
North Coast Regional Water Quality Control Board

September 15, 2021

Rhonda Shiffman
Pacific Gas and Electric Company
6111 Bollinger Canyon Road, Mail Code: Y3A
San Ramon, CA 94583
Rhonda.Shiffman@pge.com

Dear Ms. Shiffman:

Subject: **Notice of Violation Associated with Bridge Installation and Culvert Replacement Activities at 3157 Calistoga Road, Santa Rosa**

File: PG&E, 3157 Calistoga Road, Santa Rosa; CW-875170

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 region of the State of California. It has come to our attention that Pacific Gas and Electric Company (PG&E) and/or its agents have conducted activities involving road reconstruction, bridge installation, and culvert replacement on private property located at 3175 Calistoga Road in Santa Rosa (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, and may violate the federal Clean Water Act (Refer to Exhibit A, Regulatory Citations) due to discharges and/or threatened discharges of earthen material and pollutants into waters of the state. In particular, you have failed to comply with Basin Plan Section 4.2.1 Prohibitions 1 and 2, California Water Code Sections 13260 and 13264.

On June 28, 2021, enforcement unit staff from the Regional Water Board and staff and law enforcement personnel from the California Department of Fish and Wildlife inspected the subject property. During this inspection, Regional Water Board staff identified features and conditions on the subject property that represent alleged violations of water quality requirements and associated regulations. Enforcement unit staff observed violations of the Basin Plan Section 4.2.1 Prohibitions 1 and 2, California Water Code Sections 13260 and 13264, and federal Clean Water Act section 301. Following the June 28 inspection, the Regional Water Board issued a Notice of Violation (NOV) to Syed Shahzad Karim (landowner) and the CDFW issued a NOV to the landowner and issued a separate NOV to Pacific Gas and Electric Company (PG&E). Based on the information gathered during the June 28 inspection and information contained in those NOVs, some of the alleged violations were determined to be

attributable to road grading and stream crossing replacement activities conducted by PG&E or its agents to restore access to a transmission powerline as part of PG&E's efforts to "harden" the powerline facilities and associated access.

On July 21, 2021, Regional Water Board 401 unit staff met with PG&E personnel to discuss the purpose of the project, identification of waters of the state compared to waters of the United States, potential water quality violations, and associated requirements for application and prior authorization for the type of work PG&E is conducting at the Site. On July 28, 2021, PG&E provided a brief written project description indicating that high-density polyethylene culverts along the access road melted during the Tubbs fire in 2017, making the road impassable for vehicle access to pole 017/071 on the Eagle Rock-Fulton-Silverado 115kV powerline. The project description indicates PG&E's road maintenance work includes in-kind replacement of five melted culverts with corrugated metal culverts, grading within the road prism, and bridge installation. Two of the five melted culverts had already been replaced and a "temporary" bridge was installed on June 24, 2021.

On August 11, 2021 Regional Water Board 401 unit staff conducted an inspection of the Site with PG&E personnel that focused on the conditions of the road grading work performed by PG&E and the associated work to replace wildfire damaged stream crossings. Inspection of the Site confirmed that activities to reopen the private road and restore fire damaged stream crossings were being conducted within jurisdictional waters of the state without appropriate review and authorization from the Regional Water Board (Refer to Exhibit B, August 11, 2021 Inspection Report). This NOV is specifically for unpermitted activities associated with culvert replacement and bridge installation within waters of the state. Please be aware that the operation of heavy equipment and alteration of waters of the state and or United States, including wetlands, requires a permit from the Regional Water Board. Specifically, PG&E failed to comply with section Basin Plan Section 4.2.1 Prohibitions 1 and 2, Water Code sections 13260 and 13264.

Activities that may directly or indirectly impact waters of the state and/or waters of the United States require an application for Water Quality Certification and/or Waste Discharge Requirements (WDRs) for review and approval by the Regional Water Board's Executive Officer. These activities might also require input, consultation, and permits from other federal, state, and local agencies. For additional information on permits for fill and excavation activities within waters of the state please consult our website here:

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

By no later than **September 24, 2021**, we request that PG&E submit a complete *Notice of Intent (NOI) to Enroll Under and Comply with the Terms of Water Quality Order No. 2004-004-DWQ (General WDRs), Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction* including details for stream crossing design, calculations to demonstrate proposed crossings are adequately sized to pass flows

associated with a 100-year flood event, and details of Best Management Practices to be employed to control pollutant discharges from the reconstructed access road and associated stream crossings during and after construction to prevent project related sediment and disturbed soil from entering streams. A copy of the NOI and General WDR can be found on our website here:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf.

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 Notice of Intent by **September 24, 2021**, to Northcoast@waterboards.ca.gov and copy Dean Prat of the 401 Unit at Dean.Prat@waterboards.ca.gov.

If you have any questions regarding this matter, please contact Dean Prat at Dean.Prat@waterboards.ca.gov or Gil Falcone at Gil.Falcone@waterboards.ca.gov or (707) 576-2830.

Sincerely,

Jonathan Warmerdam
Environmental Program Manager
Nonpoint Source and Surface Water Protection Division

210915_DLP_er_PGE_3157CalistogaRd_NOV

Exhibit A: Regulatory Citations

Exhibit B: August 11, 2021 Inspection Report

cc:

Timothy Dodson, California Department of Fish and Wildlife,

Timothy.Dodson@wildlife.ca.gov

Army Corps of Engineers,

CESPN-Regulatory-Info@usace.army.mil

Nathan Jacobsen, State Water Resources Control Board, Office of Chief Counsel,

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Jennifer Siu, EPA Wetlands Office,

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Diana Henrioulle, Regional Water Board,

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Brian Fuller, Regional Water Board,

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Heather Co, PG&E,

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Karli Foreman, PG&E,

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Exhibit A: Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	Prohibits “[t]he 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.”
Basin Plan Section 4.2.1, Prohibition 2	Prohibits “[t]he 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.”
California Water Code Section 13260	<p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p>(1) A 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.</p> <p>(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p>
California Water Code Section 13264 (a)	“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:”
Federal Clean Water Act Section 301 (a)	Section 301(a) provides that subject to certain exceptions, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). One of the exceptions allowed for under the Clean Water Act is the discharge from a dredge and fill activity under the auspices of § 404 and 401 of the Clean Water Act. 33 U.S.C. § 1342. The Clean Water Act prohibits the discharge of any pollutant from a point source into waters of the United States without a section 404 dredge and fill permit and a section 401 state water quality certification.

North Coast Regional Water Quality Control Board

TO: Gil Falcone
Senior Environmental Scientist

FROM: Dean Prat
Engineering Geologist

DATE: August 17, 2021

SUBJECT: Inspection of Unpermitted Stream Crossing Replacement

INSPECTION DATE: August 11, 2021 (1000-1200)

LOCATION: 3157 Calistoga Road, Santa Rosa (APN 028-130-009)

INSPECTED BY: Dean Prat, Regional Water Board, Southern 401 Unit
Gil Falcone, Regional Water Board, Southern 401 Unit
Ryan Bey, Regional Water Board, Northern 401 Unit

ACCOMPANIED BY: Karli Foreman, PG&E
Rhonda Shiffman, PG&E
Jason Warshawer, PG&E
Erica Jones, PG&E

BACKGROUND

On June 28, 2021, enforcement unit staff from the North Coast Regional Water Quality Control Board (RWQCB) and staff and law enforcement personnel from the California Department of Fish and Wildlife (CDFW) inspected the subject property to evaluate onsite development and conditions, and assess impacts and threatened impacts to the quality and beneficial uses of waters of the state. During the June 28 inspection, RWQCB staff identified features and conditions on the subject property that represent violations of water quality requirements and associated regulations. RWQCB staff observed violations of the Basin Plan Section 4.2.1 Prohibitions 1 and 2, California Water Code Sections 13260 and 13264, and federal Clean Water Act section 301.

Following the June 28 inspection, the RWQCB issued a Notice of Violation (NOV) to Syed Shahzad Karim (landowner) and the CDFW issued a NOV to the landowner and issued a separate NOV to Pacific Gas and Electric Company (PG&E). Based on the information gathered during the June 28 inspection and information contained in these NOVs, some of the alleged violations were attributable to road grading and stream crossing replacement activities conducted by contractors working under the direction of

PG&E to restore access to a transmission powerline as part of PG&E's efforts to "harden" the powerline facilities and associated access.

On August 11, 2021 a follow-up inspection was conducted by RWQCB 401 units staff that work primarily on projects that involve a discharge of dredge and/or fill materials to waters of the state. This inspection focused on the conditions of road work performed by PG&E on the private access road and associated work to replace several stream crossings damaged by wildfire. Land disturbance associated with PG&E activities appeared to be separate and unrelated to some of the violations identified in the NOVs that were issued prior to August 11 and determined to be associated with illegal cannabis cultivation activities. Violations on the private property related to the illegal cannabis cultivation activities included an active cultivation area, historic cultivation area, fuels and fertilizers, and instream reservoir.

OBSERVATIONS

RWQCB inspectors and PG&E personnel walked along the access road to observe the recent road grading and stream crossing repairs under construction by PG&E. Inspection of recent work at watercourse crossings WQ5, WQ8, and WQ9 confirmed the activities to reopen the private road and restore fire damaged stream crossings were being conducted within jurisdictional waters of the state without appropriate review and authorization from the RWQCB. Figure 1 below shows the property boundary, reference point locations, and road segment that PG&E had reopened for the purpose of creating access for a powerline hardening project.

PG&E suspended work on the project and conditions observed on August 11 appeared unchanged compared to conditions observed and documented in the June 28, 2021 inspection report except for the addition of straw wattles. Straw wattles appeared to be placed without an erosion control plan. The straw wattles were not installed properly, lacked adequate staking to the ground, and did not appear adequately distributed to effectively control potential sediment discharges from the fine material on the roadbed and disturbed soil around stream crossings in the event of a storm event. Based on conversations with PG&E representatives during the inspection, PG&E conducted all recent and observed road grading, culvert replacement at reference locations (Figure 1) WQ5 and WQ9, and bridge installation at WQ8.

During the inspection a discussion occurred regarding the poor condition of the road surface, the lack of road drainage, and the amount of fine material on the road surface and inlet and outlet of the new metal culverts. PG&E representatives indicated the type of work is messy and they had not completed the work due to suspending the project. PG&E representatives indicated they planned to add rock riprap at culvert inlets and outlets. When asked whether the road surface would be rocked as part of the project PG&E representative Jason Warshawer stated that PG&E does not rock the surface of utility access roads on private property where they only need the road access a couple times per year.

PG&E representatives indicated the road work and replacement of burned out plastic culverts with permanent metal culverts was a necessary aspect of a utility hardening project. Since PG&E representatives referred to the new bridge as temporary, RWQCB staff inquired as to why permanent culverted stream crossings were necessary on either

side of the bridge if the bridge was temporary. PG&E representatives clarified there was no plan to remove the bridge and their use of the term “temporary bridge” only meant that the new bridge could be removed and relocated if needed at another location. RWQCB staff explained that our permitting approach for a “temporary” bridge installation involves ongoing permit coverage during the period of use of the bridge and a “permanent” bridge would be permitted for the bridge installation with permit coverage typically terminating following bridge installation.

Photos taken on August 11 of reference point locations WQ5, WQ8, WQ9 are attached (Attachment 1) below. Locations of additional fire damaged watercourse crossings where PG&E is proposing additional culvert replacements were also observed to the west of WQ9 along the same access road. All of the proposed additional culvert replacements were located on ephemeral channels no larger than the channels located at WQ5 and WQ9. PG&E representatives noted that the installation of the culvert at WQ9 would likely need to be reinstalled to place the culvert on grade and in-line with the channel. Photo 4 below shows the culvert at WQ9 is clearly perched and not installed appropriately to current standards.

VIOLATIONS OBSERVED

RWQCB staff observed violations of the Basin Plan Section 4.2.1 Prohibitions 1 and 2, Water Code sections 13260 and 13264, and federal Clean Water Act section 301. Staff observed these violations at reference point locations WQ5, WQ8 and WQ9 as shown in Figure 1.

Inspection Map for inspections conducted June 28, 2021 and August 11, 2021

Map completed by Brian Fuller, PG, Engineering Geologist, NCRWQCB

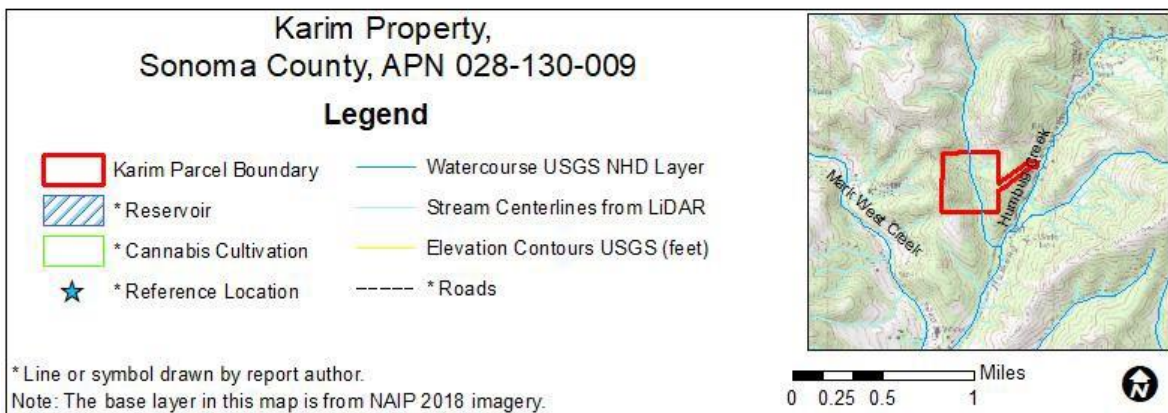
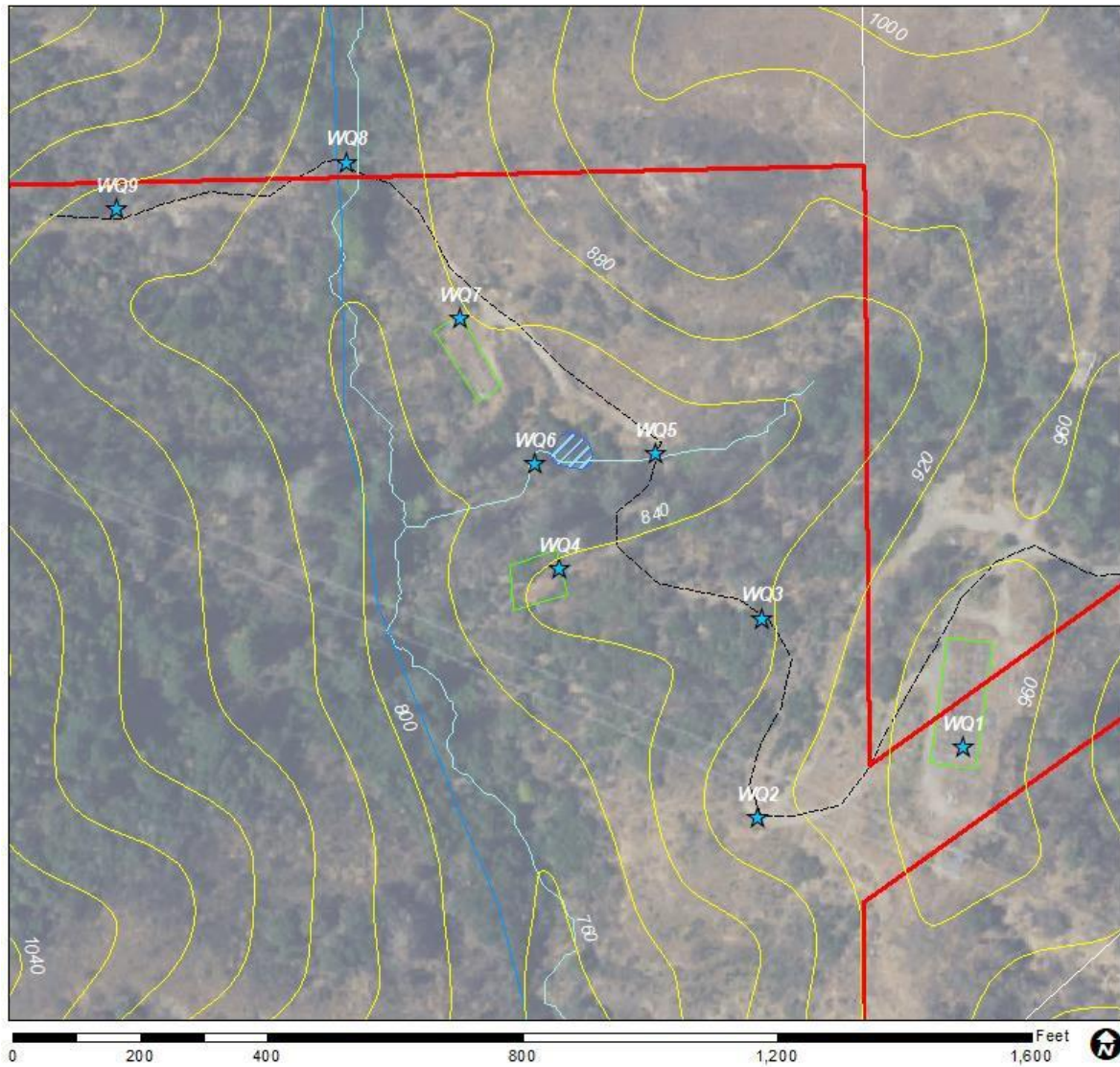


Figure 1: Map of Property, including inspection points of interest.



Photo 1. Road segment south of WQ5 with representative example of straw wattle installation.



Photo 2. Outlet of new unauthorized culvert, wattles, and fine sediment at WQ5.



Photo 3. Recently installed bridge at WQ8 and opposite direction view of road and wattles in Photo 1.



Photo 4. Outlet of recently installed culvert at WQ9.