

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

DIVISION OF WATER RIGHTS

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), Unauthorized Diversion or Use of Water (Water Code section 1052), Requirements Adopted Pursuant to California Water Code section 13149, and Diversion or Use of Water for Cannabis Cultivation for which a License is Required (Water Code section 1847(b)(4)),

by

Maria Lenta & Bruno Lenta

in

Lake County

on

APN: 013-045-090-000 & 013-045-160-000

MARIA LENTA AND BRUNO LENTA (HEREINAFTER REFERRED TO AS “THE DIVERTERS”) ARE HEREBY GIVEN NOTICE THAT:

1. The State Water Resources Control Board (State Water Board) Division of Water Rights (Division) alleges that the Diverters committed the violations described below, which relate to the diversion or use of water for cannabis cultivation activities on Lake County Assessor Parcel Numbers 013-045-090-000 and 013-045-160-000 (collectively referred to as the Property).
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverters imposing liability in the total amount of \$27,000.
3. **The Diverters have the right to request a hearing on these allegations but must do so in writing within 20 days from the date the Diverters receive 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 Diverters are alleged to have failed to submit a Statement of Water Diversion or Use (Statement) for water diverted and used in 2020 and 2021.
5. Violation 2: The Diverters are alleged to have diverted or used water for cannabis cultivation in violation of Water Code section 1052, subdivision (a), which provides that any diversion or use of water subject to the State Water Board’s authority under Division 2 of the Water Code, without proper authorization, is a trespass.

6. Violation 3-9: The Diverters are alleged to have violated seven 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 the cultivation of cannabis during the surface water forbearance period (Section 2, Term 66); failing to bypass flow or render the diversion intake incapable of diverting water for cannabis cultivation during the surface water forbearance period (Section 2, Term 77); failing to install separate storage systems for water diverted for cannabis irrigation or otherwise install separate measuring devices to quantify water diverted for separate uses (Section 2, Term 81); failing to install a water measuring device or maintain diversion records (Section 2, Term 82); failing to equip water storage facilities with a device to prevent water overflow (Section 2, Term 92); failing to properly secure tank openings to prevent the entry and entrapment of wildlife (Section 2, Term 93); and failing to maintain daily irrigation records (Section 2, Term 98).
7. Violation 10: The Diverters are alleged to have diverted or 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

8. Property Ownership and Operation:
According to Lake County property records, Maria Lenta acquired the Property on or around October 1, 2014, and has owned the Property at all times relevant to the violations alleged in this Complaint. Based on information available to Division staff, Bruno Lenta has represented himself as the site operator and claimed to have performed the work on the Property. Additionally, based on documents submitted to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), Bruno Lenta has been identified as the operator of cannabis cultivation activities on the Property since December 15, 2017.
9. Watershed Information:
The Property is located in the Upper Putah (HUC 8), Upper Putah Creek (HUC 10), Bucksnot Creek (HUC12) watershed. Water for cannabis cultivation was diverted from an unnamed stream that is a tributary of Bucksnot Creek. Bucksnot Creek is a tributary of Putah Creek, which is designated as a Fully Appropriated Stream System from the Monticello dam upstream, including all tributaries, from January 1 to December 31 of any year.² Putah Creek, below the Monticello Dam and Lake

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 WR Order 96-002

Berryessa, is a tributary of the Yolo bypass and ultimately the Sacramento River. The Sacramento River and its tributaries harbor many threatened and endangered species such as the Dela Smelt, Winter Run Chinook Salmon, Spring Run Chinook Salmon, Green Sturgeon, and Steelhead Trout. For over 20 years restoration work has been ongoing in the Putah Creek Watershed, Yolo Bypass and its tributaries. Non-governmental organizations have spent millions of dollars of state grant funds on restoration efforts that have included increased stream flows to support salmon, stream restoration, fish screening, surface and ground water monitoring, and riparian vegetation and habitat enhancement.

10. 2017 State Water Board Cannabis Portal Entry:

On December 15, 2017, a consultant for the Property submitted an entry into the State Water Board Cannabis Portal to obtain coverage under the State Water Board Order No. WQ-2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*. The portal entry listed Bruno Lenta as the cultivator/diverter and Maria Lenta as the landowner. Groundwater was listed as the source of water for cannabis cultivation, with no surface water sources identified. The Cannabis Portal generated the determination that a Small Irrigation Use Registration was not required, based on the responses submitted.

11. 2018 Central Valley Water Board Notice of Applicability:

On January 25, 2018, the Central Valley Water Board issued a Notice of Applicability (NOA) and assigned a waste discharger identification number (5S17CC400139) for the cannabis cultivation operation occurring on the Property. The NOA provided a link to the Cannabis Cultivation Policy and informed Bruno Lenta that he must comply with all requirements outlined.

12. 2018 Site Management Plan:

In March of 2018, Bruno Lenta submitted a Site Management Plan (SMP) to the Central Valley Water Board. The SMP was prepared by a certified professional and described the water source for cannabis cultivation as a fully contained spring and a well. The description of the well included photos to pair with the text description. The SMP stated that the well is sourced from surface water and would require a water right filed to the Division. Additionally, the SMP included Attachment A of the Cannabis Cultivation Policy. The acknowledgment of the need for a water right, as well as the inclusion of Attachment A of the Cannabis Cultivation Policy illustrates that Mr. Lenta was aware of the need to comply with the requirements of the Water Code and Cannabis Cultivation Policy. Division staff received a copy of the SMP on April 25, 2022 and determined that the well described in the SMP was point of diversion (POD) 1 that staff documented during inspections conducted on April 19, 2021 and September 1, 2021.

13. 2019 Central Valley Water Board Inspection:

On March 20, 2019, Central Valley Water Board staff conducted a consent inspection of the Property. Bruno Lenta and a consultant were present during the inspection. Central Valley Water Board staff issued a compliance memo based on this inspection, dated April 26, 2019.

14. 2020 Central Valley Water Board Inspection Report:

On June 11, 2020, CDFW performed a search warrant inspection of the Property. Central Valley Water Board staff were also present at the time of inspection and provided a report, dated January 12, 2021. The Central Valley Water Board's inspection report identified Maria Lenta as the owner of the Property and Bruno Lenta as the cultivator and discharger of record listed on the NOA. The inspection report also discussed a phone call that Central Valley Water Board staff had on September 10, 2020, where Mr. Lenta stated that his daughter will be taking over cultivation on the Property. The inspection report also referenced a September 29, 2020 email to Central Valley Water Board staff from Gina Carmella Lenta in which she stated she would work towards establishing a fully compliant cannabis cultivation site, and further indicated she would be taking over the operation from her father.

15. CDFW NOV June 11, 2020 inspection Notice of Violation (NOV):

On August 12, 2020, Maria Lenta received a CDFW Notice of Violation (NOV), via certified mail that described the violations observed by CDFW on June 11, 2020. The on-stream reservoir, described as Point A in the CDFW NOV is located at 38.7027 -122.5578, which corresponds to the onstream reservoir location of POD5/POS10 documented by Division staff during the September 1, 2021 inspection.

16. 2020 CDFW LSAA Status:

On October 29, 2020, Gina Lenta entered the CDFW EPIMS online enrollment system and created an account; however, to date, CDFW has not received a complete LSAA application for remediation from Gina Lenta, Bruno Lenta, or Maria Lenta.

17. March 18, 2021 Division Notice:

On March 18, 2021, Division staff mailed a Notice of Potential Unauthorized Diversion and Failure to File a Statement of Water Diversion and Use to Maria Lenta. The Division's notice was issued based on CDFW's August 12, 2020 NOV that identified potential Water Code and Cannabis Cultivation Policy violations. The Division's notice provided Maria Lenta information that she may be in violation of Water Code sections 5101, 1052, and requirements of the Cannabis Cultivation Policy. The notice also specified corrective actions, potential penalties associated with the observed violations and provided 30 days to contact Division staff with a response.

18. Landowner/Diverter Response to March 18, 2021 Division Notice:

On March 22, 2021, Bruno Lenta called the Division in response to the Division's notice issued on March 18, 2021. Mr. Lenta acknowledged receipt of the notice and stated that the onstream reservoir, identified as Point A in CDFW's NOV, was constructed on the Property 10-12 years ago and is not used for cannabis but is used for domestic gardens and other purposes. Mr. Lenta stated that Maria Lenta is the Property owner and that she may continue to cultivate cannabis. Mr. Lenta

stated no one was on the Property at this time due to fires. Mr. Lenta also provided his contact information to Division staff.

19. Water Rights Record Review:

On April 16, 2021, prior to the Division's inspection of the Property, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS) and found two existing Statements of Diversion and Use (Statements), S025849 and S025850, and one Small Domestic Use Registration (SDU), D032720, filed in 2016. The georeferenced locations identified in the Statements (S025849 and S025850) and the SDU registration (D032720) do not correlate with the points of diversion observed by Division staff during the April 19, 2021 inspection or the subsequent inspection on September 1, 2021. Division staff inspected the locations identified in the Statements and SDU and did not observe any points of diversion.

20. Commercial Cannabis Cultivation License Records Review:

On April 16, 2021, Division staff reviewed available California Department of Food and Agriculture (CDFA) CalCannabis³ license records for commercial cannabis cultivation, which provided license records on file as of February 11, 2021. Division staff found no licenses registered to the Diverters or the Property.

21. Well Records Review:

On or around April 16, 2021, Division staff reviewed the Department of Water Resources database of Well Completion Reports and found a record of a well on the Property with a Well Completion Report (WCR) ID of WCR2016-00935. The same well was observed by Division staff during subsequent inspections of the Property.

22. April 19, 2021 Inspection:

In April of 2021, CDFW notified the Division of a search warrant inspection of the Property based on illegal cannabis cultivation and possible surface water diversions used for cannabis cultivation. On April 19, 2021, Division staff accompanied CDFW Wardens and scientific staff, the Lake County Sheriff's Office, and Lake County Code enforcement on an inspection of the Property. Neither the Diverters nor representatives of the Diverters were present during the inspection. Division staff observed approximately 6,626 cannabis plants at the time of the inspection. During the inspection, the Diverters' cannabis plants were eradicated by CDFW Wardens.

23. Points of Diversion:

Division staff observed and documented three points of diversion (POD) during the April 19, 2021, inspection.

³ 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. This Complaint references the licensing agency in effect at the time of each review.

- a. POD1 was a diversion sourced from what appeared to be groundwater, comprised of three perforated pipes placed vertically into the ground at a depth of approximately 20 feet about 30-40 feet from Bucksnot Creek, and in the confluence of where an unnamed stream enters the floodplain terrace of Bucksnot Creek. Water from POD1 was stored off-stream at point of storage (POS) 3 and conveyed by pump to be used for cannabis cultivation at place of use (POU) 1-2.
- b. POD2 was a spring box installed in an excavated area on a hillside where a spring naturally daylighted and flows down a channel with defined bed and banks and is a tributary to Bucksnot Creek. POD2 was observed diverting water during the inspection. Water was conveyed by pump to off-stream storage at POS4, which was then conveyed to POS5 and used at POU3 for cannabis irrigation.
- c. POD3 was a groundwater well that was drilled by Weeks Drilling and Pump. The Well Completion Report Number is e0182948. POD3 conveyed water to POS3 to irrigate cannabis at POU1-2. The location of POD3 correlates to the well identified by Department of Water Resources WCR ID of WCR2016-00935.

24. Aerial Imagery Review:

On April 21, 2021, Division staff reviewed Google Earth Aerial Imagery dated January 28, 2015, showing similar greenhouse structures observed by Division staff at the areas identified as POU 1-3 during the April 19, 2021 inspection, of the Property.

25. Inspection Report and Notice of Violation for April 19, 2021 Inspection:

Subsequent to the inspection, Division staff prepared a Notice of Violation and Inspection Report (NOV/IR) that describes the observations made by Division staff during the inspection, the violations relating to those observations, and the corrective actions required to address each alleged violation. Division staff mailed the NOV/IR to Maria Lenta via certified mail on June 24, 2021, and again on August 5, 2021. Both attempts to mail the NOV/IR resulted in the NOV/IR being returned to the Division.

26. Landowner/Diverter Response to the NOV/IR:

On May 4, 2021, Division staff contacted Bruno Lenta to make him aware of the April 19, 2021 inspection, and that the Property was not in compliance with the Water Code and Cannabis Cultivation Policy based on the conditions observed. Division staff inquired about the construction of the cisterns at POD1. Mr. Lenta stated that POD1 was constructed by excavating in an area where he saw water daylighting at a stream bank on the Property.

27. Commercial Cannabis Cultivation License Records Review:

On August 27, 2021, Division staff reviewed available Department of Cannabis Control (DCC) license records for commercial cannabis cultivation, which provided license records to the State Water Board on file with DCC as of July 29, 2021. Division staff found no licenses registered to the Diverters or the Property.

28. CDFW Aerial Flyover:

On August 11, 2021, CDFW Game Wardens documented active cannabis cultivation at POU3 via an aerial flyover of the Property.

29. September 2021 Inspection:

In August of 2021, Division staff were notified by CDFW of a second search warrant inspection of the Property. Prior to the inspection, Division staff conducted another review of eWRIMS records and again found no record of an appropriate water right on file with the State Water Board. On September 1, 2021, Division staff accompanied CDFW staff and the Lake County Sheriff's Office on a second warrant inspection of the Property. Division staff documented cannabis cultivation and additional Water Code violations during the inspection. Neither the Diverters nor representatives of the Diverters were present during the inspection. During the inspection, the Diverters' cannabis plants were eradicated by CDFW Wardens and Lake County Sheriff deputies. At the conclusion of the inspection, Division staff left a Field Notice of Violation (Field NOV) at the Property, along with the NOV/IR from the April 19, 2021 inspection, dated August 5, 2021.

30. Points of Diversion:

Division staff observed and documented five points of diversion (POD) during the September 1, 2021, inspection.

- a. During the September 1, 2021, inspection, water from POD1 was conveyed to storage at POS3; however, the electric pump connected to the outlet line of POS3 was inactive at the time of the inspection. No water line was present or observed by Division staff that would be used to convey water from POS3 to irrigate cannabis.
- b. POD2 was diverting water during the September 1, 2021, inspection. Water from POD2 was conveyed by pump to off-stream storage at POS4 and used at POU3-6 for cannabis cultivation irrigation. Water from POD2 was also used for domestic use at POU7. Division staff determined that POD2 was the main source of water used for cannabis cultivation on the Property at the time of the inspection as it was the only point of diversion conveying water to storage that was connected to a place of use where cannabis was irrigated. PODs 1, 3, and 4 conveyed water to POS3, which was not connected to a POU at the time of the inspection. Additionally, POD5/POS10 did not have water lines connected to a cannabis cultivation area.
- c. POD3 was connected to convey water to POS3.
- d. POD4 was comprised of two excavations into hillside springs with plastic tarps lining the excavated area to retain water. Water at POD4 was conveyed by gravity to off-stream storage at POS9. POS9 was observed conveying water to POS3 by gravity, but no water line was present or observed by

Division staff that would be used to convey water from POS3 to irrigate cannabis.

- e. POD5/POS10 was a crescent-shaped earthen dam constructed in an unnamed stream channel to impound water in an on-stream reservoir. The unnamed stream is tributary to Bucksnot Creek and has defined bed and banks upstream and downstream of POD5/POS10. This observed location of POD5/POS10 corresponds to CDFW's observations documented in the CDFW August 12, 2020 NOV described in Point A. POD5/POS10 was observed to be storing water during the September 1, 2021, inspection. POD5/POS10 was not connected to a water conveyance system on the Property at the time of inspection. Division staff did not observe a direct use of water diverted and stored at POD5/POS10 at the time of inspection.

31. Additional Water Rights Record Review:

On September 2, 2021, Division staff again examined available State Water Board eWRIMS records and did not find any evidence of an existing appropriative water right or statement on file. As previously noted, the georeferenced locations identified in Statements S025849 and S025850 and the SDU registration D032720, filed in 2016, do not correlate with the points of diversion observed by the Division during the April 19, 2021 inspection, or the subsequent inspection on September 1, 2021.

32. Additional Cannabis License Records Review:

On September 2, 2021, Division staff again reviewed DCC license records for commercial cannabis cultivation to determine if there was a license on file that would authorize commercial cannabis cultivation on the Property and found no record of a license. Division staff checked again on May 18, 2022 and did not find any such licenses.

33. Additional Aerial Imagery Review:

On September 15, 2021, Division staff reviewed LandVision aerial imagery dated September 6, 2020, showing similar greenhouse structures observed by Division staff at POU1-3 and the onstream reservoir at POD5/POS10.

34. Landowner/Diverter Response to September 1, 2021 Inspection:

On October 6, 2021, Bruno Lenta called Division staff to discuss the September 1, 2021 inspection of the Property. Division staff needed to reschedule the call to the following week. On October 12, 2021, Division staff called Mr. Lenta to make him aware of compliance options for the violations documented on the Property. Mr. Lenta stated he was not responsible for the cannabis cultivation on the Property and had no plans to cultivate in the future. Mr. Lenta stated he would begin work on the Property to come into compliance and to reserve the right to commercially cultivate cannabis in the future.

35. October 21, 2021 Inspection Report and Notice of Violation:

Subsequent to the September 1, 2021, inspection, Division staff prepared an NOV/IR that described the observations made by Division staff during the inspection. The NOV/IR identified the violations relating to Division staff's observations and

recommended corrective action for each alleged violation. Division staff mailed the NOV/IR to Maria Lenta via certified mail on October 21, 2021. The NOV/IR was subsequently returned to the Division. On October 22, 2021, Division staff emailed Bruno Lenta the NOV/IR from the April 19, 2021 inspection, and the NOV/IR for the September 1, 2021 inspection. Mr. Lenta did not confirm he received copies of both NOV/IRs.

36. Aerial Imagery Review:

On October 27, 2021, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. Google Earth Aerial Imagery, dated July 10, 2014, shows similar greenhouse structures observed by Division staff at POU1-3 and the onstream reservoir at POD5/POS10.
- b. Google Earth Aerial Imagery, dated July 10, 2016, shows similar greenhouse structures observed by Division staff at POU1-3 and the onstream reservoir at POD5/POS10.
- c. LandVision Aerial Imagery, dated May 21, 2017, shows similar greenhouse structures observed by Division staff at POU1-3 and the onstream reservoir at POD5/POS10.
- d. LandVision Aerial Imagery, dated August 7, 2018, shows similar greenhouse structures observed by Division staff at POU1-3 and the onstream reservoir at POD5/POS10.
- e. LandVision Aerial Imagery, dated August 25, 2019, shows similar greenhouse structures observed by Division staff at POU1-3 and the onstream reservoir at POD5/POS10.

37. Subsequent Landowner/Diverter Response:

- a. On January 19, 2022, Bruno Lenta called Division staff to discuss compliance actions so he could sell the Property. During the call, Division staff sent Mr. Lenta the August 5, 2021 and October 21, 2021 NOV/IRs by email and verbally confirmed on the phone that he received them. Division staff instructed Mr. Lenta to contact CDFW and the Central Valley Water Board to determine the appropriate actions for POD5/POS10. Mr. Lenta stated he would be willing to file for a Small Domestic Use Registration for POD5/POS10.
- b. On June 30, 2022, a real estate agent representing the Lenta family called Division staff to discuss compliance actions to remediate the Property. Division staff sent the agent both inspection reports from 2021 and explained the compliance options for the alleged violations. The agent stated that the Property would be sold as a homestead property and that no cannabis cultivation would be occurring on the Property after it is sold. She further

stated that Maria Lenta would contact the Division to discuss the alleged violations.

- c. On July 8, 2022, Maria Lenta called Division staff and confirmed that she is the owner of the Property. Division staff forwarded the 2021 inspection reports to Ms. Lenta via email and received verbal confirmation that she received the reports. Division staff explained the alleged violations and required compliance actions. Ms. Lenta claimed neither she nor Bruno Lenta had any indication that cannabis was being cultivated on the Property and that she has been in Mexico for the last 10 years. She also confirmed that POD5/POS10 was used for domestic gardening prior to a fire that burned the Property and destroyed the residence/garden. Ms. Lenta stated that she will be contracting workers to remediate the Property but stated that she has no money, and that the Property is her only asset.

STATE WATER BOARD AUTHORITY

- 38. 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.
- 39. Water Code section 1848, subdivision (c), provides that liability cannot be imposed under Water Code section 1847 for a violation for which liability is imposed under Water Code section 1052.
- 40. Water Code 1112 generally provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055, among other specified matters. 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

- 41. **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 1⁴ of the succeeding year, with certain exceptions that are not relevant here.

⁴ Senate Bill 155, which went into effect September 23, 2021, modified the water use reporting period and deadlines. The bill established a new reporting deadline based on

42. Water Code section 5102 states that a separate statement shall be filed for each point of diversion.
43. Water Code section 5107, subdivision (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. POD5/POS10 is an onstream reservoir comprised of an earthen berm with defined bed and banks upstream and downstream from the diversion structure. The stream would naturally flow off the Property if not diverted. On August 12, 2020, CDFW mailed Maria Lenta an NOV that identified several violations documented during the June 11, 2020 inspection, including an unauthorized point of diversion, described as Point A of the NOV. Division staff determined that the point of diversion described in Point A of CDFW's NOV corresponds to POD5/POS10 that was observed by Division staff during the September 1, 2021 inspection.
 - b. The Diverters were therefore required to file a statement of diversion and use by July 1, 2021 for the water diverted and used at POD5/POS10 in 2020. The Division mailed a Notice of Potential Unauthorized Diversion and Failure to File a Statement of Water Diversions and Use to Maria Lenta on March 18, 2021, informing her of the requirements to file a Statement under Water Code section 5101. Bruno Lenta responded, via a phone call to Division staff, acknowledging receipt of the NOV on March 22, 2021. Additionally, a violation of Water Code section 5101 was called to Bruno's attention in the August 5, 2021 NOV/IR and the October 21, 2021 NOV/IR that were emailed to him on October 22, 2021 and January 19, 2022. During a phone call with Division staff on January 19, 2022, Bruno confirmed receipt of the emailed NOV/IRs. The NOV/IRs mailed to Maria Lenta were all returned to Division staff as undelivered; however, Maria Lenta confirmed receipt of the NOV/IRs that were emailed to her on July 8, 2022. To date, the Diverters have not filed a Statement for POD5/POS10.
 - i. One Violation is alleged for failure to file a Statement by July 1, 2021 for the diversion and use of water from POD5/POS10 in 2020.

the standard water year (October 1 through September 30). Beginning October 1, 2021, any water diverted and used during a water year (October 1 through September 30) must file a report with the State Water Board by February 1 of the succeeding year. For water diverted and used between January 1, 2021, and September 30, 2021, the bill established a transition period in which reports must be filed with the State Water Board by April 1, 2022.

- c. POD2 is a diversion from a headwater spring, comprised of a wooden spring box, with defined bed and banks below POD2 that would allow water to naturally flow off the Property, if not for the diversion. During the April 19, 2021 inspection, POD2 was observed to be diverting water for cannabis irrigation on the Property. During the September 1, 2021 inspection, Division staff again documented POD2 diverting water for the irrigation of cannabis. Based on staff's observations during the April 19, 2021 and September 1, 2021 inspections, the Diverters were required to file a Statement with the State Water Board by April 1, 2022 for the water diversion and use at POD2 documented during the inspections. To date, neither Diverter has filed a Statement for POD2.
 - i. One violation is alleged for the failure to file an Initial Statement for POD2 by April 1, 2022 for the diversion and use of water that was observed during the April 19, 2021, and September 1, 2021 inspections conducted by the Division.

Diversion or Use of Water That Requires Authorization by the Division of Water Rights

44. Violation 2: Unauthorized Diversion or Use of Water:

Water Code section 1052, subdivision (a), provides that any diversion or use of water subject to the State Water Board's authority under Division 2 of the Water Code, without proper State Water Board authorization, is a trespass.

45. All water flowing in any natural channel is public water of the State and subject to appropriation in accordance with the Water Code, as provided in section 1201 of the Water Code. Pursuant to Water Code section 1225, no right to appropriate or use water subject to appropriation shall be initiated or acquired except in compliance with Division 2 of the Water Code.

- a. During the September 1, 2021 inspection, Division staff observed POD5/POS10, an onstream reservoir, storing water that had been previously diverted from an unnamed stream with defined bed and banks upstream and downstream of POD5/POS10. No diversion of water to POD5/POS10 was occurring at the time of inspection since no water was flowing into POD5/POS10 from upstream and no water was spilling from POD5/POS10 to the downstream channel. Division staff calculated the total water storage of POD5/POS10 to be approximately 170,098 gallons with approximately 1,705 gallons being stored in POD5/POS10 at the time of the inspection. Bruno Lenta stated on March 22, 2021, that POD5/POS10 was built 10-12 years ago and was used for domestic gardening. Division staff observed water lines that were removed from POD5/POS10 that support the use described by Mr. Lenta. The diversion of surface water into seasonal storage requires an appropriative water

right to be issued by the State Water Board. The Diversifiers do not have an appropriative water right on file with the State Water Board that would authorize diversion or use of water at POD5/POS10.

- b. The reservoir has existed on the Property since Maria Lenta purchased the Property on October 1, 2014. POD5/POS10 is visible in aerial imagery every year from 2014 to 2021, with inspection observations made by CDFW in 2020 and Division staff in 2021.
- c. Since Division staff observed stored water in POD5/POS10 but did not observe water flowing from upstream or downstream of POD5/POS10 during the September 1, 2021 inspection, Division staff reasonably concluded that the diversion of water from the unnamed stream occurred prior to September 1, 2022 inspection. Division staff used rainfall data from a nearby rain gage, stream flow data from a nearby gage on Putah Creek, and relative watershed sizes to calculate the days of diversion that likely occurred to fill POD5/POS10 each water year. For purposes of this analysis, Division staff used a water year of October 1 to September 31, for each year, to determine when diversions would have occurred. Division staff determined that the evaporation rate, creating drawdown, from the onstream reservoir is an estimated 4.1 feet (49.4 inches) per year.

46. Water Code section 1052, subdivision (c)(1), provides that any person committing a trespass may be liable in an amount not to exceed one thousand dollars (\$1,000) for each day in which the trespass occurs if the unauthorized diversion or use occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based upon drought conditions.

- a. Based on the conservative analysis described above, four days of unauthorized diversions from the unnamed stream to fill POD5/POS10 are alleged pursuant to Water Code section 1052, subdivision (c)(1), specifically, on December 2, 2014⁵, December 10, 2015, October 25, 2016, and October 24, 2021⁶.

⁵ On January 17, 2014, Governor Brown issued Executive Order B-14-2014 proclaiming a State of Emergency in California due to drought conditions. On April 7, 2017, Governor Brown issued Executive Order B-40-17 lifting the drought emergency except Fresno, Kings, Tulare, and Tuolumne Counties.

⁶ On May 10, 2021, Governor Gavin Newsome declared a the State of Emergency for drought in the Klamath River Watershed (within Del Norte, Humboldt, Modoc, Siskiyou, and Trinity Counties), the Sacramento San Joaquin Watershed (within Alameda, Alpine Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Napa, Nevada, Placer, Plumas,

47. Water Code section 1052, subdivision (c)(2), provides that persons or entities committing a trespass under section 1052, subdivision (a), may be liable in an amount not to exceed five hundred dollars (\$500) per day for each day in which the unauthorized diversion or use occurs.

- a. Based on the analysis described above, eight days of unauthorized diversions from the unnamed stream to POD5/POS10 are alleged pursuant to Water Code section 1052, subdivision (c)(2), specifically on November 16, 2017, November 29, 2018, December 1, 2019, December 17, 2020, December 26, 2020, December 28, 2020, December 31, 2020, and January 4, 2021.

48. In total, the Division alleges twelve days of trespass for the unauthorized diversions to seasonal storage that occurred on the Property between 2014 and 2021.

Cannabis Cultivation Policy Requirements

49. 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 Cannabis Cultivation 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.

50. The 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.

51. 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.

Sacramento, San Benito, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties), and the Tulare Lake Watershed (within Fresno, Kern, Kings, and Tulare Counties) on May 10, 2021.

52. Violation 3: The Cannabis Cultivation Policy, in 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, Numeric and Narrative Instream Flow Requirements of this Attachment A for more information.

- a. The April 19, 2021, inspection occurred during the surface water dry season forbearance period (April 1 through October 31). POD2 diverts surface water from an unnamed spring subject to the Numeric and Narrative Instream Flow Requirements. POD2 diverts from a headwater spring into a wooden spring-box that captures water that would naturally flow through the defined bed and banks off the Property as a tributary to Bucksnot Creek. Division staff observed that water was flowing into the diversion infrastructure of the unnamed spring at POD2 at the time of inspection on April 19, 2021, and water was then conveyed by pump to POS4 for irrigation of cannabis at POU3. The Diverters were cultivating approximately 6,626 cannabis plants at the time of the inspection.
- b. The September 1, 2021 inspection, occurred during the surface water dry season forbearance period. Staff made observations similar to the April 19, 2021 inspection, specifically, POD2 diverting water from an unnamed spring subject to the Numeric and Narrative Instream Flow Requirements. Water diverted and stored was used for irrigating cannabis at POU3-6. The Diverters were cultivating approximately 1,251 cannabis plants at the time of the inspection on September 1, 2021.
- c. The diversion of water at POD2 for irrigation of cannabis during the forbearance period, documented during the April 19, 2021 and September 1, 2021 inspections, constitutes two violations (one for each day of inspection) of Term 66 of Section 2 of the Cannabis Cultivation Policy.

53. Violation 4: The Cannabis Cultivation Policy, in 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. On April 19, 2021, Division staff observed actively diverting water at POD2 and conveying surface water by pump to POS4 and ultimately to POS5 for

irrigation of cannabis at POU3. POD2 had not been plugged, blocked, capped, disconnected, or otherwise rendered incapable of diverting water during the surface water forbearance period, as required.

- b. When staff returned to inspect the Property on September 1, 2021, Division staff observed POD2 diverting surface water that was ultimately conveyed by pump to POS6 for cannabis irrigation at POU3-6. POD2 was not plugged, blocked, capped, disconnected, or otherwise rendered incapable of diverting water during the surface water forbearance period, as required.
- c. The Division alleges two violations (one for each day of inspection) of Term 77 of Section 2 of the Cannabis Cultivation Policy for the failure to follow intake requirements during the April 19, 2021, and September 1, 2021 inspections.

54. Violation 5: The Cannabis Cultivation Policy, in Attachment A, Section 2, Term 81, states:

Cannabis cultivators are encouraged to install separate storage systems for water diverted for cannabis irrigation and water diverted for any other beneficial uses, or otherwise shall install separate measuring devices to quantify diversion to and from each storage facility, including the quantity of water diverted and the quantity, place, and purpose of use (e.g., cannabis irrigation, other crop irrigation, domestic, etc.) for the stored water.

- a. During the inspection on September 1, 2021, Division staff observed that water diverted at POD2 was used for both cannabis irrigation and domestic use without separate storage systems. Water diverted at POD2 was pumped to POS4, then conveyed to POS 6-8 for irrigation use at POU3-6. Water from POS4 is also conveyed by gravity to POU7 for domestic use. Without separate storage facilities for water diverted for cannabis and water diverted for other beneficial uses, the Diverters were required to install separate measuring devices to quantify the diversion to and from each storage facility. Division staff found no water measuring devices on any POS or on any water conveyance lines leading to POU3-6 or POU7 that would enable the Diverters to quantify the water diverted for cannabis irrigation separate from the water used for domestic purposes, in violation of this requirement.
- b. One violation of Term 81 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to install separate storage systems for water diverted for cannabis irrigation or otherwise install separate measuring devices to quantify diversion to and from each storage facility, as observed during the inspection on September 1, 2021

55. Violation 6: The Cannabis Cultivation Policy, in 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 inspection on April 19, 2021, Division staff observed POD2 diverting water from an unnamed spring from which it was conveyed to POS4 and POS5 for irrigation at POU3. No water measuring device was observed on or near POD2 nor were any records of water diversion found at the time of the April 19, 2021 inspection.
- b. During the inspection on September 1, 2021 inspection, Division staff again observed POD2 diverting water from the unnamed where it was conveyed to POS4 by pump and ultimately to POS6 for cannabis irrigation at POU3-6. No water measuring device was observed on or near POD2 nor were any records of water diversion found at the time of the September 1, 2021 inspection.
- c. Two violations (one for each day of inspection) of Term 82 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to have a water measuring device or records of water diversion for cannabis cultivation during the inspections on April 19, 2021 and September 1, 2021.

56. Violation 7: 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 inspection on April 19, 2021, Division staff documented POS1 (Tank 1 & 2), POS2 (Pool 1), POS3 (Tank 4), POS4 (Tank 6), POS5 (Pool 2) on the Property that did not have a float valve or similar device installed

to prevent the overflow and waste of water. Based on the water storage infrastructure observed, each of these storage systems would have required overflow prevention devices to prevent the overflow and waste of water. Division staff determined that, based on the diversion system configuration at the time of the inspection, there would need to be at least six overflow prevention devices installed to prevent the overflow of water from POS1 (Tank 1 & 2), POS2 (Pool 1), POS3 (Tank4), POS4 (Tank 6), POS5 (Pool 2) on April 19, 2021.

- b. During the inspection on September 1, 2021, Division staff documented POS3 (Tank 4), POS4 (Tank 6), POS6 (Pool 3), POS7 (Tank 9), POS8 (Pool 4) and POS9 (Tank 10) on the Property that did not have a float valve or similar device installed to prevent the overflow and waste of water. Based on the water storage infrastructure observed, each of these storage systems would have required an overflow prevention device to prevent the overflow and waste of water. Division staff determined that there would need to be at least six overflow prevention devices installed to prevent the overflow of water from POS3 (Tank 4), POS4 (Tank 6), POS6 (Pool 3), POS7 (Tank 9), POS8 (Pool 4), and POS9 (Tank 10) on September 1, 2021.
- c. The use of water storage facilities without an overflow prevention device is a violation of this requirement. The Division alleges twelve violations (one for each storage system lacking a requisite device) of Term 92 of Section 2 of the Cannabis Cultivation Policy for the failure to use water storage systems equipped to prevent overflow during the inspections on April 19, 2021 and September 1, 2021.

57. Violation 8: 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 April 19, 2021 inspection, Division staff documented six storage tanks associated with cannabis cultivation on the Property that did not have lids secured to prevent wildlife entrapment. POS1 (Tank 1), POS3 (Tank 4), POS4 (Tank 5 & 6) and POS5 (Tank 7 & 8) were all observed without lids to prevent the entry and entrapment of wildlife on April 19, 2021.
- b. During the September 1, 2021 inspection, Division staff documented five storage tanks associated with cannabis cultivation on the Property that did not have lids secured to prevent wildlife entrapment. POS3 (Tank 4), POS4 (Tank 5-6), POS7 (Tank 9), and POS9 (Tank 10) were all observed without lids to prevent the entry and entrapment of wildlife on September 1, 2021.

- c. The failure to secure covers over tank port openings to prevent wildlife entrapment presents a hazard and is a violation of this requirement. Eleven (11) violations (one for each tank without a lid) of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to ensure all water storage tanks are designed to prevent entry and/or entrapment of wildlife during the April 19, 2021, and September 1, 2021 inspections.

58. Violation 9: 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 April 19, 2021 inspection, Division staff documented that POU1- 3 were cannabis cultivation areas where cannabis was irrigated with water supplied by POD2. During the inspection, Division staff did not observe any water measuring devices nor find any records documenting water use at POD2, any of the storage facilities, or any of the cannabis cultivation areas.
- b. During the September 1, 2021 inspection, Division staff documented that POU3-6 were cannabis cultivation areas where cannabis was irrigated with water supplied by POD2. During the inspection, Division staff did not observe any water measuring devices nor find any records documenting water use from POD2, the storage facilities, or at the cannabis cultivation areas.
- c. The failure to maintain daily irrigation records constitutes a violation of this requirement. Two violations (one for each day of inspection) of Term 98 of Section 2 of the Cannabis Cultivation Policy are alleged for failing to have daily records of water used for irrigation of cannabis during the inspections on April 19, 2021 and September 1, 2021.

Diversion or Use of Water for Cannabis Cultivation That Requires a License

59. Violation 10: Water Code section 1847, subdivision (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 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.

60. 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 and began issuing licenses on January 1, 2018. While the Division is not responsible for determining the specific type of state cultivator license that would have been required, based on the review of aerial images and Division staff's observations during the site inspections, the extent of cannabis cultivation occurring on the Property was of a scale sufficient to require a commercial cannabis cultivation license under Chapter 6 (commencing with Section 26060) of Division 10 of the California Business and Professions Code as more than six living cannabis cultivation plants were observed.

- a. During the April 19, 2021 inspection, Division staff observed and documented approximately 6,626 cannabis plants that were irrigated with surface water diverted at POD2. Additionally, when staff returned to inspect the Property on September 1, 2021, Division staff observed and documented approximately 1,251 cannabis plants that were irrigated with surface water diverted at POD2. The scale of cannabis cultivation occurring on the Property requires a commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. Division staff reviewed licensing records on April 16, 2021, August 27, 2021, October 25, 2021, and April 28, 2022 and did not find an issued license that would legally authorize the cannabis cultivation activities observed on the Property.
- b. The failure to obtain a commercial cultivation license was documented at both inspections. Therefore, Division staff allege two days of violation (one for each day of inspection) of Water Code section 1847, subdivision (b)(4).

Statutory Maximum Liability

61. The statutory maximum liability for Violations 1-10 is the sum of each Violation's statutory maximum liability (Violations 1+2+3+4+5+6+7+8+9+10= Statutory Maximum Liability). Therefore, the statutory maximum liability for Violations 1-10 is \$27,000. (\$2,000 + \$8,000 + \$1000 + \$1000 + \$500 + \$1,000 + \$6,000 + \$5,500 + \$1,000 + \$1,000).

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

62. 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.

63. Violation 1: Failure to Submit Statements of Water Diversion and Use (Water Code section 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 a central repository for records of diversion and uses of water reported by all water diverters that do not have or are not required to have an appropriate water right on file with the State Water Board. The failure to submit statements of water diversion and use impacts the water rights regulatory program harming other priority of right diverters, the environment, and public trust resources. The effects of cannabis-related water diversion and use that is not reported to the State Water Board remains unknown and is a concern as the state continues to experience severe drought conditions. The need for timely water diversion and use records is particularly important after three years of critical drought conditions that have led to curtailments of legal users based on reported water use and projected water availability data. Failure to comply with reporting requirements adds administrative burden to state and local regulators that can alter or reduce water use by legal water users when there is insufficient supply relative to demand. When legal users are curtailed, the water that becomes available unfairly benefits illegal diverters or those who do not report their diversion or use of water. Therefore, by failing to file a Statement to report water diversion and use, the Diverters impaired the State Water Board's orderly and efficient administration of the state's water resources.

b. Nature and Persistence:

The nature and persistence of the Diverters' failure to file a statement of water diversion and use is notable over the amount of time this information has gone unreported to the State Water Board. The Diverters were provided the regulatory requirements outlined in the Water Code and Cannabis Cultivation Policy in the March 18, 2021 Notice of Potential Unauthorized Diversion and Failure to File a Statement of Water Diversions and Use. The need to file a Statement was further called to the attention of the Diverters in the August 5, 2021 NOV/IR, and the October 21, 2021 NOV/IR, and again during the January 19, 2022 phone call with Bruno Lenta. Nevertheless, to date, Division staff have received no statement of water diversion and use, while evidence indicates water diversions continued on the Property up to September 2021.

c. Corrective Action:

To date, the Division has not received a Statement for any POD observed in use on the Property. The Diverters have failed to comply despite the multiple opportunities that Division staff have provided notice and opportunities to solicit a response.

d. Length of Time:

Maria Lenta purchased the Property in October 2014, and any water diverted in 2014 and subsequent years was required to be reported to the State Water Board. Any water diverted and used at POD5/POS10 in 2020, as observed by CDFW and calculated by Division staff, was required to be filed with the State Water Board by July 1, 2021. Additionally, any water diverted or used at POD2 in 2021, as observed during the April 19, 2021 and September 1, 2021 inspections, was required to be filed with the State Water Board by April 1, 2022. The Diverters were notified in the March 18, 2021 Notice of Potential Unauthorized Diversion or Use and Failure to File a Statement of Water Diversion and Use. The requirement to comply with Water Code section 5101 was also identified in the Field NOV left on the Property on September 1, 2021. Bruno Lenta was notified of the alleged violation for POD5/POS10 in the August 5, 2021, and October 21, 2021 NOV/IRs that were transmitted to him via email and discussed during a January 19, 2022 phone call with Division staff. The copies of the NOV/IRs mailed to Maria Lenta were all returned to staff as undelivered; however, Maria Lenta confirmed receipt of the NOV/IRs that were emailed to her on July 8, 2022. To date, the Diverters have not submitted the required statements. As of July 1, 2022, the violations continue as a Statement has yet to be filed.

- f. Taking into consideration the factors listed in a-e above, the Division proposes administrative liability in the amount of \$2,000 for this violation.

64. Violation 2: Unauthorized Diversion or Use of Water for Cannabis Cultivation (Water Code section 1052)

a. Extent of Harm Caused:

This violation has the potential to impact downstream beneficial uses and downstream water right holders that are operating in compliance with the law. A reduction in stream flow may result in a loss of available riparian and aquatic habitat and the availability of water to priority of right diverters. Harm may be both cumulative and direct in nature and much of the harm associated with the illegal diversion goes undocumented. Moreover, these activities occurred in the portion of the Putah Creek Watershed that is designated as a Fully Appropriated Stream System. For over 20 years restoration work has been ongoing in the Putah Creek Watershed, Yolo Bypass and its tributaries. Non-governmental organizations have spent millions of dollars of state grant funds on restoration efforts that have included increased stream flows to support salmon, stream restoration, fish screening, surface, ground water monitoring and riparian vegetation and

habitat enhancement. Unauthorized diversions pose significant impacts to public trust resources and reduce the amount of water available to support cool water habitat for the different developmental stages of fish and benthic invertebrate production as a food source. The Diverters' unauthorized water diversions and use of water pose even greater threats to public trust resource during dry and critically dry years.

b. Nature and Persistence:

The nature and the persistence of the Diverters' unauthorized diversion and use of water is significant. The illegal diversion of water from POD5/POS10 appears to have been occurring since Maria Lenta's purchase of the Property in 2014 based on review of aerial imagery from 2014 to 2021. Bruno Lenta stated that the POD5/POS10 is used for domestic gardening. Division staff informed the Diverters of the Policy's prohibition against onstream reservoirs and that POD5/POS10 was an unauthorized diversion and use under Water Code section 1052 in the March 18, 2021 Notice. Despite that Notice, Division staff observed POD5/POS10 storing surface water that had been diverted for use on the Property during the inspection September 1, 2021. Additionally, Bruno Lenta was informed of the violation on October 22, 2021, and again on January 19, 2022, via electronic transmittal of the October 21, 2021 NOV/IR, as well as a verbal discussion with Division staff concerning the details of the report over the phone on January 19, 2022.

c. Corrective Action:

The Diverters have taken no steps to implement corrective actions to cease the unauthorized diversion and use of water at POD5/POS10. The State Water Board expects a violator, once aware of the violation, to promptly implement corrective actions to come into compliance. The Diverters did not attempt to achieve compliance by ceasing the unauthorized diversion, even after the violation was called to their attention in the March 18, 2021 Notice, nor did they attempt to achieve compliance after Bruno Lenta's subsequent receipt of the October 21, 2021 NOV/IR.

d. Length of Time:

A review of aerial imagery between July 10, 2014, to April 4, 2021 suggests POD5/POS10 has been on the Property since Maria Lenta purchased the Property in 2014. During Maria Lenta's ownership of the Property, the diversion of water at the reservoir has occurred annually to support domestic gardening. There is no appropriative water right on file with the State Water Board that would authorize POD5/POS10 to divert water into seasonal storage. Based on the facts and evidence collected during the inspections of the Property, the Division alleges that there has been one day of diversion to fill the reservoir each water year between 2014 and 2021, with the exception of the 2020/2021 water year in which five days of diversion are alleged. Therefore, the Division alleges a total of 12-days of unauthorized diversion at POD5/POS10. Four days of unauthorized diversions or use occurred during an emergency drought proclamation

issued by the Governor and are therefore subject to heightened liability under Water Code section 1052, subdivision (c)(1). The remaining eight days of unauthorized diversions or use are subject to liability under Water Code section 1052, subdivision (c)(2). Although Bruno Lenta has stated POD5/POS10 has been used for domestic gardening, the Division has conservatively chosen not to calculate liability for days of use.

- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$8,000, taking into consideration violations that occurred during drought years.

Violations 3 through 9: Cannabis Cultivation Policy Violations

65. Violation 3: 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 decrease instream flow each year and, in some instances, reduce hydrologic connectivity or lead to completely dewatering the stream. Minimum flows that provide habitat and flow connectivity are needed to maintain juvenile salmonid passage conditions in late spring and early summer in addition to maintaining healthy cool water conditions for redds and benthic macro-invertebrate production in the stream. 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. Furthermore, many species depend on spring recession flows as migratory and breeding cues. The violation represents impacts to instream resources causing habitat loss and stream dewatering events. The State Water Board is requiring a surface water diversion forbearance period to ensure adequate stream flows are maintained throughout the dry season to protect aquatic species, habitat, and water quality. Diverting water during the forbearance period also impacts downstream priority of water right diverters' ability to use water beneficially.

b. Nature and Persistence:

On March 18, 2021, Maria Lenta was mailed a Notice of Potential Unauthorized Diversion and Failure to File a Statement of Water Diversion and Use, outlining the requirements set forth in the Water Code and Cannabis Cultivation Policy. Bruno Lenta acknowledged receipt of this notice during a subsequent call with staff on April 23, 2021. Despite that notice, Division staff observed POD2 diverting during the surface water dry season forbearance period (April 1 – October 31) for cannabis cultivation during the April 19, 2021 inspection. Bruno Lenta was made aware of the violations at the Property during the April 23, 2021 phone call with staff. Despite these notices, Division

staff again observed POD2 diverting during the forbearance period during the September 1, 2021 inspection. Following the September 1, 2021 inspection, a Field NOV and a copy of the August 5, 2021 NOV/IR were left on the Property, which informed the Diverters that POD2 did not comply with the Narrative and Numeric Instream Flow Requirements in the Cannabis Cultivation Policy. Based on the consumptive water demand estimates of cannabis (6 gallons per plant per day during the growing season), as determined by independent studies, the amount of water necessary to irrigate the 6,626 cannabis plants documented during the April 19, 2021 inspection and the 1,251 cannabis plants observed during the September 1, 2021 inspection is appreciable. This violation did not continue past September 1, 2021, since the cannabis plants were eradicated by law enforcement during the inspection.

- c. Corrective Action:
On October 12, 2021, Bruno Lenta contacted the Division by phone to discuss compliance options for the alleged violation. Mr. Lenta stated that he intended to remove the cannabis operation from the Property and that diversion for cannabis irrigation would stop. To date, the Division is not aware of any corrective actions taken by the Diverters.
- d. Length of Time:
Division staff documented a violation of this requirement during the April 19, 2021, and September 1, 2021 inspections. The Division alleges administrative liability for two one-day violations (one for each day of inspection) 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 in the amount of \$500 per violation, for a total liability amount of \$1,000.

66. Violation 4: 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 Diverters' 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 Fully Appropriated Stream System, the harm to beneficial uses may be acute.
- b. Nature and Persistence:

During the April 19, 2021, and September 1, 2021 inspections Division staff observed POD2 diverting water, capturing all the flow at a headwater spring, for cannabis cultivation in violation of the requirement to plug, block, cap, disconnect, or remove the diversion intake or otherwise render the POD incapable of diverting water during the forbearance period. Additionally, Division staff did not observe a diversion control gate, dam release, or a bypass structure in place at POD2 that could allow water diverted to be released downstream during the forbearance period.

c. Corrective Action:

Despite a phone call with Bruno Lenta on April 23, 2021, discussing the violations documented during the April 19, 2021 inspection, the Diverters continued to divert water from POD2 for cannabis cultivation during the forbearance period, as documented during the September 1, 2021 inspection. Division staff received a call from Mr. Lenta on October 12, 2021, during which Mr. Lenta stated that he intended to remove the cannabis operation from the Property and that diversions for cannabis cultivation would stop. However, to date, Division staff have received no evidence to demonstrate that corrective action has been taken.

d. Length of Time:

Division staff documented a violation of the requirement to plug, block, disconnect, or remove the diversion intake or otherwise render the POD incapable of diverting water during the forbearance period at POD2 during the April 19, 2021, and September 1, 2021 inspections. The Division alleges two one-day violations (one for each day of inspection) of Term 77 of Section 2 of the Cannabis Cultivation Policy.

- 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.

67. Violation 5: Cannabis Cultivation Policy, Section 2, Term 81– Failure to Install Separate Storage Systems or Install Separate Measuring Devices

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 water diversion and use data on how much water is being diverted in watersheds. Accurate water diversion and use data is needed from all users of water in the state so that the State Water Board can administer the appropriate water right application and permitting process and plan for emergency drought response. By failing to install a measuring device and maintain daily diversion records, the Diverters deprive the State Water Board of critical data. This directly harms the State Water Board's ability to plan for limited water supply, forecast water demand, assure compliance with water rights, and effectively manage the state's water resources.

- b. Nature and Persistence:
During the inspection on September 1, 2021, Division staff observed that water diverted at POD2 was used to irrigate cannabis and for domestic purposes, without separate storage systems. Additionally, no water measuring device was observed on or near POD2, any of the POSs, or POU's that would allow the Diverters to quantify the water diverted to and from each storage facility for each use.
- c. Corrective Action:
Bruno Lenta contacted the Division on October 21, 2021, to discuss compliance options for the Property. Although Mr. Lenta stated that he intended to remove the cannabis operation from the Property, the Division has not received evidence of any corrective actions.
- d. Length of Time:
This violation was documented during the September 1, 2021 inspection. The Division alleges administrative liability for one day of violation of Term 81 of Section 2 of the Cannabis Cultivation Policy.
- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$500 for this violation.

68. Violation 6: Cannabis Cultivation Policy, Section 2, Term 82– Failure to Install Water Measuring Device 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 water diversion and use data on how much water is being diverted in watersheds. Accurate water diversion and use data is needed from all users of water in the state so that the State Water Board can administer the appropriate water right application and permitting process and plan for emergency drought response. By failing to install a measuring device and maintain daily diversion records the Diverter deprives the State Water Board of critical data. This directly harms the State Water Board's ability to plan for limited water supply, forecast water demand, assure compliance with water rights, and effectively manage the state's water resources.
- b. Nature and Persistence:
During the inspections on April 19, 2021, and September 1, 2021, no water measuring device was observed on or near POD2 nor were any records of water diversion found. Based on the configuration of the irrigation system observed during each inspection, a single measuring device was required to comply with Cannabis Cultivation Policy, Section 2, Term 82.
- c. Corrective Action:

To date, the Division has received no evidence that the Diverters have taken any corrective action.

d. Length of Time:

This violation was documented during the April 19, 2021, and September 1, 2021 inspections. The Division alleges administrative liability for two one-day violations (one for each day of inspection) of Term 82 of Section 2 of the Cannabis Cultivation Policy for the failure to have a measuring device installed at POD2.

- 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.

69. Violation 7: 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 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 when there are multiple storage facilities without devices to prevent overflow.

b. Nature and Persistence:

Division staff inspected the property twice in 2021, and on both occasions found multiple violations of this requirement documenting a total of 12 violations over the course of both inspections. During the April 19, 2021 inspection, Division Staff documented POS1 (Tank 1 & 2), POS2 (Pool 1), POS3 (Tank 4), POS4 (Tank 6), POS5 (Pool 2) on the Property that did not have a float valve or similar device installed to prevent the overflow and waste of water. During the September 1, 2021 inspection, POS3 (Tank 4), POS4 (Tank 6), POS6 (Pool 3), POS7 (Tank 9), POS8 (Pool 4), and POS9 (Tank 10) on the Property that did not have a float valve or similar device installed to prevent the overflow and waste of water. The inspections occurred in April and September indicating that these violations persisted even after the March 18, 2021 Notice, and staff's April 23, 2021 phone call with Bruno Lenta.

c. Corrective Action:

To date, the Division has received no evidence that the Diverters took any corrective actions.

d. Length of Time:

Six violations were documented during the April 19, 2021 inspection, and six violations were documented during September 1, 2021 inspection. The

Division alleges twelve one-day violations (one for each tank missing a requisite device) of Term 92 of Section 2 of the Cannabis Cultivation Policy.

- 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 \$6,000.

70. Violation 8: 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 to the environment 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:

Division staff inspected the Property twice in 2021, and on both occasions found multiple violations of this requirement. The inspections occurred in April and September, indicating that these violations persist, even after the March 18, 2021 Notice, and staff's April 23, 2021 phone call with Bruno Lenta. During the April 19, 2021 inspection, Division staff documented six violations of this requirement. POS1 (Tank 1), POS3 (Tank 4), POS4 (Tank 5-6) and POS5 (Tank 7-8) were in use for cannabis cultivation on the Property without tank lids, as required. When Division staff returned on September 1, 2021, they documented five violations of this requirement. POS3 (Tank 4), POS4 (Tank 5-6), POS7 (Tank 9), and POS9 (Tank 10) were in use for cannabis cultivation on the Property without tank lids, as required.

c. Corrective Action:

To date, the Division has no evidence that the Diverters took any corrective actions.

d. Length of Time:

These violations were documented during the April 19, 2021 and September 1, 2021 inspections. The Division alleges a total of eleven one-day violations (one for each tank not properly sealed) of Term 93 of Section 2 of the Cannabis Cultivation Policy.

- 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 \$5,500.

71. Violation 9: 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 and riparian habitat and does not impact downstream water right holders. Accurate data on cannabis cultivation irrigation water demand is necessary so that the State Water Board can determine if best irrigation management practices are in use. The application of best irrigation management practices prevents the waste of water from overwatering and prevents runoff of cannabis cultivation wastewater. By failing to maintain daily irrigation records, the Diverters directly harm the State Water Board's ability to plan for emergency drought response, limited water supply, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources.

b. Nature and Persistence:

During the inspections on April 19, 2021, and September 1, 2021, no water measuring devices were observed on or near POD2, any POSs, or POUs, nor were any irrigation records for cannabis water demands found.

c. Corrective Action:

To date the Diverters have not contacted the Division to provide any additional information or copies of past daily irrigation records.

d. Length of Time:

The Diverters' failure to maintain daily irrigation records was documented on both the April 19, 2021, and September 1, 2021 inspections. The Division alleges two one-day violations (one for each day of inspection) of Term 98 of Section 2 of the Cannabis Cultivation Policy.

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.

72. Violation 10: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code section 1847(b)4))

a. Extent of Harm Caused:

Operating a commercial cannabis cultivation 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 Diverters' 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 April 19, 2021 inspection required a commercial cannabis license. Division staff reviewed commercial cannabis license records on multiple dates including April 16, 2021 and found no record of a license current or pending for the Property as of April 26, 2022. When Division staff returned to inspect the Property on September 1, 2021, staff observed new cannabis cultivation, the scale of which required a license. Division staff again reviewed available DCC records on April 28, 2022 and found no record of a license for the Property.

c. Corrective Action:

On October 12, 2021, Bruno Lenta informed Division staff that he intended to remove the cannabis operation from the Property. Division staff have not received any further information or documentation from the Diverters.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the April 19, 2021, and September 1, 2021 inspections. Although aerial imagery suggests it is likely water diversion and use for cannabis cultivation, the scale of which required a license, occurred on the Property prior to April 19, 2021, liability for two separate violations 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 \$1,000 for this violation.

Violations 1-10: All Other Relevant Circumstances

73. LandVision and Google Earth Aerial imagery dated between July 10, 2014, to October 3, 2020 depict a similar cannabis cultivation operation to the operations observed during the April 19, 2021 and September 1, 2021 inspections. It is likely that POD2 was used starting in 2014 and was used until at least September 1, 2021 to irrigate cannabis cultivation. In addition to the water diversions occurring in a Fully Appropriated Stream System during the forbearance period, they may have had significant impacts over 8 years of diversion and use.

74. Although the evidence suggests that illegal cannabis cultivation activities likely predated the April 19, 2021, and September 1, 2021 inspections, the Division has taken a conservative approach to calculating the proposed administrative civil liability amount. However, to deter illegal cannabis cultivation activities and to 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 cannabis cultivation activities; 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

PROPOSED CIVIL LIABILITY

75. Having taken into consideration the factors described above and the need for deterrence the Assistant Deputy Director for Water Rights recommends an administrative civil liability for Violations 1-10 in the amounts of \$2,000 + \$8,000 + \$1,000 + \$1,000 + \$500 + \$1,000 + \$6,000 + \$5,500 + \$1,000 + \$1,000, for a total proposed liability amount of \$27,000.

RIGHT TO HEARING

76. The Diverters 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 Diverters receive this Complaint as required by Water Code section 1055, subdivision (b).

77. If the Diverters do 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.

78. If the Diverters request a hearing, the Diverters 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.

79. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that 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



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

Dated: 12/1/2022