
North Coast Regional Water Quality Control Board

November 17, 2021

Jesse Payne
NWE4 LLC
16410 US Hwy 101 N
Klamath, CA 95548
jessepayne1@hotmail.com

Dear Mr. Payne:

Subject: Notice of Violation Associated with Heavy Equipment Use and Vegetation Clearing in High Prairie Creek and Wetlands

File: Jesse Payne, NWE4 LLC, APN 127-710-006-000, Klamath, High Prairie Creek, Del Norte County

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 and/or your agents have conducted activities involving accessing High Prairie Creek with heavy equipment, driving in the creek channel, exiting the channel, and grading on the subject parcel, Assessor's Parcel Number (APN) 127-710-006-000 (Site). By this letter, we are providing you notice that such activities violate 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, due to the discharges and/or threatened discharges of earthen material and pollutants into waters of the state and the United States. In particular, you have failed to comply with section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act.¹

On October 14, 2021, Regional Water Board staff received communication from California Department of Fish and Wildlife (CDFW) regarding a complaint concerning heavy equipment (excavator) use in High Prairie Creek (jurisdictional waters of the state and United States), driving down the creek for some distance, grading and clearing

¹ 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 Clean Water Act and issuance of a state water quality certification by the Regional Water Board under section 401 of the Clean Water Act.

vegetation in wetlands. In response, on October 25, 2021, Regional Water Board, Del Norte County, and CDFW staff visited the site and observed evidence of heavy equipment use in and adjacent to High Prairie Creek and riparian vegetation clearing in potential wetlands. The Regional Water Board has no record of any active or past permits for construction or temporary crossings at the Site.

During the site visit, Regional Board staff observed substrate disturbance in the channel under the Highway 101 bridge, a berm extending down the right bank of High Prairie Creek, and channel modification and equipment exit on the left bank. Freshly disturbed soil piles, evidence of grading, including equipment tracks and vegetation removal were also observed (Refer to Exhibit B, Photographs of Impact, Photographs 1, 2, and 3).

This Notice of Violation (NOV) is specifically for unpermitted activities associated with heavy equipment access in High Prairie Creek and adjacent potential wetlands. High Prairie Creek is considered a jurisdictional water of the state and United States. Other jurisdictional waters at the site may include wetlands. High Prairie Creek is located within the Klamath Glen Hydrologic Subarea 105.11. The existing and potential Beneficial Uses of the Hydrologic Subarea include:

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

Please be aware that the operation of heavy equipment and work in waters of the state and or United States, including wetlands, requires a permit from the Regional Water Board. Specifically, you have failed to comply with section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act.

On October 25, 2021, we met with you to discuss this matter, and advised you that a Notice of Violation letter would be sent outlining next steps. By no later than **March 31, 2022** we request that you submit a Restoration Plan (Plan) describing how you propose to remediate the site and restore it to pre-disturbed conditions. The Plan should include, but is not limited to: a description of how the site will be revegetated and restored, equipment and materials to be used, anticipated start date and duration of work, Best Management Practices that will be used to control sediment discharge during and following work, and a monitoring plan that ensures the Plan goals are achieved.

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 might/typically result in impacts to the waters of the state include, but are not limited to, watercourse crossing construction and use (temporary and/or permanent), grading for agriculture, and physical and hydrological alterations and modifications to riparian zones and wetlands. (Exhibit C: National Wetlands Inventory wetlands in vicinity of APN 127-710-006-000). 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. 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 earthen material, 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. We will contact you upon further assessment of these violations to discuss any potential associated civil liability or other enforcement actions.

Summary/Conclusion

Submit your restoration plan for review and approval, by **March 31, 2022**, to Northcoast@waterboards.ca.gov and copy Amanda Piscitelli of the 401 Unit at Amanda.Piscitelli@waterboards.ca.gov.

Additionally, **submit evidence of complete implementation of restoration plan by October 15, 2022**, to Northcoast@waterboards.ca.gov and copy Ryan Bey at Ryan.Bey@waterboards.ca.gov.

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

Sincerely,

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

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Exhibit A: Regulatory Citations

Exhibit B: Photographs of Impact

Exhibit C: National Wetlands Inventory wetlands in vicinity of APN 127-710-006-000

cc:

Del Norte County Community Development Department, Dominic Mello, Heidi Kunstal, Rosanna Bower, dmello@co.del-norte.ca.us, hkunstal@co.del-norte.ca.us, rbower@co.del-norte.ca.us

California Department of Fish and Wildlife, Warden William Castillo, William.Castillo@wildlife.ca.gov

California Department of Fish and Wildlife, Kalyn Bocast, Kalyn.Bocast@wildlife.ca.gov

Mr. Jesse Payne
NWE4 LLC
Notice of Violation

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November 17, 2021

Army Corps of Engineers, Roberta Morganstern,
Roberta.A.Morganstern@usace.army.mil

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

Jennifer Siu, EPA Wetlands Office, siu.jennifer@epa.gov

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

Exhibit A: Regulatory Citations

Regulatory Section	Citation
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...”
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 13376	“A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260.”
California Water Code Section 13385	“A person who violates any of the following shall be liable civilly in 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. Photograph taken by Amanda Piscitelli, High Prairie Creek, facing upstream. The photograph shows channel modification where the excavator was driven down the creek channel and under the Highway 101 bridge.



Photograph 2. Photograph taken by Amanda Piscitelli, at High Prairie Creek, facing downstream. The photograph shows berm at right of channel, channel modification, cleared vegetation, and soil piles along the left bank.



Photograph 3. Photograph taken by Amanda Piscitelli, High Prairie Creek, facing upstream. The photograph shows equipment tracks on the channel bottom of High Prairie Creek that extend to the right of the picture where channel has been modified by grading and vegetation has been cleared.

Exhibit C: National Wetlands Inventory wetlands in vicinity of APN 127-710-006-000

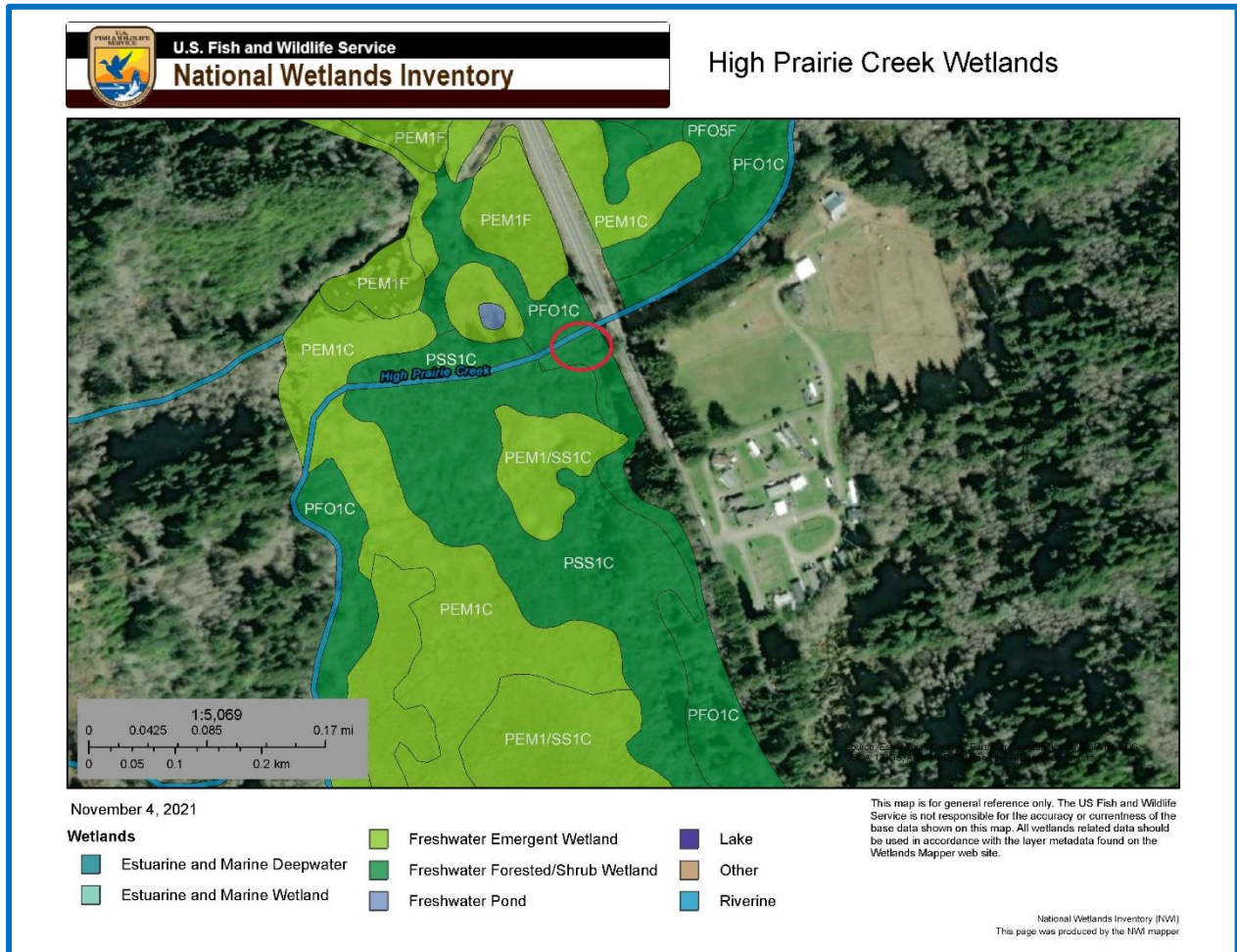


Image of U.S. Fish and Wildlife Service National Wetlands Inventory wetlands mapper biological wetlands in the vicinity of the parcel and High Prairie Creek. The Freshwater Forested/Shrub Wetland areas (dark green) shown near the creek and road crossing (red circle) is where the channel was modified, and vegetation removal occurred.