under Water Code section 13267.

Pursuant to Water Code section 13267(b), you are hereby ordered to provide the following Technical Reports:

By December 31, 2009 submit engineering plans, prepared by a licensed civil engineer or geologist, for the new road, showing proposed emergency or short-term drainage system, slope stabilization, and erosion control. The amount of earthwork involved to implement these measures should be minimized.

Mr. and Mrs. Green

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December 2, 2009

Pursuant to Section 13268 of the Water Code, a violation of Water Code Section 13267 requirements may subject you to civil liability of up to \$1,000 per day for each day in which the violation occurs.

You are directed to provide this information in order to ensure that waste discharges and threatened discharges from the new road in its present condition and configuration are corrected so as to minimize, to the extent feasible, further sediment discharges and impacts to water quality and beneficial uses during the 2009/2010 rainy season. Evidence supporting this requirement is included in the attached September 25, 2009 inspection reports and referenced photographs taken during this inspection. More detailed information is available in the Water Board's public file on this matter.

Any person affected by this action of the Water Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Board, Office of Chief Counsel, P. O. Box 100 Sacramento, 95812 within 30 days of the date of this order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

Longer Term Actions Regarding the New Road

As my staff and the staff of other agencies have observed and documented, the new road was constructed without Waste Discharge Requirements from the Regional Water Board nor coverage under the statewide Construction Storm Water Permit, and the road is impacting and threatening to impact water quality at a number of locations and for a number of reasons. As with previous grading work conducted at the site, it appears that you have constructed this road without any engineering design or planning beforehand, without obtaining proper permits to construct the road, and without any apparent engineering oversight during construction in order to ensure long term stability or integrity.

We are aware of the grading permit which you obtained from Mendocino County (permit issued on June 5, 2008) for your new road, and we understand that the County has since revoked that permit. Based on our discussions with County staff and Regional Water Board observations in the field, it does not appear that the constructed road matches the description of the project permitted by the County and, in fact, is far larger and involves the movement of much larger volumes of soil than your County permit allows. On November 17, 2009, the County notified us that your permit has been revoked and it is requiring you to submit specific information in order to obtain a new permit. We have no record of any other permits which you have obtained for constructing this road. Based on our observations of the road, it appears that the construction of the road involved elements subject to coverage under the State Water Board Construction Storm Water Permit for Construction Activities. The project may also be subject to the requirements of Section 401/404 of the Clean Water Act, requiring permits from this agency and the Army Corps of Engineers, as well as compliance with

California Environmental Protection Agency

Mr. and Mrs. Green

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December 2, 2009

the California Environmental Quality Act (CEQA). It is possible that construction of this road was also subject to permitting by the California Department of Fish and Game and CalFire, and may violate regulations administered by NOAA National Marine Fisheries Service.

Given the size and location of the road, the steep slopes, and large volumes of cut and fill material necessary to construct the road in its existing alignment, it is possible that at least a portion of the road might not be able to be permitted in its existing configuration nor modified in any way that would allow it to be permitted. Please refer to the attached reports for further description of the conditions, water quality concerns, and violations which my staff observed and documented with respect to this road.

Please be advised that my staff are currently collecting and evaluating information to determine further enforcement actions and penalties to recommend to the Regional Water Board for past, continuing, and new violations, including violations associated with the newly constructed road. Our options in this matter are varied; our intended outcome is for you to take the steps necessary to control sediment discharges from your property and to ensure that your site and the results of your past and recent grading activities no longer pose a threat to waters of the State and the United States.

At this time, we suggest a meeting at our office with you, your attorney, your consultants, and our staff to discuss the next steps necessary for you to achieve compliance.

The violations noted above are serious and may result in further enforcement action by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), including: administrative enforcement orders requiring you to cleanup waste and abate existing or threatened conditions of pollution or nuisance, administrative proceedings for the assessment of civil liability in amounts of up to \$5,000 per day; referral to the State Attorney General for injunctive relief; and referral to the District Attorney for criminal prosecution.

Our staff will contact you or your attorney as necessary to continue our site investigation.

If you have any questions or if you wish to discuss this matter, please contact Cecile Morris at (707) 576-2347 or Diana Henriouille at (707) 576-2350.

Sincerely,



Luis Rivera
Assistant Executive Officer

California Environmental Protection Agency

December 2, 2009

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Mr. and Mrs. Green

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Certified-Return Receipt Requested

Attachments:

- Compliance Inspection Memo, October 5, 2009 (revised 10/22/09) prepared by Cecile Morris
- September 25, 2009 Inspection (Internal Memo) prepared by Mark Alpert
- September 25, 2009 Inspection (Internal Memo) prepared by Stormer Feiler

- cc: Ms. Sue Michaelson, Michaelson & Associates, P.O. Box 9125, Santa Rosa, CA 95405
- Pat Conway, PJC and Associates, Inc., 706 Portal St., Suite B, Cotati, CA 94931
- Jan Zabriskie, Deputy Attorney General, California Attorney General's Office, P.O. Box 944255, Sacramento, CA 94244-2550
- Jose Cross, Environmental Circuit Prosecutor, California District Attorneys Association, 921 11th Street, Suite 300, Sacramento, CA 95814
- Derek Roy, National Marine Fisheries Service, 777 Sonoma Ave., Room 203, Santa Rosa, CA 95404
- Jeanette Pederson, California Department of Forestry, 17501 North Highway 101, Willits, CA 95490
- Warden Cindy Pourroy, California Department of Fish and Game, P.O. Box 47, Yountville, CA 94599
- Chris Warrick, Building Official, Mendocino County Building Department, 501 Low Gap Road, Room 1140, Ukiah, CA 95482

7007 0710 0000 6373 6368

U.S. CE <small>(Domestic)</small>	SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
For delivery to: Ref. Endorser Restrict Endorser Total Pct Sent To Street, Apt. or PO Box City, State	<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to:</p> <p>Jon and Deann Green P.O. Box 643 Willits, CA 95490</p> <p>2. Article Number (Transfer fee)</p> <p>7007 0710 0000 6373 6368</p>	<p>A. Signature</p> <p><i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p><i>Jon Green</i> <input type="checkbox"/></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

California Environmental Protection Agency

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LTA:
File No:
MEREDITH LINTOTT
District Attorney
Mendocino County
Courthouse, Room 9
PO Box 1000, Ukiah, CA 95482
(707) 463-4211

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

THE PEOPLE OF THE STATE OF
CALIFORNIA

Plaintiff

MCUK-CRNT-

COMPLAINT-CRIMINAL
FELONY AND MISDEMEANOR

vs.

JON GREEN AND DEANN GREEN

Defendants

THE UNDERSIGNED, ON INFORMATION AND BELIEF, COMPLAINS AND
SAYS, THAT WITHIN THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA

COUNT ONE

Said Defendant,

JON GREEN,

did knowingly on or about the 27TH day of February 2009, in the
County of Mendocino, commit the crime of **DISCHARGE OF POLLUTANTS
OR DREDGED OR FILL MATERIAL INTO WATERS OF THE STATE**, a **FELONY**
violation of section 13387(a)(3) of the California Water Code, in
that Defendant violated a prohibition issued pursuant to Water

Code section 13243, by knowingly placing or disposing of soil, silt, 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 quantities which could be deleterious to fish, wildlife or other beneficial uses, to wit: sediment-laden soil from Defendant's premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13), was disposed of or placed where it could pass into navigable waters of the United States through unnamed tributaries and/or directly into Scott Creek, a tributary of Tomki Creek, a tributary of the main fork Eel River, in violation of section 13387 (a) (3) of the California Water Code.

COUNT TWO

Said Defendant,

JON GREEN,

did knowingly on or about the 3rd day of March 2009, in the County of Mendocino, commit the crime of **DISCHARGE OF POLLUTANTS OR DREDGED OR FILL MATERIAL INTO WATERS OF THE STATE**, a **FELONY** violation of section 13387(a) (3) of the California Water Code, in that Defendant violated a prohibition issued pursuant to Water Code section 13243, by knowingly placing or disposing of soil, silt, 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 quantities which could be deleterious to fish, wildlife or other beneficial uses, to wit: sediment-laden soil from Defendant's premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13), was disposed of or placed where it could pass into navigable waters of the United States through unnamed tributaries and/or directly into Scott Creek, a tributary of Tomki Creek, a tributary of the main fork Eel River, in violation of section 13387 (a) (3) of the California Water Code.

COUNT THREE

Said Defendants,

JON GREEN AND DEANN GREEN,

did on or about the 27th day of February 2009, in the County of Mendocino, unlawfully commit the crime of **WATER POLLUTION**, a **MISDEMEANOR** violation of Section 5650 (a) (6) of the California Fish and Game Code, in that Defendants did unlawfully deposit in, permit to place into, or place where it can pass into the waters of this state, any substance or material deleterious to fish, plant life, mammals or bird life, to wit: deleterious amounts of sediment from Defendants' premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13), were deposited in, placed where it could pass into, or permitted to pass into waters of this state,

including unnamed tributaries and Scott Creek, a tributary of Tomki Creek, a tributary of the main fork Eel River, in violation of California Fish & Game Code section 5650 (a) (6).

COUNT FOUR

Said Defendants,

JON GREEN AND DEANN GREEN,

did on or about the 3rd day of March 2009, in the County of Mendocino, unlawfully commit the crime of **WATER POLLUTION**, a **MISDEMEANOR** violation of section 5650 (a) (6) of the California Fish and Game Code, in that Defendants did unlawfully deposit in, permit to place into, or place where it can pass into the waters of this state, any substance or material deleterious to fish, plant life, mammals or bird life, to wit: deleterious amounts of sediment from Defendants' premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13), were deposited in, placed where it could pass into, or permitted to pass into waters of this state, including unnamed tributaries and Scott Creek, a tributary of Tomki Creek, a tributary of the main fork Eel River, in violation of California Fish & Game Code section 5650 (a) (6).

COUNT FIVE

Said Defendants,

JON GREEN AND DEANN GREEN,

did on or about the 3rd day of March 2009, in the County of Mendocino, unlawfully commit the crime of **SUBSTANTIALLY DIVERTING OR OBSTRUCTING A STREAM**, a **MISDEMEANOR** violation of section 1602 (a) of the California Fish and Game Code, in that Defendants did unlawfully and substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel or bank of, any river, stream, or lake, or deposit or dispose of soil, rocks or other material where it may pass into any river, stream or lake without prior notification to the Department of Fish and Game, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13), soil, rocks and other materials were deposited in, or placed where it could pass into, or permitted to pass into waters of this state, including unnamed tributaries and Scott Creek, a tributary of Tomki Creek, a tributary of the main fork Eel River, in violation of California Fish & Game Code section 1602 (a).

COUNT SIX

Said Defendant,

JON GREEN,

did unlawfully on or about the 26th day of March 2009, commit the crime of **ILLEGAL TIMBER HARVESTING WITHOUT A TIMBER HARVESTING PLAN**, a **MISDEMEANOR** violation of Public Resources Code section 4581, in that said defendant did engage in timber operations at or upon his premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13) without first submitting a timber harvesting plan prepared by a registered professional forester to the State Board of Forestry and Fire Protection, in violation of section 4581 of the California Public Resources Code.

COUNT SEVEN

Said Defendant,

JON GREEN,

did unlawfully on or about the 26th day of March 2009, commit the crime of **CONVERSION OF TIMBERLAND WITHOUT A TIMBERLAND CONVERSION PERMIT**, a **MISDEMEANOR** violation of Public Resources Code section 4601, in that said defendant did engage in the conversion of timberland, upon his premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13) without first applying to the to the Director of the Department of Forestry and Fire Protection for

issuance of a Timberland Conversion Permit, pursuant to California Code of Regulations title 14 section 1103.

COUNT EIGHT

Said Defendant,

JON GREEN,

did unlawfully on or about the 26th day of March 2009, commit the crime of **TIMBER OPERATIONS OR OTHER CONVERSION ACTIVITIES WITHOUT A CONVERSION PERMIT**, a **MISDEMEANOR** violation of Public Resources Code section 4601, in that said defendant did engage in timber operations and conversion of timberland, upon his premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13) without a conversion permit issued by the to the Director of the Department of Forestry and Fire Protection for issuance of a Timberland Conversion Permit, pursuant to California Code of Regulations title 14 section 1103.1(a).

COUNT NINE

Said Defendant,

JON GREEN,

did unlawfully on or about the 26th day of March 2009, commit the crime of **FAILURE TO REMOVE OR STABILIZE DEBRIS** in two Class III watercourses, a **MISDEMEANOR** violation of Public Resources Code section 4601, in that said defendant failed to remove or stabilize debris deposited during timber operations and before

the conclusion of timber operations, upon his premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13), pursuant to California Code of Regulations title 14 section 936.4(c)(3).

COUNT TEN

Said Defendant,

JON GREEN,

did unlawfully on or about the 25th day of September 2009, commit the crime of **ILLEGAL TIMBER HARVESTING WITHOUT A LICENSE**, a **MISDEMEANOR** violation of section 4571(a) of the California Public Resources Code, in that said defendant did engage in timber operations at or upon his premises, located at 22341 Tomki Road, Willits, California 95490 (Assessors Parcel No. 108-191-11; 108-192-11 and 108-193-13) without lawfully obtaining a license from the State Board of Forestry and Fire Protection first, in violation of section 4571(a) of the California Public Resources Code.

The offenses charged in the **TEN COUNTS** of this complaint were connected together in their commission.

Complainant therefore prays that said defendant(s) be dealt with according to law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2009, at Ukiah, California.

Douglas Parker
Deputy District Attorney

Pursuant to Penal Code section 1054.3, the prosecuting attorney hereby requests that the defendant(s) and the attorney of record disclose the following:

"(a) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at the trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial."

"(b) Any real evidence which the defendant intends to offer in evidence at the trial."

1 CARTER & MOMSEN, LLP
Jared G. Carter SBN 36310
2 Brian C. Carter SBN 139456
Matisse M. Knight SBN 258039
3 444 North State Street
Ukiah, CA 95482
4 Telephone: (707) 462-6694
Facsimile: (707) 462-7839
5

6 BEFORE THE CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD

8 JON AND DEANN GREEN)
9)
10 and Petitioner,) PROOF OF SERVICE
11)
12 CALIFORNIA REGIONAL WATER)
QUALITY CONTROL BOARD - NORTH)
13 COAST REGION)
Respondent.)

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1 STATE OF CALIFORNIA)
2)
3 COUNTY OF MENDOCINO)

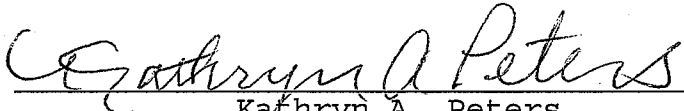
4 I am employed in the County of Mendocino, State of
5 California. I am over the age of eighteen years and not a party
6 to the within action. My business address is 444 North State
7 Street, Ukiah, California.

8 On September 7, 2010, I served the document entitled
9 **PETITION FOR REVIEW BY THE CALIFORNIA STATE WATER RESOURCES BOARD**
10 **[Cal. Water Code §13320]** on the interested parties by placing
11 true and complete copies thereof, as follows:

12 State Water Resources Control Board **Via Fax Transmission to**
13 Office of Chief Counsel **Fax No. 916-341-5199, and**
14 Jeanette L. Bashaw, Legal Analyst **Federal Express**
15 1001 "I" St., 22nd Floor **overnight delivery**
16 Sacramento, CA 95814

17 North Coast Regional Water Quality **Via Federal Express**
18 Control Board **overnight delivery**
19 5550 Skylane Blvd., Suite A
20 Santa Rosa, CA 95403-1072

21 I declare under penalty of perjury under the laws of the
22 State of California that the foregoing is true and correct, and
23 that this declaration is executed on September 7, 2010, at Ukiah,
24 California.

25 
26 _____
27 Kathryn A. Peters
28