

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0001-EXEC

In the Matter of the Administrative Civil Liability Complaint and Draft Cease and Desist
Order Issued to:

John Long
Trinity County

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of an Administrative Civil Liability Complaint (Complaint) and Draft Cease and Desist Order to John Long (Respondent). In accordance with the attached Settlement Agreement, the Assistant Deputy Director of the State Water Board's Division of Water Rights and the Respondent agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.¹

2.0 BACKGROUND

On July 12, 2022, the Assistant Deputy Director of the Division, acting under delegated authority, issued to the Respondent the Complaint and Draft Cease and Desist Order. The Complaint and Draft Cease and Desist Order concern allegations that Respondent failed to comply with the terms and conditions of Small Irrigation Use Registration (SIUR) H500552 on real property owned by Respondent, identified as Trinity County Assessor Parcel Number 018-230-024 (Property), by failing to comply with requirements of the State Water Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) and diverting and using water for cannabis cultivation for which a license is required

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

under the Business and Professions Code but was not obtained. Upon consideration of the factors set forth in Water Code section 1055.3, the Complaint recommends an administrative civil liability in the amount of \$4,000. The Draft Cease and Desist Order proposes that the Respondent cease diversion and use of water for cannabis cultivation until Respondent has taken certain corrective actions.

On August 4, 2022, Respondent requested a hearing before the State Water Board Administrative Hearings Office to contest the allegations contained in the Complaint and Draft Cease and Desist Order. The Administrative Hearings Office scheduled a hearing to commence on January 10, 2023.

The Respondent and the Assistant Deputy Director engaged in settlement negotiations and agreed to settle all matters identified in the Complaint and Draft Cease and Desist Order by settlement agreement in lieu of a hearing. During the settlement negotiations, the Respondent provided evidence of the implementation of several corrective actions to the satisfaction of the Assistant Deputy Director.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Assistant Deputy Director executed a Settlement Agreement on December 8, 2022. A copy of the Settlement Agreement is attached hereto as Exhibit A and incorporated herein by reference. The general terms of the settlement are:

- 1) Respondent stipulates to request cancelation of the hearing on the Complaint and Draft Cease and Desist Order, waive the right to petition for reconsideration of this Order, and agrees to the other terms and conditions described in the Settlement Agreement;
- 2) Respondent is subject to administrative civil liability in the amount of \$4,000, to be paid consistent with the payment schedule detailed in the Settlement Agreement, which will be deposited into the Water Rights Fund pursuant to Water Code section 1551; and
- 3) Respondent will undertake the corrective action detailed in Stipulation 8 of the Settlement Agreement.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Assistant Deputy Director and the Respondent is approved. The Respondent must perform all of the following actions:

1. Pay \$4,000 in administrative civil liability for the violations alleged in the Complaint by December 31, 2022. Payment shall be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board – Water Rights Fund." Respondent should include reference to Investigation ID: 13736 on the memo of the check and properly execute and

deliver payment to:

State Water Resources Control Board
Division of Water Rights
Attention: Cannabis Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

2. Comply with all terms and requirements described in the Settlement Agreement by December 31, 2022, including the submission of Annual Use Reports for the years 2021 and 2022 for SIUR H500552.

The administrative civil liability, if not paid consistent with the Settlement Agreement, will be recoverable as provided in Water Code section 1055.4. The terms and requirements described in the Settlement Agreement are enforceable as a cease-and-desist order issued in accordance with Water Code section 1831.

Failure to comply with the terms of the Settlement Agreement may result in additional enforcement, which may include imposition of administrative civil liability pursuant to Water Code section 1845.

STATE WATER RESOURCES CONTROL BOARD



Eileen Sobeck
Executive Director

January 3, 2023

Date

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between John Long (Respondent) and the State Water Resources Control Board (State Water Board), acting by and through the Assistant Deputy Director of the Division of Water Rights (Division). The Assistant Deputy Director and Respondent are jointly referred to herein as the Parties.

RECITALS

1. Pursuant to authority delegated from the Executive Director of the State Water Board, and subsequently redelegated from the Deputy Director of the Division of Water Rights, the Assistant Deputy Director of the Division of Water Rights issued an Administrative Civil Liability Complaint (Complaint) to Respondent on July 12, 2022. The Complaint is included as Attachment 1 to this Agreement.
2. Pursuant to authority delegated by the State Water Board in Resolution 2012-0029, and subsequently redelegated from the Deputy Director for Water Rights, the Assistant Deputy Director for Water Rights issued a Draft Cease and Desist Order to Respondent on July 12, 2022.
3. The Complaint and Draft Cease and Desist Order concern allegations of Respondent's failure to comply with the terms and conditions of Small Irrigation Use Registration (SIUR) H500552 on real property owned by Respondent and identified as Trinity County Assessor Parcel Number 018-230-024 (Property) by failing to comply with requirements of the State Water Board's *Cannabis Cultivation Policy – Principle and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) established pursuant to Water Code section 13149, and diversion and use of water for cannabis cultivation for which a license is required but was not obtained.
4. The violations alleged in the Complaint are subject to liability under Water Code section 1846, and section 1847, subdivision (b)(4). The Complaint proposes administrative civil liability in the amount of \$4,000 for the alleged violations after consideration of the factors in Water Code section 1055.3.
5. The violations and threatened violations alleged in the Draft Cease and Desist Order are subject to a cease and desist Order pursuant to Water Code section 1831.
6. On August 4, 2022, Respondent requested a hearing before the State Water Board, Administrative Hearings Office. The Administrative Hearings Office has scheduled a hearing to commence on January 10, 2023.

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7. The Parties agree to settle the Complaint and the Draft Cease and Desist Order without an administrative hearing or civil litigation by presenting this Agreement and a proposed order to the Executive Director of the State Water Board, as the Board's delegee, for adoption as an order by settlement authorized under Government Code section 11415.60.
8. This Agreement will become effective when the Executive Director issues an order approving the settlement, provided that the Parties concur in any substantive changes to the approving order proposed by the Executive Director.

STIPULATIONS

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties agree to settle the violations alleged in the Complaint as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Agreement, this Agreement is a confidential settlement document subject to all the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Administrative Civil Liability.** Respondent shall be subject to administrative civil liability in the amount of \$4,000 for the violations alleged in the Complaint. The Director has determined that this amount is appropriate after consideration of the factors in Water Code section 1055.3.
4. **Administrative Civil Liability Payment Schedule.** Respondent shall pay the administrative civil liability amount of \$4,000 no later than December 31, 2022.
5. **Administrative Civil Liability Payment Process.** Respondent shall submit the payment detailed in Paragraph 4 by cashier's check, certified check, or money order payable to the "State Water Resources Control Board – Water Rights Fund", include reference to Investigation ID 13736 in the memo of the check and delivered to:

State Water Board Water Resources Control Board
Division of Water Rights
Cannabis Enforcement Section
P.O. Box 2000

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Sacramento, CA 95812-2000

6. A copy of the cashier's check, certified check, or money order shall be provided to Andrew Tauriainen via email at Andrew.Tauriainen@waterboards.ca.gov or by mail at:

State Water Resources Control Board
Office of Enforcement
Attn: Andrew Tauriainen
801 K Street, Suite 2300
Sacramento, CA 95814

7. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water Code section 1551.
8. **Required Corrective Actions.** The parties stipulate and agree that Respondent has undertaken certain corrective actions during the settlement negotiation period. Respondent will undertake the following remaining corrective action to demonstrate compliance with the Water Code:
 - i. Submit Annual Use Reports for the years 2021 and 2022 for SIUR H500552 no later than December 31, 2022.
9. **Stipulation to Request Cancellation of Hearing.** Respondent will work with the Division of Water Rights Prosecution Team to jointly submit this Agreement and proposed order to the Administrative Hearings Office, request a notice of cancellation of the hearing be issued, and withdraw the hearing request.
10. **Satisfaction of Administrative Civil Liability Complaint.** Respondent's full payment of the administrative civil liability amount consistent with the schedule established under Stipulation 4, and completion of the corrective actions identified in Stipulation 8, will constitute a complete and final satisfaction of the administrative civil liability described in the Complaint. Provided that Respondent satisfies the terms and conditions of this Agreement, the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the Complaint.
11. **Stipulation to Cease and Desist Order.** The Parties jointly stipulate and agree that the terms of this Agreement, particularly the corrective action described under Stipulation 8, shall be enforceable as a Cease and Desist Order issued in accordance with Water Code section 1831, and shall resolve the allegations contained in the Draft Cease and Desist Order issued on July 12, 2022.

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12. **Enforcement of this Settlement Agreement.** The administrative civil liability required in Stipulation 3, if not paid consistent with the terms described in Stipulation 4, will be recoverable as provided in Water Code section 1055.4. Failure to comply with the corrective actions described under Stipulation 8 may result in additional enforcement, including imposition of administrative civil liability pursuant to Water Code section 1845.
13. **State Water Board Authority.** This Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law.
14. **Waiver of Reconsideration.** Respondent waives his right to request reconsideration of the State Water Board Executive Directors' Order approving this Agreement, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in that Order.
15. **Independent Judgment.** Each Party represents and declares that in executing this Agreement it is relying solely on its own judgment, knowledge, and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
16. **No Precedent.** This Agreement involves unique facts and legal issues and shall not be used as a precedential decision of the State Water Board.
17. **Additional Documents.** Each Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Agreement.
18. **Entire Agreement.** This Agreement reflects and represents the entire agreement between and among the Parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each Party represents that it has not relied on any inducements, promises, or representations made by the other party other than those contained in this Agreement.
19. **Mutual Agreement.** The Parties have agreed to the language in this Agreement. This Agreement shall not be construed against the party that drafted this Agreement or any portion of this Agreement.
20. **Counterparts.** This Agreement may be executed in one or more counterparts,

EXHIBIT A

each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

- 21. **Reasonableness of Settlement.** The Parties represent and warrant that this Agreement is made in good faith and in full recognition of the implications of such agreement.
- 22. **Section Headings.** The Parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify, or otherwise aid in the interpretation of this Agreement.
- 23. **Effective Date.** This Agreement shall become effective immediately upon issuance of the State Water Board Executive Director’s Order Approving the Agreement.
- 24. **Choice of Law.** This Agreement shall be interpreted and governed by the laws of the State of California.
- 25. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
- 26. **No Waiver of Other Requirements.** Nothing in this Agreement shall excuse the Respondent from meeting any other applicable requirement, legislation, regulation, or other authority.

IT IS SO STIPULATED.

State Water Board, Division of Water Rights’ Prosecution Team

By:  _____
 Julé Rizzardo
 Division of Water Rights

Date

Respondent

By: _____
 John Long

Date

Attachment 1: Administrative Civil Liability Complaint

EXHIBIT A

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- 21. **Reasonableness of Settlement.** The Parties represent and warrant that this Agreement is made in good faith and in full recognition of the implications of such agreement.
- 22. **Section Headings.** The Parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify, or otherwise aid in the interpretation of this Agreement.
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- 25. **Authorization.** Each Party warrants that the individual executing this Agreement on behalf of such Party is duly authorized to do so.
- 26. **No Waiver of Other Requirements.** Nothing in this Agreement shall excuse the Respondent from meeting any other applicable requirement, legislation, regulation, or other authority.

IT IS SO STIPULATED.

State Water Board, Division of Water Rights' Prosecution Team

By: _____
Jule Rizzardo
Division of Water Rights

Date

Respondent

By: John Long
John Long

12-8-2022
Date

Attachment 1: Administrative Civil Liability Complaint

ID-13736