

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0004-EXEC

In the Matter of the Administrative Civil Liability Complaint
and Draft Cease and Desist Order against

Andrea Chevalier

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 Andrea Chevalier (Respondent). In accordance with the attached Settlement Agreement, the State Water Board Division of Water Rights' Prosecution Team (Prosecution Team) 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

Respondent acquired Humboldt County Assessor Parcel Number (APN) 219-051-001-000 (Property) on or around June 21, 2020. On July 9, 2021, the State Water Board Division of Water Rights (Division) participated in a search warrant inspection of the Property based on the possible unauthorized diversion and use of water for illegal cannabis cultivation. During the inspection, Division staff observed water being diverted from an unnamed stream tributary to Kinsey Creek, a tributary of the South Fork Eel River. Water diverted from the unknown stream was being used to irrigate cannabis and for domestic purposes.

Subsequent to the inspection, on September 28, 2021, the Respondent contacted the Division. Respondent informed the Division that her deceased son was the prior

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.

owner and his partner Beth MacDonald (the cannabis cultivator) was the tenant on the Property at the time of the inspection. Additionally, the Respondent indicated the required actions to address the Water Code violations would be undertaken. However, no evidence of corrective actions was submitted to the Division by the Respondent or Ms. MacDonald.

On August 18, 2022, the Assistant Deputy Director of the Division, acting under delegated authority, issued the Respondent an Administrative Civil Liability Complaint (Complaint) and Draft Cease and Desist Order. The Complaint alleged that the Respondent failed to implement requirements of the State Water Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) established pursuant to Water Code section 13149, and diverted and used water for cannabis cultivation for which a license is required but was not obtained.

The Complaint recommended an administrative civil liability in the amount of \$3,000 for the alleged violations. The Prosecution Team determined that this amount of civil liability took into consideration the extent of the harm caused by the alleged violations, their nature and persistence, the length of time over which the alleged violations occurred, the corrective actions taken by the Respondent, and all other relevant circumstances, pursuant to Water Code section 1055.3.

On August 30, 2022, Respondent requested a hearing before the State Water Board's Administrative Hearings Office to contest the allegations contained in the Complaint and Draft Cease and Desist Order.

The Respondent and the Prosecution Team 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.

3.0 SETTLEMENT AGREEMENT

The Respondent and the Prosecution Team executed the settlement agreement, dated December 2, 2022, and attached hereto (Settlement Agreement). The general terms of the Settlement Agreement are:

- (1) The Respondent stipulates to request cancelation of any hearing on the Complaint and Draft Cease and Desist Order, waive the right to petition for reconsideration of this Order, and agree to the other terms and conditions described in the Settlement Agreement and incorporated herein;
- (2) The Respondent will comply with the terms and requirements described in the August 18, 2022 Draft Cease and Desist Order which are incorporated herein;
- (3) The Respondent is subject to administrative civil liability in the amount of \$3,000, 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

- (4) The Respondent will undertake the corrective actions detailed in the Settlement Agreement and provide statements and photo or video evidence satisfactory to the Division.

ORDER

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

1. Pay \$3,000 in administrative civil liability for the violations alleged in the Complaint in accordance with the following payment schedule:
 - a. Within 60 days of the effective date of this Order, the Respondent shall submit an initial payment of \$750.00
 - b. Subsequently, the Respondent shall submit three payments of \$750.00 in accordance with the schedule stipulated in the Settlement Agreement.
2. 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," 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

3. Comply with all terms and requirements described in the Draft Cease and Desist Order that was sent to the Respondent on August 18, 2022, including the requirement that the Respondent immediately cease and desist any diversion and use of water for cannabis cultivation on the Property until a Department of Cannabis Control 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, subdivision (a)(2)(A).

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 Draft Cease and Desist Order are enforceable as a cease and desist order issued in accordance with Water Code section 1831.

Failure to comply with the terms of the Draft Cease and Desist Order 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 9, 2023

Date

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Andrea Chevalier (Respondent) and the State Water Resources Control Board (State Water Board), Division of Water Rights' Prosecution Team (Prosecution Team), referred to hereinafter jointly as the Parties.

RECITALS

1. Respondent acquired Humboldt County Assessor Parcel Number (APN) 219-051-001-000 (Property) on or around June 21, 2020 and owned the Property at all times relevant to the violations resolved by this Agreement.
2. On July 9, 2021, the Division of Water Rights (Division) participated in a search warrant inspection of the Property based on the possible unauthorized diversion and use of water for illegal cannabis cultivation. During the inspection, Division staff observed water being diverted from an unnamed stream tributary to Kinsey Creek, a tributary of the South Fork Eel River. Water diverted from the unnamed stream was used to irrigate cannabis and for domestic purposes.
3. The Respondent contacted the Division on September 28, 2021, to discuss the inspection and Water Code violations documented on the Property. Respondent informed the Division that her deceased son was the prior owner, and his partner Beth MacDonald (the cannabis cultivator) was the tenant on the Property at the time of the inspection. Subsequently, Ms. MacDonald did remediate some water quality issues at the Property providing information and photos to the North Coast Regional Water Quality Control Board. However, no evidence of corrective actions were submitted to the Division by the Respondent or Ms. MacDonald addressing the water right violations observed on the Property.
4. On August 18, 2022, the Assistant Deputy Director of the Division, acting under delegated authority, issued the Respondent an Administrative Civil Liability Complaint (Complaint) and Draft Cease and Desist Order. The Complaint alleged the Respondent failed to implement 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 diverted and used water for cannabis cultivation for which a license is required but was not obtained. The Complaint is included as Attachment A to this Agreement.
5. The violations as alleged in the Complaint constitute violations of Water Code section 1847, subdivisions (b)(1) and (b)(4). The Complaint proposed administrative civil liability in the amount of \$3,000 for the alleged violations after consideration of the factors in Water Code section 1055.3.

6. On August 30, 2022, Respondent requested a hearing before the State Water Board, Administrative Hearings Office on the Complaint. At the time of this Agreement, a hearing date has not been assigned.
7. The Parties engaged in settlement negotiations and agree to settle the matter without an administrative hearing or civil litigation by presenting this Agreement and a proposed order to the State Water Board or authorized delegate for adoption as an order by settlement, pursuant to Government Code section 11415.60.
8. This Agreement will become effective when the State Water Board's 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 do hereby 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.** The Respondent shall be subject to administrative civil liability in the amount of \$3,000 for the violations alleged in the Complaint. The Prosecution Team determined that this amount is appropriate after consideration of the factors in Water Code section 1055.3.
4. **Administrative Civil Liability Payment Schedule.** The Respondent shall pay the administrative civil liability amount of \$3,000 consistent with the following schedule:
 - a. Within 60 days of the Executive Director or authorized delegate issuing an order approving this Agreement, the Respondent shall submit an initial payment of \$750.00.

- b. The Respondent shall submit three additional payments of \$750.00 in accordance with the dates below:
 - i. April 1, 2023
 - ii. August 1, 2023
 - iii. November 1, 2023

- 5. **Administrative Civil Liability Payment Process.** The Respondent shall submit the payments detailed in Paragraph 4 by cashier's check, certified check, or money order payable to the "State Water Resources Control Board – Water Rights Fund" and delivered to:

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

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

State Water Resources Control Board
Office of Enforcement
Attn: Patrick Lewis
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.** Respondent will undertake the following corrective actions to demonstrate compliance with the Water Code and provide evidence of implementation of the required actions by providing statements and photo and/or video evidence satisfactory to the Prosecution Team:

- a. Provide photos and/or video evidencing the following:
 - i. Removal of all water conveyance infrastructure located at the point of diversion (POD1);
 - ii. All irrigation infrastructure is disconnected from all water storage containers on the Property; and
 - iii. Cannabis cultivation is not occurring on the Property.
- b. Provide a statement indicating the following:

- i. Whether a water measuring device was used to measure water diverter from POD1 in 2021, if water diversion records were kept provide such records to the Division;
 - ii. Whether in 2021 monthly inspections of the water conveyance infrastructure were carried out and recorded, if inspection records were kept provide such records to the Division; and
 - iii. Whether during 2021 records were maintained for the cannabis cultivation daily water use demands, if records were kept provide such records to the Division.
9. **Stipulation to Request Cancellation of Hearing.** Respondent will work with the Prosecution Team to jointly submit this Agreement to the Administrative Hearings Office and request a notice of cancellation of the hearing be issued.
10. **Satisfaction of Administrative Civil Liability Complaint.** The Respondent's full payment of the administrative civil liability amount consistent with the schedule established under Paragraph 4, satisfactory completion of the corrective actions described under Paragraph 8, and completion of the terms and conditions of this Agreement will constitute a complete and final satisfaction of the administrative civil liability described in the Complaint. 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 Draft Cease and Desist Order.** The Parties jointly stipulate and agree to the terms and requirements described in the Draft Cease and Desist Order that was sent to the Respondent on August 18, 2022. The Draft Cease and Desist Order is included as Attachment B to this Agreement. The Parties agree that the terms contained therein shall be enforceable as a Cease and Desist Order issued in accordance with Water Code section 1831.
12. **Enforcement of this Settlement Agreement.** The administrative civil liability required in Paragraph 3, if not paid consistent with the terms described in Paragraph 4, will be recoverable as provided in Water Code section 1055.4. Failure to comply with the terms of the Cease and Desist Order may result in additional enforcement, which may include 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 her 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, 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: Erik Ekdahl 12-2-22
Erik Ekdahl Date
Division of Water Rights

Respondent

By: Andrea Chevalier 11/29/22
Andrea Chevalier Date

Attachment 1: Administrative Civil Liability Complaint

Attachment 2: Draft Cease and Desist Order