

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

Cassady Mandzik

SOURCE: Unnamed stream, Unnamed spring

COUNTY: Mendocino

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

SUMMARY OF DETERMINATIONS

1. Based on the facts and information contained herein, Cassady Mandzik (hereinafter the Diverter) is violating or threatening to violate requirements set forth in Water Code section 1831, subdivision (d)(6)(A):

State Water Board, Division of Water Rights (Division) staff observed Diverter cultivating approximately 2,473 cannabis plants on May 13, 2021, without a license issued by the California Department of Food and Agriculture CalCannabis¹ (CalCannabis) 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.

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 inspections and records review for this matter occurred prior to July 12, 2021, this Complaint 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 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 May 13, 2021. Based on information obtained from review of aerial imagery of the location, the Diverter has likely cultivated cannabis since 2012. The cannabis cultivation site is located on property owned by the Diverter in Mendocino County. The Diverter diverted water from three separate points of diversion (PODs) for cannabis cultivation activities and domestic use on the property. The Diverter impounded and diverted water from one POD on an unnamed stream (POD 2) and one POD on an unnamed spring (POD 3) for cannabis cultivation, both with a natural channel that flows through the property.
6. Property: The violations and threatened violations at issue were observed on Mendocino County Assessor Parcel Number (APN) 031-010-19-01 (hereinafter the Property).
7. Property Ownership: According to Mendocino County property records, the Diverter acquired the Property on or around January 31, 2007, and remains the owner of record.

8. Watershed Information: The property is located in the Willow Creek watershed (#11111.420402), tributary to the Main-stem Eel River. The Main-stem 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 Scenic River, the Main-stem Eel River is considered fully appropriated from January 1 through December 31 of any year. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093.50 et seq., it 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. The 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.
9. 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, while the average growing season for mixed light growers is 158 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). The Diverter's Property is uniquely situated to facilitate either mixed light or outdoor cannabis cultivation. In addition, the Property has multiple perennial water sources capable of meeting cannabis' high consumptive water demand. Evidence indicates the Diverter developed the Property and its water resources to maximize cannabis cultivation.
10. Aerial Imagery Review: On May 20, 2021, Division staff reviewed available aerial imagery of the Property and made the following observations:
 - a. Google Earth Pro aerial imagery from May 24, 2009, shows there was no cultivation on the Property.
 - b. Google Earth Pro aerial imagery taken on July 9, 2012, shows two greenhouse structures consistent with mixed light cannabis cultivation. In addition, plants can be seen growing outdoors that are consistent with the size and spacing of outdoor cannabis cultivation.
 - c. Google Earth Pro aerial imagery taken on May 28, 2014, shows the expansion, from two to four, greenhouse structures consistent with mixed light cannabis cultivation on the Property.
 - d. Google Earth Pro aerial imagery taken on August 12, 2017, shows additional expansion, from four to seven, greenhouse structures on the Property. Plants consistent with the size and spacing of cannabis can be seen in the greenhouses.
 - e. Google Earth aerial imagery taken on November 11, 2018, shows a similar cannabis cultivation site to that of 2017. Plants consistent with the size and spacing of cannabis can be seen in the greenhouses.

- f. LandVision Time View aerial imagery taken on August 2, 2020, shows the expansion, from seven to eight, greenhouse structures on the Property. The site appears consistent with the findings of Division staff during the May 13, 2021 inspection.
11. Water Rights Records Review: Prior to the inspection on May 11, 2021, 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 water diversion and use, that would authorize the diversion and use of water on the Property at the time of the inspection. Division staff found no records. Division staff has since verified that, as of the date of this Order, 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 PODs.
12. CalCannabis License Records Review: On or around May 11, 2021, Division staff reviewed CalCannabis records of commercial cannabis cultivation licenses to determine if there was a license on file that would authorize the commercial cannabis cultivation on the Property. Division staff found no CalCannabis license on record for the Property. Division staff has since verified that, as of November 3, 2021, Diverter still does not possess such licensure.
13. Inspection Basis: In May 2021, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant inspection of the Property due to illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. Division staff, accompanied by CDFW, the North Coast Regional Water Quality Control Board, and Mendocino County Sheriff's Office conducted an inspection of the Property as authorized by the warrant on May 13, 2021, starting at 3:00 p.m. The Diverter, nor a representative of the Diverter, was present during the inspection.
14. Points of Diversion:
Division staff observed and documented three points of diversion (POD) during the May 13, 2021 inspection.
 - a. POD1 is located on an unnamed stream that is tributary to the Eel River. The unnamed stream has defined bed and banks upstream and downstream of POD1. POD1 was actively diverting during the inspection for domestic use.
 - b. POD2 is located on the same unnamed stream as POD1, which is tributary to the Eel River. The unnamed stream has defined bed and banks upstream and downstream of POD2. POD2 was actively diverting during the inspection for cannabis cultivation.
 - c. POD3 is located at the headwaters of an unnamed spring that is tributary to the Eel River. The unnamed spring has defined bed and banks downstream and flows off the property. POD3 was actively diverting water during the inspection for cannabis cultivation.

15. Inspection Findings and Observations:

During the May 13, 2021 inspection, Division staff observed cannabis cultivation occurring in nine greenhouse structures on the Property. Approximately 2,473 cannabis plants were documented at the time of the inspection. Staff observed water being diverted from two PODs (POD 2 and 3) to irrigate cannabis.

16. Confirmation of the Need for 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 and 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 (i.e. combination of both above). 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.

17. Inspection Report and Notice of Violation:

At the conclusion of the May 13, 2021 inspection, Division staff left a Field Notice of Violation (Field NOV) with the search warrant in the residential structure on a desktop with what appeared to be personal items of the Diverter. Subsequent to the inspection, Division staff prepared another NOV and Inspection Report (IR) dated August 13, 2021. The 2nd NOV and 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 mailed the NOV and IR to the Diverter via United States Postal Service (USPS) certified mail on August 13, 2021. USPS records indicate that the NOV IR was received on August 20, 2021. The IR was also sent to the Diverter via email on August 13, 2021.

18. Response to Notice of Violation:

On August 20, 2021, the Diverter responded to the Division's email sent on August 13, 2021. The Diverter informed staff that as of July 16, 2021, all water diversions ceased on the Property, the water storage tanks were disconnected from the POD intakes and emptied, and the cannabis cultivation waste removed from the stream channel. The Diverter's actions corrected the Cannabis Cultivation Policy term violations observed during the May 13, 2021 inspection. As requested in the IR, the Diverter provided before and after photos evidencing the corrective actions. The before and after photos provided by the Diverter show that the water storage and irrigation system infrastructure remain on the Property. In addition, LandVision Time View aerial imagery from post inspection taken on June 15, 2021, shows that the greenhouse structures and grow platforms are still intact. The Diverter stated that there are no plans to cultivate cannabis legally or illegally on the Property in the future.

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)(6)(A):

- a. Based on Division staff's observations during the May 13, 2021 inspection, staff determined that the observed scale of cannabis cultivation occurring 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. Paragraphs (1), (5), and (8) of subdivision (a) of Section 26061 specify the license required for outdoor cultivators based on the size of cultivation: a Type 1 license is required for outdoor cultivation with a total canopy size less than or equal to 5,000 square feet on one premises, or up to 50 mature plants on noncontiguous plots; a Type 2 license is required for outdoor cultivation with a total canopy size between 5,001 and 10,000 square feet on one premises; and a Type 3 license is required for outdoor cultivation with a total canopy size from 10,001 square feet to one acre on one premises. Additionally, Section 26061, subdivision (b)(1) requires a Type 5 license² for outdoor cultivation with a total canopy size greater than one acre on one premises.
- b. Violation: On May 13, 2021, Division staff observed water diversion and use for cannabis cultivation on the Diverter's Property in violation of Water Code, section 1831, subdivision (d)(6)(A). Division staff observed approximately 2,473 cannabis plants growing in nine greenhouses, with an approximate total canopy size of 9,140 sq. ft., irrigated from surface water diversions at POD 2-3. Division staff found no record that Diverter obtained the required license from CalCannabis for the observed cannabis cultivation on the Property.
- c. Threatened Violation: Based on current facts and evidence Division staff determined there is a threat of water diversion and use for cannabis cultivation on the Property without the required license from CalCannabis. Although the Diverter took corrective action to address some violations documented in the IR, the Property still presents a threat of violation. Between 2012 and 2021, the Diverter significantly altered the Property, and developed water resources, to cultivate larger quantities of cannabis. Outdoor cannabis cultivation began in approximately 2012, with two greenhouse structures visible in aerial imagery. By 2021, the Diverter had erected nine greenhouse structures capable of cultivating approximately 2,473 cannabis plants. Aerial imagery of the Property post inspection shows the Diverter's grow platforms and some greenhouse structures remain standing. Moreover, the Diverter's before and after photos show that the water storage tanks, and irrigation system infrastructure remain on the Property. As of November 16, 2021, the Diverter is the owner of record for the Property. Due to the Diverter's ownership of the Property and the relative ease by which a cannabis cultivation irrigation system can be re-established there exists a threat the Diverter will continue to divert and use water for commercial cannabis cultivation on the Property.

² As provided in Business and Professions Code section 26061, subdivision (c), no Type 5 cultivation licenses may be issued before January 1, 2023.

SECTION 1834 NOTICE REQUIREMENTS

20. On [date of draft CDO issuance], 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)(6)(A).
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 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.
22. [This paragraph is for when the diverter requested a hearing.] On [hearing request date], [Diverter shorthand name] requested a hearing. The hearing was held on [hearing date] before the State Water Board's Administrative Hearings Office pursuant to Water Code section 1112.
23. [This paragraph is for when the diverter did not request a hearing.] [Diverter shorthand name] did not submit a timely hearing request.

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 and unnamed stream for cannabis cultivation on the Property unless authorized under a valid water right.
2. If the Diverter plans to cultivate in the future, an appropriate water right such as a cannabis Small Irrigation Use Registration must be obtained by the Diverter prior to any diversion or use of water for cannabis cultivation activities occurring on the Property.

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 board adopts this Order.

STATE WATER RESOURCES CONTROL BOARD