



North Coast Regional Water Quality Control Board

May 26, 2022

Oscar and Lorri Duckworth
3200 Canfield Road
Sebastopol, CA 95472
lkd@sonic.net

Certified Mail 7021 0950 0001 6499 7541

Dear Mr. and Mrs. Duckworth:

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for discharges to a water of the state, and transmittal of Site Inspection Memo, Duckworth Property, 2950 Canfield Road, Sebastopol

File: Oscar and Lorri Duckworth, 2950 Canfield Road Rd. Sebastopol, APN 025-060-002-000
CW-881082, WDID No. 1B22063WNSO

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 2950 Canfield Road, Sebastopol; Sonoma County Assessor's Parcel Number 025-060-002-000 (the Property):

1. California Water Code (Water Code) sections 13260, 13264 and 13376.
2. Federal Clean Water Act sections 301, 401, and 404.
3. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1.

This letter directs you, within 20 days, to contact North Coast Regional Water Quality Control Board (Regional Water Board) staff to advise of your plan to comply with Water Code 13260.

The 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.

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

The Regional Water Board issues permits for discharges or threatened discharges of waste to waters of the state and Water Quality Certifications for dredge or fill activities within Waters of the United States, including wetlands.

On October 22, 2021, Regional Water Board staff participated in a site inspection of the Property (see Attachment 1, Site Inspection Memo, 2950 Canfield Road, Sebastopol) and observed removal of a significant amount of riparian vegetation that influences water quality on Canfield Creek as well as ground disturbance adjacent to the creek and discharges of sediment to the waterbody. The Property is located at approximate coordinates, latitude 38.3477° N and longitude -122.8127° W. The inspection report documents and provides evidence of unpermitted impacts to wetlands and stream channels that are waters of the state and/or United States at the site.

By this letter, we are providing you notice that such activities violate provisions of the California Water Code and the federal Clean Water Act, due to the unpermitted discharges and/or threatened discharges of earthen material, debris and vegetation into wetlands and stream channels, waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

Property Background

Prior to 2002, the Bernard Nahmens family owned and operated a dairy on the Property. Blucher Creek and its tributary, locally known as Canfield Creek, flows through the Property. Occurrences of California freshwater shrimp (*Syncaris pacifica*) in the area of this violation have been well documented, including a California Natural Diversity Database observation at the confluence of Canfield Creek and Blucher Creek from October 12, 1990. In the early 1990's the Nahmens entered into a conservation agreement with Sonoma County Agriculture and Open Space (SCAOS) to comply with three contingencies that included to preserve and enhance Blucher and Canfield Creeks including California freshwater shrimp and northwestern pond turtle populations. In the 1990's SCAOS worked with California Department of Fish and Game (CDFG) to develop and implemented a riparian revegetation plan for Blucher and Canfield Creeks with red and arroyo willows. You described using an excavator during the summer of 2021 to remove dead, dying, and unhealthy willows and dense Himalayan blackberry brambles from the stream and riparian corridor without agency notification or permits.

September 15, 2021, Sonoma County site inspection

On September 15, 2021, Jackie Crawford with Permit Sonoma, inspected the riparian corridor on your Property and observed riparian corridor clearing along the right bank of Canfield Creek. On September 17, 2021, Ms. Crawford contacted our office and submitted photographs of the clearing work including soils disturbed by machinery an estimated 30 to 40 feet in width along the right bank.

October 22, 2021, Regional Water Board Staff Property inspection

On October 22, 2021, Regional Water Board staff (staff) participated in a multi-agency inspection of Canfield Creek on the Property starting at the railcar bridge over Canfield Creek and ending at the confluence of Canfield and Blucher Creeks. Upstream of the railcar bridge, you reported that two years ago both banks of the riparian corridor had been removed. Staff confirmed the removal of riparian vegetation at this location.

Below the railcar bridge, staff observed the stream flowing and riparian corridor on the right bank of Canfield Creek cleared using an excavator, as described earlier this summer, for an estimated distance of 900 feet and width of 30 to 40 feet. Disturbance included the removal of willow and blackberry vines on the right bank as well as riparian corridor and the right bank laidback. In several areas it appeared earthwork occurred within the wetted channel. Additionally, in several locations the excavator reached across the stream and cleared portions of the left bank. You described using an excavator during the summer of 2021, to remove riparian vegetation from the stream and riparian corridor including instream earthwork without agency notification or permits.

The recently disturbed area within the stream way, riparian areas, and floodway is predominantly made up of fine soil material that threatens to discharge to Canfield and Blucher Creeks. Erosion control included seeding and mulching all disturbed soils and irrigation to germinate the cover crop. Staff observed the cover crop in most areas to be thick and 4 inches high. However, in areas adjacent to Canfield Creek where the bank was laid-back, the cover crop was sparse and poorly developed representing a threatened discharge of sediment to the stream. Additionally, areas cleared of vegetation on the left bank were exposed without erosion control, representing a threatened discharge of sediment to the stream. Due to the site's low gradient and hydrologic connectivity, this could pose a downstream threat of fine sediment delivery during the rainy season. Clearing and ground disturbance in the stream way, riparian areas and channels was not authorized by the Regional Water Board, US Army Corps of Engineers or the California Department of Fish and Wildlife. These unauthorized impacts have caused ecological degradation and loss of functions within the riparian areas and channels and threaten further degradation downstream. The Project area has not been delineated; therefore, the extent of impacted wetlands is not known at this time.

Disturbance of fill material within the channel banks and bed of a water of the state including wetlands requires authorization from the Regional Water Board under section 13260 of the Water Code, as well as sections 401 (33 U.S.C. 1341) of the Clean Water Act and section 13376 of the 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.

Staff explained that due to the environmental impacts on Canfield Creek, you would need to submit a Riparian Corridor and Channel Restoration and Management Plan to us for review and to determine the extent of the impacts before any further restoration work is conducted at the site.

Canfield Creek

Canfield Creek flows directly into Blucher Creek and are located within the Russian River Hydrologic Unit, Laguna hydrologic sub-area 114.21. The existing and potential Beneficial Uses of Canfield Creek and its tributaries include:

- 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

The Russian River 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 Clean Water Act section 401 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.

Wetlands adjacent to Canfield creek

Wetlands in the North Coast Region including those at the site have the existing and potential beneficial uses of:

- Wetland Habitat
- Water Quality Enhancement
- Flood Peak Attenuation / Flood Water Storage

For information on our Certification 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 Water Code may apply to the activities: 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.

Recommendations

To limit the days that aquatic resources are impacted and therefore your exposure to financial liability, we recommend that you do the following:

1. **Within 20 days of receipt this letter**, contact Scott Gergus of the Clean Water Act section 401 Certification Unit at scott.gergus@waterboards.ca.gov or (707) 576-2685 or me at Gil.Falcone@waterboards.ca.gov or (707) 576-2830 to discuss your plan to correct the violations.
2. **By July 15, 2022**, submit a Riparian Corridor and Channel Restoration and Management Plan developed by a qualified professional to restore the wetland, riparian corridor and creek impacts that have occurred to date.

This plan should include aquatic resource assessment identifying all aquatic resources impacted and plans to restore their functions. Submit a Clean Water Act section 401 Certification / Waste Discharge Requirements permit application (see link above), restoration plan and permit application fee for review and authorization, by July 15, 2022, to NorthCoast@waterboards.ca.gov and copy Gil Falcone at Gil.Falcone@waterboards.ca.gov and Scott Gergus at scott.gergus@waterboards.ca.gov.

In the event that you or your tenant(s) propose to develop or use the Property in a manner or method that will or may result in a discharge of waste to waters of the state in the future, be aware of and comply with relevant regulatory requirements for water quality protection. For example, Water Code section 13260 requires that 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 shall file with the appropriate regional board a report of the discharge. Further, Water Code section 13264 states, in part: "No person shall initiate any new discharge of waste or make any material changes in any discharge...prior to the filing of the report required by section 13260." In addition, projects involving dredge or fill in waters of the United States are subject to regulation under Clean Water Act section 401. For more information about Water Board permits that may apply to proposed site development or land use activities, refer to this link:

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

These activities might also require input, consultation, and permits from other federal, state, and local agencies as listed above.

If you have any questions regarding this matter, please contact Scott Gergus on the Clean Water Act section 401 Certification Team at scott.gergus@waterboards.ca.gov or (707) 576-2685 or me at Gil.Falcone@waterboards.ca.gov or (707) 576-2830.

Sincerely

Gil Falcone
Senior Environmental Scientist Supervisor
Southern 401 Certification Unit

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Exhibit A: Regulatory Citations

Attachment 1: Site Inspection Memo, Oscar and Lorri Duckworth, 2950 Canfield Road, Sebastopol

cc:

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

Tiffany Wolvek, California Department of Fish and Wildlife,
tiffany.wolvek@wildlife.ca.gov

William M. Connor, Army Corps of Engineers,
William.M.Connor@usace.army.mil

U.S. Environmental Protection Agency,
R9cwa401@epa.gov

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

Jeremiah Puget, North Coast Regional Water Board,
Jeremiah.puget@waterboards.ca.gov

Jackie Crawford, Sonoma County code enforcement,
Jackie.crawford@sonoma-county.org

Jacob Newell, Sonoma County Agriculture and Open Space,
JACOB.NEWELL@SONOMA-COUNTY.ORG

Mike Jensen, Prunuske and Chatham, Inc.,
mike@pcz.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,

Regulatory Section	Citation
	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 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