

Alexander Chen [SBN 245798]
William R. Walz [SBN 136995]
Theodore Lee [SBN 281475]
INHOUSE CO. LAW FIRM
7700 Irvine Center Dr., Suite 800
Irvine, California 92618
Telephone: (714) 932-6659
Facsimile: (714) 882-7770

Attorneys for Petitioner
Olivia Yutang Liu

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of:

ORDER NO. R9-2024-0205
ASSESSING ADMINISTRATIVE CIVIL
LIABILITY ON
OLIVIA YUTANG LIU

No.

PETITION FOR REVIEW

1 Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the
2 California Code of Regulations (CCR), OLIVIA YUTANG LIU (“Petitioner”) petitions the State Water
3 Resources Control Board (“State Board”) to review and vacate or amend the San Diego Regional Water
4 Quality Control Board’s Adoption of Order No., R9-2024-0205 Assessing Administrative Civil Liability
5 issued on December 11, 2024.

6 **1. INTRODUCTION**

7 The Petitioner, Olivia Liu, is the owner of the property located at 3001 Rancho Chimney Road,
8 Ranchita, CA 92066, with APN 197-100-02-00 (the “Property”). This Property had been leased out to a
9 third-party lessee with a lease term of September 28, 2019 to September 30, 2024. Declaration of Olivia
10 Yutang Liu (“Decl. Liu”) ¶ 3, Ex 1. On November 4, 2019, San Diego Water Board inspectors
11 conducted an initial site inspection and observed alleged cannabis cultivation and discharges, but no
12 notification was provided to the lessee regarding water law violations. Decl. Liu ¶ 4. Despite further
13 inspections on May 12, 2020, July 16, 2020, and December 10, 2020, the lessee was still not notified of
14 any violations. Decl. Liu ¶ 5. The San Diego Water Board compiled an Inspection Memo on January 22,
15 2021, which included reports from the aforementioned inspections. On February 26, 2021, the Board
16 issued a Notice of Violation (NOV) to Ms. Liu, including the Inspection Memo and photo evaluations
17 from May 12, 2020. Decl. Liu ¶ 6. Ms. Liu forwarded the NOV to the lessee, who clarified they were
18 growing industrial hemp, not recreational cannabis, and had an approved cultivation license from the
19 Department of Agriculture. Despite explanations, inspectors destroyed the hemp crops. Decl. Liu ¶ 6.

20 Subsequent site inspections on May 19, 2021, led to a second NOV on June 15, 2021, without
21 any accusations of violations communicated to the lessee. Decl. Liu ¶ 7, Ex 2. On July 6, 2021, a draft
22 Cleanup and Abatement Order was sent to Ms. Liu, requesting comments or evidence within 30 days.
23 Decl. Liu ¶ 8. The Cleanup and Abatement Order was issued on August 16, 2021, requiring submission
24 of a Remedial Management Plan (RMP) within 60 days and implementation by October 1, 2022. Decl.
25 Liu ¶ 8. Ms. Liu responded on September 10, 2021, stating that there was no stream on the site and
26 provided evidence, including the industrial hemp license and lessee details, asking the Board to address
27 issues directly with the lessee. Decl. Liu ¶ 9. Ms. Liu also filed a petition with the State Water Resources
28

1 Control Board to correct alleged errors in the Cleanup Order on September 14, 2021. Decl. Liu ¶ 9, Ex.
2 3. On October 14, 2021 Ms. Liu submitted a RMP. Decl. Liu ¶ 10, Ex. 4. However, the San Diego Water
3 Board rejected it on December 3, 2021, citing noncompliance with the Cleanup Order requirements.
4 Decl. Liu ¶ 10, Ex. 5.

5 Ms. Liu's petition for review of the Cleanup and Abatement Order No. R9-2021-0165 which was
6 received and acknowledged by the State Water Resources Control Board on December 13, 2021. Decl.
7 Liu ¶ 11, Ex. 6.

8 On January 31, 2022, Ms. Liu reiterated via email that no stream exists on the property and
9 provided evidence such as soil tests and crop reports showing no pollution or recreational cannabis
10 cultivation. Decl. Liu ¶ 12. On April 15, 2022, a new NOV was issued, repeating prior allegations
11 without additional evidence. Decl. Liu ¶ 13, Ex. 7.

12 On May 3, 2022, the lessee's company received an email from the Department of Agriculture,
13 Weights and Measures of the County of San Diego regarding the renewal of its industrial hemp
14 registration. Decl. Liu ¶ 14, Ex. 8.

15 On October 14, 2022, a subsequent NOV was issued by the San Diego Regional Water Quality
16 Control Board. Decl. Liu ¶ 15, Ex. 9.

17 On October 13, 2023, a Notice of Intent to Proceed With An Administrative Civil Liability
18 Complaint for Failure to Comply with Order No. R9-2021-0165 was issued by the San Diego Regional
19 Water Quality Control Board. Decl. Liu ¶ 16, Ex. 10.

20 Efforts to comply with the April 15, 2022 NOV included contacting a professional firm for RMP
21 assistance on October 18, 2023, which declined due to the absence of a stream to restore. Ms. Liu
22 submitted a response on November 10, 2023, requesting evidence to support the allegations, but the
23 Water Board did not respond until May 2024. Decl. Liu ¶ 17.

24 On May 23, 2024, the San Diego Water Board issued an Administrative Civil Liability
25 Complaint No. R9-2024-0090. Decl. Liu ¶ 18, Ex. 11. On June 10, 2024, Ms. Liu reached out to Cailynn
26 Smith with the San Diego Regional Water Quality Control Board with a request for assistance. Decl. Liu
27 ¶ 19, Ex. 12.
28

1 On June 13, 2024, Ms. Liu sent a request for revisions to the tentative hearing procedure. Decl.
2 Liu ¶ 20, Ex. 13.

3 Ms. Liu responded with evidence in July 2024, including soil test reports, maps, lease
4 agreements, and hemp licenses. Decl. Liu ¶ 21, Ex. 14.

5 On July 25, 2024, the San Diego Regional Water Quality Control Board denied my submission
6 of evidence as being untimely. Decl. Liu ¶ 22, Ex. 15.

7 On July 26, 2024, the Prosecution Team submitted its Rebuttal Evidence and Evidentiary
8 Objections. Decl. Liu ¶ 23, Ex. 16. On August 5, 2024, the Prosecution Team submitted its Request for
9 Clarification and Objections to Late Arguments. Decl. Liu ¶ 24, Ex. 17. On August 9, 2024, the
10 Prosecution Team submitted its Objection to Discharger's Late Waiver Form. Decl. Liu ¶ 25, Ex. 18.

11 At the beginning of August, 2024, Ms. Liu engaged counsel, John Lormon, with Procopio, Cory,
12 Hargreaves & Savitch LLP regarding this matter. On August 12, 2024, Ms. Liu submitted, through
13 counsel, my Opposition to Prosecution Team's Objection to Continuance of Administrative Civil
14 Liability Hearing. Decl. Liu ¶ 26, Ex. 19.

15 In preparation for the hearing scheduled for August 14, 2024, supporting documents were
16 prepared. Decl. Liu ¶ 27, Ex. 20. Thereafter, an updated set of supporting documents was prepared for
17 the hearing scheduled for October 9, 2024. Decl. Liu ¶ 28, Ex. 21.

18 With my counsel withdrawn from the case, Ms. Lui prepared her defense for the hearing on the
19 Administrative Civil Liability Complaint dated September 10, 2024. Decl. Liu ¶ 29, Ex. 22. A
20 subsequent amended defense dated September 13, 2024 was submitted. Decl. Liu ¶ 29, Ex. 23.

21 The Prosecution Team submitted its Evidentiary Objections and Rebuttal Arguments on
22 September 20, 2024. Decl. Liu ¶ 30, Ex. 24.

23 The Prosecution Team submitted its Proposed Findings of Facts and Conclusions of Law and its
24 amended version on September 26, 2024. Decl. Liu ¶ 31, Ex. 25.

25 Additionally, the Prosecution Team also submitted its Proposed Attached A: Liability
26 Methodology for Proposed ACLO and also an amended version on September 26, 2024. Decl. Liu ¶ 32,
27 Ex. 26.
28

1 A hearing was conducted on October 9, 2024, where Ms. Liu and her father rebutted the
2 allegations, citing errors in the Water Board’s evidence. The hearing concluded without a penalty but
3 allowed 45 days to provide additional materials as stated in the Advisory Team Summary Report and the
4 Order of Proceedings for ACLC. Decl. Liu ¶ 33, Ex. 27.

5 Ms. Liu hired Ben Ho and his team, who had reached out to Mr. Brian Covellone, the Senior
6 Engineering Geologist with the South Coast Regional Cannabis Program regarding this matter. Decl.
7 Liu ¶ 34, Ex. 28. Thereafter, Ben Ho and his team began site assessments and mapping, culminating in a
8 site survey by licensed engineer Gary A. Lewis on November 18, 2024, confirming the absence of a
9 physical stream and attributing water flow to natural drainage patterns. Decl. Liu ¶ 35, Ex. 29. Mr. Ho
10 provided Mr. Lewis’s November 18, 2024 survey to the San Diego Regional Water Quality Control
11 Board on November 26, 2024 via email. Decl. Liu ¶ 36, Ex. 30. Despite this, on December 4, 2024, the
12 San Diego Regional Water Quality Control Board rejected the engineer’s report and mapping results.
13 Decl. Liu ¶ 37, Ex. 31.

14 On December 11, 2024, the San Diego Regional Water Quality Control Board imposed a
15 substantial fine, disregarding Ms. Liu’s evidence. In the hearing, the board adopted Order No. R9-2024-
16 0205 Assessing Administrative Civil Liability in this matter. Decl. Liu ¶ 38, Ex. 32. This order,
17 however, should be vacated as being inappropriate and improper for several reasons. Specifically, the
18 notice provided was defective, which resulted in the absence of the petitioner or her representative at the
19 hearing. Decl. Liu ¶ 39.

20 Specifically, the notice for the December 11, 2024 meeting, however, did not clearly indicate
21 that Ms. Liu’s or her representatives' presence was required. Decl. Liu ¶ 39. As such, Ms. Liu was under
22 the impression that the meeting was a closed-door session, primarily because it was scheduled as part of
23 a regular meeting and explicitly mentioned that no additional arguments or evidence concerning her
24 liability would be heard. Decl. Liu ¶ 39.

25 Moreover, Ms. Liu believed that her primary obligation was to submit a compliant restoration
26 and monitoring plan within 45 days, as stated in the notice. Decl. Liu ¶ 40. There was no clear
27 instruction or indication that her presence at the December 11, 2024, meeting was necessary. Decl. Liu ¶
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1 Ultimately, this lack of clarity and the misleading nature of the notice deprived Ms. Liu of her
2 opportunity to be heard and for the evidence to be submitted and considered by the San Diego Regional
3 Water Quality Control Board. Decl. Liu ¶ 44.

4 Accordingly, the Order is inappropriate and improper for the following reasons:

- 5 i. There are fundamental errors in the Clean Up order and submission and
6 implementation of a Restoration and Monitoring Plan is infeasible;
7 ii. The burden of complying with the Restoration and Monitoring Plan exceeds the
8 benefits;
9 iii. The Order violates Due Process given the totality of the circumstances and the
10 excessive civil liability; and
11 iv. The assessed Administrative Civil Liability of \$409,534 is an excessive fine and
12 in violation of the Eighth Amendment.

13 **2. IDENTIFICATION OF PETITIONER**

14 Olivia Yutang Liu
15 449 Walnut Avenue
16 Arcadia, California 91007
17 (626) 236-6772
18 Liulv598@gmail.com

19 Please provide a copy of all materials related to this matter to counsel of record:

20 Alexander Chen
21 William R. Walz
22 Theodore S. Lee
23 **INHOUSE CO. LAW FIRM**
24 7700 Irvine Center Dr., Suite 800
25 Irvine, California 92618
26 Telephone: (714) 932-6659
27 Facsimile: (714) 882-7770

28 **3. REGIONAL BOARD ACTION TO BE REVIEWED**

 Petitioner seeks review of Order No. . R9-2024-0205 Assessing Administrative Civil Liability on
Olivia Yutang Liu.

1 **4. DATE OF REGIONAL BOARD ACTION**

2 The Order was signed by David W. Gibson as the Executive officer for the San Diego Regional
3 Water Quality Control Board on December 11, 2024.

4 **5. STATEMENT OF REASONS WHY THE REGIONAL BOARD ACTION WAS**
5 **IMPROPER**

6 As explained in detail below, the Regional Board action was inappropriate and improper for the
7 following reasons:

- 8 A. There are fundamental errors in the Clean Up order and submission and implementation
9 of a Restoration and Monitoring Plan is infeasible
- 10 B. The burden of complying with the Restoration and Monitoring Plan exceeds the benefits
11 to be obtained
- 12 C. The Order violates Due Process given the totality of the circumstances.
- 13 D. The assessed Administrative Civil Liability of \$409,534 is an excessive fine.

14 **6. MANNER IN WHICH PETITIONER IS AGGRIEVED**

15 Ms. Liu is aggrieved because the Penalty Order illegally requires her to pay a penalty of
16 \$409,534.

17 **7. STATE BOARD ACTION REQUESTED BY PETITIONER**

18 The Petitioners seek an immediate stay of the Order, while the Board reviews this Petition.

19 Further, the Petitioners seek the following action:

- 20 1) The Petitioner respectfully requests that the Board vacate the Order.
- 21 2) In the alternative, the Petitioners request that the Board:
- 22 a. Cancel or significantly reduce the assessed amount of the
23 administrative civil liability to be commensurate with the case;
- 24 b. Acknowledge the absence of a stream on the property and revise
25 the CAO accordingly;
- 26 c. Recognize the results of the soil tests as conclusive evidence that
27 there is no pollution in the identified areas; and
28

- 1 d. Eliminate unachievable requirements such as stream restoration
2 and RMP submission.

3 **8. POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE**
4 **PETITION**

5 The State Board should vacate the Order for the following reasons:

- 6 1) There are fundamental errors in the Cleanup order and submission and
7 implementation of a Restoration and Monitoring Plan is infeasible
8 2) The burden of complying with the Restoration and Monitoring Plan exceeds the
9 benefits to be obtained
10 3) The assessed Administrative Civil Liability of \$409,534 violates due process.
11 4) The assessed Administrative Civil Liability of \$409,534 is an excessive fine.

12 **A. STANDARD OF REVIEW**

13 Pursuant to California Water Code Section 13320(a), an aggrieved person may petition the State
14 Board to review a Regional Board order, within 30 days of such order. The State Board may find that
15 the actions of a Regional Board were inappropriate or improper and direct the Regional Board to take
16 the appropriate action, refer the issue to another state agency with jurisdiction, or take the appropriate
17 action itself. Water Code Section 13320(c).

18 The State Board is not subject to the standards which bind a court, and the scope of the State
19 Board's review is "closer to that of independent review." *In the Matter of the Petition of Exxon*
20 *Company*, Order No. WQ 85-7, at p. 10. In reviewing a Regional Board action, the State Board shall
21 consider the record before the Regional Board, and any other relevant evidence which it wishes to
22 consider. Water Code Section 13320(b); *In the Matter of the Petition of Exxon Company, U.S.A., et al.*
23 *of the Adoption of the Cleanup and Abatement Order No. 85-066*, Order No. WQ 85-7, at p. 10.
24 However, any findings made by an administrative agency in support of an action must be based on
25 substantial evidence in the record. (*Id.*, citing *Topanga Association for a Scenic Community v. County of*
26 *Los Angeles* (1974) 11 Cal. 3d 506, 113 Cal. Rptr. 836).

27 This petition was filed by Petitioner, an aggrieved party, within 30 days of the issuance of the
28

1 Order and is therefore timely filed for review by the State Board. Pursuant to Water Code Section
2 13320, the State Board should independently review the record and any other materials that it wishes to
3 consider. The State Board should vacate the Order because it is inappropriate and improper, compliance
4 with the Cleanup Order is infeasible, the burden of compliance with the Order is not reasonably related
5 to the benefits of the Restoration and Monitor Plan to be produced, the Regional Board has not produced
6 evidence that the work plan is necessary, and the penalty order violates due process.

7 **B. THE STATE BOARD SHOULD VACATE THE ORDER BECAUSE IT IS**
8 **INAPPROPRIATE AND IMPROPER TO THE DEGREE THAT ITS**
9 **IMPLEMENTATION IS INFEASIBLE**

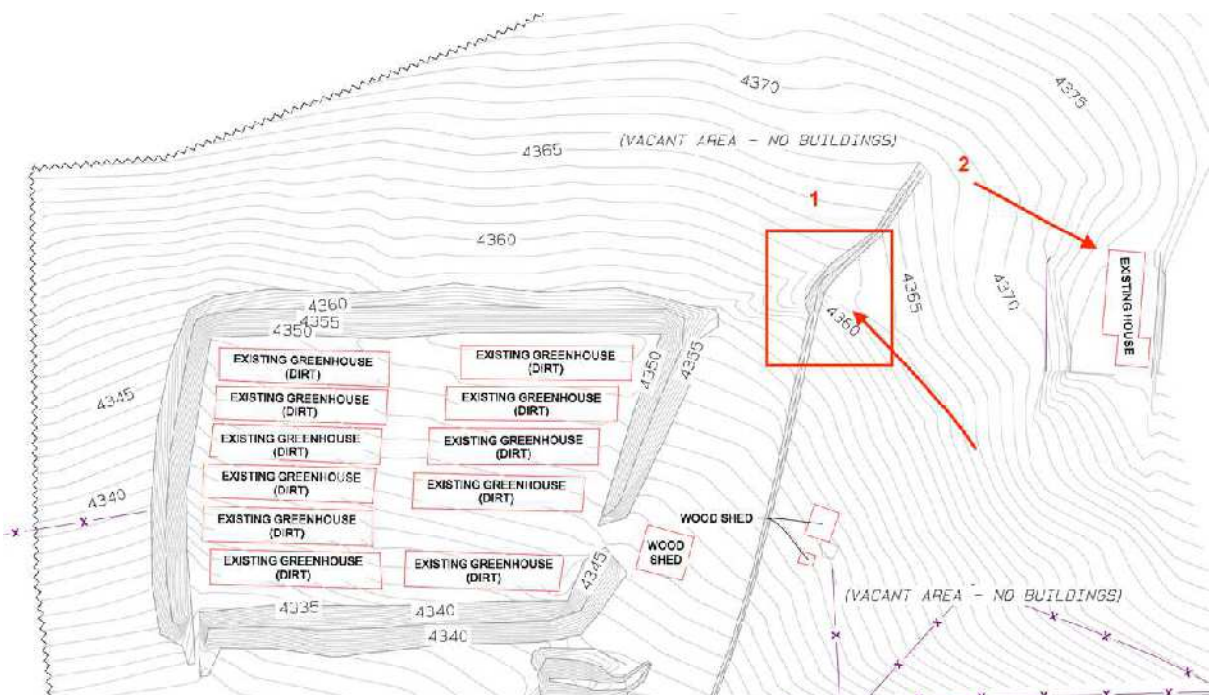
10 The State Board should vacate the Order because it is inappropriate and improper. See Water
11 Code Section 13320(c). There are fundamental errors in the Cleanup order and submission and
12 implementation of a Restoration and Monitoring Plan is infeasible. Specifically, the Cleanup Order No.
13 R9-2021-0165 is based on the erroneous assumption that a stream exists on the property site and that
14 greenhouses were built on this stream, resulting in the alleged pollution. However, this assumption is
15 factually incorrect. As a result, the Cleanup Order requires the Petitioner, among other things, to submit
16 a Restoration and Monitoring plan (RMP) for the restoration of a stream and riparian area that do not
17 exist.

18
19 Petitioner engaged Gary A. Lewis, PLS 8601, a licensed California Engineer and member of the
20 State of California Local Land Surveying Association with over thirty years of experience, to conduct a
21 survey of the property site. Declaration of Lewis (“Decl. Lewis”) ¶¶ 1-4. Mr. Lewis performed a survey
22 of the Property site on November 11, 2024 and conclusively found no physical riverbed or established
23 watercourse on the property site. Decl. Lewis ¶¶ 6-7. The Petitioner submitted Mr. Lewis’s
24 boundary/topographical map and report which stated that “[d]uring the survey, no discernable physical
25 creek bed or established watercourse was identified within the area of concern. Observations indicate
26 that any water runoff in the area appears to be attributable to natural occurrences, such as precipitation
27 or surface drainage patterns, rather than from a defined or permanent water feature.” Decl. Lewis ¶¶ 6-7.

28 Rather than substantively respond to Mr. Lewis report, the Regional Board determined that the

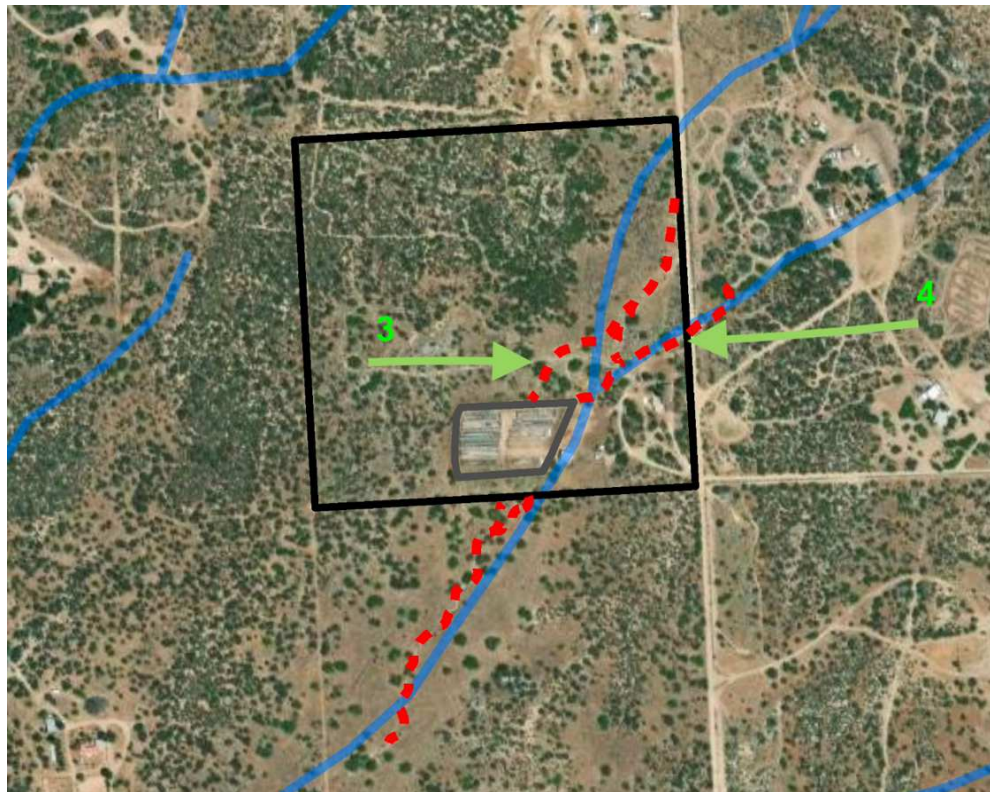
1 response did not meet the requirements of the Cleanup Order. In addition, the Regional Board found that
2 since Mr. Lewis have conceded that water does flow naturally through the property after a precipitation
3 event, it qualifies as state of water which is typically defined as an ephemeral stream. The Regional
4 Board's record however mischaracterizes the completeness of Mr. Lewis's opinion. Decl. Lewis ¶ 8.

5 In his amended surveyor report, Mr. Lewis provided clear GPS coordinates of the elevation,
6 which suggests that even with an ephemeral stream in the hoop house area, the water flow could not
7 have reached the area of concern, as in area one (1) because the ephemeral stream is twenty feet lower in
8 elevation compared to the area of concern. Decl. Lewis ¶ 9. Water cannot flow against gravity. Decl.
9 Lewis ¶ 9. As one can see below in the excerpt from my survey result, the location of concern area one
10 (1) has an elevation of 4360, while the hoop house area is at a lower elevation of 4350. Indeed, the hoop
11 house area is a slightly lower-lying piece of land than its surroundings. Decl. Lewis ¶ 9. As for the area
12 (1), it is a deeper drainage channel that extends from north to south. Decl. Lewis ¶ 9. Water flows
13 through this channel during heavy rainfall due to the slope naturally directing water southward. Decl.
14 Lewis ¶ 9. The drainage channel is dry under normal conditions and only carries water during
15 extraordinary rainfall. This channel is approximately 200 feet away from the hoop houses. Decl. Lewis ¶
16 9.
17



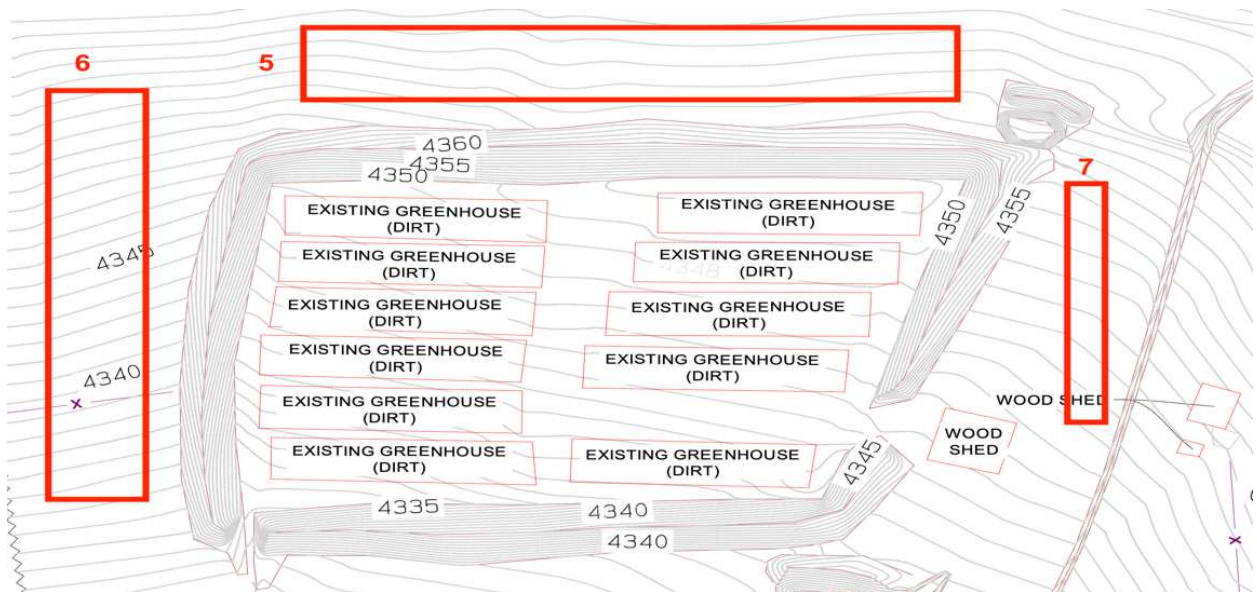
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2 The Prosecution Team also referred to area one (1) as the “V”-shaped contours” and suggested it
3 was created as the shallow stream channel was diverted where the berm impacted natural water flow.
4 Decl. Lewis ¶ 10. This is not true. Decl. Lewis ¶ 10. The “V” shape contours were created as the natural
5 drainage gets diverted due to the construction grading of the neighboring house, the well, and the
6 dilapidated sheds, as seen in area two (2). Decl. Lewis ¶ 10. These areas are graded to build level pads
7 and allow easier travel, thereby changing some of the natural drainages around the property. Decl. Lewis
8 ¶ 10. In any case, this is well outside the “hoop house” graded area. Decl. Lewis ¶ 10. The “V” shape
9 contours, area one (1), take any water that flows from the northeast end of the property and divert the
10 flows to the south end of the property away from the “hoop house” area. Decl. Lewis ¶ 10. Therefore, the
11 water flow would not and could not be contaminated as it starts from the areas northeast and moves the
12 water around the property to the south, where it disperses out naturally. Decl. Lewis ¶ 10.

13
14 Further to the point, based on Mr. Lewis’s observation and survey results, the two suggested
15 waterways (3) and (4), as outlined in the red dotted line by the prosecution team, simply do not exist.
16 Decl. Lewis ¶ 11.



1 Decl. Lewis ¶ 11. As such, there could not have been any natural flowing water that would run through
2 the greenhouse area under any circumstance. Decl. Lewis ¶ 11. In any case, water cumulation due to
3 precipitation events in the greenhouse area cannot travel to the V-shape contour area as discussed before
4 due to elevation differences. Decl. Lewis ¶ 11.

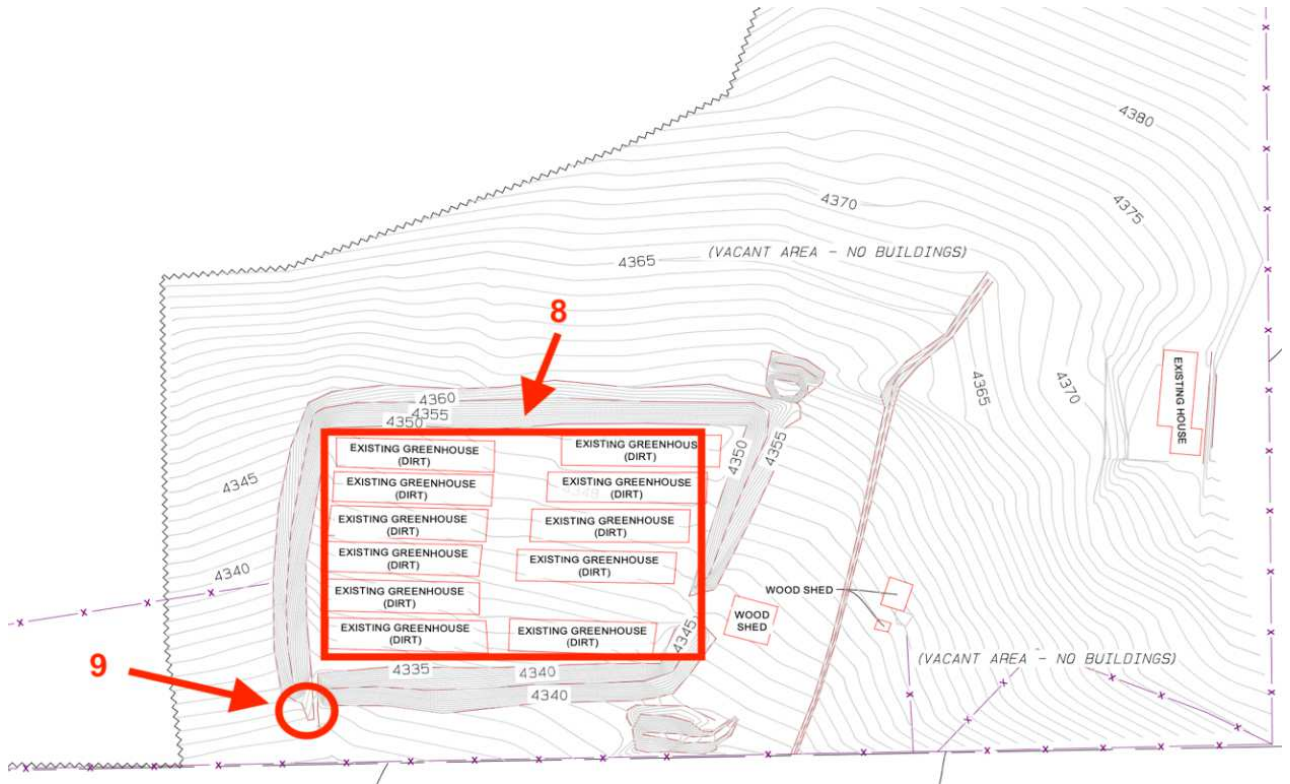
5 As to the surrounding areas five (5), six (6), and seven (7), any flow of water into the greenhouse
6 area due to perceptions event would have been stopped by the surrounding berms. Decl. Lewis ¶ 12.



17 Decl. Lewis ¶ 12.

18 Therefore, the only ephemeral stream event at issue is when there is a precipitation event, and this is
19 referring to where the rainwater is kept inside the greenhouse area as it falls directly from the sky. Decl.
20 Lewis ¶ 13. It is important to note that the greenhouse area is in the lower-lying elevation and, therefore,
21 is considered a retention basis (area number 8). Decl. Lewis ¶ 13. Under regular precipitation events, in
22 typical weather, such as in the San Diego area, any cumulation of the water would have been kept within
23 the greenhouse area and eventually be absorbed through the soil. Decl. Lewis ¶ 13. Even if there is a
24 hundred-year storm, as one would know, retention ponds act as a stormwater control structure that
25 provides retention and treatment of contaminated stormwater runoff, by capturing and retaining
26 stormwater runoff, wet retention ponds control stormwater quantity and quality. Decl. Lewis ¶ 13. The
27 pond's natural processes then work to remove pollutants. Decl. Lewis ¶ 13. In this way, no water from
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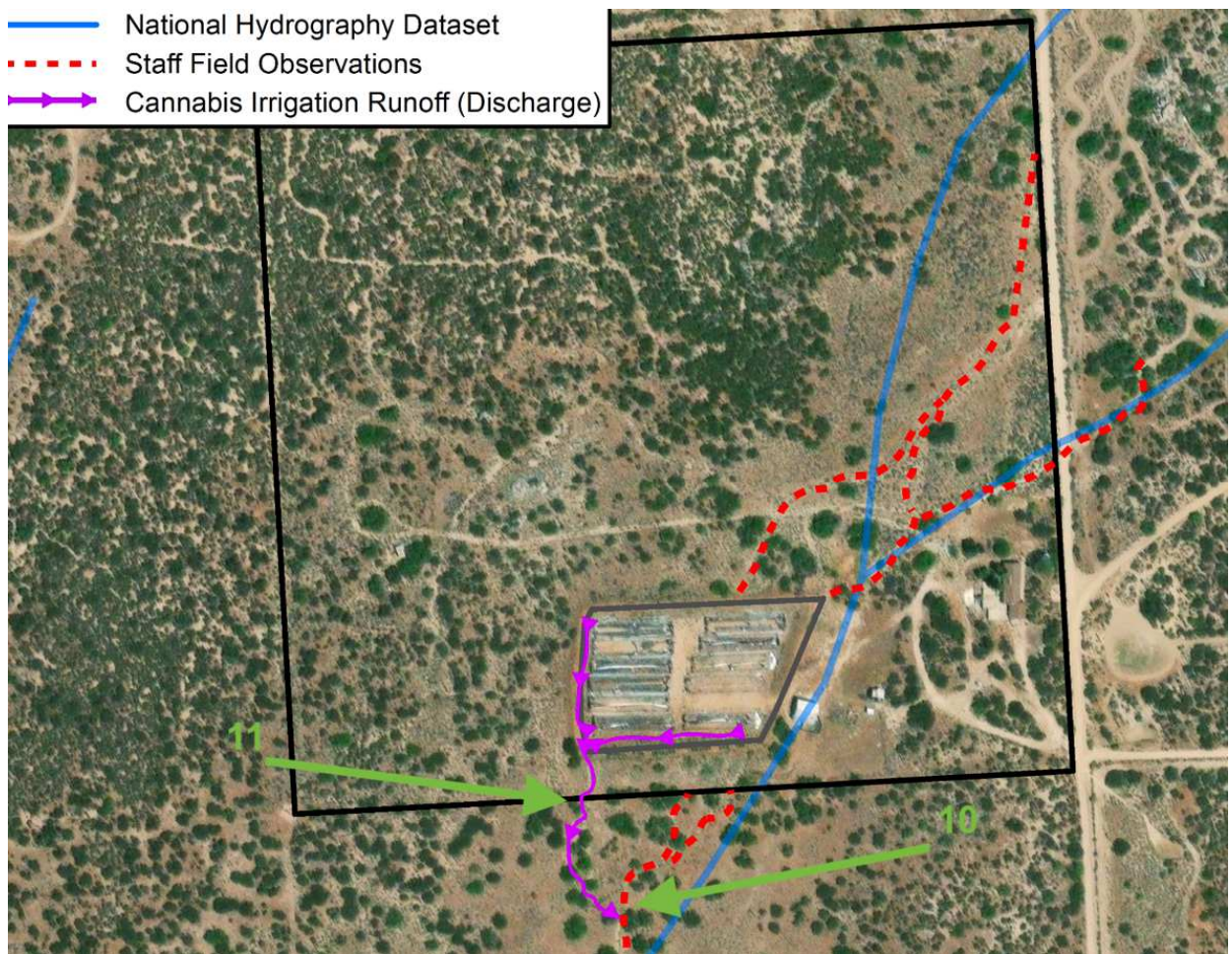
1 the basin would be polluted. Decl. Lewis ¶ 13. Any water leaving the basin must travel southbound
2 through area (9) and disperse into the surrounding soil as shown below. Decl. Lewis ¶ 13.



16 Decl. Lewis ¶ 13.

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1 Lastly, the prosecution team believes that water drainage around the berm area would have
2 flown through an observed waterway, as illustrated in the red dotted line, which connects to the known
3 blue waterway as it discharges into the watercourse. Decl. Lewis ¶ 14. This cannot be true. Decl.
4 Lewis ¶ 14.



21 As shown above, Mr. Lewis confirmed that he did not observe any waterway (10) or (11) and
22 believe in the event any water would have left the basin they would have been dispersed and absorbed
23 by the soil area to the southwestern end of the basin and extremely unlikely to have been able to travel
24 to the blue line without a viable path. Decl. Lewis ¶ 14.

25 In light of the above findings the board's demand the submission of a Restoration and
26 Monitoring Plan (RMP) is unreasonable and impractical as it requests for a restoration of a non-
27 existent stream. Decl. Lewis ¶ 15. Accordingly, compliance with the Order is infeasible because it
28 requires for the Restoration and Monitoring of a Non-existent stream.

1
2 **C. THE STATE BOARD SHOULD VACATE THE ORDER BECAUSE THE**
3 **BURDEN OF COMPLYING WITH THE ORDER EXCEEDS THE BENEFITS TO**
4 **BE OBTAINED FROM THE RESTORATION AND MONITOR PLAN**

5 The State Board should vacate the Order because the burden of complying with the order
6 exceeds the benefits to be obtained from the Restoration and Monitoring Plan required by the Order.
7 Pursuant to Water Code Section 13267, the burden, including costs, of reports required by the Regional
8 Board shall bear a reasonable relationship to the need for the report and the benefits to be obtained from
9 the reports. As detailed in the following sections, Restoration and Monitor Plan is not necessary and, in
10 fact, is infeasible. However, under the Order, Petitioner must prepare and submit a Restoration and
11 Monitor Plan for a non-existent stream.

12 Even if the Petitioner is able to prepare and submit a Restoration and Monitor Plan for a non-
13 existent stream, Petitioner estimates that the cost of performing the work to comply with the Order
14 would be prohibitively expensive, not to mention unnecessary, due to the need to conduct additional
15 investigations, performing the investigations, including monitoring, and providing analysis and a
16 technical report regarding the results. These costs of compliance with the Order for a non-existent
17 stream do not bear a reasonable relationship to the Restoration and Monitor Plan required by the Order
18 because it is not necessary and infeasible.

19
20 **D. THE STATE BOARD SHOULD VACATE THE ORDER BECAUSE THE ORDER**
21 **VIOLATES DUE PROCESS**

22 A party can establish that an agency has violated that party's "constitutional due process right to
23 an impartial tribunal" in any one of four ways: (1) by identifying financial or other personal interest, (2)
24 by establishing that "rules mandating an agency's internal separation of functions and prohibiting ex
25 parte communications" have not been observed, (3) by showing actual bias, or (4) by showing that a
26 particular combination of circumstances (sometimes referred to as the "totality of the circumstances"),
27 creates an unacceptable risk of bias. *Morongo Band of Mission Indians v. State Water Resources*
28 *Control Bd.* (2009) 45 Cal.4th 731, 741. Here number (4) applies. The Regional Board violated the due-

1 process protections of the California and United States Constitutions.

2 A trial must not only be fair; it must appear to be fair. The same applies to adjudicatory
3 proceedings. (See *Morongo*, 45 Cal.4th 731, and cases it cites.) Here, Ms. Liu did not receive a fair trial
4 because the “totality of the circumstances” created an unreasonable risk of bias.

5 The impression of bias was created, first and foremost, by the Regional Board’s preferential
6 treatment of the prosecution team. The prosecution team was not treated “like any other party”. (See
7 *Morongo*, quoted above.) Instead, the Regional Board treated the prosecution team like its own staff,
8 which indeed they are. As discussed above, the legal positions taken by the prosecution team were taken
9 as correct legal determinations, rather than as the disputed arguments of a party. Factual statements
10 made by the prosecution team were also assumed to be true, and were not challenged by Board
11 members. The burden was placed on Ms. Liu to disprove the assertions of the prosecution team, rather
12 than on the prosecution team to prove their case.

13 **i. Lack of Clear Notice and Misleading Information**

14 The notice for the December 11, 2024, meeting did not clearly indicate that Ms. Liu’s or her
15 representatives' presence was required. As such, Ms. Liu was under the impression that the meeting was
16 a closed-door session, primarily because it was scheduled as part of a regular meeting and explicitly
17 mentioned that no additional arguments or evidence concerning her liability would be heard. This lack
18 of clarity and the misleading nature of the notice deprived Ms. Liu of her opportunity to be heard, which
19 is a fundamental aspect of due process.

20 **ii. Miscommunication on Obligations**

21 Ms. Liu believed that her primary obligation was to submit a compliant restoration and
22 monitoring plan within 45 days, as stated in the notice. There was no clear instruction or indication that
23 her presence at the December 11, 2024, meeting was necessary. This miscommunication led to her
24 absence, which subsequently affected her ability to present her case and defend her interests. The failure
25 to provide clear and precise instructions on procedural requirements constitutes a violation of due
26 process rights.
27
28

1 of these factors demonstrates that the Petitioner's right to an impartial tribunal was compromised, as
2 established in the precedent set by *Morongo Band of Mission Indians v. State Water Resources Control*
3 *Board* (2009) 45 Cal.4th 731, 741.

4 The petitioner respectfully requests that the Court acknowledges the violation of her due process
5 rights and takes appropriate remedial actions to ensure a fair and impartial hearing.

6 **E. THE STATE BOARD SHOULD VACATE THE ORDER BECAUSE THE**
7 **PENALTY ORDER IS AN EXCESSIVE FINE**

8 **i. The Penalty Order Violates The Eighth Amendment's Excessive Fines**
9 **Clause**

10 The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines
11 imposed, nor cruel and unusual punishments inflicted.” The Excessive Fines Clause “limits the
12 government’s power to extract payments, whether in cash or in kind, as punishment for some offense.”
13 *Austin v. United States* (1993) 509 U.S. 602, 609-610, citation and internal quotations omitted. “[A] civil
14 sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as
15 also serving either retributive or deterrent purposes, is punishment, as [the U.S. Supreme Court has]
16 come to understand the term.” (*Id.* at 621, emphasis in original, citation and internal quotations omitted.)

17 A fine must be proportional:

18 The touchstone of the constitutional inquiry under the Excessive Fines
19 Clause is the principle of proportionality: The amount of the [fine] must
20 bear some relationship to the gravity of the offense that it is designed to
21 punish.

22 *United States v. Bajakajian* (1998) 524 U.S. 321, 334. In *Bajakajian*, the U.S. Supreme Court held that a
23 fine violates the Excessive Fines Clause “if it is grossly disproportional to the gravity of a defendant’s
24 offense.” (*Id.*) The Court has focused on three criteria: (1) the degree of the defendant’s reprehensibility
25 or culpability, (2) the relationship between the penalty and the harm to the victim caused by the
26 defendant’s actions, and (3) the sanctions imposed in other cases for comparable misconduct. *Cooper*
27 *Indus. v. Leatherman Tool Group, Inc.* (2001) 532 U.S. 424, 435, citations omitted.

28 Here, the penalty is grossly disproportional under all three criteria. First, Ms. Liu has a low

1 culpability. Second, the prosecution team has not established any relationship between the penalty and
2 damage to the environment. Third, the proposed penalty is disproportionate to other comparable matters.

3 **1. Low Culpability**

4 The Petitioner’s level of culpability in this matter is minimal because the Petitioner has made
5 consistent and genuine efforts to comply with the directives of the Cleanup Order. This includes hiring
6 qualified professionals to assist with the Restoration and Monitoring Plan preparation, conducting
7 necessary land surveys, and undertaking soil testing to address the concerns of the Water Board. Despite
8 facing significant challenges and misunderstandings, the petitioner has demonstrated a sincere
9 commitment to fulfilling her obligations as mandated by the Cleanup Order.

10 **2. No Relationship Between Penalty and Harm**

11 There is no relationship between the penalty imposed and the harm alleged because,
12 fundamentally, there is no harm due to the absence of a water stream on the property. The Cleanup
13 Order was predicated on the erroneous assumption that a stream existed and was polluted by
14 greenhouses. However, a thorough survey conducted by Gary A. Lewis, PLS 8601, a licensed engineer,
15 conclusively found that there is no physical riverbed or established watercourse on the property.
16 Consequently, without the existence of a stream, there can be no pollution, and thus no environmental
17 harm requiring remediation.

18 Moreover, it is important to note that the prosecution team did not contend that the penalty is
19 based on the cost to remediate any alleged environmental harm. The Regional Board's penalty
20 assessment was not grounded in considerations such as cleanup costs or other measures of
21 compensability typically associated with environmental restoration. This further underscores the lack of
22 correlation between the penalty and any actual harm.

23 While harm is indeed a factor used in the penalty consideration, it serves merely as an
24 adjustment that may increase or decrease the penalty. The penalty imposed is not derived from any
25 calculation of remedial costs, loss of use, or any economic assessment of harm. Therefore, the basis for
26 the penalty remains unsupported by tangible evidence of environmental damage or the need for financial
27 restitution for cleanup activities.
28

1 In conclusion, the petitioner's argument hinges on the factual inaccuracy of the Cleanup Order's
2 assumptions and the absence of any real harm. Given that there is no stream to restore and no pollution
3 to remediate, the imposed penalty lacks a justified basis and should be reconsidered or nullified
4 accordingly.

5 **3. Disproportionate To Other Comparable Matters**

6 Since no harm has been demonstrated, there should be no penalty imposed. The Cleanup and
7 Abatement Order (CAO) is predicated on the erroneous assumption that a stream exists on the
8 petitioner's property and that pollution has occurred. However, the survey conducted by Gary A. Lewis,
9 PLS 8601, a licensed engineer, conclusively found no physical riverbed or established watercourse on
10 the property. Additionally, two rounds of soil testing confirmed the absence of contamination or
11 pollution in the areas identified by the Water Board.

12 Given these findings, it is clear that no environmental harm has occurred. Without evidence of
13 harm, the basis for imposing a penalty is unfounded. In matters where no harm is demonstrated, it is
14 standard practice to either significantly reduce or not impose penalties at all. Therefore, the petitioner
15 respectfully requests that the penalty be canceled, as there is no justifiable reason for its imposition in
16 the absence of harm.

17 **ii. Safeguard Applicable to Criminal Prosecutions Should be Applied**

18 Even where a legislature has identified a penalty as civil, a statutory scheme can be so punitive in
19 purpose or effect that it is transformed into a criminal penalty. *Hudson v. United States* (1997) 522 U.S.
20 93, 99. The U.S. Supreme Court, in the *Mendoza-Martinez* case, established tests for determining
21 whether a penalty is criminal in effect. *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 169. Two
22 of these tests confirm that the proposed sanction is criminal.

23 First, the proposed punishment “promotes the traditional aims of criminal punishment—
24 retribution and deterrence.” (See *id.* (describing the retribution and deterrence as a test for whether a
25 penalty is criminal in effect).) The prosecution team proposed the penalty for reasons of revenge and
26 retribution, and the Regional Board imposed the penalty for those reasons. The prosecution team has
27 made no effort to calculate any actual damage to the environment. Nor does the enforcement policy
28

1 provide any method for quantifying tangible environmental damage. As a result, the penalties are not
2 compensatory, but punitive.

3 Second, the proposed punishment is excessive. See *Mendoza-Martinez*, 372 U.S. at 169. The
4 Regional Board has violated provisions of the California and United States Constitutions protecting
5 against excessive fines and overzealous penalty prosecutions. It lacks any relation to environmental
6 injury, and is designed to destroy Ms. Liu and take away her land.

7 They demanded a penalty of \$409,534, when the property site of approximately 38-acre parcel is
8 worth less than that. The penalty potentially exceeds the value of the property site and Ms. Liu cannot
9 pay the penalty. Nevertheless, the Regional Board does not take that into account.

10 The penalty here is so severe that it would deprive Ms. Liu of all value to the property site. When
11 a penalty is this severe, it is no longer an administrative procedure. It is a criminal matter. The
12 protections afforded in criminal proceedings by the United States Constitution and California
13 Constitution apply, including the requirement that the prosecution team's facts be proved by clear and
14 convincing evidence or beyond a reasonable doubt, and the protection against excessive fines. The
15 Regional Board violated these requirements.

16 When a proceeding is criminal in nature, the procedural safeguards guaranteed by the Fifth and
17 Sixth Amendments apply. *Mendoza-Martinez*, 372 U.S. at 168. Every procedural safeguard afforded to
18 criminal defendants should also have been afforded here, including a jury trial and proof beyond a
19 reasonable doubt.

20 Because these procedures were not implemented, no penalty should have been imposed.

21
22 **iii. Due Process Requires A Heightened Burden of Proof**

23 The U.S. Supreme Court has “explicitly [held] that the Due Process Clause protects the accused
24 against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the
25 crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). Because this proceeding is
26 criminal in effect, the beyond-a-reasonable-doubt standard applies and the prosecution team should have
27 proved each fact of its case beyond a reasonable doubt.

28 Instead, the prosecution team produced only the most flimsy evidence in support of many of its

1 claims, including the claim that that there must be water streams over Ms. Liu’s property site. The
2 prosecution team did not produce substantial evidence in supports of its position and refute Mr. Lewis’s
3 survey and report evidencing that no water stream run over the property site.

4 This evidence does not meet the standard of proof beyond a reasonable doubt.

5 The U.S. Supreme Court requires proof by “clear and convincing evidence” when the individual
6 interests at stake in a state proceeding are “particularly important”. *Addington v. Texas* (1979) 441 U.S.
7 418, 424. At stake here is everything Ms. Liu has, because the Regional Board is determined to take
8 away her land. As a result, the clear-and-convincing standard should have been applied even if the
9 beyond-a-reasonable-doubt standard was not applied.

10 The prosecution team’s evidence does not meet the clear-and-convincing standard either.

11 As a result, no penalty should have been imposed.

12 **9. A STATEMENT THAT COPIES OF THE PETITION HAVE BEEN SENT TO THE**
13 **REGIONAL WATER BOARD AND TO THE DISCHARGER, IF DIFFERENT**
14 **FROM THE PETITIONER.**

15 A true and correct copy of this Petition and all supporting documentation were sent electronically
16 to:

17 1) State Water Resources Control Board
18 Office of Chief Counsel
19 Adrianna M. Jerome
20 P.O. Box 100 Sacramento, CA 95812-0100
waterqualitypetitions@waterboards.ca.gov

21 2) San Diego Regional Water Quality Control Board
22 David W. Gibson
23 Executive Officer
24 2375 Northside Drive, Suite 100
25 San Diego, CA 92108-2700
David.Gibson@waterboards.ca.gov
Alex.Sauerwein@Waterboards.ca.gov
Heather.Jidkov@Waterboards.ca.gov
liulv598@gmail.com
Kelly.Dorsey@waterboards.ca.gov
Chiara.Clemente@waterboards.ca.gov;
oger.Mitchell@waterboards.ca.gov
Brian.Covellone@Waterboards.ca.gov

1 Maher.Zaher@Waterboards.ca.gov

2 Cc: Jennifer.Fordyce@waterboards.ca.gov
3 Cailynn.Smith@Waterboards.ca.gov

4 **10. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE RAISED**
5 **BEFORE THE REGIONAL BOARD, OR AN EXPLANATION OF WHY THE**
6 **PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE**
7 **REGIONAL BOARD**

8 As discussed in depth in this Petition, the notice for the December 11, 2024, meeting did not
9 clearly indicate that Ms. Liu or her representatives were required to attend. Consequently, Ms. Liu
10 believed that the meeting was a closed-door session, as it was scheduled as part of a regular meeting and
11 explicitly mentioned that no additional arguments or evidence concerning her liability would be heard.
12 This lack of clarity and the misleading nature of the notice deprived Ms. Liu of her opportunity to be
13 heard.
14

15 Ms. Liu had misunderstood that her primary obligation was to submit a compliant restoration and
16 monitoring plan within 45 days, as stated in the notice. There was no clear instruction or indication that
17 her presence at the December 11, 2024, meeting was necessary. This miscommunication led to her
18 absence, which subsequently affected her ability to present her case and defend her interests. The failure
19 to provide clear and precise instructions on procedural requirements constitutes a violation of her due
20 process rights.

21 Accordingly, Ms. Liu has raised additional issues and provided supporting evidence and
22 materials in her defense, as outlined in this petition.

23 **11. CONCLUSION**

24 For the foregoing reasons, Petitioner respectfully submits that the issuance of the Order was
25 improper and inappropriate, the burden of complying with the Order is not reasonably related to the
26 benefits, and the Order is not supported by evidence that the work plan is necessary. Petitioner
27 respectfully requests that the State Board grant this Petition and review the Regional Board's action in
28 issuing the Order.

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DATED: January 10, 2025

By: /s/ Alexander Chen
Alexander Chen
William R. Walz
Theodore S. Lee
Attorney for Petitioner Olivia Yutang Liu