
North Coast Regional Water Quality Control Board

August 18, 2017

Chris McCook Contracting (License # 869059)
Attn: Mr. Chris McCook
4391 Price Avenue
Santa Rosa, CA 95407

Dear Mr. McCook,

Subject: Notice of Violation of Unpermitted Discharges of Waste and Requirement for Information, Pursuant to Water Code Section 13267: Instream Bank Stabilization at 21786 Moscow Road, Monte Rio

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

File: Instream Bank Stabilization at 21786 Moscow Road Monte Rio; WDID 1B171423WNSO; ECM PIN CW-736983

On June 26, 2017, the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) received your email describing instream bank stabilization work that you performed in January 2017. Construction activities were performed without receiving a Clean Water Act Section 401 Water Quality Certification (401 permit). Your unpermitted activities are in violation of Section 301 of the Federal Water Pollution Control Act (Clean Water Act), Section 13376 of the Porter Cologne Water Quality Control Act (Water Code) and Discharge Prohibitions of the Water Quality Control Plan for the North Coast Region (Basin Plan).

Pursuant to Water Code section 13267, you are required to submit technical reports containing the information listed below (see Information Required) no later than 45 days from the date of this letter (13267 Order). Please direct the reports and any related correspondence to the attention of Regional Water Board staff Kaete King.

A. Background

1. In the fall of 2007, you worked with our office to obtain an emergency permit for bank stabilization work (Russian River Bank Erosion at Moscow Road; WDID 1B07154WNSO). Special condition 9 of your Army Corps authorization (File Number 2007-400827N) stated, "For any subsequent applications for bank stabilization projects at this project location, you shall contact and formulate project plans with an engineer familiar with bank stabilization techniques, and engineered drawings shall be submitted with your application."
2. You phoned the Regional Water Board twice in early 2017 and spoke with staff member Gil Falcone who informed you of our policies and procedures for permitting an emergency project.
3. On June 26, 2017, you emailed the Regional Water Board and other agencies to describe bank stabilization work you performed on your property at 21786 Moscow Road, Monte Rio, in January 2017 (enclosure). From the information you provided, we deduce that the project involved using an excavator to move earth and to install plastic sheeting, rock, and gravel on the bank of the Russian River in contact with flowing water. The project, as described and shown in your email, does not meet water quality standards and was performed without permits.
4. You also performed unpermitted construction on your neighbor's property at 21800 Moscow Road (Tobey Property) and caused discharge of waste. This work also does not meet water quality standards. Gary Tobey, property owner of 21800 Moscow Road, has hired a professional engineer and has submitted an application for Clean Water Act Section 401 Water Quality Certification (WDID 1B171485WNSO) to perform restoration and mitigation. The Tobey Property is expected to be restored prior to November 2017, using bioengineering techniques.

B. Alleged Violations

1. California Water Code: 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 discharge is a violation.
2. 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.

3. The Basin Plan prohibits the following:
 - a. 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.
 - b. 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.

C. Information Required

No later than 45 days from the date of this 13267 Order, technical reports, containing the information listed below, shall be submitted to Regional Water Board staff:

1. A report describing the activities performed in a chronological order with beginning and end dates at 21786 and 21800 Moscow Road. The report shall also include:
 - a. An assessment of all threatened and endangered species located in the project areas at the time of construction;
 - b. A calculation of the linear feet and acreage of waters of the state and United States that were temporarily or permanently impacted, and volume of fill;
 - c. A characterization of all fill materials;
 - d. A detailed description of construction methods used;
 - e. Any designs, diagrams, maps, plans, and as-builts of the activities performed;
 - f. A description of what measures, if any, were taken to prevent or mitigate and/or monitor sediment releases from construction activities; and
 - g. Copies of permits applied for and/or received.
2. A workplan for restoration and mitigation at 21786 Moscow Road that addresses all unpermitted impacts to waters of the state and United States, with the goal of restoration of ecological functions and mitigation of temporal and permanent loss of functions. The workplan shall include:
 - a. An alternatives analysis identifying the least environmentally damaging practical alternative (i.e. bioengineering techniques are considered having less impact than rip rap on stream bank protection projects);
 - b. An assessment of how the restoration will weave together with the repairs being performed at Tobey Property;
 - c. Measureable success criteria to ensure functions are fully restored and/or adequately mitigated;
 - d. An annual monitoring and reporting plan that demonstrates progress toward the success criteria; and
 - e. A 401 Water Quality Certification and/or Waste Discharge Requirements application for dredge/fill projects to permit the restoration and mitigation

per the workplan. The application can be found here:

http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml

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 discharge, an additional liability may be assessed up to \$10 per gallon.

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.

Please contact Ms. Kaete King at Kaete.King@waterboards.ca.gov or (707) 576-2848, with any questions pertaining to this Notice of Violation and 13267 Order and to discuss obtaining a 401 water quality certification permit for this project, at your earliest opportunity.

Sincerely,

Shin-Roei Lee
Assistant Executive Officer

170818_KRK_er_McCook NOV

Enclosure: McCook email with photos

Certified - Return Receipt Requested

cc: Chris McCook, christophercmccook@yahoo.com
Bryan Matsumoto, Army Corps of Engineers, Bryan.T.Matsumoto@usace.army.mil
Karen Weiss, CDFW, Karen.Weiss@wildlife.ca.gov
Reg Cullen, Sonoma County Engineering, Reg.Cullen@sonoma-county.org
Mark Franceschi, Sonoma County Code Enforcement,
Mark.Franceschi@sonoma-county.org
Jennifer Siu, EPA, siu.jennifer@epa.gov