

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

DIVISION OF WATER RIGHTS

ORDER 2023-0002-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

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

**Napaville Ranch LLC
Humboldt County
APN: 317-054-006-000**

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 Napaville Ranch LLC (Diverter).

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 Diverter was the owner of record for Humboldt County Assessor Parcel Number (APN) 317-054-006-000 (Property) from July 30, 2015 until March 16, 2021, during which time Division staff conducted inspections of the Property, on June 24, 2019 and September 4, 2019, and documented cannabis cultivation activities occurring.

3. During the July 24, 2019 and September 4, 2019 inspections, Division staff documented numerous violations of the California Water Code (Water Code) on the Property. Additionally, Division staff received information regarding additional violations observed during an August 10, 2020 inspection of the Property conducted by California Department of Fish and Wildlife (CDFW) staff. The Division sent the Diverter a Notice of Violation and Inspection Report (NOV/IR) following the July 24, 2019 and September 4, 2019 inspections, which were mailed on November 23, 2020 and December 3, 2020, respectively. Each NOV/IR detailed the alleged violations observed on the Property and informed the Diverter of the corrective actions needed to remediate the violations. United States Postal Service (USPS) records indicate that the November 23, 2020 NOV/IR was delivered to the manager/member of Napaville Ranch LLC, Ms. Griselle Quinones, at her Streamwood, Illinois address on December 3, 2020. USPS records could not confirm receipt of the December 3, 2020 NOV/IR. The Division mailed another copy of both NOV/IRs to the Diverter on March 11, 2021; however, USPS records could not confirm receipt of this package. On May 3, 2021, Division staff contacted Ms. Quinones regarding her receipt of the NOV/IRs. Ms. Quinones indicated that she had received the report.
4. On October 31, 2022, the Assistant Deputy Director of the Division issued an Administrative Civil Liability Complaint (Complaint) to the Diverter at five addresses associated with the Diverter. The Complaint alleges the Diverter failed to submit a Statement of Water Diversion or Use (Statement) as required under Water Code section 5101, committed trespass under Water Code section 1052 by diverting or using water without proper State Water Board authorization, violated Cannabis Cultivation Policy requirements adopted pursuant to Water Code section 13149, and that the Diverter diverted and used water for cannabis cultivation for which a license was required but 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 proposed a total administrative civil liability amount of \$52,500 for the alleged violations:
 - a. Violation 1: For the failure to submit a Statement to the State Water Board by July 1, 2020 for the diversion and use of water during 2019, in violation of Water Code section 5101, and for 73 continuing days of violation that accrued when the Diverter failed to file a Statement within 30 days after the State Water Board called the violation to its attention, the Complaint proposed an administrative civil liability amount of \$7,500 pursuant to Water Code section 5107, subdivision (c)(1).

- b. Violation 2: For the 44 days of unauthorized diversion and use of water in violation of Water Code section 1052, subdivision (a), the Complaint proposed an administrative civil liability amount of \$22,000 pursuant to Water Code section 1052, subdivision (d).
- c. Violation 3: For the days of trespass committed to divert water from a neighboring parcel to the Property for cannabis cultivation activities, in violation of Term 18 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposed an administrative civil liability amount of \$1,500 pursuant to Water Code section 1847, subdivision (a)(1).
- d. Violation 4: 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 proposed an administrative civil liability amount of \$1,500 pursuant to Water Code section 1847, subdivision (a)(1).
- e. Violation 5: 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 proposed an administrative civil liability amount of \$1,500 pursuant to Water Code section 1847, subdivision (a)(1).
- f. Violation 6: For the failure to prevent overflow from water storage tanks, in violation of Term 89 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposed an administrative civil liability amount of \$6,500 pursuant to Water Code section 1847, subdivision (a)(1).
- g. Violation 7: For the failure to use water storage facilities equipped with a device to prevent overflow, in violation of Term 92 of Section 2 of the Cannabis Cultivation Policy, the Complaint proposed an administrative civil liability amount of \$6,000 pursuant to Water Code section 1847, subdivision (a)(1).
- h. Violation 8: 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 proposed an administrative civil liability amount of \$4,500 pursuant to Water Code section 1847, subdivision (a)(1).
- i. Violation 9: 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 proposed an administrative civil liability amount of \$1,000 pursuant to Water Code section 1847, subdivision (a)(1).

- j. Violation 10: 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 proposed an administrative civil liability amount of \$500 pursuant to Water Code section 1847, subdivision (a)(1).
6. The Division sent the Complaint to the Diverter via USPS certified mail. The certified delivery receipt received by Division staff, as well as USPS online tracking records, demonstrate that the certified delivery sent to the Diverter's agent for service of process, as identified in the Diverter's 2022 Statement of Information filed with the California Secretary of State, was forwarded to an address in Sacramento and accepted on November 8, 2022. USPS online tracking records also indicate that the certified delivery mailed to the Diverter's manager/member, Ms. Quinones, at her Kilpatrick address in Chicago was forwarded to Streamwood, Illinois and accepted on November 7, 2022. The Complaint, as well as the cover letter to the Complaint, provided the Diverter with notice of the 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 Diverter did not submit a hearing request to contest the allegations in the Complaint and the deadline specified in the Complaint and cover letter 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 Diverter 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 Diverter shall be assessed an administrative civil liability amount of **\$52,500**.
3. The Diverter shall remit, within 30 days of the date of this Order, a check or money order payment of the full liability amount of **\$52,500** to:

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

4. Fulfillment of the Diverter's obligations under this Order constitutes full and final satisfaction of 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 Diverter fails 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
ROBERT P. CERVANTES, For

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

Dated: January 6, 2023