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North Coast Regional Water Quality Control Board

October 27, 2020

Mr. Andrew Pillet  
11208 Loch Haven Dr.  
Santa Rosa, CA 95401

Dear Mr. Pillet:

Subject: **NOTICE OF VIOLATION:** Unauthorized activities involving the placement of fill in waters of the State in violation of the Federal Clean Water Act and California Water Code.

File: Andrew Pillet 11208 Loch Haven Dr, Santa Rosa,  
Sonoma County, WDID No. 1B20198WNSO

This letter serves to notify you that you are in violation of the law and subject to enforcement action for engaging in and/or allowing the following activity or activities to occur on your property located at 11208 Loch Haven Dr., Santa Rosa, Sonoma County:

- Discharging waste (fill soil constitutes a waste as defined by California Water Code (Water Code) section 13050) to a stream in the Mark West Creek watershed, a tributary to the Laguna De Santa Rosa, a water of the state and/or United States, without filing a report of waste discharge and without an appropriate permit from the North Coast Regional Water Quality Control Board.

The North Coast Regional Water Quality Control Board (Regional Water Board) staff has investigated a complaint we received on August 31, 2020, regarding placement of fill and a culvert in waters of the state on a privately owned parcel in Santa Rosa, at 11208 Loch Haven Drive. Our investigation was initially prompted by an anonymous complaint we received through CalEPA's website. The Department of Fish and Wildlife (DFW) had also received the complaint and sent Warden Demetri Esquivel to document site conditions. Warden Esquivel identified three sites of concern on the property during this visit. DFW issued a statement to the landowner asking him to remove all fill

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VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

material threatening or potentially threatening to discharge to watercourses. Regional Water Board staff communicated to the DFW that we would be conducting our own investigation of the complaint and potentially pursuing enforcement if warranted. The three sites described on the property will be keyed to the map provided below (Figure 1).

### On-site observations

On September 14, 2020, Regional Water Board staff Justin Fitt and I inspected the property. At Site B, we observed fill, including soil and a culvert placed in a watercourse to cross a small ephemeral stream to enhance access to the landowner's parcel. Associated spoils were perched above the watercourse and bare earth related to the crossing construction (Figure 2).

We also inspected other sites of concern identified by the Warden. Site A is a historic crossing of a class III watercourse by a dirt road that was constructed to access a livestock coral on the property. Flow from the head of this class III watercourse is diverted from its historic channel to an inboard ditch before dispersing into a flat animal pasture. Evaluating historic aerial imagery was inconclusive to determine the date of the initial diversion. Recent work at this site has expanded the crossing and a flat area beside the landowner's barn (Figure 3). This expansion resulted in fill material being placed above the head of the cutoff channel where the material could be transported to the channel. We inspected site C, a recently compacted hillside adjacent to a swale feature on the landscape. We concluded that with the installation of erosion and sediment control, there was no risk of sediment discharge (Figure 4).

### Basin Plan Prohibitions, Objectives, and Violations

The Water Quality Control Plan for the North Coast Region (Basin Plan) contains an Action Plan for Logging, Construction, and Associated Activities (Action Plan, page 4-26.00) which includes two prohibitions that apply to the discharge of earthen materials or debris to surface waters:

- 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.”*

Fill soil and a culvert have been discharged/placed into or placed at sites where it threatens to discharge into waters of the state in violation of the Basin Plan. The Basin Plan identifies the beneficial uses for each hydrologic area in the Region, as

well as for specific waterbodies and broad categories of waters and water bodies which are to be designated and protected. The beneficial uses of any specifically identified water body generally apply to all its tributaries. A complete list of the beneficial uses designated to the Laguna de Santa Rosa watershed can be found in the North Coast Basin Plan, chapter 2, table 2.1.

#### Water Code and Clean Water Act Section 401 and 404 Violations

Fill soil and a culvert have been discharged/placed in waters of the state, and may be in violation of the Federal Clean Water Act (CWA). Dredge and fill activities within waters of the United States require prior authorization from the U.S. Army Corps of Engineers under section 404 of the CWA and issuance of a state water quality certification by the Regional Water Board under section 401 of the CWA.

The discharge and/or placement of waste into waters of the state and/or United States without filing a report of waste discharge violates Water Code sections 13260, 13264, and 13376 and CWA section 301 (33 U.S.C. section 1311). Water Code sections 13260 and 13376, respectively, require that a person who discharges or proposes to discharge waste (including clean fill, riprap or other revetment, excavation sidecast, dredge spoils, soil displaced while clearing vegetation, etc.) that could affect the quality of waters of the State, or who discharges or proposes to discharge pollutants to navigable waters of the United States within the jurisdiction of the State, shall file a report of waste discharge, which will regulate the discharge as necessary to protect the beneficial uses of the waters. Pursuant to Water Code section 13264, no person shall initiate any new discharge prior to the filing of a waste discharge report as required by Water Code section 13260. Furthermore, CWA section 301 prohibits the unpermitted discharge of pollutants to waters of the United States.

Pursuant to Water Code sections 13261 and 13265, respectively, you may be subject to administrative civil liability in an amount not to exceed \$1,000 for each day you continue to fail to submit a report of waste discharge and for each day you discharge waste prior to filing that report. Pursuant to Water Code section 13385 you may be subject to administrative civil liability in an amount not to exceed \$10,000 per day of violation or judicial civil liability in an amount not to exceed \$25,000 per day of violation for violations of Water Code section 13376, for discharge to waters of the United States and violation of the Basin Plan, as noted above.

#### Project Completion

Be advised that, as set forth above, you have discharged without a permit in violation of state and federal law and could be subject to administrative civil liability pursuant to Water Code sections 13350 and 13385 in the amount of up to \$10,000 per day of violation. We advised you that material that had been placed in the channel (site B), or in a position where it could discharge to the channel (site A) must be removed and stabilized with erosion/sediment control measures prior to the onset of the rainy season. Long term remediation of site A would entail redirecting the head of the

ephemeral watercourse to its original channel by installation of an appropriately designed crossing structure. Such work is beyond the scope of the current process and will require that you apply for and receive the appropriate water quality permit.

Subsequently on September 23 and October 5, 2020, Regional Water Board staff conducted site visits to observe and provide input on work that was being conducted by your contractor to address the violations described above. Following the October 5, 2020 site visit, we have determined that all short-term fill removal and stabilization work has been adequately completed. In order to fully resolve the violation, you must reconnect the head of the ephemeral stream above site A with its original channel below by constructing an appropriately designed drainage structure. This work should be adequately completed by no later than October 15, 2021. Please continue to work with Regional Water Board staff and other applicable local and state agencies to acquire the necessary permits.

If you have any questions please contact me at [James.Burke@waterboards.ca.gov](mailto:James.Burke@waterboards.ca.gov) or Justin Fitt at [Justin.Fitt@waterboards.ca.gov](mailto:Justin.Fitt@waterboards.ca.gov).

Sincerely,

Jim Burke  
Senior Engineering Geologist  
Southern Nonpoint Source & Forestry Unit

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cc: Diana Henrioulle, [Diana.Henrioulle@waterboards.ca.gov](mailto:Diana.Henrioulle@waterboards.ca.gov)

Site Map and Photographs



Figure 1: Overview of property and site map



Figure 2: Site B



Figure 3: Site A



Figure 4: Site C