

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2007-0082

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

LAURENCE A. KLUCK

FOR

FAILURE TO SUBMIT A REPORT OF
WASTE DISCHARGE AS REQUIRED UNDER
SECTION 13264 OF THE CALIFORNIA WATER CODE

Humboldt County

Pursuant to California Water Code section 13265, this administrative civil liability complaint (Complaint) is issued to Laurence A. Kluck, owner and Project Proponent of Timber Harvest Plan (THP) 1-07-014 HUM, aka THP 1-06-030 HUM. This Complaint is being issued for violation of Water Code section 13264.

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby finds that:

1. Mr. Laurence A. Kluck, (Discharger) is responsible for management activities and other operations including, but not limited to, timber harvesting, land conversion, road construction, watercourse crossing construction, road maintenance, and erosion control maintenance associated with the THP site. The Discharger has signed THP 1-07-014 HUM, which was submitted to the California Department of Forestry (CAL-FIRE) as the Timberland Owner of Record, and Plan Submitter.
2. THP 1-07-014 HUM is located in the Martin Slough watershed, tributary to Elk River, which flows to Humboldt Bay.
3. The Elk River watershed is listed under the Federal Clean Water Act Section 303(d) as impaired due to excessive sediment. Water quality problems cited under the listing include: sedimentation, threat of sedimentation, impaired irrigation water quality, impaired domestic supply water quality, impaired spawning habitat, increased rate and depth of flooding due to sediment, and property damage.
4. Timber harvesting activities have been recognized as a contributing factor to the problems of sedimentation and siltation. On December 16, 1997, representatives of CAL-FIRE, California Department of Fish and Game, the California Geologic Survey, and Regional Water Board staff reached consensus that the Elk River

watershed had significant adverse cumulative watershed impacts, with timber harvesting a contributing factor.

5. The Discharger, and the Discharger's representative, Mr. Stephen Launi, a Registered Professional Forester (RPF) hired by the Discharger to oversee the development and implementation of THP 1-07-014 HUM conversion from timberland to residential lots, failed to submit adequate technical reports for compliance with Order No. R1-2004-0030, *General Waste Discharge Requirements For Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region*. The technical reports are required for enrollment under Order No. R1-2004-0030. These reports are identified and defined in Order No. R1-2004-0030.
6. In addition to the reports required for enrollment under Order No. R1-2004-0030, a State of California Dredge and Fill Permit (WDR) from the Regional Water Board is required because there are designated wetlands within the THP area, and the THP proposes to convert wetlands and watercourses to permanent residential roads which include watercourse crossings.
7. Timber Harvest Activities are defined in Order No. R1-2004-0030 as:

“... commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products, including Christmas trees, as well as, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or road flagging.”
8. The Discharger and his representative, Mr. Stephen Launi, are conducting Timber Harvest activities without a permit. Timber Harvest activities began on June 4, 2007, according to the California Department of Forestry and Fire Protection (CAL FIRE) records.
9. The Assistant Executive Officer, therefore, seeks to assess civil liabilities as provided herein this Complaint. Unless waived, a hearing on this matter will be held before the Regional Water Board within 60 days following the issuance of this Complaint. You or your representative will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability before the Regional Water Board, in Santa Rosa, California. An agenda showing the time set for the hearing will be mailed to you not less than 10 days before the hearing.

At the hearing, unless waived, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, whether to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

10. The following facts are the basis for the alleged violation in this matter:

- a. Regional Water Board Environmental Scientist Stormer Feiler, conducted a Timber Harvest Plan (THP) pre-harvest inspection of the Property on May 26, 2006. At that time the operative THP was no. 1-06-030 HUM.
- a. The inspection and subsequent research and investigation identified that the discharger was intending to convert the property to residential use and that coverage under Order No. R1-2004-0030 would be required. Additionally, the requirements for enrollment were discussed with the RPF during the inspection and in subsequent telephone conversations. The proposed watercourse crossings in the THP area were verbally identified as "controllable sediment discharge sources" as defined in Order No. R1-2004-0030.
- b. The THP area contains designated wetlands. The San Francisco District of the U.S. Army Corps of Engineers, sent a letter, dated October 3, 2005 to Mr. Jesse Buffington regarding File No. 21548-1N, wherein the Wetland Jurisdiction Plat for the Discharger is identified as delineated in 1995. This letter confirms the wetland delineation and maps the delineated area(s).
- b. THP 1-06-030 HUM was denied by CAL FIRE on October 13, 2006. Denial was due to insufficient response to Second Review Team Chair's recommendations and addition of significant new information that had not been available for public comment.
- c. Subsequently, THP 1-07-014 HUM was submitted by the Project proponent and accepted for filing on January 17, 2007. THP 1-07-014 HUM was approved by CAL FIRE on March 21, 2007.
- d. Regional Water Board staff submitted comments to the CAL FIRE on THP 1-07-014 HUM, which addressed permitting requirements for THP 1-07-014 HUM. First review comments were submitted on January 27, 2007. Second Review Team Meeting comments were submitted on March 1, 2007.
- e. On April 30, 2007, Regional Water Board staff received a request for enrollment under Order No. R1-2004-0030 from Stephen Launi, the RPF of record for the THP.

- f. On May 7, 2007, Regional Water Board staff sent a letter to Mr. Launi, notifying him that the request for enrollment had been received.
- g. On May 15, 2007, Regional Water Board staff reviewed the application for enrollment and responded to Mr. Launi via email indicating that the submitted application was not adequate for enrollment under Order No. R1-2004-0030. The Erosion Control Plan was inadequate and Mr. Launi had not addressed the conversion of wetlands with permanent watercourse crossing construction via consultation with the Army Corps of Engineers or a State of California Dredge and Fill Permit. The State of California Dredge and Fill permit (WDR) requirements were brought to Mr. Launi's attention during the Second Review Team Meeting, prior to approval of the THP. Regional Water Board staff Second Review Team Meeting Comments were attached to the email response sent on May 15, 2007.
- h. On May 30, 2007, Mr. Launi responded via email. The response included two attachments: a *Sediment Prevention Plan* and an *Erosion Control Plan*. A Sediment Prevention Plan is not required for enrollment under Order No. R1-2004-0030. This documentation is a requirement for enrollment in Order No. R1-2004-0016, Categorical Waiver F. The *Erosion Control Plan* submitted was still inadequate with no significant revisions addressing the requirements of Order No. R1-2004-0030. In addition, there was no indication that the RPF had consulted with the Army Corps of Engineers for compliance with Clean Water Act section 404 permit requirements or with Regional Water Board staff regarding a State of California Dredge and Fill permit (WDR).
- i. On June 4, 2007, Regional Water Board staff responded to the May 30, 2007 email correspondence. Regional Water Board staff stated in their response that the *Erosion Control Plan* was inadequate, and that a Sediment Prevention Plan was not required. The email directed Mr. Launi to revise the *Erosion Control Plan* per the requirements of Order No. R1-2004-0030 and to submit a complete application package including all required information.
- j. On June 5, 2007, Regional Water Board staff received an email from Mr. David Ammerman of the Army Corps of Engineers office in Eureka. Mr. Ammerman indicated that the Corps does not regulate impacts to wetlands from timber harvest and haul roads associated with timber harvest. Mr. Ammerman stated that Mr. Launi informed him that "he [Mr. Launi] is not associated with any future development of the access road, the one track dirt and grass road perpendicular to Fairway Drive (aka Golf Course Road) or with development of any of the parcels for homes and associated driveways etc." According to Mr. Ammerman, Mr. Launi indicated that he would be replacing or upgrading two or three drainages that come off of the hill slope and cross under or over the existing Golf Course Road "to comply with state THP requirements." Mr. Ammerman concludes his June 5, 2007 email by

stating that nationwide permits would be required for residential developments.

Contrary to Mr. Launi's assertions to Mr. Ammerman, the Regional Water Board staff did not find in the previous pre-harvest inspection that there were any existing watercourse crossings on the hill slope. The road work proposed under the THP, therefore, includes watercourse crossing installations, not replacements. Therefore, Regional Water Board staff conclude that a State of California Dredge and Fill permit (WDR) is required because the Army Corps of Engineers is not requiring a section 404 permit for fill of waters of the U.S., including watercourses and wetlands, on the THP area. In the absence of a section 404 permit/401 certification, a State of California Dredge and Fill permit (WDR) becomes a required permit to mitigate the permanent conversion of waters of the state to residential roads.

- k. On July 10, 2007 Regional Water Board staff received a mailing from CAL FIRE, which forwarded an email from the neighbors of the THP named Finamore. This e-mail was sent to CAL FIRE on July 1, 2007, in which the Finamores complained of active logging within the THP 1-07-014 HUM THP area. The active logging was described as ongoing for several weeks.
- l. On July 12, 2007, Regional Water Board staff reviewed the letter received on July 10, 2007 and called Mr. Launi, the Discharger and the Licensed Timber Operator, Dennis Cook, leaving a message with each party informing them that the timber operations were occurring without a permit. Regional Water Board staff requested that the timber operations be stopped until such a time as adequate documentation is submitted for enrollment under Order No. R1-2004-0030 permitting timber harvest operations. Mr. Launi returned Regional Water Board staff phone message indicating that timber harvest operations had been terminated. Mr. Launi was verbally informed of what he needed to do to enroll the THP under Order No. R1-2004-0030 and was referred back to previous correspondence and comment provided throughout the THP review process. In addition, Regional Water Board staff again pointed out that the proposed watercourse crossings reviewed in the THP area were considered controllable sediment discharge sources, and as such were required to be identified in the *Erosion Control Plan* developed for compliance with Order No. R1-2004-0030.
- m. On the evening of July 13, 2007, Stormer Feiler observed the THP area from the Eureka Municipal Golf Course grounds and saw evidence of timber harvest activities. A landing was stacked with logs, trees were down, and areas had been cleared. Regional Water Board staff did not enter the THP area; the site visit was to determine if the email from the Finamores accurately represented that timber harvest activities had taken place.

- n. On July 17, 2007, Regional Water Board staff received two letters from Mr. Launi. One dated July 11, 2007, and the other dated July 12, 2007. The July 11, 2007 letter included the same *Sediment Prevention Plan* and *Erosion Control Plan* from previous correspondence and the letter discussed the installation of permanent crossings. The letter dated July 12, 2007 was a response to a previous phone conversation on that day. In addition, the letter included a revised *Erosion Control Plan*. However, the revised *Erosion Control Plan* did not meet enrollment requirements because Controllable Sediment Discharge Sources were not clearly identified and assessed as per the requirements for Order No. R1-2004-0030 and a State of California Dredge and Fill permit (WDR) had not been applied for.
- o. On July 17, 2007, Regional Water Board staff faxed a Notice of Violation to the Discharger and Mr. Stephen Launi. The Notice of Violation was for failure to enroll the subject THP under Order No. R1-2004-0030. This letter provided notification of violation of Water Code sections 13260, subdivision (a), and 13264.
- p. On July 17, 2007, Regional Water Board staff received a fax from Mr. David Ammerman of the Army Corps of Engineers office in Eureka. The fax stated that the THP did not require a section 404 permit from the Army Corps of Engineers. According to Mr. Ammerman, silviculture activities are exempt from section 404 permit requirements regardless of conversion of land use. This information confirms that in the absence of a section 404 permit/401 certification, a State Of California Dredge and Fill permit (WDR) is required in order to mitigate the permanent conversion of waters of the state to residential roads.
- q. On July 19, 2007, a Regional Water Board staff member, Water Resource Control Engineer Joelle Geppert, inspected THP 1-07-014 HUM. In attendance were the Discharger, Stephen Launi (RPF), Gerald Pavlach (landowner employee), and Bill Forsberg (CAL FIRE). The inspection was a follow-up to the July 17, 2007 NOV letter. Ms. Geppert observed numerous skid trails constructed, fallen trees, access road and landing clearing, and constructed watercourse crossings. Ms. Geppert concluded that no significant sediment discharges had occurred to date, and that it is likely that insufficient wetland protections had been applied. She recommended that timber harvest activities cease immediately until the necessary evaluations were completed and permits were obtained.
- r. On July 23, 2007, Regional Water Board staff received a letter from Mr. Launi. The letter was dated July 20, 2007 and discussed the inspection conducted by Ms. Geppert. The letter indicated that the timber harvest activities were in a "stop work" mode and that Regional Water Board staff should grant the Order No. R1-2004-0030 coverage for which he applied

some months before. In addition, Mr. Launi claimed that Regional Water Board staff were presenting false and misleading information and behaving prejudicially.

- s. On July 24, 2007, Regional Water Board Timber Harvest Division Chief, Robert Klamt, responded to the July 11, and 12 letters received from Mr. Launi. The response letter provided a brief discussion of background information and laid out the necessary actions Mr. Launi needed to take in order to comply with Order No. R1-2004-0030 and receive enrollment and coverage under the order. The necessary actions were identified as a complete and approvable erosion control plan and an approved application for a State Of California Dredge and Fill permit for the permanent conversion of watercourse crossings in streams and delineated wetland areas associated with THP 1-07-014 HUM. The letter contained an example *Erosion Control Plan* and suggested that Mr. Launi follow that example.
- t. On July 25, 2007, Regional Water Board staff received a phone message from an adjacent landowner indicating that the landowner heard heavy equipment operating nearby. The adjacent landowner did not hear or see trees falling.
- u. On July, 26, 2007, Regional Water Board staff received a phone message from an adjacent landowner indicating that the landowner heard trees falling and that active logging was occurring on the THP site.
- v. On July 27, 2007, Stormer Feiler drove to the Eureka Municipal Golf Course and discussed THP 1-07-014 HUM with Don Roller, the Eureka Municipal Golf Course Superintendent, and Bruce Perisho, the Golf Course General Manager. Mr. Roller confirmed that timber harvest activities had occurred on July 26, 2007, stating that he had seen a load of logs leaving the THP area. In addition, Regional Water Board staff reviewed the THP area from the golf course grounds and observed active skidding of logs. Photos from this inspection are in the official THP file.
- w. On July 31, 2007, Regional Water Board staff concluded that timber harvest activities for THP 1-07-014 HUM commenced on June 4, 2007. This information was received from the Fortuna office of CAL FIRE. Timber harvest activities were conducted through July 12, 2007 when the stop work order was received. Timber harvest activities resumed on or about July 25, 2007, and as of this date, are still without coverage under Order No. R1-2004-0030 and no contact with Regional Water Board staff has been made regarding acquiring a state dredge and fill permit. June 4, 2007 to July 12, 2007 (39 days) and July 25, 2007 through August 17, 2007 (25 days) represents 64 days of timber harvest activities occurring without required permits.

- x. On August 1, 2007, Mr. Klamt received a phone message from Mr. Launi stating that he was responding to the July 24, 2007 letter with additional information. Mr. Klamt returned the call, was connected to Mr. Launi's voice mail, and left a message to the effect that he had received Mr. Launi's message and would look for the information.
- y. On August 8, 2007, Mr. Klamt called Mr. Launi to let him know that he had received the additional information. Mr. Klamt again underscored the request to enroll the THP under Order No. R1-2004-0030, and that Mr. Launi needed to submit an *Erosion Control Plan* per the example in the July 24, 2007 letter and that it must include the volume, priority, and schedule for remediating the five identified controllable sediment discharge sites. Mr. Launi also was advised to contact Mr. Dean Prat at the Regional Water Board office to obtain coverage under a state dredge and fill permit. Mr. Launi was also informed that in the absence of coverage under the Order No. R1-2004-0030 and/or the state dredge and fill permit, Mr. Launi could be liable for up to \$1,000 per day for each permit for each day for operating without a permit. Mr. Launi was requested to submit the required information to Mark Neely, Stormer Feiler's supervisor. Mr. Klamt also requested that Mr. Launi call him to discuss the matter.
- z. Mr. Klamt received a phone message from Mr. Launi later that evening that he had received Mr. Klamt's message and had sent the needed information a couple of weeks prior.
- aa. On August 9, 2007, Mr. Launi telephoned Mr. Klamt and described some of the background to the THP, and said that he was sending additional information as requested. Mr. Launi was insistent that his operation was not connected in any way to a conversion for future development, but did mention that lots in the THP area were for sale. Mr. Launi stated the he had only inserted stream crossings and performed erosion control activities prior to a rain event, and that no trees were harvested. Mr. Launi stated that he had called for a CDF inspection of the plan area for the morning of August 9, 2007.
- bb. On August 10, 2007, Regional Water Board staff received via fax from CAL FIRE, an Active Inspection Report for THP 1-07-014 HUM. The active inspection was conducted on July 27, 2007 by Division Chief, Ernie Rohl. The inspection report indicates that timber harvest activities were being conducted at the north landing between watercourses no. 2 and no. 3.
- cc. In conclusion, Regional Water Board staff find that timber harvest activities within the THP 1-07-014 HUM plan area were conducted without a permit and that fill had been placed within the bed and bank of a watercourse without a

State Dredge and Fill permit. This is a violation of Water Code section 13264, subdivision (a) and is subject to civil liability as provided by Water Code section 13265, subdivision (a) because previous written notice had been given to the Discharger emphasizing the need for compliance with Order No. R1-2004-0030 and the State of California Dredge and Fill Permit (WDR). The terms of civil liability are set forth in Water Code section 13265, subdivision (b) (1). The Discharger has been notified of his failure to adequately meet the requirements for enrollment under Order No. R1-2004 -0030, and subsequently conducted timber harvest activities without permits.

Proposed Civil Liability

§ 13264. Prerequisites to discharge

(a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

§ 13265. Civil penalties

(a) Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

In accordance with Water Code section 13265, subdivision (b) (1), The Assistant Executive Officer assesses a civil penalty in the amount of \$1,000.00 per day for 64 days, for two violations for a maximum civil liability penalty of \$128,000.00. This penalty is assessed for both the required GWDR permit and the State Dredge and Fill permit. Water Code section 13265, subsection (b) (1) is applicable for each permit.

In determining the amount of civil liability actually assessed, the following factors were considered:

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

The Discharger has failed to adequately address enrollment requirements for Order No. R1-2004-0030, *General Waste Discharge Requirements For Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region*. Such failure has prevented the Regional Water Board staff from enrolling the THP under Order No. R1-2004-0030. The initiation of a discharge without required permits (Order No. R1-2004-0030, and State of California Dredge and Fill Permit (WDR)) has occurred within the Elk River watershed, which is federal Clean Water Act 303(d) listed for sediment and is subject to documented nuisance conditions of flooding.

b) Degree of Culpability:

The Discharger is conducting timber harvest activities without a permit.

c) Prior History of Violations:

The Discharger has been informed numerous times of permit requirements, and to cease operations until the required permits have been obtained. Despite these numerous interactions and warnings, the discharger continues to operate without the appropriate permits.

d) Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

None taken to Regional Water Board staff knowledge.

e) Economic Savings:

The cost of obtaining the State of California Dredge and Fill Permit; the cost of retaining an RPF to develop and monitor the State of California Dredge and Fill Permit (WDR).

f) Ability to Pay and Ability to Continue in Business:

The Discharger's ability to pay is unknown. The Discharger is a practicing attorney and owns a number of parcels of timberland.

The entire timber industry on the North Coast is subject to the cost of the GWDRs. There has been no evidence, anecdotal or otherwise, of a detrimental impact on the ability of the industry to continue in business as a result of obtaining permit coverage.

g) Other Matters as Justice May Require:

The Discharger, by not obtaining Permit(s) coverage for this THP, receives an economic competitive advantage over other landowners by reducing his costs (for both obtaining and complying with the permit.)

11. 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, subsection (a)(2).

In consideration of the foregoing, I hereby propose that Administrative Civil Liability in the amount of \$128,000.00 be imposed.

Waiver of Hearing

12. 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 the amount of civil liability proposed above 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. This settlement will not become effective until after a 30-day public comment period.

PROPOSED CIVIL LIABILITY

Based on the foregoing, the Regional Water Board staff hereby proposes that the Discharger pay an Administrative Civil Liability in the amount of \$128,000 dollars due and payable within 30 days of the adoption of this Complaint.

LAURENCE A. KLUCK IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$128,000.00.
2. A hearing shall be conducted on this complaint by the Regional Water Board on December 6, 2007, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the total assessed penalty of \$128,000.00 to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint.

3. If the Discharger waives the hearing and pays the liability, the resulting settlement will become effective on the next day after the thirty-day public comment period for this Complaint ends. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue a new complaint, or take other appropriate action.
4. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.
5. Regulations of the United States Environmental Protection Agency (USEPA) require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.
7. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for should additional violations occur as a result of operating without a permit.

Luis G. Rivera
Assistant Executive Officer

September 10, 2007