CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

NORTH COAST REGION

CLEANUP AND ABATEMENT AND WATER CODE SECTION 13267 INVESTIGATIVE ORDER NO. R1-2022-0046

FOR

KENNETH AND DONNA BOWMAN

MENDOCINO COUNTY

ASSESSOR'S PARCEL NUMBER 011-530-08-01

AND

TRINITY COUNTY

ASSESSOR'S PARCEL NUMBERS 022-200-33-00 AND 022-200-31-00

This Order is issued to Kenneth and Donna Bowman (hereafter 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 (collectively, the Order).

FINDINGS

The Executive Officer, acting under authority delegated by the Regional Water Board, finds, with respect to the Dischargers' acts, or failure to act, the following:

1. **Site Conditions:** Site conditions on Mendocino County Assessor's Parcel Number (APN) 011-530-08-01 and Trinity County APNs 022-200-33-00 and 022-200-31-00 (collectively, the Property) constitute threats to water quality and beneficial uses. Watercourses observed on the Property are waters of the state, as well as a water of the United States (references hereafter to waters of the United States are also waters of the state, see Attachment 1 for more detail). The dischargers caused or permitted the discharge and threatened discharge of waste to receiving water through: (1) a graded pad with water bladders bordering a watercourse~~, slash where it threatens to discharge to the watercourse~~ and human wastes within the banks of the watercourse; (2) petroleum stored without

secondary containment; (3) undersized, perched and failed culverts; (4) a water tank placed in the watercourse and surface water diversions; (5) a cultivation pad interrupting an ephemeral watercourse; (6) roads susceptible to erosion that are hydrologically connected to receiving waters ~~and slash discharged directly to receiving waters~~; (7) roads fording a watercourse at various locations; and (8) unauthorized fill within waters of the state. These violations are documented in the Notice of Violation (NOV) and associated inspection reported dated, June 8, 2021. The Middle Mainstem Eel River is Clean Water Act section 303(d)-listed as impaired due to elevated temperature and sedimentation/siltation. In 2005, the United States Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Main Eel River. (See Attachment 2 for additional watershed information and the Regional Water Board's Total Maximum Daily Load Sediment Implementation Policy and Eel River Temperature Action Plan.)

2. **Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharges of ~~slash and/or~~ sediment to waters of the state or locations where it can discharge to unnamed tributaries of the Eel River, the fill of suspected wetlands that abut tributaries to the Eel River, and to eliminate the threat of future discharges located at the Property. This Order requires investigation and cleanup actions in compliance 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:** This Order finds that the Dischargers are responsible parties for discharging waste in violation of a Regional Water Board prohibition and/or threatening to cause or permit the discharge of waste and creating a condition of pollution, and are all jointly and severally liable based on the following:

    a. According to County ownership information available via Land Vision services, Kenneth Bowman and Donna Bowman purchased Mendocino County APN: 011-530-08-01 and Trinity County APN 022-200-33-00 on February 8, 2001, and Trinity County APN 022-200-31-00 on June 25, 2001.

    b. For the purpose of this Order the Regional Water Board is naming Kenneth Bowman and Donna Bowman as responsible parties on the basis that they owned the Property at the time of the discharge and/or threatened discharge, including the time period when staff inspected the Property; that they had or should have had knowledge of the activities that resulted in the discharge or threatened discharge; that they had the legal ability to prevent the discharge; that they currently own the Property, that

ongoing discharges or threatened discharges are occurring on the Property, that they know or should know of the activities or conditions resulting in the discharge or threatened discharge, and that they have the legal ability to prevent the discharge.

c. The Regional Water Board reserves the right to amend this Order, or issue a subsequent Order, to add additional responsible parties when/if those parties are identified.

4. **Property Location and Description:** The Property is located at Latitude 39.98, Longitude -123.47 and is identified as Mendocino County APN 011-530-08-01 and Trinity County APNs 022-200-33-00 and 022-200-31-00.

5. **Property History:** The Property has no prior regulatory oversight or history with the Regional Water Board.

6. **Factual Basis of Order:** On April 29, 2021, Regional Water Board staff inspected the Property during the execution of search warrants obtained by California Department of Fish and Wildlife (CDFW) law enforcement. The purposes of the inspections were to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state. On June 8, 2021, the Regional Water Board transmitted the report of the inspection and a Notice of Violation to the Dischargers (Attachment 3). The conditions observed at the Property, as documented in the Regional Water Board inspection report, included the following:

   a. Fuels and waste oil containers improperly stored without secondary containment at WQ1 and WQ4;

   b. Human waste improperly disposed along a watercourse at WQ1;

      ~~Piles of slash from land clearing at WQ1 or road construction/maintenance at WQ4 threatening to discharge to receiving waters;~~

      ~~Slash discharged into a watercourse along the road in the vicinity of WQ6;~~

   c. Agricultural chemicals including high-concentration, water soluble nutrients, where they threaten to be transported to receiving waters by stormwater or irrigation runoff in the vicinity of WQ6;

   d. Plastic tanks associated with water diversion infrastructure placed within the banks of a watercourse at WQ3 and WQ11;

e. Controllable sediment delivery sites[1] at the location of a perched and undersized culverted road crossing at WQ3, graded flats for cannabis cultivation at WQ4 and WQ7, along a road between WQ5 and WQ6 that is hydrologically connected to receiving waters, and earthen fords[2] at seven locations between WQ9 and WQ10, and four locations between WQ8 and WQ11;

f. Saturated ground and hydrophytic vegetation bordering a greenhouse located at WQ7 that abuts a tributary to the Eel River. These observations suggest that fill was placed in potential wetlands, waters of the United States, without authorization during the summer of 2020;

7. **Failure to Obtain Applicable Permits:** The Dischargers' activities resulting in the discharge and threatened discharge of sediment and other wastes were conducted without authorization from applicable federal, state, and local agencies, including coverage under any of the following regulatory permits:

   a. State Water Board Order No. WQ 2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis General Order), as amended by WQ-2019-0001-DWQ, for cannabis cultivation activities occurring at the Property;

   b. A Clean Water Act section 404 permit from the Army Corps of Engineers for dredge and fill activities in waters of the United States;

   c. A Clean Water Act section 401 Water Quality Certification, Regional Water Board Water Quality Certification or Waste Discharge Requirements, or a Waiver of Waste Discharge Requirements from the Regional Water Board; and

   d. Applicable Division of Water Rights, water right license, permit, or statement for water diversion and use.

8. **Review of Aerial Imagery:** On June 7, 2021, Regional Water Board staff (Staff) reviewed available aerial imagery from Land Vision services, and noted in their April 29, 2021 inspection report (Attachment 3), that between June 16, 2010 and

[1] Controllable sediment delivery sites are generally areas that are discharging or have the potential to discharge sediment to waters of the state, that are caused or affected by human activity, and may feasibly and reasonably respond to prevention and minimization management measures.

[2] A ford is a shallow portion of stream used as a crossing by a vehicle. Fords may be unimproved (crossing of the natural streambed) or improved (crossing over material brought in to modify the streambed).

April 3, 2018 a cultivation pad interrupting a watercourse at WQ4 was substantially widened, and between April 1, 2020 and June 8, 2020, a pad and greenhouses were constructed at the location of suspected wetlands at WQ7.

9. **Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:** The Basin Plan designates beneficial uses of water within Hydrologic Subareas, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the State and Regional Water Boards.

    a. Beneficial Uses**:** Existing and potential beneficial uses for the watershed for Middle Main Eel River, specifically the Spy Rock 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); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Commercial 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); Aquaculture (AQUA); Native America Culture (CUL); Flood Peak Attenuation/Flood Water Storage (FLD); Wetland Habitat (WET); and Water Quality Enhancement (WQE). See Attachment 2 for additional watershed information, including the existing and potential beneficial uses for the watershed.

    b. Receiving Waters: The Property is situated in the Island Mountain area approximately seven miles east of Bell Springs and a half mile west of the Eel River, within the Eel River Hydrologic Unit (HU), the Middle Fork Eel River Hydrologic Area (HA), and the Spy Rock Hydrologic Sub Area (HSA) (HU/HA/HSA 111.42). Two northeast trending tributaries to the Eel River are mapped as blue lines with one crossing the northern portion of the Property located in Trinity County and the other crossing mostly through the southern portion of the Property located in Mendocino County. The Middle Mainstem Eel River is Clean Water Act section 303(d)-listed as impaired due to elevated temperature and sedimentation/siltation. In 2005, the United States Environmental Protection Agency established Total Maximum Daily Loads (TMDL) for temperature and sediment for the Middle Main Eel River. (See Attachment 2 for additional watershed information and the Regional Water Board's Total Maximum Daily Load Sediment Implementation Policy and Eel River Temperature Action Plan.)

    c. Basin Plan: Prohibitions: The Basin Plan also contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses identified. The Basin Plan's *Action Plan*

for Logging, Construction, and Associated Activities includes the following waste discharge prohibitions (See section 4.2.1 of the 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 deleterious to fish, wildlife, or other beneficial uses is prohibited."

d. 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."

10. **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.

11. **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.

12. **Legal Authority to Require Clean 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) to include, sewage and any other waste substances, whether 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 prior to, and for purposes of, disposal. Earthen material, including sediment ~~and slash~~, when discharged to waters of the state, is a "waste" as defined in Water Code section 13050, subdivision (d). The plastic that was observed within and adjacent to watercourses is also a "waste" as defined in Water Code section 13050, subdivision (d).

        i. The sediment described above threatens to discharge to receiving waters in violation of Prohibition 2 of the Action Plan for Logging, Construction, and Associated Activities contained within the Basin Plan. The plastic that was observed within and adjacent to watercourses is also a "waste" as defined in Water Code section

13050, subdivision (d). These wastes could become deleterious to fish, wildlife, or other beneficial uses.

ii. Additionally, the Dischargers activities on the Property, including expansion of graded flats for cannabis cultivation, modification of watercourses for road stream crossings, and inadequate housekeeping, has caused or threatens to cause or permit waste to be discharged, or deposited where it may be discharged, into the waters of the state in a manner that has created or threatens to create a condition of pollution by altering the quality of the waters of the state to a degree that unreasonably affects the waters for beneficial uses.

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. Petroleum products used for lubricants and fuels including oil, diesel, and gasoline can enter waters through spills, leakage from storage containers, and improper storage and disposal and can result in contamination of freshwater sources. Spilled oil in freshwater habitats can affect mammals, aquatic birds, insects, fish, microorganisms and sensitive vegetation. Heavier petroleum products can sink and can become trapped in gravels, contributing to long-term exposures, while lighter petroleum products can accumulate on the surface of water and spread downstream where it can collect on stream beds, log jams, and at the water's edge. Petroleum products can also dissolve into the water column where it can be ingested by fish and other freshwater organisms. The actual behaviors of the product in water will depend on the characteristics of the petroleum product and that of the water body Amphibian exposure to petroleum products can be particularly detrimental as they breathe through their skin, and coating can be lethal. Oil and fuel exposure to fish can cause impaired functions, physical deformities, and compromised reproduction. In addition, human exposure to petroleum products from ingestion and exposure can have impacts to the central nervous system, eyes, and respiratory tract. (Beneficial Uses that are potentially impacted include: REC 1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

ii. Discharges 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 in 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 that are potentially impacted include: REC-1, REC-2, and MUN).

c. Sediment from construction of the stream crossings and land clearing and grading activities that occurred within or adjacent to the unnamed tributaries can alter the quality of those waters and unreasonably affect beneficial uses.

    i. Discharges of sediment and other inert material can alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. 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). The unnamed tributaries provide habitat for amphibians and are tributary to streams that provide habitat for salmonids. Increased sedimentation and turbidity can also 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 can also discharge to surface water and result in increased turbidity that may affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).

    ii. The discharge of sediment is especially problematic in this watershed since the Middle Main 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. Sediment delivery to streams impacts the migration, spawning, reproduction, and early development of cold-water fish such as fall run Chinook salmon, Coho salmon, and steelhead trout. Sediment delivery to headwater streams is especially problematic for amphibian species.

iii. Sediment Deposition (i.e. bottom deposits) in headwater streams can result in the direct impact to native amphibians that rely on clean substrate to burrow in and access cold, clean water, including Southern Torrent Salamanders, Coastal Giant Salamanders, and Tailed Frogs. Southern Torrent Salamanders are primarily aquatic, extremely moisture dependent, burrow into streambed substrates during both low and high stream flows, and feed largely on aquatic macroinvertebrates. Southern Torrents lay single eggs that take approximately eight months to hatch and their larvae take up to two and a half years to metamorphose.

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.

Suspended 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.

v. Impacts to beneficial uses 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) and nutrients, which bind to sediment particles. (Beneficial Uses impacted: REC1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

13. **Cleanup and Abatement Action Necessary**: Cleanup and abatement is necessary to ensure that any discharge of waste or existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property that may create a condition of pollution are prevented, that the background water quality or the best water quality that is feasible is 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. (See Attachment 1 for applicable Regional Water Board and State Water Board Resolutions.)

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 four types of technical and monitoring reports. Staff estimate the total cost of technical reports required by this Order to be approximately $16,980 to $56,160.[3] The costs of the technical or monitoring reports required by this Order bear a reasonable relationship to the need for these reports and the benefit to be gained by these reports, as discussed below:

    a. The Interim Stabilization Plan is a technical report that is necessary to gain Executive Officer authorization to conduct work to stabilize the site and prevent further discharges and threatened discharges of waste to waters of the state, prior to the full implementation of the Cleanup Restoration and Monitoring Plan described in item b, which will not occur until 2023. The Interim Stabilization Plan shall be prepared by an appropriately licensed professional for the completion of cleanup and stabilization measures necessary to clean up wastes, and to prevent further erosion and discharge of sediment to receiving waters during the 2022/2023 wet weather period. The plan requirements (i.e., field inspection and report preparation) are comparable to that of preparing a Site Erosion and Sediment Control 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 $1,200 to $2,400. The burden, including costs, of preparing and submitting the plan, therefore, bears a reasonable relationship to the need for the plan and the benefits to be obtained from the plan because its implementation will reduce the threat of discharges of fine sediment to surface waters during the upcoming wet weather season.

[3] 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) (https://www.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 1, subparagraphs a-d.

b. 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 the cannabis cultivation, alteration of the bed and bank of watercourses at road stream crossings, and the discharge and threatened discharge of sediment and cannabis cultivation waste; (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 discharges of waste on the Property. By requiring the Dischargers 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 that the proposed work will adequately remediate site conditions and prevent the discharges of sediment and other wastes from further impacting the beneficial uses of sensitive water bodies. As previously mentioned, the Middle Main 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, thereby heightening the need for this technical report in order to reduce further impairment to waters of the state. 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 Disturbed Area Stabilization Plan as presented in the 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 the report and the benefits to be obtained from the report.

c. Separate Completion Reports are necessary to demonstrate that the Dischargers have successfully completed implementation of the Interim Stabilization Plan and 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 of a Completion Reports (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 described above, which are estimated to cost between $2,760 and $7,920 each. Therefore, the estimated cost to prepare two Completion Reports is between $5,520 and $15,840. The burden, including costs, of preparing and submitting two Completion Reports therefore bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

Annual Monitoring Reports are necessary to allow the Regional Water Board, or its delegated officer, to confirm the long-term stability of restored areas, to identify any areas where restoration is failing or needs improvement, and to demonstrate the effectiveness of erosion control measures in preventing sediment discharges to waters of the state. Given the condition of the Property as a result of the Dischargers' activities, observation and maintenance of the completed project for a period of five years is needed to ensure that the anticipated water quality benefits are achieved in the long-term and that CRMP components continue to function and remain effective. The cost to prepare an Annual Monitoring Report (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-$4,760. Therefore, the cost to prepare five Annual Monitoring Reports is estimated to be between $5,400 and $23,800. The burden, including costs, of preparing and submitting the Completion Reports therefore bears a reasonable relationship to the need for the report and the benefits to be obtained from the report. The Dischargers named in this Order currently own the Property and/or owned the Property at the time of staff's inspections during which the discharges and threatened discharges were observed, and thus are appropriately responsible for providing the reports.

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 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, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and provide the following information.

1. **Submit an Interim Stabilization Plan:** Within 30 days of issuance of this Order, the Dischargers shall submit a proposed Interim Stabilization Plan for approval by the Regional Water Board or its delegated officer. The Interim Stabilization Plan shall be prepared by an appropriately licensed professional and shall describe immediate cleanup and stabilization measures necessary to clean up wastes and trash, disperse concentrated stormwater, and prevent further erosion and discharges of sediment and other pollutants. The Interim Stabilization Plan is generally intended for the type and scope of work that would not require additional permitting. The Interim Stabilization Plan shall include, at a minimum:

    a. A site map depicting topography, watercourses, roads, stream crossings, graded/disturbed surfaces, areas of accumulated refuse, areas of human waste disposal and/or domestic waste treatment systems, and areas of fertilizer and potting soil accumulation.

    b. Identification of locations of controllable sediment delivery sites[4] or other sites where waste has discharged or threatens to discharge to waters of the state; and

    c. Identification of all areas of immediate concern, using the above information, along with proposed cleanup and stabilization measures to be implemented at each area of concern. Cleanup and stabilization measures shall include, but not be limited to:

        i. Installation of water breaks designed to reduce road surface erosion by diverting storm water runoff from the road surface and directing it to a safe discharge area;

[4] Controllable sediment delivery sites are generally areas that are discharging or have the potential to discharge sediment to waters of the state, that are caused or affected by human activity, and may feasibly and reasonably respond to prevention and minimization management measures.

ii. Hydrologic disconnection of road drainage from waters of the state;

iii. Stabilization of disturbed areas with appropriate erosion control measures to protect the disturbed areas from the forces of rain drop impact and overland flow;

iv. Prevention of discharges of sediment, stagnant water, and other wastes to surface waters; and

v. Ensuring the proper storage and containment of petroleum products, chemicals, pesticides, waste piles, potting soil, and soil amendments and fertilizers to avoid transport into surface waters – this includes proper disposal of waste materials, including empty or partially used containers per manufacturer and waste disposal guidelines.

d. A monitoring plan and schedule to regularly inspect the Property to determine if actions are being implemented as planned, evaluate the effectiveness of cleanup and stabilization measures and corrective actions, and identify where additional work and maintenance of site cleanup and stabilization measures may be needed.

2. **Complete Implementation of the Interim Stabilization Plan:** The Dischargers shall obtain approval of the Interim Stabilization Plan from the Regional Water Board and complete the work specified in the approved Interim Stabilization Plan ~~by October 15, 2022~~ Within 45 days of issuance of this Order.

3. **Submit Completion Report for Interim Stabilization Plan:** No more than 45 days after completion of the work specified in the Interim Stabilization Plan, the Dischargers shall provide a report of completion of the measures outlined in the Interim Stabilization Plan for approval by the Regional Water Board or its delegated officer. This report shall include a written summary and photographs of the completed cleanup and stabilization measures.

4. **Submit a Cleanup, Restoration, and Monitoring Plan:** By April 1, 2023, the Dischargers 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 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 before the impacts occurred and their 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, 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, forensic wetland delineation reports[5], 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;

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 channels 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;

   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 Policy (identified in Attachment 1), the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (State Wetland Definition and Procedures[6]) and be

[5] 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 United States Army Corps of Engineers Wetlands Research Program Technical Report Y-87-1, Section F. Atypical situations (pages 73-83).

[6] State Wetland Definition and Procedures can be found online at: https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformed.pdf

developed in accordance with the United States Army Corps of Engineers Regulatory Program Standard Operating Procedure for Determination of Mitigation Ratios (12501-SPD)[7]. The proposal shall: (1) describe existing site conditions at the proposed mitigation site; (2) describe implementation methods used to provide compensatory mitigation; and (3) include monitoring that will be conducted and performance criteria that will be used to evaluate the success of the compensatory mitigation; The Compensatory Mitigation Proposal shall (1) describe existing and proposed site conditions at the proposed mitigation sites; (2) describe implementation methods used to provide compensatory mitigation; (3) include a land use covenant, deed restriction, or other legal mechanism to preserve all mitigation sites in place and in perpetuity; (4) include photo point monitoring that will document success of the compensatory mitigation; and (5) the submittal of monthly progress updates due on the 1st of each month until all required construction activities are completed.

c. 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.

5. **Modifications to the approved CRMP:** The Dischargers shall notify and obtain approval from the Regional Water Board or its delegated officer at least 30 days prior to making any modifications to the approved CRMP.

6. **Complete the Cleanup and Restoration:** By October 15, 2023, the Dischargers shall complete all work to clean up and abate the Property contained in the CRMP as approved by the Regional Water Board or its delegated officer.

7. **Completion Report for the CRMP:** No more than 60 days after completing implementation of the CRMP, 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 included in the approved CRMP 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.

8. **Annual Monitoring Reports:** Upon completion of the restoration and mitigation under the CRMP, 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. Such a request may be submitted when the approved success criteria in the CRMP are met with supporting

[7] The 12501-SPD can be found online at:
https://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/ratio/12501-SPD.pdf

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 Performance Standards included in Attachment 4.

GENERAL REQUIREMENTS AND NOTICES

1. The Dischargers shall comply with all provisions of Attachment 4 and shall ensure that the subject Property complies with all applicable Performance Standards for Cleanup, Abatement, and Remedial Action.

2. **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 Executive 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.

3. **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 a complaint for administrative civil liability may be issued by the Regional Water Board. 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 sections 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.

4. **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.

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

6. **Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify 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 Dischargers may contact Regional Water Board using the general phone line at (707) 576-2220 or contact Brian Fuller at (707) 576-2806 or by email at Brian.Fuller@waterboards.ca.gov.

7. **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 no later than 5:00 p.m., 30 days following 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 effective upon the date of signature.

Digitally signed by
Matthias St John
Date: 2022.10.26
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Water Boards

Matthias St. John
Executive Officer

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List of Attachments:

Attachment 1:	Legal Citations and Authority
Attachment 2:	Watershed Fact Sheet
Attachment 3:	Notice of Violation and Transmittal of Report of April 29, 2021 Inspection
Attachment 4:	General Requirements and Notices, and Performance Standards for Cleanup, Abatement and Remedial Action