

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

In the Matter of  
NCA Management Co., LLC  
San Bernardino County,  
WDID No. 7\_36CC403989

**ADMINISTRATIVE CIVIL LIABILITY  
COMPLAINT NO R7-2020-0024**

The Administrative Civil Liability Complaint (Complaint) is issued to NCA Management Co., LLC (“Discharger”) by the Regional Water Quality Control Board, Colorado River Basin (Regional Water Board) Assistant Executive Officer pursuant to California Water Code (Water Code) section 13350, which authorizes the imposition of administrative civil liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer’s authority to a deputy, in this case, the Assistant Executive Officer. The Discharger is alleged to have violated conditions of the State Water Resources Control Board’s (State Water Board) *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*, Order No. WQ 2017-0023-0001-DWQ<sup>1</sup> (General Order), as amended by Order No. WQ 2019-0001-DWQ.

THE ASSISTANT EXECUTIVE OFFICER OF THE REGIONAL WATER BOARD  
ALLEGES THE FOLLOWING:

**BACKGROUND**

1. The Discharger owns and operates an indoor cannabis cultivation facility on San Bernardino County Assessor Parcel Number (APN) 0660-091-09, located at 3241 Needles Hwy in Needles, California (“Site”). The Site is located within the Homer Hydrologic Unit. The Regional Water Board’s Water Quality Control Plan for the Colorado River Region (Basin Plan), last amended in 2019, designates beneficial uses for groundwater in the Homer Hydrologic Unit as Municipal and Domestic Supply (MUN), Industrial Service Supply (IND), and Agricultural Supply (AGR).
2. On September 13, 2018, the Regional Water Board issued a Notice of Applicability (NOA) informing the Discharger of its enrollment under the General Order and its responsibility for meeting all applicable requirements associated with cannabis cultivation activities.
3. The Water Code directs the State Water Board, in consultation with the California Department of Fish and Wildlife, to adopt principles and guidelines, as part of a state policy for water quality control pursuant to the Porter-Cologne Water Quality Control Act, for diversion and use of water for cannabis cultivation. (Water Code, sec. 13149.)

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<sup>1</sup> Available at: [General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities](#)

In accordance with this mandate, on October 17, 2017, the State Water Board adopted the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy).<sup>2</sup> The Cannabis Policy contains guidelines for evaluating whether a cannabis cultivation site may affect instream flows and/or water quality, and establishes requirements related to water diversions and waste discharges. These guidelines and requirements are primarily implemented through permits to appropriate water, water right registrations, waste discharge requirements, waiver of waste discharge requirements, and general water quality certification. The purpose of the Cannabis Policy is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not negatively impact water quality, aquatic habitat, riparian habitat, wetlands, and springs.

4. On October 17, 2017, the State Water Board adopted General Order No. WQ-2017-0023-DWQ.<sup>3</sup> On February 5, 2019, the State Water Board adopted Order No. WQ-2019-0001-DWQ, amending the General Order effective April 16, 2019. The General Order implements the Cannabis Policy requirements, specifically those requirements that address waste discharges associated with cannabis cultivation activities. As part of this, the General Order provides conditional exemptions for certain cultivation activities. Dischargers may apply for conditional exemptions if its commercial cannabis cultivation activities occur within a structure with a permanent roof, a permanent relatively impermeable floor (e.g. concrete or asphalt paved), and comply with the Cannabis Policy and all applicable requirements in Attachment A and either:
  - a. Discharge all industrial wastewaters generated to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater; or
  - b. Collect all industrial wastewater in an appropriate storage container to be stored and properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater.
5. Conditionally exempt dischargers, like those engaging in indoor commercial cannabis cultivation activities, are required to obtain coverage under the Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Conditional Waiver).
6. Dischargers covered under the Conditional Waiver must comply with the conditions contained in the General Order. Ordered Paragraph A of the General Order (page 23) requires the Discharger to comply with all requirements described in Attachment A of the Cannabis Policy. The Cannabis Policy is included as Attachment A to the General Order.

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<sup>2</sup> The Cannabis Policy became effective December 18, 2017 upon the Office of Administrative Law's approval.

<sup>3</sup> General Order No. WQ-2017-0023-DWQ became effective December 18, 2017 upon the Office of Administrative Law's approval.

7. On August 21, 2018, the Discharger submitted an application for coverage under State Water Board Order No. WQ 2017-0023-DWQ's Conditional Waiver for its indoor cannabis cultivation facility. Discharge of wastewater from indoor cannabis cultivation activities to an onsite wastewater treatment system (OWTS) (such as a septic tank and leach field), to land, or to surface water was selected on the application as the method of wastewater disposal. On August 31, 2018, Regional Water Board staff contacted the Discharger to clarify the requirements for discharging cannabis cultivation wastewater, informing the Discharger that disposal of such waste to the OWTS was not permitted. Additionally, staff requested clarification on how the Discharger's wastewater would be disposed of in order to proceed with review of its Conditional Waiver application.
8. On September 6, 2018, Regional Water Board staff communicated with the Discharger's representative (Elyse Kaplan) and confirmed the change to the Site's method of disposal from an OWTS to a sealed tank system with a third-party hauler (tank and haul). The Discharger stated that all hydroponic /industrial wastewater generated are contained within a sealed tank or recirculated system with final waste products hauled off site.
9. Based on this information, the Discharger's cultivation activity was consistent with the Conditional Waiver. The Executive Officer of the Regional Water Board issued an NOA on September 13, 2018, confirming the Discharger's enrollment under the Conditional Waiver (Waste Discharge Identification No. 7\_36CC403989).
10. On June 25, 2019, Regional Water Board staff inspected the Discharger's Site. During that inspection staff observed:
  - Irrigation source water provided by the City of Needles and treated on-site by a reverse osmosis filtration system; and
  - Wastewater from the reverse osmosis filtration system discharged directly into a floor drain that led to the Discharger's OWTS on the east side of the Site.

The Discharger's representative (Matt Kaplan) confirmed that cannabis industrial wastewater began discharging from the reverse osmosis filtration system into the Site's OWTS starting on or around January 21, 2019. In response to staff's request to cease discharging, the Discharger turned off the reverse osmosis filtration system to prevent further discharges of industrial wastewater on June 26, 2019. In total, the reverse osmosis filtration system discharged to the Site's OWTS for 157 days.

11. The Regional Water Board issued a Notice of Violation (NOV) to the Discharger on October 22, 2019, for the unauthorized discharge of cannabis cultivation wastewater (mineralized wastewater from a reverse osmosis filtration system) to an OWTS. The NOV specified the tasks, plans, and documents required by the Regional Water Board to address the unauthorized discharges.

## LEGAL AND REGULATORY CONSIDERATIONS

### Water Code

12. Pursuant to Water Code section 13350, subdivision (a), any person who in violation of a waste discharge requirement, waiver condition, or other order or prohibition discharges waste or causes or permits waste to be deposited where it is discharged into waters of the State is subject to civil liability.
13. Pursuant to Water Code section 13350, subdivision (e), civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs, or an amount not to exceed ten dollars (\$10) per gallon discharged, but not both.
14. Pursuant to Water Code section 13327, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

### Basin Plan

15. Pursuant to the authority of Water Code Section 13243, Chapter 3 of the Basin Plan establishes enforceable Waste Discharge Prohibitions that apply to the Colorado River Basin Region. The Basin Plan is available at: [Colorado River Region Basin Plan](#).
16. Chapter 3, IV. D of the Basin Plan states that discharge of brines and mineralized waste to disposal facilities (septic tank) is prohibited. "Discharges of water softener regeneration brines, other mineralized wastes, and toxic wastes to disposal facilities which ultimately discharge in areas where such wastes can percolate to ground waters usable for domestic and municipal purposes are prohibited."

### Cannabis Policy

17. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 26:

Except as allowed and authorized in this Policy, cannabis cultivators shall not discharge:

- Irrigation runoff, tailwater, sediment, plant waste, or chemicals to surface water or via surface runoff;
- Waste classified as hazardous (California Code of Regulations, title 23, section 2521(a)) or defined as designated waste (Water Code section 13173); or

- Waste in violation of, or in a manner inconsistent with, the appropriate Water Quality Control Plan(s).

18. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 27:

Unless authorized by separate waste discharge requirements, the Cannabis Cultivation General Order, or a CWA section 404/401 permit, the following discharges are prohibited:

- Any waste that could affect the quality of waters of the state; or
- Wastewater from cannabis manufacturing activities defined in Business and Professions Code section 25100, indoor grow operations, or other industrial wastewater to an onsite wastewater treatment system (e.g. septic tank and associated disposal facilities), to surface water, or to land.

19. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 12:

The cannabis cultivator shall comply with all applicable requirements of the State Water Board and Regional Water Board (collectively Water Boards) water quality control plans and policies.

### **Water Quality Enforcement Policy**

20. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors identified in Water Code section 13327 that are required to be considered when imposing civil liability.

### **California Environmental Quality Act**

21. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Control Act (Pub. Res. Code § 21000 et seq.) in accordance with title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

### **ALLEGED VIOLATION**

22. The Prosecution Team alleges that between January 21, 2019 and June 26, 2019, the Discharger violated the Conditional Waiver requirements of the General Order by discharging approximately 94,200 gallons of mineralized wastewater from its reverse osmosis filtration system to its OWTS, thereby discharging waste or causing or

permitting this waste to be deposited to waters of the State. Discharger's actions constitute 157-days of violation. Due to the nature of the sediment under the Site and its proximity to the Colorado River channel (approximately 1,300 ft.), the discharge of industrial wastewater to the OWTS infiltrated groundwater and poses a threat to the groundwater basin's water quality.

### **PROPOSED ADMINISTRATIVE LIABILITY AMOUNT**

23. The Prosecution Team proposes an administrative civil liability amount of \$334,356.18 for the violation identified herein, and as detailed in Attachment A to this Complaint. The proposed administrative civil liability is calculated on a per day basis, as authorized under Water Code section 13350, and takes into account the factors cited in Water Code section 13327.

### **MAXIMUM LIABILITY**

24. The maximum liability under Water Code section 13350 is \$5,000 per day of violation. The Prosecution Team alleges 157 days of violation; this was calculated based on the documents and information provided by the Discharger. Therefore, the statutory maximum liability amount is \$785,000.00.

### **MINIMUM LIABILITY**

25. The Enforcement Policy requires the Regional Water Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for the alleged violation is approximately \$32,970.00. Therefore, the minimum liability that may be imposed in accordance with the Enforcement Policy is \$36,267.00.

### **THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

26. The Assistant Executive Officer of the Colorado River Basin Regional Water Board proposes an administrative civil liability amount of \$334,356.18.
27. A hearing on this matter will be conducted by the Regional Water Board on September 3, 2020, unless the Discharger selects one of the options in the Hearing Waiver Form and submits the completed form to the Regional Water Board by the deadline identified in the Hearing Procedure.
28. If this matter proceeds to a hearing, it will be governed by the attached Proposed Hearing Procedure. During the hearing, the Regional Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability amount. The Assistant Executive Officer, or designated lead prosecutor, reserves the right to amend the proposed amount of civil liability to conform to the evidence presented.

29. Notwithstanding issuance of this Complaint, the Regional Water Board retains authority to assess additional penalties for violations of the Discharger's Conditional Waiver for which penalties have not yet been assessed or for violations that may subsequently occur.

Original signed by Cassandra Owens 6/5/2020

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Cassandra Owens  
Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board

Date

Attachment: Attachment A - Administrative Civil Liability Penalty Methodology