
North Coast Regional Water Quality Control Board

June 13, 2017

Mr. Kenneth McCoy
Ms. Darlene McCoy
2301 Peoria Street
Aurora, CO 80010

Dear Kenneth and Darlene McCoy:

Subject: Notice of Violation and California Water Code 13267, Order No. R1-2017-0025 to Submit Technical Reports – Trinity County Assessor's Parcel No. 008-040-06-00

You are receiving this Notice of Violation and order to submit information pursuant to California Water Code (Wat. Code) section 13267 (13267 Order) because, based on information available to the North Coast Regional Water Quality Control Board (Regional Water Board) and the State Water Resources Control Board (State Water Board) Office of Enforcement staff, you are responsible for the threat of an unlawful discharge of waste¹ into waters of the state. This 13267 Order requires information from you about the domestic water well on your property, Trinity County Parcel 008-040-06-00 (Property), which you have owned since 2005.

On June 8, 2016, Regional and State Water Board staff inspected several parcels in the Sharber Creek watershed, including your Property. The purpose of the inspection was to observe site conditions, including erosion and storm water drainage controls, grading issues, and overall site maintenance, as well as water diversion and use on the Property in order to evaluate potential impacts to Sharber Creek. Sharber Creek is a water of the state² that supports a number of beneficial uses, including providing habitat for spawning coho salmon. The inspection report is attached as Attachment B.

¹ The term "waste" is defined as "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." (Wat. Code § 13050, subd. (e))

² The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050, subd. (e))

PURSUANT TO DELEGATED AUTHORITY, THE ASSISTANT EXECUTIVE OFFICER HEREBY FINDS:

1. On June 3, 2016, the California Department of Fish and Wildlife obtained a warrant to search the Property located just north of Fountain Ranch Road near Salyer. The search warrant also authorized the Regional and State Water Boards to inspect and investigate the Property.
2. According to the Trinity County Assessor-Recorder's Office, Mr. Kenneth McCoy and Ms. Darlene McCoy (Dischargers) own the Property.
3. On June 6, 2016, Regional Water Board staff confirmed that there is no record of the Property having prior regulatory oversight or coverage under a permit with the Regional Water Board. There is no record of any person obtaining coverage under Regional Water Board Order No. R1-2015-0023 *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operation with Similar Environmental Effects* (Waiver) or submitting a report of waste discharge.
4. Anyone who intends to cultivate cannabis, or allow the cultivation of cannabis on his/her property by any tenant(s) or lessee(s), must obtain coverage under the Waiver or under individual waste discharge requirements.
5. On June 8, 2016, Regional and State Water Board staff inspected the Property to determine if any wastes, sediment, or other materials were discharging or threatening to discharge to Sharber Creek.
6. During the inspection, State Water Board Division of Water Rights measured 29,366 square feet of cannabis cultivation area and other conditions on the Property that would require coverage under the Waiver or the submittal of a report of waste discharge; specifically, staff noted the threat of a discharge of waste to the underlying aquifer.
7. As described in the enclosed inspection report (Attachment B), staff observed a steel-cased, 6-inch diameter water supply well without a sanitary seal on the top of the casing, exposing the groundwater³ to the atmosphere.
8. Because the well is large (6-inch diameter) and open to the atmosphere, it is exposing the underlying groundwater to contamination and constitutes a threat to

³ The North Coast Regional Water Quality Control Plan (Basin Plan) defines groundwater as "subsurface water in soils and geologic formations that are fully saturated all or part of the year. It includes areas where saturation of the soils and geology fluctuate, including areas of capillary fringe. Groundwater bearing formations sufficiently permeable to transmit and yield significant quantities of water are called aquifers." The Basin Plan also states "'groundwater' includes all subsurface waters, whether or not these waters meet the classic definition of an aquifer or occur within identified groundwater basins (Basin Plan, page 2-18.00)."

water quality that could impair the beneficial uses of waters of the state, specifically municipal and domestic drinking water supply. As such, it constitutes a future risk to users of down-gradient wells and an immediate health risk to anyone drinking from this well. Control measures to prevent waste from discharging to waters of the state must be implemented.

9. Based on the assessment of a licensed Professional Geologist skilled in geomorphologic hazards, and documented in the enclosed, signed inspection report (Attachment B), your domestic well is located within the floodplain of Sharber Creek and within a former channel of the Trinity River, which is hydraulically connected to the Sharber Creek floodplain. Armoring of the wellhead and supply line may reduce the risk of damage from natural hazards.

Based on the findings, your Property is discharging or has the potential to discharge waste to waters of the state via the uncapped well and from pollutants comingling with and being transported by stormwater runoff into Sharber Creek.

The following California Water Code (Wat. Code) section governs the Dischargers' rights and responsibilities under this Order:

I am issuing this subsequent directive pursuant to Wat. Code section 13267, which states, in relevant part:

- (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements...may investigate the quality of any waters of the state within its region.
- (b)(1) In conducting an investigation specified in subdivision (a), 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.

The costs associated with sampling the domestic well for bacteria, nitrates, and other pollutants; reporting analytical results; properly sealing the domestic well; and protecting the well from damage due to flooding in the floodplain of Sharber Creek, are both necessary and reasonable for protecting water quality and human health. Both Sharber Creek and its underlying groundwater have the beneficial uses of Municipal and Domestic Water Supply (MUN) and Agricultural Water Supply (AGR); the groundwater also has the beneficial use of

Freshwater Replenishment to Surface Waters (FRSH). The Discharger shall sample for bacteria, nitrogen compounds, caffeine, and general minerals. To protect these beneficial uses, the State and Regional Water Boards will evaluate the sample results to characterize water in the well and evaluate whether its quality has been adversely impacted such that beneficial uses are impaired or threatened with impairment.

Because the well is not sealed, it creates a pathway for bacteria from bird droppings, animals, and human wastewater. The parameters, listed in the Monitoring and Reporting Program (MRP) (Attachment A), were precisely and judiciously chosen to determine and characterize outside influence to the underlying groundwater, based on site conditions and gastrointestinal complaints from the residents.

IT IS HEREBY ORDERED, pursuant to Wat. Code section 13267,

- 1. Beginning in third quarter 2017** and continuing until the well is sealed and this 13267 Order is rescinded, conduct monitoring and reporting in accordance with the requirements in the enclosed Monitoring and Reporting Program (MRP) (Attachment A). You shall submit results of the quarterly monitoring by the 1st day of the second month after the reporting period. For example, your first report is due by **November 1, 2017**.
- 2. By July 15, 2017**, you must submit to the State Water Board a response to this Order that includes the following:
 - a. Proof of enrollment under the Regional Water Board's Waiver (refer to Finding 3) or under individual waste discharge requirements. This may include an enrollment confirmation letter from the Regional Water Board, verification from a third party, or a copy of enrollment forms with the date submitted.
 - b. Alternatively, if the Discharger discontinues cannabis cultivation and other activities with similar environmental impacts, proof of the cessation of all activities.
 - c. A sampling plan and Standard Operating Procedures for sampling to comply with the enclosed MRP and its provisions.
 - d. A schedule and plan to seal and protect the domestic well from external contaminants.
- 3. By July 31, 2017**, you must provide documentation to the State Water Board, signed by either a county official or a licensed contractor that the well on the Property has been sealed and complies with Trinity County ordinance and California well standards as provided in the California Department of Water Resources Bulletins 74-90 and 74-81, Water Well Standards:

http://www.water.ca.gov/groundwater/wells/california_well_standards/well_standards_content.cfm.

The technical reports and plans required in this Order shall be timely submitted to:

Ms. Shin-Roei Lee
Assistant Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Email: NorthCoast@waterboards.ca.gov

The monitoring report as detailed in the MRP is necessary and appropriate to allow State and Regional Water Board staff to:

- 1) Characterize the water in the well,
- 2) Evaluate whether its quality has been adversely impacted,
- 3) Determine if beneficial uses are impaired or threatened with impairment, and
- 4) Ensure the protection of the groundwater as a source of drinking water.

Any modification to this 13267 Order shall be in writing and approved by the Assistant Executive Officer, including any potential deadline extensions. If you are unable to perform any activity or submit any document in compliance with the schedule set forth herein, you may request, in writing, an extension of the time specified. The written extension requires shall include justification(s) for the delay and shall be submitted to the Assistant Executive Officer at least 30 days prior to the deadline that you are requesting to extend. The Assistant Executive Officer may grant an extension in writing for good cause.

Failure to submit complete and timely technical and monitoring reports required in this 13267 Order will subject you to further enforcement action by the Regional Water Board. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring 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. The Regional Water Board reserves its right to take any enforcement action as authorized by law.

Any person affected by the technical and monitoring report requirements provided above may petition the State Water Board to review those requirements 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 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 will be provided on request or may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/

For any questions on this matter, please contact Mr. Jim Barton by phone at (916) 319-8576 or by email at Jim.Barton@waterboards.ca.gov or Ms. Diana Henriouille, senior of the North Coast Regional Water Board's Compliance Assurance Unit, by phone at (707) 576-2350 or by email at Diana.Henriouille@waterboards.ca.gov.

Sincerely,

Shin-Roei Lee
Assistant Executive Officer

17_0025_McCoy_13267_NOV

Attachment A - Monitoring and Reporting Program
Attachment B - June 8, 2016 Water Quality Inspection Report
Attachment C - Notice of Intent Form for Order No. R1-2015-0023

cc: Trinity County Environmental Health Department
Ms. Kristalynne Anderson, KAnderson@trinitycounty.org
Department of Fish and Wildlife
Mr. Jeremy Valverde, Jeremy.Valverde@wildlife.ca.gov
Mr. DeWayne Little, DeWayne.Little@wildlife.ca.gov
Mr. Scott Bauer, Scott.Bauer@wildlife.ca.gov
North Coast Regional Water Quality Control Board
Ms. Diana Henriouille, Diana.Henriouille@waterboards.ca.gov
State Water Resources Control Board
Mr. Cris Carrigan, Cris.Carrigan@waterboards.ca.gov
Mr. Andrew Tauriainen, Andrew.Tauriainen@waterboards.ca.gov
Ms. Yvonne West, Yvonne.West@waterboards.ca.gov
Ms. Erin Mustain, Erin.Mustain@waterboards.ca.gov
Ms. Heather Mapes, Heather.Mapes@waterboards.ca.gov
Mr. Taro Murano, Taro.Murano@waterboards.ca.gov
Mr. Skyler Anderson, Skyler.Anderson@waterboards.ca.gov