

**Attachment B – ACL Complaint No. R1 –2011- 0039**  
**Specific Factors Considered – Civil Liability**  
**Humboldt Redwood Company (Complaint)**

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. **Violation No. 1 (*discharge violation*):** The Discharger applied for a CWA section 404 individual dredge/fill permit and discharged 400 cubic yards of aggregate fill without CWA section 401 certification from the state. The total maximum potential penalty amount for this violation is **\$684,300**.

**Calculation of Penalty**

**Step 1. Potential for Harm for Discharge Violations**

The potential for harm to the environment is associated with the discharge of aggregate (sand, gravel, and associated fine sediment). This is determined by the sum of the factors for:

- a) *Harm or Potential Harm to Beneficial Uses:* 1 - Minor

*Discussion:* Material discharged is native aggregate from the nearby gravel bar.

- b) *Physical, Chemical, Biological or Thermal Characteristics:* 0 – Negligible Risk

*Discussion:* Material discharged is native aggregate from the nearby gravel bar.

- c) *Susceptibility to Cleanup:* 1

*Discussion:* Less than 50% of the discharge was susceptible to cleanup or abatement since the aggregate fill material was inundated by flowing water and washed downstream by the river.

**Step 2. Assessment for Discharge Violations**

The volume of aggregate fill discharged to the Eel River is estimated to be 400 cubic yards based on the amount listed in the Discharger's application for the certification which expired on November 15, 2009. Accordingly, liability is proposed on a per gallon basis, as shown below.

- d) *Deviation from Requirement:* Major

*Discussion:* The Discharger disregarded the requirement to obtain certification prior to conducting fill activities within waters of the United States.

- e) *Per Gallon Factor:* 0.015 (Table 1, Page 14 of the Enforcement Policy)
- f) *Gallons Discharged:* 69,430 gallons (400 cubic yards X 173.6 gallons per cubic yard)
- g) *Liability Amount:* **\$10,645.00** (Number of Gallons Subject to Penalty (68,430) X Maximum Per Gallon Penalty (\$10) X Per Gallon Factor (0.015))

### **Step 3. Per Day Assessment for Non-Discharge Violations**

This step is not applicable because this violation is a discharge violation.

### **Step 4. Adjustment Factors**

- h) *Culpability:* 1.1

*Discussion:* The Discharger was given the score of 1.1, which increases the amount of liability because the Discharger was negligent but the discharge was not intentional.

- i) *Cleanup and Cooperation:* 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the amount of liability, because the Discharger responded to the incident and was able to remove the bridge deck and one abutment log from the river. The bridge deck and abutment log were the only portions of the temporary structure that could be removed once the temporary bridge and associated aggregate fill had been washed away by high flows.

- j) *History of Violations:* 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the amount of liability, because there is not a history of repeat violations.

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

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

- k) *Total Base Liability Amount:* **\$11,290.95** (Initial Liability (\$10,264.50) x Adjustments (1.1)(1)(1))

**Steps 6 through 10 Are Applied to the Combined Total Base Liability Amount for All Violations and Will be Discussed After the Total Base Liability Amounts Have Been Determined for the Remaining Violations.**

- 2. Violation No. 2 (non-discharge violation):** The Discharger violated valid conditions and monitoring requirements of an expired CWA section 401 certification. The Discharger was required to notify the Regional Water Board at least five working days prior to bridge installation and bridge removal activities with details regarding the project schedule, in order to allow staff to be present onsite during bridge installation or removal, and to answer any public inquiries that may arise regarding the project.

### **Calculation of Penalty**

#### **Step 1 and 2. Potential for Harm and Assessments for Discharge Violations**

Violation No. 2 is a non-discharge violation. Accordingly, Steps 1 and 2 are not applicable.

#### **Step 3. Per Day Assessment for Non-Discharge Violations**

Liability is assessed on a per day basis as shown below.

- a) *Potential Harm to Beneficial Uses:* Minor

*Discussion:* Failing to notify the Regional Water Board in advance of bridge installation and removal activities presents a minor threat to beneficial uses.

- b) *Deviation from Requirement:* Major

*Discussion:* The requirement to notify the Regional Water Board in advance of bridge installation and removal activities has been rendered ineffective.

- c) *Per Day Factor:* 0.30 (Table 3, Page 16 of the Enforcement Policy)

- d) *Multiple Day Violations:* 2

- e) *Initial Liability Amount:* **\$6,000.00** (Number of days (2) X Maximum Penalty (\$10,000) X Per Day Factor (0.30))

#### **Step 4. Adjustment Factors**

- f) *Culpability:* 1.1

*Discussion:* The Discharger was given the score of 1.1, which increases the amount of liability because the Discharger was negligent but the discharge was not intentional.

- g) *Cleanup and Cooperation:* 0.75

*Discussion:* The Discharger responded to the incident in a relatively timely manner and was able to remove the bridge deck and one abutment log from the

flowing river. The bridge deck and abutment log were the only portions of the temporary structure that could be removed.

h) *History of Violations:* 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the amount of liability, because there is not a history of known violations with this project.

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

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

- i) *Total Base Liability Amount:* **\$4,950.00** (Initial Liability (\$6,000.00) x Adjustments (1.1)(0.75)(1))

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

The Combined Total Base Liability Amount for Violation Nos. 1 and 2 is **\$16,240.95** (\$11,290.95 + \$4,950.00)

The following factors apply to the Combined Total Base Liability Amounts for all of the violations discussed above.

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

- a) *Adjusted Combined Total Base Liability Amount:* **\$16,240.95**

*Discussion:* The Discharger is a large privately owned timber company. The Total Base Liability Amount was not adjusted to address the Discharger's ability to pay or continue in business.

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

- a) *Combined Total Base Liability Amount:* **\$16,240.95** + \$1,500 (Staff Costs) = **\$17,740.95**

- b) *Discussion:* The State and Regional Water Boards have incurred \$1,500 in staff costs associated with the investigation and enforcement of the violations alleged herein. In accordance with the Enforcement Policy, this amount is added to the Adjusted Combined Total Base Liability Amount.

**Step 8. Economic Benefit**

- a) *Estimated Economic Benefit:* **\$2,704.00**

*Discussion:* The economic benefit associated with Violation No. 1 is the delayed cost of obtaining certification including the associated project fee based on CCR section 2200. The estimated economic benefit is based on the total fee including the "Fill & Excavation Discharges" fee, which is based on the discharge size (0.75 acres), plus the \$640 base fee. The Discharger is not expected to have benefitted financially by not removing the bridge and associated fill prior to the bridge being washed away during high flows because it was still necessary for the Discharger to mobilize heavy equipment to the site to remove the bridge deck and bridge removal was more difficult during the high flow conditions.

There was no economic benefit associated with Violation No. 2.

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

a) *Minimum Liability Amount: **\$2,974.40***

*Discussion:* The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is \$2,704.00.

b) *Maximum Liability Amount: **\$704,300.00***

*Discussion:* The maximum administrative liability amount is the maximum amount allowed by Water Code Section 13385: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. The proposed liability falls within these maximum and minimum liability amounts.

### **Step 10. Final Liability Amount**

The total recommended liability for all the violations alleged in the Complaint is **\$17,740.95** (final liability amount for Violation Nos. 1 and 2).