

**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

**Soda Creek Ranch LLC
Lake County
APN: 002-012-290-000**

**SODA CREEK RANCH LLC (HEREINAFTER REFERRED TO AS “DIVERTER”) IS
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 Lake County 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 \$5,000.
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 file a statement of water diversion or use (Statement) during 2020.
5. Violations 2-7: The Diverter is alleged to have violated six (6) 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); failing to use water

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.

storage tanks equipped with a float valve (Section 2, Term 92); failing to ensure that all vents and other openings on water storage tanks are designed to prevent entry and/or entrapment of wildlife (Section 2, Term 93); 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 for which a license is required, but has not been obtained, under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code during 2021.

BACKGROUND AND FACTUAL BASIS

7. Property Ownership: According to Lake County property records, the Diverter acquired Lake County Assessor's Parcel Number (APN) 002-012-290-000 (the Property) on April 1, 2020² and owned the Property at all times relevant to the violations alleged in this Complaint.
8. Watershed Information: The Property is located in Upper Eel (HUC8), Rice Fork (HUC10), Bear Creek- Rice Fork (HUC12). Cannabis cultivation activities occurred in the Bear Creek Watershed. Water for cannabis cultivation was diverted from an unnamed spring that is tributary to Little Soda Creek. Little Soda Creek is a tributary to the Main-stem Eel River, which is designated as a State Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean. As a Wild and Scenic River, the Main-stem Eel River is a fully appropriated stream system from January 1 through December 31 of any year. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093.50 et seq., it is the policy of the State of California, that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of section 2 of Article X of the California Constitution.
9. Aerial Imagery Review: On or around June 2, 2021, Division staff reviewed aerial imagery³ of the Property to determine the earliest date of cannabis cultivation and made the following observations:
 - a. Google Earth aerial images showed greenhouse structures and graded areas consistent with cannabis cultivation at POU1 in 2013.
 - b. LandVision aerial images showed greenhouse structures and graded areas consistent with cannabis cultivation at POU1 in 2016.
10. Water Rights Records Review:
 - a. On June 2, 2021, prior to the inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) and did not find any evidence of an existing Statement, water right permit, license, or registration for diversion and use of water on the Property. Subsequent to the inspection,

² On June 2, 2021, Division staff reviewed property records available on LandVision, which indicated that the Diverter purchased the Property in 2005. Based on this information, staff's Inspection Report (IR) asserted the Diverter has owned the Property since 2005. However, after additional review of property records available on Westlaw and the Lake County Assessor-Recorder's Office, Division staff have determined that the Diverter purchased the Property on April 1, 2020.

³ This aerial imagery predates the Diverter's purchase of the Property on April 1, 2020; however, these images were reviewed by Division staff prior to the inspection based on information available on LandVision.

on June 4, 2021, Division staff examined available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) records and did not find any evidence of an existing water right permit, license, or registration for the diversion and use of water Division staff observed taking place on the Property, nor that a Statement had ever been filed regarding the observed diversions.

11. CalCannabis License Records Review: On June 2, 2021, and again on June 4, 2021, Division staff reviewed the California Department of Food and Agriculture (CDFA) CalCannabis⁴ 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 CalCannabis license on record for the Property.
12. June 3, 2021 Inspection Basis: On June 1, 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. On June 3, 2021, Division staff, accompanied by CDFW Wardens and scientific staff, conducted an inspection of the Property. Neither the Diverter, nor a representative of the Diverter, was present during the inspection. During the inspection, the Diverter's cannabis plants were eradicated by CDFW Wardens.
13. Points of Diversion: Division staff observed and documented one point of diversion (POD) during the June 3, 2021 inspection.
 - a. POD1 is an impoundment, created by hand-stacked rocks that allow water to pool behind the dam, located on an unnamed spring that is tributary to Little Soda Creek. The unnamed spring has a defined bed and bank upstream and downstream of POD1. POD1 was actively diverting water to storage for cannabis irrigation during the inspection. Staff observed that water was flowing into and out of the diversion structure at the time of inspection.
14. Inspection Report and Notice of Violation: Division staff sent the Diverter two copies of the Inspection Report and Notice of Violation (IR) via certified mail on July 15, 2021. United States Postal Service (USPS) records indicate that the IR sent to the Diverter's managing member and agent for service of process was received on July 19, 2021. USPS records further indicate that the IR sent to the Diverter at the mailing address identified in Lake County property records was received on July 21, 2021. The IR described the observations made by Division staff during the inspection, notified the Diverter that the observed violations may subject it to enforcement by the State Water Board, and recommended corrective actions to address the violations.
15. Additional Aerial Imagery Review: On September 15, 2021, Division staff reviewed LandVision aerial imagery, dated August 26, 2020, which showed a graded area and greenhouses at POU1, consistent with cannabis cultivation activities.
16. Landowner/Diverter Response: As of the date of this Complaint, date the Diverter has not responded to the IR. Division staff have no knowledge or evidence to suggest any of the recommended corrective actions have been taken.

⁴ 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 inspection and records review for this matter occurred prior to July 12, 2021, this Complaint references CDFA rather than DCC when identifying the licensing agency.

STATE WATER BOARD AUTHORITY

17. 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 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.
18. Water Code 1112 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

19. 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 State Water Board by July 1 of the succeeding year, with certain exceptions that are not relevant here.
20. Water Code section 5102 states that a separate statement shall be filed for each point of diversion.
21. Water Code section 5107(c)(1) provides that the State Water 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 State Water Board has called the violation to the attention of that person.
 - a. POD1 is an impoundment in the unnamed spring, consisting of hand-stacked rocks that allow water to pool behind the stone impoundment. Directly below POD1 is a naturally defined channel with bed and banks downstream that flows off property and is tributary to Little Soda Creek. Water is then channeled into a polyvinyl chloride (PVC) pipe laid into the rock impoundment. The PVC pipe connects to a polyethylene water supply line that was conveying water by gravity to place of storage (POS) 2. Water stored at POS2 is conveyed by gravity to POS1, which then conveys water to POU1 to irrigate cannabis. POD1 was actively diverting water for cannabis cultivation during the inspection. Division staff observed water flowing into and out of POD1 at the time of inspection. POD1 diverts from surface water that is subject to the State Water Board's permitting authority.
 - b. LandVision aerial imagery from August 2020 that depicts greenhouses with what appears to be cannabis plant canopy present on POU1, and evidence of cannabis cultivation occurring in the greenhouses during the June 3, 2021 inspection, suggests that the greenhouses were likely used for cannabis cultivation on the Property in 2020. POD1 was the sole source of water observed on the Property. All water diversion and use by the Diverter in 2020 would need to have been reported by July 1, 2021. As of the date of this Complaint, the State Water Board does not have an Initial Statement of Water Diversion and Use on file for POD1.
 - i. One Violation is alleged for failure to file a Statement by July 1, 2021 for the diversion and use of water from POD1 in 2020.

Cannabis Cultivation Policy Requirements

22. 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.

23. Cannabis Cultivation Policy, Attachment A, Section 1, Term 9, 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.,

24. Water Code section 1847, subdivisions (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 State Water 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.

25. Violation 2: The 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 Cannabis Cultivation Policy, Attachment A, Section 3, Numeric and Narrative Instream Flow Requirements No. 4, for more information.

a. POD1 diverts water from an unnamed spring with a known and definite channel, subject to the Numeric and Narrative Instream Flow Requirements. POD1 was observed to be actively diverting water on June 3, 2021 for cannabis cultivation. POD1 was conveying water by gravity to POS2, which conveys water by gravity to POS1, which then conveys water by gravity to POU1 where cannabis was being cultivated. The Diverter was cultivating approximately 400 plants at POU1 at the time of the inspection. The diversion documented during the June 3, 2021 inspection occurred during the surface water dry season forbearance period (April 1 through October 31).

i. One violation of Term 66 of Section 2 of the Cannabis Policy is alleged for the diversion of water at POD1 for cannabis cultivation irrigation during the forbearance period, documented during the site inspection on June 3, 2021.

26. 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. Division staff observed that POD1 was actively diverting surface water for cannabis cultivation during the June 3, 2021 inspection, which was conducted during the surface water forbearance period (April 1 – October 31). Division staff observed that the diversion structure for POD1 was not plugged, blocked, capped, disconnected, or rendered inoperable to stop the diversion of water during the forbearance period, as required.
 - i. One violation of Term 77 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to follow intake requirements for POD1 during the site inspection on June 3, 2021.

27. Violation 4: The 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 Code of Regulations, Title 23, Division 3, Chapter 2.7. 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 June 3, 2021, no water measuring device was observed on or near POD1, 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 for POD1 to measure water diverted for cannabis cultivation.
 - i. One violation of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged for failure to have a water measuring device installed during the inspection and for the failure to maintain daily diversion records on the Property.

28. Violation 5: The 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 June 3, 2021, Division staff documented water storage tanks without float valves or similar devices installed to prevent the overflow and waste of water. POS1 consisted of two storage tanks, one 2,500-gallon tank (Tank 1) that was full and a 500-gallon tank (Tank 2) that was approximately seventy-five percent full. Division staff observed that Tank 2 was not connected to an inlet or outlet line at the time of the inspection. Tank 1 was receiving water and supplying water to POU1 at the time of the inspection. Staff observed Tank 1 actively overflowing at the time of inspection, with no float valve or other device installed to prevent the overflow. POS2 consisted of two water storage tanks, a 3,000-gallon tank (Tank 3) and a 2,500-gallon tank (Tank 4) that were both full. At the time of the inspection, Tank 3's outlet line was connected, but the inlet line

was disconnected. Neither Tank 3 nor Tank 4 had a float valve or similar device installed to prevent overflow at POS2. Tanks 1, and 4, for which staff observed inlet lines conveying water from POD1 to the tanks, each require a device to automatically shut-off the water supply once the tank has reached storage capacity. Based on Division staff's observations of the diversion and storage systems in place during the inspection, at least two overflow prevention devices were needed to prevent the overflow of water from POS1 and POS2 during the inspection. The use of water storage tanks without an overflow prevention device is a violation of this requirement.

- i. Two violations (one for each tank with an inlet line connected to receive water) 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, during the inspection on June 3, 2021.

29. Violation 6: The Cannabis Cultivation Policy, Attachment A, Section 2, Term 93 states:

Cannabis cultivators shall ensure that all vents and other openings on water storage tanks are designed to prevent the entry and/or entrapment of wildlife.

- a. During the site inspection on June 3, 2021, Division staff documented that the opening of Tank 1 was not secured with a tank lid. Failure to secure all tank openings with lids presents an entrapment hazard to wildlife and is a violation of this requirement.
 - i. One violation of Term 93 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to have a lid installed on Tank 1 to prevent the entry and/or entrapment of wildlife during the inspection on June 3, 2021.

30. Violation 7: The 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 June 3, 2021, Division staff did not locate daily records of water used for cannabis irrigation on the Property. Additionally, staff did not observe any water measuring devices at POD1, the POSs, or at POU1. After the inspection, no additional information has been received in response to corrective actions required.
 - 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 inspection on June 3, 2021.

Diversion or Use of Water for Cannabis Cultivation Requires CDFA License

31. Violation 8: Water Code section 1847, subdivisions (a) and (b)(4) provide 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 State Water 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.

CalCannabis established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code. CDFa 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.

- a. During the site inspection, Division staff observed approximately 400 cannabis plants at POU1, with an approximate total cultivation area of 10,000 sq. ft., irrigated from surface water diversions from POD1. Cannabis cultivation of the scale observed by Division staff 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. Division staff examined available records on June 2, 2021, September 27, 2021, and again on November 3, 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). Therefore, the statutory maximum liability for Violations 1-8 is \$5,000 (\$1,000 + \$500 + \$500 + \$500 + \$1,000 + \$500 + \$500 + \$500).

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

33. Water Code section 1055.3 requires that the State Water 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.

Relevant Circumstances Applicable to All Violations

34. Although the evidence suggests that illegal cannabis cultivation activities likely pre-dated the July 3, 2021, inspection, the Division has taken a conservative approach to calculating the proposed administrative civil liability amount. However, 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. The Division recommends that the State Water Board take each opportunity to deter illegal activities and demonstrate the need to comply, including by imposing

significant administrative civil liabilities for cannabis cultivation violations. The Diverter engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as both punishment for the violations and as a deterrent for future noncompliance by similarly situated parties.

35. 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 State Water 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 Diversion and Use is minimal. The need to file a Statement was called to the attention of the Diverter after the inspection in the IR. Nevertheless, to date, Division staff have received no Statement of Water Diversion and Use for POD1.
- c. Corrective Action: As of the date of this Complaint, the Diverter has not come into compliance by filing a Statement for POD1.
- 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. The Diverter was notified in the July 15, 2021 IR of the failure to file a Statement for the diversion and use of water that appeared to be occurring on the Property based on aerial imagery. The violation continues as a Statement has yet to be filed for the diversion and use of water on the Property in 2020. Although the Division may seek additional liability for continuing days of violation, liability for one violation of Water Code Section 5101 is alleged.
- e. Considering the factors listed in a-d above, the Division proposes an administrative liability in the amount of \$1,000 for this violation.

Violations 2 through 7: Cannabis Cultivation Policy Violations

36. 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 drift from riffles to pools. Further, many species depend on spring recession flows as migratory or breeding cues. 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 Policy is mandatory to ensure that the diversion of water and 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 may be compounded as these activities occurred in the Bear 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. Additionally, the current condition of drought increases the propensity for harm.

- b. Nature and Persistence: During the inspection, Division staff observed an active water diversion at POD1 during the surface water dry season forbearance period (April 1 – October 31) for cannabis cultivation. The Diverter was notified by the IR that diverting water from POD1 during the surface water dry season forbearance period was a violation of Cannabis Policy, Section 2, Term 66. 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 400 cannabis plants is appreciable. This violation did not continue past June 3, 2021, since the cannabis plants were eradicated by law enforcement during the inspection.
- c. Corrective Action: The Diverter has not contacted Division staff or provided any evidence in response to the IR.
- d. Length of Time: The Division is alleging a single day of violation for the surface water diversion observed during the inspection. Therefore, the Division alleges one violation of Term 66 of Section 2 of the Cannabis Cultivation Policy for the diversion and use of surface water from POD1 during the forbearance period.
- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

37. Violation 3: Cannabis Cultivation Policy Section 2, Term 77- Failure to Follow Diversion Intake Requirements

- a. Extent of Harm Caused: 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 the Main-stem Eel River, a State Wild and Scenic River, the harm to beneficial uses resulting from this violation may be acute.
- b. Nature and Persistence: During the June 3, 2021 inspection, Division staff observed POD1 actively diverting for cannabis cultivation. The Diverter was notified by the IR that the equipment used to operate POD1 was in violation of Cannabis Cultivation Policy, Section 2, Term 77, as the diversion intake remained in the unnamed stream without any plug, block, cap, or bypass and was capable of diverting water during the forbearance period.

- c. Corrective Action: The Diverter has not contacted Division staff in response to the IR or provided any evidence that corrective action to plug, block or cap, disconnect, or remove the diversion intake has been taken.
- d. Length of Time: Division staff documented a violation of the requirement to plug block or remove the diversion intake at POD1 during the June 3, 2021 inspection. The Division is alleging a single day of violation for the failure to render POD1 inoperable to stop the diversion of water on June 3, 2021. Therefore, liability for one violation of Cannabis Policy Section 2, Term 77 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.

38. Violation 4: Cannabis Cultivation Policy Section 2, Term 82- Failure to Install Water Measuring Devices or Maintain Diversion Records

- a. Extent of Harm Caused: 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: The Diverter was notified by the IR that the equipment used to operate POD1 was a violation of Cannabis Cultivation Policy, Section 2, Term 82, as no measuring device was observed measuring diversions from POD1, nor were any records of water diversion found for POD1. Based on the structure of the irrigation system as observed during the inspection, at least one measuring device was required to comply with this requirement.
- c. Corrective Action: The Diverter has not contacted Division staff in response to the IR to provide diversion records or any evidence that the Diverter has installed a device to measure the amount of water diverted from POD1 for cannabis irrigation.
- d. Length of Time: Division staff documented a violation of the requirement to measure surface water diversions and maintain daily records during the June 3, 2021 inspection. Division staff are alleging a single day of violation. Therefore, liability for one violation 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 \$500 for this violation.

39. Violation 5: Cannabis Cultivation Policy Section 2, Term 92- Water Storage Facility Without Device to Prevent Water Overflow

- a. Extent of Harm Caused: 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 have 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 site inspection on June 3, 2021, Division staff documented that Tank 1 at POS1 and Tank 4 and POS2 were receiving water from POD1 without float valves or similar devices installed to prevent the overflow and waste of water. Division staff called to the Diverter's attention in the IR 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 has not contacted the Division in response to the IR or provided any evidence that the Diverter took corrective actions to install or use water storage tanks equipped with a float valve, or equivalent device, to shut off diversions when storage systems are full.
- d. Length of Time: Division staff documented two storage tanks without float valves or similar devices installed to prevent overflow or runoff on June 3, 2021. Therefore, liability for two violations (one for each storage tank receiving water from POD1 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 \$500 per violation, for a total liability amount of \$1,000.

40. Violation 6: Cannabis Cultivation Policy Section 2, Term 93- Failure to Secure Tank Openings to Prevent Entry and Entrapment of Wildlife

- a. Extent of Harm Caused: Cannabis cultivators are required to ensure that tank openings are closed as open storage tanks may potentially cause direct harm by entrapping wildlife. The potential harm to wildlife increases significantly when there are multiple water storage tanks with accessible openings or vents.
- b. Nature and Persistence: During the inspection, Division staff identified one storage tank at POS1 without a lid. The IR notified the Diverter of this requirement and that one of the water storage tanks at POS1 was in violation of Cannabis Cultivation Policy, Section 2, Term 93.
- c. Corrective Action: The Diverter has not contacted Division staff in response to the IR or provided any evidence that the Diverter took corrective actions to achieve compliance by ensuring that all vents and other openings on water storage tanks are designed and managed to prevent the entry and/or entrapment of wildlife.
- d. Length of Time: Division staff documented one storage tank at POS1 without a lid to prevent wildlife from entering the tank and becoming entrapped. Therefore, liability for one violation) of Term 93 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 7: Cannabis Cultivation Policy Section 2, Term 98- Failure to Maintain Daily Records of Water Use for Cannabis Irrigation

- a. Extent of Harm Caused: 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 June 3, 2021, no water measuring devices were observed on or near the POD, POSs, or POU, nor were any irrigation records found for cannabis water demand. The Diverter was notified by the IR that the cannabis cultivation area was in violation of the Cannabis Policy, Section 2, Term 98.
- c. Corrective Action: The Diverter has not contacted Division staff in response to the IR or provided any additional information regarding maintenance of daily irrigation records.
- d. Length of Time: During the site inspection on June 3, 2021, Division staff were unable to locate any cannabis irrigation records, nor did Division staff observe any measuring devices that could calculate the water used for irrigation of cannabis. Therefore, 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.

42. 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. 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 June 3, 2021, inspection required a commercial cannabis license. Division staff called to the Diverter's attention in the IR that commercial cannabis cultivation required a license pursuant to Water Code section 1847.
- c. Corrective Action: The Diverter has not contacted Division staff in response to the IR. Division staff examined CalCannabis records of commercial cannabis cultivation licenses on November 3, 2021 and found no record that a cultivation license has been issued for the activities observed on the Property.

- d. Length of Time: Water diversion and use for cannabis cultivation was documented on the Property during the July 3, 2021 inspection. Although it is likely that 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 under 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.

PROPOSED CIVIL LIABILITY

- 43. 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 \$5,000; Adding the proposed fines for Violations 1 – 8: \$1,000 + \$500 + \$500 + \$500 + \$1,000 + \$500 + \$500 + \$500 brings the total proposed liability to \$5,000.

RIGHT TO HEARING

- 44. 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).
- 45. If the Diverter does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Assistant 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.
- 46. If the Diverter timely requests a hearing, the Diverter 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.
- 47. 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

Jule Rizzardo, Assistant Deputy Director

Division of Water Rights

Dated: DEC 08 2021