

MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP

ATTORNEYS AT LAW
A Partnership Including Professional Corporations

1681 BIRD STREET
P.O. BOX 1679
OROVILLE, CALIFORNIA 95965-1679

Writer's e-mail: awallace@minasianlaw.com

PAUL R. MINASIAN, INC.
JEFFREY A. MEITH
M. ANTHONY SOARES
DUSTIN C. COOPER
EMILY E. LaMOE
ANDREW J. McCLURE
JACKSON A. MINASIAN
AIDAN P. WALLACE

TELEPHONE:
(530) 533-2885

FACSIMILE:
(530) 533-0197

WILLIAM H. SPRUANCE,
Retired
MICHAEL V. SEXTON,
Retired

March 11, 2021

BY CERTIFIED MAIL AND EMAIL

North Yuba Water District
PO Box 299
Brownsville, CA 95919
email@nywd.org

Barbara Brenner, General Counsel
North Yuba Water District
White Brenner
1414 K Street, 3rd Floor
Sacramento, CA 95814
Barbara@whitebrennerllp.com

Jeff Maupin, General Manager, NYWD
jmaupin@nywd.org

Central Valley Regional Water Quality
Control Board
364 Knollcrest Drive, Suite 205
Redding, CA 96002

Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: 60 Day Notice of Intent to File Suit under the Clean Water Act

Dear North Yuba Water District,

This notice letter is to provide you with sixty days' notice of South Feather Water & Power Agency's (the "Agency") intent to file suit against North Yuba Water District (NYWD) for violation of the Clean Water Act in connection with NYWD's Oroleve Ditch Line Project in and around Oroleve Creek ("Oroleve Project"). The violations upon which this notice letter is based are set forth more fully below.

I. Authority to File Suit under the Clean Water Act

Section 505 of the Clean Water Act authorizes citizens to bring suit for violation of an effluent standard or limitation, or for violation of an order issued by the Administrator of the EPA or a state with respect to such a standard or limitation. 33 U.S.C. § 1365. This 60 day notice is being provided to NYWD, the Administrator of the United States Environmental Protection Agency (EPA), and the Central Valley Regional Water Quality Control Board ("CVRWQCB") in accordance with Clean Water Act § 505(b), 33 U.S.C. § 1365(b).

II. The Clean Water Act Prohibits Discharges of Stormwater from Construction Sites Except in Compliance with an NPDES or Construction Stormwater General Permit

The Clean Water Act and regulations promulgated by the United States Environmental Protection Agency (Title 40 Code of Federal Regulations (C.F.R.) Parts 122, 123, and 124) prohibit discharges of storm water containing pollutants from construction sites larger than or equal to one acre of land disturbance, except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. State Water Resources Control Board Order 2009-0009-DWQ (As amended by 2010-0014-DWQ and 2012-0006-DWQ) (“the Order”) established a General Permit for Storm Water Discharges Associated With Construction And Land Disturbance Activities (“General Permit”), as a general NPDES permit for construction projects in California. Prior to undertaking construction activity in California that disturbs one acre or more of land, the Legally Responsible Person (LRP) must obtain coverage under the General Permit. Without coverage under the General Permit, any amount of storm water discharge from the project site is prohibited by the Clean Water Act and regulations promulgated pursuant to the Clean Water Act. See 40 C.F.R. § 122.26; 33 U.S.C. § 1311.

III. The Oroleve Project Proceeded Without the Required Stormwater General Permit, in Violation of the Order

As a project disturbing one or more acres of soil, NYWD was and is required to obtain coverage under the General Permit for the Oroleve Project. NYWD, an LRP as defined in Appendix 5 to the Order, failed to submit the required Permit Registration Documents (PRDs). Only a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) were submitted. “To obtain coverage, the LRP must electronically file Permit Registration Documents (PRDs) prior to the commencement of construction activity. Failure to obtain coverage under this General Permit for storm water discharges to waters of the United States is a violation of the CWA and the California Water Code.” Order, Section II.B.2 at p. 15. PRDs consist of a Notice of Intent (NOI), a Risk Assessment, a Site Map, a Storm Water Pollution Prevention Plan, an Annual Fee, and a Signed Certification Statement. Order, Section II.B.3 at p. 15.

According to the Stormwater Unit of the CVRWQCB, and based upon information publicly indexed under SMARTS Application ID 528273, NYWD has failed to submit a number of these PRDs, including a Signed Certification Statement. The SWPPP indexed in the SMARTS database identifies North Yuba Water District as the LRP for the Oroleve Project, estimates construction taking place between July 6, 2020 and December 3, 2020, and identifies the project area to be over one acre, at 1.5 acres of land disturbance.

Construction activity at the Oroleve Project proceeded, or is in progress, without approval or coverage under the General Permit. According to the SMARTS database, the SWPPP and NOI were resubmitted on February 26, 2021, but the application remains pending and deficient

for lack of certification. Additionally, a Waste Discharger Identification (WDID) has not been issued for the project, indicating the application has not been approved.

IV. Discharges of Storm Water and Pollutants Are Identified in the SWPPP

The Oroleve Project directly discharges storm water to Oroleve Creek and eventually to the South Fork of the Feather River. See SWPPP, Section 2.1.3. This constitutes a discharge to Waters of the United States, including sediment from the project.

Additionally, the SWPPP identifies non-Stormwater discharges purported to be authorized for the Oroleve Project, and pollutants anticipated to be used or discharged in connection with the project. See SWPPP, Section 2.5, Section 2.6, and Appendix D. As NYWD has not obtained coverage under the General Permit, these discharges are not authorized.

The Agency owns and operates water facilities downstream of Oroleve Creek, and is the recipient and injured party due to NYWD's failure to comply with the Clean Water Act (See VI, infra).

V. NYWD Has Committed Additional Violations of the Clean Water Act, including Failure to Obtain a 404 Permit and Failure to Obtain a 401 Water Quality Certification

Based upon information publicly available, the Agency cannot locate, and on that basis does not believe exists, a Section 404 permit for the discharge of dredged or fill material into Waters of the United States. Any discharge of dredged or fill material into Waters of the United States, without a Section 404 permit, is a violation of the Clean Water Act.

In response to a Public Records Act request to the CVRWQCB from the Agency for documents relating to NYWD's Oroleve Project, a staff representative of the CVRWQCB stated that no records were found for any applications received for a Section 401 Water Quality Certification.

The Agency cannot locate a Section 401 water quality certification for the Oroleve Project, and believes that such a certification does not exist. The absence of a 401 Water Quality Certification for a project discharging dredged or fill material to Waters of the United States is a violation of the Clean Water Act.

The State of California similarly requires a 401 water quality certification issued by the Water Boards for the discharge of dredged or fill material to waters of the state. See Water Code § 13160; California Code of Regulations, title 23, sections 3830-3869. Waters of the state include Waters of the United States and non-federal waters of the state. See Water Code Section 13050(e); California Code of Regulations, title 23, section 3831(w). As stated above, the

To: North Yuba Water District
Re: 60 Day Notice of Intent to File Suit under the Clean Water Act
Date: March 11, 2021

Page 4

Agency cannot locate a water quality certification for the project, which is additionally a violation of the Porter Cologne Water Quality Control Act.

VI. The Agency Is Negatively Affected by NYWD's Violations of the Clean Water Act

The Oroleve Project discharges to Oroleve Creek and eventually to the South Fork of the Feather River. See SWPPP, Section 2.1.3. Oroleve is also a tributary to the Forbestown Ditch. the Agency operates diversion facilities and hydroelectric powerplants on the South Fork of the Feather River, and additionally receives water from the Forbestown Ditch. the Agency is directly affected by illegal discharge to these waters affecting water quality.

As a result of NYWD's failure to obtain the necessary permits and submit the necessary documents for the project, the Agency lacked 1) notice of the Oroleve Project; 2) the opportunity to provide input and comment on the Oroleve Project; and 3) the opportunity to protect its interests affected by the Oroleve Project.

In conclusion, this letter provides notice of the Agency's intent to file suit against NYWD to enforce the Clean Water Act, under the Act's citizen-suit provision. This notice letter is based on publicly available information available at the time of the letter. The Agency continues to investigate these violations, and additional information may reveal additional violations of the Clean Water Act.

Should you or your attorney wish to discuss this matter, please feel free to contact me.

Regards,

MINASIAN, MEITH, SOARES
SEXTON & COOPER, LLP

By:



Aidan P. Wallace

CC: Rath Moseley, General Manager
South Feather Water and Power Agency