
North Coast Regional Water Quality Control Board

November 3, 2020

Certified Mail No. 7016 2710 0000 2653 2862

Dan Renati
Renati Dairy
8371 Lower Lake Road
Crescent City, CA 95531
trapperdan66@aol.com

Dear Mr. Renati:

Subject: Notice of Violation of General Waste Discharge Requirements for Dairies in the North Coast Region, Order No. R1-2019-0001, Regarding Discharge to Americano Creek, APN 027-170-015, Petaluma

The purpose of this letter is to notify you that discharges from your dairy operations have violated General Waste Discharge Requirements for Dairies in the North Coast Region, Order No. R1-2019-0001 (GWDR), due to unauthorized dairy operations not in compliance with the GWDR. This Notice of Violation (NOV) documents the applicable conditions of the GWDR and evidence indicating a failure of the Discharger to implement those conditions. "Discharger" means the landowner and anyone working on behalf of the landowner in the conduct of dairy operations.

Renati Dairy has been regulated under the GWDR since 2019. The GWDR can be found on the Regional Water Board web page:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/dairies/

I. Introduction

This NOV applies to the June 29, 2020, Regional Water Board staff inspection (Attachment 1) in response to a complaint regarding a watercourse crossing at Assessor's Parcel Number (APN) 027-170-015, Americano Creek in Sonoma County. Rock fill and a culvert were observed within the bed and bank of Americano Creek, potentially impacting the Beneficial Uses of water and in violation of the GWDR. In addition, there were extensive areas of bare mineral soil within the riparian zone around the watercourse crossing.

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

Renati Dairy leases this parcel from landowners Gary and Bernice Caselli. During the inspection, Mr. Renati stated that the rock fill and culvert crossing have been in place for several years including during the winter rainy season. To Regional Water Board staff's knowledge, no government permits were obtained to construct or maintain this perennial crossing.

II. Requirements of the GWDR and Basin Plan

The GWDR states that failure to implement adequate best management practices (BMPs), as well as causing, or threatening to cause, pollution, contamination, or nuisance from dairy activities, are violations of the GWDR. Compliance with the requirements of the GWDR is intended to ensure compliance with water quality requirements as specified in the *Water Quality Control Plan for the North Coast Basin* (Basin Plan).¹ GWDR Finding 36 (page 10) discusses USEPA approved Total Maximum Daily Load (TMDL) impairments in North Coast waterbodies pursuant to Clean Water Act Section 303(d). The Estero Americano Hydrologic Area is currently TMDL listed for nutrient and sediment impairments. Goals include control of discharges to impaired water bodies so that TMDLs are met and beneficial uses are protected. This Finding also discusses a 2016 Basin Plan amendment to implement the Water Quality Objective for Temperature.

The sections of the GWDR cited below address pollution and the issue of the rock fill and culvert in Americano Creek during active stream flow periods and the lack of riparian vegetation in the crossing area.

A. GWDR Condition A. Discharge Prohibitions, paragraph 2 (page 16) states that:

"The collection, treatment, storage, discharge, or disposal of waste at a dairy shall not cause a condition of nuisance, contamination, pollution, or degradation of surface water or groundwater (as defined in Water Code section 13050)."

B. GWDR Condition C. Provisions, paragraph 5 (page 23) states that:

If onsite or offsite monitoring results (visual or water quality testing) indicate that the Discharger's facility (including land application areas) is causing a condition of nuisance, contamination, pollution, or degradation of surface water or groundwater, the Discharger shall take immediate corrective action to cease such pollutant discharges. The corrective action must be documented and submitted with a Noncompliance Report, as required by the MRP (Monitoring and Reporting Plan Section II.B. page 14-15).

¹ Available at:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan_documents/

C. GWDR Attachment C. Definitions, lists rock as a pollutant:

Pollutant: is defined in Title 40 Code of Federal Regulations Section 122.2 as "...dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

D. GWDR Condition C. Provisions, paragraph 11 (page 24) states that:

"This Order does not authorize any act that results in the taking of threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). Dischargers shall be responsible for meeting all applicable requirements of the Endangered Species Acts. A discharge that is deleterious to fish, plant life, mammals, or bird life or otherwise in violation of Fish and Game Code section 5650 is not a discharge which is authorized nor in compliance with the terms and conditions of this Order. The Discharger shall obtain permits as necessary and comply with permit conditions and all other applicable federal, state, county, and local laws and regulations."

E. The GWDR requires dairy operators to submit a Riparian Management Plan (RMP- see GWDR Appendix 1, pages 20 to 23) to the Regional Water Board. The RMP states that riparian areas shall be managed to protect water quality. Compliance measures include but are not limited to: allowing natural growth, sufficient vegetation to prevent erosion, maintenance of woody species, exclusion of animals from surface water or perennial streams, preventing animals from disturbing streambanks, and grazing only when it does not result in waste discharge (soil or manure) to the stream.

F. The GWDR also requires dairy operators to submit an Annual Report form to the Regional Water Board starting in 2021. These Annual Reports (Appendix 3 of the GWDR) contain a section on progress of implementation of the dairy's RMP.

III. Violations

Placement of the culvert with rock and fill and loss of vegetation in the riparian area have violated specific requirements of the GWDR listed above. In addition, unpermitted activities that discharge waste into the Waters of the United States are violations of the Federal Clean Water Act and provisions of the Water Code that implement the Act. Pursuant to Water Code section 13350, the Discharger is subject to potential enforcement actions and penalties resulting from the violations described in this NOV. Violations pursuant to Water Code section 13350 are subject to

potential administrative civil liability penalties of up to \$5,000 per day that a discharge occurs. Clean Water Act violations resulting from unauthorized discharges to Waters of the United States subject you to administrative civil liability penalties of up to \$10,000 per day, and \$1 per gallon of waste discharged in excess of the first 1,000 gallons discharged. (Water Code section 13385.)

IV. Resolution of Violation

Renati Dairy is required to implement the following actions regarding water quality protection and riparian vegetation protection in the watercourse crossing area of Americano Creek on APN 027-170-015:

- A. Permanent Crossing: If a permanent crossing is to be left in place year-round, then a professional engineer or registered geologist must design the crossing utilizing options such as multiple culverts, arch culvert, clean rock fill, flat rail car with constructed approaches, or other bridge design. The engineering design must be submitted to the Regional Water Board for approval and is covered by the dairy's existing permit: General Waste Discharge Requirements for Dairies, Order No. R1-2019-0001. The existing crossing may remain in place until a new permanent crossing is designed, approved by Regional Water Board, and constructed during the 2021 dry season; or:
- Temporary Crossing: If a temporary crossing at this location is preferred, then a proposal must be submitted to the Regional Water Board for review. Acceptable options include installation of the temporary crossing of similar design as the existing crossing (minimum 24-inch diameter culvert, clean angular rock fill) but annual installation and maintenance must protect the integrity of the creek. The temporary crossing must only be in place during the spring-summer-fall season when the creek is dry. Temporary crossings may be considered normal farming operations and may be exempt from federal and local regulations and permitting.
- No Crossing: Watercourse crossing removal and riparian area restoration would meet the requirements of the GWDR, however, the dairy operator expressed the need for a crossing of Americano Creek to continue ranching operations.
- B. Other Permits: Regional Water Board staff conducted a conference call with United States Army Corps of Engineer staff Sahrye Cohen and Kasey Sirkin on September 28, 2020 regarding your crossing. The Corps concluded that the crossing constituted normal agricultural operations and that a Clean Water Act Section e404 permit is not required. However, as discussed at the second onsite inspection that took place on October 13, 2020 with you, Cherie Blatt of the Regional Water Board staff, and Jerrad Swaney, California Department of Fish and Wildlife (DFW), this crossing requires a 1602 Agreement for changes to the creek bed and bank. Please contact james.hansen@wildlife.ca.gov at DFW for more information about obtaining a 1602 Agreement. Note that the Riparian Management Plan (GWDR Appendix 1, pages 20 to 23) improvements may qualify as environmental mitigation for the 1602 Agreement.

- C. The Riparian Management Plan must be submitted to the Regional Water Board prior to crossing reconstruction no later than **July 1, 2021** and must detail how riparian vegetation will be improved around the crossing area. Current conditions show approximately 600 linear feet of riparian area along Americano Creek that is devoid of adequate riparian vegetation. Measures such as limiting animal and machinery access to just the crossing area, replanting riparian vegetation, and protecting future plant growth for at least 35 feet from both creek banks, are necessary to protect the water quality of Americano Creek. Temporary fencing to preclude access to the creek area by cattle may be necessary during the dry season to protect riparian vegetation. The Riparian Management Plan must ensure that animal water and feed troughs are located at least 35 feet away from Americano Creek banks to help maintain vegetation. Animals may cross the creek on the new crossing but must not have access to the creek.
- D. Annual Reports: Subsequent reporting on riparian protection of this area must be in the dairy's Annual Reports beginning in 2021 (GWDR Appendix 3, Sections F (pages 3 to 4) and L (page 10)).
- E. Discharge Prohibitions: Dairy staff must familiarize themselves with the GWDR, including the Discharge Prohibitions in Section A (GWDR pages 16 and 17) to ensure discharges of nutrients or sediment to the creek do not occur in the future.
- F. APN Correction: The Renati NOI lists APN 027-070-015 as a leased parcel, however that is one digit off from the Caselli APN which is 027-170-015. The Renati's must enter the correct APN in their Water Quality Plan (GWDR Appendix 1, page 3) as due to the Regional Water Board by **July 1, 2021**.
- G. Assistance: If Renati Dairy needs help with meeting Regional Water Board requirements, the USDA NRCS offers grants for many agricultural practices including assistance with engineering designs or funding for projects such as water troughs (Code 642), groundwater wells (Code 642), riparian fencing (Code 382), or livestock crossings (Code 578). If interested, please contact Drew Loganbill andrew.loganbill@usda.gov or Brooke Pippi brooke.pippi@ca.usda.gov (707) 794-1242 ext 3. Other local organizations that can assist are the Sonoma Resource Conservation District infor@sonomarcd.org (707) 569-1488; or Gold Ridge Resource Conservation Service: Brittany Jensen brittany@goldridgercd.org (707) 823-5244. Other public and private consulting services are available in the Sonoma/Marin County area.

Regional Water Board approval of the crossing design, final completion work, and riparian area mitigation is expected to resolve this NOV. If you have any questions regarding this matter, please contact: Cherie Blatt at (707) 576-2755, cherie.blatt@waterboards.ca.gov or me, James Burke at (707) 576-2289, james.burke@waterboards.ca.gov.

Sincerely,

James Burke
Senior Engineering Geologist

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Attachment: Staff Report for Inspection June 29, 2020

cc: Melissa Lema, Western United Dairies mlema@wudairies.com
James Hansen, CA Department of Fish & Wildlife james.hansen@Wildlife.ca.gov