

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: 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

**Fabiola Lopez
Humboldt County
APN No. 216-381-016-000**

FABIOLA LOPEZ (HEREINAFTER REFERRED TO AS “DIVERTER”) ARE HEREBY GIVEN NOTICE THAT:

1. The State Water Resources Control Board’s (State Water Board’s) Division of Water Rights (Division) alleges that the Diverter committed the violations described below, relating to the diversion or use of water for cannabis cultivation activities on the Diverter’s real property in Humboldt County Assessor’s Parcel Number 216-381-016-000 (Property), during 2021.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of \$4,000.
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. Violations 1-6: 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

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.

to use water 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).

5. Violation 7: 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

6. Property Ownership:
According to LandVision Real Estate Mapping Application, the Diverter acquired the Property on or around April 15, 2021, and owned the Property at all times relevant to the violations alleged in this Complaint.
7. Watershed Information:
The Property is located in the Powers Creek watershed (Cal Water Watershed version 2.2 No. 1111.410303), tributary to the Main-stem Eel River. The Main-stem Eel River is a state designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean. The Wild and Scenic River designation precludes the State Water Board from accepting any application to appropriate water from the Main-stem Eel River from January 1 through December 31 of any year. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093.50 et seq., it is the policy of the State of California, that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of section 2 of Article X of the California Constitution.
8. Water Rights Records Review:
On or around July 15, 2021, prior to the inspection, Division staff reviewed the State Water Board's Electronic Water Rights Information Management System (eWRIMS) database to determine if there are any appropriative water rights permits or licenses, or any statements of water diversion and use (Statement) that would authorize the diversion and use of water on the Property. Division staff found no such records. Division staff has since verified that, as of the date of this Complaint, the Diverter still does not possess any appropriative water rights, permits or licenses that would authorize the diversion of water for cannabis cultivation on the Property. Nor has the Diverter filed any Statements.
9. Department of Cannabis Control License Records Review:
On or around July 15, 2021, prior to the inspection, Division staff reviewed the Department of Cannabis Control's (DCC) CalCannabis 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 did not find any license. As of February 2, 2022, Division staff have verified that there is no DCC license for the Property or for the Diverter.

10. July 2021 Inspection:

On July 9, 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 and use for cannabis cultivation. Division staff accompanied CDFW, the North Coast Regional Water Quality Control Board (Regional Water Board), and the Humboldt County Sheriff's Office, on a search warrant inspection of the Property based on illegal cannabis cultivation and possible surface water diversions used for cannabis cultivation. Neither the Diverter, nor a representative of the Diverter, were present during the inspection. During the inspection, Division staff observed approximately 1,622 cannabis plants growing, and two points of diversion providing irrigation water to one Point of Use (POU) for cannabis cultivation. Humboldt County Sheriff's Office and CDFW law enforcement staff eradicated all 1,622 cannabis plants.

11. Points of Diversion:

Division staff observed and documented two points of diversion (POD) on the Property during the July 20, 2021 inspection.

- a. POD1 is located on an unnamed stream that is a tributary of Powers Creek, a tributary of the Main-stem Eel River. The unnamed stream has defined bed and banks upstream and downstream of POD1. POD1 was actively diverting surface water from the unnamed stream using a pump submerged in a pool created by a hand-built rock structure with a plastic visqueen layer on the bottom held in place with stones.
- b. POD2 is a point of diversion to off-stream storage located on an unnamed spring that is a tributary to Powers Creek. The unnamed spring forms a large pool of water in the stream that has a defined bed and banks above and below the pool. POD2 is located in the same stream channel above POD1. Water was flowing into, but not out of the pool at POD2. Water was observed in the pool at the time of the inspection and is likely seeping in through the hyporheic zone. The stream channel downstream of POD2 continues off property. No water was being actively diverted from POD2 during the inspection, although water was available for diversion.

12. Notice of Violation and Inspection Report:

On September 16, 2021, Division staff sent the Diverter a Notice of Violation and Inspection Report (NOV/IR) via certified mail. United States Postal Service (USPS) records indicate that delivery was attempted, but it is not known why the Diverter did not receive the NOV/IR on September 23, 2021. Division staff sent the Diverter a second IR via certified mail on September 30, 2021. USPS records indicate that delivery was attempted, but it is not known why the Diverter did not receive the NOV/IR on October 4, 2021. Division staff sent the Diverter a third NOV/IR via certified mail on November 10, 2021. USPS records indicate that the

Diverter received the NOV/IR on November 12, 2021. The November 12, 2021, certified mail card returned to the Division is signed by "Tony N". The NOV/IR describes the observations made by Division staff during the July 20, 2021, inspection and notifies the Diverter that the observed diversion and use of water for cannabis cultivation activities without the required licenses and/or without complying with all applicable requirements in the Cannabis Cultivation Policy are violations potentially subject to enforcement by the State Water Board. The NOV/IR established a 30-day period to respond or correct the alleged violations noted in the NOV/IR.

13. Landowner/Diverter Response:

As of the date of this Complaint, the Diverter has not responded to the NOV/IR. Division staff have no knowledge or evidence to suggest any of the recommended corrective actions have been taken.

STATE WATER BOARD AUTHORITY

14. 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.
15. Water Code section 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 before the Administrative Hearings Office 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

Cannabis Cultivation Policy Requirements

16. 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.
17. 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.

18. 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 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.

19. **Violation 1:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 66, states:

All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g., groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements. This includes lakes, ponds, and springs (unless the spring is deemed exempt by the Deputy Director). See Section 3, No. 4. Numeric and Narrative Instream Flow Requirements of the Cannabis Cultivation Policy Attachment A for more information².

- a. POD1, documented by staff during the July 20, 2021 inspection, is a hand-built rock structure that diverts surface water from unnamed stream, tributary to Powers Creek, which is subject to the Numeric and Narrative Instream Flow Requirements of the Cannabis Cultivation Policy. Staff observed POD1 actively diverting water from the unnamed stream to water storage containers on July 20, 2021 during the surface water dry season forbearance period for the purpose of cannabis cultivation. This diversion occurred during the surface water dry season forbearance period (April 1 through October 31) when the Diverter was cultivating approximately 1,622 plants at the time of the inspection.
- i. The diversion of water at POD1 for cannabis cultivation irrigation during the forbearance period constitutes one day of violation of Term 66, of Section 2 of the Cannabis Cultivation Policy.

20. **Violation 2:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 77, states:

² The Numeric and Narrative Instream Flow Requirements No. 4. Surface Water Dry Season Forbearance Period requirement stipulates the following: "Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year unless the water diverted is delivered from storage in compliance with Narrative Instream Flow Requirement 4."

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. POD1 diverts surface water from an unnamed stream, tributary to Powers Creek, and was observed to be actively diverting for cannabis cultivation on July 20, 2021, during the surface water forbearance period (April 1 – October 31). Division staff observed that the diversion intake structures for POD1 were not rendered incapable of diverting water and were not plugged, blocked, capped or disconnected to stop the diversion of water during the forbearance period.
 - i. Division staff allege one day of violation of Term 77 of Section 2 of the Cannabis Cultivation Policy for the failure to follow intake requirements observed during the July 20, 2021 inspection.

21. **Violation 3:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 82, states:

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

- a. During the site inspection on July 20, 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, there would need to be at least one water measuring device installed at or near POD1 to measure water diverted for cannabis cultivation.
 - i. One day of violation of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged for failure to have a water measuring device installed on or near POD1 during the inspection on July 20, 2021.

22. **Violation 4:** 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 July 20, 2021, Division staff did not observe float valves or similar devices installed to prevent overflow of water at POS1. Division staff observed water being conveyed from POD1 to Tanks 1-4 at POS1. As water enters each tank, it is filled until it reaches a water line inserted into the access port at the top, which prevents overflow from escaping the tanks. The water lines at POS1 were interconnected to convey water from the access ports of one tank to the next in the series of tanks. Due to the manifolded nature of the water lines, at least one float valve or similar device is required to ensure no water overflow occurs.
 - i. One day of violation of Term 92 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to have installed a float valve or a similar device at POS1 during the inspection on July 20, 2021.

23. **Violation 5:** 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 July 20, 2021, Division staff observed water storage tanks in use on the Property at POS1. POS1 consisted of four polyethylene water tanks (Tanks 1-4). The storage capacity of POS1 was 10,750 gallons and was approximately 60% full at the time of inspection. Division staff observed Tank 1 and Tank 3 without lids to prevent wildlife entrapment.
 - i. Two one day violations of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for failing to ensure coverage of water storage to prevent wildlife entrapment for two tanks (one violation day for each tank; Tanks 1 and 3) observed by Division staff at POS1 on July 20, 2021.

24. **Violation 6:** 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 July 20, 2021, Division staff did not observe any water measuring devices, nor any records of water use at any of the POD, POS, or cannabis cultivation areas.
 - i. One violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to measure cannabis water use and the failure to maintain daily records of water use for irrigation of cannabis.

Diversion or Use of Water for Cannabis Cultivation Requires DCC License

25. **Violation 7:** 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 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.
26. DCC established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code and began issuing licenses on January 1, 2018. While the Division is not responsible for determining the specific type of state cultivator license type that DCC would have required here, based on the review of aerial images and Division staff's observations during the site inspection, the cannabis cultivation occurring on the Property is of a scale sufficient to require a commercial cannabis cultivation license under Chapter 6 (commencing with Section 26060) of Division 10 of the California Business and Professions Code as more than six living cannabis cultivation plants were observed.
 - a. During the site inspection on June 8, 2021, Division staff observed approximately 1,622 cannabis plants growing at one outdoor cannabis cultivation area with a total area of 11,200 sq. ft., irrigated from surface water diverted from POD1. The scale of cannabis cultivation observed by Division staff on the Property required a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. Division staff examined publicly available records on June 2, 2021, and again on November 8, 2021, and

did not find any record that DCC had 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 DCC commercial cannabis license as required.

Statutory Maximum Liability

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

WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS

28. Water Code section 1055.3 requires that the Board in determining the amount of civil liability shall take into consideration all relevant circumstances, including, but not limited to, 1) the extent of harm caused by the violations, 2) the nature and persistence of the violation, 3) the length of time over which the violation occurs, and 4) the corrective action, if any taken by the violator. This requirement is applied to all penalty proposals relative to this administrative civil liability complaint.
29. **Violation 1: 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 violation represents potential harm to multiple species through diversion of water from a stream causing habitat loss in a stream length by dewatering or diminished flows extirpating multiple species, as compared to a threat of individual harm to an individual in a species. The State Water Board is requiring a surface water diversion forbearance period to ensure adequate flows are maintained throughout the dry season to protect aquatic species, aquatic habitat, and water quality. Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, or springs. Diverting water during the forbearance period impacts downstream priority of water right diverter's

ability to use water beneficially and impacts instream and terrestrial public trust resources and habitat. The extent of harm caused by the violation is compounded as these activities occurred in the Powers Creek Watershed, a tributary to the Main-stem Eel River which is a State designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean.

b. Nature and Persistence:

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 of the violation in the November 12, 2021 IR and the need for corrective action. 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 1,622 cannabis plants is appreciable. This violation did not continue past July 20, 2021, since the cannabis plants were eradicated by law enforcement during the inspection. The eradication of the cannabis plants at the time of the search warrant inspection served to eliminate the threat of continued use but does not abrogate the past effect caused by diverting during the forbearance period at the time of and prior to the inspection date.

c. Corrective Action:

The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

d. Length of Time:

The Division is alleging a single day of violation for the surface water diversion observed during the July 20, 2021 inspection. Therefore, the Division alleges one day of 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 above in a-d, the Division proposes an administrative civil liability in the amount of \$500 for one day of observed violation.

30. Violation 2: Cannabis Cultivation Policy, Section 2, Term 77 – Failure to Follow Diversion Intake Requirements

a. Extent of Harm:

Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not harm instream flows during the forbearance period. Inability to render the Diverter's POD intake incapable of diverting water can result in continued water diversion; thus, impacting downstream beneficial uses and depriving downstream priority of right diverters. These violations may also injure other water right holders by improperly shifting the burden of offsetting

public trust impacts to senior rights. Impacts are compounded when the violation persists throughout the forbearance period in dry and critically dry years. As this violation occurred within an unnamed stream tributary to a State Wild and Scenic River (Main-stem Eel River), the harm to beneficial uses due to the violation is acute.

b. Nature and Persistence:

During the July 20, 2021 inspection, Division staff observed that the equipment used to operate POD1 was a violation of Cannabis Cultivation Policy, Section 2, Term 77, as the diversion intake remained in the unnamed stream with no plug, block, cap, or bypass and were capable of diverting and POD1 was actively diverting water during the forbearance period (April 1 – October 31).

c. Corrective Action:

The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

d. Length of Time:

Division staff documented a violation of the requirement to plug, block, or remove the diversion intake at POD1 during the July 20, 2021 inspection. Liability for one day of violation of Term 77 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed above in a-d, the Division proposes an administrative civil liability in the amount of \$500 for one day of observed violation.

31. Violation 3: Cannabis Cultivation Policy, Section 2, Term 82 – Failure to Install Water Measuring Device or Maintain Diversion Records

a. Extent of Harm:

Cannabis cultivators are required to maintain measuring device(s) and daily diversion records for surface water diversions to assist the State Water Board in obtaining accurate data on how much water is being diverted in watersheds. Accurate data on water diversion is needed for all users of water in the state so that the Division can plan for drought and effectively manage limited water resources in impacted watersheds. Moreover, this is vital information for water use planning and even more critical in drought periods. 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 NOV/IR that the equipment used to operate POD1 was a violation of Cannabis Cultivation Policy, Section 2, Term 82, as no measuring devices were observed measuring diversions from POD1, nor were any records of water diversion found. Based on the structure of the irrigation

system as observed during the inspection, at least one measuring device was required to comply with the requirement.

c. Corrective Action:

The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

d. Length of Time:

Division staff documented a violation of the requirement to measure surface water diversions and maintain daily records during the July 20, 2021 inspection at POD1. Liability for one day of violation of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed above in a-d, the Division proposes an administrative civil liability in the amount of \$500 for one day of observed violation.

32. Violation 4: Cannabis Cultivation Policy, Section 2, Term 92 – Water Storage Facility Without Device to Prevent Water Overflow

a. Extent of Harm:

Compliance with this requirement is necessary to prevent waste from water diversions to full storage facilities. Storage facilities without devices to prevent overflow, run off, or ruptured storage containers have the potential to harm instream flows. This in turn impacts downstream beneficial uses and downstream priority of right diverters.

b. Nature and Persistence:

During the inspection on July 20, 2021, Division staff documented one storage tank at POS1 without a float valve or similar device installed to prevent overflow or runoff. As water enters each tank, it is filled until it reaches a water line inserted into the access port at the top, which prevents overflow from escaping the tanks. The water lines at POS1 were interconnected to convey water from the access port of one tank to the next in the series. Due to the manifolded nature of the water lines, at least one float valve or similar device is required in order to ensure no water overflow occurs. Division staff observed that the storage tank at POS1 required overflow prevention and one was not installed at the time of inspection. Division staff called to the Diverter's attention in the Inspection Report 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 Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

d. Length of Time:

Division staff documented one storage tank at POS1 without float valves or similar devices installed to prevent overflow or runoff on July 20, 2021.

Liability for one day of violation at POS1 of Term 92 of Section 2 of the Cannabis Cultivation Policy is alleged.

- e. Considering the factors listed above in a-d, the Division proposes an administrative civil liability in the amount of \$500 for one day of observed violation.

33. Violation 5: Cannabis Cultivation Policy Section 2, Term 93 – Failure to Ensure All Water Storage Vents or Openings are Designed to Prevent Entry and/or Entrapment of Wildlife

- a. Extent of Harm:
Cannabis cultivators are required to ensure that tank openings are closed as open storage tanks may 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 site inspection on July 20, 2021, Division staff observed storage tanks in use on the Property at POS1. Division staff observed Tanks 1-2 at POS1 without lids to prevent wildlife entrapment.
- c. Corrective Action:
The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.
- d. Length of Time:
During the inspection on July 20, 2021, Division staff observed storage tanks in use on the Property at POS1. Division staff observed Tanks 1-2 without lids to prevent wildlife entrapment. Liability is alleged for two one day violations of Term 93 of Section 2 of the Cannabis Policy are alleged.
- e. Considering the factors listed above in a-d, the Division proposes an administrative civil liability of \$500 per violation, for a total liability in the amount of \$1,000 for two observed violations.

34. Violation 6: Cannabis Cultivation Policy Section 2, Term 98 – Failure to Maintain Daily Records of Water Use for Cannabis Irrigation

- a. Extent of Harm:
Compliance with this term is required to ensure that the diversion and use of water associated with cannabis cultivation does not have a negative impact on aquatic habitat, riparian habitat, and does not indirectly impact downstream water right holders. Accurate data on cannabis cultivation irrigation water demand is necessary so that the Division can determine if standard irrigation practices are applied and collect consistent data with best management practices prescribed by the Cannabis Cultivation Policy. 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 water supply, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources. The State Water Board 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 July 20, 2021, no water measuring devices were observed on or near the POD, POS or at a POU, nor were any irrigation records for cannabis water demands found at any location. Additionally, the Diverter has provided no records to the Division to demonstrate documentation of water use for cannabis cultivation.

c. Corrective Action:

The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

d. Length of Time:

During the site inspection on July 20, 2021, Division staff were unable to locate any cannabis irrigation records, nor did Division staff observe any water measuring device at the observed POUs. Liability for one violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed above in a-d, the Division proposes an administrative civil liability in the amount of \$500 for one day of observed violation.

35. Violation 7: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code 1847)

a. Extent of Harm:

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

b. Nature and Persistence:

Division staff determined the scale of cannabis cultivation occurring on the Property during the July 20, 2021 inspection required a commercial

cannabis license. Division staff called to the Diverter's attention in the NOV/IR that commercial cannabis cultivation required a license pursuant to Water Code, section 1847.

c. Corrective Action:

The Diverter has not contacted Division staff or provided evidence of any corrective action taken in response to the NOV/IR.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the July 20, 2021 inspection. Liability for a single violation of Water Code section 1847, subdivision (b)(4) is alleged. The Division proposes an administrative civil liability in the amount of \$500 for this violation.

- e. Considering the factors listed above in a-d, the Division proposes an administrative civil liability in the amount of \$500 for one day of observed violation.

Violation 1-7: All Other Relevant Circumstances

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

PROPOSED CIVIL LIABILITY

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

RIGHT TO HEARING

38. 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).
39. 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.

40. 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.
41. 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

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive, flowing style.

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

Dated: March 23, 2022