

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

**ORDER NO. R1-2023-0040
For Administrative Civil Liability**

**In the Matter of: Ken Bareilles
Sonoma County
Assessor's Parcel Number (APN) 110-190-001-000**

Administrative Civil Liability Complaint No. R1-2023-0026

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

This matter comes before the Regional Water Board from Administrative Civil Liability Complaint No. R1-2023-0026, dated March 20, 2023 (Complaint) issued to Ken Bareilles. The Complaint alleges seven violations based on evidence that the Discharger 1) violated Required Action 1 of Regional Water Board Cleanup and Abatement Order No. R1-2022-0009 (Emergency CAO), 2) violated Required Action 1 of Regional Water Board Cleanup and Abatement Order No. R1-2022-0028 (Long-Term CAO), and 3) discharged waste to waters of the state in violation of the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region Order No. R1-2014-0011 (Categorical Waiver), and Section 4.2.1 of the Water Quality Control Plan for the North Coast Region (Basin Plan). The Complaint proposes an administrative civil liability in the amount of \$250,981 pursuant to applicable laws and regulations, including California Water Code sections 13268 and 13350. A hearing took place on June 16, 2023, in accordance with the hearing notices and procedures served to the Discharger, and applicable laws and regulations, including California Code of Regulations, title 23, sections 648-648.8, as well as applicable laws from the Governor of the State of California.¹

BACKGROUND

1. The Discharger acquired title to Sonoma County APN 110-190-001-000 (Property) on December 9, 2015, and Property ownership has not changed since. The Discharger submitted The Notice of Emergency Timber Operations (Emergency Notice) 1-20EM-00125-SON on October 14, 2020, which was subsequently

¹ Based on the evidentiary hearing held by the Regional Water Board, for purposes of liability, the term Discharger as used in this Order, applies to Ken Bareilles only notwithstanding how it may be used to describe issuance of prior enforcement directives or orders.

accepted by California Department of Forestry and Fire Protection (CAL FIRE) on October 21, 2020.

2. The Emergency Notice allowed the Discharger to conduct Emergency Timber Operations (timber harvest activities) on the Site in accordance with the Categorical Waiver, which incorporates by reference requirements of the Forest Practice Rules (FPRs) (Cal. Code Regs., tit. 14, §§ 895-1115.3). The Categorical Waiver applies to timber harvest activities as defined in the FPRs and establishes general and specific conditions for which Waste Discharge Requirements (WDRs) can be waived. Implementation and compliance with the conditions are required to reduce the likelihood that timber harvesting activities pose a significant threat to water quality.
3. The Discharger conducted timber harvest activities at the Emergency Notice Area (Site), which resulted in discharges of waste into waters of the state in violation of the Categorical Waiver and the Basin Plan.
4. Following several inspections between November 4, 2021, and January 4, 2022, the Regional Water Board issued the Emergency CAO in response to observed discharges and threatened discharges of waste to waters of the state in violation of the Categorical Waiver and the Basin Plan. The Emergency CAO directed the Discharger to submit an Interim Cleanup and Stabilization Plan (Interim Plan) to the Regional Water Board by January 25, 2022, (Required Action 1) to stabilize the Site and prevent further discharges.²
5. On December 16, 2021, CAL FIRE granted the Discharger a one-year extension of the Emergency Notice, allowing the Discharger to continue timber harvest activities at the site.
6. On March 3, 2022, the Regional Water Board issued a Notice of Violation to the Discharger for failure to furnish a technical report (the Interim Plan) to comply with Required Action 1 of the Emergency CAO.³ On March 4, 2022, the Regional Water Board received the Interim Plan from the Discharger's Registered Professional Forester, 38 days after the deadline set in the Emergency CAO. Staff had several recommendations for modification of the Interim Plan; but overall, it adequately addressed the short-term threats to water quality. The Interim Plan was only intended to address potential sediment discharge during the winter period and would be followed up by a long-term site stabilization and cleanup plan. The Emergency CAO established short time frames for submittal, approval, and completion of stabilization work during the winter period. Since the Discharger failed to submit the Interim Plan until March 4, 2022, the implementation of the work could

² January 10, 2022 Cleanup and Abatement Order for Ken Bareilles - [Order No. R1-2022-0009 \(ca.gov\)](#)

³ March 3, 2022 Notice of Violation for Ken Bareilles - [Notice of Violation \(ca.gov\)](#)

not reasonably be completed during the winter period, rendering the requirement for the Interim Plan ineffective in its essential functions.

7. On June 23, 2022, the Regional Water Board transmitted a draft version of the Long-Term CAO to the Discharger, allowing 30 days to provide comments. The Long-Term CAO was intended to ensure the implementation of appropriate best management practices (BMPs) after completion of timber operations, and long-term monitoring of these BMPs. The Long-Term CAO directed the Discharger to submit a Long-Term Restoration and Monitoring Plan (Long-Term Plan) to the Regional Water Board which must 1) identify where sediment discharge to waters of the state has occurred, or threatens to occur, 2) determine the appropriate cleanup and restoration work to prevent or minimize sediment discharge, and 3) outline an implementation schedule that will guide the scope of work to clean up and abate the discharges and threats of discharge.
8. On July 13, 2022, the Regional Water Board received the Discharger's comments on the draft Long-Term CAO, and Staff revised the draft Long-Term CAO in response to specific comments by the Discharger. On September 13, 2022, the Regional Water Board issued the Long-Term CAO directing the Discharger to submit a Long-Term Plan to the Regional Water Board by October 13, 2022.⁴ Due to the Discharger's continuation of timber harvest operations under the one-year extension to the Emergency Notice granted by CAL FIRE on December 16, 2021, the Regional Water Board incorporated the requirements of the Emergency CAO and the Interim Plan into the Long-Term CAO. Thus, the Long-Term CAO superseded the Emergency CAO, which was rescinded except for purposes of enforcement of non-compliance.
9. On October 20, 2022, the Regional Water Board issued a Notice of Violation to the Discharger for failure to furnish a technical report (Long-Term Plan) to comply with Required Action 1 of the Long-Term CAO.⁵
10. On January 13, 2023, the Regional Water Board issued a Notice of Violation to the Discharger citing violations of the Categorical Waiver and Basin Plan for two areas with threatened discharges identified during the October 26, 2022, and December 2, 2022, inspections.⁶
11. On January 24, 2023, Staff conducted a maintenance inspection in conjunction with CAL FIRE inspector Kim Sone. During this inspection an additional discharge of waste was observed at an area that had previously been identified during a June 6, 2022, inspection as a threatened discharged of waste. However, even after Staff

⁴ September 13, 2022 Cleanup and Abatement Order for Ken Bareilles - [Order No. R1-2022-0028 \(ca.gov\)](#)

⁵ October 20, 2022 Notice of Violation for Ken Bareilles - [Notice of Violation \(ca.gov\)](#)

⁶ January 13, 2023 Notice of Violation for Ken Bareilles - [Notice of Violation \(ca.gov\)](#)

repeatedly informed the Discharger of the threatened discharge, the Discharger failed to stabilize the area, which resulted in the observed discharge of waste.

12. The Penalty Methodology for the Order (Attachment A) provides the details of these violations and the factors considered in developing the recommended civil liability. Below is a summary of each alleged violation.

VIOLATIONS

13. **Violation 1:** The Prosecution Team alleges that the Discharger violated Emergency CAO Required Action 1 by failing to submit the Interim Plan by January 25, 2022.
14. **Violation 2:** The Prosecution Team alleges that the Discharger violated Long-Term CAO Required Action 1 by failing to submit the Long-Term Plan by October 13, 2022.
15. **Violation 3 (Map Point 2):** The Prosecution Team alleges that the Discharger discharged waste to waters of the state in violation of Categorical Waiver General Conditions I.1 and I.3, and the Basin Plan section 4.2.1, Prohibition 1, for one day on October 24, 2021, based on Staff observations and an analysis of rainfall data.
16. **Violation 4 (Map Point 3):** The Prosecution Team alleges that the Discharger discharged waste to waters of the state in violation of Categorical Waiver General Condition I.3 for twelve days between October 24, 2021, and April 20, 2022, based on Staff observations and an analysis of rainfall data.
17. **Violation 5 (Map Point 4):** The Prosecution Team alleges that the Discharger discharged waste to waters of the state in violation of Categorical Waiver General Condition I.3 for one day on October 24, 2021, based on Staff observations and an analysis of rainfall data.
18. **Violation 6 (Map Point 5):** The Prosecution Team alleges that the Discharger discharged waste to waters of the state in violation of Categorical Waiver General Conditions I.1 and I.3, and the Basin Plan section 4.2.1, Prohibition 1, for one day based on Staff observations on March 28, 2022.
19. **Violation 7 (Map Point 6):** The Prosecution Team alleges that the Discharger discharged waste to waters of the state in violation of Categorical Waiver General Condition I.3 for one day based on Staff observations on January 24, 2023.

LEGAL AND REGULATORY CONSIDERATIONS

20. The Regional Water Board is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within the north coast region of the State of California. Earthen material from unstable and hydrologically connected road segments have discharged and threaten to discharge to Felta Creek and unnamed tributaries to the Russian River in the Lower Russian River Hydrologic Area as well as the Middle Russian River Hydrologic Area. The

Basin Plan identifies the following existing and potential beneficial uses for the Lower and Middle Russian River Hydrologic Areas (Basin Plan, Chapter 2 pages 13 – 18):

- a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Navigation
 - h. Hydropower generation
 - i. Water contact recreation
 - j. Non-contact water recreation
 - k. Commercial and sport fishing
 - l. Cold freshwater habitat
 - m. Wildlife habitat
 - n. Rare, threatened, or endangered species
 - o. Migration of aquatic organisms
 - p. Spawning, reproduction, and/or early development
21. The Russian River Watershed supports several aquatic species, including the Coho Salmon, Chinook Salmon, and Steelhead Trout (all of which are listed as Threatened under the Federal Endangered Species Act).

The Basin Plan contains water quality objectives that are necessary for reasonable protection of the beneficial uses. Protection of fishery-related beneficial uses (i.e., Cold Freshwater Habitat; Commercial and Sport Fishing; Spawning, Reproduction, and/or Early Development; Rare, Threatened, or Endangered Species; and Migration of Aquatic Organisms) is of particular importance, including from the following pollutants:

- Sediment (Section 3.3.11) “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.”
 - Suspended Material (Section 3.3.12) “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - Turbidity (Section 3.3.17) “Turbidity shall not be increased more than 20 percent above naturally occurring background levels.”
22. The federal Clean Water Act section 303(d) list identifies the Russian River and all its tributaries as impaired due to sediment and temperature.

On November 29, 2004, the Regional Water Board adopted the *Total Maximum*

Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region (Sediment TMDL Implementation Policy) by Resolution R1-2004-0087. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

The Sediment TMDL Implementation Policy states that the Executive Officer is directed to “rely on the use of all available authorities, including the existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”

23. The Emergency CAO directive to submit the Interim Plan was issued pursuant Water Code section 13267.
24. The Long-Term CAO directive to submit the Long-Term Plan was issued pursuant Water Code section 13267.
25. The Categorical Waiver was issued pursuant to Water Code section 13269 to establish a categorical waiver of waste discharge requirements for discharges of waste from timber harvest activities on non-federal lands in the North Coast Region. This Categorical Waiver requires timber harvest activities and erosion control maintenance be conducted in compliance with the FPRs and in compliance with the Basin Plan.
26. The Basin Plan was issued pursuant to Water Code sections 13240 through 13248, which requires the Regional Water Board to formulate and adopt water quality control plans for all areas within the region. Water Code section 13243 authorizes the Regional Water Board to specify in the Basin Plan certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. Section 4.2.1 of the Basin Plan establishes waste discharge prohibitions pertain to logging, construction, and associated activities in the North Coast Region.
27. The Basin Plan (Section 4.2.1) contains the *Action Plan for Logging, Construction, And Associated Activities*, which includes the following waste 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.”

WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY

28. Water Code section 13268 provides that the Regional Water Board may impose civil liability administratively to any person who fails to submit reports as required under Water Code section 13267 in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

29. Water Code section 13350 states, in relevant part:

(a) A person who (is):

(2) ...in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state...shall be liable civilly.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

WATER QUALITY ENFORCEMENT POLICY

30. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy).

The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e).

31. The alleged violations are subject to liability in accordance with Water Code sections 13268 and 13350, respectively. Administrative civil liabilities under each of these sections are subject to the factors set forth in Water Code section 13327. The Prosecution Team has considered the required factors for the alleged violations using the methodology in the 2017 Enforcement Policy, as described in Attachment A to this Order.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

32. Issuance of this Order to enforce Water Code Division 7, Chapter 5 is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308 and 15321, subdivision (a)(2).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

33. The Prosecution Team proposes an administrative civil liability of **\$250,981** for the violations, as detailed in Attachment A of this Order. This proposed administrative civil liability was derived from the use of the penalty methodology in the 2017 Enforcement Policy. The proposed administrative civil liability considers the factors described in Water Code section 13327, such as the Dischargers' culpability, history of violations, ability to pay, and other factors as justice may require.
34. Notwithstanding the issuance of this Order, the Regional Water Board retains the authority to assess additional administrative civil liability for violations that have not yet been assessed or for violations that may subsequently occur.

MAXIMUM STATUTORY LIABILITY

35. **Violation 1:** Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit the required Interim Plan for **38 days** from January 25, 2022, to March 4, 2022. The statutory maximum liability for Violation 1 is \$38,000 [(\$1,000/day) x 38 days].
36. **Violation 2:** Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

The Discharger failed to submit the required Long-Term Plan for **158 days** from October 13, 2022, to March 20, 2023. The statutory maximum liability for Violation 2 is \$158,000 [(\$1,000/day) x 158 days].

37. **Violation 3:** Pursuant to Water Code section 13350, subdivision (a)(2), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount up to five thousand dollars (\$5,000) for each day the violation occurs. The Discharger failed to adequately implement erosion controls in violation of FPRs 914.6(a), 914.6(c), and 923.5(j) at Map Point 2 which led to a discharge of sediment to waters of the state. Thus, the Discharger was in violation of Categorical Waiver General Conditions I.1 and I.3, and Basin Plan Section 4.2.1, Prohibition 1 for **one day** on October 24, 2021. The statutory maximum liability for Violation 3 is \$5,000 [(\$5,000/day) x 1 day].
38. **Violation 4:** Pursuant to Water Code section 13350, subdivision (a)(2), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount up to five thousand dollars (\$5,000) for each day the violation occurs. The Discharger failed to adequately implement erosion controls in violation of FPRs 914.6(a), 914.6(b)(1), 914.6(c), and 923.5(j) at Map Point 3 which led to a discharge of sediment to waters of the state. Thus, the Discharger was in violation of Categorical Waiver General Condition I.3 for **12 days** between October 24, 2021, and April 20, 2022. The statutory maximum liability for Violation 4 is \$60,000 [(\$5,000/day) x 12 days].
39. **Violation 5:** Pursuant to Water Code section 13350, subdivision (a)(2), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount up to five thousand dollars (\$5,000) for each day the violation occurs. The Discharger failed to adequately implement erosion controls in violation of FPRs 914.6(a), 914.6(c) and 923.5(j) at Map Point 4 which led to a discharge of sediment to waters of the state. Thus, the Discharger was in violation of Categorical Waiver General Condition I.3 for **one day** on October 24, 2021. The statutory maximum liability for Violation 5 is \$5,000 [(\$5,000/day) x 1 day].
40. **Violation 6:** Pursuant to Water Code section 13350, subdivision (a)(2), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount up to five thousand dollars (\$5,000) for each day the violation occurs. The Discharger failed to adequately implement erosion controls in violation of FPRs 914.6(a), 914.6(b)(1), 914.6(c) and 923.5(j) at Map Point 5 which led to a discharge of sediment to waters of the state. Thus, the Discharger was in violation of Categorical Waiver General Conditions I.1 and I.3, and Basin Plan Section 4.2.1, Prohibition 1 for **one day** between October 24, 2021, and March 20, 2022. The statutory maximum liability for Violation 6 is \$5,000 [(\$5,000/day) x 1 day].

41. **Violation 7:** Pursuant to Water Code section 13350, subdivision (a)(2), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount up to five thousand dollars (\$5,000) for each day the violation occurs. The Discharger failed to adequately implement erosion controls in violation of FPRs 914.6(a) and 914.6(b)(1) at Map Point 6 which led to a discharge of sediment to waters of the state. Thus, the Discharger was in violation of Categorical Waiver General Condition I.3 for **one day** on January 24, 2023. The statutory maximum liability for Violation 7 is \$5,000 [(\$5,000/day) x 1 day].
42. The proposed administrative civil liability considers the statutory maximum liability for each violation.

MINIMUM LIABILITY

43. Violations 1 through 7: There is no statutory minimum liability for these violations.
44. The 2017 Enforcement Policy requires the Regional Water Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for the violations alleged is approximately \$175. Attachment A includes a detailed explanation of the basis of this calculation. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to **\$192**. The proposed administrative civil liability is more than the minimum liability amount.

ADMINISTRATIVE CIVIL LIABILITY

45. Based on consideration of the above facts, the evidence in this matter, material submitted by parties, the testimony and arguments presented at hearing, the applicable law, and after applying the methodology in the Enforcement Policy, the Regional Water Board finds that civil liability shall be imposed administratively against Ken Bareilles in the amount of \$250,981, as explained in detail in Attachment A to this Order.
46. Notwithstanding the issuance of this Order, the Regional Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.
47. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filling petitions will be provided upon request, and may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/

IT IS HEREBY ORDERED, pursuant to Water Code sections 13268, 13350 and other applicable law, that:

1. Ken Bareilles shall be assessed an Administrative Civil Liability in the amount of two hundred and fifty thousand, nine hundred and eighty-one dollars (\$250,981).
2. Payment shall be made no later than 30 days from the date on which this Order is adopted. Ken Bareilles shall send the original signed check to:

State Water Resources Control Board
Division of Administrative Services
ATTN: Accounting 1001 I Street, 18th Floor
Sacramento, CA 95814

With a copy to:

North Coast Regional Water Quality Control Board
ATTN: Jeremiah Puget
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

I, Valerie Quinto, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 16, 2023.

Date

Valerie Quinto
Executive Officer

Attachments:

- A. Penalty Methodology for Administrative Civil Liability Order No. R1-2023-0040