

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT AND WATER CODE SECTION 13267 INVESTIGATIVE
ORDER NO. R5-2023-0704

FOR

TOM ATWOOD AND EDDIE AXNER CONSTRUCTION, INC.

2023 STORMS 16565 REEDS CREEK ROAD EMERGENCY REPAIR PROJECT

TEHAMA COUNTY

This Order is issued to Thomas G. Atwood, Cypress Abbey Company, and Eddie Axner Construction, Inc. (hereafter referred to as “Dischargers”) based on provisions of California Water Code (Water Code) section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water 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.

The Executive Officer finds, with respect to the Dischargers’ acts, or failures to act, the following:

Purpose of the Order

1. This Order requires the Dischargers to clean up wastes generated from the construction of access routes, placement of riprap, recontouring of the banks, and grading of the bed and channel within two unnamed tributaries to Liza Creek, leading to unauthorized discharges and threatened discharges of waste to the Sacramento River and its tributaries. These activities have caused the discharge of wastes and threaten future discharges of waste to waters of the State of California (state) in violation of the Water Code. This Order requires investigation and cleanup in compliance with the Water Code, the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fifth Edition, February 2019 (Basin Plan), State Water Resources Control Board (State Water Board) Resolution No. 92-49¹, and other applicable state and Central Valley Water Board plans, policies, and regulations.

¹ Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304 (Resolution 92-49)

Site Location and Description

2. The site is located at 16565 Reeds Creek Road in Tehama County, at two different locations: Site 1 is located at latitude 40.17544°, longitude -122.42652° and Site 2 is located at latitude 40.17479°, longitude -122.42263°. Collectively, Site 1 and Site 2, and the remainder of the property located at 16565 Reeds Creek Road, are referred to as “the Site.” Unauthorized bank stabilization and grading activities have negatively impacted and are continuing to negatively impact two unnamed tributaries to Liza Creek. Surface water from the unnamed tributaries at the Site discharge to Liza Creek, then to Reeds Creek, a tributary to the Sacramento River; all of these waters are waters of the state.

Responsible Parties

3. This Order finds that the Dischargers are responsible parties based on the following:
 - a. Cypress Abbey Company is the current owner of the Site and was the owner during all inspections conducted by Central Valley Water Board staff. Thomas G. Atwood is the Chief Executive Officer, Chief Financial Officer, Secretary, and Director of Cypress Abbey Company as per the Statement of Information filed with the California Secretary of State on 19 October 2022 (Entity No. 1033771). Based on the Tehama County Assessor’s records, Cypress Abbey Company acquired the Site in October 1995.
 - b. Thomas (“Tom”) Atwood is listed as the property owner on the Notice of Intent (NOI) form submitted for certification of the 2023 Storms 16565 Reeds Creek Road Emergency Repair Project (Project) under State Water Resources Control Board Clean Water Act (CWA) Section 401 General Water Quality Certification SB18054IN for emergency repair and replacement activities conducted under the U.S. Army Corps of Engineers Regional General Permit 8 (RGP 8). Tom Atwood signed the NOI, certifying that the document and attachments were prepared under his direction and supervision and that the information is, to the best of his knowledge and belief, true, accurate and complete.
 - c. On the signed and certified NOI, Tom Atwood designated Chris Manteiga of Eddie Axner Construction, Inc. as the Project contact.
 - d. During the 8 February 2023 inspection, employee Pat Robinson stated that Eddie Axner Construction, Inc. was responsible for the construction of the access routes, placement of riprap, recontouring of banks, and grading of the bottom of the unnamed tributaries.
 - e. As the owner and/or contractor at the time of the discharge and threatened discharge of waste, the Dischargers had or should have had knowledge of the unauthorized activities that resulted in the discharge and threatened discharge and had the legal ability to prevent the discharges from occurring. The

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Dischargers also have the ability to remediate conditions at the Site and prevent additional threatened waste discharges to waters of the state.

4. The Central Valley Water Board reserves the right to amend this Order to add additional responsible parties if/when those parties are identified.
5. The Central Valley Water Board, by adopting this Order, is not making any determination as to apportionment of liability among or between responsible parties and nothing in this Order is intended to limit, or shall be interpreted as limiting, a responsible party's ability to seek reimbursement or indemnity from any and all other responsible parties.

Factual Basis of the Order

6. On 25 January 2023, the Central Valley Water Board received a Notice of Intent from Tom Atwood for certification of the 2023 Storms 16565 Reeds Creek Road Emergency Repair Project (Project) under State Water Resources Control Board Clean Water Act (CWA) Section 401 General Water Quality Certification SB18054IN for emergency repair and replacement activities conducted under the U.S. Army Corps of Engineers Regional General Permit 8 (RGP 8). Mr. Atwood designated Chris Manteiga of Eddie Axner Construction, Inc. as the Project contact.
7. On 27 January 2023, Mr. Manteiga of Eddie Axner Construction, Inc. contacted Lynn Coster, the Central Valley Water Board's Water Quality Certifications Program Manager, by phone to inquire when the certification was expected to be issued for the Project. During the conversation, Mr. Manteiga stated that since equipment would be at the Site, they planned to conduct additional bank stabilization work. Ms. Coster notified Mr. Manteiga that the work authorized under U.S. Army Corps of Engineers Section 404 Regional General Permit (RGP) 8 and the Central Valley Water Board's impending Section 401 General Water Quality Certification for RGP 8 was strictly limited to the two defined project areas and the scope of emergency activities identified in the respective permits, and that any additional activities would require a separate Section 401 Water Quality Certification.
8. The Central Valley Water Board issued a Notice of Applicability (NOA) to Tom Atwood on 27 January 2023 for authorization of the Project under Section 401 General Water Quality Certification SB18054IN for RGP 8 (WDID No. 5A52CR00226). The NOA authorized emergency work at two different locations: Site 1 and Site 2. The authorized work and project impacts (0.08 total acres) were limited only to those approved work areas identified in the application materials and NOA; permitted work consisted of the placement of 270 cubic yards of riprap within the bed, bank and channel of unnamed tributaries to Liza Creek at Site 1 and Site 2. The NOA authorizing the emergency work specifically states, "The Project will be conducted with heavy equipment that will not enter the tributary below the ordinary high water mark."

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9. On 8 February 2023, Central Valley Water Board staff (staff) inspected the Site. During the inspection, staff documented unauthorized ground-disturbing activities conducted within two unnamed tributaries of Liza Creek, including construction of access routes, placement of riprap, recontouring of bank slopes, and grading of the bed of the tributaries. During the inspection, staff documented threatened waste discharges from the active grading operations occurring within the bed and banks of the unnamed tributaries to Liza Creek. Staff observations are summarized in an inspection report dated 8 February 2023.
10. On 8 February, staff communicated to Eddie Axner Construction, Inc. staff that a portion of the work was unauthorized, and that no equipment was authorized to enter the tributary.
11. On 10 February 2023, staff conducted a follow-up inspection of the Site. United States Army Corps of Engineers staff also participated in the inspection. Staff documented additional placement of riprap, recontouring of bank slopes, and grading of the bed of the unnamed tributaries. An excavator was also observed in the bottom of the unnamed tributary. Staff observations are summarized in an inspection report dated 10 February 2023.
12. On 23 February 2023, Pat Robinson of Eddie Axner Construction, Inc. requested authorization from U.S. Army Corps of Engineers to apply erosion control best management practices to all affected areas of the job site “in order to not have any more erosion control problems in repaired areas.” On 27 February 2023, U.S. Army Corps of Engineers authorized the installation of erosion control measures at the Site. Documentation of installation was provided by Pat Robinson on 13 March 2023, including photographs taken on 3 March 2023.
13. On 13 March 2023, staff inspected the Site to observe recently installed erosion control measures, with some failure and lack of maintenance observed during the inspection. Water quality samples were collected to measure turbidity levels in the unnamed tributary downstream of the Site 1 project area and at an upstream location outside of the influence of the project area; measurements indicated an increase of 75.7 Nephelometric Turbidity Units in the downstream sample compared to the upstream background sample. Samples were not collected within the Site 2 tributary because the tributary was dry. Staff observations are summarized in an inspection report dated 13 March 2023.

Water Quality Concerns

14. During the inspections conducted by Central Valley Water Board staff, numerous water quality concerns resulting from the Dischargers’ ground-disturbing activities were documented, including unauthorized discharges of waste and threatened discharges of waste to waters of the state. Staff initially identified the absence of effective erosion and sediment control measures and other best management practices (BMPs). The Dischargers’ failure to implement effective BMPs has led to

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unauthorized discharges of waste to waters of the state and continued threats of waste discharge. Water quality concerns noted during site inspections are associated with the following:

- a. Construction of access routes, placement of riprap, recontouring of bank slopes, and grading within the bed of unnamed tributaries to the Sacramento River.
- b. Unauthorized discharges of sediment laden runoff and sediment to the unnamed tributaries.
- c. Continued threat of discharges due to the lack of maintenance of BMPs within the tributaries and disturbed areas.
- d. Unauthorized discharge of earthen fill directly to the unnamed tributaries.
- e. Unstable stream banks associated with bank recontouring activities and the construction of access routes into the unnamed tributary.
- f. Disturbance of the bed and bank of the unnamed tributaries of Liza Creek and the Sacramento River from unauthorized grading.
- g. Unauthorized discharges and threatened discharges of sediment resulting from grading activities.

Staff Response to Date

15. On 12 May 2023, the Central Valley Water Board issued a Notice of Violation (NOV) to Tom Atwood and Eddie Axner Construction, Inc. that documented numerous violations stemming from Eddie Axner Construction, Inc's work based on observations made during inspections conducted on 8 February 2023, 10 February 2023 and 13 March 2023. Violations generally stemmed from erosion and sediment discharges resulting from construction of access routes, placement of riprap, recontouring of bank slopes, and grading of the bed of the unnamed tributaries.

Beneficial Uses and Water Quality Objectives

16. The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board.
17. The unnamed tributaries on the Site are tributary to Liza Creek, which is tributary to Reeds Creek, which is a tributary to the Sacramento River. Existing beneficial uses for the Sacramento River (Shasta Dam to Colusa Basin Drain) include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Industry (IND); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Warm (WARM) & Cold (COLD) Freshwater Habitat; Migration of Aquatic Organisms (MIGR);

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Spawning (SPWN); Wildlife Habitat (WILD); and Navigation (NAV). Beneficial uses of any specifically identified water body generally apply to all its tributaries. (Basin Plan, p. 11-2.00)

18. The Basin Plan specifies Water Quality Objectives for inland surface waters. These objectives include, in part, limitations on sediment discharges, settleable and suspended material, and turbidity.
19. The Sacramento River from Cottonwood Creek to Red Bluff is currently listed per Clean Water Act section 303(d) as an impaired water body for the following pollutants: mercury, temperature, and toxicity².

Legal Basis of the Order

20. Water Code section 13304, subdivision (a) states, in relevant part, “any person who has discharged or discharges waste into 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, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup and 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.”
21. “Waste” is defined by Water Code section 13050, subdivision (d) as, “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 purpose of, disposal.”
 - a. Sediment, when discharged to waters of the state, is considered a “waste” as defined in Water Code section 13050, subdivision (d). As a result of the land disturbing activities, sediment was unlawfully discharged or deposited where it will be, or has the potential to be, mobilized and discharged into waters of the state.

² [2020-2022 California Integrated Report | California State Water Resources Control Board](https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html)

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22. "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."
- a. Sediment from the unauthorized land-disturbing activities has unlawfully discharged, and has the potential to continue to discharge, to numerous watercourses throughout the Sacramento River drainage, creating or threatening to create a condition of pollution by unreasonably affecting the beneficial uses of waters of the state.
 - b. Discharges of sediment alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and substrate habitat for aquatic organisms. 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 impacting the following beneficial uses: Spawning (SPWN), Warm (WARM) and Cold (COLD) Freshwater Habitat, and Wildlife Habitat (WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for municipal users, impacting the following beneficial use: Municipal and Domestic Supply (MUN). 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 the following beneficial uses: Water Contact Recreation (REC-1) and Other Non-contact Recreation (REC-2).
 - c. Sediment and soils that have been impacted by land-disturbing activities have the potential to alter the chemistry and water quality of surface water. Such changes may lead to increased treatment and/or maintenance costs for users of the surface waters impacting the following beneficial uses: Municipal and Domestic Supply (MUN).
23. Cleanup and abatement are necessary to ensure that any existing condition of pollution is cleaned up, that threatened unauthorized discharges to waters of the state from the Dischargers' land-disturbing activities 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. 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 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 restored. Any alternative

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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 those 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.

Technical Reports Required

25. 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 Central Valley Water Board, in conducting an investigation, may require the discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these technical reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. Staff estimate the total cost of technical reports, as detailed in the Required Actions section of this Order, to be approximately \$39,000 – \$48,500. The costs of the technical or monitoring reports required by this Order bear a reasonable relationship to the need for these reports and the benefit to be gained by these reports, as discussed below:
- a. The Site Assessment is a technical report that is necessary to determine the scope and extent of the aquatic resource impacts associated with the unpermitted dredge and/or fill activity. At a minimum, the assessment needs to include the quantity of impacts to waters caused by the unpermitted dredge/fill activity at each location rounded to at least the nearest one-hundredth (0.01) of an acre and nearest linear foot. Central Valley Water Board staff performed a cost analysis for preparation of the Site Assessment by obtaining cost estimates from local mid-sized consulting firms and determined that the Site Assessment preparation is estimated to cost \$10,000 – \$12,500. After consideration of these factors, staff has determined that the burden, including costs, of submitting the Site Assessment bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
 - b. The Restoration Mitigation, and Monitoring Plan (RMMP) is a technical report that is necessary to describe the corrective actions that will be taken to address actual and/or potential discharges of waste that could affect the quality of the waters of the state. By requiring the Discharger to submit an RMMP, the Central Valley Water Board or its delegated officer can review and approve the proposed restoration and corrective actions to assess whether the proposed actions are adequate to address discharges of waste to receiving waters. Central Valley Water Board staff performed a cost analysis for preparation of the RMMP by

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obtaining cost estimates from local mid-sized consulting firms and determined that the RMMP preparation is estimated to cost \$15,000 – \$20,000. After consideration of these factors, staff has determined that the burden, including costs, of submitting the RMMP bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

- c. The RMMP Completion Report demonstrates to the Central Valley Water Board or its delegated officer that the restoration and corrective actions contained in the approved RMMP have been fully implemented. By requiring the Dischargers to submit documentation that the corrective actions have been completed, including pre- and post-remediation photographs and relevant maps, staff can confirm the RMMP has been fully implemented and that best management practices are adequate to prevent future discharges of waste to waters of the state. Central Valley Water Board staff performed a cost analysis for preparation of the RMMP Completion Report by obtaining cost estimates from local mid-sized consulting firms. Based on information available to Central Valley Water Board staff, the RMMP Completion Report preparation is estimated to cost \$7,000 –\$8,000. After consideration of these factors, staff determined that the burden, including costs, of submitting the RMMP Completion Report bears a reasonable relationship to the need for the report and the benefits obtained from the report.
 - d. Annual Monitoring Report(s) are necessary to document the long-term stability of restored areas, to demonstrate the effectiveness of erosion and sediment control measures in preventing discharges to waters of the state, to identify deficient restoration activities, and to identify any new discharges of waste occurring from the Dischargers at the Site. An Annual Monitoring Report for a minimum period of one year will enable staff to confirm that the completed corrective actions continue to be effective over wet and dry seasons. Central Valley Water Board staff performed a cost analysis for preparation of the Annual Monitoring Report by obtaining cost estimates from local mid-sized consulting firms. Based on information available to Central Valley Water Board staff, preparation of an Annual Monitoring Report is estimated to cost \$7,000 – \$8,000 for one year of reporting. After consideration of these factors, staff has determined that the burden, including costs, of submitting the Annual Monitoring Report bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
26. Cypress Abbey Company owns and/or operates, and has owned and/or operated the facility and private lands from which waste was discharged as observed during the Site inspections, and thus is appropriately named as a party responsible for providing the reports. Thomas G. Atwood, a.k.a. Tom Atwood, is the Chief Executive Officer, Chief Financial Officer, Secretary, and Director of Cypress Abbey Company, and thus is appropriately named as a party responsible for providing the reports. Eddie Axner Construction, Inc. conducted the unauthorized activities that

resulted in the discharge and threatened discharge to waters of the state, and thus is appropriately named as a party responsible for providing the reports.

California Environmental Quality Act

27. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. To the extent that the Order requires earth disturbing and/or 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. If the Central Valley Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Central Valley Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Central Valley Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Central Valley Water Board shall enter into a memorandum of understanding with the Central Valley Water Board regarding such costs prior to undertaking any environmental review.

Required Actions

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall clean up and abate or 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. **By 10 November 2023**, implement and ensure that erosion and sediment control Best Management Practices (BMPs) are effectively installed and maintained throughout the Site.
2. **By 10 November 2023**, the Dischargers must submit a **Site Assessment** detailing the extent of the temporary and permanent aquatic resource impacts associated with the construction of access routes, placement of riprap, recontouring of bank slopes, and grading of the bed of the unnamed tributaries. At a minimum, the assessment

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needs to include the quantity of impacts to waters caused by the unpermitted dredge/fill activity at each location rounded to at least the nearest one-hundredth (0.01) of an acre and nearest linear foot and must include the cubic yards of dredge and/or fill material placed below the ordinary high water mark of the unnamed tributaries and provide relevant locations on a scaled base map.

3. **By 10 November 2023**, the Dischargers must submit a proposed **Restoration, Mitigation and Monitoring Plan (RMMP)** for approval by the Central Valley Water Board or its delegated officer for mitigation of all impacts to waters of the state resulting from the unauthorized fill, to include a compensatory mitigation plan to replace lost aquatic resource function(s). More specifically, the plan must include, at minimum, the following:
 - a. An inventory of all permanent and temporary aquatic resource impacts associated with the unauthorized construction of access routes, placement of riprap, recontouring of bank slopes, and grading of the bed of the unnamed tributaries. The inventory shall be consistent with the impacts detailed in the **Site Assessment** or a detailed explanation provided for an inconsistency.
 - b. Proposed method of treatment. For each site included in the inventory, Dischargers shall identify proposed treatments including a description of restoration efforts, BMPs, and mitigation to be implemented. At a minimum, proposed treatment methods shall include the following:
 - i. For tributary access: A description of planned construction and maintenance of sediment and erosion control measures (including temporary and permanent BMPs) along tributary access routes, and any other areas where related ground-disturbing activities occurred.
 - ii. For impacts to bed, bank, or channel: Proposed plan for the removal and/or stabilization of dredge or fill material deposited within the bed, bank or channel of the unnamed tributaries to prevent further waste discharges.
 - c. Maps accurately depicting access routes, all surface watercourses and drainages, and other areas disturbed by Tom Atwood and Eddie Axner Construction, Inc.
 - d. An implementation schedule that includes a timeline for submitting any necessary permit application(s) to all applicable local, state, and federal agencies along with detailed project milestones to fulfill the requirements of this Order.
 - e. A draft compensatory mitigation plan to offset unavoidable permanent impacts to aquatic resources. The draft plan must describe how the project impacts and compensatory mitigation would not cause a net loss of the overall abundance, diversity, and condition of aquatic resources, based on the watershed profile. Plans to secure credits from an approved mitigation bank or in-lieu fee program

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must include the specific mitigation bank or in-lieu fee program proposed to be used.

- f. A proposed Monitoring Plan designed to assess discharges prior to treatment and ensure effectiveness of implemented measures over at least a one-year period after remediation activities have been completed. If measures are found to be ineffective or insufficient to prevent discharges or threatened discharges of waste to receiving waters during the one-year monitoring period, the Monitoring Plan must include provisions to mitigate such deficiencies. The Monitoring Plan, at a minimum, must include the following:
 - i. A plan for monthly monitoring prior to and during implementation of Restoration and Mitigation activities focused in areas identified as having discharged waste or where threats of waste discharge exist.
 - ii. Submittal of monthly status update reports. The monthly reports must summarize remediation activities completed, any BMP failures noted, and proposed actions to address failed or ineffective measures. Monthly reporting shall continue until the Central Valley Water Board or its delegated officer issues a Notice of Project Complete Letter to the Dischargers.
4. **No later than 30 days** after approval of the plan by the Central Valley Water Board or its delegated officer, the Dischargers shall begin implementation of the RMMP in accordance with the approved implementation schedule.
5. Notify Central Valley Water Board staff, within 24 hours of identification, when failure of a measure or a discharge of waste occurs. Such notice shall include a description and schedule for proposed actions.
6. **By 15 February 2024**, the Dischargers shall complete all restoration and mitigation measures described in the approved RMMP. Should the Dischargers anticipate inclement weather during planned construction activities, Dischargers may request extension per procedures outlined in the Delayed Compliance section below. Central Valley Water Board will review any such requests promptly and respond in writing.
7. **No later than 1 April 2024**, the Dischargers shall submit a **Completion Report** for approval by the Central Valley Water Board or its delegated officer. The Completion Report shall include accurate depictions and documentation of all completed construction, mitigation and/or restoration measures included in the approved RMMP to demonstrate the RMMP has been fully implemented.
8. Upon approval of the Completion Report, the Dischargers shall submit an **Annual Monitoring Report** by **1 November** each year for at least one year or until the Central Valley Water Board or its delegated officer approves a request to discontinue monitoring. Each Annual Monitoring Report shall include, at a minimum, a summary of the Monitoring Plan results, descriptions and photographs of any

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additional remediation and mitigation measures implemented, a description of any locations where discharges or threats of discharge have been identified and proposed treatment(s).

General Requirements and Notices

Use of Qualified Professionals

1. 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

2. All technical reports submitted by the Dischargers shall include a cover letter signed by Tom Atwood and a duly authorized representative of Eddie Axner Construction, Inc., certifying under penalty of law that the signer has examined and is familiar with the report and that to its knowledge, the report is true, complete, and accurate. The Dischargers shall also state if it agrees with any recommendations/proposals provided in the technical report and whether it approves of the 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

3. The Dischargers 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

4. The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning work. Applicable permits may include, but are not limited to, the following:
 - a. Clean Water Act section 404 permit (Army Corps of Engineers) and Clean Water Act section 401 Water Quality Certification (Central Valley Water Board) or Waste Discharge Requirements for the Discharge of Dredged or Fill Material to Waters of the State (Central Valley Water Board).
 - b. Lake or Streambed Alteration Agreement from the California Department of Fish and Wildlife.

Cost Recovery

5. 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 unauthorized 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 Dischargers 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

6. All technical reports or notices required under this Order shall be submitted to Lynn Coster, Lynn.Coster@waterboards.ca.gov, (530) 224-2437.

Delayed Compliance

7. If for any reason the Dischargers are unable to perform any activity or submit any document in compliance with the 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 Dischargers 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 deadline. 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 Dischargers and will take all the available relevant facts into consideration when considering whether to grant an extension request.

CLEANUP AND ABATEMENT ORDER R5-2023-0704
THOMAS ATWOOD, AND EDDIE AXNER CONSTRUCTION, INC.
2023 STORMS 16565 REEDS CREEK ROAD EMERGENCY REPAIR PROJECT

Modification of Order

8. 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.

Enforcement Authority

9. If the Dischargers fail 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 ranging from \$1,000 to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350, and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

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