



North Coast Regional Water Quality Control Board

Notice of Violation

April 11, 2023

Certified No. 7021-0950-0001-6500-0882

John Balletto
P.O. Box 2579
Sebastopol, CA, 95473

Dear Mr. Balletto,

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Discharges to a Water of the State, and Transmittal of Site Inspection Memo, Sexton Hill Vineyard, 707 Sexton Road, Sebastopol, APN 077-030-012

File: John and Theresa Balletto, Balletto Vineyards, Sexton Hill Vineyard, 707 Sexton Road, Sebastopol, 95473
ECM PIN: CW-887265, WDID No. 1B23023CNSO

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 077-030-012 (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 August 5, 2022, Regional Water Board (RWB) staff participated in a site inspection of the Property (see Attachment 1, Site Inspection Memo, 707 Sexton Road,

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Sebastopol). The inspection report documents and 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 stream, waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

Property Background

Regional Water Board staff received an anonymous complaint alleging the unpermitted placement of rock slope protection (RSP) in an un-named stream (Site) on a Balletto vineyard at 707 Sexton Road in Sebastopol.

On August 5, 2022, RWB staff inspected the Site with Balletto Farm representative Nick Frey. The purpose of the inspection was to respond to the complaint alleging unpermitted placement of RSP on the 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. Attachment A – Regulatory Citations, provides references to these requirements and regulations.

Observed Violations

Regional Water Board staff inspected the complaint Site (latitude 38.3830, longitude -122.8719) and confirmed the unpermitted placement of RSP on the near vertical stream banks and in the stream bed. While investigating the unpermitted RSP, staff also observed a stream crossing at the site consisting of a damaged 24-inch diameter corrugated metal pipe (CMP), earthen material, and RSP. Records indicate the crossing was installed without a permit. The placement of RSP in the channel and the installation of the crossing are an unpermitted discharge to waters of the state. The placement of RSP on the near vertical stream banks is a threat of discharge. These items are a threat to discharge pollutants to the stream such as rock and sediment and threaten the integrity of the culvert crossing.

Ground disturbance activities in the stream and riparian areas was not authorized by the Regional Water Board. These activities might also have required permits from 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 stream and riparian area 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.

Sexton Creek

The unnamed stream is a tributary Sexton Creek. Sexton Creek is tributary to Jonive Creek and eventually flows into the Russian River. The unnamed stream is located within the Russian River Hydrologic Unit, Guerneville Hydrologic Sub-area 114.11. The existing and potential Beneficial Uses of Sexton 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
- Estuarine Habitat
- 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/).

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

The November 23, 2022 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. Within 30 days of receipt this letter, contact Gil Falcone at Gil.Falcone@waterboards.ca.gov or (707) 576- 2830 and Scott Gergus at scott.gergus@waterboards.ca.gov or (707) 576-2685 of the Clean Water Act section 401 Certification Unit to discuss your plan to correct the violations. This plan should include an evaluation of the crossing, including culvert sizing, crossing design, and of activities conducted in the riparian area.**
- 2. By May 30, 2023, submit a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) (individual 401 application packet) addressing the unpermitted placement of RSP on the stream banks**

and in the stream bed at the culverted crossing and unpermitted 24-inch damaged corrugated metal pipe with RSP failing into the unnamed stream following recommendations found in Handbook for Forest, Ranch, and Rural Roads, January 2014 to bring the site back into compliance. Submit the application for review and authorization, to NorthCoast@waterboards.ca.gov and copy Gil Falcone at Gil.Falcone@waterboards.ca.gov and Scott Gergus at Scott.Gergus@waterboards.ca.gov.

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 Gil Falcone at Gil.Falcone@waterboards.ca.gov or (707) 576-2830 or Scott Gergus at Scott.Gergus@waterboards.ca.gov or (707) 576-2685.

Sincerely,

Gil Falcone
Senior Environmental Scientist, Supervisor Southern 401 Certification Unit

Exhibit A: Regulatory Citations

Attachment 1: Site Inspection Memo, Sexton Hill Vineyard, 707 Sexton Road, Sebastopol, Sonoma County

cc: John Balletto, Balletto Vineyards
john@ballettovineyards.com
Nick Frey, Balletto Vineyards
nick@ballettovineyards.com
Cort Munselle, Munselle Civil Engineering
cort@munsellecivil.com
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
Kendra Spicher, Army Corps of Engineers,
Kendra.A.Spicher@usace.army.mil
U.S. Environmental Protection Agency,
R9cwq401@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@somoma-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 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,

Regulatory Section	Citation
	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