

Attachment A Calculation of Penalties

The State Water Resources Control Board's Water Quality Enforcement Policy ("Enforcement Policy") establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under California Water Code (Water Code) section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The proposed administrative civil liability amount is based on the use of that methodology.

Step 1. Potential for Harm (8)

The Potential for Harm for the discharge is eight (**8**). The potential for harm is the sum of all factors for a) the potential for harm to beneficial uses, b) the physical, chemical, biological or thermal characteristics of the discharge, and c) the susceptibility for cleanup or abatement (<50%).

a. Specific Factor: Potential Harm to Beneficial Uses

Category: Major (5)

Staff observed that the water released from the bladder started out with a dispersed flow path that overtopped and eroded a two-foot berm that surrounded the water bladder, and then traveled 30 to 40 feet as sheet flow, over forest soils, before discharging to an unnamed tributary to the Upper Main Eel River. The discharge posed a high threat of harm to beneficial uses where the release of approximately 50,000 gallons of water that mixed with sediment was discharged into a confined channel located on steep slopes ranging from 50-80%. The discharge subsequently formed a debris torrent that traveled for a distance of approximately 2000 feet, and along the way, eroded the bed and banks of the unnamed tributary stream; dislodged soil, instream boulders, cobbles and woody materials; radically altered, if not eliminated, all habitats in the affected Class II¹ stream channel before discharging to the Upper Main Eel River (Eel River). The discharge appeared to remove most of the vegetation within the stream channel bed and banks, for a distance of over 2000 feet, leaving clear evidence of a scour line.

Fine and coarse materials from the channel bed appeared to have been scoured out by the surge (kinetic energy) of the discharge. The volume of the discharge transported down the stream scoured the channel bottom to an average depth of 1-

¹ California Forest Practice Rules define a Class II watercourse as 1) a watercourse capable of supporting non-fish aquatic species, or 2) a watercourse within 1000 feet of a watercourse that seasonally or always has fish present. The definition excludes Class III watercourses from the exception.

4 feet from downstream of the water bladder to the confluence with the Eel River. Regional Water Board staff observed broken off vegetation and ferns that had been completely torn away except for the root masses. Staff observed the unnamed tributary had been scoured to bedrock on the bottom of the stream and on side slopes in the stream in many locations. Staff observed boulders and debris that had been carried and deposited onto roads and into inside ditches. At the M8 Road, staff observed that sediment and debris had plugged the culvert and overtopped the road and entered the stream channel again. Staff saw deposits of large boulders 2-3 feet in diameter where the stream met the road. Staff also observed that a portion of the flow had diverted along the road surface and inside ditch and discharged into an adjacent stream channel. At the point the unnamed tributary feeds to the Eel River, Regional Water Board staff observed a significant amount of sediment covering the soil and plants, leaving deposits of sediment visible as a trail into the Eel River.

The discharge and the subsequent scouring and erosion violated water quality objectives in the unnamed tributary and likely violated these objectives in the Eel River temporarily. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality objectives for all waters within the Region. The objectives identify constituents that are of concern when discharged into the aquatic environment, including the following:

Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

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.

Turbidity

Turbidity shall not be increased more than 20% 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 waivers thereof.

The Basin Plan also designates potential and existing beneficial uses to each watershed. According to the Basin Plan, the existing and potential beneficial uses of the Lake Pillsbury Hydrologic Subarea of the Upper Main Eel River Hydrologic Area include: Municipal & Domestic Supply; Agricultural Supply; Industrial Service Supply; Industrial Process Supply; Ground Water Recharge; Freshwater Replenishment; Navigation; Hydropower Generation; Water Contact Recreation; Non-Contact Water Recreation; Commercial & Sport Fishing; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species; Migration of Aquatic Organisms; Spawning, Reproduction and/or Early Development; and Aquaculture. Of these beneficial uses, all except Navigation and

Hydropower Generation are likely to have been impacted during and following the discharge event.

This discharge reached the Upper Main Eel River watershed, which is a Class II stream and in the California Coast Evolutionarily Significant Unit (ESU) for Chinook Salmon and the Northern California Distinct Population Segment (DPS) for Steelhead Trout. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA-NMFS) designated the ESU and DPS to protect Chinook Salmon, and Steelhead Trout, which are both listed as Threatened species under the United States Endangered Species Act.

The period of the initial impacts is estimated to have lasted at least 24 hours.

The Van Arsdale fishery station observed and reported an increase in instream turbidity in the Eel River during this time period that lasted about a day and half, and reported that a high rate of outmigration occurred coincident to this increase in turbidity. A turbidity plume can potentially affect aquatic life through disruption of the following: 1) feeding behavior, 2) predator avoidance 3) cover-seeking responses, 4) respiration, and 5) migration. At the time this discharge occurred, Chinook Salmon young of the year were rearing in the Eel River.

In sum, the discharge adversely impacted the beneficial uses where the scouring of approximately 2,000 feet of the unnamed tributary occurred. Impacts to the unnamed tributary, as described above, likely altered the habitat such that the beneficial uses were adversely impacted. In addition, water quality objectives were likely violated in both the unnamed tributary and the Eel River. A factor of (5) five is appropriate where the discharge posed a high threat to beneficial uses (e.g., significant impacts to aquatic life and habitat).

b. Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Category: **Moderate (2)**

The discharge of water mixed with sediment initially discharged to the unnamed tributary. Sediment has physical characteristics that pose a moderate physical and biological risk or threat to aquatic life and instream habitat, both in the water column and deposited on the stream channel bottom. Sediment in the water column can cause elevated turbidity levels leading to altered light regimes which can directly impact primary productivity, species distribution, behavior, feeding, reproduction, and survival of aquatic biota.

Suspended sediment in the water column can cause other direct effects to aquatic species, including physical abrasion, clogging of filtration and respiratory organs, and, at very high concentrations, mortality.

Increased sedimentation can smother macroinvertebrates, incubating embryos and emergent fry, can fill pools, and can seal gravel and decrease interstitial water flow and dissolved oxygen concentrations.

The Prosecution Team assessed a factor of two (2) where the physical and biological characteristics of sediment-laden water posed a moderate risk to the aquatic habitat and species.

c. Susceptibility to Cleanup or Abatement:

Category: **<50% Susceptible to Cleanup or Abatement**

The earthen materials discharged from the water bladder failure were dispersed and not susceptible to cleanup. Therefore, a factor of 1 was assessed.

Step 2. Assessments for Discharge Violation

In total, this discharge represents the approximately 50,000 gallons of sediment-laden water discharged into the unnamed tributary.

The deviation from requirements is major, where an unauthorized discharge to a water of the U.S. occurred in violation of the Clean Water Act which prohibits the discharge of pollutants to waters of the U.S. without a permit.

Per-Gallon Determination

The Potential for harm is eight (8). This is determined by the sum of the factors for a) the potential for harm to beneficial uses (5 – Major); b) the physical, chemical, biological or thermal characteristics of the discharge (2 – Moderate); and the susceptibility for cleanup or abatement is < 50 %, so a value of (1) applies. With the potential of harm factor of 8 and a major deviation from requirement, according to Table 1 on page 14 of the Enforcement policy, a factor of 0.6 per gallon is derived.

Based on these parameters, liability is assessed on a discharge of 50,000 gallons. Therefore, the initial amount of liability based on the volume discharged is:

$(50,000 - 1,000 = 49,000 \text{ gallons}) \times (0.6 \text{ per gallon factor}) \times (\$10 \text{ per gallon}) =$
\$294,000

Per Day Determination

Based on the facts in this case, an assessment for one day of discharge is appropriate. The water bladder failed all at once, discharging sediment, water and debris in a one-day event. When applying a deviation from requirement of “major” to Table 2 on page 15 of the Enforcement Policy, a 0.6 per day factor is derived.

The initial liability amount for one day of discharge is $\$10,000 \times 0.6 =$ **\$6,000**

Step 3. Assessment for Non-Discharge Violations

No penalties are being assessed at this time for non-discharge violations.

Step 4. Adjustment Factors

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

a. Culpability (1.25)

Higher liabilities should result from intentional and negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Dischargers were assessed a multiplier value of **(1.25)** because Mr. Daniel Franklin, as the operator of the Site, should have been aware of the potential for the bladder to fail if overfilled, yet Mr. Daniel Franklin neglected to adequately supervise operations to sufficiently monitor the volume of the bladder as it was filled and ensure the intake valve was closed. The bladder's label indicated the bladder was intended to store fuels for military use and not to be used for long term use. "Do not overfill" was also stamped on the bladder. Ms. Olive Franklin as the trustee has the duty to take reasonable steps to take and keep control of and preserve trust property.² A reasonable and prudent person would have sought and obtained the necessary permits and installed the appropriate infrastructure to store diverted water. The bladder was clearly labeled to notify the user that the bladder was not intended to store water. Yet, the bladder was used to store water. This was not the first time Mr. Daniel Franklin had used the bladder to store water. In conversations with Regional Water Board staff, Mr. Daniel Franklin mentioned prior uses for the bladder, including for irrigation and firefighting. At the minimum, responsible operators should have monitored the volume of the bladder as it was being filled and turned off the intake line or installed a valve that automatically shuts the intake line off when the bladder is at capacity.

A 1.25 is a reasonable assessment of culpability where the Dischargers' negligence caused 50,000 gallons of sediment-laden water to discharge to the unnamed tributary and the Eel River.

b. Cleanup and Cooperation (1)

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 can be used, with a higher multiplier when there is a lack of cooperation. In this case, the Dischargers have been assessed a neutral value of **1** due to their cooperation, including reporting the discharge incident and accepting

² See Cal. Prob. Code § 16006.

responsibility for the bladder failure. No voluntary cleanup or restoration measures were taken immediately after the discharge. After being prompted by Regional Water Board staff in 2014, the Dischargers took steps to identify whether it was necessary to take restoration measures. Here, cleanup was not obligatory because the nature and extent of the damage to the unnamed tributary was not conducive to restoration or remediation. On balance, a factor of 1.0 was assessed.

c. History of Violations (1)

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.0 can be used, and is to be increased as merited by history of violations. In this case, because the Dischargers have no prior known history of non-compliance, the minimum factor of 1 is used.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors (Step 4) to the Initial Liability Amount (Step 2).

(Initial liability) x (culpability factor) x (cleanup and cooperation factor) x (history of violations factor) = Total base liability amount

Discharge Violation
 $\$294,000 \times 1.25 \times 1 \times 1 = \$367,500$

One Day of Discharge
 $\$6,000 \times 1.25 \times 1 \times 1 = \$7,500$

Total Base Liability
 $\$367,500 + \$7,500 = \$375,000$

Step 6. Ability to Pay and to Continue in Business

The Enforcement Policy provides that if the Regional Water Board has sufficient financial information to assess the Discharger's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

Based on a preliminary asset search of the public records, the Franklin Trust has assets within the United States consisting of two properties (17777 Eel River Road in Potter Valley and 27860 Poppy Drive in Willits). The last full market sale of the 17777 Eel River property was for \$255,000 in 2002 and \$135,000 for the 27860 Poppy Drive property. This ability to pay analysis does not capture any income stream derived from the cultivation of marijuana on the Dischargers' property. Based on aerial imagery, marijuana has been cultivated on the Dischargers' property for at least four years, including in 2015. Regional Water Board staff expects that

the Dischargers generated revenue from this activity and have developed conservative estimates based on the wholesale price for the area.

Based on the information available in the public record, the Franklin Trust has assets of approximately \$390,000 to pay the total base liability amount. This value is based on the sum of the last full market sale of the two properties owned by the trust. The Prosecution Team has met its initial burden in demonstrating the Dischargers' ability to pay the proposed liability.

Step 7. Other Factors as Justice May Require

Costs of Investigation and Enforcement:

The costs of investigation and enforcement are other factors as justice may require, and should be added to the liability amount.

As of the date of drafting this methodology, Prosecution Staff has incurred costs of investigation and enforcement of at least \$6,946.68. This is a conservative amount based on 73 hours of staff time invested, including 8 for site inspections and interviews, and 65 for data analysis, writing the report and calculating penalties at \$95.16 per hour. **Staff Costs: \$6,947.**

Total Base Liability Amount: \$381,947.

Given the massive damage to the unnamed tributary from the Dischargers' failure to responsibly manage growing operations in compliance with water quality laws, the Prosecution Team determined that the penalty derived in applying the methodology is fair and an appropriate deterrent against similar growing operations that choose to operate irresponsibly. No reduction in the proposed liability is seen as justified.

Step 8. Economic Benefit

Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation.

Any estimate of economic benefit is not able to capture the fact that the Regional Water Board would not have issued waste discharge requirements for an uncontrolled discharge of a large volume of water such as occurred due to the Dischargers' actions. Potentially, to appropriately divert and store water in compliance with the law, the Dischargers would have needed to install an estimated ten (10) 5000-gallon storage tanks. The installation of the tanks would require a project plan including survey and design of the plan, amounting to approximately \$51,500. The annual maintenance cost for the storage tanks and associated pumps and piping is estimated at \$1,000 per year. The economic benefit also includes the cost of: a lake and streambed alteration permit from California Department of Fish and Wildlife (DFW) (with \$250.00 permit fee), a diversion and use permit from the State Water Resources Control Board Division of Water Rights and the five-year

renewal fee (with \$250 registration fee and \$100 renewal fee), and permits from Mendocino County. In addition, the Dischargers can be required to pay the California Environmental Quality Act costs of addressing the permit application to DFW, which starts with a \$1500.00 deposit and can require additional deposits. To calculate the economic benefit of non-compliance we have our in house economist use the BEN model that was developed and is recommend by the US Environmental Protection Agency. Based upon the use of the BEN model with a set of estimated costs associated with potential avoided permitting requirements the Prosecution Team has estimated the economic benefit of non-compliance at \$74,017.

This estimated economic benefit of noncompliance does not take into account any financial gain derived from the competitive advantage of operating without complying with the law. It is unlikely that the Dischargers could have obtained the necessary permits and authorization to legally cultivate the quantity of marijuana supported by the unauthorized water bladder and the profits from that activity should be considered part of the competitive advantage derived from these violations.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount of \$74,017, or \$81,419. The adjusted combined Total Base Liability Amount of \$381,947 is more than the economic benefit of noncompliance plus 10%. Therefore no liability adjustment is required.

Step 9. Maximum and Minimum Liability Amounts

The maximum and minimum amounts for the violations are shown below. The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The maximum administrative liability amount is the maximum allowed by Water Code section 13385: (1) \$10,000 for each day of violation, and (2) on a per gallon basis in an amount not to exceed \$10 per gallon of waste discharged but not cleaned up in excess of 1,000 gallons. Though there is no statutory minimum, the Enforcement Policy requires 10% more than the economic benefit. The proposed liability falls within the maximum and minimum amounts.

- a. Maximum Liability Amount: **\$500,000**

$$[49,000 \text{ gallons} \times \$10.00/\text{gallon}] + \$10,000/\text{day} = \$500,000$$

- b. Minimum Liability Amount: **\$81,419.**

Step 10. Final Administrative Civil Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is **\$381,947.**

July 22, 2016

Mr. Daniel Franklin
27860 Poppy Drive
Willits, CA 95490

Ms. Melissa A. Thorme
Downey Brand
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
mthorme@DowneyBrand.com

Dear Mr. and Ms. Franklin and Ms. Thorme:

Subject: Administrative Civil Liability Complaint No. R1-2016-0033

File: Daniel Franklin, Olive Franklin Trust, 17777 Eel River Road, Fuel Bladder rupture and water/sediment discharges into watercourses in the Upper Eel River watershed, Mendocino County
WDID No. 1B13159CNME

FedEx Express Package US Airbill FedEx Tracking Number **8029 0701 5934**

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Sender's Name **Elena Franceschi** Phone **(707) 576-2220**

Company **CALIF REGIONAL WATER QUALITY**

Address **5550 SKYLANE BLVD STE A** Dept/Floor/Suite/Room

City **SANTA ROSA** State **CA** ZIP **95403-1072**

2 **Your Internal Billing Reference** First 24 characters will appear on invoice.

3 **To** Recipient's Name **Mr. Daniel Franklin** Phone ()

Company

Address **27860 Poppy Drive** We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept/Floor/Suite/Room

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☐ FedEx 2Day Second business afternoon. Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

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November 3, 2016

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Shipping Information:

Tracking number:	802907015934	Ship date:	Jul 22, 2016
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Recipient:
MR DANIEL FRANKLIN
-
27860 POPPY DR
WILLITS, CA 95490 US

Shipper:
ELENA ENGARESCHI
CALIF REGIONAL WATER QUALITY
5550 SKYLANE BLVD STE A
SANTA ROSA, CA 954031072 US

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July 22, 2016

Mr. Daniel Franklin
27860 Poppy Drive
Willits, CA 95490

Ms. Melissa A. Thorme
Downey Brand
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
mthorme@DowneyBrand.com

Dear Mr. and Ms. Franklin and Ms. Thorme:

Subject: Administrative Civil Liability Complaint No. R1-2016-0033

File: Daniel Franklin, Olive Franklin Trust, 17777 Eel River Road, Fuel Bladder rupture and water/sediment discharges into watercourses in the Upper Eel River watershed, Mendocino County
WDID No. 1B13159CNME



FedEx Tracking Number 8029 0701 5923

1 From Please print and press hard.
Date 7/22/16 Sender's FedEx Account Number 1305-6377-5
Sender's Name Elena Franceschi Phone (707) 576-2220
Company CALIF REGIONAL WATER QUALITY
Address 5550 SKYLANE BLVD STE A
City SANTA ROSA State CA ZIP 95403-1072

2 Your Internal Billing Reference
First 24 characters will appear on invoice.

3 To Recipient's Name Ms. Melissa A. Thorme Phone ()
Company
Address 621 Capitol Mall, 18th Floor
We cannot deliver to P.O. boxes or P.O. ZIP codes.
Address
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FedEx location address
REQUIRED.
FedEx Priority Overnight and
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4 Express Package Service *To most locations.
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Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx Priority Overnight
Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☒ FedEx Standard Overnight
Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days
☐ FedEx 2Day A.M.
Second business morning.* Saturday Delivery NOT available.
☐ FedEx 2Day
Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx Express Saver
Third business day.* Saturday Delivery NOT available.

5 Packaging *Declared value limit \$500.
☒ FedEx Envelope* ☐ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

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☐ Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.
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If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?
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☒ No ☐ Yes
As per attached Shipper's Declaration. ☐ Yes
Shipper's Declaration not required. ☐ Dry Ice
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November 3, 2016

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Service type:	FedEx Standard Overnight		
Special Handling:	Deliver Weekday		



Shipping Information:

Tracking number:	802907015923	Ship date:	Jul 22, 2016
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Recipient:

MS MELISSA A THORME
-
621 CAPITAL MALL 18TH FL
SACRAMENTO, CA 95814 US

Shipper:

ELENA FRANCOSCHI
CALIF REGIONAL WATER QUALITY
5550 SKYLANE BLVD STE A
SANTA ROSA, CA 954031072 US

Thank you for choosing FedEx.

North Coast Regional Water Quality Control Board

**Complaint Inspection Report
Daniel Franklin Property
1-00NTMP-019 MEN/LAK
Lake and Mendocino Counties
WDID No. 1B13159CNME**

Date: April 30, 2014

To: Diana Henriouille – Senior Water Resource Control Engineer
David Leland - Assistant Executive Officer

From: Stormer Feiler, Environmental Scientist

Subject: May 3, and May 24, 2013 inspections

Landowner: Daniel Franklin
Physical Site: 17777 Eel River Road
APN: 171-260-06

Mailing Address: Daniel Franklin, 27860 Poppy Drive, Willits, Ca. 95490

Mailing Address: (Tax Bill Address) Olive Franklin c/o Muckle Hill Farm
SPA Common North Walsham, Norfolk, NR28985, England

Watershed: Main Stem Eel River, Upper Eel River watershed

Violations: Federal Clean Water Act Section 301, Porter Cologne Water Quality
Control Act Section 13376, Water Quality Control Plan North Coast
Region (Basin Plan) Point Source Prohibition

Inspection Attendance May 3, 2013

Stormer Feiler- North Coast Regional Water Quality Control Board (NCRWQCB)

Inspection Attendance on May 24, 2013

Stormer Feiler- NCRWQCB

Dave Longstreth – California Geologic Survey (CGS)

Steve Crawl – California Department of Fish and Wildlife Warden (DFW)

Rick Macedo –Senior Environmental Scientist (Specialist) (DFW)

Daniel Franklin - Landowner

Introduction

On or about April 24 and 25, 2013, a 50,000 gallon rubber bladder water tank failed and discharged approximately 80,000 gallons of water directly to a Class 2 stream and the Main-stem Eel River in the Upper Eel River watershed. I received the initial complaint from two sources: Rick Macedo of the California Department of Fish and Wildlife (CDFW) and Missy Torisse-Brosnan of Pacific Gas and Electric (PG&E), during the week of May 1, alerting me to the bladder failure and the resulting significant instream resource damage. Mr. Macedo stated that the landowner, Daniel Franklin, had reported the incident to CDFW and was willing to cooperate with the investigation.

On May 3, 2013, I drove to the crossing on the Eel River Road, also known as Forest Service Road M8, and reviewed the instream damage visible above the road and the damage below the road extending down to the confluence with the Main Stem Eel River.

Following this inspection, I contacted California Geologic Survey (CGS), the CDFW warden and the landowner to schedule an inspection of the entire stream area and evaluate the environmental impacts that had occurred. This full site inspection was scheduled for and conducted on May 24, 2013.

These inspections are discussed, and observations supported with photographs in the body of this report.

Watershed and Beneficial Use Information

The site is located within the Bucknell Creek Cal Water watershed 1111.630904 (Cal Water version 2.2) within the Upper Main Eel River watershed area. This watershed is also referred to as the Hydrologic Unit Code (HUC) 12 watershed 180101030502 Soda Creek-Eel River. The affected stream is tributary to the Mainstem Eel River, which is in the California Coast Evolutionarily Significant Unit (ESU) for Chinook Salmon and the Northern California ESU for Steelhead trout; both these fish species are listed as Threatened in accordance with requirements contained in the federal Endangered Species Act and the California Endangered Species Act. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) designated the relevant ESU's. The Mainstem Eel River and its tributaries are federal Clean Water Act section 303(d)-listed as impaired due to both sediment and temperature. In December 2004, the U.S. Environmental Protection Agency (USEPA) approved a total maximum daily load (TMDL) for sediment and temperature in the Upper Main Eel River watershed.

In addition to providing habitat for rare and endangered species, the watershed supports a number of other existing and potential designated beneficial uses of water, including Municipal and Domestic Supply, Agricultural Supply, Industrial Process and Service Supply, Groundwater Recharge, Freshwater Replenishment, Navigation, Hydropower Generation, Water Contact and Non-Contact Water Recreation, Commercial and Sport Fishing, Cold Freshwater Habitat, Migration of Aquatic Organisms, Spawning, Reproduction, and/or Early Development and Rearing, Wildlife Habitat, and Aquaculture.

Inspection Observations

May 3, 2013 Inspection Observations

In response to the complaints received earlier in the week, I drove out the old Eel River logging road also known as Forest Service Road M8 (hereinafter referred to as M8 road), to evaluate the area claimed to be affected by the bladder failure and the nature and severity of the resulting damage to determine an appropriate response. The location as reported by CDFW and PG&E was easy to find, as I observed a large amount of mud deposited on and crossing the M8 road. At the time of the inspection, surface soils were still wet where water and muddy debris had pooled on the road surface and in the road's inside ditch. Evidence of the instream disturbance caused by the recent high flows was clearly visible. At the stream crossing on the M8 road, I saw that sediment and debris had plugged the culvert and overtopped the road and entered the stream channel again. I observed deposits of large boulders 2-3 feet in diameter where the stream met the road on the south (upstream) side. I also observed that a portion of the flow had diverted west down both the road surface and the road's inside ditch and discharged into an adjacent stream, which also delivered sediment and debris to the Main stem Eel River.

I walked up the affected stream channel to assess channel conditions at a point far enough away from the road to be representative of a natural channel condition; stream channels are often somewhat altered near the road-stream interface. As I walked up the stream, I noted that the entire stream channel was scoured out to a depth of 4-6 feet on each side of the stream. The bedrock was visible on the bottom of the stream and on side slopes into the stream in many locations. I did not see any bankside vegetation, but did see places where ferns had been completely torn away except for the root masses. Based upon the morphology and professional experience, I determined that the stream appeared to have been a relatively high volume Class II¹ stream capable of sustaining flows into the summer, and perhaps perennial, likely providing habitat for macro invertebrates and amphibians on a year round basis. The stream was flowing lightly at the time of this inspection down to the plugged M8 road crossing. The entire stream channel was eroded ("destroyed" more correctly characterizes the conditions I observed), and the scour line was visible as eroded stream banks and flattened and broken off bankside vegetation. I observed that the flows had transported large cobbles and boulders. It appeared that the flow had captured a significant amount of debris by the time it reached the road and river area, resulting in a debris flow.

I also walked down to the Eel River, a Class I² stream, and then upstream in the Eel River to the confluences of the two tributary streams affected by the high flows. I photographed the depositional areas at these confluences. The stream that received the flows directly from the water bladder conveyed the majority of the water from Road M8 down to the Eel River, with only a portion diverting over to the adjacent stream channel. Therefore, the bulk of the damage and the conditions I report pertain to that primary stream unless otherwise specified. I observed a large pile of debris hung up on a willow tree at the confluence of the

¹ California Forest Practice Rules define a Class II watercourse as 1) a watercourse capable of supporting non-fish aquatic species, or 2) a watercourse within 1000 feet of a watercourse that seasonally or always has fish present. The definition excludes Class III watercourses from the exception.

² California Forest Practice Rules define a Class I watercourse as 1) a watercourse providing habitat for fish always or seasonally, and/or 2) providing a domestic water source.

stream and the river. Downstream, in the river, I noted floating woody debris caught among the boulders. The river was clear at the time of this inspection. I observed sediment splashed onto branches 4+ feet above the bottom of the stream channel adjacent to the confluence. In addition, I could see that flows in the stream had scoured out the fine and coarse materials from the channel bed, as the channel bottom consisted of primarily materials that were large cobbles or small boulders well cemented into the substrate. The amount of water that had traveled down the channel appeared to have scoured the entire channel bottom to a depth of 1-4 feet from below the road to the confluence, as it delivered to the Eel River. The flow line of the discharge was visible on the stream banks as a scour line and as muddy deposits. This was extraordinary considering the flow from the bladder had crossed a road and been partially diverted to another channel approximately 75-100 feet upstream. The sudden change of grade at the road crossing had likely acted as a brake on the flow, as evidenced by the deposition of large boulders described earlier.

May 24 2013 Inspection

On May 24, 2013, DFW Warden Steve Crowley, Staff Environmental Scientist Rick Macedo, CGS Geologist Dave Longstreth, and I met Daniel Franklin, the property owner, at the driveway to the property on the M8 road. Mr. Franklin was accompanied by a man introduced as his business partner, however, I did not get his name. Mr. Franklin had reported the bladder failure and water discharge to Rick Macedo. In reporting the incident to me, Mr. Macedo indicated that he had heard from a neighbor the event had occurred sometime between 1700 hours on April 24, and 0630 hours on April 25, 2013. We started the inspection by interviewing Mr. Franklin. Mr. Franklin advised us that the discharge had occurred when a 25' x 60' bladder he uses for water storage failed. Mr. Franklin stated that the outlet line for the water bladder had been left in a closed position with the intake line on, or partially on, causing the bladder to overfill and burst delivering all of its stored contents to the stream directly adjacent to the bladder. Mr. Franklin said that they only fill the bladder in the spring to use it for firefighting. He said that in the past they had also used it for irrigation, but they were not doing that anymore. Usually they would turn it on, fill it, and then turn it off. Mr. Franklin stated that he owned the entire drainage and the property; he also said he accepted responsibility for the bladder failure. Following the introductions and brief interview, we drove onto the property to see the failed water bladder, located at GPS waypoint N 39°22'05.6" W 123°03'52.9".

I inspected the bladder, and could see that it had burst along a seam, likely instantly releasing its entire contents into the adjacent Class II stream. I observed that the flow path caused by the bladder failure was about 30 feet wide. I walked around the bladder and found a label indicating that it is a military surplus item intended to store fuels for military use. The label indicates that the bladder capacity is a maximum of 50,000 gallons, with a maximum tank height of 4' 9." The label also states "CAUTION," "DO NOT OVERFILL," "Overfilling Will Result In Permanent Damage And Failure Of The Tank." The label also indicates that the bladder is not recommended for long term use for gasoline storage. Mr. Franklin estimated that the bladder might have contained as much as 80,000 gallons of water when it failed. Mr. Franklin stated the adjacent two (2) 2500 gallon tanks are gravity fed from the source above (POD #1), and water is then transferred to the bladder. POD #2 is also used to fill the bladder later in the year when POD #1 goes dry.

We measured the bladder and found its dimensions to be approximately 25' X 70,' as compared to the 25' X 60' discussed earlier. Considering that the bladder may have held 80,000 gallons when it failed, would explain the apparently stretched out or expanded length of the bladder from specifications when we measured it. The pad the bladder was located on was 70' X 104'. We also observed two (2) 2500 gallon water tanks next to the water bladder. Mr. Franklin indicated that the water flowed from the tanks into the bladder. From the bladder, water was either pumped back into the tanks or into the adjacent cleared area, where we observed holes filled with potting soils that looked as though they had been used for growing plants. I did not observe any plants during the inspection.

We asked Mr. Franklin where water came from to fill the tanks and he said uphill from a spring. At our request, Mr. Franklin and his partner took us to the spring, which I have identified as Point of diversion 1 (POD #1³) on the map included with this report. The "spring" feature consisted of a pool partially dug out and dammed with stones and black plastic in a Class II stream. The diversion location was dry at the time of inspection.

During the inspection, we also visited a second point of diversion on the same stream, at a location I have identified as POD #2⁴ on the map. POD #2 is located in a high functioning Class II stream, of about the same watershed area and channel dimensions as the stream affected by the water bladder failure. For the purposes of this report the stream associated with POD #2 is being used as a reference stream to demonstrate the change in habitat conditions caused by the catastrophic failure of the water bladder. During the inspection, I observed multiple species of macro invertebrates, and a well-developed instream morphology consisting of large rocks, boulders, cobbles, dominating a riffle and drop pool stream system in this tributary located directly adjacent to the stream the water bladder failed into.

Evidence observed at the site of the bladder indicates that the discharge from the bladder started out with a flow path 30 feet wide, and as it flowed down the confined stream channel, formed a debris torrent picking up loose materials from the stream bank and boulders and cobbles from the stream bottom, scouring banks to heights of 7-8 feet with a flow cross section of up to 20 feet at the top of the flow path. The stream is located on slopes ranging from 50-80%, facing predominately north. These extreme flows scoured down to and exposed bedrock, and moved 1-4 ton boulders downstream, the boulder deposits were visible where roads crossed the stream. The instream erosion and scour traveled approximately 2000 feet to the Eel River downstream. I observed that the stream channel morphology is primarily confined, with an average width at the base of 4-5 feet, the scour line of the channel ranged from 4-8 feet up on the stream banks. In some areas, the channel was of greater confinement and in these locations the average stream base width was approximately 2-3 feet. For the benefit of calculating erosion volumes an average stream base width of 3 feet with a scour depth of 4 feet and a channel width at the top of the scour of 8 feet is used⁵ to estimate that approximately 1629 yds³ of instream erosion occurred.

³ POD #1 N 39° 21' 56.8" W 123° 03' 47.1" (NAD 83)

⁴ POD #2 N 39° 22'06.6" W 123° 04' 02.5" (NAD 83)

⁵ $(3+8)/2 \times 4 \times 2000 = 44000/27 = 1629.629$ yds³ of instream erosion (Volume of a trapezoid channel)

I requested that Mr. Longstreth estimate the volume of materials eroded from the stream channel during the high flows following the bladder failure. Mr. Longstreth indicates in his report⁶ that over 518 cubic yards of sediment and debris originating from instream channel scour were delivered to the Eel River. Mr. Longstreth indicates that he developed this estimate using an average V-shaped scour channel of 3.5 feet of depth and 4 feet of width for a distance of 2000 feet.

The instream scouring and removal of vegetation and debris down to bedrock resulted in the down cutting of the channel and delivery of a large quantity of sediment to the Main-stem Eel River below. The bladder failure was likely an extraordinary hydrologic event for this stream, and resulted in the erosion of aquatic and riparian habitat and stored gravels, cobbles, and boulders. The photographs in the following section do not do justice to the amount and scope of instream damage that was caused by the bladder failure. In the May 24, 2013 inspection photo section, I compare the impacted stream to another, similar sized but unaffected stream located directly adjacent to the affected stream on the same property.

While investigating the complaint, I noted that the existing road system on the property did not appear to be maintained. The road system should be evaluated and assessed for controllable sediment sources and an erosion control plan developed to bring roads up to standards. The evaluation of the road system was not the primary purpose of the inspection; what I noted was ancillary to evaluating the damage associated with the bladder failure.

Inspection Photographs

I took all photos provided below; dates and times⁷ are shown on the photos.

May 3, 2013 inspection photographs

⁶ California Geologic Survey, Preliminary Engineering Geology Assessment of Water Storage Bladder Failure and Erosion, Portion of Section 34, T18N, R11W, MD BL&M; Potter Valley Area, Ca. August 14, 2013

⁷ Note that the time update feature on the camera used was turned off, so the time shown on each image is not the actual time that the photo was taken, but the date is accurate. On May 24, 2013, there was a 55-minute time difference between the photo time and the actual time; the time shown on each photograph is 55 minutes earlier than the actual time that the photo was taken.

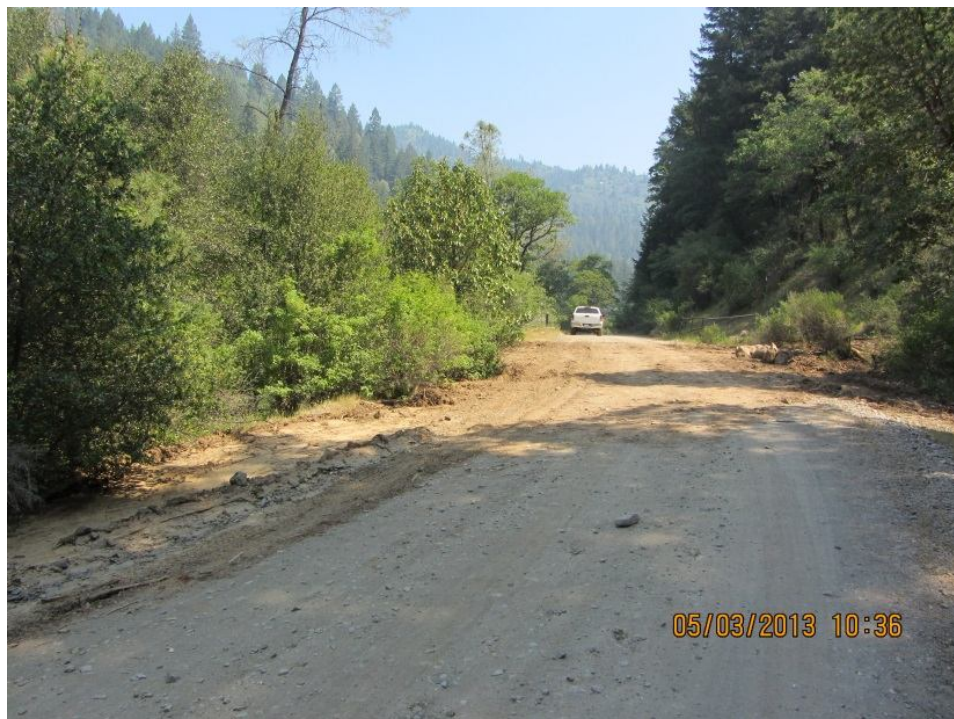


Image 1, May 3, 2013 M8 Road with soil and mud deposits from bladder failure discharge.



Image 2, May 3, 2013, stream crossing on M8 Road, looking upstream. This is the stream that carried the release from the failed bladder down to the road (note the large boulders deposited by the high flows at the road edge).



Image 3, May 3, 2013, this is taken upstream from the M8 Road crossing. Note the scour line: this shows the depth of flow during the discharge from the bladder failure. This is likely a perennial stream



Image 4, May 3, 2013, this image depicts the confluence of the primary stream with the Middle Main Eel River (note the flood debris captured on the willow in the foreground).



Image 5, May 3, 2013, over bank flows in the primary stream below the crossing on the M8 Road

May 24, 2013 Inspection Photos



Image 6, May 24, 2013, the clearing with planting holes, reportedly one of the destinations for water stored in the bladder prior to its failure. The location is identified as "point of use" on the inspection map.



Image 7, May 24, 2013, point of diversion; source of water used to fill the bladder and adjacent water tanks. (N 39°21'56.8" W 123°03'47.1")



Image 8, May 24, 2013, failed water bladder (N 39°22'05.6" W 123°03'52.9")



Image 9, May 24, 2013, water bladder label, which indicates it has a maximum capacity of 50,000 gallons. The bladder is designed for use with fuels, and not recommended for long term use.



Image 10, May 24, 2013, affected watercourse, looking downstream. The channel is scoured to the bedrock and large boulders carried in the flood are sitting on the road below. The road is on the subject property.



Image 11, May 24, 2013, the road shown in the previous photo at the watercourse crossing. Note the boulders deposited by the flood on the road bench and the extensive flood debris field.



Image 12, May 24, 2013, in the affected watercourse, looking downstream; note the complete removal of all stream side vegetation and the depth of the instream channel scour.



Image 13, May 24, 2013, affected watercourse channel looking upstream; instream erosion and flood deposits



Image 14, May 24, 2013, adjacent unaffected "reference" stream. Note the stream side vegetation is well developed. In this section of stream the flow appears perennial based upon flow, the aquatic life present, and vegetation component.



Image 15, May 24, 2013, the reference stream downstream from image 13. The stream appears to flow underground and then re-surface farther down the slope. Note that here there is moss on the stream substrate and no apparent high flow scour line.

Summary

I observed a segment of Class II stream that had been completely scoured down to bedrock in many places due to high water flows resulting from the failure of the 50,000+ gallon military surplus fuel bladder. The instream living component, such as amphibians and macro-invertebrates that existed prior to the event, are nonexistent for the time being and will take some time to recover. The streamside vegetation in many places was completely scoured out and in others torn down to the roots. Where roots remain, the riparian vegetative community may recover within one to two seasons. Where scour has removed the roots, it will take much longer to re-establish a riparian community. This discharge could have been avoided had the landowner managed the water system adequately. Note that the system itself, as constructed and operated is likely an illegal diversion, and may be in violation of Water Rights laws.

Environmental Damage Associated with Unauthorized Discharge of 50,000+ gallons of water and debris

- 2,000 feet of stream channel erosion ranging from 3-5 feet in width at the streams base and 3.5 feet in depth dislodging and removing 1-4 ton boulders and most of the instream gravels and cobbles
- A range of 518 yds³ up to 1629.6 yds³ of instream erosion depending upon how the channel shape is viewed

The resultant instream erosion that occurred from the failure of the bladder I estimate at approximately 1629.6 yards³. The water bladder itself could have released as much as 80,000 gallons due to overfilling, which caused the bladder to rupture. The potential volume

of discharge subject to penalties is the amount of erosion as a per gallon estimate added to the minimum of 50,000 gallons of discharge from the bladder or approximately 379,136.83 gallons⁸.

As noted above, incidental to the damage associated with the bladder failure, existing roads on the site are in poor condition appearing to lack regular maintenance resulting in the potential for erosion and subsequently sediment delivery to streams.

Observed Violations

- The failure of the water bladder resulted in a discharge of water into a stream sufficient to scour out the stream channel and available instream habitat. No report of waste discharge or permit allowing surface water discharges from this bladder was filed, therefore this was an unpermitted discharge to waters of the state and waters of the United States.
- Water Quality Control Plan for the North Coast Region (Basin Plan)⁹ prohibits certain point source discharges of waste. In this instance, the discharge of the bladder to the Eel River and its tributaries violates a point source prohibition, which stipulates that such discharges are prohibited on the Mad and Eel Rivers and their tributaries from May 15-September and during all other periods when the receiving waters discharge flow is greater than 1% of the receiving stream's flow. This incident occurred prior to May 15, but as discussed in this report, the receiving stream received flows sufficient to completely scour out the stream channel and destroy bank side vegetation; clearly much more than 1% of the flow this stream receives at any time of the year. If one considers the bladder and its attendant plumbing system designed for the storage and piping of water to represent a defined, and discrete system of conveying and storing water in a specific location, then the water bladder failure due to overfilling appears to represent a point source discharge.

Conclusion

Mr. Franklin may have illegally diverted water from Eel River tributaries without a license or permit. In operating this diversion and storing water Mr. Franklin discharged up to 80,000 gallons of water directly into a tributary channel and the Main Stem Eel River, the discharge resulted in up to 1629.6 yds³ of instream erosion delivering sediment and debris to the Main Stem Eel River, a water of the U.S. Mr. Franklin may be subject to penalties for the water quality and water rights violations.

⁸ 1629.6 yds³ X 201.974 (gallons) = 329,136.8 gallons + 50,000 gallons = 379,136.83 gallons

⁹ Water Quality Control Plan for the North Coast Basin Region 1-(Page 4-1)
http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan.shtml

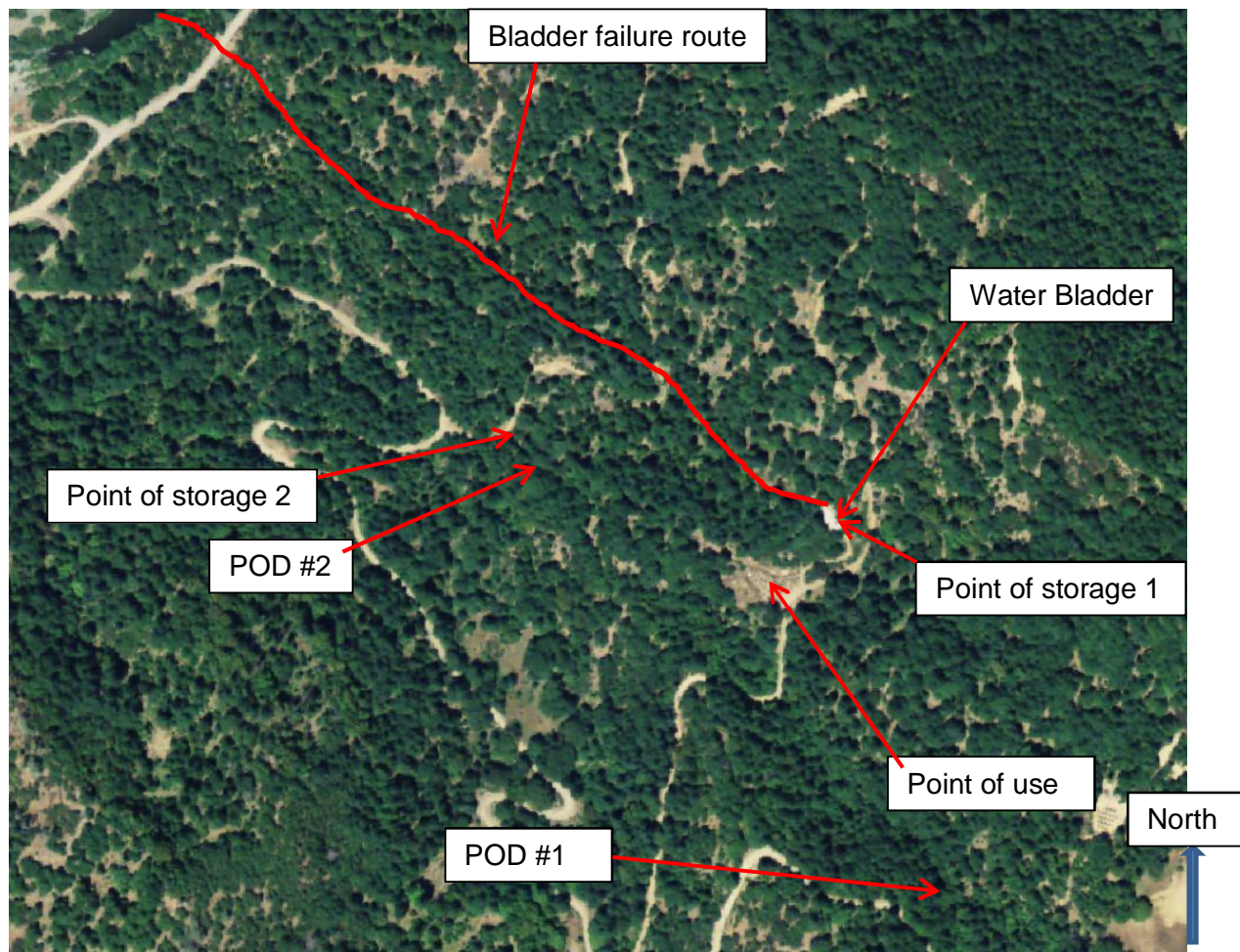


Image 15- NAIP 2012 the areas identified on the map approximate locations observed in the field and discussed above in the report.



Image 15, Google Earth Image of subject property and locations described within this report. The map points are generated by hand, and are estimated locations on the google image based upon observable landmarks. There is also a point of storage not shown, located directly downstream of POD #2 next to the road.

131205Daniel Franklin M8 road bladder failure new template_.docx

1 **Olive Franklin, Trustee of the Charles & Julia Franklin Trust, and Daniel Franklin**
2 **ARE COMMANDED** to produce the papers, books, records and documents in your possession or
3 under your control described below in connection with the above-titled proceeding **by August 29,**
4 **2016.** Documents must be sent to: Vanessa M. Young, Staff Counsel, Office of Enforcement, State
5 Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.

6 You may seek the advice of an attorney in any matter connected with this subpoena. You
7 should consult your attorney promptly so that any problems concerning your production of
8 documents may be resolved within the time required by this subpoena.

9 **FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL**
10 **SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.**

11 **DEFINITIONS**

12 Definitions for industry or trade terms contained herein are to be construed broadly. Where
13 the industry or trade definition set forth herein does not coincide precisely with your definition, the
14 question, inquiry or production request should be responded to or answered by using the definition
15 which you apply and/or recognize in your usage of the term, further documenting your definition in
16 the response. Non-industry or non-trade definitions should be applied as defined herein.

17 (1) The term "COMMUNICATION" or "COMMUNICATIONS" means every disclosure,
18 transfer, exchange or transmission of information, whether oral or written and whether face to face
19 or by telecommunications, computer, mail, telecopier or otherwise.

20 (2) The terms "RELATING TO" or "RELATE TO" includes referring to, alluding to,
21 responding to, concerning, connected with, commenting on, in respect of, about, regarding,
22 discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or
23 pertaining to.

24 (3) (a) The term "DOCUMENT" means a document whose existence is known to
25 you, your employees, superiors, representatives or assigns, regardless of its location or origin,
26 including the original and all non-identical copies, whether written, printed or recorded, including,
27 with limitations, contracts, agreements, leases, receipts, invoices, payment vouchers, purchase
28 orders, books, booklets, brochures, reports, notices, announcements, minutes and other
communications, including inter and intra-office communications, studies, analyses, maps, charts,

1 tables, questionnaires, indices, telegrams, messages (including reports of telephone conversations
2 and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,
3 negotiations, canceled checks, financial statements, deposit slips, bank drafts, books of account,
4 summaries, reports, tests, projections, studies, charts, notebooks, worksheets, recordings, calendars,
5 or other materials which are written, recorded, printed, typed, or transcribed. "DOCUMENT" also
6 means data sheets or data processing cards, tapes, films or graphic matter or materials on computer
7 magnetic diskettes or tapes, electronically or magnetically-stored data (including data stored on
8 "hard," "floppy" or "micro-floppy" disks or data stored in data base systems), photographs,
9 videotapes or any other matter of any kind or nature however produced or reproduced and each
10 copy of any of the foregoing which is not identical because of margin notations or otherwise. If any
11 such documents were, but no longer are, in your possession or control, state what disposition was
12 made of them and when.

13 (b) The term "DOCUMENT" shall also include all documents necessary to
14 interpret, translate, decode or understand any other document requested or produced. If a form of
15 document (i.e., magnetic tape) cannot be read, such form must be converted to a paper document
16 that can be read.

17 (4) The term "DISCHARGERS" refers to Olive Franklin, Charles & Julia Franklin
18 Trust, and Daniel Franklin.

19 (5) The term "SITE" refers to 17777 Eel River Road in Mendocino County.

20 (6) The term the "STATE OF CALIFORNIA" means all land within the geopolitical
21 boundaries of the State of California.

22 (6) The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

23 (7) The terms "YOU" or "YOUR" refer to Olive Franklin, trustee of the Charles & Julia
24 Franklin Trust, and Daniel Franklin.

25 INSTRUCTIONS

26 i. **Unless otherwise indicated, the time period covered by this subpoena is from**
27 **January 1, 2011 to up to five days before YOUR full compliance with this subpoena. Any**
28 **documents relating to this time period are to be produced, regardless of whether the**
documents came into existence before or during this period.

1 ii. YOUR response to the subpoena should include a declaration or affidavit. It should
2 state that a diligent search for all requested DOCUMENTS has been conducted and that the affiant
3 or declarant was in charge of the search or otherwise monitored and reviewed the search
4 sufficiently to be able to represent under oath that such a search was conducted. It should be signed
5 under oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to
6 comply with the subpoena. If different people are the most knowledgeable about portions of the
7 search (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media
8 and a different person is most knowledgeable about DOCUMENTS contained on paper) each should
9 sign an affidavit or declaration identifying the category in the request for DOCUMENTS for which
10 that person is the most knowledgeable.

11 iii. Unless otherwise indicated, for any DOCUMENT stored in a computer, including
12 all electronic mail messages, YOU should produce the DOCUMENT in the original electronic file
13 format in which it was created (e.g., Microsoft email should be provided in its original format,
14 which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form,
15 such as an Excel file and word-processed DOCUMENTS should be in their original file format,
16 such as a Word or WordPerfect file), together with instructions and all other materials necessary to
17 use or interpret the data. Electronic mail messages should be provided, even if only available on
18 backup or archive tapes or disks. Computer media should be accompanied by (a) an identification
19 of the generally available software needed to open and view the DOCUMENTS or (b) a copy of the
20 software needed to open and view the DOCUMENT. Note, however, that if a print-out from a
21 computer DOCUMENT is a non-identical copy of the electronic form in which it was created
22 (non-identical as described in the definition of "DOCUMENT," by way of example, but not
23 limitation, because it has a signature, handwritten notation, or other mark or attachment not
24 included in the computer DOCUMENT), both the electronic form in which the DOCUMENT was
25 created and the original print-out should be produced.

26 iv. For each DOCUMENT contained in an audio or video medium, YOU should
27 provide both the tape, disk or other device from which the audio or video can be played and the
28 transcript of the DOCUMENT.

1 v. For all DOCUMENTS YOU do not produce in the original, as defined in Evidence
2 Code section 255, YOU may submit copies (black and white copies if the original was in black and
3 white, color copies if the original was in color, and, if the original was in electronic format, in the
4 same electronic medium as the original) in lieu of original DOCUMENTS provided that such
5 copies are accompanied by an affidavit from the DISCHARGERS stating that the copies of all three
6 types of DOCUMENTS are true, correct, and complete copies of the original DOCUMENTS. If
7 there is in YOUR possession, custody or control no original, but only a copy or photographic record
8 thereof, then YOU should produce a true and legible copy of each such DOCUMENT. The
9 accompanying affidavit should state that the DOCUMENT is only a copy or photographic record
10 and not the original.

11 vi. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not
12 in YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify
13 the person who had possession or custody of the DOCUMENT, their telephone number and current
14 business and residence addresses.

15 vii. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control
16 or care, YOU should provide a written statement identifying the DOCUMENT with specificity,
17 stating whether it is lost or missing, has been destroyed, has been transferred to others, or has
18 otherwise been disposed of. The written statement should also identify the person who disposed of
19 the DOCUMENT, explain the circumstances and authorization for the disposition and the
20 approximate date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive
21 to a document request, as to each such document request, YOU should include a statement to that
22 effect in the accompanying declaration or affidavit.

23 viii. DOCUMENTS provided in response to this subpoena should be complete and,
24 unless privileged, unredacted, submitted as found in YOUR files (*e.g.*, DOCUMENTS that in their
25 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall
26 be produced in the same form).

27 ix. Each DOCUMENT produced pursuant to this subpoena should be identified
28 according to the category in the subpoena to which it is responsive. In lieu of indicating on each
DOCUMENT the category to which it is responsive, on the date set for production, YOU may

1 instead provide an index if YOU provide it in both paper and in electronic form (such as a
2 computerized spread sheet in Excel or a Word or WordPerfect DOCUMENT set up in a table
3 format) of all DOCUMENTS YOU produce, as long as this index shows by document control
4 number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive.
5 Responsive DOCUMENTS from each person's files should be produced together, in one box or in
6 consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper DOCUMENT
7 and each tangible thing containing audio, video, computer or other electronic DOCUMENTS (e.g.,
8 cassette, disk, tape or CD) with corporate identification and consecutive document control numbers
9 (e.g., S.I.. 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS produced
10 and mark each with the name(s) of the person(s) whose files are contained therein, the request(s)
11 to which they are responsive, and the document control numbers contained therein.

12 x. For data produced in spreadsheets or tables, include in the declaration or affidavit
13 the identification of the fields and codes and a description of the information contained in each
14 coded field.

15 xi. The document requests contained in this subpoena should be deemed to include a
16 request for all relevant DOCUMENTS in the personal files, including but not limited to files
17 contained on laptops, tablets, smart phones, palm devices, home computers and home files of all
18 YOUR officers, employees, accountants, agents and representatives, including sales agents who are
19 independent contractors, and unless privileged, attorneys.

20 xii. If any DOCUMENTS are withheld from production based on a claim of privilege,
21 provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,
22 addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies,
23 and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments to a
24 DOCUMENT should be identified as such and entered separately on the log. For each author,
25 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all
26 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,
27 representative, or outside attorney, identify the person's name, division, and organization. Include
28 the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide
sufficient information to identify its general subject matter without revealing information over

1 which a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or
2 contains attorney work product, also state whether YOU assert that the DOCUMENT was prepared
3 in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which
4 the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT
5 (including non-privileged or redactable attachments) for which a claim of privilege is asserted
6 (except where the only non-privileged information has already been produced in response to this
7 instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS
8 authored by outside lawyers representing YOU that were not directly or indirectly furnished to
9 YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

10 xiii. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that
11 might otherwise be construed as outside its scope:

12 (a) the use of the verb in any tense shall be construed as the use of that verb in all
13 other tenses;

14 (b) the use of a word in its singular form shall be deemed to include within its use
15 the plural form as well; and

16 (c) the use of the word in its plural form shall be deemed to include within its use
17 the singular form as well.

18 xiv. Whenever responsive DOCUMENTS apply to more than one site, such
19 DOCUMENTS shall be organized by address of the site.

20 xv. The subpoenaing party will comply with all laws regarding payment of reasonable
21 costs incurred for the production of DOCUMENTS. Prior to the production and copying of
22 DOCUMENTS, the undersigned requests to be contacted to confer on the most efficient manner in
23 which to proceed.
24
25
26
27
28

DOCUMENTS TO BE PRODUCED

This subpoena commands production of the original of each and every DOCUMENT now or at any time in the possession, custody or control of YOU without regard to the person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited to, all DOCUMENTS in the personal, business, or other files of all present or former trustees, agents, attorneys, and accountants, which refers or relates to any of the following subjects:

- (1) Provide all rental and/or lease agreements for property owned, operated, or occupied by any DISCHARGER for the past five (5) years.
- (2) Provide all DOCUMENTS and COMMUNICATIONS which refer or RELATE TO purchase, lease, acquisition, operation, and maintenance of storage bladders used at the SITE.
- (3) Provide the signed federal income tax returns submitted to the Internal Revenue Service and all associated forms and schedules for 2011, 2012, 2013, 2014, and 2015 for each DISCHARGER.
- (4) Provide the most recent mortgage statements providing the outstanding principal and interest amounts for all real property held as trust property.
- (5) Provide the most recent trust instrument, if any, for the Charles and Julia Franklin Trust.
- (6) Provide all DOCUMENTS which refer or RELATE TO all current trust property, including assets and real property.
- (7) Provide all DOCUMENTS which refer or RELATE TO the current value of any real property owned by each DISCHARGER as identified in Special Interrogatories No. 3, attached herein, including, but not limited to, assessment records, appraisals, market trends, and economic conditions.
- (8) Provide all DOCUMENTS and COMMUNICATIONS which refer or RELATE TO the lease or rental agreement entered into by any DISCHARGER for the use or habitation of a portion or all of the SITE.
- (9) Provide all DOCUMENTS and COMMUNICATIONS which refer or RELATE TO any business, enterprise, cooperative that operates on the SITE.

- 1 (10) Provide all DOCUMENTS which evidence, RELATE TO, or describe the financial
2 condition, solvency or ability to timely pay debts of each DISCHARGER.
3 (11) Provide all DOCUMENTS which RELATE TO any crop production since 2011 at
4 the SITE including but not limited sales receipts, invoices, etc.
5 (12) Provide all DOCUMENTS which refer or RELATE TO any credit lines to each
6 DISCHARGER.

7 **I. Other**

- 8 (13) Provide all DOCUMENTS used in answering or supplying information the
9 SPECIAL INTERROGATORIES served concurrently herewith. The DOCUMENTS
10 produced should correspond with those DOCUMENTS identified in Interrogatory Nos.
11 1 through 12.

12 Given under my hand this 21 day of July 2016.

13
14 
15 Vanessa Young
16 Staff Counsel, Office of Enforcement
17 State Water Resources Control Board
18
19
20
21
22
23
24
25
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27
28

1 CHRISTIAN M. CARRIGAN (SBN 197045)
2 VANESSA M. YOUNG (SBN 276766)
3 OFFICE OF ENFORCEMENT
4 STATE WATER RESOURCES CONTROL BOARD
5 P.O. Box 100
6 Sacramento, California 95812-0100
7 Telephone: (916) 327-8622

8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD
9 STATE OF CALIFORNIA

10 In the Matter of:

11 **SPECIAL INTERROGATORIES**

12 Olive Franklin (Trustee of the Charles and
13 Julia Trust) and Daniel Franklin
14 17777 Eel River Road, Mendocino County

15 **TO OLIVE FRANKLIN, TRUSTEE OF THE CHARLES AND JULIA FRANKLIN
16 TRUST, AND DANIEL FRANKLIN AND ITS ATTORNEY OF RECORD IN THE
17 ABOVE-CAPTIONED MATTER:**

18 The State Water Resources Control Board ("State Water Board") Director of the
19 Office of Enforcement (hereinafter "PROPOUNDING PARTY") hereby requests,
20 pursuant to Government Code section 11181 et seq., and all applicable delegations
21 from the State Water Board's Executive Director, and in accordance with Civil Code of
22 Procedure section 2030 et seq., and all applicable law, that Olive Franklin, trustee of the
23 Charles and Julia Franklin Trust, and Daniel Franklin serve on PROPOUNDING PARTY
24 a written response subscribed under oath within thirty days of service hereof, which
25 shall include ALL of the information requested.

26 In answering these interrogatories, YOU must furnish ALL non-privileged
27 information which is available to YOU, including information in the possession of YOUR
28 investigators, employees, agents, attorneys, and ALL other persons ("Representatives")
or entities directly, or indirectly, employed by, or otherwise subject to, YOUR control.

1 In answering these interrogatories, YOU must make a diligent search of YOUR
2 records and of other papers and materials in YOUR possession, custody, and/or control
3 that are available to YOU or YOUR Representatives.

4 If YOU cannot answer any of the following interrogatories in full, after exercising
5 due diligence to secure the information requested, so state and answer the remainder,
6 stating whatever information or knowledge YOU have CONCERNING the unanswered
7 portions.

8 These interrogatories are being propounded on the grounds that each is relevant
9 to the North Coast Regional Water Quality Control Board's (North Coast Regional Water
10 Board) assessment of administrative civil liability against YOU for water quality
11 violations and YOUR ability to pay the proposed penalty in administrative civil liability
12 complaint R1-2016-0033, or is reasonably calculated to lead to the discovery of
13 admissible evidence.

14 Failure to respond, or adequately respond, to these Special Interrogatories will
15 result in a formally-noticed motion to compel responses, and ALL costs incurred in
16 bringing said motion will be sought.

17 18 **DEFINITIONS**

19 The term "ADDRESS" means the street address, including the city, state, and zip code.
20

21 The term "ALL" means each and every.
22

23 The term "DISCHARGERS" refers to Olive Franklin, trustee of the Charles & Julia
24 Franklin Trust, and Daniel Franklin.
25

26 The term "CONCERNING" means consisting of, referring to, reflecting or arising out of,
27 evidencing or in any way legally, logically, or factually connected with the matter
28 discussed, directly or indirectly.

1
2 The term "DOCUMENTS" means a writing, as defined in California Evidence Code
3 section 250, and includes the original or a copy of handwriting, typewriting, printing,
4 photostats, photographs, electronically-stored information, and every other means of
5 recording upon any tangible thing and form of communication or representation,
6 including letters, words, pictures, sounds, symbols, or combinations of them.
7

8 The term "IDENTIFY" when referring to a PERSON means to provide an identification
9 sufficient to notice a deposition of such PERSON and to serve such PERSON with
10 process to require his or her attendance at a place of examination and shall include,
11 without limitation, his or her full name, present or last known ADDRESS, present or last
12 known business affiliation, home and business telephone number, title or occupation,
13 each of his or her position(s) during the applicable period of time covered by any
14 answer referring to such PERSON and relationship, if any, to YOU.
15

16 The term "IDENTIFY" when used in reference to PROPERTY means to provide
17 identification including the physical address and assessor's parcel number(s).
18

19 The term "IDENTIFY" when used in reference to a writing or DOCUMENT means to
20 give a sufficient characterization of such writing or DOCUMENT to properly identify it in
21 a request to produce and shall include, without limitation, the following information with
22 respect to each such DOCUMENT:

- 23 1. The date appearing on such DOCUMENT, and if it has no date, the
24 answer shall so state and shall give the date or approximate date such
25 DOCUMENT was prepared;
- 26 2. The identity or descriptive code number, file number, title, or label of such
27 DOCUMENT;
28

- 1 3. The general nature and description of such DOCUMENT, and if it was not
2 signed, the answer shall so state and shall give the name of the person or
3 persons who prepared it;
- 4 4. The names of the PERSON(S) to whom such DOCUMENT was
5 addressed and the name of each PERSON other than such addressee to
6 whom such DOCUMENT, or copies of it, were given or sent;
- 7 5. The name(s) of the PERSON(S) having present possession, custody, or
8 control of such DOCUMENT(S); and,
- 9 6. Whether or not any draft, copy, or reproduction of such DOCUMENT
10 contains any postscripts, notations, changes, or addendum not appearing
11 on the DOCUMENT itself, and if so, the answer shall give the description
12 of each such draft, copy, or reproduction.

13
14 The terms "PERSON," "PERSONS," and "PERSON(S)" mean a natural person, firm,
15 association, organization, partnership, business, trust, limited liability company,
16 corporation, or public entity.

17
18 The term "PROPERTY" means any interest in real property.

19
20 The terms "RELATING TO" or "RELATE TO" includes referring to, alluding to,
21 responding to, concerning, connected with, commenting on, in respect of, about,
22 regarding, discussing, showing, describing, mentioning, reflecting, analyzing,
23 constituting, evidencing, or pertaining to.

24
25 The term "SITE" refers to 17777 Eel River Road in Mendocino County.

26 The terms "YOU" and "YOUR" refer to Olive Franklin, trustee of the Charles & Julia
27 Franklin Trust, and Daniel Franklin.

SPECIAL INTERROGATORIES

Interrogatory No. 1

IDENTIFY ALL PERSONS consulted in answering or supplying information to these interrogatories.

Interrogatory No. 2

IDENTIFY ALL DOCUMENTS used in answering or supplying information to these interrogatories.

Interrogatory No. 3

IDENTIFY the period of time when a storage bladder was used at the SITE or at 27860 Poppy Drive, Willits, California 95490 during the last five years.

Interrogatory No. 4

IDENTIFY the approximate period in time of any and all ruptures, tears, or leaks of a storage bladder at the SITE or at 27860 Poppy Drive, Willits, California 95490 during the last five years.

Interrogatory No. 5

If you produce a product or commodity collectively at the SITE or at 27860 Poppy Drive, Willits, California 95490 in the last five years, IDENTIFY all income or benefit derived from that activity, whether for cash or in exchange for other goods and services.

Interrogatory No. 6

If you produce a product or commodity collectively at the SITE or at 27860 Poppy Drive, Willits, California 95490 in the last five years, IDENTIFY all persons with knowledge relating to producing a product or commodity collectively.

1 Interrogatory No. 7

2 If you produce a product or commodity collectively at the SITE or at 27860 Poppy Drive,
3 Willits, California 95490, IDENTIFY the square footage used each growing season to
4 produce that product or commodity in the last five years.

5
6 Interrogatory No. 8

7 If you produce a product or commodity collectively at the SITE, IDENTIFY how many
8 pounds the collective produced in the last five years.

9
10 Interrogatory No. 9

11 IDENTIFY the location of any travel made by YOU in the last five years outside of
12 Mendocino County.

13
14 Interrogatory No. 10

15 If YOU contend YOU have the inability to pay the proposed liability set forth in the North
16 Coast Regional Water Board's administrative civil liability complaint R1-2016-0033,
17 state ALL facts, whether supporting or refuting, RELATING TO this contention,
18 including, but not limited to, ALL facts and information responsive to the Financial Data
19 Request Form incorporated by reference and attached herein as Attachment A.

20
21 Interrogatory No. 11

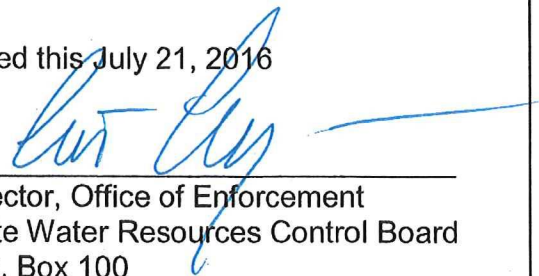
22 IDENTIFY ALL PERSONS and witnesses providing facts and information responsive to
23 Interrogatory No. 10.

24
25 Interrogatory No. 12

26 If YOU contend YOU are unable to pay the proposed liability set forth in the North Coast
27 Regional Water Board's administrative civil liability complaint R1-2016-0033, IDENTIFY
28 ALL DOCUMENTS, whether supporting or refuting, RELATING TO this contention,

1 including, but not limited to, ALL DOCUMENTS that are responsive to the Financial
2 Data Request Form incorporated by reference and attached to herein as Attachment A.

3
4 Dated this July 21, 2016

5 
6 _____
7 Director, Office of Enforcement
8 State Water Resources Control Board
9 P.O. Box 100
10 Sacramento, California 95812-0100
11 Christian M. Carrigan, Esq.
12 Vanessa M. Young, Esq.

AFFIDAVIT AND PROOF OF SERVICE

I, Elena Franceschi, declare that I am over 18 years of age. I am employed in Sacramento at 1001 I Street, Sacramento, California, 95814. My mailing address is P.O. Box 100, Sacramento, California, 95812-100. On this date, I served the within documents:

SPECIAL INTERROGATORIES

X	BY OVERNIGHT DELIVERY [1 hard copy]: I caused a true and correct copy of Special Interrogatories to be served by overnight mail on: Ms. Melissa Thorne 621 Capitol Mall, 18th Floor Sacramento, CA 95814
----------	--

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on July 21, 2016, at Sacramento, California.



Elena Franceschi

California State Water Resources Control Board

BUSINESS ORGANIZATION**ABILITY TO PAY CLAIM**

Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly, if you feel your situation is not adequately described through the information requested here. If a particular question does not apply to your business, please indicate that it does not apply and give the reason. **Failure to answer all the questions clearly and completely may result in denial of your claim of inability to pay.**

Certification

Under penalties of perjury, I declare that this financial statement submitted by me as a responsible officer of the organization is a true, correct, and complete statement of all organization income and assets, real and personal, whether held in the company name or otherwise to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the United States Government to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

Name (printed or typed)

Corporate Position

California State Water Resources Control Board

1. Business Name: _____
2. For Profit ____ Not for Profit ____
3. Business Address: _____
Street

City State Zip

NOTE: Attach Schedule of all Business Addresses

4. Foreign _____ Domestic _____
5. Legal Form of Business Organization during the last 5 years
____ Corporation
____ Subchapter S Corporation
____ Partnership
____ Proprietorship
____ Trust
____ Other: _____
6. State of Incorporation _____ Date of Incorporation _____
7. Name of Registered Agent: _____
8. Address of Registered Agent: _____
Street

City State Zip

Phone

California State Water Resources Control Board

Name and address of principal stockholders and number of shares owned by each. (If more than 8 shareholders, list only those with 5 percent or more stock ownership). If your business is a partnership, list all partners and ownership percentage.

Total outstanding shares: _____

Name	Address	Shares
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

9.A. Name and address of current, (and for previous 5 years), officers and number of shares held by each. For partnerships, list all partners for last 5 years.

Name	Address	Shares	Term

California State Water Resources Control Board

9.B. Name and address of current, (and for previous five years), members of board of directors and number of shares held by each.

Name	Address	Shares	Term

10. Has this organization ever issued a prospectus for the sale of stock? Yes ____ No ____
If yes, list date, number and type of shares for each prospectus during the last five years.

Date	Number of Shares	Type of Shares

11.A. Registration on international, national or local stock exchange(s). Give details, including date of registration and/or de-listing.

1. _____
2. _____
3. _____
4. _____

California State Water Resources Control Board

11.B. Total authorized shares for each type issued and present market value per share on each type of stock (or book value if not actively traded)

Types of Shares	Total Shares	Book Value	Market Value
1.			
2.			
3.			
4.			

C. Total outstanding shares of each type of stock currently being held as Treasury Stock.

D. Total outstanding shares of each type of stock.

E. Amount of bonded debt and principle bondholders.

12. List states and municipalities to which taxes have been paid and/or are being paid. Describe nature and amount of such taxes, state most recent year of payments thereof and whether tax payments are current.

California State Water Resources Control Board

13. Has this organization filed United States income tax returns during the last five years?
Yes_____ No _____

To what I.R.S. Office(s)

What Years?

Are Federal Taxes current? Yes_____ No_____

Provide **SIGNED** Federal income tax returns and **ALL** associated schedules for the last five years.

14. Name and address of:

A. Organization=s Independent Certified Public Accountants

B. Organization=s Attorney(s) presently and during the past five years.

15. Has this organization filed Financial Forms with any organization or government entity?
List name of organization or entity, date and type of Financial Form.
-
-
-

California State Water Resources Control Board

16. Does this organization have a Profit and Loss Statement and Balance Sheet for the most recent calendar or fiscal year and for specified past years? Past five years:

Submit one copy of each. (Audited documents are preferred.)

A. Assets

		<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
<u>Cash</u>	\$					
<u>Securities</u>	\$					
<u>Facilities</u>	\$					
<u>Depreciation</u>	\$					
<u>Equipment</u>	\$					
<u>Depreciation</u>	\$					
<u>Inventory</u>	\$					
<u>Accounts Receivable</u>	\$					
<u>Other</u>	\$					
<u>TOTAL ASSETS</u>	\$					

B. Liabilities and Stockholder's Equity

		<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Loans Principle	\$					
Monthly Payment	\$					
Mortgages Principle	\$					
Monthly Payment	\$					
Accounts Payable	\$					
Deferred Taxes	\$					
Insurance Premiums	\$					
Other	\$					

California State Water Resources Control Board

C. Stockholder's Equity

		<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Common Stock	\$					
Paid-in Capital	\$					
Retained Earnings	\$					

		<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
TOTAL LIABILITIES & EQUITY	\$					

17. Loans Payable:

A.

Owed to:	Purpose:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance	

B.

Owed to:	Purpose:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance	

California State Water Resources Control Board

C.

Owed to:	Purpose:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance	

D.

Owed to:	Purpose:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance	

18. Mortgages Payable:

A.

Owed To:	Address of Property:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance:	

California State Water Resources Control Board

B.

Owed To:	Address of Property:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance:	

C.

Owed To:	Address of Property:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance:	

D.

Owed To:	Address of Property:
Term:	Interest Rate:
Collateral:	Cosigner:
Monthly Payments:	
Original Amount:	Date:
Present Balance:	

California State Water Resources Control Board

19. Income/Expenses:

Gross Income		<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Net Sales	\$					
Interest Income	\$					
Dividends	\$					
Other	\$					

Operating Expenses

Wages	\$					
Overhead	\$					
Lease Payments	\$					
Interest Expense	\$					
Cost of Sales	\$					
Net Income	\$					

20. In addition, provide the following firm size information:

Number of Employees					
Size of Warehouse(s)					
Volume Shipped					
Other					

21. Does this organization maintain bank accounts? Give names and addresses of banks, savings and loan associations, and other such entities, within the United States or elsewhere.

A. Checking

Name of Bank	Address of Bank	Account #	Balance

California State Water Resources Control Board

B. Savings/Certificate of Deposit

Name of Bank	Address of Bank	Account #	Balance

C. Other Accounts

Name of Institution	Address of Institution	Account #	Balance

D. Savings & Loan Associations or other such entities

Name of Institution	Address of Institution	Account #	Balance

E. Trust Account(s)

Name of Institution	Address of Institution	Account #	Balance

F. Other Account(s)

Name of Institution	Address of Institution	Account #	Balance

California State Water Resources Control Board

22. List all commercial paper, negotiable or non-negotiable, in which the organization has any interest whatsoever, presently in transit or in the possession of any banking institution. Describe such paper and the organization's interest therein, and state its present location. List all loans receivable in excess of \$10,000.00 and specify if due from an officer, stockholder, or director.

23. Has this organization engaged in any Joint Loan Agreements, including Letters of Credits, with any other organization(s)? If yes, describe all such agreements.

24. Does this organization have any debt coinsured by another organization? If yes, describe such arrangements.

25. List all equity participation in other organizations, both domestic and foreign, in which this organization has an interest, including the type, amount and terms of such interest.

California State Water Resources Control Board

26. List all debt participation in other organizations, both domestic and foreign, in which this organization has an interest, including the type, amount and terms of such interest.

27. Is this organization presently:

A. Active

(Answer No for inactive, but still in existence) Yes_____ No _____

B. Void and/or terminated by State authority. Yes_____ No _____

C. Otherwise dissolved Yes_____ No _____

1. Date _____

2. By Whom _____

3. Reason _____

28. A. List corporate salaries, bonuses to and/or drawings of the following personnel for the last five taxable years:

Position	Name	2015	2014	2013	2012	2011
President						
Vice President						
Chairman						
Secretary						
Treasurer						

California State Water Resources Control Board

B. List the five most highly compensated employees or officers other than the above, describe position and list annual salary and/or bonus for the last five taxable years:

Name	Position/Title	2015	2014	2013	2012	2011

C. Describe the nature of the compensation paid to the persons listed in (A) and (B) above and set forth any stock options, pensions, profit sharing, royalties, or other deferred compensation rights of said persons.

29. List the organizations commercial activity, (fields of activity resulting in income), and SIC Code.

<u>Commercial Activity</u>	<u>SIC Code</u>
Primary _____	_____
Other 1. _____	_____
Other 2. _____	_____
Other 3. _____	_____

California State Water Resources Control Board

30. List all other supplementary fields of activity in which this organization is engaged, either directly, through it affiliates, stating the name(s) and states(s) of incorporation of such subsidiaries or affiliates:

31. Has this organization at any time been the subject of any proceeding under the provisions of any State Insolvency Law, or the federal Bankruptcy Act, as amended? If so, supply the following information as to each such proceeding:

A. Date (Commencement) _____

B. Date (Termination) _____

C. Discharge or other disposition, if any, and operative effect thereof:

D. State Court _____ Docket No. _____
County

E. Federal Court _____ Docket No. _____
County

32. A. List all real estate, and personal property of an estimated value in excess of \$ 10,000 owned or under contract to be purchased by this organization with names and addresses of seller and contract price and where located:

California State Water Resources Control Board

33. List and describe all judgments, recorded and unrecorded, this organization is a party of:

A. Against the organization

B. In favor of the organization

34. List and describe all other encumbrances (including but not limited to security interest, whether perfected or not) against any such personal property owned by the organization as is listed in 30 (A) above.

35. List all life insurance, now in force on any or all officers, directors, and/or Akey@ employees, setting forth face amounts, names of life insurance companies and policy numbers where this organization has an Ainsurable interest@ and/or paying the premium or part of same. Where applicable, indicate under which policy(s) this organization is beneficiary, type of policy(s) this organization is a beneficiary, yearly premium, and location of policy(s). In addition, state the cash value if any and the conditions of any borrowing options available under each policy.

California State Water Resources Control Board

36. For the following types of policies, list all primary and excess insurance policies, the deductible amount, per occurrence and aggregate coverage limit for each policy.

A. Comprehensive General Liability

B. Environmental Impairment Liability

C. Other policies for which coverage might apply including participation in risk retention pools.

37. List all transfers of assets (real) and/or (personal) (over \$10,000.00) made by this organization, OTHER THAN IN THE ORDINARY COURSE OF BUSINESS, during the last three calendar years and state to whom transfer was made. Describe compensation paid by recipient and to whom.

Date	Value	Property Transferred	To Whom	Compensation Paid

California State Water Resources Control Board

38. Is this business organization a party in any law suit now pending?

Yes (Give details below) _____ No _____

39. List names and addresses of any persons or other business entity, holding funds in escrow or in trust for this organization, or any of its subsidiaries or affiliates.

40. Other information requested:

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code Section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that are alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Regional Water Board is required to consider several factors specified in the Water Code, including 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 violations, and other matters as justice may require (California Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations

- IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
 3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;

6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml.

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code Section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

North Coast Regional Water Quality Control Board

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES (CORRECTED)
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R1-2016-0033

ISSUED TO
OLIVE (POLLY) FRANKLIN AS TRUSTEE OF THE CHARLES & JULIA FRANKLIN TRUST AND
DANIEL FRANKLIN
WDID #1B13159CNME

17777 EEL RIVER ROAD
LAKE AND MENDOCINO COUNTIES

SCHEDULED FOR October 20, 2016

Overview

On July 22, 2016, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (North Coast Water Board), issued an Administrative Civil Liability (ACL) Complaint No. R1-2016-0033 ("Complaint") pursuant to Water Code section 13323, to Daniel Franklin and Olive (Polly) Franklin as trustee of the Olive Franklin Trust (hereafter [collectively] "Dischargers"). The Complaint alleges that the Dischargers violated 1) Water Code section 13376 for discharging pollutants to waters of the U.S. without filing a report of waste discharge and 2) Clean Water Act section 301 for discharging pollutants to waters of the United States without an authorized permit. The Complaint proposes that the North Coast Water Board impose an administrative civil liability ("ACL") in the amount of three hundred eighty-one thousand nine hundred and forty-seven dollars (\$381,947). A hearing is currently scheduled to be held before the North Coast Water Board during its October 20, 2016, meeting.

Purpose of Hearing

At the hearing, the North Coast Water Board will consider relevant evidence and testimony and decide whether to issue an ACL order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing will commence as announced in the North Coast Water Board meeting agenda (typically at 8:30 a.m.), or as soon thereafter as practical. The meeting will be held at:

To Be Determined

An agenda for the meeting will be issued at least ten days before the meeting and posted on the North Coast Water Board's web page at:

<http://www.waterboards.ca.gov/northcoast>

Advisory Team

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role ("Prosecution Team") by presenting evidence for consideration by the North Coast Water Board have been separated from those who will provide advice to the North Coast Water Board ("Advisory Team") prior to and during the hearing. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Other members of the Prosecution Team may act or have acted as advisors to the North Coast Water Board in other, unrelated matters, but they are not advising the North Coast Water Board in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on ex parte communications.

All submittals and communications to the Advisory Team shall be sent to:

Matthias St. John,
Executive Officer
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Matt.St.John@waterboards.ca.gov

Nathan Jacobsen,
Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd floor
Sacramento, CA 95814
(916) 341-5181
Nathan.Jacobsen@waterboards.ca.gov

Any substantive communication to the Advisory Team must also be sent to the parties listed below.

Hearing Participation

Designated parties to the hearing may present evidence (e.g., photographs, eye-witness testimony, monitoring data), cross-examine witnesses and receive all correspondence related to the case. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the North Coast Water Board's website:

http://www.waterboards.ca.gov/northcoast/public_notices/public_hearings/enforcement_hearings.shtml

Persons who wish to participate in the hearing as a designated party may submit a request in writing (with copies to already designated parties) so that it is received by the Advisory Team no later than 5 p.m. on August 11, 2016. The request shall include a brief explanation of how the person will be affected by the potential action by the North Coast Water Board, the

person's need to present evidence and/or cross-examine witnesses, and why an already designated party will not adequately represent the person's interest. Any objection to the request must be received by the Advisory Team, all parties and the person requesting party status by 5 p.m. on August 8, 2016. The parties will be notified by 5 p.m. on August 11, 2016 whether the request has been granted or denied. If no objection is timely received, and/or Advisory Team does not otherwise make any modifications, designated party status is automatically granted. The new designated party shall be added to the list below and subject to all the requirements in this Notice. Additional persons may be designated as parties after the deadline at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer.

Parties are advised to read and adhere to the attached important deadlines and hearing procedures carefully. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony.

Parties

Prosecution Team:

Shin-Roei Lee
Lead Prosecutor
Assistant Executive Officer
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Shin-Roei.Lee@waterboards.ca.gov

Stormer Feiler
Environmental Scientist
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Stormer.Feiler@waterboards.ca.gov

Joshua Curtis
Environmental Program Manager
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Joshua.Curtis@Waterboards.ca.gov

Discharger:

Mr. Daniel Franklin & Ms. Olive Franklin
27860 Poppy Drive
Willits, CA 95460
brawlertrawler@gmail.com

Vanessa Young
Attorney
SWRCB Office of Enforcement
1001 I Street
Sacramento, CA 95814
Vanessa.Young@waterboards.ca.gov

Melissa Thorme
Attorney 621 Capitol Mall, 18th Floor
Sacramento, CA 95814
mthorme@downeybrand.com

Diana Henriouille
Senior Engineer
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Diana.Henriouille@waterboards.ca.gov

Important Deadlines

All required submissions must be received by the Advisory Team by 5:00 p.m. on the due date listed. Parties shall provide all submissions to the Advisory Team electronically, unless otherwise specified below. Parties shall send electronic copies of all submittals to each other unless a party specifically requests paper copies.

The Advisory Team has discretion to modify the deadlines below and may schedule additional pre-hearing conferences to resolve objections or any other outstanding pre-hearing issues, if needed. Pre-hearing conferences may be held telephonically.

- | | |
|--------------------|---|
| July 22, 2016 | Prosecution Team issues paper copy of ACL Complaint to Discharger(s) and sends an electronic copy to Advisory Team; Prosecution Team posts Hearing Notice and Procedures with copies to Discharger(s) and Advisory Team. |
| August 1, 2016 | Parties Submit any Objections to Hearing Notice. Deadline to Request Designated Party Status. |
| August 8, 2016 | Parties Submit any Objections to Requests for Designated Party Status. |
| August 22, 2016 | Deadline for Discharger to Submit Signed Form Waiving Right to Hearing within 90 Days. |
| September 12, 2016 | Prosecution Team Submits Case in Chief electronically to all parties plus (10)] hard copies to Advisory Team. The ACLC shall be included in the Case in Chief. Advisory Team issues decision on request for Designated Party Status, Hearing Notice Objections, if any. |
| September 20, 2016 | Remaining Designated Parties, including the Discharger(s), submit Case in Chief electronically to all parties plus (10) hard copies to Advisory Team). Deadline to submit request for additional time. Deadline for Interested Persons to submit written statements. |
| September 30, 2016 | Parties Submit Any Rebuttal Evidence and Written Rebuttal to Legal Argument, and all Evidentiary Objections electronically to all parties plus (10) hard copies to Advisory Team. Any evidentiary objections are due. |
| October 3, 2016 | Prosecution Team will provide the Advisory Team a proposed order in electronic format and circulate it to all Parties. It is recommended that the proposed order should, to the extent possible, address other Party's submittals and arguments. Designated Parties may submit responses to written statements submitted by Interested Persons. |
| October 20, 2016 | Adjudicatory Hearing Commences |

In the event that Parties agree to postpone the hearing to engage in settlement discussions, the Prosecution Team may withdraw the Hearing Notice. The hearing officer may request that Parties appear before the North Coast Water Board and provide an update on the status of the case. The Prosecution Team may reissue the Hearing Notice if a hearing is still necessary. In that event, the Prosecution Team shall calculate due dates as if the ACL Complaint was issued 90 days from the new hearing date. Due dates that Parties previously have met need not be extended.

General Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of enforcement matters. The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site:

http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The North Coast Water Board encourages parties with common interests to work together to make the hearing process more efficient. In addition, parties are encouraged to stipulate to facts not in dispute, if appropriate. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Hearing Time Limits

Each party shall have a combined 40 minutes to present evidence (including evidence presented by witnesses called by the party), cross-examine witnesses (if warranted), and provide an opening and/or closing statement. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the hearing officer (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Party could not adequately provide the testimony, comments or legal argument in the time provided. The hearing officer will consider and may approve any reasonable alternative hearing agenda agreed upon by the parties if appropriate.

Submission of Evidence

In accordance with California Code of Regulations, title 23, section 648.4, the North Coast Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the North Coast Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the North Coast Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record.

Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Case in Chief: Parties shall submit the following information in writing in advance of the hearing:

1. All legal and technical arguments or analysis (limited to 15 pages, double spaced).
2. All documentary evidence (except rebuttal documents) proposed to be offered at the hearing.
3. The name of each fact and/or expert witness, if any, whom the party intends to call at the hearing, a brief summary of the subject of each witness's proposed testimony, and the estimated time required by each witness to present direct testimony.
Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing. Include the qualifications of any expert witness.

Advisory Team may request all testimony in writing in advance of the hearing as necessary to conduct the hearing in a reasonable time period.

Rebuttal: "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded. Prosecution Team will provide the Advisory Team a proposed order in electronic format when it submits rebuttal and will circulate to all Parties. It is recommended that the proposed order should, to the extent possible, address other Party's submittals and arguments.

Ex Parte Contacts

There shall be no *ex parte* communications with North Coast Water Board members or Advisory Team regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof

of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and their addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the Advisory Team, not North Coast Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from the State Water Board website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Rules of Evidence

Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the North Coast Water Board office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file by the Prosecution Team and will become a part of the administrative record absent a contrary ruling by the North Coast Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/northcoast/boarddecisions/>. Although the web page is updated regularly, to assure access to the latest information, you may contact the Prosecution Team (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team (contact information above).

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Daniel Franklin and Olive Franklin, trustee of the Charles and Julia Franklin Trust (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R1-2016-0033, (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person(s) who have been issued a complaint may waive the right to a hearing."

☐ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.)***

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$381,947** by submitting a check that references "ACL Complaint No. R1-2016-0033" made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Division of Administrative Services, Accounting Branch, State Water Resources Control Board, 1001 I Street, 18th Floor, Sacramento, CA 95814 within 30 days from the date on which this waiver is executed or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment. The Discharger will send a copy of the payment to the Regional Water Board.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

- ☐ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)***
- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

160722_SRF_ef_Franklin_Hearing_Waiver

Vanessa M. Young
Office of Enforcement
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Fax (916) 341-5896

July 29, 2016

Dear Vanessa,

I understand that we must provide the "Objections to Hearing Notice" to you by August 1st. We were not personally served with the complaint or other documents. Instead, it was sent to Melissa Thorne at Downey Brand. This has caused some delay.

Melissa has tried to help us settle this matter, but we simply cannot afford to have her represent us at this hearing. We are trying to locate someone through legal services to assist us, but that will take some time. Beyond that, we are reeling from the sheer amount of paper and things we need to collect and do. There is just not enough time to prepare by the October 20th meeting, and deadlines are already coming up. We ask that the hearing and other delivery dates be delayed for a month or two). That will allow us time to get our case in order.

We had thought that this case was not going to be pursued after we had provided you with Daniel's declaration. Having not heard anything from you since October of 2015, we had thought this tragedy was in our past. Daniel announced to me just before we received the complaint that he would be asking his girlfriend to marry him. She is a lovely person and loves him deeply. He was shining with happiness. He is planning to build a small house on this land. He is also soon to be made the guardian of a teenage girl he has been like a dad to for 12 years (since she was 2). The girl's mother lost custody of the girl; she is in a group home around all sorts of things no girl should see. My son thinks becoming her guardian is the girl's best and perhaps only chance to be a happy normal grown-up - someone with a future. I am so proud of him and how much he has grown over the past 2 years. And now ... we are faced with how to respond to this again. ...and nearly crippled with fear about what the future holds.

Since it has been three and a half years since this accident occurred, we hope you will approve a delay of a month or two (to the November or December 2016 meeting). We include a signed limited waiver of the 90-day hearing requirement in order to allow for the extension we are requesting.

I am in California until 15 August staying with friends - which makes things difficult (no scanner, no printer, no fax, unreliable internet, etc. on this lovely ranch). Therefore I will go to town and fax this letter along with the "Objections to Hearing Notice" to you today, and follow up with a mailed copy.

On the 15th of August I must fly back to England, but will return for the Hearing. My contact details are below.

Sincerely,


Olive (Polly) Franklin
mucklehill@yahoo.com
cell: 707 380 6280

Address in England:
Muckle Hill Farm, Spa Common, North Walsham, Norfolk UK

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Daniel Franklin and Olive Franklin, trustee of the Charles and Julia Franklin Trust (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R1-2016-0033, (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person(s) who have been issued a complaint may waive the right to a hearing."

- ☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
 - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **\$381,947** by submitting a check that references "ACL Complaint No. R1-2016-0033" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Division of Administrative Services, Accounting Branch, State Water Resources Control Board, 1001 I Street, 18th Floor, Sacramento, CA 95814 within 30 days from the date on which this waiver is executed or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment. The Discharger will send a copy of the payment to the Regional Water Board.
 - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
 - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☒ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

OLIVE M. FRANKLIN Trustee

(Print Name and Title)

Olive M. Franklins Trustee

(Signature)

29 July, 2016

(Date)

160722_SRF_ef_Franklin_Hearing_Waiver

North Coast Regional Water Quality Control Board

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES (Revised)
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R1-2016-0033

ISSUED TO
OLIVE (POLLY) FRANKLIN AS TRUSTEE OF THE CHARLES & JULIA FRANKLIN TRUST AND
DANIEL FRANKLIN
WDID #1B13159CNME

17777 EEL RIVER ROAD
LAKE AND MENDOCINO COUNTIES

SCHEDULED FOR **December 15, 2016**

Overview

On July 22, 2016, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (North Coast Water Board), issued an Administrative Civil Liability (ACL) Complaint No. R1-2016-0033 ("Complaint") pursuant to Water Code section 13323, to Daniel Franklin and Olive (Polly) Franklin as trustee of the Olive Franklin Trust (hereafter [collectively] "Dischargers"). The Complaint alleges that the Dischargers violated 1) Water Code section 13376 for discharging pollutants to waters of the U.S. without filing a report of waste discharge and 2) Clean Water Act section 301 for discharging pollutants to waters of the United States without an authorized permit. The Complaint proposes that the North Coast Water Board impose an administrative civil liability ("ACL") in the amount of three hundred eighty-one thousand nine hundred and forty-seven dollars (\$381,947). In response to the Dischargers' request to delay the hearing, the Prosecution Team proposes to reschedule the hearing during the North Coast Water Board's December 15, 2016 board meeting. This hearing procedures document shows corresponding revisions to important deadlines.

Purpose of Hearing

At the hearing, the North Coast Water Board will consider relevant evidence and testimony and decide whether to issue an ACL order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing will commence as announced in the North Coast Water Board meeting agenda (typically at 8:30 a.m.), or as soon thereafter as practical. The meeting will be held at:

~~To Be Determined~~

North Coast Regional Water Quality Control Board

5550 Skylane Blvd, Suite A

Santa Rosa, CA 95403

An agenda for the meeting will be issued at least ten days before the meeting and posted on the North Coast Water Board's web page at:

Advisory Team

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role ("Prosecution Team") by presenting evidence for consideration by the North Coast Water Board have been separated from those who will provide advice to the North Coast Water Board ("Advisory Team") prior to and during the hearing. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Other members of the Prosecution Team may act or have acted as advisors to the North Coast Water Board in other, unrelated matters, but they are not advising the North Coast Water Board in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on ex parte communications.

All submittals and communications to the Advisory Team shall be sent to:

Matthias St. John,
Executive Officer
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Matt.St.John@waterboards.ca.gov

Nathan Jacobsen,
Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd floor
Sacramento, CA 95814
(916) 341-5181
Nathan.Jacobsen@waterboards.ca.gov

Any substantive communication to the Advisory Team must also be sent to the parties listed below.

Hearing Participation

Designated parties to the hearing may present evidence (e.g., photographs, eye-witness testimony, monitoring data), cross-examine witnesses and receive all correspondence related to the case. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the North Coast Water Board's website:

http://www.waterboards.ca.gov/northcoast/public_notices/public_hearings/enforcement_hearings.shtml

Persons who wish to participate in the hearing as a designated party may submit a request in writing (with copies to already designated parties) so that it is received by the Advisory Team no later than 5 p.m. on August 1, 2016.

The request shall include a brief explanation of how the person will be affected by the

potential action by the North Coast Water Board, the person's need to present evidence and/or cross-examine witnesses, and why an already designated party will not adequately represent the person's interest. Any objection to the request must be received by the Advisory Team, all parties and the person requesting party status by 5 p.m. on October 3, 2016. The parties will be notified by 5 p.m. on October 10, 2016 whether the request has been granted or denied. If no objection is timely received, and/or Advisory Team does not otherwise make any modifications, designated party status is automatically granted. The new designated party shall be added to the list below and subject to all the requirements in this Notice. Additional persons may be designated as parties after the deadline at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer.

Parties are advised to read and adhere to the attached important deadlines and hearing procedures carefully. Failure to comply with the deadlines and requirements contained herein may result in the exclusion of documents and/or testimony.

Parties

Prosecution Team:

Shin-Roei Lee
Lead Prosecutor
Assistant Executive Officer
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Shin-Roei.Lee@waterboards.ca.gov

Joshua Curtis
Environmental Program Manager
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Joshua.Curtis@Waterboards.ca.gov

Vanessa Young
Attorney
SWRCB Office of Enforcement
1001 I Street
Sacramento, CA 95814
Vanessa.Young@waterboards.ca.gov

Diana Henrioulle
Senior Engineer
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Diana.Henrioulle@waterboards.ca.gov

Stormer Feiler
Environmental Scientist
Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403
Stormer.Feiler@waterboards.ca.gov

Discharger:

Mr. Daniel Franklin & Ms. Olive (Polly)
Franklin
27860 Poppy Drive
Willits, CA 95460
brawlertrawler@gmail.com

Muckle Hill Farm,
Spa Common, North Walsham
Norfolk, UK
mucklehill@yahoo.com

Important Deadlines

All required submissions must be received by the Advisory Team by 5:00 p.m. on the due date listed. Parties shall provide all submissions to the Advisory Team electronically, unless otherwise specified below. Parties shall send electronic copies of all submittals to each other unless a party specifically requests paper copies.

The Advisory Team has discretion to modify the deadlines below and may schedule additional pre-hearing conferences to resolve objections or any other outstanding pre-hearing issues, if needed. Pre-hearing conferences may be held telephonically.

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| July 22, 2016 | Prosecution Team issues paper copy of ACL Complaint to Discharger(s) and sends an electronic copy to Advisory Team; Prosecution Team posts Hearing Notice and Procedures with copies to Discharger(s) and Advisory Team. |
| August 1, 2016 | Parties Submit any Objections to Hearing Notice. Deadline to Request Designated Party Status. |
| October 3, 2016 | Parties Submit any Objections to Requests for Designated Party Status. |
| October 10, 2016 | Advisory Team issues decision on request for Designated Party Status, Hearing Notice Objections, if any. |
| October 17, 2016 | Deadline for Discharger to Submit Signed Form Waiving Right to Hearing within 90 Days. |
| November 4, 2016 | Prosecution Team Submits Case in Chief electronically to all parties plus (10)] hard copies to Advisory Team. The ACLC shall be included in the Case in Chief. |
| November 15, 2016 | Remaining Designated Parties, including the Discharger(s), submit Case in Chief electronically to all parties plus (10) hard copies to Advisory Team). Deadline to submit request for additional time. Deadline for Interested Persons to submit written statements. |
| November 23, 2016 | Parties Submit Any Rebuttal Evidence and Written Rebuttal to Legal Argument, and all Evidentiary Objections electronically to all parties plus (10) hard copies to Advisory Team. Any evidentiary objections are due. |
| November 29, 2016 | Prosecution Team will provide the Advisory Team a proposed order in electronic format and circulate it to all Parties. It is recommended that the proposed order should, to the extent possible, address other Party's submittals and arguments. Designated Parties may submit responses to written statements submitted by Interested Persons. |

December 15, 2016 Adjudicatory Hearing Commences

In the event that Parties agree to postpone the hearing to engage in settlement discussions, the Prosecution Team may withdraw the Hearing Notice. The hearing officer may request that Parties appear before the North Coast Water Board and provide an update on the status of the case. The Prosecution Team may reissue the Hearing Notice if a hearing is still necessary. In that event, the Prosecution Team shall calculate due dates as if the ACL Complaint was issued 90 days from the new hearing date. Due dates that Parties previously have met need not be extended.

General Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of enforcement matters. The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site:

http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The North Coast Water Board encourages parties with common interests to work together to make the hearing process more efficient. In addition, parties are encouraged to stipulate to facts not in dispute, if appropriate. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Hearing Time Limits

Each party shall have a combined 40 minutes to present evidence (including evidence presented by witnesses called by the party), cross-examine witnesses (if warranted), and provide an opening and/or closing statement. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the hearing officer (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Party could not adequately provide the testimony, comments or legal argument in the time provided. The hearing officer will consider and may approve any reasonable alternative hearing agenda agreed upon by the parties if appropriate.

Submission of Evidence

In accordance with California Code of Regulations, title 23, section 648.4, the North Coast Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the North Coast Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the North Coast Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Case in Chief: Parties shall submit the following information in writing in advance of the hearing:

1. All legal and technical arguments or analysis (limited to 15 pages, double spaced).
2. All documentary evidence (except rebuttal documents) proposed to be offered at the hearing.
3. The name of each fact and/or expert witness, if any, whom the party intends to call at the hearing, a brief summary of the subject of each witness's proposed testimony, and the estimated time required by each witness to present direct testimony.
Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing. Include the qualifications of any expert witness.

Advisory Team may request all testimony in writing in advance of the hearing as necessary to conduct the hearing in a reasonable time period.

Rebuttal: "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded. Rebuttals are due on November 23, 2016. Prosecution Team will provide the Advisory Team a proposed order in electronic format to all Parties on November 29, 2016. It is recommended that the proposed order should, to the extent possible, address other Party's submittals and arguments.

Ex Parte Contacts

There shall be no *ex parte* communications with North Coast Water Board members or Advisory Team regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.**

Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and their addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the Advisory Team, not North Coast Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from the State Water Board website at:
http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Rules of Evidence

Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the North Coast Water Board office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file by the Prosecution Team and will become a part of the administrative record absent a contrary ruling by the North Coast Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/northcoast/boarddecisions/>. Although the web page is updated regularly, to assure access to the latest information, you may contact the Prosecution Team (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team (contact information above).