

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

**Cleanup and Abatement and Water Code section 13267 Order
No. R1-2022-0016**

**for
Daniel Maldonado Suarez
Assessor's Parcel Number 011-530-09-01**

Mendocino County

This Order is issued to Daniel Maldonado Suarez (hereinafter referred to as the Discharger) 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 finds, with respect to the Discharger's acts, or failure to act, the following:

1. **Site Conditions:** Site conditions on Mendocino County Assessor's Parcel Number (APN) 011-530-09-01 (hereinafter referred to as the Property) constitute threats to water quality and beneficial uses. Unnamed tributaries to the Eel River, are situated upon and flow through the Property. These unnamed tributaries and any adjoining wetlands are waters of the state. The Discharger has caused or allowed the discharge and threatened discharge of waste to waters of the state through: (1) constructing/reconstructing a reservoir that intercepts the unnamed tributaries; (2) grading and filling of the unnamed tributaries and suspected wetlands for cannabis cultivation and associated activities on the Property; and (3) the improper or inadequate containment, disposal, and/or storage of cultivation-related materials and wastes. The discharge and threatened discharge of waste into waters of the state resulting from the Discharger's activities has created or threatens to create a condition of pollution. Additionally, the Discharger's activities 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 Discharger to remove an unauthorized impoundment and cannabis cultivation facilities from any wetlands or watercourses that are tributary to the Eel River, to eliminate the threat of future discharges, and to clean up and abate the effects of discharges of soil and other materials into the unnamed tributaries of the Eel River. Wastes, including sediment, fertilizer products, and cannabis cultivation-related waste, have been discharged into, or placed where they may be discharged into, waters of the state.

These discharges and threatened discharges of waste threaten the water quality of the Eel River and its unnamed tributaries. 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 Discharger, as the Property owner and the person 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 threatened discharge of waste, is a responsible party for purposes of this Order. This Order finds that the Discharger is the responsible party based on the following:
 - a. Information available from the Mendocino County Clerk-Recorder accessed by Regional Water Board staff (Staff) via Digital Map Products' Land Vision service, shows that the Discharger acquired title to the Property on April 16, 2020 and has continued to own the Property since that time, including the date on which Staff inspected the Property and documented the discharges and threatened discharges of waste into waters of the state.
 - b. The Regional Water Board reserves the right to amend this Order and/or reissue to add additional responsible parties when/if those parties are identified.
4. **Property Location and Description:** The Property is located at Latitude: 39.976, Longitude: -123.479, in the Island Mountain area, and is identified as Mendocino County APN 011-530-09-01.
5. **Property History:** The Property has no regulatory oversight or history with the Regional Water Board. Aerial imagery for the Property, included in the Notice of Violation and Transmittal of the Inspection Report, which is included as Attachment 1, shows that a reservoir was present on the Property before the Discharger acquired the Property. Aerial imagery dated after the Discharger's acquisition of the Property shows evidence of land disturbance in areas of suspected wetlands and unpermitted expansion of the onstream reservoir.
6. **Factual Basis of Order:** The Discharger's activities and/or the conditions observed at the Property, as documented in Attachment 1, and summarized below, have caused or permitted to cause and/or threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into unnamed tributaries to the Eel River, and have created and/or threaten to create a condition of pollution by unreasonably impacting water quality and beneficial uses.

- a. On May 13, 2021 Staff inspected the Property during a criminal search warrant and observed¹:
 - i. An earthen buttress impounding a watercourse;
 - ii. Equipment tracks on the buttress and living trees within the area inundated by the reservoir created by the buttress;
 - iii. A watercourse, delivering flowing water to the reservoir, with a defined bed and bank upstream from the reservoir and a tributary to the Eel River at the reservoir outlet;
 - iv. Tension cracks along the top of the buttress and water emanating through a portion of the buttress and flowing south through a greenhouse with growing cannabis plants;
 - v. Plant genera *Juncus* and *Equisetum* growing in the saturated ground in the area between the reservoir and a cannabis cultivation facility; and
 - vi. Water soluble, concentrated nutrients uncontained where they threatened to discharge to the reservoir and into receiving waters.
7. **Receiving Waters:** The watercourses on the Property and any adjoining wetlands are tributaries to the Eel River in the Middle Main Eel River Hydrologic Area, Spy Rock Hydrologic Subarea. The Middle Main Fork Eel River is Clean Water Act section 303(d)-listed as impaired due to elevated sedimentation/siltation, and its tributaries are listed as impaired due to elevated temperature. On December 31, 2005, the U.S. Environmental Protection Agency approved Total Maximum Daily Loads (TMDL) for temperature and 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.
8. **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 State Water Board.
 - a. **Beneficial Uses:** Existing and potential beneficial uses for the Middle Main Eel River, specifically the Spy Rock Hydrologic Subarea, 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); Navigation (NAV); Hydropower Generation (POW);

¹ The property inspection was a result of reports of unauthorized cannabis cultivation activities. The property owner has expressed concerns that the cleanup activities required by this order are punitive and are required because the property owner engaged in cannabis cultivation. The property owner is responsible for conditions on the property that discharge or threaten to discharge waste regardless of how long cannabis cultivation occurred on the property and whether the owner is currently engaged in cannabis cultivation activities.

Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare Threatened or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, reproduction, and/or Early Development (SPWN); and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

Existing and potential beneficial uses specifically for wetlands include the following: Native American Culture (CUL); Flood Peak Attenuation/Flood Water Storage (FLD); Wetland Habitat (WET); and Water Quality Enhancement (WQE).

- 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 (Page 4-29.00 of the 2011 Basin Plan):
 - i. Prohibition 1 – “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.”
 - ii. Prohibition 2 – “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.”
- c. **Basin Plan Water Quality Objectives:** Section 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. 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.”
 - ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”

- iii. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
- iv. 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.”

9. 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*, which is 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.

- 10. 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 the 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.

- 11. Failure to Obtain Necessary Permits:** Regional Water Board Staff has reviewed available records and found the placement of fill in a watercourse, soil disturbance/grading, and site clearing to develop cultivation areas occurred without coverage under the following State and federal government programs, which may be required:
- a. Regional Water Board's waste discharge regulatory program for timber harvesting on private forest lands;
 - b. Clean Water Act section 401 and 404 Water Quality Certification; and
 - c. A CDFW Lake and Streambed Alteration Agreement for impacts to riparian vegetation and placement of fill in streams
 - d. Coverage under the Cannabis General Order, Order No. WQ-2019-0001-DWQ.

- 12. 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.

Waste: "Waste" as defined by Water Code section 13050, subdivision (d) includes 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, subdivision (d). As a result of the unauthorized land disturbance activities, the Discharger caused or permitted waste to be discharged or deposited where it is, will be, or has the potential to be, discharged to the unnamed tributaries of the Eel River, which are considered waters of the state. The sediment was discharged into the unnamed tributaries in violation of Prohibition 1, cited above, of the Action Plan contained in the Basin Plan, issued by the Regional Water Board. The extent of sediment that was discharged could be deleterious to fish, wildlife, or other beneficial uses. Additionally, these discharges, and the threatened discharges observed on the Property, have created and/or threaten to create a condition of pollution.
- 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. Earthen material associated with the unauthorized earthwork in the unnamed tributaries on the Property, has discharged, and still has the potential to discharge, sediment and other waste into waters of the state, in violation of the Water Code 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. 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 that may be 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 that may be 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 that may be impacted: REC-1 and REC-2).

- iii. The threatened discharge of earthen material in the Eel River watershed is especially problematic because, as noted above, the Eel 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. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold-water fish such as the northern California DPS steelhead (Beneficial Uses that may be impacted: SPWN and MIGR). The reservoir buttress was constructed without applicable permits and as observed by Staff during the May 13, 2021 inspection, exhibited signs of failure. The reservoir represents a direct threat of discharging fine sediment to the Eel River.
- iv. 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 that may be impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

- v. 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 that create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses that may be 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 that may be impacted: REC-1, REC-2, and MUN).

13. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that any existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state that may create a condition of pollution are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. 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 and State Water Board.

14. 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 preparing these reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. This Order requires three types of technical and monitoring reports. Staff estimate the cost of the reports to be approximately \$7,620 to \$22,040 in the first year and between \$1,080 and \$4,760 per year for five additional years of monitoring.²

² The State Water Board considered the estimated costs associated with various technical reports regarding site characterization, stabilization, and restoration during the adoption and amendment of the Cannabis Cultivation Policy and General Order. Estimated costs for technical reports were presented in the State Water Board's 2017 Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis) (waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf). The costs to develop the technical reports required in this Order are anticipated to be comparable to the preparation of reports presented in the 2017 Direct Cost Analysis, as detailed in Paragraph 13, subparagraphs a-d.

This analysis is discussed further below within subparagraphs (a) through (c).

- a. The Cleanup, Restoration, and Monitoring Plan (CRMP) is a technical report that is necessary to: (1) assess impacts to waters of the state resulting from earthwork involved in the unauthorized construction/enlargement of the reservoir and greenhouses used for cannabis cultivation; (2) determine the appropriate restoration and abatement work to correct those impacts; and (3) create a plan along with an implementation schedule that will guide the scope of work to clean up and abate the discharges and threat of discharge on the Property. The anticipated benefits from the CRMP include restoration of altered natural drainage and protection from actual and threatened waste discharges that impact beneficial uses and water quality objectives. In addition, by requiring the Discharger to submit a CRMP, the Regional Water Board or its delegated officer will have the opportunity 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 sediment discharges from further impacting the beneficial uses of sensitive water bodies. The CRMP requirements (i.e., field inspection and report preparation) are comparable to that of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and a Disturbed Area Stabilization Plan as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis), which is estimated to cost between \$4,860 and \$14,120. The burden, including costs, of preparing and submitting the CRMP therefore bears a reasonable relationship to the need for this planning and assessment report to restore watercourses and any wetlands on the Property to restore the Property to conditions that will prevent further erosion and sedimentation of sensitive water bodies.
- b. A Completion Report is necessary to demonstrate that the Discharger has successfully implemented and completed the restoration and corrective actions described in the CRMP in a timely manner in accordance with this Order. The benefit derived from a Completion Report is the Regional Water Board's, or its delegated officer's, ability to verify that remedial activities and best management practices were adequately implemented to ensure that cleanup and abatement activities remedy all water quality threats and impacts. The cost to prepare a Completion Report (i.e., field inspection and report preparation) is comparable to the report preparation component of a combined Site Management Plan and Disturbed Area Stabilization Plan as described in the 2017 Direct Cost Analysis, which is estimated to cost between \$2,760 and \$7,920. The burden, including costs, of preparing and submitting a Completion Report bears a reasonable relationship to the need for the report as assurance to demonstrate remedial actions and restoration are accomplished as proposed in the CRMP and that the Property conditions following the completion of the CRMP ensure the protection of water quality.

- c. Annual monitoring reports are necessary to ensure that the implementation of the CRMP appropriately restored impacted beneficial uses and abated the threat of future impacts to waters of the state from the unauthorized earthwork associated with cannabis cultivation activities on the Property. Observation and maintenance of the completed project is required to ensure that the anticipated water quality benefits are achieved long-term and that the CRMP components remain effective and maintained. Moreover, these reports provide further benefit by certifying that all applicable best practical treatment or control measures are implemented and properly maintained after the cleanup process. By requiring the Discharger to submit annual monitoring reports, the Regional Water Board or its delegated officer can confirm the implemented work adequately remediated site conditions in order to prevent sediment discharges from further impacting the beneficial uses of waters of the state. The annual monitoring plan requirements (i.e., field inspection and report preparation) are comparable to that of a Site Closure Report as presented in the 2017 Direct Cost Analysis, which is estimated to cost between \$1,080 and \$4,760 per report, for a total of \$5,400 to \$23,800 for five annual reports. Five years of monitoring is consistent with requirements for cannabis cultivators to evaluate revegetation plans included in the Cannabis Cultivation Policy³: Attachment A, Section 2, Term 35. The burden, including costs, of preparing and submitting annual monitoring reports therefore bears a reasonable relationship to the need for these 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.

15. 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 Discharger 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 Discharger's proposed remedial activities and possible associated environmental impacts.

³ State Water Resources Control Board, Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size 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 Discharger 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 handling any documents necessary for environmental review. If necessary, the Discharger 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 Discharger 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 Discharger shall obtain all necessary permits for the activities required in this Order.

1. **Submit a Cleanup, Restoration, and Monitoring Plan:** By ~~April 15~~ May 1, 2022, the Discharger shall submit to the Regional Water Board for approval, a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) acceptable to the Regional Water Board or its delegated officer. The CRMP shall include but not be limited to:
 - a. An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, rivers, streams, seeps, springs, bogs, and wetlands, caused by the earthwork associated with creating/enlarging the reservoir, greenhouse/cultivation areas, and all other disturbed areas on the Property, including roads; and identify controllable sediment sources that can be practicably treated/stabilized to prevent future discharges to receiving waters. The assessment shall characterize the location and quality of the watercourses and wetlands on the Property for each of the following: 1) before the reservoir was initially constructed, 2) before the Discharger modified/ expanded the reservoir, and 3) current conditions. The assessment shall be completed by an appropriately qualified professional and must, at a minimum, address surface water hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, encroaching reservoirs, active or potential erosion and sedimentation sites, stability of graded and disturbed features, culverts, and other stream crossings, as well as roads and all disturbed areas on the Property.

The assessment shall include aerial photographs and/or satellite images, photographs, wetland delineation reports⁴, topographic maps, or drawings, etc., of existing Property conditions, 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, stream crossings, instream structures, and the functional status of these features. Assessment findings shall serve as the basis for the CRMP. This Order does not specifically prohibit reconstruction of a reservoir on the Property. In your restoration plan you may propose to recreate a Reservoir on the Property that avoids impacts to waters of the state. If you cannot practicably avoid reconstructing a reservoir off-stream, you may conduct an alternatives analysis to show there is no other practicable option and mitigate for any unavoidable impacts;

- b. A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted or threatened by unauthorized site development/disturbance activities, including the tributaries to the Eel River and any springs, seeps, bogs, or wetlands (e.g. restoration of the stream channel and any adjoining wetlands). The CRMP shall contain, at a minimum, design specifications for: roads, graded areas, any water crossing, in-stream structures, riparian and aquatic habitat restoration, surface drainage controls, and erosion and sediment controls. If full restoration is not practicable, you must show that you fully evaluated full restoration and show why specific projects are not practicable, minimize all impacts that can be practicably minimized, and propose compensatory mitigation for all impacts that cannot be avoided;
- c. A proposal to provide compensatory mitigation to compensate for any temporal and/or permanent impacts to wetlands and other waters of the state that resulted from unauthorized activities on the Property. You are not responsible for compensatory mitigation for any temporal impacts to waters of the state that occurred prior to your purchase of the Property. Compensatory mitigation shall comply with the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (State Wetland Definition and Procedures⁵) and be developed in accordance with the US Army Corps of Engineers Regulatory Program

⁴ A wetland delineation acceptable to the Executive Officer that is developed by a professional wetland specialist with experience in wetland delineation; pursuant to the methodology described in the US Army Corps of Engineers Wetlands Research Program Technical Report Y-87-1, Section F. Atypical situations (pages 73-83).

⁵ State Wetland Definition and Procedures can be found online at:

https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_confirmed.pdf

Standard Operating Procedure for Determination of Mitigation Ratios (12501-SPD)⁶. The proposal shall (1) describe existing site conditions at the proposed mitigation sites; (2) describe implementation methods used to provide compensatory mitigation; and (3) include a monitoring and reporting plan, and success criteria for all restoration and compensatory mitigation work areas. If your proposed restoration includes a net increase in quality and quantity of aquatic resources, you may claim mitigation credit for offsetting these impacts;

- d. Best management practices to be applied to all current and planned work associated with construction activities on the Property impacting, or having the potential to impact, the Eel River, its unnamed tributaries, and wetlands;
 - 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.
2. **Implement the CRMP:** No more than 30 days after approval of the CRMP by the Regional Water Board or its delegated officer, the Discharger shall begin implementation of the CRMP.
 3. **Modifications to the approved CRMP:** The Discharger shall notify and provide rationale to the Regional Water Board staff and obtain approval prior to making any modifications to the approved CRMP.
 4. **Complete the CRMP:** By October 15, 2022, the Discharger shall fully implement and complete the CRMP.
 5. **Completion Report for the CRMP:** No more than **60 days** after fully completing the CRMP, the Discharger 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 included in the approved CRMP to restore wetlands and unnamed tributaries to the Eel River and to demonstrate the CRMP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.
 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 five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring.

⁶ The 12501-SPD can be found online at:

<https://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/ratio/12501-SPD.pdf>

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 Discharger 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 Discharger 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 Discharger shall include a cover letter signed by the Discharger, 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 Discharger 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 Discharger, or a duly authorized agent, shall notify Regional Water Board staff 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 Discharger may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Brian Fuller at (707) 576-2806.
4. **Notice of Change in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Property’s ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

5. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted:

By email (preferred) to:

Brian Fuller, Engineering Geologist
Brian.Fuller@waterboards.ca.gov

And to:

NorthCoast@waterboards.ca.gov

Or by mail to:

NCRWQCB
Attn: Brian Fuller
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

6. **Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.
7. **Delayed Compliance:** If for any reason, the Discharger is 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 Discharger 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 Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.
8. **Potential Liability:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or 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 condition of this Order.

9. **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.
10. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
11. **Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional 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: (http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

This Order is issued under authority delegated to the Executive Officer by the Regional Water Board pursuant to R1-2012-0062 and is effective upon the date of signature.

Matthias St. John
Executive Officer

Attachment 1: June 11, 2021 NOV and Report of May 13, 2021 Inspection.

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