

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2020-0510
IN THE MATTER OF

KYLE TERBORG

ASSESSOR'S PARCEL 041-430-049-000
SHASTA COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to Kyle Terborg (hereafter referred to as the Discharger or Mr. Terborg) pursuant to California Water Code (Water Code) sections 13268 and 13350, which authorize the imposition of administrative civil liability, and Water Code section 13323, which authorizes the Assistant Executive Officer to issue this Complaint. This Complaint is based on evidence that the Discharger violated Cleanup and Abatement Order R5-2016-0716 (CAO).

**THE ASSISTANT EXECUTIVE OFFICER OF THE CENTRAL VALLEY REGIONAL
WATER QUALITY CONTROL BOARD (CENTRAL VALLEY WATER BOARD)
HEREBY ALLEGES THE FOLLOWING:**

BACKGROUND

1. **1 November 2014**, California Department of Fish and Wildlife (CDFW) law enforcement personnel informed Central Valley Water Board staff of potential grading activities being performed off Zogg Mine Road in western Shasta County. CDFW law enforcement personnel participated in a helicopter overflight of the area on 18 November 2014 and identified that significant land disturbance and grading activities were occurring on Shasta County Assessor Parcel (APN) 041-430-049-000 (Site), in close proximity to several drainages and tributary watercourses that flow into South Fork Clear Creek. Central Valley Water Board staff reviewed relevant information provided by CDFW and determined that the grading activities posed a threat to water quality, and that a Site inspection would be necessary to better evaluate on-Site conditions.
2. Central Valley Water Board staff used Google Earth satellite imagery, property boundaries, and publicly available geographical information system (GIS) files produced by the GIS Advisory Committee of Shasta County, to confirm that the areas of disturbance were located on the Site. Historical Google Earth imagery showed the grading to have initially been conducted in 2013, with cannabis cultivation occurring in both 2013 and 2014.
3. Per records from the Shasta County Assessor-Recorder's Office, Mr. Terborg is the legal owner of the property identified as APN 041-430-049-000, a 90 acre

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parcel. Mr. Terborg purchased the Site on 23 April 2013. As the owner of the Site, Mr. Terborg is responsible for conditions of his Site, and is therefore identified as a responsible party.

4. The Site is located northeast of South Fork Clear Creek, a Class I fish-bearing watercourse that supports anadromous species of fish, and is a tributary to Clear Creek, which flows into the Sacramento River. Clear Creek is a water of the state as well as a water of the United States.
5. Throughout subsequent investigations performed at the Site, Central Valley Water Board staff have observed discharges and threatened discharges to an unnamed Class III tributary to the South Fork of Clear Creek, as a result of grading and road construction activities, and poor road maintenance. Central Valley Water Board staff observed that the ground disturbing activities were performed to facilitate the cultivation of cannabis.

TIMELINE OF INSPECTIONS, COMMUNICATION, AND ENFORCEMENT ACTIONS

6. **21 November 2014, Administrative Inspection Warrant obtained.** Central Valley Water Board staff obtained an administrative inspection warrant from the Shasta County Superior Court on 21 November 2014 to inspect the Site, based on photographic evidence and a declaration of CDFW Warden Steven Crowl.
7. **4 December 2014, Initial Site Inspection.** Central Valley Water Board and CDFW staff conducted a Site inspection to determine if sediment, fertilizers, pesticides, and other wastes were discharging to an unnamed Class III watercourse that is a tributary to the South Fork of Clear Creek. During the inspection, staff observed sediment discharge and threats of future sediment discharge due to ground disturbance activities associated with cannabis cultivation. The following observations were made at the Site, and documented in a Central Valley Water Board inspection report completed 20 December 2014 (Attachment C):
 - a. Staff observed an access road (Access Road), constructed of native materials that provided ingress to the Site from Zogg Mine Road, entering along the southern parcel boundary, and continuing northwest, upslope, to a terminus at a parking area near a Class III watercourse. The Access Road showed evidence of erosion in the form of gullies and rills along the road surface and fill. A switchback road (Switchback Road) continued upslope from the terminus of the Access Road. The Switchback Road extended north, approximately 360 feet at a 37% grade to graded terraces on the hillside. Staff observed some erosion control blankets and straw that had been placed along the sides of the Switchback Road, over the cut slopes and fill slopes.

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However, their placement and lack of maintenance rendered them ineffective, with deep gullies forming throughout the road surface. The Switchback Road then wound through a cultivation area containing seven graded terraces (Terraces), ending at a point upslope.

- b. Staff documented a total of approximately 0.41 acres of disturbed area associated with the Terraces, which were constructed of native soil and carved into the hillslope. Within the Terraces, staff observed infrastructure and refuse associated with cannabis cultivation activities on Site.
 - c. Based on the observations made during the Site inspection, staff identified the Access Road, Switchback Road, and the grading associated with the Terraces as the greatest threats to water quality. Erosion and sediment discharge originating from these three features had previously occurred, and without remediation presented a threat of future discharges.
8. Central Valley Water Board staff determined that grading at the Site was initially conducted without a Shasta County permit. Mr. Terborg reportedly applied for a grading permit after the grading was performed, however the permit was never finalized because the grading was not completed according to the permit requirements. Staff further determined that the ground disturbing activities and previous sediment discharges occurred without coverage under any appropriate local, state, or federal permits.
9. **20 February 2015, first Notice of Violation.** Central Valley Water Board staff issued a Notice of Violation (NOV, Attachment E) for a violation of (1) Water Code Section 13260 for discharging waste without filing a report of waste discharge, and (2) Water Code Section 13376 for discharging pollutants without a permit. These violations were identified during the 4 December 2014 inspection. The NOV requested submittal of a Work Plan to mitigate future discharges from the roads and Terraces. The Work Plan was to be prepared by an appropriate professional and submitted no later than 27 March 2015. The NOV was sent via United States Postal Service (USPS) certified mail on 20 February 2015 to Mr. Terborg's address at 1114 Harrison St., San Francisco, California, but it is unknown if it was received since a return receipt was never received by staff. A copy of the NOV was also sent 3 April 2015 via USPS certified mail and was received at another address associated with Mr. Terborg, 1305 12th St. N., Princeton, Minnesota, as evidenced by a return receipt with a received date of 13 April 2015.
10. **5 May 2015, communication.** Mr. Terborg failed to submit the Work Plan by 27 March 2015. On 5 May 2015, Mr. Terborg called Central Valley Water Board staff to discuss the requested Work Plan. Mr. Terborg indicated that he had hired

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an environmental consultant, John McCullah, a geomorphologist with Salix Applied Earthcare, to prepare the Work Plan.

11. **7 May 2015, communication.** Mr. Terborg called and informed staff that Mr. McCullah had inspected the Site and would be generating the Work Plan. Mr. Terborg stated that he planned to return the entire slope to a native surface configuration. Based on this information, staff agreed to extend the deadlines associated with the Work Plan submittal.
12. **21 May 2015, Work Plan submitted.** On 21 May 2015, Mr. Terborg forwarded staff an email from Mr. McCullah that contained the Work Plan. The Work Plan included recommendations for correcting adverse drainage conditions and erosion of the Switchback Road and Access Road, and implementation of Best Management Practices (BMPs). The recommendations were based on a 7 May 2015 Site visit by Mr. McCullah. The email stated, "The access trail was constructed up a steep ridgeline with a couple of switchback turns. However, effective trail drainage was overlooked. The owner had implemented erosion control by installing a straw erosion control blanket. This was, however, ineffective in treating the severe runoff-caused erosion." Mr. McCullah advised Mr. Terborg to correct the drainage problems occurring due to the current road configuration. Mr. McCullah gave instruction to Mr. Terborg on Site, and referred Mr. Terborg to online manuals for how to perform proper road construction, BMP installation, and correction of the drainage issues. The Work Plan specified correcting 300 feet of drainage from the 3rd terrace, out-sloping berms and roads to restore runoff patterns, installing rolling dips along roads, removing debris, and seeding and mulching disturbed soils.
13. **7 July 2015, Work Plan approval.** Staff commented on and approved the Work Plan, provided the following conditions were met: (1) all appropriate permits were to be obtained prior to initiating any of the above mentioned work, including Shasta County Grading Permits, and (2) the work must be conducted by a licensed contractor. Staff also suggested gravelling the roads. All work was to be completed by 15 October 2015. A report documenting completed work was to be submitted by 15 November 2015. Work Plan approval and comments letter was sent to Mr. Terborg's Princeton, MN address.
14. **16 November 2015, communication.** Staff called Mr. Terborg to discuss Site work and schedule a closure inspection. Mr. Terborg told staff that the operator he had hired was slow to complete the work and that he would like to request an extension of his deadline. At this time, staff told Mr. Terborg that they would like to schedule an inspection to review remediation progress made at the Site in order to make a decision about a deadline extension. An inspection was scheduled for 21 December 2015.

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15. **21 December 2015, Site follow up inspection.** Staff met Mr. Terborg on Site to conduct a follow up inspection to determine compliance with the 20 February 2015 NOV, with the intent of documenting work completed as proposed in the approved Work Plan. Staff's 21 December 2015 observations (Attachment D) follow:
- a. Staff inspected the Access Road used to enter the Site. Although not previously identified during the 4 December 2014 inspection, during the follow up inspection, staff observed additional erosion and sediment discharges originating from the Access Road. Sediment laden storm water was observed to be discharging from the Access Road to an unnamed Class III watercourse, causing a visual increase in turbidity. Staff collected water samples both upstream and downstream from the point of discharge (Discharge Point 1) and submitted them for laboratory analysis of turbidity levels. Lab results showed that upstream from Discharge Point 1, turbidity measured 11 Nephelometric Turbidity Units (NTUs), and downstream from Discharge Point 1, turbidity measured 454 NTUs.
 - b. The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fifth Edition, Revised May 2018 (Basin Plan) establishes that, for background waters between 5 NTUs and 50 NTUs, turbidity shall not exceed 20 percent of the background sample. Water sampled immediately downstream of Discharge Point 1 (454 NTUs) was 4,127 percent higher than the background water (11 NTUs). Therefore, the discharge exceeded the Basin Plan's water quality objectives for turbidity. Staff observed that the Terraces and roads had not been remediated and were lacking erosion and sediment control BMPs and appeared to be in a similar condition as observed during the initial Site inspection 12 months earlier. A gully in the surface of the Switchback Road was concentrating storm water runoff and discharging turbid water to a nearby unnamed Class III watercourse (Discharge Point 2), near the terminus and parking area. Field turbidity measurements of stormwater runoff in the gully registered above the recordable limit of 1,000 NTU of the Hach 2100 Q turbidimeter used by staff.
 - c. During the inspection, staff and Mr. Terborg discussed the Central Valley Water Board's Enforcement Policy. Staff described some options for mitigating runoff from the Site and confirmed that Mr. Terborg was aware that he had missed all of his deadlines. Staff informed Mr. Terborg that the condition of the Access Road and Switchback Road were causing discharges of turbid storm water to waters of the state. Mr. Terborg told staff that he hired a local operator to make the changes detailed in the Work Plan, and that the operator had not yet performed the work. Mr. Terborg informed staff that he would be hiring Eddie Axner Construction to do the work. Mr. Terborg stated

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- his intention to finish the work within a month and that he would inform staff when he hired the construction company. Staff notified Mr. Terborg that the 15 October 2015 deadline was selected to ensure that on Site mitigation measures were completed before the onset of the rainy season.
- d. Based on observations from the initial inspection on 4 December 2014 and the 21 December 2015 follow up inspection, staff concluded that no significant progress had been made toward addressing the potential for discharge from the Terraces and roads. Specifically, the Work Plan approved 7 July 2015 included correction of the drainage from the Switchback Road, out-sloping the upper reach of the Switchback Road, installing a series of rolling dips, removing plastic netting, and seeding/mulching all bare or disturbed soils. At the time of the follow up inspection, BMPs had not been implemented. Staff noted that non-compliance with the aforementioned deadline had led to the continued discharge of turbid storm water to waters of the state, as observed by Central Valley Water Board staff.
16. **8 January 2016, communication.** Central Valley Water Board staff received an email from Mr. Terborg, stating that he had consulted with Eddie Axner Construction to perform work at the Site, and with Kevin Butler, a civil engineer, to obtain the necessary permits. Mr. Terborg also informed staff that he was “able to get the property out of foreclosure” and was looking to use all funds available to get the work done.
17. **1 February 2016, second Notice of Violation.** Due to Mr. Terborg’s failure to complete remediation activities, as observed during the 21 December 2015 inspection, a second NOV was issued (Attachment E) along with the 21 December 2015 inspection report. Paper copies of the NOV and enclosed Follow Up Inspection Report were sent via USPS certified mail on 1 February 2016 to Mr. Terborg’s address at 1114 Harrison St., San Francisco, California. The documents were unclaimed for one month and returned to the Central Valley Water Board office by the USPS on 7 March 2016.
18. **8 March 2016, communication.** Staff called and emailed Mr. Terborg to confirm receipt of the 1 February 2016 NOV. Staff called Mr. Terborg again on 11 March 2016, and Mr. Terborg verified that he had received the emailed copy of the NOV sent on 8 March 2016. Mr. Terborg provided a new mailing address of 1095 Hilltop Dr., Suite 526, Redding, California. Mr. Terborg also informed staff that Shasta County had denied an extension on his previous grading permit, but he expected to receive approval on a new one the week of 14 March 2016. He also mentioned that a consultant had been out to the Site and that Eddie Axner Construction was ready to begin work as soon as a grading permit was approved.

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19. **21 March 2016, third Notice of Violation.** A third NOV (Attachment E) was issued to Mr. Terborg due to Mr. Terborg's failure to make adequate progress on completing Site remediation. On 22 March 2016, staff sent paper copies of the third NOV and the 1 February 2016 Follow Up Inspection Report via USPS certified mail to Mr. Terborg's new address at 1095 Hilltop Dr., Suite 526, Redding, California. The third NOV and enclosed Follow Up Inspection Report were received, as evidenced by a return receipt with a received date of 28 March 2016. At the time of sending the third NOV, Mr. Terborg had been in violation for 157 days. Staff recommended completing the work detailed in the Work Plan immediately, which included taking measures to stabilize the surface of the Access Road to prevent further discharge to waters of the state.
20. **6 October 2016, Draft Clean Up and Abatement Order.** Due to Mr. Terborg's failure to complete remediation activities outlined in the approved Work Plan, a draft Cleanup and Abatement Order (Draft CAO) was issued on 6 October 2016. The Draft CAO was received at Mr. Terborg's address at 1095 Hilltop Drive, Suite 526, Redding CA 96003, as evidenced by the USPS certified return receipt dated 13 October 2016. The Draft CAO included a comment period. No comments were received by the Discharger during this time.
21. **21 October 2016, communication.** Bill Clifton, a construction company owner, left a voice mail to staff indicating that he had been retained to perform repair work at the Site and requested clarification on the scope of work. Staff returned Mr. Clifton's call on 21 October 2016 and left a message. Mr. Clifton did not respond, and to staff's knowledge, did not perform any work on the Site.
22. **2 December 2016, Final Clean Up and Abatement Order.** After receiving no comments from Mr. Terborg on the Draft CAO, Cleanup and Abatement Order R5-2016-0716 (CAO) was issued to Mr. Terborg on 2 December 2016 (Attachment B). The CAO was received at Mr. Terborg's address at 1095 Hilltop Drive, Suite 526, Redding, CA 96003, as evidenced by the USPS certified return receipt dated 7 December 2016. The CAO, which contained a directive under Water Code section 13267, contains the following compliance schedule for completion of mitigation and restoration work and submission of technical documents and monitoring reports.
 - a. By 27 December 2016, Mr. Terborg was required to submit an Interim Erosion and Sediment Control Plan (Interim Plan) to staff, prioritizing immediate stabilization and mitigation efforts needed to stabilize the Site and minimize erosion and further discharges to water during the 2016/2017 wet weather period.
 - b. By 27 January 2017, Mr. Terborg was required to have completed the work outlined in the Interim Plan.

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- c. By 15 February 2017, Mr. Terborg was required to submit a completion report to staff, including a summary and photographs of the work completed for the Interim Plan.
 - d. By 1 June 2017, Mr. Terborg was required to submit a proposed Restoration Monitoring and Mitigation Plan (RMMP) to staff, including an assessment of the impacts to tributaries of South Fork Clear Creek from unauthorized activities, plans for Site restoration to include how to abate long term impacts from Site runoff, and proposed mitigation to restore beneficial uses and to compensate for and minimize any further impacts to the tributaries of South Fork Clear Creek.
 - e. By 1 July 2017, Mr. Terborg was required to begin implementing the RMMP.
 - f. By 1 August 2017, Mr. Terborg was required to have completed all the restoration and mitigation measures described in the approved RMMP.
 - g. By 1 December 2017, Mr. Terborg was required to have submitted a completion report for the RMMP.
 - h. By 1 October of each year (starting 1 October 2018), Mr. Terborg was required to submit an annual monitoring report summarizing the monitoring results of the RMMP. Monitoring was to continue until at least three years after successful completion of the RMMP, or until a report, acceptable to the Assistant Executive Officer, was submitted showing that Mr. Terborg met the requirements of the RMMP.
23. **27 December 2016, Interim Plan due.** Mr. Terborg failed to submit an Interim Plan by this date.
24. **27 January 2017, Interim Plan completion deadline.** Mr. Terborg failed to complete implementation of an Interim Plan by this date.
25. **31 January 2017, communication.** Mr. Terborg called to inform staff that he had hired Vestra Resources (Vestra) to prepare the RMMP. Staff stated that per the CAO, the Interim Plan was due 27 December 2016, and that it had not been submitted. He acknowledged that he was aware of the deadline. He indicated that Vestra was going to look at the Site the following day with a contractor, and would be preparing the full RMMP for submittal. Mr. Terborg stated that Vestra could get all of the work done during the winter period.
26. **15 February 2017, Interim Plan Completion Report due.** Mr. Terborg failed to submit an Interim Plan completion report by this date.

27. **1 June 2017, RMMP due.** Mr. Terborg failed to submit an RMMP by this date.
28. **1 July 2017, RMMP work start.** Mr. Terborg failed to start the implementation of an RMMP by this date.
29. **July - August 2017, communication.** Staff communicated via phone and voicemail on four occasions with Mr. Terborg regarding the need to submit and complete an RMMP, and to inform Mr. Terborg that he had missed important deadlines outlined in the CAO. On 24 July 2017, Mr. Terborg indicated that he did not contract with Vestra to perform Site activities, due to the cost of preparing the RMMP. On 26 July 2017, Mr. Terborg called and left a voicemail stating that he was negotiating with Lawrence and Associates to perform required activities of the CAO. On 29 August 2017, staff emailed Mr. Terborg regarding the Central Valley Water Board staff's conditions for approval of the Work Plan submitted by Mr. McCullah on 21 May 2015, which would need to be addressed in the RMMP. These conditions were originally communicated in the 7 July 2015 Work Plan review letter.
30. **1 August 2017, RMMP work completion deadline.** Mr. Terborg failed to complete any work outlined in an RMMP by this date.
31. **17 October 2017, communication.** Mr. Terborg sent staff an email specifying Mr. McCullah would prepare a revised version of the Work Plan submitted on 21 May 2015 that would constitute an RMMP, and that Mr. McCullah had a copy of the CAO. Mr. Terborg stated work could begin at the property soon after the revision is completed and signed off by Central Valley Water Board staff.
32. **1 December 2017, RMMP completion report due.** Mr. Terborg failed to provide an RMMP completion report by this date.
33. **26 January 2018, communication.** Mr. Terborg called, stating he would be entering into a contract with Mr. McCullah to perform the work required in the CAO, and asked if work could be completed during the winter period. Staff responded that he could conduct work in the winter, but the plan would need to include measures to be taken should a wet weather event occur during active construction. Mr. Terborg then asked if completion of the work would clear the active violations. Staff explained that the CAO contains monitoring requirements to ensure compliance after the work is completed. Mr. Terborg indicated he understood and explained that a neighboring property owner was interested in purchasing the Site and that Shasta County indicated the violation would have to be lifted prior to the sale. Mr. Terborg indicated he would be able to submit a work plan within "a week or so."

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34. **8 June 2018, RMMP Submitted.** The Central Valley Water Board received Mr. Terborg's proposed RMMP prepared by Mr. McCullah.
35. **18 June 2018, communication, RMMP review comment provided.** Staff emailed and spoke via telephone with Mr. Terborg about the proposed RMMP. Staff concluded that the work plan appeared appropriate for the Site remediation. However, the proposed RMMP lacked a monitoring plan and site maps which were required per the CAO. Mr. Terborg indicated that he would contact his consultant and have him submit the additional information. Staff suggested that Mr. Terborg contact Shasta County regarding a grading permit, so that the final plan could be approved in a timely manner. Mr. Terborg indicated that he would begin the Shasta County grading permit process as soon as possible. Staff requested to be kept informed on the progress, and Mr. Terborg indicated that he would copy Central Valley Water Board staff on any email correspondence and communicate the status regularly.
36. **5 September 2018, communication.** Mr. Terborg called to discuss his property and compliance with the CAO. The Site had recently burned in the Carr Fire, and he asked if that would change the requirements of the CAO. Staff informed him that the CAO was still active, and he still needed to perform the required work. Additionally, due to the increased runoff expected due to the fire, completing the work in a timely manner was critical. Mr. Terborg again indicated that a neighbor of his was interested in purchasing the Site. Staff reminded Mr. Terborg that if the property transaction occurred without the remediation being completed, that the new Site owner would also be responsible for the remediation work. Mr. Terborg indicated that he understood, and that his consultant (Mr. McCullah) was going back to the Site to assess the RMMP with regards to the recent fire. Staff requested updates on progress, and urged Mr. Terborg to complete the required work prior to the coming winter to ensure that manageable runoff was mitigated. Staff reminded Mr. Terborg that the requirements of the CAO were long overdue, and that work needed to be completed as soon as possible.
37. **25 April 2019, communication.** Staff emailed Mr. Terborg to check on his progress of complying with the CAO and requested confirmation of a current mailing address. A copy of the third NOV and CAO were attached to the email. No response to this email was received.
38. **26 April 2019, fourth Notice of Violation.** Due to Mr. Terborg's continued failure to complete the requirements of the CAO, a fourth NOV (Attachment E) was issued to Mr. Terborg. However, the fourth NOV was undeliverable and marked "Return to Sender" from both his Redding and San Francisco addresses.
39. **10 May 2019, communication.** Staff called Mr. Terborg, who stated he had received the 25 April 2019 email and that he had reviewed the attached NOV and

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CAO. Mr. Terborg indicated he was proceeding with remediation efforts and would inform us of the status of a possible sale of the Site. Mr. Terborg indicated the potential buyer had a copy of the CAO and understood the violations and would remediate the Site if purchased. Mr. Terborg said he would arrange a conference call with the potential buyer and Central Valley Water Board staff for the following week. Staff reminded Mr. Terborg that any changes to the scope of work by new consultants would need to be approved.

40. **15 May 2019, communication.** Staff emailed Mr. Terborg a copy of the fourth NOV issued for failure to complete the requirements of the CAO, and requested he confirm receipt of the email. Staff also requested he provide a current mailing address, and informed him we had not yet heard from the prospective property buyer. Staff requested an update on the status of the property transaction and the steps taken to inform the prospective buyer of the ongoing Water Code violations, as well as the prospective buyer's contact information.
41. **31 May 2019, communication.** Staff emailed Mr. Terborg, reminding him that based on the 10 May 2019 phone call, staff expected to hear from him and the potential buyer, and that no information regarding recent progress with remediation efforts, or the status of the possible sale of the property had been received. Staff requested Mr. Terborg arrange a conference call with the potential buyer, so that we could communicate the requirements of the CAO. Mr. Terborg was instructed to contact the Central Valley Water Board's Redding office, as soon as possible to avoid an escalation of enforcement actions. As of the issuance of this Complaint, staff received no response.

THE DISCHARGER'S NON-COMPLIANCE WITH THE CAO

42. To date, the Discharger, Mr. Terborg, has yet to implement either the Interim Plan, or the RMMP, as required by the CAO. Table 1 outlines all potential violations associated with the Discharger's failure to comply with the CAO.

Table 1 – Potential Violations associated with non-compliance with Cleanup and Abatement Order R5-2016-0716

Requirement	Due Date	Water Code Violation	Maximum Per Day Penalty
Interim Plan Submission	27 December 2016	13268	\$ 1,000
Interim Plan Completion	27 January 2017	13350	\$ 5,000
Interim Plan Completion Report	15 February 2017	13268	\$ 1,000
RMMP Submission	1 June 2017	13268	\$ 1,000
Completion of Work in RMMP	1 August 2017	13350	\$ 5,000
RMMP Completion Report	1 December 2017	13268	\$ 1,000

43. As outlined in Table 1 (above) the Discharger is potentially in violation of six requirements of the CAO. (Noting that an RMMP was eventually submitted on 8 June 2018, over a year after the due date). Water Code sections 13350 and 13268 authorize the Central Valley Water Board to impose civil liabilities in the amounts listed in Table 1 on a per day basis for each of the violations.
44. Mr. Terborg was given an opportunity to comment on the Draft CAO before the final CAO was issued. However, no comments were received from Mr. Terborg during that time. It is acknowledged, and reflected in the administrative record, that staff had no communication with Mr. Terborg, either verbal or written, from 11 March 2016 through 31 January 2017, aside from a phone call on 21 October 2016 from Bill Clifton indicating he had been retained by Mr. Terborg to perform repair work on the Site.
45. Although staff had little communication with Mr. Terborg around the time of the initial Site inspection and issuance of the first NOV, Mr. Terborg was aware of the violations and was given ample opportunity to come into compliance as evidenced by his receipt of the Draft CAO issued 6 October 2016, and receipt of the 2 December 2016 final CAO, as well as Mr. Terborg's eventual submittal of an RMMP on 8 June 2018.

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46. Based on the above information, Central Valley Water Board staff recommends imposing civil liabilities based on two violations of the CAO as authorized by Water Code sections 13267 and 13350 for (1) failure to submit an RMMP by the deadline specified in the CAO, beginning on 1 June 2017, the date the RMMP was to be submitted; and (2) failure to complete the restoration and mitigation work described in the RMMP, beginning on 5 September 2018, the date Central Valley Water Board staff urged the Discharger to begin implementation of the RMMP.

ALLEGED VIOLATIONS – NON-COMPLIANCE WITH THE CAO

47. **Violation 1:** The Prosecution Team alleges that the Discharger violated Water Code section 13267 by failing to submit an RMMP by the deadline required under the CAO, which was 1 June 2017. An RMMP was eventually submitted on 8 June 2018. This violation is subject to administrative civil liability under Water Code section 13268, subdivision (b)(1). The Prosecution Team developed the proposed administrative civil liability for Violation 1 using the 2010 Enforcement Policy since the alleged violation occurred prior to adoption of the 2017 Enforcement Policy.
48. **Violation 2:** The Prosecution Team alleges that the Discharger violated the final CAO by failing to complete all approved restoration and mitigation measures described in the RMMP. This violation is subject to administrative civil liability under Water Code section 13350, subdivision (e)(1). The Prosecution Team developed the proposed administrative civil liability for Violation 2 using the 2017 Enforcement Policy since the alleged violation occurred after adoption of the 2017 Enforcement Policy. The violation being alleged is for failure to complete the work described in the 8 June 2018 RMMP starting on 5 September 2018, the date staff advised the Discharger to begin implementation of the RMMP. Staff understands that such work still has not been performed as of the date of issuance of this Complaint.

ADMINISTRATIVE CIVIL LIABILITY PROVISIONS

49. Water Code Section 13268 states, in relevant part:
- (a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)
- (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a

violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

50. Water Code section 13350 states, in relevant part:

(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or

(2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e). . .

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. (A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated. (B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs. . .

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

The violations alleged herein are subject to liability in accordance with Water Code section 13350.

CALCULATION OF ADMINISTRATIVE CIVIL LIABILITIES UNDER WATER CODE SECTION 13350 FOR THE VIOLATION

Maximum Civil Liability for Violation of a CAO:

51. Violation 1: Pursuant to Water Code section 13268, subdivision (b)(1), the statutory maximum administrative civil liability for Violation 1 is \$1,000 per day of

violation. The Prosecution Team alleges 373 days of violation, from 1 June 2017 to 8 June 2018. The statutory maximum for Violation 1 is therefore \$373,000. The proposed liability amount for Violation 1 is below the statutory maximum.

52. Violation 2: Pursuant to Water Code section 13350, subdivision (e)(1), the statutory maximum administrative civil liability for Violation 2 is \$5,000 per day per violation. The Prosecution Team alleges 552 days of violation, from 5 September 2018 to 9 March 2020 (the issuance date of this Complaint). The statutory maximum for Violation 2 is therefore \$2,760,000. The proposed liability for Violation 2 is below the statutory maximum.

Minimum Civil Liability for Violation of a CAO:

53. The 2010 Enforcement Policy requires the Regional Board to recover, at a minimum, the economic benefit plus ten percent.¹ The economic benefit for Violation 1 is approximately \$598. The minimum liability that may be imposed is the economic benefit \$598 plus ten percent, which is equal to \$657.80. The proposed liability amount for Violation 1 is above the minimum liability amount.
54. The 2017 Enforcement Policy similarly requires the Regional Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for Violation 2 is approximately \$1,788. The minimum liability permitted under the 2017 Enforcement Policy is the economic benefit \$1,788 plus ten percent, which is equal to \$1,966.80. However, Violation 2 is subject to a statutory minimum liability amount pursuant to Water Code section 13350, subdivision (e)(1)(B), which provides that where an order of the regional board is violated but does not result in a discharge, the civil liability amount shall be no less than one hundred dollars (\$100) for each day in which the violation occurs. The Prosecution Team alleges 552 days of violation. Accordingly, the statutory minimum liability for Violation 2 is \$55,200. Since the statutory minimum exceeds the economic benefit plus 10%, the statutory minimum liability is used for Violation 2, which is \$55,200.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

55. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Board is required to take into account the nature,

¹ The economic benefit figures in this Complaint assume that the Discharger would not try to deduct the delayed/avoided costs to reduce taxable income, due to cannabis cultivation remaining illegal under federal law. Additionally, including tax deductibility yields unrealistically low numbers because of the major revisions to the tax code effective in 2018.

circumstance, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

56. On 4 April 2017, the State Water Resources Control Board adopted Resolution No. 2017-0020 amending the Enforcement Policy. The amended Enforcement Policy was approved by the Office of Administrative Law and became effective on 5 October 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13350. Since violation 1 occurred prior to the effective date of the 2017 Enforcement Policy, the previous 2010 Enforcement Policy will govern prosecution and basis of liability. The 2017 Enforcement Policy amendments however will be used to provide clarification and procedural requirements. Violation 2 occurred after the effective date of the 2017 Enforcement Policy, which will govern that analysis.

The [2010 Enforcement Policy](#) can be found at:

https://www.waterboards.ca.gov/water_issues/programs/ssso/docs/audit/25wqep.pdf

The [2017 Enforcement Policy](#) can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

57. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A of this Complaint. The proposed civil liability considers such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
58. As described above, the maximum penalty that can be imposed against the Discharger for both violations is **\$3,133,000** and the minimum penalty, in accordance with the Enforcement Policy and Water Code section 13350, is **\$55,857**. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$198,352**. The specific factors considered in this penalty and calculations are detailed in Attachment A of this Complaint.

KYLE TERBORG
ASSESSOR'S PARCEL 041-430-049-000
SHASTA COUNTY

59. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the CAO for which penalties have not yet been assessed or for violations that may subsequently occur.
60. Issuance of this Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

DISCHARGER KYLE TERBORG IS HEREBY GIVEN NOTICE THAT:

61. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **One Hundred Ninety Eight Thousand, Three Hundred and Fifty Two Dollars (\$198,352)**. The amount of the proposed liability is based upon a review of the requirements of Water Code sections 13327 and 13350, as well as the 2010 and 2017 State Water Resources Control Board's Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violation.
62. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on 4 and 5 June 2020, unless one of the following occurs:
 - a. The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and it is received by the Central Valley Water Board by 7 April 2020, along with payment for the proposed civil liability of One Hundred Ninety Eight Thousand, Three Hundred and Fifty Two Dollars (\$198,352); or
 - b. The Discharger requests a delay by checking the box next to Option #2 or Option #3 on the attached form, and it is received by the Central Valley Water Board by 7 April 2020 along with a letter describing the issues to be discussed, and the Assistant Executive Officer of the Central Valley Water Board agrees to the delay after consideration of the letter.
63. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
64. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs)

incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by
CLINT E. SNYDER, P.G.,
Assistant Executive Officer

9 March 2020
Date

Attachment A: Penalty Calculations
Attachment B: Cleanup and Abatement Order R5-2016-0716
Attachment C: 20 December 2014 Inspection Report
Attachment D: 21 December 2015 Inspection Report
Attachment E: Notices of Violation (NOVs)
20 February 2015
1 February 2016
21 March 2016
26 April 2019