

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2019-0003
IN THE MATTER OF

TENG VANG

ASSESSOR PARCEL NUMBER 041-300-006-000
SHASTA COUNTY

This Administrative Civil Liability Order (Order) is issued to Teng Vang (hereafter referred to as the Discharger or Mr. Vang) pursuant to California Water Code section 13350, which authorizes the imposition of Administrative Civil Liability. This Order is based on evidence and findings that the Discharger violated Cleanup and Abatement Order R5-2017-0701 (CAO).

The CAO also named William Clagett (Mr. Clagett) as a responsible party, based on observed violations related to the threatened discharge of waste associated with a hillside bench, cannabis cultivation, and an access road located on Assessor Parcel Number (APN) 041-300-033-000, owned by Mr. Clagett. Mr. Clagett has since complied with the requirements of the CAO as documented below and is thus not named in this Order.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) hereby finds the following:

BACKGROUND

1. In December 2015, while performing Google Earth aerial imagery review of western Shasta County, Central Valley Water Board staff (staff) noted the presence of what appeared to be several access roads on steep hillsides above Ducket Creek and several tributaries thereto. Historical Google Earth satellite imagery from 2004, 2005, 2006, 2009 and 2010 indicates APNs 041-300-006-000 and 041-300-033-000 (hereafter referred to collectively as the Site) were largely undeveloped prior to 2011 and included natural hillsides with little to no grading or access roads present. Subsequent clearing of trees, grading, construction of access roads, and cleared hillsides are visible in the 2011 and later Google Earth imagery. Due to the close proximity of Ducket Creek and its tributaries, in conjunction with the steep hillsides, staff determined that an on-Site inspection of the access roads and graded areas was necessary to better evaluate potential threats to water quality.
2. Staff used Google Earth satellite imagery, property boundaries, and publicly available geographical information system (GIS) files produced by the GIS Advisory Committee of Shasta County, to confirm that the areas of disturbance were located on the Site.
3. The Site is located directly east of Ducket Creek, a Class II watercourse that is tributary to North Fork Cottonwood Creek. The North Fork Cottonwood Creek is tributary to Cottonwood Creek and thence the Sacramento River. The soil in the area is composed of

decomposed granitic material, identified as Chaix coarse sandy loam by the United States Department of Agriculture (USDA) Web Soil Survey, and has a high erosion hazard rating.

4. Per records from the Shasta County Assessor-Recorder's Office, Mr. Vang purchased APN 041-300-006-000, a 160 acre parcel, in April 2015. Per records from the Shasta County Assessor-Recorder's Office, Mr. Clagett purchased APN 041-300-033-000, an adjacent 40 acre parcel, in October 2009. As owners of these properties, and/or the persons discharging waste or creating conditions that threaten to discharge waste to waters of the state, Mr. Vang and Mr. Clagett were identified as responsible for the condition of their properties and discharges of wastes emanating from their properties.
5. On 1 February 2016, staff contacted both Mr. Vang and Mr. Clagett by phone to discuss their properties and obtain consent to conduct an inspection. Mr. Clagett agreed to allow staff to inspect his property in his absence. Mr. Vang agreed to an inspection of his property; however, Mr. Vang requested that he be present during the inspection.
6. On 8 February 2016, staff arrived at the Site at approximately 12:00 p.m. to conduct the inspection as agreed to by Mr. Vang and Mr. Clagett. After approximately 30 minutes, Mr. Vang arrived and through communications with staff regarding the parcels to be inspected and ownership, it appeared that the exact boundary location between the parcels was uncertain. Mr. Vang escorted staff to where he believed the property boundary was located, which was further north than mapped on Garmin GPS units being used by staff. Staff asked Mr. Vang if the access roads and grading observed were located on his property, or both his property and Mr. Clagett's property, to which Mr. Vang claimed that it was all on his (Mr. Vang's) property and under his (Mr. Vang's) control. Mr. Vang asked staff to leave his property and double check the property boundaries of his and Mr. Clagett's property. Details of this encounter are documented in the CAO and Inspection Report (See Cleanup and Abatement Order R5-2017-0701).
7. After attempting to inspect the Site on 8 February 2016, staff again confirmed the property boundaries using a publicly available GIS file produced by the GIS Advisory Committee for Shasta County and determined that the boundaries that were displayed on the Garmin GPS units were correct. The access roads and grading observed by staff were located on both parcels, contrary to Mr. Vang's assertion that the access roads and graded areas were solely on his property.
8. In June 2016, staff participated in an overflight of the area and noted additional hillside clearing and cannabis cultivation occurring on the properties owned by Mr. Vang and Mr. Clagett. In addition to the cannabis cultivation staff noted the presence of water storage tanks and irrigation lines in support of the cannabis cultivation. There were no statements or applications on file with the State Water Resources Control Board's Division of Water Rights (Division of Water Rights) for water storage or diversion for the Site. The Site has no prior regulatory oversight or history with the Central Valley Water Board.
9. On 23 June 2016, California Department of Fish and Wildlife (CDFW) Warden Aaron Galwey obtained a search warrant from the Shasta County Superior Court for both properties. The warrant authorized Central Valley Water Board staff to inspect the Site for water quality violations.

10. For purposes of this Order, the Central Valley Water Board is only imposing administrative civil liability against Mr. Vang. As detailed under the Enforcement Actions section of this Order, actions taken by Mr. Clagett to date comply with the CAO and as such, Mr. Clagett is not subject to this Order.
11. Although this Order is only brought against Mr. Vang, the Central Valley Water Board reserves its right to take any enforcement actions authorized by law for violations of the CAO.

SITE INSPECTION OBSERVATIONS

12. On 24 June 2016, staff met with CDFW wardens and environmental scientists, and Shasta County Code Enforcement staff to inspect the Site. During the Site inspection of both parcels (APN 041-300-006-000 owned by Mr. Vang and APN 041-300-033-000 owned by Mr. Clagett) staff observed improper storage of various chemical fertilizers, pesticides, fuel, imported potting soil, and septage. Staff also observed the results of grading activities, constructed access roads, constructed benches, cannabis cultivation, constructed watercourse crossings, a failing earthen dam, a water diversion, a Koi farming operation, and a point source discharge to Ducket Creek. A significant portion of the associated cannabis cultivation activities were conducted on steep hillsides above several tributaries to Ducket Creek and lacked appropriate water quality protection measures.
13. The following observations were made on APN 041-300-006-000, owned by Mr. Vang:
 - a. Approximately 0.90 acres were graded to create the Southern Cannabis Cultivation Area. Grading occurred along a ridge top and along slopes that drain to tributaries of Ducket Creek. The grading occurred on highly erodible soils and lacked proper erosion and sediment control measures. Active cannabis cultivation was occurring within the graded area during the inspection. As of the day of inspection, the Southern Cannabis Cultivation Area presented threats of sediment discharge to tributaries of Ducket Creek.
 - b. Two access roads were identified during the inspection of the Southern Cannabis Cultivation Area: the Mid Access Road and the Lower Access Road. The Mid Access Road was created by grading up a hillside to a ridge top and was utilized to access and facilitate cannabis cultivation activities. The lowest portion of the Mid Access Road traverses a steep slope and construction resulted in a near vertical cut slope and an over steepened fill slope above a tributary to Ducket Creek. Staff observed a straw/fiber roll or "wattle" installed along the outside, downslope edge of the Mid Access Road; however, the Mid Access Road in general lacked appropriate erosion and sediment control measures to prevent discharges to surface waters. The Lower Access Road branches off from the Mid Access Road and traverses a steep hillside that drains directly towards a tributary to Ducket Creek. The Lower Access Road crosses the tributary via a constructed watercourse crossing labeled as Crossing 3. Crossing 3 was constructed utilizing a 12-inch plastic culvert and placement of earthen fill material over the top of the culvert. Staff estimated that approximately 38 cubic yards of earthen fill material was placed within the tributary to construct Crossing 3. While both the Mid Access Road and

the Lower Access Road present threats of sediment erosion and discharge to tributaries of Ducket Creek, the construction of Crossing 3 resulted in the direct deposition of approximately 38 cubic yards of earthen materials directly into the tributary to Ducket Creek.

- c. A failing earthen dam of unknown age was identified within a tributary to Ducket Creek during the inspection. Staff observed during the inspection that the remaining portion of the failing dam was covered with erosion control netting and was beginning to re-vegetate with grasses. However, on the northern portion of the earthen dam a large erosional gully was observed, indicating that the dam had previously overtopped. The gully discharged directly into the tributary to Ducket Creek and had begun to reestablish itself as the tributary channel. Staff estimated approximately 41 cubic yards of earthen fill material remained within the tributary from the dam structure, and approximately 13 cubic yards of earthen fill material had eroded and discharged to the tributary during the previous failure(s).
 - d. Staff documented the storage of chemical fertilizers and pesticides, and fuels directly on the ground surface with no cover or secondary containment occurring adjacent to Ducket Creek. Chemicals stored on the ground surface and lacking appropriate cover or containment present a threat of container degradation leading to potential rupture and discharge to Ducket Creek. Discharges of pesticides and fuels to surface water bodies can lead to impacts including habitat degradation and impacts to aquatic life. Discharges of fertilizers to surface water bodies could lead to excessive nutrient loading that can lead to algal blooms, lowered dissolved oxygen levels, and fish kills.
 - e. Staff also documented the disposal and storage of septage in the form of pit toilets installed above a vertical cutbank of Ducket Creek. During the inspection the pits utilized to store the septage appeared to be unlined and presented a risk of discharge of septage waste directly to Ducket Creek. A large deposit of uncovered and uncontained imported potting soil was observed directly adjacent to and upslope of Ducket Creek creating a threat of discharge.
 - f. Staff documented a water diversion on a naturally occurring spring that is tributary to Ducket Creek. The water diversion was created by stacking concrete blocks at the spring source to block the entire flow of the spring. A PVC pipe was used to divert the flow from the concrete blocks to two containers used to filter solid material out of the water. From the two containers the flow was directed to a PVC pipe that was routed to a Koi tank where a submersible pump moved water uphill to the Northern Cannabis Cultivation Area and eventually to the Southern Cannabis Cultivation Area to irrigate the cannabis plants. Research into the status of water rights on the Site yielded no active statements of diversion or other appropriate water right for the parcel.
14. Central Valley Water Board staff determined that the grading, access roads, bench construction, watercourse crossings, dam construction, and water diversion activities at the Site occurred without coverage under any of the following regulatory permits:

- a. Any waste discharge requirements, conditional waiver, or water quality certification issued by either the Central Valley Water Board or the State Water Resources Control Board;
- b. A Lake and Streambed Alteration (LSA) Agreement (1600 Agreement) from CDFW;
- c. A Clean Water Act (CWA) section 404 dredge and fill permit from the U.S. Army Corps of Engineers;
- d. A CWA section 401 Water Quality Certification from the Central Valley Water Board;
- e. A permit, license, or registration for water storage from the Division of Water Rights;
or
- f. A grading permit issued by Shasta County.

ENFORCEMENT ACTIONS

15. **6 October 2016 Draft Cleanup and Abatement Order.** A draft CAO was issued to Mr. Vang and Mr. Clagett jointly on 6 October 2016 via certified mail. The certified mail to Mr. Clagett was returned to the Central Valley Water Board as unclaimed on 17 November 2016. The certified mail to Mr. Vang was delivered 12 December 2016 as evidenced by USPS certified return receipt. As originally issued, the draft CAO included a time schedule for compliance with the tasks set forth in the draft CAO. The first task required that, by 15 November 2016, Mr. Vang and Mr. Clagett prepare and provide a proposed Interim Erosion and Sediment Control Plan to stabilize the Site and minimize erosion and further discharge during the 2016 wet weather period. The draft CAO included a comment period of 15 days for Mr. Clagett and Mr. Vang to provide comments to the Central Valley Water Board. No comments were received during the comment period.
16. **2 December 2016 Draft Cleanup and Abatement Order.** On 2 December 2016, staff reissued a second copy of the draft CAO to ensure delivery and receipt. The draft CAO was sent via standard mail to Mr. Vang and Mr. Clagett. The second copy of the draft CAO included a comment period of 15 days to provide comments. No comments were received.
17. **2 February 2017 Draft Cleanup and Abatement Order.** On 2 February 2017 staff issued a third copy of the draft CAO to Mr. Vang and served it via AAA Attorney (Process Server). The Process Server personally served the draft CAO to Mr. Vang on 5 February 2017 at 4:45 p.m. The draft CAO included a comment period of 15 days for Mr. Vang to provide comments on the draft CAO to Staff. No comments were received.
18. **9 March 2017 Final Cleanup and Abatement Order.** On 9 March 2017, after receiving no comments on the draft CAO, the final CAO was issued to Mr. Vang and Mr. Clagett by the Central Valley Water Board. The CAO was received by the Discharger, as evidenced by the USPS certified return receipt, on 13 March 2017. The final CAO was received by William Clagett, as evidenced by the USPS certified mail return receipt, on 15 March

2017. The final CAO contains the following compliance schedule for completion of mitigation and restoration work and submission of technical and monitoring reports.

- a. By 31 March 2017, Mr. Vang and Mr. Clagett were required to submit an Interim Erosion and Sediment Control Plan (Interim Plan) to staff, prioritizing immediate stabilization and mitigation efforts needed to stabilize the Site and minimize erosion and further discharge during the 2017 wet weather period.
 - b. By 30 April 2017, Mr. Vang and Mr. Clagett were required to have completed the work outlined in the Interim Plan.
 - c. By 15 May 2017, Mr. Vang and Mr. Clagett were required to submit a report of completion to Staff, including a summary and photographs of the work completed for the Interim Plan.
 - d. By 30 June 2017, Mr. Vang and Mr. Clagett were required to submit a proposed Restoration Monitoring and Mitigation Plan (RMMP) to Staff, including plans for Site restoration, abatement of long-term impacts from the Site runoff, as well as proposed mitigation to restore beneficial uses and to compensate for and minimize any further impacts to Duck Creek and tributaries thereto.
 - e. By 15 July 2017, Mr. Vang and Mr. Clagett were required to begin implementing the RMMP.
 - f. By 31 August 2017, Mr. Vang and Mr. Clagett were required to have completed the restoration and mitigation measures described in the approved RMMP.
 - g. By 1 December 2017, Mr. Vang and Mr. Clagett were required to have submitted a Completion Report for the RMMP.
 - h. By 1 October of each year (starting 1 October 2018), Mr. Vang and Mr. Clagett were required to submit an annual monitoring report summarizing the monitoring results of the RMMP. Monitoring is to continue until at least three years after successful completion of the RMMP, or until a report, acceptable to the Assistant Executive Officer, is submitted showing that Mr. Vang and Mr. Clagett have met the requirements of the RMMP.
19. To date, Mr. Clagett has complied with the requirements of the CAO and has completed implementation and initial monitoring of the RMMP.

To date, Mr. Vang has not completed any of the required items outlined in the final CAO.

20. **20 July 2018 Notice of Violation:** On 20 July 2018 staff sent the Discharger a Notice of Violation (NOV) for non-compliance with the issued CAO. The NOV required that the Discharger submit all documentation required of the final CAO no later than 20 August 2018. The NOV was sent via certified mail and was received by the Discharger on 25 July 2018, as evidenced by the USPS Tracking System confirmation and certified mail return receipt. After receipt of the NOV, the Discharger emailed staff on 28 August 2018 stating

that he had complied with Shasta County code violations and provided a copy of the 24 October 2017 Notice of Compliance provided by the County. Staff responded to the Discharger's email on 29 August 2018 explaining that county code violations, including permitted property usage and building, are not related to the CAO, issued by Central Valley Water Board, or the requirements therein. Additionally, the 29 August 2018 email response notified the Discharger that since no documentation had been provided to staff confirming that the requirements of the CAO have been met, the Central Valley Water Board had prioritized this case and may pursue additional enforcement actions related to non-compliance with the CAO. The Discharger has not responded to the 29 August 2018 staff email.

21. **13 November 2018 Administrative Civil Liability Complaint No. R5-2018-0528 (Complaint):** On 13 November 2018, the Assistant Executive Officer of the Central Valley Water Board issued the Complaint to Mr. Vang.
22. Staff attempted to provide service of the Complaint via USPS certified mail at the Sacramento address where Mr. Vang previously received certified mail. After several attempts at delivery, the Complaint package sent via certified mail was returned as unclaimed.
23. Additionally, staff from the Central Valley Water Board sent the Complaint to Mr. Vang by process server for personal service at his Sacramento address. Between 29 November 2018 and 3 December 2018, the process server attempted personal service on five separate occasions. On 29 November 2018, 30 November 2018, 1 December 2018, 2 December 2018, and 3 December 2018, the process server received no answer at the residence. On 3 December 2018, the process server posted the Complaint to the front door of the property.
24. Subsequently, Central Valley Water Board staff published notice of the Complaint and hearing dates in the Sacramento Bee newspaper once a week for four consecutive weeks. The notice was published on 20 December 2018, 27 December 2018, 3 January 2019, and 10 January 2019. The publication provided Mr. Vang until 31 January 2019 to contact Central Valley Water Board staff. To date, Mr. Vang has not responded to Central Valley Water Board staff regarding the Complaint.

PROPERTY TRANSFER OF OWNERSHIP

25. On 13 September 2018 staff received an email from Shasta County Building Inspections/Code Enforcement indicating that the Site had recently changed owners. This information was verified by the Shasta County Assessor Recorders Office, which showed that the Site had transferred ownership on 13 August 2018.
26. On 25 September 2018 staff issued a letter to the Discharger, via certified mail, stating that the ownership transfer of the Site does not in any way relieve the Discharger of his responsibilities to comply with the requirements of the CAO, nor prevent the Central Valley Water Board from pursuing additional enforcement actions due to failure to comply with the CAO. The letter requested that the Discharger provide documentation that the

new owner was made aware of the non-compliance issues and existing enforcement actions associated with the property, including any agreements that were made regarding completion of the remediation and mitigation work required in the CAO. Additionally, the letter notified the Discharger that the Central Valley Water Board had still not received any response to the email correspondence on 29 August 2018 related to the NOV. The letter was unclaimed as of 16 October 2018 and was returned to staff on 29 October 2018. To date staff has not received any response or documentation from the Discharger.

**THE DISCHARGER'S
 NON-COMPLIANCE WITH THE CAO**

27. To date the Discharger, Mr. Vang, has yet to complete any of the requirements outlined in the CAO. Table 1 outlines all potential violations associated with the Discharger's failure to comply with the CAO.

Table 1. Violations associated with non-compliance with Cleanup and Abatement Order R5-2017-0701

Violations – Non-Compliance with the CAO			
Requirement	Due Date	Water Code Violation	Maximum Per Day Penalty
Interim Plan Submission	31 March 2017	13268	\$ 1,000
Interim Plan Completion	30 April 2017	13350	\$ 5,000
Interim Completion Report	15 May 2017	13268	\$ 1,000
RMMP Submission	30 June 2017	13268	\$ 1,000
RMMP Completion	31 August 2017	13350	\$ 5,000
RMMP Completion Report	1 December 2017	13268	\$ 1,000

28. As outlined in Table 1 (above) the Discharger is potentially in violation of six requirements of the CAO. Water Code sections 13350 and 13268 authorize the Central Valley Water Board to impose civil liabilities in the amounts listed in Table 1 on a per day basis for each of the violations.
29. On 14 December 2016 Yvonne West, Esq., then Senior Counsel at the State Water Resources Control Board's Office of Enforcement, received a voice mail from Jeff Swanson, Esq. Mr. Swanson indicated he was the attorney representing Mr. Vang and was

inquiring about the correspondence the Central Valley Water Board issued to Mr. Vang on 2 December 2016. Ms. West left a follow up voicemail with Mr. Swanson on or about 19 December 2016, and again on 6 February 2017. To date staff has not received any response from Mr. Swanson nor Mr. Vang, related to Mr. Swanson's initial inquiry.

30. Although staff had little communication with Mr. Vang, Mr. Vang was aware of the violations and was given ample opportunity to come into compliance as evidenced by receipt of the three draft CAOs issued 6 October 2016, 2 December 2016, and 2 February 2017, receipt of the 9 March 2017 final CAO, as well as the 20 July 2018 NOV that was received by Mr. Vang on 25 July 2018.
31. Mr. Vang was given opportunities to comment on the CAO before it was issued. No comments were received from Mr. Vang. It is acknowledged, and reflected in the administrative record, that staff had very little communication with Mr. Vang, either verbal or written, aside from the attempted initial Site inspection (and the call that preceded it), and issuance of the CAO (in draft and final forms) and issuance of the NOV.
32. Based on the above information, Central Valley Water Board staff recommends imposing civil liabilities based on one violation of the CAO as authorized by Water Code section 13350 for failure to complete a Restoration, Monitoring, and Mitigation Plan, beginning from 31 August 2017, the date work outlined in the RMMP was to be completed.

VIOLATION – NON-COMPLIANCE WITH THE CAO

33. **Violation:** Mr. Vang failed to comply with any of the requirements of the CAO, issued on 9 March 2017. This included the requirement to file, implement, and complete a RMMP by 31 August 2017.
34. **Responsible Parties:** Mr. Vang, as the former property owner of APN 041-300-006-000, operator of the Site, and responsible party named in the CAO when the Water Code violations were observed, is liable for conditions of the Site and is responsible for complying with the CAO.

ADMINISTRATIVE CIVIL LIABILITY PROVISIONS

35. Water Code section 13350 states, in relevant part:
 - (a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or
 - (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e). . . .

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. (A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated. (B) When 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. . .

(f) A regional 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 board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

The violations alleged herein are subject to liability in accordance with Water Code section 13350.

CALCULATION OF ADMINISTRATIVE CIVIL LIABILITIES UNDER WATER CODE SECTION 13350 FOR THE VIOLATION

Maximum Civil Liability for Violation of a CAO:

36. Per Water Code section 13350, civil liability administratively imposed by the Central Valley Water Board shall not exceed \$5,000 per day per violation. Staff utilized the required RMMP completion date of 31 August 2017 as a start date. The Discharger has been in violation up to the issuance of the Administrative Civil Liability Complaint on 13 November 2018, equating to 440 days of violation. Therefore, the maximum statutory liability that may be assessed pursuant to section 13350 is \$2,200,000.
37. The Complaint, using the alternate approach in the 2010 Enforcement Policy, based the maximum civil liability on a reduced number of days of violation. Under the alternate approach, for violations that last more than thirty (30) days, 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 day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment of one day for each thirty (30) days of violation thereafter, provided that this amount is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. Here, staff has determined the Discharger's failure to submit and complete an RMMP did not result in an economic benefit that can be measured on a daily basis. Therefore, the violation at issue qualifies for the alternative

approach to penalty calculation under the Enforcement Policy as described in Attachment A of this Order. In this case, full collapse of days does not provide for a penalty that is reflective of the water quality impacts noted at the Site and does not provide for a sufficient deterrent. As a result, staff used a partial collapse of days in the Complaint for the Violation, resulting in 30 days of violation. The Complaint put the Discharger on notice that the maximum administrative civil liability that may be assessed pursuant to section 13350 is \$150,000.

38. The 2010 Enforcement Policy states that the applicable statute sets the maximum civil liability, and the 2017 Enforcement Policy clarifies that the maximum civil liability does not include any reduction in the number of days for multiple day violations. However, because the Discharger was put on notice that the maximum amount that the Board could impose was \$150,000, the maximum administrative civil liability that may be assessed by the Board at the February hearing is **One Hundred and Fifty Thousand Dollars (\$150,000)**.

Minimum Civil Liability for Violation of a CAO:

39. As provided above, Water Code section 13350 requires a minimum penalty of \$500 per day for each day there is a CAO violation and a discharge occurs, and \$100 per day for each day there is a CAO violation without a discharge. Due to the Discharger's failures to implement requirements of the CAO, it is reasonable to conclude that discharges of wastes to waters of the State occurred and that the beneficial uses of receiving waters were impacted. Staff, however, do not have sufficient information to determine how many days during the violation period that discharges occurred, nor can staff estimate volume of sediment laden water discharged from the Site. Accordingly, staff used a daily statutory minimum of \$100 per day. Using the 30 days of violation as described above, the statutory minimum under section 13350 is **Three Thousand Dollars (\$3,000)**.
40. Additionally, the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) provides that civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. Using the US EPA's BEN model and highly conservative calculations for total delayed and avoided costs, the economic benefit gained by non-compliance is calculated to be approximately **\$4,134¹** which becomes the minimum civil liability which must be assessed pursuant to section 13350 and the Enforcement Policy. In addition, the Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations, which is calculated to be approximately **\$4,547**.

¹ This figure assumes that the Discharger would not try to deduct the delayed/avoided costs to reduce taxable income. If the Discharger did try to deduct the delayed/avoided costs, the BEN model estimates an economic benefit of -\$2,058. Because inclusion of tax deductibility yields a negative number, the above figure—which does not include tax deductibility and reflects a more likely scenario of not paying income taxes on cultivation-related revenue—is presented.

41. To avoid undermining the purposes of the Water Code and the Enforcement Policy, the higher minimum of \$4,547 is used. Accordingly, the minimum liability that the Central Valley Water Board should impose for Violation 1 in accordance with Water Code section 13350 is **Four Thousand Five Hundred and Forty-Seven Dollars (\$4,547)**.

ADMINISTRATIVE CIVIL LIABILITY

42. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the 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.
43. On 4 April 2017, the State Water Resources Control Board adopted Resolution No. 2017-0020 amending the Enforcement Policy. The amended Enforcement Policy was approved by the Office of Administrative Law and became effective on 5 October 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13350. Since the violation occurred prior to approval of the 2017 Enforcement Policy, the previous 2010 Enforcement Policy will govern prosecution and basis of liability. The 2017 Enforcement Policy amendments however will be used to provide clarification and procedural requirements.

The 2010 Enforcement Policy can be found at:

https://www.waterboards.ca.gov/water_issues/programs/sso/docs/audit/25wqep.pdf

The 2017 Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

44. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Order. The civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
45. As described above, the maximum penalty that can be imposed against the Discharger for the combined violations is **\$150,000** and the minimum penalty, in accordance with the Enforcement Policy and Water Code section 13350, is **\$4,547**. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Central Valley Water Board determines that civil liability be imposed administratively on the Dischargers in the amount of **\$83,187.50**. The specific factors considered in this penalty and calculations are detailed in Attachment A of this Order.

46. Notwithstanding the issuance of the Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the CAO for which penalties have not yet been assessed or for violations that may subsequently occur.
47. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13323 and 13350 that:

1. **No later than 30 days from the date on which this Order is issued**, Mr. Teng Vang shall pay the amount of **Eighty-Three Thousand, One Hundred Eighty-Seven Dollars and Fifty Cents (\$83,187.50)**. The liability imposed is based upon a review of the factors cited in Water Code section 13327 and the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. Payment shall be made to the Waste Discharge Permit Fund (in accordance with Water Code section 13350 (k)) and shall be remitted to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670-6114.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulation, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date this Order is issued, 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 regulation applicable to filing petitions may be found on the internet at:

https://www.waterboards.ca.gov/public_notices/petitions/water_quality/

or will be provided upon request.

I, Patrick Pulupa, 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, Central Valley Region, on 7 February 2019.

Original signed by

PATRICK PULUPA, Executive Officer

Attachment A: Penalty Calculations

Attachment A

Penalty Calculations

Attachment A – ACL Order No. R5-2019-0003
Specific Factors Considered for Administrative Civil Liability
Teng Vang Assessor Parcel Number 041-300-006-000, Shasta County

The *Water Quality Enforcement Policy* (Enforcement Policy) promulgated by the State Water Resources Control Board (State Board) establishes a methodology for determining administrative civil liabilities by addressing the factors that are required to be considered under California Water Code section 13350, subdivision (e). Each factor of the nine-step approach is discussed below, as is the basis for assigning the corresponding score.

The 2017 Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Guidance on the application of the 2017 Enforcement Policy, as compared to the 2010 Enforcement Policy can be found at:

https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2017/final_enforcement_policy_memo.pdf

The 2010 Enforcement Policy was adopted in 2009 and approved in 2010. The terms of the 2010 Enforcement Policy direct the State Board to “review and revise” the Enforcement Policy every five years. (2010 Enforcement Policy, p. 31, §8.) Pursuant to that directive, the State Board approved the 2017 amendments, 2017 Enforcement Policy, on 4 April 2017, and the 2017 Enforcement Policy became effective on 5 October 2017. The 2010 Enforcement Policy still remains in effect for violations where the date of “the last act or event necessary to trigger application of the statute” occurred prior to the effective date of the 2017 Enforcement Policy.

The State Board and Central Valley Regional Water Quality Control Board (Central Valley Water Board), and the State Board’s Office of Enforcement (OE), should rely on the version of the Enforcement Policy’s substantive requirements in effect at the time of the violation to prosecute any violations. However, several aspects of the 2017 Enforcement Policy can be utilized when bringing enforcement actions that are related to conduct prior to the 2017 Enforcement Policy’s effective date. Additionally, changes to the prior policy that are reflected in the 2017 Enforcement Policy that are clarifications or procedural changes can also be applied immediately. Substantive changes reflected in the 2017 Enforcement Policy, in contrast, can only be applied to violations that occurred after the effective date of the 2017 Enforcement Policy.

In this case, the violation committed by Teng Vang (Discharger) related to not completing the Restoration, Monitoring, and Mitigation Plan (RMMP) work as required by Cleanup and Abatement Order R5-2017-0701 (CAO), occurred on 31 August 2017, prior to the effective date of the 2017 Enforcement Policy. Substantive changes from the 2017 Enforcement Policy will not be applied and the 2010 Enforcement policy will be utilized. Clarifications or procedural changes reflected in the 2017 Enforcement Policy will be utilized.

VIOLATION – NON-COMPLIANCE WITH THE CAO

Step 1 – Potential for Harm for Discharge Violations

The Enforcement Policy states that calculating the actual harm or potential for harm for discharge violations is the initial step for discharge violations. In this case, this factor does not apply because the violation is for non-compliance with the CAO, a non-discharge violation.

Step 2 – Assessments for Discharge Violations

The Enforcement Policy states that this step addresses per gallon and per day assessments for discharge violations. In this case, this factor does not apply because the violation is for non-compliance with the CAO, a non-discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The Enforcement Policy states that the Central Valley Water Board shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. Using the matrix set forth in Table 3, a Per Day Factor multiplier is determined. The Per Day Factor multipliers in Table 3 were not changed in the 2017 Enforcement Policy. The per day assessment for non-discharge violation is determined by multiplying the Per Day Factor by the maximum per day amount allowed under the California Water Code.

Potential for Harm

The definitions for Minor, Moderate, and Major Potential for Harm were considered substantive changes in the 2017 Enforcement Policy, therefore the potential for harm categories from the 2010 Enforcement Policy were used and are as follows:

Minor –

The characteristics of the violation present 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 present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major –

The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

In this case, the Discharger failed to implement requirements of the CAO, including implementation of a RMMP for APN 041-300-006-000 (hereafter referred to as the Site) to restore the Site and to mitigate the potential for discharges to waters of the State. By not implementing the RMMP, the Site continues to discharge or threatens to discharge earthen materials, soil, sediment, nutrient rich waste waters, fertilizers, and pesticides to surface waters of the State, impacting water quality and beneficial uses of receiving waters. As

documented during the Site inspection (Attachment B, Appendix A), the discharges or threat of discharges to tributaries of Duck Creek, a tributary of the North Fork of Cottonwood Creek, are a result of the Discharger's grading activities, road construction, watercourse crossing construction, dam construction, and point source discharge from a koi tank. Therefore, the Potential for Harm for the violation is determined to be **Moderate**.

Deviation from Requirement

The 2010 Enforcement Policy was revised to provide clarification of the categories for Deviation from Requirement in Table 3. The categories are defined in the 2017 Enforcement Policy as follows:

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).

In this case, the Discharger failed to complete the required RMMP, a requirement of the CAO. By not completing the RMMP, a requirement of the CAO, the CAO has been rendered ineffective in its essential function. Therefore, the Deviation from Requirement for this Violation is determined to be **Major**.

Per Day Factor

The Per Day Factor, utilizing a Moderate Potential for Harm and Major Deviation from Requirement is **0.55**. The Per Day Factor utilized is the midpoint value of Moderate Potential for Harm and Major Deviation from Requirement due to disturbed area that requires stabilization, the number of individual threatened discharges, and the point source discharge observed at the Site.

The maximum per day assessment for non-compliance with the CAO, as allowed under Water Code section 13350(e)(1), is \$5,000 per day. Utilizing an adjustment factor of 0.55, the per day assessment for the violation is \$2,750.

Multiple Day Violations

As required in the CAO, the Discharger was to have completed the restoration and mitigation measures described in the approved RMMP by 31 August 2017. To date the Discharger has not completed implementation of the RMMP, a requirement of the CAO. The Discharger has been in violation up to the issuance of the Administrative Civil Liability Complaint on 13 November 2018, equating to 440 days of violation.

Violations under Water Code section 13350 are assessed on a per day basis. However, the violations at issue qualify for the alternative approach to penalty calculation under the Enforcement Policy (page 18). Under that approach, for violations that last more than thirty

(30) days, the daily 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 Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used.

Here, the Central Valley Water Board finds that the Discharger's failure to submit a RMMP and complete the restoration and mitigation measures described in an approved RMMP results in no economic benefit from the illegal conduct that can be measured on a daily basis. Rather, the economic benefit here is associated with costs of delayed and avoided costs that would have been accrued during completion of the required actions in the final CAO, including development and completion of an approved RMMP.

Since the economic benefit cannot be measured on a daily basis, the use of the alternate approach to penalty calculation for multiple day violations is justified. The 2010 Enforcement Policy provides that, in such a case, the liability "shall not be less than" the amount calculated by determining the days of violation by counting "the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation." The minimum number of days of violation to be assessed in this case under the alternate approach is 20. However, in this case utilizing the full collapse of days does not provide for a penalty that is reflective of the water quality impacts noted at the Site and does not provide for a sufficient deterrent, therefore a partial collapse of days for the Violation is utilized, resulting in 25 days of violation.

Initial Liability Amount: The value is determined by multiplying the per day assessment by the days of violation. Utilizing 25 days of violation at \$2,750 per day of violation, the initial liability is calculated to be **\$68,750**.

Step 4 – Adjustment Factors

The 2010 Enforcement Policy considers three additional factors for potential modification of the ACL amount: the Discharger's degree of culpability, efforts to clean up or cooperate with regulatory authority, and the Discharger's history of violations. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the initial liability amount proposed for each violation to determine the revised amount for that violation.

Culpability

The 2017 Enforcement Policy revised the instruction for applying the culpability factor and changed the multiplier range. Since these are considered substantive changes, the 2010 Enforcement Policy will be used to assess the Degree of Culpability. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.50 and 1.5 will be used, with a lower multiplier for accidental incidents, and a higher multiplier for intentional or negligent behavior. The Discharger was given a multiplier value of **1.1** because the Discharger intentionally or negligently failed to produce and implement the RMMP work that was required in the CAO.

History of Violation

The 2017 Enforcement Policy revised the instructions for assessing the history of violation. Since this is considered a substantive change, the 2010 Enforcement Policy will be used to determine the adjustment for history of violations. When there is a history of repeat violations, the Enforcement Policy indicates a minimum multiplier of 1.1 to be used. The Discharger does not have a history of violations with the Central Valley Water Board. Therefore, a neutral History of Violation factor of **1.0** is assigned.

Cleanup and Cooperation

The 2017 Enforcement Policy was updated to provide clarification on determining the cleanup and cooperation adjustment factor. The adjustment factors themselves were not changed, therefore this was considered a clarification and not a substantive change from the 2010 Enforcement Policy. The 2017 Enforcement Policy recommends that adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and the higher multiplier where there is not. A reasonable and prudent response to a discharge violation or timely response to a Water Code section 13267 order should receive a neutral adjustment as it is assumed a reasonable amount of cooperation is the warranted baseline. Adjustments below or above 1 should be applied where the discharger's response to a violation or order is above and beyond, or falls below, the normally-expected response, respectively.

In this case, the Discharger failed to fully cooperate with cleanup directives. The Discharger failed to respond to the three separate draft CAOs that were sent prior to issuance of the CAO, subsequently failed to fully act on the requirements of the CAO, and has not responded or complied with the subsequent NOV issued on 20 July 2018. However, the Discharger presented uncontroverted evidence at the hearing demonstrating that he had remediated some issues at the Site. Based on the Discharger's failure to fully cooperate and cleanup the Site the Discharger was given a Cleanup and Cooperation multiplier value of **1.1**.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Total Base Liability Amount: This value is calculated as the Initial Liability Amount (\$68,750) x Adjustment Factors (1.1) x (1.0) x (1.1) and is equal to **\$83,187.50**.

The following factors apply to the Total Base Liability Amount for the violation discussed above.

Step 6 - Ability to Pay and Ability to Continue in Business

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. Based on reasonably available information regarding the Discharger's assets, it appears the Discharger may be able to pay the total base liability amount of \$83,187.50. Based on initial analysis of the Discharger's ability to pay, the Discharger owns at least one real property in joint tenancy with Lor Xia. The Discharger also

owned the Site (real property) as an individual, however, the Discharger apparently transferred title of the Site on 13 August 2018 based on information provided by the Shasta County Assessor’s office. While staff does not have information as to how much cash or other benefit, if any, the Discharger received from the transfer of the Site, or the terms of the property transaction, staff does have access to the 2018 assessed value of the Site. Table 1 contains a list of properties owned in whole or in part by the Discharger, within the last three months, and the respective assessed values. The combined tax assessor value of those properties is \$399,733, based upon the most recent available tax assessment information. It is possible that the Discharger has additional assets/income unknown to staff at this time.

Table 1

Property APN	County	Listed Owner	Assessment Year	Assessed Value
041-300-006	Shasta	Teng Vang	2018	\$ 179,562
050-0293-017	Sacramento	Teng Vang and Lor Xia	2018	\$ 220,171
Total Assessed Value for all Properties				\$ 399,733

Step 7 – Other Factors as Justice May Require

If the Central Valley Water Board believes that the proposed administrative civil liability amount using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” contained in the Water Code and Enforcement Policy but only if express findings are made to justify this.

Step 8 – Economic Benefit

Pursuant to the Enforcement Policy, the Economic Benefit Amount shall be estimated for every violation. The Economic Benefit is defined as any savings or monetary gain derived from the act or omission that constitutes the violation.

The Discharger’s economic benefit for non-compliance with the CAO is calculated from the delayed and avoided costs that would have been accrued during completion of the required actions in the final CAO, including development, completion and final completion report for implementation of the required RMMP. The calculation was completed using the US EPA’s BEN computer program, and is equal to the present value of the avoided costs plus the “interest” on delayed costs. This calculation reflects the fact that the Discharger has had the use of the money that should have been used to achieve compliance. The total Benefit of Noncompliance to the Discharger because of the violation described above is calculated to be **\$4,134**.

The 2010 Enforcement Policy states (p. 21) that the total base liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.” Therefore, the economic benefit plus 10% is estimated to be **\$4,547**.

While calculating the economic benefit, due to recent changes in Federal tax law, the BEN computer program produced results that could not be considered realistic when including tax deductibility. Due to this, and that the Discharger was operating a cannabis cultivation site illegally and outside of traditional business practices, the tax deductibility component was removed from the analysis.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violations must be determined for comparison to the amounts being proposed.

In addition to the requirement that total base liability shall be at least 10% higher than the economic benefit of \$4,134, Water Code section 13350(e)(1)(B) requires a minimum daily penalty of \$500 per day for each day there is a CAO violation and a discharge occurs, and \$100 per day for each day there is a CAO violation without a discharge. Although the Discharger has been in violation of the CAO requirement to complete a RMMP since 31 August 2017, the use of the “alternate approach” to calculating the number of days of violation results in only 30 days of violation. Therefore, the statutory minimum under Water Code section 13350 is \$3,000 (30 days x \$100/day).

To avoid undermining the purposes of the Water Code and the 2010 Enforcement Policy, as between the economic benefit analysis and the statutory minimum amount, the higher of the two minimums (i.e., \$4,547) is used in this analysis.

Maximum Liability Amount: \$150,000¹

Minimum Liability Amount: \$4,547

The proposed administrative liability amount should be within the limits created by the maximum and minimum liability amounts.

Step 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the 2010 Enforcement Policy, the final liability amount for the violation is **\$83,187.50**.

¹ This amount represents the maximum liability amount as set forth in the Complaint. This amount does not represent the maximum civil liability provided under section 13350 of the Water Code for this violation.