



California Regional Water Quality Control Board
Central Coast Region



Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

May 18, 2005

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William S. Walter
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**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT – VIOLATION OF A
PROHIBITION; HAIG KELEGIAN, CRESTON, SAN LUIS OBISPO COUNTY**

Mr. Walter:

Enclosed is Administrative Civil Liability Complaint No. R3-2005-0025 issued by the Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board) for violation of a Prohibition. The related Staff Report is also enclosed.

On **July 7 or 8, 2005**, in the office of the Central Coast Water Board, the Central Coast Water Board will hear public testimony and decide whether to affirm the Executive Officer's recommended liability of one hundred thousand dollars (\$100,000), increase or decrease the amount, or refer the matter for judicial civil action.

The Discharger and/or the Discharger's representative(s) will have the opportunity to be heard and to contest the allegations in the Complaint and the imposition of civil liability by the Central Coast Water Board. If the proposed Order is adopted, payment will be due and payable by August 8, 2005 (Check payable to State Water Resources Control Board).

An agenda will be mailed to you separately, not less than ten days before the hearing date. If you have questions regarding this matter, please call **Chris Adair at (805) 549-3761** or **Steven H. Blum at (916) 341-5177**.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosures:

Administrative Civil Liability Complaint No. RB3-2005-0025
Staff Report

California Environmental Protection Agency



Item No. 19 Attachment No. 18
July 7-8, 2005 Meeting
Haig Kelegian ACL

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

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R3-2005-0025
Issued on May 18, 2005

Issued to

HAIG KELEGIAN
Creston,
San Luis Obispo County

You Are Hereby Given Notice: Haig Kelegian (hereafter Discharger) is alleged to have violated provisions of law and Prohibitions of the California Regional Water Quality Control Board, Central Coast Region (Water Board), for which the Water Board may impose civil liability pursuant to California Water Code Section 13350.

A hearing on this matter will be held before the Water Board within 90 days of receipt of this administrative civil liability complaint (Complaint). The Discharger and/or the Discharger's representative(s) will have the opportunity to be heard, and to contest the allegations in the Complaint and the imposition of civil liability by the Water Board. A hearing is tentatively scheduled for July 7 or 8, 2005, in San Luis Obispo, San Luis Obispo County, California.

An agenda will be mailed to you separately, not less than ten days before the hearing date. At the hearing, the Water Board will consider whether to affirm, reject, increase or decrease the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

1. The Discharger is the owner of 412 acres of land in the Creston area of San Luis Obispo County. The specific location is Section 31, Township 28 South, Range 14 East, Mount Diablo Base, and Meridian (35° 27' - Latitude, 120° 25' - Longitude). The property has on occasion been referred to as Kelegian Ranch, and Kelegian Creston Ranch. During the summer of 2002, the Discharger cleared and grubbed most of the vegetation from approximately 200 of the 412 acres. The 200-acre area will hereafter be referred to as the Site.
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)

In determining the amount of civil liability the California Water Code requires the Water Board consider the following factors as specified in Section 13327:

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

The Discharger removed most of the existing 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, Water Board staff inspected the Site. The Discharger's representative proposed to seed the site as a means of erosion control. The Discharger did not propose any other BMP. Water Board staff sent a letter dated October 8, 2002 addressing best management practices:

“...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.”

During the fall of 2002, Water Board staff sent letters dated October 8, November 12, and November 25, 2002, urging the Discharger to provide effective erosion and sedimentation controls for the Site. These efforts also included an Administrative Civil Liability Complaint dated November 21, 2002. Although the Discharger made some efforts to prevent erosion and the discharge of sediments, he failed to use best management practices. Although the Water Board staff made repeated efforts to convince the Discharger that effective BMPs were essential to prevent erosion and the discharge of sediment, the Discharger's efforts remained ineffective. The Discharger's efforts in part consisted of spreading loose straw on the Site. However, the Discharger did not apply a tackifier to make the straw cohesive or crimp the straw into the soil to prevent it from being mobilized by rain and wind, thus rendering the straw ineffective. Fiber rolls or straw wattles were placed on some slopes, but the distance between them was too great to reduce runoff velocities and eliminate erosion or trap sediments. Hay bales were used in some areas, in an apparent attempt to trap sediments, but were installed improperly; flush with the ground surface rather than recessed below the surface, and with up-gradient drainage areas too great for the bales to be effective. The piles of cleared vegetation that were left at the base of some slopes were purported to be functioning as sediment controls or barriers, however they were largely ineffective because the vegetation consisted mostly of lightweight brush that was lying loosely on the ground surface. The steep grades and large up-gradient areas resulted in storm water runoff volumes and velocities that rendered the brush ineffective. Existing erosion rills compounded the ineffectiveness of these efforts. No attempt was made to eliminate the rills, either prior to the installation of the BMPs, or later following rain events, and as a result, the rills became more pronounced as the rainy season progressed.

From the beginning of the project, the Discharger violated the prohibition by threatening the discharge in violation of best management practices. In addition, sediment discharges

however, because the violations were not toxic, the most harmful nor the most extensive violations covered by Water Code section 13350.

Consideration of this factor justifies assessment of civil liability that is significant, but **less than the 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 be more damaging than if the sediments are left in place. As a result, a significant amount of liability is justified. Maximum liability is not justified, however, because the violations were not toxic, the most harmful nor the most extensive violations covered by Water Code section 13350.

Consideration of this factor justifies assessment of civil liability that is significant but **less than the 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 the maximum**.

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

The Water Board has no evidence regarding the Discharger's financial resources or the 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, Water 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 significant but **less than the maximum**.

Other matters that justice may require

The actions and inactions of the Discharger are by themselves deserving of strong, decisive enforcement. Enforcement is also necessary to deter others from doing as the Discharger has done.

During the past three years, Water Board staff has spent an extensive amount of time addressing water quality concerns on the Discharger's property. Using conservative estimates, staff has spent 359 hours on the matter at a cost \$26,925 (Hourly Rate = \$75).

Consideration of this factor justifies assessment of civil liability that is not less than \$26,925.

RECOMMENDATION

Upon consideration of factors as required by California Water Code Section 13327, the Executive Officer recommends civil liability be assessed in the amount of **\$100,000** for the Discharger's violations of the Basin Plan Prohibition from September 1, 2002 through March 4, 2003.

Maximum Liability – Pursuant to California Water Code Section 13350(e)(1), the Water Board can impose civil liability up to \$5,000 for each day the prohibition is violated. The Discharger was in violation of the prohibition for at least 185 days. The maximum liability that may be imposed for having violated the prohibition for 185 days is **\$925,000**

Minimum Liability – California Water Code Section 13350(e)(1) provides no minimum liability provision that is applicable in this matter.



Roger W. Briggs, Executive Officer

5-18-05

Date