
North Coast Regional Water Quality Control Board

July 12, 2016

Mr. Robert Pinoli
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437

Dear Mr. Pinoli:

Subject: **Notice of Violation** of Section 301 of the *Federal Water Pollution Control Act* (Clean Water Act), Section 13376 of the California Water Code (California Water Code) and the *Water Quality Control Plan for the North Coast Region* (Basin Plan) for unauthorized discharges to Pudding Creek; Notice of Violation of the November 13, 2015, California Water Code Section 13267 Order (November 13, 2015, 13267 Order) for failure to submit reports; Mendocino Railway, Fort Bragg, Mendocino County

File: The Skunk Train Tunnel No. 1 West Portal (Site), WDID No. 1 23C376303

The Mendocino Railway is hereby given notice that it has violated section 301 of the Clean Water Act and the Basin Plan, for unauthorized discharges of sediment or earthen materials from the above-referenced Site to Pudding Creek, a water of the United States and state.

Alleged Violations

To date, Regional Water Board Staff (Staff) has conducted three inspections and observed conditions which have caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and U.S. and creates, or threatens to create, a condition of pollution. Attached is a chronology of events associated with activities at the Site (see Attachment A).

Inadequate sediment basin design, ineffective BMPs, and lack of BMP maintenance on the Site have continued to result in unauthorized discharges of sediment to Pudding Creek, a water of the United States and the state, in violation of Basin Plan prohibitions and section 301 of the Clean Water Act. The following unauthorized discharges, which occurred prior

to the Permittee's May 6, 2016, Construction General Permit (CGP) enrollment, were reported by Ms. Teri Jo Barber, the Discharger's appointed Qualified Storm Water Practitioner (QSP), in the monthly progress reports required by the November 13, 2015, 13267 Order. The reports include a summary of activities on the Site, photographs, and inspection forms from Site visits. Photographs depict that water samples were taken, but there is no indication that water quality testing was conducted to verify the effectiveness of the BMPs at sediment control, the quality of the discharge, or the impacts to Pudding Creek, in accordance with the CGP.

1. January Monthly Report

- a) On January 7, 2016, a discharge from the Site to Pudding Creek occurred. The discharge seeped through the geotextile-lined sediment basin to underneath the bridge and into the creek (p. 9).
- b) On January 14, 2016, a sediment plume in Pudding Creek was observed. The discharge was a result of seepage through the sediment basins (p.10).
- c) The report includes two photos from the QSP January 21, 2016, inspection that indicate recent discharges of sediment to Pudding Creek from the Site. Sediment can be observed leading to the water on the south bank of the creek in both of the photos (pp. 14-15).

2. February Monthly Report

- a) On February 8, 2016, spring water seeped through BMPs and discharged to Pudding Creek (page 33).
- b) On February 16, 2016, evidence of a discharge from the primary and secondary sediment basins to Pudding Creek was observed (page 36).

3. March Monthly Report

- a) On March 3, 2016, a discharge occurred from the northwestern corner of the secondary sediment basin to Pudding Creek. After the discharge left the basin, it seeped through the tertiary treatment, comprised of a lined straw bale barrier, and then over willow washout protection and discharged into the creek (page 13).
- b) On March 5, 2016, a discharge occurred from the Site to Pudding Creek. The collapsed area of the tunnel was the source of the plume of sediment underneath the bridge (pages 16, 17, and 21).
- c) On March 6, 2016, the Site was inundated by Pudding Creek during a large rain event, resulting in the discharge of sediment from the southern and northern stockpiles (page 24).
- d) On March 8, 2016, a discharge occurred from the primary and secondary basins to Pudding Creek. Water seeped through the straw bale barrier, through an opening in the geotextile material, and discharged to the creek (page 26).

- e) On March 10, 2016, the primary sediment basin overflowed, but that the water was successfully routed to the secondary sediment basin. However, a photo depicts discharge located beyond the secondary sediment basin on the bridge and adjacent to Pudding Creek, indicating that a discharge likely occurred (page 35).
- f) On March 15, 2016, a discharge occurred from the primary sediment basin to Pudding Creek (page 68).
- g) On March 22, 2016, material from the southern stockpile seeped through the straw bale barrier. Photos depict deposited sediment and standing sediment-laden water that had penetrated the straw bale barrier, providing evidence of a previous discharge (page 53).

Applicable Legal Authority and Requirements

Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

California Water Code section 13376 prohibits the discharge of pollutants to waters of the United States unless authorized by a permit issued by the Regional Water Board or State Water Board. A person who discharges pollutants to waters of the United States must file a report of discharge in compliance with California Water Code section 13260. California Water Code section 13260 requires “[a] person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state” to submit a report of waste discharge.” All waters of United States are waters of the state.

Additionally, the Basin Plan prohibits the following under the Action Plan for Logging, Construction, and Associated Activities (page 4-29.00):

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.”*
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.”*

California Water Code section 13267 subdivision (b)(1) states, in part: *“In conducting an investigation, 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 . . . 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.”

Sections 401 and 404 of the Clean Water Act requires any project that proposes to disturb jurisdictional waters to obtain a permit from the United States Army Corps of Engineers and a Water Quality Certification from a Regional Water Quality Control Board. Water Quality Certifications are issued for activities resulting in dredge or fill within waters of the United States and waters of the state. The Basin Plan and the California Water Code define waters of the state as follows: “*Waters of the state’ refers to any surface water or groundwater, including saline waters, within the boundaries of the state (Water Code §13050 (e).*”

Future Enforcement Action

Please note that correcting the conditions of non-compliance at the Site and with the November 13, 2015, 13267 Order, February 19, 2016, NOV, and section 301 of the Clean Water Act, does not preclude enforcement for the violations alleged in this notice. The Regional Water Board reserves its rights to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General’s office. Please be aware that Mendocino Railway may be subject to a cleanup and abatement order requiring it to clean up and abate the discharge of waste to Pudding Creek along with any threat of discharges to Pudding Creek. Administrative civil liabilities may be assessed beginning with the date that a violation first occurred. The liabilities can be up to \$10 per gallon over 1,000 gallons discharged and not cleaned up plus \$10,000 per day per violation, pursuant to Water Code section 13385 and/or up to \$1,000 per day per violation pursuant to Water Code section 13268.

Should you have any questions regarding this matter, please contact Devon Jorgenson of my staff at (707) 576-2701, or Devon.Jorgenson@waterboards.ca.gov.

Sincerely,

Claudia Villacorta
Point Source and Groundwater Protection Division Chief

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cc: 1. Angela Liebenberg
California Department of Fish and Wildlife
Angela.Liebenberg@wildlife.ca.gov

Certified Return Receipt Requested