
North Coast Regional Water Quality Control Board

September 9, 2021

Mr. David Mitchell
Goodfellow-Teichert-Odin, A Joint Venture (GTO)
50 Contractors Street
Livermore, CA 94551
davidmi@goodfellowbros.com

Dear Mr. Mitchell:

Subject: Notice of Violation and Transmittal of Inspection Report 1-21EX-00634-SON associated with 8200 and 7411 St. Helena Road sites

File: David Mitchell, 8200/7411 St. Helena Road, Mark West Creek, CW-876091, WDID No. 1B21189WNSO

This letter is to notify you of observed and documented violations of the requirements listed below for unauthorized discharges to waters of the state from the above-referenced subject properties:

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1.
2. California Water Code (Water Code) sections 13260, 13264, and 13376.
3. Federal Clean Water Act sections 401 and 404.

Within 20 days of receipt this letter, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

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 beneficial uses within the north coast portion of the State of California. On August 11, 2021, CalRecycle staff brought to our attention that you and/or your agents had conducted activities involving the discharge of approximately three cubic yards of soil, slash and rock into a tributary to Mark West Creek at 8200 St. Helena Road, Santa

Rosa, Latitude 38.502 N, Longitude 122.5917 W. Additionally, at 7411 St. Helena Road, (Latitude 38.5235 N, Longitude 122.6071 W) a temporary creek crossing consisting of approximately two cubic yards of cobbles to fine sediment, plastic sheeting, logs and steel plates had been installed on different tributary to Mark West Creek, without authorization by the Regional Water Board or the 2020 Statewide post-fire emergency authorizations.

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 the federal Clean Water Act, due to the discharges and/or threatened discharges of earthen material and pollutants into waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

On August 18, 2021, Regional Water Board staff participated in a joint agency site inspection of 8200 and 7411 St. Helena Road properties (sites) (see Attachment 1 Inspection Memorandum Inspection Report 1-21EX-00634-SON). The inspection report documents and provides evidence of discharges to two unnamed tributaries to Mark West Creek, waters of the state and United States at the sites.

8200 St. Helena Road site

On August 10, at the 8200 St. Helena Road site, CalRecycle documented that an equipment operator from Sierra Mountain Construction Inc (SCMI) pushed approximately three cubic yards of soil, slash and rock into the banks and channel bed of a tributary to Mark West Creek (a water of the state) within the Russian River Hydrologic Unit 114.23. Discharged fill material to a water of the state was observed at the August 18, 2021, joint agency site inspection and documented in Attachment 1. Placement of fill material within channel banks and bed of a water of the state requires authorization from the Regional Water Board under Section 13260, of the California Water Code as well as sections 401 (33 U.S.C. 1341) of the Clean Water Act and Section 13376 of the California Water Code, if the watercourse is also a water of the United States (see Exhibit A). You did not seek authorization prior to this discharge and are currently in violation of these regulations. Additionally, the Water Quality Control Plan for the North Coast (Basin Plan) expressly prohibits the threatened discharge or discharge and/or placement of soil, slash and other earthen materials into a water of the state in quantities which could be deleterious to fish, wildlife, or other beneficial uses (Basin Plan Section 4.2.1, Prohibition 1 and 2). Attachment 1 clearly documents your activities have discharged and continue to threaten additional discharges of prohibited materials and are in violation of these prohibitions.

7411 St. Helena Road site

On August 18, 2021, Regional Water Board Staff inspected and documented a temporary stream crossing consisting of approximately two cubic yards of cobbles to fine sediment, plastic sheeting and steel plates had been installed on different tributary

to Mark West Creek (see Attachment 1). The temporary crossing was not authorized through the 2020 post-fire debris removal secretarial waivers from specific permitting issued by the California Environmental Protection Agency (CalEPA). Placement of fill material within channel banks and bed of a water of the state requires authorization from the Regional Water Board under Section 13260, of the California Water Code as well as sections 401 (33 U.S.C. 1341) of the Clean Water Act and Section 13376 of the California Water Code, if the watercourse is also a water of the United States (see Exhibit A). You did not obtain authorization prior to this discharge and are currently in violation of these regulations. Additionally, the Water quality Control Plan for the North Coast (Basin Plan) expressly prohibits the threatened discharge or discharge and/or placement of soil, slash and other earthen materials into a water of the state in quantities which could be deleterious to fish, wildlife, or other beneficial uses (Exhibit 1 Basin Plan Section 4.2.1, Prohibition 1 and 2). Attachment 1 clearly documents your activities have discharged and continue to threaten additional discharges of prohibited materials and are in violation of these prohibitions.

Tributaries to Mark West Creek

The two unnamed tributaries to Mark West Creek are located within the Russian River Hydrologic Unit, Mark West Creek sub-area 114.23. Other jurisdictional waters at the site may also include wetlands. The existing and potential Beneficial Uses of Mark West Creek and its tributaries include:

- Municipal and Domestic Supply
- Agricultural Supply
- Industrial Service 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

Mark West Creek and its tributaries have been designated as impaired for sediment and temperature. Activities that may directly or indirectly impact beneficial uses of 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. For information on permits for fill

and excavation within waters of the state and/or United States, please consult our website here:

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

Non-compliance and enforcement

Please note that correcting the conditions of non-compliance at the sites does not preclude enforcement for the violations alleged in this notice. The following Sections of the California Water Code may apply: 13261(a), 13264 (a), 13265(a), 13304, 13350, 13385 (See Exhibit A). 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 and/or United States 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

To prevent further degradation of aquatic resources and bring sites back into compliance, and in order to prevent the discharge of sediment during rain events, discharged fill shall be removed. We request that you submit a plan or plans (restoration plan(s)) describing how you propose to remove discharged fill and restore and stabilize channel, bank and top of bank conditions at each site. All material discharged at each location including footings, supports, crossing materials and temporary sediment control Best Management Practices (BMPs) for the crossings shall be removed and restored to pre-project conditions. The plan(s) should include details of BMPs to be employed to control pollutant discharges during and following decommissioning work, including materials to be used to stabilize and prevent sediment from entering the stream after decommissioning.

The Regional Water Board shall review restoration plans and authorize the activities to restore these aquatic resources through our permitting process or rely on 2020 post-fire debris removal secretarial waivers from specific permitting issued by the California Environmental Protection Agency (CalEPA).

At the 8200 St. Helena Road site, The US Army Corps of Engineers has determined that these activities will not require permitting under its authority. The Regional Water Board will require a permit. You may request permitting through the Regional Water Board under order No. 2004-0004-DWQ by submitting a Notice of Intent and application fee. The order and application can be found here:

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

For the 7411 St. Helena Road Site, if the US Army Corps deems the activities to remove the fill and restore the channels are not within their jurisdiction or require a federal permit, you may request Regional Water Board authorization under order No. 2004-0004-DWQ as well using a single Notice of Intent. If the US Army Corps of Engineers will need to issue a federal permit, please contact our office for the appropriate permitting pathway to facilitate the restoration actions.

Submit your restoration plan(s), application and fee for review and authorization, by **September 30, 2021**, to Northcoast@waterboards.ca.gov and copy Gil Falcone of the 401 Unit at Gil.Falcone@waterboards.ca.gov.

Additionally, **submit evidence of complete implementation of restoration and stabilization of the sites by October 31, 2021**, to Northcoast@waterboards.ca.gov and copy Gil Falcone at Gil.Falcone@waterboards.ca.gov.

If you have any questions regarding this matter, please contact me at Jonathan.Warmerdam@waterboards.ca.gov or (707) 576-2468.

Sincerely,

Jonathan Warmerdam
Environmental Program Manager
Non-point Source and Surface Water Protection Division

210909_GBF_82007411StHelenaRoad_NOV

Exhibit A: Regulatory Citations

Attachment: Inspection memo 210819_IBR_1-21EX-00634-SON_Insp

cc:

California Office of Emergency Services, Patricia Nelson,
Patricia.Nelson@CalOES.ca.gov

Department of Resources Recycling and Recovery, Anthony Toto,
Anthony.Toto@calrecycle.ca.gov

California Department of Fish and Wildlife, James Hansen,
James.Hansen@wildlife.ca.gov

Army Corps of Engineers, Jayme Ohlhaber,
Jayme.A.Ohlhaber@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 Henrioulle, Regional Water Board,
Diana.Henrioulle@waterboards.ca.gov

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 13261(a)	“A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
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:”
California Water Code Section 13265(a)	“Any person discharging waste in violation of Section 13264 , after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.”

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