

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of the Following Alleged Water Code Violations

Gabriel Alejandro Fernandez

Assessor Parcel Number 171-110-03-00

COUNTY: MENDOCINO

Gabriel Alejandro Fernandez, (HEREINAFTER REFERRED TO AS “DIVERTER”) ARE 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. The violations are related to the diversion or use of water for cannabis cultivation activities on the Diverter’s real property in Mendocino County, Assessor Parcel Number (APN) 171-110-03-00 (Property).
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of twelve thousand five hundred dollars \$12,500.
3. The State Water Board or the State Water Board’s Administrative Hearings Office may impose civil liability (i.e. monetary fines) for these violations through the administrative process described below.

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. Violation 1: Failure to file a Statement of water diversion or use (Statement) for two points of diversion (POD) as required by Water Code section 5101.
5. Violation 2: Unauthorized diversion or use of water in violation of Water Code section 1052.

6. Violations 3-10: Eight (8) violations of term requirements in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy)¹.
7. Violation 11: Diverting and using water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC) in violation of Water Code section 1847(b)(4).

BACKGROUND AND FACTUAL BASIS

8. Property Ownership:

According to Mendocino County Recorder's Office property records, on February 25, 2021, Gabriel Alejandro Fernandez acquired Mendocino County APN 171-110-03-00.

9. Watershed Information:

The Property is located in the Thomas Creek-Eel River watershed (HUC 12 #180101030503), tributary to the Main-stem Eel River. The Main-stem Eel River is designated as a Wild and Scenic River from 100 yards below Van Arsdale Dam to the Pacific Ocean. As a Wild and Scenic River, the State Water Board is limited to processing or accepting new applications to appropriate water pursuant to California Code of Regulations, title 23, section 734. In accordance with the Public Resources Code section 5093 et seq. it is the policy of the State of California, that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of section 2 of Article X of the California Constitution.

10. Department of Cannabis Control License Records Review:

On or around May 8, 2024, Division staff reviewed DCC's licensing records for commercial cannabis cultivation 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 29, 2024, and again on November 20, 2024, during following checks of DCC license records, Division staff found no active or pending DCC license for the Property.

11. Aerial Imagery Review:

On or around May 8, 2024, State Water Board, Division staff reviewed aerial imagery of the Property and made the following observations:

¹ On October 17, 2017, the State Water Board Approved Resolution No. 2017-0063 adopting the Cannabis Cultivation Policy. On February 5, 2019, the State Water Board approved resolution 2019-007 updating the Cannabis Cultivation Policy. The office of Administrative Law approved both versions of the Cannabis Cultivation Policy on December 18, 2017, and April 16, 2019, respectively.

- a. May 7, 2021, Google Earth Pro aerial imagery shows graded areas, greenhouse structures, outdoor cultivation areas, spacing indicative of active cannabis cultivation on APN 171-110-03-00 consistent with place of use (POU) 1-2 observed during the May 14, 2024, inspection.
- b. May 1, 2022, LightBox Vision aerial imagery shows graded areas, seven (7) greenhouse structures and associated infrastructure such as clear visqueen tarps indicative of active cannabis cultivation on APN 171-110-03-00 consistent with the location of POU 1-2 observed during the May 14, 2024, inspection.
- c. June 19, 2023, Google Earth Pro aerial imagery shows graded areas, seven (7) greenhouse structures and associated infrastructure such as clear visqueen tarps indicative of active cannabis cultivation on APN 171-110-03-00 consistent with the location of POU 1-2 observed during the May 14, 2024, inspection.

12. Inspection Basis:

On or around May 9, 2024, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant investigation of the Property based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation.

13. Water Rights Records Review:

On or around May 13, 2024, prior to the inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS) and found no pending or registered water right for the Diverter.

14. Well Records Review

On or around May 13, 2024, Division staff reviewed the Department of Water Resources records and did not find any record of a well on the Property.

15. Inspection:

On May 14, 2024, Division staff participated in a search warrant inspection of the Property. The Property owner was not onsite during the inspection. Division staff observed 1,706 actively growing cannabis plants on the Property. CDFW law enforcement officers provided the total cannabis plant count. The two surface water points of diversion (PODs) observed by Division staff during the inspection were the sole sources of water on the Property.

16. Points of Diversion:

During the May 14, 2024, inspection, Division staff documented the two PODs (POD1 and POD2):

- a. POD1 is a diversion located on the Upper Main-Stem Eel River that is tributary to the Pacific Ocean. POD1 has defined bed and banks upstream and downstream from POD1 and water was flowing in the Eel River at the time of the inspection. Water is diverted from POD1 by a 0.5 submersible

electric pump that conveys water through a 1-inch polyethylene water line to water storage at point of storage (POS) 1. Division staff observed a water filter connected to the tip of the 1-inch polyethylene waterline. The 1-inch polyethylene water line was used to fill POS1 where water is seasonally stored for cannabis cultivation at POU1.

- b. POD2 is a diversion to off-stream storage located on an unnamed spring that is a tributary to the Upper Main-Stem Eel River. The unnamed spring has defined bed and banks downstream from POD2 and water was flowing off the Property down the channel into the Eel River. POD2 was not actively diverting water during the inspection. Water diverted from POD2 is pumped using an electric 1 hp through a 1-inch polyvinyl chloride water supply line to water storage at POS3. Water diverted from POD2 is used for cannabis cultivation at POU2 and used for domestic use at POU3. POD2 is located within APN 171-110-02-00 owned by Ofelia Alejandro Razo Diaz Havoa² and appears to be riparian to the unnamed spring. Water from POD2 was used on APN 171-110-03-00 by the Diverter.

17. Notice of Violation and Inspection Report:

Subsequent to the inspection, Division staff prepared a Notice of Violation and Inspection Report (NOV/IR) and mailed the NOV/IR to the Diverter via United States Postal Service (USPS) certified mail on June 12, 2024. On June 15, 2024, the NOV/IR was received and signed for by Gabriel Fernandez. The NOV/IR describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for the violations.

18. Landowner/Diverter Response:

- a. Division staff has received no contact from the Diverter after receiving a signed USPS certified mail receipt.
- b. As of the date of this Complaint, no evidence has been provided to the Division regarding any corrective actions taken by the Diverter.

STATE WATER BOARD AUTHORITY

19. 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, 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

² The search warrant obtained for the inspection of the Property by CDFW Wardens authorizes law enforcement to search adjacent parcels as needed to follow any water supply or waste discharge lines or trails, in order to identify the source of the water for cannabis cultivation. The affidavit in support of the warrant states that law enforcement officers shall be allowed to bring other agencies (specifically the State Water Board) in order to determine if there are violations of the California Water Code or federal Clean Water Act.

redelegated this authority to the Assistant Deputy Director for the Permitting and Enforcement Branch by memorandum dated August 27, 2008.

20. Water Code section 1112 generally provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055, among other specified matters. 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.
21. Water Code section 1848, subdivision (c), provides that liability cannot be imposed under section 1847 for a violation for which liability is imposed under Water Code section 1052.

ALLEGED VIOLATIONS

Statement of Annual Diversion or Use

22. **Violation 1:** Failure to file a Statement of Water Diversion or Use:
Water Code section 5101 requires that any person who diverts water shall file a Statement with the Board by February 1 of the succeeding year, with certain exceptions that are not relevant here.
23. Water Code section 5102 states that a separate Statement shall be filed for each point of diversion.
24. Water Code section 5107, subdivision (c)(1) provides that the Board may impose liability pursuant to Water Code section 1055 for failure to file a Statement in an amount not to exceed one thousand dollars (\$1,000), plus five hundred dollars (\$500) per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the Board has called the violation to the attention of that person.
- a. POD1 is a diversion from the Upper Main-Stem Eel River that is tributary to the Pacific Ocean. Water diverted at POD1 was plumbed to convey water to storage at POS1 and then for use at POU1 for cannabis cultivation. Water diverted at POD1 is subject to the State Water Board's permitting authority.
 - b. POD2 is a diversion from an unnamed stream that is tributary to the Upper Main-Stem Eel River. Water diverted at POD2 was plumbed to convey water to POS2 and POS3 for cannabis cultivation at POU2 and for domestic use at POU3. Water diverted at POD2 is subject to the State Water Board's permitting authority.
 - c. On June 12, 2024, Division staff mailed the Diverter a NOV/IR via certified mail. On June 15, 2024, the NOV/IR was received and signed for by the Diverter. The NOV/IR informed the Diverter that based on the observations made during the May 14, 2024, inspection a Statement needed to be filed by February 1, 2025, reporting the diversion and use of water from POD1 and

POD2. As of the date of this Complaint, the Diverter has not submitted any Statements for the diversion and use of water from POD1 or POD2. Division staff allege one violation for the failure to file a Statement for each POD1 and POD2.

Unauthorized Diversion or Use of Water

25. Violation 2: Unauthorized Diversion or Use of Water

Water Code section 1052, subdivision (a), provides that any diversion or use of water subject to the State Water Board's authority under Division 2 of the Water Code, without proper Board authorization, is a trespass. Subdivision (c)(3) of Water Code section 1052 provides that for each day in which the unauthorized diversion or use for unlicensed cannabis cultivation occurs, the persons or entities committing a trespass under section 1052, subdivision (a) may be liable in an amount not to exceed three thousand five hundred dollars (\$3,500).

26. All water flowing in any natural channel is public water of the State and subject to appropriation in accordance with the Water Code, as provided in Section 1201 of the Water Code. Pursuant to Water Code Section 1225, no right to appropriate or use water subject to appropriation shall be initiated or acquired except in compliance with Division 2 of the Water Code.

- a. On May 14, 2024, Division staff observed, POD2 diverts from surface water source that is subject to the State Water Board's permitting authority and was identified by Division staff during the inspection to be the source of water for cannabis cultivation at POU2. Division staff observed POD2 to be located on APN 171-110-02-00 owned by Ofelia Alejandro Razo Diaz Havoa. The Property is not riparian to the unnamed spring and does not have a basis of right to divert or use water from POD2. Division staff observed water from POD2 is conveyed to the Property (APN 171-110-03-00) owned by the Diverter. Division staff reviewed Bureau of Land Management (BLM) land patent records and a copy of the Property deed. Division staff found that APN 171-110-03-00 and 171-110-02-00 was part of the same land patent, but the Property deed did not include an easement or riparian rights to divert water from the unnamed spring located on APN 171-110-02-00. The diversion or use of water from a non-riparian source requires an appropriative water right issued by the State Water Board. The Diverter does not have an existing appropriative water right that would authorize the diversion and use of water from POD2.

27. The following day of violation is alleged for POD2 pursuant to Water Code section 1052 (c)(3) for unlicensed cannabis cultivation.

- a. Division staff allege a violation for one day of diversion and use for POD2 as observed during the inspection on May 14, 2024. POD2 diverted water from an unnamed spring located on APN 171-110-02-00. During the inspection, POD2 was not actively diverting water. However, water diverted from POD2 was stored at POS3 also located on APN 171-110-02-00. POD2 was the sole source of water observed by Division staff supplying POS3. POS3 is a

2,500-gallon polyethylene water tank that was completely full at the time of the inspection. The Diverter's irrigation infrastructure was plumbed to use the water stored in POS3 for domestic use at the residence (POU3) on APN 171-110-03-00 and for consumptive use irrigating cannabis at POU2 also located on APN 171-110-03-00. POU2 consists of two cannabis cultivation greenhouse that use dripline irrigation supplied from water diverted from POD2.

Cannabis Cultivation Policy Requirements

28. 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 Cannabis Cultivation Policy contains principles, guidelines and requirements (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 later amended the Cannabis Cultivation Policy, effective April 16, 2019.
29. The Cannabis Cultivation Policy 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.
30. Water Code Section 1847, subdivisions (a) and (b)(1), provide that any person or entity violating any requirement adopted pursuant to Water Code Section 13149 may be liable in an amount not to exceed the sum of five hundred dollars (\$500) per violation, plus two hundred fifty dollars (\$250) for each additional day on which each violation continues if the person fails to correct the violation within 30 days after the Board has called the violation to the attention of that person or entity, plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the applicable requirement.
31. **Violation 3:** Cannabis Cultivation Policy, Attachment A, Section 1, Term 18, states:
Cannabis cultivators shall not commit trespass. Nothing in this Policy or any program implementing this Policy shall be construed to authorize cannabis cultivation:
- a. During the Property inspection on May 14, 2024, Division staff observed POD2 located on an adjacent property (APN: 171-110-02-00). Water was diverted and conveyed from POD2 to APN: 171-110-03-00, owned by the Diverter for the cultivation of cannabis. Water was pumped from POD2 using a 1 hp electric pump to convey water to POS3 for storage, then to POS2 and use at POU2 for cannabis cultivation.
 - i. One (1) violation of Term 18 of Section 1 of the Cannabis Cultivation Policy is alleged for the Diverter's trespass to access POD2.
32. **Violation 4:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 66:

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, Numeric and Narrative Instream Flow Requirements of this Attachment A for more information.

Cannabis Cultivation Policy, Attachment A, Section 3, Numeric and Narrative Instream Flow Requirement No. 4, states:

Surface Water Dry Season Forbearance Period: *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.*

- a. During the Property inspection on May 14, 2024, Division staff observed POD1 and POD2 installed and plumbed to divert surface waters for the purpose of cannabis cultivation at POU1 and POU2. POD1 and POD2 are the sole sources of water on the Property for cannabis cultivation.
 - i. Two (2) violations of Term 66 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to comply with narrative and numeric instream flow requirements No.4. during the surface water dry season.

33. Violation 5: Cannabis Cultivation Policy, Attachment A, Section 2, Term 77: *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. On May 14, 2024, during the inspection, Division staff observed that POD1 was not plugged, blocked, capped, disconnected, removed, or otherwise bypassed nor rendered incapable of diverting water for cannabis activities during the surface water diversion forbearance period. POD1 did not have a diversion control structure in place to prevent the diversion of water or the ability to bypass water downstream during the forbearance period.
 - i. One (1) violation of Term 77 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to follow diversion intake condition requirements as observed at POD1 during the Property inspection on May 14, 2024.

34. Violation 6: Cannabis Cultivation Policy, Attachment A, Section 2, Term 81, states: *Cannabis cultivators are encouraged to install separate storage systems for water diverted for cannabis irrigation and water diverted for any other beneficial uses, or otherwise shall install separate measuring devices to quantify diversion to and from*

each storage facility, including the quantity of water diverted and the quantity, place, and purpose of use (e.g., cannabis irrigation, other crop irrigation, domestic, etc.) for the stored water.

- a. Water diverted to storage from POD2 is used to irrigate cannabis at POU2 and for domestic use at POU3. During the inspection, Division staff observed a water diversion and water conveyance system that commingled water used for domestic and cannabis cultivation. There were no water measuring devices observed or documented on any POS or on any of the water conveyance lines leading from POD2 to POU3 where domestic use occurs. Based on the water diversion and conveyance system, Division staff determined there would need to be at least one water measuring device installed to measure and record the water use for cannabis cultivation and domestic purposes.
 - i. One (1) violation of Term 81 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to install separate storage systems for domestic use and cannabis cultivation use or a measuring device(s) to quantify the amount of water diverted for cannabis cultivation from POD2 to POU3 water diverted for other beneficial uses, observed during the Property inspection on May 14, 2024.

35. Violation 7: Cannabis Cultivation Policy, Attachment A, 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. On May 14, 2024, Division staff observed that POD1 and POD2 divert water for cannabis cultivation. Division staff did not observe either POD with a measuring device installed, and no daily diversion records were found during the May 14, 2024, inspection.
 - i. Two (2) violations (one each for POD1 and POD2) of Term 82 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to install and maintain measuring devices to record daily diversions

used for cannabis cultivation and for the absence of diversion records noted during the May 14, 2024, inspection.

36. Violation 8: Cannabis Cultivation Policy, Attachment A, 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 Property inspection on May 14, 2024, Division staff documented one water storage tank located at POS1 and one water storage tank at POS2 without a float valve or similar device installed to prevent the overflow and waste of water.
 - i. Two (2) violations of Term 92 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to have water storage tanks equipped with a float valve, or equivalent device, to shut off the diversion when the water storage tanks are full.

37. Violation 9: Cannabis Cultivation Policy, Attachment A, Section 2, Term 93, states: *Cannabis cultivators shall ensure that all vents and other openings on water storage tanks are designed to prevent the entry and/or entrapment of wildlife.*

- a. During the May 14, 2024, Property inspection, Division staff observed a total of four (4) water storage tanks in use for cannabis cultivation without tank lids or other means to prevent the entry and/or entrapment of wildlife at the following locations: at POS1 (Tank 1 and Tank 2) and POS2 (Tank 3 and Tank 4).
 - i. Four (4) violations of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for the use of storage tanks for cannabis cultivation without ensuring that openings are designed to prevent the entry and/or entrapment of wildlife.

38. Violation 10: Cannabis Cultivation Policy, Attachment A, 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 May 14, 2024, Property inspection, Division staff did not observe any water measuring devices nor any records of water cannabis cultivation use at any of the PODs, POSs, or POU.

- i. One (1) violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to measure water used for cannabis cultivation and for failing to have daily records of water used for cannabis cultivation during the May 14, 2024, inspection.

Diversion or Use of Water for Cannabis Cultivation Requires DCC License

39. **Violation 11:** Water Code section 1847, subdivisions (a) and (b)(4) provide that any person or entity who diverts or uses water for cannabis cultivation for which a license is required, but which has not been obtained, under Chapter 6 (commencing with 26060) or Chapter 7 (commencing with 26070) of Division 10 of the Business and Professions Code may be liable in an amount not to exceed the sum of five hundred dollars (\$500) per violation, plus two hundred fifty dollars (\$250) for each additional day on which each violation continues if the person fails to correct the violation within 30 days after the Board has called the violation to the attention of that person or entity, plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the applicable requirement.
40. 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. Based on the review of aerial images and Division staff's observations during the 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. During the May 14, 2024, Property inspection, Division staff determined that the observed 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 Property inspection, Division staff observed approximately 1,706 cannabis plants growing in greenhouses, with an approximate total area of 15,026 sq. ft., irrigated from surface water diverted at POD1 and POD2. Division staff examined available records on May 8, 2024, and recently on September 4, 2024, did not find any record that DCC issued a cultivation license for the activities observed on the Property.
 - i. One (1) violation is alleged for diverting and using water for cannabis cultivation without having obtained a DCC commercial cannabis license, as required.

Statutory Maximum Liability

41. The statutory maximum liability for Violations 1-11 is the sum of each Violation's statutory maximum liability: Violations 1 (\$2,000) + 2 (\$3,500) + 3 (\$500) + 4 (\$500) + 5 (\$500) + 6 (\$500) + 7 (\$1,000) + 8 (\$1,000) + 9 (\$2,000) + 10 (\$500) + 11 (\$500) = \$12,500

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

42. 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

43. The aerial imagery indicates that illegal cannabis cultivation activities likely pre-dated the May 14, 2024, inspection. The Division calculated the proposed administrative civil liability taking into consideration all relevant circumstances including the extent of harm, nature and persistence of the violation, corrective action, and the length of time the violation occurred. The Division recommends that the State Water Board take each opportunity to deter illegal cannabis cultivation activities and demonstrate the need to comply by imposing administrative civil liability sufficient to ensure the cost of noncompliance is an incentive to comply. The Diverter engaged in the unauthorized diversion and use of water for illegal cannabis cultivation activities. The proposed penalty is adequate to penalize the violations and deter noncompliance by similarly situated parties.

44. Division of Water Rights staff found no evidence that the Diverter has obtained any of the regulatory approvals necessary for commercial cannabis cultivation. Permit and licensing fees and other regulatory costs for commercial cannabis cultivation can be significant, and unlicensed and unpermitted cultivators obtain an unfair advantage over those cultivators who participate in the regulated market. Liabilities should consider the need for specific and general deterrence to similarly situated cultivators who operate without State or local authorization.

45. Violation 1: Failure to File Statements of Water Diversion and Use (Water Code section 5101)

a. Extent of Harm Caused:

The failure to file a Statement impacts the State Water Board's administration of the State's water resources and the priority of right to divert and use water. The State Water Board's Statement Program is a central repository for records that report each point of diversion, diversion amount and use of water by all water diverters that are not required to have an appropriative water right on file with the State Water Board. The failure to submit Statements of water diversion and use impacts the water rights regulatory program and harms other priority of right diverters, the environment, and public trust resources. The effects of cannabis-related water diversion and use that is not reported to the State Water Board remains a concern as the state continues to experience water shortages. The need for timely water diversion and use records is particularly important after three years of critical drought conditions that have led to curtailments of legal users based on reported water use and projected water availability data. Failure to comply with reporting

requirements adds an administrative burden to state and local regulators that can alter or reduce water use by legal water users when there is insufficient supply relative to demand. When legal users are curtailed, the water that becomes available unfairly benefits illegal diverters or those who do not report their diversion or use of water. Therefore, by failing to file a Statement, the Diverters compromise the State Water Board's orderly and efficient administration of the State's water resources.

b. Nature and Persistence:

The Diverter signed the mailing receipt providing confirmation of a received the NOV/IR, making the Diverter aware of the State Water Board Statement filing requirements. To date, the Diverter has not completed the State Water Board Statement filing requirements for POD1 and POD2.

c. Corrective Action:

As of the date of this complaint, the Diverter has not come into compliance by filing Statements for POD1 and POD2.

d. Length of Time:

A Statement has been required to report the annual diversion and use of water from POD1 and POD2 as of February 1, 2025. As of the date of this Complaint, a search of eWRIMS shows no Statements on file for POD1 or POD2.

e. Taking into consideration relevant circumstances and the factors listed in a-d above, the Division proposes administrative liability in the amount of \$2,000.

46. Violation 2: Unauthorized Diversion or Use of Water for Cannabis Cultivation (Water Code 1052)

a. Extent of Harm Caused:

The unauthorized diversion and use of water creates a cumulative and direct impact to downstream beneficial uses and downstream water right holders that are operating in compliance with the laws. A reduction in stream flow causes a loss of available aquatic habitat areas for fish and macroinvertebrates, and the water resources available for senior appropriative or riparian right diverters. Harm can also be characterized as a disruption to the State Water Board's orderly and efficient administration of water resources of the State from the failure to report water diversion and use. The diversion of water to seasonal storage on the Property without an appropriative water right and reporting annual water diversion and use can cause injury to downstream water users and public trust resources.

b. Nature and Persistence:

Since the Diverter purchased the Property, no application to appropriate water has been filed to authorize the diversion and use of water from POD2. The Diverter does not have a legal basis of right to divert water from the unnamed spring tributary to the Eel River. POD2 is located on an adjacent property owned by another individual. Division staff reviewed Bureau of Land

Management (BLM) land patent records and a copy of the Property deed. Division staff found that APN 171-110-03 and APN 171-110-02-00 are part of the same land patent, but the Property deed did not retain an easement or riparian right to divert water from the unnamed spring located on the adjacent property. The diversion and use of water from POD2 requires an appropriative water right issued by the State Water Board. The Division notified the Diverter of the violation in the NOV/IR and explained what corrective actions could be taken to correct the violation at POD2.

c. Corrective Action:

As of the date of this Complaint, the Diverter has no appropriative water right on file that would authorize the off-Property diversion and use of water from POD2. The Diverter has made no attempt to file for an appropriative water right. The Diverter has taken no corrective action since May 14, 2024, inspection and receiving the NOV/IR on June 15, 2024.

d. Length of Time:

Aerial imagery dated May 1, 2022, depicts the presence of seven greenhouses and a residence on the Property (POU1-3). During the May 14, 2024, Division staff observed POD2 being used for cannabis cultivation at POU2 and domestic use at POU3. Division staff have conservatively alleged a violation for one day of diversion and use for cannabis cultivation as documented during the inspection.

e. Considering the relevant circumstances and factors listed in a-d above, the Division proposes an administrative civil liability of \$3,500.

47. Violations 3 – 4: Cannabis Cultivation Policy, Section 1: Term 18; Section 2: Term 66.

Violations of terms and conditions of the Cannabis Cultivation Policy Terms 18 and 66 are jointly analyzed in accordance with Water Code section 1055.3. Compliance with State Water Board's Cannabis Cultivation Policy terms, conditions, and requirements are necessary to ensure individual or cumulative water diversions associated with cannabis cultivation do not have a negative impact on water availability, aquatic and riparian habitat, public trust resources, or the environment, and noncompliance with all state and local laws. The Diverter was cultivating illegally without a state issued cannabis cultivation license issued by the Department of Cannabis Control and was trespassing onto a neighboring parcel to undertake cannabis cultivation activities. These violations of the State Water Board's Cannabis Cultivation Policy contribute to the impacts that the state seeks to deter.

a. Extent of Harm Caused:

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 within the Thomas Creek-Eel River watershed (HUC 12 #180101030503), tributary to the Main-stem Eel River. As such, the Property is located in a priority watershed based on high public trust resource value such as aquatic habitat, listed anadromous and amphibian endangered species in the stream system. Additionally, Diverter unlawfully trespassed on a neighboring parcel in violation of local laws in order to undertake cannabis cultivation activities harming the neighbor's right to restrict access to and the private enjoyment of their property.

b. Nature and Persistence:

During the inspection, Division staff observed water diversion infrastructure at POD1 during the surface water dry season forbearance period (April 1 – October 31) in use for cannabis cultivation. It is also more likely than not that the Diverter continually trespassed on the neighboring parcel during the cultivation season in order to facilitate water diversion from POD2 for cannabis cultivation activities.

c. Corrective Action:

The Diverter has taken no corrective action since the May 14, 2024, inspection and receiving the NOV/IR on June 15, 2024.

d. Length of Time:

Although it is likely the Diverter continually diverted water from POD1 during the forbearance period based on the consumptive water demands of cannabis, the Division alleges one violation of Term 66 and one violation of Term 18 for Diverter's trespass onto the neighboring parcel to establish POD2.

e. Considering the factors listed in a-d above, the Division proposes the following administrative civil liability for these violations: Violation 3: \$500; and Violation 4: \$500.

48. Violations 6, 7, and 10: Cannabis Cultivation Policy, Section 2, Term 81, 82, and 98.

Violations of Term 81, 82, and 98 of the State Water Board's Cannabis Cultivation Policy have been analyzed jointly with respect to Water Code, section 1055.3. These violations are analyzed jointly because the requirements of these Cannabis Cultivation Policy terms establish best management practices associated with the diversion and use of water for cannabis cultivation. The Cannabis Cultivation Policy terms and conditions are required to ensure individual or cumulative water diversions and associated cannabis cultivation activities do not have a negative impact on water availability, aquatic and riparian habitat, public trust resources, or the environment.

a. Extent of Harm:

Accurate data on water diversion and use is required from all users of water in the State so that the Division can plan for drought and effectively manage the State's limited water resources. The failure to install monitoring devices, maintain diversion and use records, and implement best management practices deprives the Division of critical data required for resource planning, forecast water demand, protection of public trust resources, to ensure water diverters are not diverting more water than authorized, to ensure water diverted is put to beneficial use without the waste and unreasonable use of water, and protects the priority of right to divert and use water beneficially.

b. Nature and Persistence:

Division staff observed no water measuring device nor water diversion records on or near POD1, or POD2, which both divert water by pump for cannabis irrigation. On June 15, 2024, the Diverter signed for and received the NOV/IR providing notice of the Cannabis Cultivation Policy violations observed during the inspection.

c. Corrective Action:

The Diverter has taken no corrective action since the May 14, 2024, inspection and receiving the NOV/IR on June 15, 2024.

d. Length of Time:

During the inspection, Division staff documented the Diverter's failure to install water diversion measuring devices for POD1 and POD2 and the failure to keep and maintain records of water diversion and consumption for cannabis irrigation and domestic use. Although these violations likely persisted prior to the inspection Division staff allege as single violation for each Cannabis Cultivation Policy term requirements.

e. Considering all the relevant circumstances and the factors listed in a-d above, the Division proposes the following administrative civil liability for these violations: Violation 6: \$500; Violation 7: \$1,000; Violation 10: \$500.

49. Violations 5, 8, and 9: Cannabis Cultivation Policy, Section 2, Terms 77, 92 and 93

These violations are analyzed jointly because the requirements of these Cannabis Cultivation Policy terms establish best management practices for the diversion and storage of water for cannabis irrigation that seek to prevent waste of water resources and harm to the surrounding riparian and aquatic habitats.

a. Extent of Harm:

The Cannabis Cultivation Policy Terms associated with these violations are requirements necessary to prevent impacts to water availability and aquatic habitats. Water diversions that do not cap or block intakes harm instream flows during the forbearance period. Inability to render the Diverter's POD intake incapable of diverting water can result in continued water diversion,

impacting downstream beneficial uses and depriving downstream priority of right diverters. Moreover, storage facilities without overflow prevention devices and lids have the potential to waste water depleting instream flows. the waste of water and may cause direct harm by entrapping wildlife. The potential for harm to instream flows and wildlife increases significantly when there are multiple water storage tanks that fail to comply with the Cannabis Cultivation Policy requirements.

b. Nature and Persistence:

During the May 14, 2024, inspection, Division staff observed POD1 was not plugged, blocked, capped, disconnected, removed, or otherwise bypassed or rendered incapable of diverting water for cannabis activities during the surface water diversion forbearance period. Additionally, Division staff documented two (2) water storage tanks without a device to prevent overflow and four (4) storage tanks without lids installed to prevent wildlife entrapment.

c. Corrective Action:

The Diverter has taken no corrective action since the May 14, 2024, inspection and receiving the NOV/IR on June 15, 2024.

d. Length of Time:

During the inspection Division staff documented the Diverters' failure to implement the water diversion and storage facilities best management practices required by the Cannabis Cultivation Policy. It is likely these violations persisted during the duration of cannabis cultivation activities at the Property.

e. Considering all the relevant circumstances and the factors listed in a-d above, the Division proposes the following administrative civil liability for these violations: Violation 5: \$500; Violation 8: \$1,000; Violation 9: \$2,000.

50. Violation 11: Water Code Section 1847(b)(4) - Diversion or Use of Water for Cannabis Cultivation without a Department of Cannabis Control License

a. Extent of Harm:

Operating a commercial cannabis cultivation site without a license causes negative economic impacts on the legal cannabis industry and harm to the regulatory program. 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 availability, terrestrial and aquatic habitats, wetlands, and springs. As such, the Diverters' cannabis cultivation activities significantly harm legal cultivators, priority of right diverters, beneficial uses of water, and the Cannabis Cultivation Regulatory Program.

b. Nature and Persistence:

Unlicensed commercial cannabis cultivation violates the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. DCC 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 inspection required a commercial cannabis cultivation license. During the inspection, Division staff observed approximately 1,706 cannabis plants growing in greenhouses, with approximately 15,026 sq. ft., of irrigated land from surface water diversions. On June 15, 2024, the Diverter signed for and was notified by the NOV/IR that commercial cannabis cultivation requires a license pursuant to Water Code section 1847.

c. Corrective Action:

As of the date of this complaint, the Diverter has not provided evidence of corrective action taken to remediate this violation.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the inspection. Division staff observations and evidence collected suggest the water diversion and use for cannabis cultivation was at a commercial cultivation scale that requires a DCC license. Although Division staff believe the scale of cultivation similar to the amount of cultivation observed during the inspection of the Property has been occurring prior to the inspection, liability for a single violation of Water Code section 1847, subdivision (b)(4) 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.

PROPOSED CIVIL LIABILITY

51. 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 \$12,500 calculated as follows: Violation 1(\$2,000) + Violation 2(\$3,500) + Violations 3 through 10(\$6,500) + Violation 11(\$500) = \$12,500.

RIGHT TO HEARING

52. 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).

53. If the Diverter does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Deputy Director for Water Rights, under delegated

authority by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.

54. If the Diverter requests a hearing, an opportunity to contest the allegations in this Complaint and the imposition of liability before a hearing officer from the Administrative Hearings Office will be provided. 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.
55. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that 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

ORIGINAL SIGNED BY:

*Robert P. Cervantes, Acting Assistant Deputy Director
Division of Water Rights*

Dated: August 14, 2025