



North Coast Regional Water Quality Control Board

Notice of Public Hearing and Hearing Procedure

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2023-0026, ISSUED TO:

**KEN BAREILLES, SONOMA COUNTY, ASSESSOR'S PARCEL NUMBER (APN)
110-190-001-00**

**Notice of Public Hearing
June 15-16, 2023
Remote and In-Person Meeting
(see instructions below)**

Administrative Civil Liability Complaint

On March 20, 2023, the Advisory Team of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Regional Water Board Prosecution Team staff had issued an Administrative Civil Liability Complaint (ACLC or Complaint) to Ken Bareilles (Discharger). On March 27, 2023, the Advisory Team was notified that the Discharger had received the Complaint.

The Prosecution Team's Complaint seeks penalties of \$250,981 for violations of Cleanup and Abatement Order No. R1-2022-0009, Cleanup and Abatement Order No. R1-2022-0028, 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, and the Water Quality Control Plan for the North Coast Region. Pursuant to Water Code section 13323, subdivision (b), the Regional Water Board is required to hold a hearing on the Complaint within 90 days of service of the Complaint. The Board has therefore scheduled a hearing to consider the matter at its upcoming public meeting scheduled for June 15-16, 2023.

At the public hearing, the Regional Water Board will consider evidence regarding the alleged violations in the Complaint. After considering the evidence, the Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Hearing Date and Location

This meeting is scheduled to occur with both a physical meeting location and an option for parties to the hearing and the public to participate from a remote location. The physical meeting location is **5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403**.

Live video and audio broadcasts of the public hearing will be available via the internet and can be accessed at the [CalEPA Public meeting live webcasts page](https://video.calepa.ca.gov) (<https://video.calepa.ca.gov>). The public hearing will be recorded.

At this time, this matter is scheduled to occur on **June 15 and/or June 16, 2023**. In accordance with the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.), an agenda will be posted to the Board's website at least 10 days in advance of the meeting. The agenda will specify any updates to the meeting format.

Please follow the [Regional Water Board website](http://www.waterboards.ca.gov/northcoast) at (www.waterboards.ca.gov/northcoast) for information on how to participate in the meeting and any updates, including notice of any changes to meeting time, location and format.

Hearing Waiver

Water Code section 13323, subdivision (b), requires a hearing on the Complaint within 90 days of service of the Complaint; however, the Discharger may waive this right. The Discharger may decide to waive the hearing requirement and pay the full proposed liability amount and settle the Complaint, contingent on the Regional Board's approval of the settlement. Alternatively, the Discharger may decide to waive the right to a hearing within 90 days to (1) engage in settlement discussions or (2) seek additional time to prepare for the hearing.

To waive the hearing requirement, the Discharger should complete and submit the *Waiver Form for Administrative Civil Liability Complaint*, included with the Complaint, by **5 p.m. on April 10, 2023**.

Hearing Procedure

Attached to this Notice is a Tentative Hearing Procedure that will apply to the proceedings related to the Regional Water Board's consideration of the Complaint. The Prosecution Team and Discharger may comment on the Tentative Hearing Procedure and propose changes to the Procedure or due dates for prehearing submittals. Any comments or objections to the Tentative Hearing Procedure must be submitted by **5 p.m. on April 17, 2023**.

Opportunity for Public Participation

The Regional Water Board will consider written comments submitted by members of the public that are interested in the pending matter (Interested Persons). Interested Persons

who are not the parties to the proceeding will be permitted to submit formal written comments. Interested Persons must submit comments as early as possible, and in no case later than **5 p.m. on May 8, 2023.**

Interested Persons will also be provided the opportunity to orally present general policy statements to the Regional Water Board members at the hearing. Such statements will generally be limited to **5 minutes** per Interested Person, though the Board may grant additional time upon request. Interested Persons do not need to submit written statements in order to speak at the hearing. Please follow the Regional Water Board's website and posted agenda for this Board meeting for instructions on how to participate in this meeting remotely.

Interested Persons who wish to be considered Designated Parties to the proceeding, please see the attached Hearing Procedure for instructions.

Document Review

The Complaint and related documents, including any comments that are received on the Complaint are part of the Regional Water Board's public file for this matter and may be inspected or copied at the Regional Water Board's office, 5550 Skylane Blvd, Suite A, Santa Rosa, CA. You may contact the Regional Water Board at 707-576-2220 to arrange for a file review. Additionally, copies of the file record can be obtained by contacting the Prosecution Team.

The Complaint and most associated documents will also be available on the Regional Water Board's website.

Accessibility

Anyone requiring reasonable accommodation to participate in the public meeting should contact Deidre Wilkerson at 707-576-2220 at least five days prior to the scheduled meeting. The Regional Water Board hearing room is accessible. TTY users may contact the California Relay Service at 800-735-2929 or voice line at 800-735-2922.

Questions

Questions regarding this Public Notice or the Hearing Procedure should be directed to Bayley Toft-Dupuy, bayley.toft-dupuy@waterboards.ca.gov, or 916-341-5165.

Valerie Quinto
Executive Officer

Attachment: Hearing Procedure

Hearing Procedure

Proposed Action: Consideration of Administrative Civil Liability Complaint No. R1-2023-0026.

Hearing Date: June 15-16, 2023

Location: 5550 Skylane Blvd. Suite A, Santa Rosa CA 95403 (in-person); and Zoom Videoconferencing (online)

Discharger: Ken Bareilles

**IF EITHER PARTY INTENDS TO PARTICIPATE IN THE HEARING REMOTELY,
PLEASE CONTACT THE ADVISORY TEAM TO OBTAIN SPECIFIC INSTRUCTIONS
ON HOW TO PARTICIPATE REMOTELY VIA VIDEOCONFERENCE OR
TELEPHONE**

A. Applicable Laws and Regulations

This hearing constitutes an “adjudicative proceeding.” This proceeding is governed by the following statutes, regulations, and policies:

- (1) California Water Code, section 13323;
- (2) California Code of Regulations, title 23, section 648 et seq., available on the [State Water Board's laws and regulations page](#) (https://www.waterboards.ca.gov/laws_regulations);
- (3) Chapter 4.5 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.), excluding Article 8 (*Language Assistance*), Article 13 (*Emergency Decision*), Article 14 (*Declaratory Decision*) and Article 16 (*Administrative Adjudication Code of Ethics*);
- (4) Evidence Code, sections 801 through 805;
- (5) Government Code, section 11513; and
- (6) [State Water Resources Control Board's Water Quality Enforcement Policy](#) (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Except for Government Code section 11513, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

B. Parties and Separation of Functions

Regional Water Board staff and counsel have undertaken a separation of functions. Board members will be advised by an “Advisory Team,” composed of staff and counsel that have not participated in development of the Complaint. The Regional Water Board staff and attorneys that have issued the Complaint (the Prosecution Team) have been separated from the Advisory Team regarding the development of the Complaint. Members of the Prosecution Team have not communicated with the Regional Water Board or the Advisory Team regarding any substantive matter at issue in this proceeding.

The members of the Advisory Team, Prosecution Team, and Discharger are listed below with contact information for each.

Advisory Team

Valerie Quinto, Executive Officer
Valerie.Quinto@waterboards.ca.gov

Chad Johnson, Environmental Scientist
Chad.Johnson@waterboards.ca.gov

Bayley Toft-Dupuy, Attorney for Advisory Team
Bayley.Toft-Dupuy@waterboards.ca.gov
(916) 341-5165

Nathan Jacobsen, Attorney for Advisory Team

Nathan.Jacobsen@waterboards.ca.gov

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95043

Prosecution Team

Christopher Law, Attorney for Prosecution Team
(916) 341-5869
Chris.Law@waterboards.ca.gov

Joshua Curtis, Assistant Executive Officer,
Joshua.Curtis@waterboards.ca.gov

Kason V. Grady, P.E., Supervising Water Resources Control Engineer
Kason.Grady@waterboards.ca.gov

James Burke, P.G., Senior Engineering Geologist

James.Burke@waterboards.ca.gov

Jeremiah Puget, Senior Environmental Scientist
Jeremiah.Puget@waterboards.ca.gov

Izaac Russo, Engineering Geologist
Izaac.Russo@waterboards.ca.gov

Zane Stromberg, Environmental Scientist
Zane.Stromberg@waterboards.ca.gov

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A, Santa Rosa, CA 95043

Discharger

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

All contacts from the Complaint transmittal have been listed. Please provide to the Advisory Team a list of primary contacts that should be copied on communications.

C. Ex Parte Contacts Prohibited

To maintain the Regional Water Board's impartiality, ex parte contacts are prohibited. (Gov. Code, § 11430.10 et seq.) Ex parte contacts are those communications that are directed at the Regional Water Board members or the Advisory Team members, regarding the pending matter, and which are made without notice and opportunity for all parties to participate. Ex parte communications regarding non-controversial procedural matters are not prohibited.

To avoid ex parte contacts in pre-hearing communications, the Discharger should copy the Prosecution Team on all correspondence directed to the Advisory Team, and *vice-versa*.

D. Interested Persons

1. Written Comments

The Regional Water Board will consider written, non-evidentiary comments submitted by members of the public that are interested in the pending matter (Interested Person). The parties to the proceeding will be permitted to submit formal written responses to Interested Person written comments. To allow for such responses, all Interested Persons must submit written comments as early as possible, and in no case later than

5pm on May 8, 2023. Interested Persons will also be provided the opportunity to orally present general policy statements to the Regional Water Board at the hearing. Such statements will be limited to 5 minutes, though the Board Chair may grant additional time on a case-by-case basis. Interested Persons do not need to submit written statements in order to speak at the hearing.

2. Requesting Party Status

By default, the only parties to this adjudicative enforcement proceeding are: (1) the Prosecution Team; and (2) the Discharger. In some circumstances, however, it may be appropriate for certain Interested Persons to participate directly in the proceeding as a “Designated Party.” Such determinations shall be made discretionarily on a case-by-case basis by the Executive Officer, in consultation with the Board Chair.

To request “Designated Party” status, Interested Persons must submit a written request to the Advisory Team no later than **April 17, 2023**. The request must include a brief explanation of how the person will be affected by the potential action, the person’s need to present evidence and/or cross examine witnesses, and why an existing Party (Prosecution Team or Discharger) will not adequately represent the person’s interest. When granting a request for party status, the Board Chair may impose restrictions on the requestor’s hearing participation, including limiting or excluding the use of cross-examination and other procedures to promote the orderly and prompt conduct of the proceeding. (Gov. Code, § 11440.50, subd. (c).) In the event that “Designated Party” status is granted, the Parties will be notified and this Hearing Procedure may be revised as appropriate.

E. Hearing Waiver

Water Code section 13323, subdivision (b), requires a hearing on the Complaint within 90 days of service of the Complaint; however, the Discharger may waive this right. The Discharger may decide to waive the hearing requirement and pay the full proposed liability amount and settle the Complaint, contingent on the Regional Board’s approval of the settlement. Alternatively, the Discharger may decide to waive the right to a hearing within 90 days to (1) engage in settlement discussions or (2) seek additional time to prepare for the hearing.

To waive the hearing requirement, the Discharger should complete and submit the *Waiver Form for Administrative Civil Liability Complaint*, included with the Complaint, by **April 10, 2023**.

F. Pre-Hearing Submittals

To avoid the introduction of surprise testimony and exhibits (Cal. Code Regs., tit. 23, § 648.4, subd. (a)) and to minimize the need for oral argument and testimony at the hearing, this Hearing Procedure requires the Parties to submit documentary evidence, witness information, and legal/technical memoranda to the Advisory Team prior to the hearing. Absent a showing of good cause and lack of prejudice to the parties, the Board

Chair may exclude materials that are not submitted in accordance with this Hearing Procedure. Excluded materials will not be considered by the Board. (Cal Code Regs., tit. 23, § 648.4, subd. (e).)

1. Electronic Submittals

All communications and pre-hearing submittals related to this proceeding must be submitted electronically. Communications to the Advisory Team must be submitted via email, to the email addresses listed in section B. All emails and submissions to the Advisory Team must be directed to the attorney for the Advisory Team who will serve as the primary point of contact for the Advisory Team; the Parties may elect to include other members of the Advisory Team on submissions. Communications to the Prosecution Team must, at a minimum, be sent to the attorney for the Prosecution Team.

2. Prosecution and Discharger Pre-Hearing Submittals

The following numbered items must be submitted prior to the hearing by the dates specified. These prehearing submittals must be submitted to the Regional Water Board's FTP site. Instructions for uploading and downloading documents on the FTP site will be provided. Parties must provide notice via email to the Advisory Team when documents are uploaded to the FTP site.

(1) **Documentary Evidence.** The Prosecution Team must submit all documentary evidence supporting the Complaint. The Discharger must submit all documentary evidence that supports its position with respect to the Complaint. Each document submitted must be clearly titled to identify as a Prosecution Team or Discharger submittal and separately designated as a sequentially-numbered exhibit (i.e., Exhibit 1, Exhibit 2, Exhibit 3, etc.). The Parties must provide an index of submitted exhibits.

(2) **Memorandum.** The Prosecution Team and Discharger may each submit a memorandum articulating the party's legal arguments and technical analyses in support of its position on the Complaint.

(3) **Witness Information.** The Prosecution Team and Discharger must submit a Witness Information Sheet containing the name of each witness the party intends to call to testify at the hearing, the subject matter of the testimony, and the estimated time required for each witness.

The Prosecution Team must submit items (1)-(3) above by **April 24, 2023**. The Discharger must submit these items by **May 8, 2023**.

(4) **Rebuttal Evidence.** Both Parties may submit Rebuttal evidence. "Rebuttal" means evidence, analysis, or comments offered to disprove or contradict other Designated Parties' submissions. Both Parties may also submit written responses to comments received from Interested Persons.

Rebuttal evidence and responses to comments from Interested Persons must be received by **May 22, 2023**. Parties may rebut oral testimony offered at the hearing.

(5) **Proposed Order.** The Prosecution Team must submit a proposed Order for the Board's consideration to the Advisory Team by **May 30, 2023**. The Discharger may submit a Proposed Order by **May 30, 2023**.

(6) **Presentations.** Slide presentations (e.g., PowerPoint) may be used at the hearing, provided their contents do not exceed the scope of previously submitted material. Regional Water Board administrative staff will be running the presentation at the party's direction. Copies of the slide presentation must be provided to the Advisory Team by **June 14, 2023**.

G. Conduct of Hearing

1. Hearing Time Limits

Prosecution Team: **90 Minutes**

Discharger: **90 Minutes**

Interested Persons [*if any*]: **5 minutes**

The above time limits are in consideration of title 23, section 648.5, subd. (a), which specifies that adjudicative proceedings be conducted with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and the Board.

The Parties may allocate their allotted time as they see fit between presenting evidence and testimony, cross-examining adverse witnesses, making opening and closing statements. A timer will be used to track how much time has elapsed. This timer will be paused during Board questions and party responses to Board questions. Additional time may be provided at the discretion of the Board Chair, upon a showing that additional time is necessary.

2. Witness Testimony

All witnesses who have submitted written testimony must be available to appear during the hearing to affirm that the written testimony is true and correct and to be subject to cross-examination. All persons intending to testify at the hearing must take the oath administered by the presiding officer. (Gov. Code, § 11513; Cal. Code Regs., tit. 23, § 648.5, subd. (a)(3).)

3. Rules of Evidence

Government Code section 11513 and Evidence Code sections 801 through 805 apply to this proceeding. Hearsay evidence may be used to supplement or explain other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action. Evidence already in the Regional Water Board's files may be submitted by reference if the location of the evidence is clearly identified. (Cal. Code Regs., tit. 23, § 648.3.)

H. Prehearing Conferences and Summary Report

The Advisory Team may schedule a pre-hearing conference to resolve objections or any other outstanding prehearing issues, if needed. Pre-hearing conferences will be held telephonically or through videoconferencing.

Prior to the hearing, the Advisory Team will prepare an Executive Officer Summary Report summarizing the matters involved in the proceeding, and the positions taken by each of the other parties. Once finalized, the Summary Report will be provided to the Parties and included in the agenda materials for the proceeding.

I. Modifications to Hearing Procedure

The Board Chair may revise this Hearing Procedure after appropriate notice and opportunity for Parties to be heard.

J. Important Deadlines

The following list summarizes the important deadlines in this matter. All submissions are due by **5 p.m.** on the listed date.

April 10, 2023: Discharger submits Hearing Waiver

April 17, 2023: Parties submit any comments or objections to the Tentative Hearing Procedure

April 17, 2023: Interested Persons submit any Designated Party request

April 24, 2023: Prosecution Team submits supporting evidence, index, legal/technical memorandum, witness list

May 8, 2023: Discharger submits supporting evidence, index, legal/technical memorandum, witness list

May 8, 2023: Interested Persons submit written comments

May 22, 2023: Parties submit written rebuttal evidence, responses to Interested Person comments, if any

May 30, 2023: Prosecution Team submits proposed Order; Discharger may submit proposed Order

June 14, 2023: Parties submit presentation slides