

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906**

**ADMINISTRATIVE CIVIL LIABILITY  
ORDER NO. R3-2004-0125**

**Issued to:**

**Haig Kelegian  
San Luis Obispo County**

The California Regional Water Quality Control Board, Central Coast Region, finds:

1. Haig Kelegian (hereafter Discharger) owns 412 acres of land in the Creston area of San Luis Obispo County. Of the 635 acres 200 acres (hereafter Site) were altered.
2. The Site drains to an unnamed "blue line" stream that is tributary to Huerhuero Creek, both of which are waters of the state. Huerhuero Creek is tributary to the Salinas River. The Water Quality Control Plan, Central Coast Region (Basin Plan) designates protection of both recreation and aquatic life as a beneficial use of the blue line stream, among other uses and the beneficial uses of Huerhuero Creek to include municipal and domestic water supply, agricultural supply, ground water recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, rare, threatened, or endangered species, and commercial and sport fishing.
3. The Discharger disturbed soils on the Site by removing vegetation on 200 acres without completing soil-disturbing activities by implementing any effective Best Management Practices (BMPs) to prevent soil erosion and the discharge of sediments to waters of the state. The Discharger failed to stabilize soils for a period of at least 185 days, from September 1, 2002, when removal of vegetation was completed, until at least March 4, 2003, when Regional Board staff documented that the soils were partially stabilized. It is unknown at what precise time the soils became extensively stable because

after March 4, 2003, when soils were still eroding and being discharged to state waters, the next inspection wasn't until September 19, 2003, and at that time the soils were considered extensively stable.

4. On November 8, 2002, December 20, 2002, and February 3, 2003, Regional Board staff witnessed and documented discharges of eroded soil from the Site to waters of the state.
5. For 185 days the referenced disturbed soils and related discharges constituted violations of Land Disturbance Prohibitions contained in Section VIII.E.1 in Chapter 4. Implementation Plan of the Water Quality Control Plan, Central Coast Region (Basin Plan).

**First Prohibition Violated**

**VIII.E.1. LAND  
DISTURBANCE PROHIBITIONS**

Soil disturbance activities not exempted pursuant to Regional Board Management Principles contained in Chapter Five are prohibited:

On soils rated a severe erosion hazard by soil specialists (as recognized by the Executive Officer) where water quality may be adversely impacted;

Unless,

- a. In the case of agriculture, operations comply with a Farm Conservation or Farm Management Plan approved by a

Resource Conservation District or the USDA Soil Conservation Service;

- b. In the case of construction and land development, an erosion and sediment control plan or its equivalent (e.g., EIR, local ordinance) prescribes best management practices to minimize erosion during the activity, and the plan is certified or approved, and will be enforced by a local unit of government through persons trained in erosion control techniques; or,
  - c. There is no threat to downstream beneficial uses of water, as certified by the Executive Officer of the Regional Board.
6. Discharger violated this Prohibition because he disturbed soils rated a severe erosion hazard by soil specialists recognized by the Executive Officer where water quality may be adversely impacted and failed to complete soil disturbing activities by implementing BMPs. The Executive Officer recognizes the Resource Conservation District (RCD) and the United States Department of Agriculture, Soil Conservation Service, presently known as United States Department of Agriculture, Natural Resources Conservation Service (NRCS) as being entities that specialize in evaluating soils and determining if soils are a severe erosion hazard. This recognition is supported by the specific reference to both agencies in the Land Use Disturbance portion in the Basin Plan, Chapter 4. Implementation Plan. that is shown in allegation 6.

The NRCS co-produced the "Soil Survey of San Luis Obispo County, California – Paso Robles Area" (Soil Survey). In summary the Soil Survey describes the area of the Site as hilly with moderate to very steep slopes of 15 – 75 %, and having shallow sandy loam soils of 6 – 40 inches overlying weathered granite rock. Surface runoff is rapid to very rapid, and the hazard of erosion is high to very high.

The Soil Survey also references the soil in some areas of the site as being "fragile and any disturbance can cause severe erosion". Regional Board staff visiting the Site determined there was a severe erosion hazard that could adversely affect water quality. The Executive Officer recognizes staff as having expertise, by virtue of their engineering and geology training and work experience, to rate soil as a severe erosion hazard. Sediment discharges adversely affect water quality and unreasonably affect beneficial uses by causing excess turbidity, burying riparian vegetation, impairing flow and by covering creek bottoms. Increased turbidity, vegetation destruction and sedimentation can deplete food and habitat availability to zooplankton, insects, freshwater mollusks, and fish.

7. The three exemption criteria (a., b., and c. in allegation 6.) associated with the prohibition are not applicable because (a.) the Discharger never filed a farm plan with or received approval from the RCD or the NRCS, (b.) the land disturbance was not related to construction or land development, and was not subject to an erosion control plan that was enforced by a local government, and (c.) no certification regarding threat to beneficial uses was applied for or issued by the Executive Officer.
8. Regional Board Management Principles in Chapter Five of the Basin Plan contain exemptions that are referenced in the Land Disturbance Prohibitions. The exemptions are as follows:
  - Emergency projects undertaken or approved by a public agency and necessary to prevent or mitigate loss of, or damage to, life, health, property, or essential public services from an unexpected occurrence involving a clear and imminent danger are exempt from this chapter providing such exemption is in the public interest.
  - Regulation of sediment discharges from routine annual agricultural

operations, such as tilling, grazing, and land grading and from construction of agricultural buildings is waived except where such activity is causing severe erosion and causing, or threatening to cause, a pollution or nuisance.

- Regulation of discharges from State and federal lands managed by agencies operating in accordance with approved management agency agreements is waived except where such activity is causing, or threatening to cause, a pollution or nuisance.

The Discharger's soil disturbance activities were not an emergency project, do not qualify as a part of a routine annual agricultural activity, and did not involve State or Federal lands. Therefore the referenced exemptions are not applicable.

9. The Discharger disturbed severe erosion hazard soils in violation of a Regional Board issued prohibition. The soils remained disturbed for at least 185 days (September 1, 2002 – March 4, 2003) during which time there were occasions when eroded soil sediments from the Site were discharged to waters of the state.

**Second Prohibition Violated**

**VIII.E.1. LAND DISTURBANCE PROHIBITIONS**

The discharge or threatened discharge of soil, silt, bark, slash, sawdust, or other organic and earthen materials into any stream in the basin in violation of best management practices for timber harvesting construction, and other soil disturbance activities and in quantities deleterious to fish, wildlife, and other beneficial uses is prohibited.

10. The Discharger discharged and threatened discharge of soil, silt, and other organic and earthen materials into the blue line stream and Huerhuero Creek in violation of best management practices for soil disturbance activities and in quantities deleterious to fish,

wildlife, and other beneficial uses. The Discharger violated this prohibition by removing most all vegetation from the Site, which has a severe erosion hazard without implementing effective BMPs to eliminate or minimize erosion and sediment discharges. Regional Board staff in letters and in person had instructed the Discharger as to correct implementation of soil stabilization BMPs and the Discharger did not follow that instruction..

11. Pursuant to California Water Code Sections 13350(e)(1), the Regional Board may impose civil liability up to \$5,000 per day for each day each violation occurs. The Discharger violated two Basin Plan prohibitions for a total of at least 185 days each. The maximum liability that may be imposed is \$925,000 (nine hundred twenty-five thousand dollars) per violated prohibition. The total Maximum Liability that can be imposed for violating both prohibitions is \$1,850,000 (one million eight hundred fifty thousand dollars).
12. As required by California Water Code Section 13327, the Regional Board considered:
  - a. nature, circumstances, extent, and gravity of the violations
  - b. discharge susceptibility to cleanup or abatement
  - c. discharge toxicity
  - d. ability to pay and the effect on ability to continue in business
  - e. voluntary cleanup efforts undertaken
  - f. violation history
  - g. degree of culpability
  - h. economic benefit or savings (if any), and
  - i. other matters as justice may require.

**Nature, circumstances, extent, and gravity of the violation or violations**

The discharger removed most all vegetation from the Site during the summer of 2002, without implementing any form of erosion controls and with sediment controls that were ineffective.

On October 1, 2002 Regional Board staff inspected the Site and followed up with a letter dated October 8, 2002 addressing best management practices as follows, "applying seed alone is not a sufficient erosion control measure. Established vegetation is a means of erosion control; thus, the

seed must be nurtured into vegetation before runoff occurs to be effective erosion control.” Thus, Regional Board staff instructed the Discharger on the correct method for implementing the BMP for erosion control by seeding, the BMP the Discharger said he would use at the site.

Continuing into the fall of 2003 staff of the Regional Board repeatedly urged the Discharger to provide effective erosion and sedimentation controls for the Site. Although the Discharger made some efforts to prevent erosion and the discharge of sediments, he failed to comply with the best management practices described by Regional Board staff. Discharger failed to implement BMPs that eliminated or minimized erosion and sediment discharge.

Sediment discharges occurred periodically throughout the entire rainy season of 2002-2003, and receiving water beneficial uses were adversely impacted.

Because the blue line stream is tributary to Huerhuero Creek and no sediments discharged to the blue line stream were recovered, most all sediments discharged to the blue line stream migrated to Huerhuero Creek. Soil sediments are known to be deleterious to fish, wildlife and other beneficial uses of the blue line stream and Huerhuero Creek.

Because the Discharger removed most vegetation from the 200 acre Site there was a major threat of larger discharges that would have more severely impaired beneficial uses. Larger discharges were likely to have occurred if storms had been more forceful or more frequent.

A report prepared by the Resource Conservation District (RCD) concerning soil conditions on adjacent acreage discussed the damage soil erosion and other landowners had done to the Huerhuero Creek watershed. The RCD Report states:

“Consequently it is critical, at this time, that proper erosion and sediment controls be exercised throughout the watersheds draining into Huerhuero Creek to preclude further damage to or elimination of remaining vegetation in the creek. This would include all work done on the applicant’s property. Similar measures should be underwritten for other development being proposed in this region of the county.”

The sediment discharges adversely affected beneficial uses and threatened discharges were in amounts deleterious to fish, wildlife and other beneficial uses. The violations occurred for the entire rainy season of 2002-2003. Also, because the Discharger removed vegetation from such a large area of highly erosive soil, about 200 acres, there was a high threat of larger discharges, therefore a significant amount of liability is justified. However, maximum liability is not justified because the violations were not the most harmful or most extensive violations within the scope of violations covered by Water Code section 13350.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

**Whether the discharge is susceptible to cleanup or abatement**

Although it is possible that at least some of the discharged sediments could have been cleaned up, it was probably not prudent to do so because doing so can often times be more damaging than if the sediments are left in place. Because the discharge is not susceptible to cleanup, a significant liability amount is justified. But because the discharges were not the most harmful or most extensive violations within the scope of violations covered by Water Code Section 13350 the liability should be less than maximum.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

**The degree of toxicity of the discharge**

There is no reason to believe that the discharged sediments were toxic.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

**With respect to the violator, the ability to pay, the effect on ability to continue in business**

The Regional Board has no evidence regarding the Discharger’s financial resources or ability to stay in business.

Consideration of this factor does not affect the amount of liability assessed.

**Any voluntary cleanup efforts undertaken**

The discharger never proposed or initiated any efforts to remove the discharged sediments from waters of the state. However, Regional Board staff would probably have discouraged such efforts as being impractical because efforts to remove the sediments in this case could have been more damaging than if they were left in place.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

**Any prior history of violations**

The Regional Board has no evidence of any prior violations of environmental laws by the Discharger.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

**The degree of culpability**

The Discharger removed most all vegetation from severe erosion hazard soils without initiating effective best management practices and as a result the soils eroded and entered waters of the state. Having had the services of EDA, a firm that is familiar with the erosion hazards in the area of the Site, the Discharger should have known that removing so much vegetation from steep slopes would cause erosion that would discharge to the blue line stream and Huerhuero Creek. Additionally, in November 2002, the Discharger knew of the erosion hazard because Regional Board staff provided oral and written warnings to the Discharger that BMPs he had implemented at the site were not adequate to eliminate or minimize erosion and sediment discharges to waters of the state. Regional Board staff instructed Discharger on the proper method for implementing erosion control BMPs by seeding and nurturing vegetation to maturity. Nonetheless, the Discharger did not implement adequate BMPs to prevent or minimize erosion or sediment discharge for the entire rainy season. While knowledge is not required to establish a violation of the Basin Plan Prohibitions, violation with knowledge indicates a higher degree of culpability.

The Discharger's failure to comply over an entire rainy season despite knowledge of the adverse water quality consequences and opportunities to

come into compliance indicates a high level of culpability.

Consideration of this factor justifies assessment of maximum liability.

**Economic benefit or savings, if any, resulting from the violation**

Regional Board staff does not have specific information that would allow staff to determine with any accuracy the actual amount of the savings.

Consideration of this factor justifies assessment of civil liability that is less than maximum.

**Other matters that justice may require**

Discharger has sent a letter and additional documentation to staff that he spent \$60,594 in an effort to comply with Regional Board requirements. Assuming for the purpose of analysis that Discharger had spent this amount in an attempt to stabilize the 200 acres of disturbed soils and prevent discharges to surface water, those efforts were not successful. These expenditures do not reflect the fact that the Discharger violated the Prohibitions by disturbing the soils, violating BMPs, and failing to prevent discharges to surface waters. The expenditures indicate the discharger spent money but does not justify reducing liability below \$25,500, an amount an amount hundreds of thousands of dollars below maximum.

During the past two years Regional Board staff have spent an extensive amount of time addressing water quality concerns on the Discharger's property. Using conservative estimates, multiple staff members have spent 340 hours on the matter at a cost \$25, 500 (twenty-five thousand five hundred dollars) (Hourly Rate = \$75).

Consideration of this factor justifies assessment of civil liability that is not less than \$25, 500 (Twenty Five Thousand Five Hundred Dollars).

After consideration of the above-listed factors, the Executive Officer issued the Complaint in the amount of \$25,500 (twenty-five thousand five hundred dollars), including staff costs of twenty-five thousand five hundred dollars (\$25,500). The Regional Board has considered the analysis of these factors set forth in the "Proposed Civil

Liability” section of the Complaint, and all comments, evidence and testimony received.

13. This enforcement action is taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with California Code of Regulations, Title 14, Sections 15307 and 15308.

14. A hearing on this matter was held before the Regional Board on December 2, 2004, at 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Discharger, or the Discharger’s representative(s), had the opportunity to be heard and to contest the allegations in the Complaint No. R3-2004-0125, which recommended the imposition of civil liability by the Regional Board.

15. Following completed testimony on December 2, 2004, the hearing was closed and the Regional Board deliberated. This Administrative Civil Liability Order No. R3-2004-0125 is adopted based upon the evidence and arguments presented at the hearing and relevant evidence in the Regional Board files and upon consideration of the factors mandated by Water Code section 13327.

**IT IS HEREBY ORDERED**, pursuant to California Water Code Section 13350, Haig Kelegian is assessed a total civil liability of \$25,500 (twenty-five thousand five hundred dollars) to be delivered to the Regional Water Quality Control Board at the letterhead address by January 3, 2005. The check is to be made payable to the State Water Resources Control Board.

**I, Roger W. Briggs, Executive Officer**, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Regional Water Quality Control Board on December 2, 2004.

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Roger W. Briggs, Executive Officer

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Date