

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. R2-2021-XXXX

AUTHORIZING REFERRAL OF CIVIL ENFORCEMENT TO THE
ATTORNEY GENERAL

PARAM AND AMANDEEP DHILLON
ASSESSOR'S PARCEL NO. 0052-160-090
VALLEJO, SOLANO COUNTY

WHEREAS:

- A. Param and Amandeep Dhillon (collectively, the Dischargers) own 7.6 acres of land in the City of Vallejo identified as Solano County Assessor's Parcel No. 0052-160-090 (the Property).
- B. In or around October 2019, the Dischargers authorized fill and grading activities at the Property that damaged wetlands and threatened waters of the State. According to testimony provided by Param Dhillon,¹ such activities included authorizing a currently unidentified party to import fill of unknown origin to the Property and place the fill at the Property.
- C. On November 18, 2019, Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) staff issued a notice of violation of the California Water Code (Water Code) and San Francisco Bay Basin Water Quality Control Plan (Basin Plan) to the Dischargers for their unauthorized activities.
- D. On February 7, 2020, the Regional Water Board issued a "Notice of Violation and 13267 Directive to Submit Technical Reports" (13267 Order) to the Dischargers, requiring them to submit technical reports about their fill and grading activities, wetlands, and impacts to State waters.
- E. On November 18, 2020, the Regional Water Board adopted Administrative Civil Liability Order R2-2020-0030 (ACL Order), which imposed a monetary penalty of \$61,374 on the Dischargers for failing to submit technical reports as required by the 13267 Order. The Dischargers petitioned the ACL Order to the State Water Resources Control Board (State Water Board) on December 17, 2020.
- F. The State Water Board did not act on the petition regarding the ACL Order. It was dismissed by operation of law on March 17, 2021, pursuant to Section 2050.5, subdivision (e), of title 23 of the California Code of Regulations. Regional Water Board staff notified the Dischargers by email on May 28, 2021, and

¹ Testimony of Mr. Param Dhillon during Board Hearing for Administrative Civil Liability Complaint, November 18, 2020, and by email to Regional Water Board staff on May 21, 2020.

June 11, 2021, of their obligation to pay the administrative civil liability. To date, the Dischargers have not paid the administrative civil liability.

- G. On May 27, 2021, the Regional Water Board issued Cleanup and Abatement Order R2-2021-1011 (CAO) to the Dischargers, requiring technical reports and actions to clean up or abate impacts to wetlands and waters of the State at the Property. The CAO required the first of three technical reports by July 1, 2021. Pursuant to "Required Action 1" of the CAO, for the first report, the CAO directed the Dischargers to submit documentation of the unauthorized construction activities (including the plugging of a storm drain) and an assessment of the impacts to the wetlands and waters of the State at the Property.
- H. On June 10, 2021, the Dischargers submitted two reports prepared by Gallaway Enterprises to the Regional Water Board: a "Technical Memorandum" dated June 2021 and a "Draft Aquatic Resources Delineation" dated May 2021, which concluded there was 0.27 acre of impact to pre-fill wetlands due to recent fill activities and presumed grading. In a June 22, 2021, e-mail, Regional Water Board staff informed the Dischargers of staff concerns over the methodology arriving at the impacted area, and of significant omissions and deficiencies in the submittals, including the volume and types of fill, overall description of project purpose and design, and, if the fill is suspected to contain contaminants of concern with respect to wetland habitat, an evaluation of sources of imported fill and a sampling plan. On July 2, 2021, Regional Water Board staff informed the Dischargers that an acceptable report had not been submitted by the July 1, 2021, deadline in the CAO.
- I. On July 7, 2021, Mr. Param Dhillon sent Regional Water Board staff an email responding to staff's July 2, 2021, email. The response did not correct the omissions and deficiencies. For example, it did not include the volume and types of fill or an evaluation of sources of imported fill and sampling plan. Mr. Dhillon stated, without evidence, that the fill was "clean dirt" and was placed "outside the wet area that is not jurisdictional."
- J. The Dischargers may be subject to additional civil liability for the alleged violations described herein pursuant to Water Code sections 13350 and/or 13385.
- K. Water Code sections 13350 and 13385 allow the Regional Water Board to request that the Attorney General petition the superior court to impose, assess, and recover civil liabilities for violations in accordance with sections 13350 and/or 13385. Under the Water Code, civil liabilities imposed judicially may be higher than those imposed administratively.
- L. Water Code section 13304 authorizes the Regional Water Board to request that the Attorney General petition the superior court for injunctive relief.
- M. On June 22, 2021, the San Francisco Bay Conservation and Development Commission (BCDC) referred similar issues to the Attorney General's office.

BCDC is investigating activities at the Property consistent with its own jurisdiction, which includes protecting wetlands in accordance with the 1990 White Slough Protection and Development Act (A.B. 719, California Government Code section 66672). BCDC issued Cease and Desist Order CCD2020.002.00 (CDO) to the Dischargers on February 8, 2021. The CDO also required the Dischargers to submit technical reports and perform corrective actions at the Property. The Dischargers failed to submit the technical reports the CDO required and BCDC referred enforcement of the CDO to the Attorney General's office.

- N. The Dischargers have failed to pay the liability imposed by the ACL Order, refused to provide the technical reports required by the Regional Water Board, and installed concrete to block a storm drain likely causing further environmental harm at the Property. Compliance with the CAO is important because it requires the Dischargers to cleanup and abate the effects of unauthorized fill and grading, and acceptable technical reports are needed to inform the Regional Water Board of the appropriate measures to achieve these goals. Because of the Dischargers' history of non-compliance and repeated challenges to the Board's authority over this matter, and because of the other reasons noted herein, judicial enforcement of the CAO by the Attorney General provides a better opportunity to obtain compliance at the Property and facilitates inter-agency coordination of enforcement efforts.
- O. Water Code section 13350, subdivision (g), requires the Regional Water Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Attorney General petition a court to impose and assess civil liability. On September 8, 2021, the Regional Water Board held such a hearing in compliance with section 13350, subdivision (g).

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Regional Water Board hereby instructs the Executive Officer to confer with the State Water Board Office of Chief Counsel and the Office of Enforcement on the availability of resources to support a referral to the Attorney General prior to making a referral.
2. Subject to available resources, the Regional Water Board hereby authorizes the Executive Officer to request that the Attorney General seek judicially-imposed civil penalties and injunctive relief against the Dischargers and anyone else that is determined to have acted in concert with the Dischargers to violate the Water Code at the Property pursuant to Water Code sections 13304, 13350, and/or 13385, and file other punitive causes of action, and seek other relief, as may be permissible and appropriate.
3. If a referral is made and accepted by the Attorney General, the Regional Water Board hereby authorizes the Executive Officer to seek injunctive relief and judicial civil liability against the defendants named in the complaint in an amount that the Executive Officer deems appropriate, and report to the Regional Water Board Chair.

Resolution No. R2-2021-XXXX
Dhillon Property, Vallejo

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the Regional Water Board at its regular meeting on September 8, 2021.

Michael Montgomery
Executive Officer