

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

NORTH COAST REGION

Cleanup and Abatement and Water Code section 13267 Investigative Order

**No. R1-2024-0026
for**

Vern McGaughey,

as an Individual and as Trustee of the Vern C. McGaughey Trust

**Assessor's Parcel Numbers 513-171-005-000, 513-121-001-000, 513-151-001-000,
513-141-009-000, 513-171-012-000**

Humboldt County

This Order is issued to Vern McGaughey, as an individual and as trustee of the Vern C. McGaughey Trust (collectively, Discharger), pursuant to California Water Code (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.

FINDINGS

The Regional Water Board Executive Officer (Executive Officer) finds, with respect to the Discharger's acts, or failure to act, the following:

- 1. Site Conditions:** Site conditions on Humboldt County Assessor's Parcel Numbers (APNs) 513-171-005-000, 513-121-001-000, 513-151-001-000, 514-141-009-000, 513-171-012-000 (collectively, the Property) constitute threats to water quality and beneficial uses. The Little River, tributaries to the Little River, and adjoining wetlands are situated upon and flow through the Property. The Little River, its tributaries, and the adjoining wetlands are waters of the state and waters of the United States (U.S.).¹ The Discharger has caused or permitted waste to be

¹ The Regional Water Board administers and enforces the federal Clean Water Act (CWA). The CWA regulates "navigable waters" and defines those waters as "waters of the United States." Waters of the United States includes all traditionally navigable waters and their tributaries that are relatively permanent, standing or continuously flowing bodies of water. (40 C.F.R. 120.2) The Porter-Cologne Water Quality Control

discharged, or threatens to cause or permit waste to be discharged, to waters of the state and waters of the U.S. through: (1) unauthorized fill within and adjacent to the Little River, its tributaries, and wetlands; (2) unauthorized onsite waste disposal; (3) construction of unpermitted roads through wetlands and unpermitted stream crossings along those roads; and (4) inadequately controlled grazing that is threatening to cause and/or contribute to physical degradation and bacterial impairment within the Little River. The Discharger's activities were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

- 2. Purpose of the Order:** This Order requires the Discharger to:
- a. Clean up and abate the effects of the unauthorized fill within the Little River, tributaries to the Little River, and adjoining wetlands;
 - b. Clean up and properly dispose of solid waste, including garbage, refuse, animal waste, debris, and motor vehicles on the Property that have discharged or threaten to discharge into waters of the state and waters of the U.S.;
 - c. Determine the magnitude and extent to which uncontrolled livestock grazing on the Property has threatened and continues to threaten waters of the state and waters of the U.S. by causing and/or contributing to bacterial impairment of Little River, its tributaries and the adjoining wetlands.

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. Discharger:** Vern McGaughey, as trustee of the Vern C. McGaughey Trust, is named in this Order as a discharger because the Vern C. McGaughey Trust owns the Property and he has the legal ability to control the activities on the Property that caused or permitted, causes or permits, and/or threatens to cause or permit, the discharge of waste to waters of the state and waters of the U.S. Vern McGaughey, as an individual, is named as a discharger in this Order because: (1) through his actions or inactions at the Property, caused or permitted, causes or permits, and/or

Act 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 within California are also waters of the state.

threatens to cause or permit, the discharge of waste to waters of the state and waters of the U.S.; and (2) he owned the Property from at least 2004 to on or around December 28, 2017, when the discharge and/or threatened discharge of waste to waters of the state and waters of the U.S. occurred during that time period.² All the discharges and/or threatened discharges of waste to waters of the state and waters of the U.S. discussed herein create and/or threaten to create, a condition of pollution or nuisance for the reasons set forth in Finding 13. The Regional Water Board reserves the right to amend this Order to add additional parties if and/or when those parties are identified.

- 4. Property Location and Description:** The Property is located within the Little River Hydrologic Area, less than two miles from the Pacific Ocean. The Little River flows through the Property and directly into the Pacific Ocean. The Property is located approximately five miles north of McKinleyville in Humboldt County. The Property is comprised of five parcels (listed above) which span approximately 226 acres in total. All parcels are zoned Agricultural Exclusive³ with Coastal Wetlands zones.

² Information available from the Humboldt County Clerk-Recorder accessed by Regional Water Board staff via Digital Map Products' Land Vision service and/or Westlaw Edge shows that Vern McGaughey transferred his personal ownership interest in the Property to the Vern C. McGaughey Trust on December 28, 2017. Before transferring his ownership to the Vern C. McGaughey Trust, Vern McGaughey, as an individual, owned the Property since at least 2004.

³ According to the Humboldt County General Plan, the Agricultural Exclusive designation applies primarily to bottomland farms and lands that can be irrigated. Typical uses include dairy, row crops, orchards, specialty agriculture, and horticulture.

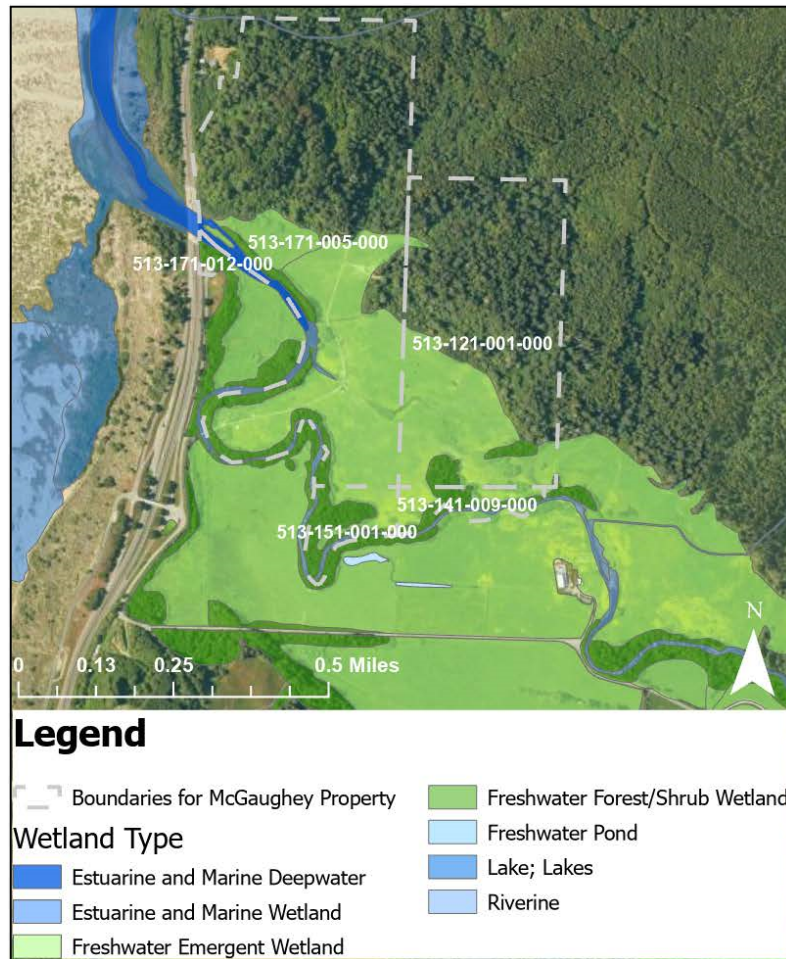


Figure 1: Property map, overlaid with the National Wetlands Inventory layer⁴ provided by CDFW and Humboldt County APN boundaries.

- 5. Regulatory History:** On January 14, 2011, Regional Water Board staff inspected the Property in response to a complaint filed by the California Department of Fish and Wildlife (CDFW) (formerly known as the California Department of Fish and Game) and a Notice of Violation (NOV) issued by CDFW to the Discharger.⁵ Regional Water Board staff observed violations of Federal Clean Water Act (Clean Water Act) sections 301, 401, and 404, as well as violations of Basin Plan

⁴ The [National Wetlands Inventory](https://www.fws.gov/program/national-wetlands-inventory/wetlands-data) is a public database which covers the conterminous United States and associated territories. The dataset is updated twice annually. (<https://www.fws.gov/program/national-wetlands-inventory/wetlands-data>)

⁵ December 23, 2010 California Department of Fish and Wildlife Notice of Violation issued to Vern McGaughey

Prohibitions as documented in the April 14, 2011 Inspection Report.⁶ The violations include the unpermitted discharge of waste into waters of the state and Waters of the U.S., unauthorized dredge and fill, and potentially increasing levels of sediment in violation of the Basin Plan water quality objectives.

Since 2011, the California Coastal Commission (Coastal Commission) has issued nine NOVs to the Discharger for failing to comply with the California Coastal Act and other regulatory requirements (Attachment A).⁷ The NOVs identified violations such as the failure to obtain coverage for authorized development or comply with the California Coastal Act,⁸ failure to comply with various requirements under the Humboldt County Code Zoning Regulations, and failure to submit a Lake and Streambed Alteration Agreement as required by CDFW. Despite years of attempted communication by Coastal Commission personnel, the Discharger remains out of compliance with regulatory requirements across all of the agencies listed above.

On November 10, 2022, with consent from the Discharger, the Coastal Commission, CDFW, and County of Humboldt inspected a portion of the Property (November 2022 Inspection). Due to time constraints, a comprehensive evaluation of the entire Property was not feasible, and the inspection only covered Humboldt County APNs 513-171-005-000 and 513-121-001-000.

Following the November 2022 Inspection, on December 6, 2022, Humboldt County Code Enforcement Unit issued a Stop Work Order to the Discharger for the unauthorized development in a coastal zone, building code violations, junk and/or inoperable vehicles, and improper storage and removal of solid waste. (see Attachment B). On January 31, 2024, Humboldt County Department of Health and Human Services issued a Cease and Desist and Compliance Order to the Discharger for the illegal disposal of solid waste on the Property. On January 31, 2024, Humboldt County Department of Health and Human Services also issued an NOV to the Discharger for the unpermitted construction of a pit privy located in an area unsuitable for the installation of a conventional septic tank-leach field sewage treatment system. The Humboldt County Department of Health and Human Services Cease and Desist and Compliance Order and Notice of Violation from January 31, 2024, are combined and provided in Attachment C to this Order.

⁶ April 14, 2011 Regional Water Board Complaint Inspection Report of the Vern McGaughey Property, Humboldt County APNs 513-171-005-000, 513-121-001-000, & 513-121-012-000

⁷ The nine NOVs included in Attachment A were issued on the following dates: January 24, 2011; August 28, 2014; November 25, 2015; November 3, 2017; April 9, 2021; September 14, 2022; February 21, 2023; December 5, 2023; and February 5, 2024.

⁸ Public Resources Code Division 20 California Coastal Act (2023), Chapter 2, Section 30106, page 11.

On February 21, 2023, the Coastal Commission issued an NOV to the Discharger, addressing the violations of the California Coastal Act for unauthorized coastal development observed on the Property during the November 10, 2022 inspection. On December 5, 2023, the Coastal Commission issued a follow-up NOV to the Discharger, reiterating the need for cleanup and restoration on the Property, and to remind the Discharger of the in-person meeting scheduled for February 2, 2024. On February 5, 2024, the Coastal Commission issued a Notice of Intent to record a formal NOV (known as a “NOVA”) pursuant to Coastal Act section 30812,⁹ signed by the Coastal Commission’s Executive Officer. The NOVA recorded the violations of the Coastal Act as well as the violations of the County of Humboldt’s Certified Local Coastal Plan (Humboldt County LCP) on the Property.

On April 18, 2023, CDFW issued an Environmental Impact Assessment Report (EIA Report) documenting the violations observed by its personnel on the two parcels during the November 10, 2022, inspection.¹⁰ The EIA Report (Attachment D) includes a detailed description of the substantial acute and chronic degradation to the aquatic habitat and associated beneficial uses of the Little River watershed resulting from the violations documented during the inspection, as well as the dozens of wildlife species potentially threatened by the violations.

- 6. Factual Basis of Order:** The Discharger’s activities and/or the conditions observed on the Property have caused and/or threaten to cause waste to be discharged or deposited where it is, or probably will be, discharged into the Little River, its tributaries, and adjacent wetlands. The Discharger’s activities and/or the conditions observed on the Property have created and/or threaten to create a condition of pollution by unreasonably impacting water quality and beneficial uses. These activities and conditions include:
- a. Unauthorized development on the Property observed by Coastal Commission personnel and documented in its February 21, 2023, NOV includes: placement of construction waste, household trash, and several vehicles, all located within wetlands and along stream channels; placement and installation of numerous materials, including concrete, plastic cloth, and grading along banks of the Little

⁹ Formal Notices of Violation (NOVAs) under Section 30812 of the Coastal Act require the Property Owner to maintain forward momentum towards resolution of the subject violations. Failure to comply with a NOVA can result in additional formal enforcement actions such as the issuance of a Cease and Desist Order pursuant to Sections 30809 and 30810 of the Coastal Act, or a Restoration Order pursuant to Section 30811. Furthermore, Section 30821.3 authorizes the Coastal Commission to impose civil liabilities against Property Owners who violate any provision of the Coastal Act.

¹⁰ April 18, 2023 California Department of Fish and Wildlife Environmental Impact Assessment; Vern McGaughey, Humboldt County Assessor’s Parcels Numbers 513-171-005-000 and 513-121-001-000.

River inlet; and grading and installation of culverts to create crossings of several unnamed blue-line streams tributary to the Little River.

- b. As documented in the CDFW EIA Report, CDFW personnel observed six activities in violation of Fish and Game Code (FGC) section 1602, ten activities in violation of FGC section 5650, and 24 activities in violation of FGC section 5652 on the Property. Violations observed on the Property by CDFW personnel include: unpermitted construction of hydrologically connected roads within emergent wetlands; placement and improper storage of garbage, soil/fill, and waste material in the Little River, its tributaries, and wetlands; unpermitted construction of stream crossings and potential streamflow diversion; inadequate enclosures for livestock resulting in widespread fecal waste, trampling of sensitive habitats such as wetlands and streambanks; and the unpermitted construction of a pit privy within wetlands associated with the Little River. All 40 activities on the Property in violation of Fish and Game Code section 1602, 5650, and 5652 observed during the November 10, 2022 inspection are described in Table 1 of the EIA Report, with photos of the observed violations in the associated Photo Appendix.

7. **Receiving Waters:** The Little River, unnamed tributaries to the Little River, and the adjoining wetlands on the Property lie within the Trinidad Hydrologic Unit, Little River Hydrologic Area. The wetlands adjoining the Little River, the unnamed tributaries to the Little River, and Little River itself are waters of the state, as well as waters of the U.S. Some of the upland adjoining wetlands and tributaries further up the main stem of the Little River are only considered waters of the state.

The Little River and its tributaries are Clean Water Act section 303(d)-listed as impaired due to elevated levels of Indicator Bacteria, specifically E. Coli and fecal coliform. In 2012, the United States Environmental Protection Agency (U.S. EPA) published the Current Recreational Water Quality Criteria (Recreational Water Quality Criteria) pursuant to Clean Water Act section 304(a) to protect the public from exposure to harmful levels of pathogens in all water bodies designated for primary contact recreational uses.¹¹

8. **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 State Water Board.
 - a. **Beneficial Uses:** Existing and potential beneficial uses for the Little River Hydrologic Area include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process

¹¹ United States Environmental Protection Agency Recreational Water Quality Criteria (2012).

Supply (PRO); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare Threatened or Endangered Species (RARE); Marine Habitat (MAR); Migration of Aquatic Organisms (MIGR); Spawning, reproduction, and/or Early Development (SPWN); Shellfish Harvesting (SHELL); Estuarine Habitat (EST); and Aquaculture (AQUA). Existing and potential beneficial uses specifically for wetlands include Native American Culture (CUL).

- b. Basin Plan Prohibitions:** 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. Basin Plan Water Quality Objectives:** 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 activities include the following:
- i. 3.3.1 Bacteria: “The bacteriological quality of waters of the North Coast Region shall not be degraded beyond natural background levels.”
 - ii. 3.3.6 Floating Material: “Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.”
 - iii. 3.3.7 Oil and Grease: “Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance, or that otherwise adversely affect beneficial uses.”

- iv. 3.3.11 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.”
- v. 3.3.12 Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
- vi. 3.3.13 Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
- vii. 3.3.14: Taste and Odors: “Waters shall not contain taste- or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, or that cause nuisance or adversely affect beneficial uses.”
- viii. 3.3.15: Temperature: “The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses. At no time or place shall the temperature of any COLD or WARM intrastate waters be increased by more than 5°F above natural receiving water temperature.”
- ix. 3.3.16: Toxicity: “Waters shall not contain toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.”
- x. 3.3.17 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.”

9. 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* (Sediment TMDL Implementation Policy) on November 29, 2004. The Sediment TMDL Implementation Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

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.

Additionally, the Regional Water Board adopted Resolution No. R1-2023-0001, Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism in the North Coast Region (Racial Equity Resolution), which commits the Regional Water Board to “making racial equity, diversity, inclusion, and environmental justice central to [the work of the Regional Water Board] to implement the [Regional Water Board’s] mission so that the access to beneficial uses of water...are shared equitably by all people.”¹² The Basin Plan identifies Water Contact Recreation (REC-1) as an existing beneficial use for the Little River. Implementing this Order supports protecting and restoring recreational beneficial uses in the Little River Hydrologic Area, which is a popular recreation area for disadvantaged communities, visitors, and residents of Humboldt County.

- 10. State Water Board Resolutions:** 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 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

¹² North Coast Regional Water Quality Control Board Resolution R1-2023-0001 – Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism in the North Coast Region. The [Racial Equity Resolution](https://waterboards.ca.gov/northcoast/board_info/board_meetings/02_2023/pdf/6/2301_racialequity.pdf) is available at the link below: (https://waterboards.ca.gov/northcoast/board_info/board_meetings/02_2023/pdf/6/2301_racialequity.pdf)

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.

11. Failure to Obtain Necessary Permits: Based on CDFW, Coastal Commission, and Humboldt County Code Enforcement personnel observations and review of available records associated with the Property, this Order finds that the discharge of waste and/or dredge and fill within waters of the state and Waters of the U.S. on the Property have occurred without necessary regulatory coverage, including the following (the regulatory requirements discussed below that do not involve the Regional Water Board may also apply):

- a. Under Water Code section 13376, a person who discharges pollutants or dredged or fill material to waters of the U.S. in the North Coast Region shall file a report of waste discharge pursuant to Water Code section 13260.
- b. Clean Water Act section 404 permit from the Army Corps of Engineers and an associated Clean Water Act section 401 Water Quality Certification from the Regional Water Board;
- c. California Coastal Commission Coastal Development Permit;
- d. A CDFW Lake and Streambed Alteration Agreement for impacts to riparian vegetation and placement of fill in streams; and
- e. Any applicable County of Humboldt Planning and Building Department Code Enforcement permit(s) for unauthorized development in the Coastal Zone.

The Regional Water Board has no evidence that the Discharger obtained any permits or water quality certification for the discharges discussed in this Order.

12. 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.

The Discharger has discharged waste into waters of the state in violation of Basin Plan prohibitions and regulatory requirements identified above, and/or has caused or permitted, causes or permits, or threatens to cause or permit, waste to be discharged to waters of the state and creates, or threatens to create, a condition of pollution, as explained below.

- a. Waste:** “Waste” is defined by Water Code section 13050, subdivision (d) as, “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.”
- i. **Indicator Bacteria and Nutrients:** Indicator bacteria such as E. Coli and fecal coliform are both fecal indicator bacteria associated with wastes produced by uncontrolled livestock operations and improper disposal of human waste. Human and animal waste, manure, and animal viscera, when discharged or deposited into waters of the state, are “wastes” as defined in Water Code section 13050.
 - ii. **Sediment:** Sediment and organic material, when discharged to waters of the state, are “wastes” as defined in Water Code section 13050.
 - iii. **Automobiles/ Vehicles:** Automobiles and vehicles, when deposited into, placed in, or improperly stored in or adjacent to waters of the state, are “wastes” as defined in Water Code section 13050.
 - iv. **Trash/ Debris:** Trash and debris, when improperly stored and/ or disposed of, are “wastes” as defined in Water Code section 13050.
- b. Pollution:** “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.”

- 13. Findings of Pollution:** The Regional Water Board have received several reports, notices, and enforcement actions from the Coastal Commission, CDFW, Humboldt County Department of Health and Human Services, and the Humboldt County Code Enforcement of observed discharges and threatened discharges of wastes following the inspection of the Discharger’s Property on November 10, 2022. The discharges and/or threatened discharges described in Finding 5, above, have altered and/or

threaten to alter the quality of waters of the state and Waters of the U.S. to a degree that unreasonably affects waters for beneficial uses for the reasons explained below. Although the pollution analysis is based on observations from the November 10, 2022 inspection, neither the Discharger or participating regulatory agencies have indicated that conditions observed on the Property during the inspection do not accurately reflect current conditions on the Property.

The discharges and/or threatened discharges of waste to waters of the state in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan create or threaten to create conditions of pollution subject to this Order in accordance with Water Code section 13304, as follows:

- i. On August 10, 2022, the Regional Water Board received a complaint report from the Humboldt County Department of Health and Human Services detailing the bacterial contamination of the Little River determined by microbial source sampling conducted by Humboldt County Department of Health and Human Services personnel. Coastal Commission, CDFW, and Humboldt County Code Enforcement personnel observed human and animal wastes (i.e., manure, animal viscera, and construction of an unpermitted pit privy) within or adjacent to waters of the state and Waters of the U.S. on the Property during the November 10, 2022 inspection of the Property. Uncontrolled livestock grazing and unauthorized construction of a pit privy within and adjacent to waters of the state and Waters of the U.S. are activities of human and animal origin which have the potential to contaminate and/or exacerbate the existing bacterial impairment in the Little River, its tributaries, and adjoining wetlands.

Bacterial contamination in the Little River watershed is especially problematic because, as noted above, the Little River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to elevated level of indicator bacteria, specifically E. Coli and fecal coliform. Bacterial contamination impacts the uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible (beneficial use impacted: REC-1).

Furthermore, the wastes produced by uncontrolled livestock operations are a source of excess nutrients, which can create nuisance conditions and pollute surface waters if improperly managed. 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. Excess nutrients can also 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).

- ii. Coastal Commission, CDFW, and Humboldt County Code Enforcement personnel documented and observed several cases of dredge and fill, grading, installation of culverts, and uncontained/ uncovered sediment piles within and adjacent to waters of the state and Waters of the U.S. during the November 10, 2022 Property inspection. The unauthorized dredge and fill, soil disturbance, and exposed sediments resulting from unauthorized development on the Property are all activities of human origin which have the potential to escalate sediment mobilization and transportation to Little River, its tributaries, adjoining wetlands, and the Pacific Ocean, exacerbating the existing sediment impairment of waters of the state and Waters of the U.S.

Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters. 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).

- iii. Coastal Commission, CDFW, and Humboldt County Code Enforcement personnel observed the improper storage and placement of several automobiles/vehicles within or adjacent to waters of the state and Waters of the U.S. during the November 10, 2022 inspection of the Property. The placement of these wastes without proper storage and best management practices (BMPs) is an activity of human origin that can discharge pollutants which have the potential to contaminate the Little River, its tributaries, adjoining wetlands, and subsequently the Pacific Ocean.

- iv. Coastal Commission, CDFW, and Humboldt County Code Enforcement personnel observed numerous cases of improper storage, disposal, and placement of trash/debris within and adjacent to waters of the state and Waters of the U.S. throughout the Property during the November 10, 2022 inspection. Inadequate storage and disposal of these wastes are activities of human origin that can result in threatened and/ or actual discharges and contamination to the Little River, its tributaries, and subsequently the Pacific Ocean.

14. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution and/or threatened condition of pollution is cleaned up and/or abated; the threat of unauthorized discharges to waters of the state from the Property are prevented; background water quality conditions are restored; the waste and refuse littered throughout the Property are removed and adjacent wetlands are restored; and any impacts to beneficial uses are mitigated. The current condition of pollution and/or threatened 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 and State Water Board.

15. 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 discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of preparing these reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

This Order requires four types of technical and monitoring reports. Regional Water Board staff estimated the cost of the reports to be approximately \$20,142 to \$46,744, in the first year, and between \$2,537 and \$3,380 annually.¹³ This analysis is discussed further in subparagraphs (a) through (e) below.

¹³ The State Water Board considered the estimated costs associated with various technical reports regarding site characterization, stabilization, and restoration during the adoption and amendment of the Cannabis Cultivation Policy and General Order. Estimated costs for technical reports were presented in the Direct Cost Analysis for the Cannabis Cultivation Policy (2017 Direct Cost Analysis) linked below. The costs to develop the technical reports required in this Order are anticipated to be comparable to the preparation of reports presented in the [2017 Direct Cost Analysis](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf). (https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf)

- a. The Stream and Wetland Impact Assessment is a technical report that is necessary to delineate wetlands and assess the temporary and/or permanent impacts from unauthorized dredge and fill activities (including road construction), construction of unpermitted stream crossings, streambank stabilization, waste and refuse disposal, and equestrian livestock operations throughout the entire Property. The Stream and Wetland Impact Assessment requirements are comparable to that of preparing a combined Preliminary Site Assessment and Soil and Water Investigation as presented in the State Water Resources Control Board Underground Storage Tank Cleanup Fund Cost Guidelines (2018 UST Cost Guidelines Update),¹⁴ which are estimated to cost anywhere between \$1,745 and \$3,380 depending on the scope of the assessment.

The Report of Grazing Activities is a component of the Stream and Wetland Impact Assessment that is necessary to evaluate the efficacy of the grazing management activities (or lack thereof) implemented on the Property over the last five years. The requirements of the Report of Grazing Activities are comparable to that of a Comprehensive Conservation Plan as presented in the United States Department of Agriculture Natural Resource Conservation Service Conservation Stewardship Program Fiscal Year 2023 (NCRS Conservation Stewardship Program),¹⁵ which are estimated to cost between \$2,516 and \$3,360 (see Requirement 1.A. for more information).

- b. The Cleanup, Restoration, and Monitoring Plan (CRMP) is a technical report with multiple components that is necessary for restoration of altered natural drainage patterns on the Property and protection for waters of the state and waters of the U.S. as well as associated beneficial uses from actual and

¹⁴ The State Water Resources Control Board Underground Storage Tank Cleanup Fund Cost Guidelines (2018 UST Cost Guidelines Update) focused on updating labor rates and unit costs using the California Consumer Price Index (CPI). Cost Guideline updates include stakeholder involvement and focus on updating costs and narrative guidelines, the addition of remediation costs, and integration of guidelines into a unified document. Estimated costs for technical reports were presented in the 2018 UST Cost Guidelines Update. The costs to develop the technical reports required in this Order are anticipated to be comparable to the preparation of reports presented in the 2018 UST Cost Guidelines Update. The [2018 Cost Guidelines Update](https://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/2018_cost_guidelines_update.pdf) can be found here: (https://www.waterboards.ca.gov/water_issues/programs/ustcf/docs/cost_guidelines/2018_cost_guidelines_update.pdf)

¹⁵ The United States Department of Agriculture Natural Resource Conservation Service Conservation Stewardship Program Payment Rates for Fiscal Year 2023 ([NRCS Conservation Stewardship Program Rates](https://www.nrcs.usda.gov/sites/default/files/2022-11/California-CStwP-23-payment-rates.pdf)) list of costs are available at the link below: (https://www.nrcs.usda.gov/sites/default/files/2022-11/California-CStwP-23-payment-rates.pdf)

threatened waste discharges. There are two components to the CRMP: (i) a Solid Waste Removal and Disposal Plan to cleanup and abate impacts to waters of the state and Waters of the U.S. resulting from unauthorized solid waste disposal (including garbage, refuse, debris, etc.) on the Property; and (ii) a Stream and Wetland Restoration Plan to restore all natural functions and drainage patterns of waters of the state and Waters of the U.S. on the Property. By requiring the Discharger to submit a CRMP, the Regional Water Board or its delegated officer will have the opportunity to review and approve the scope of the proposed restoration and corrective actions to confirm the proposed work will adequately remediate site conditions and prevent sediment, refuse, elevated bacteria, and unauthorized construction material discharges from further impacting the beneficial uses of sensitive water bodies.

- i. Solid Waste Removal and Disposal Plan: The requirements of the Solid Waste Removal and Disposal Plan are comparable to that of preparing a Corrective Action Plan as presented in the 2018 UST Cost Guidelines Update, which are estimated to cost anywhere between \$8,832 and \$12,656.

The requirements of the Final Waste Disposal Report are comparable to that of preparing a Periodic Update Report or a Cleanup Progress Report as presented in the 2018 UST Cost Guidelines Update, which are estimated to cost \$851 and \$2,682, respectively (see Requirement 2.A.(v) below for more information).

- ii. Stream and Wetland Restoration Plan: The requirements of the Stream and Wetland Restoration Plan are comparable to that of preparing a Comprehensive Conservation Plan as presented in the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Conservation Stewardship Program Fiscal Year 2023, which are estimated to cost anywhere between \$2,516 and \$14,422 (see Requirement 2.B. for more information).
- c. A Completion Report is a technical report which is necessary to demonstrate that the Discharger has successfully implemented and completed the CRMP activities in a timely manner in accordance with the implementation schedule set forth in the CRMP and this Order. The benefit derived from a Completion Report is documented evidence that remedial activities and BMPs were implemented to ensure that cleanup and abatement activities remedy all water quality threats and impacts. The scope of a Completion Report (i.e., field inspection and report preparation) is comparable to that of preparing a Site Closure Report as described in the 2017 Direct Cost Analysis, or a Site Assessment Report as presented in the UST Cost Guidelines Update, which

are estimated to cost between \$1,080 and \$3,360, or \$6,310 and \$6,944, respectively (see Requirement 2.D.(iii) for more information).

- d. Annual Monitoring Reports are necessary to evaluate the efficacy of the remediation and restoration activities implemented throughout the CRMP and their associated impact on beneficial uses and compliance with water quality objectives. Observation and maintenance of the restoration activities implemented as described in the CRMP is required to ensure that the anticipated water quality benefits are achieved in the long-term and that CRMP components remain effective and maintained. Moreover, these reports provide further benefit by certifying that all applicable BMPs or control measures are implemented and properly maintained during and after the cleanup process.

By requiring the Discharger to submit annual monitoring reports, the Regional Water Board or its delegated officer can confirm the implemented work adequately remediates site conditions in order to prevent sediment, refuse, animal waste, and solid waste discharges from further impacting the beneficial uses of sensitive water bodies. The requirements of an Annual Monitoring Report are comparable to that of a Periodic Groundwater Monitoring Report as presented in the 2018 UST Cost Guidelines Update, which is estimated to cost between \$2,602 and \$3,300.

- 16. 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 Discharger 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 Discharger's proposed remedial 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 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 Discharger 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 submitting any documents necessary for environmental review. If necessary, the Discharger 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 the Discharger shall submit technical and monitoring reports described below pursuant to Water Code section 13267, and clean up the wastes, and abate the impacts to water quality in accordance with the scope and schedule set forth below pursuant to Water Code section 13304. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. Stream and Wetland Impact Assessment

Requirements 1.A. & 1.B. address the Property-wide Wetland Delineation and assessment of the impacts to the Little River, its tributaries, and the adjoining wetlands, all of which are waters of the state and/or Waters of the U.S.

A. Report of Grazing Activities

The Discharger shall submit a Report of Grazing Activities for the Property along with the Wetland Delineation and Impact Assessment Report. This Report shall describe the timing, duration, and extent to which livestock have had grazing access on the Property. The Report must attempt to characterize the grazing that has occurred on the Property by acreage and identify any grazing management practices/activities that have been implemented on the Property over the last five years and any planned activities on the property in the next two years.

Compliance Date: January 31, 2025 (submitted along with Wetland Delineation and Impact Assessment Report)

B. Stream and Wetland Delineation and Impact Assessment Report

On or before January 31, 2025, the Discharger shall submit a Property-wide Wetland Delineation¹⁶ for waters of the state and waters of the U.S. with an incorporated Impact Assessment Report identifying all impacts to waters of the

¹⁶ A wetland delineation acceptable to the Executive Officer that is developed by a professional wetland specialist with experience in wetland delineation; pursuant to the methodology described in the US Army Corps of Engineers Wetlands Research Program Technical Report Y-87-1, Section F. Atypical situations (pages 73-83).

state and waters of the U.S. (streams and wetlands) quantified in linear feet and acreage. The Report must accomplish the following:

- i. Incorporate and differentiate between all the temporary and permanent impact sources identified in the Wetland Delineation and within Finding 6 on the Property including but not limited to: unauthorized discharges resulting from human and animal waste activities; sediment discharges from dredge and fill activities, soil disturbance, and unauthorized development; and discharges resulting from improper storage of automobiles/ vehicles and trash/debris.
- ii. Provide volume, area, and linear feet of waste, as well as maps, figures, and photographs containing all sources of unauthorized discharge throughout the Property (all photographs must be accompanied by date and time the photograph was taken).

Compliance Date: January 31, 2025

2. Cleanup, Restoration, and Monitoring Plan (CRMP):

Requirements 2.A.-2.B. address the Cleanup, Restoration, and Monitoring components of the CRMP. The CRMP shall serve to guide the cleanup and restoration of the altered natural drainage patterns on the Property and ensure protection for waters of the state and Waters of the U.S. from actual and threatened waste discharges that impact beneficial uses.

A. Solid Waste Characterization, Removal, and Disposal Plan

Requirements 2.A.(i)-2.A.(iv) describe the requirement to develop and implement a plan for proper characterization, removal, and disposal of all wastes deposited, placed, and/or improperly stored in or adjacent to waters of the state, Waters of the U.S., and throughout the Property. Any proposed work that will result in the discharge into and/or removal of material from waters of the state and Waters of the U.S. will require waste discharge requirements and a water quality certification¹⁷ prior to conducting work. The Discharger shall obtain any applicable permits¹⁸ for removal and disposal of wastes within all waters of the state and Waters of the U.S. on the Property.

- i. Characterize Solid Waste

¹⁷ Work within Waters of the U.S. requires water quality certification and waste discharge requirements (WDRs) but work only in waters of the state only requires WDRs.

¹⁸ The [applications for water quality certifications](https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/) can be found here: (https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/)

On or before January 31, 2025, the Discharger shall quantify and characterize all wastes deposited, placed, and improperly stored throughout the Property. Waste characterization shall include proper identification, classification, and any necessary analytical sampling and laboratory analysis to determine the risk they pose to water quality.¹⁹ The characterization shall include sampling procedures and analytical data to ensure the requirements of Title 27 of the California Code of Regulations have been met for handling, transportation, and disposal of solid waste.

ii. Develop Solid Waste Removal and Disposal Plan

By March 31, 2025, the Discharger shall develop and submit a Solid Waste Removal and Disposal Plan to the Regional Water Board's Executive Officer for their review and approval, which describes the proposal for the removal of unauthorized fill materials, improperly stored solid waste, unauthorized domestic waste, improperly disposed automobiles and animal wastes throughout the Property.

The Plan shall incorporate the appropriate waste management requirements and remedial actions necessary for the on-site and off-site disposal of solid waste, including the following:

- a. A description of the method(s) of waste removal;
- b. A proposal, including engineered design drawings, to remove all waste material to restore natural conditions of waters of the state and Waters of the U.S. on the Property;
- c. An implementation timeline for waste removal;
- d. A plan to dispose of excavated waste material appropriately (more information on proper disposal of waste material in Requirement 2.A.(i));
- e. Details regarding planned BMPs for all waste excavation work, including, at a minimum, identification of staging areas, haul and access roads, housekeeping BMPs, as well as erosion, sedimentation, and run-off controls, and any stream diversion or other in-stream BMPs that may be necessary;
- f. A map identifying all access roads to be used for waste hauling; and

¹⁹ [Waste classification guidance](https://www.waterboards.ca.gov/water_issues/programs/land_disposal/waste_class.html) can be found using the following links:
(https://www.waterboards.ca.gov/water_issues/programs/land_disposal/waste_class.html)
(https://www.waterboards.ca.gov/water_issues/programs/land_disposal/)

- g. An application for water quality certification and/or waste discharge requirements.

Compliance Date: March 31, 2025

iii. Implement Solid Waste Removal and Disposal Plan

Prior to implementation of the Solid Waste Removal and Disposal Plan, the Discharger shall obtain and submit copies of the appropriate permit(s) from all local, state, and/or federal regulatory agencies for (1) storage of all solid waste material on the Property, or (2) removal of solid waste on the Property and disposal of solid waste at an appropriately permitted off-site solid waste disposal facility.

If the Discharger elects to dispose of solid waste off-site, then the Discharger shall provide waste manifests to document solid waste disposal transport and disposal. If solid waste is disposed off-site, the Discharger shall submit Interim Disposal Reports including photographs, certifying complete disposal of waste no later than 60 days after completion of waste disposal.

The Interim Disposal Reports shall include waste manifests for the off-site waste disposal that include:

- a. Description of the waste (including weight and/or volume of the waste);
- b. Date of removal and transport from the site;
- c. Location of final deposition of the waste;
- d. Signature of the person overseeing waste disposal; and
- e. Receipts documenting the time, weight and/or volume, and location of waste disposal.

Compliance Date: The Discharger shall fully implement the approved Solid Waste Removal and Disposal Plan no later than October 31, 2025.

iv. Final Waste Disposal Report

Compliance Date: The Discharger shall submit a Final Waste Disposal Report acceptable to the Executive Officer that includes as-built plans, documentation of waste material disposal location(s), waste manifests, photographs, and a narrative description of waste material excavation and restoration activities no later than December 1, 2025.

B. Stream and Wetland Restoration Plan

Requirement 2.B. addresses the restoration of streams and wetlands identified as waters of the state and Waters of the U.S. in the Wetland Delineation and Impact Assessment Report under Required Action 1 above.

i. Submit a Stream and Wetland Restoration Plan

By March 31, 2025, the Discharger shall submit a Stream and Wetland Restoration Plan for the Executive Officer's review and approval. The Plan shall be prepared by an appropriately licensed professional and shall include but not be limited to:

- a. A detailed site map accurately depicting topography, roads, watercourses, watercourse road crossings, and all areas identified as potential and/or actual impacts to waters of the state and/or Waters of the U.S. as identified in the Wetland Delineation and Impact Assessment Report;
- b. A plan for cleanup and restoration activities to address the restoration of streams and wetlands on the Property, including a description of feasible and effective corrective actions proposed for each potential and/or actual impact or discharge site. Restoration measures included in the plan shall include, but not be limited to, the restoration of impacted and degraded wetlands, water courses, and riparian habitats;
- c. A plan for monitoring the performance and success of the restoration actions. This plan shall include, but not be limited to, monitoring methods, monitoring schedule, performance criteria, and final success criteria. The final success criteria must include the establishment of native riparian and wetland species at 85 percent after five (5) years.
- d. A proposal to provide compensatory mitigation to compensate for all temporal and/or permanent impacts to wetlands and other waters of the state and Waters of the U.S. resulting from the required restoration activities on the Property. The Compensatory Mitigation Proposal shall comply with the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (State Wetland Definition and Procedures)²⁰ and be developed in accordance with the U.S. Army Corps of Engineers Regulatory Program Standard Operating Procedure for Determination of Mitigation Ratios (12501-

²⁰ [State Wetland Definition and Procedures](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html) can be found online at:
(https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html)

SPD).²¹ Opportunities for onsite mitigation must be explored and exhausted prior to proposing offsite mitigation projects.

The Compensatory Mitigation Proposal shall (1) describe existing and proposed site conditions at the proposed mitigation sites; (2) describe implementation methods used to provide compensatory mitigation; (3) include a land use covenant, deed restriction, or other legal mechanism to preserve all mitigation sites in place and in perpetuity; (4) include photo point monitoring that will document success of the compensatory mitigation; and (5) the submittal of monthly progress updates due on the 1st of each month until all required construction activities are completed.

Compliance Date: March 31, 2025

ii. Implement the Stream and Wetland Restoration Plan

Prior to implementation of the Stream and Wetland Restoration Plan, the Discharger shall obtain and submit copies of the appropriate permit(s) from all local, state, and/or federal regulatory agencies for the cleanup and restoration activities contained within the Stream and Wetland Restoration Plan.

Compliance Date: The Discharger shall fully implement the approved Stream and Wetland Restoration Plan no later than October 31, 2025.

C. Reporting Requirements

i. Cleanup, Restoration, and Monitoring Plan Completion Report

Submit a CRMP Completion Report (Completion Report)

The Discharger shall submit a Completion Report to demonstrate the successful implementation and completion of the CRMP activities (specifically, Requirements 2.A. & 2.B.) in accordance with the Compliance Dates set forth in Requirements 2.A. & 2.B. above.

Compliance Date: January 30, 2026

ii. Annual Monitoring Reports: Upon completion of the restoration and mitigation of waters of the state and Waters of the U.S., submit annual monitoring reports by January 31st 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

²¹ The [12501-SPD](https://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/ratio/12501-SPD.pdf) can be found online at:
(<https://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/ratio/12501-SPD.pdf>)

approved success criteria in the CRMP 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 Discharger 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 Discharger shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
- 2. Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Discharger shall also state in the cover letter whether they will implement the recommendations/proposals provided in the report. Any person signing a document submitted under this Order shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”
- 3. Notice of Onsite Work:** The Discharger, or a duly authorized agent, shall notify 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 Discharger may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Brian Fuller at (707) 576-2806.

4. Notice of Change in Ownership or Occupancy: The Discharger shall file a written report on any changes in the Property's ownership or occupancy. This report shall be 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. Submissions: All monitoring reports, technical reports or notices required under this Order shall be submitted:

By email (preferred) to:

Brian Fuller, Engineering Geologist

Brian.Fuller@waterboards.ca.gov

And to:

NorthCoast@waterboards.ca.gov

Or by mail to:

NCRWQCB

Attn: Brian Fuller

5550 Skylane Blvd, Suite A

Santa Rosa, CA 95403

6. Other Regulatory Requirements: The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. 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.

7. Delayed Compliance: If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Regional Water Board or its delegated officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date, but no later than 30 days before the due date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the

Dischargers and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.

- 8. Potential Liability:** If the Discharger fails to comply with any of the requirements of this Order, the Regional Water Board may refer this matter to the Attorney General for judicial enforcement or the Regional Water Board's Assistant Executive Officer may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$10,000 per violation per day, and \$10 per gallon of waste discharged, when the violation results in the discharge of waste to waters of the U.S. Failure to comply with cleanup and/or abatement requirements of this Order may result in the assessment of an administrative civil liability up to \$5,000 per violation per day pursuant to Water Code section 13350. Failure to comply with technical reporting and/or monitoring requirements of this Order may result in the assessment of an administrative civil liability up to \$1,000 per violation per day pursuant to Water Code section 13268. The Regional Water Board reserves its right to take any enforcement action authorized by law, including, but not limited to, violation of the terms and conditions of this Order.
- 9. 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 and/or amended as additional information becomes available.
- 10. Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
- 11. Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional 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 by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the [law and regulations applicable to filing petitions](#) may be found on the Internet at:

(https://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml)

or will be provided upon request.

Vern McGaughey
CIWQS Place ID 765542
CAO and 13267 Order R1-2024-0026

This Order is effective upon the date of signature.

Valerie Quinto
Executive Officer

Attachments:

- A. Attachment A: California Coastal Commission Notices of Violation for Vern McGaughey
- B. Attachment B: December 6, 2022 County of Humboldt Code Enforcement Unit Stop Work Order & Transmittal Letter for Vern McGaughey
- C. Attachment C: January 31, 2024 Humboldt County Department of Health Notice of Violation & Cease and Desist Compliance Order (combined) for Vern McGaughey
- D. Attachment D: April 18, 2023 California Department of Fish and Wildlife Environmental Impact Assessment (EIA Report)

Cleanup and Abatement and Investigative Order No. R1-2024-0026