STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DANIEL SUAREZ,

Petitioner,

vs.

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD NORTH COAST REGION,

Respondent

Pursuant to Water Code section 13320 and California Code Regulations, title 23, sections 2050 - 2068, Daniel Suarez ("Petitioner") respectfully petitions the State Water Resources Control Board ("State Board") for review of Cleanup and Abatement Order No. R1-2022-0016 ("Order", "CAO"), dated March 17, 2022, issued by the Executive Officer the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION ("Regional Board") with regard to the property identified as Assessor’s Parcel Number 011-530-09-01 ("Property"), Mendocino County (no known postal designation).

A copy the Order is attached hereto as Exhibit "A1".

Also, pursuant to Water Code section 13321, Petitioner respectfully requests that the effect of the Order be stayed during the review.

Attached is a Declaration by Petitioner in support of stay.

I. Name and address of Petitioner

Petitioner’s mail address is:

Daniel Suarez
3554 Princeton Drive
Santa Rosa, CA 95405

nvmtnman@yahoo.com
II. Regional Board Action for Review

Petitioner requests that the State Water Resources Control Board ("SWRCB") review the Cleanup and Abatement Order No. R1-2022-0016 ("the Order", "CAO"), dated March 17, 2022, issued by the Executive Officer the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION ("Regional Board").

III. Date of the Regional Boards Action

The Regional Board Executive Officer dated the order as of March 17, 2022.

IV. Statement of Reasons Why Regional Board’s Action Was Inappropriate or Improper.

The Regional Board greatly exaggerates the scope and purported impact of both the water and pollution issues on this Property in this case.

The ostensible issues on the Property for the Regional Board would likely never have come to light, or perhaps been so fervently pursued, if not for the underlying unpermitted cannabis cultivation.

As a result of the May 13, 2021 events on the Property, Petitioner had all cultivation activities ceased and immediately proceeded to have as many of the issues not consistent with the Cannabis Order taken care of. A report of that progress was delivered to the State Water Resource Control Board, Water Rights Division ("Water Rights") on January 14, 2022 (Exhibit "K").

The Regional Board’s Order conveys a tone that seems to cloud the entire issue with Petitioner’s Property in an encompassing simile that the Property is “as dangerous to the public interest as an extensive "trespass cultivation"”. Below it will be shown how that is wrong.

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In reality the actual cultivation area on the Property, as documented by Water Rights, was one of hardly 2/3 (two-thirds) of an acre (*Water Rights – October 21, 2021: .69 acre and see Exhibit “A”, Map 4*) on a property totaling 75 acres in area (*Mendocino ArcGIS Parcel Viewer*).

All the asserted issues by the Regional Board exist on barely 3 acres of the 75.

The singular large issue on the Property, beyond the cultivation, is the pond ("reservoir"). It has very little in common with a true reservoir like Lake Oroville. It is not located on any watercourse(s) that would conform to most persons’ common perception of a watercourse, and at least one watercourse purported by the Regional Board to be leading into or through the pond does not exist, except possibly to mislead. (to be shown following and see Exhibit “A”, Maps 1 & 4)

Contrary to the Regional Board’s implied and stated fears, Petitioner’s pond is not any more subject to anything even approaching catastrophic failure—and the spewing of sediment or pollution, except possibly under off-scale, biblical events—than are well-engineered and maintained dams/reservoirs—which have seen their shortcomings.

In size the pond is, by Water Rights documentation (*10/21/2021*), less than ½ acre (.41 acre) in surface area and contains a volume of less than 2 acre-feet at its maximum—619,000 gal.

Size comparisons would put the pond surface area at 1/3 (one-third) that of the area of a regulation NFL Football field of 1.3 acres (that 1/3 figure being roughly the distance from the goalpost to the 30-yard line), and, in volume, at maximum, just under that of an Olympic-size swimming pool (660,000 gal., 2.03 acre-feet). See Exhibit “A”, Map 2.

By size alone it is difficult to imagine the level of any potential “deleterious effects”, at worst, that the pond would or could contribute that would be commensurate with the size, scope, and monetary costs associated with the Order for what it envisions as “requiring remediation”.

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Beyond the pond specific issues, Petitioner states that, in contrast with "trespass grows", often covering many acres, during his ownership, and he believes with earlier cultivations, care was used in the storage and use of nutrients, and virtually no herbicides, no pesticides, and no rodenticides were used on the Property.

Other than minimal nutrient amounts, none of the mentioned chemicals above were documented on the Property, in accordance with Petitioner’s statement, therefore, fears of pollution by chemicals have very little likelihood—something that is a large concern of "trespass grows".

The issuance of the Order was beyond the authority of the Regional Board, inappropriate, improper, or not supported by facts on the record, for the following:

1. Beyond the issues of unpermitted cannabis cultivation on the Property, which the Petitioner believes he has mostly rectified, the broad scope and expansiveness of the Order causes serious questions pertaining to the rights of an owner to use and enjoy their own property versus governmental “taking” and right to due process.

2. There exists no “onstream reservoir” ("pond") on the Property as somewhat ambiguously defined by the Water Boards on its “Fact Sheet” concerning “watercourses” and “onstream reservoirs”.

3. There is no “blueline stream” running through the reservoir (pond) or the pond area as presented on Figure 1 shown in Exhibit "B", its Attachment B – May 13, 2021, Inspection Report.

The Regional Board has yet to answer the Petitioner's question why they continue to hold to the presentation of the figure when it conveys a misleading sense of some
sort of true stream that does not actually exist to a viewer who may not otherwise be
aware of the reality.

   The Regional Board has not responded to an offer to walk the Property with the
Petitioner to prove the reality. (Exhibit "A2", bottom of pg. 4)

   The Regional Board has failed to answer other substantial points raised by
Petitioner in his February 18, 2022 response letter to Matt St. John and Brian Fuller
(Exhibit “A2”).

4.   The Regional Board staff has concluded, and used its incorrect conclusion(s), to
create a further sense in the minds of anyone who may not know, that the pond on
the Property is an unstable structure, capable of calamitous failure and the spewing of
sediment and possibly more and causing egregious harm to the environment.

   It continues an unsubstantiated fear that the Regional Board wishes to remain in
place: in addition to unsubstantiated actual "discharges of a deleterious nature" there
continues an ongoing threat of substantial damage environmentally and perhaps more
that the Petitioner will be responsible for and time is of the essence.

   Time and rain have proved the Regional Board wrong.

5.   There exists no continuous, discernible watercourse leading downslope, south or
east, out of or away from the pond or pond area into any continuous, discernible
watercourse leading to the Eel River—the Regional Board staff has made loose
"inferences" but nothing was actually documented in the Inspection Report.

   Exhibit "A", Maps 1 & 4, show clearly the one documented "watercourse" leading
into the pond, and how it flattens out when entering the pond basin. Petitioner
believes that that shows proof of a relatively low rate of flow due to the lack of
significant erosional deepening of the channel over many years.

   The Maps, with their 1-meter contour intervals, show very little evidence of any
significant watercourse—certainly not one even matching the inflowing course—that is
leaving the pond either east, or to the south—and to the south is where the “blueline stream” should be evident.

6. The general slope of the Property, in the areas used for cultivation, east and south of the pond area are of such slight slope (<20%) that it is not conducive to large flows with serious potential for erosion or transport of “pollutants” through the areas—mostly water flows fan out and dissipate in less than 200’ (Map 4).

The north and west slopes of the pond area rise rapidly up from the pond and are sources of rain sheet flow. (Exhibit “A”, Map 3)

7. The Regional Board has asserted actualities and threats are occurring, and have occurred, on the Property and are in violation of the Regional Board’s Basin Plan Prohibitions 1 & 2.

No proof whatsoever of actual “discharges of deleterious amounts” of anything has been documented.

As a major “presumed threat”, the Regional Board had implied that a threat was looming in the structure of the pond and that Petitioner should “engage a licensed and qualified civil engineer with haste to assess any imminent threats of discharge from the features on the Property and propose appropriate best management practices (BMP) to stabilize the site for this upcoming wet weather season”, (Exhibit “M”, Brian Fuller email 9-24-2021) such “recommendation” directed primarily at the pond.

The pond today has no issues of the sort, and it does not take a professional to see today, even after the heavy rains of late October, 2021 amounting to nearly 11” in less than 10 days, and further rainfall this year, that the pond structure is sound and that there exists no threat of “discharges” as the implied fears in the Regional Board’s Inspection and ongoing communications carried.

8. The Regional Board fails to take into account that by the method of the minor restructuring of the pond, for an aesthetic look rather than capacity/diversion, the
pond, as do all dammed reservoirs, provides for sediment settlement in its volume due to slow water movement.

9. The Regional Board staff asserts that “beneficial uses” are, in essence, being denied.

Not so. See Paragraph VII, point 2.

“Beneficial uses” have been created. See Paragraph VII, point 9.

10. The Regional Board implies that Petitioner has violated, and the Order requires an assessment of, wetlands/aquatic resources on the Property.

No wetland and/or riparian impacts such as these listed on Waterboard websites have occurred at any level:

→ Draining a wetland;
→ placing fill or excavating water-logged soils from a wetland;
→ removing vegetation from the riparian corridor of a stream; or
→ removing any tree canopy that provides shade to maintain any stream’s temperature.

None was documented.

Greenhouses were not constructed in any such areas.

The pond has long existed in its basin so the pond was not “constructed” in any such areas. (see Paragraph VII, “Background”)

11. The Regional Board makes assertions concerning “discharges” and “pollution” involving chemicals and nutrients with no documentation of any actual discharge measurements anywhere, and only vague claims of “threats” of discharges.

12. The Regional Board fails to take into account the potential, around maximum capacity time, the pond has to aid fire suppression activities in a remote area where
the first responders are likely to be helicopter units with buckets that can be filled from small water sources.

   Petitioner would approve and allow such use.

13. The Order unreasonably names Petitioner as solely responsible for all its assertions even though Petitioner had only owned the Property for less than 13 months and did not cause or permit waste to be discharged or deposited where it has discharged to waters the of the state and did not create, or continue to threaten to create, a condition of pollution or nuisance.

14. The Order fails to acknowledge that Petitioner, at the most, should be designated as a "secondarily-liable" party, consistent with what Petitioner believes is established State Board precedent holdings that a landowner should bear only "secondary" responsibility for a cleanup when it is clear he is not totally responsible for transgressions.

15. The Order includes directives, findings of fact, and conclusions that are not supported by, or are inconsistent with, substantial evidence in the record for the Property.

16. The Order and underlying "Inspection Report" carry no indication or evidence from any investigation or testing of surface water, groundwater, subsurface soil, or soil vapor, or any other data.

17. The Order fails to set forth legally sufficient grounds for requiring Petitioner to complete "Required Actions" in the Order.

18. The Order fails to identify or name additional Dischargers or potentially responsible parties for the Site, and for completing "Required Actions" under the Order.

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19. The Order, if not vacated, poses an unreasonable burden on Petitioner, both with regard to the “Required Actions” stated monetary costs for testing and monitoring, the proposed time schedule, and the ultimate costs of the physical work enforcement of the Order will entail.

   It will cause the Petitioner great economic harm.

20. The Order fails to take into account that as a result of the Inspection Report and related activities indicating to Petitioner that allowing cannabis cultivation on his property was not something he might want to continue for the future, he immediately ordered cultivation to be halted and substantial progress towards cleaning the property and dismantling cultivation was made.

21. The Order fails to acknowledge that multiple offers were made by Petitioner to the Regional Board for cooperation, such as: asking Board staff members to return to the Property to see the reality of the nonexistent "blueline stream"; to consider alternative considerations and possible methods of finding a "middle ground" with respect to the Pond; and to consider reasonable alternatives to the excessive costs stated in the original Draft CAO and CAO. (With respect to testing: Petitioner reserves the right to submit further evidence, when it becomes available, of water sample testing as described in Petitioner’s 10/30/2021 Response to all Agencies, Exhibit "G").

22. The Order fails to adequately account for the results of Petitioner’s previous cleanup of cannabis cultivation, or to sufficiently, except by negation, address Petitioners' comments to the draft cleanup and abatement order, or other email/letter/communications.

   As such, Petitioner has been denied procedural and substantive due process rights, resulting in substantial harm through the imposition of unjustified and inappropriate regulatory requirements, costs, and/or the potential for civil liability.
23. Petitioner is not stating or implying that the actions of the Regional Board are solely or absolutely *punitive* due to the Regional Boards perception of its duties or mandates under Cannabis Cultivation programs/orders or the Porter/Cologne Act, merely that, given the staggering large amounts of monetary costs and physical actions under the Order if not vacated, the Order itself gives an *implication of punitiveness* when its affects are weighed against the valuation of the property and the potential economic distress that would ensue the Petitioner.

V. Petitioner is Aggrieved

Petitioner is aggrieved for the reasons set forth in Paragraph IV, above, plus those in Paragraph VII, below. The Order will require Petitioner to incur substantial investigative, monitoring, cleanup, abatement, and other costs, without adequate cause or justification.

VI. Petitioners’ Requested Actions by the State Board

Petitioner respectfully requests the State Board determine that the Regional Board’s action in issuing the Order was inappropriate and improper, carries vague language as to its ends, incorporates ends that are unreasonably excessive in scope, and to vacate the Order pursuant to this Petition and in accordance with applicable law.

Petitioner further requests that the State Board find that the pond on the Petitioner’s Property, which the Regional Board has determined to be an “onstream reservoir”, is in fact not an “onstream reservoir”, based upon the facts, arguments and evidence presented in this Petition.

Petitioner also requests that the State Board issue a Stay of Order.

Attached is Petitioner’s Declaration putting forth reasons for the Stay.
VII. Statements of Points and Authorities

Background:

The history of the Property, as best Petitioner knows it, is a history of various resident and non-resident owners, lessees, and tenants who over the last 30 years or so may have contributed to various aspects of the Property that drive the assertions underlying “Required Actions” made in the Order (Exhibit “A1”), and its underlying Notice of Violations and Inspection Report (Exhibit “B”), wherein the Regional Board seeks to use a very broad brush to paint a wide swath of violation it deems in need of “remediation”.

Petitioner had purchased the Property to add to his small portfolio of properties he owned and was developing, as well as to become a potential retreat that he might use with his friends to camp and fish, and to help a friend who was in danger of losing the property in foreclosure.

Petitioner realizes that his allowing cultivation of cannabis to continue on the Property was not done with the best deference to the legal requirements of such, but he also has very definite concerns and wishes towards the long-term value and potential enjoyment of his property.

Petitioner wishes to keep the pond on the Property—as is—as it will add a “beneficial use” to the real estate in the form of a domestic water supply and a recreational use at the very minimum—and as stated, a place where Petitioner and his friends could enjoy fishing—with a license—in his legally stocked pond near his cabin.

The original pond basin, evident in aerial imagery, is a natural pond, and has existed since at least 1993, and no doubt much longer. (Exhibit "G", October 30, 2021 letter from Petitioner, pgs. 2-6). Over the years, during wet years and dry years, and at different times of the year, the pond has shown various levels of filling—*not captured in all the historic imagery available*. In the 1993, 2004, and 2009 images the pond basin appears to have nearly
the same footprint as the current pond. Sometime prior to the 2014 image (pg. 4) the
owner/lessee/tenant at that time chose to put some kind of division in for an unknown reason.

Petitioner, before doing anything to his existing pond asked neighboring land owners
and an inspector, whom he encountered in another venue, their opinions before proceeding.

The neighbors assured him that even if he were constructing a new pond, which he
was not, on his property, that as long as his pond was less than 1 acre or so and not
constructed on any actual streams, he should not have any problem.

The inspector whom the Petitioner encountered was inspecting a new pond
constructed to serve a vineyard. The inspector’s opinion also was also that a small pond was
no problem.

Petitioner believed from those opinions that his reorganizing of his existing pond basin,
not located on any true watercourses such as those located north and south of his pond area,
would not be a problem.

With those opinions in mind Petitioner felt he was proceeding reasonably.

The Petitioner, in rearranging the pond, primarily to give it a look more like a classic,
idyllic pond (which it now has), merely smoothed the basin and moved some of the earth from
the internal division to the south/southeast edge of the pond. The purported “watercourse”
entering the pond basin was not altered in any way; no actual watercourse leaving the pond
was altered: none existed (see below). The volume of the pond, even with the portion of the
internal division earth removed (and placed upon the south/southeast edge), did not increase
its volume by any significant amount. The reason is because the top of the crest of the edge
(“dam”) is only approximately 30-36” above the invert level of the existing overflow drain
pipe.

That drain pipe had essentially been placed at the level that the original pond
overflowed its basin, which at that time left the pond through no discernible watercourse. The
current pond in essence drains to essentially the level of the original basin—functionally no
extra impoundment over the original pond’s maximum volume. (as shown in Photo 1, Exhibit
“B”, its Attachment B – May 13, 2021, Inspection Report, trees are rooted at invert level of
drain: the same level as they were in original pond)

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This is capable of being inferred from the image dated “4/19 or newer” on page 16 (Exhibit "G", October 30, 2021 letter from Petitioner). Newer it probably is—perhaps late summer—as little water is apparent. In the image east is left and north is down. There is no discernible (much less obvious) watercourse leaving east or south, or one obvious entering from the west or north. Also, the same trees appear to be rooted near pond level.

The conclusion left, concerning the original pond, is that most of the entering water was from rain “sheet flow” and when the pond overflowed, it overflowed in a wide apron to the south.

There is no “blueline stream” in the less than 3-year-old image. (see Exhibit “A”, Map1)

More will be shown on this below.

1. The Fifth Amendment guarantees that a person not be deprived of “property, without due process of law; nor shall private property be taken for public use, without just compensation.”

A recently decided U.S. Supreme Court case (published on June 23, 2021: Cedar Point Nursery v. Hassid, No. 20-107 (S. Ct. June 23, 2021) has opened the question: how far can a public agency regulate private property rights?

Due process, and if taken, compensation.

The Court answered the question of what constitutes “taking”.

The Regional Board has a dubious right to essentially “blanket” Petitioner’s Property with requirements that beg the issues raised by the Fifth Amendment.

The Porter-Cologne Act precept that says in effect any and all water, up or down is water of the State of California may find itself under question as a result of this ruling.

The Petitioner seeks to demonstrate the issue in the following sections.
2. Petitioner has made numerous attempts to present essentially the same arguments that follow concerning whether or not his pond is an "onstream reservoir".

The points brought up above in section 1 lead to the question of whether an abuse of discretion is happening with the "onstream reservoir" designation of the Petitioner’s pond.

Staff of the regional Board have stated that the pond is "onstream" because a "watercourse intercepts a reservoir, a water of the State”.

From the Water Board’s own "Fact Sheet” (Exhibit "I”):

"Onstream reservoirs block the natural flow of water through a watercourse and retain or store the water through embankment, dam or other means of impounding water. This may seem to be a straightforward determination but it can become more complicated when a reservoir is situated within a drainage or spring source, or has multiple sources of surface water that are not always flowing with water. Consideration of the local hydrology and landscape is important for classifying onstream reservoirs." (emphases added)

One of the key statements in the Fact Sheet (Exhibit "I") is that "Onstream reservoirs block the natural flow of water through a watercourse..." The "Background" above illustrates that this is not happening—the water flow through the pond is essentially as it has always been.

The pond is not blocking what is essentially the natural flow that seems to have existed since before 1993.

As such, no beneficial uses could have been denied.

Its wide, south-edge outflow was in essence concentrated into a point, being the drain pipe, and turned into a direction, selected by the contractor, that seemed
to cause it to return to a possible historical outflow direction (Exhibit "A", Map 4).

This has been restated to the Regional Board more than once.

It is also something the Petitioner has offered to work on with the Regional Board.

Point one that differentiates the Petitioner’s pond from the Fact Sheet.

The designation of “onstream reservoir” for the Petitioner’s pond, using the simplified, ambiguous definition from the “Fact Sheet” (Exhibit “I”) also leaves out much of the big picture of this pond. For the Regional Board staff to merely state that the pond is an “onstream reservoir” because “a watercourse intercepts a reservoir” [pond] misses the big picture here.

The Petitioner has argued that the definition of “watercourse” is fairly liberally stretched—virtually any rivulet of water can be defined as a “watercourse” by the Fact Sheet definition if it’s stretched enough.

Even should the Petitioner accept the definition of the “watercourse”, what that “watercourse” represents is still ignored by the Regional Board.

The State Water Resources Control Board – Water Rights Division (“Water Rights”) and the California Department of Fish and Game (“CDFW”) both seem to have inadvertently essentially concluded that the ongoing major source of water in the “watercourse” entering the pond, on the date of inspections, May 13, 2021, is from a set of springs, located entirely on the Petitioner’s Property. (see Exhibit “A”, Map 1)

Three points are independently co-identified by Water Rights staff and CDFW staff. Water Rights identifies two as “springs” and the third is probably also one—though for some reason Water Rights does not connect it as so on a water diagram. They all are known to Petitioner. The CDFW staff member states: “They are located at the upper extent of small headwater drainages.” (Exhibit “H”, Bourque emails 9-24, a few pages down, in blue type below first image).
The only place they can drain to is the pond.

The water comes from a non-surface source and travels a short distance
downslope by gravity to reach a pond basin that has long existed.

A perched aquifer is providing water to an artesian or gravity spring, feeding
the “definitional” watercourse.

It is not surface water so it has to be groundwater.

It is the same exact water as if the springs were a pump and the 200’ channel
was a pipe.

It is Petitioner’s understanding that pumped water in general is not subject to
permitting.

"Water sources such as sheet flow, diffused surface water usually originating
from rain events, and groundwater, are not subject to the Division’s permitting
authority.” – “Fact Sheet”

In this case the water from the springs should logically be treated as the
equivalent of water pumped from the ground.

Same water. Same source.

Springs and “watercourse”. Pump and pipe.

That would make the water not subject to permitting authority.

It follows no logic to be asked to believe that we now have water not subject
to permitting, as it has likely to have been doing so long before 1993, entering a
long existent pond and the pond is now being designated an “onstream reservoir”.

Second point that differentiates Petitioner’s pond.

"This fact sheet does not capture every possible scenario that may exist for
onstream reservoirs.” – “Fact Sheet”

Or may exist to preclude the designation of “onstream”.

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But further differentiating this pond from an “onstream” designation is the other contribution of water to the pond—and is an exception named in the Fact sheet.

Water filling this pond comes more from rain-fed sheet flow Petitioner believes than from any other source. (see Exhibit “A”, Map 3 and Exhibit “G”, 10/30/2021 Petitioner’s Response, page 18 where it was first addressed)

"Water sources such as sheet flow, diffused surface water usually originating from rain events, and groundwater, are not subject to the Division’s permitting authority. Reservoirs that collect sheet flow, groundwater, or other water that is not subject to the Division’s permitting authority do not require a water right."

From Fact Sheet.

From Map 3 it can be seen that upslope of the pond there exists at least 2 acres, not including the “watercourse”, that could provide the sheet flow. For each 12” of rainfall in the area, exclusive of soil penetration, absorption, and other considerations, 2 acre/ft., more than the capacity of the pond is available. The variables of penetration, absorption, and other considerations are not easily pinned down, but the fair degree of slope does not give much time for penetration and absorption.

However, with the average yearly rainfalls at Piercy and Laytonville, 15 miles west and 20 miles south of the Property respectively, being 70” and 52”, again respectively, averaging them at 60” gives a potential maximum of 10 acre/feet of collection per year and no matter how significant the variables above are at least 2 acre/feet is likely going to be available to fill the pond solely from sheet flow—no doubt much more.

From Exhibit “G”, “October 30, 2021 Petitioner’s Response, pg. 19”: 

From Exhibit “G”, “October 30, 2021 Petitioner’s Response, pg. 19”:
"The rains of the 3rd week of October 2021, estimated at Laytonville and another measuring station to be 11-13", brought the pond to a relatively full state."

"For the small purported watercourse at WQ3 to carry upwards of 2 acre feet in the space of less than a week to fill the pond and not show any significant deepening or other erosion leads us to believe that as previously stated, the pond receives most of it water by "sheet flow" or "rain catchment".

The same seems evident in the chronological images—no deepening inflow after years."

Further conclusions are drawn at the bottom of page 19 and a detail of the rainfall observations (including station names and locations) is in the middle of page 26 (Exhibit “G”).

Third point, at least, that differentiates Petitioner’s pond.

Once again:

"This fact sheet does not capture every possible scenario that may exist for onstream reservoirs." – “Fact Sheet”

Nor does it capture every scenario that may negate their designation as such.

If the Petitioner’s pond cannot be reasonably and absolutely designated as “onstream” and the water filling it is not subject to water rights, then many, if not all, of the Regional Board’s issues of EPA or CEPA permits and Basin Plan issues are moot and the Order lacking.

3. Again from Exhibit “G”, "October 30, 2021 Petitioner’s Response, pg. 19":

"The rains of the 3rd week of October 2021, estimated at Laytonville and another measuring station to be 11-13", brought the pond to a relatively full state.
No erosional or stability issues were the least apparent on Mr. Suarez’ visit on the 26th.”

This train of thought was continued on page 25:

Petitioner “feels that concerns expressed about the need to "stabilize the site prior to the upcoming wet weather season” (RWQCB) or an "unstable embankment” (CDFW) are speculative at best. While there are actual issues he is willing to correct, RWQCB and CDFW have drawn inaccurate conclusions from their observations as have been shown in this letter.

The pond’s work was done by a local builder in the area with experience locally and he assures Mr. Suarez that excess concerns are not reasonable.

The 2020-21 rainy season did little to increase any fears.

The recent rainy period starting on about October 17, and peaking during a continuous 36 hour period that saw almost 8” of rain between the 23rd and the 24th (for a total of around 11”), brought the pond level back up to full with no evidence of serious, if any, erosion, drain/overflow failure, or any extra tension cracks.”

This continues to be the reality today.

4. In addition to the unreasonable "requirements" placed upon the pond in the "Background” above and following here, the Order directly “requires” the following items be addressed, unreasonably, under "Required Actions" points 1a and 1b (but not limited to either points or items):

1) The roadways on the property that have existed since at least 1993 (Exhibit "G", October 30, 2021 letter from Petitioner, pgs. 2 -6, and in Exhibit "A", Map 4).
They have not shown any obvious erosion over 30 years of images and it can be "inferred" from that that very little water, if any, traverses those roadways.

2) The Inspection Report (Exhibit "B", its Attachment B – May 13, 2021, Inspection Report) calls out and shows pictures of, “a stream crossing” at WQ9—that appears to be an artifact dating back to perhaps 1967 or earlier. Its location is on a named, “quasi-public” road shown on the 1967 7.5-minute (1:24000 scale) USGS map, Updegraff Ridge, and named explicitly as “Island Mountain Road”.

Photos 28 -30 in the inspection Report show that the “undersized, perched and failed culvert at WQ 9” (Inspection Report, General Notes) is, in fact, an artifact of some age.

The Petitioner could not have had any responsibility for that road or crossing, or the other roads on the property.

The Order appears to require that Petitioner “fix” them.

Given the Order’s generalities: where will the line be drawn?

5. On the reality of the “blueline stream” (and how the Regional Board conflates it with another “watercourse”):

"Staff does not find that the arguments presented in the Comment Letter for the Reservoir being off-stream are supported. ... Staff has identified a stream, a water of the state, being interrupted by the Reservoir on your Property with all three of these methods: the USGS 1:24,000-scale topographic map covering your Property shows a blueline stream passing through the Reservoir; LiDAR data available from the USGS more precisely shows the location of this watercourse and identifies it passing through the Reservoir location;” (Exhibit “J”, pg. 4)

Quote: “a stream”, “a water of the state”: one only.

Identified by three methods.
Further quote: "this watercourse" as shown by LiDAR data—one of the methods.

The quoted "stream" and "watercourse" are not one and the same, even though the full quote above implies it is so: actually, one exists, the other does not.

The "blueline stream" does not.

See Exhibit "A", Map 1, for a map detail of this error.

The nonexistent USGS "blueline stream" shown on Map 1, as an overlay from the Regional Board’s Figure 1 (Exhibit "B"), is obviously wrong by inspection of the map. The "watercourse" shown entering the pond at "WQ3", which is shown by LiDAR and on Map 1, is NOT the same as the non-existent "blueline stream" which, however, seems plainly stated above by Brian Fuller of the Regional Board as being the case.

Petitioner, who knows this to be true, has offered to meet with Regional Board staff onsite to show the reality (Exhibit "A2", bottom of pg. 4) and has previously addressed the issue on 10/30/2021 in Exhibit "G" on page 12.

On January 14, 2022, the same offer was made to Water Rights.

It requires no professional opinion to see the "blueline stream" does not exist—just eyes.

There has been no response from Regional Board staff (or Water Rights) to the offer.

Again, the USGS error "blueline stream" is shown on Figure 1 (Exhibit "B", its Attachment B – May 13, 2021, Inspection Report). The Regional Board does not seem to want to walk it back.

The Regional Board has not addressed it at all (save to try to use it as proof of their assertions) since at least October 30, 2021 when questioned about it.
It is, in opinion of Petitioner, for the reason stated as a question in Exhibit "A2", top of page 5, also questioned in Exhibit "G" (Petitioner’s Response to All Agencies October 30, 2021 on pgs. 12-13) and stated here: the Regional Board does not want to admit to the error as it adds to a misleading "first glance" impression backing an exaggerated assertion that the pond is "blocking a watercourse" and/or the Property’s pond is "dangerous to the public interest".

If true, it begs a question of abuse of discretion.

Even if it did exist it carries no weight in Petitioner’s opinion:

From the quoted USGS webpage:

"Regardless of actual accuracy, USGS maps and geospatial products are intended for general reference and are not authoritative or official for navigation or for any regulatory purpose." (https://www.usgs.gov/faqs/how-accurate-are-us-topo-maps-and-why-dont-they-have-accuracy-statement)

The important point here is that the USGS seems to allow itself the reality that errors can, and do, exist in their maps and products.

Visual and text explanation of the error is shown in the excerpt from the January 14, 2022 response to SWRCB (Water Rights) shown as Exhibit “L” and, again, visually and in text in Exhibit "A", Map 1.

6. "Cleanup and abatement is necessary to ensure that any existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state that may create a condition of pollution are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated.” –from the Order, Paragraph 13.

→ No significant “existing condition” has been documented; minor conditions have been rectified.
● Threats have been exaggerated and are incorrect as detailed in this petition
● No background water quality conditions have been shown to be exceeded and
no baseline for conditions has been stated
● Impacts to “beneficial uses” are subjective and speculative at best.

The Regional Board is in effect trying to paint a picture of fear of an unknown
that is more in concert with the effects of “trespass grows”.

7. Egregious timing: April 15 becomes May 1 in the Order after a 100-day break
in diligence.

The original Draft Order of October 8, 2021 (Exhibit “F”), which was to be
effective November 8, 2021, gave a 30-day period for Petitioner to respond with
comments and issues.

Petitioner did so within the period providing Exhibit “G”, 10/30/2021,
Petitioner’s Response.

Apparently, the ultimate gravity of the Petitioner’s Property’s issues was not so
pressing as was intoned by various communications with the Regional Board staff.

Approximately 100 days later (roughly 3 months, 1 week, and some days),
Brian Fuller of the Regional Board staff responded to the 10/30/2021 comments
from the Petitioner, asking for them to be in essence ignored, negating them with
no discussion, and requesting that the Draft Order be made final with no changes.

As the first line in this section states: the Regional Board took 100 days for a
response, but chose to only move a “required” date up by 15 days: April 15
became May 1.

8. From Mattias St. John, Executive Director, Regional Board (his letter
accompanying the Order):
"The Order requires you to take actions to clean up and abate the impacts of constructing/reconstructing an onstream reservoir and other wastes from discharging to the Eel River and its tributaries." (Exhibit "A3")

The wording of the Order, as with Mr. St. John's letter, is not sufficiently clear to make it truly clear that what is stated in this line is all the Regional Board will deem necessary or what it actually requires. The Regional Board has been mostly predisposed to "removing the reservoir" (pond) and having "professionals" prove—or disprove the Regional Board—at the expense of the Petitioner.

In the responses of Regional Board staff member Brian Fuller to questions posed to him his responses were:

1) "I recommend that based off this assessment, Mr. Suarez engage with qualified professionals to develop and submit a work plan to remove the reservoir and restore the aquatic resources in the area to the pre-reservoir condition." (July 2, 2021, Exhibit “C”, last page),

2) "I recommend Mr. Suarez engage a consulting firm that has a biologist experienced with the US Army Corps’ Wetlands Delineation Manual. A licensed Geologist with experience in geomorphology, and a licensed engineer and land surveyor may also assist in identifying the historical watercourse locations and preparing grading plans for restoration.” (July 19, 2021), and

3) "2. Engage a qualified professional to develop and submit a work plan to remove the enlarged reservoir and restore the aquatic resources in the area.” (Facilities Inspection Report, printed 6/9/2021, attached to NOV of June 11, 2021, Exhibit “B”).

Petitioner believes that given the broad extent of the language in the Order and the staggering estimates for the costs of reports, plans, and testing, the Regional Board will seek to force him ("require him") to perform unnecessary
"remediation” as has been intoned in the above email quotes and in the NOV/Inspection Report of June 11, 2021 (Exhibit “B”).

The Petitioner has presented his arguments based upon his own knowledge of the Property and his own common sense, plus assistance with research and presentation by his agent, against the Regional Board’s ongoing “recommendations” to engage professionals at a sizeable cost when it is clear from the above that they are not needed at this point—if at all.

"...you have not provided Staff any reports, documents, or names and/or qualifications of any qualified professionals.” (Exhibit “J”, pg. 8, 4(d))

The Regional Board staff has “recommended” professionals at all communication points as if they are the only acceptable way to prove anything to the Board—however, the only absolute requirement for professionals quoted to the Petitioner or his agent is where the Order requires that “The Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals.”

9. Regional Board staff member Brian Fuller has continued to advance the idea (example in Exhibit “H”, page 2, email of 8/25/2021) that Petitioner’s pond is denying “beneficial uses”.

That seems inconsistent with the Water Board’s own statement on the webpage titled The Water Rights Process, (https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.html): “The conflicting nature of California’s dual water right system prompted numerous legal disputes. Unlike appropriative users, riparian right holders were not required to put water to reasonable and beneficial use. This clash of rights eventually resulted in a constitutional amendment (Article X, Section 2 of the California Constitution) that requires all use of water to be "reasonable and beneficial.” These “beneficial uses” have commonly included municipal and
industrial uses, irrigation, hydroelectric generation, and livestock watering. More recently, the concept has been broadened to include recreational use, fish and wildlife protection, and enhancement and aesthetic enjoyment.” (emphasis added)

Petitioner’s pond is exactly providing the highlighted “beneficial uses” in the above quote.

10. The Regional Board has inflated assertions concerning “discharges” and “pollution” involving sediments, chemicals, and nutrients with no documented basis showing any actual discharge measurements anywhere, and only vague claims of “threats” of such “discharges” and “pollution”.

The only evidence presented in the Inspection Report (Exhibit “B”, its Attachment B – May 13, 2021, Inspection Report, Photos 5 - 8) of “discharges” or “threats” was: a relatively small amount of nutrients being mixed, and never intended to be left at that point; a pair of unused, empty propane tanks owned by the propane supplier next to a partially full drum of some kind of oil (left by a previous occupant); and old plant stocks from a previous cultivation before Petitioner’s ownership.

All has been removed—save the propane tanks which the supplier has been notified of. (Note: Equisetum grows all over the Property in small patches even where the ground is relatively dry).

Except for the above, no evidence was shown or stated of any improper storage or use of large amounts of nutrients, or of any herbicides, insecticides, or rodenticides as is common at cultivation sites where cultivators do not value their property, such as on “trespass grows”.

As stated earlier, the area of the Property of major concern has a relatively minimal slope.
As is so often the case with cutting edge socio-political issues in the midst of change, agreement is hard to come by, and sources that afford opinions as to the effect of unpermitted cannabis cultivation on the environment are somewhat mixed in their assessments of the true and actual affects.

The amount of questionable data and speculation—both official and not—is widespread.

Most sources, however, seem to agree that the most serious environmental effects in terms of qualitative and quantitative impacts of such cultivation arise from what is often termed “trespass cultivation” or “trespass grows”.

Trespass cultivation usually occurs on public lands, on areas of fairly large degree of slope in the topography, often at relatively high elevation and high up in watersheds, and often associated with cartel or cartel-like activities.

None of these characteristics represent the Petitioner’s Property.

The Petitioner’s Property is:

→ Private land valued by its owner

→ Less than 20 percent of slope in area of concern

→ Situated at an altitude of approximately 2000’ and not located at the top of a drainage

→ Is not associated with any cartel-like activities

While it cannot be argued that cannabis cultivation has no affect at all, the fear of the affects seems to be the proof in some peoples’ minds.

Fear, and not data, after many years, is still driving responses.

Potential localized affects can’t be denied: the family living next to the cultivation and depending on the local water can certainly be affected.

The effects of “trespass grows” are acknowledged by everyone.
Nonetheless, current sources have called into question the actual level of documented effects as well as the actual number of studies performed:

From the Public Policy Institute of California (PPIC) blog "How does cannabis cultivation affect California's Water?" on June 28, 2021:

“Water quality impacts from pesticides and nutrients are a major concern. But, so far, studies haven’t detected high levels of contaminants in streams, and the effects from [cannabis] cultivation appear to be fairly localized.”

It would make sense that that would follow for sediments also.

In the Journal of Cannabis Research, "A narrative review on environmental impacts of cannabis cultivation" published August 6, 2021:

“there is limited data on the impact of cannabis cultivation on water quality worldwide or even nationwide.”

In the American Chemical Society publication "Environmental Science and Technology Letters 2021 8 (2), 98-107” issue article “Cannabis and the Environment: What Science Tells Us and What We Still Need to Know”, a multi-author study dated January 4, 2021 writes:

“However, although surface water and groundwater pollution from the cannabis industry is a likely environmental risk, (11) we found no peer-reviewed studies quantifying the impacts of cannabis cultivation on water quality.”
All the above seem to question the actual likelihood that any affects as feared under Basin Plan Prohibitions 1 & 2 or other Regional Board issues have come to pass on Petitioner’s Property.

11. While the NCRWQCB has reserved the right to add further responsible parties to its CAO it has not done so, and is placing, in essence, the responsibility for 30 years of history solely upon the Petitioner if the Order is upheld.

12. Prior to the warrant and ensuing inspection made by the Board on 5/13/2021, Petitioner had only owned the property less than 13 months.

13. Even should the Order not be vacated, naming the Petitioner as solely responsible for all its assertions is not consistent with due process. *In re Prudential Insurance Company*, WQO No. 87-6 (holding "primarily for equitable reasons" initial responsibility for cleanup should be with operator or party who create discharge), citing *In re Schmid*, WQO 89-1 (same); see also WQO 93-9 (several factors "appropriate for the Regional Water Boards to consider in determining whether a party should be held secondarily liable," include: (1) whether or not the party initiated or contributed to the discharge; and (2) whether those parties who created or contributed to the discharge are proceeding with the cleanup); WQO 87-6 (same); WQO 89-8 (same).

**VIII. Petition Served**

A copy of this Petition has been sent to the Executive Officer of the Regional Water Board in the same email that was sent to the State Board’s Water Quality Petitions email address.

A request was made that the Executive Officer acknowledge receipt—both to Petitioner and to the State Board.
IX. Presented to Regional Board

The issues raised in the petition were presented to the Regional Board before the Regional Board acted and issued its order.

Petitioner has not been afforded a meaningful opportunity to be heard on the substantive issues set forth in the Order.

It is clear from Paragraphs IV and VII above and the many attached Exhibits, that the Petitioner through his agent has presented quite a few arguments and provided substantial evidence to the Regional Board—multiple times.

Summary and Conclusions.

Petitioner has sought through his agent and by his immediate actions to cooperate not only with the Regional Board, but also with Water Rights and the CDFW in all reasonable ways.

The cooperation has mostly come back as: spend a large amount of money to document what it is we have not and remove that pond.

Further, ignore any and all mistakes we at the agencies have made, and you have uncovered, but believe us about all else.

And then, contrary to a seeming need-for-speed, 100 days are needed to respond to comments submitted by Petitioner’s agent under a 30-day response requirement.

Nevertheless, after the abrupt visit by the various agencies to his Property on May 13, 2021 the Petitioner immediately called for a halt to the unpermitted cannabis cultivation on his property until he could or would want to continue to allow it on his property.

Petitioner had all functional aspects of the cultivation stopped, removed, and cleaned up save for a few of the greenhouse wood bases. All water use was ended for cultivation and a statement of such provided to Water Rights indicating all that was done (Exhibit "K").

Petitioner believes he has done what he can to reasonably “clean up” his property short of returning it to the “pristine wilderness” the Regional Board seems to leave open in the broad scope and generality of its Order.
Petitioner feels that even with his attempts at and offers of cooperation, the cultivation on the Property has been looked at through a glass colored by the fears and concerns engendered by "trespass cultivation" and the activities of cartels or cartel-like groups.

Petitioner has not introduced Waste into a Stream or Watercourse as those terms are defined in the Regional Board’s Basin Plan.

The largest single issue with the agencies concerned the pond and its purported inadequacies. It is arguable, and has been so above, that the designation of “onstream” is as much lacking in reality as it has reality.

The basic nature of the pond area has not truly been changed: the pond will fill to its old overflow level in rainy times, and it will shrink back to a very small volume in the late summer and fall.

Essentially the same amount of water will flow through it as has always happened.

Therefore, no “beneficial uses” have been denied; beneficial uses have been created.

The vast majority of the water flowing through it is not reasonably “waters of the State” that are “subject to permitting”, and therefore it is not reasonable to designate the pond as “onstream”.

Further, there follows no water rights issue, and concerns about “instream” issues are moot.

No wetlands or aquatic resources have been changed in any meaningful way as a result of the pond reorganization. The area pond, wetlands, and aquatic resources are fundamentally as they were.

The Regional Board has not documented any actual discharges of any sediment or other “pollutants” and through its inaccurate and misleading presentations of a “blueline stream” and unsubstantiated and proven-by-time-and-rain wrongness of pond instability, has continued to try to maintain a level of drama not commensurate with the reality of the Property.

Petitioner feels that with all the above and the level of economic hardship that the Regional Board (and other agencies) may seek to place upon him, even without an obvious punitive element, or a statement of intent by the agencies, the potential outcome will end up, in fact, being just so to him.

Respectfully submitted,

[Signature]

Petitioner
Dated: 4/11/2022