

**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. R3-2004-0125**

Issued on July 16, 2004

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 Prohibition's of the California Regional Water Quality Control Board, Central Coast Region (Regional Board), for which the Regional Board may impose civil liability pursuant to California Water Code Section 13350.

Unless waived, a hearing on this matter will be held before the Regional 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 Regional Board. A hearing is tentatively scheduled for September 10, 2004 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 Regional 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 all 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 Basin-Region 3 (Basin

Plan) designates protection of both recreation and aquatic life as beneficial uses of the unnamed "blue line" stream, 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 without completing soil disturbing activities by establishing or implementing 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, Regional Board staff first witnessed and documented eroded soil sediments being discharged from the Site to waters of the state.
5. The Basin Plan contains several Land Disturbance Prohibitions in Chapter 4., Implementation Plan, page IV-70. The Discharger violated two of these prohibitions.

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:

3. 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. The 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 United States Department of Agriculture, Soil Conservation Service, presently known as United States Department of Agriculture, Natural Resources Conservation Service (NRCS) as being an entity that specializes in evaluating soils and determining if soils are a severe erosion hazard. This recognition is supported by the specific reference to the NRCS in the Land Use Disturbance portion in the Basin Plan, Chapter 4. Implementation Plan.

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 5.) associated with the prohibition are not applicable because (a.) the discharger never filed a farm plan with or received approval from the Resource Conservation District (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 agricultural activity as defined in the exception, 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. Therefore, the Discharger is liable for civil monetary remedies pursuant to California Water Code Section 13350(a)(2).

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 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.

PROPOSED CIVIL LIABILITY

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).

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

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, staff instructed discharger on the correct method for implementing the BMP for erosion control by seeding.

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.

A report prepared by the RCD concerning soil conditions on adjacent acreage discussed the damage soil erosion and other land owners had done to the Huerhuero Creek watershed. The RCD Report states:

“Consequently it is critical, at this time, that proper erosion and sediment control be exercised throughout the water sheds 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 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, 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 an element of violation of the Basin Plan Prohibitions, violation with knowledge indicates a higher degree of culpability.

The Discharger could have implemented adequate BMPs and avoided or minimized the discharge and threat of discharge had he been proactive in response to the Regional Board staff's repeated visits, instructions, and warnings by implementing effective best management practices.

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 determination of 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

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

During the past two years Regional Board staff have spent an extensive amount of time addressing water quality concerns on the Dischargers property. Using conservative estimates staff has spent 340 hours on the matter at a cost \$25, 500 (twenty-five thousand five hundred fifty 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 Fifty Dollars)**.

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 **\$25,500 (Twenty-Five Thousand Five Hundred Fifty Dollars)** for the Discharger's violations of two Basin Plan Prohibitions from September 1, 2002 through March 3, 2003.

Maximum Liability – Pursuant to California Water Code Section 13350(e)(1), the Regional Board can impose civil liability up to \$5,000 (Five Thousand Dollars) per day of violation of each prohibition. The Discharger was in violation of both prohibitions for at least One Hundred Eighty-five Days. The maximum liability that may be imposed for each of the violated prohibitions is \$925,000 (Nine Hundred Twenty-five Thousand Dollars) per prohibition. The total maximum liability that can be imposed for violating both prohibitions is **\$1,850,000 (One Million Eight Hundred Fifty Thousand Dollars)**.

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

Roger W. Briggs, Executive Officer

Date

WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver and return it to the Regional Water Quality Control Board, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906.

If you choose to waive the right to a hearing, the Executive Officer will present an Order for the amount of liability proposed in the Complaint to the Regional Board at the September 10, 2004 Regional Board meeting. The Regional Board may adopt or reject the Order. If the proposed Order is adopted, payment will be due and payable by October 12, 2004 (Check payable to State Water Resources Control Board). If the Order is rejected, the Regional Board may direct the Executive Officer to issue a new complaint and schedule another hearing.

If you do not waive your right to a hearing, the Board will be asked to accept the amount proposed by the Executive Officer. The Regional Board may proceed with the scheduled hearing and consider testimony received from interested persons during the hearing and decide whether to accept the amount proposed by the Executive Officer or increase or decrease the liability. Liability may be increased up to the amount of maximum potential liability stated in this Complaint. The Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General.

If you have questions regarding this matter, please direct them to Bruce Paine at (805) 542-4782, or Regional Board Counsel, Jennifer Soloway, at (916) 341-5176.

WAIVER OF THE RIGHT TO A HEARING

WAIVER

- By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R3-2004-0125. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up my right to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability.

Signature

Printed Name

Title/Position

Date