

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the Matter of:)	
)	Order No. R1-2016-0051
OLIVE FRANKLIN, TRUSTEE OF THE)	
CHARLES A. FRANKLIN & JULIA F. FRANKLIN)	for
TRUST (also known as "THE FRANKLIN)	
DECLARATION OF REVOCABLE TRUST DATED)	Administrative Civil Liability
JUNE 16, 1992" and as "THE FRANKLIN)	
DECLARATION OF REVOCABLE TRUST)	
DATED 6-16-1992") AND)	
AS TRUSTEE OF THE OLIVE M. FRANKLIN)	
FAMILY TRUST DATED JUNE 16, 1992, AND)	
DANIEL FRANKLIN (Referred to collectively)	
as Franklin Trust))	
)	
)	
ADMINISTRATIVE CIVIL LIABILITY)	
COMPLAINT No. R1-2016-0033)	
MENDOCINO COUNTY)	

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds the following:

This matter comes before the Regional Water Board from an Administrative Civil Liability Complaint R1-2016-0033 dated July 22, 2016 (Complaint) issued to Mr. Daniel Franklin and Ms. Olive Franklin, Trustee of the Charles A. Franklin & Julia F. Franklin Trust (Dischargers). The Complaint alleged violations of Clean Water Act section 301 (33 U.S.C.A. §1311) and Water Code section 13376 and proposed an administrative civil liability in the amount of \$381,947 pursuant to California Water Code section 13385. A hearing took place on December 15, 2016, in accordance with the Hearing Notice and Procedure and California Code of Regulations, title 23, sections 648-648.8.

BACKGROUND

1. In 2002, the Charles A. Franklin & Julia F. Franklin Revocable Trust (Franklin Trust) purchased the property located on 17777 Eel River Road, in Mendocino County, California (Site). The Mendocino County assessor parcel number (APN) for the Site is APN 171-260-16. The Site is 260 acres and the designated land use is Timber Production Zone. Ms. Olive Franklin, as trustee of the Franklin Trust, is properly named as a Discharger in this Complaint where legal title to property owned by a trust is held by the trustee¹. As owner of the Property, Ms. Olive Franklin, on behalf of the Franklin Trust, is responsible for the condition of the property and discharges of waste from the property.
2. Mr. Daniel Franklin is a beneficiary of the Franklin Trust, and son of Olive Franklin. Daniel Franklin controlled and conducted activities on the Property including the

¹ See *Galdjie v. Darwish* (2003) 113 CalApp.4th 1331, 1349

cultivation of cannabis. Mr. Franklin purchased and installed and/or authorized the installation of a fuel bladder on the Site to divert and store stream water for purposes of providing water for irrigation and fire protection on the Property.

3. Regional Water Board enforcement staff (staff) inspected the Property two times in May 2013 following the April 2013 discharge event described in subparagraph b., below, and conducted additional aerial reconnaissance and site review in 2015 and 2016. Staff observed and documented evidence indicating the following:
 - a. **May 24, 2013 Inspection.** On May 24, 2013, Regional Water Board staff and representatives of the California Geologic Survey and California Department of Fish and Wildlife inspected the Property. During the inspection, Mr. Franklin informed Regional Water Board staff that a discharge occurred when a fuel bladder failed, discharging water that had been collected therein for irrigation and fire protection. The bladder reportedly failed because the outlet line on the bladder had been left in a closed position while the intake line was open, causing the bladder to overfill and burst. The bladder was filled with water diverted from two points of diversion, from a spring (POD #1) and from a stream (POD #2). The label on the bladder indicated that the bladder was designed for use with fuels, with a maximum capacity of 50,000 gallons, and not recommended for long term use. Mr. Franklin estimated that at the time of the rupture, the bladder might have contained as much as 80,000 gallons of water.
 - b. **Discharge Event.** On or about April 24, 2013 or April 25, 2013 a fuel bladder containing an estimated volume of at least 50,000 gallons of water ruptured along a seam. Evidence at the site of the bladder indicated that after the rupture, the entire contents of the bladder emptied onto the native soil below, eroded sections of an approximately two-foot high berm surrounding the bladder, then carried sediments, soils, and rocks from the berm into an unnamed tributary to the Upper Main Eel River. Once reaching the unnamed tributary, the volume and velocity of the sediment-laden water scoured and displaced instream sediment and debris for a distance of approximately 2,000 lineal feet before reaching the Upper Main Eel River.
 - c. The Discharger diverted water from an adjacent stream in a different watershed without an authorized diversion and use permit from the State Water Resources Control Board. This enforcement action does not address violations related to the Dischargers' unauthorized diversion and use of water from the stream without a proper permit.
 - d. The Penalty methodology developed by Prosecution Team staff for ACLC R1-2016-0033 conservatively assessed penalties for 50,000 gallons of water discharged from the ruptured bladder. The subsequent erosion of the berm and stream channel was estimated to result in approximately 104,727

gallons of waste discharged into the Upper Main Eel River. Prosecution Team staff did not include the volume of eroded sediment and rock in the penalty calculation.

4. The Regional Water Board may impose an administrative civil liability pursuant to the procedures described in Water Code section 13323.
5. The unnamed stream is tributary to the Eel River in the Lake Pillsbury Hydrologic Sub Area of the Upper Main Eel River Hydrologic Area and is a water of the United States. 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 the Upper Main Eel River watershed (Basin Plan, p. 2-9.00-10.00):
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Navigation
 - h. Hydropower generation
 - i. Water contact recreation
 - j. Non-contact water recreation
 - k. Commercial and sport fishing
 - l. Warm freshwater habitat
 - m. Cold freshwater habitat
 - n. Wildlife habitat
 - o. Rare, threatened, or endangered species
 - p. Migration of aquatic organisms
 - q. Spawning, reproduction, and/or early development
 - r. Aquaculture

The Upper Main Eel River and its tributaries are waters of the United States and waters of the state, and are federal Clean Water Act section 303(d)-listed as impaired due to both sediment and temperature.

6. Pursuant to Water Code section 13385, subdivisions (a)(1) and (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.

VIOLATIONS

7. On or about April 24 and 25, 2013, the Dischargers violated Water Code section 13385(a)(1) and (5) and federal Clean Water Act section 301 (33 U.S.C. §1311) when a 50,000 gallon water bladder ruptured and released water at the site, resulting in a discharge of 104,727 gallons or more of sediment slurry into the unnamed Class II tributary and the Upper Main Eel River.

DETERMINATION OF LIABILITY

1. Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(5) A requirement of section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.
2. Water Code section 13376 provides that “the discharge of pollutants . . . except as authorized by waste discharge requirements . . . is prohibited.”
3. Water Code section 13385, subdivision (c), provides that the state board or regional board may impose civil liability administratively pursuant to California Water Code Article 2.5 (commencing with section 13323) of Chapter 5 not to exceed the sum of both a daily basis and a per gallon basis.
4. Water Code section 13385, subdivision (c)(1), provides that the civil liability on a daily basis may not exceed ten thousand dollars (\$10,000) for each day the violation occurs.
5. Water Code section 13385, subdivision (c)(2), provides that the civil liability on a per gallon basis where there is a discharge that exceeds 1,000 gallons not cleaned up may not exceed an additional penalty of ten dollars (\$10) multiplied by the number of gallons discharged.
6. Pursuant to Water Code section 13385, subdivision (e), 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 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 its ability to continue its 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.

7. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

CALCULATION OF PENALTY

8. On November 17, 2009, the State Water Resources Control 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. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385(e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.
9. **Maximum Penalty Amount:** The maximum liability that may be imposed under Water Code section 13385 is \$500,000. This is based on the maximum liability of \$10,000 per day for one day of violation, and \$10 per gallon over 1,000 gallons discharged but not cleaned up (49,000 x \$10=\$490,000).
10. **Minimum Penalty Amount:** The minimum liability under Water Code section 13385, subdivision (e) is no less than the economic benefit derived from the violation. For this case, as established in Attachment A, the minimum statutory liability is \$7,949. The Enforcement Policy requires that the adjusted Total Base Liability Amount be, at a minimum, 10 percent higher than the economic benefit received as a result of the alleged violation. The Dischargers' estimated economic benefit plus 10 percent is \$8,743.90.

ADMINISTRATIVE CIVIL LIABILITY

11. Based on consideration of the above facts, the applicable law, and after applying the methodology in the Enforcement Policy, the Regional Water Board finds that civil liability shall be imposed administratively against the Dischargers in the amount of **\$37,079**, as explained in detail in Attachment A to this Order.

12. Notwithstanding the issuance of this Order, the Regional Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.
13. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request, and may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that:

1. Ms. Olive Franklin, Trustee of the Charles A. Franklin & Julia F. Franklin Trust and Daniel Franklin shall be assessed an Administrative Civil Liability in the amount of thirty-seven thousand and seventy nine dollars (\$37,079).
2. Payment shall be made no later than 30 days from the date on which this Order is adopted. Ms. Olive Franklin, Trustee of the Charles A. Franklin & Julia F. Franklin Trust and Daniel Franklin shall send the original signed check to the State Water Resources Control Board Division of Administrative Services, ATTN: Accounting, 1001 I Street, 18th Floor, Sacramento, California 95814, and shall send a copy to Stormer Feiler, North Coast Regional Water Quality Control Board, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

I, Matthias St. John, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on December 15, 2016.

Matthias St. John
Executive Officer

Attachment A Calculation of Penalties

The State Water Resources Control Board's Water Quality Enforcement Policy ("Enforcement Policy") establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under California Water Code (Water Code) section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

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

Step 1. Potential for Harm (7)

The Potential for Harm for the discharge is seven (7). The potential for harm is the sum of all factors for a) the potential for harm to beneficial uses, b) the physical, chemical, biological or thermal characteristics of the discharge, and c) the susceptibility for cleanup or abatement (<50%).

a. Specific Factor: Potential Harm to Beneficial Uses

Category: **Above Moderate (4)**

Staff observed that the water released from the bladder started out with a dispersed flow path that overtopped and eroded a two-foot berm that surrounded the water bladder, and then traveled 30 to 40 feet as sheet flow, over forest soils, before discharging to an unnamed tributary to the Upper Main Eel River. The discharge posed a significant threat of harm to beneficial uses where the release of approximately 50,000 gallons of water that mixed with sediment was discharged into a confined channel located on steep slopes ranging from 50-80%. The discharge subsequently formed a debris torrent that traveled for a distance of approximately 2,000 feet, and along the way, eroded the bed and banks of the unnamed tributary stream; dislodged soil, instream boulders, cobbles and woody materials; radically altered, if not eliminated, all habitats in the affected Class II¹ stream channel before discharging to the Upper Main Eel River (Eel River). The discharge appeared to remove most of the vegetation within the stream channel bed and banks, for a distance of over 2,000 feet, leaving clear evidence of a scour line.

¹ California Forest Practice Rules define a Class II watercourse as 1) a watercourse capable of supporting non- fish aquatic species, or 2) a watercourse within 1000 feet of a watercourse that seasonally or always has fish present. The definition excludes Class III watercourses from the exception.

Fine and coarse materials from the channel bed appeared to have been scoured out by the surge (kinetic energy) of the discharge. The volume of the discharge transported down the stream scoured the channel bottom to an average depth of 1-4 feet from downstream of the water bladder to the confluence with the Eel River. Regional Water Board staff observed broken off vegetation and ferns that had been completely torn away except for the root masses. Staff observed the unnamed tributary had been scoured to bedrock on the bottom of the stream and on side slopes in the stream in many locations. Staff observed boulders and debris that had been carried and deposited onto roads and into inside ditches. At the M8 Road, staff observed that sediment and debris had plugged the culvert and overtopped the road and entered the stream channel again. Staff saw deposits of large boulders 2-3 feet in diameter where the stream met the road. Staff also observed that a portion of the flow had diverted along the road surface and inside ditch and discharged into an adjacent stream channel. At the point the unnamed tributary feeds to the Eel River, Regional Water Board staff observed a significant amount of sediment covering the soil and plants, leaving deposits of sediment visible as a trail into the Eel River.

The discharge and the subsequent scouring and erosion violated water quality objectives in the unnamed tributary and likely violated these objectives in the Eel River temporarily. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality objectives for all waters within the Region. The objectives identify constituents that are of concern when discharged into the aquatic environment, including the following:

Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Turbidity

Turbidity shall not be increased more than 20% above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waivers thereof.

The Basin Plan also designates potential and existing beneficial uses to each watershed. According to the Basin Plan, the existing and potential beneficial uses of the Lake Pillsbury Hydrologic Subarea of the Upper Main Eel River Hydrologic Area include: Municipal & Domestic Supply; Agricultural Supply; Industrial Service Supply; Industrial Process Supply; Ground Water Recharge; Freshwater Replenishment; Navigation; Hydropower Generation; Water Contact Recreation; Non-Contact Water Recreation; Commercial & Sport Fishing; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species; Migration of Aquatic Organisms; Spawning, Reproduction and/or

Early Development; and Aquaculture. Of these beneficial uses, all except Navigation and Hydropower Generation are likely to have been impacted during and following the discharge event.

This discharge reached the Upper Main Eel River watershed, which is a Class II stream and in the California Coast Evolutionarily Significant Unit (ESU) for Chinook Salmon and the Northern California Distinct Population Segment (DPS) for Steelhead Trout. The National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA-NMFS) designated the ESU and DPS to protect Chinook Salmon, and Steelhead Trout, which are both listed as Threatened species under the United States Endangered Species Act.

The period of the initial impacts is estimated to have lasted at least 24 hours.

The Van Arsdale fishery station (located 3 miles downstream from where the unnamed tributary discharges into the Eel River) observed and reported an increase in instream turbidity in the Eel River during this time period that lasted about a day and half, and reported that a high rate of outmigration occurred coincident to this increase in turbidity. A turbidity plume can potentially affect aquatic life through disruption of the following: 1) feeding behavior, 2) predator avoidance 3) cover-seeking responses, 4) respiration, and 5) migration. At the time this discharge occurred, Chinook Salmon young of the year were rearing in the Eel River.

In sum, the discharge adversely impacted the beneficial uses where the scouring of approximately 2,000 feet of the unnamed tributary occurred. Impacts to the unnamed tributary, as described above, likely altered the habitat such that the beneficial uses were adversely impacted. In addition, water quality objectives were likely violated in both the unnamed tributary and the Eel River. A factor of (4) four is appropriate where the discharge posed a significant threat to beneficial uses (e.g., significant impacts to aquatic life and habitat).

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

Category: **Moderate (2)**

The discharge of water mixed with sediment initially discharged to the unnamed tributary. Sediment has physical characteristics that pose a moderate physical and biological risk or threat to aquatic life and instream habitat, both in the water column and deposited on the stream channel bottom. Sediment in the water column can cause elevated turbidity levels leading to altered light regimes which can directly impact primary productivity, species distribution, behavior, feeding, reproduction, and survival of aquatic biota.

Suspended sediment in the water column can cause other direct effects to aquatic species, including physical abrasion, clogging of filtration and respiratory organs, and, at very high concentrations, mortality.

Increased sedimentation can smother macroinvertebrates, incubating embryos and emergent fry, can fill pools, and can seal gravel and decrease interstitial water flow and dissolved oxygen concentrations.

The Prosecution Team assessed a factor of two (2) where the physical and biological characteristics of sediment-laden water posed a moderate risk to the aquatic habitat and species.

c. Susceptibility to Cleanup or Abatement:

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

The earthen materials discharged from the water bladder failure were dispersed and not susceptible to cleanup. Therefore, a factor of **1** was assessed.

Step 2. Assessments for Discharge Violation

In total, this discharge represents the approximately 50,000 gallons of sediment- laden water discharged into the unnamed tributary.

The deviation from requirements is major, where an unauthorized discharge to a water of the U.S. occurred in violation of the Clean Water Act which prohibits the discharge of pollutants to waters of the U.S. without a permit.

Per-Gallon Determination

The Potential for harm is seven (7). This is determined by the sum of the factors for a) the potential for harm to beneficial uses (**4** – Above moderate); b) the physical, chemical, biological or thermal characteristics of the discharge (**2** – Moderate); and c) the susceptibility for cleanup or abatement is < 50 %, so a value of (**1**) applies. With the potential for harm factor of 7 and a major deviation from requirement, according to Table 1 on page 14 of the Enforcement policy, a factor of **0.31** per gallon is derived.

Based on these parameters, liability is assessed on a discharge of 50,000 gallons. Therefore, the initial amount of liability based on the volume discharged is:

High Volume Discharge

Based on the facts of this case, a per gallon assessment of \$2 is appropriate because the nature of the discharge is comparable to a construction storm water discharge. In this case, the evidence shows the discharge was composed of diverted springwater collected during the winter period that contained no pollutants other than the sediment that was carried downstream when the bladder ruptured and the water was released. Applying the

Enforcement Policy’s maximum penalty amount of \$2 for a “high volume discharge” is appropriate based on the unique circumstances in this case.

$(50,000 - 1,000 = 49,000 \text{ gallons}) \times (0.31 \text{ per gallon factor}) \times (\$2 \text{ per gallon}) =$
\$30,380

Per Day Determination

Based on the facts in this case, an assessment for one day of discharge is appropriate. The water bladder failed all at once, discharging sediment, water and debris in a one-day event. When applying a deviation from requirement of “major” to Table 2 on page 15 of the Enforcement Policy, a **0.31** per day factor is derived.

The initial liability amount for one day of discharge is $\$10,000 \times 0.31 =$ **\$3,100**

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 dischargers’ culpability, efforts to clean up and/or cooperate with regulatory authority, and the dischargers’ compliance history.

a. Culpability (**1.0**)

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 Dischargers were assessed a neutral multiplier value of (**1.0**). because while Mr. Daniel Franklin, as the operator of the Site, should have been aware of the potential for the bladder to fail if overfilled,, there was no evidence presented to show that Mr. Franklin or any person responsible for operating or maintaining the bladder had ever previously overfilled the bladder to the point where it compromised its integrity leading to a sudden discharge event. The evidence shows that while negligent, it was not intentional or grossly negligent; rather it was an accident to overfill a bladder with water. The Enforcement Policy supports applying a lower multiplier for accidental incidents.

A 1.0 is a reasonable assessment of culpability where the Discharger was negligent, and that negligence caused an accidental and unexpected release of 50,000 gallons of sediment-laden water to discharge to the unnamed tributary and the Eel River.

b. Cleanup and Cooperation (**0.9**)

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 can be used, with a higher multiplier when there is a lack of cooperation. In this case, the Dischargers have been assessed a slightly lower than neutral value of **0.9** due to their cooperation, including reporting the discharge incident, accepting responsibility for the bladder failure, and providing some timely site mitigations following notification of the incident. After being prompted by Regional Water Board staff in 2014, the Dischargers took steps to identify whether it was necessary to take restoration measures. Here, restoration was not obligatory because the nature and extent of the damage to the unnamed tributary was not conducive to restoration or remediation. On balance, a factor of 0.9 was assessed.

c. History of Violations (**1**)

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.0 can be used, and is to be increased as merited by history of violations. In this case, because the Dischargers have 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 factor) x (cleanup and cooperation factor) x (history of violations factor) = Total base liability amount

Discharge Violation
 $\$30,380 \times 1.0 \times 0.9 \times 1 = \$27,342$

One Day of Discharge
 $\$3,100 \times 1.0 \times 0.9 \times 1 = \$2,790$

Total Base Liability
 $\$27,342 + \$2,790 = \$30,132$

Step 6. Ability to Pay and to Continue in Business

The Enforcement Policy provides that if the Regional Water Board has sufficient financial information to assess the Dischargers' ability to pay the Total Base Liability, or to assess

the effect of the Total Base Liability on the violator’s ability to continue in business, then the Total Base Liability amount may be adjusted downward.

Based on a preliminary asset search of the public records, the Franklin Trust has assets within the United States consisting of two properties (17777 Eel River Road in Potter Valley and 27860 Poppy Drive in Willits). The last full market sale of the 17777 Eel River property was for \$255,000 in 2002 and \$135,000 for the 27860 Poppy Drive property.

Based on the information provided, the Discharger’s net worth is \$285,702, the net worth of the properties in the Olive Franklin Family Trust. However, based on the evidence, there is very little income generated by the Trust, and Daniel Franklin has a limited income. Thus, the entire ability to pay analysis is based on the value of the properties held by the trust.

Step 7. Other Factors as Justice May Require

Costs of Investigation and Enforcement:

The costs of investigation and enforcement are other factors as justice may require, and should be added to the liability amount.

As of the date of drafting this methodology, Prosecution Staff has incurred costs of investigation and enforcement of at least \$6,946.68. This is a conservative amount based on 73 hours of staff time invested, including 8 for site inspections and interviews, and 65 for data analysis, writing the report and calculating penalties at \$95.16 per hour. **Staff Costs: \$6,947.**

Total Base Liability Amount: \$37,079.

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.

Any estimate of economic benefit is not able to capture the fact that the Regional Water Board would not have issued waste discharge requirements for an uncontrolled discharge of a large volume of water such as occurred due to the Dischargers’ actions. The installation of alternate tanks would require a project plan including survey and design components, however the Prosecution Team did not present sufficient evidence to support the assumed number and cost of tanks provided in its analysis, or associated cost of developing a Project Plan for the tank installation and operation. Accordingly, the Board is deleting the costs (\$41,017) that the Prosecution team asserts in its economic analysis are

necessary to replace the single bladder with ten individual tanks. The annual maintenance cost for the storage tanks and associated pumps and piping is estimated at \$1,000 per year. The economic benefit also includes the cost of: a lake and streambed alteration permit from California Department of Fish and Wildlife (DFW) (with \$250.00 permit fee), a diversion and use permit from the State Water Resources Control Board Division of Water Rights and the five-year renewal fee (with \$250 registration fee and \$100 renewal fee), and permits from Mendocino County. In addition, the Dischargers can be required to pay the California Environmental Quality Act costs of addressing the permit application to DFW, which starts with a \$1500.00 deposit and can require additional deposits. To calculate the economic benefit of non-compliance we had our in house economist use the BEN model that was developed and is recommended by the US Environmental Protection Agency. Based upon the use of the BEN model with a set of estimated costs associated with potential avoided regulatory requirements the Board has estimated the economic benefit of non-compliance at \$7,949.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount of \$7,949, or \$8743.90. The adjusted combined Total Base Liability Amount of \$37,079 is more than the economic benefit of noncompliance plus 10%. Therefore no liability adjustment is required.

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. Though there is no statutory minimum, the Enforcement Policy requires 10% more than the economic benefit. The proposed liability falls within the maximum and minimum amounts.

- a. Maximum Liability Amount: **\$500,000**

$$[49,000 \text{ gallons} \times \$10.00/\text{gallon}] + \$10,000/\text{day} = \$500,000$$

- b. Minimum Liability Amount: **\$8,743.90.**

Step 10. Final Administrative Civil Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is **\$37,079.**