

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

Soda Creek Ranch LLC
APN: 002-012-290-000

SOURCE: Unnamed Spring tributary to Little Soda Creek
COUNTY: Lake

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

SUMMARY OF DETERMINATIONS

1. Based on the facts and information contained herein, Soda Creek Ranch LLC (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 400 cannabis plants on June 3, 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 site 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 Lake County Assessor Parcel Number (APN) 002-012-290-000 (hereinafter the Property)
6. Property Ownership:
According to Lake County property records, the Diverter purchased the Property on April 1, 2020² and remains the owner of record.
7. Watershed Information:
The Property is located in the Bear Creek Watershed. Water for cannabis cultivation was diverted from an unnamed spring that is tributary to Little Soda Creek, which is a tributary to the mainstem Eel River. The mainstem Eel River is a state designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean. As a Wild and

² On June 2, 2021, Division staff reviewed property records available on LandVision, which indicated that the Diverter purchased the Property in 2005. Based on this information, staff's Inspection Report (IR) asserted the Diverter has owned the Property since 2005. However, after additional review of property records available on Westlaw and the Lake County Assessor-Recorder's Office, Division staff have determined that the Diverter purchased the Property on April 1, 2020.

Scenic River, the mainstem Eel River is a fully appropriated stream system from January 1 through December 31 of any year.

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).

9. Water Rights Records Review:

On or around June 2, 2021, prior to the inspection, Division staff reviewed the State Water Board's Electronic Water Rights Information Management System (eWRIMS) database to determine if there are any appropriative water rights permits or licenses, or any statements of diversion and use, on file for the Property. Division staff found no records. 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, that would allow the diversion of water from the observed point of diversion (POD1).

10. CalCannabis License Records Review:

On or around June 2, 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 November 3, 2021, Division staff verified that the Diverter still had not obtained a commercial cannabis license.

11. Inspection Basis:

On June 1, 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 Wardens and scientific staff conducted an inspection of the Property as authorized by the warrant on June 3, 2021. The Diverter, nor a representative of the Diverter, was present during the inspection. During the inspection, the Diverter's cannabis plants were eradicated by CDFW Wardens.

12. Points of Diversion:

Division staff observed and documented one point of diversion (POD1) during the June 3, 2021 inspection.

- a. POD1 is an impoundment, created by hand-stacked rocks that allow water to pool behind the dam, located on an unnamed spring that is tributary to Little Soda Creek. The unnamed spring channel has a defined bed and banks downstream of POD1 and the channel continues off property. POD1 was actively diverting water during the inspection. Staff observed that water was flowing into and out of the diversion structure at the time of inspection.

13. Inspection Findings and Observations:

During the June 3, 2021 inspection, Division staff observed surface water being diverted from POD1 to irrigate cannabis. Division staff observed approximately 400 cannabis plants in three greenhouse structures on the Property.

14. 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. The type of cultivation license required is dependent on the size of cultivation (measured by total canopy or number of

mature plants) and whether the cultivation uses no artificial lighting (i.e. outdoor), exclusively artificial lighting (i.e. indoor), or mixed-lighting. 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.

15. Inspection Report and Notice of Violation:

Subsequent to the June 3, 2021 inspection, Division staff prepared an Inspection Report and Notice of Violation (IR) dated July 15, 2021. The IR describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for the violations. Division staff sent two copies of the IR to the Diverter via certified mail on July 15, 2021. United States Postal Service (USPS) records indicate that the IR sent to the Diverter's managing member and agent for service of process was received on July 19, 2021. USPS records further indicate that the IR sent to the Diverter at the mailing address identified in Lake County property records was received on July 21, 2021.

16. Aerial Imagery Review:

On September 15, 2021, Division staff reviewed LandVision aerial imagery, dated August 26, 2020, which showed a graded area and greenhouses at POU1, consistent with cannabis cultivation activities.

17. Response to Notice of Violation:

As of the date of this Order, the Diverter has not contacted Division staff in response to the IR. Division staff have no knowledge or evidence to suggest any of the recommended corrective actions have been taken.

ALLEGED VIOLATIONS AND THREATENED VIOLATIONS

18. 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 June 3, 2021 inspection, Division staff observed approximately 400 cannabis plants growing in three greenhouses, with an approximate total cultivation area of 10,000 sq. ft., irrigated from surface water diversions at POD1. 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 November 3, 2021, 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 it 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 2020. 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.

19. 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)³ 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 June 3, 2021 inspection, Division staff documented active surface water diversion from POD1 for cannabis cultivation during the forbearance period in violation of this requirement. LandVision aerial imagery from August 2020 that depicts greenhouses with what appears to be cannabis plant canopy present on POU1, and evidence of cannabis cultivation occurring in the greenhouses collected during the June 3, 2021 inspection, suggests that the greenhouses were likely used for cannabis cultivation on the Property in 2020. POD1 was the sole source of water observed on the Property during the inspection and was likely used to irrigate any cannabis grown in 2020.
 - ii. The Diverter has not contacted Division staff in response to the IR or provided any evidence that the corrective actions detailed in the 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 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

20. On, December 8, 2021 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 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).

³ 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.

21. 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.

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 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 and use of water from the unnamed stream and that water will not be diverted from the unnamed stream during the forbearance period (April 1 - October 31) for irrigation of cannabis.
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