

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2009-0057

REQUIRING TECHNICAL INFORMATION
PURSUANT TO WATER CODE SECTION 13267(b)

FOR

Andy and Sandy Westfall

8224 Elk River Rd.
Elk River Watershed

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Andy and Sandy Westfall (Discharger) recently purchased a property in Elk River, California, along South Fork Elk River, at 8224 Elk River Rd, Eureka, herein referred to as the 'project area'.
2. On August 28, 2008, the Humboldt County Community Services Planning Division of Humboldt County (Humboldt County Planning Department) issued a Staff Report and staff recommendations describing a proposed Land Conservation Contract and Zone Reclassification for the project area. The Land Conservation Contract would establish approximately 77 acres into a Class C Agricultural Preserve pursuant to the California Land Conservation Act (The Williamson Act) and the Humboldt County Agricultural Preserve Guidelines.
3. According to the Humboldt County Planning Department Staff Report, the establishment of agricultural preserves is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and the zone reclassification to the more restrictive Agricultural Exclusive (AE) and Timber Production Zoning (TPZ) zones are statutorily exempt from the provisions of CEQA.
4. The Staff Report at page 14 shows a plot plan of the property and identifies Russ soils for grazing adjacent to South Fork Elk River. According to the Federal Emergency Management Act (FEMA) map and observations of flooding in the area by Regional Water Board Elk River Sediment Total Maximum Daily Load (TMDL) Development staff, the area slated for cattle grazing may become inundated with floodwaters.

5. Cattle grazing activities have the potential to discharge manure containing bacteria, chemicals, and nutrients to surface waters. Further, grazing can cause discharge of sediment into surface waters by loss of streamside ground cover and breaking down of streambanks. These discharges could violate water quality objectives, impair beneficial uses, and contribute to a nuisance condition.
6. The "Water Quality Control Plan for the North Coast Region" (Basin Plan) includes water quality objectives, implementation plans for point source and nonpoint source discharges of waste, prohibitions, and statewide plans and policies.
7. The beneficial uses and water quality objectives for Elk River are contained in the Basin Plan in Table 3-1.

Existing beneficial uses for Elk River are:

- a) Municipal Water Supply (MUN)
 - b) Agricultural Supply (AGR)
 - c) Industrial Service Supply (IND)
 - d) Groundwater Recharge (GWR)
 - e) Freshwater Replenishment (FRSH)
 - f) Navigation (NAV)
 - g) Water Contact Recreation (REC-1)
 - h) Non-Contact Water Recreation (REC-2)
 - i) Commercial or Sport Fishing (COMM)
 - j) Cold Freshwater Habitat (COLD)
 - k) Wildlife Habitat (WILD)
 - l) Rare Threatened or Endangered Species (RARE)
 - m) Migration of Aquatic Organisms (MIGR)
 - n) Spawning, Reproduction, and/or Early Development (SPWN)
 - o) Estuarine Habitat (EST)
8. The waters of Elk River support, or before recent timber harvest-related degradation of water quality, have supported, domestic and agricultural water supplies for more than 100 residents. Elk River is currently the sole water source for some residences, including property adjacent to and downstream of the project area.
 9. The waters of Humboldt Bay, to which Elk River is tributary, grow 70 percent of California's commercial oysters.
 10. The waters of Elk River support coho and Chinook salmon, and steelhead and cutthroat trout. Coho salmon, Chinook salmon, and steelhead trout are listed as threatened under the Federal Endangered Species Act in the Elk River watershed. Additionally, the California Fish and Game Commission amended

the California Endangered Species Act (CESA) to list coho salmon as threatened in the Southern Oregon / Northern California Coast Evolutionarily Significant Unit (ESU), which includes the Elk River.

11. The Elk River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation. Water quality problems cited under the listing include: sedimentation, threat of sedimentation, impaired irrigation water quality, impaired domestic supply water quality, impaired spawning habitat, increased rate and depth of flooding due to sediment, and property damage.
12. On November 25, 2008, Regional Water Board staff sent a letter to Mr. Westfall (included herein as Attachment A) that included the following points:
 - a. Due to sediment-impaired beneficial uses and nuisance flooding conditions, the Regional Water Board is currently in the process of creating a plan to restore water quality in Elk River through development of a Total Maximum Daily Load (TMDL) and associated implementation plan. Staff anticipates that drafts of these documents will be available in the spring of 2009.
 - b. Staff are conducting early TMDL implementation with landowners who are implementing new projects.
 - c. Even in the absence of an adopted TMDL or early TMDL implementation, discharges and potential discharges are subject to the provisions of the California Water Code and the federal Clean Water Act.
 - d. Our understanding is that cattle grazing activities have already taken place on a portion of his recently purchased property.
 - e. Impaired domestic and agricultural water supplies are located adjacent to the project area. Elk River is currently the only water source for numerous residents living along Elk River.
 - f. In an effort to ensure the beneficial uses of water are appropriately protected from further impairment, and to ensure Mr. Westfall's activities on his property will not be in conflict with the upcoming TMDL implementation plan and associated regulatory actions, a site visit of the project area is necessary.
 - g. Advance consultation with the Regional Water Board was recommended to Mr. Westfall, to ensure that he develops his grazing project efficiently and in a way that will comply with applicable water quality laws.
 - h. The letter advised Mr. Westfall to contact Adona White at (707)576-2672 to identify a suitable time for a site visit.
 - i. Senior Engineering Geologist Mark Neely sent an email on June 5, 2009, requesting a site visit, and contacted Mr. Westfall via telephone to reiterate the request through the month of June. However, Mr. Westfall requested additional people to attend and was not able to schedule them. Over six months has elapsed since the initial request for a site visit.

13. On December 16, 2008, the Humboldt County Board of Supervisors held a hearing to consider Mr. Westfall's application to establish the project area into a Williamson Act Class C Preserve. At the hearing the Mr. Westfall indicated that he had received the November 25, 2008 Regional Water Board letter, had not responded, and did not necessarily intend to respond. The Supervisors unanimously approved the contract.
14. Between January 21, 2009 and May 20, 2009, Regional Water Board staff Adona White had numerous exchanges with Mr. Westfall including emails, telephone calls, and face-to-face discussions. These exchanges reiterated that, based on the specific location of the project area and its proximity to sensitive beneficial uses of water, including domestic water supplies, staff continued to request a site visit and submission of information about the existing and proposed grazing operations and associated management measures, prior to the commencement of grazing operations.
15. On May 29, 2009, the Regional Water Board received a complaint stating that cows had been brought to the subject property and grazing operations had commenced.
16. The Regional Water Board is responsible for protecting and restoring beneficial uses of waters of the State, and attaining and maintaining water quality objectives set forth in the Basin Plan.
17. As set forth, in part, below, Water Code section 13267 allows a regional board to require of anyone who is proposing to discharge waste within its region to furnish, under penalty of perjury, technical or monitoring program reports that the regional water board requires. The ability to request such reports has been delegated to the Executive Officer.
 - Section 13267(a) - *"A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region."*
 - Section 13267(b) - *"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."*
 - Section 13267(c) - *"In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in*

Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”

18. All of the technical reports required by this Order are necessary to evaluate the risk of impacts to water quality created by Mr. Westfall's grazing activity.
19. In light of the grazing activity, a potential threat to water quality, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained. Downstream of the property, numerous water intakes are located along South Fork and Mainstem Elk River, including domestic water supplies, representing the sole source of water for residents. The Regional Water Board has received complaints from South Fork and Mainstem Elk River residents of degradation of water supplies from both surface and groundwater systems (wells). Residents report to the Regional Water Board that these effects continue in nature and extent. Regional Water Board staff observations have verified these reports.
20. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
21. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs.
22. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code Section 13320 and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you

must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code Section 13267(b) the Discharger shall:

1. By July 3, 2009, and prior to commencing any grazing activities on the project area, Mr. Westfall shall arrange a site inspection by the Regional Water Board of the project area,
2. By July 22, 2009, submit to the Executive Officer:
 - a) A description of the grazing activities that includes a map of where on the project area the proposed grazing activity will occur, the number of cows that will be involved, and proposed timing of the grazing activities.
 - b) An assessment of quantity and location of waste that may be produced by the cows and a description, including maps, that show potential waste discharge routes to waters of the state and United States. These routes should include direct discharge to South Fork Elk River and its tributaries, discharge onto surfaces which may carry overland flow to South Fork Elk River and its tributaries, discharge to soil that may be connected to groundwater or surface water and to surfaces that may become inundated during flood events.
 - c) A description of management measures to be used to avoid or minimize discharges of waste from the grazing activities into surface and ground waters, including locations of exclusionary fencing and off-stream livestock water sources, waste treatment measures and any other proposed management measures designed to avoid or minimize waste discharges.
 - d) A description of any proposed monitoring program to demonstrate implementation and effectiveness of the management measures.
 - e) A schedule for the grazing activities, implementation of management measures and monitoring.
3. All of the above required information shall be submitted under penalty of perjury.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

June 26, 2009