

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

**DIVISION OF WATER RIGHTS**

**ORDER WR XXXX-XXXX-DWR**

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**[DRAFT] CEASE AND DESIST ORDER**

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

Trisha Starback, aka Spring Starback, as Settlor and Trustee for the Spring Starback Trust, & Matthew Feigel

Mendocino County  
APN: 037-100-06-00

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

**SUMMARY OF DETERMINATIONS**

1. Based on the facts and information contained herein, Trisha Starback, also known as Spring Starback, as Settlor and Trustee for the Spring Starback Trust, and Matthew Feigel (hereinafter the Diverters) are violating or threatening to violate requirements set forth in Water Code section 1831, subdivision (d)(6)(A):
  - a. State Water Board, Division of Water Rights (Division) staff observed the Diverters cultivating approximately 2,050 cannabis plants on August 30, 2021, without a license issued by the Department of Cannabis Control (DCC)<sup>1</sup> 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 Diverters to cease and desist the activities causing the violation or threatened violation and to take the corrective actions described below.

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<sup>1</sup> 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 after July 12, 2021, this Complaint references DCC when identifying the licensing agency.

## **CEASE AND DESIST ORDER AUTHORITY**

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 violation(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.

3. 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**

### **4. Property Ownership and Operation:**

The violation and threatened violation were observed on Mendocino County Assessor Parcel Number (APN) 037-100-06-00 (hereinafter the Property). According to Mendocino County property records, Trisha Starback acquired the Property on or around September 12, 2002. On or around May 1, 2019, the Property was transferred to the Spring Starback Trust, with Spring Starback identified as the trustee. According to the Property deed, Trisha Starback is

also known as Spring Starback.

Matthew Feigel was present at the time of the August 30, 2021 inspection and was interviewed by Division staff. During the interview, Mr. Feigel told Division staff that he was not the Property owner, and that the Property owner does not live on the Property nor were they present at the time of inspection. During a subsequent phone call with Mr. Feigel on November 29, 2021, Division staff discovered that Mr. Feigel was the tenant and was responsible for the cannabis cultivation activities on the Property. Additionally, on December 17, 2021, Mr. Feigel stated in an email to Division staff that he has been a tenant on the Property since approximately 2009.

5. Watershed Information:

The Property is located in the Ryan Creek watershed (#1111.420402), tributary to Outlet Creek, which is tributary to the Upper Main-stem Eel River. The Upper Main-stem Eel River is a state designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean. The Wild and Scenic River designation precludes the State Water Board from accepting any application to appropriate water from the Main-stem Eel River 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.

6. Water Rights Records Review:

On August 27, 2021, prior to the inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS) and found no evidence of an existing Statement, water right permit, license, or registration on file for the Property.

7. DCC License Records Review:

On or around August 27, 2021, Division staff reviewed DCC records of commercial cannabis cultivation licenses to determine if there was a license on file that would authorize commercial cannabis cultivation on the Property. Division staff found no DCC license on record for the Property.

8. August 2021 Inspection:

In August of 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 CDFW, the Mendocino County Sheriff's Office, and the California National Guard on the execution of the search warrant inspection of the Property on August 30, 2021, starting at 6:30 a.m. The tenant, Mr. Feigel, was present during the inspection and was interviewed by Division staff. During the interview, Mr. Feigel claimed that the point of diversion (POD1) was a groundwater well. Division staff observed cannabis cultivation occurring in six separate outdoor grow areas and nine separate greenhouse structures on the Property. Division staff observed water being diverted from POD1 to irrigate cannabis. Approximately 2,050 cannabis plants were documented at the time of the inspection. During the inspection, the Diverters' cannabis plants were eradicated by law enforcement.

9. Point of Diversion:

Division staff observed and documented one point of diversion on the Property during the August 30, 2021 inspection.

- a. POD1 is a cistern located on Ryan Creek, which is tributary to Outlet Creek, a tributary of the upper Main-stem Eel River. Ryan Creek has defined bed and banks upstream and downstream of POD1. Water was flowing into and out of the cistern at the time of inspection. POD1 was actively diverting water during the inspection for domestic use and cannabis cultivation.

10. Aerial Imagery Review:

On September 9, 2021, Division staff reviewed available aerial imagery of the Property and made the following observations:

- a. Google Earth Pro aerial imagery dated August 15, 2009 shows plants growing outdoors that are consistent with the grading, size, and spacing of outdoor cannabis cultivation. The main residence at POU1 is visible.
- b. LandVision Time View aerial imagery dated June 16, 2010 shows similar outdoor cannabis cultivation to that of 2009. A greenhouse structure is also visible (identified as place of use (POU) 11 during the August 30, 2021 inspection). The main residence (identified as POU1) is visible.
- c. LandVision Time View aerial imagery dated October 31, 2018 shows an expansion of greenhouse structures from one to five (identified as POU4, POU7, and POU11). Two additional outdoor cannabis cultivation areas are also visible (identified as POU5 and POU11). Plants consistent with the size and spacing of cannabis can be seen in the greenhouses. The main residence at POU 1 is also visible.

- d. LandVision Time View aerial imagery dated July 7, 2019 shows what appears to be outdoor cannabis cultivation occurring at POU5 and POU11, based on the large plant size, dark coloring, and wide spacing between each plant. Using a LandVision measuring tool, Division staff determined that the area of POU5 was approximately 6,786 sq. ft., an increase of 1,943 sq. ft. since 2018. Division staff determined that the area of POU11 was approximately 19,520 sq. ft., an increase of 1,080 sq. ft. since 2018. Six greenhouse structures at POU4, POU7 and POU11 are also visible. Four of the greenhouse structures are visible without tarps, housing smaller plants. Two of the greenhouse structures are visible with tarps.
- e. LandVision Time View aerial imagery dated September 25, 2020 shows expansion from three to five outdoor cannabis cultivation areas, with plants consistent with cannabis visible in the ground. Using a LandVision measuring tool, Division staff determined that POU11 measured approximately 20,370 sq. ft. in this imagery, an increase of approximately 850 sq. ft. since the 2019 imagery. staff determined that the area of POU5 was approximately 7,496 sq. ft. in this imagery, an increase of approximately 710 sq. ft. since the 2019 imagery. Five greenhouse structures are also visible at POU4 and POU11 without tarps.
- f. LandVision Time View aerial imagery dated June 15, 2021 shows five greenhouse structures at POU4 and POU11 visible without tarps and two greenhouse structures are visible at POU7 with tarps on. The outdoor grow areas at POU5 and POU11 are also visible. Using a LandVision measuring tool, Division staff determined that the area of POU11 was approximately 22,320 sq. ft. in this imagery, an increase of approximately 1,950 sq. ft. since the 2020 imagery. The main residence at POU1 is also visible. This image appears consistent with the findings of Division staff during the site inspection on August 30, 2021.

11. 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. 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).) Based on the review of aerial images and Division staff's observations during the August 30, 2021 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.

12. Inspection Report and Notice of Violation:

Subsequent to the August 30, 2021 inspection, Division staff prepared an Notice of Violation and Inspection Report and (NOV/IR) dated October 28, 2021. Division staff sent the NOV/IR to the Spring Starback Trust via United States Postal Service (USPS) certified mail on October 28, 2021. USPS records indicate that the NOV/IR was received on October 30, 2021. The NOV/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.

13. Diverters' Response:

On November 24, 2021, Mr. Feigel contacted Division staff in response to the NOV/IR. Division staff has corresponded with Mr. Feigel via email since November 24, 2021 and have continued to be in contact via phone and email through December 22, 2021. Mr. Feigel informed staff he has no plans to cultivate cannabis in the future and that water will only be diverted from POD1 for domestic purposes. Mr. Feigel has submitted photographs demonstrating remediation efforts to address the corrective actions included in the NOV/IR. Photographs of remediation efforts, such as removal of one of the recreational vehicles, emptying and removal of water storage tanks, removal of cannabis cultivation sites, and removal of water lines were submitted to Division staff via email. Additionally, on December 8, 2021, Trisha Starback submitted a Statement of Domestic Use Registration (D033262) to the Division of Water Rights, which is pending as of January 3, 2022.

### **ALLEGED VIOLATIONS AND THREATENED VIOLATIONS**

14. Based on the findings described above, including observations made during the inspection, the Diverters are violating or threatening to violate Water Code section 1831, subdivision (d)(6)(A):

- a. Any person engaged in commercial cannabis activity must obtain a state license from DCC. (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).) DCC's cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.
- b. Violation: On August 30, 2021, Division staff observed water diversion and use for cannabis cultivation on the Property in violation of Water Code section 1831, subdivision (d)(6)(A). Division staff observed

approximately 2,050 cannabis plants growing in six outdoor grow areas and nine greenhouses, with an approximate total canopy size of 18,735 sq. ft., irrigated from the surface water diverted at POD1. Division staff found no record that the Diverters had obtained the required license from DCC for the observed cannabis cultivation on the Property.

- c. Threatened Violation: Based on the facts described above, Division staff have determined that there is a threat of water diversion and use for cannabis cultivation on the Property without the required commercial cannabis license from DCC. Although the Diverters took corrective action to address some violations documented in the NOV/IR, the Property still presents a threat of violation. Aerial imagery reviewed by Division staff from July 7, 2019 through June 15, 2021, show a consistent use of the Property to cultivate cannabis. During this time Trisha Starback, also known as Spring Starback, held title to the Property as trustee for the Spring Starback Trust and Mr. Feigel was the tenant. In addition, aerial imagery reviewed by Division staff show a consistent use of the Property to cultivate cannabis from August 15, 2009 through October 31, 2018. During that time, Trisha Starback owned the Property, in her individual capacity, and Mr. Feigel remained the tenant. Throughout the years, the Property was developed and expanded, including the addition of greenhouse structures and outdoor grow areas on the Property. During the August 30, 2021 inspection, Division staff observed that Ryan Creek was the sole source of water on the Property. As such, it is likely that POD1 was used throughout this time period to irrigate cannabis. Although post-inspection review of aerial imagery of the Property shows no active cannabis cultivation or infrastructure, in light of the Diverters' history of cultivation and the ease by which the cultivation infrastructure can be re-established, there is a threat that the Diverters will resume diverting and using 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.

### **SECTION 1834 NOTICE REQUIREMENTS**

15. On April 15, 2022, in accordance with Water Code section 1834, subdivision (a), the Division provided the Diverters with notice of the State Water Board's intent to issue an order determining that the Diverters are violating or threatening to violate requirements described in Water Code section 1831, subdivision (d)(6)(A).

16. The notice included the facts and information stated above, which describe the basis for the violation and threatened violation, and informed the Diverters 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 Diverters shall immediately cease and desist any diversion and use of water for cannabis cultivation on the Property 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).

### **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 Diverters 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 Diverters 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