

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order No. R1-2007-0104  
For

Dennis Wendt  
Strong's Creek Drive Residential Subdivision  
APN 202-121-078  
Fortuna  
Humboldt County

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

1. Dennis Wendt (hereinafter Discharger) owns approximately 38 acres of land in the City of Fortuna. Mr. Wendt allegedly conducted unauthorized wetland filling activities and creek rerouting on this property (hereinafter Site). The Site is identified by Assessor Parcel Number 202-121-078, accessed by Strong's Creek Drive extension, located immediately east of the recently developed Strong's Creek Plaza.
2. On September 10, 2007, Regional Water Board staff (staff) received a report of the filling of wetland and creek (waters of the state) that were conducted on the Discharger Site. On September 19, 2007, Regional Water Board staff performed an initial inspection of the Site. Staff noted fill material across most of the Site, and noted the culvert on the southeastern corner of the property collecting flow from a small spring. A subsequent review of aerial photos and other information regarding the Site identified wetlands and a watercourse that had been rerouted from its former alignment along the southern boundary of the Strong's Creek Plaza property. A further investigation relative to conditions observed at the Site as well as a review of information provided by the California Department of Fish and Game indicated that riparian and wetland vegetation had been covered by fill. There was no water quality certification, waste discharge requirements or construction stormwater permits issued by the Regional Water Board for this discharge.
3. After the inspection, staff reported the wetland filling and creek rerouting to the California Department of Fish and Game and United States Army Corps of Engineers. Staff was informed that the Discharger had not sought and received the required authorization under Fish and Game Code section 1600 or section 404 of the Clean Water Act. These activities constitute an unauthorized discharge or threatened discharge that could adversely affect water quality in violation of various provisions of the Water Code.
4. The perennial spring-fed creek and wetlands are tributary to Strong's Creek and Eel River, with beneficial uses as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), that include:

- a. Municipal and domestic supply
  - b. Agricultural supply
  - c. Industrial supply
  - d. Industrial service supply
  - e. Groundwater recharge
  - f. Navigation
  - g. Hydropower generation
  - h. Water contact recreation
  - i. Non-contact water recreation
  - j. Commercial and sport fishing
  - k. Warm freshwater habitat
  - l. Cold freshwater habitat
  - m. Rare, threatened, or endangered species
  - n. Wildlife habitat
  - o. Migration of aquatic organisms
  - p. Spawning, reproduction, and/or early development
  - q. Estuarine habitat
  - r. Aquaculture
5. The lower main stem Eel River and its tributaries are listed under the 303(d) list of the Federal Clean Water act as impaired for sediment, which in excess amounts can impact the beneficial uses of water.
6. 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 Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
- Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
  - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
7. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, the staff shall require the submission of Reports of Waste Discharge.”
8. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are

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

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

9. As described above, the Discharger filled wetlands and diverted and culverted a perennial creek, impacting the creek and adjacent wetland habitat at the Site (Photographs enclosed). The impacts to creek, riparian and wetland habitat and associated functions and values are deleterious to wildlife and other beneficial uses, and therefore violate Prohibitions 1 and 2 in the Action Plan. Creek habitat and associated riparian and wetland habitat generally consist of linear habitat that perform important functions related to water quality including but not limited to: providing habitat for aquatic species and wildlife; water quality enhancement; flood peak attenuation and flood water storage; and potential habitat for rare and endangered species. Removal of this habitat through the discharge and threatened discharge of sediment is deleterious to aquatic species and wildlife, as well as to other beneficial uses and users, and therefore violates Prohibitions 1 and 2 in the Action Plan as described in Finding 6 above. These detrimental effects also constitute the creation of pollution or nuisance. The unauthorized filling activity is therefore subject to cleanup and abatement under California Water Code section 13304.

10. Water Code section 13304, subdivision (a) provides: "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create a

condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”

11. A restoration workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated and controlled.
12. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 *et seq.*) in accordance with California Code of Regulations, title 14, sections 15308 and 15321.
13. Failure to comply with the terms of this Order subjects Discharger to an enforcement action under the Water Code, including a administrative civil liabilities under Water Code section 13350, subdivision (e), of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
14. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Executive Officer to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner’s legal rights. Additionally, if you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13304:

The Dischargers shall perform the following cleanup and abatement actions:

1. Cease the discharge of earthen materials, soil, and sediment to waters of the State and clean up and abate, in accordance with requirement no. 2 below, the condition of earthen materials, soil, and sediment discharged or placed into wetlands, surface waters and surface water drainage courses.
2. Submit a work plan to the Regional Water Board, for Executive Officer concurrence, on or before January 15, 2008, that includes the following:

- a. A plan for removing the fill, which shall include a copy of an Army Corps of Engineers (ACOE)-approved wetland delineation and the location of an appropriate disposal site for removed fill material.
  - b. A detailed restoration plan, for Executive Officer approval, that addresses the timely restoration of the wetland affected by the filling activity. The plan shall contain a time schedule for restoration activities, criteria to judge the success of the restoration project, and a monitoring proposal to evaluate whether the restoration is successful. Alternatively, the Discharger may submit a 401/Waiver of Waste Discharge Requirements application including adequate mitigation for the loss of wetland area and beneficial uses.
  - c. A plan to provide mitigation to account for the temporal loss of wetland habitat that has occurred as a result of the unauthorized filling. Such mitigation shall include restoration and/or creation of wetland habitat elsewhere in the watershed, restoration and/or creation of wetland habitat in upland areas on the site, and/or the purchase of wetland mitigation credits at an approved wetland mitigation bank.
3. Submit a report by January 15, 2008, that includes the following:
- a. A schedule to complete and submit an analysis of the area impacted, including the volume of fill added and delineation of impacted waters;
  - b. Information on agencies and personnel contacted regarding the unauthorized fill activities and copies of any related correspondence;
  - c. An investigation into and chronology of events related to the unauthorized fill and creek rerouting activities; and
  - d. Identification of erosion and sediment transport control best management practices (BMPs) that are being implemented on the site to prevent further discharge to wetlands or streams.
4. Following Executive Officer written concurrence, implement the work plan. All work to remove the fill, restore the affected wetland habitat, and mitigate for total wetland impacts shall be completed before further construction activities commence, except for continuing monitoring requirements.

If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines in the workplan implementation schedule submitted pursuant to this Order and concurred with by the Executive Officer, the Dischargers may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall be received by the Regional Water Board not less than 15 calendar days prior to the deadline sought to be extended. An extension may be granted for good cause, in which case this Order will be accordingly revised.

This Cleanup and Abatement Order (CAO) in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with the California Water Code. This CAO may be revised by the Executive Officer as additional information becomes available.

Ordered by \_\_\_\_\_

Robert R. Klamt  
Interim Executive Officer

November 30, 2007

113007\_CAO\_WendtWetlandFill



September 19, 2007 Area of filled wetlands



September 19, 2007 Rerouting of spring fed creek



October 7, 2007 Fill Material in Wetland Area



October 7, 2007 Fill Material Adjacent to Strongs Creek



November 2, 2007 Site Winterization



November 2, 2007 Site Winterization