

Order R1-2022- 0034
Stipulated Administrative Civil Liability Order
California Redwood Company
Trinity River Timber Company dba North Fork Lumber Company

3. On October 4, 2021, Regional Water Board staff (staff) invited the Dischargers to enter into settlement discussions prior to issuance of a formal administrative civil complaint for mandatory minimum penalties (MMPs) regarding 19 exceedances of the effluent limits for pH, Nickel Impact Ratio, and Zinc Impact Ratio. Of these violations that occurred during the period between June 1, 2019 and March 31, 2021, 16 were subject to MMPs, pursuant to Water Code section 13385, subdivisions (h) and (i), for an administrative civil liability totaling \$48,000.
4. The Dischargers accepted the Regional Water Board's invitation to enter into settlement discussions prior to the issuance of a formal administrative civil complaint. During the course of settlement negotiations, the violation period was extended to March 31, 2022. This extension in the violation period resulted in five additional violations, three of which are subject to MMPs. Between June 1, 2019, and March 31, 2022, 19 of the 24 total violations are subject to MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), for a total of **\$57,000** in administrative civil liabilities.
5. Pursuant to Water Code section 13385, subdivision (h), the Regional Water Board shall assess a \$3,000 MMP for each serious violation. A "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable WDRs for a Group II pollutant by 20 percent or more or for a Group I pollutant by 40 percent or more.
6. Pursuant to Water Code section 13385, subdivision (i), the Regional Water Board shall assess a \$3,000 MMP for each violation whenever the person does any of the following four or more times in period of six consecutive months, except that the requirement to assess the MMP shall not be applicable to the first three violations:
 - a. Violates a WDRs effluent limitation;
 - b. Fails to file a report pursuant to Water Code section 13260;
 - c. Files an incomplete report pursuant to Water Code section 13260; or
 - d. Violates a toxicity effluent limitation contained in the applicable WDRs where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.
7. The Dischargers' self-monitoring reports, from June 1, 2019, through March 31, 2022, document 24 violations of effluent limitations set forth in WDRs Order No. R1-2019-0005. Of the 24 effluent limitation violations, five violations were exempt from MMPs, because they were the first three violations in the six-month period. The remaining 19 violations are subject to MMPs, as described in paragraphs 4 and 8.

8. This Stipulated Order resolves the effluent limitation violations, identified in Attachment A, incorporated herein by reference. The total administrative civil liability amount is **\$57,000** (19 violations subject to MMPs x \$3,000/violation).
9. Pursuant to Water Code section 13385, subdivision (I)(1), in lieu of assessing penalties pursuant to subdivision (h) or (i), the Regional Water Board, with the concurrence of the Dischargers, may direct a portion of the penalty amount to be expended on a Supplemental Environmental Project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board (State Board). If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
10. The Parties have engaged in confidential settlement negotiations and have agreed to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60.
11. To resolve the alleged violations set forth in Attachment A, by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$57,000** against the Dischargers.
12. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

Section III: Stipulations

The foregoing recitals are adopted by the Parties and they stipulate to the following:

13. **Jurisdiction:** The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
14. **Administrative Civil Liability:** The Dischargers hereby agree to imposition of an administrative civil liability totaling **\$57,000** to resolve the alleged violations as follows:
 - a. No later than 30 days after the Regional Water Board, or its delegate, signs this Stipulated Order, the Dischargers shall submit a check for \$21,000 to the State Water Resources Control Board. The check shall be made payable to

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the “State Water Pollution Cleanup and Abatement Account,” reference the order number on page one of this Stipulated Order, and be mailed to:

State Water Resources Control Board Accounting Officer
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Dischargers shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement (Kailyn.Ellison@waterboards.ca.gov) and the Regional Water Board (Zane.Stromberg@waterboards.ca.gov).

15. Consistent with Water Code section 13385, subdivision (1)(1), the Parties agree the remaining \$36,000 (SEP Amount) will be suspended pending completion of the SEP as set forth below and in Attachment B, incorporated herein by reference. No later than 30 days after the Regional Water Board, or its delegate, signs this Stipulated Order, the Dischargers shall submit a check for \$36,000 to California Trout (CalTrout). The Dischargers shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement (Kailyn.Ellison@waterboards.ca.gov) and the Regional Water Board (Zane.Stromberg@waterboards.ca.gov).

16. **SEP Description:** The Dischargers will fund a portion of a project known as the Mad River Estuary Floodplain Habitat and Public Access Enhancement Project (Project). The 9.3-acre project area is located in McKinleyville, on property owned by the McKinleyville Community Services District. CalTrout is the project applicant and lead agency for the SEP. The Project consists of two separate components. The primary component is the design and implementation of a 4.25-acre off-channel, floodplain and salmonid habitat restoration site to replace a pair of decommissioned percolation ponds adjacent to the river. This component of the Project will improve water quality by increasing floodplain connectivity, off-channel habitat, and riparian forest for the sake of migratory birds, Coho and Chinook Salmon (both federally listed as endangered species), and Steelhead. The second component includes design and implementation of accessible trails and other public access amenities, which are compliant with the Americans with Disabilities Act (ADA), to expand recreational opportunities in McKinleyville.

The Dischargers will apply the SEP Amount to the floodplain restoration component of the Project, specifically wetland monitoring and post-construction revegetation. SEP funds directed towards wetland monitoring will fund a California Rapid Assessment Method (CRAM) wetland survey, which includes field sampling, data analysis, and the technical memorandum summarizing wetland monitoring. SEP funds directed towards post-construction revegetation will fully fund the

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required materials for revegetation and partially fund the revegetation effort performed by the California Conservation Corps (CCC).

Staff reviewed the Project proposal and concluded that the Project meets the requirements of a SEP, pursuant to the State Water Board’s 2017 Policy on Supplemental Environmental Projects (SEP Policy), under the Environmental Restoration and Protection category. The Project will serve to improve and protect water quality and beneficial uses of the Mad River by expanding terrestrial and estuarine habitat and enhancing the spawning and migratory patterns of anadromous fish.

17. **SEP Milestone Requirements:** The Dischargers agree that this Stipulated Order includes the Milestone Requirements set forth in Table 1 below. The Dischargers acknowledge that credit for completing any Milestone Requirement is dependent on the Regional Water Board’s or its delegate’s adoption of this Stipulated Order. The implementation schedule for completion of the SEP is included in Finding 18 below.

18. Table 1 – Milestone Requirements

Task	Description	Deadline
1	Begin Pre-Project Wetland Surveys using the CRAM	May 31, 2022
2	Complete Pre-Project Wetland Surveys using the CRAM	July 1, 2022
3	First Quarterly Progress Report	October 31, 2022
4	Begin Post-Construction Revegetation	November 1, 2022
5	Second Quarterly Progress Report	January 31, 2023

Task	Description	Deadline
6	Complete Post-Construction Revegetation	March 31, 2023
7	Third Quarterly Progress Report	April 30, 2023
8	Submit Final Report/ Certificate of SEP Completion	June 30, 2023

19. **Representations and Agreements Regarding the SEP:**

- a. As a material condition for the Regional Water Board’s acceptance of this Stipulated Order, the Dischargers agree that they will spend the SEP Amount to implement the SEP in accordance with Table 1 and Attachment B.
- b. The Dischargers agree that the Regional Water Board has the right to require a third-party audit, to be paid by the Dischargers, of the funds expended to implement the SEP, and that the Dischargers bear ultimate responsibility for meeting all deadlines specified in this Stipulated Order.

20. **The SEP is Above and Beyond the Dischargers’ Obligations:** The SEP included in this Stipulated Order contains only measures that go above and beyond the Dischargers’ obligations. The SEP is not part of the Dischargers’ normal business nor are the Dischargers otherwise legally required to implement any portion of the SEP.

21. **Publicity Associated with the SEP:** Whenever the Dischargers or their agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the SEP was undertaken as part of a settlement to a Regional Water Board enforcement action against the Dischargers.

22. **Progress Reports and Inspection Authority:** The Dischargers shall provide certified written quarterly reports describing the progress of SEP implementation, including the status of the Milestone Requirements as described in Table 1. The Dischargers agree that staff has permission to inspect the SEP at any time during normal business hours without notice.

23. **Certification of SEP Completion:** No later than June 30, 2023, an authorized representative for the Dischargers shall submit the certification of project completion, including a certified statement, signed under penalty of perjury, which documents the Dischargers' expenditures to implement the SEP and documents that the Dischargers completed the SEP in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include the normal, routine work undertaken by the Dischargers' employees. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and the costs incurred. The Dischargers shall provide staff with any additional information that is reasonably necessary to verify the Dischargers' SEP expenditures and completion. The Certification of Completion shall also include confirmation that the Dischargers followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and the federal Clean Water Act.
24. **Time Extension for SEP:** The Executive Officer may extend the deadlines contained in this Stipulated Order if the Dischargers demonstrate delays from unforeseeable contingencies, provided that the Dischargers continue to undertake all appropriate measures to meet the deadlines contained in this Stipulated Order. The Dischargers shall make any deadline extension request in writing at least 30 days prior to the applicable deadline.
25. **Regional Water Board Acceptance of Completed SEP:** Upon the Dischargers' satisfaction of its obligations under this Stipulated Order, completion of the SEP, and any audits, the Executive Officer will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further obligations of the Dischargers under this Stipulated Order and permanently suspend the remaining administrative civil liability amount.
26. **Failure to Expend All Suspended Funds on the Approved SEP:** If the Dischargers are not able to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP amount was spent on the completed SEP, the Dischargers shall pay the difference between the SEP Amount and the amount the Dischargers can demonstrate was actually spent on the SEP (the Difference). The Regional Water Board or its delegate shall issue a "Notice of Violation" that will require the Dischargers to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the Notice of Violation's issuance date. The Dischargers shall submit payment consistent with the payment

method described in Section III, paragraph 14. Timely payment of the Difference shall satisfy the Dischargers' obligations to implement the SEP.

27. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date, or if there has been a material failure to satisfy any of the Milestone Requirements, Regional Water Board or its delegate shall issue a Notice of Violation to the Dischargers requiring the Dischargers to pay some or all of the SEP Amount. The amount to be paid shall be determined via a Motion for Payment of Suspended Liability decided by the Regional Water Board or its delegate. The Dischargers shall be liable to pay the entire SEP Amount, or, if shown by the Dischargers, some portion thereof less the amount spent to achieve any completed Milestone Requirement as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Regional Water Board or its delegate determines otherwise, the Dischargers shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. Within 30 days of the Regional Water Board's or its delegate's ruling on the Motion for Payment of Suspended Liability, the Dischargers shall submit payment pursuant to the ruling and consistent with the payment method described in Section III, paragraph 14. Payment of the Suspended Liability amount determined by the Regional Water Board or its delegate, following the Motion for Payment of Suspended Liability, shall satisfy the Dischargers' obligation to implement the SEP.
28. **Regional Water Board is not Liable:** Neither the Regional Water Board members nor staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Dischargers, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Dischargers, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

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29. Party Contacts for Communications related to the Stipulated Order:

For the Regional Water Board:

Zane Stromberg
Environmental Scientist
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Zane.Stromberg@waterboards.ca.gov
(707) 576-2674

For the Dischargers:

Ken Dunn
Operations Manager
Trinity River Timber Company dba
North Fork Lumber Company
Korbel Sawmill
1165 Maple Creek Road,
Korbel, CA 95550
kdunn@nflmill.com
(707) 677-8119

Peter Jackson
Vice President/ Operations
Manager
California Redwood Company
5151 Highway 101 North,
Eureka, CA 95503
PJackson@greendiamond.com

30. **Compliance with Applicable Laws:** The Dischargers understand that complying with the terms of this Stipulated Order, including payment of the administrative civil liability set forth herein, is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
31. **Matters Addressed by Stipulation:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation(s) as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the completion of the SEP as specified herein.
32. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this

Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Stipulated Order.

33. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
34. **Public Notice:** The Dischargers understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
35. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
36. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Regional Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
37. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

38. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
39. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
40. **If Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that the matter may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections that efforts to settle this matter preclude the Regional Water Board from proceeding with a contested evidentiary hearing on the matter, including, but not limited to the following:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
41. **Waiver of Hearing:** Dischargers have been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waive their right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.
42. **Waiver of Right to Petition or Appeal:** Dischargers hereby waive their right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waive their rights, if any, to appeal the same to any court, such as the California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Regional Water Board, or its delegate directly related to this Stipulated Order,

including, but not limited to time extensions, determination of SEP completion, and other terms contained in this Stipulated Order.

43. **Covenant Not to Sue:** Dischargers covenant not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.
44. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval this Stipulated Order requires.
45. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights of obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
46. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
47. **Severability:** This Stipulated Order is severable; should any provision be found invalid; the remainder shall remain in full force and effect.
48. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
49. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

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IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**


Digitally signed by
Claudia E. Villacorta
Date: 2022.07.28
11:24:58 -07'00'

By: _____
Claudia Villacorta, P.E.
Assistant Executive Officer

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**Trinity River Timber
Company dba North Fork
Lumber Company**

Date: Jul 27, 2022

By: *Ken Dunn*
By: [Ken Dunn \(Jul 27, 2022 16:29 PDT\)](#)

**Ken Dunn,
Operations Manager**

Order R1-2022- 0034
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Trinity River Timber Company dba North Fork Lumber Company

**California Redwood
Company**

Date: Jul 28, 2022

By: 
Pete Jackson (Jul 28, 2022 06:20 PDT)

**Peter Jackson,
Vice President/ Operations Manager**

ORDER OF THE REGIONAL WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. 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 is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321(a)(2). This Order includes a SEP in the North Coast Region. 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 approval 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 handing 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.
3. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of their obligations under the Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, North Coast Region.


Digitally signed by
Matthias St John
Date: 2022.09.07
09:51:47 -07'00'

By: _____
Matthias St. John
Executive Officer

Korbel Sawmill Stipulated Order 2022

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Trinity River Timber Company dba North Fork Lumber Company

Attachments:

Attachment A – Effluent Limitation Violations Requiring Mandatory Minimum Penalties
(List of Violations)

Attachment B – Supplemental Environmental Project Description

Mandatory Penalty Administrative Civil Liability

California Redwood Company

North Fork Lumber Company – Korbel Sawmill

WDID No. 1B80020OHUM

NPDES No. CA0005932

Attachment A

Effluent Limitations Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	Exempted from MMP?	Exempt Reason	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	1069752	11/27/2019	Nickel Impact Ratio	Group 2	Monthly Average	1	1.15	ug/L	Y	a	15%	05/31/2019	C	Ct. 1	N	13385(i)	\$ 0
2	1069753	11/27/2019	Zinc Impact Ratio	Group 2	Monthly Average	1	1.3	ug/L	N		30%	05/31/2019	S	Ct. 2	Y	13385(h)	\$ 3,000
3	1073487	03/31/2020	pH	Other	Instantaneous	6.5	6.38	SU	Y	a	-2%	10/03/2019	C	Ct. 3	N	13385(i)	\$ 0
4	1073488	03/31/2020	pH	Other	Instantaneous	6.5	6.3	SU	N		-3%	10/03/2019	C	Ct. >3	Y	13385(i)	\$ 3,000
5	1078585	05/19/2020	Nickel Impact Ratio	Group 2	Monthly Average	1	1.2	%	N		20%	11/21/2019	S	Ct. >3	Y	13385(h)	\$ 3,000
6	1089512	1/4/2021	Zinc Impact Ratio	Group 2	Maximum Daily	1	1.17	%	Y	a	17%	7/8/2020	C	Ct. 1	N	13385(i)	\$ 0
7	1089506	1/14/2021	Nickel Impact Ratio	Group 2	Maximum Daily	1	1.6	%	N		60%	7/18/2020	S	Ct. 2	Y	13385(h)	\$ 3,000
8	1089498	1/14/2021	Zinc Impact Ratio	Group 2	Maximum Daily	1	1.8	%	N		80%	7/18/2020	S	Ct. 3	Y	13385(h)	\$ 3,000
9	1089508	1/28/2021	Zinc Impact Ratio	Group 2	Maximum Daily	1	1.1	%	N		10%	8/1/2020	C	Ct. > 3	Y	13385(i)	\$ 3,000
10	1089515	1/28/2021	Nickel Impact Ratio	Group 2	Maximum Daily	1	1.1	%	N		10%	8/1/2020	C	Ct. > 3	Y	13385(i)	\$ 3,000
11	1089509	1/31/2021	Nickel Impact Ratio	Group 2	Monthly Average	1	2.5	%	N		150%	8/4/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
12	1089507	1/31/2021	Zinc Impact Ratio	Group 2	Monthly Average	1	2.7	%	N		170%	8/4/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
13	1089519	2/1/2021	Nickel Impact Ratio	Group 2	Maximum Daily	1	1.8	%	N		80%	8/5/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
14	1089517	2/1/2021	Zinc Impact Ratio	Group 2	Maximum Daily	1	1.9	%	N		90%	8/5/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
15	1089500	2/12/2021	Zinc Impact Ratio	Group 2	Maximum Daily	1	1.6	%	N		60%	8/16/2020	S	Ct. > 3	Y	13385(i)	\$ 3,000
16	1089502	2/12/2021	Nickel Impact Ratio	Group 2	Maximum Daily	1	1.7	%	N		70%	8/16/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
17	1089510	2/16/2021	Zinc Impact Ratio	Group 2	Maximum Daily	1	1.4	%	N		40%	8/20/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
18	1089511	2/16/2021	Nickel Impact Ratio	Group 2	Monthly Average	1	2.7	%	N		170%	8/20/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
19	1089503	2/16/2021	Zinc Impact Ratio	Group 2	Monthly Average	1	3.3	%	N		230%	8/20/2020	S	Ct. > 3	Y	13385(h)	\$ 3,000
20	1099183	10/31/2021	Nickel Impact Ratio	Group 2	Monthly Average	1	1.15	%	Y	a	15%	5/4/2021	C	Ct. 1	N		\$ 0
21	1099182	10/31/2021	Zinc Impact Ratio	Group 2	Monthly Average	1	1.66	%	N		66%	5/4/2021	S	Ct. 2	Y	13385 (h)	\$ 3,000
22	1099181	11/30/2021	Nickel Impact Ratio	Group 2	Monthly Average	1	1.04	%	Y	a	4%	6/3/2021	C	Ct. 3	N		\$ 0
23	1102953	01/04/2021	Nickel Impact Ratio	Group 2	Monthly Average	1	1.71	%	Y		71%	7/8/2020	S	> Ct. 3	Y	13385(h)	\$ 3,000
24	1102952	01/04/2021	Zinc Impact Ratio	Group 2	Monthly Average	1	1.86	%	Y		86%	7/8/2020	S	> Ct. 3	Y	13385(h)	\$ 3,000

Total Penalty: \$ 57,000

Legend of Table

a. The first three violations in a 180-day period shall not receive MMP assessment unless serious.

Ct. Count – The number that follows represents the number of exceedances in the past 180 days. A count > than Ct. 3 means that a penalty under Water Code Section 13385 (i) applies.

1 - Violation occurs on sample date or last date of averaging period.

2 - For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more

- For Group II pollutants, a violation is serious when the limit is exceeded by 20% or more

3 - When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a penalty.

Violation Period Between June 1, 2019 and March 31, 2022

Group I Violations Assessed MMP:	0
Group II Violations Assessed MMP:	18
Other Effluent Violations Assessed MMP:	1
Violations Exempt from MMP:	5
Total Violations Assessed MMP:	19

Mandatory Minimum Penalty = (16 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$57,000

Supplemental Environmental Project Proposal for Mad River Estuary Floodplain Habitat Project

Project Location

The project to be funded by the Discharger is called the Mad River Estuary Floodplain Enhancement Project, and the lead agency is California Trout (Caltrout). The contact for the lead agency is Mary Burke who works as the North Coast Regional Coordinator ((707) 825-0420, mburke@caltrout.org). The project is in Wiyot unceded ancestral territory, along the north and east bank of the lower Baduwat River (Mad River), in the southwest edge of McKinleyville, Humboldt County. The project area is owned by the McKinleyville Community Services District (MCSD) and is bordered to the north by School Road, to the east by Fischer Road. (Location of approximate center of public access project area, lat. 40.933683; lon. -124.127639; the restoration project area is due south of this location).

The Mad River drains 497 square miles over a length of roughly 100 miles, and it empties into the Pacific Ocean, 6 miles north of Humboldt Bay. The river offers close to 50 miles of spawning and rearing habitat but is severely limited in estuarine and off-channel habitat to support rearing winter juvenile fish. The project is located within tidal influence approximately 3 miles upstream of the ocean.

Project Description

This multi-partner design and implementation project provides habitat enhancements in the riverine estuary of the Mad River. The habitat enhancement project entails the design and permitting of a 4.25-acre off-channel, floodplain and salmonid habitat restoration site to replace percolation ponds for treated wastewater. The project goal is to increase floodplain connectivity, off-channel habitat, and riparian forest for the sake of migratory birds and Federally listed Coho and Chinook salmon, and steelhead. Anticipated benefits include increased habitat diversity, floodplain connectivity, cottonwood riparian establishment, and resiliency of aquatic habitats to drought and/or climate change impacts (i.e. increased surface water expression for aquatic dependent species, and increased ground water recharge and storage). Floodplain reconnection in the lower estuarine zone will result in a meaningful enhancement of riparian habitat for migratory songbirds and increased salmonid survival, particularly juvenile salmon that require floodplain refugia habitat during high mainstem flows. For this phase of the project (associated with this funding), the aim is to conduct monitoring and revegetation at the project site.

Tasks, Deliverables, Milestones, and Schedule

The SEP funding is part of the larger project with tasks including project management; preparation for bidding the construction project with CalTrout's team of consultants;

construction management; and project monitoring. Tasks that would be funded using SEP monies are described below:

Component 1 – California Rapid Assessment Wetland Surveys (CRAM)

Monitoring will be performed by McBain Associates. McBain Associates staff are certified in CRAM methodology. Pre-construction CRAM monitoring tasks for the project include:

- Acquiring aerial images, creating base maps, and selecting plots;
- Field sampling of up to 6 plots (including travel to and from the site);
- Post-field map clean-up, plot digitization, analysis and tabulation; and
- Preparation of a draft technical memorandum summarizing results of baseline sampling, response to comments, and finalizing the memorandum.

Assessments will be performed within the year prior to the beginning of project construction. CRAM data will be submitted to eCRAM. Deliverables will include a draft and final baseline CRAM assessment technical memorandum and associated figures, tables, and data files (*.doc; *.xls; *.shp; *.pdf)

Component 2– Revegetation

Plants used in revegetation will be provided by Samara Restoration, and revegetation will be performed by the California Conservation Corps (CCC). Deliverables will include:

- Receipt of payment for the revegetation materials,
- Invoices for CCC labor, and
- Photographs of revegetation.

Major project milestones are shown in the project schedule include:

- CRAM monitoring, which will be performed in June 2022;
- Awarding of a construction bid, which will occur in July and August 2022,
- Construction, which will occur in July through October 2022, and
- Revegetation, which will occur from October 2022 through March 2023.

Progress reports and the final completion report will be submitted in accordance with the deadlines in Table 1 of the Stipulated Order.

SEP Funding

The total project cost is estimated to be \$1,799,220.54; the final construction costs will be determined in the public bid process. SEP monies totaling \$36,000 will be used toward:

- California Rapid Assessment Wetland Surveys (CRAM) (\$9,250)
- Revegetation materials (\$12,500)
- California Conservation Corps revegetation costs (\$14,250)

Other funding sources include the National Oceanic and Atmospheric Administration (NOAA), the Wildlife Conservation Board (WCB), US Fish and Wildlife Service (USFWS), the State Coastal Conservancy (SCC), and various local matching funds (not administered by CalTrout). WCB funds and some local match funds are to be used for the public access portions of the project, while USFWS, NOAA, and some local match funds are to be used for restoration activities.

The grants funds awarded to this project from NOAA, WCB, USFWS and SCC cannot be used as documented cost share for the SEP as the funds are being formally matched within the project.

Project readiness, including status of CEQA, permits, and landowner agreements

Permits and Approvals.

The Project requires the following permits and approvals to proceed.

- Humboldt County – Conditional Use Permit and Grading Permit (submitted April 15, 2022)
- California Coastal Commission – Coastal Development Permit
- United States Army Corps of Engineers – Clean Water Act Section 404 compliance, including USFWS and NMFS Section 7 Consultation
- Regional Water Quality Control Board (North Coast Region) – 401 Water Quality Certification
- CA Department of Fish and Wildlife – Lake and Streambed Alteration Agreement, and Consistency Determination with NMFS B.O.
- State Lands Commission – Determination with a potential requirement for Lease

All permits have been submitted and approved except for the Humboldt County Grading Permit, and NOAA's NEPA programmatic EIS which are in progress. A mitigated negative declaration was adopted at the June 2020 meeting of the lead agency and landowner.

Expected benefits or improvements to water quality or beneficial uses

The project will enhance habitat and provide public access, improving the following beneficial uses¹:

- Estuarine Habitat (EST) – The project will enhance estuarine habitats, vegetation, fish, and wildlife (e.g., estuarine mammals, waterfowl, shorebirds).
- Wildlife Habitat (WILD) – The project will enhance terrestrial ecosystems adjacent to water including, but not limited to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.
- Rare, Threatened, or Endangered Species (RARE) – The project will enhance habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.
- Migration of Aquatic Organisms (MIGR) – The project will enhance habitats necessary for migration, acclimatization between fresh and saltwater, or other temporary activities by anadromous fish.
- Spawning, Reproduction, and/or Early Development (SPWN) – The project will enhance high quality habitats suitable for reproduction, early development, and sustenance of anadromous and estuarine fish.

CalTrout's established record of completing projects

CalTrout has successfully completed unqualified Single Audits each year beginning in 2014. It currently administers 80+ government grants totaling over \$25 million, and it completes unqualified Single Audits each year. It has successfully completed grants for the State Water Board for Work on the Elk Watershed and the Shasta River and is currently funded with a 319h grant on the Little Shasta River.

Institutional stability and capacity to complete the project as proposed

For 50 years, CalTrout has been dedicated to protecting and restoring wild trout, steelhead, salmon, and their waters across California. With administrative offices in San Francisco, its seven regional offices with expert conservation staff engage local stakeholders, identify regional conservation priorities, design long term plans, and implement, monitor, and analyze the plans' activities.

The project team of CalTrout, Northern Hydrology and Engineering, GHD, SHN Engineering Geologists, Redwood Coast Action Agency have worked together on similar projects on the north coast. The team is working on multiple similar projects in

¹ Water Quality Control Plan for the North Coast Region. State Water Board, (2018). [Final Basin Plan 2018 \(ca.gov\)](#)

the area and in partnership with local agency personnel. The project's team, including the technical agency advisors, is key to project success. The team will continue to meet approximately twice a month in the pre-bid and bid process on an as needed basis through the construction of the project.