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## North Coast Regional Water Quality Control Board

February 24, 2017

Rhys Vineyards  
Attn: Kevin Harvey  
11715 Skyline Blvd.  
Los Gatos CA 95033

Passalacqua, Mazzoni, Gladden,  
Lopez, & Maraviglia, LLP  
Thomas Passalacqua  
1201 Vine Street, Suite 200  
Healdsburg, CA 95448  
[Tom@ping-legal.com](mailto:Tom@ping-legal.com)

Dear Mr. Harvey:

Subject: **Notice of Violation of Unpermitted Discharges of Waste and Requirement for Information, Pursuant to Water Code Section 13267:**  
Rhys Vineyard, Mendocino County Property, 6501 Branscomb Road near Laytonville

Violations: Section 301 of the Federal Water Pollution Control Act (Clean Water Act), the Water Quality Control Plan for the North Coast Region (Basin Plan); and Section 13376 of the Porter Cologne Water Quality Control Act (Water Code)

File: Rhys Vineyard, Kevin Harvey Owner, Mendocino County, 6501 Branscomb Road near Laytonville - WDID No. 1B15139CNME; Place ID: 818929

Rhys Vineyards is hereby given notice that it has violated section 301 of the federal Clean Water Act, California Water Code section 13376, and Basin Plan prohibitions.

Pursuant to Water Code section 13267, this letter requires that no later than 45 days from the date of this Order Rhys Vineyard prepare and submit a technical report or reports containing the information listed below (see Information Required). Please direct the report and any related correspondence to the attention of Regional Water Board staff, Stormer Feiler.

### Applicable Requirements and Alleged Violations

In this case, at a minimum, a Clean Water Act section 401 Water Quality Certification and/or Waste Discharge Requirements would have been necessary to conduct the work

observed by Regional Water Board staff in and adjacent to waters of the state and United States.

To the best of our knowledge, all site construction and development work was conducted without required permits.

Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States. Compliance with the prohibition is obtained by receiving the appropriate permit for the scope of work prior to the initiation of the project and its attendant scope of work; unpermitted development is a violation.

Section 13376 of the Water Code requires that a report of waste discharge be filed by any person discharging pollutants or proposing to discharge pollutants to waters of the United States. The discharge of pollutants or dredged or fill material by any person, except as authorized by waste discharge requirements or dredged or fill material permits, is prohibited.

Additionally, the Basin Plan (p. 4-29) prohibits the following:

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.<sup>1</sup>
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.

Rhys Vineyard has violated section 301 of the CWA, the Water Code, and the Basin Plan by discharging earthen materials to tributaries to the South Fork Eel River and the Ten Mile River, which are waters of the United States, and are both Clean Water Act section 303(d)-listed for sediment impairment; the South Fork Eel River is also listed for temperature impairment. The United States Environmental Protection Agency approved the Ten Mile River Sediment Total Maximum Daily Load (TMDL) on December 16, 1999, and the South Fork Eel River temperature and sediment TMDL in December of 2000.

Rhys Vineyard purchased the property, previously known as the Clarke Ranch, on January 1, 2015.

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<sup>1</sup> Table 2-1 of the Basin Plan identifies beneficial uses for each hydrologic area in the Region, as well as for specific waterbodies and broad categories of waters (i.e., bays, estuaries, minor coastal streams, ocean waters, wetlands, and groundwaters). Protection will be afforded to the present and potential beneficial uses of waters of the North Coast Region as designated and presented in Table 2-1. The beneficial uses of any specifically identified water body generally apply to all its tributaries. Since the “streams” and “watercourses” where Rhys Vineyards is alleged to have discharged pollutants are tributaries to the South Fork Eel River and Ten Mile River, they share the same beneficial uses.

On September 29, 2015, in response to a complaint received from the California Department of Fish and Wildlife, Regional Water Board staff participated in a multi-agency inspection of the subject property, as discussed in the enclosed inspection report. Javier Tapia of your staff, and a contractor, Ken Seckora, accompanied the inspection team during this inspection. During the inspection, Regional Water Board staff observed 15 or more acres of cleared/graded area with no apparent erosion/drainage controls, and evidence that up to approximately 1650 feet of stream channel had been filled within this graded area. Staff also observed many locations where recently constructed or reconstructed roads crossed streams without culverts, bridges or any other forms of stream crossing, and staff observed many locations where there was loose and unconsolidated earthen fill material in, and adjacent to streams.

At the close of the inspection, Regional Water Board and DFW staff recommended to Mr. Tapia and Mr. Seckora that steps be taken to immediately remove all earthen fill from streams and to pull back all perched fills along roads where there is a potential for that material to be transported into waters of the state and United States in the event of rainfall. Staff further recommended that excess earthen material be placed at a stable location away from streams; that appropriate erosion controls be applied to these stored materials; and that appropriate erosion control measures be implemented to stabilize instream excavation sites following removal of earthen fill materials.

On January 13, 2017, during a multi-agency site inspection, Regional Water Board staff observed evidence of additional or continuing discharges of waste to receiving waters including possible seeps and wetlands (waters of the State). A report of observations and violations documented during that inspection will follow under separate cover.

### **Information Required**

No later than 45 days from the date of this Order, the technical report(s) required, containing the information listed below, shall be submitted to Regional Water Board staff as detailed herein:

1. A report describing the current conditions of the Rhys Vineyard development at 6501 Branscomb Road in Mendocino County. The development report shall include a list of and attachments of all designs, diagrams, maps, plans, photographs and as-built(s) of all site and vineyard development including but not limited to the vines planted; areas graded; roads, stream crossings, ponds with inlets and outfalls, reservoirs with inlets and outfalls, rock pits, or borrow pits, surface and subsurface drainage systems constructed; and permits applied for and/or received for the development on the Rhys property parcels denoted as Mendocino County Assessor Parcel Numbers 015-050-61, 015-050-57, 015-050-56, 015-050-55, 015-050-50, 015-050-51, and 014-300-19. Any and all corrective actions that were taken since the Regional Water Board staff inspection on September 29, 2015, shall be demarcated in the development report.
2. Any available delineation of all waters of the state including wetlands, seeps, springs and streams prior to the site and vineyard development on the Rhys property parcels denoted as Mendocino County Assessor Parcel Numbers 015-050-61, 015-050-57, 015-050-56, 015-050-55, 015-050-50, 015-050-51, and 014-300-19. If delineation was

never performed, then provide a forensic delineation to determine the extent and types of waters of the state and United States that existed prior to site and vineyard development. This forensic delineation shall be conducted through historical ecology by a wetland professional. In addition to the forensic delineation, provide the chronology (date and year), the volume and type of materials placed or dredged from within the delineated areas due to the site and vineyard development.

3. A current jurisdictional delineation performed in accordance with the 1987 United States Army Corps of Engineers Wetlands Delineation Manual and 2010 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0)*. The current delineation shall include wetlands, seeps, springs and streams on the Rhys property parcels denoted as Mendocino County Assessor Parcel Numbers 015-050-61, 015-050-57, 015-050-56, 015-050-55, 015-050-50, 015-050-51, and 014-300-19.
4. A hydrologic report that describes topography, vegetation, geology, soil types, land use, drainage and runoff patterns before and after site and vineyard development.
5. A permit application (Form 200<sup>2</sup>) for any activities that have resulted in and could result in the discharge of dredged or fill material to waters of the state in accordance with California Code of Regulations, title 23, section 3855. An alternative analysis must be part of the application that shows a sequence of actions will be taken to first avoid, then to minimize, and lastly mitigate for adverse impacts to waters of the state.

### **Basis for Requirements in this Letter**

The reports required are necessary for the Regional Water Board to determine the state of compliance of the Rhys Vineyard property and to determine whether Rhys Vineyard has taken, or plans to take, necessary actions to ensure protection of the beneficial uses of the South Fork Eel River and the Ten Mile River, and tributaries thereto. The burden, including costs of the report, bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

Please note that compliance with the requirement of this letter does not preclude enforcement action 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 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, rather than as of the date of this notice.

Pursuant to Water Code section 13385, any person who violates Water Code section 13376 can be liable for up to \$10,000 for each day in which the violation occurs. Where there is a

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<sup>2</sup> [http://www.waterboards.ca.gov/publications\\_forms/forms/docs/form200.pdf](http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf)

discharge, an additional liability may be assessed, not to exceed \$10 per gallon by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Pursuant to Water Code section 13268, any person failing or refusing to furnish technical reports required under Water Code section 13267, or falsifying any information provided therein, is guilty of a misdemeanor and subject to an administrative civil liability of up to one thousand dollars (\$1,000) for each day in which the violation occurs.

Should you have any questions regarding this matter, please contact Stormer Feiler of my staff at (707) 543-7128 or, by email, at [Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov).

Sincerely,

Shin-Roei Lee  
Assistant Executive Officer

170224\_SRF\_dp\_Rhys\_NOV

Certified Return Receipt Requested

Attachment A: Regional Water Board Staff Inspection Report

Attachment B: 13267 Fact Sheet

Attachment C: 10/14/2015 Notice of Violation from Department of Fish and Game

cc: California Department of Fish and Wildlife, Wes Stokes, [Wes.Stokes@wildlife.ca.gov](mailto:Wes.Stokes@wildlife.ca.gov)  
Gordon Leppig, [Gordon.Leppig@wildlife.ca.gov](mailto:Gordon.Leppig@wildlife.ca.gov)  
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