



**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**



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Environmental
Protection

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**Arnold
Schwarzenegger**
Governor

Field Inspection Memo

To: Mark Neely, Senior Engineering Geologist, Non-point Source Unit

From: Scott A. Gergus, Engineering Geologist, Non-point Source Unit

Date: October 9, 2008
Amended for accuracy on April 10, 2009

Subject: September 16, 2008, inspection of waterline road

File: Wayne Waters, 5430 Canyon Road, Willits, Mendocino County

On September 16, 2008, staff from the Bureau of Land Management (BLM) and the California Department of Fish and Game (CDFG) participated in a meeting and inspection of a road and spring development on properties owned by Mr. Larry White and the Bureau of Land Management (BLM). Mr. Wayne Alan Waters installed the road on Mr. White's and BLM's properties and developed several springs on BLM property. The purpose of the meeting and inspection was to determine the erosion potential of the road and threat to water quality in the Alder Creek Watershed. Figure 1 shows landmarks and points of interest discussed in the field inspection memo.

Background

Mr. Waters illegally developed 6 of 7 existing springs on BLM property, originally claiming the springs were located on his property. Additionally, Mr. Waters illegally installed a new road to access the springs and buried a pipeline beneath the road to divert water to his property. Mr. Waters had installed 4 substandard culverts along the road in unnamed Class III Watercourses tributary to McKenna Creek. Special Agent Kynan Barrios reported that someone on the Waters property had discharged firearms at him and other BLM staff during past compliance inspections. During an investigation in early September 2008, Federal agents had confiscated 120 pounds of processed marijuana and numerous firearms from Mr. Waters and his son. Agent Barrios indicated that Mr. Waters had been growing significant amounts of marijuana with water that he had illegally diverted from BLM (Federal) property.

Meeting Attendees

Wayne Waters	(707) 459-0439	
Joyce Waters	(707) 459-0439	
Todd McMahon	(707) 485-7211 x 25	toddmcmahon@ncrm.com
Lynda Roush BLM supervisor	(707) 825-2309	lroush@ca.blm.gov

Rick Macedo DFG	(707) 928-4369	rmacedo@dfg.ca.gov
Hank Harrison BLM forester		
Dave Fuller BLM biologist	(707) 825-2315	dfuller@ca.blm.gov
Kathy Stangl BLM		
Jared Hammatt BLM		
Dave Tomson BLM		
Kynan Barrios BLM Spl. Agent	(707) 825-2300	Kynan_Barrios@BLM.GOV
Sam Flanagan BLM		
Clara Sander BLM	(707) 825-2348	Clara_Sander@ca.blm.gov
Brad Jobb BLM		
Scott Gergus NCRWQCB	(707) 576-2685	sgergus@waterboards.ca.gov

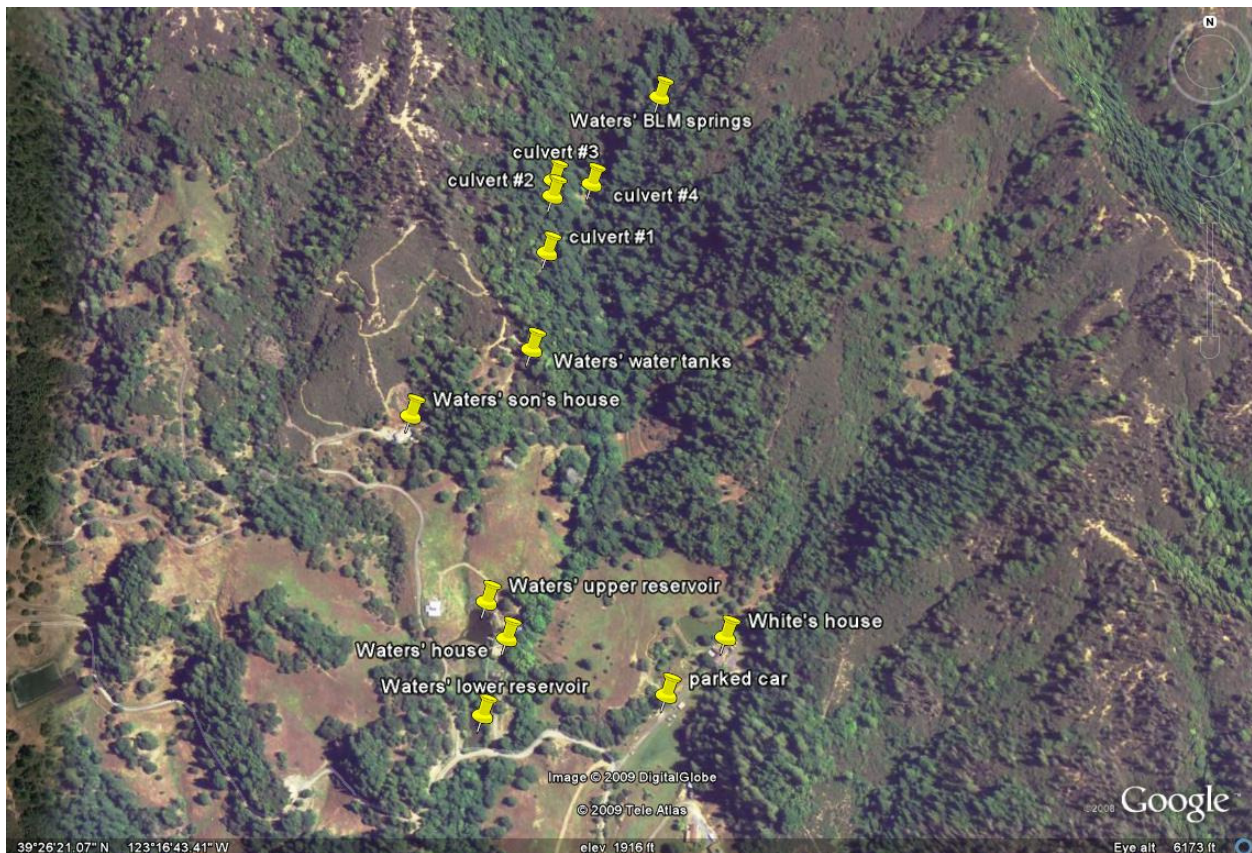


Figure 1. Landmarks and points of interest inspected on September 16, 2008.

Inspection

On September 16, 2008, staff from BLM, CDFG, and I met at Waters Construction Inc., located at 101 Lenore in Willits. We proceeded up to Mr. Waters' property located at 5430 Canyon Road in Willits. Mr. Waters briefly described his waters rights diversion (Water Rights Permit) and indicated the diversion locations were "all wrong". However, to obtain a permit from the Department of Water Resources to divert water, Mr. Waters

is required to submit a map with all diversion points accurately located on the map. Questions were raised if Mr. Waters had submitted an accurate location map or misrepresented the points of diversion. Mr. Waters was unable to tell me how much water he is allowed to divert on a daily or monthly basis and whether or not the water quantity varies by season. Mr. Waters indicated that he has installed bypass pipes and all diverted water is returned to the creek as required by his permit. Mr. Waters indicated that all water is diverted to his house and his son's house and the unused water is pumped back up to the water tanks. However, Mr. Waters was unable to verify if overflow from the water tanks was diverted back into the creek or if the excess water was piped to his 2 irrigation ponds. Mr. Waters indicated that his water system has 3 water meters and he logs monthly water meter readings as required in his Water Rights Permit. However, Mr. Waters indicated that the main water meter located on his water tank is not operating properly and he intends to replace it. The water meters are as follows:

1. Water meter recording total flow into the two water tanks
2. Water meter recording the flow to the Waters' house
3. Water meter recording the flow to the Waters' son's house

While at the water tanks, Mr. Waters was reminded that the bulldozing of chaparral on his hillside above his son's house was disturbing large areas of soil which could result in serious erosion and sedimentation into his 2 irrigation ponds. Mr. Waters was asked to revegetate this area.

Mr. Waters stated that he constructed the roads in 1997. Mr. Waters stated that he had obtained all the agencies permission for constructing the main road in 1994. Mr. Macedo and Mr. Barrios explained that CDFG and BLM never issued permits for the road work. Mr. Waters stated that BLM staff used a handheld GPS to locate the road and the property boundaries in 1994. BLM staff indicated that no one from their office used a GPS to locate the road and property lines for this project because they did not own a GPS unit at that time and civilian GPS units provided only crude locations that could not be used to reliably locate property lines. The unimproved dirt roads constructed on the White and BLM properties can be separated into three sections as follows:

1. Lower Road leading from the Waters' property to the main road. This road is an unimproved dirt road that has an average slope of approximately 15% and is partially out-sloped. Mr. Waters indicated that the culvert at the top of this road has plugged and overflowed down the road in the recent past resulting in surface rilling of moderate depth that extends down the road and over the fill slope and onto the forest floor. Recommendation: Install rolling dips or large waterbars at Forest Practice Rules recommended intervals. Recent excavation near the top end of this road seems to indicate that a waterline might be buried under this road.

2. Water Tank Road spur extending from the Main Road to the water tank pad. This is also an unimproved dirt road that is relatively steep near the intersection with the Main Road and levels off near the water tanks. The road has been roughly cut into the hillside and is 6 to 8 feet wide. The road surface appears stable. Mr. Waters stated that one water line is buried under this road, however, during an earlier inspection I observed an open trench with two 2-inch diameter PVC waterlines both full of water in the area of the 2 water tanks.
3. Main Road that extends from the intersection of the Lower Road and the Water Tank Road. This road is approximately 1,000 feet long and extends well into BLM property. The road is relatively level, approximately 10 to 14 feet wide, outsloped in most areas, running surface appears stable and draining, and the road prism appears stable. The road crosses 4 unnamed Class III watercourses and each crossing has significant problems. Mr. Waters stated that he installed all 4 culverted stream crossings. Mr. Waters' pipeline is buried beneath this road.

The 4 stream crossings were inspected by the staff from BLM and CDFG and me. All 4 culverts were found to be undersized, improperly constructed, lacking inlet and outlet protection, and lacking routine maintenance. Prior to inspecting the culverts, Mr. Todd McMahon told me that all culverts were properly sized and installed using a minimum 18-inch diameter double walled HDPE pipe. Mr. McMahon was hired as an expert witness who testified in court that all culverts were properly sized and installed using corrugated metal pipe. Also, prior to inspecting the culverts, Mr. Waters stated that he is a licensed contractor involved in forest and ranch road construction, culvert installation and replacement, and stream restoration and he performed all the road construction work and installed the culverts. Mr. McMahon objected to me measuring each culvert diameter and the close inspection of each culvert. Mr. Waters also objected to the close inspection of the culverts, claiming the culverts were all installed with permission from BLM and CDFG. Culvert deficiencies are as follows:

- Culvert #1 - White 12-inch diameter PVC that has separated at the joint beneath the road fillslope with a developing sinkhole. The culvert is not installed at grade and the outlet is located high in the fill with a 5 to 6-foot vertical fall eroding the road's fillslope and gullying downslope. Inlet and outlet protection is absent. Mr. Waters indicated that the culvert has plugged in the past with debris causing rilling of the lower road.
- Culvert #2 - 10-inch diameter double wall HDPE. The culvert has not been installed at grade and the outlet is located high in the fill with a 5 to 6-foot vertical fall eroding the fillslope and gullying downslope. The pipe outlet is sloping uphill. Flow discharge is causing soil erosion to the

road's fillslope and inlet and outlet protection is absent. The inlet is nearly plugged with sediment and forest debris.

Culvert #3 - 15-inch diameter double wall HDPE. The culvert has not been installed at grade and the outlet is located high in the fill with a 4-foot vertical fall eroding the road's fillslope and gullying downslope. Inlet and outlet protection is absent. The inlet is nearly plugged with sediment and forest debris.

Culvert #4 - 18-inch diameter double wall HDPE. The culvert has been installed close to grade and the outlet has a 1-foot vertical fall. Flow discharge is causing some soil erosion and inlet and outlet protection is present. Mr. Waters indicated the culvert has plugged with sediment and forest debris in the past and the road crossing fill has been eroded. Inlet sediment has been excavated and placed near the road crossing inlet.

Mr. McMahon was made aware that all the culverts are all undersized, improperly installed, and are actively eroding soil and discharging sediment and threatening to discharge sediment to waters of the State in violation of the Water Quality Control Plan for the North Coast Region. Mr. McMahon and Mr. Waters were advised to clear the culvert inlets of all debris prior to the rainy season to help prevent plugging and washout of the crossings.

The inspection team continued up the road onto BLM property and inspected the diversion pipeline and springs. The diversion bypass pipe was observed to be flowing and Mr. Waters estimated the bypass flow to be 1 gallon per minute. Mr. Waters explained that his pipeline and spring boxes had been recently vandalized and a report had been filed with the Mendocino County Sheriff's Department. Agent Barrios requested a copy of the Sheriff's Report. Mr. Waters explained the pipeline vandalism consisted of a damaged valve assembly and he replaced the damaged fitting with a PVC "T" fitting that is positioned to lie on its side. A small amount of water was observed trickling from the "T" and down the hillside and into the creek.

The mountainside spring area is approximately 1/3 acre in area and was inspected by the group. Mr. Waters explained that he originally had 6 spring boxes in this area but reduced this to 5 spring boxes. Mr. Waters explained that 4 of the 5 spring boxes had been vandalized and were still connected to the collection system; however, Mr. Waters later stated that he had performed maintenance on the spring boxes and placed plastic sheeting in the boxes to aid with spring seepage capture. The spring boxes appeared to be in the same condition as I observed them on June 4, 2008. At that time the spring boxes did not have tops and spring seepage was flowing from around the spring box and down the hillside and into the creek. Mr. Waters indicated that the main spring located at the base of a large bay tree was not vandalized and its spring box was intact and its pipe was delivering water to his system.

Post Inspection Meeting

A post inspection meeting was held at the Waters' house. Mr. Waters maintains the watershed where his springs are located belongs to him because he has lived at this location for over 25 years and he installed the piping infrastructure to divert water to his property. Mr. Waters stated that he owns this water despite the fact that the springs are on BLM property and he does not own property near the springs. Mr. Waters asked the group when he would get his water back. Mr. Waters' spring water has not been shut off and he is still receiving water from the springs located on BLM property. Mr. Waters stated that he would be drilling a well soon and this water would be used for domestic purposes at his house and his son's house. Mr. Waters was made aware that all the culverts are undersized, improperly installed, and are actively eroding soil and discharging sediment and threatening to discharge sediment to waters of the State in violation of the Water Quality Control Plan for the North Coast Region. Mr. McMahon proposed removing the creek crossings and the culverts and replacing them with vented fords. Mr. Waters and Mr. McMahon were made aware that they must obtain permits from CDFG, BLM, our agency, and possibly the Army Corps of Engineers before any work replacing or removing the culverts was started. Additionally, permits were not needed for routine maintenance of the culverts such as clearing debris at the inlets or installing downdrains with energy dissipation so long as the proposed work is described in a letter and all concerned agencies concur with his proposed work.