
North Coast Regional Water Quality Control Board

November 3, 2023

Ms. Mary Byrnes
1905 King Street
Santa Rosa, CA, 95404

Dear Ms. Byrnes,

Subject: **Notice of Violation and Transmittal of Site Inspection Memo, 1905 King Street, Santa Rosa, APN 180-360-010-000**

File: Mary Byrnes, 1905 King Street, Santa Rosa, CA, 95404, CIWQS Place ID 890976

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 (APN) 180-360-010 (Property):

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

THIS LETTER RECOMMENDS THAT YOU ACT WITHIN 30 DAYS

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 October 19 and 23, 2023, Regional Water Board staff (RWB staff) participated in a site inspection of the Property (see Attachment 1, Site Inspection Memo, 1905 King Street, Santa Rosa). 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, Basin Plan, and Clean Water Act, due to the unpermitted discharges

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

and/or threatened discharges of earthen material or fill into a stream, waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

Background

On October 18, 2023, RWB staff were notified by City of Santa Rosa Code Enforcement staff of recent unpermitted construction of a retaining wall installed within Poppy Creek at the property 1905 King Street in the City of Santa Rosa, APN 180-360-010. Photos provided depicted a recently constructed retaining wall containing approximately over two hundred and fifty cement bags.

On October 19, 2023, RWB staff Kason Grady, Supervising Water Resource Control Engineer, and Jordan Filak, Environmental Scientist, inspected the site. The purpose of the inspection was to evaluate the alleged installation of an unpermitted retaining wall in Poppy Creek and impacts or threatened impacts to the quality and beneficial uses of waters of the state. RWB staff met with you to discuss the potential impacts and associated noncompliance with the federal Clean Water Act, Basin Plan, and California Water Code. You explained that the wall was constructed to prevent streambank erosion and support an unstable streambank at the rear of your property and also confirmed no permits were obtained to conduct the instream work.

RWB staff provided an email to you on the afternoon of October 19, 2023, with the recommendation to acquire the necessary permitting and consult with a qualified professional to develop a plan for the removal, stabilization, and restoration of the affected area. RWB staff also provided a list a list of private consultants that specialize in bioengineering and stream bank restoration as you requested on site.

On October 23, 2023, RWB staff received a voicemail and email from City of Santa Rosa Code enforcement staff Megan Lackie, indicating the retaining wall structure located at 1905 King Street was removed over the weekend of October 21, 2023. The City of Santa Rosa and RWB staff were not notified of the removal. Regional Water Board and City of Santa Rosa staff performed a joint inspection in the morning on October 23, 2023, to assess and document site conditions following the removal of the retaining wall. Staff observed the now denuded stream bank without the presence of erosion and sediment controls or best management practices (BMPs) to stabilize the stream bank.

Poppy Creek

Poppy Creek is tributary to Paulin Creek. Paulin Creek is tributary to Piner Creek and flows into Santa Rosa Creek. Santa Rosa Creek is tributary to Laguna de Santa Rosa / Mark West Creek and eventually flows into the Russian River. Poppy Creek is located with the Russian River Hydrologic Unit, Santa Rosa Hydrologic Sub-area 114.22. The existing and potential Beneficial Uses of Poppy Creek and its tributaries include:

- Municipal and Domestic Supply
- Agricultural Supply
- Industrial Service Supply
- Industrial Process Supply
- Groundwater Recharge
- Navigation
- Hydropower Generation
- 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

Laguna de Santa Rosa / Mark West Creek and its tributaries have been designated as impaired for sediment and temperature.

Relevant Requirements

During both inspections, RWB staff observed features and conditions on the Property that represent violations of water quality requirements and regulations. Exhibit A – Regulatory Citations, provides references to these requirements and regulations. Activities that may directly or indirectly impact beneficial uses of waters of the state would 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.

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/.

Observed Violations

Regional Water Board staff inspected the complaint site (latitude 38.3150, longitude - 122.4023) and confirmed the presence of an unpermitted retaining wall installed within Poppy Creek. The retaining wall consisted of approximately two hundred and fifty raw to semi hardened fifty pound “Sakrete” concrete bags, pierced and stabilized with rebar,

and filled with three-quarter inch blue shale gravel. The retaining wall originated below the ordinary high water mark and was approximately six feet tall, eighteen feet long, and had a depth of two feet. It is unknown if riparian and stream side vegetation had been cleared to facilitate construction of the retaining wall. Ms. Byrnes confirmed, and records indicate, that the retaining wall was installed without a permit. The placement of concrete bags and other fill material in the channel is an unpermitted discharge to waters of the state and a threat to discharge pollutants to the stream.

1. Violations of California Water Code 13260 and 13376, and section 401 of the Clean Water Act for placement of fill material within the stream banks and bed of a water of the state without obtain authorization prior to this discharge and are currently in violation of these regulations.
2. Violations of the Water Quality Control Plan for the North Coast (Basin Plan) section 4.2.1, Prohibition 2 expressly prohibits the threatened 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. Attachment 1 documents your activities have threatened discharges of prohibited materials and are in violation of the prohibition.

Clearing and ground disturbance in the stream and riparian areas was not authorized by the Regional Water Board. These activities might also have required permits from the 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 area and stream and threaten further discharges and degradation downstream.

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 state, 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

The November 3, 2023, Inspection Report documents and provides evidence of unpermitted impacts to waters of the state and/or United States at the site. To correct violations and address features and conditions that threaten to impact water quality described in the inspection report, we recommend that you do the following:

1. Cease from conducting any additional work within the streamside management area without coordination with Regional Water Board staff and all applicable local jurisdictions.
2. Engage with a qualified licensed professional with experience in stream bank stabilization and mitigation work to assess the current conditions of the denuded stream bank and develop both a temporary plan for Regional Water Board staff consideration that addresses the stabilization of the affected area to minimize further erosion and sedimentation throughout the forthcoming wet season and a long term restoration plan to permanently stabilize the stream banks and prevent further erosion and sedimentation.

Future correspondence regarding this matter will be sent to you at this address unless an alternative address is provided to the Regional Water Board. Failure to accept mail from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

If you have any questions regarding this matter, please contact Jeremiah Puget at Jeremiah.Puget@waterboards.ca.gov or (707) 576-2835 or Jordan Filak at Jordan.Filak@waterboards.ca.gov or (707) 576-6743.

Sincerely,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

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Exhibit A: Regulatory Citations

Attachment 1: Site Inspection Memo, Site Inspection Memo, 1905 King Street, Santa Rosa, APN 180-360-010

cc:

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

Nathan.Jacobsen@waterboards.ca.gov

Jeremiah Puget, North Coast Regional Water Board,

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Kason Grady, North Coast Regional Water Board

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Gil Falcone, North Coast Regional Water Board

Gil.Falcone@waterboards.ca.gov

Heaven Moore, North Coast Regional Water Board

Heaven.Moore@waterboards.ca.gov

Megan Lackie, City of Santa Rosa Code Enforcement,

mlackie@srcity.org

Daniela DeBaca, City of Santa Rosa Code Enforcement,

Exhibit A: Regulatory Citations

Regulatory Section	Citation
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 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).”