
North Coast Regional Water Quality Control Board

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION

CLEANUP AND ABATEMENT ORDER NO. R1-2022-0009

for

KEN BAREILLES

Assessor Parcel Number:
110-190-001-000

SONOMA COUNTY

This Order is issued to Ken Bareilles (landowner, hereafter referred to as the Discharger) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board or RWB) to issue a Cleanup and Abatement Order and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports. The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. Site Conditions: Felta Creek is a water of the state, as well as a water of the United States (references hereafter to waters of the United States are also waters of the state)¹. The Discharger has caused or allowed the discharge and threatened discharge of waste to receiving waters through failure to implement standard erosion control measures as required under applicable regulations [Forest Practice Rules (FPRs) [Cal. Code Regs., tit. 14, §§ 895-1115.3), and Regional Board Order No. R1-2014-0011],

¹ The Regional Water Board administers and enforces the Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States includes all traditionally navigable waters and tributaries as defined in 40 C.F.R. section 122.2. The Porter-Cologne provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

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operating heavy equipment in saturated soil conditions, which is prohibited under the aforesaid regulations, and failure to construct an appropriate drainage structure to convey stream flow across a native surfaced road. These activities resulted in discharge, and/or potential discharge, of earthen material to waters of the state. In addition, the Discharger installed a bridge on a fish-bearing stream, including operating heavy equipment in the channel, which resulted in impacts, and/or potential impacts to waters of the state, without a Regional Water Board permit. The Discharger's activities resulting in impacts, or potential impacts to waters of the state, were conducted in violation of applicable state regulations, including water quality requirements.

2. Purpose of the Order: This Order requires the Discharger to clean up and abate the effects of discharging soil and other earthen materials into Felta Creek and unnamed tributaries of the Russian River and eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 *et seq.*), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

3. Responsible Parties: The Discharger are the property owner and/or operator and are the persons responsible for discharging waste or creating a threat of discharge of waste into waters of the state and has created or threatened to create a condition of pollution. The Dischargers had the ability to control the activities on the property that resulted in the discharge and threat of discharge of waste. This Order finds that Ken Bareilles is the responsible parties for purposes of this Order and is liable:

- a. Per records from the Sonoma County Assessor-Recorder's Office, Ken Bareilles owns approximately 160 acres, identified as Assessor Parcel Number (APN) # 110-190-001-000 (hereafter Property).
- b. The Regional Board reserves the right to amend this Order to add additional responsible parties if those parties are identified.

4. Property Location and Description: The Property is located in Sonoma County approximately 3.5 miles southwest of the City of Healdsburg. The 160-acre parcel is located on hillslopes above both banks of Felta Creek, a fish-bearing tributary to the Russian River. Much of the property is forested with a mix of conifer and hardwood species. Elevations on the property range from 250 to 680 feet above sea level with hillslope gradients generally less than 65 percent. The activities described in above in "**1. Site Conditions**", occurred above and on Felta Creek and the unnamed tributaries to the Russian River, approximately three miles southwest of the City of Healdsburg.

5. Property History: The Discharger filed a "*Notice of Emergency Timber Operations*" (Emergency Notice) with the California Department of Forestry and Fire Protection (CAL FIRE), which was accepted on October 21, 2020.

The Emergency Notice, which covers 106 acres of the 160-acre parcel, was given the number 1-17EM-00125 SON. Notices of Emergency Timber Operations are covered by Regional Water Board Order No. R1-2014-0011, *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region* (Categorical Waiver).

6. Factual Basis of Order: The Discharger's activities and the conditions observed at the Property, as documented in the Regional Water Board inspection report (Attachment A), and as detailed below, created and threaten to create condition of pollution in waters of the state by unreasonably impacting water quality and beneficial uses.

- a. Watercourses within and adjacent to the plan area and appurtenant road system drain into fish and non-fish bearing tributaries of the Russian River. The Emergency Notice is located in the Felta Creek (1114.240602) and Adam and Eve Redwoods (1114.110104) CALWATER planning watersheds. Potential downstream Beneficial Uses of Water (BUs) affected include those associated with spawning and rearing habitat for listed anadromous salmonids (COLD)(RARE)(MIGR) for steelhead trout (*Oncorhynchus mykiss*), coho salmon (*Oncorhynchus kisutch*), Domestic Water Supplies (DWS) and sedimentation of aquatic habitat for a variety of amphibian and macroinvertebrate communities (WILD). Potentially affected onsite BUs include impacts to habitat for non-fish aquatic dependent species.
- b. On June 30, 2021, CAL FIRE inspector Kim Sone informed Regional Water Board staff of an unpermitted bridge installation associated with Emergency Notice timber operations. On July 8, 2021, RWB staff attended an inspection of this site. On September 16, 2021, and October 15, 2021 RWB staff attended a follow-up inspection of this site focusing on bridge removal and mitigation measures to prevent or minimize impacts to Felta Creek from installation and removal of the bridge. The bridge location is outside of the area of the Emergency Notice, and therefore, the installation is not permitted under either the FPRs or the Categorical Waiver. On August 13, 2021, CAL FIRE issued a Notice of Violation for unauthorized timber operations.
- c. On October 24 and 25, 2021, a storm system dropped an estimated eight to ten inches of rain in the area of the Emergency Notice, and on October 28, 2021, Kim Sone of CAL FIRE contacted RWB staff to inform them of sediment deposits in the Watercourse and Lake Protection Zone of Felta Creek due to inadequate installation of required erosion control on an adjacent road. Ms. Sone's email included photographs depicting fresh sediment deposits on the watercourse bank. October 29, 2021, CAL FIRE issued a Notice of Violation for failure to install erosion control as required by the FPRs. (Cal. Code Regs. tit. 14, §§ 914.6(a1, a2, b, c, f, g and h) and 923.5(b and j)).

- d. In response to the October 29, 2021 NOV, the landowner, who is a Licensed Timber Operator (LTO) (although not the LTO of record listed on the Emergency Notice), began installing erosion control measures until directed to stop work by CAL FIRE because he was not the LTO of record. He conducted the work with heavy equipment in saturated soil conditions, in violation of the FPRs. (Cal. Code Regs., tit.14 § 923.6(g). Operating heavy equipment in saturated soil condition caused severe rutting of the ground and additional sediment discharge. In addition, at one location, two Class III streams that converge at a dirt surfaced road cross the road without an appropriately constructed watercourse crossing.
- e. On November 4 and 9, 2021, RWB staff inspected the Emergency Notice to investigate the site of the discharge into waters of the state. During these inspections, Regional Water Board staff observed other potential threats to water quality documented in Attachment A.

7. Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives: The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.

- a. Existing and potential beneficial uses for Russian River (Warm Springs Hydrologic Subarea) include the following: Water Contact Recreation (REC-1) & Other Non-Contact Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Wildlife (Wild); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN) and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all its tributaries.
- b. The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions in section 4.2.1:
 - i. Prohibition 1 – 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.
 - ii. Prohibition 2 – 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.

Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development and timber harvest include the following:

- i. Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- ii. Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- iii. Sediment: 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.
- iv. Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

8. State Water Board Resolutions and Orders: State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California*. Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practicable, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

9. Failure to Comply with Necessary Permits: The Discharger filed a “*Notice of Emergency Timber Operations*” (Emergency Notice) with CAL FIRE, which was accepted on October 21, 2020. The Emergency Notice was given the number 1-17EM-00125 SON. Notices of Emergency Timber Operations are covered by Order No. R1-2014-0011, *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region* (Categorical Waiver)(Order No. R1-2014-0011 was renewed by Order No. R1-2019-0008). Emergency Notices are automatically covered by the Categorical Waiver once CAL FIRE has accepted the landowner’s Emergency Notice for the project.

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Section I of the Categorical Waiver describes General Conditions that apply to all enrolled projects that landowners and their consultants should be aware of, including the following:

1. The landowner shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board;
3. The landowner shall conduct timber harvest activities and erosion control maintenance in compliance with the FPRs. In addition, FPRs and THP conditions (including but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required by CAL FIRE) that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

As noted in the inspection report (Attachment A), the failure to install adequate erosion control and the improper installation of a stream crossing at the Property are in violation of the terms and conditions of Order No. R1-2014-0011.

10. Legal Authority to Require Cleanup and Abatement: Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, 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 the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, 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.... Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. "Waste" is defined by Water Code section 13050, subdivision (d) to include, sewage and any other waste substances, whether liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers prior to, and for purposes of, disposal.
 - i. Sediment, when discharged to waters of the state, is a "waste" as defined in Water Code section 13050.

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The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to Felta Creek, and unnamed tributaries of the Russian River, which are considered waters of the state.

- b. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.

11. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a violation of applicable water quality regulations and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

12. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of preparing these reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. This Order requires two types of technical reports. Staff estimate the cost of the reports to be approximately \$3,840 to \$14,680. This analysis is discussed further below within subparagraphs (a) and (b)

- a. The Interim Cleanup and Stabilization Plan (ICSP) is a technical report that is necessary to: (1) assess site conditions to identify where sediment discharge to waters of the state has occurred, or threatens to occur, from logging roads, skid trails and watercourse crossings with insufficient erosion control measures and sediment control devices to prevent erosion and rutting; (2) determine the appropriate stabilization and abatement work to prevent or minimize sediment discharge; and (3) create a plan along with an implementation schedule that will guide the scope of work to stabilize the site and clean up and abate the discharges and threat of discharge on the Property. The anticipated benefits from the ICSP include restoration of road and skid trail drainage and protection from actual and threatened waste discharges that impact beneficial uses and water quality objectives. In addition, by requiring the Dischargers to submit an ICSP, the Regional Water Board or its delegated officer will have the opportunity to review and approve the scope of the proposed stabilization and abatement actions to confirm the proposed work will adequately remediate site conditions and prevent sediment discharges from further impacting the beneficial uses of sensitive water bodies.

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As previously mentioned, the Russian River is a Clean Water Act section 303(d)-listed impaired water body due to sediment/siltation and high water temperature, thereby heightening the need for this technical report in order to reduce further impairment to waters of the state. The ICSP requirements (i.e., field inspection and report preparation) are comparable to that of preparing an Erosion Control Plan as required in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis), which is estimated to cost between \$2,760 and \$9,920. The burden, including costs, of preparing and submitting the ICSP therefore bears a reasonable relationship to the need for this planning and assessment report to restore the Property to conditions that will prevent further erosion and sedimentation of sensitive water bodies.

- b. A Completion Report is necessary to demonstrate that the Dischargers have successfully implemented and completed the ICSP activities in a timely manner in accordance with the implementation schedule set forth in the ICSP and this Order. The benefit derived from a Completion Report is documented evidence that remedial activities and best management practices were implemented to ensure that stabilization and abatement activities adequately prevent further erosion and discharge of sediment to Felta Creek and its tributaries during the 2021-2022 winter period. The scope of a Completion Report (i.e., field inspection and report preparation) is comparable to that of preparing a Site Closure Report as described in the 2017 Direct Cost Analysis, which is estimated to cost between \$1,080 and \$4,760. The burden, including costs, of preparing and submitting a Completion Report bears a reasonable relationship to the need for the report as assurance to demonstrate remedial actions and restoration are accomplished as proposed in the ICSP and the completed-ICSP Property conditions ensure the protection of water quality.

13. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan.

The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that the Discharger shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information. The Discharger shall obtain all necessary permits for the activities required in this Order.

1. **Within 15 days from issuance of this Order**, Dischargers shall submit an **Interim Cleanup and Stabilization Plan** (hereafter "Interim Plan") prepared by an appropriately licensed professional for the completion of short-term cleanup and stabilization measures necessary to clean up wastes and to prevent further erosion and discharge of sediment to Felta Creek and its tributaries during the 2021-2022 winter period. The Interim Plan shall include, but not be limited to, the following:
 - a. A detailed site map accurately depicting topography, roads and skid trails, watercourses, and watercourse road crossings;
 - b. Identification of all locations where sediment has discharged or has the potential to discharge to waters of the state;
 - c. Using the above information, identify all areas that are actively discharging or have the potential to discharge, along with proposed cleanup and stabilization measures to be implemented at the discharge, or potential discharge site, that are necessary to prevent and minimize sediment transport and discharge and stabilize any disturbed areas on the Property. Cleanup and stabilization measures included in the interim plan may likely be limited to those that can be implemented without heavy equipment due to the likelihood of persistent saturated soil conditions in the project area and shall include, but not be limited to:
 - i. Installation of an adequate number of water breaks designed to reduce road surface erosion by diverting storm water runoff from the road surface and directing it to a stable discharge area;
 - ii. Disconnection of road drainage from all hydrologically connected areas as well as potentially unstable fills;

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- iii. Stabilization of earthen material at watercourse road crossings to prevent erosion of road fill material or channel destabilization and directing flow across the road surface so as to prevent stream diversion to the extent feasible;
 - iv. Stabilization of all disturbed areas with erosion control measures as warranted, including, but not limited to mulches, slash or other erosion control measures to protect the disturbed areas from the forces of rain drop impact and overland flow;
2. **Within 20 days from the day the Regional Water Board approves the Interim Plan**, the Discharger shall have completed the work specified in the approved Interim Plan, cleaning up and stabilizing the for the remainder of the 2021-2022 winter wet-weather period.
 3. **Within 15 days from completion of the work in the Interim Plan**, the Discharger shall provide a report of completion of the Interim Plan to the Regional Water Board for approval. This report shall include a summary and photographs of the completed cleanup and stabilization measures. Include photographs of all areas where corrective action has taken place, clearly keyed to site map(s).

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Discharger shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

3. **Notice of Change in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Property’s ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
4. **Reasonable Access:** The Discharger shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
5. **Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
6. **Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order.
7. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order approved by the Executive Officer or the Executive Officer’s delegee.
8. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board.

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Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.

9. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
10. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
11. **Requesting Review by the State Water Board:** Any person aggrieved by any final 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 et al. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following 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 on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St. John
Executive Officer

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Attachment A: Regional Water Board staff Emergency Notice Inspection Report
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Attachment A
Inspection Memorandum

To: Jim Burke, Senior Engineering Geologist Southern Nonpoint Source and Forestry Unit, North Coast Regional Water Quality Control Board (RWB)

From: Izaac Russo, Engineering Geologist, Southern Nonpoint Source and Forestry Unit, RWB

Date: November 15, 2021

Subject: Emergency Notice Inspection Report 1-20EM-00125-SON

Legal Description

T8N, R9W, Section 6
Mt. Diablo base and meridian
Sonoma County Assessor's Parcel Number (APN) 110-190-001-000

Watershed CalWater (2.2)

1114.240602: Felta Creek
1114.110104: Adam and Eve Redwoods

CWA 303(d) Listed

Sediment, Temperature

Landowner

Ken Bareilles

Harvesting Practices

Ground

Watercourses

Class I, II, III

I. INTRODUCTION

In 2020, a portion of the former Fox Meadows Timber Harvesting Plan (THP), 1-17-017 SON, footprint burned in the Walbridge Fire. On October 21, 2020, the Notice of Emergency Timber Operations 1-20EM-00125-SON (The Emergency Notice) was

accepted by California Department of Forestry and Fire Protection (CAL FIRE). The Emergency Notice is 106 acres in size and is fully contained within the footprint of the original THP. The Emergency Notice used ground-based yarding methods.

The THP proposed to manage 160 acres using the group selection (79 acres), transition (51 acres), and selection (16 acres) silvicultural methods. In addition, 14 acres were proposed as no harvest. Ground based equipment (tractor, including end line and long line, and rubber-tired skidder) were proposed to yard the THP area.

THP 1-17-017 SON was initially submitted to CALFIRE in February 2017. On March 15, 2017, Regional Water Board staff participated in a preharvest inspection for THP 1-17-017 SON. The THP was originally approved on November 17, 2017 and then rescinded ten months later due to the court decision on September 17, 2018. It was then re-submitted addressing the items cited in the court decision in March 2020. A focused PHI was held on April 7, 2020 to verify compliance with the court's requirements.

The deadline for CAL FIRE approval or denial of the THP was on July 31, 2020. CAL FIRE requested an extension of the decision date in order to address public comment, which the landowner denied. Since CAL FIRE and the landowner could not agree on an extension, CAL FIRE denied the THP. Landowner Ken Bareilles appealed to the Board of Forestry and Fire Protection (BOF) and the BOF denied his appeal.

Water Quality Requirements

"Water Quality Requirements" means a water quality objective (narrative or numeric), prohibition, TMDL implementation plan, policy, or other requirement contained in a water quality control plan adopted by the Regional Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional Board or State Water Board, including, but not limited to, the State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality Waters in California.

The Regional Water Board is responsible for enforcing the Porter-Cologne Water Quality Control Act (Act), the Water Quality Control Plan for the North Coast Region (Basin Plan), and permits that have been issued on forest use projects. The Act and the Basin Plan prohibit the discharge of materials that adversely affect the beneficial uses of the waters of the State. The Regional Water Board has the authority to take enforcement action, ranging from a Notice of Violation to issuing administrative civil liabilities (fines) against persons who violate the Act, the Basin Plan, or a permit.

Permitting

The Regional Water Board has developed permits (i.e. Waste Discharge Requirements (WDRs) or Waiver of Waste Discharge Requirements (Waivers)) for addressing

Nonpoint Source (NPS) discharges associated with forest management activities on private lands.

Post-fire salvage projects conducted under an Emergency Notice pursuant to the California Forest Practice Rules (FPRs) are typically covered under Category A of the North Coast Water Board's Order No. R1-2014-0011, *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region* (Categorical Waiver).

https://www.waterboards.ca.gov/northcoast/water_issues/programs/forest_activities/private_forest_land/

Emergency Notices are automatically covered by the Categorical Waiver once CAL FIRE has accepted the landowner's Emergency Notice for the project. Section I of the Categorical Waiver describes General Conditions that apply to all enrolled projects that landowners and their consultants should be aware of, including the following:

1. The landowner shall comply with all applicable requirements, waste discharge prohibitions specified in the Basin Plan, and policies adopted by the State Water Board.
2. The landowner shall conduct timber harvest activities and erosion control maintenance in compliance with the FPRs. In addition, FPRs and THP conditions (including but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required by CAE FIRE) that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

Waste Discharge Prohibitions

The Basin Plan contains an Action Plan for Logging, Construction, and Associated Activities (Action Plan, page 4-26.00) which includes two prohibitions that apply to the discharge of earthen materials or debris to surface waters:

- Prohibition 1 – *“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.”*
- Prohibition 2 – *“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 and Clean Water Act Section 401 and 404

Dredge and fill activities within waters of the United States require prior authorization from the U.S. Army Corps of Engineers under section 404 of the CWA and issuance of a state water quality certification by the Regional Water Board under section 401 of the CWA. Silvicultural activities are exempt from CWA sections 404 and 401.

The discharge and/or placement of waste into waters of the state and/or United States without filing a report of waste discharge violates Water Code sections 13260, 13264, and 13376 and CWA section 301 (33 U.S.C. section 1311). Water Code sections 13260 and 13376, respectively, require that a person who discharges or proposes to discharge waste (including clean fill, riprap or other revetment, excavation sidecast, dredge spoils, soil displaced while clearing vegetation, etc.) that could affect the quality of waters of the State, or who discharges or proposes to discharge pollutants to navigable waters of the United States within the jurisdiction of the State, shall file a report of waste discharge, which will regulate the discharge as necessary to protect the beneficial uses of the waters. Pursuant to Water Code section 13264, no person shall initiate any new discharge prior to the filing of a waste discharge report as required by Water Code section 13260. Furthermore, CWA section 301 prohibits the unpermitted discharge of pollutants to waters of the United States.

Regional Water Board staff inspections:

Regional Water Board staff have conducted the following on-site inspections of 1-20EM-00125-SON:

On December 1, 2020, RWB staff, conducted an inspection of The Emergency Notice, along with staff from CAL FIRE, California Department of Fish & Wildlife (CDFW) and the Registered Professional Forester (RPF), Randy Jacobszoon. No water quality issues were observed at this time.

On June 30, 2021 RWB staff were informed by Kim Sone of CAL FIRE of an unpermitted bridge installation associated with harvesting activities. On July 8, 2021 RWB staff attended an inspection of this site. The inspection team observed loose sediment on the road approaches on both sides of Felta Creek. RWB staff told both the RPF and landowner that the loose sediment should be removed, and the road approaches should be hydrologically disconnected prior to the winter period. RWB staff told both the RPF and landowner that failure to remove the loose sediment and stabilize the road approaches prior to any winter storm even could result in a violation.

On October 15, 2021 RWB staff attended a follow-up inspection of this site focusing on the bridge removal mitigation measures. The inspection team observed that two large water bars had been constructed on the road approach on the south side of Felta Creek. Additionally, straw mulch had been spread on the loose material on the south side of Felta Creek. The inspection team observed disturbed material in the channel of Felta Creek that had not been apparent during the previous inspection. The landowner

admitted that a tractor had been driven through the channel to perform the work on the south side of the watercourse.

On October 24 and 25, 2021, a storm system dropped at least 6 inches (this is a conservative estimate based on extrapolating from nearby rain gauges) in the area of The Emergency Notice, and on October 28, 2021 Kim Sone of CAL FIRE emailed RWB staff to inform us of sediment deposits in the Watercourse and Lake Protection Zone of Felta Creek due to inadequate waterbars on an adjacent road. Ms. Sone's email included photographs depicting fresh sediment deposits on the watercourse bank.

On November 4, 2021 RWB staff inspected The Emergency Notice to investigate the site of the discharge into the WLPZ. During this inspection we discovered other potential threats to water quality and scheduled a follow up inspection to further document these issues.

On November 9, 2021 RWB staff conducted an inspection of The Emergency Notice to document discharges and threatened discharges of sediment into Waters of the State.

CAL FIRE Notices of Violation

As of November 11, 2021, CAL FIRE has issued four separate Notices of Violations (NOV), briefly described below:

August 13, 2021: The landowner installed a bridge on Felta Creek at a location outside of the area covered under the Emergency Notice. Regardless of whether the bridge had been located within the Emergency Notice, it does not meet any of the conditions for timber operations allowed in a Watercourse or Lake Protection Zone (WLPZ) as described in 14CCR 916.9(t).

September 21, 2021: A logging road was constructed that was not shown on project maps and is therefore not authorized timber operations. This does not constitute a water quality violation.

October 29, 2021: Waterbars had been installed inadequately or not installed at all. This led to discharge, and/or threatened discharge, in violation of water quality requirements.

November 11, 2021: In response to the October 29, 2021 NOV, the landowner, who is a Licensed Timber Operator (LTO) (although not the LTO of record on the Emergency Notice), began installing waterbars on the site until directed to stop work by CAL FIRE because he was not the LTO of record. He conducted the work with heavy equipment in saturated soil conditions, in violation of 14CCR 923.6(g). Operating heavy equipment in saturated soil condition caused severe rutting of the ground and additional sediment discharge.

CDFW Notices of Violation

As of December 1, 202, CDFW has issued two Notices of Violation:

July 22, 2021: CDFW observed a partially constructed temporary bridge with two redwood stringer logs placed atop redwood log abutments. Significant disturbance to the bed, bank, and channel was observed from directly below the temporary bridge continuing upstream approximately 100 feet, in violation of Fish and Game Code Sections 1602 and 5650.

October 7, 2021: This second Notice of Violation was issued for failure to notify for a Lake and Streambed Agreement (LSA) by August 15 and for failure to implement the erosion control interim measures described in the July 22 NOV prior to beginning bridge deconstruction activities.

II. FIELD OBSERVATIONS

Over the course of our five inspections of the Emergency Notice, RWB staff identified four sites where violations of water quality requirements have likely occurred. Map Points are keyed into the Emergency Notice inspection map (Figure 1):

1. Unpermitted bridge installation over Felta Creek (a Class I watercourse);
2. Inadequately drained road segment discharging, and threatening to discharge, sediment into Felta Creek;
3. A complex site involving diversion of two Class III watercourses down a haul road, and an inadequately drained road segment, exacerbated by operating heavy equipment during saturated soil conditions, discharging into a Class III watercourse.
4. Inadequately drained road segment, exacerbated by operating heavy equipment during saturated soil conditions, discharging into an unnamed Class III watercourse;

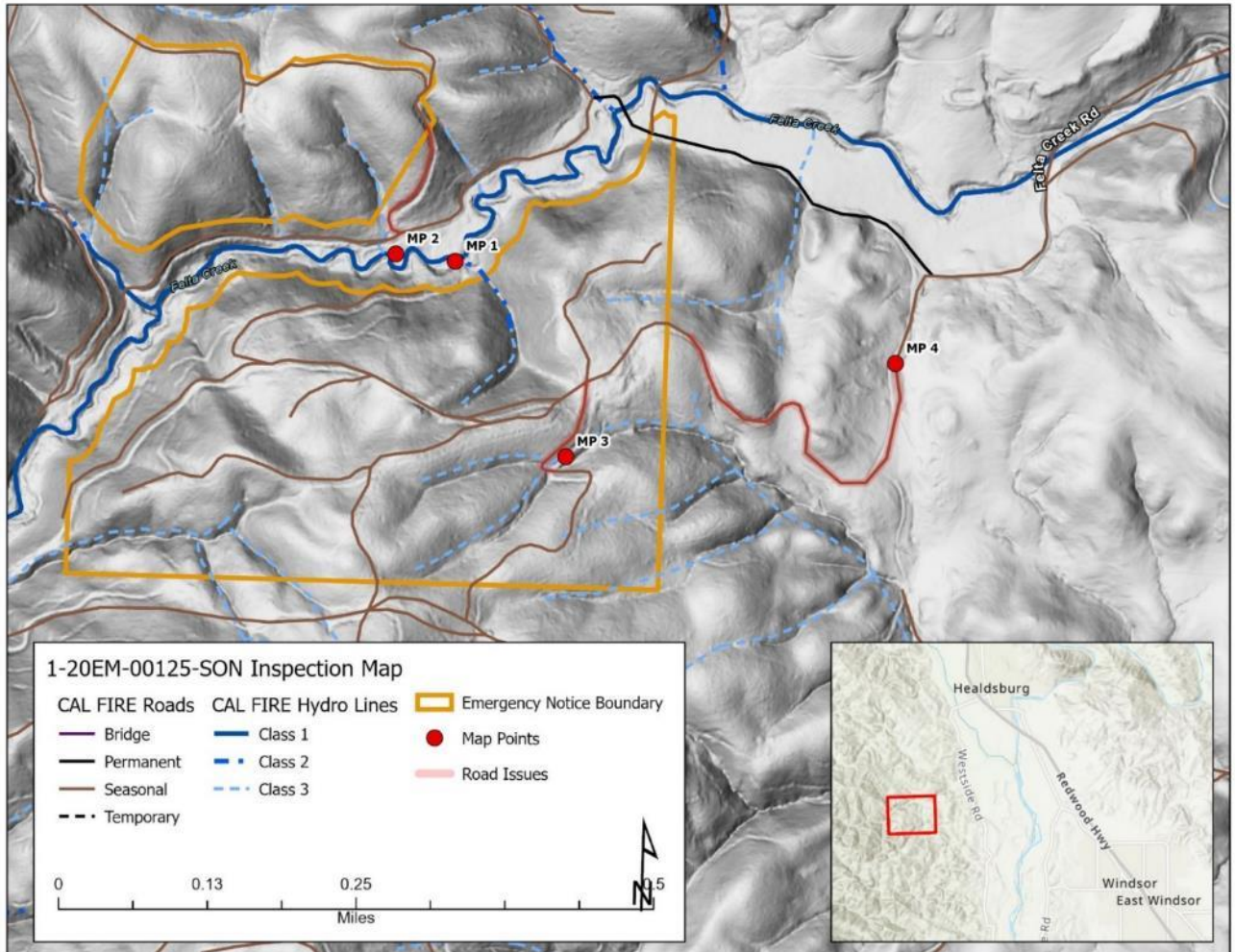


Figure 1. 1-20EM-00125-SON Inspection Map

Map Point 1

Site Description and Recommendations

The landowner constructed an unpermitted bridge across Felta Creek, a Class I watercourse. CAL FIRE staff identified the bridge before it was completed during a routine active inspection. At that time, two log stringers spanned the watercourse and four logs had been placed on the north bank to stabilize the stringers. The landowner acknowledged to agency personnel that during bridge installation and removal activities, both he and the LTO operated heavy equipment in the watercourse channel. The purpose of the bridge was to provide access to haul logs on a steep existing skid trail south out of the plan area. The skid trail was not identified in the Emergency Notice as a haul road. The landowner was informed that the bridge was outside of the Emergency Notice area and therefore, not authorized timber operations, nor permitted under any other agency regulations, and therefore, must be removed prior to October 15, 2021.

The landowner was advised by agency personnel that failure to remove or stabilize material with a potential to discharge could result in a violation being issued. As of the October 15 inspection, it appeared that the landowner had adequately addressed the potential discharges.

As the bridge installation and associated disturbance to the channel, which adversely impacted, or potentially adversely impacted beneficial uses of water, is not covered under the Emergency Notice, it was not covered under the Categorical Waiver or any other Regional Water Board permit, in violation of water quality requirements.

Map Point 2

Site Description and Recommendations

A steep native surfaced haul road turns as it comes downhill towards Felta Creek. The road flattens as it approaches a landing located on a flat area approximately 50 feet wide adjacent to the watercourse. No drainage facilities¹ had been constructed on the road segment for approximately 250' uphill from the landing and Felta Creek. As a result, numerous rills formed on the road surface during the storm event on October 24, 2021. There were as many as 6 parallel rills in places, ranging in width from 2 to 9 inches, and from 1 to 9 inches in depth (Photo Point 2.1). A fan of fine sediment roughly 10 inches deep was deposited on the banks above Felta Creek (Photo Point 2.3) and, based on sediment deposits on the bank and leading into the active channel, an unknown quantity of fine sediment discharged into the watercourse (Photo Points 2.4, 2.6).

¹ From 14CCR 895.1 - **Drainage Facilities** means facilities constructed to control water, including, but not limited to, fords, inside ditches, waterbreaks, outsloping and rolling dips.

The landowner installed straw mulch and plastic mesh wrapped straw wattles on the landing at the bottom of this road segment after the rains of October 24, 2021 (Photo Point 2.6).

A waterbar was installed on this segment of road at some time between our inspection of November 4, 2021 and the rain event on November 8, 2021 (Photo Point 2.7). Roughly four inches of fresh sediment from the segment of road up to the newly installed waterbar was deposited on the straw mulch from the rain event on November 8, 2021 (Photo Point 2.8). No sediment from this event appears to have discharged to Felta Creek from the road.

Photo Point 2.1 - Road segment, looking uphill. 11/04/2021



Photo Point 2.2 - Road, looking downhill, from first waterbar. 11/04/2021



Photo Point 2.3 - Deposited sediment on banks above Felta Creek. 11/04/2021



Photo Point 2.4 - Fine sediment deposits on channel bank and leading into channel of Felta Creek. 11/04/2021



Photo Point 2.5 - Fine sediment deposits in channel of Felta Creek looking downstream from point of deposition. 11/04/2021



Photo Point 2.6 - Erosion control measures at base of hill, on banks of Felta Creek, installed after storm of October 24, 2021. 11/04/2021



Photo Point 2.7 - Waterbar, newly installed between inspection of November 4, 2021 and rains of November 8, 2021. 11/08/2021



Photo Point 2.8 - Roughly 4" of freshly deposited sediment on top of erosion control straw. 11/08/2021



Map Point 3

Site Description and Recommendations

A segment of haul road approximately 450' long connects a ridgetop landing to a crossing of two Class III watercourses. There are several issues and discharge sites associated with this road segment. Concentrated sediment laden runoff from the landing flows approximately 300' down a disused skid trail, before discharging to a Class III watercourse (Photo Points 3.4-3.6). Regional Water Board staff observed evidence of active delivery at the time of our November 4, 2021 inspection.

At the other end of this road segment two Class III watercourse converge at the haul road. No drainage structure has been constructed to convey streamflow across the road. It appears that, during timber operations, spoils from road reconstruction had been placed at the crossing outlet and along the edge of the road at several points along the road segment adjacent to the crossing. The watercourses have scoured earthen material from the berm that was placed in the channel at the outboard edge of the road surface. In addition, stream flow has diverted down the road approximately 20 feet before flowing off the road, discharging road surface and sidecast material into the channel (photos 3.1-

3.3). The 2017 THP identifies this crossing as Map Point 6, stating the streams are eroding the road surface and calls for a 30' culvert, and armoring the inlet, outlet, and inboard ditch. We observed fresh sediment deposits up to approximately 18 inches deep in the channel below this location.

Photo Point 3.1 - Outboard edge of Class III crossing, showing material placed at crossing outlet during road reconstruction. 11/04/2021



Photo Point 3.2 – Water and sediment reentering Class III watercourse after diverting down road and through sidecast material. 11/04/2021



Photo Point 3.3 –Class III watercourse entering road prism before diverting down road and through sidecast material. 11/04/2021



Photo Point 3.4 - Sediment discharge into channel of Class III stream after running over landing and down old skid trail. 11/09/2021



Photo Point 3.5 - Sediment being transported downslope from landing to Class III stream. 11/09/2021



Photo Point 3.6 - Sediment on outboard edge of landing before being delivered downhill to Class III watercourse/ 11/09/2021



Map Point 4

Site Description and Recommendations

A segment of haul road runs approximately 1500' downhill to Felta Creek Road and a Class III watercourse. Following Emergency Timber Operation, no drainage structures had been installed on this segment of road. Consequently, the road developed rilling (Photo Point 4.1) and delivered sediment to a Class III watercourse (Photo Point 4.2) near the junction with Felta Creek Road. The site of delivery and a portion of the road are outside of The Emergency Notice area and outside of the landowner's ownership.

After the storm event of October 24, the landowner installed one waterbar using heavy equipment during saturated soil conditions (Photo Point 4.3).

Photo Point 4.1 – Rilling on haul road downhill of newly installed waterbar.
11/09/2021



Photo Point 4.2 – Sediment deposition at head of Class III watercourse near haul road junction with Felta Creek Road. 11/09/2021



Photo Point 4.3 – Newly installed waterbar on haul road. Installed during saturated soil conditions. 11/09/2021

