

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

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|------------------------------|---|--------------------------------|
| In the Matter of: |) | |
| |) | |
| Eel River Summer Crossing at |) | Complaint No. R1-2011-0039 |
| Dyerville |) | |
| Humboldt Redwood Company |) | For |
| P.O. Box 712 |) | |
| 125 Main Street |) | Administrative Civil Liability |
| Scotia, CA 95565 |) | |

Attn: Mike Jani

This Administrative Civil Liability Complaint (Complaint) is issued to the Humboldt Redwood Company (hereinafter Discharger) to assess administrative civil liability for unauthorized discharges of fill material from its Eel River summer crossing at Dyerville in violation of provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose civil liability pursuant to California Water Code (CWC) Section 13385. The Complaint alleges that the Eel River summer crossing at Dyerville was installed without notification to the Regional Water Board pursuant to conditions of an expired Federal Clean Water Act, section 401, Water Quality Certification (certification), the activity was not authorized by a valid certification, the summer crossing was not removed prior to a forecasted storm, and the summer crossing washed out on the weekend of October 23, 2010, resulting in the discharge of fill material associated with the temporary bridge abutments.

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

1. Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose administrative civil liability under CWC section 13385. The Complaint proposes to assess \$17,740.95 in administrative civil liability for the violations cited based on considerations described herein.
2. This Complaint is issued under authority of CWC section 13323.
3. A hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint unless, pursuant to CWC section 13323, the Discharger waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on May 5, 2011, at the Wharfinger Building, #1 Marina Way, Eureka, California. The Discharger or its designated representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the meeting will be available at http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/ not less than 10 days before the hearing date.

4. If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER:

The Discharger is required to comply with the following:

5. Anyone proposing to conduct a project that requires a federal permit or involves dredge or fill activities that may result in a discharge to waters of the United States and/or "Waters of the State" is required to obtain a Clean Water Act (CWA) section 401 Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) from the state, verifying that the project activities will comply with state water quality standards. The most common federal permit for dredge and fill activities is a CWA section 404 permit issued by the Army Corps of Engineers.
6. During the period from March 11, 2005 to November 15, 2009, the discharge of dredge or fill material associated with the Discharger's Eel River summer crossing at Dyerville was regulated under a CWA section 401 certification (WDID No. 1B05006WNHU) and State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of the certification. The expired certification includes, in part, the following condition and expiration language:

ADDITIONAL CONDITION: 1) Regional Water Board staff shall be notified at least five working days (working days are Monday – Friday) prior to the bridge installation and bridge removal, with details regarding the project schedule, in order to allow staff to be present onsite during bridge installation or removal, and to answer any public inquiries that may arise regarding the project.

EXPIRATION: The authorization of this certification for any dredge and fill activities expires on November 15, 2009. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

ALLEGED VIOLATIONS OF SPECIFICATIONS AND PROVISIONS APPLICABLE TO THE DISCHARGER

7. This Complaint covers violation of CWA section 401 and violation of the terms of an individual CWA section 401 certification which expired on November 15, 2009, all of which may be subject to discretionary penalties contained in CWC section 13385.
8. **Violation No. 1:** Discharger applied for a CWA section 404 individual dredge/fill permit and discharged without CWA section 401 certification.

On October 25, 2010, the California Department of Fish and Game (CDFG) informed the Regional Water Board that the Discharger did not remove the bridge within 24 hours of DFG directing the Discharger to do so, and the weekend storm washed out the bridge. The total volume of fill discharged to the Eel River is estimated to be 400 cubic yards (69,430 gallons) based on Pacific Lumber Company's (Palco) application for the expired certification that was signed by a Palco representative on January 17, 2005 and received by the Regional Water Board on January 20, 2005. In response to written requests by Palco and the Discharger, the Regional Water Board transferred authorization of the expired certification from Palco to the Discharger on February 2, 2009. The total maximum potential penalty amount for this violation is **\$684,300**, as shown in Table 1 (Attachment A).

9. **Violation No. 2:** Discharger violated CWA section 401 certification.

During the period from March 11, 2005 to November 15, 2009, the discharge of fill material associated with the Discharger's Eel River summer crossing at Dyerville was regulated under CWA section 401 certification (WDID No. 1B05006WNHU) and State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of the water quality certification. This certification includes, in part, the following condition and expiration date:

ADDITIONAL CONDITION: 1) Regional Water Board staff shall be notified at least five working days (working days are Monday – Friday) prior to the bridge installation and bridge removal, with details regarding the project schedule, in order to allow staff to be present onsite during bridge installation or removal, and to answer any public inquiries that may arise regarding the project.

EXPIRATION: The authorization of this certification for any dredge and fill activities expires on November 15, 2009. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

CDFG staff sent an email to the Discharger on October 21, 2010 regarding a series of storms predicted for the weekend of October 23, 2010. The CDFG email explicitly stated: "For those of you that have Streambed Alteration Agreements that may allow for work after October 15, please complete any unfinished encroachment work, including erosion control measures, within 24 hours."

The Discharger did not provide any notification to the Regional Water Board that the Eel River summer crossing at Dyerville would be installed during the summer of 2010, so the Regional Water Board was not aware that the summer crossing had been installed. Failure to notify the Regional Water Board at least five working days prior to bridge installation and prior to bridge removal resulted in two violations of Additional Condition 1. The total maximum potential penalty amount for violation of Additional Condition 1 (subject to CWC section 13885(a)(2)) is **\$20,000** as shown in Table 2 (Attachment A).

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The following evidence supports the alleged violations described above:

10. On March 24, 2010, the Discharger contacted Regional Water Board staff via email and requested information regarding the status of permit fees and coverage under Order No. R1-2005-0011: General Waste Discharge Requirements and Water Quality Certification for Discharges Related to Sand and Gravel Mining, Excavation, and Processing Activities, Including Asphalt and Concrete Operations, on Non-Federal Lands in the North Coast Region. Regional Water Board staff provided an email response on March 24, 2010 which included information regarding the status of fees and the Discharger's coverage under Order No. R1-2005-0011. In addition, Regional Water Board staff notified the Discharger that its Eel River summer crossings had been covered by an individual CWA section 401 certification that expired on November 2009 and a new individual certification must be issued for any future activities that were authorized by the expired certification.
11. On October 25, 2010, California Department of Fish and Game (CDFG) staff reported to the Regional Water Board that the Discharger did not remove the bridge within 24 hours of DFG directing the Discharger to do so and the weekend storm washed out the bridge. NOAA staff submitted photos of the washed out bridge to the Regional Water Board. CDFG staff reported that both bridge halves and one of the abutment logs had been removed from the flowing water by 0930 on October 27, 2010, and one abutment log had floated downstream.

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH APPLICABLE REQUIREMENTS

12. Pursuant to CWC section 13385(a)(5), any person who violates any requirements of CWA sections 301, 202, 306, 307, 308, 318, or 405, shall be liable civilly in accordance with this section. A Regional Water Board may issue a Complaint pursuant to CWC section 13385(a)(5) (relating to violations of the CWA) to a discharger who applied for a CWA section 404 individual dredge or fill permit but who discharged without applying for certification. Section 13385(a)(5) subjects a discharger to administrative civil liability for violating CWA section 401. CWA section 401(a) requires an "applicant" for a federal permit to provide the federal agency with a state section 401 certification. Thus, failure to provide the certification to the federal agency is a violation of section 401, and therefore a violation of CWC section 13385(a)(5).
13. Pursuant to CWC section 13385(a)(2), any person who violates any waste discharge requirements or dredge and fill material permit is subject to administrative civil liability pursuant to CWC section 13385(c). If the terms of a CWA section 401 certification are violated, a Regional Water Board may impose an administrative civil

liability under CWC section 13385(a)(2) which provides applicable civil liabilities, and violation of the certification gives rise to liability.

14. CWC section 13385(c)(1) provides that the amount of civil liability that may be imposed by the Regional Water Board may be up to ten thousand dollars (\$10,000) for each day in which the violation occurs. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

15. On November 17, 2009 the State Water Board adopted Resolution No. 2009-0083, amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and also are used to calculate penalties consistent with both the CWC and the Enforcement Policy.

The required factors have been considered for violations 1 and 2 using the methodology in the Enforcement Policy, as explained in detail in Attachment B.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

16. Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$17,740.95** for the violations of CWC section 13385.
17. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an

administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, *Cal. Procedure* (4th ed. 1996) Actions, §405(2), p. 510.).

18. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
19. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Luis G. Rivera
Assistant Executive Officer

February 24, 2011

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