

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

DIVISION OF WATER RIGHTS

ORDER WR XXXX-XXXX-DWR

CEASE AND DESIST ORDER

**In the Matter of Diversion or Use of Water for
Cannabis Cultivation**

Stacio Kopiej

Mendocino County

APNs: 052-070-03-00 and 052-120-03-00

Source: Unnamed stream tributary to Indian Creek

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

SUMMARY OF DETERMINATIONS

1. Based on the facts and information contained herein, Stacio Kopiej (hereinafter the Diverter) is violating or threatening to violate requirements set forth in Water Code section 1831, subdivision (d)(6)(A)-(B):
 - a. State Water Board, Division of Water Rights (Division) staff observed the Diverter using water to cultivate approximately 1,870 cannabis plants on May 27, 2021, without a license issued by California Department of Food and Agriculture (CDFA) CalCannabis¹ as required by Chapter 6 of Division 10 of the Business and Professions Code (Bus. & Prof. Code, section 26060 et. seq.); and
 - b. Division staff also observed and documented diversions of water for cannabis cultivation in violation of an applicable requirement established by the State Water Board in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) pursuant to Water Code, section 13149.

2. This Order directs the Diverter to cease and desist the activities causing the violations or threatened violations and to take the corrective actions described below.

¹ Three state programs merged to form the Department of Cannabis Control (DCC). Those programs were the Bureau of Cannabis Control in the Department of Consumer Affairs, the Manufactured Cannabis Safety Branch in the Department of Public Health, and CalCannabis Cultivation Licensing in the Department of Food and Agriculture. Effective July 12, 2021, DCC is the state program tasked with licensing, inspecting, and regulating cannabis activities in California. However, because the property inspection and records review for this matter occurred prior to July 12, 2021, this Order references CDFA rather than DCC when identifying the licensing agency.

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, subdivision (d)(6) provides:

(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.

(C) The diversion or use is not in compliance with a requirement imposed under paragraphs (1) and (2) of subdivision (b) of Section 26060.1 of, and paragraph (3) of subdivision (a) of Section 26070 of, the Business and Professions Code.

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 State Water 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. Property:

The violations and threatened violations at issue were observed on Mendocino County Assessor Parcel Numbers (APNs) 052-070-03-00 and 052-120-03-00 (hereinafter the Property).

6. Property Ownership:

According to Mendocino County property records, the Diverter acquired ownership interest in the Property on or around March 20, 2019. At that time, the Property was also jointly owned by Tzetzko Mishev, David M. Verno Sr., and David M. Verno Jr. David M. Verno Jr. subsequently sold his ownership interest in the Property to Richard Etherton.

7. Watershed Information:

The Property is located in the Indian Creek and Coulborn Creek watersheds (HUC 12 Indian Creek, 180101060303). Water for cannabis cultivation was diverted from

an unnamed stream that is tributary to Indian Creek, which is a tributary to the South Fork Eel River. The South Fork Eel River is a state designated Wild and Scenic River from its confluence with the main stem to the Section Four Creek confluence. As a Wild and Scenic River, the South Fork Eel River itself is a fully appropriated stream system from January 1 through December 31 of any year and the Division cannot accept any applications for appropriative water rights.

8. Cannabis Cultivation Season:

The average growing season for cannabis can vary depending on the type of cultivation and location. In northern California, the average growing season for outdoor growers is 190 days (Bauer et al., *Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds* (March 18, 2015) PLoS ONE 10(3): e0120016. doi:10.1371/journal, at p. 15). Cannabis cultivation typically occurs between March and November with water use peaking in the summer and early fall (June-October).

8. July 21, 2020, Search Warrant Inspection by CDFW:

On September 8, 2020, Division staff received a copy of a Notice of Violation that was sent to the Diverter from the California Department of Fish and Wildlife (CDFW) following the execution of a July 21, 2020, search warrant inspection of the Property. The Notice of Violation from CDFW documented multiple cannabis cultivation areas on the Property. The Diverter was not present for the inspection; however, several other individuals were on the Property at the time of the inspection, including Mishev. A CDFW Warden interviewed Mishev, who explained the division of the Property between the co-owners. Based on statements from Mishev, the cultivation activities occurring in the middle portion of the Property were associated with the Diverter, while the southern portion was managed by Mishev.

9. September 2020 Water Rights Records Review:

Between September 8, 2020, and September 24, 2020, Division staff reviewed the State Water Board's Electronic Water Rights Information Management System (eWRIMS) database to determine if there were any appropriative water rights permits or licenses, or any statements of diversion and use on file for the Property. Division staff found no records.

10. September 24, 2020, Notice Letter:

September 24, 2020, Division staff mailed a "Notice of Potential Unauthorized Diversion and Failure to File a Statement of Water Diversion and Use" letter to the Diverter via certified mail in response to the diversions documented by CDFW. The letter was returned to Division staff as "unclaimed" on October 20, 2020.

11. CDFW Communication Regarding Subsequent Inspection:

On or around May 20, 2021, the Division was notified by CDFW of another 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.

12. Aerial Imagery Review:

On or around May 20, 2021, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. Google Earth Pro aerial imagery dated April 21, 2019, shows graded areas and greenhouse structures consistent with cannabis cultivation activities documented by CDFW during a search warrant inspection on July 21, 2020.
- b. Landvision aerial imagery dated May 6, 2020, shows graded areas and greenhouse structures consistent with cannabis cultivation activities observed by CDFW on July 21, 2020.

13. 2021 Water Rights Records Review:

On or around May 20, 2021, prior to the inspection, Division staff examined available State Water Board water rights records in eWRIMS and found no evidence of an existing Statement, water right permit, license, or registration on file. Division staff has since verified that, as of the date of this Order, the Diverter still does not possess any appropriative water rights permits or licenses or filed any statements of diversion and use.

14. CalCannabis License Records Review:

On or around May 20, 2021, Division staff reviewed CalCannabis records of commercial cannabis cultivation licenses to determine if there is any license on file that would authorize commercial cannabis cultivation on the Property. Division staff did not find any such license. On January 3, 2022, Division staff verified that the Diverter still has not obtained a commercial cannabis license.

15. May 27, 2021, Inspection:

On May 27, 2021, Division staff, accompanied by staff from CDFW and the Trinity County Sheriff's Office conducted an inspection of the Property as authorized by the warrant obtained by CDFW. Neither the Diverter, nor a representative of the Diverter, was present during the inspection; however, Mishev, was again present on the Property and was interviewed by a CDFW Warden. Mishev stated that the cannabis cultivation that was observed during the inspection, including the greenhouse structures in the middle portion of the Property, was associated with the Diverter. Mishev stated he had removed his greenhouse structures and was cleaning up the portion of the Property he had been cultivating at in 2020. During the inspection, the Diverter's cannabis plants were eradicated by CDFW Wardens.

16. Points of Diversion:

Division staff observed and documented two points of diversion (PODs) during the May 27, 2021, inspection.

- a. POD1 is an impoundment, created by excavating a hole approximately 5 feet in diameter and 6 inches in depth, located on an unnamed stream that is tributary to Indian Creek. The unnamed stream has defined bed and banks upstream and downstream of POD1. POD1 was actively diverting water during the inspection for cannabis cultivation. Division staff observed water flowing upstream of POD1, with little to no water flowing downstream of POD1.
- b. POD2 is a natural pool, created by a broken redwood tree stump and stream shape, located on an unnamed stream that is tributary to Indian

Creek. The unnamed stream has defined bed and banks upstream and downstream of POD2. POD2 was actively diverting water during the inspection for cannabis cultivation. Division staff observed water flowing upstream of POD2, but no water was flowing downstream of POD2.

17. Inspection Observations:

During the May 27, 2021, inspection, Division staff observed surface water being diverted from POD1 and POD2 to irrigate cannabis. Division staff observed approximately 1,870 cannabis plants in six greenhouse structures on the Property.

18. Confirmation of the Need for a CalCannabis License:

CalCannabis established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code. CDFA 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 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.

19. Inspection Report and Notice of Violation:

Subsequent to the May 27, 2021, inspection, Division staff prepared an Inspection Report and Notice of Violation (IR/NOV) dated July 29, 2021. The IR/NOV describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for the violations. Division staff sent two copies of the IR/NOV to the Diverter via certified mail on July 29, 2021. United States Postal Service (USPS) records indicate that the IR/NOV sent to the Diverter's Redway address was returned to Division staff on August 7, 2021, based on "insufficient address." The IR/NOV sent to the Diverter at his Eureka address was returned to Division staff on August 9, 2021, based on "addressee unknown." On October 27, 2021, Division staff resent the IR/NOV via certified mail to the Diverter at his Redway address. The IR/NOV was returned to Division staff on December 9, 2021, based on the delivery being "unclaimed/being returned to sender."

20. Response to Notice of Violation:

To date, Division staff have been unable to deliver a copy of the IR/NOV to the Diverter. As a result, there has been no contact between Division staff and the Diverter regarding the violations or corrective actions required.

ALLEGED VIOLATIONS AND THREATENED VIOLATIONS

21. Based on the findings described above, including observations made during the inspection, the Diverter is violating or threatening to violate a requirement described in Water Code section 1831, subdivision (d)(6)(A):

- a. Any person engaged in commercial cannabis activity must obtain a state license from CDFA. (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).) CDFA's cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.

- b. During the May 27, 2021, inspection, Division staff observed approximately 1,870 cannabis plants growing in six greenhouse structures, with an approximate total cultivation area of 5,200 sq. ft., irrigated from surface water diverted from POD1 and POD2. Cannabis cultivation of the scale observed by Division staff on the Property required a CDFA commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.
- c. On January 3, 2022, Division staff verified that the Diverter still had not obtained a cultivation license for the activities observed on the Property. The Diverter has not contacted staff to indicate whether he intends to continue cultivation activities on the Property; however, the Diverter appears to have a history of cultivation based on review of aerial imagery from 2019 and 2020, and information provided by CDFW from its July 21, 2020, inspection of the Property. It is likely that the Diverter will continue to divert or use water for commercial cannabis cultivation on the Property that requires a license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.

22. Based on the findings described above, including observations made during the inspection, the Diverter is violating or threatening to violate a requirement described in Water Code section 1831, subdivision (d)(6)(B):

- a. Division staff documented that the Diverter failed to comply with an applicable requirement established by the State Water Board in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy)² pursuant to Water Code, section 13149.
 - i. **Cannabis Cultivation Policy, Attachment A, Section 2, Term 66 Violation:** Term 66 requires that all surface water diversions for cannabis cultivation comply with the surface water Numeric and Narrative Instream Flow Requirements found in the Cannabis Cultivation Policy. Numeric and Narrative Instream Flow Requirements No. 4 prohibits surface water diversions for cannabis cultivation activities between April 1 through October 31 of each calendar year. During the May 27, 2021, inspection, Division staff documented active surface water diversion from POD1 and POD2

² The State Water Board on October 17, 2017, adopted the Cannabis 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.

for cannabis cultivation during the forbearance period in violation of this requirement. Based on the findings above, it is likely that the Diverter also violated this requirement in 2019 and 2020. Aerial imagery dated April 21, 2019, and May 6, 2020, show graded areas and greenhouses consistent with cannabis cultivation activities. Cannabis cultivation was subsequently confirmed by CDFW during its July 21, 2020, inspection of the Property, which was conducted during the forbearance period. Although CDFW was unable to identify which POD(s) was used to irrigate the Diverter's cannabis during the July 21, 2020, inspection, no sources of water were observed other than the surface streams on the Property. Therefore, the Diverter likely diverted from surface water during the forbearance period to irrigate his cannabis in 2019 and 2020.

- ii. Division staff are not aware that any corrective actions have been taken to correct this violation. In light of the aerial imagery and prior inspection by CDFW indicating a history of cannabis cultivation activities on the Property, and the seasonal nature of cannabis cultivation, 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

23. On, March 22, 2022, in accordance with Water Code section 1834, subdivision (a), the Division provided the Diverter with notice of the State Water 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)(6)(A)-(B).
24. 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 State Water Board within 20 days after receipt of the notice, the State Water Board may adopt a cease and desist order based on the statement of facts and information set forth in the notice, without a hearing.
25. **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 or use of water from the unnamed stream 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)(A).
 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 or use of water from the unnamed stream and that water will not be diverted from the unnamed stream during the forbearance period (April 1 through 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 stream, the draft compliance plan must include installation of adequate water storage to enable the Diverter to divert during the non-forbearance period and store water at a capacity sufficient to irrigate through the forbearance period without diverting from the stream. If the Diverter intends to seasonally store water diverted from the stream, the draft compliance plan must also include a timeline for obtaining an appropriate water right, such as a Cannabis Small Irrigation Use Registration.

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 in 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 State Water Board adopts this Order.

STATE WATER RESOURCES CONTROL BOARD

Dated:

DRAFT