**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
**NORTH COAST REGION**

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| In the matter of: | ) | Complaint No. R1-2013-0085 |
| Joung Min Yi | ) | |
| For the Properties Located at 29980 and 30010 Highway 101 North, Near Willits, Mendocino County, California | ) | Violations of Water Code Section 13385 Unauthorized Discharges in Violation of the Clean Water Act |
| WDID #1B11153CNME | ) | December 18, 2013 |

Mr. Joung Min Yi is hereby given notice that:

1. Mr. Joung Min Yi (hereinafter the Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), may impose civil liability pursuant to California Water Code section 13385. This Complaint proposes to assess the Discharger **$56,404** in administrative civil liability for the violations based on the considerations described herein.

2. This Administrative Civil Liability Complaint is issued under the authority of California Water Code section 13323.

3. The Discharger owns the land parcels located at 29980 and 30010 Highway 101 North, near Willits, in Mendocino County, California (hereinafter the Site). The Mendocino County Assessor Parcel Numbers for the Site are 037-120-09 and 037-120-08.

4. On August 23, 2011, the Regional Water Board issued Cleanup and Abatement and [Water Code section] 13267 Order No. R1-2011-0089 to the Discharger for unlawfully discharging and threatening to discharge earthen materials into the Upper Main Eel River watershed, a water of the State and of the United States. The Regional Water Board found that the Discharger and/or his agents excavated earthen materials and constructed two large earthen pads, which resulted in placing 17,500 or more cubic yards of earthen and woody materials in a manner and at locations that discharge and threaten to discharge to unnamed tributaries to Outlet Creek and the Upper Main Eel River.

5. The Water Quality Control Plan for the North Coast Region, also known as the Basin Plan, identifies the following existing and potential beneficial uses for Outlet Creek in the Upper Main Eel River watershed:

a. Municipal and domestic supply
b. Agricultural supply
c. Industrial service supply
d. Industrial process supply
e. Groundwater recharge
f. Navigation
g. Hydropower generation
h. Water contact recreation
i. Non-contact water recreation
j. Commercial and sport fishing
k. Warm freshwater habitat
l. Cold freshwater habitat
m. Wildlife habitat
n. Rare, threatened, and endangered species
o. Migration of aquatic organisms
p. Spawning, reproduction, and/or early development
q. Aquaculture

6. Cleanup and Abatement and 13267 Order No. R1-2011-0089 (CAO R1-2011-0089) required the Discharger to:

   a. Immediately cease all activities that cause or threaten to cause the discharge of sediment to all waters of the state or United States. (CAO p.5)

   b. Develop an Emergency Plan to remove and/or properly stabilize all unstable earthen and woody material. The Emergency Plan was to include re-vegetation through planting of exposed soils, and required the plantings to be monitored and maintained for five years to ensure successful earthen stabilization. Tree and shrub plantings were to have a minimum of 85% success of thriving growth at the end of five years, with a minimum of two consecutive years of monitoring after removing irrigation in the event irrigation is necessary. The Discharger was required to submit the plan by September 15, 2011, and submit progress reports each month thereafter until the restoration efforts were complete. (*Id.* pp. 5-6, ¶ 2.)

   c. Implement the work plan, by completing the work necessary to restore the site by November 1, 2011.

7. The Regional Water Board Assistant Executive Officer issued a Notice of Violation (NOV) to the Discharger on October 10, 2011 for failing to submit the Emergency Plan by September 15, 2011, as required in CAO R1-2011-0089.

8. On November 18, 2011, the Discharger submitted a Petition for Review to the Regional Water Board. The Discharger requested that the State Water Resources

Control Board set aside or modify CAO R1-2011-0089 or direct the Regional Water Board to take appropriate action pursuant to title 23 of California Code of Regulations, section 2052; the Discharger asked that the review be stayed pending efforts to resolve the issues at the Site.

9. The Discharger submitted its Emergency Erosion Control Plan (Plan) for the Site on December 13, 2011, via electronic mail from its consultant, Pacific Watershed Associates. The Regional Water Board Assistant Executive Officer approved the Plan with conditions in a letter issued December 16, 2011, stating that the Discharger was still required to develop and implement a long term erosion control plan to meet the requirements in CAO R1-2011-0089.

10. Enforcement staff inspected the Site eight times between September 30, 2011, and December 20, 2011. Enforcement staff observed and recorded evidence indicating the following:

    a. September 30, 2011: Water tanks had been emptied at the Site, leading to a discharge of approximately 5,000 gallons of water and over ten cubic yards of sediment slurry to the intermittent Class III/Class II[1] stream adjacent to the Site. (Yi Joung Min Properties Inspection Report #2, January 27, 2012, pp. 2-4.)

    b. October 28, 2011: Fine sediment in the stream deriving from surface erosion at the Site's access driveway. (*Id*., pp. 4-7.)

    c. November 4, 2011: 13,090 gallons of sediment discharged to a small Class III/Class II channel for approximately 2,800 feet, with an average depth of approximately 6-12 inches and an average width of 1-1.5 feet (in many areas the deposition dimensions exceeded the average). (*Id*., pp. 7-12.)

    d. November 10, 2011: Sediment had discharged from the Site and deposited in an unnamed tributary in Reeves Canyon. (*Id*., pp. 12-14.)

    e. November 22, 2011: Staff observed two sediment discharges from the Site.

        i. Sediment was deposited in the Northern Highway 101 culvert confluence with an unnamed tributary to Outlet Creek. (*Id*., pp. 14-15.)

[1] The California Forest Practice Rules defines a Class III stream as a stream capable of transporting sediment to a Class II or Class I watercourse. A Class II stream is capable of supporting non-fish aquatic species, and fish are always or seasonally present within 1,000 feet downstream. A Class I stream is a domestic water supply of any type, and/or a stream capable of providing always or seasonally habitat for fish.

ii. Sediment was deposited in the northern tributary at the base of the Site driveway directly above where the tributary crosses under Highway 101. (*Id*., p. 18.)

11. On February 2, 2012, the Regional Water Board Assistant Executive Officer transmitted the inspection report for the 2011 inspections to the Discharger, and notified the Discharger that he still had not complied with CAO R1-2011-0089 in full. The Assistant Executive Officer's letter also notified the Discharger that the sediment discharge observed on the properties was potentially subject to civil penalties.

12. The Discharger provided a replanting schedule on November 15, 2011, via e-mail through his consultant stating, in summary, that 800 Douglas fir seedlings would be planted between December 2012 and January 2013 in accordance with Forest Practice Rules.

13. On February 29, 2012, the Discharger's consultant submitted the Re-Vegetation and Monitoring Plans required by CAO R1-2011-0089 directives 2.c. and 2.d., which had been due September 15, 2011. The Assistant Executive Officer formally accepted the plans in a March 16, 2012 letter.

14. On January 14, 2013, the Executive Officer amended CAO R1-2011-0089 Directive 2.d. to reduce the number of inspections required due to rainfall triggering events. The amendment states that the Discharger shall monitor during or following wet weather conditions twice a year, with Inspection 1 prior to January 15, and Inspection 2 prior to April 1, with reports due on the same days. The monitoring and reporting is to continue until the Site is re-vegetated to CAL FIRE stocking requirements, or the Regional Water Board determines that the Site is stabilized and no longer threatens water quality.

15. In the Discharger's December 28, 2012, Winter Monitoring Site Inspection Report #7, submitted by Pacific Watershed Associates, Inc., the consultant states that the Site had not yet been re-vegetated, but that planting was scheduled for early 2013.

16. In the Discharger's April 1, 2013 Winter Monitoring Site Inspection Report #8, submitted by Pacific Watershed Associates, Inc., the consultant states that there had been no site inspection (Inspection 2) conducted between January 15 and April 1, 2013, as required by the January 14, 2013 amendment to CAO R1-2011-0089. Report #8 does not document any changes at the Site since the December 28, 2012 Report #7.

17. On June 13, 2013, the Acting Assistant Executive Officer issued a second Notice of Violation (NOV) to the Discharger for failing to complete replanting of exposed soils as required in CAO R1-2011-0089 Directives 2.c. and 3.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

18. The State Water Resources Control Board (State Water Board) may impose an administrative civil liability pursuant to the procedures described in Water Code section 13323.

19. Pursuant to Water Code section 13385, subdivisions (a)(5) and (c)(1)-(2), any person who violates the federal Clean Water Act (33 U.S.C. § 1311) by discharging pollutants to the navigable waters of the United States without complying with sections 301, 302, 306, 307, 308, 318, 401, or 405 may be liable civilly up to ten thousand dollars ($10,000) for each day the violation occurs, and up to ten dollars ($10) per gallon of discharge over one thousand (1,000) gallons not cleaned up.

ALLEGED VIOLATIONS

20. On or about September 30, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C.A. §1311) when 5,000 gallons of water were dumped at the Site, causing over ten cubic yards of sediment slurry to discharge into the intermittent Class III/Class II stream adjacent to the Site without a permit. Pursuant to Water Code section 13385(c), the Discharger is subject to a statutory maximum of $10,000 for the day of violation, and $10,190 for the 2,019 gallons of sediment slurry discharged, for a total of $20,190.00.

21. On or about November 4, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C.A. §1311) when 13,090 gallons of sediment discharged from the Site to a small Class III/Class II channel without a permit. Pursuant to Water Code section 13385(c), the Discharger is subject to a statutory maximum of $10,000 for the day of violation, and $120,900 for the 13,090 gallons of sediment discharged, for a total of $130,900.00.

22. On or about November 10, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C.A. §1311) when sediment discharged from the Site and was deposited in an unnamed tributary in Reeves Canyon without a permit. Pursuant to Water Code section 13385(c), the Discharger is subject to a statutory maximum of $10,000 for the day of violation.

23. On or about November 22, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C.A. §1311) when sediment discharged from the Site and was deposited in the Highway 101 northern culvert confluence with an unnamed tributary to Outlet Creek without a permit. Pursuant to Water Code section 13385(c), the Discharger is subject to a statutory maximum of $10,000 for the day of violation.

24. The total statutory maximum penalty for these four alleged violations is $171,090.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

25. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385(e).

26. Regional Water Board staff have considered the required factors for the alleged violation using the methodology in the Enforcement Policy, as explained in detail in Attachment A attached hereto and incorporated herein by this reference.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

27. Based on consideration of the above facts and the applicable law, and after applying the Enforcement Policy methodology, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board proposes that civil liability be imposed administratively on the Discharger in the amount of **$56,404**.

28. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability up to the maximum penalty provided for by law, or to refer the matter to the Attorney General to have a Superior Court consider enforcement. The Discharger may waive his right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full, or by taking other actions as described in the waiver form. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing. The enforcement costs can be considered as an additional factor as justice may require.

29. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional administrative civil liability for violations of the requirements of any applicable Water Code section and/or portion of the Clean Water Act (33 U.S.C.A. § 1251 et seq.) for which liability has not yet been assessed or for violations that may subsequently occur.

30. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations section 15308 and section 15321, subdivision (a)(2).

December 18, 2013
_____
Date

Original Signed By
_____
David F. Leland, P.E.
Assistant Executive Officer
Regional Water Board Prosecution Team

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**ATTACHMENT A**
**CALCULATION OF PENALTIES**

On November 17, 2010, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code section 13385. The Enforcement Policy is available at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The proposed administrative civil liability is based on the use of that methodology.

**Step 1. Potential for Harm for All Four Alleged Violations from September 30, November 4, November 10, and November 22, 2011**

The Potential for Harm for the discharges is **6** for all violations. The potential for harm is the sum of all factors for a) the potential for harm to beneficial uses (3 = moderate), b) the physical, chemical, biological or thermal characteristics of the discharge (2 = moderate risk), and c) the susceptibility for cleanup or abatement (<50%).

The deviation from the requirements is major. The Discharger is prohibited from discharging into a water of the state or of the United States without Waste Discharge Requirements or a waiver thereof, or in compliance with the federal Clean Water Act (33 U.S.C.A. § 1251 et seq.). In this case, the Discharger violated these requirements by grading earthen materials off ridge tops and benches onto steep slopes leading to waters tributary to Outlet Creek and the Upper Main Eel River; resulting discharges violated both the Basin Plan and the Clean Water Act section 301. The Discharger knew of the discharge prohibitions because the Regional Water Board Executive Officer had issued Cleanup and Abatement Order (CAO) No. R1-2011-0089 on August 23, 2011, requiring that the Discharger restore the Site by November 1, 2011.

a. Specific Factor: Potential Harm to Beneficial Uses

Category: **Moderate (3)**

The North Coast Regional Water Quality Control Board (Regional Water Board) adopted the Water Quality Control Plan for the North Coast Region (Basin Plan), which contains water quality objectives for all waters within the Region, and describes their beneficial uses. The watershed affected through lack of compliance with the Cleanup and Abatement Order is the Upper Main Eel River Watershed. The CAO was issued to correct for illegal grading and development on steep slopes above tributaries to the Upper Main Eel River. According to the Basin Plan, the existing and potential beneficial uses of the watershed include Municipal & Domestic Supply, Agricultural Supply, Industrial Service Supply, Industrial Process Supply, Freshwater Replenishment, Navigation, Hydropower

Generation, Water Contact Recreation, Non-Contact Recreation, Commercial & Sport Fishing, Cold Freshwater Habitat, Wildlife Habitat, Rare, Threatened or Endangered Species, Migration of Aquatic Organisms, Spawning, Reproduction and/or Early Development, Shellfish Harvesting, Estuarine Habitat, and Aquaculture. These uses were impacted when earthen material was discharged to the streams. Sediment can affect beneficial uses through mortality to fish during the spawning and development stages. Sediment potentially affects instream macroinvertebrate communities as well, likely reducing the availability of prey for salmonid species. Sediment may also affect domestic supplies and other beneficial uses of water.

b. Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Category: **Moderate (2)**

The discharges to the unnamed tributary streams that occurred on all four dates, as described in the Complaint, CAO, and attendant inspection reports, discharged sediment and sediment slurry into steep headwater streams leading to unnamed tributaries to Outlet Creek and the Upper Main Eel River. The Upper Main Eel River watershed is federal Clean Water Act Section 303(d)-listed for sediment and temperature; in December 2005, the United States Environmental Protection Agency (USEPA) established Total Maximum Daily Loads (TMDLs) for sediment and temperature. The TMDLs identify the potential impacts to beneficial uses associated with sediment discharges, and recommends means for controlling the unauthorized release of sediment to receiving waters in the Upper Main Eel River.

c. Susceptibility to Cleanup or Abatement:

Category: **<50% Susceptible to Cleanup or Abatement**

The earthen materials discharged, because of site grading and road construction, are not susceptible to cleanup.

**Step 2. Assessments for Discharge Violations**

The conservative assessments of volume of sediment discharged are provided below, and are based on information collected by Regional Water Board staff during Site inspections.

<u>Per Day Assessments for Discharge Violations for all Four Violations</u>

When there is a discharge, the Regional Water Board is to determine an initial liability amount on a per day basis using the Potential for Harm score and the Extent of Deviation from Requirement associated with the violation. As noted above, in Step 1, the Potential for Harm Score is 6. The "per day factor," based on the Potential for Harm and Extent of Deviation, is therefore 0.22. The four days of violation have been conservatively identified as the four inspection days, as staff confirmed discharge violations on each of these days. The maximum penalty for each day of violation is $10,000. Therefore, the initial liability amount for the four days of violation is $10,000 x 0.22 x 4 = $8,800.

Per Gallon Assessment for Discharge Violations for September 30, 2011 and November 4, 2011

When there is a discharge, the Regional Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm score and the Extent of Deviation that are used in the per-gallon analysis. As discussed above, the factor in this case is **0.22**. The Regional Water Board staff inspection reports include conservative estimates of discharge volumes, specifically **2,019 gallons of discharge on September 30, 2011,** and **13,090 gallons of discharge on November 4, 2011.** Therefore, the initial liability amount for September 30, 2011 is 2,019 gallons, minus 1,000 gallons not cleaned up, multiplied by 0.22 and $10, totaling $2,242. The initial liability for November 4, 2011 is 13,090 gallons, minus 1,000 gallons not cleaned up, multiplied by 0.22 and $10, totaling $26,598. Therefore, the initial liability amount for the gallons of discharge estimated on the two inspection days is $28,840.

September 30, 2011 Discharge
[2,019 – 1,000] x 0.220 X $10 = $2,242

November 4, 2011 Discharge
[13,090 – 1,000] x 0.220 x $10 =$26,598

The total initial liability for the discharge violations is the per day amount plus the per gallon amount, which is $8,800 + $28,840 = $37,640.

The statutory maximum for these four violations is $171,090, as described in paragraphs 20-24 in the Complaint.

**Step 3. Assessment for Non-Discharge Violations**

No penalties are being assessed at this time for non-discharge violations.

**Step 4. Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up and/or cooperate with regulatory authority, and the violator's compliance history.

a. Culpability

Higher liabilities should result from intentional and negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **(1)** because the construction of the graded areas that caused the discharges to occur was an intentional act. The grading of the site was done with the discharger's knowledge and consent as a lessor of the real property located at 29980 and 30010 Highway 101 North, Near Willits, Mendocino County, California.

b. Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between .75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. In this case, the Discharger is assessed a value of **1.1** for failure to return to compliance because the discharger delayed initial CAO compliance which may have prevented at least three of the four discharges, if not all of them.

c. History of Violations

The factor is to be used when there is a history of repeat violations. A minimum multiplier of **1** is to be used, and is to be increased as necessary. In this case, because the Discharger has no prior known history of non-compliance, the minimum factor of 1 is used.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors (Step 4) to the Initial Liability Amount (Step 2).

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

<u>Per Day Base Liability for all Four Discharge Violations</u>

Total base liability under Water Code section 13385

$8,800 x 1 x 1.1 x 1 = $9,680

<u>Per Gallon Base Liability for September 30, 2011 Violation</u>

Total base liability under Water Code section 13385

$2,242 x 1 x 1.1 x 1 = $2,466

<u>Per Gallon Base Liability for November 4, 2011 Violation</u>

Total base liability under Water Code section 13385

$26,598 x 1 x 1.1 x 1 = $29,258

**Total Base Liability = $41,404**

**COMBINED TOTAL BASE LIABILITY AND FACTORS APPLIED TO ALL DISCRETIONARY VIOLATIONS**

The Combined Total Base Liability Amount for the four violations is **$41,404**

The following factors apply to the combined Total Base Liability Amount for all of the violations.

**Step 6. Ability to Pay and Continue in Business: 1**

The Discharger's tenants were engaged in marijuana cultivation, but it is not known whether the Discharger received any revenue from the cultivation beyond standard rental payments. Therefore, this factor remains neutral.

**Step 7. Other Factors as Justice May Require: 1**

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are other factors as justice may require, and should be added to the liability amount. The State Water Board Office of Enforcement has directed that all regions are to use a value of $150 per hour for staff costs.

Adjusted Combined Total Base Liability Amount: **$41,404 + $15,000** (Staff Costs) = **$56,404**

Regional Water Board and State Water Board staff cost associated with this enforcement action is estimated to be a minimum of $15,000. This amount is calculated based on an average hourly wage of $150, multiplied by 100 hours of staff time spent on inspections and report writing. If this matter proceeds to hearing, the Regional Water Board Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred during the issuance of this Complaint through hearing.

**Step 8. Economic Benefit**

Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation.

a. Estimated Economic Benefit: **$25,500**

b. Discussion: Regional Water Board Staff contend the Discharger realized economic benefit through: (1) construction of earthen pads for marijuana cultivation without required permits, (2) without developing technical reports demonstrating and ensuring adequate engineering design, and (3) without having adequate geologic review of the site prior to and during construction.

c. Calculation

Permitting Compliance Costs
1. Less than 3 acre conversion cost is $1,500 for a Registered Professional Forester
2. Geologic Report and engineered fill design costs-$20,000- $30,000
3. Engineering construction oversight $3,000
4. County permits $700-$1000

California Environmental Quality Act Compliance Costs: Likely covered by less than 3-acre conversion costs.

(Note: These costs assume the project could be permitted)

The total economic benefit to the Discharger for violations contained in this complaint is estimated at **$25,500.**

**Step 9. Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for the violations are shown below. The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The maximum administrative liability amount is the maximum allowed by Water Code section 13385: (1) $10,000 for each day of violation, and (2) on a per gallon basis in an amount not to exceed $10 per gallon of waste discharged but not cleaned up in excess of 1,000 gallons. The proposed liability falls within the maximum and minimum amounts.

a. Maximum Liability Amount: **$171,090**

b. Minimum Liability Amount: **$28,050**

**Step 10. Final Liability Amount**

The total recommended liability amount proposed for four discharge violations is the adjusted combined total base liability amount plus staff costs for a total of **$56,404.**