



North Coast Regional Water Quality Control Board

February 25, 2022

Fred Euphrat
2535 Marra Road
Occidental, CA 95465
Fred@euphrat.org

Epic Wireless Group
Attn: Ashley Smith, Site Acquisition Specialist
605 Coolidge Drive, Suite 100
Folsom, CA 95630
Ashley.Smith@epicwireless.net

Nevada City Engineering
Attn: John Baker, Principal
505 Coyote Street
Nevada City, CA 95959
john@nevadacityengineering.com

Bechtel Corporation
Attn: Keith Connor
5000 Executive Parkway, Suite 350
San Ramon, CA.94583
gkconnor@bechtel.com

To Whom it May Concern:

Subject: **Notice of Violation and Directive Under Water Code Section 13260 to Obtain Permit Coverage for the Discharge and Threatened Discharge of Contaminated Stormwater Runoff to an Unnamed Tributary to Mill Creek**

File: NPS Complaints, 6699 Mill Creek Road, Healdsburg, Unnamed Tributary to Mill Creek, Sonoma County

This letter serves to notify you that you are in violation of the Federal Clean Water Act and the California Water Code for engaging in actions that have resulted in the discharge and threatened discharge of contaminated runoff on your property located at 6699 Mill Creek Road, Healdsburg, Sonoma County, into an unnamed perennial

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

watercourse that is a tributary to Mill Creek without filing a report of waste discharge and without an appropriate permit from the North Coast Regional Water Quality Control Board. Santa Rosa Creek is a tributary to the Russian River, both are 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 Region. Activities conducted on your road have resulted in the discharge of stormwater runoff containing earthen material to the unnamed seasonal watercourse on the subject parcel at 6699 Mill Creek Road, Healdsburg (Site). Additionally, the presence of a substantial gully in the road surface has resulted in the threatened discharge of stormwater runoff containing earthen material to the unnamed tributary. This Notice of Violation is for both the “discharge” and “threatened discharge”. This letter provides you notice that such activities violate provisions of the Water Quality Control Plan for the North Coast Region (Basin Plan), the Water Code, and the federal Clean Water Act, due to the discharge and threatened discharges of earthen materials into waters of the state and the United States.

Location and Geography

The site is located at 6699 Mill Creek Road in Healdsburg, Sonoma County. The property is a 375-acre parcel zoned for timber production. A Non-Industrial Timber Management Plan (NTMP), 1-06NTMP-003 SON, for the parcel was approved on August 16, 2006. Review of the NTMP maps show six ephemeral watercourse crossings on the road that the power lines (see section below) are installed in. The ephemeral watercourses drain to an unnamed perennial tributary of Mill Creek which runs roughly parallel to the road and is located between 50 to 200 feet downslope of the road surface. Photographs from Regional Water Board staff's November 9, 2021, site-inspection are included in Exhibit B at the end of this letter.

Background

On November 8, 2021, Regional Water Board staff (staff) received a citizen complaint from Fred Euphrat (Landowner), regarding existing and threatened sediment discharges to watercourses resulting from road work to install power lines that was conducted by Apex Site Solutions working on behalf of Epic Wireless as part of the construction of a cellular service tower on your property at 6699 Mill Creek Road. The power lines were laid in a ditch excavated on the inboard side of a native surfaced road that traverses the hillslope from the entrance of the property up to the cell tower site and backfilled with fill material. The Landowner stated that the road had been widened and insloped, and road drainage features including rolling dips and water bars obliterated as part of the work to install powerlines to the cell service tower. On October 24, 2021, Sonoma County experienced an intense storm with rainfall of up to 10 inches in the vicinity of the Site. During the storm the fill material in the power line ditch washed out and was deposited into an unnamed perennial tributary of Mill Creek downslope of the road.

On November 9, 2021, Maggie Robinson of our staff met with Mr. Euphrat, Aron Lucas (Apex Site Solutions), and Keith Connor (Bechtel Corporation) to evaluate road conditions and discuss interim road drainage and erosion control measures. During the evaluation staff observed that on sections of the road part or all of the backfill material in the power line ditch been washed out. Staff also observed six culvert crossings on ephemeral watercourses with no critical dips. Additionally, the road lacks drainage features and has moderate to severe gullying of the road surface, sloughing of material from road cuts onto the roadbed, and evidence of existing and threatened sediment discharges to an unnamed tributary of Mill Creek (Photographs 1 – 5). During the site visit it was discussed and agreed that interim measures to both drain the road and to prevent and minimize further sediment delivery to watercourses on the property needed to be installed before the next significant rain event. It was also discussed and agreed that following the end of the winter rainy season, when the road surface was stable enough for heavy equipment use, a road drainage and erosion control plan outlining the remediation of the power line ditch, installation of permanent road drainage features, road re-grading, and possible watercourse crossing improvements would be developed and implemented.

On December 1, 2021, staff returned to the property to meet with the Landowner to discuss possible interim road drainage and erosion control measures and to evaluate the existing road configuration. It was discussed and agreed that straw bales and water bars would be used as interim measures to both drain the road and to prevent and minimize further sediment delivery to watercourses on the property.

On January 20, 2022, staff returned to the property to meet with the Landowner, Ashley Smith (Epic Wireless), Andrew Medina (Epic Wireless), John Baker (Nevada City Engineering, a subcontractor for Epic Wireless), Ken Baker (private citizen), and Keith Connor (Bechtel Corporation) to evaluate the current condition of the road, discuss options for permanent road drainage features and the best management practices needed for their installation. During the evaluation Nevada City Engineering, working on behalf of Epic Wireless, agreed to conduct a detailed survey of the road and develop the road drainage and erosion control plan outlining the remediation of the power line ditch, installation of permanent road drainage features, road re-grading, and watercourse crossing improvements. Nevada City Engineering also agreed that the plan would be completed and submitted to the Regional Water Board for review and authorization by June 1, 2022.

Notice of Violation

This Notice of Violation (NOV) is specifically for the unpermitted existing and threatened discharge of sediment to the unnamed tributary to Mill Creek. The unnamed tributary and where it discharges into Mill Creek is located within the Mill Creek Hydrologic Sub-Area, CALWATER No. 114.24. The existing and potential Beneficial Uses of Mill Creek include:

- Municipal and Domestic Supply
- Agricultural Supply
- Navigation
- Groundwater Recharge
- 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 to waters of the State and or United States requires a permit from the Regional Water Board. This letter serves to notify you that unpermitted discharges constitute violations of the Federal Clean Water Act and/or the California Water Code. See attached Exhibit A for list of regulatory citations.

Actions to comply with this Notice of Violation:

Activities that may directly or indirectly impact waters of the state require you to apply for a Clean Water Act section 401 Water Quality Certification (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 (temporary and/or permanent), and physical and hydrological alterations and modifications to riparian zones and wetlands. For information on the permit for fill and excavation associated with rural roads and within waters of the state please consult our website here:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/non_point_source/5/C/

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 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. In addition, the Regional Water Board retains its discretion to refer this matter to the Attorney General for judicial enforcement.

Summary/Conclusion:

1. Periodic inspection and, if necessary, maintenance of the water bars and straw bales is needed for the remainder of the winter rainy period, until **May 1, 2022**. Inspection and maintenance should take place both before and after winter storms to ensure proper functioning.
2. By **June 1, 2022**, Nevada City Engineering will submit a plan prepared by a qualified professional to remove the sloughed road cut material and outside berm, install permanent road drainage features, and replace/repair damaged culverts. Include an application and permit fee for permit coverage under Order No. R1-2018-0011, *Waiver of Waste Discharge Requirements and General Water Quality Certification for Road Management and Activities Conducted Under the Five Counties Salmonid Conservation Program in the North Coast Region* (5C Waiver) for review and approval to NorthCoast@waterboards.ca.gov and copy Maggie Robinson at Maggie.Robinson@waterboards.ca.gov.¹

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

If you have any questions regarding this matter, please contact me at: James.Burke@waterboards.ca.gov or Maggie Robinson at Maggie.Robinson@waterboards.ca.gov.

Sincerely

James Burke
Senior Engineering Geologist
Southern Nonpoint Source and Forestry Unit

ER 220225_JRB_er_6699MillCreekRd_NOV

Exhibit A: List of Regulatory Citations
Exhibit B: Photographs of Impacts

¹ As noted above, during the site visit Nevada Engineering agreed to submit the required Plan by June 1, 2022.

cc:

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

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

Ashley Smith, Epic Wireless,
Ashley.Smith@epicwireless.net

John Baker, Nevada City Engineering,
John@nevadacityengineering.com

Keith Connor, Bechtel Corporation
Gkconnor@bechtel.com

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	“(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: (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. (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.”
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 water 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

Regulatory Section	Citation
	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 301 (a) (33 U.S.C. 1311), 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 Impacts



Photographs 1 and 2. The two photos show the washed out ditch line for the power cables. The ditch measures approximately 2 ft wide by 3 feet deep.



Photograph 3. The photograph shows rilling and gulying of road surface. What appears to be a remnant rolling dip is present near the top of the road.



Photograph 4. The photo shows road material entrained in redwood duff immediately adjacent to an unnamed perennial tributary to Mill Creek. Road material is also visible within the watercourse channel.