

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order No. R1-2011-0021  
WDID #1A11011CNTR

For

Eric Windschitl  
1520 USFS Road NO9  
Assessor Parcel Number  
011-020-05-00

Trinity County

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

1. Eric Windschitl (hereinafter Discharger) owns the parcel of land identified as Trinity County Assessor's Parcel Number 011-020-05-00, hereinafter Site). The Discharger and/or its agent(s) have conducted grading and bulldozing of earthen materials in swales and adjacent to streams that lead to Mill Creek and the Trinity River, a water of the State and the United States. The Discharger's activities at the Site have resulted in a threatened discharge of sediment to waters of the Trinity River watershed.
2. On November 3, 2010 Regional Water Board staff (Staff) inspected the Site with staff from CAL FIRE and observed 5 large earthen pads located on the top of ridges, and two earthen dams creating impoundments in swales and near streams. All of these features appear constructed of unconsolidated earthen fill materials, and all were observed to be showing evidence of failure from the first rains.
3. The unstabilized earthen fill materials are causing threatened discharges of sediment and debris to waters of the State and United States.
4. The Trinity 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 service supply
  - d. Industrial process supply
  - e. Groundwater recharge
  - f. Freshwater replenishment
  - g. Navigation
  - h. Water contact recreation
  - i. Non-contact water recreation
  - j. Commercial and sport fishing
  - k. Cold freshwater habitat
  - l. Rare, threatened, or endangered species (RARE)
  - m. Wildlife habitat

- n. Migration of aquatic organisms
  - o. Spawning, reproduction, and/or early development
  - p. Aquaculture
5. The discharge of organic and earthen material in the Trinity River watershed is especially problematic because, as noted above, the Trinity River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to excess sedimentation/siltation. The sources of the impairment are identified in the Trinity River Total Maximum Daily Load (TMDL) as road related erosion, legacy road and mining erosion, landslide, harvest related surface erosion, and bank erosion. These sources can affect beneficial uses of water through sedimentation, threat of sedimentation, impaired spawning and rearing habitat, and reduction in cold water and available cold water habitat.
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 (page 4-26 of the 2007 Basin Plan):
- 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. 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 background 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.
8. As described above, the Discharger and/or his agent(s) have cleared soil on the Site and have constructed earthen features on the Site, causing soil to be placed in swales, and near watercourses where it could pass into watercourses and thence, to higher order watercourses downstream, in quantities deleterious to fish, wildlife and other beneficial uses as described in Finding 5 above. This deleterious impact is a violation of Prohibitions 2 in the Action Plan, as described in Paragraph 6, above.
  9. The conditions on the Site are therefore subject to cleanup and abatement under California Water Code (Water Code) section 13304. 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."
  10. As noted in Paragraph 6 above, the Basin Plan's Action Plan contains two separate prohibitions against the discharge of; or threatened 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. As explained herein, the Discharger's activities on the Site have violated prohibition 2; therefore, the Discharger is subject to this Order pursuant to Water Code section 13304.
  11. As explained in Paragraph 9, Water Code section 13304 authorizes the Regional Water Board to issue a Cleanup and Abatement Order to any person 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." Section 13050 of the Water Code defines the term "pollution" to include "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects . . . the waters for beneficial uses." Additionally, sediment, when discharged to waters of the State, constitutes a "waste" as defined in Water Code section 13050. As explained herein, the Discharger's activities on the Site

have caused or permitted, cause or permit, and threaten to cause or permit a condition of pollution, as well as a discharge of waste, because these activities either have, or threaten to, violate water quality objectives and negatively impact beneficial uses as defined in the Basin Plan.

12. Water Code section 13267, subdivision (a) authorizes the Regional Water Board to 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. An Erosion Control Plan and Geologic Slope Stability report required by this Order, pursuant to Water Code section 13267, are necessary to ensure that the threat to water quality created by the discharges described above are properly assessed, abated and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing a Erosion Control Plan and Geologic Stability analysis of slopes and earthen fill materials bear a reasonable relationship to the benefits that will be realized once the work plan is implemented.
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 the Discharger to progressive enforcement action under state law, including administrative civil liabilities pursuant to Water Code section(s) 13350 or 13385.
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 reconsideration of this Order by the Executive Officer of the Regional Water Board. To be timely, such request must be made in writing within 30 days of the date of this Order. Please note that even if reconsideration by the Executive Officer 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 sections 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Immediately cease all activities that cause or threaten to cause the discharge of sediment to Little Mill Creek and any other waters of the State or United States (or tributaries thereto) which exist on the Site.
2. Under the direction of a qualified licensed professional experienced in erosion control, hill slope restoration, and slope stability; develop an Erosion Control and Monitoring Plan to prevent and minimize sediment discharge to surface waters. The Erosion Control and Monitoring Plan must include design and construction standards, and a monitoring plan for the following:
  - a. An Erosion Control Plan for restoration of the slopes and stream segments impacted by construction; the plan must include a map (to a 1:12000 scale or larger). The map must illustrate all erosion control plan work points, all roads, unstable features, unstable fills, spoil disposal sites, impoundments, restoration planting and any other factor required to complete the scope of work. In addition, the plan must include design and construction standards for removal of the impoundments, identification of and repair off road work points threatening discharge of lacking adequate drainage structures, hill slope and earthen fill stabilization, erosion control for bare soils, and excess spoil disposal. All bare soils must be contoured to mimic natural drainage patterns of the surrounding area. All work points must be prioritized and scheduled for remediation within the time frame allotted by this Order. Refer to the attached inspection report contents for a definition of a controllable sediment source and more detail about onsite features/conditions which should be addressed in an adequate erosion control plan.
  - b. A monitoring plan for all restored areas that evaluates the restoration to determine the success of impoundment removal, hill slope stabilization, re-planting and sediment remediation efforts. The monitoring plan must include regularly scheduled inspections concurrent with or immediately following rainfall, a minimum of three inspections are required per winter and spring period, a rainfall trigger is suggested such as-following each rain event of greater than 2 inch in a 48 hour period. Each monitoring event must be followed within 21 days by a report that describes the inspection findings, and provides corrective actions for any failures of the restoration site(s); failures include but are not limited to, failures in hill slope remediation, sediment stabilization, and restoration planting. Monitoring must be continued until the site is adequately stabilized, and restoration success is documented by the licensed professional.
  - c. The entire Erosion Control and Monitoring Plan (Plan) must be submitted to the Regional Water Board by April 15, 2011 (inclusive of all designs and monitoring and reporting requirements described herein). Progress reports are due the first of each month starting March 1, 2011 until the completion of restoration efforts triggers the required monitoring and reporting program described above.

3. Retain a Professional Geologist and/or a Certified Engineering Geologist to assess soil and slope stability of the recently constructed earthen pads and impoundments. A geologic slope stability report must be provided that assesses short and long term slope stability of all recent construction or reconstruction, where relevant, recommendations should be made to prevent discharge of sediment to waters of the State and United States, and to prioritize the work required to stabilize the site and prevent or minimize discharge to waters of the State or United States. The assessment should include a stamped report describing the Site and characterizing the fill materials, the fill materials utility as earthen fill, and compaction necessary for use in construction. The report should also characterize and calculate fill volumes that have a potential to fail in cubic yards or tons. All calculations and measurements used should be included in or attached to the report. This report is due on April 15, 2011. Refer to the attached inspection report for more detail about specific areas of concern identified by Regional Water Board Staff.
4. Following Assistant Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the Department of Fish Game, and other relevant agencies, the Discharger shall implement the work plan. All work to restore the Site shall be completed by October 15, 2011.
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 Assistant 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 Assistant 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.

Ordered by

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Luis G. Rivera  
Assistant Executive Officer

January 28, 2011