

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2003-0078

For

Ms. Anita O'Bryan and Mr. Jamie O'Bryan

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Ms. Anita O'Bryan and Mr. Jamie O'Bryan (hereinafter Discharger), whose mailing address is Bridgehaven Resort, 9965 Highway 1, Jenner, California, 95450, constructed a section of rock riprap material along the bank of the Russian River near the City of Jenner, California, without appropriate permitting. The riprap is located on the south bank of the Russian River approximately 200 feet downriver of the Highway 1 bridge crossing. The riprap consists of approximately 100 cubic yards (yd³) of rock fill material in an area approximately 75 feet long, 12 feet wide, and 3 feet deep. The Discharger installed the rock riprap along the bank of the Russian River during the spring of 2002. Prior to the installation of the riprap, Regional Water Board staff member Mr. Andrew Jensen informed the Discharger that a Clean Water Act (CWA) Section 404 permit and a CWA Section 401 certification would be required for the proposed activities, but the Discharger failed to obtain them.
2. On July 5, 2001, Mr. Jensen observed an excavator working in the Russian River Estuary at an elevation below the high tide level, just downstream of the Russian River Highway 1 Bridge, located just south of City of Jenner. Mr. Jensen drove to Bridgehaven Resort, where he observed the excavator clearing the riverbank prepping for the placement of riprap in the above-described area. Mr. Jensen approached the heavy equipment operator, Mr. Rob Dixon. Mr. Dixon stated that he was installing the riprap for the Discharger, and that the Discharger would be the one to contact to discuss the work. Mr. Jensen informed Mr. Dixon that the project was not covered under the necessary permits and therefore his work was in violation of the CWA and subject to enforcement. Mr. Jensen also telephoned and left a message for the Discharger indicating that the riprap installation was not permitted, and asked the Discharger to call immediately. Mr. Jensen also left contact information for Ms. Jane Hicks of the U.S. Army Corps of Engineers, and told the Discharger to contact her in regards to obtaining a CWA Section 404 permit for his project. The Discharger returned Mr. Jensen's call the same day and discussed the issue with Mr. Jensen. The Discharger was told that the project could not proceed until the appropriate permits were obtained. Mr. Jensen then sent a Water Quality Certification and/or Waiver of Waste Discharge Requirements (Dredge/Fill Projects) (Application) packet to the Discharger. No Application was received from the Discharger.

3. On May 6, 2002, Mr. Jensen received a phone complaint from a California Department of Fish and Game Warden regarding the construction of rock riprap at two locations along the mainstem of the Russian River near the Highway 1 Bridge. The warden indicated that in early May 2002, he/she had personally observed active riprap installation occurring. Regional Water Board staff confirmed with the warden that the location of the installation was Bridgehaven Resort slightly downriver of the Russian River Highway 1 Bridge.
4. On May 21, 2002, and again on July 5, 2002, Mr. Jensen called the Discharger and left messages regarding the complaint and asked for a return phone call. The Discharger left a message on Mr. Jensen's voicemail on July 10, 2002, in which he stated that the California Department of Transportation (Caltrans) placed the riprap and that Bridgehaven representatives had never asked Caltrans to do the construction along the Bridgehaven portion of riverbank.
5. On June 7, 2002, Mr. Jensen and another Regional Water Board staff member, Ms. Sherri Shelly, conducted a site inspection and verified that rock riprap had been placed along the riverbank on the Discharger's property, Bridgehaven Resort, 9965 Highway 1, Jenner, California.
6. On July 15, 2002, the Regional Water Board sent Mr. Randall Iwasaki of Caltrans a California Water Code Section 13267 Order regarding apparent unauthorized bank stabilization in the Russian River Estuary at the Bridgehaven Resort, 9965 Highway 1, Jenner, Sonoma County.
7. On August 29, 2002, Caltrans submitted a report in response to the 13267 Order. The report stated "the work conducted by Caltrans was limited to the rock slope protection installed directly under the Russian River Bridge on the bank below the maintenance access road" and thus had no involvement in the placement of rock riprap along the Bridgehaven Resort property. In addition, the report states that during a site visit, Mr. Dragomir Bogdanic of Caltrans District 4, met with the Discharger and discussed the work that had taken place on the Discharger's property. The Discharger (Mr. O'Bryan) told Mr. Bogdanic that he had hired a contractor to do the work on his property and that he had used some rocks he already had available.
8. On November 22, 2002, Regional Water Board staff sent the Discharger an After-the-Fact Request for a Report of Waste Discharge (ROWD) for unpermitted rock riprap installation. Due to the fact that the Caltrans project was not directly linked to the Bridgehaven Resort project, a separate ROWD was required for each of the two projects. The Report of Waste Discharge was to include, at a minimum, an Application along with the appropriate fees, by December 18, 2002.
9. On December 10, 2002, Mr. O'Bryan submitted an Application, on behalf of himself and Ms. Anita O'Bryan. The Discharger failed to sign the Application and to include the appropriate fee.

10. On December 30, 2002, the Regional Water Board sent the Discharger a letter explaining that a valid Application must include a fee of \$2,250 and a signed copy of the Application.
11. On February 4, 2003, Mr. Jensen called the Discharger and left a message asking whether the required Application fee and signature page had been sent yet. On February 28, 2003, the Discharger called Mr. Jensen and left a message stating that he had left out the Application fee and signature page until a riparian restoration plan could be completed.
12. As of the date of this Order, neither the fee nor an executed signature page have been received from the Discharger.

14.13. The Russian River beneficial uses, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:

- a. Municipal and domestic supply
- b. Agricultural supply
- c. Industrial supply
- d. Industrial service supply
- e. Groundwater recharge
- f. Navigation
- g. Hydropower generation
- h. Water contact recreation
- i. Non-contact water recreation
- j. Commercial and sport fishing
- k. Warm freshwater habitat
- l. Cold freshwater habitat
- m. Rare, threatened, or endangered species
- n. Wildlife habitat
- o. Fish migration
- p. Fish spawning
- q. Estuarine habitat
- r. Aquaculture

15.14. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:

- Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*

- Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*

16.15. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste dischargers, the staff shall require the submission of Reports of Waste Discharge.”

17.16. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:

- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
- Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

18.17. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:

- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*
- Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within 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.”*

- Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*
- Section 13304(a) - *“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 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.”*

19:18. As explained above, the Discharger has placed a riprap structure into the Russian River and has therefore caused a discharge of waste into waters of the state. |

19. The quantity and manner in which the rock fill material was placed caused the direct loss of riparian habitat and its associated functions, which is deleterious to fish, wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. Riparian habitat generally consists of trees, shrubs and woody species, that perform important functions related to water quality including but not limited to: providing shade to the river; reducing water flow velocities along the river bank; increasing habitat complexity; adding organic matter to the river; reducing erosion potential by providing stability to the river bank through root structures. Removal of this habitat is deleterious to fish, wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the rock fill material is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.
20. The rock fill material also threatens to create pollution or nuisance because they threaten to exacerbate loss of riparian habitat and increase erosion upstream and/or downstream of the riprap structure, which unreasonably interfere with beneficial uses. Unless properly engineered, rock fill structures placed on the bank of a watercourse have the potential to increase bank erosion because they create vortices at high flows that undercut the structure. The placement of the rock fill material has increased erosion potential threatening to create pollution or nuisance and is therefore subject to cleanup and abatement under CWC 13304.

21. The workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board's public file on this matter.

~~24.~~22. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.

~~25.~~23. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to CWC Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

~~26.~~24. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Discharger shall perform the following cleanup and abatement actions:

1. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before July 11, 2003, that describes: (1) a plan for removing the riprap; (2) mitigation measures that will be incorporated to protect water quality; and (3) all necessary permits to be obtained prior to commencement of work.

2. Following Executive Officer written concurrence, implement the workplan. All work to remove the riprap and restore the affected streambed and bank shall be completed before October 15, 2003.

Ordered by _____

Susan A. Warner
Executive Officer

June 24, 2003

(bridgehavenresortcao)