



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Coast Regional Water Quality Control Board

May 18, 2016

Barton and Vicki Myers
959 Toro Canyon Road
Santa Barbara, CA 93108
Email: b_myerssb@bartonmyers.com

VIA ELECTRONIC AND CERTIFIED MAIL
Certified Mail No. 7015 0640 0001 9863 2710

Dear Mr. and Mrs. Myers:

NOTICE OF VIOLATION FOR EXCAVATION AND GRADING ACTIVITIES AND THE DISCHARGE OF FILL MATERIAL WITHOUT A PERMIT, TORO CANYON CREEK, SANTA BARBARA COUNTY

You are in violation of California Water Code (CWC) section 13376 for failure to obtain a Clean Water Action section 401 Water Quality Certification (Certification) prior to the excavation, grading, and discharge of fill material at Toro Canyon Creek as part of a road building project.

Violation Description

On or about January 26, 2016, California Department of Fish and Wildlife staff notified the Central Coast Regional Water Quality Control Board (Central Coast Water Board) that during or about May of 2015, you initiated activities that resulted in, and continue to result in, unauthorized excavation and grading activities and the discharge of fill material to Toro Canyon Creek. Grading, excavation, and the discharge of fill material to Toro Canyon Creek requires Certification from the Central Coast Water Board. You did not submit an application for Certification and proceeded with the unauthorized installation of a road and at-grade crossing.

Construction included grading, vegetation trimming and removal activities to construct the road, placement of several medium to large size boulders within the channel of the streambed, and placement of a fill pad within the channel for the at-grade crossing. Medium boulders were also placed along a partial perimeter of the newly constructed road. Adjacent riparian vegetation was damaged by equipment used to complete the construction. The County of Santa Barbara issued an Emergency Permit on January 11, 2016 to allow for the removal of the boulders from the at-grade crossing. This work has been completed. However, a rock fill pad remains in the creek bed at the at-grade crossing.

Excavation and grading activities and the discharge of fill to waters of the United States without a Certification are violations of CWC section 13376.

Action Required

You must take action to come into compliance with CWC section 13376 as soon as possible. You can achieve compliance by (1) implementing an effective combination of erosion and sediment control to prevent further discharges at the site, (2) submitting a complete Certification

DR. JEAN-PIERRE WOLFF, CHAIR | JOHN M. ROBERTSON, EXECUTIVE OFFICER

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application to restore the site to pre-existing conditions, and (3) restoring the site to pre-existing conditions upon Certification.

A complete application for Certification will include the following:

- a. The name, address, and telephone number of:
 1. the applicant, and
 2. the applicant's agent (if an agent is submitting the application).
- b. A full, technically accurate description, including the purpose and final goal, of the entire activity.
- c. Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the:
 1. federal agency;
 2. type (e.g., individual license, regional general permit, nationwide permit, etc.);
 3. license/permit number(s) (e.g., nationwide permit number), if applicable; and
 4. file number(s) assigned by the federal agency(ies), if available.
- d. Complete copies of either:
 1. the application(s) for federal license(s)/permit(s) being sought for the activity, or
 2. if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or,
 3. if no federal notifications are issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.If no application, notification, correspondence or other document must be exchanged between the applicant and federal agency(ies) prior to the start of the activity, the application shall include a written statement to this effect.
- e. Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.
- f. A copy of any draft or final CEQA document(s), if available, prepared for the activity. Although CEQA documentation is not required for a complete application, the certifying agency shall be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action.
- g. The correct fee deposit, as identified in the Dredge and Fill Fee Calculator.
- h. A complete project description, including:
 1. Name(s) of any receiving water body(ies) that may be adversely impacted.
 2. Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).
 3. Location of the activity area in latitude and longitude, in township/range, or clearly indicated on a published map of suitable detail, quality, and scale to allow the certifying agency to easily identify the area and water body(ies) receiving any discharge.
 4. For each water body type reported under Subsection (h)(2) of this Section, the total estimated quantity of waters of the State that may be adversely impacted temporarily or permanently by a discharge of fill or by excavation and/or grading. The estimated quantity of waters adversely impacted by any grading and/or discharge of fill shall be reported in acres and (for channels, shorelines, riparian corridors, and other linear habitat) linear feet, except that excavation estimates shall be reported in cubic yards.

5. The total estimated quantity (in acres and, where appropriate, linear feet) of waters of State, by type (see Subsection (h)(2) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any and all adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.
6. A description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.
7. The total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of jurisdictional waters of the State.
8. A brief list/description, including estimated adverse impacts of any projects implemented by the applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For purposes of this item, the water body extends to a named source or stream segment identified in the relevant basin plan.

Items h.5 and h.6 above necessitate development of a Restoration and Mitigation Plan. An adequate Restoration and Mitigation Plan will include the following:

- a. Identification of party(ies) responsible for the restoration and other mitigation.
- b. A detailed description of the site impacted by the at-grade crossing and road that includes:
 1. Identification of the location and size of the jurisdictional areas and waters of the State (including riparian areas) that were directly and indirectly impacted.
 2. A description of the jurisdictional areas and waters of the State (including riparian areas) that were directly and indirectly impacted, by habitat type.
 3. Identification and description of the functions and values of the jurisdictional areas and waters of the State (including riparian areas) that were directly and indirectly impacted.
- c. A detailed description of the goals of the restoration and other mitigation, including, but not limited to:
 1. Identification of the type(s) of habitat(s) (waterbody type and plant community(ies)) that will be restored, and for other mitigation, identification of the habitats that will be established, restored, enhanced, or preserved.
 2. Description of the functions and values of the restoration and other mitigation habitat and how it will replace lost or otherwise impacted beneficial uses and functions, including temporal loss of beneficial uses and functions.
 3. Identification of when implementation of the restoration and other mitigation will begin and be completed.
- d. A detailed description of the restoration and other mitigation site(s), including, but not limited to:
 1. Location and size (acres and linear feet) of the restoration and other mitigation area(s).
 2. Identification of the size of area(s) to be planted.
 3. Ownership status of the restoration and other mitigation site(s).

4. Present and proposed uses of all adjacent areas for the restoration and other mitigation site(s).
 5. Existing functions and values of the restoration and other mitigation site(s).
 6. Existing soil conditions of the restoration and other mitigation site(s).
 7. Existing surface water and groundwater conditions of the restoration and other mitigation site(s) (in terms of riparian and wetland habitat, explain the hydrology of the site(s), including how and when the site(s) will draw and hold water, and identify the depth to groundwater).
 8. Hydrologic connectivity to a permanent water source for the restoration and other mitigation site(s).
 9. Jurisdictional delineation of the restoration and other mitigation site(s).
 10. Present and proposed uses of the restoration and other mitigation site(s).
- e. A detailed restoration and other mitigation implementation plan that (1) describes the restoration of the area where the at-grade crossing and road have been removed, and (2) describes the other mitigation to be implemented to account for the temporal loss of habitat associated with the installation and removal of the at-grade crossing and road. The plan shall include, but not be limited to:
1. Identification of the time schedule for restoration and other mitigation activities, including initial planting, submittal of "as-built" documents, monitoring, maintenance, and reporting.
 2. A detailed description of proposed methods to be used for the restoration and other mitigation site(s), including, but not limited to:
 - a) A detailed description of the steps that will be taken to restore Toro Canyon Creek to its original contour and a figure showing the contours of the Toro Canyon Creek before impact and after restoration.
 - b) A detailed description of the steps that will be taken to implement the restoration and other mitigation.
 - c) A figure showing the planting palettes for the restoration and other mitigation site(s).
 - d) Identification of success criteria for the restoration and other mitigation site(s), including functional assessment criteria.
 - e) A detailed description of how the restoration and other mitigation site(s) will receive supplemental water.
 3. A detailed description of erosion control measures to be implemented at the restoration and other mitigation site(s).
 4. Identification of maintenance and monitoring activities and duration for the restoration and other mitigation site(s).
 5. Forbiddance of pruning, trimming or cutting of native plants in the restoration and other mitigation site(s), or buffer areas, except to control non-native and/or invasive plant species.
 6. Forbiddance of herbicide use in the restoration and other mitigation site(s), or buffer areas, except to control non-native and/or invasive plant species.

In accordance with CWC section 13385(a), your violation of CWC section 13376 subjects you to civil liability. Pursuant to CWC section 13385(c), the Central Coast Water Board may impose civil liability for up to \$10,000 per day for each violation. If the Central Coast Water Board elects to refer the matter to the Attorney General, the superior court may impose civil liability for up to \$25,000 per day for each violation, and up to \$25 per gallon of waste discharged in excess of 1,000 gallons and not cleaned up (CWC 13385(b)). Days of

violation and the associated potential civil liability continue to accrue for each day of non-compliance.

Central Coast Water Board staff's recommendations for further enforcement will depend on your response to this Notice of Violation. The Central Coast Water Board may also issue a Cleanup and Abatement Order to require cleanup or abatement of the effects of the unauthorized activities pursuant to section 13304 of the CWC. The Central Coast Water Board reserves its right to take any enforcement action authorized by law.

If you have questions please contact Paula Richter at Paula.Richter@waterboards.ca.gov, or Phil Hammer at Phillip.Hammer@waterboards.ca.gov.

Sincerely,



Digitally signed by Michael Thomas

Date: 2016.05.18 14:11:38 -07'00'

Michael J. Thomas
Assistant Executive Officer

cc:

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