

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

ORDER WR 2022-0100-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of: Administrative Civil Liability for Violations of Division 2 of the California Water Code in Trinity County Associated with the Diversion and Use of Water for Cannabis Cultivation by

Darrell Evenson and Jose Rodriguez
Trinity County
APN: 020-520-020-000

The Assistant Deputy Director of the Division of Water Rights (Division), through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Order for Administrative Civil Liability to Darrell Evenson and Jose Rodriguez (Diverters).

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

1. On October 17, 2017, the State Water Board adopted the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. The Cannabis Cultivation Policy went into effect on December 18, 2017, following approval by the Office of Administrative Law. Pursuant to Water Code section 13149, the Cannabis Cultivation Policy established principles and guidelines for the diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The State Water Board subsequently amended the Cannabis Cultivation Policy, effective April 16, 2019.
2. The Diverters are the owners of record for Trinity County Assessor Parcel Number (APN) 020-520-020-000 (Property) where Division staff observed and documented commercial cannabis cultivation activities on June 8, 2021.
3. During the June 8, 2021 inspection, Division staff documented numerous violations of the California Water Code (Water Code) on the Property. On July 29, 2021, the Division mailed an Inspection Report and Notice of Violation to the Diverters that detailed the alleged violations observed on the Property and informed the Diverters of the corrective actions needed to remediate the violations.

4. On December 22, 2021, the Assistant Deputy Director of the Division issued an Administrative Civil Liability Complaint (Complaint) to the Diverters at the mailing address listed on Trinity County Tax Assessor records for the Property. On January 12, 2022, a copy of the Complaint was mailed to Mr. Rodriguez at an address he provided to Division staff on January 11, 2022. The Complaint alleges the Diverters violated Cannabis Cultivation Policy requirements adopted pursuant to Water Code section 13149 and that the Diverters diverted and used water for cannabis cultivation for which a license is required but was not obtained.
5. Water Code section 1055.3 provides 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. After consideration of all relevant circumstances, the Complaint proposes a total administrative civil liability amount of \$5,000 for the alleged violations:
 - a. Violation 1: For the unauthorized diversion and use of water during the surface water dry season forbearance period, in violation of Term 66 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposes an administrative civil liability amount of \$750 pursuant to Water Code section 1847, subdivision (a)(1).
 - b. Violation 2: For the failure to follow diversion intake requirements and render the point of diversion incapable of diverting water during the forbearance period, in violation of Term 77 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposes an administrative civil liability amount of \$750 pursuant to Water Code section 1847, subdivision (a)(1).
 - c. Violation 3: For the failure to install and maintain a measuring device for all water diversions, in violation of Term 82 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposes an administrative civil liability amount of \$750 pursuant to Water Code section 1847, subdivision (a)(1).
 - d. Violation 4: For the failure to secure tank openings to prevent entry or entrapment of wildlife, in violation of Term 93 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposes an administrative civil liability amount of \$1,750 pursuant to Water Code section 1847, subdivision (a)(1).
 - e. Violation 5: For the failure to maintain daily records of all water used for irrigation of cannabis, in violation of Term 98 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposes an administrative civil liability amount of \$500 pursuant to Water Code section 1847, subdivision (a)(1).

- f. Violation 6: For the diversion or use of water for cannabis cultivation without the necessary license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code, in violation of Water Code section 1847, subdivision (b)(4), the Complaint proposes an administrative civil liability amount of \$500 pursuant to Water Code section 1847, subdivision (a)(1).
6. The Division sent the Complaint to the Diverters via United States Postal Service certified mail. On December 29, 2021, the certified delivery was accepted at the mailing address listed on Trinity County Tax Assessor records for the Property. On January 15, 2022, the certified delivery was accepted at the address provided by Mr. Rodriguez. The Complaint, as well as the cover letters to the Complaint, provided the Diverters with notice of their ability to contest the allegations in the Complaint by requesting a formal hearing no later than 20 days from the date of receipt of the Complaint.
7. The Diverters did not submit a hearing request to contest the allegations in the Complaint and the deadline specified in the Complaint and cover letters has passed.
8. Pursuant to Water Code section 1055, subdivision (c), the State Water Board, after any necessary hearing, may adopt an order setting administrative civil liability.
9. The State Water Board is authorized to delegate authority to the Deputy Director of Water Rights under Water Code section 7. State Water Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing Administrative Civil Liability when a Complaint has been issued and no hearing has been requested in the period provided by Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights. This authority has been redelegated to the Assistant Deputy Director of Water Rights.
10. The Assistant Deputy Director is therefore authorized under Water Code section 1055, subdivision (c) to issue an administrative civil liability order to the Diverters imposing the liability amount proposed in the Complaint.

IT IS HEREBY ORDERED THAT:

1. The attached Complaint is fully incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including but not limited to those specifically identified in the Complaint, as required by Water Code section 1055.3 in determining that the Diverters shall be assessed an administrative civil liability amount of **\$5,000**.

3. The Diverters shall remit, within 30 days of the date of this Order, a check or money order payment of the full liability amount of **\$5,000** to:

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

4. Fulfillment of the Diverters' obligations under this Order constitutes full and final satisfaction of its liability for the alleged violations specifically identified in the Complaint. The State Water Board reserves the right to take further enforcement action for any additional or future violations.
5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed, as authorized by Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if the Diverters fail to comply with remitting payment of the full liability amount within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: March 16, 2022