
North Coast Regional Water Quality Control Board

March 8, 2018

Mr. Steven Westbrook
P.O. Box 75
Smith River, CA 95567
ReservationRanchSteven@gmail.com

Dear Mr. Westbrook:

Subject: **Notice of Violation of California Water Code Section 13267 Order dated January 9, 2017**

File: Reservation Ranch; WDID No. 1B11125DDN; CIWQS PIN CW-775497

On January 9, 2017, the North Coast Regional Water Quality Control Board's (Regional Water Board) Assistant Executive Officer issued a Notice of Violation and Order to submit technical reports pursuant to Water Code section 13267 (13267 Order) to you, co-owner and manager of Reservation Ranch (Discharger), for unlawful discharges of waste into waters of the state and violation of the *Conditional Waiver of Waste Discharge Requirements, Order No. R1-2012-0003 for Existing Cow Dairies in the North Coast Region* (Conditional Waiver).

This letter serves as a Notice of Violation of the 13267 Order for the reasons set forth below.

Violations

The 13267 Order required the Discharger to submit technical reports containing the following information by April 6, 2017:

- 1) A wetland and waters delineation and hydrology report, including:
 - a. A jurisdictional wetland delineation prepared pursuant to the United States Army Corps of Engineers protocol;
 - b. A forensic wetland delineation;
 - c. A hydrologic report;
 - d. A seasonally high groundwater elevation delineation for Area 3;
- 2) A workplan to estimate volume of non-native material for the Assistant Executive Officer's approval;

- 3) An inventory and characterization of trash, including:
 - a. Trash volume;
 - b. Trash type;
 - c. Trash origin;
 - d. Trash placement timeline;
- 4) A map showing current and historical disposal of animal carcasses and volume estimates;
- 5) Levee details, including:
 - a. Dates of levee construction;
 - b. Levee dimensions;
 - c. Levee construction methods and materials;
 - d. Permits obtained for levee construction; and
- 6) Dredging in Ritmer Creek, including:
 - a. Dates of dredging;
 - b. Volume of dredged material;
 - c. Purpose and need for dredging;
 - d. Permits for dredging;
 - e. Photographs of creek.

The Regional Water Board issued the Discharger a Notice of Violation on April 17, 2017, for failure to submit the six required technical reports on or before April 6, 2017. The Regional Water Board issued another Notice of Violation to the Discharger on July 11, 2017, for submittal of an inadequate technical report and continued failure to submit technical reports on or before April 6, 2017.

The reports submitted to date by the Discharger and the status of Regional Water Board review are as follows:

- *A Workplan for Reservation Ranch Notice of Violation Revision* was submitted on July 28, 2017, to comply with 13267 Order requirement 2. The Regional Water Board conditionally approved the Workplan to estimate volume of non-native material in a letter to the Discharger dated August 11, 2017. The Regional Water Board finds that the Workplan submittal and its implementation, including submittal of final reports, satisfies 13267 Order requirement 2.
- *A Wetland Delineation Report* was submitted on November 22, 2017, to comply with 13267 Order requirement 1.A. The Wetland Delineation Report identifies a survey of plant species found within the study area. During the September 19, 2016, resource agency inspection of the study area, California Department of Fish and Wildlife Senior Environmental Scientist, Gordon Leppig, observed a significant

population of Lyngbyei's sedge (*Carex lyngbyei*), a California rare plant¹. The Wetland Delineation Report is inadequate because it did not identify *Carex lyngbyei* as a plant within the study area. The Discharger must re-evaluate its plant survey findings and determine if *Carex lyngbyei* was either missed or misidentified as a different sedge species. Upon plant survey re-evaluation, a revised Wetland Delineation Report or addendum must be submitted to account for presence of *Carex lyngbyei*.

The Wetland Delineation Report also included information to comply with 13267 Order requirement 3.C. The Regional Water Board finds that the Wetland Delineation Report satisfies 13267 Order requirement 3.C.

- A *Seasonal High Groundwater Delineation* was submitted on December 1, 2017, to comply with 13267 Order requirement 1.D. The Regional Water Board finds that the Seasonal High Groundwater Delineation satisfies 13267 Order requirement 1.D.
- A *Forensic Wetland and Waters Report* (Forensic Report) was submitted on December 11, 2017, to comply with 13267 Order requirement 1.B. The Regional Water Board finds that the Forensic Report satisfies 13267 Order requirements 1.B and 4.

The Forensic Report also included information to comply with 13267 Order requirement 5.A, which requires information on the date or dates of levee construction. The Forensic Report uses aerial imagery interpretation to infer that levee construction "within the vicinity of Areas 1 and 2" was completed prior to October 18, 1972. The Regional Water Board finds that the aerial photos are inadequate and do not provide a sufficient level of levee construction detail to reliably support the inference that levee construction within these areas was completed by October 18, 1972. Moreover, the 13267 Order required information for levee construction date(s) for the length of levee shown in Attachment C of the 13267 Order. The reports provided to date do not provide levee construction dates for the entire length of the levee shown in Attachment C. The Discharger has not satisfied 13267 Order requirement 5.A.

- A *Hydrologic Report* was submitted December 13, 2017, to comply with 13267 Order requirement 1.C. The Regional Water Board finds that this submittal satisfies 13267 Order requirement 1.C.

This Notice of Violation notifies you that 13267 Order requirements 1.A, 3.A, 3.B, 3.D, 5, and 6 remain outstanding. Because you failed to submit these technical reports on April 6, 2017, you are in violation of the 13267 Order. Each of the six technical reports required in the 13267 Order are subject to penalties under Water Code section 13268 for each day of violation. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports required under Water Code section 13267, or falsifying any information provided therein, is guilty of a misdemeanor and subject to an

¹ California Native Plant Society, Rare Plant Program. 2018. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 23 February 2018]

administrative civil liability of up to one thousand dollars (\$1,000) for each day in which the violation occurs. Regional Water Board staff will consider both the time and adequacy of the Discharger's response to this Notice of Violation when deciding whether to pursue formal enforcement actions, including whether to assess administrative civil liabilities.

Regional Water Board staff remains available to discuss the 13267 Order and this Notice of Violation, either in-person or via teleconference. To set up an appointment, or for any questions on this matter, please contact Brendan Thompson at 707-576-2699 or via e-mail at Brendan.Thompson@waterboards.ca.gov.

Sincerely,

Fred J. Blatt, Division Chief
Nonpoint Source and Surface Water Protection Division

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Certified—Return Receipt Requested

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