

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order R1-2017-0041

For

Kellen Sibley and Kathy MacDonald
Assessor Parcel Number 215-171-001-000

Humboldt County

This Order is issued to Kellen Sibley and Kathy MacDonald (hereafter referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports (Order).

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

- 1. Site Conditions:** Bridge Creek, Anderson Creek, and their unnamed tributaries are tributaries to the Mattole River and are waters of the state, as well as waters of the United States (references hereafter to waters of the United States are also waters of the state).¹ The Dischargers has caused or allowed the discharge and threatened discharge of waste to receiving waters through excavation and fill of a Class II watercourse with construction of an on-stream dam and impoundment; development and use of roads and stream crossings for cannabis cultivation and associated activities; and placement of cultivation-related potting soil, and spoils generated through the development of cleared and graded areas in a manner and location where they can enter receiving waters. These activities were performed at the Property without appropriate water diversion and storage facilities, and without adequate or properly installed sediment stabilization and control measures. Stream crossings were not properly designed or installed. Spoils were not properly managed to prevent discharge to surface waters. The Dischargers' activities resulting in the waste discharges to receiving waters were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States". Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state". (Wat. Code § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state". (Wat. Code § 13050 subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

- 2. Purpose of the Order:** This Order requires the Dischargers' to clean up and abate the effects of discharging sediment and soil into unnamed tributaries of Bridge and Anderson Creeks and to eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
- 3. Responsible Parties:** The Dischargers, as the property owner and/or operator and the person(s) discharging or creating a threat of discharge, with the legal ability to control the activities on the property that resulted in the discharge and/or threat of discharge, are responsible parties for purposes of this Order. This Order finds that Kellen Sibley and Kathy MacDonald are the responsible parties [and are all jointly and severally liable]:

 - a.** Per records from the Humboldt County Assessor-Recorder's Office, Kathy MacDonald owns approximately 163 acres, identified as Assessor Parcel Number (APN) 215-171-001 (hereafter Property).
 - b.** Per information received from Mr. Kellen Sibley, as documented by Regional Water Board on May 2, 2016, Mr. Sibley's father had occupied a portion of the Property for a number of years; Mr. Sibley was in the process of purchasing a 40 acre portion of the Property; past tenants on the Property had conducted grading work and equipment operations; and Mr. Sibley had also used heavy equipment to disturb and develop the site; this latter site development included heavy equipment work in and near streams.
 - c.** On May 11, 2016, California Department of Fish and Wildlife (CDFW) issued a Notice of Violation (NOV) of Fish and Game Code sections 1602, 5650, and 5652. According to personal communication with Warden Lynch of CDFW on June 14, 2017, Kathy MacDonald signed for the NOV, admitted to receiving it, and claimed to have given it to Kellen Sibley to address. Additionally, according to Warden Lynch, both Sibley and MacDonald have stated that MacDonald is selling the Property to Sibley.
 - d.** On August 11, 2016, the California Department of Forestry and Fire Protection (Cal Fire) issued an NOV of Forest Practice Laws to Ms. Kathy MacDonald for violations of Public Resource Code (PRC) 4571(a), 4581, and 4621(a).

- e. On July 11, 2017, the California Department of Forestry and Fire Protection (Cal Fire) issued an NOV of Forest Practice Laws to Mr. Kellen Sibley for violations of PRC 4571(a), 4581, 4621(a), 14 California Code of Regulation (CCR) 923.4 (h), 14 CCR 916.3 (c), and 14 CCR (a)(2)(D)(7). The NOV also states that Mr. Sibley verbally accepted responsibility for the violations, including the dam construction and watercourse crossings.
 - f. The Regional Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
4. **Property Location and Description:** The Property is located in Humboldt County. Grading and fill activities occurred above and on the unnamed tributaries to Bridge and Anderson Creeks, tributary of Mattole River, in the vicinity of latitude 40.0373 and longitude -123.9756. The Property is located at 1533 Hungry Gulch Road in the Bridge Creek and Anderson Creek watersheds, west of Whitethorn, and approximately 58 stream miles from the mouth of the Mattole River at the Pacific Ocean
5. **Property History:** The Property has no prior regulatory oversight or history with the Regional Water Board. There is also no record of any person obtaining coverage under the Regional Water Board Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operation with Similar Environmental Effects* (Waiver) for activities occurring at the Property. If the Dischargers and/or any tenant(s) or lessee(s) wishes to continue cultivation, coverage under this Waiver or under individual waste discharge requirements is required.
6. **Factual Basis of Order:** The Dischargers' activities and/or the conditions observed at the Property, as documented in the Regional Water Board inspection report (Attachment 1), and as detailed below, created and/or threaten to create condition of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.
 - a. Bridge Creek and Anderson Creek, which receive runoff from the Property, are tributary to the Mattole River, located in the Mattole Hydrologic Area of the Cape Mendocino Hydrologic Unit. The Mattole River is listed as impaired due to sediment and temperature pursuant to Clean Water Act section 303(d). In December 2002, the United States Environmental Protection Agency established Total Maximum Daily Loads (TMDL) for sediment and temperature, indicating that "[t]he primary adverse impacts associated with excessive sediment supply and elevated temperature in the Mattole River pertain to the anadromous salmonid fishery. The water quality conditions do not adequately support the several anadromous salmonid species present in the Mattole River and its tributaries, a situation that has contributed to severe population declines. The populations of coho salmon (*Oncorhynchus kisutch*),

Chinook salmon (*O. tshawytscha*), and steelhead trout (*O. mykiss*) in this watershed are all listed as threatened under the federal Endangered Species Act.”

- b.** On May 2, 2016, staff from the Regional Water Board and CDFW received consent from Kellen Sibley to inspect the Property to determine whether there were conditions of, and/or threatened conditions of, pollution due to discharges of waste to waters of the United States resulting from development and use of the Property for cultivation of cannabis and associated activities. During the May 2, 2016, inspection, Regional Water Board staff observed the following, as documented in the Regional Water Board inspection report (Attachment 1).

 - i.** An earthen dam on a Class II watercourse showing evidence of recent equipment work at the location identified in Attachment 1 as WQ-1 in the Regional Board inspection report. Staff observed evidence that fill has been placed on multiple occasions first to construct and, more recently, to augment the dam by directly filling the watercourse. Staff observed approximately 100 yards of placed fill in the watercourse serving as part of the dam structure.
 - ii.** Substantial damage to watercourses in and downstream of the earthen dam. The watercourse below the dam was approximately 1-2 feet wide, with fresh sediment deposits approximately 5 inches deep across the channel width and extending downstream along approximately 225 feet of the watercourse.
 - iii.** Cleared or graded areas showing evidence of erosion of sediment and potting soil, evidence of overland transport of eroded sediment, and evidence of sediment delivery/discharge into Class II and III watercourses, most notably in the vicinity of the areas identified in Attachment 1 as WQ-2, WQ-3, WQ-4, and WQ-5 in the Regional Water Board inspection report.
 - iv.** Poor housekeeping at various locations on the Property, with refuse, chemical and fuel containers, and cultivation wastes unprotected from the elements and, in some areas, having been transported or blown into watercourses.
- 7. Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:** The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.
- a.** Existing and potential beneficial uses for the Mattole River Hydrologic Subarea of the Cape Mendocino Hydrologic Unit include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact

Recreation (REC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); Estuarine Habitat (EST); and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

- b.** The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):
 - i.** Prohibition 1 – “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”
 - ii.** Prohibition 2 – “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
- c.** Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development and cannabis cultivation activities include the following:
 - i.** Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - ii.** Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - iii.** Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - iv.** Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher

percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”

- 8. Regional Water Board Resolutions:** As part of Regional Water Board’s efforts to control sediment waste discharges and restore sediment impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all discharges of sediment waste”. The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

To address sources of elevated water temperature to reduce impairments to waters of the state and prevent further impairment, the Regional Water Board adopted the *Policy for Implementation of the Water Quality Objective for Temperature in the North Coast Region* (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provides shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.

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

plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

10. Failure to Obtain Necessary Permits: Regional Water Board staff has determined that the development on the Property, including vegetation removal and soil disturbance, and instream disturbance and placement of fill in watercourses, as well as concurrent and subsequent use of the site for cannabis cultivation and associated activities occurred without coverage under any of the following regulatory permits:

- National Pollutant Discharge Elimination System (NPDES) permit for land disturbance of an acre or more (Construction General Permit Order No. 2009-0009-DWQ as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ);
- Cal Fire timber harvest permit or exemption for timber harvesting;
- Regional Water Board permit for waste discharges associated with timber harvest activities;
- Clean Water Act (CWA) section 404 permit from the Army Corps of Engineers for dredge and fill in a water of the US;
- CWA section 401 Water Quality Certification from the Regional Water Board for dredge and fill in water of the State and US;
- Department of Fish and Wildlife Lake and Streambed Alteration Agreement for substantial alteration to bed, bank, and hydrology of watercourses;
- Grading permit from Humboldt County Building and Planning Department for grading of more than 50 yd³; and
- Regional Water Board Order No. R1-2015-0023 for discharges of waste associated with cannabis cultivation.

11. Legal Authority to Require Cleanup and Abatement: Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have

jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a.** “Waste” is defined by Water Code section 13050, subdivision (d) to include, sewage and any other waste substances, whether liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers prior to, and for purposes of, disposal.
 - i.** Sediment, when discharged to waters of the state, is a “waste” as defined in Water Code section 13050. The Dischargers caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to Bridge and Anderson Creeks, tributaries to the Mattole River, which is considered a water of the state.
- b.** “Pollution” is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.
 - i.** Earthen material from onsite roads, cultivation areas located within or adjacent to watercourses, erodible soils on road and cultivated surfaces, and improperly contained garbage, debris, fuels, and chemicals on property owned and/or used by the Dischargers has discharged, and still has the potential to discharge, sediment and other waste into Bridge and Anderson Creeks and their tributaries in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan, and creates or threatens to create a condition of pollution subject to this Order in accordance with Water Code section 13304.
 - ii.** Site development activities conducted by the Dischargers, their agents, and/or their tenants, in addition to inadequate maintenance or pollution control efforts on existing site features, improper storage of fertilizers, soil amendments and other waste materials, and inadequate human waste handling/disposal features have resulted in the unauthorized discharge or threat of discharge of waste into surface water and groundwater, and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. Tributaries of Bridge and Anderson Creek pass through the Property with many features of concern located adjacent to or draining into the creeks and/or their tributaries. Including an onstream earthen dam, roads and skid trail crossings and watercourse diversions, cleared and graded flats, development at steep headwater streams, lack of spoils management.

- iii.** Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).
- iv.** The discharge of organic and earthen material in the Mattole River watershed is especially problematic because, as noted above, the Mattole River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to several pollutants, including temperature and sedimentation/siltation. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold water fish such as spring and fall run Chinook salmon, coho salmon, and steelhead trout and wildlife habitat including for rare, threatened and endangers species and other aquatic life.
- v.** Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which requires that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters.

These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature; and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat.

It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

- vi. Discharge of excess nutrients, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase for biological oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms which create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses impacted: RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (Beneficial Uses impacted: REC-1, REC-2, and MUN).

12. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

13. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a Dischargers to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and to ensure that cleanup complies with Basin Plan requirements and State Water Board Resolution 92-49. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports. The

Dischargers named in this Order owns and/or operates the Property from which waste was discharged, and thus is appropriately responsible for providing the reports.

14. Electronic Reporting Requirements: To effectively carry out the state's No Net Loss Policy, the State needs to closely track both aquatic habitat losses and mitigation/restoration project success. Therefore, we require that the Discharger provide project information related to impacts and mitigation/restoration measures to EcoAtlas using the Project Tracker website, <http://ptrack.ecoatlas.org>. Instructions and how to request a user name and password can also be found at the Project Tracker website. More information about EcoAtlas can be found at: www.ecoatlas.org.

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

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Dischargers shall obtain all necessary permits for the activities required in this Order.

- 1. Within 30 days from issuance of this Order**, Dischargers shall submit an **Interim Cleanup and Stabilization Plan** (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of cleanup and stabilization measures necessary to clean up wastes and trash, and to prevent further erosion and discharge of sediment and other pollutants to the Mattole River and its tributary during the 2017/2018 wet weather period. The Interim Plan shall include, but not be limited to, the following:
 - a.** A detailed site map accurately depicting topography, all graded/disturbed surfaces, roads, surface watercourses, surface water drainages, and water crossings;
 - b.** Identification of all locations where sediment has discharged to waters of the state;
 - c.** Using the above information, identify all areas of immediate concern, along with proposed cleanup and stabilization measures to be implemented at each area of concern that are necessary to remove, contain, and cover any soil and waste piles, and stabilize any disturbed areas on the Property during the winter and spring seasons of 2018. Cleanup and stabilization measures shall include, but not be limited to:
 - i.** Install an adequate number of water breaks designed to reduce road surface erosion by diverting storm water runoff from the road surface and directing it to a safe discharge area;
 - ii.** Disconnect road drainage from Bridge and Anderson Creeks and their unnamed tributaries;
 - iii.** Stabilize all disturbed areas with erosion control mulches, blankets, mats, tarps, berms or other erosion controls to protect the disturbed areas from the forces of rain drop impact and overland flow;
 - iv.** Ensure the proper storage and containment of chemicals, pesticides, waste piles, soil amendments and fertilizers to avoid accidental release into surface waters. This includes proper disposal of waste materials, including empty or partially used containers per manufacturer and waste disposal guidelines;

- v. Prevent leaks and releases from fuel storage tanks, water storage tanks, and bladders from carrying sediment and stagnant water to surface waters.

The Regional Water Board or a delegated officer will review and approve the Interim Plan in consultation with other responsible agencies. Once approved, work to implement the approved Interim Plan shall begin immediately, but no later than 10 business days.

2. **By September 15, 2017**, the Dischargers shall have completed the work specified in the approved Interim Plan, cleaning up and stabilizing the Property for the 2017/2018 winter wet-weather period.
3. **Within 60 days from completion of the Interim Plan** the Dischargers shall provide a report of completion of the Interim Plan to the Regional Water Board for approval. This report shall include a summary and photographs of the completed cleanup and stabilization measures.
4. **By September 5, 2017**, the Dischargers shall submit to the Regional Water Board a proposed **Restoration Mitigation and Monitoring Plan** (hereafter "RMMP") acceptable to the Regional Water Board or its delegated officer. The RMMP shall include but not be limited to:
 - a. An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, seeps, springs, bogs, and wetlands, caused by the unauthorized activities, including all areas that have been developed or disturbed, and identify controllable sediment sources requiring restoration. The assessment shall be completed by an appropriately qualified professional, and must at a minimum address channel hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, instream reservoirs, active or potential erosion and sedimentation sites, culverts, and other stream crossings, as well as roads and all disturbed areas on the Property. The assessment shall include aerial photographs and/or satellite images, photographs, delineation reports, topographic maps, or drawings, etc., of Property conditions prior to and after conducting the unauthorized activities, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, all waters of the state and waters of the United States, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings before and after the unauthorized activities shall serve as the basis for the RMMP;
 - b. A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses of any waters of the state on the Property that were

has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.

8. Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by **January 31** of each year for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the RMMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

- 3. Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Adona White at (707) 576-2672.
- 4. Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
- 5. Reasonable Access:** The Dischargers shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
- 6. Submissions:** Within 14 days from RMMP approval, the Dischargers shall upload the RMMP and complete all information fields required by EcoAtlas, including a map (either using upload or draw polygon features) to the following website: <http://ptrack.ecoatlas.org/>. All monitoring reports associated with the restoration and mitigation shall be uploaded on EcoAtlas (using the "Files and Links" tab under "Projects" in EcoAtlas) or submitted as specified below, by January 31 of each year for 5 years.

All monitoring reports, technical reports or notices required under this Order shall be submitted to:

Assistant Executive Officer - Shin-Roei Lee
Shin-Roei.Lee@waterboards.ca.gov

[Adona White, Water Resource Control Engineer](mailto:Adona.White@waterboards.ca.gov)
Adona.White@waterboards.ca.gov

By email to: NorthCoast@waterboards.ca.gov (preferred)

By mail to: NCRWQCB, 5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403

- 7. Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of

- a river, stream, or lake; or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
- 8. Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program managed by the State Water Board for the discharges addressed by this Order and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board pursuant to the procedures established in that program.
 - 9. Delayed Compliance:** If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer.
 - 10. Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.
 - 11. No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
 - 12. Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
 - 13. Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Water Board may petition the State Water Board to review

the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St. John
Executive Officer
August 8, 2017