

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2010-0089

For

Mrs. Jane Hofstetter
Assessor Parcel Number
096-120-031

Duncan Mills
Sonoma County

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

1. Mrs. Jane Hofstetter (hereinafter Discharger) is believed to own approximately 3/4 acre of land at 25708 Freezeout Road, Duncan Mills, identified as Sonoma County Assessor's Parcel Number 096-120-031 (hereinafter Site). Mrs. Hofstetter or her agents have conducted unauthorized dredge and fill activities within and adjacent to the Russian River, which is a water of the State and United States. The Discharger's activities at the Site have resulted in a discharge or threatened discharge of sediment to the Russian River.
2. On July 8, 2010, Regional Water Board staff (Staff) received a citizen complaint reporting heavy equipment activities including grading, tree removal and the excavation of soils for a boat ramp on the Site. On Thursday, September 9, 2010, Staff inspected the property with permission from the Discharger and observed the following:
 - a) Evidence that a boat ramp was recently excavated that resulted in a deep cut into the bank of the river. The cut was approximately 6 feet wide and 8 feet deep at the water's edge extending approximately 40 feet upslope. (Appendix A: Photo 1)
 - b) Trees and other vegetation were cleared across approximately 1/2 acre of the property. Spoils from the boat ramp excavation were spread across this cleared area. (Appendix A: Photo 2)
 - c) Removed vegetation was cut up into fire wood, pushed to either side of the property boundary, and sidecast over the bank of the river. (Appendix A: Photos 3 and 4)
 - d) The open cut into the bank of the river, the sidecast soils and the debris pose ongoing threatened discharges of sediment and debris to waters of the State and United States.
3. Staff reported the grading and river excavation to the California Department of Fish and Game and United States Army Corps of Engineers. Representatives of those agencies advised Staff that the Discharger had neither sought nor received the

required authorization under Fish and Game Code section 1600 or section 404 of the Clean Water Act for the activities that had been conducted on the Site; the Discharger also has not secured the necessary 401 permit from the Regional Water Board for those activities. These activities constitute an unauthorized discharge or threatened discharge that could adversely affect water quality in violation of various provisions of the Water Code and the Clean Water Act.

4. The Russian River has beneficial uses designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), including:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Commercial and sport fishing
 - j. Warm freshwater habitat
 - k. Cold freshwater habitat
 - l. Rare, threatened, or endangered species
 - m. Wildlife habitat
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
 - r. Flood peak attenuation / flood water storage
 - s. Wetland habitat
5. The Russian River and its tributaries are listed on the Clean Water Act section 303(d) list for a number of impairments including sediment/siltation and temperature.
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 Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two prohibitions:
 - Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
 - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could*

pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”

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 dredged and filled areas within the banks of the Russian River and within the ordinary high water elevation, (photographs enclosed in Appendix A). This caused soil to be discharged into the Russian River, and be placed where it could pass into the Russian River, in quantities deleterious to fish, wildlife and other beneficial uses as described in Finding 4 above. This deleterious impact is a violation of Prohibitions 1 and 2 in the Action Plan, as described in Paragraph 6, above.
10. In addition to violating Prohibitions 1 and 2, the discharges from the dredge and fill activities to the Russian River, have created, or threaten to create, a condition of pollution. Water Code Section 13050(l) defines “pollution” as an alteration of the quality of the waters of the state by waste to a degree that unreasonably affects the waters for beneficial uses. Here, beneficial uses of the Russian River have been unreasonably affected by the discharge of the sediment. Such beneficial

uses include not only the beneficial uses described in paragraph 4 above, but also providing habitat for aquatic species and wildlife, including rare and endangered species. The discharge of sediment into the Russian River and associated riparian habitat unreasonably affects these beneficial uses. The unauthorized dredging and filling activity is therefore subject to cleanup and abatement under California Water Code section 13304.

11. 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."
12. Water Code section 13267, subdivision (a) provides the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. A restoration workplan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated and controlled.
13. This is an enforcement action taken by a regulatory agency for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 *et seq.*), in accordance with California Code of Regulations, title 14, sections 15308 and 15321.
14. Failure to comply with the terms of this Order may subject Discharger to an enforcement action under the Water Code, including administrative civil liabilities under Water Code section 13385, subdivision (c), in an amount not to exceed the sum of ten thousand dollars (\$10,000) per day and ten dollars (\$10) per gallon of waste discharged in excess of 1,000 gallons.
15. 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 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Cease onsite grading activities that have caused, or threaten to cause the discharge of earthen materials, soil, and sediment to waters of the State, and cleanup and abate, in accordance with requirements 2 and 3 below, the earthen materials, soil, and sediment discharged or placed adjacent to or into surface waters and surface water-drainage courses.
2. Immediately install temporary erosion and sediment control measures by hand to minimize future violations caused by sediment transport to the Russian River. "By hand" shall mean without the use of heavy equipment or machinery that could cause further discharges. Measures may include the spreading of mulch, direct seeding and planting of vegetations, installation of erosion control fabric, etc. There shall be no heavy equipment mobilization without prior approval by the Executive Officer.
3. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before November 1, 2010 that includes the following:
 - a. Professionally engineered plans for the stabilization of the disturbed riverbank and other onsite areas that pose a threat for sediment delivery to waters. Plans should be prepared by an entity that has experience in successful riverbank restoration projects. The restoration area should include bioengineering techniques, if applicable, and include native plant species indigenous to the immediate area. Plans should include a planting plan that clearly indicates species, location, and a tabulation of species and quantities to be used.
 - b. A Storm Water Pollution Prevention Plan (SWPPP) that includes both a short term and long term erosion control plan for the river bank and all other graded areas. The SWPPP must include detail on measures utilized and ongoing inspection and maintenance. The plan shall discuss how the entire site will be protected from stormwater erosion and discharge of sediment to waters of the State.
 - c. A statement that all soil and cut vegetation that had been pushed over the edge of the bank during previous grading activities has been collected and properly replaced or disposed of.

- d. A monitoring and reporting plan for the restoration area. Annual reports shall be submitted before December 31 yearly for five years, or until performance criteria have been achieved if longer than five years. Vegetation shall achieve at least an 85% survival rate. Adaptive management such as replanting, seeding, fencing, etc. shall be implemented to ensure mitigation success.
4. Following Executive Officer written concurrence, the Discharger shall implement the workplan. All work to restore the affected river bank and grounds shall be completed by November 15, 2010.
5. If the Discharger is unable to perform any activity or submit any documentation in compliance with the deadlines in this Order, the Discharger may request, in writing to the Executive Officer, an extension of the time schedule as specified. The written extension request shall describe how the delay is beyond the reasonable control of the Discharger and shall be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. An extension may be granted by the Executive Officer, for good cause, in which case this Order will be accordingly revised.
6. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by

Catherine Kuhlman
Executive Officer

October 7, 2010