
North Coast Regional Water Quality Control Board

April 3, 2014

Donald and Rogie Shutt
P.O. Box 160
Smith River, CA 95567

Dear Mr. and Mrs. Shutt:

Subject: Second Notice of Violation - Cleanup and Abatement and Water Code Section 13267 Order No. R1-2013-0050

File: Donald and Rogie Shutt, Gilbert Creek, Del Norte County, WDID No. 1A13014CNDN

On July 8, 2013, the Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) issued to you, via certified mail, the subject Cleanup and Abatement and Water Code section 13267 Order (CAO), requiring that you restore the stream diversion caused by excavation and fill discharge in Gilbert Creek. The Post Office returned this correspondence, as you did not sign the certified mail return receipt. Subsequently, on August 9, 2013, you were personally served with a copy of this Order.

The CAO requires you to develop and submit the following technical reports: 1) a report describing details associated with the in-stream construction that caused the violation, 2) a restoration and monitoring plan (both due August 15, 2013), and 3) monthly progress reports starting September 1, 2013. The CAO requires you to implement the restoration and monitoring plan by October 15, 2013. At this time, you remain in violation of the CAO for failing to submit any of the required reports and for failing to implement the restoration and monitoring plan.

As described above, pursuant to the CAO, you were required to comply with Directives 1, 2, 3, and 4 and submit the in-stream construction report and the restoration and monitoring report by **August 15, 2013**. As of April 1, 2014, you are **229 days in violation**. Note that

penalties may be assessed on each individual violation. In this case, there are two violations (one for each report), each 229 days overdue, for a total of 458 days of violation.

Pursuant to Directive 5 of the CAO, you were required to submit monthly progress reports at the beginning of each month starting **September 1, 2013**, until you complete the required site restoration/cleanup work and begin submitting monitoring reports, pursuant to Directive 3. As of April 1, 2014, you have failed to submit eight (8) progress reports. Each day that a report is not turned in is an additional day of violation.

Finally, Directive 6 of the CAO requires that all work to restore the site be completed by **October 15, 2013**. As of April 1, 2014, you are **170 days in violation** of this directive.

Failure to submit the required technical reports and failing to comply with the CAO may subject you to \$1,000 and/or \$5,000 a day for each individual violation pursuant to California Water Code sections 13268 and 13350. Note that in addition to the potential penalties associated with your violations of the CAO, you face potential penalties for violations associated with the unlawful diversion and placement of fill in Gilbert Creek. You may be subject to up to \$10,000 a day and \$10 per gallon of fill over 1,000 gallons not cleaned up pursuant to Water Code section 13385. These are penalties associated with the Regional Water Board's jurisdiction and do not include any enforcement you may be subject to by other regulatory agencies (e.g. Department of Fish and Wildlife).

As you know, on November 5, 2013, Regional Water Board staff David Leland, Stormer Feiler, and Diana Henriouille, and staff counsel Laura Drabandt met with Mr. Shutt at the Regional Water Board office to discuss this matter. Following that meeting, Stormer Feiler received a voice mail message from you indicating that you were planning to meet with Pacific Watershed Associates (PWA) on November 11, 2013. Mr. Feiler spoke with Tom Leroy of PWA later in November and confirmed that you were working with them. Since November, we have not heard from you again, and have more recently learned from PWA staff that you have not followed through with getting a plan developed to remediate the violations described in the subject CAO.

You are facing a substantial potential penalty at this time, and potential penalties continue to accrue daily. It is in your interest to take action to comply with the directives of the CAO and to restore the damage to Gilbert Creek as expeditiously as possible to avoid continuing to accrue potential penalties. At this time, we are reviewing all violations associated with this matter in preparation of developing an administrative civil liability complaint for consideration by the Regional Water Board. We recommend that you contact us as soon as possible to discuss your plans to comply with the CAO.

If you have any questions regarding this matter, 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. For legal matters, contact Laura Drabandt at (916) 341-5180 or Laura.Drabandt@waterboards.ca.gov.

Sincerely,

Original signed by

David F. Leland, P.E.
Assistant Executive Officer

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Enclosures: Attachment 1 - CAO/13267 Order No. R1-2013-0050

Send by Regular Mail and Certified Mail

cc by email:

California Department of Fish and Wildlife
Scott Bauer, sbauer@wildlife.ca.gov
John Fraley, jfraley@wildlife.ca.gov
Clare Golec, cgolec@wildlife.ca.gov
Jackie Krug, jkrug@wildlife.ca.gov

Del Norte County
Rosanna Bower, rbower@co.del-norte.ca.us

United States Army Corps of Engineers
Laurie Monarres, laurie.a.monarres@usace.army.mil
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Coastal Commission
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Pacific Watershed Associates
Tom Leroy, toml@pacificwatershed.com