

# SETTLEMENT AGREEMENT AND STIPULATION FOR PROPOSED ORDERS

## Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Proposed Orders (“Settlement Agreement”) is entered into by and between the Prosecution Staff for the North Coast Regional Water Quality Control Board (“Water Quality Prosecution Staff”), Prosecution Staff for the State Water Resources Control Board (“State Water Board”), Division of Water Rights, the California Department of Fish and Wildlife (“Fish and Wildlife”), and Rhys Vineyards, LLC (“Settling Respondent”) (collectively “Parties”) and is presented to the North Coast Regional Water Quality Control Board (“Regional Water Board”) and State Water Board for adoption as orders, by settlement, pursuant to Government Code section 11415.60.

As discussed in greater detail below, it is alleged that Settling Respondent violated laws and regulations for which the Regional Water Board, State Water Board, and Fish and Wildlife may seek administrative and judicial penalties. The alleged violations resulted from and/or are related to the Settling Respondent filling a wetland and stream to construct a vineyard, improper construction and maintenance of roads and stream crossings, and building and operating one on-stream reservoir and operating two additional on-stream reservoirs without obtaining necessary permits or authorization from the Regional Water Board, State Water Board, and Fish and Wildlife.

## Section II: RECITALS

1. The Settling Respondent conducted activities resulting in the alleged violations on the Clarke Ranch (Property), which straddles the divide between the South Fork Eel River and the Ten Mile River watersheds. The South Fork Eel River and the Ten Mile River and their respective tributaries are waters of the state, as well as waters of the United States (references hereinafter to waters of the United States include waters of the state). The Property is subject to the requirements set forth in Clean Water Act (“CWA”) sections 301 and 401, Water Code section 13376, and waste discharge prohibitions specified by the Water Quality Control Plan for the North Coast Region (“Basin Plan”).
2. CWA section 301 (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of dredge and fill materials to surface waters except in compliance with an Army Corp of Engineers CWA section 404 dredge and fill permit and a CWA section 401 water quality certification from the Regional Water Board.
3. The Regional Water Board adopted the Basin Plan on March 20, 1975, and then thereafter amended it on March 25, 1976 and again in January 2007. The Basin Plan establishes water quality objectives, designates beneficial uses, and contains discharge prohibitions. The Basin Plan’s Action Plan for Logging, Construction, and Associated Activities contains the following discharge prohibitions:

Prohibition 1 - The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

Prohibition 2 - The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could be passed into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

4. Water Code section 1052 prohibits the diversion or use of water subject to Division 2 of the Water Code, other than as authorized in that Division, and defines such unauthorized diversion or use as a trespass for which the State Water Board may impose civil liability. During a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the State Water Board may administratively impose civil liability not to exceed a sum of \$1,000 for each day the trespass occurs and \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water right. For unauthorized diversion or use during any other period, the State Water Board may administratively impose civil liability not to exceed a sum of \$500 for each day the trespass occurs.
5. Fish and Game Code section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into the waters of the state materials deleterious to fish, plant life, mammals, or bird life. "Waters of the state," under Fish & Game Code section 89.1, means "waters of the state" as defined in California Water Code section 13050, subdivision (e), including all surface water or groundwater within the boundaries of the state.
6. Fish and Game Code section 1602 generally makes it unlawful to substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of any river, stream, or lake or deposit or dispose of debris, waste, or other material where it may pass into any river, stream, or lake without submitting a written notification and fee to Fish and Wildlife and obtaining from the agency a lake or streambed alteration agreement, if one is needed.
7. The Settling Respondent is alleged to have violated CWA section 301, Water Code section 13376, and Basin Plan Prohibitions 1 and 2 cited above by discharging sediment while conducting activities that included constructing a vineyard on top of a stream and wetland by grading and filling a water of the

United States, discharging earthen and woody debris at numerous stream crossings, increasing hillslope instability, and filling additional wetlands through grading, road construction, and active use of the Property without adequate erosion controls. The alleged violations are subject to administrative civil liability, pursuant to Water Code section 13385, subdivision (c). Based on information the Settling Respondent provided through their consultant in response to a Notice of Violation by the Regional Water Board, the Settling Respondent placed a total of 537 cubic yards (108,460 gallons) of fill in 2,148 feet of the stream bed and 2,178 cubic yards (439,901 gallons) of fill in 0.54-acre of wetland. The Regional Water Board is authorized to impose administrative civil liability for these violations, referred to as the "Discharge Violations," pursuant to Water Code section 13385, subdivision (c). The Discharge Violations are described in the Regional Water Board staff reports dated September 29, 2015 and January 13, 2017 staff report included in Attachment A.

8. The Settling Respondent is alleged to have violated Water Code section 1052, for which the State Water Board may impose civil liability. Specifically, one reservoir constructed and operated and two reservoirs operated by the Settling Respondent are alleged to be unauthorized diversions of water constituting a trespass for which the State Water Board may impose civil liability in an amount not to exceed \$500 for each day that the unauthorized diversion or use of water occurs or, during a proclaimed state of emergency under the California Emergency Services Act (Govt. Code § 8550 *et seq.*) based on drought conditions, a sum not to exceed \$1,000 for each day the trespass occurs and \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water right. These violations are referred to as "State Water Board Violations." The Settling Respondent agrees to pay the liability for the State Water Board Violations to the State Water Board in accordance with this Settlement Agreement. The State Water Board Violations are described in the Report of Inspection, sent to the Settling Respondent by certified mail on June 21, 2016 ("Attachment B").
9. The Settling Respondent is alleged to have violated Fish and Game Code sections 5650 and 1602 by discharging sediment while conducting activities that included constructing a vineyard on top of a stream and wetland by grading and filling a water of the state, discharging earthen and woody debris at numerous stream crossings, filling additional wetlands through grading, road construction, and active use of the Property without adequate erosion controls, and obstructing the flow of an unnamed tributary by creating an earthen dam across the creek, all without first notifying Fish and Wildlife as required under Fish and Game Code section 1602. These violations are referred to as "Fish and Wildlife Violations." The Regional Water Board is not authorized to impose administrative civil liability for these violations; nevertheless, the Parties agree to settle these matters and the Settling Respondent agrees to pay the liability for the Fish and Wildlife Violations in accordance with this Settlement Agreement.

10. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (“Enforcement Policy”). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. Although the Enforcement Policy was updated in 2017, the Discharge Violations occurred while the 2010 Enforcement Policy remained in effect. Therefore, the Discharge Violations remain subject to the substantive provisions of the 2010 Enforcement Policy.
11. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Water Quality Prosecution Staff considered the methodology set forth in the Enforcement Policy for the Discharge Violations, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.
12. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and a proposed order to the Regional Water Board for adoption as an order by settlement, pursuant to Government Code section 11415.60. To resolve the violations alleged by consent, the Parties have agreed to the imposition of \$3,763,391 in liability against the Settling Respondent, and to the Scope of Work set forth in Attachment C the Settling Respondent must perform. The amount of administrative civil liability imposed pursuant to this Settlement Agreement is the amount calculated by Water Quality Prosecution Staff using the Enforcement Policy, and exceeds the estimated economic benefit plus ten percent and staff costs, and includes Fish and Wildlife and State Water Board penalties, which are in addition to the penalties described in Attachment C. In addition, a portion of the overall liability (\$1,651,376) shall be suspended pending completion of the Lower Ten Mile River Supplemental Environmental Project (“SEP”) described in Attachment D. Water Quality Prosecution Staff believe this resolution of the alleged violations is fair and reasonable, fulfills its enforcement objectives, and that no further action is warranted concerning the Discharge Violations, except as provided in this Settlement Agreement, and that this Settlement Agreement is in the best interest of the public.
13. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and a proposed order to the State Water Board for adoption as an order by settlement, pursuant to Government Code section 11415.60. To resolve the State Water Board Violations alleged by consent, the Parties have agreed that the Settling Respondent will complete the activities described in Paragraph 19. The Parties will submit this Settlement Agreement and a draft approving order to the State Water Board Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement before an agency pleading. The requirements described in Paragraph 16.c and Paragraph 19 of this Settlement Agreement will become effective when the State Water Board’s Executive Director issues an order approving the settlement,

provided that the Parties concur in any substantive changes to the approving order proposed by the Executive Director.

### Section III: STIPULATIONS

The Parties stipulate to the following:

14. **Recitals Incorporated:** The preceding Recitals are incorporated herein.
15. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling **\$3,763,391**. Recovery of this liability amount includes and is in excess of the estimated costs incurred by Regional Water Board staff (\$23,139.38) and State Water Board staff (\$9,469) to investigate and prosecute this action. The allocation and payment of liability is discussed in greater detail in Paragraph 16.
16. **Payment of Administrative Civil Liability:** No later than 30 days from issuance of the Order, the Settling Respondent agrees to pay a total of \$3,763,391 in administrative civil liability as follows:
  - a. **For the North Coast Regional Water Quality Control Board:**
    - i. For administrative civil liability and staff costs, a total of \$1,674,515 by cashier's check or money order payable to the *State Water Pollution Cleanup and Abatement Account* and mailed to the State Water Resources Control Board, Accounting Office, ATTN: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888, with a copy mailed to Joshua Curtis, Assistant Executive Officer, North Coast Regional Water Quality Control Board, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403. A copy of the cashier's check or money order shall be provided to Kenneth Petruzzelli, State Water Resources Control Board, Office of Enforcement, 801 K Street, 23<sup>rd</sup> Floor, Sacramento, California 95814. The remaining \$1,651,376 in administrative civil liability (referred to as the "SEP Amount") shall be suspended upon completion of the Lower Ten Mile River SEP, described in Paragraph 17 herein and in the SEP Proposal in Attachment D.
    - ii. The State Water Board last updated its Supplemental Environmental Project (SEP) Policy, which applies to the Regional Water Board, in 2017, and the State Water Board adopted the amended SEP Policy on December 5, 2017 before the effective date of the revisions to section 162 of the Internal Revenue Code that year, and currently has no position as to whether a SEP constitutes restitution, including remediation of property, for damage or harm which was or may have been caused by the violation of any law or the potential violation of any law, or is paid to

come into compliance with any law which was violated or otherwise involved in the investigation or inquiry related to the violation or potential violation. However, for purposes of this settlement, this Settlement Agreement recognizes that the SEP Amount constitutes restitution, including remediation of property, for damage or harm that was or may have been caused by the violation of a law of the potential violation of a law under section 162, subdivision (f)(2) of the Internal Revenue Code, as amended in 2017. The Settling Respondents recognize, at this time, that the Regional Water Board is not required to make a return to the Internal Revenue Service.

- b. **For the Department of Fish and Wildlife:** A total of \$400,000 shall be paid as follows:
- i. A total of \$183,378.55 by cashier's check or money order payable to the *Department of Fish and Wildlife* and mailed to Lisa Wolfe, Attorney III, P.O. Box 160362, Sacramento, CA 95816-0362 for deposit into Fish and Wildlife's Fish and Wildlife Pollution Account.
  - ii. A total of \$118,824 by cashier's check or money order payable to *The Nature Conservancy* and mailed to The Nature Conservancy, Accounts Receivable, 201 Mission Street, 4<sup>th</sup> Floor, San Francisco, CA 94105, with the Project ID P119622 included in the notes line, for the Lower Ten Mile River SEP, described in Paragraph 17 herein and in the SEP Proposal in Attachment D. Fish and Wildlife currently has no position as to whether a SEP constitutes restitution, including remediation of property, for damage or harm which was or may have been caused by the violation of any law or the potential violation of any law, or is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry related to the violation or potential violation. However, for purposes of this settlement, this Settlement Agreement recognizes that this amount paid constitutes restitution, including remediation of property, for damage or harm that was or may have been caused by the violation of a law of the potential violation of a law under section 162, subdivision (f)(2) of the Internal Revenue Code, as amended in 2017. The Settling Respondents recognize, at this time, that Fish and Wildlife is not required to make a return to the Internal Revenue Service.
  - iii. A total of \$97,797.45 by cashier's check or money order payable to the *National Fish and Wildlife Foundation* and mailed to California Department of Fish and Wildlife, Office of Spill Prevention and Response, Legal Branch, P.O. Box 160362, Sacramento, California 95816-0362, for the Dutch Charlie Creek Instream Habitat Enhancement Project – Phase I. Fish and Wildlife currently has no

position as to whether the Dutch Charlie Creek Instream Habitat Enhancement Project – Phase I would constitute restitution, including remediation of property, for damage or harm which was or may have been caused by the violation of any law or the potential violation of any law, or is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry related to the violation or potential violation. However, for purposes of this settlement, this Settlement Agreement recognizes that this amount paid constitutes restitution, including remediation of property, for damage or harm that was or may have been caused by the violation of a law of the potential violation of a law under section 162, subdivision (f)(2) of the Internal Revenue Code, as amended in 2017. The Settling Respondents recognize, at this time, that Fish and Wildlife is not required to make a return to the Internal Revenue Service.

iv. A copy of each cashier's check or money order shall be provided to Kenneth Petruzzelli, State Water Resources Control Board, Office of Enforcement at 801 K Street, 23<sup>rd</sup> Floor, Sacramento, CA 95814.

c. **For the State Water Resources Control Board, Division of Water Rights:** A total of \$37,500 by cashier's check or money order payable to the *State Water Board Water Rights Fund* and mailed to State Water Resources Control Board, Division of Water Rights, Attn: Julé Rizzardo, P.O. Box 2000, Sacramento, CA 95812-2000. A copy of the cashier's check or money order shall be provided to Kenneth Petruzzelli, State Water Resources Control Board, Office of Enforcement at 801 K Street, 23<sup>rd</sup> Floor, Sacramento, CA 95814.

17. **Supplemental Environmental Project ("SEP"):** The Settling Respondent shall pay the SEP Amount of \$1,651,376 by cashier's check or money order payable to The Nature Conservancy ("TNC") and mailed to The Nature Conservancy, Accounts Receivable, 201 Mission Street, 4<sup>th</sup> Floor, San Francisco, CA 94105, with the Project ID P119622 included in the notes line, for the Lower Ten Mile River SEP described in Attachment D. The Lower Ten Mile River SEP is a project designed to increase available salmonid rearing habitat in the South Fork Ten Mile River through installation of large woody debris structures and construction of side channels and overflow channels. A more complete description of the SEP, including an implementation schedule, milestone dates, and budget, is contained in the SEP Proposal in Attachment D.

a. **Settling Respondent Agrees to Implement the SEP Through a Funding Agreement With The Nature Conservancy**

The Settling Respondent will implement the Ten Mile River SEP through a Funding Agreement with TNC, wherein the Settling Respondent will fund the

SEP for the SEP Amount, as described in this Settlement Agreement, and that TNC will effectuate the SEP. A copy of the Funding Agreement is attached to this Settlement Agreement as Attachment E. Although TNC has agreed to effectuate the Ten Mile River SEP, the Settling Respondent remains legally responsible for completion of the Ten Mile River SEP consistent with the requirements in this Settlement Agreement. Once Settling Respondent funds the Ten Mile River SEP, it shall not be required to further fund the SEP, even if TNC fails to perform or fails to complete the SEP work. Settling Respondent agrees to take all reasonably available steps to enforce the Funding Agreement.

**b. Diligent Pursuit of all Necessary Permits and Other Applicable Agency Approvals**

Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) agrees to diligently pursue all necessary permits and other applicable agency approvals to complete the Scope of Work included in Attachment D, including but not limited to a CWA section 404 permit from the Army Corps of Engineers, a CWA section 401 Water Quality Certification from the Regional Water Board, a lake or streambed alteration agreement from Fish and Wildlife, and agree to meet all local permitting requirements. Diligent pursuit of these approvals includes providing the required information and payment of all necessary fees.

**c. SEP Progress Reports and Final Completion Date**

The Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall provide quarterly reports of progress on the Lower Ten Mile River SEP to the Designated Regional Water Board Representative commencing on October 1, 2019 and continuing through the Certification of Completion described in Paragraph 17.f.ii, below. If no activity occurs during a quarter, a quarterly report so stating shall be submitted. The Lower Ten Mile River SEP shall be completed by December 31, 2021 (SEP Completion Deadline).

**d. Request for Extension of Final SEP Completion Deadlines**

If the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) cannot meet the SEP Completion Deadlines due to circumstances beyond its anticipation or control, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall notify the Regional Water Board Executive Officer in writing within thirty (30) days of the date it first knew of the event or circumstance that caused or could have caused a violation of this Settlement Agreement. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the Settling



Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) and its agents will be made by the Regional Water Board Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent), due to circumstances beyond its control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent), a new compliance deadline shall be established and this Settling Agreement and Order and will be revised accordingly. The Regional Water Board Executive Officer will endeavor to grant a reasonable extension of time, if warranted.

**e.      Publicity Associated with SEP**

If the Settling Respondent publicizes one or more elements of the Lower Ten Mile River SEP, it shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Settling Respondent.

**f.      Audits and Certification of SEP**

**i.      Certification of Expenditures**

The Regional Water Board has the right to require an audit of the funds the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) expends to implement the SEP. No later than March 21, 2022, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall submit to the Designated Regional Water Board Representative a certified statement by the Settling Respondent (or TNC pursuant to a contractual agreement with the Settling Respondent) documenting the expenditures by Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) during the completion period for the Lower Ten Mile River SEP. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall

provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify the expenditures of the Settling Respondent's funds for the Lower Ten Mile River SEP.

ii. **Certificate of Completion and Final Report**

On or before December 31, 2021 the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall complete the Lower Ten Mile River SEP and submit a Final Report under penalty of perjury, stating that the Lower Ten Mile River SEP has been completed in accordance with the terms of this Order.

g. **Regional Water Board Acceptance of Completed SEP**

Upon the Settling Respondent's satisfaction of its obligations under the Regional Water Board order approving this Settlement Agreement and the completion of the Lower Ten Mile River SEP and any audits, the Regional Water Board will issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Respondent under this Settlement Agreement.

h. **Failure to Expend Entire SEP Amount on the Approved SEP**

In the event that the Certification of Expenditures or an audit fail to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) has spent the entire SEP Amount for the completed Lower Ten Mile River SEP, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall pay the difference between the SEP Amount and the amount that the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) can demonstrate was actually spent on the Lower Ten Mile River SEP, as an administrative civil liability to the *State Water Pollution Cleanup and Abatement Account* within 30 days pursuant to the procedures identified in Paragraph 16.a after service of the Regional Water Board's determination. Upon confirmation of payment, the Regional Water Board will issue a Satisfaction of Order.

i. **Failure to Complete the SEP**

If the Lower Ten Mile River SEP is not fully implemented within the time required by the Regional Water Board Order, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall pay the entire SEP Amount of \$1,651,376, less the value of any completed portion of the Lower Ten Mile River SEP.

18. **Stipulation for Future Compliance or Removal:** The Parties jointly stipulate and agree to the following terms and that those terms shall be enforceable as a Cleanup and Abatement Order issued in accordance with California Water Code section 13304 by the Regional Water Board:
- a. The Settling Respondent agrees to complete the Scope of Work described in Attachment C within the timelines established therein by October 15, 2024 to come into compliance with the law and for restoration or remediation. The Settling Respondent shall submit a Final Report by February 1, 2025 supporting/verifying that the Scope of Work described in Attachment C is complete.
  - b. Settling Respondent agrees to diligently pursue all necessary permits and other applicable agency approvals to complete the Scope of Work included in Attachment C, including but not limited to a CWA section 404 permit from the Army Corps of Engineers, a CWA section 401 Water Quality Certification from the Regional Water Board, a lake or streambed alteration agreement from Fish and Wildlife, and agree to meet all local permitting requirements. Diligent pursuit of these approvals includes providing the required information and payment of all necessary fees.
19. **Stipulation for Water Right Compliance:** The Parties jointly stipulate and agree to the following terms for compliance actions described below in Paragraph 19.a through Paragraph 19.f and that those terms shall be enforceable as a Cease and Desist Order issued in accordance with California Water Code section 1831. The Settling Respondent would undertake the compliance actions described below in Paragraph 19.a through Paragraph 19.f to come into compliance with the law and for restoration or remediation. The terms “Reservoir 1,” “Reservoir 2,” and “Reservoir 3” have the same meaning as those terms are used in Attachment B. The location of these reservoirs is shown as R-1, R-2 and R-3 on Attachment C-1, the “Map.”
- a. The Settling Respondent shall diligently and in good faith implement the compliance plan for Reservoir 1, previously submitted to the State Water Board and dated June 29, 2018, that renders Reservoir 1 incapable of storing water subject to the State Water Board’s permitting authority. The Settling Respondent shall satisfy all requests from the Division of Water Rights for information within the designated time frames allowed in the plan, or any extension of time granted by the Assistant Deputy Director for the Division of Water Rights (“Assistant Deputy Director”), until implementation of the compliance plan is determined by the Assistant Deputy Director to be complete. The Settling Respondent shall, within 30 days of issuance of any permits, approvals, or waivers for the project, transmit copies to the Assistant Deputy Director. The Settling Respondent shall provide the Assistant Deputy Director written notice of any failure to

meet any milestone dates set forth in the compliance plan.

- b. Within 10 days of completing implementation of the compliance plan for Reservoir 1, the Settling Respondent shall submit to the Assistant Deputy Director documentation signed by a professional engineer certifying that the compliance plan has been fully implemented and Reservoir 1 does not store water subject to the State Water Board permitting authority. The Assistant Deputy Director shall provide a written determination of whether implementation of the compliance plan is complete.
- c. The Settling Respondent shall diligently work with the Permitting and Licensing Section in the Division of Water Rights to complete the Livestock Stockpond Use application for Reservoir 2. The Settling Respondent shall satisfy all requests for information within the time frames the Permitting and Licensing Section designates. If the Livestock Stockpond Use application for Reservoir 2 is approved, the Settling Respondent shall notify the Assistant Deputy Director within 10 days of the approval.
- d. If the Livestock Stockpond Use application for Reservoir 2 is cancelled or denied, the Settling Respondent shall notify the Assistant Deputy Director of the cancellation or denial within 30 days. Within 150 days of notifying the Assistant Deputy Director of the cancellation or denial of the Livestock Stockpond Use application for Reservoir 2, the Settling Respondent shall submit a plan to the Assistant Deputy Director for permanently rendering Reservoir 2 incapable of storing water subject to the State Water Board's permitting authority. The plan shall include a time schedule not to exceed two years for completion of the proposed alteration and the identification of any permits or agreements necessary from other federal, state, and local agencies to complete the work. The Settling Respondent shall diligently comply with all provisions and time schedules of the plan. If the Settling Respondent is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, the Settling Respondent shall immediately alert the Assistant Deputy Director of the reason for the delay and any problems with fully complying with the provisions of the plan and diligently work to overcome such obstacles.
- e. The Settling Respondent shall diligently work with the Division of Water Rights, Permitting and Licensing Section to complete the Livestock Stockpond Use application for Reservoir 3. The Settling Respondent shall satisfy all requests for information within the time frames the Permitting and Licensing Section designates. If the Livestock Stockpond Use application for Reservoir 3 is approved, the Settling Respondent shall notify the Assistant Deputy Director within 10 days of the approval.

- f. If the Livestock Stockpond Use application for Reservoir 3 is cancelled or denied, the Settling Respondent shall notify the Assistant Deputy Director of the cancellation or denial within 30 days. Within 150 days of notifying the Assistant Deputy Director of the cancellation or denial of the Livestock Stockpond Use application for Reservoir 3, the Settling Respondent shall submit a plan to the Assistant Deputy Director for permanently rendering Reservoir 3 incapable of storing water subject to the State Water Board's permitting authority. The plan shall include a time schedule not to exceed two years for completion of the proposed alteration and the identification of any permits or agreements necessary from other federal, state, and local agencies to complete the work. The Settling Respondent shall diligently comply with all provisions and time schedules of the plan. If the Settling Respondent is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, the Settling Respondent shall immediately alert the Assistant Deputy Director of the reason for the delay and any problems with fully complying with the provisions of the plan and diligently work to overcome such obstacles.
20. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Settlement Agreement is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may be subject to further enforcement, including additional administrative civil liability.
21. **Party Contacts for Communications related to this Settlement Agreement:**

**For the Regional Water Board:**

Joshua Curtis  
Assistant Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd. Suite A.,  
Santa Rosa, CA 95403  
Phone: (707) 543-7128  
[Joshua.Curtis@Waterboards.ca.gov](mailto:Joshua.Curtis@Waterboards.ca.gov)

Kenneth Petruzzelli, Attorney III  
Office of Enforcement  
State Water Resources Control Board  
801 K Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814  
Phone: (916) 319-8577  
[kenneth.petruzzelli@waterboards.ca.gov](mailto:kenneth.petruzzelli@waterboards.ca.gov)

**For Rhys Vineyards LLC:**

Tina Wallis  
Law Offices of Tina Wallis, Inc.  
3581 Westwind Blvd.  
Santa Rosa, CA 95403  
Phone: (707) 595-8681  
[twallis@twallislaw.com](mailto:twallis@twallislaw.com)

Rhys Vineyards  
Attn.: Luciel Leis  
2965 Woodside Rd.  
Woodside, CA 94062  
Phone: 650-234-3982  
[Lleis@rhysvineyards.com](mailto:Lleis@rhysvineyards.com)

**For the State Water Board:**

Skyler Anderson  
Senior Environmental Scientist  
North Coast Enforcement Unit  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
Phone: (916) 341-5307  
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**For Fish & Wildlife:**

Lisa V. Wolfe, Attorney III  
Office of Spill Prevention and Response  
California Department of Fish and Wildlife  
P.O. Box 160362  
Sacramento, CA 95816-0362  
Phone: (916) 327-9952  
[lisa.wolfe@wildlife.ca.gov](mailto:lisa.wolfe@wildlife.ca.gov)

22. **Media Notifications:** Solely as a courtesy, the Settling Respondent shall be notified and provided a copy of any media notification or press release no less than 72 hours before a media notification or press release is issued.
23. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
24. **Matters Addressed by Stipulation:**
- a. Upon adoption by the Regional Water Board as an Order, this Settlement Agreement represents a final and binding resolution, subject to Paragraph 17.d) and settlement of all claims, violations or causes of action for the Discharge Violations alleged herein, or which could have been asserted against the Settling Respondent, as of the date this Settlement Agreement is signed. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 16.a and 16.c, and the Settling Respondent's full satisfaction of the obligations described in Paragraphs 17 and 18.
  - b. Upon adoption by the State Water Board as an Order, this Settlement Agreement represents a final and binding resolution and settlement of all claims, violations or causes of action for the State Water Board Violations alleged herein, or which could have been asserted against the Settling Respondent, as of the date this Settlement Agreement is signed. The provisions of this Paragraph are expressly conditioned on the Settling Respondent's full satisfaction of the obligations described in Paragraph 19.
25. **Public Notice:**
- a. The Parties agree that this Settlement Agreement, as signed by the Parties, and the proposed order for the Regional Water Board will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption. If the Regional Water Board Assistant Executive Officer or other Water Quality Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Settlement Agreement to the Regional Water Board for adoption as an Order by settlement, the Assistant Executive Officer may unilaterally declare this Settlement Agreement void and decide not to present the Order to the Regional Water Board. The Settling Respondent agrees that it may not rescind or otherwise withdraw approval of this proposed Settlement Agreement.

- b. The Settling Parties agree that the proposed Order for the State Water Board will be included in the notice above, under Paragraph 25.a, prior to being presented to the State Water Board. If significant new information is received that significantly affects the propriety of presenting this Settlement Agreement to the State Water Board for adoption as an Order by settlement, the Executive Officer may unilaterally declare this Settlement Agreement void and decide not to present the Order to the State Water Board.
26. **Interpretation:** This Settlement Agreement shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.
27. **Modification:** This Settlement Agreement shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved by the Regional Water Board and State Water Board.
28. **If Order Does Not Take Effect:** In the event that this Settlement Agreement does not take effect because it is not approved by the Regional Water Board, or its delegate, or by the State Water Board, or its delegate, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that it expects to proceed to one or more contested evidentiary hearings before the Regional Water Board, the Water Board, or both, to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including:
- a. Objections related to prejudice or bias of any of the Regional Water Board or State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board and State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Settlement Agreement and proposed order approving the Settlement Agreement, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review, but only to the extent this period has been extended by these settlement proceedings.
29. **Regional Water Board, State Water Board and Fish and Wildlife Shall Not Enforce on Each Other's Behalf:** The Regional Water Board, State Water



Board, and Fish and Wildlife are each responsible for enforcing this Order with respect to the matters falling under their respective jurisdiction.



30. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waive their right to an evidentiary hearing before the Regional Water Board prior to the adoption of the Order. The Settlement Agreement will be heard as a settlement agreement before the Regional Water Board, but the hearing will not be an evidentiary hearing.
31. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
32. **No Precedent:** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
33. **Waiver of Reconsideration:** The Settling Respondent waive the right to request reconsideration of the State Water Board Order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
34. **Additional Documents:** The Parties agree that they will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
35. **Settling Respondent' Covenant Not to Sue:** The Settling Respondent's covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to this Settlement Agreement.
36. **Reasonableness of Settlement:** The Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
37. **Entire Agreement:** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.

38. **Section Headings:** The Parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that it shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
39. **Choice of Law:** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
40. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or State Water Board under the terms of this Settlement Agreement shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board or State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of the obligation to obtain any final written approval required by this Settlement Agreement.
41. **Authority to Bind:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
42. **Additional Documents:** Each Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
43. **Independent Judgment:** Each Party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them. The parties are represented by counsel.
44. **Successors and Assigns:** This Settlement Agreement is binding on any successors or assigns of the Settling Respondent, the Regional Water Board, the State Water Board, and Fish and Wildlife.
45. **Effective Date:**
  - a. The obligations under Paragraphs 15 through 18 of this Settlement Agreement are effective and binding only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Settlement Agreement.

- b. The obligations under Paragraph 19 of this Settlement Agreement are effective and binding only upon the entry of an Order by the State Water Board, which incorporates the terms of this Settlement Agreement.
- 46. **Severability:** This Settlement Agreement is severable; should any provision be found invalid or should the Regional Water Board or State Water Board fail this Settlement Agreement, the remainder shall remain in full force and effect.
- 47. **Counterpart Signatures:** This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**IT IS SO STIPULATED.**

North Coast Water Quality Control Board Prosecution Staff  
North Coast Region

By:   Digitally signed by Joshua  
Curtis  
Date: 2019.06.19 12:41:59  
-07'00'  
Joshua Curtis  
Assistant Executive Officer

Date: \_\_\_\_\_

State Water Resources Control Board  
Division of Water Rights, Permitting and Enforcement Branch

By: \_\_\_\_\_  
Julé Rizzardo  
Assistant Deputy Director

Date: \_\_\_\_\_

Department of Fish and Wildlife

By: \_\_\_\_\_  
Thomas M. Cullen Jr.  
Administrator  
Office of Spill Prevention and Response

Date: \_\_\_\_\_

Settling Respondent

By: \_\_\_\_\_  
Robert J. Guenley  
Chief Financial Officer  
Rhys Vineyards LLC

Date: \_\_\_\_\_

**IT IS SO STIPULATED.**

North Coast Water Quality Control Board Prosecution Staff  
North Coast Region

By: \_\_\_\_\_  
Joshua Curtis  
Assistant Executive Officer

Date: \_\_\_\_\_

State Water Resources Control Board  
Division of Water Rights, Permitting and Enforcement Branch

By: Julie Rizzardo  
Julie Rizzardo  
Assistant Deputy Director

Date: 06/19/19

Department of Fish and Wildlife

By: \_\_\_\_\_  
Thomas M. Cullen Jr.  
Administrator  
Office of Spill Prevention and Response

Date: \_\_\_\_\_

Settling Respondent

By: \_\_\_\_\_  
Robert J. Guenley  
Chief Financial Officer  
Rhys Vineyards LLC

Date: \_\_\_\_\_

**IT IS SO STIPULATED.**

North Coast Water Quality Control Board Prosecution Staff  
North Coast Region

By: \_\_\_\_\_  
Joshua Curtis  
Assistant Executive Officer


Date: \_\_\_\_\_

State Water Resources Control Board  
Division of Water Rights, Permitting and Enforcement Branch

By: \_\_\_\_\_  
Julé Rizzardo  
Assistant Deputy Director

Date: \_\_\_\_\_

Department of Fish and Wildlife

By:  \_\_\_\_\_  
Thomas M. Cullen Jr.  
Administrator  
Office of Spill Prevention and Response

Date: \_\_\_\_\_

Settling Respondent

By: \_\_\_\_\_  
Robert J. Guenley  
Chief Financial Officer  
Rhys Vineyards LLC

Date: \_\_\_\_\_

**IT IS SO STIPULATED.**

North Coast Water Quality Control Board Prosecution Staff  
North Coast Region

By: \_\_\_\_\_  
Joshua Curtis  
Assistant Executive Officer

Date: \_\_\_\_\_

State Water Resources Control Board  
Division of Water Rights, Permitting and Enforcement Branch

By: \_\_\_\_\_  
Julé Rizzardo  
Assistant Deputy Director


Date: \_\_\_\_\_

Department of Fish and Wildlife

By: \_\_\_\_\_  
Thomas M. Cullen Jr.  
Administrator  
Office of Spill Prevention and Response

Date: \_\_\_\_\_

Settling Respondent

By:  \_\_\_\_\_  
Robert J. Guenley  
Chief Financial Officer  
Rhys Vineyards LLC

Date: 4/20/19

**ATTACHMENTS:**

Attachment A – Administrative Civil Liability Methodology for Discharge Violations

Attachment B – Division of Water Rights Report of Investigation

Attachment C – Scope of Work (Sediment and Roads)

Attachment D –South Fork Ten Mile Scope of Work and Budget

Attachment E – Rhys Vineyards-TNC Funding Agreement