

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

**Complaint No. R1-2020-0009  
for  
Administrative Civil Liability**

**In the Matter of:  
Sonoma Luxury Resort, LLC  
Saggio Hills Development Project Site (a.k.a. Montage Healdsburg)  
16840 Healdsburg Avenue, Healdsburg, CA 95448**

**Attn: Mr. Robert S. Green  
WDID NO. 1B06169WNSO (401 Cert)  
WDID NO. 1 49C375878 (CGP)**

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) to Sonoma Luxury Resort LLC (hereinafter, Discharger) for the Saggio Hills Development Project Site (a.k.a. Montage Healdsburg) (Site)<sup>1</sup>. The Complaint assesses liability for discharges from the Site in violation of California Water Code (Water Code) section 13385, subdivisions (a)(2), (a)(4), and (a)(5) and federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. section 1311) section 301. The Complaint is issued pursuant to Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code Division 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer.

This Complaint alleges thirty-eight violations based on evidence that Discharger failed to implement the requirements of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit or CGP) and meet the conditions of the Clean Water Act Section 401 Water Quality Certification issued to the Discharger (401 Certification) while conducting construction work on the Site.

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<sup>1</sup> The Site is comprised of approximately 60 parcels, and for that reason each assessor's parcel number (APN) is not listed here. For reference purposes, the two largest parcels at the Site are Sonoma County APNs 091-310-001-000 and 091-320-027-000. The Site also include Parcels 091-330-043-000 (Woodlands Drive) and 091-320-029-000 (Valley Oak Circle) and the residential lots adjacent to these parcels.

**The Assistant Executive Officer of the Regional Water Board hereby alleges that:**

### **BACKGROUND**

1. The Discharger is constructing a resort and residential homes with structures and associated infrastructure disturbing approximately 65 acres of land on a 258-acre property in the hills in the northern portion of the unincorporated urban boundary of the City of Healdsburg, in Sonoma County. The Site consists of 43 acres for a 130-room hotel resort, 37 acres for a public park and fire substation, 14.3 acres for 150 units of affordable housing, and 22 acres for construction of 70 privately-owned residences within a 142-acre private open space. Site construction began in May 2016; final stabilization is anticipated in November 2021. The Site contains approximately 3.8 acres of wetlands and other waters of the state and the United States, and the project will permanently fill 2.08 acres of seasonal wetlands and 1,100 linear feet of watercourse.
2. The Regional Water Board is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within the north coast region of the State of California. Storm water runoff from the Site discharges to Foss Creek, and to an unnamed tributary to Jordan Pond, thence to Lytton Creek, both of which are tributary to the Russian River.<sup>2</sup> The *Water Quality Control Plan for the North Coast Region* (Basin Plan) identifies the following existing and potential beneficial uses for the Middle Russian River Hydrologic Area (Basin Plan, pp. 2-11):
  - 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

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<sup>2</sup> Lytton Creek is in the Middle Russian River HA, Geyserville HSA, and is identified on the 303(d) list as impaired for sediment / siltation. Foss Creek is in the Middle Russian River HA, Warm Springs HSA, and is identified on the 303(d) list as impaired for sediment/siltation.

- o. Rare, threatened, or endangered species
  - p. Migration of aquatic organisms
  - q. Spawning, reproduction, and/or early development
  - r. Aquaculture
3. The Russian River supports a number of aquatic species, including the Coho Salmon, Chinook Salmon, and Steelhead Trout.

The Basin Plan contains water quality objectives which are necessary for reasonable protection of the beneficial uses. Protection of fishery beneficial uses (i.e., Cold Freshwater Habitat; Commercial and Sport Fishing; Spawning, Reproduction, and/or Early Development; Rare, Threatened, or Endangered Species; and Migration of Aquatic Organisms) are of particular importance and include the following:

- Sediment (Section 3.3.11) “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.”
  - Suspended Material (Section 3.3.12) “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
  - Turbidity (Section 3.3.17) “Turbidity shall not be increased more than 20 percent above naturally occurring background levels.”
4. The Basin Plan (Section 4.2.1) contains the *Action Plan for Logging, Construction, And Associated Activities*, that includes the following waste discharge prohibitions:
- “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”
  - “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
5. The federal Clean Water Act section 303(d) list identifies the Russian River as impaired due to sediment and temperature.

On November 29, 2004, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region* (Sediment TMDL Implementation Policy) by

Resolution R1-2004-0087. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

The Sediment TMDL Implementation Policy states that the Executive Officer is directed to “rely on the use of all available authorities, including the existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”

6. On December 5, 2008, the Regional Water Board issued a 401 Certification to the Discharger for dredge and fill to waters of the United States associated with Site development.<sup>3</sup> The 401 Certification contains project-specific requirements to avoid, minimize, and mitigate temporary and permanent impacts caused by project activities, including requirements for monitoring and reporting, implementation of best management practices (BMPs), implementation of the project as described in the application for certification, cessation of project activities in the event of an unauthorized discharge or water quality problem, and compliance with applicable requirements of the Basin Plan.
7. On April 4, 2016, the Discharger obtained coverage for the Site, as a Risk Level 3 site, under the CGP. The CGP requires implementation of Best Available Treatment Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate pollutants in storm water runoff. Furthermore, the CGP has requirements for storm water runoff monitoring and reporting, implementation of BMPs, bioassessment monitoring and reporting, low-impact development, and compliance with applicable requirements of the Basin Plan.
8. Beginning on October 3, 2018, Regional Water Board staff observed numerous violations of the CGP and 401 Certification at the Site. Attachment A provides the details of these violations. Below is a summary of each alleged violation. Generally speaking, it is important to note that the violations caused significant deposition of fine sediment in receiving waters that support a habitat for a number of aquatic species including endangered salmonids. Fine sediment in Site receiving waters caused elevated turbidity. Turbidity, if chronic, can affect respiration through damage to and interference with the gills of fish and macro-invertebrates, affecting overall physiological health of aquatic species.

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<sup>3</sup> Amended on September 30, 2013, and December 6, 2018.

## ALLEGED VIOLATIONS

9. **Violations 1, 9, 15, 18, 25, and 31:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.5.e by failing to ensure effectiveness of existing BMPs to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges on October 3, 2018 (Violation 1), November 29 through December 4, 2018 (Violation 9), January 7, 2019 (Violation 15), January 18, 2019 (Violation 18), February 1, 2019 (Violation 25), and February 4, 2019 (Violation 31).
10. **Violations 2, 10, 16, 19, 26, and 32:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section D.2 by failing to provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots on October 3, 2018 (Violation 2), November 29 through December 4, 2018 (Violation 10), January 7, 2019 (Violation 16), January 18, 2019 (Violation 19), February 1, 2019 (Violation 26), and February 4, 2019 (Violation 32).
11. **Violations 3, 11, 20, 27, and 33:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section E.1 by failing to have effective perimeter controls and failing to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site on October 3, 2018 (Violation 3), November 29 through December 4, 2018 (Violation 11), January 18, 2019 (Violation 20), February 1, 2019 (Violation 27), and February 4, 2019 (Violation 33).
12. **Violations 4, 13, 21, 29, and 35:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section E.4 by failing to have adequate or effective linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths on October 3, 2018 (Violation 4), November 29 through December 4, 2018 (Violation 13), January 18, 2019 (Violation 21), February 1, 2019 (Violation 29), and February 4, 2019 (Violation 35).
13. **Violations 5, 14, 22, 30, and 36:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section F by failing to effectively manage all run-on, all runoff within the Site and all runoff that discharges off the Site on October 3, 2018 (Violation 5), November 29 through December 4, 2018 (Violation 14), January 18, 2019 (Violation 22), February 1, 2019 (Violation 30), and February 4, 2019 (Violation 36).
14. **Violations 6, 17, and 23:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.1.b by failing to cover and berm loose stockpiled construction materials that are not actively being used at the Site on November 29, 2018 (Violation 6), January 18, 2019 (Violation 17), and February 1, 2019 (Violation 23).

15. **Violations 7 and 24:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.2.d by failing to cover waste disposal containers at the Site during rain events on November 29, 2018 (Violation 7) and February 1, 2019 (Violation 24).
16. **Violation 8:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section B.1.c by failing to properly store chemicals in watertight containers or in a storage shed at the Site on November 29, 2018 (Violation 8).
17. **Violations 12, 28, and 34:** The Prosecution Team alleges that the Discharger violated CGP Attachment E, Section E.3 by failing to implement appropriate erosion control BMPs in conjunction with sediment control BMPs for areas under active construction on November 29 through December 4, 2018 (Violation 12), February 1, 2019 (Violation 28), and February 4, 2019 (Violation 34).
18. **Violation 37:** The Prosecution Team alleges that the Discharger violated CGP Section VI.C and Basin Plan Section 3.3.17 by discharges from the Site which resulted in turbidity increases of more than 20% above background in receiving waters on 33 days between November 29, 2018 and May 19, 2019.
19. **Violation 38:** The Prosecution Team alleges that the Discharger violated CGP Section III.A, CGP Section III.B, and 401 Certification Condition 7 through the unauthorized discharge of 6.6 million gallons of sediment-laden storm water from the Site on November 20-24, 2018, November 27-29, 2018, and February 1-2, 2019.

### **LEGAL AND REGULATORY CONSIDERATIONS**

20. The CGP was issued pursuant to Clean Water Act section 402 and implementing regulations adopted by the US EPA and chapter 5.5, division 7 of the Water Code (commencing with section 13370), including Water Code section 13376. The General Permit serves as an NPDES permit for discharges of stormwater runoff from the Site.
21. The 401 Certification was issued pursuant to Clean Water Act 401 and Water Code section 13160 and certifies that the project, as approved by the U.S. Army Corps of Engineers pursuant to Clean Water Act section 404, will also meet state water quality requirements if certain conditions are met.

### **WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY**

22. 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. ...

- (4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.
- (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. ...
- (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but 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.
- (e) In determining the amount of any liability imposed under this section, the regional water board shall take into account the nature, circumstances, extent, and gravity of the violation or violations, 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 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 violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

### **WATER QUALITY ENFORCEMENT POLICY**

23. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e).
24. The violations alleged are subject to liability in accordance with Water Code section 13385. The Prosecution Team has considered the required factors for the alleged violation using the methodology in the 2017 Enforcement Policy.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

25. 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. Res. Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308 and 15321, subdivision (a)(2).

### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

26. The Prosecution Team proposes an administrative civil liability of **\$4,907,409** for Violations 1-38, as detailed in Attachment A to this Complaint. This proposed administrative civil liability was derived from the use of the penalty methodology in the 2017 Enforcement Policy. The proposed administrative civil liability takes into account the factors described in Water Code section 13385, subdivision (e) and Water Code section 13327, such as the Discharger's culpability, history of violations, ability to pay, and other factors as justice may require.
27. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional administrative civil liability for violations which have not yet been assessed or for violations that may subsequently occur.

### **MAXIMUM STATUTORY LIABILITY**

28. Pursuant to Water Code section 13385, subdivision (c), the statutory maximum administrative civil liability for each violation in Violations 1-38 is \$10,000 per day of violation, plus \$10 for each gallon discharged and not cleaned up in excess of 1,000 gallons.
29. Violations 1, 9, 15, 18, 25, and 31 describe the Discharger's failure to ensure effectiveness of existing BMPs to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges on October 3, 2018 (Violation 1), November 29 through December 4, 2018 (Violation 9), January 7, 2019 (Violation 15), January 18, 2019 (Violation 18), February 1, 2019 (Violation 25), and February 4, 2019 (Violation 31). The statutory maximum liability for Violations 1, 9, 15, 18, 25, and 31 is \$60,000 [(\$10,000/day) x 6 days].
30. Violations 2, 10, 16, 19, 26, and 32 describe the Discharger's failure to provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots on October 3, 2018 (Violation 2), November 29 through December 4, 2018 (Violation 10), January 7, 2019 (Violation 16), January 18, 2019 (Violation 19), February 1, 2019 (Violation 26), and February 4, 2019 (Violation 32). The statutory maximum liability for Violations 2, 10, 16, 19, 26, and 32 is \$60,000 [(\$10,000/day) x 6 days].
31. Violations 3, 11, 20, 27, and 33 describe the Discharger's failure to have effective perimeter controls and failing to stabilize all construction entrances and exits to



sufficiently control erosion and sediment discharges from the Site on October 3, 2018 (Violation 3), November 29 through December 4, 2018 (Violation 11), January 18, 2019 (Violation 20), February 1, 2019 (Violation 27), and February 4, 2019 (Violation 33). The statutory maximum liability for Violations 3, 11, 20, 27, and 33 is \$50,000 [(\$10,000/day) x 5 days].

32. Violations 4, 13, 21, 29, and 35 describe the Discharger's failure to have adequate or effective linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths on October 3, 2018 (Violation 4), November 29 through December 4, 2018 (Violation 13), January 18, 2019 (Violation 21), February 1, 2019 (Violation 29), and February 4, 2019 (Violation 35). The statutory maximum liability for Violations 4, 13, 21, 29, and 35 is \$50,000 [(\$10,000/day) x 5 days].
33. Violations 5, 14, 22, 30, and 36 describe the Discharger's failure to effectively manage all run-on, all runoff within the Site and all runoff that discharges off the Site on October 3, 2018 (Violation 5), November 29 through December 4, 2018 (Violation 14), January 18, 2019 (Violation 22), February 1, 2019 (Violation 30), and February 4, 2019 (Violation 36). The statutory maximum liability for Violations 5, 14, 22, 30, and 36 is \$50,000 [(\$10,000/day) x 5 days].
34. Violations 6, 17, and 23 describe the Discharger's failure to cover and berm loose stockpiled construction materials that are not actively being used at the Site on November 29, 2018 (Violation 6), January 18, 2019 (Violation 17), and February 1, 2019 (Violation 23). The statutory maximum liability for Violations 6, 17, and 23 is \$30,000 [(\$10,000/day) x 3 days].
35. Violations 7 and 24 describe the Discharger's failure to cover waste disposal containers at the Site during rain events on November 29, 2018 (Violation 7) and February 1, 2019 (Violation 24). The statutory maximum liability for Violations 7 and 24 is \$20,000 [(\$10,000/day) x 2 days].
36. Violation 8 describes the Discharger's failure to properly store chemicals in watertight containers or in a storage shed at the Site on November 29, 2018 (Violation 8). The statutory maximum liability for Violation 8 is \$10,000 [(\$10,000/day) x 1 day].
37. Violations 12, 28, and 34 describe the Discharger's failure to implement appropriate erosion control BMPs in conjunction with sediment control BMPs for areas under active construction on November 29 through December 4, 2018 (Violation 12), February 1, 2019 (Violation 28), and February 4, 2019 (Violation 34). The statutory maximum liability for Violations 12, 28, and 34 is \$30,000 [(\$10,000/day) x 3 days].
38. Violation 37 describes the Discharger's failure to prevent discharges from the Site resulting in turbidity increases of more than 20% above background in receiving

waters on 33 days between November 29, 2018 and May 19, 2019. The statutory maximum liability for Violation 37 is \$330,000 [(\$10,000) x 33 days].

39. Violation 38 describes the Discharger's failure to prevent unauthorized discharges of 6.6 million gallons of sediment-laden storm water from the Site on November 20-24, 2018, November 27-29, 2018, and February 1-2, 2019. The statutory maximum liability for Violation 38 is [(\$10,000/per day) x 10 days] + [\$10 x (6,600,000 gallons-3,000 gallons)] = \$66,070,000.
40. The proposed administrative civil liability considers the statutory maximum liability for each violation.

### MINIMUM LIABILITY

41. Water Code section 13385, subdivision (e), requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The 2017 Enforcement Policy further requires the Regional Water Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for the violations alleged is approximately \$363,612.14. Attachment A includes a detailed explanation of the basis of this calculation. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to \$399,973.35. The proposed administrative civil liability is more than the minimum liability amount.

### THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

42. The Assistant Executive Officer of the Regional Water Board proposes an administrative civil liability in the amount of **\$4,907,409**. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code sections, 13385, subdivision (e), and 13327, as well as the 2017 Enforcement Policy.
43. The Regional Water Board will hold a hearing on this Complaint at the April 16/17, 2020. The meeting will be held in Humboldt County, California, at a time and location to be announced or at a location posted on the [Regional Water Board's website](#), unless the Discharger does one of the following by the February 20, 2020, deadline to submit the Waiver Form, as described in the Hearing Procedures.
  - a. The Discharger waives the right to a hearing by completing the attached Waiver Form (checking the box next to Option 1) and returning it to the Regional Water Board, along with payment for the proposed administrative civil liability amount of **\$4,907,409**; or
  - b. The Regional Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option 2 on the attached Waiver Form and returning it to the Regional Water Board; or

- c. The Regional Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option 3 on the attached Waiver Form and returning it to the Regional Water Board along with a letter describing the items to be discussed.
44. If a hearing is held, it will be governed by the attached Hearing Procedures. During the hearing, the Regional Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.
45. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented.
46. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 405(2), p. 510.)

January 21, 2020  
Date

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Claudia E. Villacorta, P.E.  
Assistant Executive Officer  
Regional Water Board Prosecution Team