

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Allegations of Violations of the Following: Failure to Comply with Appropriate Water Right Conditions and Requirements (Small Irrigation Use Registration (SIUR) H500552) California Water Code ((WC) section 1846 (a) (1), Diversion or use of Water for Cannabis Cultivation for which a License is Required (Water Code section 1847(b)(4)),

**John Long
Trinity County
APN: 018-230-024-000**

JOHN LONG (HEREINAFTER REFERRED TO AS "DIVERTER") IS HEREBY GIVEN NOTICE THAT:

1. The State Water Resources Control Board's (State Water Board's) Division of Water Rights (Division) alleges that the Diverter committed the violations described below, relating to the diversion or use of water for cannabis cultivation activities on the Diverter's real property in Trinity County during 2021.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of \$4,000.
3. **The Diverter has the right to request a hearing on these allegations but must do so in writing within 20 days from the date the Diverter receives this Complaint, or else that right is waived.** Please see the specific directions for submitting hearing requests in the "Right to Hearing" section at the end of this Complaint.

SUMMARY OF ALLEGED VIOLATIONS

4. Violations 1-5: The Diverter is alleged to have violated WC section 1846 for a failure to comply with the terms and conditions of SIUR H500552 related to WC section 13149 Cannabis Cultivation Policy¹ Requirements and specific terms SIUR H500552

¹ The State Water Board on October 17, 2017, adopted the Cannabis Policy (Order No. WQ-2017-0023-DWQ). This Order became effective December 18, 2017 upon the approval of the Office of Administrative law. On February 5, 2019, the State Water Board adopted Order No. WQ-2019-001-DWQ, amending the Cannabis Policy effective April 16, 2019.

for established by the State Water Board pursuant to Water Code section 13149, by doing the following: diverting water for cannabis cultivation during the surface water forbearance period (Section 2, Term 66); failing to plug, block, disconnect, or remove diversion intakes and otherwise bypass flows or render diversions inoperable during the surface water forbearance period (Section 2, Term 77); failing to install and maintain measuring devices for surface water diversions and retaining daily diversion records (Section 2, Term 82); failing to use water storage tanks equipped with a float valve (Section 2, Term 92); and failing to maintain daily records of all water used for irrigation of cannabis (Section 2, Term 98).

5. Violation 6: The Diverter is alleged to have diverted and used water for cannabis cultivation for which a license is required, but has not been obtained, under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code during 2021.

BACKGROUND AND FACTUAL BASIS

6. Property Ownership:

According to Trinity County property records, the Diverter acquired APN 018-230-024-000 (Property) on or around March 1, 2013 and owned the Property at all times relevant to the violations alleged in this Complaint. The violations and threatened violations occurred on the Property.

7. Watershed Information:

The Property is located in the Olsen Creek watershed (CalWater Watershed version 2.2, No. 1109.400301) tributary to the Mad River. The Mad River is a Fully Appropriated Stream System from the mouth of the Mad River at the Pacific Ocean upstream including all tributaries, from which there is no water available for new appropriation from June 1 through October 31 (WR Order 98-08).

8. Water Rights Records Review:

Prior to the inspection on September 2, 2021, Division staff examined available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) and found the Diverter has three Statements on file (S025124, S025125, and S025129) and has applied for a Domestic Use registration D032499 that was rejected in 2017. In addition, Division staff found the diverter has a registered and active SIUR (H500552) on file described as follows and requiring the following:

- a. On October 22, 2018, the Division of Water Rights issued a Small Irrigation Use Registration (SIUR) H500552 to John Long for the diversion and use of water on APN 018-230-24-00. Water appropriated, is limited to 0.09 acre-feet or less per year, and the amount of water stored is limited to 0.028541 acre-feet under the terms and conditions of H500552. H500552 states requires that the water right holder must be in compliance with all applicable conditions including the narrative and instream inflow requirements of Attachment A of

the Cannabis Policy, and specifically identifying the following sections of the Cannabis Cultivation Policy Attachment A:

Section 1 – Term Numbers 4, 15, 17, 24, 26, and 36.

Section 2 – Term Numbers 23, 63, 64, 66, 69 – 78, 82 – 94, 96, and 98 – 103.

Section 3 – All Instream Flow Requirements for Surface Water Diversions (Requirements 1 – 7) and the Gage Installation, Maintenance, and Operation Requirements.

Section 4 – All requirements and conditions.

9. Department of Cannabis Control (DCC) License Records Review:

On September 2, 2021, Division staff reviewed DCC's license records to determine if there was a license on file that would legally authorize the commercial cannabis cultivation on the Property. Division staff found no DCC license on record for the Property. On May 11, 2022, Division staff checked again for a DCC license and found no record of an active or pending license.

10. Inspection Basis:

In September 2021, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant inspection of the Property based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. Division staff, accompanied CDFW Game Wardens, Trinity County Sheriff's, and Trinity County Code Enforcement, conducted an inspection of the Property on September 7, 2021, starting at 11:00 am. Neither the Diverter, nor a representative of the Diverter, was present during the inspection. At the conclusion of the inspection, Division staff left a Field Notice of Violation (Field NOV) with the search warrant on pallets inside a small structure near the cultivation site.

11. State Water Board Permitting Authority:

Division staff observed and documented one point of diversion (POD) during the September 7, 2021, inspection. Based on the location of the diversion(s) and use of water observed during the inspection, the diversion and use of water described below is subject to the permitting authority of the Board.

- a. POD1 is a cistern located on an unnamed stream that is a tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream from POD1 and water was flowing into and out of POD1 at the time of the inspection. POD1 was actively diverting water during the inspection. POD1 is labelled as the "spring" diversion in SIUR H500552.

12. Aerial Imagery Review:

On or around September 14, 2021, State Water Board, Division of Water Rights (Division) staff reviewed aerial imagery of the Property and made the following observations:

- a. Google Earth Pro aerial imagery from July 10, 2012, shows no cultivation and dense tree cover on the Property.
- b. Google Earth Pro aerial imagery from May 28, 2016, shows a section of trees that have been clear cut to make room for cultivation at POU1 and POU2, similar to what was observed in the September 7, 2021, inspection.
- c. LandVision aerial imagery from October 11, 2020, shows continued cultivation at the same outdoor cultivation site.

13. Inspection Report and Notice of Violation:

Subsequent to the September 7, 2021, inspection, Division staff sent the Diverter a Notice of Violation and Inspection Report (NOV/IR) via certified mail on October 21, 2021. United States Postal Service records indicate that the Diverter received the NOV/IR on October 26, 2021. The NOV/IR described the observations made by Division staff and notified the Diverter that the diversion or use of water for cannabis cultivation activities without necessary licenses and/or without complying with all applicable requirements in the Cannabis Cultivation Policy are violations potentially subject to enforcement by the State Water Board. The NOV/IR provided recommended corrective actions for the violations.

14. Landowner/Diverter Response:

As of the date of this Complaint, the Diverter has not responded to the NOV/IR. Division staff have no knowledge or evidence to suggest any of the recommended corrective actions have been taken.

STATE WATER BOARD AUTHORITY

15. Water Code section 1055, subdivision (a) provides that the Executive Director for the State Water Board may issue a Complaint to any person or entity on which administrative civil liability may be imposed pursuant to Water Code sections 1052, 1846, 1847, and 5107. The Executive Director delegated this authority to the Deputy Director for Water Rights by memorandum dated May 17, 1999. The Deputy Director redelegated this authority to the Assistant Deputy Director for the Permitting and Enforcement Branch by memorandum dated August 27, 2008.
16. Water Code section 1112 generally provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055. Pursuant to Water Code section 1114, for matters seeking administrative liability under Water code section 1847 or 5107, the Hearing Officer adopts a final order. For all other matters, the Hearing Officer adopts a proposed order to be considered by the State Water Board.

ALLEGED VIOLATIONS

California Water Code Violations

17. WC section 1846 (a) A person or entity may be liable for a violation of any of the following in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs: (1) A term or condition of a permit, license, certificate, or registration issued under this division.

18. The Small Irrigation Use Registration (SIUR) H500552 issued on October 22, 2018, by the State Water Board, to John Long for the diversion and use of water on APN 018-230-24-00. Established the following compliance requirements: Water appropriated, is limited to 0.09 acre-feet or less per year, and the amount of water stored is limited to 0.028541 acre-feet under the terms and conditions of H500552. H500552 requires that the water right holder must be in compliance with all applicable conditions including the narrative and instream inflow requirements of Attachment A of the Cannabis Policy, and specifically identifying the following sections of the Cannabis Cultivation Policy Attachment A:

Section 1 – Term Numbers 4, 15, 17, 24, 26, and 36.

Section 2 – Term Numbers 23, 63, 64, 66, 69 – 78, 82 – 94, 96, and 98 – 103.

Section 3 – All Instream Flow Requirements for Surface Water Diversions (Requirements 1 – 7) and the Gage Installation, Maintenance, and Operation Requirements.

Section 4 – All requirements and conditions.

19. On September 7, 2021, Division staff observed that the POD1, the “spring” diversion registered under SIUR H500552 was actively diverting water for cannabis cultivation in violation of the SIUR terms and conditions as specifically described below.

- a. WC Section 1846 SIUR H500552 Section 2., Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements No. 4. The Surface Water Dry Season Forbearance Period
- b. WC Section 1846 SIUR H500552 - Section 2, Term 77 - Failure to Follow Diversion Intake Requirements
- c. WC Section 1846 SIUR H500552 Term 82 - Failure to Install Water Measuring Device or Maintain Diversion Records.
- d. WC Section 1846 SIUR H500552 - Term 92 - Water Storage Facility Without Device to Prevent Water Overflow
- e. WC Section 1846 SIUR H500552 Section 2, Term 98 – Failure to Maintain Daily Records of Water Use for Cannabis Irrigation.
- f. WC section 1846 SIUR H500552, Paragraph 10 “No water shall be diverted under this right unless the water right holder complies with all applicable state, city, county, and local laws, regulations, ordinances, permits and license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building”.

20. The State Water Board's 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 Policy contains principles, guidelines and requirements (referred to here as "requirements") for the diversion or use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow. The State Water Board subsequently amended the Cannabis Cultivation Policy, effective April 16, 2019. All SIURs Issued for Cannabis Cultivation incorporate the requirements from the Cannabis Cultivation Policy to ensure protection of instream flows and aquatic habitat.

21. Cannabis Cultivation Policy, Attachment A, Section 1, Term 9, defines cannabis cultivation as:

Any activity involving or necessary for the planting, growing, pruning, harvesting, drying, curing, or trimming of cannabis. This term includes but is not limited to: (1) water diversions for cannabis cultivation, and (2) activities that prepare or develop a cannabis cultivation site or otherwise support cannabis cultivation and which discharge or threaten to discharge waste to waters of the state.

22. **Violation 1:** WC section 1846 (a) (1) violation for a Failure to Comply with SIUR H500552 Requirements (diverting water for cannabis cultivation during the surface water forbearance period) (Section 2, Term 66) - states:

All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g., groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements. This includes lakes, ponds, and springs (unless the spring is deemed exempt by the Deputy Director). See Section 3, No. 4. Numeric and Narrative Instream Flow Requirements of the Cannabis Cultivation Policy Attachment A for more information².

- a. POD1 is a surface water diversion subject to the State Water Board's permitting authority and was observed to be actively diverting water on September 7, 2021, for cannabis cultivation. POD1 was actively conveying water by gravity to place of storage (POS) POS2, which conveys water to place of use (POU) POU1 where cannabis was cultivated. POD1 also is capable of conveying water to POS1 and POS3. This Diversion occurred during the surface water dry season forbearance period (April 1 through

² The Numeric and Narrative Instream Flow Requirements No. 4. Surface Water Dry Season Forbearance Period requirement stipulates the following: "Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year unless the water diverted is delivered from storage in compliance with Narrative Instream Flow Requirement 4."

October 31). The Diverter was cultivating approximately 229 plants at the time of the inspection.

- i. One day of violation of SIUR H500552 paragraph 5, section 2, term 66) is alleged for the diversion of water for cannabis cultivation activities during the forbearance period.

23. Violation 2: WC section 1846 (a) (1) violation for a Failure to Comply with SIUR H500552 Requirements (Failure to Plug, Block, Dismantle or Cap Diversion Structures During the Surface Water Dry Season Forbearance Period) (Section 2, Term 77) - states:

Cannabis cultivators shall plug, block, cap, disconnect, or remove the diversion intake or otherwise bypass flow or render the diversion intake incapable of diverting water for cannabis cultivation activities during the surface water forbearance period, unless the diversion intake is used for other beneficial uses, to ensure no water is diverted during that time.

- a. POD1 was observed to be actively diverting surface water for cannabis cultivation at the time of the September 7, 2021, inspection during the surface water forbearance period (April 1 – October 31). Division staff observed that the diversion structure for POD1 was not rendered incapable of diverting water and were not plugged, blocked, capped or disconnected to stop the diversion of water during the forbearance period.

- i. One day of violation of SIUR H500552 paragraph 5, section 2, term 77 is alleged for the failure to follow intake requirements.

24. Violation 3: WC section 1846 (a) (1) violation for a Failure to Comply with SIUR H500552 Requirements (Failure to Install Water Measuring Device or Maintain Diversion Records) (Section 2, Term 82) – states:

The cannabis cultivator shall install and maintain a measuring device(s) for surface water or subterranean stream diversions. The measuring device shall be, at a minimum equivalent to the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.7 and Chapter 2.8. The measuring device(s) shall be located as close to the point of diversion as reasonable. Cannabis cultivators shall maintain daily diversion records for water diverted for cannabis cultivation. Cannabis cultivators shall maintain separate records that document the amount of water used for cannabis cultivation separated out from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water Boards, CDFW, or any other authorized representatives of the Water Boards or CDFW. Daily diversion records shall be retained for a minimum of five years. Compliance with this term is

required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year.

- a. During the site inspection on September 7, 2021, no water measuring device was observed on or near POD1, nor were any records of water diversion found on the Property. Division staff observed that based on the diversion system, there would need to be at least one water measuring device installed to measure water diverted for cannabis cultivation.
 - i. One day of Violation of SIUR H500552 paragraph 5, section 2, term 82 is alleged for the failure to have water measuring devices installed during the inspection.

25. Violation 4: WC section 1846 (a) (1) violation for a Failure to Comply with SIUR H500552 Requirements (Water Storage Facility Without Device to Prevent Water Overflow) (Section 2, Term 92) – states:

To prevent rupture or overflow and runoff, cannabis cultivators shall only use water storage tanks and bladders equipped with a float valve, or equivalent device, to shut off diversion when storage systems are full. Cannabis cultivators shall install any other measures necessary to prevent overflow of storage systems to prevent runoff and the diversion of more water than can be used and/or stored.

- a. During the site inspection on September 7, 2021, Division staff documented three water storage tanks without float valves or similar devices installed to prevent the overflow and waste of water. POS1 had one tank, POS2 had one tank, and POS3 had two tanks connected in series. Division staff determined there would need to be at least three overflow prevention devices installed to comply with this requirement.
 - i. Three one day violations of SIUR H500552 paragraph 5, section 2, term 92 are alleged for the failure to maintain three (3) water storage tanks with float valves, or equivalent devices, to shut off diversions when storage tanks are full.

26. Violation 5: WC section 1846 (a) (1) violation for a Failure to Comply with SIUR H500552 Requirements (Failure to Maintain Daily Records of Water Use for Cannabis Irrigation) (Section 2, Term 98) – states:

Cannabis cultivators shall maintain daily records of all water used for irrigation of cannabis. Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered (e.g., irrigating for one hour twice per day using 50 half-gallon irrigation emitters equates to 50 gallons per day (1 hour x 2 times per day x 50 irrigation emitters x 0.5 gallons per irrigation emitter per hour) of water used for irrigation). Cannabis cultivators shall retain, for a minimum of five years, irrigation records at the cannabis cultivation

site and shall make all irrigation records available for review by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.

- a. During the site inspection on September 7, 2021, Division staff did not observe any water measuring devices at any of the PODs, POSs, or cannabis cultivation areas. In addition, Division staff did not observe any irrigation records during the inspection.
 - i. One day of violation of SIUR H500552 paragraph 5, section 2, term 98 is alleged for failing to have daily records of water use for irrigation of cannabis available on the day of inspection.

27. Violation 6: Water Code section 1846(a) (1) violation for a Failure to Comply with SIUR H500552 Requirements described under Paragraph 10 - "No water shall be diverted under this right unless the right holder complies with all applicable state, city, county and local laws, regulations, ordinances, permits, and license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building". This violation stems from diverting water without a Cannabis Cultivation license issued by the Department of Cannabis Control (DCC). Chapter 6 (commencing with 26060) or Chapter 7 (commencing with 26070) of Division 10 of the Business and Professions Code requires that any person or entity who diverts or uses water for cannabis cultivation must have a License to cultivate cannabis.

DCC established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code and began issuing licenses on January 1, 2018. While the Division is not responsible for determining the specific type of state cultivator license type that DCC would have required here, based on the review of aerial images and Division staff's observations during the site inspection, the cannabis cultivation occurring on the Property is of a scale sufficient to require a commercial cannabis cultivation license under Chapter 6 (commencing with Section 26060) of Division 10 of the California Business and Professions Code as more than six living cannabis cultivation plants were observed.

- a. Based on Division staff's observations during the September 7, 2021, site inspection, staff observed that the scale of cannabis cultivation occurring on the Property required a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. During the site inspection, Division staff observed approximately 229 cannabis plants growing in two outdoor cultivation sites, with an approximate total cultivation area of 12,326 sq. ft., irrigated from surface water diversions at POD1. The Diverter's cultivation area exceeds the minimum licensing requirement established under Business and Professions Code section 26061, subdivision (a). Division staff examined available records on September 7, 2021, again on September 9, 2021, and

recently on May 11, 2022, and did not find any record that DCC issued a cultivation license for the activities observed on the Property.

- i. One day of violation is alleged for diverting and using water for cannabis cultivation without having obtained a DCC commercial cannabis license as required to comply with SIUR H500552 requirements.

Statutory Maximum Liability

28. The statutory maximum liability for Violations 1-6 is the sum of each Violation's statutory maximum liability: Violations 1 (\$500) +2 (\$500) +3 (\$500) +4 (\$1,500) +5 (\$500) +6 (\$500) = \$4,000 Statutory Maximum Liability.

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

29. Water Code section 1055.3 requires that the Board in determining the amount of civil liability shall take into consideration all relevant circumstances, including, but not limited to, 1) the extent of harm caused by the violations, 2) the nature and persistence of the violation, 3) the length of time over which the violation occurs, and 4) the corrective action, if any taken by the violator. This requirement is applied to all penalty proposals relative to this administrative civil liability complaint.

Relevant Circumstances Applicable to All Violations

30. Based upon the water rights history of the Property, the Diverter is presumably aware of the Water Code and water rights licensing and application requirements.
31. To deter illegal cannabis cultivation activities and encourage the legal market and enterprises, it is necessary to impose administrative civil liability in sufficient amounts to make the costs of noncompliance higher than the cost of compliance. The Division recommends that the State Water Board take each opportunity to deter illegal activities and demonstrate the need to comply, including by imposing significant administrative civil liabilities for cannabis cultivation violations. The Diverter engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as both punishment for the violations and as a deterrent for future noncompliance by similarly situated parties.

Violations 1 through 6: WC section 1846 (a) (1) Violations

32. **Violation 1: SIUR H500552 Paragraph 5, Section 2, Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements**

a. Extent of Harm Caused:

Absent restrictions on water diversion, the individual and cumulative effects of water diversions for cannabis cultivation during the dry season are likely to

significantly decrease instream flow and, in some instances, reduce hydrologic connectivity or completely dewater the stream. Minimum flows that provide habitat connectivity are needed to maintain juvenile salmonid passage conditions in late spring and early summer. Instream flows are also needed to maintain habitat conditions necessary for juvenile salmonid viability throughout the dry season, including adequate dissolved oxygen concentrations, low stream temperatures, and high rates of invertebrate production and drift from riffles to pools. Further, many species depend on spring recession flows as migratory or breeding cues. The violation represents harm through the potential extirpation of multiple species from water diversion causing habitat loss in a stream through dewatering. Compared to violations with a threat of harm to individuals in a species this violation poses a significantly greater threat. This harm is compounded by the effects seen in the watershed from drought. The State Water Board is requiring a surface water diversion forbearance period to ensure adequate flows are maintained throughout the dry season to protect aquatic species, aquatic habitat, and water quality. Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, or springs. Diverting water during the forbearance period impacts downstream priority of water right diverter's ability to use water beneficially and impacts instream and terrestrial public trust resources and habitat. The extent of harm caused by the violation is compounded as these activities occurred in the Olsen Creek watershed, tributary to the Mad River. The Mad River is a Fully Appropriated Stream System, from which there is no water available for new appropriation from the mouth of the Mad River at the Pacific Ocean upstream, from June 1 through October 31 (WR Order 98-08).

b. Nature and Persistence:

Division staff observed active water diversion at one location (POD1) during the forbearance period for cannabis cultivation. Based on the consumptive water demand estimates of cannabis (up to 6 gallons per-plant per day during the growing season), as demonstrated by independent studies, the amount of water necessary to irrigate the Diverter's 229 cannabis plants is appreciable. During the inspection, law enforcement and Division staff eradicated cannabis plants and removed the water line from the POD, so to the best of our knowledge this violation did not continue past September 7, 2021. In this case, the eradication of the cannabis and removal of the water line at the time of the search warrant inspection served to eliminate the threat of continued use at that time but did not abrogate the past effect caused by diverting during the forbearance period at the time of and prior to the inspection date, nor did it eliminate the threat of continued diversion by replacing the pipe in the stream.

- c. Corrective Action:
As of the date of this complaint, the Diverter has not contacted the Division or shown any efforts to come into compliance.
- d. Length of Time:
For the observed active diversion of surface water during the dry season forbearance period for cannabis cultivation, the Division alleges one day of violation of SIUR H500552 paragraph 5, section 2, term 66.
- e. Considering the factors listed in a-d above the Division proposes an administrative civil liability of \$500 for this violation.

33. Violation 2: SIUR H500552 Paragraph 5, Section 2, Term 77 - Failure to Follow Diversion Intake Requirements

- a. Extent of Harm:
Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not harm instream flows during the forbearance period. The violation represents potential harm to multiple species through diversion of water from a stream causing habitat loss in a stream length by dewatering or diminished flows extirpating multiple species, as compared to a threat of individual harm to an individual in a species. Inability to render the Diverter's POD intake incapable of diverting water can result in continued water diversion; thus, impacting downstream beneficial uses and depriving downstream priority of right diverters. These violations may also injure other water right holders by improperly shifting the burden of offsetting public trust impacts to senior rights. Impacts are compounded when the violation persists throughout the forbearance period in dry and critically dry years. As this violation occurred within an unnamed stream tributary to a Fully Appropriated Stream (The Mad River), the harm to beneficial uses due to the violation is acute.
- b. Nature and Persistence:
On September 7, 2021, the Diverter was notified by the Field NOV that the equipment used to operate POD1 was in violation of SIUR H500552 paragraph 5, section 2, term 77, as the diversion intakes remained connected and in the unnamed stream with no intake plug, block, or cap and was capable of diverting water during the forbearance period (April 1 – October 31). In this case, the eradication of the cannabis and removal of the water line at the time of the search warrant inspection served to eliminate the threat of continued use but did not abrogate the past effect caused by diverting during the forbearance period at the time of and prior to the inspection date, nor did it eliminate the threat of continued diversion with limited effort of reinstalling the water line.

- c. Corrective Action:
As of the date of this complaint, the Diverter has not contacted the Division or shown any efforts to come into compliance.
- d. Length of Time:
Division staff documented a violation of the requirement to plug block or remove the diversion intake at POD1 during the September 7, 2021 inspection. Liability for one day of violation of SIUR H500552 paragraph 5, section 2, term 77 is alleged.
- e. Considering the factors listed in a-d above, and below, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

34. Violation 3: SIUR H500552 Paragraph 5, Section 2, Term 82 - Failure to Install Water Measuring Device or Maintain Diversion Records

- a. Extent of Harm:
Cannabis cultivators are required to maintain measuring device(s) and daily diversion records for surface water diversions to assist the State Water Board in obtaining accurate data on how much water is being diverted in watersheds. Accurate data on water diversion is needed for all users of water in the state so that the Division can plan for drought and effectively manage limited water resources in impacted watersheds. Moreover, this is vital information for water use planning made even more critical by drought conditions. By not maintaining measuring devices and daily diversion records the Diverter deprives the Division of this critical data. This directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources.
- b. Nature and Persistence:
On September 7, 2021, the Diverter was notified by the Field NOV that the equipment used to operate POD1 was a violation of SIUR H500552 paragraph 5, section 2, term 82, as no measuring devices were observed measuring diversions from POD1 nor were any records of water diversion found. Based on the structure of the irrigation system as observed during the inspection, one measuring device is required to comply with the requirement.
- c. Corrective Action:
As of the date of this complaint, the Diverter has not contacted the Division or shown any efforts to come into compliance.
- d. Length of Time:
Division staff documented a violation of the requirement to meter surface water diversions and maintain daily records during the September 7, 2021

inspection. Liability for one day of violation of SIUR H500552 paragraph 5, section 2, term 82 is alleged.

- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

35. Violation 4: SIUR H500552 Paragraph 5, Section 2, Term 92 - Water Storage Facility Without Device to Prevent Water Overflow

a. Extent of Harm

Compliance with this requirement is necessary to prevent waste from water diversions to full storage facilities. Storage facilities without devices to prevent overflow, run off, or ruptured storage containers has the potential to harm instream flows. This in turn impacts downstream beneficial uses and downstream priority of right diverters. The harm caused by these violations is compounded where there are multiple storage facilities without devices to prevent overflow.

b. Nature and Persistence:

During the inspection Division staff documented three storage tanks at POS 1-3 without float valves or similar devices installed to prevent overflow or runoff. POS1 contained 1 storage tank, POS2 had 1 storage tank, and POS3 had two storage tanks that required one device, all of which failed to meet the requirement. Division staff called to the Diverter's attention in the Field NOV the requirement to use water storage tanks with a float valve, or equivalent device, to shut off diversions when storage systems are full.

c. Corrective Action:

As of the date of this complaint, the Diverter has not contacted the Division or shown any efforts to come into compliance.

d. Length of Time:

Division staff documented three storage tanks at POS 1-3 without float valves or similar devices installed to prevent overflow or runoff on September 7, 2021. Liability for one day of violation for three separate violations (one day of violation for each storage tank without a device) of SIUR H500552 paragraph 5, section 2, term 92 is alleged.

- e. Considering the factors listed in a-d above below, the Division proposes an administrative civil liability in the amount of \$500 per each observed violation, for a total liability amount of \$1,500 for this violation.

36. Violation 5: SIUR H500552 Paragraph 5, Section 2, Term 98 - Failure to Maintain Daily Irrigation Records

a. Extent of Harm:

Compliance with this term is required to ensure that the diversion and use of water associated with cannabis cultivation does not have a negative impact on aquatic habitat, riparian habitat, and does not indirectly impact downstream water right holders. Accurate data on cannabis cultivation irrigation water demand is necessary so that the Division can determine if standard irrigation practices are applied. This in turn prevents water waste from overwatering and prevents runoff of cannabis cultivation wastewater. By failing to maintain daily irrigation records, the Diverter directly harms the Division's ability to plan for limited water supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources. The State Water Board has stated the importance of real time accurate data on water demand, especially in dry and critically dry years. As such, the harm caused by the Diverter's failure to maintain irrigation records is notable.

b. Nature and Persistence:

During the site inspection on September 7, 2021, no water measuring devices were observed on or near the POD or POSs, nor were any irrigation records for cannabis water demands found. Additionally, the Diverter provided no records to the Division documenting water use for cultivation. To summarize, the diverter acknowledged responsibility for this requirement in applying for and receiving a SIUR for cannabis cultivation. No reason exists that this requirement should not be followed by a responsible water right holder diverting water in accordance with the Water Code.

c. Corrective Action:

As of the date of this complaint, the Diverter has not provided any evidence that records of irrigation have been maintained. In the NOV/IR division staff requested submittal of all cannabis irrigation water use records. No response has been provided to address this corrective action.

d. Length of Time:

During the site inspection on September 7, 2021, Division staff were unable to locate any cannabis irrigation records. Liability for one day of violation of SIUR H500552 paragraph 5, section 2, term 98 is alleged for the day of inspection.

e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

37. Violation 6: SIUR H500552 Paragraph 10 Diversion or Use of Water for Cannabis Cultivation Without the Requisite License

a. Extent of Harm:

Operating a commercial cannabis cultivation site without a license causes negative economic impact on the legal cannabis industry and general harm to the regulatory program. The Cannabis Cultivation Regulatory Program is in its infancy and the degree of illegal cannabis cultivation exceeds legal cultivators by orders of magnitude in all aspects of the Cannabis Industry across the state. Illegal cultivation directly harms the legal market by supporting and supplying an unregulated market where illegal cultivators do not incur the compliance costs to cultivate cannabis in a manner that does not have a negative impact on water quality, aquatic habitats, riparian habitats, wetlands, and springs. As such, the Diverter's illegal cannabis cultivation activities significantly harm legal cultivators and the Cannabis Cultivation Regulatory Program.

b. Nature and Persistence:

Unlicensed cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. DCC as CDFA began accepting applications for commercial cannabis cultivation licenses on January 1, 2018. It was determined the scale of cannabis cultivation occurring on the Property during the September 7, 2021 inspection required a commercial cannabis license. Division staff called to the Diverter's attention in the Field NOV and NOV/IR that water diversion associated with commercial or medicinal cannabis cultivation requires a license.

c. Corrective Action:

As of the date of this complaint, the Diverter has not contacted the Division or shown any efforts to come into compliance.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the September 7, 2021 inspection. Evidence indicates that water diversion and use for cannabis cultivation, requiring a license occurred on the Property prior to and at the time of inspection, liability for a single day of violation of Water Code section 1847, subdivision (b)(4) is alleged.

e. Considering the factors listed in a-d above below, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

Violation 1-6: All Other Relevant Circumstances

38. Aerial imagery reviewed by Division staff from May 28, 2016, through October 11, 2020, shows a consistent use of the Property to cultivate cannabis.

The Diverter obtained the SIUR H500552 on October 22, 2018. POD1, listed as "spring" diversion in the SIUR, was found to be active during the September 7, 2021, inspection. It is the responsibility of the Diverter to know and understand all terms and conditions that are associated with their SIUR. During the inspection, Division staff found multiple violations of the terms and conditions of the Diverters SIUR. As stated in paragraph 22 of SIUR H500552, "this right is subject to enforcement, including but not limited to revocation ...[if] the State Water Board finds that the right holder is in violation of the conditions of this right (Wat. Code, § 1228.4 et seq.)"

39. The Cannabis Cultivation Regulatory Program is in its infancy. To deter illegal cannabis cultivation activities and encourage the legal market and enterprises, it is necessary to impose administrative civil liability in sufficient amounts to make the costs of noncompliance higher than the cost of compliance. Each opportunity to deter illegal activities and demonstrate the need to comply must be taken. The Diverter engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as a deterrent for future noncompliance.

PROPOSED CIVIL LIABILITY

40. Having taken into consideration the factors described above and the need for deterrence the Assistant Deputy Director for Water Rights recommends an ACL in the amount of \$7,000; Total Proposed Liability: Adding the proposed fines for Violation 1 through 5, and Violation 6: Violations 1 (\$500) +2 (\$500) +3 (\$500) +4 (\$1,500) +5 (\$500) +6 (\$500) = \$4,000 brings the total proposed liability to: \$4,000.

RIGHT TO HEARING

41. The Diverter may request a hearing on this matter before the State Water Board Administrative Hearings Office. Any such request for hearing must be delivered to or received by mail by the Administrative Hearings Office within 20 days after the date the Diverter receives this Complaint as required by Water Code section 1055, subdivision (b).
42. If the Diverter does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Assistant Deputy Director for Water Rights, under authority delegated by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.
43. If the Diverter timely requests a hearing, the Diverter will have an opportunity to contest the allegations in this Complaint and the imposition of liability before a hearing officer from the Administrative Hearings Office. The Administrative Hearings Office will issue a notice setting the specific time and place for the hearing, and describing the hearing process, not less than 10 days before the hearing date.
44. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that a liability shall not be

imposed. If the Administrative Hearings Office issues a proposed order, the State Water Board will consider adopting the order at a subsequent public meeting.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive, flowing style.

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

Dated: **JUL 12 2022**