
North Coast Regional Water Quality Control Board

March 24, 2014

Mr. Fernando Becerra-Valencia
919 Link Lane
Santa Rosa, CA 95401

Dear Mr. Becerra-Valencia:

Subject: **NOTICE OF VIOLATION:** Unauthorized activities involving the placement of fill (soil, sandbags, concrete, and fence posts) and fence construction in vernal pools and draining vernal pools in violation of the Federal Clean Water Act and California Water Code.

Files: 4032 Madera Avenue, Santa Rosa, Sonoma County

This letter serves to notify you that you are in violation of the law and subject to enforcement action for engaging in and/or allowing the following activity or activities to occur on your property located at 4032 Madera Avenue, Santa Rosa, Sonoma County APN 035-182-002:

- Discharging waste (fill soil constitutes a waste as defined by California Water Code (Water Code) section 13050) to a vernal pool complex in the Laguna de Santa Rosa Watershed, a water of the State and/or United States, without filing a report of waste discharge and without an appropriate permit from the North Coast Regional Water Quality Control Board.

Regional Water Board staff have been investigating complaints we received regarding placement of fill and construction of a fence in vernal pools and draining vernal pools conducted by Fernando Becerra-Valencia and/or his agents on a privately owned parcel in Santa Rosa, at 4032 Madera Avenue (Photograph 1). According to current Sonoma County Assessor's information the parcel is owned by Fernando Becerra-Valencia (discharger). Our investigation was initially prompted by a complaint we received from an anonymous party on February 20, 2014.

On February 22, 2014, Scott Gergus of our staff inspected the property located at 4032 Madera Avenue with Stephanie Buss and Warden Dimitri Esquivel of the California Department of Fish and Wildlife (CDFW), and observed fill, including soil, sandbags, concrete, and fence posts placed in a vernal pool complex (Photograph 2). It appears that the sandbags and soil are being used to isolate onsite vernal pools and to prevent vernal pool complexes located on neighboring properties from flowing and filling the onsite vernal pool complex (Photographs 2 and 3). A tall wooden fence has been constructed in the onsite vernal pool complex using concrete and fence posts. Additionally, a sump pit was excavated onsite and a sump pump placed in it for the apparent purpose of dewatering the vernal pool complex (Photographs 4 and 5). On February 25 and 27, 2014, Mr. Gergus again inspected the site and observed additional work had been performed in the onsite vernal pool complex. A ditch approximately 200 feet long had been excavated along the eastern fence line for the apparent purpose of draining the vernal pool complex. The excavated ditch extends from the southern property line, through vernal pool complex and to the roadside ditch on Madera Avenue. Excavated spoils were placed alongside the ditch within the vernal pool complex (Photograph 6). On February 28, 2014, Warden Esquivel was notified that the excavated ditch was discharging to the roadside ditch along Madera Avenue (Photograph 7). Photographs are included in Attachment A.

Basin Plan Prohibitions, Objectives, and Violations

The Water Quality Control Plan for the North Coast Region (Basin Plan) contains an Action Plan for Logging, Construction, and Associated Activities (Action Plan, page 4-26.00) which includes two prohibitions that apply to the discharge of earthen materials or debris to surface waters:

- 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.”*
- 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.”*

Fill soil, sandbags, concrete, and fence posts have been discharged/placed into vernal pools in violation of the Basin Plan. The Basin Plan identifies the beneficial uses for each hydrologic area in the Region, as well as for specific waterbodies and broad categories of waters and water bodies which are to be designated and protected. The beneficial uses of any specifically identified water body generally apply to all its tributaries. The identified beneficial uses of wetlands (vernal pools) include Wetland Habitat (WET), Flood Peak Attenuation/Flood Water Storage (FLD), and Water Quality Enhancement (WQE). Additionally, the draining of vernal pools also impacts other beneficial uses, such as Rare,

Threatened, or Endangered Species (RARE), Wildlife Habitat (WILD), and Ground Water Recharge (GWR), in violation of the Basin Plan.

Water Code and Clean Water Act Section 401 and 404 Violations

Fill soil, sandbags, concrete, and fence posts have been discharged/placed in vernal pools in violation of the Federal Clean Water Act (CWA). Dredge and fill activities within waters of the United States require prior authorization from the U.S. Army Corps of Engineers under section 404 of the CWA and issuance of a state water quality certification by the Regional Water Board under section 401 of the CWA.

The discharge and/or placement of waste into waters of the State and/or United States without filing a report of waste discharge violates Water Code sections 13260, 13264, and 13376 and CWA section 301 (33 U.S.C. section 1311). Water Code sections 13260 and 13376, respectively, require that a person who discharges or proposes to discharge waste (including clean fill, riprap or other revetment, excavation sidecast, dredge spoils, soil displaced while clearing vegetation, etc.) that could affect the quality of waters of the State, or who discharges or proposes to discharge pollutants to navigable waters of the United States within the jurisdiction of the State shall file a report of waste discharge, which will regulate the discharge as necessary to protect the beneficial uses of the waters. Pursuant to Water Code section 13264, no person shall initiate any new discharge prior to the filing of a waste discharge report as required by Water Code section 13260. Furthermore, CWA section 301 prohibits the unpermitted discharge of pollutants to waters of the United States.

Pursuant to Water Code sections 13261 and 13265, respectively, you may be subject to administrative civil liability in an amount not to exceed \$1,000 for each day you continue to fail to submit a report of waste discharge and for each day you discharge waste prior to filing that report. Pursuant to Water Code section 13385 you may be subject to administrative civil liability in an amount not to exceed \$10,000 per day of violation or judicial civil liability in an amount not to exceed \$25,000 per day of violation for violations of Water Code section 13376, for discharge to waters of the United States and violation of the Basin Plan, as noted above.

To prevent ongoing threats to water quality and beneficial uses, and to minimize liability stemming from the above-outlined water quality violations, you must immediately cease any activities that involve the discharge or placement of waste into the vernal pool complex and draining of the vernal pool complex located on your property. In addition, consider this a formal notice of the requirements of Water Code section 13260, section 13264, and 13376, which require that a report of waste discharge be filed with the Regional Water Board prior to the initiation of a discharge.

Be advised that, as set forth above, you are currently discharging without a permit in violation of state and federal law and are currently subject to administrative civil liability pursuant to Water Code sections 13350 and 13385 in the amount of up to \$10,000 per day of violation.

We request that you take immediate action to resolve these violations as outlined below:

1) Immediately:

- a) Refill ditch that was excavated to drain vernal pool/wetlands with material that was removed; elevation shall be the same as prior. If it is not possible to fill the ditch due to water being present, then the ditch shall be blocked at the end to prevent further drainage from the vernal pool/wetland.
- b) Remove sump-pump and stop draining the vernal pool/wetlands.
- c) Remove wooden board fence and fence posts within vernal pool and other wetland areas. Areas of the fence that may shade the vernal pool/wetland area shall also be removed so that vernal pools receive natural sunshine and are not shaded.

2) Within 45 days of the date of this letter:

- a) Submit a wetland evaluation and restoration plan for the entire property located at 4032 Madera Avenue in Santa Rosa, Sonoma County APN 035-182-002, to the Regional Water Board, for Executive Officer concurrence. The wetland evaluation shall contain: a delineation of wetlands on the property and adjacent areas that may be impacted by activities and violations detailed in this letter; if necessary, an engineering and biological design for all wetland restoration components; a time schedule for restoration activities; criteria to judge the success of the restoration project; and, a monitoring proposal to evaluate whether the restoration is successful. The restoration plan must be prepared by a competent professional wetland specialist with experience in wetland delineation, restoration/creation, and erosion/sediment control, and must be approved by the Executive Officer prior to implementation. Provisions of this requirement may be modified upon review by the Executive Officer, dependent upon actions by discharger.

If you have any questions please contact Stephen Bargsten at (707) 576-2653 or Scott Gergus at (707) 576-2685.

Sincerely,

Original signed by

Fred Blatt
Division Chief
Nonpoint Source and Timber Harvest Division

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Certified-Return Receipt Requested

cc: Ms. Marcela Damian, 114 Damian Court, Hot Springs National Park,
AR 71901-9222 R012
Mr. Rigoberto Becerra Valencia, Good Price Auto Parts, 12 West Third St.,
Santa Rosa, CA 95401
Mr. Rigoberto Becerra Valencia, 2570 Buss Drive, Santa Rosa, CA 95407

Mr. Rigoberto Becerra Valencia, 804 S. 6th Street, Yakima, WA 98901-3313

Electronic copy e-mailed to:

Ms. Laurie A. Monarres, Laurie.A.Monarres@usace.army.mil

Mr. Bryan Matsumoto, Bryan.T.Matsumoto@usace.army.mil

Mr. Vincent Griego, Vincent.Griego@fws.gov

Warden Dimitri Esquivel, Dimitri.Esquivel@wildlife.ca.gov

Ms. Stephanie Buss, Stephanie.Buss@wildlife.ca.gov

Mr. Michael Reynolds, Mjeynolds@srcity.org

Mr. Sean McNeil, SMcneil@srcity.org

Mr. Steve Brady, SBrady@srcity.org

Ms. Ann Gallagher-White, Ann.Gallagher-White@sonoma-county.org

Ms. Kaete King, Kaete.King@waterboards.ca.gov

Ms. Debbie Hultman, Debbie.Hultman@wildlife.ca.gov

Mr. Craig Weightman, Craig.Weightman@wildlife.ca.gov

Mr. James Jones, James.Jones@wildlife.ca.gov

Mr. Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov

Ms. Rosa Busse, RBusse@schsd.org

Mr. Dan Cahill, Dan.Cahill@sonoma-county.org

Attachment A

The following seven photographs show the violations cited in the Notice of Violation occurring on 4032 Madera Avenue in Santa Rosa, Sonoma County APN 035-182-002.



Photograph 1. Photograph was taken February 22, 2014, by Scott Gergus and looking east. The photograph was taken at the rear of the property and shows a portion of the vernal pool complex on 4032 Madera Avenue, APN 035-182-002, in southwest Santa Rosa.



Photograph 2. This photograph was taken on February 22, 2014, by Stephanie Buss with the California Department of Fish and Wildlife. The photograph was taken looking south towards the rear of the property and shows a portion of the vernal pool complex and the wetland plant California semaphore grass, perimeter fence, and sandbags and earthen berm along the fence line. The vernal pool complex extends to the south, east, and west onto neighboring properties.



Photograph 3. Photograph was taken February 22, 2014, by Scott Gergus. Close-up photograph showing the earthen fill and sand bags placed in the vernal pool along the southern property line for the purpose of isolating onsite vernal pools and to prevent vernal pool complexes located on neighboring properties from flowing and filling the onsite vernal pool complex with water.



Photograph 4. This photograph was taken on February 22, 2014, by Scott Gergus. An electrically powered sump pump had been placed in an excavated hole in the vernal pool complex to drain it. A soil pile from the excavation can be seen to the right. A rope and electric cord can be seen tied to an overhead tree branch. A $\frac{3}{4}$ -inch black plastic discharge hose is attached to the sump pump and extends an estimated 175 feet to the Madera Avenue roadside ditch.



Photograph 5. This photograph was taken on February 22, 2014, by Stephanie Buss with the California Department of Fish and Wildlife. Close-up of the sump pump in the vernal pool. The black plastic hose leads to the Madera Avenue roadside ditch.



Photograph 6. This photograph was taken on February 27, 2014, by Scott Gergus. This photograph shows the excavated ditch along the eastern fence line. The ditch extends from the rear of the property to the top of the roadside ditch along Madera Avenue through the vernal pool complex. The ditch sidecast materials have been placed beside the ditch and into the vernal pool complex. The entire ditch had standing water in it and appeared to be close to discharging into the Madera Avenue roadside ditch.



Photograph 7. This photograph was taken on February 28, 2014, and submitted by Warden Demitri Esquivel. The photograph shows the ditch discharging (draining) water from the vernal pool complex on 4032 Madera Avenue to the roadside ditch along Madera Avenue.