

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
June 16, 2023

ITEM: 11

SUBJECT: Public Hearing on Administrative Civil Liability Complaint No. R1-2023-0026 issued to Ken Bareilles, Sonoma County, Assessor's Parcel Number 110-190-001-000.

BOARD ACTION: The Regional Water Board will consider evidence and testimony from the Discharger and Prosecution Team and consider whether to impose penalties against the Discharger.

BACKGROUND: On March 20, 2023, the Advisory Team of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Prosecution Team (Regional Water Board and State Water Board Office of Enforcement) staff had issued an Administrative Civil Liability Complaint (ALCL or Complaint) to Ken Bareilles (Discharger). The Discharger allegedly failed to submit a report required by the deadline under Required Action No. 1 of the Regional Water Board Cleanup and Abatement Order No. R1-2022-0009 (Emergency CAO) in violation of Water Code section 13267; failed to submit a report under Required Action No. 1 of the Regional Water Board Cleanup and Abatement Order No. R1-2022-0028 (Long-Term CAO) in violation of Water Code section 13267; and discharged waste to waters of the state 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).

Pursuant to Water Code section 13323 subdivision (c), the Regional Water Board is required to hold a hearing on the Complaint within 90 days of service of the Complaint. The Discharger did not waive his right to a hearing within 90 days. Accordingly, the Board has scheduled a hearing to consider the matter at its upcoming public meeting scheduled for June 16, 2023. At the public hearing, the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the Complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may 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.

DISCUSSION: According to the Complaint, Regional Water Board staff participated in several multi-agency inspections located at Sonoma County Assessor's Parcel Number (APN) 110-190-001-000 (the Property) between November 4, 2021, and

January 4, 2022. Following these inspections, the Regional Water Board issued the Emergency CAO. On March 3, 2022, the Regional Water Board issued a Notice of Violation to the Discharger for failure to furnish a technical report (the Interim Plan) to comply with Required Action 1 of the Emergency CAO. On September 13, 2022, the Regional Water Board issued the Long-Term CAO. On October 20, 2022, the Regional Water Board issued a Notice of Violation to the Discharger for failure to furnish a technical report (Long-Term Plan) to comply with Required Action 1 of the Long-Term CAO. On January 13, 2023, the Regional Water Board issued a Notice of Violation to the Discharger, citing discharges in violation of the Categorical Waiver and Basin Plan. On January 24, 2023, Staff conducted an inspection and identified an additional discharge of waste in an area that had previously been identified as a discharge threat.

The Complaint seeks penalties of \$250,981 for seven alleged violations. Alleged Violations 1 and 2 are for failure to timely submit the Interim and Long-Term Plans in compliance with the Emergency and Long-Term CAOs. Alleged Violations 3 through 7 are for discharges to waters of the state in violation of the Categorical Waiver and Basin Plan. As stated in the Complaint, earthen material from unstable and hydrologically connected road segments have discharged and threaten to discharge to Felta Creek and unnamed tributaries to the Russian River. The Russian River Watershed supports several aquatic species, including the Coho Salmon, Chinook Salmon, and Steelhead Trout (all of which are listed as Threatened under the Federal Endangered Species Act). The federal Clean Water Act section 303(d) list identifies the Russian River and all its tributaries as impaired due to sediment and temperature.

The Advisory Team provided a Notice of Public Hearing and Tentative Hearing Procedure to the Parties on April 4, 2023. The Parties provided comments on the Tentative Hearing Procedure, and the Advisory Team finalized the Hearing Procedure on April 21, 2023.

The Prosecution Team made a timely submittal of its evidentiary and witness information on April 24, 2023. The Discharger made a timely submittal of its supporting evidence and witness information on May 8, 2023. No written comments were received from interested persons.

As stated in the Hearing Procedure, the Prosecution Team is required to submit a proposed Order for the Board to consider at the hearing by May 30, 2023. The Discharger may also submit a proposed Order for the Board's consideration by this date. Additionally, the Parties may submit evidentiary objections by May 25, 2023, and any responses by May 30, 2023. These documents will be provided to Board members when they are received.

RECOMMENDATION: At this time, the Executive Officer does not have a proposed recommendation. At the conclusion of the hearing and any deliberations, the Executive Officer may provide a recommendation.

SUPPORTING DOCUMENTS:

1. Administrative Civil Liability Complaint
2. Comments and Objections to Hearing Procedure and Advisory Team Responses (available electronically)
3. Notice and Final Hearing Procedure
4. Prosecution Team Evidence and Witness Information (available electronically)
5. Discharger Evidence and Witness Information (available electronically)
6. Pre-hearing Evidentiary Objections (available electronically)
7. Proposed Order(s)