

**STATE OF CALIFORNIA**  
**REGIONAL WATER QUALITY CONTROL BOARD**  
**NORTH COAST REGION**

**[PROPOSED] ORDER NO. R1-2023-0043**  
**for Administrative Civil Liability**  
**In the Matter of Daniel Maldonado Suarez**  
**Mendocino County**  
**Assessor's Parcel Number (APN) 011-530-09-01**  
**Administrative Civil Liability Complaint No. R1-2023-0009**

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds the following:

This matter comes before the Regional Water Board from Administrative Civil Liability Complaint No. R1-2023-0009 (Complaint), dated January 9, 2023, issued to Daniel Maldonado Suarez (hereinafter, Discharger). The Complaint alleges two violations based on evidence that the Discharger failed to comply with Regional Water Board Cleanup and Abatement and Water Code section 13267 Order No. R1-2022-0016 (Cleanup Order) and proposes an administrative civil liability in the amount of \$424,575 pursuant to applicable laws and regulations, including California Water Code (Water Code) sections 13268 and 13350. A hearing took place on June 15, 2023, in accordance with the hearing notice and procedures served on the Discharger, and applicable laws and regulations, including California Code of Regulations, title 23, sections 648-648.8.

**BACKGROUND**

1. The Discharger acquired title to Mendocino County APN 011-530-09-01 (Property) on April 16, 2020, and has owned the Property at all times relevant here.
2. On May 13, 2021, Regional Water Board staff (Staff) accompanied staff from the California Department of Fish and Wildlife (CDFW), State Water Resources Control Board (State Water Board) Division of Water Rights (Division), and various law enforcement personnel on a joint inspection of the Property, which was conducted pursuant to a criminal search warrant. Staff observed a recently constructed/reconstructed reservoir and cannabis greenhouse facilities encroaching on waters of the state, identified by surface water concentrated in channels with defined beds and banks, and saturated soils hosting plant genera indicative of wetlands. The constructed reservoir and facilities created or threatened to create a condition of pollution by unreasonably affecting beneficial uses of waters of the state in the Middle Main Eel River Hydrologic Area. Staff also observed an undersized and failed culverted stream crossing on the Property in violation of the prohibitions included in the Action Plan for Logging, Construction, and Associated

Activities contained in Section 4.2.1 of the Water Quality Control Plan for the North Coast Region (Basin Plan).

3. On June 11, 2021, Staff transmitted a Notice of Violation (NOV) and Inspection Report to the Discharger. This NOV and Inspection Report described the observed violations and provided recommendations to engage a qualified professional to develop and submit a work plan to correct the violations.
4. Between July and September 2021, Staff had many email discussions with the Discharger's agent. Staff explained the need for the Discharger to engage a qualified professional, but the Discharger's agent asserted that the Discharger should not be required to engage a qualified professional.
5. On October 8, 2021, Staff transmitted a draft Cleanup Order to the Discharger that proposed tasks with associated deadlines that would be required to clean up and abate the impacts from observed discharges and threatened discharges resulting from the site conditions and unauthorized activities on the Property, including unpermitted cannabis cultivation. The transmittal letter for the draft Cleanup Order provided the Discharger 30 days from the date of the transmittal letter to submit written comments and/or evidence for the Regional Water Board to consider.
6. On November 3, 2021, the Discharger's agent emailed a letter to Staff and personnel from CDFW and the Division that included lengthy arguments against both Staff's justifications underlying the draft Cleanup Order and concerns raised from the other agencies. Staff responded to the Discharger's agent on November 4, 2021, acknowledging the submittal of their comments and stating that Staff would consider the comments before making a final recommendation to the Regional Water Board's Executive Officer (the Executive Officer) regarding the draft Cleanup Order.
7. On February 16, 2022, Staff provided a written response to the Discharger's comments on the draft Cleanup Order and transmitted it to the Discharger and the Executive Officer with a proposed Cleanup Order for consideration by the Executive Officer.
8. On March 17, 2022, after consideration of the proposed Cleanup Order, the Executive Officer issued the Cleanup Order to the Discharger. The Cleanup Order directed the Discharger to complete several Required Actions, including submittal of a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) by May 1, 2022 (Required Action 1) and to complete implementation of the CRMP by October 15, 2022 (Required Action 4).
9. On April 12, 2022, the Discharger petitioned the State Water Board for reconsideration of the Cleanup Order and requested a stay of the deadlines contained therein. On July 11, 2022, the State Water Board informed the Discharger that the petition would be dismissed by operation of law effective July 13, 2022 unless one of the following events occurred prior to 5:00 p.m. on July 12, 2022: 1)

the State Water Board notifies the Regional Water Board that they have 30 days to respond to the petition, 2) the Discharger submits a written request for the State Water Board to hold the petition in abeyance, or 3) the State Water Board previously notified the petitioner that the petition was dismissed. None of those actions occurred, resulting in the Discharger's petition and request for stay being dismissed by operation of law effective July 13, 2021. The Discharger did not seek judicial review by filing a petition for writ of mandate with the superior court within 30 days of the dismissal by operation of law, as provided in Water Code section 2050.5, subdivision (e), and Water Code section 13330, subdivision (b).

10. On July 26, 2022, Staff transmitted a NOV to the Discharger for failing to submit a proposed CRMP by May 1, 2022, as required under Required Action 1 of the Cleanup Order. This NOV explained that the Discharger risked the Regional Water Board imposing administrative civil liability if he did not comply with the Cleanup Order.
11. On August 4, 2022, the Discharger's agent disputed the basis of the Order to the Executive Officer and Staff, but the Discharger did not seek judicial review of the Cleanup Order by the August 12, 2022 deadline to do so, as described in Finding 10. Between August and November 2022, Staff attempted on multiple occasions to encourage the Discharger to comply with the Cleanup Order: Staff attempted to explain why the Discharger's arguments did not impact the requirements of the Cleanup Order; Staff met in person with the Discharger and his agent; Staff communicated the options for delayed compliance to the Discharger in the event that he was interested in requesting an extension or modification to the order; and Staff even offered to use its prosecutorial discretion if the Discharger showed that he was making progress towards compliance with the Cleanup Order by engaging a qualified professional to prepare an acceptable CRMP. Nevertheless, the Discharger continued to refuse to comply with the Cleanup Order.
12. On December 8, 2022, Staff transmitted a second NOV to the Discharger for failure to comply with the Cleanup Order; this NOV cited failure to complete implementation of corrective actions pursuant to an approved CRMP by October 15, 2022, as required under Required Action 4 of the Cleanup Order. This NOV also reiterated the Discharger's continued violation of Required Action 1 and informed the Discharger that days of violation for both Required Actions 1 and 4 would continue to accrue until a proposed CRMP is submitted, approved, and implemented.
13. On December 30, 2022, the Discharger's agent emailed Staff three documents: a Response to Staff's November 16, 2022 email, a separate response to the December 8, 2022 NOV, and a timeline describing the Discharger's communications with Staff. The submitted documents did not propose a plan or timeline for complying with the Cleanup Order but instead continued to dispute the justification for the issuance of the Cleanup Order. To date, Staff has not received a CRMP for review and approval, and the Discharger has not completed implementation of corrective actions pursuant to an approved CRMP.

14. The Penalty Methodology, included as Attachment A to the Order, provides the details of these violations and the factors considered in developing the assessed administrative civil liability amount.

### **VIOLATIONS**

15. **Violation 1:** The Discharger violated Water Code section 13267 by failing to submit a proposed CRMP for approval by the Regional Water Board or its delegated officer by May 1, 2022, as required under Required Action 1 of the Cleanup Order.
16. **Violation 2:** The Discharger violated Water Code section 13304 by failing to complete implementation of an approved CRMP by October 15, 2022, as required under Required Action 4 of the Cleanup Order.

### **WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY**

17. Water Code section 13268 provides that the Regional Water Board may administratively impose civil liability to any person who fails to submit technical or monitoring reports, as required under Water Code section 13267, in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
18. Water Code section 13350, subdivision (a), states, in relevant part:  
  
A person who violates a cleanup and abatement order issued, reissued, or amended by a regional board or the State Water Board may be liable civilly, and remedies may be proposed, in accordance with subdivision (e).
19. Water Code section 13350, subdivision (e), states:  
  
(1) The Regional Water Board may administratively impose civil liability in an amount not to exceed five thousand dollars (\$5,000) for each day the violation occurs...  
  
(B) When there is no discharge, but an order issued by the Regional Water Board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.
20. Water Code section 13350, subdivision (f), states that the Regional Water Board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the Regional Water Board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Water Code section 13327.
21. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, a regional board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and,

with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

### **WATER QUALITY ENFORCEMENT POLICY**

22. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e).<sup>1</sup>
23. The violations alleged are subject to liability in accordance with Water Code sections 13268 and 13350, respectively. Administrative civil liabilities under each of these sections are subject to the factors set forth in Water Code section 13327. The Regional Water Board considered the required factors for the alleged violations using the methodology in the 2017 Enforcement Policy, as described in Attachment A to this Order.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

24. Issuance of this Order is an enforcement action and is, therefore, exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, and 15321, subdivision (a)(2).

### **MAXIMUM STATUTORY LIABILITY**

25. Violation 1: Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the Regional Water Board on a daily basis in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Complaint alleges that the Discharger failed to submit the required CRMP for **253 days**, from May 1, 2022 to January 9, 2023. The statutory maximum liability amount for Violation 1 is \$253,000 (\$1,000/day x 253 days).
26. Violation 2: Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be administratively imposed by the Regional Water Board on a daily basis in

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<sup>1</sup> [The 2017 Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf))

an amount not to exceed five thousand dollars (\$5,000) for each day the violation occurs. The Complaint alleges that the Discharger failed to complete implementation of an approved CRMP for **86 days**, from October 15, 2022 to January 9, 2023. The statutory maximum liability for Violation 2 is \$430,000 (\$5,000/day x 86 days).

### MINIMUM LIABILITY

27. **Violation 1:** The 2017 Enforcement Policy requires the Regional Water Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for Violation 1 was estimated to be \$193. The minimum liability that may be imposed for Violation 1 is therefore \$212.
28. **Violation 2:** Pursuant to the 2017 Enforcement Policy, the Regional Water Board must recover, at a minimum, \$75 for Violation 2. However, Violation 2 is also subject to a statutory minimum liability amount. Water Code section 13350, subdivision (e), provides that, “[w]hen there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.” The minimum liability that may be imposed for this violation pursuant to Water Code section 13350, subdivision (e), is \$8,600.

### ADMINISTRATIVE CIVIL LIABILITY

29. Based on consideration of the above facts, the evidence in this matter, material submitted by the parties, the testimony and arguments presented at hearing, the applicable law, and after applying the methodology in the 2017 Enforcement Policy, the Regional Water Board finds that civil liability shall be imposed administratively against the Discharger in the amount of **\$424,575**, as explained in detail in Attachment A to this Order.
30. Payment of the assessed liability amount does not absolve the Discharger from complying with the Cleanup Order. Notwithstanding the adoption of this Order, the Regional Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.
31. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. [Copies of the law and regulations applicable to filling petitions](#) will be provided upon request, and may be found on the Internet at: ([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/))

**IT IS HEREBY ORDERED,**

pursuant to Water Code sections 13268 and 13350, that:

1. Daniel Maldonado Suarez shall be assessed administrative civil liability in the amount of four hundred twenty-four thousand five hundred seventy-five dollars (\$424,575).
2. Payment for Violation 1, in the amount of \$80,325, shall be made to the Cleanup and Abatement Account, in accordance with Water Code section 13441, and shall be sent to the address provided below no later than 30 days from the date on which this Order is adopted.
3. Payment for Violation 2, in the amount of \$344,250, shall be made to the Waste Discharge Permit Fund, in accordance with Water Code section 13350, subdivision (k), and shall be sent to the address provided below no later than 30 days from the date on which this Order is adopted.
4. Daniel Maldonado Suarez shall send the original signed checks to:

State Water Resources Control Board  
Division of Administrative Services  
ATTN: ACL Payment Accounting Office  
P.O. Box 1888  
Sacramento, California, 95812-1888

with a copy mailed or emailed to:

North Coast Regional Water Quality Control Board  
Attn: Jeremiah Puget  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403.  
[northcoast@waterboards.ca.gov](mailto:northcoast@waterboards.ca.gov)

I, Valerie Quinto, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 15, 2023.

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Valerie Quinto  
Executive Officer

**Attachment A**  
**Penalty Methodology for**  
**Administrative Civil Liability Order No. R1-2023-0043:**  
**Factors Considered in Developing Imposed Civil Liability**  
**Daniel Maldonado Suarez**

This technical analysis provides a summary of factual and analytical evidence that supports the findings in Administrative Civil Liability Order No. R1-2023-0043 (Order) and the assessment of administrative civil liability in the amount of \$424,575. The Order finds that Daniel Maldonado Suarez (Discharger), failed to implement the requirements of the North Coast Regional Water Quality Control Board's (Regional Water Board's) Cleanup and Abatement Order and Water Code section 13267 Order No. R1-2022-0016 (Cleanup Order) at the Property located in Mendocino County at Assessor's Parcel Number (APN) 011-530-09-01.

**SUMMARY OF VIOLATIONS**

1. The Order finds that the Discharger violated Water Code section 13267 by failing to submit a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) for approval by May 1, 2022 as required under Required Action 1 in the Cleanup Order. Water Code section 13268, subdivision (b), provides that the Regional Water Board may impose civil liability administratively in response to violations of section 13267 in an amount of up to one thousand dollars (\$1,000) per day of violation. At the time Administrative Civil Liability Complaint No. R1-2023-0009 (Complaint) was issued, on January 9, 2023, the CRMP was 253 days late, and the Discharger is subject to liability of up to \$253,000 pursuant to Water Code section 13268, subdivision (b). **As described below, the Regional Water Board finds that administrative civil liability in the amount of eighty thousand three hundred and twenty-five dollars (\$80,325) shall be imposed for this violation.**

2. The Order finds that the Discharger violated Water Code section 13304 by failing to complete implementation of corrective actions pursuant to an approved CRMP by October 15, 2022, as required under Required Action 4 in the Cleanup Order. Water Code section 13350 provides that persons who violate cleanup and abatement orders are subject to civil liability of up to five thousand dollars (\$5,000) per day of violation, with a minimum of one hundred dollars (\$100) per day where no discharge occurs but a cleanup and abatement order has been violated. As of January 9, 2023, the Discharger had been in violation of this requirement for 86 days, and is subject to liability of up to \$430,000, with a statutory minimum liability amount of \$8,600, pursuant to Water Code section 13350, subdivision (e). **As described below, the Regional Water Board finds that administrative civil liability in the amount of three hundred forty-four thousand two hundred and fifty dollars (\$344,250) shall be imposed for this violation.**



## PENALTY METHODOLOGY

The State Water Resources Control Board's *Water Quality Enforcement Policy*<sup>1</sup> ("Enforcement Policy") establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under Water Code section 13327 and/or 13385, subdivision (e), depending on the violations. As the violations alleged in the Complaint are enforceable under Water Code sections 13268 and 13350, the liability must take into consideration the factors specified in Water Code section 13327, specifically:

"the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

Each factor of the Enforcement Policy's ten-step approach is discussed below, as is the basis for assessing the corresponding score and administrative civil liability amount.

The violations here involve: (1) failure to comply with the Water Code section 13267 reporting directive; and (2) failure to implement cleanup actions pursuant to a cleanup and abatement order issued by the Regional Water Board. These are "non-discharge violations" for purposes of the Enforcement Policy penalty methodology.

### ***Step 1. Actual Harm or Potential for Harm for Discharge Violations***

Enforcement Policy Step 1 is only applicable to discharge violations, which were not alleged in the Complaint.

### ***Step 2. Per Gallon and Per Day Assessments for Discharge***

Enforcement Policy Step 2 is only applicable to discharge violations, which were not alleged in the Complaint.

### ***Step 3. Per Day Assessment for Non-Discharge Violations***

The Enforcement Policy provides that "[t]he Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, failure to conduct routine monitoring and reporting, failure to provide required information, and the failure to prepare and implement required plans. While all non-

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<sup>1</sup> [The 2017 Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

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## Attachment A

## Penalty Methodology

discharge violations harm or undermine the Water Boards' regulatory programs and compromise the Water Boards' ability to perform their statutory and regulatory functions, some non-discharge violations have the potential to directly or indirectly impact beneficial uses and should result in more serious consequences."

To determine the initial liability factor for each violation, the Water Boards use the matrix set forth in Table 3 of the Enforcement Policy to determine a per-day assessment factor for each violation. The matrix considers the potential for harm resulting from the violation, and the deviation from the applicable requirement. Each of these can be "Minor," "Moderate," or "Major."

**Potential for Harm:**

The Potential for Harm categories are as follows:

- *Minor – The characteristics of the violation have little or no potential to impair the Water Boards' ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.*
- *Moderate – The characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.*
- *Major – The characteristics of the violation have wholly impaired the Water Boards' ability to perform their statutory or regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement orders, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major.*

(Enforcement Policy, page 16)

**Violation 1:** The CRMP required by the Cleanup Order is a technical report that is necessary to (1) assess impacts to waters of the state resulting from earthwork involved in the unauthorized construction/reconstruction of the reservoir and greenhouses used for cannabis cultivation at the Property; (2) determine the appropriate restoration and abatement work to correct those impacts; and (3) create and implement a plan per an approved implementation schedule that will guide the scope of work to clean up and abate the discharges and threat of discharge on the Property. By requiring the Discharger to submit a proposed CRMP for approval, the Regional Water Board or its delegated officer has the opportunity to review and approve the scope of the proposed restoration and corrective actions to confirm that the proposed work will adequately

## Attachment A

## Penalty Methodology

remediate site conditions and prevent sediment discharges from further impacting beneficial uses of sensitive water bodies. By failing to submit a CRMP for approval, the Discharger has wholly impaired the Regional Water Board's ability to perform its regulatory functions. Additionally, the impacted waterbodies intended to be addressed through the CRMP are impaired and contain sensitive habitats. The federal Clean Water Act section 303, subdivision (d), list identifies the Middle Main Fork Eel River as impaired due to elevated sedimentation/siltation, and its tributaries are listed as impaired due to elevated temperature. On December 31, 2005, the U.S. Environmental Protection Agency approved Total Maximum Daily Loads (TMDL) for temperature and sediment for the Middle Main Fork Eel River and its tributaries. The TMDL indicates that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. A number of aquatic species are sensitive to increases in sediment and temperature including the Southern Oregon Northern California coast coho salmon and the Northern California coast summer steelhead, which occupy the Middle Main Eel River, specifically the Spy Rock Hydrologic Subarea in which the Property is located. The impacts on the property leading to increased water temperature and fine sediment have the potential to exacerbate these impairments in the sensitive fish habitat downstream. Therefore, the Potential for Harm for Violation 1 is **Major**.

**Violation 2:** The Discharger failed to complete implementation of the cleanup, restoration, or monitoring work required to be contained in an approved CRMP. Implementation of an approved CRMP was required under the Cleanup Order to mitigate damages resulting from previous discharges of sediment and to prevent future discharges from occurring. To date, no CRMP has been submitted or approved and thus no work can be implemented in accordance with an approved plan. The conditions of concern that the Cleanup Order was designed to address continue to exist on the Property. By failing to complete implementation of the cleanup, restoration, and monitoring work required to be contained in an approved CRMP, the Discharger has wholly impaired the Regional Water Board's ability to perform its statutory and regulatory functions. As previously stated, the impacted waterbodies intended to be addressed through the CRMP are impaired and contain sensitive habitats. As stated above, the federal Clean Water Act section 303, subdivision (d), list identifies the Middle Main Fork Eel River as impaired due to elevated sedimentation/siltation, and its tributaries are listed as impaired due to elevated temperature. On December 31, 2005, the U.S. Environmental Protection Agency approved Total Maximum Daily Loads (TMDL) for temperature and sediment. The TMDL indicates that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. A number of aquatic species are sensitive to increases in sediment and temperature including the Southern Oregon Northern California coast coho salmon and the Northern California coast summer steelhead, which occupy the Middle Main Eel River and its tributaries, specifically the Spy Rock Hydrologic Subarea in which the Property is located. Therefore, the Potential for Harm for Violation 2 is **Major**.

**Deviation from Requirement:**

The Deviation from Requirement categories are as follows:

## Attachment A

## Penalty Methodology

- *Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).*
- *Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).*
- *Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).*

(Enforcement Policy, page 16)

**Violation 1:** The deviation from the requirement to submit a proposed CRMP by the deadline contained in the Cleanup Order is **Major**. Although the Discharger indicated that he had contacted a qualified professional to conduct a limited assessment of the Property, the Discharger has made no attempt to submit a proposed CRMP for approval, rendering the requirement ineffective in its essential functions.

**Violation 2:** The deviation from the requirement to complete implementation of corrective actions in an approved CRMP by the deadline contained in the Cleanup Order is **Major**. The Discharger has failed to correct the conditions of actual or threatened discharge described in the Cleanup Order pursuant to an approved CRMP, thus rendering the requirement ineffective in its essential functions.

**Per Day Factors:**

**Violation 1:** Utilizing a Potential for Harm score of **Major** and Deviation from Requirement score of **Major**, Staff selected a Per Day Factor of 0.85 for Violation 1, consistent with Table 3 on page 16 of Enforcement Policy.

**Violation 2:** Utilizing a Potential for Harm score of **Major** and Deviation from Requirement score of **Major**, Staff selected a Per Day Factor of 0.85 for Violation 2, consistent with Table 3 on page 16 of Enforcement Policy.

**Initial Liability Amounts:** The initial liability amount for Violation 1 and 2 are calculated on a per-day basis as follows:

**Violation 1:** Per-Day Liability (253 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability)) = **\$215,050**

**Violation 2:** Per-Day Liability (86 (days) x 0.85 (per day factor) x \$5,000 (statutory maximum per day liability)) = **\$365,500**

**Step 4. Adjustment Factors**

Under this step, the initial liability amount for each violation is adjusted by factors addressing multiple day violations and the violator's conduct.

## Attachment A

## Penalty Methodology

**Multiple Day Violations**

The Enforcement Policy advises that “for violations that are assessed a civil liability on a per day basis and do not constitute a single operational upset, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily penalty assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Regional Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program;
- b. Results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of the violation, plus an assessment for each 5-day period of violation until the 60th day, plus an assessment for each 30 days of violation thereafter. Staff determined that neither Violation 1 nor Violation 2 resulted in discrete economic benefit that can be measured on a daily basis. Therefore, applying the alternative approach to penalty calculation, the Regional Water Board has collapsed the number of days for which administrative civil liability shall be assessed as follows:

**Violation 1:** Full collapsing of days from 253 days to 42 days. Therefore, the adjusted Initial Liability Amount for Violation 1 becomes \$35,700 (42 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability)).

**Violation 2:** Full collapsing of days from 86 days to 36 days. Therefore, the adjusted Initial Liability Amount for Violation 2 becomes \$153,000 (36 (days) x 0.85 (per day factor) x \$5,000 (statutory maximum per day liability)).

**Violator’s Conduct:**

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

**Culpability:**

This factor assesses a discharger’s degree of culpability prior to the violation. The Enforcement Policy provides that “[h]igher liabilities should result from intentional or negligent violations” as opposed to accidental violations. A multiplier between 0.75 and

## Attachment A

## Penalty Methodology

1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence, a lower multiplier for more simple negligence, and a neutral assessment of 1.0 where a discharger is determined to have acted as a reasonable and prudent person would have.

**Violation 1:** At the time of the inspection, the Discharger was conducting unlicensed commercial cannabis cultivation on the Property. Commercial cannabis cultivators are required to maintain the Property where cultivation is occurring consistent with the Cannabis Policy, and with the Water Code generally. Due to observed discharges and threats of discharge on the Property, the Regional Water Board issued the Cleanup Order to ensure the Property was adequately remediated. Upon issuance of the Cleanup Order, a reasonable and prudent person would have made efforts to comply with the requirement to submit a proposed CRMP for approval and communicate these efforts to the Regional Water Board. The Discharger's conduct fell below that of a reasonable and prudent person. The Discharger was aware of the requirement to submit a proposed CRMP under the Cleanup Order; however, instead of taking steps to meaningfully engage with Staff, the Discharger submitted multiple correspondence to Staff that were combative and intended to contest the validity of the Cleanup Order, even after Staff informed the Discharger that he had exhausted his options to challenge the order. These actions constitute an intentional violation of Required Action 1; thus, a value of **1.5** is appropriate for this violation.

**Violation 2:** Similarly, after issuance of the Cleanup Order, a reasonable and prudent person would have timely completed implementation of a CRMP upon approval. As previously stated, the Discharger's failure to submit a CRMP for approval fell short of what would be expected of a reasonable and prudent person. The Discharger was informed through the issuance of the Cleanup Order on March 17, 2021, and in the July 26, 2022 NOV, that approval of a proposed CRMP was required prior to implementation of corrective actions. Nevertheless, the Discharger did not submit a plan or obtain approval, thereby precluding his ability to complete implementation of the corrective actions contained in an approved plan by the deadline contained in the Cleanup Order. The Discharger has continued to contest the Regional Water Board's authority to require the cleanup, particularly as it relates to the onstream reservoir. These actions constitute an intentional violation of Required Action 4; thus, a value of **1.5** is appropriate for Violation 2.

***History of Violations:***

The Enforcement Policy advises that "[w]here the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1."

**Violations 1 and 2:** There are no previous orders requiring the Discharger to take actions or assessing administrative civil liability against the Discharger for previous

Attachment A  
Penalty Methodology

violations within the last five years. Accordingly, a neutral factor of **1.0** is used for both violations.

***Cleanup and Cooperation:***

This factor assesses voluntary efforts to cleanup and/or to cooperate with regulatory agencies in returning to compliance after the violation. The Enforcement Policy states that the cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation or timely response to a Regional Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline.

**Violation 1:** After the Discharger failed to comply with the May 1, 2022 deadline to submit a proposed CRMP, Staff sent the Discharger a NOV on July 26, 2022, informing him of the violation and the risk of administrative civil liability for continued noncompliance. Between August and November, Staff exchanged multiple correspondence with the Discharger and his agent and participated in an in-person meeting to discuss the requirements of the Cleanup Order. Although the Discharger's agent emailed Staff indicating that the Discharger was hiring a qualified professional to visit the Property, the Discharger did not confirm the full scope of work that would be performed by the consultant. Rather, the email included statements indicating that a CRMP would not be provided that contained all of the required elements detailed in Required Action 1 of the Cleanup Order. To date, Staff has not received a proposed CRMP for review. The Discharger has routinely responded to Staff correspondence; however, the Discharger's communications with Staff have, at times, been confrontational and counterproductive. The Discharger continues to question the Regional Water Board's authority and the validity of the Cleanup Order despite exhausting all avenues for administrative and judicial review of the order. Due to the Discharger's ongoing failure to correct the violation and cooperate with Regional Water Board Staff, a score of **1.5** has been assessed for Violation 1.

**Violation 2:** After the Discharger failed to comply with the October 15, 2022 deadline to complete implementation of the corrective actions required in an approved CRMP, Staff attempted to work with the Discharger towards compliance with the Cleanup Order. Staff offered not to recommend formal enforcement if the Discharger retained a qualified professional and submitted a plan and schedule to fully comply with the Cleanup Order by November 15, 2022. Despite the opportunity to submit a CRMP that could be approved and subsequently implemented, the Discharger failed to do so and remains in violation of the requirement to complete implementation of an approved CRMP. Staff issued a NOV to the Discharger on December 8, 2022 documenting the ongoing days of violation and potential administrative civil liability. Although the Discharger provided a response to the NOV on December 30, 2022, the response reiterated the Discharger's previous challenges to the Regional Water Board's authority and the basis of the Cleanup Order. The response did not provide any indication that the Discharger is

## Attachment A

## Penalty Methodology

making progress towards complying with the order. Due to the Discharger's ongoing failure to correct the violation and cooperate with the Regional Water Board staff, a score of **1.5** has been assessed for Violation 2.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by adding the amounts above for each violation, including any adjustment for multiple day violations. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

The Total Base Liability amount for Violations 1 and 2 is calculated on a per-day basis as follows:

**Violation 1:** \$35,700 (Initial Liability after collapsing days) x 1.5 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.5 (Cleanup and Cooperation Factor) = **\$80,325**

**Violation 2:** \$153,000 (Initial Liability after collapsing days) x 1.5 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.5 (Cleanup and Cooperation Factor) = **\$344,250**

**Total Base Liability Amount: \$80,325 + \$344,250 = \$424,575**

**Step 6. Ability to Pay and Continue in Business**

The Enforcement Policy provides that “[i]f the Water Boards have sufficient financial information necessary to assess the violator’s ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator’s ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The ability of a discharger to pay is determined by its income (revenues minus expenses) and net worth (assets minus liabilities).”

The Discharger owns the Property, which has an assessed value of \$53,122. Property transaction records indicate that the Property was purchased in 2020 for cash, which suggests that the Property likely has no mortgage or other financial encumbrances. The Discharger jointly owns three properties in Sonoma County in addition to the Property, and the total assessed value of the four properties based on County Tax Assessor records is \$519,864. The Regional Water Board does not have information about the Discharger’s revenues or liabilities that would further inform his ability to pay. Based on the information available, Staff proposes no adjustment to the Total Base Liability Amount.

**Step 7. Economic Benefit**

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than any economic benefit realized by the Discharger.



## Attachment A

## Penalty Methodology

For **Violation 1**, the cost of preparing a CRMP (i.e., field inspection and report preparation) is comparable to the cost of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and a Disturbed Area Stabilization Plan, as presented in the State Water Resources Control Board, October 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)<sup>2</sup>, which is estimated to cost between \$4,860 and \$14,120.

Although the Discharger will still need to submit a proposed CRMP for approval, he has not done so yet, so the costs estimated above are considered delayed. Using the EPA BEN model, staff determined the economic benefit from delayed expenditures associated with Violation 1. Staff identified the midpoint in the estimated range of plan cost of \$9,490 as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring costs with a noncompliance date of the May 1, 2022 deadline and an estimated compliance date of April 7, 2023, the anticipated hearing date. The resulting economic benefit from delaying the plan expenditures is \$193.

For **Violation 2**, implementation of the corrective actions required to be contained in an approved CRMP would require Waste Discharge Requirements or a Water Quality Certification from the Regional Water Board that would require a one-time application fee of \$2,734. Without the Discharger having completed the assessment required to develop the CRMP under the Cleanup Order, it is difficult to estimate what the cost will be to complete implementation of the corrective actions; therefore, Staff has not included implementation costs in the economic benefit analysis.

Although the Discharger will still be required to complete implementation of an approved CRMP, he has not done so yet, so the costs estimated above are considered delayed. Using the EPA BEN model to determine the economic benefit from delayed expenditures associated with Violation 2, Staff identified the permit application cost of \$2,734, and estimated implementation cost of \$0 as a one-time non-depreciable expenditure, \$0 in capital investment, and the \$0 in annual recurring fees with a noncompliance date of the October 15, 2022 deadline and an estimated compliance date of October 15, 2023, based on the current wet season, lack of an approved CRMP, and length of time provided in the Cleanup Order to complete implementation following approval of the CRMP. The resulting economic benefit from delaying the permit application fees is \$68.

Based on the foregoing analysis, the total economic benefit estimated for Violations 1 and 2 is \$261. Consistent with the Enforcement Policy, the Total Base Liability Amount must be at least ten percent higher than the economic benefit derived from the

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<sup>2</sup> [The 2017 Direct Cost Analysis](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf)

([https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/policy/20171017\\_cannabis\\_cultivation\\_policy\\_cost\\_analysis.pdf](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf)).

## Attachment A

## Penalty Methodology

violations. Economic benefit plus ten percent is calculated to be  $\$261 + \$26 = \$287$  in this instance, which the Total Base Liability Amount exceeds.

**Step 8. Other Factors as Justice May Require**

The Enforcement Policy states that “[i]f the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for ‘other factors as justice may require,’ but only if express findings are made to justify this adjustment.” The Regional Water Board may exercise its discretion to include some of the costs of investigation and enforcement in the total administrative civil liability. Although the Regional Water Board has incurred staff costs associated with investigation and enforcement of the alleged violations, the Regional Water Board has exercised its discretion to not include such costs in the assessed liability amount.

**Step 9. Maximum and Minimum Liability Amounts**

The Enforcement Policy requires the Regional Water Board to consider the maximum and minimum liability amounts that may be assessed for each violation. For all violations, the applicable statute sets a maximum liability amount. For some violations, the statute also establishes a minimum liability amount. The maximum and minimum liability amounts for each violation must be determined for comparison to the calculated liability amounts.

**Violation 1:** Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the Regional Water Board in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Complaint alleges this violation occurred for 253 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$253,000. Water Code section 13268 does not impose a minimum liability amount; however, the Enforcement Policy requires the Regional Water Board to recover, at a minimum, the economic benefit derived from this violation plus ten percent. As previously stated, Staff calculated the economic benefit of Violation 1 to be \$193. Therefore, the minimum liability that can be imposed is \$193 plus ten percent (\$19) totaling \$212. The calculated liability for Violation 1 falls within the minimum and maximum liability amounts.

**Violation 2:** Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be administratively imposed by the Regional Water Board on a daily basis in an amount that shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. The Complaint alleges this violation occurred for 86 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$430,000. Water Code section 13350, subdivision (e)(1)(B), further provides that, “[w]hen there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.” Accordingly, the statutory minimum liability amount that can be imposed for Violation 2 is \$8,600. The calculated liability for Violation 2 falls within the statutory maximum and minimum liability amounts.

**Step 10. Final Liability Amount:**

Attachment A  
Penalty Methodology

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

**Violation 1:** After full collapsing of days from 253 days to 42 days, the liability amount for Violation 1 is calculated as 42 (days) x 0.85 (per day factor) x \$1,000 (statutory maximum per day liability) x 1.5 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.5 (Cleanup and Cooperation Factor) = **\$80,325**.

**Violation 2:** After full collapsing of days from 86 days to 36 days, the liability amount for Violation 2 is calculated as 36 (days) x 0.85 (per day factor) x \$5,000 (statutory maximum per day liability) x 1.5 (Culpability Factor) x 1.0 (History of Violations Factor) x 1.5 (Cleanup and Cooperation Factor) = **\$344,250**.

After adding the amount for Violation 1 (\$80,325) and Violation 2 (\$344,250), the Final Liability Amount is calculated to be **four hundred twenty-four thousand, five-hundred and seventy-five dollars (\$424,575)**.