

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

**ORDER NO. R1-2025-0006  
for Administrative Civil Liability**

**In the Matter of:  
Yesenia and Raul Carrillo  
Mendocino County  
Assessor's Parcel Numbers 032-294-03-00 and 032-180-45-00**

The California Regional Water Quality Control Board, North Coast Region (hereinafter North Coast Water Board) finds the following:

This matter comes before the North Coast Water Board from Administrative Civil Liability Complaint No. R1-2025-0006, dated February 10, 2025, (Complaint) issued to Yesenia and Raul Carrillo (Dischargers). The Complaint alleges that, between September 15, 2024 and February 10, 2025, the Dischargers failed to comply with Required Action No. 1 contained in North Coast Water Board Cleanup and Abatement and Investigative Order No. R1-2024-0034 (Cleanup and Abatement Order or CAO), and proposes an administrative civil liability amount of **\$55,335** for the alleged violation, pursuant to Water Code section 13268. A hearing took place on May 7, 2025, in accordance with the hearing notice and procedures served on Dischargers, and applicable laws and regulations, including California Code of Regulations, title 23, sections 648-648.8. The Board evaluated the evidence and argument and based on the allegations in the Complaint determined for the reasons set forth below that the Dischargers failed to comply with the Cleanup and Abatement Order and are liable for **\$55,335** in penalties.

**BACKGROUND**

1. The Dischargers own two separate parcels located within three miles of each other east of the town of Covelo in Mendocino County. One parcel identified as APN 032-294-03-00 is located less than two miles north of Black Butte River, approximately three miles east and upstream from its confluence with the Middle Fork Eel River. The other parcel identified by APN 032-180-45-00 is located less than one mile north and upstream from the confluence of the Black Butte River with the Middle Fork Eel River. The Dischargers acquired title to Mendocino County APN 032-294-03-00 on August 28, 2020 and APN 032-180-45-00 on December 7, 2020, and owned the properties at all times relevant to the allegations in the Complaint.

2. The North Coast Water Board is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within the North Coast Region of the State of California. The Dischargers created, and threaten to create, conditions of pollution by unreasonably impacting water quality and beneficial uses to the Black Butte River and Middle Fork Eel River. The *Water Quality Control Plan for the North Coast Region* (Basin Plan) identifies the following existing and potential beneficial uses for the Black Butte River Hydrologic Subarea within the Eel River Hydrologic Unit to include the following:
  - a. Municipal and Domestic Supply (MUN),
  - b. Agricultural Supply (AGR),
  - c. Industrial Service Supply (IND),
  - d. Industrial Process Supply (PRO),
  - e. Freshwater Replenishment (FRSH),
  - f. Navigation (NAV),
  - g. Hydropower Generation (POW),
  - h. Water Contact Recreation (REC1),
  - i. Non-Contact Water Recreation (REC2),
  - j. Commercial or Sport Fishing (COMM),
  - k. Warm Freshwater Habitat (WARM),
  - l. Cold Freshwater Habitat (COLD),
  - m. Wildlife Habitat (WILD),
  - n. Rare, Threatened, or Endangered Species (RARE),
  - o. Migration of Aquatic Organisms (MIGR),
  - p. Spawning, Reproduction, and/or Early Development (SPWN); and
  - q. Aquaculture (AQUA).
3. The Basin Plan contains water quality objectives which are necessary for reasonable protection of the beneficial uses. Protection of fishery beneficial uses (i.e., Cold Freshwater Habitat; Commercial and Sport Fishing; Spawning, Reproduction, and/or Early Development; Rare, Threatened, or Endangered Species; and Migration of Aquatic Organisms) are of particular importance and include the following:
  - a. 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."
  - b. Suspended Material: "Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."
  - c. Turbidity: "Turbidity shall not be increased more than 20 percent above naturally occurring background levels."
  - d. Settleable Material: "Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses."

4. The Basin Plan (Section 4.2.1) contains the *Action Plan for Logging, Construction, And Associated Activities*, that includes the following waste discharge prohibitions:
  - a. 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.”
  - b. “The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
5. The Middle Fork Eel River is Clean Water Act section 303(d)-listed as impaired due to elevated sedimentation and temperature. In December of 2003, the U.S. Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Fork Eel River and its tributaries.
6. As part of the Regional Water Board’s efforts to control sediment waste discharges and restore sediment-impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.
7. North Coast Water Board staff inspected APN 032-294-03-00 on May 9, 2023 and APN 032-180-45-00 on May 22, 2023, (both parcels are collectively referred to herein as the Property) during the execution of search warrants obtained by California Department of Fish and Wildlife (CDFW) law enforcement. The purpose of Staff’s inspections was 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 from illicit cannabis cultivation. The Dischargers’ activities were conducted without authorization from the applicable state, and local agencies, including the North Coast Water Board.
  - a. On June 22, 2023, the North Coast Water Board transmitted a report of the inspection of APN 032-180-45-00 and a Notice of Violation to the Dischargers documenting controllable sediment sources associated with graded cultivation

- pads; road fords and poorly designed or maintained culverted stream crossings; and cannabis cultivation waste discharged to land and burned where it threatens to discharge pollutants into watercourses.
- b. On August 11, 2023, the North Coast Water Board transmitted a report of the inspection of APN 032-294-03-00 and a Notice of Violation to the Dischargers documenting controllable sediment sources associated with poorly designed, constructed or maintained access roads, graded cultivation pads and a culverted stream crossing from where sediment threatens to discharge to receiving watercourses; cannabis cultivation waste including soil pots, plastic netting, and lumber discharged into a watercourse; and unauthorized alteration of a channel bank and fill of sediment into a watercourse.
8. On May 15, 2024, Staff transmitted a draft cleanup and abatement order to the Dischargers that proposed tasks with associated deadlines that would be required to clean up and abate the impacts from observed discharges or threatened discharges resulting from the unauthorized cannabis cultivation activities on the Property. The transmittal letter for the draft cleanup and abatement order provided the Dischargers 30 days from the date of the transmittal letter to submit written comments and/or evidence for the North Coast Water Board to consider.
9. On June 13, 2024, the Dischargers emailed comments to Staff. Staff responded to the Dischargers' comments on July 18, 2024, acknowledging the submittal of their comments and informing them of their risk of liability if they fail to comply with a Cleanup and Abatement Order issued by the North Coast Water Board, but Staff did not propose any changes to the draft cleanup and abatement order based on the Dischargers' comments.
10. On July 23, 2024, the Executive Officer issued the Cleanup and Abatement Order to the Dischargers. The Cleanup and Abatement Order directs the Dischargers to complete several Required Actions, including submittal of a proposed Cleanup, Restoration, and Monitoring Plan by September 15, 2024 (Required Action 1).
11. On September 26, 2024, Staff transmitted a Notice of Violation to the Dischargers for failing to submit a proposed CRMP by September 15, 2024, as required under Required Action 1 of the Cleanup and Abatement Order. The Notice of Violation explained that the Dischargers risked the North Coast Water Board imposing administrative civil liability if they did not comply with the Cleanup and Abatement Order.
12. The Penalty Methodology for the Complaint (Attachment A) provides the details of the violation and the factors considered in developing the civil liability. Attachment A to the Complaint is included as Attachment A to this Order and incorporated herein by reference.

## **VIOLATION**

13. **Violation 1:** The Dischargers violated Cleanup and Abatement Order, Required Action 1 by failing to submit a Cleanup, Restoration, and Monitoring Plan (CRMP) by September 15, 2024.

## **LEGAL AND REGULATORY CONSIDERATIONS**

14. The Cleanup and Abatement Order directive to submit the CRMP (Required Action 1) was issued pursuant to Water Code section 13267.

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

15. Water Code section 13268 provides that the North Coast Water Board may impose civil liability administratively to any person who fails to submit reports as required under Water Code section 13267 in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

## **WATER QUALITY ENFORCEMENT POLICY**

16. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 *Water Quality Enforcement Policy*<sup>1</sup> (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e).<sup>2</sup>
17. The violation alleged is subject to liability in accordance with Water Code section 13268. Administrative civil liabilities under this section of the Water Code are subject to the factors set forth in Water Code section 13327. The North Coast Water Board considered the required factors for the alleged violation using the methodology in the 2017 Enforcement Policy, as described in Attachment A.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

18. Issuance of this Order to enforce Water Code, Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code,

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<sup>1</sup> The [2017 Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) (https://www.waterboards.ca.gov/board\_decisions/adopted\_orders/resolutions/2017/040417\_9\_final%20adopted%20policy.pdf)

<sup>2</sup> The Office of Administrative Law approved revisions to the Enforcement Policy in November 2024. Because the Dischargers' violation occurred prior to that approval date, the 2017 Enforcement Policy governs the penalty calculation for the assessed administrative civil liability in this Order.

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

### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

19. The Prosecution Team proposes an administrative civil liability of **\$55,335** for the violation, as detailed in Attachment A. This proposed administrative civil liability was derived from the use of the penalty methodology in the 2017 Enforcement Policy. The proposed administrative civil liability takes into account the factors described in Water Code section 13327, such as the Dischargers' culpability, history of violations, ability to pay, and other factors as justice may require.
20. The Dischargers did not submit any evidence or argument contesting the allegations or the proposed liability. The Dischargers did not appear at the hearing held on May 7, 2025.

### **MAXIMUM STATUTORY LIABILITY**

21. Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the North Coast Water Board on a daily basis in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Dischargers have failed to submit the required CRMP for **148 days**, from September 15, 2024, to February 10, 2025. The statutory maximum liability amount for the violation is \$148,000 (\$1,000/day x 148 days).

### **MINIMUM STATUTORY LIABILITY**

22. The 2017 Enforcement Policy requires the North Coast Water Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for the violation is estimated to be \$292. The minimum liability that may be imposed is, therefore, \$292 plus 10 percent (\$29), totaling **\$321**.

### **ADMINISTRATIVE CIVIL LIABILITY**

23. Based on consideration of the above facts, the evidence in this matter, material submitted by the parties, the testimony and arguments presented at hearing, the applicable law, and after applying the methodology in the 2017 Enforcement Policy, the North Coast Water Board finds that civil liability shall be imposed administratively jointly against the Dischargers in the amount of **\$55,335**, as explained in detail in Attachment A to this Order.
24. Notwithstanding the issuance of this Order, the North Coast Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.
25. Any person aggrieved by this 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 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. [Copies of the law and regulations applicable to filling petitions](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/) ([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/)) will be provided upon request, and may be found on the Internet.

**IT IS HEREBY ORDERED**, pursuant to Water Code sections 13268 and other applicable law, that:

1. The Dischargers jointly shall be assessed an Administrative Civil Liability in the amount of fifty-five thousand three hundred and thirty-five dollars (\$55,335).
2. Payment shall be made no later than 30 days from the date on which this Order is adopted. The Dischargers shall send the original signed check to:

State Water Resources Control Board  
Division of Administrative Services  
ATTN: Accounting  
1001 I Street, 18th Floor  
Sacramento, CA 95814

with a copy to:

North Coast Regional Water Quality Control Board  
Attn: Jeremiah Puget  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403.

I, Valerie Quinto, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on May 7, 2025.

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Valerie Quinto  
Executive Officer

Attachment A to the Complaint

**Attachment A**  
**Penalty Methodology for**  
**Administrative Civil Liability Complaint No. R1-2025-0006**  
**Factors Considered in Developing Recommended Civil Liability**  
**In the Matter of Yesenia and Raul Carrillo**

This technical analysis provides a summary of factual and analytical evidence that support the findings in Administrative Civil Liability Complaint No. R1-2025-0006 (Complaint) and the recommended assessment of administrative civil liability in the amount of \$55,335. The Complaint alleges that Yesenia and Raul Carrillo (the Dischargers), failed to implement Required Action No. 1 of the North Coast Regional Water Quality Control Board's (North Coast Water Board's) Cleanup and Abatement and Investigative Order No. R1-2024-0034 (Cleanup and Abatement Order) at the Property located in Mendocino County at Assessor's Parcel Numbers (APNs) 032-294-03-00 and 032-180-45-00.

**SUMMARY OF VIOLATION**

The Complaint alleges that the Dischargers violated Water Code section 13267 by failing to submit a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) for approval by September 15, 2024, as required under Required Action 1 in the Cleanup and Abatement Order. Water Code section 13268, subdivision (b), provides that the North Coast Water Board may impose civil liability administratively in response to violations of section 13267 in an amount of up to one thousand dollars (\$1,000) per day of violation. As of February 10, 2025, the CRMP is 148 days late, and the Dischargers are subject to liability of up to \$148,000 pursuant to Water Code section 13268, subdivision (b). **As described below, the Prosecution Team<sup>3</sup> recommends administrative civil liability in the amount of fifty-five thousand three hundred and thirty-five dollars (\$55,335) for this violation.**

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<sup>3</sup> To maintain impartiality of the North Coast Water Board, during potential enforcement hearings as a standard practice in progressive enforcement cases, staff organizes a group of staff that works on case development (the Prosecution Team), which consists of the Assistant Executive Officer as the lead prosecutor together with staff that has inspected the site and reviewed associated enforcement documents. Another group of staff that has not been involved in the enforcement case can help advise the Regional Water Board (the Advisory Team).



## **PENALTY METHODOLOGY**

The State Water Resources Control Board's *Water Quality Enforcement Policy*<sup>4</sup> ("Enforcement Policy") establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under Water Code section 13327 and/or 13385, subdivision (e), depending on the violations. As the violation alleged in the Complaint is enforceable under Water Code section 13268, the proposed liability must take into consideration the factors specified in Water Code section 13327, specifically:

"the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

Each factor of the Enforcement Policy's ten-step approach is discussed below, along with the basis for assessing the corresponding scores and proposed administrative civil liability amount.

The violation alleged here involves failure to comply with the Water Code section 13267 reporting directive. This is a "non-discharge violation" for purposes of the Enforcement Policy penalty methodology.

### **Step 1. Actual Harm or Potential for Harm for Discharge Violations**

Enforcement Policy Step 1 is only applicable to discharge violations, which are not alleged in the Complaint.

### **Step 2. Per Gallon and Per Day Assessments for Discharge**

Enforcement Policy Step 2 is only applicable to discharge violations, which are not alleged in the Complaint.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

The Enforcement Policy provides that "[t]he Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not

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<sup>4</sup> [The Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)). The Office of Administrative Law approved revisions to the Enforcement Policy in November, 2024. Because the violations alleged in the Complaint occurred prior to that approval, the 2017 Enforcement Policy governs the penalty calculation here.

limited to, failure to conduct routine monitoring and reporting, failure to provide required information, and the failure to prepare and implement required plans. While all non-discharge violations harm or undermine the Water Boards' regulatory programs and compromise the Water Boards' ability to perform their statutory and regulatory functions, some non-discharge violations have the potential to directly or indirectly impact beneficial uses and should result in more serious consequences."

To determine the initial liability factor for each violation, the Water Boards use the matrix set forth in Table 3 of the Enforcement Policy to determine a per-day assessment factor for each violation. The matrix considers the potential for harm resulting from the violation, and the deviation from the applicable requirement. Each of these can be "Minor," "Moderate," or "Major."

**Potential for Harm:**

The Potential for Harm categories are as follows:

- *Minor – The characteristics of the violation have little or no potential to impair the Water Boards' ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.*
- *Moderate – The characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.*
- *Major – The characteristics of the violation have wholly impaired the Water Boards' ability to perform their statutory or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major. (emphasis added.)*

(Enforcement Policy, page 16)

**Violation 1:** The CRMP required by the Cleanup and Abatement Order is necessary to: (1) assess impacts to waters of the state resulting from the cannabis cultivation, Dischargers' alteration of the bed and bank of watercourses, 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. The

CRMP is comparable in scope to the technical documents required of all licensed cannabis cultivators in California enrolling in Order No. WQ 2019-0001-DWQ General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order). By failing to submit a CRMP for approval, the Dischargers wholly impaired the North Coast Water Board's ability to perform its regulatory functions by preventing the Board from authorizing cleanup actions. Additionally, the Dischargers obtained an unfair economic advantage over enrollees in the Cannabis General Order by not obtaining appropriate permits and by not producing the CRMP, which is comparable with reports required of enrollees in the Cannabis General Order.

Additionally, the impacted waterbodies intended to be addressed through the CRMP are impaired and contain sensitive habitats. The federal Clean Water Act section 303, subdivision (d), impaired waterbodies list identifies the Middle Fork Eel River as impaired due to elevated sedimentation/siltation and elevated temperature. In December of 2003, the U.S. Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Fork Eel River and its tributaries. The TMDLs indicate that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. As such, protection of this beneficial use is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation. Since this non-discharge violation involves failure to comply with a directive in the Cleanup and Abatement Order to submit a report that identifies cleanup actions impacting an impaired waterbody, the Potential for Harm for Violation 1 is **Major**.

**Deviation from Requirement:**

The Deviation from Requirement categories are as follows:

- *Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).*
- *Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).*
- *Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).*

(Enforcement Policy, page 16)

**Violation 1:** The deviation from the requirement to submit a proposed CRMP by the deadline contained in the Cleanup and Abatement Order is **Major**. North Coast Water Board staff (Staff) transmitted a letter to the Dischargers on September 26, 2024, notifying them of Violation 1, but the Dischargers did not respond. The Dischargers

have made no attempt to submit a proposed CRMP for approval, rendering the requirement ineffective in its essential functions.

**Per Day Factors:**

**Violation 1:** Utilizing a Potential for Harm score of **Major** and Deviation from Requirement score of **Major**, Staff selected a Per Day Factor of 0.85 for Violation 1, consistent with Table 3 on page 16 of Enforcement Policy.

**Initial Liability Amounts:**

The initial liability amount for Violation 1 is ***calculated on a per-day basis as follows:***

**Violation 1:** Per-Day Liability (148 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability)) = **\$125,800**

**Step 4. Adjustment Factors**

Under this step, the initial liability amount is adjusted by factors addressing multiple-day violations and the violator's conduct.

**Multiple-Day Violations**

The Enforcement Policy advises that “for violations that are assessed a civil liability on a per day basis and do not constitute a single operational upset, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily penalty assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the North Coast Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program;
- b. Results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of the violation, plus an assessment for each 5-day period of violation until the 60th day, plus an assessment for each 30 days of violation thereafter. Staff determined that neither Violation 1 nor Violation 2 resulted in discrete economic benefit that can be measured on a daily basis. Therefore, applying the alternative approach to penalty calculation, Staff recommends collapsing the number of days for which administrative civil liability shall be assessed as follows:

**Violation 1: Full collapsing of days from 148 days to 38 days. Therefore, the adjusted Initial Liability Amount for Violation 1 becomes \$32,300 (38 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability)).**

**Violator's Conduct:**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history.

**Culpability:**

This factor assesses a discharger's degree of culpability prior to the violation. The Enforcement Policy provides that "[h]igher liabilities should result from intentional or negligent violations" as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence, a lower multiplier for more simple negligence, and a neutral assessment of 1.0 where a discharger is determined to have acted as a reasonable and prudent person would have.

**Violation 1:** At the time of the inspection, the Dischargers were conducting unlicensed commercial cannabis cultivation on the Property. Commercial cannabis cultivators are required to maintain their property, where cultivation is occurring, consistent with the Cannabis Cultivation Policy and the Water Code. Due to observed discharges and threats of discharge on the Property, the North Coast Water Board issued the Cleanup and Abatement Order to ensure the Property was adequately remediated. Upon issuance of the Cleanup and Abatement Order, a reasonable and prudent person would have made efforts to comply with the requirement to submit a proposed CRMP for approval and communicate these efforts to the North Coast Water Board. The Dischargers' conduct fell below that of a reasonable and prudent person. The Dischargers have failed to respond to Staff's September 16, 2024 email or their September 26, 2024 Notice of Violation which was delivered via email and by FedEx mail to the Dischargers' home following the July 23, 2024 issuance of the Cleanup and Abatement Order. These actions constitute an intentional violation of Required Action 1; thus, a value of **1.25** is appropriate for this violation.

**History of Violations:**

The Enforcement Policy advises that "[w]here the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1."

The Dischargers are also named in Cleanup and Abatement Order R1-2024-0033 requiring cleanup of a property that the Dischargers no longer own, however the new owners of that property are complying with Order R1-2024-0033. There are no previous

orders assessing administrative civil liability against the Dischargers for previous violations within the last five years. Accordingly, a neutral factor of **1.0 is selected**.

***Cleanup and Cooperation:***

This factor assesses voluntary efforts to cleanup and/or to cooperate with regulatory agencies in returning to compliance after the violation. The Enforcement Policy states that the cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation or timely response to a North Coast Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline.

**Violation 1:** After the issuance of Staff's response to the Dischargers' comments on a draft of the Cleanup and Abatement Order, the Dischargers did not sign receipt for certified mailing of the July 23, 2024 final Cleanup and Abatement Order and failed to respond to Staff's September 16, 2024 email or their September 26, 2024 Notice of Violation Letter with enclosed copy of the Cleanup and Abatement Order, which was delivered via email and by certified mail to the Dischargers' home ; therefore, a score of **1.25** has been assessed for Violation 1.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by adding the amounts above for each violation, including any adjustment for multiple day violations. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

The Total Base Liability amount for Violations 1 is calculated on a per-day basis as follows:

**Violation 1: \$32,300** (Initial Liability after collapsing days) x **1.25** (Culpability Factor) x **1.0** (History of Violations Factor) x **1.25** (Cleanup and Cooperation Factor) = **\$50,468**

**Total Base Liability Amount: \$50,468**

**Step 6. Ability to Pay and Continue in Business**

The Enforcement Policy provides that "[i]f the Water Boards have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The ability of a discharger to pay is determined by its income (revenues minus expenses) and net worth (assets minus liabilities)."

The Dischargers own the Property, with APN 032-180-45-00 and APN 032-294-03-00 having assessed values of \$618,108 and \$73,440, respectively. Property transaction records indicate that APN 032-294-03-00 was purchased in 2020 for cash, which suggests that the Property likely has no mortgage or other financial encumbrances. Staff does not have information about the Dischargers' revenues or liabilities that would further inform their ability to pay. Based on the information available, Staff proposes no adjustment to the Total Base Liability Amount.

### **Step 7. Economic Benefit**

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than any economic benefit realized by the Dischargers.

For **Violation 1**, the cost of preparing a CRMP (i.e., field inspection and report preparation) is comparable to the cost of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and a Disturbed Area Stabilization Plan, as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)<sup>5</sup>, which is estimated to cost between \$4,860 and \$14,120.

Although the Dischargers will still need to submit a proposed CRMP for approval, they have not done so yet, so the costs estimated above are considered delayed. Using the EPA BEN model, staff determined the economic benefit from delayed expenditures associated with Violation 1. Staff identified the midpoint in the estimated range of plan cost of \$9,490 as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring costs with a noncompliance date of the September 15, 2024, deadline and an estimated compliance date of May 15, 2025, two weeks after the anticipated hearing date. The resulting economic benefit from delaying the plan expenditures is \$292.

The economic benefit plus ten percent is calculated to be  $\$292 + \$29 = \$321$  in this instance, which the Total Base Liability Amount exceeds.

### **Step 8. Other Factors as Justice May Require**

The Enforcement Policy states that “[i]f the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for ‘other factors as justice may require,’ but only if express findings are made to justify this adjustment.” The North Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in the total administrative civil liability.

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<sup>5</sup> [The 2017 Direct Cost Analysis](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf)

([https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/policy/20171017\\_cannabis\\_cultivation\\_policy\\_cost\\_analysis.pdf](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf))

### **Staff Costs**

The North Coast Water Board incurred \$12,574 in staff costs associated with this enforcement action. The total staff time needed to investigate the alleged violation and prepare the Complaint was seventy-three (73) hours. Staff labor included the work of an Engineering Geologist, Senior Engineering Geologist, Supervising Environmental Scientist, Supervising Water Resources Control Engineer, and Assistant Executive Officer. Specifically, development of this enforcement action necessitated four (4) hours of labor from an Engineering Geologist and Supervising Environmental Scientist to investigate the violation and issue a notice of violation to the Dischargers for the failure to comply with the Cleanup and Abatement Order; forty-six (46) hours for an Engineering Geologist, Senior Engineering Geologist, Supervising Environmental Scientist, and Supervising Water Resources Control Engineer to prioritize the violation for enforcement and draft the Complaint; and twenty-three (23) hours for a Supervising Water Resources Control Engineer and Assistant Executive Officer to review, edit, and issue this Complaint.

The Prosecution Team proposes to recuperate only the staff costs associated with the labor related to the executive-level review and issuance of the Complaint. This amounts to \$4,867 for the twenty-three (23) hours the North Coast Water Board's Assistant Executive Officer and Supervising Water Resources Control Engineer needed to review, edit, and issue this Complaint. The Prosecution Team's reasoning to seek only the staff costs associated with management level review and issuance of the Complaint is to allow the Dischargers to use the funds, that would otherwise be included in the proposed penalty, to comply with the requirements of the Cleanup and Abatement Order which is still in effect.

### **Step 9. Maximum and Minimum Liability Amounts**

The Enforcement Policy requires the North Coast Water Board to consider the maximum and minimum liability amounts that may be assessed for each violation. For all violations, the applicable statute sets a maximum liability amount. For some violations, the statute also establishes a minimum liability amount. The maximum and minimum liability amounts for each violation must be determined for comparison to the liability amounts proposed.

Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the North Coast Water Board in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Complaint alleges this violation occurred for 148 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$148,000. Water Code section 13268 does not impose a minimum liability amount; however, the Enforcement Policy requires the North Coast Water Board to recover, at a minimum, the economic benefit derived from this violation plus ten percent. As previously stated, Staff calculated the economic benefit of Violation 1 to be \$292. Therefore, the minimum



liability that can be imposed is \$292 plus ten percent (\$29) totaling \$321. The proposed liability for Violation 1 falls within the minimum and maximum liability amounts.

**Step 10. Final Liability Amount:**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

**Violation 1: After full collapsing of days from 148 days to 38 days, the liability amount for Violation 1 is calculated as 38 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability) x 1.25 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.25 (Cleanup and Cooperation Factor) = \$50,468 + Staff Costs of \$4,867.**

The Final Liability Amount is calculated to be fifty-five thousand three hundred and thirty-five dollars (**\$55,335**).