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## North Coast Regional Water Quality Control Board

### Notice of Violation

February 23, 2022

Mr. David Bent  
13940 Village Avenue  
Healdsburg, CA 95448

Dear Mr. Bent,

**Subject:** Notice of Violation, Directive to Obtain Regulatory Coverage for Discharges to a Water of the State, and Transmittal of Site Inspection Memo, Bent Property, 13940 Village Avenue, Healdsburg

**File:** Mr. David Bent, 13940 Village Avenue, Healdsburg, APN 088-120-023-000.  
ECM PIN: CW-877823, WDID No. 1B21239WNSO,  
CIWQS Reg Measure: 445834

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 Sonoma County Assessor's Parcel Number 088-120-023-000 (the Property):

1. California Water Code (Water Code) sections 13260, 13264 and 13376.
2. Federal Clean Water Act (CWA or 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 30 days, to contact Regional Water Board staff to advise of your plan to comply with Water Code 13260.**

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. 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 September 17, 2021, Regional Water Board staff participated in a site inspection of the Property (see Attachment 1, Site Inspection Memo, 13940 Village Avenue, Healdsburg). The Property is located at approximate coordinates, latitude 38.6067° N and longitude -122.8495° W. The inspection report documents and provides evidence of unpermitted impacts to 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 Water Code and the CWA, due to the unpermitted dredge or fill within waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

### **Property Background**

Mr. and Mrs. Bent purchased 13940 Village Avenue in Healdsburg on September 20, 2013. The property is 0.33 acres or 14,374 square feet in area with a single-family residence and attached garage. The property borders the outside bend of the south-bank of the Russian River.

### **August 31, 2021, Sonoma County site inspection**

On August 31, 2021, Ryan Sharp with Permit Sonoma contacted our office regarding rock armoring and 8 gabions placed on the bank of the Russian River without a Sonoma County permit, located at 13940 Village Avenue in Healdsburg. During Mr. Sharp's inspection, you reported you hand pulled rocks from a gravel bar(s) along the Russian River and placed them on your riverbank property from the waterline to about 8 vertical feet above the riverbank. You stated you placed the rocks on the riverbank to prevent bank erosion and cover up concrete debris left by the previous owner. Mr. Sharp observed eight gabion steps down to the river and gabions used to make a boat ramp. During the inspection, Mr. Sharp told you the cobble rock armoring and gabion structures placed on the riverbank needed a County permit, to stop all work, and to also contact the Regional Water Board for permitting information. You immediately stopped all work on your riverbank project and contacted Regional Water Board staff.

### **September 17, 2021, Regional Water Board staff site inspection**

During a September 17, 2021, site inspection, Mr. Sharp and Regional Water Board staff met with you to assess the status of the August 31, 2021 inspection referral. Regional Water Board staff explained the purpose of the inspection was to assess the status of the referral and gather information on rock armoring and installation of gabions on the bank of the Russian River with respect to required Regional Water Board permitting. Regional Water Board staff observed the riverbank at the rear of the house and the recent placement of gabion structures filled with river cobbles (see Attachment 1). At the base of the riverbank, in some areas, concrete debris was previously placed over metal debris and pre-existing boulder bank protection.

During the inspection you explained that cobbles had been collected for several years on an extensive gravel bar(s) located on the opposite side of the river. The collected clean cobbles have been used for rock armoring of the riverbank to help prevent bank

erosion, cover unsightly concrete debris, and for landscaping. The area below the alleged ordinary high water was observed to contain the majority of river cobbles. Most of the collected cobbles in this area have been placed on the riverbank as cobble rock armoring and in gabions below alleged ordinary high water. Cobble filled gabions of several different sizes have been used to construct a stairway, canoe haul out, and sitting area (see Attachment 1).

Conservatively, the total cubic yards of river cobble fill placed on the riverbank below the alleged ordinary high water by you is an estimated 49.9 cubic yards (see Attachment 2).

Placement of fill material such as gabions and the associated cobbles 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.

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/](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 water of the United States, 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 30 days of receipt this letter, contact Scott Gergus and Gil Falcone of the Clean Water Act section 401 Certification Unit at [Scott.Gergus@waterboards.ca.gov](mailto:Scott.Gergus@waterboards.ca.gov) and [Gil.Falcone@waterboards.ca.gov](mailto:Gil.Falcone@waterboards.ca.gov) to discuss your plan to correct the violations.**
2. **By May 15, 2022, submit a plan developed by a qualified professional to remove the river cobble fill and gabions you placed without a permit and location(s) where the cobble fill will be disposed including an individual 401 application packet, and permit fee for review and authorization, to [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) and copy Scott Gergus [Scott.Gergus@waterboards.ca.gov](mailto:Scott.Gergus@waterboards.ca.gov) and Gil Falcone at [Gil.Falcone@waterboards.ca.gov](mailto:Gil.Falcone@waterboards.ca.gov).**
3. If you choose to have a qualified professional develop a plan for bank stabilization to be implemented when you remove the rocks and gabions and under that same permit, please be advised that the Regional Water Board requires minimization measures to reduce impacts to the banks of the Russian River. These measures may include implementing a bioengineered bank stabilization that incorporates plantings to reduce hardness and restore some riparian functions. Be advised that the Regional Water Board does not find gabion structures acceptable for bank stabilization projects along the bed or banks or rivers or streams due to their long-term instability that will discharge unpermitted waste and/or fill material to the river and lack of minimized impacts. 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.

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

If you have any questions regarding this matter, please contact Scott Gergus at [Scott.Gergus@waterboards.ca.gov](mailto:Scott.Gergus@waterboards.ca.gov) or (707) 576-2685 or Gil Falcone at [Gil.Falcone@waterboards.ca.gov](mailto: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, Mr. David Bent, 13040 Village Avenue, Healdsburg

**Attachment 2:** Volume Calculation Memo, David Bent, 13940 Village Avenue, Healdsburg, Sonoma County

cc: James Hansen, California Department of Fish and Wildlife, [James.Hansen@wildlife.ca.gov](mailto:James.Hansen@wildlife.ca.gov)  
James Reed, California Department of Fish and Wildlife, [James.Reed@wildlife.ca.gov](mailto:James.Reed@wildlife.ca.gov)  
William M. Connor, Army Corps of Engineers, [William.M.Connor@usace.army.mil](mailto:William.M.Connor@usace.army.mil)  
Kendra Spicher, Army Corps of Engineers, [Kendra.A.Spicher@usace.army.mil](mailto:Kendra.A.Spicher@usace.army.mil)  
U.S. Environmental Protection Agency, [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov)  
Nathan Jacobsen, State Water Resources Control Board, Office of Chief Counsel, [Nathan.Jacobsen@waterboards.ca.gov](mailto:Nathan.Jacobsen@waterboards.ca.gov)  
Diana Henriouille, North Coast Regional Water Board, [Diana.Henriouille@waterboards.ca.gov](mailto:Diana.Henriouille@waterboards.ca.gov)  
Jackie Crawford, Sonoma County code enforcement, [Jackie.Crawford@sonoma-county.org](mailto:Jackie.Crawford@sonoma-county.org)  
Ryan Sharp, Sonoma County code enforcement, [Ryan.Sharp@sonoma-county.org](mailto:Ryan.Sharp@sonoma-county.org)

## 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

Regulatory Section	Citation
	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 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