
North Coast Regional Water Quality Control Board

RESOLUTION NO. R1-2020-0013

**AUTHORIZING REFERRAL OF WATER CODE VIOLATIONS
BY SHADOW LIGHT RANCH, LLC, JOSHUA SWEET, AND THE HILLS, LLC
TO THE OFFICE OF THE ATTORNEY GENERAL
FOR JUDICIAL CIVIL ENFORCEMENT**

- A. WHEREAS, Shadow Light Ranch, LLC, Joshua Sweet, and The Hills, LLC, (collectively, Responsible Parties) are the current or former owners and/or operators at the property commonly known as Humboldt County Assessor's Parcel Numbers 223-073-004-000, 223-073-005-000, 223-061-003-000, 223-061-038-000, 223-061-039-000, 223-061-043-000, and 223-061-046-000 (hereafter referred to collectively as the Site).
- B. WHEREAS, the Site has been used for cannabis cultivation since at least 2016 while enrolled under North Coast Regional Water Quality Control Board (Regional Water Board) Order No. R1-2015-0023 (Regional Cannabis Order¹) and while applying for enrollment coverage under the State Water Resources Control Board (State Water Board) Order WQ 2019-0001-DWQ, (Statewide Cannabis Order²). The Regional Cannabis Order requires disclosure of Site information regarding the size of the cultivation area, which was initially enrolled for a cultivation area of ">5,000" square feet submitted in June 2016. The cultivation area was updated to 10,000 square feet on March 31, 2017, in the 2016 Annual Report for the 2016 cultivation season. The cultivation area observed by staff during inspections has exceeded the cultivation area declared as part of the Site's enrollment in the Regional Cannabis Order. During the November 2, 2017, inspection, Regional Water Board staff observed approximately 80,000 square feet of cultivation as described in the report for such inspection (2017 Inspection Report). On April 13, 2018, the Responsible

¹ Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

² General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities

Parties submitted the 2017 Annual Monitoring Report for the Site and reported 57,300 square feet of cultivation for the 2017 cultivation season. During the May 10, 2018, inspection, Regional Water Board staff observed an additional 4,000 square feet of cultivation, for a total of 84,000 square feet of cultivation as described in the report for such inspection (2018 Inspection Report). On March 29, 2019, the Responsible Parties submitted the 2018 Annual Monitoring Report for the Site and reported 57,300 square feet of cultivation for the 2018 cultivation season.

- C. WHEREAS, Responsible Party Joshua Sweet acquired the Site in 2006, and transferred the Site to Responsible Party Shadow Light Ranch, LLC in 2016. Responsible Party The Hills, LLC is the operator at the Site. Between approximately June and September 2016, the Responsible Parties constructed an impoundment approximately 24,670 square feet (0.5 acre) in size and up to 18 feet deep (Upper Pond) without required permits or approval from the Regional Water Board. The Upper Pond was constructed in a wetland, which required issuance of a Clean Water Act section 401 certification or analogous waste discharge requirements, depending on whether the wetland was a water of the United States or water of the state, prior to starting construction activities. The Responsible Parties did not obtain such approval, and the Upper Pond filled approximately 6,828 square feet of wetland. The construction of the Upper Pond reactivated approximately 15,000 square feet of a historic landslide amphitheater complex, which discharged sediment into the Upper Pond and the inundated wetland, reduced the pond capacity, and damaged the access road to the Lower Pond (defined below), making it impassable to motorized vehicles.

In addition, in approximately June 2016, the Responsible Parties constructed seven stream crossings (identified as C2 through C8 in the 2017 Inspection Report and 2018 Inspection Report). Such stream crossings were not properly built, including placement of culverts high in the road fill and culverts misaligned with the natural stream channel, which often results in erosion and sediment discharge to the stream. A Notification of Lake or Streambed Alteration submitted by the Responsible Parties to the California Department of Fish and Wildlife on December 31, 2018, documents 22 stream crossings at the Site, including 15 additional stream crossings beyond those documented in the 2017 Inspection Report and 2018 Inspection Report. Any recent instream work associated with or proposed for any of the 22 stream crossings on Site would have required submission of an application for Clean Water Act section 401 water quality certification or analogous waste discharge requirements. To date, Regional Water Board staff has not received an application for instream work at the Site even though staff has

documented that work in streams and wetlands did occur without the required authorization.

The Responsible Parties have not adequately maintained another impoundment on a Class III watercourse (Lower Pond), which receives water via overflow from the Upper Pond, and the Lower Pond's berm now shows signs of failure, presenting a threat to the Class II watercourse below the Lower Pond. Failure of the Lower Pond could deliver significant amounts of sediment to the Class II watercourse below, which is a tributary to the South Fork Eel River which is listed under Section 303(d) of the Clean Water Act as an impaired water body for sediment and temperature. Sediment delivery also has the potential to impact the migration, spawning, reproduction, and early development of threatened cold water fish such as spring and fall run Chinook salmon, coho salmon, and steelhead trout.

- D. WHEREAS, the Regional Water Board is a state agency whose primary authority under the Porter-Cologne Water Quality Control Act (California Water Code § 13000 et seq.) is regulating, enforcing, and ensuring the quality of the waters of the state, which includes waters of the United States.
- E. WHEREAS, the Regional Water Board has reviewed and evaluated technical reports and assessments pertaining to the discharge and distribution of wastes at the Site and concluded that the Responsible Parties have discharged sediment to waters of the state and/or United States and illegally filled in a wetland. The presence of destabilized slopes and improperly installed stream crossings constitute a continuous water quality threat and source of discharges of waste to waters of the state.
- F. WHEREAS, the discharges of waste have adversely impacted waters of the state and/or United States and ongoing discharges and threatened discharges of waste will continue to result in further impacts. The Site is located in the Benbow Hydrologic Subarea of the South Fork Eel River watershed in Humboldt County with onsite wetlands. The existing beneficial uses designated in the Basin Plan for this hydrologic subarea include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial or 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). Potential

beneficial uses for the Benbow Hydrologic Subarea include Industrial Process Supply (PRO), Hydropower Generation (POW), and Aquaculture (AQUA). The existing beneficial uses designated in the Basin Plan for freshwater wetlands include Wetland Habitat (WET) and potential beneficial uses include MUN, AGR, IND, GWR, FRSH, NAV, REC1, REC2, COMM, WARM, COLD, WILD, RARE, MIGR, SPWN, Shellfish Harvesting (SHELL), Estuarine Habitat (EST), AQUA, Native American Culture (CUL), Flood Peak Attenuation/Flood Water Storage (FLD), and Water Quality Enhancement (WQE).

- G. WHEREAS, on June 27, 2018, the Regional Water Board sent a Notice of Violation (NOV) regarding issues at the Site to the Responsible Parties. The NOV required the Responsible Parties to submit a revised, complete, and accurate Water Resource Protection Plan (WRPP) within 30 days of receipt of the NOV. The creation of a WRPP is required by the Regional Cannabis Order to assess, characterize, and delineate threats to water quality and to propose remedial actions and a timeline for completion of the proposed actions. Although the Responsible Parties submitted an Annual Monitoring Report for the 2018 reporting period on March 29, 2019, a revised WRPP was never submitted. The Responsible Parties have failed to comply with and resolve the violations identified in the NOV.
- H. WHEREAS, on May 8, 2019, the Responsible Parties applied for coverage under the Statewide Cannabis Order, which requires submittal of a Site Management Plan and Nitrogen Management Plan within 90 days of application for coverage. ~~To date, the Responsible Parties have not submitted the required Site Management Plan or Nitrogen Management Plan as required by the Statewide Cannabis Order. These technical documents were submitted on February 10, 2020. These required technical reports were submitted 188 days past the 90-day deadline stated within the State Water Board Cannabis General Order (Section B.2.c) and 593 days past the deadline (July 27, 2018) to submit a revised Water Resource Protection Plan (WRPP) within 30 days, as required by a June 27, 2018 Notice of Violation under the Regional Cannabis Order. These documents are essential to assess, delineate, manage, remediate, and cleanup the discharges of waste and impacts to wetlands. Most significantly, to date, the Responsible Parties have failed to cleanup and abate wastes discharged and to restore or remediate impacted wetlands.~~
- I. WHEREAS, Water Code sections 13350, subdivision (g), and 13385, subdivision (b)(2), allow the Regional Water Board to request that the Office of the Attorney General (Attorney General) petition the superior court for civil relief.

- J. WHEREAS, the Responsible Parties are alleged to have discharged waste, or caused or permitted waste to be deposited in or on waters of the state and/or waters of the United States and may be civilly liable under the aforementioned sections of the Water Code. Under Water Code section 13350, subdivision (d), a court may impose such civil liability not to exceed fifteen thousand dollars (\$15,000) for each day the violation occurs or not to exceed twenty dollars (\$20) for each gallon of waste discharged. Under Water Code section 13385, subdivision (b), a court may impose such civil liability not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs, plus twenty-five dollars (\$25) per gallon of discharge that is not susceptible to clean up, or is not cleaned up, in excess of 1,000 gallons. Judicial enforcement of the Water Code allows for the assessment of higher maximum civil liabilities, if appropriate, for the Responsible Parties' violations of the Water Code, as well as injunctive relief and the issuance of a consent judgment.
- K. WHEREAS, all other enforcement options have been considered. The Regional Water Board could pursue administrative enforcement via issuance of an Administrative Civil Liability (ACL) complaint assessing monetary liability. However, there are multiple factors that support referring enforcement to the Attorney General: (1) the ability to seek injunctive relief, which could lead to more immediate relief as compared to administrative enforcement; (2) the severity of the violations, which warrant referral to the Attorney General for civil enforcement; (3) coordination of the Regional Water Board's enforcement with the anticipated enforcement by the Division of Water Rights and the California Department of Fish and Wildlife, avoiding the possibility of conflicting rulings if separate administrative actions were brought; (4) efficiency for the Water Boards, as there would be one civil action to prosecute rather than two administrative actions which could require the same witnesses to appear at and testify in two separate proceedings; and (5) it would allow the Regional Water Board to tap into the Attorney General's resources, which may be needed if the Responsible Parties put substantial resources into defense of the action (as anticipated). In short, administrative enforcement, including ACL orders assessing only monetary penalties, may not be the best and most direct remedy to remediate the Site. For these reasons, referral to the Attorney General is the most prudent option.

Given the multiple significant issues involved in this case, referral to the Attorney General will allow the Regional Water Board to better focus on and ensure remediation of the Site than would otherwise be allowed if the Regional Water Board pursued another administrative enforcement

action. In this case, referral of the Responsible Parties to the Attorney General for enforcement of the violations of the Water Code related to the Responsible Parties' development of the Site for cannabis cultivation is an appropriate remedy for the scope of the alleged violations.

- L. WHEREAS, Water Code section 13350, subdivision (g), requires the Regional Water Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Attorney General to petition a superior court to impose civil liability under Water Code section 13350. On January 27, 2020, notice was given to the Responsible Parties regarding this hearing, and all Responsible Parties were given a chance to comment on the proposed Resolution in writing in advance of the hearing. On June 18, 2020<BOARD HEARING DATE>, the Regional Water Board held such a hearing in compliance with section 13350, subdivision (g).

NOW THEREFORE BE IT RESOLVED THAT:

1. The Regional Water Board hereby authorizes the Executive Officer to request that the Attorney General seek civil liabilities under the Water Code, including, but not limited to, Water Code sections 13350 and/or 13385, bring other applicable causes of action, and/or seek other relief such as an injunction as may be appropriate against the Responsible Parties.
2. The Regional Water Board hereby authorizes the Executive Officer to participate in any settlement discussions regarding the resolution of the violations at issue. The Regional Water Board retains its authority to approve any proposed settlement of the alleged violations.

I, Matthias St John, Executive Officer, hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, at its regular meeting on June 18, 2020<BOARD HEARING DATE>.

Matthias St. John
Executive Officer