

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement and 13267 Order No. R1-2011-0089

For

Yi Joung Min  
Mendocino County Assessor Parcel Numbers  
APN# 037-120-09 and 037-120-08

Mendocino County  
WDID# 1B1110532CNME

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

1. Yi Joung Min (hereinafter Discharger) is identified as the owner of the parcels of land located at 29980 HWY 101 North and 30010 HWY 101 North, near Willits, CA (hereinafter Site). The Discharger and/or their agents have excavated earthen materials and constructed two large pad fills, involving placement of a total of 17,500 or more cubic yards of earthen and woody materials in a manner and at locations that discharge and threaten discharge to unnamed tributaries to Outlet Creek and the Upper Main Eel River, and to Highway 101. These watercourses are waters of the State and United States. The Discharger's activities at the Site have resulted in erosion, discharge, and threatened discharge of sediment and woody debris, as described herein, to waters of the Upper Main Eel River watershed.
2. On July 8, 2011 Regional Water Board staff (Staff) and representatives of several other State and local agencies inspected the Site and observed the following:
  - a) Two large earthen fill pad areas described in the attached Regional Water Board staff inspection Report as being located on Parcels 1 and 2 of the Site. The earthen fill pad on Parcel 1 consists of approximately 15,000 cubic yards of earthen and other materials excavated and placed, without apparent compaction, on top of woody debris above a watercourse channel, on slopes in excess of 80%. The earthen fill pad on Parcel 2 is a constructed pad of 2500 cubic yards of fill materials, including organic debris, ranging from about 10 to 20 feet thick, apparently very loose and uncompacted, and perched on 80% slopes.
  - b) An access road constructed on a 25-30% grade with an earthen berm on the outside road edge. The road does not include any apparent drainage features and is likely to drain and deliver sediment into watercourses and Highway 101 below.
  - c) Approximately 300-400 cubic yards of earthen materials side cast on 90 percent slopes descending to a watercourse below. The side cast materials extend from the outboard edge of the driveway all the way into the watercourse channel.
  - d) Both the pads and the access road are constructed and configured in such a manner that they discharge and will continue to discharge earthen and woody materials into downslope watercourses and, in the event of fill saturation or

periods of rainfall runoff, these features pose a significant threat to public health, safety, and the environment due to the potential for catastrophic failure of large amounts of earthen materials and woody debris

3. The loose piles of earthen materials and debris, sidecast earthen spoils, and inadequately drained access road are resulting in an 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 Outlet Creek:
  - a. Municipal and domestic supply
  - b. Agricultural supply
  - c. Industrial service supply
  - d. Industrial process 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. Wildlife habitat
  - n. Rare, threatened, and endangered species
  - o. Migration of aquatic organisms
  - p. Spawning, reproduction, and/or early development
  - q. Aquaculture
5. The earthen fill pads and inadequately drained road on the Site increase the potential for impacts to the beneficial uses of Outlet Creek and its tributaries and directly introduce sediment into streams that provide fish bearing habitat and contribute to downstream fish bearing habitat for Coho salmon, Chinook salmon, and steelhead trout. Discharges of earthen and organic waste 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, 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 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.
8. As described above, the Discharger and/or their agent(s) have deposited debris into and adjacent to a watercourse channel, causing earthen materials and debris to be discharged into watercourses and to be placed where such materials could pass into those watercourses 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, 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. 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.

11. 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 cleanup and abatement activities, or taking other remedial actions required by this Order.
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. 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.
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 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.
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 all waters of the State or United States (or tributaries thereto) which exist on the Site.
2. Under the direction of a qualified licensed California Certified Engineering Geologist and Geotechnical Engineer experienced in slope stability, erosion control, and design and construction of engineered fills, develop an Emergency Plan to remove and/or properly stabilize all unstable earthen and woody material. The 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. Restoration and stabilization of earthen materials and woody debris on Parcels 1 and 2, and along the access roads impacted by excavation and construction, and placement and or removal of earthen or woody materials resulting from the work required under a., above.
  - c. The Emergency Plan must include: a map at 1:12000 or larger scale (e.g., 1:6000) (illustrating all restoration plan work points, debris piles, any unstable areas, watercourses, roads and highways, spoil disposal sites, bank stabilization locations, re-vegetation planting and any other factor that requires mapping or site construction details to complete the scope of work); design and construction standards for earthen material and woody debris stabilization; soil compaction; re-planting of exposed soils; and erosion control for unanticipated precipitation during remediation. Clearly state the method and manner of reconstruction including, as necessary, compaction standards, erosion controls, rock sizing, and planting densities. To ensure a successful re-vegetation/earthen 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 discharger is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these goals. In addition, the plan must include a time schedule for completing the work including receiving any necessary permits from State, County and/or federal agencies that may be required.

- d. A monitoring plan for all site remediation to determine the success of sediment remediation efforts and re-vegetation. The monitoring plan must include regularly scheduled inspections a minimum of three times per rainy season until the Site is stabilized and erosion is not ongoing. Each monitoring event must include a report within 30 days that describes the inspection findings, and provides corrective actions for any failures of the Site(s); failures include but are not limited to, erosion controls and re-vegetation success. For the first three years after restoration, provide a rainfall related inspection trigger.
  - e. The Discharger must submit the entire restoration and monitoring plan to the Regional Water Board by **September 15, 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 Assistant 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 Discharger shall implement the work plan. Monitoring may be continued beyond the scope required above, at the discretion of the Assistant Executive Officer, should monitoring reports indicate the Site requires further stabilization. The Discharger must complete all work to restore the site by **November 1, 2011**.
4. 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 Dischargers 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.
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 federal and state law.

Ordered by

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Luis G. Rivera  
Assistant Executive Officer

August 23, 2011