
North Coast Regional Water Quality Control Board

December 3, 2015

Douglas and Heidi Cole
92520 Highway 96
Somes Bar, CA 95568

Dear Mr. and Mrs. Cole:

Subject: Notice of Violations Associated with the Stanshaw Ditch, 92520 Highway 96, Somes Bar

File(s): Stanshaw Ditch, Marble Mountain Ranch - Siskiyou County APN 026-290-200 - WDID No. 1A15024NSI

Please be advised that you are in violation of the federal Clean Water Act, the California Water Code, and the Water Quality Control Plan for the North Coast Region (Basin Plan), due to unregulated discharges of waste in waters of the state and/or of the United States associated with maintenance, operation, and chronic failures of the Stanshaw Ditch.

Background

At the request of staff of the State Water Resources Control Board Division of Water Rights (Division), on February 12, 2015, North Coast Regional Water Quality Control Board (Regional Water Board) staff Stormer Feiler, Environmental Scientist, accompanied Division staff Skyler Anderson and Michael Vella on an inspection of the Stanshaw Creek diversion. The diversion originates on Stanshaw Creek and discharges to Irving Creek, both tributaries to the Klamath River, near Somes Bar. Diverted water is used for electrical power generation with a pelton wheel and for domestic water supply and irrigation on the Marble Mountain Ranch.

The diversion has reportedly been in place since the 1800s, supplying a variety of uses to landowners over the years. We understand that the Division is presently reviewing various aspects of the diversion in response to complaints that allege public trust impacts and unauthorized diversion in excess of pre-1914 water rights. The objective of the Regional Water Board's inspection was to evaluate the existing and potential impacts to water quality and beneficial uses associated with operation of the diversion.

As documented in Mr. Feiler's inspection report (attached), he observed 19 points in the upper ditch where the outboard berm has been or may be compromised by either erosion of the berm, saturation of the berm, or sediment loading to the ditch from cut bank failures. In addition, Mr. Feiler observed evidence of significant active erosion occurring at the downstream discharge point to Irving Creek, representing a chronic source of sediment delivery into Irving Creek and, thence, to the Klamath River. All features observed are controllable sources of sediment and appear to represent or comprise violations or threatened violations of various water quality requirements, as summarized below.

Applicable Requirements and Alleged Violations

Clean Water Act Violations

Section 301(a) of the Clean Water Act provides that subject to certain exceptions, "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. § 1311(a). One of the exceptions allowed for under the Clean Water Act is the discharge from a point source as authorized by a permit granted pursuant to the National Pollutant Discharge Elimination System (NPDES) under § 402 of the Clean Water Act. 33 U.S.C. § 1342. The Clean Water Act prohibits the discharge of any pollutant from a point source into waters of the United States without an NPDES permit. Evidence observed by staff along the upper ditch indicated that the ditch had overtopped or caused the berm to fail at several locations. While staff did not follow the erosion path below each failure point to confirm that flows reached downstream surface waters, staff did observe a number of points where the flows reached Stanshaw Creek. In each case, such a flow, carrying sediment and/or other mobilized materials and delivering them into a surface water represents a point source discharge of waste, requiring an NPDES permit.

Water Code Violations

Water Code section 13376 requires any person discharging or proposing to discharge pollutants to waters of the United States to file a report of the discharge. Each case where the ditch has failed and flows have discharged into Stanshaw Creek or the Klamath River, represents a violation of Water Code section 13376 associated with the discharge of sediment-laden water into waters of the state and the United States without first filing a report of discharge. In addition, the chronic discharge of sediment into Irving Creek associated with the erosion feature at the ditch outfall represents an ongoing violation, and a discharge of waste without a report of waste discharge and/or waste discharge requirements.

All earthen fill material discharged into Stanshaw Creek, Irving Creek, and/or the Klamath River as a result of operation, maintenance, and/or failure of the Stanshaw Ditch subjects you to administrative civil liability and orders for cleanup and abatement.

Penalties for water code violations are based upon a per gallon and per day basis, and can reach \$10,000/day per violation and \$10/gallon for discharge violations.

Basin Plan Violations

The Water Quality Control Plan for the North Coast Region (Basin Plan) contains specific discharge prohibitions to protect the beneficial uses. The Basin Plan's Action Plan for Logging, Construction and Associated Activities (Action Plan) includes two discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):

- i. Prohibition 1 - "The 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 is prohibited."
- ii. Prohibition 2 - "The 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 is prohibited."

Evidence observed by staff during the inspection suggests that flow in the ditch chronically overtop portions of the ditch berm and, at times, cause the ditch berm to fail, and potentially transport that berm material into Stanshaw Creek or the Klamath River. Ditch maintenance/repair by rebuilding or reinforcing the berm with additional material can cause or contribute to discharges into watercourses in the event of a ditch failure.

Recommended Actions

We recognize that operation of the ditch and the associated issues have been occurring over the course of many years, and that a number of parties and agencies including the Division have been in continued discussions with you about alternatives to improve the efficiency of your water delivery system and to reduce the impacts and threatened impacts to water resources, including water quality and beneficial uses of Stanshaw and Irving creeks and the Klamath River. Whether you continue to operate the Stanshaw Ditch in its present form or make improvements to the system that allow you to decommission the ditch, it will be necessary for you to address the water quality violations we have identified and to take appropriate measures to correct features that represent chronic discharges or threatened discharges of waste to receiving waters. The enclosed water quality inspection report identifies features of concern and provides recommendations to address those.

The Regional Water Board is coordinating closely with the Division on this matter, and providing its inspection report and this Notice together with an inspection report prepared by the Division that specifies corrective action measures that you shall take in order to

prevent the waste and unreasonable use of water, unreasonable method of diversion of water, and harm to public trust resources. We would prefer that corrective actions you take in response to the direction from the Division consider and incorporate appropriate mitigations and corrective actions to address the Water Quality recommendations as well. Furthermore, we would prefer to continue to coordinate with the Division in working with you to address both of our agencies' concerns. Accordingly, as directed in the transmittal letter accompanying this document package, we expect a response from you and/or your attorney, within 30 days of receiving this Notice, describing your plans to address the collective water resource violations identified by Division staff and Water Quality staff.

Your failure to respond within 30 days and/or to demonstrate your plans to address those violations will lead to additional enforcement action and may cause the Regional Water Board to proceed under its own enforcement authority, including, but not limited to issuing an order directing the development and implementation of corrective actions to address violations or potential violations throughout the ditch system. We have enclosed a draft Cleanup and Abatement Order (Order) for your reference, subject to revision in the event we deem it appropriate to develop and issue such an Order.

We look forward to your response in this matter. If you have any questions, please contact Stormer Feiler of my staff by email at Stormer.Feiler@waterboards.ca.gov, or by phone at (707) 543-7128, or his supervisor, Diana Henriouille, by email at Diana.Henriouille@waterboards.ca.gov, or by phone at (707) 576-2350.

Sincerely,

Joshua Curtis, EPM, Chief
Planning, Stewardship, and Compliance Assurance Division

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Enclosures: Inspection Report
Draft Cleanup and Abatement Order