

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Alleged Water Code Violations

**Rural Property Management LLC, Sunsets LLC, and Michael
Zeyock**

Assessor Parcel Numbers 011-690-20-01, 011-690-21-01 and 011-690-22-01

COUNTY: MENDOCINO

**Rural Property Management LLC, Sunsets LLC, and Michael
Zeyock, (HEREINAFTER REFERRED TO AS “DIVERTERS”)
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 DiverTERS committed the violations described below. The violations are related to the diversion or use of water for cannabis cultivation activities on the DiverTERS’ real property in Mendocino County, Assessor Parcel Numbers (APNs) 011-690-20-01, 011-690-21-01 and 011-690-22-01 (Property).
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the DiverTERS imposing liability in the total amount of \$39,000.
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 DiverTERS have the right to request a hearing on the alleged violations but must do so in writing within 20 days from the date the DiverTERS receive this Complaint, or else that right is waived. Please see the 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: Knowingly making a material misstatement in supplemental Statement S026510 for the reporting period December 31, 2020, through October 1, 2021, in violation of Water Code section 5107.
6. Violation 3: Unauthorized diversion or use of water in violation of Water Code section 1052.
7. Violations 4-8: Five (5) violations of Term requirements in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy)¹.
8. Violation 9: Diverting and using water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC)² in violation of Water Code section 1847 (b)(4).

BACKGROUND AND FACTUAL BASIS

9. Property Ownership:

The Property is comprised of three APNs all currently owned by Rural Property Management, LLC. Below is a summary of the ownership and transfer history of each APN according to Mendocino County Recorder's Office records:

APN 011-690-20-01 – In 2006 Justin Gaffney purchased the parcel. In 2013, Justin Gaffney transferred title of the parcel to Gaffney Group, LLC. In 2015, the parcel was transferred to Sunsets, LLC. Sunsets LLC owned the parcel until 2022 when the company was dissolved and the parcel was transferred to Rural Property Management, LLC.

APN 011-690-21-01 – In 2010, Justin Gaffney acquired ownership of the parcel. He transferred the parcel to Gaffney Group, LLC in 2013. In 2016, the parcel was purchased or transferred to Rural Property Management, LLC.

APN 011-690-22-01 – Rural Property Management, LLC purchased the parcel from Darwish Adram in 2019.

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.

² Three State programs merged to form the Department of Cannabis Control (DCC). Those programs were the Bureau of Cannabis Control in the Department of Consumer Affairs, the Manufactured Cannabis Safety Branch in the Department of Public Health, and CalCannabis Cultivation Licensing in the Department of Food and Agriculture (CDFA). Effective July 12, 2021, DCC is the State program tasked with licensing, inspecting, and regulating cannabis activities in California.

10. Rural Property Management, LLC and Sunsets, LLC Corporate Officers:

Rural Property Management, LLC – On December 30, 2009, a Limited Liability Company (LLC) Article of Organization was filed with the California Secretary of State for North Coast Self Defense Academy LLC listing Justin Liam Gaffney as the organizer and agent for service of process. On June 7, 2013, at the authorization of Justin Gaffney a Certificate of Amendment was filed with the California Secretary of State changing the name from North Coast Self Defense Academy LLC to The Gaffney Group, LLC and identified Justin Liam Gaffney as the manager/member. On April 20, 2016, Justin Gaffney again filed a Certificate of Amendment with the California Secretary of State changing the name of The Gaffney Group, LLC to Rural Property Management, LLC. Justin Gaffney remained the sole manager/member for the company. On August 12, 2021, Rural Property Management, LLC filed a Statement of Information with the California Secretary of State changing the business address, agent, and manager/member. Maureen McCready was identified as the agent for service of process and Michael Zeyock replaced Justin Liam Gaffney as Rural Property Management, LLC's sole manager/member.

Sunsets, LLC – On November 2, 2015, Articles of Organization were filed with the Secretary of State for Sunsets, LLC by the company's agent Maureen McCready. On November 15, 2015, Sunsets, LLC filed a Statement of Information with the Secretary of State listing Michael Zeyock as the manager/member. The business license for Sunsets, LLC was suspended by the Secretary of State on November 2, 2020. On December 30, 2021, the suspension of Sunsets, LLC's business license ended and on March 18, 2022, a Statement of Information was filed with the Secretary of State identifying Michael Zeyock as the manager/member of Sunsets, LLC. On June 6, 2022, Michael Zeyock dissolved Sunsets, LLC filing a Certificate of Cancellation - LLC Termination with the Secretary of State.

11. Responsible Corporate Officer:

Michael Zeyock is individually liable for the alleged violations herein pursuant to the responsible corporate officer doctrine. The Water Code, section 100 states "because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent...and that the waste or unreasonable use or unreasonable method of use of water be prevented." The people of the State have paramount interest in the protection of the public interest in the development of the state's water resources to ensure the greatest public benefit. (see Water Code, sec. 105.) The statutes the Division seeks to enforce in this complaint are found in Division 2 of the Water Code and were declared "to be in furtherance of...the welfare and benefit of the people of the state..." (Water Code, sec. 1050.)

Michael Zeyock is the current corporate officer for Rural Property Management, LLC and was the sole corporate officer of Sunsets, LLC at the time of the alleged violations. As such, he is the only individual within the companies holding a position of authority and responsibility with a positive duty to seek out and remedy violations of the Water Code associated with the diversion and use of water on the Property.

Moreover, as a corporate officer he had a duty to proactively implement measures within the companies that would ensure the businesses operated legally. Rather, California Department of Fish and Wildlife (CDFW) Game Warden, Joshua Zulliger's August 13, 2021 Investigation Report shows Michael Zeyock controlled the residence on the Property, used his two personal trucks and a trailer to conduct cannabis cultivation activities on the Property, and purchased the infrastructure and supplies identified as used in the cultivation operations at the Property. Thus, Michael Zeyock is individually liable as a responsible corporate officer of both Rural Property Management, LLC and Sunsets, LLC for the allegations in this complaint. (see *People v. Roscoe* (2009) 169 Cal.App.4th 829.)

12. Watershed Information:

The Property is located in the Bell Springs Creek watershed (HUC 12 #180101050205), tributary to the Main-stem Eel River. The Main-stem Eel River is designated as a Wild and Scenic River from the main stem 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.

13. Water Rights Records Review:

On or around August 2, 2021, 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 that on June 22, 2017, a Statement of Water Diversion and Use (Statement, S026510) was filed by Ryley Tauzer of Stillwater Sciences for a riparian diversion and use occurring in 2016. Statement S026510 identifies the place of use (POU) as APN 011-690-021 and the purpose of use as irrigation of 0.23 acres (including cannabis) and domestic use for four people. The POD is the same as POD1 described by the November 23, 2021 Notice of Violation and Inspection Report, as observed during the August 5, 2021 inspection. The water course description for Statement S026510 is an unnamed spring tributary to Cinch Creek. The supplemental Statements filed for the years 2017 and 2021 for S026510 claim domestic uses only and no use for cannabis irrigation. The 2017 filing stated that 0.009207 acre-feet (3,000 gallons) per month were diverted in each month from February through October for two persons for domestic use only. The method of diversion reported in 2017 was diversion to storage only with no direct diversion. The 2021 filing stated that 0.2271 acre-feet (74,001 gallons) per month were diverted from April through September for four people for domestic use only. The method of diversion reported in 2021 was direct diversion only with no diversion to storage. During the inspection in 2021, Division

staff observed cannabis cultivation at six separate places of use (POU 1-6) that were supplied water from POD1, which is the same POD reported on in Statement S026510. As of the date of this Complaint, the Division has no supplemental Statements on file reporting annual water diversion and use for each of the following years: 2018, 2019, 2020, 2022 or 2023.

14. Well Records Review

On or around August 2, 2021, Division staff searched Department of Water Resources records and did not find any record of a well on the Property.

15. Department of Cannabis Control License Records Review:

On or around August 2, 2021, 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. Division staff again checked DCC license records dated October 12, 2022, and July 17, 2024, and found no active or pending DCC license for the Property.

16. Aerial Imagery Review:

On or around August 2, 2021, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. Google Earth aerial imagery dated June 11, 2005, is the earliest available image showing water storage at the offstream reservoirs located at Points of Storage (POS) POS1 and POS9, observed during the August 5, 2021 inspection.
- b. Google Earth aerial imagery dated May 28, 2014, shows POS9 visibly enlarged to approximately 11,000 square feet (from approximately 1,840 sq. ft. as measured in Google Earth aerial imagery dated June 11 2005) and holding water in storage. A natural stream channel constricted by road construction is visible north of POS9 which is adjacent to the stream. The road construction filled in the natural stream channel, leaving a smaller cross-sectional area that caused erosion of the road surface and diversion of the stream across the road (described herein as POD3).
- c. Google Earth aerial imagery dated May 28, 2014, shows POS1 visibly enlarged to its current footprint with reconstructed berms and a spillway pipe installed. Google Earth aerial imagery dated August 12, 2017, appears to show POS1 with additional berm height added. This image also shows POS1 empty. Google Earth aerial imagery dated April 21, 2019, shows the reservoir liner installed and POS1 filled to maximum capacity.
- d. Google Earth aerial imagery dated August 12, 2017, is the earliest available image showing water storage at the offstream reservoir POS18, observed during the August 5, 2021 inspection. This imagery shows POS18 surface area approximately 7,200 sq. ft.

- e. Google Earth aerial imagery of APN 011-690-20-01 shows cannabis cultivation greenhouses and associated infrastructure such as tanks, blackout tarps and solar panels visible, and indicative of active cultivation and water use on August 12, 2017, April 21, 2019, and July 1, 2021. LandVision aerial imagery dated July 16, 2019, October 22, 2019, May 13, 2021, May 20, 2021, June 9, 2021, June 15, 2021, and July 18, 2021, shows similar or the same cannabis cultivation infrastructure in use. APN 011-690-20-01 contains the water system supplied by POD4, with water storage at POS 17-21, and use at POU7, as observed during the August 5, 2021 inspection. POD4 was found to be the sole water source for APN 011-690-20-01.
 - f. Google Earth aerial imagery of APNs 011-690-21-01 and 011-690-22-01 show cannabis cultivation greenhouses and associated infrastructure such as tanks, blackout tarps and solar panels, which are indicative of active cultivation occurring on April 21, 2019, June 18, 2020, July 13, 2020, and July 1, 2021. Land Vision aerial imagery dated April 17, 2018, July 16, 2019, October 22, 2019, May 13, 2021, May 20, 2021, June 9, 2021, June 15, 2021, and July 18, 2021, show similar cannabis cultivation infrastructure in use. APNs 011-690-21-01 and 011-690-22-01 contain the water system supplied by POD1 and POD3, stored at POS 1-16, and used at POU 1-6, 8, and 9 as observed during the August 5, 2021 inspection. During the August 5, 2021 inspection, POD1 and POD3 were found to be the sole water sources in use for APNs 011-690-21-01 and 011-690-22-01.
17. Inspection Basis:
On or around August 2, 2021, the Division was notified by CDFW of a search warrant inspection of the Property based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation.
18. Inspection:
On August 5, 2021, Division staff participated in a search warrant inspection of the Property. The Property owners were not onsite during the inspection. During the inspection, Division staff observed 12,949 actively growing cannabis plants on the Property. CDFW law enforcement officers provided the total cannabis plant count. The three surface water points of diversion (PODs) observed by Division staff during the inspection were the sole sources of water on the Property.
19. California Department of Fish and Wildlife Arrest Report
In October 2020, CDFW Wardens first visited the Property to investigate possible Fish and Game Code violations related to observed hunting activities of Michael Zeyock. While on the Property CDFW Wardens observed cannabis cultivation infrastructure (cultivation pads, greenhouses, and traps) and a trailer registered to Michael Zeyock. On August 5, 2021, CDFW Wardens obtained a search warrant for the Property based on their observations from October 2020. During the search warrant inspection wardens documented approximately 12,949 cannabis plants growing and 5,288.2 pounds of processed cannabis on the Property.

20. Notice of Violation and Inspection Report:

Subsequent to the inspection, Division staff prepared a Notice of Violation and Inspection Report (NOV/IR) and sent the NOV/IR to the Diverters via United States Postal Service (USPS) certified mail on November 23, 2021. On November 26, 2021, the NOV/IR was documented as received and signed for by Michael Zeyock, and on December 3, 2021, the NOV/IR was received and signed for by Kaati Gaffney. 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.

21. Points of Diversion:

During the August 5, 2021 inspection, Division staff documented the following PODs:

- a. POD1 is a diversion from a cistern located in an unnamed stream that is tributary to Cinch Creek, tributary to Bell Springs Creek, tributary to the Eel River. POD1 is an 18-inch diameter concrete cistern buried in the unnamed stream bed that diverts streamflow and conveys water by gravity through a 2-inch polyethylene water line that ran approximately 200-feet where it ended (not connected to anything) near POS1. Division staff believe that the 2-inch polyethylene water line was used to fill POS1 where water was seasonally stored for later use. Division staff based this finding on the 200-foot length of the 2-inch water line from POD1, the proximity of the 2-inch water line's unconnected end to the offstream reservoir (hereafter referred to as POS1), and the water level in POS1 during the inspection (11.5 feet deep). POS1 was found to have a maximum storage capacity of approximately 598,400 gallons. A stream channel with defined bed and banks exists both upstream and downstream of POD1. The unnamed stream was not flowing during the inspection, and POD1 was not actively diverting. Water diverted at POD1 is conveyed to storage at POS1 where it is then conveyed to storage at POS2, 4-8 and 10. POS10 also receives water from POD3 via POS9. Water from POS 1-2, 4-10 were used on APNs 011-690-21-01 and 011-690-22-01 for cannabis cultivation and domestic uses at POU 1-6 and 8-9, respectively. On August 5, 2021, during the inspection, Division staff documented that POD1 is in the same location as the POD described in Statement S026510.
- b. POD2 is a 30-inch diameter corrugated metal cistern that stands approximately 7-feet above the ground level and the water surface was approximately 11-feet down from the top of the cistern putting it at 4 feet below ground surface. There were no water lines or observed water conveyance connections to POD2 that would indicate POD2 supplied water for use. No stream channel exists upstream or downstream of the cistern.
- c. POD3 is a point of diversion to offstream storage from an unnamed stream that is tributary to Cinch Creek and then the Eel River. A stream channel with defined bed and banks exists both upstream and downstream of POD3. The natural stream channel north of the offstream reservoir has been altered by road construction and by the enlargement of reservoir (POS9) to divert and

store water. The diversion of water at POD3 occurs because POS9 was enlarged and the cross-sectional area of the road was widened, filling and constricting the flow in the stream channel. Based on the road and offstream reservoir enlargement, the stream flow is now diverted into POD3/POS9 when it flows over the road from the ditch. There was no flow in the stream channel, and POD3 was not actively diverting water during the inspection. POS9 was storing water during the inspection. Water diverted from POD1 and POD3 was commingled in storage at POS10 (for domestic use at POU 8-9) and conveyed to POS 11-16 (for cannabis cultivation at POU 3-6) on APNs 011-690-21-01 and 011-690-22-01.

- d. POD4 is a diversion from an unnamed stream tributary to Bell Springs Creek and then the Eel River. A stream channel with defined bed and banks exists both upstream and downstream of POD4, and no water was flowing in or being diverted from the stream during the inspection. POD4 diverts water from the stream through dual 1-inch polyethylene water lines that fill a plastic bin with a 1-inch polyethylene water line connected as an outlet water line that conveyed water by gravity to POS 17-18 and then to POS 19-21 for cannabis irrigation at POU7. Water from POD4 was used on APN 011-690-20-01.

22. Diversers' Response to NOV/IR:

- a. On March 11, 2022, Division of Water Rights – Cannabis Compliance Response Portal (Portal) entry 442066 was submitted by Jacob Muggeridge (Muggeridge) of Green Road Consulting on behalf of Michael Zeyock in response to the NOV/IR. The Portal entry states that the Diversers have cultivated cannabis in the past but will no longer be cultivating cannabis. The comment left under 'Additional Information' states the following: *"The diversion infrastructure at POD 2, 3, and 4 have been removed with no plans for future diversion and no future cannabis cultivation. The removal of POD3 maintains the construction of the rainwater catchment pond diverted from... POD1 will be maintained as a domestic source of water under water right S026510. The annual report for S026510 has been filed for 2021 and the previous years will be filed soon. The tanks used for storage (without lids) will be removed from the premises with attached photo documentation showing the removal rather than proof of lids on the tanks. The required permits for the proposed work have been obtained and the landowner will complete the work when they return from being out of the country."* No photos were attached to the Portal entry.
- b. On October 19, 2022, Division staff emailed Muggeridge and asked for an update on any compliance actions taken or water rights filed for the Property based on the violations alleged in the August 5, 2021 NOV/IR. No Response was received to this email.
- c. As of the date of this Complaint, no evidence has been provided to the Division to corroborate statements made in the Portal regarding the corrective

actions taken besides the supplemental Statement filing for S026510 reporting diversion and use of water from POD1 in 2021.

23. December 21, 2022, Notice of Violation

- a. On December 21, 2022, Division staff mailed a second Notice of Violation (December 21, 2022 NOV) to Michael Zeyock and Justin Gaffney alleging a material misstatement violation in the annual diversion and use reporting for Statement S026510 for diversions from POD1 that occurred between December 31, 2021, and October 1, 2022.
- b. On December 28, 2022, John C. Gazda signed for the December 21, 2022 NOV sent to Michael Zeyock. Justin Gaffney did not pick up the December 21, 2022 NOV.
- c. On February 23, 2023, on behalf of Mr. Zeyock, Green Road Consulting, Steve Breitenstein submitted a letter addressed to Mr. Harris in Arcata. The submitted response (Portal entry 448889) indicated that Jacob Muggeridge was no longer employed by Green Road Consulting, and that Green Road Consulting had not received the NOV prior to it being forwarded. The response suggested alternative information to rebut the alleged material misstatement. The response stated that Division's staff conclusion that water stored in POS1 was diverted from POD1 was based upon "unfounded inferences and erroneous measurements". Mr. Zeyock's consultants alleged that the water in POS1 can be explained by reservoir design, water hauling and rainwater catchment.
- d. On August 27, 2024, Division staff responded to Portal entry 448889 and sent a second NOV for the Water Rights Supplemental Statement S026510. The NOV stated that the response on February 23, 2023, had been received and requested information, such as receipts, and records, to support the claim of hauled water. The NOV also requested the engineering diagram for POS1 referred to by Green Road Consulting's response on February 23, 2023.

STATE WATER BOARD AUTHORITY

24. 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 redelegated this authority to the Assistant Deputy Director for the Permitting and Enforcement Branch by memorandum dated August 27, 2008.
25. 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.

26. 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 Water Diversion and Use

27. **Violation 1:** Failure to file a Statement of Water Diversion and Use:
Water Code section 5101 requires that any person who diverts water shall file with the Board a Statement of their diversion and use as provided in subdivision (b), with certain exceptions that are not relevant here.
28. Water Code section 5102 states that a separate Statement shall be filed for each point of diversion.
29. On September 23, 2021, Senate Bill 155 came into effect and changed the reporting requirements of Water Code section 5101 and 5104 (b)(2). For diversions prior to December 31, 2020, the Statement shall be filed before July 1 of the following year. For diversions after December 31, 2020, and before October 1, 2021, the Statement shall be filed before April 1, 2022. For all diversions in all subsequent reporting periods of October 1 through September 30, Statements shall be filed before February 1 of the year after the reporting period ends.
30. Water Code section 5107(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. POD3 diverts surface water into an offstream reservoir (POS9) and is subject to the State Water Board's permitting authority. Aerial imagery dated June 18, 2020, and July 13, 2020, show POS9 storing water diverted from POD3. During the August 5, 2021 inspection, Division staff observed POS9 storing water and plumbed to convey water to cannabis cultivation and domestic use.
 - b. POD4 diverts surface water to storage at off stream reservoirs (POS18) and in three 20,000 gallon bladders (POS17) for cannabis cultivation and is subject to the State Water Board's permitting authority.
 - c. On November 23, 2021, Division staff mailed the Diverters a NOV/IR via certified mail. On November 26, 2021, the NOV/IR was documented as

received and signed for by Michael Zeyock, and on December 3, 2021, the NOV/IR was received and signed for by Kaati Gaffney. The NOV/IR informed the Diverters of the need to correct the violations. As of the date of this Complaint, the Diverters have not submitted any Statements to the Division for POD3 or POD4.

- d. Division staff allege the Diverters failed to file a Statement for the diversion and use of water occurring from POD3 and POD4. One violation is alleged for each POD3 and POD4 for the failure to file a Statement for the water diverted and stored from POD3 and POD4 by April 1, 2022.

Knowingly Making a Material Misstatement

31. **Violation 2:** Knowingly making a material misstatement on the March 4, 2022 supplemental statement of water diversion and use of water from January 1, 2021 through September 31, 2021 for Statement S026510.
32. Water Code section 5104 requires that supplemental statements be filed annually, before February 1 of each year and shall contain the quantity of water diverted and the rate of diversion by months in the preceding calendar year and any change in the other information contained in the preceding statement.
33. Water Code Section 5107 (b) states that any person who fails to file a supplemental statement required for a diversion or use that occurs after January 1, 2009, who tampers with any measuring device, or who makes a material misstatement pursuant to this part may be liable civilly as provided in subdivisions (c) and (d).
34. Water Code section 5107(c)(3) provides that civil liability may be administratively imposed for knowingly making a material misstatement in a supplemental Statement in an amount not to exceed \$25,000, plus \$1,000 for each day on which the violation continues if the violation is not corrected within 30 days after the board has called the violation to the attention of that person.
 - a. On March 4, 2022, a supplemental statement for Statement S026510 (POD1) was submitted to the Division reporting the diversion and use of water for January 1 through September 30, 2021. On the supplemental reporting statement form, under the heading 'Special Use Categories' it asks, "Are you using any water diverted under this right for the cultivation of cannabis?" Jacob Muggeridge consultant for the Diverters answered "No". Additionally, in the 'Amount of Water Diverted and Used, Type of Diversion' section, the consultant for the Diverters answered "Direct Diversion Only". Each of these representations misstate the water diversion and use as observed by Division staff during the inspection on August 5, 2021.
 - b. During the inspection on August 5, 2021, Division staff observed water diverted from POD1 and stored in an offstream reservoir (POS1) and multiple water storage tanks used for cannabis irrigation at POU 1-6, and for domestic

use at POU 8-9. Evidence obtained by CDFW Wardens during the search show the residence was under the control of Michael Zeyock and the cannabis cultivation activities on the Property used his personal vehicles and trailer in cultivation operations. As such, the Diverters knew water from POD1 was being diverted and stored for cannabis cultivation.

- c. The Diverters' misstatements are material in two ways. First, by stating that water was not diverted and used for cannabis cultivation the Diverters misstate material information on use specifically sought by the State Water Board to assess cannabis cultivation's impact on the state's water resources. Second, by stating that there was only direct diversion occurring from POD1, the Diverters misstate material information the State Water Board needs to determine if the water is being diverted and used in accordance with the Diverter's claimed right.
- d. On December 21, 2022, Division staff sent a Notice of Violation letter (December 21, 2022 NOV) to Michael Zeyock and Justin Gaffney, alleging a material misstatement violation and requested that they correct their supplemental statement by submitting a revised supplemental statement that accurately reports their diversion and use within 30 days of receiving the December 21, 2022 NOV.
- e. On December 28, 2022, the US Post Office delivered the December 21, 2022, NOV to Michael Zeyock's address and the certified return mail receipt was signed for by John C. Gazda. To date, the Diverters have not corrected the misstatements called to their attention in the Notice of Violation letter.
- f. Water Code section 5107(c)(3) requires 30 days for compliance actions to be taken following the notification of knowingly making a material misstatement in a statement. Thirty days from December 28, 2022, is January 27, 2023. On February 23, 2023, the Division received a response through the Portal from Michael Zeyock. The response did not include a corrected refiling of the 2021 supplemental statement. Division staff selected February 23, 2023, as the end date for continued days of violation after notice of the violation was provided.

Unauthorized Diversion or Use of Water

35. **Violation 3:** 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)(1) of Water Code section 1052, provides that if the unauthorized diversion or use occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act, Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code based on drought conditions, the sum of the one thousand dollars (\$1,000) for each day in which the trespass occurs as well as two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's water rights. Subdivision (c)(2) of Water Code section 1052 provides that, in years with conditions other than those described in subdivision (c)(1), persons or entities committing a trespass under Section 1052, subdivision (a) may be liable in an amount not to exceed five hundred dollars (\$500) per day for each day in which the unauthorized diversion or use occurs.

- a. As applicable to this matter, drought conditions applied when Governor Newsom expanded his Drought Declaration through Executive Order N-7-22 on July 8, 2021³. On March 24, 2023, Governor Newsom signed Executive Order N-5-23 ending the Drought State of Emergency in Mendocino County.

36. 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. Division staff observed that water diverted from POD1 and POD3 is conveyed to seasonal storage for cannabis cultivation and domestic use. These diversions to seasonal storage for use of water require an appropriative water right issued by the State Water Board. Division staff allege the diversion and use of water from POD1 and POD3 is a violation of Water Code section 1052.
 - i. Cannabis cultivation greenhouses and associated infrastructure that are indicative of active cultivation occurring, such as water storage tanks, blackout tarps and solar panels, are visible on

³ Executive Order N-7-22 was issued in response to California's intensifying drought and built upon multiple drought proclamations from 2021. It directs immediate conservation and regulatory actions to safeguard water resources and support drought resilience. The Order directed the State Water Board to expand inspections and enforcement against unauthorized diversions, including those associated with illegal cannabis cultivation, as part of statewide drought response efforts.

APNs 011-690-21-01 and 011-690-22-01, in Google Earth aerial imagery dated April 21, 2019, June 18, 2020, July 13, 2020, and July 1, 2021. Land Vision aerial imagery dated July 16, 2019, October 22, 2019, May 13, 2021, May 20, 2021, June 9, 2021, June 15, 2021, and July 18, 2021, shows similar cannabis cultivation infrastructure. APNs 011-690-21-01 and 011-690-22-01 are where the water system originating from POD1 and POD3 were located and used for cannabis cultivation and domestic use observed by Division staff during the August 5, 2021 inspection. During the inspection, POD1 and POD3 were found to be the sole water sources for APNs 011-690-21-01 and 011-690-22-01.

- c. POD4 diverts water from an unnamed stream tributary to Bell Spring Creek and is subject to the State Water Board's permitting authority. The diversion and use of water diverted from POD4 requires an appropriative water right. The failure to have an appropriative water right that authorizes the diversion and use of water from POD4 is a violation of Water Code section 1052.
 - i. Cannabis cultivation greenhouses and associated infrastructure indicative of active cultivation occurring, such as water storage tanks, blackout tarps and solar panels, are visible on APN 011-690-20-01 in Google Earth aerial imagery dated August 12, 2017, April 21, 2019, and July 1, 2021. LandVision aerial imagery dated April 17, 2018, July 16, 2019, October 22, 2019, May 13, 2021, May 20, 2021, June 9, 2021, June 15, 2021, and July 18, 2021, shows similar cannabis cultivation infrastructure. APN 011-690-20-01 is where POD4's water system was observed during the August 5, 2021 inspection. During the inspection, POD4 was found to be the sole water source for APN 011-690-20-01.

37. Methodology for Calculating Alleged Days of Diversion and Days of Use for Water Code, section 1052 Violations:

- a. Days of Diversion Calculation:
 - i. POD1, POD3, and POD4: Based on aerial imagery and observations during the inspection Division staff determined POD1 diverts water to POS1, POD3 diverts water to POS9, and POD4 diverts water to POS18 where Diverters seasonally store water for cannabis cultivation. Division staff took a conservative approach in determining the days of diversion necessary to fill POS1 and POS18 by alleging one (1) day of water diversion is necessary to fill the reservoirs.
- b. Days of Use Calculation: The inspection on August 5, 2021, found cannabis plants growing at a height that would be consistent with a May to June planting

cycle. As such it is likely the diverted water was used multiple times, if not daily, to irrigate cannabis during the 2021 growing season leading to the inspection. The Division conservatively alleges a single day of use based on the observations of cannabis cultivation and water stored in off-stream reservoir.

38. Alleged Days of Diversion and Use in violation of Water Code, section 1052:

a. POD1/POS1:

- i. 2021⁴ – One (1) day of diversion and use to fill POS1 for consumptive use documented at POU 1-6 and 8-9.

b. POD3/POS9:

- i. 2021⁵ – One day of diversion and use to fill POS9 for consumptive use documented at POU 3-6 and 8-9.

c. POD4/POS17:

- i. 2021⁶ – One day of diversion and use to fill POS18 for consumptive use at POU7.

Cannabis Cultivation Policy Requirements

39. 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 and 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.

40. The Cannabis Cultivation Policy defines cannabis cultivation as:

⁴ Governor Newsom through Executive Order N 7 22 declared a drought state of emergency on July 8, 2021. As such, the Diverters' diversion and use of water from POD1 in 2021 after the date if the Executive Order is subject to the enhanced penalties in Water Code, section 1052, subd. (c)(1).

⁵ Diverters' diversion and use of water from POD3 in 2021 is subject to Water Code, section 1052, subd. (c)(1) enhanced penalties for drought conditions after the date of the Executive Order declaring a drought on July 8, 2021.

⁶ Diverters' diversion and use of water from POD4 in 2021 is subject to Water Code, section 1052, subd. (c)(1) enhanced penalties for drought conditions after the date of the Executive Order declaring a drought on July 8, 2021.

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.

41. 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.
42. **Violation 4:** 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.*

Water diverted to storage from POD1 and POD3 is used to irrigate cannabis and for domestic purposes. There were no water measuring devices observed or documented on any POS or on any of the water conveyance lines leading to POU 8-9 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 irrigation and domestic purposes.

One (1) violation of Term 81 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to install a measuring device to quantify the amount of water diverted for cannabis irrigation and water diverted for other beneficial uses observed during the site inspection on August 5, 2021.

43. **Violation 5:** 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.

On August 5, 2021, Division staff observed that POD1, POD3, and POD4 divert water for cannabis irrigation. None of the three PODs had a measuring device installed and no daily diversion records were found during the August 5, 2021 inspection.

Three (3) violations (one each for POD1, POD3 and POD4) 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 August 5, 2021 inspection.

44. **Violation 6:** 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.*

During the site inspection, Division staff documented one water storage tank located at POS10 without a float valve or similar device installed to prevent the overflow and waste of water.

One (1) violation of Term 92 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to have water storage tanks equipped with a float valve, or equivalent device, to shut off the diversion when water storage tanks are full.

45. **Violation 7:** 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.*

During the August 5, 2021 inspection, Division staff observed a total of thirty-one (31) 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: three tanks each at POS 2, 11, 12, 15, 16, two tanks each at POS 4, 13, 14, 19 and 21, and one tank each at POS 5-8, 10, and 20.

Thirty-one (31) violations of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to ensure that all vents and other openings on water storage tanks are designed to prevent entry and/or entrapment of wildlife.

46. **Violation 8:** 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.*

During the site August 5, 2021 inspection, Division staff did not observe any water measuring devices nor any records of water use at any of the PODs, POSs, or POU.

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 irrigation during the August 5, 2021 inspection.

Diversion or Use of Water for Cannabis Cultivation Requires DCC License

47. **Violation 9:** 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.
48. 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. During the August 5, 2021 inspection, Division staff observed approximately 12,949 cannabis plants growing in greenhouses. 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. Division staff examined available records on September 2, 2021, and again on April 27, 2022, and did not find any record that DCC issued a cultivation license for the activities observed on the Property.
49. 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

50. The statutory maximum liability for Violations 1-10 is the sum of each Violation's statutory maximum liability: 1 (\$2,000) + 2 (\$25,000) + 3 (\$3,000) + 4 (\$500) + 5 (\$1,500) + 6 (\$500) + 7 (\$15,500) + 8 (\$500) + 9 (\$500) = \$49,000

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

51. 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

52. 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 Diverters 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.
53. Division staff reviewed aerial imagery dated May 24, 2009, through the present and observed a consistent use of the Property to cultivate cannabis. Throughout the years the Diverters have developed the cannabis cultivation areas by constructing greenhouse structures, water conveyance infrastructure, and water storage facilities on the Property. Division staff observed on August 5, 2021, that the diversions from surface water streams are the sole source of water on the Property. As cannabis cultivation increased at the Property, the consumptive water demand led to a decrease in the amount of surface water available. The cumulative impact of these water diversion violations is significant in this case.
54. Division staff found no evidence that the Diverters obtained any of the regulatory approvals necessary for commercial cannabis cultivation. Additionally, Diverters evaded paying permit and licensing fees and other regulatory costs. The cost of compliance 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.

55. 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 severe drought conditions. The need for timely water diversion and use records is particularly important in years of critical drought conditions where the curtailments of legal users are based on reported water use and projected water availability data. Failure to comply with reporting requirements adds 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 Diverters are aware of State Water Board Statement filing requirements, as evidenced by the active Statement on file for POD1 (S026510) and were notified of the need to file Statements for POD3 and POD4 in the NOV/IR. To date, the State Water Board has not received Statements for POD3 or POD4 from the Diverters to correct the violations.

c. Corrective Action:

As of the date of this complaint, the Diverters have not come into compliance by filing Statements for POD3 and POD4.

d. Length of Time:

The Diverter was required to file a Statement for water diverted and used from POD3 and POD4 between December 31, 2020 and before October 1, 2021 by April 1, 2022. To date, the violations are ongoing.

e. Taking into consideration all relevant circumstances and the factors listed in a-d above, the Division proposes administrative liability for two violations of Water Code, section 5101 violation for both POD3 and POD4 in the amount of \$2,000

56. Violation 2: Making a Material Misstatement on a Supplemental Statement of Water Diversion and Use (Water Code section 5107(c)(3))

a. Extent of Harm Caused:

The harm caused by this violation can be categorized generally as harm to the orderly and efficient administration of the State's water resources. The main purpose of the State Water Board's Statement Program is a central repository for records of diversion and use of water reported by all water diverters that do not have or are not required to have an appropriative water right on file with the State Water Board. Knowingly making a material misstatement on a Statement of water diversion and use undermines the water rights regulatory program harming other priority of right diverters, the environment, and public trust resources. Cannabis-related water diversion and use that are not reported to the State Water Board circumvents State Water Board's Cannabis Cultivation Policy requirements intend to protect the priority of right diverters and water availability for public trust resources during the Cannabis Cultivation Policy forbearance period. Cannabis cultivators that divert water during the forbearance period continues to be a concern as the state continues to experience severe drought conditions more frequently. Material misstatements on statements burdens the state with false information that can affect 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 who do not accurately report their diversion or use of water. Therefore, by knowingly making material misstatements, the Diverters undermine the State Water Board's abilities to administer the State's water resources and protection to public trust resources from the waste and unreasonable use of water.

b. Nature and Persistence:

On March 4, 2022, the Diverters reported water use for the 2021 reporting period of December 31, 2020, and October 1, 2021 stating that the diversion of water from POD1 (S026510) was a riparian direct diversion used for domestic only. The reported direct diversion and use of water is not consistent with Division staff observations of POD1 and POS1 during the August 5, 2021 inspection. On December 21, 2022, Division staff sent Michael Zeyock the NOV/IR citing a material misstatement and providing a 30-day notice period to comply by resubmitting a revised statement. On February 23, 2023, Green Road Consulting, (Steve Breitenstein), responded on behalf of Mr. Zeyock, to the December 21, 2022 NOV, through the Portal (Portal entry 448889). However, the response did not correct the identified misstatements or provide supporting evidence for the claim of an alternative water source.

c. Corrective Action:

As of the date of this complaint, the Diverters have not complied by submitting a corrected supplemental Statement.

d. Length of Time:

On December 21, 2022, Division staff sent the Diverters a NOV/IR for the material misstatement providing notice of the violation and stipulated that the Diverters had 30-days to comply by correcting the material misstatement. On December 28, 2022, the US Post Office delivered the December 21, 2022 NOV/IR to Michael Zeyock's address and the certified return mail receipt was signed by John C. Gazda. Division staff provided the Diverters 30 days to come into compliance by filing a revised supplement statement but did not receive a response from the Diverters. On February 23, 2023, Diverters contacted the Division to contest the allegation.

- e. Considering all relevant circumstances and factors listed in a-d above, the Division proposes an administrative civil liability for knowingly making material misstatements in a supplemental statement in the amount of \$15,000 for Violation 2.

57. Violation 3: 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 law. A reduction in stream flow causes a loss of available aquatic habitat area 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. 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. On July 8, 2021, the Governor proclaimed a State of Emergency due to drought conditions in California causing the following concerns: sustained and extreme high temperatures have increased water loss from reservoirs and streams, increased demands by communities and agriculture, and further depleted California's water supplies. Drought conditions increase the potential of harm caused by unauthorized diversion and use of water.

b. Nature and Persistence:

Since the Diverters purchased the Property, no application to appropriate water has been filed to authorize the diversion and appropriation of water to seasonal storage from POD1/POS1, POD3/POS9, and POD4. The diversion and seasonal storage of water and use for cannabis cultivation requires an appropriative water right to comply with Division 2 of the Water Code. On August 5, 2021, water diverted to seasonal storage to support cannabis cultivation and domestic use was observed. The Division does not have any record of an application to appropriate water having been filed by the Diverters. It is likely the Diverters have continuously diverted water to seasonal storage to support illegal cannabis cultivation for many years based

on past aerial imagery of the Property and observations made during the inspection.

c. Corrective Action:

As of the date of this Complaint, the Diverters have no appropriative water right on file for the seasonal storage of water at POS1 from POD1, at POS9 from POD3 and at POS18 from POD4 occurring at the Property. The Diverters contacted the Division on March 11, 2022, stating the water diversion infrastructure for POD2 – 4 was removed and they had no further plans for diverting water for cannabis cultivation. However, the reservoirs POS1, POS9, and POS18 remain on the Property and the Diverters have made no attempt to file for an appropriative water right.

d. Length of Time:

Since the construction and enlargement of the offstream reservoirs in 2017 (POS1, POS9 and POS18), the reservoirs and water storage containers have been continuously used for the seasonal storage of diverted surface water subject to the State Water Board's permitting authority. POD1/POS1, POD3/POS9, and POD4/POS18 are each assessed one day of diversion and use violations for water diversion and use documented and observed during the inspection. The Diverters' unauthorized diversion and use of water occurred during a period for which the Governor issued a proclamation of a state of emergency based on drought conditions. The Division alleges unauthorized diversion and use in violation of Water Code section 1052, subd. (c)(1), occurred one day for each POD1, POD3, and POD4. These violations are subject to heightened liability.

e. Considering all relevant circumstances and factors listed in a-d above, the Division proposes an administrative civil liability for Violation 3 in the amount of \$3,000 for the unauthorized diversion of water at POD1, POD3, and POD4 to seasonal storage for cannabis cultivation and domestic use.

58. Violation 4, 5, and 8: 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. The Diverters were cultivating cannabis without a state issued cannabis cultivation license from the Department of Cannabis Control and all violations of the Cannabis Cultivation Policy contribute to the negative impacts of the Diverters' cannabis cultivation activities.

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:

On November 26, 2021, the Diverters signed for receipt of the NOV/IR that provided notice of the Cannabis Cultivation Policy, Attachment A, Section 2 Term violations observed during the August 5, 2021 inspection.

c. Corrective Action:

As of the date of this Complaint, the Diverters have not implemented the corrective actions or provided the requested information.

d. Length of Time:

During the inspection, Division staff documented the Diverters' failure to install water diversion measuring devices and the failure to keep and maintain records of water diversion and consumption for cannabis irrigation and domestic use.

e. Considering all the relevant circumstances and the factors listed in a-d above, the Division proposes an administrative civil liability for the Cannabis Cultivation Policy Term violations in the amount of Violation 4: \$500, Violation 5: \$1,500, and Violation 8: \$500 for a total of \$2,500.

59. Violations 6 and 7: Cannabis Cultivation Policy, Section 2, Term 92 and 93

Terms 92, and 93 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 for the storage of water for cannabis irrigation.

a. Extent of Harm:

The Cannabis Cultivation Policy Terms associated with these violations are requirements necessary to prevent the waste of water and prevent wildlife entrapment in water storage infrastructure. Storage facilities without overflow prevention devices have the potential to waste water and deplete instream flows. Moreover, storage facilities without lids to open and close may cause direct harm by entrapping wildlife. The potential for harm to wildlife increases

significantly when there are multiple water storage tanks with accessible openings or vents.

b. Nature and Persistence:

During the August 5, 2021 inspection, Division staff documented thirty-one (31) water storage tanks without lids to prevent wildlife entrapment. Additionally, Division staff documented one (1) storage tank without a device to prevent overflow.

c. Corrective Action:

On March 11, 2022, the Diverters contacted the Division and stated that the tanks used for water storage without lids would be removed from the Property. The Division never received the requested photo documentation to verify if Diverters corrected these violations.

d. Length of Time:

During the inspection Division staff documented the Diverters' failure to implement the water 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 an administrative civil liability for the Cannabis Cultivation Policy Term violations in the amount of Violations 6: \$500, and Violation 7: \$15,500 for a total of \$16,000.

60. Violation 9: 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 impact on the legal cannabis industry and harm to the regulatory program. The State's 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 availability, terrestrial and aquatic habitats, wetlands, and springs. As such, the Diverters' cannabis cultivation activities significantly harm legal cultivators, priority of right diverters, beneficial use of water, and the cannabis cultivation regulatory program.

b. Nature and Persistence:

Unlicensed commercial cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis

Regulation and Safety Act. During the site inspection, Division staff observed approximately 12,949 cannabis plants growing in greenhouses, with approximately 47,000 sq. ft., of land irrigated from surface water diversions. It was determined the scale of cannabis cultivation occurring on the Property during the inspection required a commercial cannabis cultivation license.

c. Corrective Action:

On March 11, 2022, the Diverters contacted the Division and stated that they had no future plans to cultivate cannabis. As of the date of this complaint, the Diverters have not provided photo documentation demonstrating that cannabis cultivation activities have ceased on the Property.

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 all relevant circumstances and the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for Violation 9.

PROPOSED CIVIL LIABILITY

61. 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 \$39,000.
62. Total Proposed Liability for Violations 1-9: (1) \$2,000 + (2) \$15,000 + (3) \$3,000 + (4) \$500 + (5) \$1,500 + (6) \$500 + (7) \$15,500 + (8) \$500 + (9) \$500 = \$39,000

RIGHT TO HEARING

63. The Diverters 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 Diverters receives this Complaint as required by Water Code section 1055, subdivision (b).
64. If the Diverters do 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 authority delegated by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.

65. If the Diverters 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.
66. 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

ORIGINAL SIGNED BY:

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

Dated: August 15, 2025