

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

DIVISION OF WATER RIGHTS

ORDER WR XXXX-XXXX-DWR

DRAFT CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion

**John Long
Trinity County
Assessor Parcel Number: 018-230-024-00**

The State Water Resources Control Board (State Water Board) hereby finds:

SUMMARY OF DETERMINATIONS

1. Based on the facts and information contained herein, John Long (hereinafter the Diverter) is violating or threatening to violate requirements set forth in Water Code section 1831, subdivision (d)(2) and (6)(A)-(B):
 - a. State Water Board, Division of Water Rights (Division) staff observed the Diverter diverting and using water for irrigation of cannabis in violation of specific terms and conditions of the Diverter's Small Irrigation Use Registration (SIUR) H500552
 - b. Division staff observed the Diverter cultivating approximately 229 cannabis plants on September 7, 2021, without a license issued by the California Department of Cannabis Control (DCC) as required by Chapter 6 of Division 10 of the Business and Professions Code. (Bus. & Prof. Code, section 26060 et. seq).
2. This Order directs the Diverter to cease and desist the activities causing the violation(s) or threatened violation(s) and to take the corrective actions described below.

CEASE AND DESIST ORDER AUTHORITY

3. Water Code section 1831, subdivision (a), provides that the State Water Board may issue an order to cease and desist from violation(s) or threatened violations(s) of the requirements described in section 1831, subdivision (d). Specifically, Water Code

section 1831, subdivisions (d)(2) and (d)(6) provides:

[(d)] (2) Any term or condition of a permit, license, certification, or registration issued under this division.

[(d)] (6) Any diversion or use of water for cannabis cultivation if any of paragraphs (1) to (5), inclusive, or any of the following applies:

(A) A license is required, but has not been obtained, under Chapter 6 (commencing with Section 26060) or Chapter 7 (commencing with Section 26070) of Division 10 of the Business and Professions Code. (B) The diversion is not in compliance with an applicable limitation or requirement established by the board or the Department of Fish and Wildlife under Section 13149.

4. Water Code section 1834, subdivision (a), provides that the State Water Board shall give notice informing the party that he or she may request a hearing not later than 20 days from the date on which the notice is received. If the party does not timely request a hearing, section 1834, subdivision (a) authorizes the Board to adopt a cease-and-desist order based on the statement of facts and information set forth in the notice without a hearing. The State Water Board delegated this authority to the Deputy Director for Water Rights in Resolution 2012-0029. The Deputy Director has redelegated this authority to the Assistant Deputy Director for Water Rights.

STATEMENT OF FACTS AND INFORMATION

5. Diverter: The Diverter is an individual who operates a cannabis cultivation site inspected by the Division on September 7, 2021. Based on information obtained from review of aerial imagery of the location, the Diverter has likely cultivated cannabis since 2016. The cannabis cultivation site is located on property owned by the Diverter in Trinity County. The Diverter diverted water from one point of diversion (POD) for cannabis cultivation activities on the Property. The Diverter impounded and diverted water from one POD on an unnamed stream with a natural channel that flows through the property.
6. Property: The violation(s) or threatened violation(s) at issue here occurred on Trinity County Assessor Parcel Number (APN) 018-230-024-00 (hereinafter the Property).
7. Property Ownership: According to Trinity County property records, the Diverter acquired the Property on or around March 1, 2013, and remains the owner of record.
8. Watershed Information: The Property is located in the Olsen Creek watershed (Calwater Watershed version 2.2, No. 1109.400301), tributary to the Mad River. The Mad River is a Fully Appropriated Stream System from the mouth of the Mad River at the Pacific Ocean upstream including all tributaries, from which there is no water available for new appropriation from June 1 through October 31 (WR Order 98-08).

9. Cannabis Cultivation Policy: The State Water Board's Cannabis Cultivation Policy went into effect on December 18, 2017, following approval by the Office of Administrative Law. Pursuant to Water Code section 13149, the Policy contains principles, guidelines and requirements (referred to here as "requirements") for the diversion or use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow. The State Water Board subsequently amended the Cannabis Cultivation Policy, effective April 16, 2019. All SIURs Issued for Cannabis Cultivation incorporate the requirements from the Cannabis Cultivation Policy to ensure protection of instream flows and aquatic habitat.
10. Water Rights Records Review: Prior to the inspection on September 2, 2021, Division staff examined available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) and found the Diverter has three Statements on file (S025124, S025125, and S025129) and has applied for a Domestic Use registration D032499 that was rejected in 2017. In addition, Division staff found the diverter has a registered and active SIUR (H500552) on file. The SIUR (H500552) allowance and requirements are further described below:
 - a. On October 22, 2018, the Division of Water Rights issued a Small Irrigation Use Registration (SIUR) H500552 to John Long for the diversion and use of water on APN 018-230-24-00. Water appropriated, is limited to 0.09 acre-feet or less per year, and the amount of water stored is limited to 0.028541 acre-feet under the terms and conditions of H500552. H500552 states that the water right holder must be in compliance with all applicable conditions including the narrative and instream inflow requirements of Attachment A of the Cannabis Policy and specifically the following sections of the Cannabis Cultivation Policy Attachment A:
Section 1 – Term Numbers 4, 15, 17, 24, 26, and 36.
Section 2 – Term Numbers 23, 63, 64, 66, 69 – 78, 82 – 94, 96, and 98 – 103.
Section 3 – All Instream Flow Requirements for Surface Water Diversions (Requirements 1 – 7) and the Gage Installation, Maintenance, and Operation Requirements.
Section 4 – All requirements and conditions.
11. DCC License Records Review: On September 2, 2021, Division staff reviewed DCC's license records to determine if there was a license on file that would legally authorize the commercial cannabis cultivation on the Property. Division staff found no DCC license on record for the Property. On May 11, 2022, Division staff checked again for a DCC license and found no record of an active or pending license.
12. Inspection Basis: In September 2021, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant inspection of the

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

13. Points of Diversion:

Division staff observed and documented one point of diversion (POD) during the September 7, 2021, inspection.

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

14. Inspection Findings and Observations: During the September 7, 2021, inspection, Division staff observed cannabis cultivation occurring at two outdoor cultivation sites on the Property. Approximately 229 cannabis plants were documented at the time of the inspection. Staff observed water being diverted from one POD (POD1) to irrigate cannabis. On September 7, 2021, Division staff observed that the POD1, the "spring" diversion registered under SIUR H500552 was actively diverting water for cannabis cultivation in violation of the SIUR terms and conditions as specifically described herein. Division staff found that the diverter was in violation of the following SIUR H500552 requirements:

- a. WC Section 1846 SIUR H500552 Cannabis Cultivation Policy Attachment A, Section 2., Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements No. 4. The Surface Water Dry Season Forbearance Period
- b. WC Section 1846 SIUR H500552 - Cannabis Cultivation Policy Attachment A, Section 2, Term 77 - Failure to Follow Diversion Intake Requirements
- c. WC Section 1846 SIUR H500552 Term 82 - Failure to Install Water Measuring Device or Maintain Diversion Records.
- d. WC Section 1846 SIUR H500552 - Term 92 - Water Storage Facility Without Device to Prevent Water Overflow
- e. WC Section 1846 SIUR H500552 Cannabis Cultivation Policy Section 2, Term 98 – Failure to Maintain Daily Records of Water Use for Cannabis Irrigation.
- f. WC section 1846 SIUR H500552, Paragraph 10 "No water shall be diverted under this right unless the water right holder complies with all

applicable state, city, county, and local laws, regulations, ordinances, permits and license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building”.

15. Aerial Imagery Review:

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

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

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

- a. Based on Division staff's observations during the September 7, 2021, site inspection, staff determined that the observed scale of cannabis cultivation occurring on the Property required a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. During the site inspection, Division staff observed approximately 229 cannabis plants growing in two outdoor cultivation sites, with an approximate total cultivation area of 12,326 sq. ft., irrigated from surface water diversions at POD1. The Diverter's cultivation canopy size exceeds the minimum licensing requirement established under Business and Professions Code section 26061, subdivision (a). Division staff examined available records on September 7, 2021, again on September 9, 2021, and recently on May 11, 2022 and did not find any

record that DCC issued a cultivation license for the activities observed on the Property.

17. Inspection Report and Notice of Violation: Subsequent to the September 7, 2021, inspection, Division staff sent the Diverter a Notice of Violation and an Inspection Report (NOV/IR) via certified mail on October 21, 2021. United States Postal Service records indicate that the Diverter received the NOV/IR on October 26, 2021. The NOV/IR described the observations made by Division staff and notified the Diverter that the diversion or use of water for cannabis cultivation activities without necessary licenses and/or without complying with all applicable requirements in the Cannabis Cultivation Policy are violations potentially subject to enforcement by the State Water Board. The NOV/IR provided recommended corrective actions for the violations.
18. Response to Notice of Violation: As of the date of this complaint, the Diverter has not contacted the Division or shown any efforts to come into compliance.

ALLEGED VIOLATIONS AND THREATENED VIOLATIONS

19. Based on the findings described above, including observations made during the inspection, the Diverter violated or threatens to violate Water Code section 1831, subdivision (d)(2) and (6)(A):
- a. WC section 1831 (d) (2) violations: Any term, or condition of a permit, license, certification, or registration issued under this division. Violation is applied to terms and conditions of SIUR H500552 as described below:
 - i. WC Section 1846 SIUR H500552 Cannabis Cultivation Policy Attachment A, Section 2., Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements No. 4. The Surface Water Dry Season Forbearance Period
 - ii. WC Section 1846 SIUR H500552 - Cannabis Cultivation Policy Attachment A, Section 2, Term 77 - Failure to Follow Diversion Intake Requirements
 - iii. WC Section 1846 SIUR H500552 Term 82 - Failure to Install Water Measuring Device or Maintain Diversion Records.
 - iv. WC Section 1846 SIUR H500552 - Term 92 - Water Storage Facility Without Device to Prevent Water Overflow
 - v. WC Section 1846 SIUR H500552 Cannabis Cultivation Policy Section 2, Term 98 – Failure to Maintain Daily Records of Water Use for Cannabis Irrigation.
 - vi. WC section 1846 SIUR H500552, Paragraph 10 “No water shall be diverted under this right unless the water right holder complies with all applicable state, city, county, and local laws, regulations, ordinances, permits and license requirements including, but not

limited to those for cannabis cultivation, grading, construction, and building”.

- b. WC section 1831 (6) (A): A license is required, but has not been obtained, under Chapter 6 (commencing with section 26060) or Chapter 7 (commencing with Section 26070) of Division 10 of the Business and Professions Code.
 - i. DCC established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code and began issuing licenses on January 1, 2018. While the Division is not responsible for determining the specific type of state cultivator license that DCC would have required, 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.

20. The Diverter has not contacted Division staff in response to the NOV/IR or provided any evidence that the corrective actions detailed in the NOV/IR have been taken. In light of the aerial imagery indicating a history of cannabis cultivation activities on the Property, the seasonal nature of cannabis cultivation, and the Diverter's failure to provide Division staff information in response to the NOV/IR, it is likely that the Diverter will continue to cultivate cannabis on the Property and divert surface water during the next forbearance period in violation of this requirement.

SECTION 1834 NOTICE REQUIREMENTS

- 21. On, July 12, 2022, in accordance with Water Code section 1834, subdivision (a), the State Water Board's Division of Water Rights (Division), provided the Diverter with notice of the board's intent to issue an order determining that the Diverter is violating or threatening to violate requirements described in Water Code section 1831, subdivision (d).
- 22. The notice included the facts and information stated above, which describe the basis for the violations and threatened violations, and informed the Diverter that unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order based on the statement of facts and information set forth in the notice, without a hearing.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. The Diverter shall immediately cease and desist any diversion and use of water from the unnamed spring for cannabis cultivation until a CDFA commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code is obtained. The requirement to obtain a cultivation license also incorporates the requirement to obtain a water right pursuant to Business and Professions Code section 26060.1(a)(2).
2. Within 30 days of the date of adoption of this CDO, the Diverter shall submit a draft compliance plan for review and approval by the Division that details what actions will be taken to ensure that a commercial cannabis license is obtained prior to any diversion and use of water from the unnamed spring and that water will not be diverted from the unnamed spring during the forbearance period (April 1 - October 31) for irrigation of cannabis. To the extent that the Diverter intends to continue cannabis cultivation activities on the Property, irrigated with water diverted from the unnamed spring, the draft compliance plan must include installation of adequate water storage to enable the Diverter to divert water to storage during the non-forbearance period at sufficient capacity to ensure water will not be diverted during the forbearance period. The draft compliance plan must also include a water use estimate supporting that adequate storage has been obtained and will be installed as per the timeline stipulated in the compliance plan. In addition, the compliance plan must include implementing all necessary requirements stipulated in SIUR H500552. Refer to the NOV/IR for details on corrective actions for mitigation requirements not implemented.
3. Within 60 days of the final compliance plan approval date, the Diverter must implement the compliance plan.

ADDITIONAL INFORMATION

Consequences of Non-Compliance

Failure to comply with the requirements of this Order may result additional enforcement, which may include the imposition of administrative civil liability or referral to the Attorney General to take further injunctive enforcement actions or seek civil liability, pursuant to Water Code section 1845. Civil liability, whether administrative or judicial, may be up to \$1,000 for each day in which the violation occurs, or up to \$10,000 for each day in which the violation occurs during drought.

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation,

ordinance, or other law.

Regulatory Changes

Nothing in this Order shall excuse the Diverter from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse the Diverter from meeting any additional regulatory requirement that may be imposed by other local, state or federal regulatory entities for corrective actions taken to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307) and an action by a regulatory agency for the protection of the environment (Cal. Code Regs., tit. 14, § 15308).

Effective Date

This Order is effective upon issuance, pursuant to Water Code section 1832.

Petition for Reconsideration

Any interested person or entity may petition the State Water Board for reconsideration of this Order pursuant to Water Code section 1122. Such petition shall be filed not later than 30 days from the date the board adopts this Order.

STATE WATER RESOURCES CONTROL BOARD