

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

**[PROPOSED] ORDER NO. R1-2023-0017
for Administrative Civil Liability**

**In the Matter of:
Kou Xiong and Susan Yang Xiong
Trinity County
Assessor's Parcel Number 015-420-027-00**

Administrative Civil Liability Complaint No. R1-2022-0039

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. R1-2022-0039, dated September 9, 2022 (Complaint) issued to Kou Xiong and Susan Yang Xiong (Dischargers). The Complaint alleges two violations based on evidence that the Dischargers failed to comply with Regional Water Board Cleanup and Abatement and 13267 Order No. R1-2021-0040 (Cleanup and Abatement Order or CAO) and proposes an administrative civil liability in the amount of \$506,813 pursuant to applicable laws and regulations, including California Water Code section 13350. A hearing took place on February 2, 2023, in accordance with the hearing notice and procedures served on Dischargers, and applicable laws and regulations, including California Code of Regulations, title 23, sections 648-648.8, as well as applicable orders from the Governor of the State of California.

BACKGROUND

1. Susan Yang Xiong (Ms. Yang Xiong) acquired title to Trinity County APN 015-420-027-00 (Property) on February 27, 2014 and owned the Property at the time State Water Resources Control Board, Office of Enforcement staff (Staff) documented site conditions constituting threats to water quality and beneficial uses. Ms. Yang Xiong transferred ownership of the Property to Kou Xiong (Mr. Xiong) on October 7, 2020. Mr. Xiong owned the Property at the time of the violations alleged in the Complaint. The Property conditions that triggered the Cleanup and Abatement Order persist.
2. The Regional Water Board is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within the north coast region of the State of California. The Dischargers created and threaten to create conditions of pollution by unreasonably impacting water quality and beneficial uses of the unnamed tributary to Barker Creek within the Hayfork Valley Hydrologic Sub Area and subsequently to the South Fork Trinity River Hydrologic Area. The *Water Quality Control Plan for the North Coast Region*

(Basin Plan) identifies the following existing and potential beneficial uses for the Hayfork Valley Hydrologic Sub Area within the South Fork Trinity River Hydrologic Area (Basin Plan, pp. 2-7):

- a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial service supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Freshwater replenishment
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Commercial and sport fishing
 - j. Cold freshwater habitat
 - k. Wildlife habitat
 - l. Rare, threatened, or endangered species
 - m. Migration of aquatic organisms
 - n. Spawning, reproduction, and/or early development
3. The South Fork Trinity River supports a number of aquatic species, including the California Coast Fall run Chinook Salmon, Coho Salmon, and the Northern California Coast Steelhead. The Basin Plan contains water quality objectives which are necessary for reasonable protection of the beneficial uses. Protection of fishery beneficial uses (i.e., Cold Freshwater Habitat; Commercial and Sport Fishing; Spawning, Reproduction, and/or Early Development; Rare, Threatened, or Endangered Species; and Migration of Aquatic Organisms) are of particular importance and include the following:
- Sediment (Section 3.3.11) “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - Suspended Material (Section 3.3.12) “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - Turbidity (Section 3.3.17) “Turbidity shall not be increased more than 20 percent above naturally occurring background levels.”
4. The Basin Plan (Section 4.2.1) contains the *Action Plan for Logging, Construction, And Associated Activities*, that includes the following waste discharge prohibitions:
- “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”

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

5. The federal Clean Water Act section 303(d) list identifies the South Fork Trinity River as impaired due to elevated sedimentation/siltation and high-water temperature.

On November 29, 2004, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region* (Sediment TMDL Implementation Policy) by Resolution R1-2004-0087. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

The Sediment TMDL Implementation Policy states that the Executive Officer is directed to “rely on the use of all available authorities, including the existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”

6. On June 26, 2019, Staff participated in a joint inspection of the Property with personnel and law enforcement from the California Department of Fish and Wildlife, Watershed Enforcement Team. Staff observed and documented discharges and threatened discharges of waste to receiving waters through site development, including placement of fill material in a tributary to Barker Creek; installation of a concrete diversion structure in a tributary of Barker Creek; construction of an off-stream water storage pond, redirection of a section of the tributary, discharge of cannabis cultivation tailwater and storm water from drainage pipe; improper containment of wastewater, discharge of solid waste and domestic greywater; and erosion of the main access road above a tributary to Barker Creek. Peter Xiong, Ms. Yang Xiong’s ex-husband was the cannabis cultivator onsite during the inspection and signed the State Water Resources Control Board’s, Division of Water Rights Notice of Violation for unpermitted water diversion and use. Law enforcement agents eradicated the cannabis plants on the Property.
7. On November 12, 2019, Staff provided recommendations to Ms. Yang Xiong for correcting the discharges and threatened discharges on the Property in a Notice of Violation. Ms. Yang Xiong did not reply to Staff or correct the violations documented in the Notice of Violation. Subsequently, on October 7, 2020, Ms. Yang Xiong transferred ownership of the Property to Mr. Xiong.
8. On June 23, 2021, Staff provided a draft Cleanup and Abatement Order to Dischargers and invited them to provide comments within 30-days. Again, the

Dischargers did not respond to Staff.

9. On August 11, 2021, the Regional Water Board Executive Officer issued the Cleanup and Abatement Order to the Dischargers in response to violations of the Basin Plan. The Cleanup and Abatement Order directs the Dischargers to submit a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) by September 17, 2021 (Required Action 1) and to complete implementation of the CRMP by October 31, 2021 (Required Action 4). The Dischargers did not respond, nor did they file a petition to challenge the Cleanup and Abatement Order. The period to challenge the Cleanup and Abatement Order expired on September 10, 2021.
10. On January 20, 2022, Staff advised the Dischargers in a Notice of Violation Letter that they were in violation of Cleanup and Abatement Order Required Actions 1, 4, and 5 for failing to submit a CRMP by September 17, 2021, failure to implement and complete the CRMP by October 31, 2022, and the failure to submit a completion report by December 17, 2022. The letter also informed the Dischargers of the potential for administrative civil liability pursuant to Water Code sections 13268, 13350, and 13385. The letter was returned to Staff unclaimed by the Dischargers.
11. A second Notice of Violation letter was sent to the Dischargers' addresses of record on February 24, 2022, notifying the Dischargers of the continued failure to implement the Cleanup and Abatement Order's required actions. The FedEx proof-of-delivery confirmed the second letter was delivered to both Dischargers. Nevertheless, the Dischargers did not respond to Staff.
12. On April 7, 2022, a Final Notice of Violation letter was sent to the Dischargers along with a complete translation of the letter into the Hmong language. The FedEx proof-of-delivery confirmed the final letter was delivered to both Dischargers. Nevertheless, the Dischargers did not respond to Staff.
13. The Penalty Methodology for the Complaint (Attachment A) provides the details of these violations and the factors considered in developing the civil liability. Attachment A to the Complaint is included as Attachment A to this Order and incorporated herein by reference.

VIOLATIONS

14. **Violation 1:** The Prosecution Team alleges that the Dischargers violated Cleanup and Abatement Order Required Action 1 by failing to submit a CRMP by September 17, 2021.
15. **Violation 2:** The Prosecution Team alleges that the Dischargers violated Cleanup and Abatement Order Required Action 4 by failing to implement an approved CRMP by October 31, 2021.

LEGAL AND REGULATORY CONSIDERATIONS

16. The Cleanup and Abatement Order directive to submit a CRMP was issued pursuant to Water Code section 13267.
17. The Cleanup and Abatement Order directives to implement corrective actions on the Property were issued pursuant to Water Code section 13304, subdivision (a).

WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY

18. Water Code section 13268 provides that the Regional Water Board may impose civil liability administratively to any person who fails to submit 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.

19. Water Code section 13350 states, in relevant part:

(a) A person who:

(1) violates a ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board...

(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.

(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.

WATER QUALITY ENFORCEMENT POLICY

20. 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).¹

21. 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 has considered the required factors for the alleged violations using the methodology in the 2017 Enforcement Policy, as described in Attachment A.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

22. Issuance of this Order to enforce Water Code Division 7, Chapter 5.5 is 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).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

23. The Prosecution Team proposes an administrative civil liability of **\$506,813** for the violations, as detailed in Attachment A. This proposed administrative civil liability was derived from the use of the penalty methodology in the 2017 Enforcement Policy. The proposed administrative civil liability takes into account the factors described in Water Code section 13327, such as the Dischargers' culpability, history of violations, ability to pay, and other factors as justice may require.

MAXIMUM STATUTORY LIABILITY

24. **Violation 1:** Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Dischargers failed to submit the required CRMP for **357 days** from September 17, 2021 to September 9, 2022. The statutory maximum liability for Violation 1 is \$357,000 [(\$1,000/day) x 357 days].
25. **Violation 2:** Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be imposed by a regional board administratively in accordance with Article 2.5 (commencing with Section 13323) on a daily basis in an amount up to five thousand dollars (\$5,000) for each day the violation occurs. The Dischargers failed to implement corrective actions for **313 days** from October 31, 2021 to September 9, 2022. The statutory maximum liability for Violation 2 is \$1,565,000 [(\$5,000/day) x 313 days].

¹ The 2017 Enforcement Policy is available at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

MINIMUM LIABILITY

26. **Violation 1:** There is no statutory minimum liability for this Violation.
27. **Violation 2:** Water Code section 13350 (e), requires that when pursuing civil liability under section 13350 (e)(1)(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." The minimum liability that may be imposed for this violation is \$31,300.
28. The 2017 Enforcement Policy further requires the Regional Water Board to recover, at a minimum, the economic benefit plus 10%. Attachment A includes a detailed explanation of the basis of this calculation. The Dischargers' economic benefit obtained from the violations cited in the Complaint plus 10% equals \$2,209. The administrative civil liability is more than the minimum liability amount for either Violation.

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 Enforcement Policy, the Regional Water Board finds that civil liability shall be imposed administratively jointly against the Dischargers in the amount of **\$506,813**, as explained in detail in Attachment A to this Order.
30. Notwithstanding the issuance 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/

IT IS HEREBY ORDERED, pursuant to Water Code sections 13268, 13350, and other applicable law, that:

1. The Dischargers jointly shall be assessed an Administrative Civil Liability in the amount of five hundred six thousand eight hundred thirteen dollars (\$506,813).

2. Payment shall be made no later than 30 days from the date on which this Order is adopted. The Dischargers shall send the original signed check with reference to this Order number to:

State Water Resources Control Board
Division of Administrative Services
ATTN: Accounting
1001 I Street, 18th Floor
Sacramento, CA 95814

with a copy to:

North Coast Regional Water Quality Control Board
Attn: Jeremiah Puget
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403.

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 February 2, 2023.

Valerie Quinto
Executive Officer

ATTACHMENT A