

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2019-0035-DWR

ADMINISTRATIVE CIVIL LIABILITY AND CEASE AND DESIST ORDER

In the Matter of Violations of Requirements Adopted Pursuant to Water Code section 13149, Diversion or Use of Water for Cannabis Cultivation for which a License is Required, and Failure to File a Statement of Water Diversion and Use by

Jacqueline Groft

The Deputy Director, Division of Water Rights (Division), under authority delegated by the State Water Resources Control Board (State Water Board or Board), hereby issues an Order for Administrative Civil Liability (ACL) and Cease and Desist (CDO) to Jacqueline Groft (Groft).

THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. On May 17, 2019, the Deputy Director, Division of Water Rights, under delegated authority, issued an ACL Complaint and Draft CDO against Groft. The Complaint, Draft CDO, and the cover letter for both are contained in Attachment A hereto and are incorporated by reference.
2. The Complaint and Draft CDO were served via certified mail on May 20, 2019, in accordance with the provisions of Water Code sections 1055 and 1834. The Division received a certified mail return receipt signed by Groft or her agent, Samuel Groft on that date.
3. California Water Code section 1055, subdivision (b) provides that an administrative civil liability complaint shall inform the party served that they may request a hearing not later than 20 days from the date of service and that the State Water Board may adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing if the party does not submit a timely written request for hearing.
4. The Complaint, at Paragraph 48, describes Groft's right to request a hearing not later than 20 days from the date Groft receives the Complaint. The Complaint, at Paragraphs 51 and 52, states that if Groft does not request a hearing, the right to a hearing is waived and the Deputy Director is authorized to issue an

administrative civil liability order. The cover letter, at page 2, provides similar notice. The Complaint thus provides notice in accordance with Water Code section 1055.

5. California Water Code section 1834 provides that the Board shall notify the party subject to a draft cease and desist order that they may request a hearing not later than 20 days from the date of service. The notice shall contain a statement of facts and information that would tend to show the action subject to the proposed cease and desist order, and notify the party that the Board may adopt a cease and desist order based on the statement of facts and information set forth in the notice without a hearing if the party fails to timely request a hearing.
6. The cover letter to the Draft CDO provides notice that Groft may request a hearing not later than 20 days from the date of receipt of the cover letter and enclosed documents. The Draft CDO served on May 20 erroneously includes an order number, however, the cover letter makes clear that the document was a draft and that Groft could request a hearing. The Draft CDO contains a statement of facts and information that describe the violations subject to the Draft CDO. The Draft CDO, at Paragraph 4, notifies Groft that the Deputy Director is authorized to issue a CDO when a hearing has not been timely requested. The Draft CDO thus provides notice in accordance with Water Code section 1834.
7. State Water Board Resolution No. 2012-0029, at Section 4.9.1, delegates to the Deputy Director authority to issue a cease and desist order when a hearing has not been timely requested. Section 4.9.2 of the same Resolution delegates to the Deputy Director authority to issue an order imposing administrative civil liability when a complaint has been issued and a hearing has not been timely requested.
8. As 20 days from the date Groft received the Complaint and Draft CDO was Sunday, June 9, the hearing request submittal deadline was extended to the next business day, Monday, June 10.
9. Groft did not submit a timely hearing request, and to date has not submitted any hearing request.
10. The Complaint alleges six violations. Violations 1 through 4 allege that Groft failed to meet requirements established by the Board pursuant to Water Code section 13149, as set forth in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy). Violation 5 alleges that Groft diverted or used water for cannabis cultivation during 2018 without the necessary license issued by the California Department of Food and Agriculture (CDFA). Violation 6 alleges that Groft failed to submit a Statement of Water Diversion or Use for the diversion or use of water during 2016, in violation of Water Code section 5101. The Complaint proposes Administrative Civil Liability totaling \$3,500.

11. The Draft CDO alleges that Groft is diverting or using, or threatening to divert or use, water in violation of requirements established pursuant to Water Code section 13149, as set forth in the Cannabis Cultivation Policy. The Draft CDO also alleges that Groft is diverting or using, or threatening to divert or use, water for cannabis cultivation without the necessary CDFA license. The Draft CDO provides a number of options for compliance.
12. California Water Code sections 1055.3, 1848, subdivision (d), and 5107, subdivision (e) provide that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.
13. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances identified in the ACL Complaint, as required by California Water Code sections 1055.3, 1848, subdivision (d), and 5107. Specifically, the allegations contained in Paragraphs 40 through 47 of the Complaint are fully incorporated herein and adopted as findings.
14. This is an action to enforce the laws and regulations administered by the State Water Board. The issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000, et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED THAT:

1. The allegations, statements of fact, and information set forth in the Complaint and Draft CDO are fully incorporated herein and adopted as findings.

Administrative Civil Liability

2. Groft shall be assessed administrative civil liability as follows:
 - a. Violation 1: Diversion of surface water for the cultivation of cannabis without a water right in violation of a requirement established by the Board pursuant to Water Code section 13149: \$500
 - b. Violation 2: Failure to install and maintain a measuring device in violation of a requirement established by the Board pursuant to Water Code section 13149: \$500
 - c. Violation 3: Diversion of water for cannabis cultivation and causing water to overflow from an off-stream water storage facility in violation of a

requirement established by the Board pursuant to Water Code section 13149: \$500

- d. Violation 4: Failure to install measures to prevent overflow of storage systems in violation of a requirement established by the Board pursuant to Water code section 13149: \$500
 - e. Violation 5: Diversion or use of water for cannabis cultivation during 2018 without the necessary license issued by the California Department of Food and Agriculture under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code: \$500
 - f. Violation 6: Failure to submit a Statement of Water Diversion or Use to the Board for the diversion or use of water during 2016, in violation of Water Code section 5101: \$1,000
 - g. Total Administrative Civil Liability: \$3,500
3. Groft shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$3,500 to:

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

4. Fulfillment of Groft's obligations under this Order constitutes full and final satisfaction liability for the violations described in the Complaint and incorporated as findings in this Order. The State Water Board reserves the right to take further enforcement action for any violations not addressed by this Order.
5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if Groft fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

Cease and Desist

6. Pursuant to sections 1831 through 1836 of the Water Code, Groft shall immediately cease and desist any diversion or use of water from the three unnamed springs identified in the Draft CDO as POD1-3 for the purpose of cannabis cultivation, and pursue one of the following corrective action options and satisfy the appropriate time schedules outlined herein:
- a. Option 1:

- ii. If the Assistant Deputy Director rejects the proposed compliance plan, the Assistant Deputy Director will provide written notice of the rejection to Groft. The notice will state the reasons for rejection and will identify staff within the Division with whom Groft shall immediately engage in diligent and good faith consultation to remedy the reasons for rejection. Within 30 days of the date of the written rejection, Groft shall submit an amended compliance plan to the Assistant Deputy Director, which the Assistant Deputy Director will approve or reject in accordance with Option i.
 - iii. Upon approval by the Assistant Deputy Director, Groft shall diligently and in good faith implement the compliance plan and satisfy all Division requests for information within the designated time frames allowed in the plan, or any extension of time granted by the Assistant Deputy Director, until implementation of the compliance plan is determined by the Assistant Deputy Director to be complete. Groft shall, within 30 days of issuance of any permits, approvals, or waivers for the project, transmit copies to the Assistant Deputy Director. Failure to meet any milestone dates set forth in the compliance plan, Groft shall provide written notice of the failure to the Assistant Deputy Director.
 - iv. Within 10 days of completing implementation of the compliance plan, Groft shall submit documentation to the Assistant Deputy Director certifying that the compliance plan has been fully implemented and the property does not seasonally store water subject the Divisions permitting authority. The Assistant Deputy Director shall provide a written determination of whether implementation of the compliance plan is complete.
7. In the event Groft fails to comply with the requirements of this CDO, Groft shall be in violation of this CDO and subject to additional enforcement which may include the imposition of administrative civil liability. Violation of a cease and desist order is subject to administrative civil liability pursuant to Water Code, §1845, subdivision (b)(1)(B), in the amount not to exceed \$1,000 for each day in which the violations occurs, or referral to the Attorney General to take further injunctive enforcement actions as described in Water Code, §1845, subdivision (a):

Upon the failure of any person to comply with a cease and desist order issued by the Board pursuant to [California Water Code division 2, part 2, chapter 12] the Attorney General, upon request of the Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a

temporary restraining order, preliminary injunction, or permanent injunction.

Miscellaneous

8. Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Groft for unauthorized diversion or use in violation of Water Code section 1052.
9. Nothing in this Order shall excuse Groft from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations, policies or water right permit requirements.
10. Any interested person or entity may file a petition requesting that the State Water Board reconsider all or part of this Order not later than 30 days from the date of adoption of this Order pursuant to Chapter 4 of Division 2 of the Water Code, commencing at section 1120. Such petitions shall be submitted to:

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: July 22, 2019