

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2012-0075

For

Grace Sailors
Assessor Parcel Number
019-340-39-00

Trinity Pines
Trinity County

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

1. Ms. Grace D. Sailors (hereinafter Discharger) owns the parcel of land identified as Trinity County Assessor's Parcel Number 019-340-39-00 (hereinafter Site). The Discharger and/or her agents have conducted extensive grading resulting in large areas of exposed soil; loose, unconsolidated fill; and unstable slopes. Two watercourses flow through and converge within the parcel; these watercourses are tributary to Rattlesnake Creek, which is tributary to South Fork Trinity River, a water of the State and the United States. The Discharger's activities at the Site have resulted in a discharge or threatened discharge of sediment to waters of the South Fork Trinity River watershed.
2. On February 15, 2011, Regional Water Board staff (Staff) inspected the Site with staff from California Department of Forestry and Fire Protection (Cal Fire), the California Department of Fish and Game (CDFG), and a number of law enforcement agencies. Upon entering the site, staff immediately observed that both watercourses on the parcel were flowing with significantly turbid water.

Upon further inspection, staff observed that one of the watercourses crossed the access driveway, causing significant erosion and sedimentation. Approaching a terraced portion toward the middle of the Site, staff observed that the terrace area appeared to be constructed of or largely comprised of fairly loosely compacted fill; the soil was very soft and muddy, and very loose along the outer faces.

Behind a large tent structure on the parcel, staff observed a shipping container mostly buried in a steep cut slope, with a generator inside. Soils in and around the cut slope and the shipping container were bare and loose. A significant amount of runoff was flowing from the vicinity of the tent towards and over the south edge of the terrace, causing erosion and transporting sediment into the adjacent watercourse. Runoff flows from the terraced area were also flowing toward and over the north edge of the terrace, and entering the other watercourse passing through the property.

3. The bare soil, loosely compacted fill, and steep bare slopes were observed to be causing, and are likely to continue to result in, discharges and threatened discharges of sediment and debris to waters of the State and United States.
4. The Site is the subject of an active criminal case with the Trinity County District Attorney's office, relative to Forest Practice Rules violations associated with illegal timberland conversion on the Site.
5. On August 25, 2011, the Regional Water Board Assistant Executive Officer issued a draft cleanup and abatement order to the named Discharger. To date, the Regional Water Board has received no comments on that draft Order.
6. On August 31, 2011, Regional Water Board staff received from Cal Fire a copy of a document entitled "Storm Proofing and Reclamation Plan for the Building Pad at Fir Meadow Road, Trinity Pines, Trinity County California, APN 019-340-39-0," prepared by SHN Engineering, on behalf of the Discharger. Staff of the Regional Water Board and California Geologic Survey (CGS) have reviewed the plans and have made the following recommendations regarding the plan:
 - 1) We recommend that the revegetation seed mix include native plants such as those growing in the vicinity of the project area; the goal is to recruit and establish a ground cover that will endure over the long term. The Watershed Center (Watershed Research and Training Center, PO Box 356, Hayfork, CA 96041, (530) 628 - 4206) or Trinity County RCD (Trinity County R.C.D., P. O. Box 1450, #1 Horseshoe Lane, Weaverville, CA 96093, (530) 623-6004) are good resources for information about site restoration. Mulch material may include slash or wood chips.
 - 2) Specification 7.2 F notes that additional site specific recommendations may be required in connection with initial performance. We recommend that the consultant inspect the site during one or more significant rainfall events following implementation of the approved mitigation plan to assess performance during runoff conditions.
 - 3) The plan does not include a post implementation monitoring plan. Please develop an implementation and effectiveness monitoring plan that includes inspections (and, if necessary, maintenance and adaptive management to correct identified problems) over the two winter/spring periods following plan implementation.
 - 4) In the event that any deviations from the Plan are proposed or deemed appropriate when work is underway, we recommend that the consultant contact

Regional Water Board staff to discuss and obtain concurrence for the proposed changes prior to implementing any such changes.

5) We recommend that at the end of plan implementation, the consultant verify that all reconstruction activities had been performed in general compliance with the Plan, including any deviations approved while work was underway.

7. As noted above, the Site and conditions at the Site are subject to ongoing criminal and other enforcement actions by Cal Fire and the Trinity County District Attorney's Office. In the interest of providing consistent direction in coordination with and in support of the actions taken by Cal Fire and the Trinity County District Attorney's Office, Regional Water Board staff postponed finalizing this CAO pending the outcome of actions taken by those entities. We understand that to date, those actions have not yet been resolved and we are not aware of any work that has been conducted towards site restoration and the correction of ongoing impacts and threatened impacts to water quality and beneficial uses. Therefore, it is appropriate at this time to issue this CAO.
8. The South Fork Trinity River has beneficial uses designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), including:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Freshwater replenishment
 - f. Water contact recreation
 - g. Non-contact water recreation
 - h. Commercial and sport fishing
 - i. Cold freshwater habitat
 - j. Wildlife habitat
 - k. Migration of aquatic organisms
 - l. Spawning, reproduction, and/or early development
 - m. Aquaculture
9. The South Fork Trinity River and its tributaries are listed on the Clean Water Act section 303(d) list for impairments associated with sediment/siltation and temperature.
10. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two 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.”*
11. 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.”
12. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. 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.

13. As described above, the Discharger and/or her agent(s) have cleared soil, created steep cut slopes, and created loose soil fill prisms on the Site. This has caused soil to be discharged into watercourses and to be placed where it could pass into those watercourses and thence, to higher order watercourses downstream, in quantities deleterious to fish, wildlife and other beneficial uses as described in Finding 8 above. This deleterious impact is a violation of Prohibitions 1 and 2 in the Action Plan, as described in Finding 10, above.
14. The conditions on the Site are therefore subject to cleanup and abatement under California Water Code (Water Code) section 13304. Water Code section 13304, subdivision (a) provides: "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts."
15. As noted in Finding 9 above, the Basin Plan's Action Plan contains two separate prohibitions against the discharge or placement 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. As explained herein, the Dischargers' activities on the Site have violated both of these prohibitions; therefore, the Dischargers are subject to this Order pursuant to Water Code section 13304.
16. As explained in Finding 14, Water Code section 13304 authorizes the Regional Water Board to issue a Cleanup and Abatement Order to any person who "has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create a condition of pollution or nuisance." Section 13050 of the Water Code defines the term "pollution" to include "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects. . . the waters for beneficial uses." Additionally, sediment, when discharged to waters of the state, constitutes a "waste" as defined in Water Code section 13050. As explained herein, the Dischargers' activities on the Site have caused or permitted, cause or permit, and/or threaten to cause or permit a condition of pollution, as well as a discharge of waste, because these activities

either have, or threaten to, violate water quality objectives and negatively impact beneficial uses as defined in the Basin Plan.

17. Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. A restoration workplan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing a restoration workplan bear a reasonable relationship to the benefits that will be realized once the workplan is implemented.
18. This is an enforcement action taken by a regulatory agency for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 *et seq.*), in accordance with California Code of Regulations, title 14, sections 15308 and 15321.
19. Failure to comply with the terms of this Order may subject Discharger to an enforcement action under the Water Code, including administrative civil liabilities under Water Code section 13385, subdivision (c), in an amount not to exceed the sum of ten thousand dollars (\$10,000) per day and ten dollars (\$10) per gallon of waste discharged in excess of 1,000 gallons.
20. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. The State Water Board must receive the petition 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 Water Board, any person affected by this Order may request that the Regional Water Board reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. Additionally, if the Dischargers choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that the Dischargers must comply with the Order while their request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Submit a revised workplan to the Regional Water Board, for Executive Officer concurrence, on or before July 15, 2012 that incorporates, addresses, and/or otherwise reflects the agency recommendations provided in Finding 6, above.
2. Upon Executive Officer approval, the Discharger shall implement the workplan. All work to restore the Site, per the approved workplan shall be completed by October 15, 2012.
 - a. If the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines in this Order and/or in the approved workplan, the Discharger may request, in writing to the Assistant Executive Officer, an extension of the time schedule as specified. The written extension request shall describe how the delay is beyond the reasonable control of the Dischargers and shall be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. An extension may be granted by the Assistant Executive Officer, for good cause, in which case this Order will be accordingly revised.
 - b. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with the California Water Code.

Ordered by

Matthias St. John
Executive Officer

June 14, 2012