

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2023-XXXX

FOR
MR. PHILLIP S. SEES
4605 SCOTTS VALLEY ROAD, LAKEPORT, CA. 95453
LAKE COUNTY

This Cleanup and Abatement Order (Order) is issued to Phillip S. Sees (Discharger) pursuant to Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Central Valley Water Board to require the preparation and submittal of technical and monitoring reports. This Order requires the Discharger to investigate, abate, and remediate discharges of waste into waters of the state and waters of the United States, including a federally protected wetland, that have resulted from the Discharger's removal of native vegetation at 4605 Scotts Valley Road, Lakeport, Lake County, California (Site).

The Executive Officer finds the following:

Background

1. Phillip S. Sees is the current owner of the Site and has been the owner of record since 25 March 2022.
2. The Site is within the Middle Scotts Creek HUC-12 Hydrologic Unit Basin. Surface waters at the Site flow into federal protected wetlands classified as Palustrine emergent persistent wetland, temporarily flooded (PEM1A). Flows from the wetland area discharge into Hendricks Creek, a tributary of Clear Lake. Clear Lake and its tributaries are waters of the state. Hendricks Creek is located approximately 1,500 feet from the east parcel boundary of the Site. An unnamed Class III watercourse runs along the south side of the Site and flows into Federal protected wetlands and then onto Hendricks Creek. All these waterbodies are classified as Waters of the State.
3. On 24 September 2022, the Central Valley Water Board received notification from Lake County of sediment-loaded stormwater discharges from an unpermitted grading site with an area greater than an acre.
4. The federal Water Pollution Control Act (also known as the Clean Water Act (CWA) (33 U.S.C. §§ 1251 et seq.) and its accompanying regulations (see 40 C.F.R. ch. 1,

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subch. D) govern the regulation of waste discharges to waters of the United States. The state Porter-Cologne Water Quality Control Act (Wat. Code, div. 7) governs the regional of waste discharges to waters of the state and the state's administration of CWA requirements (see Wat. Code, §§ 13370-13389). Pursuant to these authorities, construction projects that encompass one acre or more of land disturbance are prohibited unless in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. (See 40 C.F.R. § 122.26, subd. (b)(15).) The State of California carries out such regulation through enrollment of parties engaged in land-disturbing activities under the State Water Resources Control Board's (State Water Board) *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order 2009-0009 DWQ (Construction General Permit).

5. The Discharger did not apply for or obtain coverage under the Construction General Permit prior to disturbing more than one acre of land. As a result, on 28 September 2022, the Board issued a Notice of Noncompliance (NONC) to the Discharger for failure to comply with Water Code requiring him to file for coverage under the Construction General Permit. The NONC explained that, based on the County's notification, the Discharger was out of compliance with state and federal law and that to return to compliance, the Discharger must enroll under the Construction General Permit. The certified letter went unclaimed and was eventually returned-to-sender.
6. On 11 October 2022, Board staff inspected the Site and verified that the area of disturbance was an acre or greater. During the inspection:
 - a. Board staff informed the Discharger that a letter had been mailed to his home address and asked the Discharger if he received mail at his home address. The Discharger replied that he did. Board staff informed the Discharger of the requirement to enroll under the Construction General Permit.
 - b. The Discharger informed Board staff that the land disturbance at issue was related to a firebreak clearance and not for construction.
 - c. Only clearing and grubbing was observed. The site area's line and grade appeared to have been kept and not modified.
 - d. The Discharger stated that he had a revegetation plan that Lake County had approved and would transmit it to Board staff.
7. Based upon the 24 September 2022 County Report and Board staff's 11 October 2022 inspection, Board staff determined that the Discharger's grading, land clearing,

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and grubbing activities had resulted in discharges of sediment and threatened discharges of sediment to the nearby wetland. Offsite discharges of other wastes were not observed, but these could also potentially discharge off site.

8. On 12 October 2022, Board staff requested a copy of the revegetation plan and the plan schedule via email.
9. On 21 October 2022 the first NONC was re-issued and mailed to the Discharger in response to his failure to provide a copy of the revegetation plan and schedule to restore the Site's vegetation cover.
10. On 27 October 2022, the Discharger provided a copy of the revegetation plan and schedule.
11. On 28 October 2022, the Discharger provided Site photographs showing the areas where hydroseeding would be applied. All work was to be completed by 7 November 2022.
12. On 2 November 2022, Board staff sent an email to the Discharger notifying him that the NONC was suspended contingent upon erosion and sediment control Best Management Practices (BMPs) being applied as specified in the revegetation plan and schedule. Board staff also advised the Discharger that if the selected BMPs were not effective, additional BMPs would be required.
13. On 28 October 2022, the Discharger informed Board Staff that hydroseeding would not be applied until 15 November 2022 because of limited equipment availability.
14. On 2 December 2022, Board staff visited the Site to document progress towards revegetating the site. Minimal progress was observed in the deployment of sediment control BMPs and no progress was observed regarding the installation or application of erosion control BMPs. Board staff photographed rills on the slopes and sediment deposits on a grassy field adjacent to the federal wetland area.
15. On 7 December 2022 a Second NONC was issued.
16. As of the date of this order, the Discharger has not obtained Construction General Permit coverage for his clearing and grubbing activities.

Legal Basis of the Order

17. Water Code section 13304, subdivision (a) states, in relevant part,

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A 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 the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon the 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.

18. "Waste" is defined by Water Code section 13050, subdivision (d) as including "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purposes of, disposal." Sediment, trash, and slash are considered "wastes" when discharged to waters of the state or deposited in a place where they will, or could potentially be, discharged to such waters.
19. "Pollution" is defined by Water Code section 13050, subdivision (l) as "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) [t]he waters for beneficial uses, [or] (B) [f]acilities which serve these beneficial uses."
20. The Central Valley Water Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fifth Edition, February 2019 (Basin Plan) designates beneficial uses for the Basins' waters, establishes water quality objectives to protect those uses, contains implementation programs for achieving objectives, and incorporates State Water Board plans and policies.
21. The unnamed Class III watercourse at the Site discharges into a federal protected wetland that is a tributary to Hendricks Creek, which flows into Scotts Creek, which discharges into Clear Lake. The designated beneficial uses for Clear Lake include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Process (PROC), Service Supply (IND); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Warm Freshwater Habitat (WARM); Warm and Cold Spawning of Freshwater Aquatic Organisms (SPWN); and Wildlife Habitat (WILD). (Basin Plan, § 2, Table 2-1.) Beneficial uses of any specifically identified water body generally apply to all its tributaries. (Basin Plan, § 2.1.) The Basin Plan lists specific Water Quality Objectives for inland surface waters. These objectives

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include, in part, limitations on increased temperature, sediment, settleable and suspended material, and turbidity. (Basin Plan, § 3.1.)

22. The Discharger's grading, clearing, grubbing, and other land disturbance activities have caused in the deposit of wastes, (i.e., sediment, trash, slash, and other miscellaneous debris) where they are, or probably will be, discharged into waters of the state and waters of the United States. The discharge of these wastes has created and/or threatens to create a condition of pollution. Precipitation runoff from the cleared and grubbed areas, containing sediment and other wastes, threaten to impact beneficial uses freshwater warm habitat, spawning warm habitat, and wildlife habitat. Unauthorized discharges of sediment and other inert materials can alter the natural hydrologic and sediment transport regimes of surface waters by affecting the flow of water, sediment deposition, and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species by impacting beneficial uses such as warm freshwater habitat, wildlife habitat, and spawning. Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users impacting the following beneficial uses such as municipal and domestic supply, agricultural supply, industrial process supply, and groundwater replenishment. Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters impacting beneficial uses to include contact water recreation and non-contact water recreation.
23. Cleanup and abatement are necessary to ensure that any existing condition of pollution is remediated, that threatened unlawful discharges of waste to waters of the state from the Site are prevented, and that any impacts to beneficial uses are mitigated. The issuance of a Cleanup and Abatement Order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Central Valley Water Board and State Water Board.
24. Water Code section 13267, subdivision (a) provides that the Central Valley Water Board may investigate the quality of any water 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 Board, in conducting an investigation, may require any person who has discharged, discharges, or is suspected of having discharged or discharging waste within its region to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these technical reports

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shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

25. Water Code section 13383 further provides, in relevant part, that the Central Valley Water Board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements for any person who discharges or proposes to discharge to navigable waters.

Technical Reports Required

26. As described in the preceding Findings, the Discharger has caused and/or threatened to cause the discharge of waste to waters of the state within the Central Valley Region. This Order requires the Discharger to submit technical and monitoring reports necessary for assessing the water quality impacts of the Discharger's activities and evaluating the Discharger's cleanup, abatement, and remediation activities at the Site. The burden, including costs, of the reports required by this Order bears a reasonable relationship to the need for these reports and the benefit to be obtained thereby. In particular, this Order requires submission and implementation of a Storm Water Pollution Prevention Plan (SWPPP) which, as described in the Construction General Permit, is an erosion and sediment control plan that specifies BMPs that must be implemented on the Site to protect the water quality of the receiving waters.

The key components of this plan are the stormwater technical reports that guide the implementation of the SWPPP, which, due to the Site's current condition and the nature of the Site, will only include post-storm inspection reports. These reports are necessary to evaluate the Site's BMP performance and to correct and/or improve the erosion and sediment control BMPs. A cost is not anticipated for this type of monitoring and reporting, as this task will likely be conducted by the Discharger. The cost to prepare and implement a SWPPP for the Site is estimated to be between \$3,000 and \$5,000.

Additional Legal Considerations

27. State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Antidegradation Policy). Resolution 92-49 requires waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be

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restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the State; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations proceed in a progressive sequence. To the extent practical, it directs the Central Valley Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

28. Issuance of this Order is exempt from provisions of the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15321 (enforcement action taken by a regulatory agency to enforce the regulatory provision of the Basin Plan), 15307 (action by a regulatory agency for the protection of natural resources), and 15308 (action by a regulatory agency for the protection of the environment). To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to ensure restoration of stream habitat and prevent erosion, such actions are considered exempt from the provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. Should additional environmental review be required in connection with future discretionary regulatory actions at this site, the Central Valley Water Board may recover the costs associated with preparing and processing environmental documents from the Discharger (Pub. Res. Code, § 21089).
29. The Central Valley Water Board reserves the right to amend this Order to add additional responsible Dischargers if/when those parties are identified.

Required Actions

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, the Discharger shall investigate, cleanup, abate and take other necessary remedial action with respect to the discharge and threatened discharge of waste to waters of the state and submit technical and/or monitoring reports as follows:

1. **Within 45 days** of the effective date of this Order, the Discharger shall submit a proposed **Storm Water Pollution Prevention Plan (SWPPP)** for approval by the Central Valley Water Board or its delegated officer. The SWPPP shall detail proposed actions to prevent stormwater discharges that deteriorate the water quality of the receiving waters. The SWPPP shall include, at a minimum, plans for the

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following items:

- a. Restoration of all the disturbed soil areas. Restoration shall include, at a minimum, the following:
 - i. Effective use of permanent sediment and erosion control BMPs.
 - ii. Revegetation of the cleared and grubbed areas with regionally native vegetation or similar native species.
 - b. Removal of all refuse, garbage, and debris from the Site that has the potential to be transported into any watercourses at the Site, including transport due to restoration activities, environmental degradation, earthmoving, precipitation runoff or stormwater, and natural stream flow.
 - c. The SWPPP shall contain all elements identified in Section XIV of the Construction General Permit.
2. **No later than 30 days** after approval of the SWPPP by the Central Valley Water Board or its delegated officer, the Discharger shall begin implementation of the SWPPP in accordance with the approved implementation schedule.
 3. **By 1 July 2023**, the Discharger shall complete all approved restoration and mitigation measures described in the approved SWPPP.
 4. **No later than 60 days** after completion of requirement 3, completion and all approved restoration and mitigation measures, the Discharger shall submit for approval by the Central Valley Water Board or its delegated officer a SWPPP Completion Report. This report shall include accurate depictions, documentation, and as-built designs of all completed restoration construction and/or abatement measures included in the approved SWPPP to demonstrate the SWPPP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, to be shown on a site map/figures. Photo points shall include up and down slope images of the following locations, at minimum: All cut slopes, all fill areas, and all cleared and grubbed areas.
 5. **Upon approval of the SWPPP Completion Report**, the Discharger shall submit **Annual Monitoring Reports by 1 September of each year** for at least two years or until the Central Valley Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the SWPPP are met with supporting documentation. Each Annual

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Monitoring Report shall include, at a minimum, a completed inspection checklist, photographs of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

General Requirements and Notices

Use of Qualified Professionals

6. All technical reports required by this Order that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geological sciences shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

Signatory Requirements

7. All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Discharger shall also state if he agrees with any recommendations/proposals and whether he approves implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

Notice of Change in Ownership or Occupancy

8. The Discharger shall file a written report on any changes in the Site’s ownership or occupancy. This report shall be filed with the Central Valley Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

Compliance with Other Regulatory Requirements

9. The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning work.

Cost Recovery

10. Pursuant to Water code section 13304, the Central Valley Water Board is entitled to, and may seek reimbursement for, all reasonable costs it incurs investigating and abating the effects of the unlawful discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. If requested by the Central Valley Water Board, the Discharger shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the Central Valley Water Board.

Submissions

11. All technical reports or notices required under this Order shall be submitted to: Jorge L. Beltran, (916) 464-4794, jorge.beltran@waterboards.ca.gov.

Delayed Compliance

12. If for any reason the Discharger is unable to perform any activity or submit any document in compliance with Required Actions, or in compliance with any work schedule submitted pursuant to this Order and approved by the Central Valley Water Board or its delegated officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Central Valley Water Board or its delegated officer. The Central Valley Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger and will take all the available relevant facts into consideration when considering whether to grant an extension request.

Modification of Order

13. Any modification to this Order shall be in writing and approved by the Central Valley Water Board or its delegated officer, including any potential extension requests.

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Enforcement Authority

14. If the Discharger fails to comply with the requirements of this Order, the Central Valley Water Board or its delegated officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of administrative civil liability up to \$10,000 per violation per day, depending on the violation, pursuant to the Water Code sections 13268, 13350, and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

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Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. [Copies of the law and regulations](#) applicable to filing petitions may be found on the Internet at: (http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request).

This Order is issued under authority delegated to the Executive Officer by the Central Valley Water Board pursuant to Resolution R5-2018-0057 and is effective upon signature.

PATRICK PULUPA
Executive Officer