

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 Information Order 2024-0016-DWR

Roxana Del Toro Lopez

Assessor Parcel Number: 008-051-730-000

COUNTY: LAKE COUNTY

YOU 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 Roxana Del Toro Lopez (Respondent) has failed to comply with requirements listed in Information Order 2024-0016-DWR.
2. On September 29, 2023, the State Water Board's Division of Water Rights Cannabis Enforcement Section issued Notices to Obtain an Appropriative Water Right for Cannabis Cultivation Water Use (Notice) to 226 property owners within the Clear Lake Watershed who appeared to be cultivating cannabis without an appropriative water right. The Notice requested that the recipients take steps to obtain an appropriative water right for cannabis cultivation use and otherwise comply with State Water Board cannabis cultivation water use and diversion requirements. The Respondent received the Notice but did not provide a response.
3. On March 24, 2023, Governor Newsom issued Executive Order N-5-23, which directs the State Water Resources Control Board (State Water Board or Board) and California Department of Fish and Wildlife to evaluate minimum instream flows and other actions needed to protect the Clear Lake hitch (hitch); work with water users, Native American Tribes, and other parties on voluntary measures; and consider emergency regulations to establish minimum instream flows to mitigate the effects of drought.
4. On December 6, 2023, the State Water Board adopted the Emergency Information Order Regulations for the Clear Lake Watershed (Emergency Regulations or Regulations). Board Resolution 2023-0044 adopted the Emergency Regulations and describes the need for the Regulations and their intent. The Regulations were

approved by the Office of Administrative Law and became effective upon filing with the Secretary of State on January 22, 2024. They are contained in Title 23, section 1050–1052 of the California Code of Regulations.

5. The Clear Lake hitch, also known as “chi,” is a medium-sized fish found only in Clear Lake and its tributaries. The hitch is an important species in the watershed and holds cultural and ecological significance. The hitch population has been in decline for some time, but the recent droughts have exacerbated the decline. There are many factors potentially impacting the hitch population including reduced and degraded habitat, passage barriers in the creeks, predation, competition with invasive species, and pollution; but a primary threat to hitch survival is water availability in creeks where hitch spawn and migrate. The State Water Board adopted the Emergency Regulations, due to the pressing threat to hitch populations resulting from the conditions in the Clear Lake Watershed, the need for prompt information-gathering, and the unique attributes of the watershed.
6. The Emergency Regulations authorize the Deputy Director for the Division of Water Rights (Deputy Director) to issue, to some or all water users in the Clear Lake Watershed, an order requiring them to provide information related to diversion, extraction, or use of water relevant to the Board’s Clear Lake hitch protection efforts, including groundwater well location and depth, beneficial uses of diverted or extracted water, place of use of diverted or extracted water, volume and timing of diversions or extractions, the basis of right with supporting documents or other evidence, parcel information, or any other information relevant to forecasting use, impacts to surface flows, assessing compliance, or contingency planning for future impacts of drought.

ALLEGATIONS

7. The Respondent owns Lake County Assessor’s Parcel Number 008-051-730-000, located within the Clear Lake Watershed and subject to the Board’s Emergency Regulations.
8. The Deputy Director determined that it is necessary to gather information on surface water diversions or groundwater extractions that support cannabis cultivation in the Clear Lake Watershed and, pursuant to the Emergency Regulations, issued an Information Order (Order) to the Respondent on July 3, 2024. The Respondent received the Order in part because of the lack of response to the earlier Notice. The Order seeks water diversion information related to cannabis cultivation, including the following:
 - a. Identify if cannabis was cultivated during the 2024 calendar year and include when cultivation started (MM/DD/YYYY);
 - b. Identify the water source (stream/creek name, unnamed stream, spring, or groundwater) used to irrigate cannabis. If the source is groundwater, provide the groundwater well completion report if available;

- c. Provide the frequency of cannabis irrigation; and
 - d. Identify the number of cannabis crops that will be cultivated during the 2024 season.
9. The Order directs the Respondent to provide the information within 30 days of receiving the Order. United States Postal Service records indicate the Respondent received the Order on July 13, 2024. The Respondent was thus required to provide the information on or before August 12, 2024. To date, the Respondent has not responded to the Order in any way.

VIOLATION AND MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

10. Under Water Code section 1846, subdivision (a)(2), "A person or entity may be liable for a violation of..." a regulation or order adopted by the State Water Board "in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs."
11. Water Code section 1055 grants the Executive Director for the State Water Board authority to issue an Administrative Civil Liability (ACL) Complaint to any person or entity to whom administrative civil liability may be imposed. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an ACL Complaint, and when a hearing has not been timely requested, issue an ACL Order in accordance with Water Code section 1055, subdivision (b). On April 20, 2023, this authority was redelegated to the Assistant Deputy Director for the Permitting and Enforcement branch of the Division of Water Rights.
12. Each day since the Respondent has failed to submit a required report is a day of violation. As of October 25, 2024, the Respondent has accrued 73 days of violation, resulting in a statutory maximum liability of \$36,500 (73 days x \$500 per day of violation).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

13. 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.

14. Extent of Harm:

Failing to provide the information required by the Order impairs the Board's ability to evaluate how cannabis cultivation in this watershed may be influencing creek flows that are critical for hitch spawning and migration, and hinders the Board's efforts to collect information needed to develop measures that will protect the hitch population while balancing other reasonable and beneficial uses of water in the watershed. A robust understanding of how groundwater and surface water interactions in the

Clear Lake Watershed affect creek flows will assist State Water Board efforts to identify measures that will protect the hitch population as well as other reasonable and beneficial diversions and uses of water in the watershed. The Respondent's failure to provide information required in the Order deprives the Board of critical information needed to develop and implement measures that will prevent extinction of the hitch and assist in its recovery.

15. Nature and Persistence:

The Respondent received the Information Order on July 12, 2024, and has not responded as of the date of this Complaint. The Information Order contained an explanation of the basis for the Order, detailed information regarding how to comply, and an invitation to contact Division staff for compliance assistance. The lack of response to the Information Order, when considered alongside the lack of response to the September, 2023, Notice to Obtain an Appropriative Water Right for Cannabis Cultivation Water Use, shows a pattern of non-compliance by the Respondent to State Water Board communications and orders. This demonstrates a disregard for the State Water Board's regulations and permitting requirements. Furthermore, a review of Lake County and Department of Cannabis Control licensing records indicate the Respondent does not have any permits to cultivate cannabis and is cultivating illegally. Aerial imagery from June, July, and August of 2024 show indications of cannabis cultivation on the Respondent's property.

16. Corrective Action:

The Division is not aware of any corrective action taken by the Respondent in response to the Information Order.

17. Length of Time:

The Respondent's violation of the Order is ongoing as of the date of this Complaint.

18. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of \$4,000.

RIGHT TO HEARING

19. The Respondent may request a hearing on this matter before the State Water Board's 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 Respondent receives this Complaint, as required by Water Code section 1055, subdivision (b).

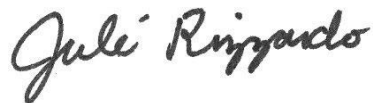
20. If the Respondent does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Deputy Director for Water Rights, under authority delegated by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.

21. If the Respondent requests a hearing, an opportunity to contest the allegations in this Complaint and the imposition of liability before a hearing officer from the

Administrative Hearings Office will be provided. 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.

22. 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

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: November 18, 2024