

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

Cleanup and Abatement and 13267 Order No. R1-2021-0040

for

Susan Yang Xiong and Kou Xiong

**11 North Meadow Lane
Hayfork, CA 96041**

Assessor Parcel Number 015-420-27-00

Trinity County

This Cleanup and Abatement and 13267 Order No. R1-2021-0040 (Order) is issued to Susan Yang Xiong and Kou Xiong (hereinafter collectively referred to as the Dischargers), based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order, and Water Code section 13267 which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports.

Findings

The Executive Officer of the Regional Water Board finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Site Conditions:** Site conditions on Trinity County Assessor's Parcel Number (APN) 015-420-27-00 (hereinafter referred to as the Property) constitute threats to water quality and beneficial uses. Barker Creek and an unnamed tributary to Barker Creek pass through the eastern portion of the Property. Barker Creek, and its unnamed tributaries are waters of the state, as well as waters of the United States (references hereinafter to waters of the United States are also waters of the state).¹ The Dischargers caused or allowed the discharge and/or

¹ The Regional Water Board administers and enforces the federal Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne Water Quality Control Act provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

threatened discharge of waste to receiving waters through site development, including placement of fill material in a tributary to Barker Creek; installation of a concrete diversion structure in a tributary to Barker Creek; construction of a water storage pond, redirection of a section of the tributary, installation of a storm water drainage pipe; improper containment of wastewater, solid waste and domestic greywater; and erosion of the main access road above a tributary to Barker Creek. Cannabis cultivation and associated activities at the Property were conducted without adequate best management practices to ensure water quality protection. The Dischargers' activities, resulting in discharge and threatened discharge, were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of unauthorized discharges to waters of the state, tributaries to Barker Creek. These discharges include fill material in a tributary to Barker Creek, and other unauthorized discharges or threat of discharges of solid waste, petroleum and fertilizer products, domestic wastewater, and sediment from the Property to multiple tributaries to Barker Creek and to eliminate the threat of future discharges. Discharges are currently threatening the water quality of Baker Creek and its unnamed tributaries and groundwater. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.), the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
3. **Responsible Parties:** The Dischargers, as the Property owner and former owners and operators are responsible for causing the discharge of waste or creating a threat of discharge, with the legal ability to control the activities on the Property that resulted in the discharge and/or threat of discharge, and are responsible parties for purposes of this Order. This Order finds that Susan Yang Xiong and Kou Xiong are the responsible parties and are jointly and severally liable:
 - a. Information available from Trinity County accessed by State Water Board staff via Digital Map Products' LandVision™ service shows that approximately 3.7 acres, identified as Trinity County APN 015-420-27-00 was purchased on February 27, 2014 from Evan D. Barrow and Lisa T. Barrow by the former owner Susan Yang Xiong.
 - b. Information available from Trinity County accessed by State Water Board staff via Parcel Quest shows that Trinity County APN 015-420-027-000 was transferred by Evan D. Barrow and Lisa T. Barrow to Susan Yang

Xiong on February 13, 2014 and the Individual Grant Deed was filed at the Trinity County Clerk Recorder Office on February 27, 2014.

- c. Per records from the Trinity County Assessor-Recorder's office, as presented in Digital Map Products' LandVision™ online service, Susan Yang Xiong owned the Property when State Water Board staff inspected the Property on June 26, 2019.
 - d. Peter Xiong was the operator onsite during the June 26, 2019 inspection. A Notice of Violation was issued by the State Water Board Division of Water Rights for unpermitted water use to Mr. Peter Xiong and signed by Mr. Peter Xiong at conclusion of the inspection.
 - e. Per records from the Trinity County Assessor-Recorder's office, as presented in Digital Map Products' LandVision™ online service, Susan Yang Xiong transferred ownership of the Property to Kou Xiong and recorded the transfer of the property on October 7, 2020.
 - f. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
4. **Property Location and Description:** This Property is located at 11 North Meadow Lane, approximately four miles northeast of Hayfork in Trinity County. Barker Creek is located on the east side of the Property and an unnamed tributary passes through the Property joining Barker Creek. Cannabis cultivation and associated activities including placement of fill material and a concrete diversion structure occurred in and adjacent to a tributary to Barker Creek, in the vicinity of latitude 40° 34'54.70"N and longitude -123°6'51.53"W.
5. **Property History:** This Property has no prior regulatory oversight or history with the Regional Water Board. There is also no record of any person obtaining coverage under the State Water Board Order No. WQ 2019-0001-DWQ (previously WQ 2017-0023-DWQ), *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation* (Cannabis General Order) for activities occurring at the Property. If the Dischargers and/or any tenant(s) or lessee(s) wish to continue cultivation, coverage under the Cannabis General Order or under individual waste discharge requirements is required.
6. **Factual Basis of Order:** The Dischargers' activities and/or the conditions observed at the Property, as documented in the State Water Board's Inspection Report (Attachment 1) and Notice of Violation dated on November 12, 2019, (Attachment 2), and as detailed below, have caused or permitted to cause and threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into an ephemeral watercourse, an unnamed

tributary to Barker Creek, and created and/or threaten to create a condition of pollution by unreasonably impacting water quality and beneficial uses of the unnamed tributary to Barker Creek.

- a. **Receiving Waters:** Barker Creek is a tributary to Hayfork Creek, which is in the Hayfork Valley Hydrologic Subarea, and tributary to the South Fork Trinity River in the South Fork Trinity River Hydrological Area of the Trinity River Hydrologic Unit. The South Fork Trinity River is a tributary to the Trinity River, a tributary to the Klamath River. Barker Creek and its unnamed tributaries are waters of the state, as well as waters of the United States. The South Fork Trinity River Watershed is Clean Water Act section 303(d)-listed as impaired due to sediment/siltation and high-water temperature. On December 30, 1998, the U.S. Environmental Protection Agency approved South Fork Trinity River and Hayfork Creek Total Maximum Daily Loads (TMDL) for sediment. The TMDL indicates that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. As such, protection of this beneficial use is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation.
- b. **Observations:** On June 26, 2019, Staff for the State Water Board Office of Enforcement and Division of Water Rights (Division), and the California Department of Fish & Wildlife (CDFW) inspected the subject Property, executing a search warrant obtained by the CDFW Watershed Enforcement Team (WET) from the Trinity County Superior Court. Attachment 1 and Attachment 2 document the water quality concerns and violations that staff observed on the Property, including the following:
 - i. Installation of a concrete diversion structure in a tributary to Barker Creek;
 - ii. Placement of spent growth medium and perlite in a tributary to Barker Creek;
 - iii. Unpermitted outdoor cannabis cultivation near a tributary to Barker Creek;
 - iv. Evidence of domestic wastewater discharged from a mobile home onto the ground;
 - v. Evidence of discharge of an unknown oily liquid from a portable generator located along the bank of Barker Creek;
 - vi. Evidence of discharge of domestic wastewater onto the ground under a makeshift kitchen sink;
 - vii. A recently excavated water storage pond for water diversion from a tributary to Barker Creek;
 - viii. An open trash container filled with an unknown bright green liquid located near a tributary to Barker Creek;

- ix. Evidence of burnt solid waste on the ground with potential to discharge to a tributary to Barker Creek; and
- x. Poor housekeeping practices associated with cannabis cultivation activities, including inadequate containment and storage of petroleum containers, cultivation-related waste, and fertilizers, allowing for potential discharges of pollutants to surface water and groundwater.

7. **Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:**

The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the Regional Water Boards.

- a. **Beneficial Uses:** Existing and potential beneficial uses for the Hayfork Valley Hydrologic Sub Area within the South Fork Trinity River Hydrologic Area, in the Trinity River Hydrologic Unit include the following: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO) Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial or Sport Fishing (COMM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Migration of Aquatic Organisms (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
- b. **Basin Plan Prohibitions:** The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan's *Action Plan for Logging, Construction, and Associated Activities* (Action Plan) includes two waste discharge prohibitions (Basin Plan, Ch. 4 at p. 4-33).
 - i. "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." (Basin Plan, 4.2.1 (1) at p. 4-33.)
 - ii. "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." (Basin Plan, 4.2.1 (2) at p. 4-33.)

- c. **Basin Plan Water Quality Objectives:** Chapter 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development activities include the following:
- i. **3.3.1 Bacteria:** “The bacteriological quality of waters of the North Coast Region shall not be degraded beyond natural background levels. In no case shall coliform concentrations in waters of the North Coast Region exceed the following: In waters designated for contact recreation (REC1), the median fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 50/100 ml, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 ml (State Department of Health Services).”
 - ii. **3.3.7 Oil and Grease:** “Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance, or that otherwise adversely affect beneficial uses.”
 - iii. **3.3.11 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.”
 - iv. **3.3.12 Settleable Material:** “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - v. **3.3.13 Suspended Material:** “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - vi. **3.3.17 Turbidity:** “Turbidity shall not be increased more than 20 percent 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 waiver thereof.”
8. **Regional Water Board Resolutions:** As part of Regional Water Board’s efforts to control sediment waste discharges and restore sediment impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region* (also known as the Sediment TMDL Implementation Policy), on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including 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.” 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.

To address sources of elevated water temperature to reduce impairments to waters of the state and prevent further impairment, the Regional Water Board adopted the Policy for Implementation of the Water Quality Objective for Temperature in the North Coast Region (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the Policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provides shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.

9. **State Water Board Resolutions:** State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the Statement of Policy with Respect to Maintaining High Quality Waters in California (“Resolution 68-16”). Resolution 92-49 requires waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup. Additionally, Executive Order W59-93, also referred to as the “No Net Loss Policy,” which has been incorporated into the Basin Plan, acknowledges the environmental and economic benefits of wetlands to the people of this state and identifies three primary objectives, including protection against net loss and an aim for long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California.
10. **Failure to Obtain Applicable Permits:** State Water Board Staff has reviewed available records and determined that site development for cannabis cultivation

and associated activities including the placement of fill material, a concrete diversion structure and spent growth medium in a tributary to Barker Creek (waters of the State); construction of a water storage pond for water diversion, and evidence of discharge of domestic wastewater occurred on the Property without coverage under the following Water Board programs:

- a. A Clean Water Act section 401 State Water Quality Certification from the Regional Water Board;
- b. Coverage under the Cannabis General Order for outdoor cannabis cultivation on the Property that exceeds 2,000 square feet;
- c. An Onsite Wastewater Treatment System permit for discharge of domestic wastewater from the Trinity County Division of Environmental Health; and
- d. Applicable Water Right from the Division.

11. Legal Authority to Require Cleanup and Abatement: Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

- a. **Waste:** "Waste" is defined by Water Code section 13050, subdivision (d) as, sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.
 - i. **Sediment:** Both sediment and organic material, when discharged to waters of the state, are "wastes" as defined in Water Code

section 13050. The Dischargers caused or permitted waste to be discharged or deposited where it is, will be, or has the potential to be, discharged to tributaries of Barker Creek and subsequently to Hayfork Creek subsequently the South Fork Trinity River, Trinity River, and Klamath River, which are considered waters of the state, and waters of the United States.

- b. **Pollution:** "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.
- i. Sediment from the insert of fill material in a watercourse, and erodible soils on main access road located on and adjacent to the property owned and/or used by the Dischargers has discharged, and still has the potential to discharge into unnamed streams tributary to Barker Creek in violation of Water Code sections 13260 and 13376 and provisions of the Basin Plan, and creates or threatens to create a condition of pollution subject to this Order in accordance with Water Code section 13304.
 - ii. Site development activities conducted by the Dischargers, their agents, and/or their tenants, in addition to inadequate maintenance or pollution control efforts on existing site features, improper handling and storage of fertilizers, soil amendments and other waste materials have resulted in the unauthorized discharge or threat of discharge of waste into surface water and groundwater, and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. Many documented areas and features of concern are affecting or threatening to affect water quality on the subject Property by encroaching on or discharging to unnamed tributaries and to Barker Creek.
 - iii. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial

Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).

- iv. The discharge of organic material and sediment in the Trinity River watershed is especially problematic because, as noted above, the Trinity River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to several pollutants, including sedimentation/siltation and temperature. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold-water fish such as spring and fall run Chinook salmon, coho salmon, and steelhead trout (Beneficial Uses impacted: SPWN and MIGR).
- v. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment, which requires that 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. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters.

These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature; and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat.

It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial

Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

- vi. Discharge of excess nutrients, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase for biological oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms which create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses impacted: RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (Beneficial Uses impacted: REC-1, REC-2, and MUN).

12. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

13. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these technical reports shall bear a reasonable relationship to the need for the reports and the benefits to be gained from the reports.

This Order requires three types of technical and monitoring reports. Staff estimate the cost of the reports to be approximately \$8,600 to \$29,000².

² The State Water Board considered the estimated costs of technical and monitoring program reports related to site characterization, stabilization, and restoration during the adoption and amendment of the Cannabis Cultivation Policy and General Order. Estimated costs for reports are in the State Water Board's 2017 Direct Cost Analysis for the Proposed Cannabis Cultivation Policy. The costs to develop

- a. The Cleanup, Restoration, and Monitoring Plan (CRMP) is a necessary planning/technical report that assesses the impacts to Barker Creek and its unnamed tributaries resulting from the unauthorized land disturbance and cultivation activities since the June 26, 2019 inspection; determines the appropriate remedial activities to address these impacts; and creates a restoration plan and implementation schedule that will guide the scope of work to cleanup and abate the discharges and threat of discharge on the Property. The anticipated benefits from the CRMP are an opportunity for the Regional Water Board or its delegated officer to review and approve the scope of the proposed restoration and corrective actions to confirm the proposed work will adequately remediate site conditions and prevent future discharges. Additional benefits include restoration of altered natural drainage and protection from actual and threatened waste discharges from previous site development and cannabis cultivation activities that impacted beneficial uses and water quality objectives. The estimated cost of the CRMP is between \$3,660 and \$11,720. The burden of developing and implementing the CRMP, including the associated costs, bears a reasonable relationship to the need for this planning and assessment report to restore the site to conditions that will prevent further erosion and sedimentation of sensitive water bodies.

- b. A Completion Report is necessary to demonstrate the Discharger has successfully implemented and completed the CRMP activities. This report evidences that the work proposed by the Dischargers was completed in a timely manner in accordance with the implementation schedule in the CRMP and this Order. The benefit derived from a Completion Report is that it documents evidence of the completed remedial actions and installed best management practices to ensure that cleanup and abatement activities remedy all water quality threats and impacts. By requiring the Discharger to submit documentation of the corrective actions, staff can confirm the CRMP has been fully implemented, and that completed measures are adequate to prevent future discharges into waters of the state. The estimated cost of the Completion Report is between \$2,760 and \$7,920. The burden to develop and submit this report

technical reports required in this Order are comparable to the costs associated with preparation of similar reports presented in the 2017 Direct Cost Analysis. The plan requirements and associated costs (i.e. field inspection and report preparation) to prepare a Cleanup, Restoration and Monitoring Plan (CRMP) are equivalent to that of preparing a combined Site Management Plan and Disturbed Area Stabilization Plan. The cost to prepare a CRMP Completion Report is equivalent to the report preparation component of a combined Site Management Plan and Disturbed Area Stabilization Plan. The cost to prepare Annual Monitoring Report(s) would be equivalent to producing a Site Closure Report. State Water Board's 2017 Direct Cost Analysis for the Proposed Cannabis Cultivation Policy is available at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf

bears a reasonable relationship to the need for this report as assurance to demonstrate remedial actions and restoration are accomplished as proposed in the CRMP and that completed-CRMP site conditions ensure the protection of water quality.

- c. Annual Monitoring Reports are necessary after implementation of the CRMP is completed and the Completion Report is submitted. Long-term observation and maintenance of remedial actions and best management practices implemented as part of the CRMP are required to ensure proper function, efficacy, and stability after their installation is complete. Observation and maintenance of the completed project is required to ensure that the anticipated water quality benefits are achieved in the long-term and that CRMP components remain effective and maintained. Moreover, these reports provide further benefit by certifying that all applicable best practical treatment or control measures are effective as installed and properly maintained after the completed cleanup. The estimated cost of completing two Annual Monitoring Reports is between \$2,160 to \$9,520. This bears a reasonable relationship to the need for these post-completion reports as documentation to the Regional Water Board or its delegated officer of the long-term effectiveness, maintenance, and success of the CRMP's remedial actions, assuring water quality is protected.

The Dischargers named in this Order own and/or operate on the Property from which waste was discharged, and thus are appropriately responsible for providing the requested technical and monitoring program reports.

14. **California Environmental Quality Act:** Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of

any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and submitting any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall submit technical and monitoring reports described below, clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below. The Dischargers shall obtain all necessary permits for the activities required in this Order.

1. **By September 17, 2021**, the Dischargers shall submit to the Regional Water Board or its delegated officer a proposed **Cleanup, Restoration, and Monitoring Plan (CRMP)**. The CRMP shall include but not be limited to:
 - a. An assessment of the impacts to Barker Creek and its unnamed tributaries on the Property caused by the unauthorized activities. The assessment shall be performed by an appropriately qualified professional experienced in stream and wetland delineation and restoration and must, at a minimum, address surface water hydrology and its effect on water quality. The assessment shall include aerial photographs and/or satellite images, photographs, topographic maps, or drawings, etc., of the Property conditions prior to and after conducting the unauthorized activities, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, all waters of the state and waters of the United States, drainages, and watercourse crossings, structures in the watercourse, and the functional status of these features. Assessment findings before and after the unauthorized activities shall serve as the basis for the CRMP;
 - b. A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., stabilization of disturbed area, re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses to Barker Creek and its unnamed tributaries that were adversely impacted by the unauthorized activities;

- c. A proposal to provide mitigation to compensate for any temporal and/or permanent impacts to waters of the state that resulted from unauthorized activities on the Property. Compensatory mitigation shall comply with the state's No Net Loss Policy³. The proposal shall:
 - (1) describe existing site conditions at the proposed mitigation site;
 - (2) describe implementation methods used to provide compensatory mitigation;
 - (3) include monitoring that will be conducted and performance criteria that will be used to evaluate the success of the compensatory mitigation; and
 - (4) include an implementation schedule;
 - d. Best management practices to be applied to all current and planned work associated with cannabis cultivation activities on the Property impacting, or having the potential to impact, Barker Creek and its unnamed tributaries. The CRMP shall contain, at a minimum, design specifications for stream restoration, surface drainage controls, erosion control methods, and standards for unanticipated precipitation during restoration, an implementation schedule, a monitoring and reporting plan, and success criteria for restoration and compensatory mitigation meeting the requirements specified herein;
 - e. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary and, detailed project milestones to fulfill the requirements of this Order once those permits are obtained and a deadline for having fully implemented and completed the CRMP.
2. **No more than 60 days after approval of the CRMP** by the Regional Water Board or its delegated officer and obtaining necessary permits, the Dischargers shall implement the CRMP.
 3. The Dischargers shall notify and provide rationale to the Regional Water Board or its delegated officer and obtain approval at least 60 days prior to making any modifications to the approved CRMP.
 4. **By October 31, 2021**, the Dischargers shall fully implement and complete all restoration construction and/or abatement measures included in the approved CRMP.
 5. **By December 17, 2021**, the Dischargers shall submit a **Completion Report** for the CRMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built designs of all completed restoration construction and/or abatement measures

³ State of California, Executive Order 59-93 (August 23, 1993). Available at: https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp2008/executive_order_w59_93.pdf

included in the approved CRMP to demonstrate the CRMP has been fully implemented to restore and prevent any further impacts to Barker Creek and its unnamed tributaries. This report shall also include pre- and post-construction photographs taken at key points, site maps/figures and any changes to the as-built drawings in the original construction specifications prepared by the person(s) who did the work.

6. **Annual Monitoring Reports:** Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by January 31 of each year for at least two years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the CRMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
2. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether they will implement the recommendations/proposals provided in the report. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true,

accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

3. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board or its delegated officer at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the State Water Board staff Pansy Yuen at (916) 341-5445 or via email at Pansy.Yuen@waterboards.ca.gov.
4. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property's ownership or occupancy. This report shall be filed no later than 30 days prior to a planned change and shall reference the number of this Order. The Dischargers may contact Pansy Yuen at (916) 341-5445 or via email at Pansy.Yuen@waterboards.ca.gov.
5. **Reasonable Access:** The Dischargers shall allow the Regional Water Board or its delegated officer or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted:

By email (preferred) to:

Pansy Yuen, Engineering Geologist
Pansy.Yuen@waterboards.ca.gov

Or by mail to:

State Water Resources Control Board
Attn: Pansy Yuen
801 K Street, Floor 2300
Sacramento, CA 95814

7. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: (1) substantially diverting or obstructing the natural flow of a river, stream, or lake; (2) substantially changing the bed, channel, or bank of a river, stream, or lake; (3) using any

material from the bed, channel, or bank of a river, stream, or lake; or (4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.

8. **Cost Recovery:** Pursuant to Water code section 13304, the State or Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program managed by the State Water Board for the discharges addressed by this Order and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board pursuant to the procedures established in that program.
9. **Delayed Compliance:** If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Regional Water Board or its delegated officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer. The State Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether to exercise additional enforcement authority.
10. **Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement, or the Regional Water Board's delegated officer may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day, and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code section 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and conditions of this Order.
11. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.

12. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegatee, including any potential extension requests.

13. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final 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 et al. 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 on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

https://www.waterboards.ca.gov/public_notices/petitions/water_quality/

or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St. John
Executive Officer

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Attachments:

1. Notice of Violation dated on November 12, 2019
2. Cannabis Water Quality Inspection Memo dated on August 23, 2019