

Regional Water Quality Control Board
North Coast Region

Assistant Executive Officer's Summary Report
June 18, 2020

ITEM: 6

SUBJECT: Consideration of 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. (Josh Curtis, Dan Kippen)

Based on recent developments, minor updates were made to the Resolution and staff report. In both of those documents, text to be added is identified by underline and text to be deleted is identified by ~~strike-through~~.

BOARD ACTION: This is a public hearing for the Regional Water Board to consider adoption of a Resolution to refer the case against the Shadow Light Ranch, LLC, Joshua Sweet, and The Hills, LLC to the Attorney General for possible judicial civil enforcement of certain violations of the Water Code.

BACKGROUND: The Resolution, if adopted, refers Shadow Light Ranch, LLC, Joshua Sweet, and The Hills, LLC (collectively, the Responsible Parties) to the California Office of the Attorney General (Attorney General) for possible enforcement of violations of the Water Code related to the Responsible Parties' extensive illegal development of property for cannabis cultivation.

The Resolution requests that the Attorney General seek injunctive relief, bring other applicable causes of action, and/or seek judicially imposed civil liabilities or other appropriate relief under California Water Code sections 13350 and/or 13385, as appropriate, against the Responsible Parties. Due to the significant issues explained in detail in the staff report, including the Responsible Parties' failure to comply with the requirements regarding discharge of waste to waters of the state and/or United States, Regional Water Board staff contends that this case is warranted for referral to the Attorney General.

The Responsible Parties are the current or former owners and/or operators at the real properties 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 (collectively, the Site). The Site is located near the town of Garberville in southern Humboldt County within the South Fork Eel River watershed.

The Site has been used for cannabis cultivation since at least 2016 while enrolled under the Regional Cannabis Order; and the Site transitioned to the Statewide Cannabis General Order on May 8, 2019. The Regional Cannabis Order requires disclosure of Site information regarding the size of an enrollee's cultivation area. 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 and in an Annual

Monitoring Report by as much as 26,700 square feet. The Site is one of the largest cannabis cultivation operations in the Region.

While enrolled under the Regional Cannabis Order, the Responsible Parties constructed an impoundment of approximately 24,670 square feet (0.5 acre) and up to 18 feet deep (Upper Pond) in a wetland without required permits or approval from the Regional Water Board or any other permitting agency. This action 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 7,000 square feet of wetland. The construction of the Upper Pond also reactivated approximately 15,000 square feet of a historic landslide amphitheater complex, which delivered sediment into the Upper Pond, reduced the pond capacity, and damaged the access road to the lower pond, making it impassable to motorized vehicles. Additionally, the historic landslide amphitheater continues to present a continued threat to downstream waters unless appropriately stabilized to prevent and minimize further sediment discharges.

In addition, the Responsible Parties improperly constructed seven stream crossings (as described in the November 2017 Inspection Report) without required permits. Staff is aware of 15 additional stream crossings at the Site (as documented in the Water Resource Protection Plan for the Site submitted on December 14, 2017) that may also be associated with illegal construction and instream work.

Construction of the Upper Pond resulted in disturbance of approximately 87,000 square feet and construction of a cultivation area (identified as Cultivation Area CA1 in the November 2017 Inspection Report and May 2018 Inspection Report) disturbed over approximately 150,000 square feet, of ground. Per the Regional Cannabis Order, ground disturbance over one acre (i.e., 43,560 square feet), required coverage under the State Water Board Construction General Permit which the Responsible Parties did not obtain.

The Responsible Parties' lack of appropriate maintenance of another impoundment (Lower Pond), which receives water via overflow from the Upper Pond and a Class III watercourse, has caused the Lower Pond's berm to begin to fail, presenting a threat to the Class II watercourse below the Lower Pond. Construction of the Lower Pond also occurred without permits or approval from the Regional Water Board but was constructed prior to the Responsible Parties owning the Site.

Failure of the Lower Pond would 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.

In early 2019, staff from the Regional Water Board (represented by the Office of Enforcement) invited the Responsible Parties to discuss potential settlement of the violations. Other state agencies – the Division of Water Rights and the California Department of Fish and Wildlife (CDFW) – joined the settlement discussions as they also have claims arising from their observations at the Site. The Responsible Parties accepted the offer to engage in settlement discussions. The Responsible Parties were represented by attorneys and consultants, and the various state agencies were represented by legal and technical staff. Despite extensive discussions, no settlement was reached.

Technical documents were submitted by the Responsible Parties, on February 10, 2020. The 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 within 30 days, as directed by a June 27, 2018 Notice of Violation under the Regional Cannabis Order.

Important Considerations: 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 particular, the ability to impose injunctive relief and/or obtain a consent judgment, bring other applicable causes of action, and/or judicially impose civil liabilities would allow the Regional Water Board, through the Attorney General, to place the Responsible Parties under a judicially enforceable timeline to perform the needed remediation.

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 actions by the Division of Water Rights and CDFW (also subject to referral to the Attorney General), 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 multiple administrative actions which could require the same witnesses appear at and testify in separate proceedings; and (5) it would allow the Regional Water Board to utilize 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.

Comments Received: Public comments were from February 11, 2020. The public was invited to comment on the draft of the Resolution from January 27, 2020 to February 11, 2020. Only the Responsible Parties submitted any comments. The comments are

included in the packet as Exhibit 5.

Response to Comments: The Regional Water Board staff considered the comments submitted and responded to them in detail in the separate Response to Comments document, included in the packet as Exhibit 6.

RECOMMENDATION: Staff recommends that Resolution No. R1-2020-0013 be adopted. This action is necessary because the Responsible Parties failed to comply with the requirements set forth in Order No. R1-2015-0023, 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 (the Regional Cannabis Order) and State Water Resources Control Board (State Water Board) 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 (and its predecessor, Order No. WQ 2017-0023-DWQ) (collectively, Statewide Cannabis General Order), giving rise to **extensive actual and threatened water quality impacts at a large cannabis cultivation site.**

SUPPORTING DOCUMENTS:

1. June 27, 2018 Notice of Violation
2. 2017 Inspection Report
3. 2018 Inspection Report
4. Staff Report Authorizing a Resolution Referring Water Code Violations to The Office of The Attorney General
5. Comments from Responsible Parties on Draft Resolution
6. Regional Board Response to Written Comments from Responsible Parties
7. Extracted Attachments to Site Management Plan submitted on February 10, 2020
 - a. Wetlands Delineation Report prepared by WRA Environmental Consultants
 - b. Engineering Geologic Assessment of Existing Ponds prepared by SHN consulting engineers and geologists
 - c. Engineering Geologic Assessment of Lower Pond Embankment Stabilization prepared by SHN consulting engineers and geologists