

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

**Cleanup and Abatement Order No. R1-2008-0115 and Order for Technical  
or Monitoring Program Reports pursuant to Water Code section 13267(b)**

**For**

**John and Lisa McCauley, and Sandra Payne**

**Siskiyou County**

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

1. On June 16, 2008, Regional Water Board staff received a complaint reporting unauthorized dredge and fill activities, grading, excavation, construction, and other earthwork activities on properties in Siskiyou County that have caused or threaten to cause sediment to discharge into waters of the U.S. and waters of the State<sup>1</sup>.
2. Two of the subject parcels (parcel #s 015-510-180 & 015-510-250) comprise approximately 13.5 acres of land and are owned by John and Lisa McCauley. A third parcel (015-510-270) is approximately 4.5 acres and is jointly owned by John and Lisa McCauley and the Sandra L. Payne Trust. The parcels are located at 27413 Scott River Road, in the town of Scott Bar in Siskiyou County, and the unauthorized activities occurred on the portion of the parcels located in the southwest quarter of Section 16, Township 45N, Range 10W, Mt. Diablo Base & Meridian, adjacent to and within an unnamed tributary to Scott River and the Scott River. For the purposes of this Order, *John and Lisa McCauley and Sandra Payne* are referred to as the "Dischargers" and the three parcels described above are referred to as the "site."
3. On August 20, 2008, Regional Water Board staff inspected the site and found evidence of significant construction and ground disturbing activities that had resulted in the discharge of sediment, soil, debris, and other earthen material into waters of the State. The area of ground disturbance exceeded one acre. Within the 18-acre site, soil had been placed in an unnamed tributary to Scott River; staff were told by the Dischargers that they placed the soil in order to

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<sup>1</sup> "Waters of the United States" is defined as traditionally navigable waters and non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally; "Waters of the State" is defined as "...any surface water or groundwater, including saline waters, within the boundaries of the state.

expand their front yard. The Dischargers had also cleared vegetation adjacent to the Scott River, and pushed soil and debris into the Scott River in the process. Additionally, the Dischargers may have discharged soil to wetlands, including a small pond. The Dischargers had not obtained necessary permits for any of these activities.

4. The unnamed watercourse that had been discharged to is a tributary to the Scott River within the Scott River Hydrologic Area. The Water Quality Control Plan<sup>2</sup> for the North Coast Region (Basin Plan) provides a definitive program of actions designed to preserve and enhance water quality and to protect beneficial uses<sup>3</sup> of waters in the North Coast region. The beneficial uses of the Scott River and its tributaries are:
  - a. Municipal and Domestic Supply
  - b. Agriculture Supply
  - c. Industrial Service Supply
  - d. Industrial Process Supply
  - e. Groundwater Recharge
  - f. Freshwater Replenishment
  - g. Navigation
  - h. Hydropower Generation
  - i. Water Contact Recreation
  - j. Non-Contact Water Recreation
  - k. Commercial and Sport Fishing
  - l. Cold Freshwater Habitat
  - m. Wildlife Habitat
  - n. Rare, Threatened, or Endangered Species
  - o. Migration of Aquatic Organisms
  - p. Spawning, Reproduction, and/or Early Development
  - q. Aquaculture
  
5. The Scott River has been listed as impaired under section 303(d) of the federal Clean Water Act for sediment and temperature. Total maximum daily loads (TMDLs) and other pollution reduction strategies have been established to

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<sup>2</sup> Water quality control plan "consists of a designation or establishment for the waters within a specified area of all of the following: (1) Beneficial uses to be protected. (2) Water quality objectives. (3) A program of implementation needed for achieving water quality objectives."

**Note:** Authority cited: CA Water Code § 13050.

<sup>3</sup> "Beneficial uses" of the waters of the State that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

**Note:** Authority cited: CA Water Code § 13050.

address these impairments, including the Scott River TMDL Action Plan. This Order will help meet TMDLs by controlling waste discharges, including discharges of sediment.

6. The Basin Plan contains an Action Plan for Logging, Construction and Associated Activities (Action Plan, section 4-25.00) which 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 Regional Water Board finds that unauthorized earthwork activities have taken place within stream, wetland, and/or riparian habitat, and that dredged/fill material, soil, sediment, and other earthen material has been discharged into waters of the State, in violation of the Clean Water Act (33 U.S.C. § 1251 et seq.), Porter-Cologne Water Quality Act (Water Code §13000 et seq.), and the Basin Plan.
8. The discharge of dredged/fill material into the tributary of the Scott River and adjacent wetlands has created a condition of pollution.<sup>4</sup> The Basin Plan contains specific narrative and numeric water quality objectives<sup>5</sup> for inland surface waters (sections 3-3.00—3-11.00) for the North Coast Region including the Scott River and its tributaries. These objectives include limitations on sediment, floating material, suspended material, color, and turbidity. The excavated materials consisting of soil, sediment, and other earthen materials constitute waste as defined in the Water Code section 13050. The unauthorized earthwork activities have caused, and threaten to cause, waste to be discharged into waters of the State. Discharges of earthen waste can directly or indirectly destabilize the channel or bed of receiving waters by changing hydrologic characteristics, sediment characteristics, stream grade,

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<sup>4</sup> "Pollution" means an alteration of the quality of the waters of the State by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses. (B) Facilities which serve these beneficial uses.

**Note:** Authority cited: CA Water Code § 13050.

<sup>5</sup> "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

**Note:** Authority cited: CA Water Code § 13050.

and other geomorphic properties. Such destabilization diminishes the ability of the water body to support stream and riparian habitat and other designated beneficial uses. Stream habitat and associated riparian and wetland habitat carry out 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 and other earthen material is harmful 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. The Discharger has, therefore, created a condition of pollution by increasing levels of sediment, floating, suspended, and turbid materials into Scott River causing a violation of the Basin Plan's water quality objectives.

9. The following sections of the Water Code authorize the Regional Water Board Executive Officer to require of persons suspected of violating Basin Plan objectives:

- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the State within its region.”*

*Section 13267(b) - “In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this State who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the State within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”*

- Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil*

*Procedure. However, in the event of an emergency<sup>6</sup> affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*

- *Section 13304(a) - “Any 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 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 limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. 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 fact may warrant*
- *Section 13304(c)(1) - “If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”*

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<sup>6</sup> "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

10. Article 4, Chapter 4, Division 7 of the Water Code, commencing with section 13260(a), requires that a report of waste discharge (ROWD) shall be filed by any person discharging or proposing to discharge waste that could affect the quality of waters of the State, other than to a community sewer system. The Discharger did not submit a ROWD to the Regional Water Board for the activities described above.
11. The State of California has adopted a General Permit for Storm Water Discharges Associated with Construction Activities, Water Quality Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit). Construction activity regulated under this General Permit includes clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre of total land area. It is the Dischargers' responsibility to obtain coverage under this General Permit. To obtain coverage, the Discharger must file a Notice of Intent (NOI) with a vicinity map and appropriate fees with the State Water Resources Control Board (SWRCB). The Discharger conducted earthwork activities including clearing, grading, and general soil disturbance on approximately 3 acres of land without obtaining coverage under this General Permit.
12. This Order is an enforcement action taken by a regulatory agency for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to section 15321(a)(2) and 15308, Title 14, California Code of Regulations.
13. This Order is consistent with the provisions of the State Water Resources Control Board's Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Implementation of this Order will prevent significant degradation of waters of the State.
14. This Order requires investigation and cleanup of the site in compliance with the Water Code, the Basin Plan, State Water Board Resolution 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, and all other applicable plans, policies, and regulations.
15. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the beneficial uses of receiving waters, achieve water quality standards, and protect public health. The technical reports are necessary to demonstrate that appropriate methods will be used to clean up waste that may be potentially discharged to surface waters and to ensure that cleanup complies with the Water Code and Basin Plan requirements. The burden, including the costs, of these reports bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.

16. Failure to comply with the terms of this Order may result in enforcement action under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to clean up or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged. Any person discharging waste into waters of the United States without waste discharge requirements is, pursuant to Water Code section 13385(c), subject to administrative civil liabilities of up to ten thousand dollars (\$10,000.00) per day in which the discharge occurs, plus ten dollars (\$10.00) per gallon of waste discharged, and may also be subject to criminal prosecution pursuant to Water Code section 13387.
17. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Water Code section 13320 and Title 23 section 2050-2068 of the California Code of Regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder and the provisions of the Federal Clean Water Act and the regulations, amendments, and guidelines adopted thereunder, the Discharger shall comply with the following:

1. Cease the discharge or threatened discharge of soil, sediment, debris and earthen materials to waters of the State, and clean up and abate, in accordance with the schedule in provision No. 2 below, the soil placed in and adjacent to the unnamed tributary, disturbance adjacent and within the banks of the Scott River, and all other areas affected by the earthwork activities.
2. Compliance with No. 1 above shall include, but not be limited to, the following measures:
  - a. By **November 1, 2008**, submit a Storm Water Pollution Prevention Plan. The Storm Water Pollution Prevention Plan shall specify measures to be taken to stabilize disturbed soil at the site and prevent discharge of sediment waste to waters of the state in the short term while the Cleanup and Restoration Plan specified in 2b, below, is developed. The Storm Water Pollution Prevention Plan is to be prepared by a professional

knowledgeable and experienced in erosion control, and shall be approved by the Regional Water Board's Executive Officer.

- b. Obtain coverage under the Construction Activities Storm Water General Permit from the State Water Resources Control Board.
  - c. By **November 15, 2008**, implement the Storm Water Pollution Prevention Plan. The Dischargers shall notify the Regional Water Board when the SWPP plan has been implemented, and provide photo documentation as necessary to document implementation of the plan.
  - d. By **December 30, 2008**, submit a Cleanup and Restoration Plan. The Cleanup and Restoration Plan shall identify stream, and riparian functions and habitat adversely affected at the site, describe how the impacted areas will be resolved, demonstrate how the cleanup and restoration will be completed, and evaluate the effectiveness of the cleanup and restoration. The Cleanup and Restoration Plan shall also identify what permits are required to implement the Plan. The Cleanup and Restoration Plan is to be prepared by a professional knowledgeable and experienced in surface water drainage restoration, and shall be approved by the Regional Water Board's Executive Officer.
  - e. Clean up and restore the site, including removing soil placed in and adjacent to the unnamed tributary, disturbance adjacent to and within the banks of the Scott River, and all other areas affected by the earthwork activities in accordance with the Cleanup and Restoration Plan, as approved by the Executive Officer.
  - f. Submit a Wetland and Biological Resource Assessment that delineates all wetlands on site and identifies sensitive plant and animal species that exist on the site. The wetland delineation must be completed in accordance with methods consistent with US Army Corps of Engineers standards. The Wetland and Biological Resource Assessment is to be prepared by a professional qualified to identify wetland and biological resources, and shall be approved by the Regional Water Board's Executive Officer.
  - g. By **June 30, 2009**, complete the implementation of the Cleanup and Restoration Plan. The Dischargers shall provide staff access to areas of the property, as necessary to demonstrate compliance, and shall submit to the Regional Water Board a final report that includes photo documentation, detailing compliance with the Cleanup and Restoration Plan.
3. If requested, reimburse the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **November 1, 2008** submit the name and address to be used for billing purposes for oversight charges.

4. The Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.
5. Failure to comply with a cleanup and abatement order or the dates specified therein may result in further enforcement actions, including actions under section 13350, 13385, and 13387 of the Water Code, which allows for administrative civil liability up to a maximum of five thousand dollars (\$5,000) for each day of violation.

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 Discharger 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 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 \_\_\_\_\_

Catherine Kuhlman  
Executive Officer

October 8, 2008