

**Regional Water Quality Control Board
North Coast Region
Executive Officer's Summary Report
June 15, 2023**

ITEM: 3

SUBJECT: Public Hearing on Administrative Civil Liability Complaint No. R1-2023-0009 issued to Daniel Maldonado Suarez, Mendocino County, Assessor's Parcel Number 011-530-09-01.

BOARD ACTION: The Regional Water Board will consider evidence and testimony from Mr. Suarez and the Prosecution Team and consider whether to impose penalties against Mr. Suarez.

BACKGROUND: On January 9, 2023, the Advisory Team of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Prosecution Team (Regional Water Board and State Water Board Office of Enforcement) staff had issued an Administrative Civil Liability Complaint (ALCL or Complaint) to Daniel Maldonado Suarez (Mr. Suarez or Discharger).

The Prosecution Team's Complaint seeks penalties of \$424,575 for alleged violations of a Cleanup and Abatement and Water Code section 13267 Order No. R1-2022-0016 (Cleanup and Abatement Order) issued to the Discharger on March 17, 2022. Pursuant to Water Code section 13323 subdivision (c), the Regional Water Board is required to hold a hearing on the Complaint within 90 days of service of the Complaint.

Mr. Suarez and the Prosecution Team agreed on a hearing date of June 15, 2023, following a pre-hearing conference held on March 9, 2023.

At the public hearing the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the Complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

DISCUSSION: According to the Complaint, Mr. Suarez acquired title to APN 011-530-09-01 (Property) on April 16, 2020. On May 13, 2021, Regional Water Board staff participated in an inspection of the Property with California Department of Fish and Wildlife (CDFW), State Water Resources Control Board (State Water Board) Division of Water Rights (Division) staff, and various law enforcement personnel during the execution of criminal search warrant.

During the inspection staff observed a spring-fed watercourse intercepted by a reservoir that according to staff appeared to have been recently reconstructed. Staff also observed an undersized culverted stream crossing and other features on the Property which they allege violated 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), and unauthorized discharges in violation of Water Code section 13260, 13264 and the Federal Clean Water Act. Staff observed a cannabis cultivation area that they allege was present in an area that

contained wetland species presenting the likelihood that wetland conditions were present in the area. Law enforcement eradicated the cannabis plants during the inspection.

On June 11, 2021, staff issued a Notice of Violation and Inspection Report to Mr. Suarez documenting water quality concerns and alleged violations observed during inspection of the Property and provided recommendations that Mr. Suarez engage qualified professionals to develop and submit a workplan to correct the violations.

On July 1, 2021, Mr. Suarez's agent, Jim Severdia, responded that Mr. Suarez intended to correct the conditions on the property that led to the issuance of the Notice of Violation. Mr. Severdia had questions and concerns regarding the features on the Property that were subject to jurisdiction of the Regional Water Board. Staff reiterated its recommendation that Mr. Suarez should retain a qualified professional to assess any jurisdictional features on the property.

Between July 1, 2021, and September 24, 2021, Mr. Severdia and Prosecution staff exchanged communications regarding staff's assessment of the reservoir and aquatic resources on the property. Mr. Severdia disagreed with staff recommendations and staff characterization of the reservoir and other property features.

On October 8, 2021, Prosecution Team staff issued a draft Cleanup and Abatement Order to Mr. Suarez with an opportunity to provide comment on the draft Order. The Draft Order proposed tasks and deadlines to cleanup and abate the impacts from alleged observed discharges and threatened discharges on the Property caused by: 1) construction/reconstruction a reservoir that intercepts unnamed tributaries; 2) grading and filling of unnamed tributaries and suspected wetlands for cannabis cultivation and associated activities on the property; and 3) the improper or inadequate containment, disposal, and/or storage of cultivation-related materials and waste.

On November 3, 2021, Mr. Severdia provided timely comments to staff on the Cleanup and Abatement Order, disagreeing with the justification for the Order. Prosecution Team staff provided written responses to the comments and transmitted the Proposed Order to the Executive Officer for review on February 16, 2022.

On March 17, 2022, after reviewing responses from staff and Mr. Severdia, the Executive Officer issued a final Cleanup and Abatement Order. The final Order required submittal of a proposed Cleanup, Restoration and Monitoring Plan (Cleanup Plan) and implementation of the Cleanup Plan.

On April 12, 2022, Mr. Severdia timely petitioned the State Water Board for review of the final Cleanup and Abatement Order. The State Water Board took no action on the petition, and it was dismissed by operation of law on July 12, 2022. Mr. Suarez did not seek judicial review.

On July 26, 2022, Staff transmitted a Notice of Violation to Mr. Suarez for failing to submit the Cleanup Plan by May 1, 2022, as required by the Cleanup and Abatement Order. The Notice of Violation also informed Mr. Suarez of the potential for administrative civil liability for non-compliance with the Order.

On August 4, 2022, Mr. Severdia communicated with staff reiterating assertions made in the Petition to the State Water Board and asserting inadequate justification for the Cleanup and Abatement Order requirements, particularly the location of watercourses on the property. Staff repeated the requirement to comply with the Cleanup and Abatement Order.

Between August 4 and November 16, Mr. Severdia exchanged communications with staff regarding Cleanup and Abatement Order compliance, including discussing retaining a qualified consultant to assess the property and compromise with the Order requirements.

On December 8, 2022, staff transmitted a second Notice of Violation for failure to develop and implement a Cleanup Plan as required by the Cleanup and Abatement Order.

On December 30, 2022, Mr. Severdia contacted staff to provide a response to the second Notice of Violation, a timeline of communications with staff, and responses to a staff communication sent November 16, 2022. In the December 30, 2022, communication, Mr. Severdia claims that existing threats to water quality have been addressed.

Staff issued the Administrative Civil Liability Complaint to Mr. Suarez on January 9, 2023. According to the Complaint, to date, Mr. Suarez has not complied with the Order requirements.

The Complaint seeks penalties totaling \$424,525 for two alleged violations of the Order: Violation 1) Mr. Suarez failed to submit a Cleanup Plan by May 1, 2022, pursuant to Water Code Section 13267, as required by Order Required Action 1; and Violation 2) Mr. Suarez failed to implement an approved Cleanup Plan by October 15, 2022, pursuant to Water Code Section 13304, as required by the Order Required Action 4.

The Advisory Team provided a Notice of Public Hearing and Tentative Hearing Procedures to the Prosecution Team and the Discharger on February 14, 2023. Both parties submitted comments and a pre-hearing conference was held on March 9, 2023. Based on the pre-hearing conference discussion, a hearing date of June 15, 2023 was set. The Advisory Team accepted additional comments on the proposed hearing and procedures.

The Prosecution Team submitted a pre-hearing motion on April 5, 2023. The motion requested a limited scope of the hearing. Mr. Severdia responded to the motion. After consulting with the Board Chair, Advisory counsel responded to all Parties that the Board would hear all relevant evidence and would not unduly restrict evidence submission.

On April 14, 2023, the Advisory Team finalized the Hearing Procedures and Public Hearing Notice.

The Prosecution Team made a timely submission of its Case in Chief on April 24, 2023, including all supporting evidence it relies on to support the Complaint. Mr. Suarez made a timely submission of his Case in Chief on May 8, 2023.

On May 17, 2023, the Prosecution Team submitted a rebuttal brief and evidentiary objections in response to the Discharger's case in chief. Mr. Severdia replied to the Prosecution Team submission on May 17, 2023. On May 25, 2023, Mr. Severdia submitted additional responses to the Prosecution Team's rebuttal brief and evidentiary objections, and additional rebuttal evidence.

No written comments were received from interested parties.

As stated in the Hearing Procedures, on May 30, 2023, the Prosecution Team is required to submit a proposed Order for the Board to consider at the hearing. The Discharger also has an opportunity to submit a proposed Order by May 30, 2023, for the Board's consideration. Proposed Orders will be provided to Board members when they are received.

RECOMMENDATION: At this time, the Executive Officer does not have a proposed recommendation. At the conclusion of the hearing and any deliberations, the Executive Officer may provide a recommendation.

SUPPORTING DOCUMENTS:

1. Administrative Civil Liability Complaint including Penalty Methodology in Attachment A.
2. Comments and Objections to Hearing Procedures (available electronically)
3. Notice of Public Hearing and Final Hearing Procedure
4. Prosecution Team Motion and Advisory Response (available electronically)
5. Prosecution Team Case in Chief (available electronically)
6. Discharger Case in Chief (available electronically)
7. Rebuttal Briefs and Evidentiary Objections (available electronically)
8. Proposed Order(s) (Will be provided to Board members when received)