



North Coast Regional Water Quality Control Board

June 15, 2021

Jeff Kent
8789 Starr Road
Windsor, CA 95492
jeff@takenokofarms.com

Dear Mr. Kent:

Subject: Notice of Violation associated with the threatened/proposed discharge of contaminated stormwater runoff to Starr and Woody Creeks

File: Jeff Kent, Takenoko Farms, 8789 Starr Road, Windsor, Starr Creek and Woody Creek, Sonoma County

This letter serves to notify you that it is a violation of the Federal Clean Water Act and the California Water Code for engaging in or allowing contaminated runoff on your property located at 8789 Starr Road, Windsor, Sonoma County, to discharge into Starr Creek and/or Woody Creek without filing a report of waste discharge and without an appropriate permit from the North Coast Regional Water Quality Control Board. Starr Creek and Woody Creek are tributaries to Mark West Creek, a tributary to the Russian River, all waters of the state and/or United States.

The North Coast Regional Water Quality Control Board (Regional Water Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all uses within the north coast portion of the State of California. It has come to our attention that you conducted activities that may have resulted in the discharge of stormwater runoff containing pig manure and earthen material to Woody Creek and Starr Creek from the subject parcel at 8789 Starr Road in Windsor (Site). Samples of stormwater runoff were not taken, and any violation is for the "threatened discharge" of waste. This letter provides you notice that discharging waste without a permit violates provisions of the Water Quality Control Plan for the North Coast Region (Basin Plan), the California Water Code (Refer to Exhibit A, Regulatory Citations), and the federal Clean Water Act. The threatened discharges include: earthen sediment, manure, and nutrients into waters of the state and the United States.

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Background:

On March 17, 2017, Regional Water Board staff (staff) received a citizen complaint alleging contaminated stormwater runoff from Takenoko Farms pasture pig operation (Site) was discharging onto a neighboring property and into Starr Creek and Woody Creek. On April 3, 2017, staff met with the complainant and observed a dry ephemeral watercourse located in a barren and eroding pig pasture on the Site. Staff observed sediment, debris and possibly manure deposited behind a property line fence upslope of the complainant's horse pasture (Photograph 1). Staff also noted that the Site's Southwest Pasture is located on steep, barren slopes that are eroding. Staff observed eroded earthen material deposited behind a fence line located adjacent to the top-of-bank of Woody Creek (Photograph 2).

On December 7, 2018, staff conducted a site visit with you. During the inspection, staff assessed the ephemeral watercourse at the Site and noted it did not originate on-site, but on an upslope property. Staff also noted that the portion of the watercourse on the Site flowed through a farrowing pasture containing pigs before exiting the Site onto the complainant's horse pasture (Photograph 3). Staff confirmed that portions of the Southwest Pasture were on steep, unvegetated slopes that drained toward Woody Creek (Photograph 4). During discussions about on-site conditions, you stated that you intended to install setback fencing and plant buffer strips between the pasture and Woody Creek. Additional discussions included services and expertise provided by the Sonoma Resource Conservation District (Sonoma RCD) and the development of site-specific LandSmart Water Resources Plan (LandSmart Plan). In June 2019, you received a draft LandSmart Plan (Photographs 5 and 6). On August 27, 2019, staff provided comments on the draft LandSmart Plan to Sonoma RCD. On September 26, 2019 staff provided these comments to you.

On October 7, 2020, a representative of Sonoma County Supervisor James Gore emailed staff asking if the Site was prepared for winter. In response, staff reached out to you several times to schedule an inspection. On March 25, 2021, staff again met with you to assess on-site conditions and to ascertain how much of the draft LandSmart Plan had been implemented. The draft LandSmart Plan contains several recommendations to protect water quality, including the installation of setback fences to create buffer strips and the planting of these buffer strips with cover crop(s). During the site visit, staff observed the new setback fence in the Southwest Pasture but noted that the buffer strip had not been planted with a cover crop. Additionally, vegetation was absent in the Southwest Pasture and staff estimated almost the entire pasture consisted of exposed soil (Photographs 7 and 8). Other recommendations described in the draft LandSmart Plan have not been implemented, including the creation of additional pastures, rotational grazing, and the establishment of additional buffer strips with cover cropping. A comprehensive list of recommendations is in the chapter "Recommended Practices with Landowner Priorities" located on pages 4-5 of the draft LandSmart Plan.

Notice of Violation:

This Notice of Violation (NOV) is specifically for the unpermitted threatened discharge of sediment, manure, and nutrients to Starr Creek and Woody Creek associated with raising pasture pigs. Woody and Starr Creeks are located within the Mark West Hydrologic Subarea 114.23. The existing and potential Beneficial Uses of Starr and Woody Creeks include¹:

- Municipal and Domestic Supply
- Agricultural Supply
- Industrial Service Supply
- Industrial Process Supply
- Groundwater Recharge
- Freshwater Replenishment
- Navigation
- Water Contact Recreation
- Non-Contact Water Recreation
- Commercial and Sport Fishing
- Warm Freshwater Habitat
- Cold Freshwater Habitat
- Wildlife Habitat
- Rare, Threatened, or Endangered Species
- Migration of Aquatic Organisms
- Spawning, Reproduction, and/or Early Development
- Shellfish Harvesting
- Aquaculture

Please be aware that the discharge of sediment, manure, and nutrients to waters of the state and/or United States requires a permit from the Regional Water Board. This letter serves to notify you that such discharges are a violation of the Federal Clean Water Act and the California Water Code due to the following factors related to your property located at 8789 Starr Road, Windsor, Sonoma County:

- Discharging waste (sediment, manure, and nutrients constitutes a waste as defined by California Water Code (Water Code) section 13050) to watercourses in the Windsor Creek watershed, a tributary to Mark West Creek, 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 (California Water Code section 13260).

¹ Beneficial uses of waters of the state are described in the North Coast Water Board's Basin Plan, available at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/

Actions to comply with this Notice of Violation:

In conversations during and after our March 25, 2021, site visit, you agreed to submit a copy of the **final** LandSmart Water Resources Plan to the Regional Water Board. As of this date, we have not received a copy. Please submit a copy of the final Land Smart Water Resources Plan to our agency as soon as possible. To ensure the Site is adequately and appropriately winterized, please provide the Regional Water Board a prioritized list of Best Management Practices (BMPs), including an implementation schedule, that will be installed at the Site to control potential sediment and manure discharge. Please submit this to the Regional Water Board for staff review and comment. Many of these BMPs are likely contained in the final LandSmart Water Resources Plan. You are reminded to winterize your farm by no later than **October 15** of any given year. If requested reports are not timely submitted, we may consider issuing a 13267 Order. Failure to furnish information to comply with that order can lead to administrative civil liability of up to \$1,000 per day pursuant to Water Code section 13268.

Activities that may directly or indirectly impact waters of the state require you to apply for a Water Quality Certification and/or Waste Discharge Requirements (WDRs). These activities might also require input, consultation, and permits from other federal, state, and local agencies. Activities that typically result in impacts to the waters of the state include, but are not limited to, watercourse crossing construction (temporary and/or permanent), and physical and hydrological alterations and modifications to riparian zones and wetlands. Information on permits for fill and excavation within waters of the state please consult our website here:

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

Please note that correcting the conditions of non-compliance at the Site does not preclude enforcement for the violations alleged in this notice, or any future violations that may occur. The Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions. Discharges or threatened discharges of waste, including sediment, manure, and nutrients, into waters of the state that create a condition of nuisance or pollution may subject a person to a Cleanup and Abatement Order pursuant to Water Code section 13304. An actual discharge to waters of the state, including allowing fill to remain within a wetland, may subject a person to an administrative liability up to \$5,000 per day of violation for each violation, or \$10 for each gallon of waste discharged pursuant to Water Code section 13350. Unlawful discharges to waters of the United States and/or violations of the Clean Water Act may subject a person to up to \$10,000 per day of violation for each violation, and up to \$10 per gallon of waste discharged over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board retains its discretion to refer this matter to the Attorney General for enforcement.

Summary/Conclusion

1. Please submit your final Land Smart Water Resources Plan to the Regional Water Board in a timely manner.
2. Please submit a prioritized list of Best Management Practices (BMPs), including an implementation schedule, that will be installed at the Site to control potential sediment and manure discharge to the Regional Water Board.
3. The Site is to be winterized by no later than **October 15** of any given year.

Please electronically submit all documents to Northcoast@waterboards.ca.gov and copy Scott Gergus of my staff at Scott.Gergus@waterboards.ca.gov.

If you have any questions regarding this matter, please contact me at: Ryan.Bey@waterboards.ca.gov or Scott Gergus at Scott.Gergus@waterboards.ca.gov.

Sincerely,



Ryan Bey
Senior Environmental Scientist
Northern Nonpoint Source and 401 Certification Unit

210615_SAG_dp_JeffKent_TakenokoFarm_NOV

Attachments: Exhibit A: Regulatory Citations
Exhibit B: Photographs of Impact

cc: Ms. Kari Wester, Sonoma Resource Conservation District, 1221 Farmers Lane, Suite F, Santa Rosa, CA 95405, kwester@sonomarc.org

Mr. Nathan Jacobsen, State Water Resources Control Board, Office of Chief Counsel, Nathan.Jacobsen@waterboards.ca.gov

Ms. Diana Henriouille, Regional Water Board, Diana.Henriouille@waterboards.ca.gov

Exhibit A: Regulatory Citations

Regulatory Section	Citation
California Water Code Section 13050	"Waste" includes 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.
California Water Code Section 13260	"Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system."
California Water Code Section 13267	"The regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."
California Water Code Section 13268	"Any person failing or refusing to furnish technical or monitoring report information as required by Water Code section 13267(b), or falsifying any information provided therein, is guilty of a misdemeanor and may become responsible for an administratively-imposed civil liability of up to \$1,000 per day for each day compliance is not achieved."
California Water Code Section 13304	"A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts..."

Regulatory Section	Citation
California Water Code Section 13350	“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”
California Water Code Section 13385	“A person following shall be liable civilly in who violates any of the accordance with this section: (1) Section 13375 or 13376...(5) A requirement of Section 301...401...of the Federal Clean Water Act...”
Clean Water Act	section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act

Exhibit B: Photographs of Impact



Photograph 1. **April 3, 2017.** The photographer is looking north. The photograph shows the ephemeral watercourse in the easternmost pig pasture. Storm water runoff has deposited sediment and debris against the wire fence burying the electric wire running along the base of the fence.



Photograph 2. **April 3, 2017.** Southwest Pasture located in the western portion of the Site is steeply sloping, barren, eroding soil, with sediment and debris deposited behind the fence line located on the top-of-bank of Woody Creek.



Photograph 3. **December 12, 2018.** Photographer is looking south across Mr. Kent's Farrowing Pasture with the vegetated Radelfinger pasture in the distance. Two farrowing sheds can be seen on the right and boar pens are located on the left. The ephemeral watercourse can be seen flowing through the Farrowing Pasture to the Radelfinger property. The pigs have full access to the ephemeral watercourse year-round.



Photograph 4. **December 12, 2018.** This photograph shows the Southwest Pasture located in the southwest corner of the Site, adjacent to Woody Creek. The pasture is an estimated three quarters of an acre with a maximum slope of 17% and is devoid of vegetation. The existing pasture fence located at the bottom of the hill is adjacent to the Woody Creek top-of-bank.



Photographs 5 and 6. **Early 2019**. Photographs taken by the Sonoma RCD and featured on the cover page of the Draft LandSmart Plan. Photograph 5 shows exposed soil in the Southwest Pasture adjacent to Woody Creek. Photograph 6 shows the muddy Southwest Pasture with pigs at the bottom of the hill adjacent to Woody Creek.



Photograph 7. Photograph taken by Mr. Kent sometime during the **first week of December 2020** showing the lower portion of the Southwest Pasture. Mr. Kent installed a new sturdy setback fence and the former fencing can be seen to the far right along the Woody Creek top-of-bank. The buffer strip is barren soil with no cover crop which is contrary to the recommendation in the draft LandSmart Plan.



Photograph 8. **March 25, 2021.** Standing at the bottom of the hill and adjacent to the Woody Creek fence and looking up the hill. The barren buffer strip can be seen to the right of the photograph between the new setback fence and Woody Creek top-of-bank fence. The draft LandSmart Plan recommends the buffer strip be covercropped. Additionally, the Southwest Pasture was 100% exposed soil and absent any vegetation.