
North Coast Regional Water Quality Control Board

July 27, 2016

Mr. Rob Hayes-St. Clair
Mr. James Free
JH Ranch
8525 Homestead Lane
Etna, CA 96027

Dear Messrs. Hayes-St. Clair and Free:

Subject: **Notice of Violation** of Section 301 of the *Federal Clean Water Act* (Clean Water Act), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), and the Porter-Cologne Water Quality Control Act (California Water Code) Section 13260 for Unauthorized Discharges to Waters of the United States and Failure to File Waste Discharge Report; and
Requirement for Information Pursuant to California Water Code section 13267, for JH Ranch Parcel Nos. 023-740-110, 023-740-120, 023-740-130, 023-740-140, and 023-740-150, City of Etna, Siskiyou County, WDID No. 1 47C376118

JH Ranch (Discharger) is hereby given notice that it has violated section 301 of the Clean Water Act, section 13260 of the California Water Code,¹ and Prohibitions 1 and 2 of the Water Quality Control Plan for the North Coast Region (Basin Plan) by discharging earthen materials to waters of the United States from the above referenced parcels (hereinafter Site) without the appropriate permits and without submitting the required report of waste discharge.

Pursuant to Water Code section 13267, this letter requires that by **August 26, 2016, the Discharger prepare and submit a plan to control the discharge of pollutants from the Site**. The plan shall contain the information listed below (see Information Required). Additionally, the Discharger shall provide monthly reports, due on the last business day of each month, documenting its progress in implementing the needed corrective action(s)

¹ All references to the Water Code are the California Water Code, unless otherwise noted.

until it has eliminated the threat of discharging pollutants to French Creek and its tributaries. **The first monthly report is due on September 30, 2016.** Please direct the report to the attention of North Coast Regional Water Quality Control Board (Regional Water Board) staff, Cecile Morris.

This Notice of Violation is supported by observations made by Regional Water Board staff during a Site inspection on February 9, 2016, (see Attachment A) and by CAL FIRE staff during a Site inspection on January 29, 2016 (Attachment B).

I. Background

- A. The Discharger owns the Site, which is located off French Creek Court, a private spur road off of French Creek Road, a county road, near the City of Etna in Siskiyou County.
- B. On February 1, 2016, the Regional Water Board staff received a complaint regarding grading, timber harvesting and well drilling activities at the Site adjacent to French Creek, and discharges and threatened discharges of sediment caused by these activities.
- C. CAL FIRE inspected the Site on January 29, 2016 and February 2, 2016. The January 29, 2016 inspection occurred during a rain event and the inspection report documented recent timber harvest, road construction, grading, and well installation activities at the Site (see Attachment B).
- D. On February 9, 2016, Regional Water Board staff inspected the Site. Regional Water Board staff determined that timber harvesting, drilling, grading and road construction activities associated with the Site have caused and threaten to cause discharges of sediment and earthen material into drainage courses, tributaries to French Creek, and French Creek (see Attachment A).
- E. On February 9, 2016, CAL FIRE issued a Notice of Violation for violations of the Public Resources Code regarding unpermitted timber harvest activities on the Site.
- F. On February 24, 2016, the Regional Water Board issued a Notice of Noncompliance to the Discharger for failing to obtain coverage under Construction General Permit that required the Discharger to file for Notice of Intent by April 23, 2016.
- G. On March 28, 2016, the Regional Water Board issued a second Notice of Noncompliance to the Discharger for failing to obtain coverage under the Construction General Permit that required the Discharger to file for a Notice of Intent by April 23, 2016.

- H. On April 26, 2016, the Discharger submitted a Notice of Intent to obtain Construction Storm Water coverage to the State Water Resources Control Board.

II. Applicable Requirements:

- A. Clean Water Act:
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 an NPDES permit.
- B. Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.):
Water Code section 13260, subdivision (a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional board a Report of Waste Discharge (ROWD) containing such information and data as may be required. There are two Water Board permits that are relevant to the discharges that took place:
1. In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality can be regulated by conditional waivers of waste discharge requirements (WDRs). Individual or general WDRs are required for discharges of waste from all timber activities not regulated with a conditional waiver. *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region* (Categorical Waiver, Order No. R1-2014-0011) provides coverage for a number of types of timber harvesting activities, including those that involve conversion of less than 3 acres of timberland to other land uses. However, in order to qualify for permit coverage under the Categorical Waiver, a landowner must first obtain appropriate permit(s) from CAL FIRE. The Categorical Waiver states that “landowners who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under Water Code sections 13350, 13264 and other applicable law if their Project results in an unauthorized discharge of waste to waters of the state.”
 2. Additionally, dischargers whose projects disturb one (1) or more acres of soil or whose projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity [Construction General](#)

[Permit Order 2009-0009-DWQ](#) as amended by Order 2010-0014-DWQ and Order 2012-0006-DWQ (Construction General Permit). Construction activity subject to the Construction General Permit this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer (QSD).

3. California Water Code (CWC): CWC 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.”

C. The Water Quality Control Plan for the North Coast Region (Basin Plan):

The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide protection to the beneficial uses listed below. The Basin Plan’s Action Plan for Logging, Construction and Associated Activities (Page 4-29.00 of the 2011 Basin Plan) prohibits the following:

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.*

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. This includes water quality objectives regarding color, suspended material, settleable material, sediment, turbidity, biostimulatory substances, oil and grease, and floating material.

The existing and potential beneficial uses of waters of the North Coast Region are outlined in Table 2-1 of the Basin Plan. French Creek is within the Klamath River Hydrologic Unit, Scott River Hydrologic Area and, specifically, the Scott Valley Hydrologic Subarea (HSA). Existing and potential beneficial uses for the Scott River HSA potentially affected by the activities described herein include the following:

Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH); Navigation (NAV); Hydropower Generation (POW); Water Contact Recreation (REC-1); Non –Contact Water Recreation (REC2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Aquaculture (AQUA). The potential beneficial use is Industrial Process Supply (PRO). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

French Creek is a tributary of the Scott River and subsequently the Klamath River, which is Clean Water Act section 303(d)-listed as impaired due to sediment and water temperatures. The United States Environmental Protection Agency approved the Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads (Action Plan) which describes specific implementation actions that shall be taken to achieve the TMDLs and meet the sediment and temperature-related water quality standards. For parties responsible for roads and sediment waste discharges, the Action Plan indicates that:

1. The Regional Water Board encourages parties responsible for roads and sediment waste discharge sites to take actions necessary to prevent, minimize, and control road-caused sediment waste discharges. Such actions may include the inventory, prioritization, control, monitoring, and adaptive management of sediment waste discharge sites and proper road inspection and maintenance.
2. The Regional Water Board's Executive Officer shall require parties responsible for roads, on an as-needed, site-specific basis, to develop and submit an Erosion Control Plan and a Monitoring Plan. An Erosion Control Plan shall describe, in detail, sediment waste discharge sites and how and when those sites are to be controlled. By September 8, 2008, criteria shall be developed for determining

when an Erosion Control Plan shall be required, although nothing precludes the Executive Officer from requiring Erosion Control Plans prior to this date.

3. Should discharges or threatened discharges of sediment waste that could negatively affect the quality of waters of the state be identified in an Erosion Control Plan or by other means, dischargers shall be required to implement their Erosion Control Plan and monitor sediment waste discharge sites through appropriate permitting or enforcement actions.

III. Alleged Violations & Findings:

- A. On February 9, 2016, CAL FIRE issued a Notice of Violation for Forest Practice Laws, which documented the Discharger's failure to obtain proper permit(s) before clearing the trees on the Site. The same NOV also documented the following discharges and threat of discharge to French Creek in violation of Clean Water Act Section 301 and Prohibitions 1 and 2 of the Basin Plan based on CAL FIRE's inspection on January 29, 2016:
 1. Delivery of fine sediment from a small ephemeral channel and other drainages from the Site directly into French Creek;
 2. Elevated turbidity in French Creek;
 3. Sediment deposits and earthen material discharged from the Site into watercourses, which are tributary to French Creek; and
 4. Large areas of disturbed and exposed soil exhibiting sheet and rill erosion that have and will continue to discharge or threatens to discharge sediment from the Site during storm events.
- B. On February 9, 2016, Regional Water Board staff conducted an inspection at the Site and observed the following conditions in violation of Clean Water Act Section 301 and Prohibitions 1 and 2 of the Basin Plan:
 1. Mud spoils created from well drilling activities were deposited and flowed along an existing ditch;
 2. Evidence of sediment transported from the cleared areas at the Site to an ephemeral watercourse tributary to French Creek; and
 3. A constructed feature or detention basin, stockpiled soil, burned stumps and earthen materials placed within the channel of the ephemeral watercourse at the Site.

- C. The Discharger failed to seek enrollment for coverage under the Regional Water Board's Categorical Waiver prior to discharging waste associated with activities observed under I.D. above by the Water Board staff. This violates Water Code sections 13260 and 13264.
- D. The Discharger failed to submit a Notice of Intent for coverage under the Construction General Permit prior to discharging waste that affected the quality of waters of the state. Discharge of waste to waters of the state and the United States without an NPDES permit violates section 13260 of the Water Code. At the Site, timber harvest and brush removal as well as construction and grading operations have created over one acre of disturbed and exposed land requiring coverage under the Construction General Permit.

IV. Information Required

The Discharger is required to submit the reports and documentation listed below. All technical reports required in conjunction with this Order are required pursuant to Water Code section 13267 and shall include a statement by the Discharger, or an authorized representative of the Discharger, certifying (under penalty of perjury in conformance with the laws of the State of California) that the signer has examined and is familiar with the report and that to his or her knowledge, that the report is true, complete, and accurate. The Discharger shall also state if it agrees with any recommendations/proposals and whether it approves 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.

- A. In addition to the Risk Level III CGP *Rain Event Action Plan* (REAP) requirements, the Discharger is required to submit all REAPs whenever they are developed pursuant to CGP requirements (page 8 of Attachment E) to SMARTS and include the additional information as follows:
 - a. A map depicting the locations of active and inactive construction sites and BMPs at each of the locations.
 - b. A summary describing the function of each BMP, including whether it is a stand-alone control, or is dependent on the effectiveness of other controls to function properly.

- c. A summary describing the condition of each BMP, including the date that it was last maintained, its current condition, and whether it requires maintenance to function properly.
 - d. A summary of how any equipment onsite will be protected to ensure that it will not be exposed to precipitation.
- B. By August 26, 2016, the Discharger shall submit reports, acceptable to the Executive Officer, as specified below::**
 1. A description and chronology of erosion and sediment controls that had been implemented prior to April 26, 2016 to prevent the discharge of sediment into French Creek and its tributaries. This shall include, but is not limited to, the following:
 - i. Dates that specific Best Management Practices (BMPs) were applied to control erosion and sediment discharges from the Site;
 - ii. Location specific BMPs applied;
 - iii. Site-specific purpose for each BMP;
 - iv. A summary of inspection and/or monitoring activities to assess the effectiveness of each BMP; and
 - v. A summary of maintenance activities of each BMP.
 2. Any available documentation prior to April 26, 2016, including photographic evidence, confirming installation of erosion and sediment control measures, and removal of sediment and other materials placed in or discharged into stream channels on the Site.
 3. An estimate of the total disturbed area as of April 25, 2016, which includes but is not limited to, areas of exposed soil due to clearing, grading, grubbing, and excavation activities; stockpiles; storage and staging areas; and access roads.
 4. An estimate of the volume of soil and/or sediment discharged to French Creek or waters of the state prior to April 26, 2016. The estimated volume shall be based on site runoff estimates based on soil type, steepness of slopes and rainfall data including a Revised Universal Soil Loss Equation (RUSLE) analysis as well as adequately or inadequately functioning sediment and erosion control measures.
 5. A description of the constructed feature or detention basin, stockpiled soil, burned stumps and earthen materials placed within the channel of the ephemeral watercourse at the Site (see Alleged Violations & Finding III.B.3.). This shall include, but is not limited to:
 - i. The purpose of the detention basin;
 - ii. The beginning and end dates when it was constructed;

- iii. The method of construction;
 - iv. The dimensions of the detention basin;
 - v. The extent (width, depth and length) of the ephemeral watercourse that was disturbed or altered associated with the construction of the detention basin;
 - vi. The volume of sediment that was excavated during construction; and
 - vii. The location(s) where the excavated material was deposited or disposed of.
6. A detailed work plan for restoration to address all unpermitted impacts to waters of the state. The work plan shall include a plan to remove the constructed detention basin in the ephemeral watercourse and to restore the ephemeral stream. The work plan shall include a schedule of implementation.
- C. The Discharger shall provide documentation that reports required under this Order are prepared under the direction of appropriately qualified professionals.** As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

V. Basis for Requirements in this Letter

The reports required are necessary for the Regional Water Board to determine the state of compliance at the Site, and if the Discharger has taken, or will take, necessary actions to protect water quality and the beneficial uses of French Creek. The burden, including costs of the reports, bears a reasonable relationship to the need for the reports and the benefits to be obtained from them. The reports required in this Order are reasonable and would be required by point and non-point source dischargers in similar circumstances, including those at construction, dairy, commercial and industrial sites. The burden of preparing such a report bears a direct relationship to the benefits of protecting French Creek from unauthorized discharges that could impair its beneficial uses.

The Regional Water Board reserves its rights to fully enforce the law by taking enforcement actions such as a cleanup and abatement order, a cease and desist order, time schedule order, administrative civil liabilities, and referral to the State Attorney General. Administrative liabilities may be assessed beginning with the date that a violation first occurred. The liabilities can be up to \$10 per gallon and/or \$1,000 to \$10,000 per day per violation pursuant to Water Code sections 13261, 13385 and/or 13268.

VI. Right to Petition

Any person aggrieved by this action of the Regional 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 and following. The State Water Board must receive the petition by 5:00 p.m., 30 calendar 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.

Should you have any questions regarding this matter, please contact Cecile Morris of my staff at (707) 576-2347 or Cecile.Morris@waterboards.ca.gov.

Sincerely,

Shin-Roei Lee
Assistant Executive Officer

160727_CNM_ef_JH Ranch_NOV & 13267 Order

Enclosures: Attachment A: February 25, 2016, Water Board Site Inspection Report and corresponding attachments
Attachment B: February 9, 2016, CAL FIRE Notice of Violation and corresponding attachments

Certified-Return Receipt Requested