



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

January 4, 2013

Certified Mail Return Receipt Requested

Article Number: 7011 0470 0002 8961 6220

In reply refer to: Place ID: 777579 FMelbourn

Rancho Guejito Corporation
Corporation Service Company (Agent for Service of Process)
Suite 150N
2710 Gateway Oaks Drive
Sacramento, California 95833-3505

**Tentative Cleanup and Abatement Order No. R9-2013-0009, Rancho Guejito Corp.
Unauthorized discharge of sediment and fill to Guejito Creek and its tributaries**

Enclosed is Tentative Cleanup and Abatement Order No. R9-2013-0009 (TCAO) to Rancho Guejito Corporation for the unauthorized discharge of sediment, debris, and fill to Guejito Creek and its tributaries. Rancho Guejito Corporation and "Interested Persons" are invited to comment on the TCAO. The comment deadline is 5 p.m. on February 1, 2013. Comments shall be sent to:

Frank Melbourn
California Regional Water Quality Control Board
San Diego Region
Suite 100
9174 Sky Park Court
San Diego, California 92123-4340

After the public comment deadline, the Prosecution Team will present the comments received, along with any necessary responses or suggested modifications to the TCAO to the Presiding Officer (here the Executive Officer of the California Regional Water Quality Control Board, San Diego Region [San Diego Water Board]) for consideration and action. The Prosecution Team will copy you and all "Interested Persons" when transmitting the comments, response, and TCAO to the Presiding Officer for consideration and action.

The Prosecution Team developed the TCAO based upon various pieces of information including that derived from a San Diego Water Board inspection of the Rancho Guejito Corporation site. In an effort to assist in your review and understanding of the TCAO, I've attached a list of publicly available documents relied upon by the Prosecution Team to issue the TCAO. These documents are available for review at the San Diego Water Board Office Monday through Friday from 8 a.m. to 5 p.m., except on State holidays. To request a review of these documents, please contact the San Diego Water Board at (858) 467-2952, or email rb9_records@waterboards.ca.gov, or fax (858) 571-6972, or mail your request to our office.

GARY STRAWN, ACTING CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353 | (858) 467-2952 | www.waterboards.ca.gov/sandiego



The Tentative CAO is a pending adjudicatory proceeding and there shall be no ex parte communications between any party, including the Prosecution Team that prepared the Tentative CAO, and the Advisory Team (including the Presiding Officer). An ex parte communication is a communication, direct or indirect, regarding any issue in the proceeding to the Advisory Team by any party without notice and opportunity for all the parties to participate in the communication.

The Prosecution Team includes the following San Diego Water Board and California State Water Resources Control Board (State Water Board), Office of Enforcement staff:

- Darren Bradford, 858-637-7137, dbradford@waterboards.ca.gov
- Chiara Clemente, 858-467-2359, cclemente@waterboards.ca.gov
- Kelly Dorsey, 858-467-2980, kdorsey@waterboards.ca.gov
- Jeremy Haas, 858-467-2735, jhaas@waterboards.ca.gov
- Frank Melbourn, 858-467-2973, fmelbourn@waterboards.ca.gov
- Mayumi Okamoto, Esq., 916-341-5674, mokamoto@waterboards.ca.gov
- James Smith, Asst. Executive Officer, 858-467-2732, jsmith@waterboards.ca.gov

The Advisory Team includes the following San Diego Water Board and State Water Board staff:

- David Gibson, Executive Officer, 858-467-4387, dgibson@waterboards.ca.gov
- Catherine Hagan, Esq., 858-467-2958, chagan@waterboards.ca.gov
- Sean McClain, 858-627-3988, smcclain@waterboards.ca.gov

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Frank Melbourn at (858) 467-2973 or fmelbourn@waterboards.ca.gov.

Respectfully,



JAMES G. SMITH
Assistant Executive Officer

JGS:jch:cmc:meo:ftm

- Enclosure: 1. Tentative Cleanup and Abatement Order No. R9-2013-0009
2. Listing of documents relied upon in issuing the TCAO

CIWQS:

Violation IDs	938205, 938206, 938207, 938208
CAO Regulatory Measure	387822
Place ID	777579
WDID No.	9 37CN601781
Party ID	528784

Copies via email or facsimile to:

1. Meris Bantilan-Smith Meris.Bantilan-Smith@usace.army.mil
U.S. Army Corps of Engineers, Regulatory Division
2. Kenneth Brazell Kenneth.brazell@sdcounty.ca.gov
County of San Diego, Division of Public Works
3. Kelly Fisher kfisher@dfg.ca.gov
California Department of Fish and Game
4. Tim Gabrielson tgabrielson@rickengineering.com
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6. Keith Garner KGarner@sheppardmullin.com
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9. Michelle Moreno Michelle_Moreno@fws.gov
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10. Bill Orme Stateboard401@waterboards.ca.gov
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11. Randy Rodriguez rfrodriguez@dfg.ca.gov
California Department of Fish and Game
12. Henry P. Rupp III, Esq. Facsimile (760) 466-2456
Rancho Guejito Corporation
13. David Smith R9-WTR8-Mailbox@epa.gov
U.S. Environmental Protection Agency, Wetlands Regulatory Office
14. Bryan Ziegler bryan.ziegler@sdcounty.ca.gov
County of San Diego, Office of County Counsel

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2013-0009
FOR
RANCHO GUEJITO CORPORATION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. Rancho Guejito Corporation (hereinafter RGC), a California corporation (Entity No. C3334811), owns approximately 22,500 acres of land (San Diego County Assessor's Parcel Nos. 240-280-08-00, 242-030-02-00, 242-030-03-00, and 242-031-01-00) located at 17224 San Pasqual Valley Road, Escondido, California, 92027, in the San Pasqual Hydrologic Area (HA) (905.30). Guejito Creek and its tributaries flow through the property and are "waters of the state" and "waters of the United States." Guejito Creek flows into Rockwood Canyon Creek; that flows into Santa Ysabel Creek; and that flows into Lake Hodges.
2. The San Diego Water Board *Water Quality Control Plan for the San Diego Basin* (Basin Plan) designates the following existing beneficial uses for the San Pasqual HA: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service (IND); Industrial Process Supply (PROC); Contact Water Recreation (REC1); Non-Contact Water Recreation (REC2); Warm Freshwater Habitat (WARM); Wildlife Habitat (WILD); and Rare, Threatened, or Endangered Species (RARE).
3. This Cleanup and Abatement Order is based upon: (1) Chapter 5, Enforcement and Implementation commencing with section 13300, of the Porter-Cologne Water Quality Control Act (Water Code Division 7, commencing with section 13000); (2) Water Code section 13267¹, Investigations; inspections, Chapter 4, Regional Water Quality Control; (3) all applicable provisions of the Basin Plan adopted by the San Diego Water Board including beneficial uses, water quality objectives, and implementation plans; (4) California State Water Resources

¹ Water Code section 13267, subdivision (b)(1) states: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

Control Board (State Water Board) Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*); (5) State Water Board Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*); and all other applicable legal authority.

4. Road Construction: This information is based upon written reports by RGC on February 10 and 24, 2012, and a January 24, 2012, San Diego Water Board inspection report. On or about July 25, 2011, RGC graded a new approximately 6,000 foot (1.14 miles) long road through the property. The road is approximately 20 feet wide; however there are portions that are up to 100 feet wide. Grading disturbed 8.59 acres of which 6.49 acres were designated as critical habitat for the Arroyo Toad. During road grading, material excavated from the road bed was "side-cast" off the downward edge of the road, resulting in the discharge of dirt and sediment into Guejito Creek and its tributaries. Furthermore, "side-casting" perched mounds of material (dirt and sediment) at the top of steep slopes thus threatening to cause future discharges of dirt and sediment into Guejito Creek and its tributaries.
5. Constructed Creek Crossings: In order to surmount the tributaries impeding road grading progress, RGC placed earthen fill material in at least five tributaries to Guejito Creek to allow passage; thus obstructing the natural flow of the tributaries. The placement of fill impacted 0.04 acre of non-wetland waters of the United States (0.08 acre of waters of the state) and 367 linear feet of streambed. Again, this information is based upon written submittals from RGC and an inspection report by the San Diego Water Board.
6. After receiving a confidential complaint of illegal road grading on the RGC property, the County of San Diego, Department of Public Works, documented the graded road during an aerial inspection of the RGC property on November 7, 2011.
7. On December 7, 2011, the County of San Diego, Department of Public Works issued an "Order to Stop Work – County Code Non-Compliance" to RGC for the following violations: 1) Grading within a watercourse without a permit; 2) Grading without a permit; 3) Insufficient Stormwater Best Management Practices (BMPs); and 4) Clearing without a clearing permit.
8. On January 24, 2012, the San Diego Water Board, County of San Diego, U.S. Fish and Wildlife Service, and the California Department of Fish and Game, inspected the RGC site. The San Diego Water Board documented debris, overburden, and excess materials from road construction resulting in sediment and debris discharges into Guejito Creek and its tributaries; as well as the placement of fill in tributaries to construct five stream crossings.

9. On February 8, 2012, the California Department of Fish and Game issued a "Notice of Violation of Fish and Game Code Section 1602" to RGC for obstructing the flow of several Guejito Creek tributaries.
10. On March 22, 2012, the San Diego Water Board issued Notice of Violation (NOV) No. R9-2012-0040 to RGC. The NOV alleged that RGC's grading activities violated Water Code section 13260 by failing to file a report of waste discharge (ROWD), and furthermore violated Basin Plan Waste Discharge Prohibitions 1 and 14.
11. On April 2, 2012, the United States Army Corps of Engineers cited RGC for violating sections 301 and 404 of the federal Clean Water Act. RGC was also ordered to remove the fill material from the tributaries and to implement BMPs to address impairments to the waters of the United States.
12. Unauthorized Discharge of Sediment Resulting from Road Construction
Activities: The discharge of dirt and sediment during road grading activities into Guejito Creek and its tributaries are discharges of waste to waters of the state and the United States in violation of Water Code sections 13260² and 13376³ and the following waste discharge prohibitions contained in the Basin Plan:

"(1) The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited."

"(3) The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in Water Code § 13376) is prohibited."

"(7) The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board."

² Pursuant to Water Code section 13260 (a)(1) "[a]ny person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge. The Regional Board has not received a 401 application or report of waste discharge for wastes discharged at the site.

³ Pursuant to Water Code section 13376 "[a]ny person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report need be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended."

“(14) The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.”

13. Unauthorized Discharge of Fill Material Resulting from Stream Crossings: The placement of fill material into tributaries to Guejito Creek are discharges of waste to waters of the state and the United States in violation of Water Code sections 13260 and 13376, and waste discharge prohibitions 1, 3, 7, and 14 contained in the Basin Plan.

14. Section 13304 (a) of the Water Code provides that:

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 the 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. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

15. “Pollution” is defined by Water Code section 13050, subdivision (l)(1) 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) The waters for beneficial uses;
- (B) Facilities which serve these beneficial uses.

16. The unauthorized discharge of dirt, sediment, and earthen fill threatens to cause a condition of pollution by directly affecting the waters used for beneficial uses. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of the unnamed tributaries to Guejito Creek by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics (RARE, WARM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural, industrial and municipal users that withdraw and treat the water (AGR, IND, MUN, and PROC). The discharge of sediment laden storm water into surface waters, and the resulting increase in turbidity within the surface waters, affects their aesthetic enjoyment (REC-2).

Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic flora by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment which concludes that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters. These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation of bottom dwelling (benthic) organisms. Sediment can also physically clog gills causing fish mortality; reduce reproduction; impair commercial and recreational fishing resources; increase water temperature; and fill in lagoons, and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with "clean" sediment, sediment is also an excellent transport mechanism for toxics (i.e., metals and synthetic organics), which bind to sediment particles (RARE, REC-1, REC-2, WARM, and WILD).

17. The discharge or deposit of sand, soil, and sediment into waters of the state and of the United States constitute "waste" as defined in Water Code sections 13050 and 13304. RGC's actions have discharged waste that causes or threatens to cause a condition of pollution where waste continues to be discharged into waters of the state and United States during each storm event by increasing levels of sediment, and settleable and suspended material in the unnamed tributaries to Guejito Creek and downstream waters.

18. The grading of the road and filling of the tributaries permanently removed the following sensitive native habitat: Coast Live Oak Woodland; Diegan Coastal Sage Scrub; Granitic Southern Mixed Chaparral; Non-native Grassland; and Southern Coast Live Oak Riparian Forest. Removal of these habitats directly threatens the RARE, WARM, and WILD beneficial uses.

Woodlands and riparian forests provide buffers from natural and anthropogenic disturbances, thereby ensuring good water quality. Woodland and riparian forests stabilize stream banks and hillsides; thus reducing sediment input to the downstream receiving waters and maintaining healthy turbidity levels. Woodland and riparian forests provide shading that ensures cool water temperatures and creates favorable microclimates. Riparian areas provide wildlife habitat for thermal cover, foraging, hiding, resting, breeding, and rearing of young.

Establishment or re-establishment of oak woodland habitat can take from approximately 25 to 100 years, depending on the type of oak and the surrounding conditions (e.g. recruitment, grazing, soil conditions, irrigation, etc.). Habitat mitigation is a critical component of clean-up actions and is necessary to restore impacts resulting from the functional loss of Beneficial Uses in the area, until such time that the impacted riparian habitat is restored to fully functional conditions.

19. Cleanup and abatement action is necessary to ensure that the unauthorized discharges from the project cease to cause and threaten to cause conditions of pollution. Because cleanup and abatement activity will occur within and adjacent to the unnamed tributaries to Guejito Creek, BMPs during remedial action are necessary to prevent further conditions that threaten the beneficial uses of Guejito Creek.
20. The following actions will reduce the threat of future site sediment discharges as a result of road grading activities: 1) Removal of sediment discharged into Guejito Creek and its tributaries; 2) Removal of hillside side-casting sediment threatening to cause a discharge of sediment into Guejito Creek and its tributaries; 3) installation of temporary sediment and erosion control BMPs on the graded road and disturbed hillsides; and 4) Restoration of the disturbed creek areas to pre-grading conditions (i.e., a return to native conditions).
21. The following actions will reduce the threat of future site sediment discharges as a result of placement of earthen fill in tributaries to Guejito Creek: 1) Removal of the earthen fill materials from the tributaries; and 2) Restoration of the natural vegetation and elevation, line, contours, flow, and circulation of the tributaries.
22. In accordance with Water Code section 13267 (b) these findings provide RGC with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports.

23. Issuance of this Cleanup and Abatement Order is an enforcement action taken by a regulatory agency and, in part, requires stream habitat restoration. The Cleanup and Abatement Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and the prevention of erosion. This Cleanup and Abatement Order and the activities required by this Cleanup and Abatement Order are exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations, Chapter 3, title 14, sections 15321 and 15333.

IT IS HEREBY ORDERED that, pursuant to section 13304 and section 13267 of Division 7 of the Water Code, Rancho Guejito Corporation (RGC) shall cease the discharge of soil and sediment to waters of the state and the United States and clean up and abate the condition of unauthorized discharge of debris, sediment and fill to Guejito Creek and its unnamed tributaries in accordance with the schedule below:

1. By **March 1, 2013**, RGC shall fully implement the "Erosion and Sediment Control Plan for the Rancho Guejito Farm Road" dated February 10, 2012.
2. By **March 29, 2013**, RGC shall submit a Restoration Plan for the Executive Officer's approval (or his delegate's approval) that addresses all of the following:
1) Restoration of the creek and tributaries to pre-grading conditions, including the restoration of streambed line and grade; 2) Removal of waste and abatement of the effects of road grading side-casting sediment discharges and the threatened discharges from side-casting mounds; and 3) A description of the revegetation palette to be used.
3. By **March 29, 2013**, RGC shall submit a Mitigation Plan that effectively mitigates for riparian impacts to waters of the state and United States for the Executive Officer's approval (or his delegate's approval). The Mitigation Plan shall address 2:1 in-kind establishment or re-establishment mitigation for impacted areas, within the property boundaries, and no less than an additional 4:1 enhancement or restoration mitigation to compensate for temporal loss of functions until the established mitigation is fully functional. Impacted areas shall be determined based upon the "Updated Biological Letter Report for the Rancho Guejito Farm Road Project" dated April 3, 2012. The Mitigation Plan shall contain the following information: acreage; siting and maps of all proposed mitigation areas; a description of the revegetation palette to be used; identification of restoration success criteria; a monitoring plan; a schedule for implementation; and a proposed long-term conservation mechanism.
4. By **May 3, 2013**, RGC shall implement the Restoration Plan.

5. By **May 3, 2013**, RGC shall initiate the Mitigation Plan. The construction of proposed mitigation must be concurrent with the restoration project and completed no later than November 29, 2013. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10 percent of the cumulative compensatory mitigation for each month of delay (i.e. if mitigation is delayed three months, then 1.33 times more acreage must be mitigated.).
6. Beginning **November 1, 2013**, and annually thereafter until all restoration and mitigation activities are complete and have met final success criteria, RGC shall submit a technical report that provides the results of restoration and mitigation site assessment. Corrective actions shall be proposed and included in these technical reports when restoration activities fail to satisfy any interim or final success criteria.
7. With each report required by this Cleanup and Abatement Order, RGC shall provide under penalty of perjury under the laws of California a "Certification" statement to the San Diego Water Board. The "Certification" shall include the following signed statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Pursuant to California Water Code Section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.

8. By **June 1, 2018**, RGC shall demonstrate that restoration and mitigation measures have met success criteria.

NOTIFICATIONS

1. **Applicability.** Requirements established pursuant to Water Code Sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the San Diego Water Board.

2. **Enforcement Actions.** The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations, including but not limited to, violations of the terms and conditions of this Cleanup and Abatement Order (i.e. implementation and maintenance of BMPs, and mitigation for impacts).
3. **Inspection and Entry.** RGC shall allow the San Diego Water Board, State Water Board, United States Environmental Protection Agency (USEPA), the County of San Diego, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to at reasonable times:
 - a. Enter upon RGC's property;
 - b. Access and copy any records related to this Cleanup and Abatement Order;
 - c. Inspect and photograph any facilities, equipment, practices, or operations regulated or required by this Cleanup and Abatement Order; and
 - d. Sample or monitor any substances or parameters onsite for the purposes of assuring Order compliance or as otherwise authorized by the federal Clean Water Act or the Porter-Cologne Water Quality Control Act.
4. **Potential Liability.** Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by Section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
5. **Cost Reimbursement.** Pursuant to Water Code section 13304, the San Diego Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order. Discharger shall reimburse the State of California for all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Board.

6. **Waste Management.** The Discharger shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050(m). The Discharger shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.

7. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the San Diego Water Board that is subject to review as set forth in Water Code section 13320, subdivision (a), may petition the State Water Board to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within thirty (30) days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, or state holiday, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml or will be provided upon request.

8. **Modifications.** Any modification to this Cleanup and Abatement Order shall be in writing and approved by the Executive Officer, including any potential extensions. Any written extension request by the Discharger shall include justification for the delay.

9. **No Limitation of Water Board Authority.** This Cleanup and Abatement Order in no way limits the authority of the San Diego Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Cleanup and Abatement Order may be revised as additional information becomes available.

REPORTING REQUIREMENTS

1. **Duty to Use Qualified Professionals.** The Discharger shall provide documentation that plans, and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Discharger shall include a statement of qualifications and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

2. **Electronic and Paper Media Reporting Requirements.** The Discharger shall submit both electronic and paper copies of all workplans, technical reports, and monitoring reports required under this Cleanup and Abatement Order in accordance with Water Code Section 13196, Electronic Submission of Reports.

Electronic submission shall be in PDF format with Optical Character Recognition (OCR), and include the signed transmittal letter with professional certification.

3. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger or by a duly authorized Discharger representative and submitted to the San Diego Water Board. A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.).
4. All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer
Attn: Frank Melbourn Place ID 777579
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

5. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CLEANUP AND ABATEMENT ORDER MAY SUBJECT YOU TO FURTHER ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO, ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 AND 13350 OF THE WATER CODE AND REFERRAL TO THE DISTRICT ATTORNEY OR ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of Cleanup and Abatement Order No. R9-2013-0009 as issued by the Executive Officer.

Tentative

DAVID W. GIBSON
Executive Officer

Date

Supporting Documents
Tentative Cleanup and Abatement Order No. R9-2013-0009

1. Order to Stop Work, County of San Diego, December 7, 2011, Document Handle 1022993
2. Inspection Report, San Diego Water Board, January 24, 2012, Document Handle 1022994
3. Notice of Violation of Fish and Game Code Section 1602, California Department of Fish and Game, February 8, 2012, Document Handle 1022995
4. Response to Request for Information from January 24th Site Inspection, Rancho Guejito Corporation, February 10, 2012, Document Handle 1022996
5. Response to Request for Additional Information form ACOE and RWQCB, Rancho Guejito Corporation, February 24, 2012, Document Handle 1023003
6. Notice of Violation No. R9-2012-0040, San Diego Water Board, March 22, 2012, Document Handle 280710
7. Notices of Violation and Inspection Request, County of San Diego, March 26, 2012, Document Handle 1023004
8. Order for Initial Corrective Measures for Unauthorized Activity, Army Corps of Engineers, April 2, 2012, Document Handle 1023005
9. Updated Biological Letter Report for the Rancho Guejito Farm Road Project, Helix Environmental Planning, April 3, 2012, Document Handle 1023023