
North Coast Regional Water Quality Control Board

January 13, 2022

Mr. Ken Bareilles
533 E Street
Eureka, CA 95501
pbareilles@sbcglobal.net

Dear Mr. Bareilles:

Subject: Notice of Violation for Threatened Discharge of Waste and Failure to Comply with the provisions of the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, Order No. R1-2014-0011, Emergency Notice 1-20EM-00125-SON, Sonoma County Assessor's Parcel Number (APN) 110-190-001-000

File: Ken Bareilles, Emergency Notice 1-20EM-00125-SON, Sonoma County Assessor's Parcel Number (APN) 110-190-001-000

This letter serves to notify you that you are in violation of the *Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region*, Order No. R1-2014-0011 (Categorical Waiver), and the Water Quality Control Plan for the North Coast Region (Basin Plan). In the event of a discharge of waste to waters of the state, failure to comply with the Categorical Waiver and Basin Plan may result in enforcement action and penalties under California Water Code section 13350. 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 conditions of the Categorical Waiver and/or Basin Plan.

A. Background

The site is located in Sonoma County approximately 3.5 miles southwest of the City of Healdsburg. Following the Walbridge Fire, which burned much of the property in August 2020, 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 1-20EM-00125-SON. Notices of Emergency Timber Operations are covered by the Categorical Waiver. The 160-acre

parcel, Assessor's Parcel Number (APN) 110-190-001-000, is located on hillslopes above both banks of Felta Creek, a fish-bearing tributary to the Russian River.

On September 13, 2022, the Regional Water Board issued Cleanup and Abatement Order No. R1-2022-0028 (CAO) based on staff observations made during inspections of the Site between July 2021 and March 2022. The CAO directed you to submit a plan to cleanup and abate the discharges, and threatened discharges, of earthen materials into Felta Creek and nearby unnamed tributaries of the Russian River. The requirements issued under the Order are enforceable. The CAO includes time schedules for compliance with the following specified tasks:

- Within 30 days of issuance of the Order, you must submit a proposed Restoration and Monitoring Plan (Plan);
- Within 60 days from the day the Regional Water Board approves the Long-Term Restoration and Monitoring Plan, you shall have completed the work specified in the approved Plan, implementing all cleanup and restoration measures included in the approved plan; and
- Within 15 days from completion of the work in the Plan, you shall provide a report of completion of the Plan to the Regional Water Board for approval.

According to the time schedule in the CAO, the Plan should have been submitted to the Regional Water Board no later than October 13, 2022. As such, on October 20, 2022, the Regional Water Board issued a Notice of Violation to you for failure to furnish the technical report as required by Cleanup and Abatement Order No. R1-2022-0028 (CAO). To date, the Regional Water Board has not yet received the Plan, and you have not contacted us to discuss any aspect of the CAO or request an extension.

During a site inspection on September 13, 2022, at which you were present, Regional Water Board staff discussed the issuance of the Order that day and explained the requirements, including the need to submit the Plan no later than October 13, 2022. You indicated to Regional Water Board staff that you understood and intended to comply with the Order's requirements.

During subsequent site visits on October 26, 2022, and December 2, 2022, with the CAL FIRE inspector and Randy Jacobszoon, your Registered Professional Forester (RPF), Regional Water Board staff evaluated site conditions. Regional Water Board staff observations are documented in the enclosed inspection memorandums dated October 27, 2022, and December 8, 2022.

In general, during the inspection on October 26, 2022, staff observed that implementation of erosion control and stabilization measures were adequate throughout much of the site. However, staff identified four specific areas that continued to pose a threatened discharge. Our observations were not intended to comprehensively capture all potential areas that would have to be addressed by the Plan. Such a comprehensive inventory of the site is your responsibility or of the qualified professional tasked by you to develop the Plan.

During a phone conversation on October 26, 2022, following the site visit, Regional Water Board staff informed you of the four areas where additional site stabilization was

necessary and provided you with specific guidance on the location and the nature of the potential discharge that must be addressed.

On December 2, 2022, Regional Water Board staff inspected the facility jointly with CAL FIRE staff to evaluate site conditions following submittal by Mr. Bareilles of a Notice of Completion. The condition of those areas, as observed by Regional Water Board staff during the December 2, 2022, inspection, are briefly described as follows (please refer to the enclosed inspection memorandum for detailed descriptions and site map) and in greater detail in our December 8, 2022, inspection memorandum:

- **Map Point 2:** Loose soil must be removed from the outlets of several waterbars on the seasonal haul road leading to the north bank of Felta Creek in order for them to function as intended and erosion control (straw bales) where the road meets the river terrace should be enhanced. That work has been done.
- **Inspection Point 2:** A skid trail on a steep slope (approximately 50%) leading directly to a Class III watercourse less than 50 feet below terminates in a perched mass of soil and organic material. The downslope face of this mass is approximately 6 feet high and nearly vertical. There is high potential for this material to lose internal strength and fail when saturated, with a high likelihood of discharge to the watercourse below. Regional Water Board staff advised you that this perched material should be pulled back and stabilized. This was not done and the potential for sediment discharge remains high at this location.
- **Inspection Point 3:** A swale below the landing at Map Point 3 that was highly disturbed from skidding logs and operating heavy equipment. Soil berms remains in the swale that will likely be eroded and sediment transported further down, potentially into the drainage network below. On October 29, 2022, CAL FIRE issued a Notice of Violation of Forest Practice Rules for equipment operations in an Equipment Limitation Zone (ELZ) Bare soil in the swale had previously been covered with slash for erosion control but had been removed. While it would potentially result in more disturbance to bring heavy equipment back into the swale to remove the berms, Regional Water Board staff advised you at a minimum to replace the slash on bare soil in contact with the ground to the extent feasible to try to prevent sediment movement. That was not done and the potential for sediment discharge remains at this location. It appears that you did construct a berm at the head of the swale, which will prevent runoff from flowing into it from the landing to the south. However, runoff will continue to drain into the swale from hillslopes and nearby roads.
- **Map Point 3:** This is a complex area with several issues that had required addressing. The final item that required addressing was to remove slash and other organic debris from the Class III watercourse channel and construct additional waterbars as needed along the edge of the landing and skid trails to prevent concentration of runoff and resulting sediment discharge. The remaining work has been adequately completed.

B. Alleged Violations

This Notice of Violation (NOV) is for failure to comply with the provisions of the Categorical Waiver and the Basin Plan. Post-fire salvage projects conducted under an Emergency Notice are regulated under the California Forest Practice Rules (FPRs), which are incorporated by reference into the Categorical Waiver. In addition, logging, construction, and associated activities, regardless of coverage under the Categorical Waiver, are subject to requirements and prohibitions of the Basin Plan. Section I of the Categorical Waiver describes General Conditions that apply to all enrolled projects, 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.
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 CAE FIRE) that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

Basin Plan section 4.2.1 contains an Action Plan for Logging, Construction, and Associated Activities which includes a prohibition that applies to the threatened discharge of earthen materials or debris to surface waters:

- 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 914.6(j) of the Forest Practice Rules states:

Waterbreaks or any other Erosion Controls on skid trails, Cable Roads, Layouts, firebreaks, Abandoned Roads, and Site Preparation areas shall be maintained during the prescribed maintenance period and during Timber Operations as defined in PRC §§ 4527 and 4551.5 so that they continue to function in a manner which minimizes soil erosion and slope instability and which prevents degradation of the quality and Beneficial Uses of water.

The conditions at Inspection Points 2 and 3, described above, are violations of FPR section 916.6(j) and Basin Plan section 4.2.1, Prohibition 2; therefore, you are in violation of Categorical Waiver sections I.1 and I.3 and Basin Plan section 4.2.1, Prohibition 2.

C. Response Required

Timely submittal of the Plan and implementation of its contents would likely have resulted in any remaining discharge or potential discharge sources on the site having been identified and treated or scheduled for treatment. All of the required submittals and timelines specified in the CAO remain in effect. In order to adequately address discharges, or threatened discharges, of sediment as well as to minimize the ongoing accrual of days of violation for required submittal of technical reports, please submit the Plan for approval as soon as possible. The Plan should address cleanup and abatement of potential discharge from the two sites described above as well as any others identified at the site. It is your responsibility to engage qualified professionals to develop the Plan.

Future correspondence regarding this matter will be sent to you at the above addresses unless an alternative address is provided to the Water Boards. Failure to accept mail from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

I strongly urge you to make every effort to address any existing or threatened sediment discharge sources on the site by submittal of the Plan at earliest possible date. If you have any questions regarding the contents of this Notice of Violation or requirements of the CAO, you should contact me by email at James.burke@waterboards.ca.gov, or by phone at (707) 477-9704 or our legal counsel, Chris Law, by email at Chris.law@waterboards.ca.gov, or by phone at (916) 341-5869.

Please electronically submit all documents to Northcoast@waterboards.ca.gov and copy me at: James.burke@waterboards.ca.gov.

Sincerely,

James Burke
Senior Engineering Geologist
Southern Nonpoint Source and Forestry Unit

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cc: Mr. Christopher Law, State Water Resources Control Board, Office of Enforcement,
Chris.Law@waterboards.ca.gov

- Enclosures: 1) Regional Water Board staff October 26, 2022 Inspection Memorandum
2) Regional Water Board staff December 2, 2022 Inspection Memorandum