
North Coast Regional Water Quality Control Board

February 19, 2016

Mr. Robert Pinoli
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437

Subject: **Notice of Violation** of Section 301 of the *Federal Water Pollution Control Act* (Clean Water Act), Section 13376 of the California Water Code (California Water Code) and the *Water Quality Control Plan for the North Coast Region* (Basin Plan) for unauthorized discharges to Pudding Creek; and Notice of Violation of the November 13, 2015, *Requirement for Information Pursuant to Water Code Section 13267* (November 13, 2015, 13267 Order) for failure to submit reports; Mendocino Railway, Fort Bragg, Mendocino County

File: The Skunk Train Tunnel No. 1 West Portal (Site)

Dear Mr. Pinoli:

The Mendocino Railway is hereby given notice that it has violated section 301 of the Clean Water Act, the Basin Plan, and sections 13376 and 13260 of the California Water Code for unauthorized discharges of sediment or earthen materials from the above-referenced Site to Pudding Creek, a water of the United States.

Additionally, Mendocino Railway is in violation of Requirements A and B of the November 13, 2015, 13267 Order for failure to submit a long-term erosion control plan, and for failure to submit an adequate short-term erosion control plan. Mendocino Railway is also in violation of Requirement C of the November 13, 2015, 13267 Order for failing to submit the monthly progress report for November 2015 and for failing to timely submit the December 2015 and January 2016 monthly reports.

Mendocino Railway is required to submit a revised short-term erosion control plan and the required long-term erosion control plan immediately. Furthermore, Mendocino Railway is required to include additional information in future monthly progress reports as discussed below (see Required Actions). Please submit the revised short-term erosion control plan

and the delinquent long-term erosion control plan electronically to Devon Jorgenson at Devon.Jorgenson@waterboards.ca.gov.

Applicable Legal Authority and Requirements

Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

Water Code section 13376 prohibits the discharge of pollutants to waters of the United States unless authorized by a permit issued by the Regional Water Board or State Water Board. A person who discharges pollutants to waters of the United States must file a report of discharge in compliance with Water Code section 13260. Water Code section 13260 requires “[a] person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state” to submit a report of waste discharge.” All waters of United States are waters of the state.

Additionally, The Basin Plan prohibits the following under the Action Plan for Logging, Construction, and Associated Activities (page 4-29.00):

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.”*
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.”*

California Water Code section 13267 subdivision (b)(1) states, in part: *“In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”*

Alleged Violations

Unauthorized Discharges

Construction activities from the Site have resulted in unauthorized discharges of sediment to Pudding Creek, a water of the United States and the state, in violation of Basin Plan prohibitions. On December 17, 2015, Regional Water Board staff observed a plume of

sediment in Pudding Creek, which is indicative of a recent discharge (Attachment A, Photo 1). In addition, on February 1, 2016, Regional Water Board staff observed a trail of sediment leading from the Site's southern stockpile to Pudding Creek, which is indicative of a previous discharge of sediment to the creek (Attachment A, Photos 3 and 4).

Construction activities by Mendocino Railway will likely continue to affect the water quality of Pudding Creek. Accordingly, regulatory permit coverage is required. Mendocino Railway has failed to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Order No. 2012-0006-DWQ) (Construction General Permit) and/or to submit a Report of Waste Discharge (ROWD) pursuant to Water Code sections 13376 and 13260. Without coverage under the Construction General Permit or another NPDES permit, discharges from the Site to Pudding Creek are unauthorized and are in violation of section 301 of the Clean Water Act and Water Code sections 13376 and 13260.

Violations of November 13, 2015, 13267 Order Directives

The Regional Water Board issued a 13267 Order on November 13, 2015, requiring submission of short-term and long-term erosion control plans by November 20, 2015, and December 11, 2015, respectively, and monthly progress reports by the last business day of the month.

Short-Term Erosion Control Plan

Regional Water Board staff has reviewed the document entitled "*Construction Erosion Control Plan*" (CECP), received on November 13, 2015, and has determined that it is inadequate. For example, section 3.1 of the CECP states that Best Management Practices (BMPs) "[g]enerally will be deployed whenever excavation and grading expose soils. BMPs shall be modified, as necessary, and maintained throughout the duration of construction activities. Modification of the BMPs should be based on the phases of construction." While this section mentions a general implementation plan, it does not discuss the controls that have already been implemented (type, timing, location), nor does it include a detailed, date-specific schedule for controls that will be implemented, as required by Requirement A.4 of the November 13, 2015, 13267 Order.

Long-Term Erosion Control Plan

Mendocino Railway is in violation of Requirement B of the November 13, 2015, 13267 Order for failing to submit a long-term erosion control plan. To date, Regional Water Board staff has not received this plan.

Monthly Progress Reports

Mendocino Railway has not submitted the November 2015 monthly progress report. Please submit the November 2015 report forthwith or, if you did not prepare a November 2015 report, advise Regional Water Board staff accordingly. Regional Water Board staff acknowledges but notes your submittal of the December 2015 monthly progress report on January 4, 2016, and January 2016 monthly progress report on February 2, 2016, which are one and two days late, respectively.

Required Actions

Mendocino Railway must comply with all requirements of the November 13, 2015, 13267 Order. Your actions to correct the conditions of non-compliance with the Order must be implemented as soon as possible, including submittal of a revised short-term erosion plan containing all provisions required under the Order and submittal of a long-term erosion plan. All reports must be submitted to Devon Jorgenson at: Devon.Jorgenson@waterboards.ca.gov.

The **revised short-term erosion control plan** must address the deficiencies noted above. Specifically, the short-term erosion control plan must, at a minimum, include the following specific revisions:

1. A chronology and discussion of BMPs applied to the site to date. This shall include dates that specific BMPs were applied, location and type of specific BMPs, site-specific purpose for each BMP, a summary of the effectiveness of each BMP, a log of efforts made to maintain the BMP, and current status of each BMP, whether the BMP continues to be deployed onsite or if it has been replaced by a different BMP.
2. A plan and schedule for deployment of additional BMPs on the site, including a description of the purpose for each BMP, a BMP inspection and maintenance plan, and a contingency plan for potential BMP failure, or lack of effectiveness.

The **long-term erosion control plan**, must, at a minimum, include the following information:

1. A description of planned operations during winter/wet periods, typically October 15 to May 1, and how the Site, including materials, equipment, stockpiles, etc., will be secured and maintained to prevent the discharge of sediment to surface waters during precipitation events.
2. An anticipated construction completion date (e.g. the date that repair work on the tunnel is expected to be finished and date by which disturbed areas are expected to be fully stabilized).
3. A description of proposed measures to restabilize disturbed areas and a schedule for implementation.
4. A description of each phase of the project, including a list of activities that will occur during each phase, and a BMP implementation schedule for each phase.

Please note, submission of the short-term and long-term erosion control plans does not preclude the need for Mendocino Railway to enroll for permit coverage for discharges associated with construction storm water discharges (e.g. Construction General Permit) and to comply with the requirements of the permit.

Future **monthly progress reports** must be submitted timely and shall:

1. Include time-stamped photos of the Site taken before and after any forecast of 50% or higher likelihood of a precipitation event including a copy of the precipitation forecast from the National Weather Service Forecast Office;
2. Identify BMPs that have failed or required maintenance since the previous monthly report. If any significant changes are made to the Construction Erosion Control Plan (or short term erosion control plan), Regional Water Board staff must be notified and the changes must be documented in the subsequent monthly progress report;
3. Include a summary of any sediment removal activities from the sediment traps. The summary shall include the date and time the removal occurred, volume of sediment removed, and photographs of post-removal conditions.
4. Include a summary of actions (e.g. additional BMP implementation and monitoring, or more frequent maintenance) taken to minimize water quality impacts from imminent discharge areas; and
5. Include an update of the status of the Site's enrollment for coverage under the Construction General Permit and preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP).

Future Enforcement Action

Please note that correcting the conditions of non-compliance at the Site and with the November 13, 2105, 13267 Order does not preclude enforcement for the violations alleged in this notice. The Regional Water Board reserves its rights to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cease and desist order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Please note the new due dates in this Notice of Violation shall not be construed as extension to the original due dates in the November 13, 2015, 13267 Order. Please be aware that Mendocino Railway may be subject to a cleanup and abatement order requiring it to clean up and abate the discharge of waste to Pudding Creek along with any threat of discharges to Pudding Creek. Administrative civil liabilities may be assessed beginning with the date that a violation first occurred. The liabilities can be up to \$10 per gallon and/or \$1,000 to \$10,000 per day per violation, pursuant to Water Code sections 13385 and/or 13268.

Please note that Regional Water Board staff will prepare an inspection report discussing in further detail Basin Plan and Clean Water Act violations observed during the February 1, 2016, inspection.

Should you have any questions regarding this matter, please contact Devon Jorgenson of my staff at (707) 576-2701, or Devon.Jorgenson@waterboards.ca.gov.

Sincerely,

Claudia Villacorta
Point Source and Groundwater Protection Division Chief

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Attached: 1. Photographs from the December 17, 2015, and February 1, 2016 inspections
2. Requirement for Information Pursuant to Water Code section 13267

Certified Return Receipt Requested

Mendocino Railway, Fort Bragg, Mendocino County