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June 28, 2005

Mr. Roger Briggs
Executive Director
Regional Water Quality Control Board
Central Coast Regional
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Administrative Civil Liability Order No.: R3-2005-0025;
Haig Kelegian – Kelegian Ranch

Dear Mr. Briggs:

I am submitting this letter in response to Administrative Civil Liability Order No. R3-2005-0025 and in anticipation of the California Regional Water Quality Control Board, Central Coast Region, Public Meeting to be held July 7 and 8, 2005. The hearing on the above-referenced matter, which is Agenda item 19, is scheduled to be heard on June 8, 2005. I will be present at the hearing on June 8, 2005 and will affirm the factual assertions contained in this letter are true and correct.

While my intent in submitting this letter is to present the California Regional Water Quality Control Board (the "Board") full and accurate information regarding the facts and circumstances surrounding the above-referenced Administrative Civil Liability Order ("ACLO"), I specifically reserve my rights to raise additional factual and/or legal arguments at the Public Meeting and at any subsequent hearing, proceeding, administrative action or civil action.

Summary of Evidence

I purchased approximately 412 acres of land in the Creston area of San Luis Obispo in 2001 site unseen. At the time of the purchase, I had no specific plan for the property, but merely intended to hold it for investment purposes. Thereafter, I elected to use a portion of the property for light agricultural purposes and currently have a lease agreement for grazing cattle. (Exhibits A and B) No grading or development was ever contemplated or undertaken. While there were two (2) wells drilled on the property, they are not suitable for residential purposes but only in support of the light agricultural use anticipated for the property.

Shortly after I purchased the property and during my first visit to see the property, I was advised by Dave Williams that I should clear some of the brush on the Site for fire prevention and suppression purposes. Due to the conditions and the concern with wild fires, this made perfect sense to me. Clearing a portion of the property would also allow for light agricultural uses which I was beginning to consider. Notwithstanding suggestions or allegations to the contrary, I have never graded the property, nor have I retained anyone to grade the property. The only work I authorized was brush removal. Due to my lack of knowledge in the area of agricultural land, I engaged the firm of eda-design professionals ("eda"), and specifically Mr. Jeffrey Emrick, P.E. to assist me in this regard.

My first knowledge that there was a concern with the property was upon receipt of the October 8, 2002 letter from CRWQCB. In response to this notice, I advised eda to take immediate corrective action and comply with the requirements of the CRWQCB, specifically the filing of a Notice of Intent ("NOI") and payment of related fees (Exhibit C) and the development and submission of an erosion and sediment control plan. (Exhibits D and E). Mr. Emrick utilized his expertise in devising similar Storm Water Pollution Prevention Plans ("SWPPP") and his years of experience in the San Luis Obispo area in devising this plan to answer the concerns of the CRWQCB regarding erosion and sediment control. Regardless of Mr. Emrick's expertise in this area and the immediate implementation of his plan, additional demands were made on me with regard to an "adequate" plan.

It is important to note that at each step of this process, I responded immediately and decisively, through Mr. Emrick, to each and every request or demand made by the CRWQCB. This is evidenced by my multiple amendments to the SWPPP and the expenses I incurred in responding to each request, implementing additional processes to meet the CRWQCB's demands and monitoring the plan's progress and maintenance. This fact is also supported by the fact that letters from the CRWQCB reference the steps taken, that seeding had been accomplished, that BMPs were in place, for example.

Regardless of these efforts, I received an Administrative Civil Liability Order ("ACLO") in 2004. In an effort to resolve these issues and to close this chapter, I agreed to pay the imposed fine and waive my right to a hearing on the matter. As a business person, I have had occasion to settle disputes in the past and have always understood that a final resolution would result upon the payment of any agreed upon amounts and the execution of the necessary documents. I understood that the waiver and payment of a fine in this prior case would have the same effect.

I was outraged to learn that regardless of my agreement to waive my rights to a hearing and pay a fine, a hearing was held on December 4, 2004. I have since learned that the hearing was not limited to the very discrete issue of whether to accept the waiver and fine, but rather, the CRWQCB accepted inflammatory and unsupported "evidence" and testimony as to the substantive underlying facts of the ACLO. It is my understanding that the CRWQCB staff's initial and primary goal was to see that the SWPPP was effectively implemented and the any actual or threatened erosion or sedimentation was halted. However, it was not until

the Board requested a fine that the staff proposed a fine based on the time they spent on the project. Thereafter, during the improper December 2004 hearing, when members of the public, with no experience let alone expertise in these areas, made baseless accusations as to what they believed had occurred on my property, the Board rescinded the agreed upon fine and directed staff to propose a more substantial penalty. The information offered by individuals at the December 2004 hearing was not only false and speculative, there was no request for facts to support their contentions nor was there any effort to ascertain the truth. Instead these accusations were accepted as the truth and served to unjustly prejudice me in the prior and current proceedings. I've attached a few select newspaper articles that shed some light on the injustice occasioned during this hearing due to the inflammatory and unsubstantiated comments from the public. (Exhibit F) I never would have never waived my rights if I had known that the hearing would be held regardless of the waiver and that the Board would agree to hear such one-sided information, which seems to have been based on speculation and assumption and not grounded in fact or truth.

Discussion

It is important to note that over the course of this enforcement action, the property I own and the property owned by David Pierson have been confused or at a minimum considered jointly. There is not now and never has been any common ownership of these two properties. They are separate properties and while they may be similarly situated from a geographic standpoint, and Mr. Pierson and I may have utilized services of the same consultants, the similarities end there.

While I take issue with the entirety of the ACLO, on both a procedural and substantive basis, there are certain specific allegations that warrant direct comment.

On page 2 of the ACLO, it is alleged that;

> "The Discharger failed to cease the discharge and threatened discharge by implementing effective BMP's 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 Water Board staff documented that the soils were partially stabilized."

This assertion completely ignores the intervening efforts I undertook from approximately September 2002 through 2004 to not only respond to the CRWQCB's demands but more importantly, to implement the SWPPP to stop and prevent any erosion on the subject property.

Since 2002, through my retained consultant, eda, I have submitted numerous revisions to the initial SWPPP (initial plan dated October 21, 2002 with revisions on March 5, 2003, April 2, 2003.) (See Exhibit G) After each site inspection or correspondence from staff and specifically Mr. Ryan Loge, I responded immediately to the demands of the CWRQCB and

supplied the labor and materials required to implement, maintain and manage the Plan. Notwithstanding these efforts, the CRWQCB responded with even additional demands, all of which were complied with in a timely fashion. (See Exhibits H, I and J as examples)

The SWPPP included, but was not limited to:

- Hand seeding of accumulated sediment and cover with straw;
- Installation of new erosion control devises to protect blue line creek;
- Installation of sandbags at inlets on access road along side of Creek;
- Installation of new berms and/or erosion control devises;
- Hand packing rivulets with straw and new seed on steep slopes;
- Installation of new straw wattles, hay bales and silt fences
- Aerial seeding of entire affected area, including the approximately 50 acres burned by wild fire.
- Inspection of all control measures at least once every 2 weeks and following any rain storm dropping 0.5 inches or more;
- The maintenance of all control measures in good condition and repair within 24 hours where necessary;

Further, the suggestion that I "failed to cease violating a prohibition" is simply not true. As noted earlier, on each and every instance of an inspection or written demand, eda's response was swift and addressed each of the alleged deficiencies enumerated by the inspector. On at least one occasion, we asked the CRWQCB staff as to the most effective measures so that we could implement those measures. Staff would not provide any feedback or assistance, but were quick to note where repairs were necessary. (Exhibit K) Any suggestion that violations were continual or willful or not immediately and effectively addressed is false. The CRWQCB has a full record and account of my efforts to effectively resolve and remedy these issues and the immediate action taken. Further, these efforts carried with them significant expense.

The ACLO references my expenditures in response to the CRWQCB's directives, but notes the absence of any invoices to substantiate these charges. All available invoices, receipts and purchase orders are attached as Exhibit L and substantiate expenditures in excess of $80,000.00.

The ACLO also states that there was a failure to implement BMPs to stabilize the disturbed soils and that the discharger never implemented effective erosion or sedimentation controls. It defies reason as to how such a statement can be made after the submission of numerous SWPPPs and revisions thereto, and after site inspections where the work called for in the SWPPP is specifically acknowledged.

The ACLO goes on to state that, "The eventual stabilization of Site soil in the spring of 2003 was just as likely the result of naturally occurring revegetation, as it was the establishment of vegetation from the aerial seeding that was initiated in the Fall of 2002."

This flies in the face of reason and fails to give any recognition to the work performed in accordance with the mandates of the CRWQCB. This statement is directly contradicted by the February 20, 2003 letter from Art Trinidade, Chief Investigator, Code Enforcement of the San Luis Obispo County Department of Planning and Building wherein Mr. Trinidade states, "From the site inspection, it is clear that the sedimentation and erosion control methods installed after the first seasonal rains are now effectively limiting siltation into swales and water ways." (Exhibit "L") The fact of the matter is that the aerial and hand seeding planned and performed as part of the SWPPP, along with the additional measures put in place, were substantial factors in the stabilization and the current pristine condition of the site today.

In several areas of the ACLO, it is suggested that the erosion and sedimentation impacted an "unnamed blue line stream". However, in an October 1, 2002 Erosion Control Review prepared by the Upper Salinas-Las Tablas Resource Conservation District, "The blue line water course is more properly called a swale. It has no defined banks and it appears to be an ephemeral watercourse that runs only when run-off during storm events enters the swale." (Exhibit N at page 10) Further in this report, it is noted that, "The steep slope that drains into the Middle Branch of Huerhuero Creek... has been revegetated by the owner and a series of straw bale check dams have been installed to capture sediment prior to its entering the creek. No discernible impacts from this grubbed area were observed in the creek.") (Exhibit N at page 10.) There is simply no support for the allegation of any adverse impact on the unnamed blue line creek.

I took every reasonable step and every step requested or required by the CRWQCB to prevent current and future erosion on the site.

Civil Liability Considerations

The actions required by the CRWQCB were undertaken on each occasion and at significant cost. As shown in Exhibit L, my costs exceeded $80,000.00.

This cost is significant when establishing a fine. Water Code §13327 requires that the costs associated with a voluntary clean up effort be considered when determining the amount of civil liability.

Additional factors to be considered by the Regional Board pursuant to Water Code § 13327 include:

a. Nature, circumstances, extent, and gravity of the violations;
b. Discharge susceptibility to cleanup or abatement;
c. Discharge toxicity;
d. Ability to pay and the effect on ability to continue in business;
e. Voluntary cleanup efforts undertaken;
f. Violation history;
g. Degree of culpability

h. Economic benefit or savings (if any), and
i. Such other matters as justice may require.

The nature, circumstances, extent and gravity of the violations in this instance do not warrant a substantial civil penalty. As noted earlier, I purchased the property site unseen and only cleared some brush from approximately one-half of my total property in the interests of fire suppression. There was never any intent or desire to violate any law, but rather, I sought only to improve the appearance of the site and limit the possibility of a wild fire. It should be noted that the CDF specifically recognized the firebreak benefits provided by the cleared land in aiding its efforts to battle the 2002 wild fires.

The nature, circumstances and extent of the violations are mitigated by the obvious and decisive efforts undertaken to abate and prevent any further erosion and discharge of sediments. These efforts included both aerial and hand seeding of the areas in question, applications of straw, fiber rolls, straw wattles, placement of hay bales to name a few.

While the ACLO asserts that, "...Water Board staff communicated numerous times regarding its concerns and BMP requirements. To a large degree, the Discharger ignored these communications" nothing could be further from the truth. In the ACLO, this fallacy is cited as a specific reason that a significant amount of liability is justified. In actuality, I, and eda on my behalf, responded swiftly and decisively to each and every oral and written communication received from the CRWQCB and took immediate action to not only design an SWPPP program but to maintain and monitor that plan and amend the plan as the situation on the site changed.

The ACLO correctly points out that the alleged violations were not toxic which warrants an assessment that is less than the maximum. What the Board fails to acknowledge is that there is no evidence of any actual damage resulting from any alleged violation. An excerpt of the US Environmental Protection Agency is apparently included to support an assertion of damages. However, there is no proof that damages actually resulted from any violations. Rather, reliance on the USEPA document requires speculation and assumption to support any assertion of damage. As noted earlier any alleged discharge into the unnamed blue line creek is not only doubtful ("No discernible impacts from this grubbed area were observed in the creek." Exhibit N at page 10), it is irrelevant as this "creek" is more of a swale or an "...ephemeral watercourse that runs only when run-off during storm events enters the swale." (Exhibit N at page 10). Pursuant to Water Code § 13350, civil liability cannot be assessed on a "threat of discharge" alone. While the ACLO references the "threat of discharge" and the site being a "severe erosion hazard", and relies on various reports to support the purported "threat" and "hazard", that is insufficient to support a finding of actual damage.

The ability to clean up or abate the discharge is also a consideration. In this instance, however, this consideration results only in conflict. The ACLO notes that while clean up in the instant case could have been accomplished, it would not have been prudent to pursue this

course of action as a clean up would likely do more harm than good. As a result, it is suggested that significant liability is warranted. It makes no sense to suggest to an alleged violator that a while a clean up effort would mitigate any imposition of civil liabilities, any clean up will be prohibited thereby justifying significant liabilities.

The lack of any significant degree of culpability also works to diminish any civil liabilities. I had no knowledge of any potential or possible harm to the environment before the brush removal commenced. In fact, it was not until after the first inspection and communication in October 2002 that I became aware that any environmental concerns existed. As noted earlier, the purpose of brush removal was both aesthetic and fire prevention. Immediately upon learning of the concerns and the needs for action to prevent erosion, I instructed eda and Mr. Emrick, a well respected engineer with an established reputation, to take any and all action necessary to comply with all the CRWQCB requirements and work with the Board to remedy the environmental concerns. To suggest that I failed to comply with the requests and warnings issued by the CRWQCB turns a blind eye to my continuing and sustained efforts to implement whatever practices and measures were necessary to control the erosion. Contrary to the assertions in the ACLO, my consistent efforts to comply with the demands made upon me are evidence of a complete lack of culpability on my part. In fact, my retention of and reliance on an expert in the field suggests the exact opposite. Based on all the uncontroverted evidence of my immediate response and voluntary actions to prevent any further erosion, to comply with all demands made on me by the CWRQCB, and to implement and maintain the SWPPP, the proposed $100,000.00 is unwarranted and unjustified and I respectfully request that the penalty be reduced as supported by the facts.

The December 2004 CRWQCB Meeting

The CRWQCB acted improperly and beyond the scope of its authority when, During its December 2004 meeting, it accepted testimony and heard evidence on the exact issues that I had previously agreed to settle and to which I had waived my right to a hearing. After receiving the prior complaint and evaluating the merits of settlement, I executed and accepted the offer presented to me by the Executive Office and paid the fine and waived my right to a hearing on the matter to finally resolve the issues.

The Executive Office imposed a fine of $25,500.00 due to claimed violations on my property and presented me with the option to resolve the matter by way of settlement. The settlement involved my agreement not to dispute the allegations contained in that prior ACLO, payment of a fine and waiving my rights to a hearing on the matter. Due to the progress I felt had been made with the measures implemented on the property, I agreed to resolve the matter once and for all and believed that to be the final action in closing this matter. Having taken these steps, I did not attend the December 2004 hearing, nor did I arrange to have a representative attend on my behalf. Regardless, and with full knowledge that I would not be and was not in attendance, the Board conducted a hearing, which was not limited to the acceptance of the proposed fine. By allowing an evidentiary hearing to go

forward, the CRWQCB acted to deprive me of the protections afforded by the Administrative Procedures Act (APA). The APA governs hearings during which the legal rights, duties, privileges or immunities of a particular person are affected. (See generally Government Code §§11410 et seq.) In order to conduct an evidentiary hearing in conformity with the APA, the Board would have had to inform me of my rights to be present at the hearing and to present testimony, both written or oral, at the hearing. Similarly, I would have to be given the opportunity to respond to or comment on other written or oral testimony at the time it was offered.

The CRWQCB cannot unilaterally elect when to allow evidentiary hearings and when to comply with the applicable regulations. The Board's failure to comply with the ADA and its own established regulations served to deny me my due process rights. As such, I believe the Board's actions in both holding the December 2004 meeting and all its actions as a result of the improper December 2004 meeting were in violation of existing law and applicable regulations and should not be permitted.

Had I known that the Board would conduct an evidentiary hearing as it did in December 2004, I would never have agreed to waive my rights to participate in the hearing. I waived my rights to participate in a hearing that was to be limited to whether or not to accept the settlement as offered. I never agreed to waive my rights to be heard at an evidentiary hearing where testimony and evidence, which prejudiced my position, were accepted. In light of the Board's conduct, I believe my waiver was not applicable to the hearing that was conducted in my absence.

Conclusion

Approximately four years ago, I purchased a piece of land as an investment. I never had any intention to violate any law or ordinance. During the last two and one half years, I have done everything in my power to comply with the requests and demands of the CWRCB and its staff and have directed others working for me to do likewise. The staff report prepared for the meeting of July 7 and 8 fails to recognize the continuous efforts on my part to stop and repair any ill effects of erosion on the property. The history of my efforts is clear and unambiguous and supports a withdrawal of any claim for a fine or at least a reduction of the proposed fine. I look forward to the equitable resolution of this matter.

Sincerely,

Haig Kelegian

Haig Kelegian

cc: Central Coast Water Board Members (without exhibits)

Leslie S. Bowker
Bruce K. Daniels
John H. Hayashi
Russell M. Jeffries
Monica S. Hunter
Daniel M. Press
Gary C. Shallcross
Donald A. Villeneuve
Jeffrey S. Young