

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
February 2, 2023

ITEM: 7

SUBJECT: Public Hearing on Administrative Civil Liability Complaint No. R1-2022-0039 issued to Kou Xiong and Susan Yang Xiong, Trinity County, Assessor's Parcel Number 015-420-027-00.

BOARD ACTION: The Regional Water Board will consider evidence and testimony from the Dischargers and Prosecution Team and consider whether to impose penalties against the Dischargers.

BACKGROUND: On September 9, 2022, the Advisory Team of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Prosecution Team (Regional Water Board and State Water Board Office of Enforcement) staff had issued an Administrative Civil Liability Complaint (ACLC or Complaint) to Kou Xiong and Susan Yang Xiong, (Dischargers). The Advisory Team was notified that service of the Complaint at the Dischargers' address by certified mail and personal service was unsuccessful. After receiving approval from the Advisory Team, the Prosecution Team served the Complaint on the Dischargers via service by publication pursuant to the requirements of Government Code section 6064. Service by publication was initiated in two publications, the Minneapolis Star-Tribune running from November 12, 2022, until December 9, 2022, and the Redding Record Searchlight running from November 17, 2022, until December 8, 2022. The Advisory Team confirmed that the published notice was provided in English and Hmong. The published notice contains the proposed hearing date of February 2, 2023, the Prosecution Team's proposed penalty amount, and instructions to contact Nathan Jacobsen, member of the Regional Water Board's Advisory Team for questions regarding the Complaint and the upcoming hearing. It also advises the Dischargers to consult the Regional Water Board's website for information and updates related to the hearing and that the Hearing Notice and Procedures would be delivered to the Dischargers' last known address. The Advisory Team attempted delivery of the Hearing Procedures and Public Notice via certified mail to the Dischargers' last known addresses. As of the December 30, 2022 deadline for the Discharger to submit a Hearing Waiver, no such request has been made.

The Prosecution Team's Complaint seeks penalties of \$506,813 for alleged violations of a Cleanup and Abatement and Water Code section 13267 Order No. R1-2021-0040 (Cleanup and Abatement Order) issued to the Dischargers on August 8, 2021. Pursuant to Water Code section 13323 subdivision (c), the Regional Water Board is required to hold a hearing on the Complaint within 90 days of service of the Complaint. The

Dischargers did not waive their right to a hearing within 90 days. Accordingly, the Board has scheduled a hearing to consider the matter at its upcoming public meeting scheduled for February 2, 2023. At the public hearing the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the Complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

DISCUSSION: According to the Complaint, on June 26, 2019, State Water Resources Control Board (State Water Board) Office of Enforcement staff participated in an inspection of the Property located at Trinity County Assessor's Parcel Number (APN) 208-054-003-000 (the Property) during the execution of criminal search warrant by law enforcement officers of the California Department of Fish and Wildlife (CDFW) and Trinity County Sheriff's Office, with assistance from the California National Guard. The joint inspection included personnel of the State Water Board Division of Water Rights (Division), Trinity County Environmental Health Department, and CDFW. The Property is located near Hayfork on Barker Creek, a tributary to Hayfork Creek, which is Tributary to the South Fork Trinity River.

During the inspection State Water Board staff documented the following site conditions on the Property which they allege constitute threats to water quality and beneficial uses, including the discharge and/or threatened discharge of waste to receiving waters through site development, including placement of fill material and installation of a concrete diversion structure in a tributary to Barker Creek; construction of an off-stream water storage pond, redirection of a section of the tributary, discharge of cultivation tailwater and storm water from a drainage pipe; improper containment of wastewater, discharge of solid waste and domestic greywater; and erosion of the main access road above a tributary to Barker Creek. Cannabis cultivation and associated activities at the Property were conducted without adequate best management practices to ensure water quality protection. The Dischargers' activities, resulting in discharge and threatened discharge, were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

On November 12, 2019, State Water Board staff issued a Notice of Violation (2019 NOV) to the Dischargers documenting water quality concerns and violations observed during inspection of the Property. The 2019 NOV directed the Dischargers, by December 16, 2019, to obtain regulatory coverage for cannabis cultivation activities and to submit a site restoration and mitigation plan to address the past and threatened discharges. According to the Complaint, the Dischargers did not respond and did not obtain appropriate regulatory coverage for cannabis operations.

On April 27, 2021, Prosecution Team staff issued a draft Cleanup and Abatement Order to the Dischargers with an opportunity to provide comment on the draft order. Unable to verify delivery, staff reissued the draft order on June 23, 2021. According to the

Complaint, the Dischargers did not respond the draft order within the 30-day comment period.

On August 11, 2021, the Executive Officer issued a final Cleanup and Abatement Order R1-2021-0040 (the Order) and sent it via a process server to the Dischargers. The process server could not deliver the Order despite multiple attempts. The Dischargers did not challenge the Order through the petition process with the State Water Board, nor did they respond.

On January 20, 2022, Prosecution Team staff transmitted a Notice of Violation (January 2022 NOV) for failure to comply with certain directives in the Order. The 2022 NOV informed the Dischargers that they are in violation of (1) Water Code section 13267 for failure to submit a Cleanup, Restoration, and Monitoring Plan (CRMP) by September 17, 2021; (2) Water Code section 13304 for failure to implement and complete the CRMP by October 31, 2021; and (3) Water Code section 13267 for failure to submit a Completion Report by December 17, 2021. The January 2022 NOV also informed the Dischargers of the potential for administrative civil liability pursuant to Water Code sections 13268, 13350, and 13385. The January 2022 NOV was issued via FedEx with signature was returned to the State Water Board as unsigned.

On February 24, 2022, a second NOV of the Order along with a version translated into the Hmong language were issued to the Dischargers. The FedEx proof-of-delivery confirmed the second NOV of the CAO were delivered to both Dischargers. On April 7, 2022, a final NOV of the CAO along with a version translated into the Hmong language were issued to the Dischargers. The FedEx proof-of-delivery confirmed the final NOV of the CAO was delivered to Susan Yang Xiong and Kou Xiong.

According to the Complaint, to date, the Dischargers have not complied with the Order directives nor responded in any form.

The Complaint seeks penalties for two alleged violations of the Order: Violation 1) The Dischargers failed to submit a CRMP by September 17, 2021, pursuant to Water Code Section 13267, as required by Order Required Action 1, and Violation 2) The Dischargers failed to implement an approved CRMP by October 31, 2021, pursuant to Water Code Section 13304, as required by the Order Required Action 4.

The proposed penalty for Violation 1, the failure to submit a CRMP, is subject to a maximum penalty of \$357,000 pursuant to Water Code section 13268; there is no statutory minimum liability for this violation. The Complaint alleges noncompliance for 357 days with a statutory maximum penalty of \$1,000 per day for failure to submit the CRMP. Applying the penalty methodology set forth in the 2017 State Water Board Enforcement Policy (Enforcement Policy), and as set forth in Attachment A to the Complaint, the Prosecution Team proposes a penalty of \$86,063 for Violation 1.

The proposed penalty for Violation 2, the failure to implement an approved CRMP, is subject to a maximum penalty of \$1,565,000 and a minimum penalty of \$31,300

pursuant to Water Code section 13350. The Complaint alleges noncompliance for 313 days with a statutory maximum of \$5,000 per day, and minimum penalty of \$100 per day. Applying the penalty methodology set forth in the Enforcement Policy and detailed in Attachment A, the Prosecution Team proposes a penalty of \$420,750 for Violation 2. Accordingly, the total proposed penalty for Violation 1 and Violation 2 is \$506,813.

The Advisory Team provided a Notice of Public Hearing and Tentative Hearing Procedures to the Prosecution Team via email and the Dischargers via certified mail on December 20, 2022. Neither the Prosecution Team nor Discharger submitted comments on the Tentative Hearing Procedures by the deadline specified in the Procedures. The Advisory Team finalized the Hearing Procedures and Public Hearing Notice on January 11, 2023; copies were posted on the Regional Water Board's website and provided to those parties with known email addresses.

The Prosecution Team made a timely submission of its Case in Chief on January 17, 2023, including all supporting evidence it relies on to support the Complaint.

The Dischargers' supporting evidence, witness information and any legal, technical arguments to contest the Complaint are due on January 23, 2023.

No written comments were received from interested parties, by January 17, 2023.

As stated in the Hearing Procedures, on January 30, 2023, the Prosecution Team is required to submit a proposed Order for the Board to consider at the hearing. The Dischargers also have an opportunity to submit a proposed Order by January 30, 2023 for the Board's consideration. Proposed Orders will be provided to Board members when they are received.

RECOMMENDATION: At this time, the Executive Officer does not have a proposed recommendation. At the conclusion of the hearing and any deliberations, the Executive Officer may provide a recommendation.

SUPPORTING DOCUMENTS:

1. Administrative Civil Liability Complaint
2. Notice of Public Hearing and Hearing Procedures
3. Prosecution Team Pre-hearing Brief
4. Prosecution Team Case in Chief (For FTP Instructions to view all submitted documents, please contact Adona.White@waterboards.ca.gov of the Advisory Team)
5. Proposed Order(s) (Will be provided to Board members when received)