

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement and 13267 Order No. R1-2011-0072

For

Jack and Arlene Guccione
Humboldt County Assessor Parcel Number
APN# 200-481-001

Humboldt County
WDID# 1B11091CNHU

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

1. Jack and Arlene Guccione (hereinafter Dischargers) are identified as the owners of the parcel of land located at 1305 Elizabeth Barcus Way, Fortuna, CA (hereinafter Site). The Dischargers and/or their agents have excavated and diverted Hillside Creek, a small stream tributary to Strongs Creek, both of which are tributary to the Lower Eel River and are waters of the state and of the United States. The Dischargers' activities at the Site have resulted in erosion, discharge, and threatened discharge of sediment and debris, as described herein, to waters of the Eel River watershed.
2. On January 15, 2011 and March 17, 2011 Regional Water Board staff (Staff) inspected the Site and observed the following:
 - a) A 265 foot¹ excavated channel undergoing severe downcutting through fine sediments and earthen materials resulting in discharges to waters of the state and United States.
 - b) Absence of riparian vegetation along the excavated channel resulting in erosion of exposed soils and of the excavated channel and discharges of earthen materials and sediment to downstream receiving waters,
 - c) During the interim period between January 15, and March 17, 2011 the City of Fortuna implemented emergency mitigation measures to provide bank stabilization and place the diverted stream back into its original channel. These actions do not constitute full restoration and the threat of discharge continues to exist.
3. The bare and eroding soil banks, excavated channel, and piles of earthen materials and debris, all within and adjacent to the watercourse, constitute an

¹ Draft 1600 Agreement Notification # 1600-2011-0019-R1

ongoing discharge and threatened discharge of sediment and debris to waters of the State and United States.

4. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates the following beneficial uses for the Lower Eel River:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial process supply
 - d. Groundwater recharge
 - e. Freshwater replenishment
 - f. Navigation
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Commercial and sport fishing
 - j. Cold freshwater habitat
 - k. Commercial Sport Fishing
 - l. Wildlife habitat
 - m. Rare threatened or endangered species
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
5. The activities conducted on the Site increase the potential for impacts to the beneficial uses of Strongs/Hillside Creek because of the introduction of sediment directly into a stream that provides fish bearing habitat and contributes to downstream fish bearing habitat for Coho salmon, Chinook, salmon, steelhead trout, and coastal cutthroat trout. The activities negatively affect beneficial uses related to fish and fisheries and other beneficial uses.
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. 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.” Such reports are required in accordance with section 13260 of the California Water Code.
 8. Section 3 of the 2007 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 of the 2007 Basin Plan) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from 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.
 9. As described above, the Dischargers and/or their agent(s) have deposited debris into and adjacent to a watercourse channel, causing earthen materials and debris to be discharged into a watercourse and to be placed where it could pass into that watercourse in quantities deleterious to fish, wildlife and other beneficial uses as described in Finding 2 above. This deleterious impact is a violation of Prohibitions 1 and 2 in the Basin Plan.
 10. 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.”

11. As stated in Paragraph 6 above, the Basin Plan’s Action Plan contains two separate prohibitions against the discharge or placement 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 Dischargers activities on the Site have violated both of these prohibitions; therefore, the Dischargers are subject to this Order pursuant to Water Code section 13304.
12. 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 Dischargers’ 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.
13. Pursuant to Water Code §13304 (c)(1), the Regional Water Board is entitled to and can seek reimbursement for reasonable costs incurred to investigate the unauthorized discharge of wastes, to oversee clean up of the wastes, supervising clean up and abatement activities, or taking other remedial actions required by this Order.
14. 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. 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. Due to the importance of protecting water resources as

explained herein, the costs associated with developing a restoration work plan bear a reasonable relationship to the benefits that will be realized once the work plan is implemented.

15. 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.
16. Failure to comply with the terms of this Order may subject the Dischargers to administrative civil liability, pursuant to sections 13350 and/or 13385 of the Water Code, in an amount of up to ten thousand dollars (\$10,000) per day of violation and ten dollars (\$10) per gallon of waste discharged in excess of 1,000 gallons.
17. 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. If you choose to file a petition with the State Water Board, be advised that you must comply with the Order while your petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Dischargers 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 Hillside 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 California professional experienced in erosion control and in stream restoration, develop a plan to restore the stream at the site of the undersized culvert and eroded backwater channel. The restoration plan must include design and construction standards, and a monitoring plan for the following:
 - a. The removal and stabilization of excess earthen fill materials, woody debris, and other wastes. All debris must be disposed of in a proper manner and/or stabilized in a location where there is no potential for discharge.
 - b. A plan for restoration and stabilization of the eroded excavated channel banks that are impacted by channel excavation, erosion, and removal of woody debris. The plan must include: a map at 1:12000 or larger scale (e.g., 1:6000) (illustrating all restoration plan work points, the road and stream crossing,

debris piles, any unstable and channel banks, spoil disposal sites, bank stabilization locations, restoration planting and any other factor that requires mapping or site construction details to complete the scope of work); design and construction standards for stream bank stabilization; stream bed stabilization and compaction; re-planting of exposed soils; and, if necessary, planning for clear water diversion of flows during restoration construction work. The method and manner of reconstruction must be clearly stated including as necessary compaction standards, rock sizing, and planting densities. To ensure a successful re-vegetation/stabilization effort, plantings shall be monitored and maintained (including irrigation if necessary) for five years. All tree and shrub plantings shall have a minimum of 85% success of thriving growth at the end of five years with a minimum of two consecutive years (two growing seasons) of monitoring after the removal of irrigation. The Applicant is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these goals. Replacement plants shall be monitored with the same survival success for an additional five years from the year of installation. In addition, the plan must include a time schedule for completing the work including receiving any permits that may be required.

- c. A monitoring plan for all restored areas that evaluates the restoration to determine the success of restoration plantings, and sediment remediation efforts. The monitoring plan must include regularly scheduled inspections a minimum of three times per rainy season until site re-vegetation is stabilized and erosion is not ongoing. The monitoring plan must include monitoring replacement plants with the same (85%) survival success for an additional five years from the year of installation. Each monitoring event must include a report within 30 days 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 planting success and in sediment stabilization. For the first year after restoration, a rainfall related inspection trigger is suggested.
 - d. The Dischargers must submit the entire restoration and monitoring plan to the Regional Water Board by **September 1, 2011** (inclusive of all restoration designs and monitoring and reporting requirements, and time schedules described herein). Progress reports are due the first of each month starting **October 1, 2011** until the completion of restoration efforts triggers the required monitoring and reporting program described above.
3. Following Executive Officer written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the CDFG, and other agencies, the Dischargers shall implement the work plan. The dischargers must complete all work to restore the site by **October 15, 2011**.
 4. If the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in this Order, the Dischargers 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 Dischargers and shall be received by the Regional Water Board no less than 15 calendar days prior to the respective deadline. The Executive Officer, for good cause, may grant an extension, in which case this Order will be accordingly revised.

5. 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 Water Code.

Ordered by

Catherine Kuhlman
Executive Officer

August 15, 2011