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North Coast Regional Water Quality Control Board

**Notice of Violation**

December 29, 2023

Certified Mail No. TBD at time of sending

Courtney Keith White  
2975 Calistoga Road,  
Santa Rosa, CA 95404  
[ckeithw@gmail.com](mailto:ckeithw@gmail.com)

Dear Courtney Keith White,

Subject: Notice of Violation and Transmittal of Site Inspection Memo, 2975 Calistoga Road, Santa Rosa, Sonoma County; APN 028-100-002

File: Keith White, 2975 Calistoga Road, Santa Rosa, Sonoma County, CA 95404 (APN 028-100-002); ECM PIN: CW-891156, WDID No. 1B23164WNSO

This letter is to notify you (the Discharger) 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 028-100-002 (Property):

1. California Water Code (Water Code) sections 13260, 13261(a), 13264(a), 13265(a), 13304, 13350 and 13376.
2. Federal Clean Water Act (CWA or Clean Water Act) sections 301, 401, and 404 (if within waters of the U.S.).
3. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1.

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 6, 2023, Regional Water Board (RWB) staff participated in a site inspection of the Property (see Attachment 1, Site Inspection Memo, 2975 Calistoga Road, Santa Rosa, Sonoma County, APN 028-100-002). The inspection report documents and

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HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

provides evidence of unpermitted activities that impact 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 possibly the Clean Water Act, due to the unpermitted discharges and/or threatened discharges of earthen material or fill into streams, waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

### **Property Background**

Regional Water Board staff received a referral alleging the unpermitted placement of earthen fill in an un-named stream on 2975 Calistoga Road in Santa Rosa (Site).

On October 6, 2023, RWB staff inspected the Site with Mr. White's representative Jamie Svanda of Robertson Engineering. The purpose of the inspection was to respond to the referral from the County of Sonoma documenting unpermitted fill placed in wetlands, riparian areas, stream banks and in the channel bed. This would include an assessment of the impacts these activities had on water quality and the beneficial uses of waters of the state.

### **Relevant Requirements**

During the inspection, 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.

### **Observed Violations**

Regional Water Board staff inspected the complaint Site (latitude 38.525985° N, longitude 122.661292° W) and confirmed the unpermitted fill of soil, large woody debris and a culvert in unnamed watercourses and wetlands as well as debris placed within riparian areas. The locations of the observed violations will be referenced numerically, 1 through 5, corresponding to Attachment 1: Site Inspection Memo. A historical analysis indicates fill was placed over, and now completely covers, a previously existing unnamed watercourse that flowed east to west towards Mark West Creek in Location 1. Large woody debris had been placed at Location 4, impacting stream bed and bank. The placement of fill in waterways and the installation of the culvert at Location 3 are an unpermitted discharge to waters of the state. The placement of fill directly on stream banks, specifically with unstable steep slopes at the unnamed creek at Location 2 and adjacent to wetlands at Location 5, are a threat of discharge to waters of the state.

Dredge and fill activities in the stream, riparian, and wetland areas were not authorized by the Regional Water Board. These activities might also have required permits from U.S. 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 stream, riparian, and wetland areas and threaten further discharges and degradation downstream.

Placement of fill material within the stream 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, and or section 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.

Disturbance of soil greater than 1 acre in extent occurred without the required permit. The federal Clean Water Act sections 301 and 402 prohibits certain discharges of storm water containing pollutants except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. 1311 and 1342(p)). The U.S. Environmental Protection Agency promulgates federal regulations to implement the CWA's mandate to control pollutants in storm water runoff discharges (Title 40 Code of Federal Regulations Parts 122, 123, and 124). The federal statutes and regulations require discharges to surface waters comprised of storm water associated with construction activity, including demolition, clearing, grading, and excavation, and other land disturbance activities (except operations that result in disturbance of less than one acre of total land area and which are not part of a larger common plan of development or sale), to obtain coverage under an NPDES permit. At the time of the October 6, 2023, inspection, the Discharger had not enrolled under the General Permit for Storm Water Discharges Associated with Construction Activities Order WQ 2022-0057-DWQ NPDES NO. CAS000002 (Construction General Permit).

On November 15, 2023, the Discharger certified a Notice of Intent (NOI) to enroll the site for coverage under the Construction General Permit. The NOI identified 2 acres of disturbed area. The Discharger is required to comply with all the conditions of the Construction General Permit.

### **Mark West Creek**

The unnamed streams are tributaries to Mark West Creek. Mark West Creek is tributary to the Russian River. The unnamed streams are located within the Russian River Hydrologic Unit, Mark West Hydrologic Sub-area 114.23. The existing and potential Beneficial Uses of Mark West Creek and its tributaries include:

- Municipal and Domestic Supply
- Agricultural Supply
- Industrial Service Supply
- Industrial Process Supply
- Groundwater Recharge

- Freshwater Replenishment
- 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

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.

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/](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: 13260, 13261(a), 13264 (a), 13265(a), 13304, 13350, 13376, 13385 (See Exhibit A). The Regional Water Board reserves its right to fully enforce the law against any 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**

The October 6, 2023, Site Inspection Memo documents and provides evidence of unpermitted impacts to waters of the state and/or United States at the site. To address features and conditions that threaten to impact water quality described in the inspection report, we recommend that you continue to winterize the site and monitor for discharges to aquatic resources throughout the wet season (October 15 – May 15) in accordance with the NPDES Construction General Stormwater Permit.

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. We will contact you upon further assessment of these violations to discuss any potential necessary remediation or other further enforcement actions.

If you have any questions regarding this matter, please contact Gil Falcone at [Gil.Falcone@waterboards.ca.gov](mailto:Gil.Falcone@waterboards.ca.gov) or (707) 576-2830 or Emma Tracy at [Emma.Tracy@waterboards.ca.gov](mailto:Emma.Tracy@waterboards.ca.gov) or (707) 576-2834.

Sincerely,

Gil Falcone  
Senior Environmental Scientist, Supervisor Southern 401 Certification Unit

**Exhibit A:** Regulatory Citations

**Attachment 1:** Site Inspection Memo, 2975 Calistoga Road, Santa Rosa, Sonoma County

cc: James Hansen, California Department of Fish and Wildlife,  
[James.Hansen@wildlife.ca.gov](mailto:James.Hansen@wildlife.ca.gov)  
U.S. Environmental Protection Agency,  
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Nathan Jacobsen, State Water Resources Control Board, Office of Chief  
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## 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 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

Regulatory Section	Citation
	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 13377	"Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance."
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