

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Allegations of Violations of the Following: Failure to File a Statement of Water Diversion and Use (Water Code section 5101), Cannabis Cultivation Policy Requirements Adopted Pursuant to California Water Code section 13149, Diversion or use of Water for Cannabis Cultivation for which a License is Required (Water Code section 1847(b)(4)),
by

**Cassady Mandzik
Mendocino County
APN No. 031-010-19-01**

**CASSADY MANDZIK (HEREINAFTER REFERRED TO AS “DIVERTER”) ARE
HEREBY GIVEN NOTICE THAT:**

1. The State Water Resources Control Board’s (State Water Board’s) Division of Water Rights (Division) alleges that the Diverter committed the violations described below, relating to the diversion or use of water for cannabis cultivation activities on the Diverter’s real property in Mendocino County Assessor Parcel Number 031-010-19-01 (Property), during 2021.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of \$4,500.00.
3. **The Diverter has the right to request a hearing on these allegations but must do so in writing within 20 days from the date the Diverter receives this Complaint, or else that right is waived.** Please see the specific directions for submitting hearing requests in the “Right to Hearing” section at the end of this Complaint.

SUMMARY OF ALLEGED VIOLATIONS

4. Violation 1: The Diverter is alleged to have failed to submit a Statement of Water Diversion or Use (Statement) to the State Water Board for the diversion and use of water from a point of diversion (POD) Division staff observed actively diverting during the May 13, 2021 inspection, in violation of Water Code section 5101, which requires each person who diverts water to file a statement of his or her diversion or use with the Board prior to July 1 of the succeeding year.
5. Violations 2-7: The Diverter is alleged to have violated eight requirements of the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*

(Cannabis Cultivation Policy)¹, established by the State Water Board pursuant to Water Code section 13149, by doing the following: diverting water for cannabis cultivation during the surface water forbearance period (Section 2, Term 66); failing to plug, block, disconnect, or remove diversion intakes and otherwise bypass flows or render diversions inoperable during the surface water forbearance period (Section 2, Term 77); failing to install and maintain measuring devices for surface water diversions and retaining daily diversion records (Section 2, Term 82); causing or allowing overflow from off-stream water storage containers served by diversion from surface water (Section 2, Term 89); failing to use water storage tanks equipped with a float valve (Section 2, Term 92); and failing to maintain daily records of all water used for irrigation of cannabis (Section 2, Term 98).

6. Violation 8: The Diverter is alleged to have diverted and used water for cannabis cultivation during the May 13, 2021 inspection, for commercial or medicinal purposes without the necessary license issued by the California Department of Food and Agriculture (CDFA)² under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.

BACKGROUND AND FACTUAL BASIS

7. Property Ownership:

According to Mendocino County property records, the Diverter acquired the Property on or around January 31, 2007 and owned the Property at all times relevant to the violations alleged in this Complaint.

8. Watershed Information:

The property is located in the Willow Creek watershed (#1111.420402), 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 Scenic River, the Mainstem 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

¹ 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.

² 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.

and beneficial use of water within the meaning of section 2 of Article X of the California Constitution.

9. 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 cultivation sites appear consistent with the findings of Division staff during the May 13, 2021 inspection.

10. Water Rights Records Review:

On May 11, 2021, prior to the inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) and found no evidence of an existing Statement, water right permit, license, or registration on file authorizing the Diverter's observed diversions.

11. CalCannabis License Records Review:

On May 11, 2021, Division staff reviewed CDFA's 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.

12. May 2021 Inspection:

In May 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, the North Coast Regional Water Quality Control Board, and Mendocino County Sheriff's Office conducted an inspection of the Property on May 13, 2021, starting at 3:00 p.m. The Diverter, nor a representative of the Diverter, was present during the inspection. During the inspection the Diverter's cannabis plants were eradicated by law enforcement staff. At the conclusion of the inspection, Division staff left a Field Notice of Violation (Field NOV) with the search warrant in the domestic structure on a desktop with other personal items of the Diverter. The Field NOV put the Diverter on notice regarding the observed Water Code violations documented during the inspection. The Field NOV also provided the Diverter with information on corrective actions necessary to abate the documented violations and Division staff contact information and directions on how the Diverter may respond to the Field NOV.

13. Points of Diversion:

Division staff observed and documented three points of diversion (POD) on the Property 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 water 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 water 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.

14. Inspection Report and Notice of Violation:

Subsequent to the May 13, 2021 inspection, Division staff prepared a second NOV accompanied by an Inspection Report (IR) dated August 13, 2021. Division staff sent 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 and IR was received on August 20, 2021. The NOV and IR was also sent to the Diverter via email on August 13, 2021. The 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.

15. Landowner/Diverter Response:

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. In addition, the Diverter as requested in the NOV and IR, provided before

and after photos evidencing the corrective actions taken. The Diverter also stated that there are no plans to cultivate cannabis legally or illegally on the Property in the future.

STATE WATER BOARD AUTHORITY

16. Water Code section 1055, subdivision (a) provides that the Executive Director for the State Water Board may issue a Complaint to any person or entity on which administrative civil liability may be imposed pursuant to Water Code sections 1052, 1847, and 5107. The Executive Director delegated this authority to the Deputy Director for Water Rights by memorandum dated May 17, 1999. The Deputy Director redelegated this authority to the Assistant Deputy Director for the Permitting and Enforcement Branch by memorandum dated August 27, 2008.
17. Water Code section 1112 generally provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055. Pursuant to Water Code section 1114, for matters seeking administrative liability under Water code section 1847 or 5107, the Hearing Officer adopts a final order. For all other matters, the Hearing Officer adopts a proposed order to be considered by the State Water Board.

ALLEGED VIOLATIONS

Statement of Annual Diversion or Use

18. **Violation 1:** Failure to file a Statement of Water Diversion or Use:
Water Code section 5101 requires that any person who diverts water shall file a Statement with the Board by July 1 of the succeeding year, with certain exceptions that are not relevant here.
19. Water Code section 5102 states that a separate statement shall be filed for each point of diversion.
20. Water Code section 5107(c)(1) provides that the Board may impose liability pursuant to Water Code section 1055 for failure to file a statement in an amount not to exceed one thousand dollars (\$1,000), plus five hundred dollars (\$500) per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the Board has called the violation to the attention of that person.
 - a. POD2 is a box like structure built into the bed of the watercourse. The structure consists of boards placed into the channel creating an approximately 2x2 square-foot box, 6 inches in height that pools water within the structure. The diversion intake was located on the bottom of the structure with an irrigation line running out. The structure appeared to be

semi-permanent in nature as the wood was aged and stream channel debris secured it in place. The structure's lid was also aged and covered in thick moss. Water was observed flowing upstream and downstream from POD2. On May 13, 2021, Division staff observed POD2 actively diverting water for cannabis cultivation. POD2 diverts from surface waters that are subject to the State Water Board's permitting authority.

- b. POD 1-3 were the sole sources of water observed on the Property. Aerial imagery and evidence observed and documented during the inspection indicates the diversion and use of water from POD2 pre-date the 2021 cultivation season. Division staff reviewed aerial imagery (see section 9) to determine that cannabis cultivation likely began in 2012. Aerial imagery shows cultivation occurring in 2012, 2017, 2018, and 2020. Mendocino County records indicate the Diverter purchased the Property on January 31, 2007. All water diversion and use by the Diverter between 2012 – 2021 would need to be reported each year by July 1. Based on past aerial imagery and the evidence observed at POD2, the Division notified the Diverter of the need to file a Statement of water diversion and use for cultivation that took place during the 2020 season in the August 13, 2021 IR. As of May 11, 2021, the State Water Board does not have an Initial Statement of Water Diversion and Use (Initial Statement) on file for the Diverter's PODs.
 - i. One violation of Water Code, section 5101 is alleged for the Diverter's failure to file a Statement for the diversion and use of water from POD2.

Cannabis Cultivation Policy Requirements

21. The State Water Board's Cannabis Cultivation Policy went into effect on December 18, 2017, following approval by the Office of Administrative Law. Pursuant to Water Code section 13149, the Policy contains principles, guidelines and requirements (referred to here as "requirements") for the diversion or use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow. The State Water Board subsequently amended the Cannabis Cultivation Policy, effective April 16, 2019.

22. The Cannabis Cultivation Policy defines cannabis cultivation as:

Any activity involving or necessary for the planting, growing, pruning, harvesting, drying, curing, or trimming of cannabis. This term includes but is not limited to: (1) water diversions for cannabis cultivation, and (2) activities that prepare or develop a cannabis cultivation site or otherwise support cannabis cultivation and which discharge or threaten to discharge waste to waters of the state.

23. Water Code section 1847, subdivision (a) and (b)(1) provide that any person or entity violating any Requirement adopted pursuant to Water Code section 13149 may be liable in an amount not to exceed the sum of five hundred dollars (\$500) per

violation, plus two hundred fifty dollars (\$250) for each additional day on which each violation continues if the person fails to correct the violation within 30 days after the Board has called the violation to the attention of that person or entity, plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the applicable Requirement.

24. Violation 2: Cannabis Cultivation Policy, Attachment A, Section 2, Term 66, states:

All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g., groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements. This includes lakes, ponds, and springs (unless the spring is deemed exempt by the Deputy Director). See Section 3, No. 4. Numeric and Narrative Instream Flow Requirements of the Cannabis Cultivation Policy Attachment A for more information³.

- a. POD 2-3 are surface water diversions subject to the State Water Board's permitting authority and were observed to be actively diverting water on May 13, 2021 for cannabis cultivation. POD2 was conveying water by gravity to place of storage (POS) 2, which conveys water to place of use (POU) 1 where cannabis was cultivated. POD3 was conveying water by gravity to POS3, which conveys water to POU1 where cannabis was cultivated. These diversions occurred during the surface water dry season forbearance period (April 1 through October 31). The Diverter was cultivating approximately 2,473 plants (across nine separate greenhouses) at the time of the inspection.
 - i. The diversion of water at POD 2-3 for cannabis cultivation activities during the forbearance period constitutes two violations (one for each POD used for cannabis cultivation) of Term 66, of Section 2 of the Cannabis Cultivation Policy.

25. Violation 3: Cannabis Cultivation Policy, Attachment A, Section 2, Term 77, states:

Cannabis cultivators shall plug, block, cap, disconnect, or remove the diversion intake or otherwise bypass flow or render the diversion intake incapable of diverting water for cannabis cultivation activities during the surface water forbearance period, unless the diversion intake is used for other beneficial uses, to ensure no water is diverted during that time.

- a. POD 2-3 were observed to be actively diverting surface water for cannabis cultivation at the time of the May 13, 2021 inspection during the surface water forbearance period (April 1 – October 31). Division staff observed

³ The Numeric and Narrative Instream Flow Requirements No. 4. Surface Water Dry Season Forbearance Period requirement stipulates the following: "Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year unless the water diverted is delivered from storage in compliance with Narrative Instream Flow Requirement 4."

that the diversion structures for POD 2-3 were not rendered incapable of diverting water and were not plugged, blocked, capped or disconnected to stop the diversion of water during the forbearance period.

- i. Two violations (one for each POD used for cannabis cultivation) of Term 77 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to follow intake requirements observed during the site inspection on May 13, 2021.

26. Violation 4: Cannabis Cultivation Policy, Attachment A, Section 2, Term 82, states:

The cannabis cultivator shall install and maintain a measuring device(s) for surface water or subterranean stream diversions. The measuring device shall be, at a minimum equivalent to the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.7 and Chapter 2.8. The measuring device(s) shall be located as close to the point of diversion as reasonable. Cannabis cultivators shall maintain daily diversion records for water diverted for cannabis cultivation. Cannabis cultivators shall maintain separate records that document the amount of water used for cannabis cultivation separated out from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water Boards, CDFW, or any other authorized representatives of the Water Boards or CDFW. Daily diversion records shall be retained for a minimum of five years. Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year.

- a. During the site inspection on May 13, 2021, no water metering device was observed on or near POD 2-3, nor were any records of water diversion found on the Property. Division staff determined that, based on the diversion system, there would need to be at least one water measuring device installed per POD to measure water diverted for cannabis cultivation.
 - i. Two violations (one for each POD used for cannabis cultivation) of Term 82 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to have water measuring devices installed during the inspection.

27. Violation 5: Cannabis Cultivation Policy, Attachment A, Section 2, Term 89, states:

Cannabis cultivators shall not cause or allow any overflow from off-stream water storage facilities that are closed to the environment (e.g., tanks and bladders) if the off-stream facilities are served by a diversion from surface water or groundwater. Cannabis cultivators shall on a monthly basis, at a minimum, inspect for and repair all leaks of the diversion and storage system. Written records describing the date,

time, and nature of such inspections and repairs shall be kept on-site for a period of at least two years. Such written records shall be made available for review by Water Boards or CDFW, and any other authorized representatives of the Water Boards or CDFW.

- a. During the May 13, 2021 site inspection, Division staff observed numerous off-stream polyethylene water storage tanks on the Property. These water storage tanks were actively being served by POD 1-3. Division staff documented water overflowing from the Diverter's off-stream water storage tanks at POS 1 and POS 3. POS 3 is a 3,000-gallon water storage tank served by the surface water diversion at POD 3 and is used to cultivate cannabis. At the time of the inspection POS 3's storage capacity was full and Division staff observed water overflowing and spilling onto the ground. Additionally, Division staff found no records of inspection or repair during the inspection.
 - i. One violation of Term 89 of Section 2 of the Cannabis Cultivation Policy is alleged for the Diverter's failure maintain monthly inspection records and for allowing surface water diverted to an off-stream water storage tank to overflow.

28. Violation 6: Cannabis Cultivation Policy, Attachment A, Section 2, Term 92, states: *To prevent rupture or overflow and runoff, cannabis cultivators shall only use water storage tanks and bladders equipped with a float valve, or equivalent device, to shut off diversion when storage systems are full. Cannabis cultivators shall install any other measures necessary to prevent overflow of storage systems to prevent runoff and the diversion of more water than can be used and/or stored.*

- a. During the site inspection on May 13, 2021, Division staff documented three water storage tanks without float valves or similar devices installed to prevent the overflow and waste of water. POS 2 consists of two water storage tanks: one 2,500-gallon tank and one 7,000- gallon tank. Division staff observed no overflow prevention system installed on either tank. POS 3 is a 3,000-gallon water storage tank and also lacked an overflow prevention system. Division staff determined, there would need to be at least three overflow prevention devices installed to comply with this requirement.
 - i. Three violations of Term 92 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to use water storage tanks with a float valve, or equivalent device, to shut off diversions when storage tanks are full.

29. Violation 7: Cannabis Cultivation Policy, Attachment A, Section 2, Term 98, states:

Cannabis cultivators shall maintain daily records of all water used for irrigation of cannabis. Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered (e.g.,

irrigating for one hour twice per day using 50 half-gallon irrigation emitters equates to 50 gallons per day (1 hour x 2 times per day x 50 irrigation emitters x 0.5 gallons per irrigation emitter per hour) of water used for irrigation). Cannabis cultivators shall retain, for a minimum of five years, irrigation records at the cannabis cultivation site and shall make all irrigation records available for review by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.

- a. During the site inspection on May 13, 2021, Division staff did not observe any water measuring devices at any of the PODs, POSs, or cannabis cultivation areas. In addition, Division staff did not observe any irrigation records during the inspection.
 - i. One violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to have daily records of water used for irrigation of cannabis during the May 13, 2021 inspection.

Diversions or Use of Water for Cannabis Cultivation Requires CDFA License

30. **Violation 8:** Water Code section 1847(b)(4) provides that any person or entity who diverts or uses water for cannabis cultivation for which a license is required, but which has not been obtained, under Chapter 6 (commencing with 26060) or Chapter 7 (commencing with 26070) of Division 10 of the Business and Professions Code may be liable in an amount not to exceed the sum of five hundred dollars (\$500) per violation, plus two hundred fifty dollars (\$250) for each additional day on which each violation continues if the person fails to correct the violation within 30 days after the Board has called the violation to the attention of that person or entity, plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the applicable requirement.
31. CalCannabis⁴ 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. 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.

⁴ Effective July 1, 2021, the CalCannabis regulatory and enforcement functions have been moved from the Department of Food and Agriculture to the Department of Cannabis Control. References herein will be to CalCannabis as it was organized during the relevant periods

- a. Based on Division staff's observations during the May 13, 2021 site 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. During the site inspection, 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. The Diverter's cultivation canopy size exceeds the minimum licensing requirement established under Business and Professions Code section 26061, subdivision (a). Division staff examined available records on May 11, 2021, again on May 20, 2021, and recently on October 11, 2021 and did not find any record that CDFA issued a cultivation license for the activities observed on the Property.
- i. One violation is alleged for diverting and using water for cannabis cultivation without having obtained a CDFA commercial cannabis license as required.

Statutory Maximum Liability

32. The statutory maximum liability for Violations 1-8 is the sum of each Violation's statutory maximum liability: Violations 1+2+3+4+5+6+7+8 = Statutory Maximum Liability \$1,000+\$1,000+\$1,000+\$1,000+ \$500+\$1,500+\$500+\$500=**\$7,000**.

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

33. Water Code section 1055.3 requires that the Board in determining the amount of civil liability shall take into consideration all relevant circumstances, including, but not limited to, 1) the extent of harm caused by the violations, 2) the nature and persistence of the violation, 3) the length of time over which the violation occurs, and 4) the corrective action, if any taken by the violator. This requirement is applied to all penalty proposals relative to this administrative civil liability complaint.
34. **Violation 1: Failure to Submit Statements of Water Diversion and Use (Water Code 5101)**

- a. Extent of Harm Caused:
The harm caused by this violation can be categorized generally as harm to the orderly and efficient administration of the state's water resources. The main purpose of the State Water Board's Statement Program is to create a central repository for records of diversions and uses of water. The failure to submit statements of water diversion and use impacts the water rights regulatory program harming other water right diverters, the environment, and the public at large. Information the regulated community includes in Statements is critical for administering water rights and managing water

- supply. The State Water Board and the public need to understand when, where, how, and why water is used to ensure water is being put to beneficial use. Therefore, by failing to file a Statement to report water diversion and use, the Diverter impaired the Board's orderly and efficient administration of water resources of the state.
- b. Nature and Persistence:
The nature and persistence of the Diverter's failure to file a statement of water diversion and use is minimal. The need to file a statement of water diversion and use for the observed PODs was called to the attention of the Diverter after the first inspection in the Field NOV. Nevertheless, to date, Division staff have received no statement of water diversion and use for POD2 from the Diverter.
 - c. Corrective Action:
As of November 2, 2021, the Diverter has not come into compliance by filing a Statement for POD2.
 - d. Length of Time:
Water diversion and use reporting for 2020 was required to be filed with the State Water Board by July 1, 2021. As of the date of this Complaint, this violation is on-going as no statements have been filed.
 - e. The Diverter was notified in the May 13, 2021, Field NOV and in the August 13, 2021, IR of the need to file Statements for the diversion and use of water that appeared to be occurring on the Property in prior years based on aerial imagery. The violations continue as a Statement has yet to be filed. The Division may allege additional days of violation if the failure to file a statement has not been corrected within 30 days of the Division calling the violation to the Diverter's attention. However, one violation of Water Code section 5101 is alleged here.
 - f. Considering the factors listed in a-e above, the Division proposes an administrative civil liability in the amount of \$1,000 for this violation.

Violations 2 through 7: Cannabis Cultivation Policy Violations

35. Violation 2: Cannabis Cultivation Policy Section 2, Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements

- a. Extent of Harm Caused:
Absent restrictions on water diversion, the individual and cumulative effects of water diversions for cannabis cultivation during the dry season are likely to significantly decrease instream flow and, in some instances, reduce hydrologic connectivity or completely dewater the stream. Minimum flows that provide habitat connectivity are needed to maintain juvenile salmonid passage conditions in late spring and early summer. Instream flows are also needed to maintain habitat conditions necessary for juvenile salmonid viability

throughout the dry season, including adequate dissolved oxygen concentrations, low stream temperatures, and high rates of invertebrate production and drift from riffles to pools. Further, many species depend on spring recession flows as migratory or breeding cues. This harm is compounded by the effects seen in the watershed from drought. The State Water Board is requiring a surface water diversion forbearance period to ensure adequate flows are maintained throughout the dry season to protect aquatic species, aquatic habitat, and water quality. Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, or springs. Diverting water during the forbearance period impacts downstream priority of water right diverters ability to use water beneficially and impacts instream and terrestrial public trust resources and habitat. The extent of harm caused by the violation is compounded as these activities occurred in the Willow Creek Watershed, a tributary to the Main-stem Eel River which is a State designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean.

b. Nature and Persistence:

Division staff observed active water diversion at two separate locations (POD 2-3) during the forbearance period for cannabis cultivation. Based on the consumptive water demand estimates of cannabis (up to 6 gallons per plant per day during the growing season), as determined by independent studies, the amount of water necessary to irrigate the Diverter's 2,473 cannabis plants is appreciable. During the inspection, cannabis plants were eradicated by law enforcement so this violation did not continue past May 13, 2021.

c. Corrective Action:

The Diverter contacted Division staff on August 20, 2021, to inform the State Water Board that water diversions on the Property had ceased as of July 16, 2021 in response to the May 13, 2021 inspection. The Diverter, as requested in the IR, provided before and after photos evidencing the corrective action.

d. Length of Time:

For the observed active diversions of surface water during the dry season forbearance period for cannabis cultivation, the Division alleges two violations (one for each POD used for cannabis cultivation) of Term 66 of Section 2 of the Cannabis Cultivation Policy.

e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability of \$250 per violation, for a total liability amount of \$500 for this violation.

36. Violation 3: Cannabis Cultivation Policy, Section 2, Term 77 - Failure to Follow Diversion Intake Requirements**a. Extent of Harm:**

Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not harm instream flows during the forbearance period. Inability to render the Diverter's POD intake incapable of diverting water can result in continued water diversion; thus, impacting downstream beneficial uses and depriving downstream priority of right diverters. These violations may also injure other water right holders by improperly shifting the burden of offsetting public trust impacts to senior rights. Impacts are compounded when the violation persists throughout the forbearance period in dry and critically dry years. As this violation occurred within an unnamed stream tributary to a National Wild and Scenic River (Main-stem Eel River), the harm to beneficial uses due to the violation is acute.

b. Nature and Persistence:

On May 13, 2021, the Diverter was notified by the Field NOV that the equipment used to operate POD 2-3 was in violation of Cannabis Cultivation Policy, Section 2, Term 77, as the diversion intakes remained in the unnamed stream with no intake plug, block, or cap and was capable of diverting water during the forbearance period (April 1 – October 31).

c. Corrective Action:

Diverter contacted Division staff on August 20, 2021, to notify the State Water Board that the diversion structures on the unnamed spring and unnamed stream were removed as of July 16, 2021. The Diverter, as requested in the IR, provided before and after photos evidencing the corrective action.

d. Length of Time:

Division staff documented a violation of the requirement to plug block or remove the diversion intake at POD 2-3 during the May 13, 2021 inspection. Liability for two violations (one for each POD used for cannabis cultivation) of Term 77 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$250 per violation, for a total liability amount of \$500 for this violation.**37. Violation 4: Cannabis Cultivation Policy, Section 2, Term 82 - Failure to Install Water Measuring Device or Maintain Diversion Records****a. Extent of Harm:**

Cannabis cultivators are required to maintain measuring device(s) and daily diversion records for surface water diversions to assist the State Water Board in obtaining accurate data on how much water is being diverted in watersheds. Accurate data on water diversion is needed for all users of water

in the state so that the Division can plan for drought and effectively manage limited water resources in impacted watersheds. Moreover, this is vital information for water use planning made even more critical by drought conditions. By failing to maintain measuring devices and daily diversion records the Diverter deprives the Division of this critical data. This directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources.

b. Nature and Persistence:

On May 13, 2021, the Diverter was notified by the Field NOV that the equipment used to operate POD 2-3 was a violation of Cannabis Cultivation Policy, Section 2, Term 82, as no measuring devices were observed measuring diversions from POD 2-3 nor were any records of water diversion found. Based on the structure of the irrigation system as observed during the inspection, two measuring devices were required to comply with the requirement.

c. Corrective Action:

Before and after photos indicate the Diverter ceased diversions from the observed PODs post inspection.

d. Length of Time:

Division staff documented a violation of the requirement to meter surface water diversions and maintain daily records during the May 13, 2021 inspection. Liability for two violations (one for each POD used for cannabis cultivation) of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$250 per violation, for a total liability amount of \$500 for this violation.

38. Violation 5: Cannabis Cultivation Policy, Section 2, Term 89 – Failure to prevent off-stream water storage overflow

a. Extent of Harm:

Compliance with this requirement is necessary to prevent waste from diversions to full storage facilities that then overflow. Storage facilities without devices to prevent overflow, run off, or ruptured storage containers have the potential to harm instream flows. The harm caused by these violations is compounded where there are multiple storage facilities without devices to prevent overflow. Here, Division staff observed water storage tanks at POS1 and POS3 served by surface water diversions at POD1 and POD3 overflowing and spilling on the ground during the inspection. As such, the harm caused by the Diverter's failure to inspect storage facilities and prevent overflow is notable.

- b. Nature and Persistence:
On May 13, 2021, the Diverter was notified in the Field NOV of the observed overflow and spilling of surface water from storage tanks at POS 1 and POS 3. These storage facilities were overflowing and spilling on the ground as the storage tanks lacked a float valve, or equivalent device, to prevent overflow. However, only POS3 stored surface water for cannabis cultivation.
- c. Corrective Action:
Before and after photos indicate the Diverter disconnected the inlet and outlet lines on all water storage tanks.
- d. Length of Time:
Division staff documented two violations of the requirement to prevent overflow of storage facilities during the May 13, 2021 inspection. While the Division may allege a violation for each instance where a requirement of the Cannabis Cultivation Policy is not followed, the Division alleges a single violation of Term 89 of Section 2 of the Cannabis Cultivation Policy for the Diverter's failure to prevent overflow from POS 3.
- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$250.00 for this violation.

39. Violation 6: Cannabis Cultivation Policy, Section 2, Term 92 - Water Storage Facility Without Device to Prevent Water Overflow

- a. Extent of Harm:
Compliance with this requirement is necessary to prevent waste from water diversions to full storage facilities. Storage facilities without devices to prevent overflow, run off, or ruptured storage containers has the potential to harm instream flows. This in turn impacts downstream beneficial uses and downstream priority of right diverters. The harm caused by these violations is compounded where there are multiple storage facilities without devices to prevent overflow.
- b. Nature and Persistence:
During the inspection Division staff documented three storage tanks at POS 2-3 without float valves or similar devices installed to prevent overflow or runoff. POS 2 contained two storage tanks and POS 3 one storage tank that failed to meet the requirement. Division staff called to the Diverter's attention in the Field NOV the requirement to use water storage tanks with a float valve, or equivalent device, to shut off diversions when storage systems are full.
- c. Corrective Action:
The Diverter did not install overflow prevention devices on all water storage tanks as of August 20, 2021. However, before and after photos indicate the Diverter disconnected the POD intakes and POS outlet lines on all water storage tanks so no water may be diverted to or from storage.

- d. Length of Time:
Division staff documented three storage tanks at POS 2-3 without float valves or similar devices installed to prevent overflow or runoff on May 13, 2021. Liability for three violations (one for each storage tank without a device) of Term 92 of Section 2 of the Cannabis Cultivation Policy is alleged.
- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$250 per violation, for a total liability amount of \$750 for this violation.

40. Violation 7: Cannabis Cultivation Policy, Section 2, 98 - Failure to Maintain Daily Irrigation Records

- a. Extent of Harm:
Compliance with this term is required to ensure that the diversion and use of water associated with cannabis cultivation does not have a negative impact on aquatic habitat, riparian habitat, and does not indirectly impact downstream water right holders. Accurate data on cannabis cultivation irrigation water demand is necessary so that the Division can determine if standard irrigation practices are applied. This in turn prevents waste from overwatering and prevents runoff of cannabis cultivation wastewater. By failing to maintain daily irrigation records, the Diverter directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources. The State Water Board has stated the importance of real time accurate data on water demand, especially in dry and critically dry years. As such, the harm caused by the Diverter's failure to maintain irrigation records is notable.
- b. Nature and Persistence:
During the site inspection on May 13, 2021, no water measuring devices were observed on or near the PODs or POSs, nor were any irrigation records for cannabis water demands found. Additionally, the Diverter provided no records to the Division documenting water use for cultivation.
- c. Corrective Action:
The Diverter has not provided any evidence that records of irrigation have been maintained as of the date of this Complaint.
- d. Length of Time:
During the site inspection on May 13, 2021, Division staff were unable to locate any cannabis irrigation records. Liability for one violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged.
- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

41. Violation 8: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code 1847)**a. Extent of Harm:**

Operating a commercial cannabis cultivation site without a license causes negative economic impact on the legal cannabis industry and general harm to the regulatory program. The Cannabis Cultivation Regulatory Program is in its infancy and the degree of illegal cannabis cultivation exceeds legal cultivators by orders of magnitude in all aspects of the Cannabis Industry across the state. Illegal cultivation directly harms the legal market by supporting and supplying an unregulated market where illegal cultivators do not incur the compliance costs to cultivate cannabis in a manner that does not have a negative impact on water quality, aquatic habitats, riparian habitats, wetlands, and springs. As such, the Diverter's cannabis cultivation activities significantly harm legal cultivators and the Cannabis Cultivation Regulatory Program.

b. Nature and Persistence:

Unlicensed cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. CDFA began accepting applications for commercial cannabis cultivation licenses on January 1, 2018. It was determined the scale of cannabis cultivation occurring on the Property during the May 13, 2021 inspection required a commercial cannabis license. Division staff called to the Diverter's attention in the Field NOV that commercial cannabis cultivation required a license pursuant to Water Code, section 1847.

c. Corrective Action:

As of September 16, 2021, Division staff have one picture of POU1 being removed. The Diverter's picture shows one greenhouse structure being dismantled, but the rest are still standing. There appears to be no cultivation in the photo. Email correspondence from the Diverter indicates there will be no future cultivation.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the May 13, 2021 inspection. Although evidence suggests it is likely water diversion and use for cannabis cultivation, the scale of which required a license, occurred on the Property prior to the inspection, liability for a single violation of Water Code section 1847, subdivision (b)(4) is alleged.

e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for this violation.**Violation 1-8: All Other Relevant Circumstances**

42. Aerial imagery reviewed by Division staff from July 9, 2012 and June 15, 2021, show a consistent use of the Property to cultivate cannabis. Throughout the years

the Diverter developed the cannabis cultivation site by erecting numerous greenhouse structures on the Property. In addition, the Diverter switched from outdoor cannabis cultivation to mixed light cultivation, increasing production significantly from 2012 to 2021. Division staff observed that the unnamed spring and unnamed stream are the sole source of water on the Property. As such, it is likely that the PODs were used starting in 2012, and were used until at least May 2021, to irrigate cannabis. As cannabis cultivation increased at the Property, so too did the water demand, leading to increased impact to the watershed. Moreover, evidence at the Property suggests that the general neglect of water irrigation infrastructure and failure to implement best management practices occurred throughout the time period the Property was used for cultivation. The cumulative impact of these water diversions and multiple Cannabis Cultivation Policy violations across a time period of approximately 9-years is significant in this case.

43. The Cannabis Cultivation Regulatory Program is in its infancy. To deter illegal cannabis cultivation activities and encourage the legal market and enterprises, it is necessary to impose administrative civil liability in sufficient amounts to make the costs of noncompliance higher than the cost of compliance. Each opportunity to deter illegal activities and demonstrate the need to comply must be taken. The Diverter engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as a deterrent for future noncompliance.

PROPOSED CIVIL LIABILITY

44. Having taken into consideration the factors described above and the need for deterrence, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of \$4,500; Total Proposed Liability: Adding the proposed fines for Violation 1, Violations 2 through 7, and Violation 8: \$1,000+\$500+\$500+\$500+\$250+\$750+\$500+\$500 brings the total proposed liability to: \$4,500.

RIGHT TO HEARING

45. The Diverter may request a hearing on this matter before the State Water Board Administrative Hearings Office. Any such request for hearing must be delivered to, or received by mail by the Administrative Hearings Office within 20 days after the date the Diverter receives this Complaint as required by Water Code section 1055, subdivision (b).
46. If the Diverter does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Deputy Director for Water Rights, under authority delegated by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.
47. If the Diverter requests a hearing, it will have an opportunity to contest the allegations in this Complaint and the imposition of liability before a hearing officer from the Administrative Hearings Office. The Administrative Hearings Office will issue a notice setting the specific time and place for the hearing, and describing the hearing process, not less than 10 days before the hearing date.

48. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that a liability shall not be imposed. If the Administrative Hearings Office issues a proposed order, the State Water Board will consider adopting the order at a subsequent public meeting.

STATE WATER RESOURCES CONTROL BOARD

 Digitally signed by Jule Rizzardo
Date: 2021.11.18 14:45:04 -08'00'

Water Boards

*Jule Rizzardo, Assistant Deputy Director
Division of Water Rights*

Dated: **November 18, 2021**