

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

Jeremy Hodys

APNs 056-060-24-00, 056-060-25-01, and 056-060-28-00

COUNTY: MENDOCINO

JEREMY HODYS (RESPONDENT) IS HEREBY GIVEN NOTICE THAT:

1. The State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division) alleges that the Respondent committed the violations described below, relating to the diversion or use of water for cannabis cultivation activities on Mendocino County Assessor Parcel Numbers (APNs) 056-060-24-00, 056-25-01, and 056-060-28-00 (Property).
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Respondent in the amount of \$40,000.
3. The State Water Board, or the Board's Administrative Hearings Office, may impose civil liability (i.e. monetary fines) for these violations through the administrative process described below.
4. **The Respondent has the right to request a hearing on these allegations but must do so in writing within 20 days from the date the Respondent receives this Complaint, or else that right is waived.** Please see the specific directions for submitting a hearing request in the "Right to Hearing" section at the end of this Complaint.

SUMMARY OF ALLEGED VIOLATIONS

5. Violation 1: Failure to file a statement of water diversion or use (Statement), as required by Water Code section 5101.¹
6. Violation 2: Failure to file supplemental statements of water diversion and use (Supplemental Statements), as required by California Code of Regulations, Title 23, section 920.
7. Violation 3: Unauthorized diversion or use of water in violation of Water Code section 1052.
8. Violations 4-8: Twelve violations of term requirements in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy).²
9. Violation 10: Diverting or using water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC) under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.

BACKGROUND AND FACTUAL BASIS

10. Property Ownership:

According to Mendocino County property records, Brenda Kershenbaum transferred title to the Property to the Brenda R. Kershenbaum Trust, for which she is the trustee, on August 26, 2013. Following the 2023 inspection of the Property, Ms. Kershenbaum informed Division staff that the Respondent had been leasing the Property and operating the farm for several years. The Respondent signed the lease agreement on August 1, 2022 and continues to lease the Property to date.

11. Watershed Information:

The Property is located in the Blue Rock Creek watershed (HUC 12 #180101050204), and tributary to the Eel River. The Middle Main Eel River is designated as a Wild and Scenic River from the confluence with Outlet Creek to the Pacific Ocean. As a Wild and Scenic River, the State Water Board is limited to

¹ Senate Bill 155 came into effect on September 23, 2021, and changed the Statement (Water Code section 5101) and Supplemental Statement (Water Code section 5104, and CCR title 23 Section 920) reporting period from January 1 – December 31 to October 1 – September 30 and changed the water rights reporting due dates for 2021 from July 1 to April 1, and for 2022 and all succeeding years to February 1.

² On October 17, 2017, the State Water Board adopted the Cannabis Cultivation Policy (Order No. WQ-2017-0023-DWQ). This Order became effective December 18, 2017, upon the approval of the Office of Administrative law. On February 5, 2019, the State Water Board adopted Order No. WQ-2019-001-DWQ, amending the Cannabis Policy, effective April 16, 2019.

processing or accepting new applications to appropriate water pursuant to California Code of Regulations, Title 23, Division 3, Article 8, section 734. In accordance with the California Wild and Scenic Rivers Act (Public Resources Code, Division 5, Chapter 1.4, section 5093.50 et seq.), “[i]t 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” and “[t]he 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.”

12. 2023 Records Review

On or around July 17, 2023, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant investigation of the Property that was going to be conducted based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. On or around this date, Division staff conducted the following as part of a desktop review:

- a. Division staff reviewed available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) records and did not find any evidence of a Statement, water right permit, license, or registration for the Property.
- b. Division staff reviewed Department of Water Resources records and did not find any record of a well on the Property.
- c. Division staff reviewed DCC commercial cannabis cultivation license records and found no active or pending license on file that would authorize commercial cannabis cultivation on the Property.

13. 2023 Aerial Imagery Review:

On or around July 17, 2023, Division staff also reviewed aerial imagery of the Property and made the following observations:

- a. Google Earth Pro aerial imagery dated May 31, 1993 shows an onstream reservoir, subsequently identified as point of diversion 1/point of storage 1 (POD1/POS1), indicating that POD1/POS1 was established prior to May 31, 1993.
- b. Google Earth Pro aerial imagery dated June 11, 2005 shows an onstream reservoir subsequently identified as point of diversion 2/point of storage 2 (POD2/POS2), indicating that POD2/POS2 was established sometime between May 31, 1993 and June 11, 2005.
- c. Lightbox Vision aerial imagery dated April 8, 2022, April 29, 2022, June 15, 2022, August 7, 2022, and August 9, 2022 show greenhouse structures on the Property.

- d. Lightbox Vision aerial imagery dated June 11, 2023 and July 10, 2023 and Google Earth Pro aerial imagery dated June 14, 2023 show the five greenhouse structures that were subsequently documented as places of use 1 and 2 (POU1 and POU2).

14. July 19, 2023 Inspection:

On July 19, 2023, Division staff accompanied wardens and scientific staff from CDFW, North Coast Regional Water Quality Control Board (North Coast Water Board) staff, Mendocino County Sheriff's officers, and California National Guard staff on a search warrant investigation of the Property. Law enforcement officers eradicated approximately 887 cannabis plants during execution of the search warrant. The Respondent was not present during the inspection; however, Division staff left a Field Notice of Violation (Field NOV) at the Property with a copy of the search warrant. The Field NOV described Water Code and Cannabis Cultivation Policy violations observed on the Property and the corrective actions necessary for each violation. During the inspection, Division staff observed the following regarding water diversion and use on the Property:

- a. POD1/POS1 is an onstream reservoir on an unnamed stream located on the Property, within APN 056-060-24-00. POD1/POS1 consists of an earthen berm constructed in the stream channel. The unnamed stream has defined bed and banks upstream and downstream from POD1/POS1 and is tributary to Blue Rock Creek. Water was not flowing upstream or downstream of POD1/POS1 at the time of the inspection. At the time of the inspection, POD1/POS1 was seasonally storing approximately 0.6 acre-feet of water. Staff observed that water stored at POD1/POS1 was pumped through a 1.5-inch water line that tee's off to POS3 for domestic use at POU3 and to POS4, where it was gravity fed to POS5 and used for cannabis irrigation at POU1 and POU2. Division staff did not observe a water measuring device at or near POD1/POS1.
- b. POD2/POS2 is an onstream reservoir on an unnamed stream located on the Property, within APN 056-060-28-00. POD2/POS2 consists of an earthen dam constructed in the stream channel. The unnamed stream has defined bed and banks upstream and downstream from POD2/POS2 and is tributary to Blue Rock Creek. Water was not flowing upstream or downstream of POD2/POS2 at the time of the inspection. At the time of the inspection, POD2/POS2 was seasonally storing approximately 0.7 acre-feet of water, but no water conveyance lines connected POD2/POS2 to any of POS or POU on the Property.

15. Communications in Response to July 19, 2023 Field NOV:

- a. On August 3, 2023, Ms. Kershenbaum called Division staff in response to the Field NOV left at the Property. That same day, Division staff emailed Ms. Kershenbaum a summary of the phone conversation, which included a discussion of the need to obtain a water right for the onstream reservoirs on

- the Property. In the email, Division staff attached a hyperlink to the water rights webpage for more information. Division staff also informed Ms. Kershenbaum that they would be drafting an inspection report that would further describe the alleged violations and provided their contact information for any questions.
- b. On August 4, 2023, Ms. Kershenbaum replied to staff's email to provide her mailing address for transmittal of the inspection report.
 - c. On August 14, 2023, Division staff emailed Ms. Kershenbaum requesting contact information for the tenant leasing the Property. Ms. Kershenbaum copied staff on an email to the Respondent on August 17, 2023, which asked the Respondent to provide a mailing address that Division staff could contact him at. The Respondent replied to the email and asked to be included in the discussions to help ensure the requirements are completed but did not provide a mailing address. On August 18, 2023, Division staff replied to the email and requested from the Respondent his mailing address, full name, and confirmation of his association with the Property. The Respondent replied on August 22, 2023 and provided his first name, mailing address on North State Street, and confirmation that he is responsible for the Property.
 - d. On August 29, 2023, Ms. Kershenbaum emailed CDFW staff, North Coast Water Board staff, and Division staff with background information on the Property. She stated that she was 84 years old, lives in Los Angeles, had not been to the Property since 2012, and that the Respondent had overseen the Property for the past couple of years as a tenant. Ms. Kershenbaum claimed that she was not aware of the extent of the cannabis cultivation on the Property until a neighbor shared photos of the greenhouses with her. Division staff responded to Ms. Kershenbaum on August 31, 2023, reiterating the requirement to obtain water rights for POD1/POS1 and POD2/POS2 and provided hyperlinks to assist Ms. Kershenbaum in filing the Statements and applying for appropriate water rights.
 - e. On September 13, 2023, the Respondent emailed Division staff and said he was filling out a form and had some questions. Division staff responded that same day and provided clarification for some of the details required in the Statement. Staff asked the Respondent to copy staff when filing the Statement and to apply for appropriate water rights for POD1/POS1 and POD2/POS2 once he has done so.
16. 2023 Notice of Violation and Inspection Report:
On September 15, 2023, Division staff mailed Ms. Kershenbaum the Inspection Report and Notice of Violation (2023 NOV/IR) for the July 19, 2023 inspection, via certified mail. United States Postal Service (USPS) records show that the 2023 NOV/IR was signed for and delivered at Ms. Kershenbaum's address on September 19, 2023. The 2023 NOV/IR described Division staff's observations, the alleged violations, corrective actions needed to resolve the violations, and provided

resources for compliance assistance as well as Division staff's contact information. The 2023 NOV/IR noted that the State Water Board retained authority to pursue enforcement for the alleged violations.

17. Communications in Response to the 2023 NOV/IR:

- a. On September 20, 2023, the Respondent emailed Division staff to convey that Ms. Kershenbaum had received the 2023 NOV/IR and was worried about fines. The Respondent again provided his North State Street address so that he could receive and review the 2023 NOV/IR. The Respondent further stated that he had submitted the "first step of paperwork" and that he believed his next step was to file a Statement. Division staff reviewed eWRIMS and confirmed that the Respondent filed a Statement (S028984) on September 20, 2023, which was digitally signed on September 16, 2023. The Statement identified the Respondent as the "Diverter" and Ms. Kershenbaum as the "Land Owner" and was submitted for water diverted and used from an "old pond on a creek" on APN 056-060-24-00.³ The Respondent reported the water diverted and used for cannabis cultivation between April and September 2022.
- b. That same day, Division staff spoke with the Respondent on the phone and discussed the corrective actions needed on the Property. Division staff subsequently emailed the Respondent a summary of the phone conversation, highlighting the need to apply for a Small Irrigation Use Registration (SIUR) or Small Domestic Use Registration (SDUR), and ensure all storage tanks have shut off valves and secured lids. Division staff provided hyperlinks to assist the Respondent in completing the water right applications and recommended that the Respondent contact the Registrations Unit for assistance. Staff also included a copy of the 2023 NOV/IR as an attachment to the email.
- c. On September 26, 2023, Ms. Kershenbaum left a voicemail for staff and followed up with an email to check on their compliance status. Division staff replied on September 29, 2023 to inform Ms. Kershenbaum that the Respondent had filed a Statement and indicated he would be working on the water rights applications.
- d. On January 8, 2024, Division staff emailed the Respondent and Ms. Kershenbaum to inquire about the status of a Statement filing for POD2/POS2 and the water right applications. The Respondent replied on January 13, 2024 and stated he filed another Statement and would locate it.

³ The APN identified in the Statement is the parcel on which POD1/POS1 is located; however, the coordinates provided in the Statement are associated with the road leading onto the Property and the upstream channel of POD1/POS1, not the coordinates for the precise location of POD1/POS1. Nevertheless, based on the information contained therein, Division staff interpret the Statement to apply to POD1/POS1.

The Respondent said that he had some family issues and was out of state. The Respondent asked if the pictures were received and if they were acceptable. The Division had not received any pictures at this time.

- e. On January 30, 2024, Ms. Kershenbaum emailed the Respondent asking if he was back from being out of state and for him to contact Division staff. She then forwarded that email to Division staff, who replied to request copies of the water right filings and/or Statement that may have been filed after the first Statement (S028984). Division staff reminded Ms. Kershenbaum and the Respondent that the 2023 NOV/IR provided a 30-day compliance period for completing the corrective actions listed therein. Ms. Kershenbaum replied, telling the Respondent that “we need this as soon as possible” and said that she was depending on him because she cannot get to the Property given her age and condition.
- f. On February 6, 2024, Division staff emailed Ms. Kershenbaum and the Respondent with a reminder to submit their water right applications and any Statement needed for POD2/POS2. The Respondent replied that same day, apologizing for the delay in compliance, citing weather constraints and limited internet on the Property. He asked if the Statement he had submitted was sufficient and indicated he was willing to work on next steps. Division staff responded that same day to clarify that water right applications were still needed for the reservoirs and that they would forward prior emails containing helpful information, which Division staff provided in a subsequent email.

18. 2024 Records Review:

On or around May 20, 2024, CDFW notified the Division of a second search warrant inspection of the Property that was going to be conducted based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. On or around this date, Division staff conducted the following as part of a desktop review:

- a. Division staff reviewed eWRIMS records and only found Statement S028984 that was signed by the Respondent on September 16, 2023. Division staff did not find a second Statement in eWRIMS⁴ or any water right permit, license, or registration for the Property.
- b. Division staff reviewed DCC commercial cannabis cultivation license records and found no active or pending license on file that would authorize commercial cannabis cultivation on the Property.

⁴ Division staff found a second copy of a Statement in their file that is not reflected in eWRIMS. The Statement was signed by the Respondent on September 19, 2023 but it is unclear when or how the Statement was submitted. The coordinates provided in the Statement are the same as those listed in Statement S028984; however, the description provided in the Statement is an “old pond on a creek” that is listed as “unused, emergency water.”

19. 2024 Aerial Imagery Review:

On or around May 20, 2024, Division staff also reviewed aerial imagery of the Property and made the following observation:

- a. Lightbox Vision aerial imagery dated April 8, 2024 shows the greenhouse structures located at POU1 and POU2 without plastic coverings.

20. May 23, 2024 Inspection:

On May 23, 2024, Division staff accompanied CDFW wardens and scientific staff, DCC staff, and North Coast Water Board staff on a criminal search warrant investigation of the Property. CDFW Wardens estimated a total of 1,413 cannabis plants were on the Property, which they eradicated during execution of the warrant. The Respondent was present on the Property and signed the Field NOV. The Field NOV described the Water Code and Cannabis Cultivation Policy violations observed on the Property and the corrective actions necessary for each violation. The Respondent was subsequently arrested by CDFW wardens. During the inspection, Division staff observed the following regarding the water diversion and use on the Property:

- a. Staff again observed POD1/POS1 in the same location as the 2023 inspection. Water was not flowing upstream or downstream of POD1/POS1 at the time of the inspection. Staff determined that approximately 0.6 acre-feet of water was seasonally stored in POD1/POS1. Water stored in POD1/POS1 was then pumped via a 6.5 hp gasoline powered water pump to POS4, which is then conveyed to POU3 for domestic use and to POU1-2 for cannabis irrigation. The Respondent did not install separate storage systems for water diverted for cannabis irrigation and water diverted for other uses, nor did Division staff observe separate measuring devices to quantify diversion to and from each storage facility. Additionally, Division staff did not observe a water measuring device at or near POD1/POS1.
- b. Staff similarly observed POD2/POS2 in the same location as the 2023 inspection. Water was not flowing into or out of POD2/POS2 at the time of the inspection. Staff determined that approximately 0.7 acre-feet of water as being seasonally stored in POD2/POS2, but no water conveyance lines connected POD2/POS2 to any of POS or POU on the Property.
- c. Staff documented a groundwater well, identified as POD3, approximately 170 feet away from an unnamed stream that is tributary to Blue Rock Creek. Water from POD3 was pumped through a ¾-inch polyethylene water supply line to POS3, which was not connected to an outlet water line at the time of the inspection.

21. Communications in Response to May 23, 2024 Field NOV:

- a. On May 28, 2024, Division staff received a voicemail from David Salomon and Peter Kershenbaum calling on behalf of Ms. Kershenbaum, regarding the 2023 NOV/IR.
- b. On May 29, 2024, Division staff called Ms. Kershenbaum and explained the need to obtain water rights for POD1/POS1 and POD2/POS2. Ms. Kershenbaum said she was eager to resolve the issues and that her family wants to sell the Property. She asked Division staff to forward her the water rights requirements so she could forward them to David Salomon for assistance. Ms. Kershenbaum told Division staff that she believed the Respondent would not be cultivating cannabis again without the proper licenses and that she was disappointed that he was caught cultivating again.
- c. On May 30, 2024, Peter Kershenbaum emailed Division staff a copy of the lease agreement between Ms. Kershenbaum and the Respondent. The lease agreement, signed August 1, 2022, specifically forbids the Respondent, as tenant, from cultivating cannabis on the Property.
- d. On June 3, 2024, Ms. Kershenbaum emailed Division staff, informing them that she was hiring a consultant, Heidi Wordhouse from Ethos Environmental, because the Respondent had been unable to complete the compliance actions. Division staff replied with a recommendation that Ms. Wordhouse contact the Division's Registrations Unit for information regarding the water right applications.
- e. On June 18, 2024, Ms. Wordhouse emailed Division staff to inform them that she had been hired by Ms. Kershenbaum to bring the Property into compliance. She was informed that another search warrant investigation had been executed on May 23, 2024, and she wanted to confirm that the alleged violations listed in the 2023 NOV/IR were a complete list of the violations alleged by the Division. Division staff responded that same day and provided the name of the staff that participated in the May 23, 2024 inspection.

22. 2024 Notice of Violation and Inspection Report:

On August 5, 2024, Division staff mailed a Notice of Violation and Inspection Report for the May 23, 2024 inspection (2024 NOV/IR) to Ms. Kershenbaum and the Respondent, via certified mail. The 2024 NOV/IR was signed and delivered to Ms. Kershenbaum's address on August 9, 2024. The 2024 NOV/IR sent to the Respondent's North State Street address was not delivered and was returned to the Division on August 23, 2024. Division staff retransmitted the 2024 NOV/IR to the Respondent's North State Street address on September 27, 2024, as well as three additional addresses that were identified for the Respondent. The copy sent to the Respondent's North State Street address was delivered on September 30, 2024. The copy sent to the Respondent's Highway 101 address was signed for on October 1, 2024 by Tonya Rowles, owner of Tonya's Business Services (a bookkeeping and

P.O. box office). The other two copies were not delivered. The 2024 NOV/IR described Division staff's inspection observations, the alleged violations relating to those observations, the recommended corrective actions for the violations, and provided staff's contact information for compliance assistance. The 2024 NOV/IR further noted that the State Water Board retained authority to pursue enforcement for the violations alleged therein.

23. Communications in Response to the 2024 NOV/IR:

- a. On September 18, 2024, Division staff called Ms. Wordhouse to discuss the corrective actions needed for the Property. Division staff confirmed that Ms. Wordhouse had a copy of the 2024 NOV/IR.
- b. On October 7, 2024, Ms. Wordhouse filed Statements for POD1/POS1 (S029181) and POD2/POS2 (S029182) on behalf of Ms. Kershenbaum for the 2020 water diversion and use reporting period. S029181 identified the water use for POD1/POS1, for that period, as aesthetic, domestic, fire protection, wildlife enhancement, and irrigation. S029182 identified the water use for POD2/POS2, for that period, as aesthetic, domestic, wildlife enhancement, and irrigation. Ms. Wordhouse indicated S029181 and S029182 were filed for 2020 because that is when the Respondent began living on the Property, despite being prior to the date the Respondent signed the lease agreement.
- c. On October 8, 2024, Ms. Kershenbaum emailed Division staff asking for a comprehensive list of the violations on the Property and the actions required to bring the Property into compliance with the Water Board's regulations.
- d. On October 9, 2024, Division staff called Ms. Kershenbaum to discuss the corrective actions taken on the Property to date. Division staff informed Ms. Kershenbaum that there was an outstanding requirement to obtain an appropriative water right for POD1/POS1 and POD2/POS2. Staff also briefly discussed the application process.
- e. On October 18, 2024, Ms. Kershenbaum called Division staff, who helped walk her through the SDUR application.
- f. The Respondent also called Division staff on October 18, 2024 to discuss the 2024 NOV/IR. The Respondent claimed that he was not involved in any of the cannabis cultivation that occurred on the Property or any of the other properties he was involved with in the area.⁵ The Respondent claimed it was "the cartel" that was cultivating on these properties. Division staff reminded him that he claimed responsibility for the Property in response to the 2023

⁵ Between 2023 and 2025, Division staff also inspected Mendocino County APNs 056-260-03-00, 056-270-18-00, and 056-260-06-00 that the Respondent owns or co-owns and on which illegal cannabis cultivation was occurring.

- NOV/IR and asked him for evidence supporting his claim that it was “the cartel.” Division staff encouraged the Respondent to contact local law enforcement if he believed there was trespass and illegal activity occurring on the Property; however, the Respondent said that local law enforcement officers had classified him as an “environmental terrorist” and that they could not be trusted. The Respondent said he would confront the cultivators himself if he had a firearm, but that he felt powerless.
- g. On October 28, 2024, Ms. Kershenbaum left a voicemail for Division staff with questions about the SDUR application. Division staff returned the call and left a voicemail for Ms. Kershenbaum.
 - h. On October 29, 2024, Ms. Kershenbaum left another voicemail for Division staff, repeating her concerns expressed in the prior voicemail. Division staff returned the call and left another voicemail for Mr. Kershenbaum and followed up with an email. Ms. Kershenbaum replied to staff’s email and provided additional phone numbers for staff to use. Ms. Kershenbaum then called Division staff to discuss the application process.
 - i. On October 30, 2024, Ms. Kershenbaum emailed Division staff and said she hoped to mail the SDUR application package that day. The Division received the SDUR application (D033471) on November 1, 2024. The application identified POD1/POS1 and POD2/POS2 and their associated uses for domestic, aesthetic, wildlife enhancement, and fire protection purposes.
 - j. On November 6, 2024, Division staff emailed Ms. Wordhouse and asked for documentation of the corrective actions taken on the Property. Ms. Wordhouse replied and said she thought she had sent those pictures in July of 2024 but realized she had not. Ms. Wordhouse said she would put the images into an appropriate format and send them the following week. Ms. Wordhouse summarized the corrective actions taken thus far, including Statement filings, tank lid coverings, removal of POS5, removal of a water pump, and dismantling of the greenhouses.
 - k. Division staff subsequently received an email from Ms. Wordhouse on November 12, 2024 that contained photographs of the corrective actions. The attached photographs showed the pump at POD1/POS1 removed, tank lids installed on POS3-4 with inlet water lines removed, POS5 removed, and the greenhouses at POU1-2 dismantled without cannabis present. Ms. Wordhouse also provided a copy of a November 12, 2024 Division of Water Rights - Cannabis Compliance Response Portal entry in a separate email.
 - l. The Respondent also contacted staff on November 12, 2024 to inform them that he planned to go to the Property on November 14, 2024 to address and document corrective actions. The Respondent provided staff the name of his Mendocino County public defender, Melanie McNeely, and stated that he had given Ms. McNeely Division staff’s contact information.

- m. On November 13, 2024, Division staff emailed Ms. Wordhouse a copy of the SDUR application package (D033471) and informed her that the application had not yet been processed.
- n. On December 13, 2024, Ms. Kershenbaum emailed Division staff to inquire about a bill associated with the Property and whether any other costs will be incurred for the violations. Division staff responded and clarified that the bill was not associated with the violations alleged by the Division.
- o. On June 3, 2026, Division staff emailed Ms. Kershenbaum to inquire about the rental status of the Property and if the respondent still resides there. Ms. Kershenbaum promptly replied via email and stated that the Respondent does still live on the Property and that he has not paid rent.

24. Aerial Imagery Post-2024 Inspection:

Division staff reviewed additional aerial imagery and made the following observations:

- a. Lightbox Vision aerial imagery dated August 14, 2024 shows the greenhouse structures located at POU1 and POU2 without plastic coverings.
- b. Lightbox Vision aerial imagery dated May 31, 2025, November 22, 2025, and December 13, 2025 show that the greenhouse structures at POU1 and POU2 were no longer present.
- c. Lightbox Vision aerial imagery dated March 21, 2026 shows a single greenhouse structure located in the area of POU1 and a single greenhouse structure in the area of POU2.

STATE WATER BOARD AUTHORITY

25. 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.
26. 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.

27. Water Code Section 1848, subdivision (c), provides, in part, that liability cannot be imposed under section 1847 for a violation for which liability is imposed under Water Code section 1052.

STATE WATER BOARD AUTHORITY

28. Water Code section 1112 provides that the AHO presides over hearings on complaints issued under Water Code section 1055. Pursuant to Water Code section 1114, for matters seeking administrative liability under Water Code section 1847 or 5107, the Hearing Officer adopts a final order. For all other matters, the Hearing Officer adopts a proposed order to be considered by the State Water Board.

ALLEGED VIOLATIONS

Statement of Annual Water Diversion and Use

29. **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.
30. Water Code section 5102 states that a separate Statement shall be filed for each point of diversion.
31. 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.
32. Based on the following facts, Division staff allege one violation for the Respondent's failure to file a Statement for his water diversion and use associated with POD1/POS1.
- a. POD1/POS1 is onstream reservoir that diverts from an unnamed stream that is tributary to Blue Rock Creek. The unnamed stream has defined banks above and below POD1/POS1 such that POD1/POS1 is subject to the Board's permitting authority.
 - b. The lease agreement between Ms. Kershenbaum and the Respondent identifies August 1, 2022 as the start date for the lease. However, Ms. Kershenbaum indicated that the Respondent was occupying the Property prior to that date. At a minimum, the Respondent was required to file a Statement before February 1, 2023 for water diverted or used from POD1/POS1 between October 1, 2021 and September 30, 2022.

- c. On or around July 17, 2023, Division staff reviewed available eWRIMS records and did not find any evidence of any Statement on file for the Property.
- d. During the inspection on July 19, 2023, Division staff observed that the Respondent diverted and used water at POD1/POS1 for cannabis irrigation and domestic purposes. Based on staff's review of aerial imagery, the Respondent likely used POD1/POS1 for cannabis irrigation prior to this date. Division staff did not observe a use associated with POD2/POS2.
- e. On July 19, 2023, Division staff left a Field NOV at the Property, which alleged a violation for failure to file a Statement. The Field NOV did not specify for which year the violation was alleged. Based on staff's subsequent communication with the Respondent after the inspection, the Respondent was generally aware of the need to file a Statement for POD1/POS1; however, the 2023 NOV/IR was not delivered to Ms. Kershenbaum until September 19, 2023. A copy of the 2023 NOV/IR was then emailed to the Respondent on September 20, 2023, after he called staff earlier that day regarding the 2023 NOV/IR that Ms. Kershenbaum had informed him she received. The 2023 NOV/IR specifically notified the Respondent that a Statement of water diverted and used between October 1, 2021 and September 30, 2022 must be filed immediately, since the deadline to do so had already passed. Having called this violation to the Respondent's attention, the Respondent had 30 days to correct the violation before being subject to continuing days of violation.
- f. That same day, on September 20, 2023, the Respondent filed Statement S028984 for POD1/POS1. The Statement described an "old pond on a creek" on APN 056-060-24-00, which is the APN on which POD1/POS1 is located. Specifically, the Statement identifies water diversion and use for cannabis irrigation between April and September of 2022. Because the Respondent filed a Statement within 30 days of the violation being called to his attention, the Division does not allege continuing days of violation.

Supplemental Statement of Water Diversion or Use

- 33. **Violation 2:** Failure to File Supplemental Statements of Water Diversion and Use
Water Code section 5104 requires supplemental statements to be filed annually before February 1 for diversion occurring between October 1 through September 1 of the prior year.
- 34. Title 23, Chapter 2.7 of the California Code of Regulations identifies requirements for water diversion and use reports required to be filed with the State Water Board. Section 920 provides that Supplemental Statements shall be filed annually before February 1 and shall detail the amount of water diverted and used within the twelve-month reporting period. Section 908 provides that the failure to meet the

requirements of Chapter 2.7 is a violation subject to civil liability pursuant to Water Code section 1846.

35. Water Code section 1846, subdivision (a)(2), authorizes the State Water Board to impose liability for each day in which a person violation a regulation or order adopted by the Board. Effective January 1, 2025, Assembly Bill 460 amended the maximum liability authorized under this statute to be \$1,000 per day. Prior to this date, the statutory maximum liability amount was \$500 per day.
36. Based on the following facts, Division staff allege two violations for the Respondent's failure to timely file a Supplemental Statement for the water diversion and use at POD1/POS1 for the 2022/2023 and 2023/2024 reporting years, with a total of 730 days of violation.
- a. As noted under Violation 1, the Respondent filed Statement S028984 on September 20, 2023 for water diverted and used at POD1/POS1 during the 2021/2022 reporting year. Accordingly, the Respondent was required to file a Supplemental Statement for POD1/POS1 annually before February 1.
 - b. During the July 19, 2023 inspection, Division staff observed that the Respondent used water diverted and seasonally stored at POD1/POS1 for cannabis irrigation and domestic purposes. The Respondent was, therefore, required to report this diversion and use before February 1, 2024 as part of the October 1, 2022 through September 30, 2023 reporting year. The Respondent did not file a Supplemental Statement by this deadline. The Division alleges days of violation from February 1, 2024 through January 31, 2025 (366 days⁶) for the failure to file a Supplemental Statement for the 2022/2023 reporting year. The days of violation alleged between January 1, 2025 and January 31, 2025 would be subject to the amended statutory maximum liability amount of \$1,000.
 - c. During the second inspection of the Property on May 23, 2024, Division staff again documented that POD1/POS1 supplied water for the Respondent's cannabis cultivation activities and domestic use. The Respondent was, therefore, required to report this diversion and use before February 1, 2025 as part of the October 1, 2023 through September 30, 2024 reporting year. The Respondent did not file a Supplemental Statement by this deadline. The Division alleges days of violation from February 1, 2025 through January 31, 2026 (365 days) for the failure to file a Supplemental Statement for the 2023/2024 reporting year.

Unauthorized Diversion or Use of Water

37. Violation 3: Unauthorized Diversion or Use of Water

⁶ 2024 was a leap year, resulting in an additional day of violation.

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.

38. Under Water Code section 1201, “[a]ll water flowing in any natural channel, excepting so far as it has been or is being applied to useful and beneficial purposes upon, or in so far as it is or may be reasonably needed for useful and beneficial purposes upon land riparian thereto, or otherwise appropriated, is hereby declared to be public water of the State and subject to appropriation with the provision of this code.”
39. For any diversion or use of water other than those exempted in Water Code section 1201, compliance with the provisions of Division 2 of the Water Code is the exclusive method to divert or use water subject to appropriation. (Wat. Code, § 1225; see also *People v. Shirokow* (1980) 26 Cal.3d 301, 309.) Additionally, “appropriation must be for some useful or beneficial purpose...” (Wat. Code, § 1240.) Notably, “the seasonal storage of water for later beneficial use is not a valid exercise of a riparian right.” (State Water Board Order WR 2018-0088 (Stornetta), p. 9; see also *Moore v. California Oregon Power Co.* (1943) 22 Cal.2d 725, 731 (*Moore v. COPCO*) (“the seasonal storage of water in a reservoir—that is, the storage of water during the wet season to be used during the dry season of the year—is not a proper exercise of riparian rights”).) Additionally, the determination of impermissible storage of water under a riparian right is not limited to circumstances where water is diverted to storage during the wet season for use in the dry season. (See *Seneca Consolidated Gold Mines Ltd. v. Great Western Power Co.* (1930) 209 Cal. 206, 217 (quoting *Still v. Palouse Irr. & Power Co.* (1911) 64 Wash. 606, 609) (“Water may not thus be gathered into reservoirs for future use, when it may best suit the convenience and use of one riparian owner, and thus deprive other riparian owners of their use and service of the stream in its natural condition, unless such right is exercised under a valid prior appropriation”); see also *Moore v. COPCO*, supra, 22 Cal.2d at 734-735.)
40. Water Code section 1052 provides that liability may be imposed in the following amounts:
- a. Pursuant to subdivision (c)(1), 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 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.⁷
- b. Pursuant to subdivision (c)(2), 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.
 - c. Pursuant to subdivision (c)(3), notwithstanding subdivisions (c)(1) and (c)(2), persons or entities may be liable up to three thousand five hundred dollars (\$3,500) for each day in which the unauthorized diversion or use for unlicensed cannabis cultivation occurs.
41. The Division alleges that the Respondent is liable pursuant to Water Code section 1052, subdivision (c)(3), for 26 days of unauthorized diversion at POD1/POS1 and 101 days of unauthorized use of water for cannabis irrigation based on the following:
- a. Division staff observed that POD1/POS1 was the sole source of water used for cannabis irrigation during the 2023 and 2024 inspections.
 - b. Days of Unauthorized Diversion: Division staff evaluated and modeled precipitation data from three nearby National Oceanic and Atmospheric Administration (NOAA) rain gages (Laytonville 9.8 NNW, Laytonville 1.1 SW, Laytonville 13.1 N), California Irrigation Management Information System (CIMIS) evapotranspiration data, stream flow data from the USGS stream gage on the Eel River at Fort Seward (USGS-11475000), and scaled relative watershed size to calculate the days on which POD1/POS1 diverted water to fill the reservoir in support of the cultivation activities that were observed in 2023 and 2024. If the surface runoff measured at Fort Seward, scaled to the drainage basin size of POD1/POS1, is greater than 0.001 acre-feet (325 gallons) and the local rain gauges measured precipitation, a day of diversion is counted.
 - c. Based on the above analysis, staff determined that POD1/POS1 would have diverted water into the reservoir in 2022 on November 9 and December 2, 5-6, 8-12, 23-25, and 27 (13 days)⁸; in 2023 on December 4, 7-8, 18-20, 24-25, 28-31 (12 days); and in 2024 on January 2 (1 day).

⁷ As applicable to this matter, drought conditions applied in Mendocino County when Governor Newsom issued a state of emergency proclamation on April 21, 2021 for drought in Mendocino County and Sonoma County, which was extended on March 28, 2022 (Executive Order N-7-22). The State of Emergency for drought was terminated on March 24, 2023 (Executive Order N-5-23).

⁸ Although this Complaint alleges liability pursuant to Water Code section 1052, subdivision (c)(3), these days of unauthorized use also occurred during a period for

- d. Days of Unauthorized Use: Division staff used information on cannabis cultivation in published articles to assess the unauthorized days of use.⁹ The articles reviewed by staff indicate that cannabis is watered daily, and that the average growing season length for outdoor plants is 27.1 weeks and for greenhouse cultivation is 22.6 weeks, typically extending from June-October (150 days).¹⁰
- e. During the inspection on July 19, 2023, Division staff observed cannabis plants growing at a height (approximately four feet) consistent with a May planting cycle. Lightbox Vision aerial imagery dated June 11, 2023 and July 10, 2023 and Google Earth Pro aerial imagery dated June 14, 2023 show the greenhouse structures on the Property with plastic coverings, indicating they were already in use. Staff, therefore, used a start date of May 1, 2023 for calculating the daily unauthorized use of water stored in POD1/POS1, which continued leading up to the July 19, 2023 inspection and eradication of the Respondent's cannabis. This results in 79 days of unauthorized use in 2023.
- e. During the inspection on May 23, 2024, Division staff observed cannabis plants growing at a height (approximately four feet) that would be consistent with a May planting cycle. Lightbox Vision aerial imagery dated April 8, 2024 shows the greenhouse structures located at POU1 and POU2 without plastic coverings, indicating that they were not yet in use. Staff, therefore, used a start date of May 1, 2024 for calculating the daily unauthorized use of water stored in POD1/POS1, which continued leading up to the May 23, 2024 inspection and eradication of the Respondent's cannabis. This results in 22 days of unauthorized use in 2024.

Cannabis Cultivation Policy Requirements

42. The State Water Board's Cannabis Cultivation Policy went into effect on December 18, 2017, following approval by the Office of Administrative Law. Pursuant to Water Code section 13149, the Policy contains principles, guidelines, and requirements (referred to here as requirements) for the diversion or use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to

which the Governor has issued a state of emergency proclamation for purposes of subdivision (c)(1).

⁹ During the July 19, 2023 and May 23, 2024 inspections, Division staff observed that POD1/POS1 supplied water to the Property for cannabis irrigation and domestic use. The calculation for days of unauthorized use alleged in this Complaint focuses on the days on which water was used to irrigate cannabis; however, domestic use was also likely occurring on these days when someone was on the Property for the cultivation activities.

¹⁰ Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds -Bauer S. et al. (2015)

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0120016>

substantially affect instream flow. The State Water Board subsequently amended the Cannabis Cultivation Policy, effective April 16, 2019.

43. Cannabis Cultivation Policy, Attachment A, Section 1, Definition 9, defines cannabis cultivation as:

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

44. 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 State Water 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.

45. **Violation 4:** The 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.

46. The Division alleges one violation of Term 81 of Section 2 of the Cannabis Cultivation Policy based on the following:

- a. During the inspection on May 23, 2024, Division staff observed that water diverted and stored at POD1/POS1 was conveyed to POS4 and POS5 for irrigation of cannabis at POU1-2 and for domestic purposes at POU3. The Respondent had not installed separate storage systems for each use, nor had he installed water measuring devices on any POS or on any of the water conveyance lines that would enable him to quantify diversion to and from each storage facility for each use. Based on the water diversion and conveyance system, Division staff determined the Respondent would need to install at least one water measuring device to measure and record the water use for cannabis irrigation and domestic purposes.

47. **Violation 5:** The Cannabis Cultivation Policy Attachment A, Section 2, Term 83 states:

48. *Cannabis cultivators with onstream reservoirs shall install and maintain a measuring device capable of meeting the requirements below to monitor and record the rate of diversion, the rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water collected in the onstream reservoir.*

A. The measurement device (e.g., water level sensor and area-capacity curve) shall be certified to measure the total volume of water diverted or stored accurate to within ± 10 percent by volume based on periodic testing of the installed device.

B. The measurement device shall be capable of recording the date, time, and volume of water diverted at an hourly or more frequent basis, year-round.

C. The measurement device shall be installed and calibrated by a Qualified Professional. This includes the development of any area-capacity curve used to convert water elevation to volume. Cannabis cultivators shall submit a description of the type of measurement device, evidence of proper installation and operation of the device, and the area-capacity curve to the Deputy Director (or designee) for review and approval within two years of the date the Cannabis SIUR is issued.

D. To assess continued accuracy of depth readings recorded by the measurement device, a staff gage shall also be installed in the same pond or reservoir as the measurement device and manual depth readings from the staff gage and the date and time of the depth readings shall be recorded monthly, at a minimum. The area-capacity curve shall be reassessed if requested by the Deputy Director (or designee).

E. Cannabis cultivators shall maintain hourly depth and volume records from the measurement device and area-capacity curves at the cultivation site and shall make the records available for review upon request by staff from the Water Boards or CDFW.

F. Depth and volume records and area-capacity curves shall be retained for a minimum of five years.

49. The Division alleges two violations of Term 83 of Section 2 of the Cannabis Cultivation Policy based on the following:

- a. POD1/POS1 is an onstream reservoir that Division staff observed was used for cannabis irrigation during the July 19, 2023 and May 23, 2024 inspections. During the inspections, Division staff did not observe any measuring devices installed at POD1/POS1 that would be capable of meeting the requirements above to monitor and record the rate of diversion, the rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water collected in the onstream reservoir. In addition, Division staff did not observe any records associated with these requirements for POD1/POS1 on the Property. The Division alleges one violation for each day of inspection.

50. **Violation 6:** The 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.

51. The Division alleged five violations of Term 92 of Section 2 of the Cannabis Cultivation Policy based on the following:

- a. During the inspection on July 19, 2023, Division staff documented two water storage tanks, the 2,500-gallon tank at POS3 and the 3,000-gallon tank at POS4, that were missing overflow prevention devices. During the inspection on May 23, 2024, Division staff documented three water storage tanks, the 2,500-gallon tank at POS3, the 3,000-gallon tank at POS4, and the 1,200-gallon tank at POS5, that were missing overflow prevention devices. The Division alleges one violation for each tank without the requisite device during each inspection.

52. **Violation 7:** The 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.

53. The Division alleges two violations of Term 93 of Section 2 of the Cannabis Cultivation Policy based on the following:

- a. During the inspection on July 19, 2023, Division staff observed that the 1,200-gallon tank at POS5 did not have a lid to prevent the entry or entrapment of wildlife. Staff again documented that this tank did not have the required lid during the May 23, 2024 inspection. The Division alleges one violation for each day of inspection.

54. **Violation 8:** The 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.

55. The Division alleges two violations of Term 98 of Section 2 of the Cannabis Cultivation Policy based on the following:

- a. During the July 19, 2023 and May 23, 2024 inspections, Division staff did not observe any water measuring devices nor any records of water used for cannabis irrigation at any of the POSs, or POU, as required. The Division alleges one violation for each day of inspection.

Diversion or Use of Water for Cannabis Cultivation Without DCC License

56. **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 State Water 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.

57. A commercial cannabis cultivation licensing program was established pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code, which began issuing licenses on January 1, 2018. Any person engaged in commercial cannabis activity must obtain a state license from DCC. (Bus. & Prof. Code § 26037.5, subd. (a); 4 Cal. Code Regs. §15000.1, subd. (a).) "Commercial cannabis activity" includes cultivation. (Bus. & Prof. Code § 26001, subd. (j); 4 Cal. Code Regs. § 15000, subd. (o).) The only exceptions to the cultivation licensing requirement are for persons cultivating not more than six living cannabis plants, or certain nonprofit entities in limited circumstances not applicable here. (Bus. & Prof. Code § 26037.5, subd. (b).)

58. The Division alleges two violations for the diversion or use of water for cannabis cultivation without a DCC license based on the following:

- a. Division staff determined that the observed scale of cannabis cultivation occurring on the Property during the 2023 and 2024 inspections required a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. On July 19, 2023, there were approximately 887 cannabis plants growing in greenhouses at POU1-2, with an approximate total area of 19,300 sq ft., irrigated from surface water diverted at POD1/POS1. On May 23, 2024, there were approximately 1,413 cannabis plants growing in greenhouses at POU1-2, with an approximate total area of 13,394 sq ft., irrigated from surface water diverted at POD1/POS1. Division staff examined available records dated July 19, 2023, May 15, 2024, and April 2, 2025, and did not find any record that DCC had issued a cultivation license, active or pending, for the activities

observed on the Property. The Division alleges one violation for each day of inspection.

Statutory Maximum Liability

59. The statutory maximum liability for Violations 1-9 is the sum of each Violation's statutory maximum liability: Violation 1 (\$1,000) + Violation 2 (\$563,500) + Violation 3 (\$444,500) + Violation 4 (\$500) + Violation 5 (\$1,000) + Violation 6 (\$2,500) + Violation 7 (\$1,000) + Violation 8 (\$1,000) + Violation 9 (\$1,000) = \$1,016,000.

CONSIDERATION OF WATER CODE SECTION 1055.3 FACTORS

60. Water Code section 1055.3 requires that the State Water 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

61. Aerial imagery suggests that illegal cannabis cultivation activities likely pre-dated the initial July 19, 2023 inspection. Division staff found no evidence that the Respondent has taken steps to comply with the regulatory requirements applicable to commercial cannabis cultivation. Permit and licensing fees and other regulatory costs for commercial cannabis cultivation can be significant, such that unlicensed and unpermitted cultivators obtain an unfair advantage over those cultivators who participate in the regulated market.
62. To deter illegal cannabis cultivation activities and support the legal market and enterprises, it is necessary to impose administrative civil liability in sufficient amounts to make the costs of noncompliance higher than the cost of compliance. Accordingly, the liability amount proposed in the Complaint is appropriate to serve as a deterrent to the Respondent, as well as to illegal cannabis cultivators generally, and to encourage compliance with the state's regulatory program for commercial cannabis cultivation.

Violations 1 & 2 Failure to File Initial and Supplemental Statements (Water Code section 5101 and California Code of Regulations, Title 23, section 920)

63. Violations 1 and 2 have been analyzed jointly with respect to Water Code section 1055.3 as they both relate to statement filings required of those who divert and use water.
- a. Extent of Harm:
The failure to timely file an initial Statement and a Supplemental 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 climate change. The need for timely water diversion and use records is critical when accounting for water use and for determining water availability. Failure to comply with reporting requirements adds an administrative burden to state and local regulators that can alter projected water resources and lead to over allocated watersheds based on unreported diversion and use information. Therefore, by failing to timely file an initial Statement and subsequent Supplemental Statements, the Respondent compromised the State Water Board's orderly and efficient administration of the state's water resources.

b. Nature and Persistence:

Aerial imagery dated March 26, 2022, April 8, 2022, April 29, 2022, June 15, 2022, August 7, 2022, and August 9, 2022 show greenhouse structures on the Property. The Respondent signed the lease agreement for the Property on August 1, 2022, although statements from Ms. Kershenbaum indicate the Respondent began using the Property prior to that date. Additionally, the Respondent identified 2022 as the start of his water diversion in Statement S028984 and reported the quantity of water diverted between April and September of that year. Accordingly, the Respondent should have filed an initial Statement for water diverted and used between October 1, 2021 and September 30, 2022 (2021/2022 reporting year) before February 1, 2023. The Respondent did not file Statement S028984 until September 20, 2023. The Respondent was subsequently required to file Supplemental Statements before February 1 of each consecutive year. To date, the Respondent has not filed a Supplemental Statement despite staff observing POD1/POS1 in use for cannabis cultivation and domestic purposes on July 19, 2023 (during the 2022/2023 reporting year) and May 23, 2024 (during the 2023/2024 reporting year). The 2023 NOV/IR and the 2024 NOV/IR both noted the requirement to file Supplemental Statements.

c. Corrective Action:

The Respondent filed Statement S028984 on September 20, 2023, the same day that staff spoke to the Respondent on the phone and emailed the Respondent a copy of the 2023 NOV/IR. Despite the 2023 NOV/IR and 2024 NOV/IR informing the Respondent that Supplemental Statements would be required, he has not filed a Supplemental Statement for the 2022/2023 or 2023/2024 reporting years.

d. Length of Time:

The Respondent was required to file a Supplemental Statement for POD1/POS1 for the 2022/2023 reporting year, which would include the water diversion and use that staff observed during the July 19, 2023 inspection, since January 31, 2024. Additionally, the Respondent was required to file a Supplemental Statement for POD1/POS1 for the 2023/2024 reporting year, which would include the water diversion and use that staff observed during the May 23, 2024 inspection, since January 31, 2025. The Respondent remains in violation of these requirements. In alleging days of violation, the Division calculated the start date on February 1, the day after each deadline, and counted the days leading up to the next filing deadline, resulting in 366 days of violation for the Supplemental Statement required for the 2022/2023 reporting year (due to 2024 being a leap year) and 365 days of violation for the Supplemental Statement required for the 2023/2024 reporting year.

- e. Taking into consideration all relevant circumstances and factors listed in subparagraphs a-d above, the Division proposes administrative civil liability in the amount of \$1,000 for Violation 1, for the late Statement filing, and \$10,000 for Violation 2 (\$5,000 for each past-due Supplemental Statement). The Division considers these amounts appropriate to achieve deterrence while also reflecting the nature and extent of harm associated with these violations.

Violation 3: Unauthorized Diversion or Use of Water (Water Code section 1052)

64. Violation 3 has been analyzed separately with respect to Water Code section 1055.3.

- a. Extent of Harm:

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 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 from the failure to report water diversion and use. The diversion of water to seasonal storage on the Property without an appropriative water right can cause injury to downstream water users and public trust resources. On April 21, 2021, Governor Newsom issued a state of emergency proclamation for drought in Mendocino County and Sonoma County, which remained in effect until March 24, 2023. The need for adequate instream flows is particularly important after three years of critical drought conditions. The recovery of instream beneficial uses following drought conditions requires adequate instream flows. Additionally, the Blue Rock Creek watershed in the Middle Main Eel River watershed provides flows to habitat harboring Chinook salmon, Coho salmon, and Steelhead trout all of which are listed species. Illegal and unauthorized diversions increase the probability of harm and slow recovery of threatened and endangered species.

b. Nature and Persistence:

During the inspection on July 19, 2023 and May 23, 2024, Division staff observed POD1/POS1 as the only source of water connected to irrigate cannabis and supply water for domestic purposes. During this time, there was no appropriate water right on file for POD1/POS1.

c. Corrective Action:

On November 1, 2024, the Division received a Small Domestic Use Registration application (D033471) for POD1/POS1 that was filed by Ms. Wordhouse on behalf of Ms. Kershenbaum. The SDUR application identified the beneficial uses of POD1/POS1 as domestic, aesthetic, wildlife enhancement, and fire protection. On November 12, 2024, Ms. Wordhouse submitted photographs documenting that cannabis cultivation was no longer occurring on the Property. The pictures provided by Ms. Wordhouse showed that the greenhouse structures at POU1 and POU2 were uncovered and there were no cannabis plants inside, and that the water pump at POD1/POS1 was removed.

d. Length of Time:

The Respondent acknowledged in Statement S028984 that he began diverting water in 2022. Aerial imagery of the Property in 2022 indicates that outdoor cannabis cultivation was occurring and greenhouse structures were in use. During the 2023 and 2024 inspections, POD1/POS1 was the sole source connected to supply water for cannabis irrigation and domestic use. It is likely that the unauthorized diversions or use of water from POD1/POS1 were occurring throughout the period the Respondent was leasing the Property; however, based on staff's analysis, the Division alleges 26 days of unauthorized diversion at POD1/POS1 and 101 days of unauthorized use of water for cannabis irrigation.

- e. Considering all the relevant circumstances and the factors listed in subparagraphs a-d above, the Division proposes an administrative civil liability amount of \$22,000 for the unauthorized diversion to seasonal storage and use of water at POD1/POS1. The Division considers this amount to be appropriate in light of the corrective action taken through application for an SDUR, while also reflecting the nature and extent of harm of this violation and the need to deter the Respondent from further diversion and use of POD1/POS1 for cannabis irrigation without an applicable water right.

Violations 4, 5, & 8: Cannabis Cultivation Policy Section 2, Terms 81, 83, & 98

65. Violations 4, 5, and 8 have been analyzed jointly with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Terms associated with these violations relate to recordkeeping that is intended to assist the State Water Board in obtaining accurate water diversion and use data.

a. Extent of Harm Caused:

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 measuring devices and maintain diversion and use records, as required under Terms 81, 83, and 98, deprives the Division of critical data required for resource planning, forecast water demand, protect public trust resources, ensure water diverters are not diverting more water than authorized, 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:

During the July 19, 2023 inspection, Division staff documented a violation of Terms 83 and 98 because the Respondent failed to install the required measuring devices and retain appropriate records. During the May 23, 2024 inspection, Division staff again documented a violation of Terms 83 and 98, as well as a violation of Term 81 because the Respondent failed to install separate storage systems for water diverted for cannabis irrigation and water diverted for other uses, or otherwise install separate measuring devices to quantify diversion to and from each storage facility for each use.

c. Corrective Action:

During each of the inspections, law enforcement eradicated the Respondent's cannabis plants. On November 12, 2024, following the second inspection, Ms. Wordhouse provided staff photographs of corrective actions taken on the Property. The photographs showed that cannabis cultivation was no longer occurring. The pictures provided by Ms. Wordhouse show that the greenhouse structures at POU1 and POU2 were uncovered and there were no cannabis plants inside, the water pump at POD1/POS1 was removed, the inlet water lines at POS3-4 were removed, and POS5 was removed.

d. Length of Time:

These violations were observed during the inspections on July 19, 2023 and May 23, 2024. The Division alleges a single day of violation for each Policy term violation observed during the inspections.

e. Administrative Civil Liability:

Considering all the relevant circumstances and factors listed in subparagraphs a-d above, the Division proposes administrative civil liability in the amount of \$500 for Violation 4 (Term 81), \$1,000 (\$500 per inspection) for Violation 5 (Term 83), and \$1,000 (\$500 per inspection) for Violation 8 (Term 98).

Violation 6: Cannabis Cultivation Policy, Section 2, Term 92

66. Violation 6 has been analyzed separately with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Term associated with this violation is intended to prevent excessive diversions to storage.

a. Extent of Harm:

Compliance with Term 92 is necessary to prevent waste from water diversions to full storage facilities. By using tanks without the required overflow prevention device, the Respondent risks impacting beneficial uses and downstream priority of right diverters.

b. Nature and Persistence:

During the July 19, 2023 and May 23, 2024 inspections, Division staff observed that POD1/POS1 was the sole source of water for cannabis irrigation occurring on the Property. Division staff observed two water storage tanks, the 2,500-gallon tank at POS3 and the 3,000-gallon tank at POS4, that were missing overflow prevention devices during the 2023 inspection. Additionally, Division staff documented three water storage tanks, the 2,500-gallon tank at POS3, the 3,000-gallon tank at POS4, and the 1,200-gallon tank at POS5, that were missing overflow prevention devices during the 2024 inspection.

c. Corrective Action:

The photographs submitted by Ms. Wordhouse on November 12, 2024 documented that cannabis cultivation was not occurring in the greenhouses, the water pump at POD1/POS1 was removed, the inlet water lines at POS3-4 were removed, and that POS5 was removed.

d. Length of Time:

These violations were observed during both inspections conducted by staff. The Division alleges one day of violation for each violation observed during the inspections.

- e. Considering all relevant circumstances and the factors listed in subparagraphs a-d above, the Division proposes an administrative civil liability amount of \$2,500 (\$500 per tank) for Violation 6.

Violation 7: Cannabis Cultivation Policy, Section 2, Term 93

67. Violation 7 has been analyzed separately with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Term associated with this violation relates to water storage requirements intended to protect wildlife.

a. Extent of Harm:

Cannabis cultivators are required to ensure that tanks openings are closed as open storage tanks may potentially cause direct harm by entrapping wildlife. The potential harm to wildlife increases significantly when there are multiple water storage tanks with accessible openings.

b. Nature and Persistence:

Division staff observed that the 1,200-gallon tank at POS5 did not have a lid to prevent the entry of entrapment of wildlife during either inspection of the Property.

c. Corrective Action:

The documentation of corrective actions submitted by Ms. Wordhouse on November 12, 2024 included photographs demonstrating that POS5 had been removed from the Property.

d. Length of Time:

These violations were observed during the July 19, 2023 and May 23, 2024 inspections. The Division alleges one day of violation for each inspection.

e. Considering the relevant circumstances and factors listed in subparagraphs a-d above, the Division proposes an administrative civil liability amount of \$1,000 (\$500 per inspection) for Violation 7.

Violation 9: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License

68. Violation 9 has been analyzed separately with respect to Water Code section 1055.3. This violation is based on the Respondent's failure to obtain a DCC license prior to diverting or using water for cannabis cultivation.

a. Extent of Harm:

Unlicensed cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. Applications for commercial cannabis cultivation licenses began on January 1, 2018. Operating a commercial cannabis cultivation site without a license causes negative economic impact on the legal cannabis industry and general harm to the regulatory program. Despite the length of time the state's cannabis cultivation regulatory program has been in effect, the degree of illegal cannabis cultivation exceeds legal cultivators by orders of magnitude in all aspects of the cannabis industry across the state. Illegal cultivation directly harms the legal market by supporting and supplying an unregulated market where illegal cultivators do not incur the compliance costs to cultivate cannabis in a manner that does not have a negative impact on water quality, aquatic habitats, riparian habitats, wetlands, and springs. As such, the Respondent's cannabis cultivation activities harm legal cultivators, downstream priority of right diverters, beneficial uses of water, and the cannabis cultivation regulatory program.

b. Nature and Persistence:

During the July 19, 2023 inspection, the Respondent was growing approximately 887 cannabis plants, irrigated with surface water diverted from POD1/POS1. During the May 23, 2024 inspection, the Respondent was growing approximately 1,413 cannabis plants, again irrigated with surface

water diverted from POD1/POS1. Division staff determined that the scale of cannabis cultivation occurring on the Property during these inspections required a commercial cannabis license from DCC.

c. Corrective Action:

During each inspection, law enforcement officers eradicated the Respondent's cannabis plants. On November 12, 2024, Ms. Wordhouse submitted photographs confirming that cultivation activities were no longer occurring on the Property.

d. Length of Time:

Water diversion and use for commercial cannabis cultivation was documented on the Property during the 2023 and 2024 inspections. It is likely that cannabis cultivation, of a scale similar to what staff observed during the inspections, has been occurring prior to the July 19, 2023 inspection. The Statement filed by the Respondent reported diversions from POD1/POS1 beginning in April 2022. Nevertheless, the Division alleges one violation for each day of inspection.

e. Considering the relevant circumstances and factors listed in subparagraphs a-d above, the Division proposes administrative civil liability in the amount of \$1,000 (\$500 per inspection) for Violation 9.

PROPOSED LIABILITY AMOUNT

69. Having taken into consideration the factors described above and the need for deterrence, the Assistant Deputy Director for the Permitting and Enforcement Branch recommends a total administrative civil liability amount of \$40,000 against the Respondent, based on the following:

Violation 1 (\$1,000) + Violation 2 (\$10,000) + Violation 3 (\$22,000) + Violation 4 (\$500) + Violation 5 (\$1,000) + Violation 6 (\$2,500) + Violation 7 (\$1,000) + Violation 8 (\$1,000) + Violation 9 (\$1,000)

RIGHT TO HEARING

70. The Respondent 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 Respondent receives this Complaint as required by Water Code section 1055, subdivision (b).

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

72. If the Respondent 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.
73. 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

A handwritten signature in blue ink, appearing to read "Robert P. Cervantes", with a stylized flourish at the end.

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

Dated: August 5, 2026