California Regional Water Quality Control Board
North Coast Region

Attachment B

COMPLAINT NO. R1-2003-0081

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

HANES RANCH INC.;

And

MR. JOHN HANES,
PRESIDENT, HANES RANCH INC.

FOR

FAILURE TO SUBMIT TECHNICAL REPORTS
REQUIRED UNDER SECTION 13267(b)
OF THE CALIFORNIA WATER CODE

AND

FAILURE TO COMPLY WITH
CLEANUP AND ABATEMENT REQUIRED
UNDER SECTION 13304(a)
OF THE CALIFORNIA WATER CODE

Mendocino County

This civil liability complaint (Complaint) pursuant to California Water Code (CWC) Sections 13268 and 13350 is issued to Hanes Ranch, Inc., and Mr. John Hanes, President of Hanes Ranch Inc. This Complaint is being issued for violations of Cleanup and Abatement and Request for Technical Reports Order No. R1-2002-0102 which was issued pursuant to CWC 13267 (b) and 13304 (a) on October 18, 2002.

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

1. Hanes Ranch, Inc. is listed by the Mendocino County Assessor's Office as the landowner for the property (hereinafter the "Property") described in Cleanup and Abatement and Request for Technical Reports Order No. R1-2002-0102 (hereinafter the "Order").

2. Mr. John Hanes, President of Hanes Ranch, Inc., P.O. Box 528, Boonville, CA, 95415, is responsible for overseeing, controlling, and directing management activities and other operations within the ownership associated with, but not limited to, timber harvesting, forestry management, recreation activities, road construction, watercourse crossing construction, road maintenance, and erosion control maintenance. Mr. Hanes, on behalf of Hanes Ranch, Inc., has signed timber harvest plans (THPs) submitted to the California

Department of Forestry (CDF) for the properties listed in the Order as the Timber Owner of Record, Timberland Owner of Record, and Plan Submitter. Mr. Hanes' exercised and exercises extensive personal direction and control over day-to-day operations of the Hanes Ranch, and specifically over the matters specified in this Complaint. Mr. Hanes is therefore named individually as a responsible party, in addition to the Hanes Ranch, Inc. Hanes Ranch, Inc. and Mr. John Hanes, President of Hanes Ranch, Inc. are collectively hereinafter known as the "Dischargers."

3. The Dischargers failed to comply with the Order of the Executive Officer of the Regional Water Board to submit technical reports, pursuant to California Water Code (CWC) Section 13267(b). Under CWC Section 13268(a), any person failing to submit reports required under CWC Section 13267(b) is guilty of a misdemeanor and may be held civilly liable.

4. The Dischargers also failed to comply with the Order of the Executive Officer by not cleaning up and abating soil discharges, pursuant to Section 13304(a). Under CWC Section 13350(a), any person failing to comply with any cleanup and abatement order issued by the Regional Water Board under Section 13304(a) shall be liable civilly.

5. The 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 90 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.

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

   a) Regional Water Board staff conducted five THP pre-harvest inspections of the Property on June 10, 2002, July 29, 2002, August 8, 2002, August 14, 2002, and September 16, 2002.

   b) The inspections all revealed that the Dischargers violated Prohibition 1 and Prohibition 2 of the Action Plan for Logging, Construction, and Associated Activities, as described in the Water Quality Control Plan for the North Coast Region (Basin Plan).

   c) Observed Basin Plan violations included the discharge of earthen material from watercourse crossings, road fill failures, inadequate road drainage, watercourse diversions, watercourse crossing failures, sidecast fill material, and numerous surface erosion sites, into Minnie Creek, Big Rough Creek, Camp Creek, Rancheria Creek, German Creek and their tributaries.

d) On October 18, 2002, the Dischargers were issued Cleanup and Abatement and Request for Technical Reports Order No. R1-2002-0102 for the Property. The Order was issued by the Regional Water Board Executive Officer pursuant to CWC Sections 13304 and 13267.

e) The Order required the Dischargers to implement Short-Term Emergency Erosion Control measures by November 8, 2002.

f) The Order required submittal of a Short-Term Erosion Control Completion Report (STCR) by November 15, 2002, to the Executive Officer. The STCR was to describe, photograph, and map the locations where erosion control measures were implemented. The STCR was to be completed and signed by a professional engineer or geologist licensed in the State of California and experienced in erosion control.

g) On November 15, 2002, the Dischargers failed and/or refused to submit a STCR to the Regional Water Board Executive Officer.

h) On November 17, 2002, Mr. Hanes submitted a "Progress Report." The letter did not meet the requirements as described in the Order for either the STCR or the November Monthly Monitoring Report.

i) The Order required the Dischargers to conduct inspections of the measures identified in the STCR throughout the November 2002 to May 2003 winter period under the supervision of a California licensed professional engineer or geologist experienced in erosion control. Notification of the day of each inspection was to be provided to Regional Water Board staff, to allow them to attend and potentially collect water quality samples.

j) The Dischargers failed to notify Regional Water Board staff of any inspection(s) during the months of November, December, January, February, March, and April triggered by rainfall amounts. Regional Water Board staff has not received any indication that any of the inspections required by the Order were conducted.

k) The Order required the Dischargers to submit monthly monitoring reports by the 15th day of each calendar month (November through May). The monthly monitoring reports are designed to ensure effectiveness and maintenance of emergency erosion control measures, as well as to document any new erosional features, throughout the winter period.

l) The Dischargers failed and/or refused to submit the monthly monitoring reports due by the 15th day of November, December, January, February, March, April and May.

m) The Order required the Dischargers to submit a long-term erosion control plan (ECP) for the Property by January 15, 2003. The ECP is to include a sediment source inventory, a landslide investigation report, and a remediation plan.

n) The Dischargers failed and/or refused to submit the ECP by the date specified in the Order.

o) On January 22, 2003, while accompanying the California Department of Forestry and Fire Protection on a timber harvest completion inspection, Regional Water Board staff accessed a portion of the roads that are part of the Property. At that time, Regional Water Board staff observed that short-term emergency erosion control measures had not been implemented in the area inspected.

p) On January 22 and January 30, 2003, Regional Water Board staff informed Mr. Hanes of the status of non-compliance with the Order. Additionally, staff requested permission to inspect the Property to evaluate compliance with the Order. Mr. Hanes indicated that he believed that inspection of the site was not important, and further that site conditions prevented access for both monitoring and inspections in portions of the area covered by the Order.

q) On February 11, 2003, the Executive Officer sent a letter informing the Dischargers of the status of non-compliance with the Order thus far. The letter also requested written permission granting access to the Property by February 18, 2003, in order to investigate compliance with the Order. The Dischargers did not grant written permission to access the Property.

r) On February 25, 2003, the Executive Officer received a letter, signed by Mr. Hanes, responding to the February 11, 2003 letter. In the letter, Mr. Hanes disputed the Order, stating that "the Cleanup and Abatement Order was unnecessary." Mr. Hanes indicated that treatment of areas of concern had been done as part of normal maintenance on the Property, but did not submit the documentation nor meet the requirements of the STCR described in the Order. The February 25, 2003 response letter also did not include any other technical reports required under the Order thus far.

s) On February 25, 2003, Regional Water Board staff spoke with Mr. Hanes in person, and requested an agreeable date for inspection of the Property. After denying Regional Water Board staff access, the Dischargers were informed that an inspection warrant would be sought to provide legal access to the Property.

t) On March 26, 2007, Mendocino County Superior Court Judge Richard Hendersen, issued an inspection warrant for the Regional Water Board staff to inspect the areas of the Property described in the Order.

u) The Dischargers were notified by telephone on March 26, 2003, by Regional Water Board staff of the inspection warrant and informed that a copy of the inspection warrant had been delivered to the Dischargers' post office box. At that time, the Dischargers were informed that the inspection of the Property would begin on April 1, 2003.

v) On April 1, 2003, staff from the Regional Water Board, the California Department of Forestry, the California Department of Fish and Game, and a Mendocino County Deputy Sheriff, participated in an inspection of the Property pursuant to the terms of the inspection warrant.

w) On April 2, 2003, staff from the Regional Water Board, and the California Department of Forestry continued the inspection of the Property.

x) During the two days of inspection, Regional Water Board staff evaluated the Property for compliance with the Order. Conduct of the inspection by vehicles or on foot allowed for unrestricted access to all areas associated with the Order. Additionally, erosion sites were measured and previous as well as threatened discharges of sediment to waters of the state were estimated. Photographic evidence was also collected to show erosion that occurred during the 2002-2003 winter period as well as past discharge locations.

y) Regional Water Board staff identified some locations where the Dischargers had implemented emergency erosion control measures. The majority of the emergency erosion control measures implemented were in the form of grass seed and mulch on isolated areas of exposed soils and installation of waterbars. Where emergency erosion control measures were implemented, they appeared to be minimally effective, or ineffective at controlling sediment discharges to waters of the state. Some improperly implemented erosion control work appeared to exacerbate the discharge of sediment to waters of the state.

z) Several of the erosional features identified during the initial pre-harvest inspections were observed to have greatly enlarged during the winter months and resulted in continuing discharges of sediment to waters of the state.

7. The Dischargers failed to comply with the Order of the Executive Officer of the Regional Water Board to submit technical reports, pursuant to California Water Code (CWC) Section 13267(b). Section 13267(b) provides as follows:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging or who proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires..."

Section 13268 of the CWC provides for the imposition of civil liabilities against Dischargers for failing or refusing to furnish technical or monitoring reports up to $1,000 per day. Specifically, Section 13268 of the CWC states the following:

"(a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(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..."

The Dischargers also failed to comply with the Order of the Executive Officer by not cleaning up and abating soil discharges, pursuant to Section 13304(a). Section 13304(a) provides as follows:

> *"Any person who has discharged or discharges waste into the water of this state in violation...of any waste discharge requirement or other order...or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state...shall upon order of the regional board, clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts."*

Section 13350 of the CWC provides for the imposition of civil liabilities against any person for failing or refusing to comply with a cleanup and abatement order up to $5,000 per day or ten dollars ($10) per gallon of waste discharged. Specifically, Section 13350(e)(1) of the CWC states the following:

> *"Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) for a violation of this section in an amount which shall not exceed ten dollars ($10) for each gallon of waste discharged.*

Section 13350(e)(1)(A) of the CWC also provides that where there is a discharge and a cleanup and abatement order issued, the civil liability must be at least $500 per day, unless findings are made to support assessing a lower amount.

8. The Dischargers failed or refused to furnish technical or monitoring program reports as required by the Order. Pursuant to Section 13268 of the CWC, a day of violation has accrued every day that the STCR, a monitoring report, or the ECP was past due through July 1, 2003. One day of violation per month has accrued for the period of November of 2003 through April of 2003 for failure to conduct and/or notify Regional Water Board staff of the required inspection triggered by rainfall amounts. The days of violation for each report, reporting requirement, or plan not submitted are summarized as follows:

Item	Date Due	Date Received	Days of Violation
Short Term Erosion Completion Report	11/15/02	Not received	229
November Monitoring Report	11/15/02	Not received	229
December Monitoring Report	12/15/02	Not received	199
Long Term Erosion Control Plan	1/15/03	Not received	168
January Monitoring Report	1/15/03	Not received	168
February Monitoring Report	2/15/03	Not received	137
March Monitoring Report	3/15/03	Not received	109
April Monitoring Report	4/15/03	Not received	78
May Monitoring Report	5/15/03	Not received	48
	Total Days of Violation:		1,366

Item	Date Notification Due	Violation
11/7/02 Storm Inspection	11/8/02	Not conducted/No notification given
12/13/02 Storm Inspection	12/14/02	Not conducted/No notification given
1/12/03 Storm Inspection	1/13/03	Not conducted/No notification given
2/13/03 Storm Inspection	2/14/03	Not conducted/No notification given
3/13/03 Storm Inspection	3/14/03	Not conducted/No notification given
4/12/03 Storm Inspection	4/13/03	Not conducted/No notification given
		Total Violations: 6

Pursuant to Section 13350, the Dischargers have violated the Order and prohibitions contained in the Basin Plan, by intentionally or negligently discharging waste, or causing or permitting waste to be deposited where it is discharged into the waters of the state, and creating a condition of pollution or nuisance. Accordingly, an estimate of the minimum volume of sediment delivered to waters of the state from the 66 active erosion sites inspected by Regional Water Board staff on April 1 and 2, 2003 is approximately 450 cubic yards (yd^3). A minimum of 50 yd^3 of sediment is estimated to have been delivered to waters of the state during the winter 2002-2003, after issuance of the Order. The total estimated volume of 500 yd^3, or approximately 100,000 gallons of waste have been discharged from the Property into waters of the state.

The current maximum total civil liability as of the date of this Complaint that could be imposed against the Dischargers in this matter is calculated as follows:

1,366 days of violation at $1,000 per day = $1,366,000
6 days of violation at $1,000 per violation = $6,000
100,000 gallons of discharged waste at $10 per gallon = $1,000,000

In sum, the Dischargers may be subject to maximum potential civil liabilities of $2,372,000.

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

a) <u>The Nature, Circumstances, Extent, and Gravity of the Violations</u>:

The Dischargers have refused and/or failed to submit the STCR, monthly monitoring reports, and the ECP as required in the Order. In addition, the Dischargers have refused and/or failed to provide notification of any of the inspections required by the Order and have not provided evidence that such inspections have occurred.

The monthly inspections of short-term erosion control measures and Regional Water Board participation in the inspections are necessary to evaluate the effectiveness of the measures and implement additional measures if they are determined to be necessary.

The STCR and monthly monitoring reports are necessary for Regional Water Board staff to evaluate short term erosion control measures that have been implemented and

the degree to which such measures have been effective in minimizing erosion and discharge of sediment to waters of the State.

The long-term ECP is necessary to address and mitigate erosion and discharge of sediment to waters of the state resulting from poorly designed and implemented erosion control on roads throughout the Property.

Ongoing discharge of sediment to waters of the state is occurring throughout the Property from numerous road related active erosion sites. Greater than 50 cubic yards have discharged this past winter following issuance of, and during a period of non-compliance with, the Order, in addition to the discharges that occurred before the issuance of the Order.

b) Degree of Culpability:

The Order required the Dischargers to perform certain erosion control measures, submit an STCR, monthly monitoring reports, an ECP, and perform inspections with notification to Regional Water Board staff following heavy rainfall events. The Dischargers have refused and/or failed to submit any of the required documents. In addition, the Dischargers have refused and/or failed to notify Regional Water Board staff of any of the inspections required by the Order and have not provided evidence that any of the required inspections have occurred.

c) Prior History of Violations:

Regional Water Board staff reviewed the files of sixteen approved THPs submitted by the Dischargers since 1991. The California Department of Forestry and Fire Protection issued Notices of Violations of the California Forest Practice Rules for operations conducted under eight of the approved THPs. Five of the violations were issued for failure to properly implement or maintain drainage facilities, which did, or potentially did, cause discharge of earthen material to waters of the state. During inspections of four separate THPs in 2003, Regional Water Board staff observed direct delivery of earthen material to waters of the state resulting from failure to properly implement or maintain drainage facilities.

In March 1999, the Dischargers pleaded no contest to two charges filed against them by the Mendocino County District Attorney resulting from "willful violation" of Public Resource Code (PRC) 4601. The Deputy District Attorney prosecuting the case wrote that the Dischargers, "very deliberately chose to refuse to comply with the law." In an agreement resulting in resolution of the case, the Dischargers received a fine and agreed to "cooperate in good faith with CDF in all future dealings." Two subsequent Notices of Violations of the California Forest Practice Rules were issued to the Dischargers by CDF in May 2003.

d) Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

Significant volumes of sediment have discharged from the property and have been transported downstream into the Navarro River and its tributaries. Sediment remains

in-stream or in a position in which it threatens to discharge into waters of the state. Excess sediment residing in-stream or perched in a position in which it threatens to discharge into waters of the state may be susceptible to cleanup. Excess sediment that is suitable for removal should be identified in a sediment source inventory as part of a long-term erosion control plan, as required by the Order. To avoid or minimize threatened discharges to waters of the state, proper development and implementation of a long term erosion control plan, as required in the Order, is necessary, prior to the on-set of the next rainy season.

Regional Water Board staff have no knowledge of any voluntary cleanup efforts undertaken by the Dischargers. The Dischargers have implemented some minimally effective or ineffective short-term erosion control measures, in response to the Order, during the winter of 2002/2003.

e) Economic Savings:

The Dischargers received economic savings in excess of $50,000. These savings resulted from the failure to comply with the Order. Specifically, non-submittal of required reports and plans, not collecting or developing the information underlying these reports and plans, and not developing or implementing the ECP make up the majority of the economic savings. Costs associated with developing and implementing the ECP may be incurred in the future as the Dischargers remain obliged to develop and implement the ECP.

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

Regional Water Board staff have no knowledge of the Dischargers' ability to pay. However, Hanes Ranch, Inc. owns in excess of 5000 acres of land in Mendocino County. According to the Mendocino County Assessor's records, Hanes Ranch, Inc. has owned the Property since 1973. Mr. Hanes and Hanes Ranch, Inc. have been in the business of harvesting timber for over a decade from the Hanes Ranch lands.

g) Other Matters as Justice May Require:

Several Class I (fish-bearing) and Class II (habitat for non-fish aquatic species) watercourses flow through the Property, including Minnie Creek, Rancheria Creek, and other tributaries to the Navarro River. The Navarro River and its tributaries are listed under section 303(d) of the Clean Water Act as impaired due to excessive sediment and temperature. The failure or refusal to submit the monitoring reports required by the Order, the delay in submittal of an adequate Long Term Erosion Control Plan, and the failure or refusal to conduct and/or notify Regional Water Board staff of required inspections has likely resulted in continuing discharges of sediment that could reasonably be controlled. The Dischargers also refused to allow Regional Water Board staff access to the Property during the winter of 2002/2003 to determine compliance with the Order, and to assess the extent of any continuing discharges of waste to waters of the state. Accordingly, Regional Water Board staff resources were expended to obtain an inspection warrant and carry out their duties to protect the beneficial uses of

water. On-going discharges of waste to the Navarro River may create or threaten to create a condition of pollution or nuisance unless abated.

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).

11. Payment of the Civil Liability does not satisfy the Dischargers' obligation to comply with the tasks required by the Order. That Order remains in full force and effect.

Proposed Civil Liability

Based on the above factors, I hereby propose that the Dischargers pay an Administrative Civil Liability in the amount of $100,000 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 $100,000 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. This settlement will not become effective until after a 30-day public comment period.

Ordered by Frank Reinhardt for
Susan A. Warner
Executive Officer

July 10, 2003