

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2006-0084

FOR
ADMINISTRATIVE CIVIL LIABILITIES COMPLAINT
IN THE MATTER OF

STUART BEWLEY
ALDER SPRINGS RANCH

FOR

VIOLATIONS OF WASTE DISCHARGE PROHIBITIONS
CONTAINED IN THE WATER QUALITY CONTROL PLAN
FOR THE NORTH COAST REGION

Mendocino County

This civil liability complaint (Complaint) is issued to Stuart Bewley (hereinafter Discharger) for violations of the Water Quality Control Plan for the North Coast Region (Basin Plan).

The Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board) finds the following:

1. The Discharger owns a 2,400 acre ranch, known as Alder Springs Ranch, located approximately 3 miles west of Laytonville (section T21N, R15W, MDB&M).
2. On May 7, 1999, the California Department of Forestry and Fire Protection issued timber harvest plan (THP) 1-99-010 MEN and associated timberland conversion permit. The THP and conversion permit cover a proposal to convert 133 acres of the Discharger's ranch from timberland to vineyard. The Discharger is listed as the plan submitter and landowner on the THP. Hereinafter the conversion/THP area is referred to as the Site.
3. On March 6, 2002, Regional Water Board staff first inspected the Site and observed highly turbid storm water runoff flowing from the Site and discharging into receiving waters. The discharges increased the ambient turbidity and resulted in sediment deposits in several streams, including Class I fish bearing streams known as Mud Springs Creek and Little Case Creek. The discharges resulted from the Discharger's vineyard conversion activities, which included logging, grubbing, road construction/reconstruction, burning, and extensive grading and land recontouring, often on very steep and unstable slopes without adequate erosion control measures. Poor grading activities resulted in a landslide, which also discharged turbid water into receiving waters. Regional Water Board staff also observed diesel leaking from the Discharger's diesel tank truck and heavy equipment and discharging diesel into watercourses at two locations. (See photos, attached as Exhibit "A.")

4. On March 21, 2002, the Executive Officer of the Regional Water Board issued the Discharger a California Water Code section 13267(b) Order, requiring the submittal of technical reports, including short and long term erosion control plans to prevent additional discharges of sediment and turbid water into waters of the State, as well as a landslide investigation report, and a plan to prevent additional discharges of diesel into waters of the State.
5. On June 21, 2002, the Executive Officer issued Cleanup and Abatement Order No. R1-2002-0068 (CAO), requiring the submittal of a long-term erosion control plan, landslide investigation report, stream remediation plan and an estimate of the amount of sediment discharged into waters of the State that resulted from the Discharger's activities.
6. Initially the Discharger did not fully comply with the requirements of the CAO. Regional Water Board staff documented the following CAO non-compliance issues:
 - Provision 1: Submission of a Long Term Erosion Control Plan (LTECP) by August 1, 2002. In a letter dated August 29, 2002 the Executive Officer granted an extension for the submittal until August 30, 2002. An Adequate LTECP was not submitted until December 10, 2002. Therefore the LTECP was submitted 102 days after the required due date.
 - Provision 3: Submission of an inventory and assessment of watercourses downstream of erosion sites. The inventory shall include volume estimates of the amount of material delivered at each site. The inventory and assessment report were submitted nearly two years late. It was due on August 1, 2002 and was submitted April 22, 2004. It was therefore submitted 601 days late.

The Discharger's initial failure to comply with the provisions of the CAO resulted in additional sediment discharges in the early stages of the cleanup. Additionally, the inventory and assessment report was completed after much of the sediment had flushed downstream, so much of the sediment volume was unaccounted for in the report. The Discharger is subject to penalties of up to \$1,000 per day for each day the Discharger failed to comply with the CAO. The total potential penalties for the Dischargers failure to comply with the CAO are $703 \text{ days} \times \$1,000 \text{ per day} = \$703,000$.

7. From the years 2002 through 2005, Regional Water Board staff conducted numerous site inspections and worked extensively with the Discharger's attorney, forester, engineers, hydrologist and geologist to stabilize the Site and prevent additional discharge violations. The Discharger implemented extensive erosion control measures and largely controlled erosion and sediment discharges by the year 2005. However, during the years 2002 through 2004, staff observed ongoing turbid water discharges into waters of the State, resulting from the Discharger's activities.
8. On February 28, 2006, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service issued the Discharger a Notice of Violation and Assessment of

Administrative Penalty for violations of the Endangered Species Act of 1973. The violations are for the unlawful take of Northern California Evolutionary Significant Unit steelhead trout (*Oncorhynchus mykiss*), which resulted from the above-mentioned activities conducted by the Discharger at the Site.

9. Regional Water Board staff have expended considerable time and effort to bring the Discharger into compliance with the CAO and Basin Plan requirements. Staff costs and overhead since March 2002 are estimated to be \$80,000.
10. The Discharger has violated prohibitions contained in the Basin Plan, by intentionally or negligently discharging waste, or causing or permitting waste to be deposited where it was discharged into waters of the State, in amounts deleterious to beneficial uses, as demonstrated in part by the adverse impacts to the above-described steelhead trout, and creating a condition of pollution or nuisance. In so doing, the Discharger violated the following prohibitions contained in the Basin Plan (page 4-1.00):

Section 4. IMPLEMENTATION PLANS

DISCHARGE PROHIBITIONS:

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.

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.

The Basin Plan also contains water quality objectives (page 3-2.00-3.00) including:

Section 3. WATER QUALITY OBJECTIVES

OBJECTIVES FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES:

Color

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

Settleable Material

Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.

Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Turbidity

Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

On several site inspections conducted during the years 2002 through 2004 Regional Water Board staff observed evidence of turbid water discharges from the site into receiving waters. In an April 22, 2004 report, the Discharger's consultants, Pacific Watershed Associates, estimated that 72 cubic yards of sediment were discharged as a result of the Discharger's logging and vineyard conversion activities.¹ This is an extremely conservative estimation and is based only on physical evidence observed by the Discharger's consultant during the winter of 2003/2004. This conservative estimate does not account for much of the erosion and sediment discharges that had been flushed downstream, from the previous year, prior to implementation of erosion control measures. Regional Water Board staff believe that the actual volume of sediment discharged to receiving waters is much more than 72 cubic yards. However, for the purpose of this complaint, the Discharger's conservative estimate of 72 cubic yards will be used to calculate the total civil liability in this matter.

On this basis, the total civil liability that could be imposed against the Discharger in this matter is calculated as follows: 72 cubic yards of discharged waste at \$2020 cubic yard = \$145,440.

In determining the amount of civil liability actually assessed, pursuant to California Water Code Section 13327, the Executive Officer considered the following factors:

a) The Nature, Circumstances, Extent and Gravity of the Violations.

Over the course of several years, a large volume of sediment discharged, affecting important steelhead trout fisheries and other fish and wildlife beneficial uses, was discharged from this site. These are important water quality considerations. Further, a violation of this nature consumes a lot of staff time, even with good faith efforts by the Discharger to respond, improve their practices, and conduct mitigating and cleanup activities. This type of extensive land grading, logging, and related equipment fuel management, without proper erosion control or other pollution prevention efforts are individually damaging to the immediate receiving waters, and cumulatively a very large problem in this region.

b) Degree of Culpability

The Discharger obtained a timber harvest plan and timberland conversion permit from the California Department of Forestry (CDF), and complied with the provisions of the Forest Practice Act. CDF oversight, however, did not serve to ensure that the logging and

¹ 72 cubic yards is the equivalent of over seven (7) large dump trucks, for comparison purposes, discharged into small fish-bearing streams.

conversion activities were conducted in a manner to avoid violations of Basin Plan prohibitions, nor did it serve to avoid significant harm to species protected both under the Basin Plan and the Endangered Species Act. Nevertheless, the Discharger ultimately responded to Water Board orders with cooperation, has implemented extensive erosion control measures and has expended a considerable amount of money to conduct the necessary remediation and mitigation, in his efforts to comply with the CAO and the Basin Plan.

c) Prior History of Violations:

Regional Water Board staff are not aware of any prior history of California Water Code Violations. Again, as noted in finding number seven (7) above, on February 28, 2006, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service issued the Discharger a Notice of Violation and Assessment of Administrative Penalty for violations of the Endangered Species Act of 1973. The violations are for the unlawful take of Northern California Evolutionary Significant Unit steelhead trout (*Oncorhynchus mykiss*), which resulted from the above-mentioned activities conducted by the Discharger at the Site. We are not aware of any other citations or enforcement actions from other agencies or any previous violations.

d) Susceptibility to Cleanup and Voluntary Efforts Undertaken

Significant volumes of sediment from the site have entered downstream watercourses, including Mud Springs Creek and Little Case Creek, and ultimately the South Fork Eel River and the Eel River. Those already discharged sediments are not susceptible of removal and cleanup, once in the watercourse and moving downstream, unfortunately. The Discharger has implemented extensive erosion control measures to avoid additional discharges and violations of the Basin Plan, however, and to come into compliance with the CAO.

e) Economic Savings

The Discharger has gone to considerable expense hiring engineers, contractors, a geologist, a hydrologist, a forester, and an attorney to assist him in complying with the CAO and Basin Plan requirements. The Discharger may have initially realized economic benefits by not employing the necessary experts such as geologists, engineers, erosion control experts or hydrologists to develop and implement proper erosion control, grading, and drainage plans to prevent sediment discharges into water of the state. These are not savings from committing the violations at issue here, however, since the Discharger had to ultimately employ those experts and conduct that work, so the costs were delayed, not avoided. Regional Water Board staff do not believe there was long term economic savings associated with the violations themselves.

f) Ability to Pay and Continue in Business

Regional Water Board staff have no knowledge of the Discharger's ability to pay. However, the Discharger owns large land holdings in the North Coast Region.

10. The issuance of a Complaint for Administrative Civil Liability is an enforcement action and is not subject to the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321(a)(2).

Proposed Civil Liability

Based on the above factors, I hereby propose that the Dischargers pay an Administrative Civil Liability in the amount of \$140,000, due and payable within 30 days of the date of this Complaint.

Waiver of Hearing

You may waive the right to a future hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board" for \$140,000 within 30 days of receipt of this Complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. Payment of the proposed civil liability will be treated as a settlement, and as with this any other settlement, will not become effective until after a 30-day public comment period.

Ordered by _____
Catherine E. Kuhlman
Executive Officer

August 2, 2006