
North Coast Regional Water Quality Control Board

June 21, 2013

Don Roberts
P.O. Box 1832
Laytonville, CA 95454

Stephen G. Whitley and Taylor Whitley
P.O. Box 1990
Laytonville, CA 95454

Dear Mr. Roberts, and Mr. and Mrs. Whitley:

Subject: **Notice of Violation, Cleanup and Abatement and 13267 Order (CAO) R1-2013-0007**

File: Don Roberts Property, Mendocino County Assessor's Parcel Number 014-060-26 (Aka 014-060-44), 320 Branscomb Rd., Laytonville, Mendocino County, WDID No. 1B12063CNME

Thank you for submitting the required wetland delineation and restoration/monitoring plan (plan) by the May 15, 2013 deadline. This Notice of Violation is sent to document that the plan submitted is deficient in meeting CAO requirements.

On May 15, Stormer Feiler of my staff advised your consultant, Keith Hess, that the plan was deficient. In a subsequent teleconference, on May 21, 2013, Mr. Feiler explained to your consultants, Keith Hess and Josh McKnight the plan deficiencies in meeting CAO directive requirements 3, 4, 4 a., 4 b., 4 c., 4 d., and 5, as summarized below. In addition, Mr. Feiler has reviewed the plan further and has determined that the May 15 plan lacks an adequate Monitoring and Reporting Plan, per Directives 4, 4 c., 4 d., and 5. The summary below quotes each of the above directives, showing with underline, those portions of the directives that have not been met to date, thereby constituting a violation of the CAO.

Directive 3

3. Develop and submit a technical report that includes the following details on road construction no later than **February 15, 2013**:
- How many days were spent constructing the road;
 - A list of all contractors, and or operators that worked on the road construction;
 - How many truckloads of each construction material were imported, including earthen materials, rock, and asphalt grindings;
 - The equipment, (trucks, excavators, etc.) used to construct the road;
 - Receipts for all equipment, including excavation bulldozing and trucks used, by the Dischargers and any other contractors involved;
 - How the road was constructed and what methods were used for compaction, including what compaction standards were applied, and any other technical details identifying that the road was adequately built to support the designated use;
 - Copies of any and all plans or as built, or diagrams used to guide road construction;
 - Method(s) used and any calculations associated with sizing the culverts;
 - Construction standards, performance standards or other guidelines used to install the culverts;
 - Source(s) of earthen material and/or rock used for road construction, including any highway construction projects, and volume(s) of material sourced from those sites/projects;
 - Source(s) and volume(s) of asphalt grindings obtained from each of those sources;
 - Copies of any contracts or agreements regarding mobilization and/or storage of earthen spoils rock or asphalt grindings from highway projects or other sources to be delivered to and/or stored at the Laytonville Quarry or the subject property; and
 - Copies of receipts for the heavy equipment time and length of use in constructing the road, copies of any truck logs, or truck hauling information regarding the hauling of the earthen materials, rock, and asphalt grindings to the subject property, and/or to the Laytonville Quarry.

To date, the Dischargers have not submitted any of the information listed in Directive 3. As of May 31, this constitutes 105 days of violation.

Directive 4

4. Retain a qualified licensed professional experienced in wetland, stream and aquatic restoration, erosion control, and design and construction of engineered fills, to delineate the full extent of wetlands and develop a restoration plan to remove all illegally placed earthen material and restore the functionality of the damaged wetlands, streams, and pond(s). The plan must include design and construction standards, and a monitoring plan for the following:

Directive 4 lays out the groundwork for Directives 4 a. – 4 d. The May 15 plan provided a portion of the information required under Directive 4, but underlined items above represent the deficiencies in that plan. Specifically, the plan lacks 1) full delineation of wetland habitats, and 2) a complete restoration plan that includes removal of all illegally placed fills, 3) a full monitoring plan including reporting and re-vegetation compliance requirements as stipulated in the directives below. To fulfill the requirements of directive 4, the requirements for each subdirective must be fulfilled. As of May 31, the incompleteness of the plan constitutes 16 days of violation.

Directive 4 a., Wetland Delineation

- a. Delineation of the extent and typing of all wetland/riparian habitats filled and/or affected by the construction of the roads at the Site; delineation must comply with United States Army Corps of Engineers standards and requirements. The United States Army Corps of Engineers must approve the delineation as a jurisdictional determination.

The delineation provided does not encompass the full scope of affected wetlands or include all wetland habitats on the affected properties. The East-West Road and the crossings proposed as rock fords are not part of the delineation nor does the delineation include the full scope of the pond or wetland habitats adjacent to the pond. Due to the incomplete wetland delineation, the Army Corps of Engineers jurisdictional determination cannot be accomplished on the partial delineation.

Directive 4 b., Removal and Stabilization of Fill Materials

- b. The removal and stabilization of earthen fill materials, and other wastes. All material removed from State and/or federal waters must be disposed of in a proper manner and/or stabilized in a location where there is no potential for discharge. Disposal locations must be described and design standards must be provided for stabilizing removed earthen materials and debris.

The information included in the May 15 plan regarding spoil disposal and spoils treatment is incomplete, as the scope of the project work is incomplete. In addition, more information is necessary regarding the proposal to leave the removed spoils on site. Specifically, 1) explain dimensionally how large a pile of material this will result in, 2) describe erosion controls to be applied to the spoils, and describe what materials will be stored here (eg. will asphalt be placed in this pile?), 3) describe how this pile will be planted and, if necessary, irrigated to ensure survival of plantings to control erosion over the long term.

Directive 4 c., Restoration of Natural Drainage and Wetlands

- c. Restoration of natural drainage paths in streams, wetlands, and the pond functionally including re-vegetation as necessary. The restoration plan must include: a map(s) at 1:12000 or larger scale (e.g., 1:6000) 1) delineating wetlands and 2) illustrating all restoration plan work points, watercourses, roads, spoil disposal sites, re-vegetation planting, and any other factor that requires mapping or site construction details to complete the scope of work; design and construction standards for earthen material and woody debris stabilization; soil compaction; re-planting of exposed soils; and erosion control for unanticipated precipitation during remediation.

To ensure a successful re-vegetation/earthen stabilization effort, site restoration and any necessary plantings shall be monitored and maintained (including irrigation if necessary) for five years. All tree and shrub plantings shall have a minimum of 85% success of thriving growth at the end of five years with a minimum of two consecutive years (two growing seasons) of monitoring after the removal of irrigation. In the event the re-vegetation fails and requires re-planting, the monitoring shall be extended until the 85% success rate of vegetation re-establishment is accomplished. The Dischargers are responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these goals. In addition, the plan must include a time schedule for completing the work including receiving any necessary permits from State, County and/or federal agencies that may be required.

The May 15 plan does not include a complete restoration plan that addresses the revegetation and monitoring requirements, as specified in Directive 4 c. The restoration and monitoring plan provided does not encompass the full scope of affected pond and wetlands adjacent to the pond and those fills that have been placed in these habitats illegally. The East-West Road is not part of the restoration plan, and the plan indicates that you propose to leave two illegally constructed crossings in place as rock fords. In addition, the proposed designated area for spoil placement on the northwest edge includes a segment of fill placed illegally during the illegal road construction.

Directive 4 d., Monitoring and Reporting Plan Requirements

- d. A monitoring plan for all site remediation activities and features, to assess and demonstrate the success of sediment remediation efforts and re-vegetation. The monitoring plan must include regularly scheduled inspections for five years or until the Site is restored, vegetation is re-established, erosion is no longer ongoing and monitoring is no longer necessary. Each monitoring event must include a report within 30 days that describes the inspection findings, and provides corrective actions for any failures of the Site(s); failures include but are not limited to erosion

controls and re-vegetation success. Each year an annual monitoring report shall be submitted documenting verbally and photographically any necessary mitigation and evidence of successful restoration and Site recovery, for five years or until the Site is recovered.

The May 15 monitoring plan does not include rainfall-related post-excavation monitoring inspections, reporting within 30 days of inspections, annual reporting, monitoring of vegetation to ensure re-vegetation success at 85% survival, or photo documentation. Monitoring and reporting are required for five years, or until the site has recovered adequately. You are required to submit reports annually, and within 30 days of each inspection. In order to meet the re-vegetation success criteria, you may need to plant additional vegetation during the five-year post-restoration period. The May 15 plan does not address these requirements adequately. At a minimum, your monitoring plan must meet these requirements.

Directive 5, deadline for submittal of wetland delineation, and Restoration and Monitoring Plan

5. The Dischargers must submit the entire restoration and monitoring plan to the Regional Water Board by **May 15, 2013** (inclusive of wetland delineation, restoration designs, and monitoring and reporting requirements, and time schedules described herein).

As discussed above, the plan provided on May 15, 2013 is incomplete; all elements mentioned in this directive were due in a complete form on May 15, 2013. As of May 31, 2013, this constitutes 16 days of violation.

Directive 6, requirements to submit progress reports the first of each month starting February 1, 2013

6. Progress reports are due the first of each month starting **February 1, 2013**, until the completion of restoration efforts triggers the required monitoring and reporting program described above. Progress reports can be submitted via email or regular mail to Stormer Feiler (stormer.feiler@waterboards.ca.gov) and should describe the steps taken to comply with the Order, and any problems encountered that may affect the dischargers' ability to comply in a timely manner.

As noted above, Stormer Feiler discussed many of these deficiencies with your consultants in a May 21, 2013 teleconference. In summary, we understand that your consultants have agreed to meet the CAO requirements by doing the following:

- 1) Rock fords will be removed from plan designs and replaced with bridges,
- 2) Fill placed on the east west road/levee will be removed down to the historic levee fill prism,
- 3) Additional fill will be removed from the wetland/pond complex from off the north end of the pad/old mill site where fill has recently been placed and is encroaching into the wetland,
- 4) The culvert on the east-west road that is the spillway to the wetland/pond complex will remain in place with a rocked structure placed as a critical dip in the event of overtopping, resulting in armoring both sides of the levee over the culvert.
- 5) The design diagrams will be revised to identify existing structures (roads and levee) that will be remaining in place.
- 6) The wetland delineation will be expanded to include the wetland/pond complex, the east-west road, and areas proposed for construction such as the bridge crossings.
- 7) The fill removed from the wetland will be compacted and stored on the old mill site.

In addition to Items 1-7 above, please ensure that your revised plan addresses all comments included in this Notice of Violation regarding noncompliance with CAO directives.

As mentioned above, this Notice of Violation serves to document that the plan you submitted on May 15, 2013 did not provide all the information required to meet CAO requirements. However, we appreciate your cooperation to date in this matter, and we look forward to receiving your revised submittal providing all the required information in a timely manner. The timelines prescribed in the CAO for submittal of information remain in effect, and at the discretion of the Regional Water Board, civil penalties can be assessed for failure to comply with 13267/CAO directive requirements. Each day of violation can result in civil penalties from \$100-5,000.00 for each violation.

If you have any questions, please contact Stormer Feiler of my staff by email at stormer.feiler@waterboards.ca.gov or by phone at (707) 543-7128 or his supervisor, Diana Henriouille by email at diana.henriouille@waterboards.ca.gov or by phone at (707) 576-2350.

Sincerely,

David Leland
Assistant Executive Officer (Acting)

130621_CA0-13267_R1-2013-0007_NOV

Certified-Return Receipt Requested

cc:

Mendocino County

Ryan Pelleriti, pelleritir@co.mendocino.ca.us

California Department of Fish and Game

Tony LaBanca, Tony.LaBanca@wildlife.ca.gov

Terra Fuller, TFULLER@wildlife.ca.gov

Rick Macedo, RMACEDO@wildlife.ca.gov

Donald White, DHWhite@wildlife.ca.gov

United States Army Corps Of Engineers

Laurie Monarres Laurie.A.Monarres@USACE.Army.Mil

Christine Cavett-Cox christina.cavett-cox@usace.army.mil

Trinity Valley Consulting Engineers

Josh McKnight, josh@tvce.biz

Keith Hess, keith@drwhess.com

National Marine Fisheries Service

Special Agent Derek Roy derek.roy@noaa.gov

SWRCB Office of Enforcement

Andrew Tauriainen andrew.tauriainen@waterboards.ca.gov