

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**

Fabiola Lopez

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

SUMMARY OF DETERMINATIONS

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

During an inspection on July 20, 2021, State Water Board, Division of Water Rights (Division) staff observed the Diverter cultivating approximately 1,622 cannabis plants without a license issued by the California Department of Cannabis Control (DCC), CalCannabis¹ 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

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.

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, 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. Property: The violations and threatened violations at issue were observed by Division staff during the July 20, 2021 inspection of Humboldt County Assessor Parcel Number (APN) 216-381-016-000 (hereinafter the Property).
6. Property Ownership: According to Humboldt County property records, the Diverter acquired the Property on or around April 15, 2021, and remains the owner of record.

7. Watershed Information: The property is located in the Powers Creek watershed (#11111.410303), 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 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.

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, 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 can facilitate cannabis cultivation. In addition, the Property has adequate water sources capable of meeting cannabis' high consumptive water demand.

9. Water Rights Records Review: On or around July 15, 2021, and again on December 31, 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. As of the date of this Order, Division staff has since verified that, 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 PODs.

10. Department of Cannabis Control (DCC) License Records Review: On or around July 15, 2021, and again on December 21, 2021, Division staff reviewed DCC 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 DCC license on record for the Property. Division staff has since verified that, as of February 2, 2022, the Diverter still does not possess such licensure.

11. Inspection Basis: In July of 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 Humboldt County Sheriff's Office conducted an inspection of the Property as authorized by the warrant on July 20, 2021, starting at 12:30 p.m. Neither the Diverter, nor a representative of the Diverter, were present during the inspection.

12. Points of Diversion:

Division staff observed and documented two points of diversion (POD) during the July 20, 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 cannabis irrigation.
- b. POD2 is located on an unnamed spring. POD2 forms a large pool of water in a streambed with defined bed and banks downstream from POD2. The stream created by POD2 continues off property. POD2 was not actively diverting during the inspection.

13. Inspection Findings and Observations:

During the July 20, 2021 inspection, Division staff observed cannabis cultivation occurring in a large outdoor grow area on the Property. Approximately 1,622 cannabis plants were documented growing in an outdoor grow site of approximately 11,200 Sq. Ft. at the time of the inspection. Staff observed two PODs and water being actively diverted from one POD (POD1) to irrigate cannabis.

14. 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.

15. Inspection Report and Notice of Violation:

On September 16, 2021, Division staff sent an Notice of Violation and Inspection Report (NOV/IR) to the Diverter via certified mail. Based on the investigation described above, United States Postal Service records indicate

that the Diverter refused or failed to pick up the NOV/IR on September 23, 2021. Division staff re-sent the IR via certified mail on September 30, 2021. USPS records indicate that the Diverter failed to pick up the NOV/IR on October 4, 2021. Division staff re-sent the NOV/IR for a third time via certified mail on November 10, 2021. USPS records indicate that the Diverter received the NOV/IR on November 12, 2021. The NOV/IR describes the observations made by Division staff during the inspection, the violations relating to those observations, and recommended corrective actions for the violations.

16. Response to Notice of Violation:

The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

ALLEGED VIOLATIONS AND THREATENED VIOLATIONS

17. 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 July 20, 2021 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.
- b. Violation: On July 20, 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 1,622 cannabis plants growing in an outdoor grow area, with an approximate total canopy size of 11,200 sq. ft. The Diverter's cannabis cultivation exceeds the minimum licensing requirement established under Business and Professions Code section 26061, subdivision (a), and required a license. The cannabis plants were irrigated from surface water diversions at POD 1-2. Division staff found no record demonstrating the Diverter obtained the required license from CalCannabis for the observed cannabis cultivation on the Property.
- c. Threatened Violation: Outdoor cannabis cultivation began in approximately 2021. During the 2021 cultivation season, the Diverter cultivated approximately 1,622 cannabis plants. The Diverter was noticed of these requirements in the NOV/IR on November 12, 2021. On December 21,

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 Division staff subsequent to the inspection. The Diverter has taken no post- inspection corrective actions to demonstrate an intent to comply. As of February 8, 2022, the Diverter is the owner of record for the Property. Due to the Diverter's ownership of the Property, their lack of acknowledgement of the violations observed on 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. Based on the findings described above, including observations made during the inspection, Division staff find that the Diverter threatens to violate Water Code, section 1831, subdivision (d)(6)(A).

SECTION 1834 NOTICE REQUIREMENTS

18. On March 23, 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)(6)(A).
19. 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 stream for cannabis cultivation until a DCC 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 on the property during the forbearance period (April 1 - October 31) for irrigation of cannabis. The Diverter must also

list and include all corrective actions necessary to comply with the Inspection Report. To the extent that the Diverter intends to continue cannabis cultivation activities on the Property, irrigated with water diverted from the unnamed streams and unnamed spring, the draft compliance plan must include installation of adequate water storage to enable the Diverter to divert during the non-forbearance period and store sufficient water to irrigate through the forbearance period without diverting from surface waters within the permitting authority of the State Water Board. If the Diverter intends to seasonally store water diverted from the spring, the draft compliance plan must also include a timeline for obtaining an appropriative 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 board adopts this Order.

STATE WATER RESOURCES CONTROL BOARD