

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

**DIVISION OF WATER RIGHTS**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Alleged Water Code Violations

**Jose M. Alvarez & Vicente Lopez**

APN 108-213-030-000

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COUNTY: MENDOCINO

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**JOSE M. ALVAREZ AND VICENTE LOPEZ (JOINTLY 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. The violations are related to the diversion or use of water for cannabis cultivation activities on Mendocino County Assessor Parcel Number (APN) 108-213-030-000 (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 eighteen thousand five hundred dollars \$18,500.
3. The State Water Board or the State Water Board's Administrative Hearings Office may impose civil liability (i.e., monetary fines) for these violations through the administrative process described below.
4. **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**

5. Violations 1-7: Thirty-six (36) violations of Term requirements in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis

Cultivation Policy)<sup>1</sup>, established by the State Water Board pursuant to Water Code section 13149.

6. Violation 8: Diverting and using water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC) under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.

## **BACKGROUND AND FACTUAL BASIS**

7. Property Ownership:

According to Mendocino County property records, the Diverters acquired the Property on October 5, 2020, as joint tenants, each with 50% ownership, as described in Paragraph 26 below. The Diverters have owned the Property at all times relevant to the violations alleged in this Complaint.

8. Watershed Information:

The Property is located in the Lower Tomki Creek watershed (HUC 12 #180101030302). Water for the Property was diverted from Tomki Creek, a tributary to the Main-stem Eel River. The Main-stem Eel River is designated as a State Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean. As a Wild and Scenic River, the State Water Board is limited in processing or accepting new applications to appropriate water pursuant to California Code of Regulations, Title 23, Division 3, Chapter 2, Article 8, section 734. In accordance with the California Wild and Scenic Rivers Act (Public Resources Code, Division 5, Chapter 1.4, section 5093.50 et seq.), “[i]t 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” and “[t]he Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of section 2 of Article X of the California Constitution.”

9. June 8, 2023 Inspection Basis:

On or around June 6, 2023, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant investigation of the Property based on illegal cannabis cultivation and possible surface water diversion for cannabis cultivation.

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<sup>1</sup> On October 17, 2017, the State Water Board 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.

10. 2023 Aerial Imagery Review:

On or around June 6, 2023, Division staff reviewed aerial imagery of the Property to determine the earliest date of cannabis cultivation, and made the following observations:

- a. LightBox Vision aerial imagery dated October 18, 2020 shows graded areas consistent with cannabis cultivation at the areas identified as Places of Use (POU) 1-4.
- b. LightBox Vision aerial imagery dated April 28, 2021, March 5, 2022, May 1, 2022, June 7, 2022, June 19, 2022, and September 8, 2022 show greenhouse structures and graded areas consistent with cannabis cultivation at the areas identified as POU1-4.

11. 2023 Water Rights Records Review:

On or around June 6, 2023, Division staff reviewed available State Water Board water rights records in the electronic Water Rights Management System (eWRIMS) and did not find evidence of any Statement on file for the Property.

12. Department of Cannabis Control License Records Review:

Prior to the inspection, Division staff reviewed DCC commercial cannabis license records dated April 26, 2023, and found no active or pending license on file that would authorize commercial cannabis cultivation on the Property.

- a. Division staff subsequently reviewed DCC license records, dated December 20, 2023, December 11, 2024, and February 6, 2025, and similarly found no active or pending license on file.

13. Well Records Review:

On or around June 6, 2023, Division staff reviewed the Department of Water Resources' database of Well Completion Reports and did not find any record of a well on the Property.

14. June 8, 2023 Inspection:

On June 8, 2023, Division staff accompanied CDFW Wardens and scientific staff, Mendocino County Sheriff's officers, and DCC staff on a search warrant investigation of the Property. Neither the Diverters, nor a representative of the Diverters, were present during the Division's inspection of the Property. During the inspection, Division staff observed approximately 1,644 cannabis plants at POU1 – POU4 and one domestic residence at POU5. Law enforcement officers eradicated the Diverters' cannabis plants during the inspection. Division staff identified two surface water PODs as the sole sources of water on the Property, as further described below.

15. June 8, 2023 Points of Diversion:

During the June 8, 2023 inspection, Division staff observed and documented two surface water PODs.

- a. POD1 is a diversion to off-stream storage located on Tomki Creek. Tomki Creek has defined bed and banks upstream and downstream from POD1 and water was flowing in Tomki Creek at the time of the inspection. Division staff observed a 1 hp water pump connected to a ¾-inch polyethylene water supply line that conveys water from POD1 uphill to POS1. The electric pump was powered by a nearby generator to convey water with the assistance of two additional electric 1hp pumps. POD1 was not diverting water during the inspection, but all water diversion infrastructure appeared to be connected and in working order such that it could divert water whenever the pump was turned on. Water stored at POS1 was conveyed by a 3.5 horsepower pump to POS2, POS3, and POS4, which then conveyed water to POU1-4 to irrigate cannabis and to POU5 for domestic use.
- b. POD2 is a diversion to onstream storage consisting of an excavated hole located in an unnamed stream channel that collects spring water. Division staff observed a downstream channel below POD2 but no upstream channel. The spring did not appear to be flowing into POD2, and staff did not observe POD2 diverting water. Based on staff's observations, water that is diverted at POD2 appeared to be used to prime the pumps that conveyed water diverted from POD1 uphill. Water diverted at POD2 did not appear to be used for cannabis irrigation.

16. 2023 Inspection Report and Notice of Violation:

On September 28, 2023, Division staff mailed Mr. Alvarez an Inspection Report and Notice of Violation (NOV/IR) for the June 8, 2023 inspection, via certified mail. The NOV/IR only identified Mr. Alvarez as the owner of the Property and recipient of the notice, based on information available at the time from LandVision that indicated he was the sole owner of the Property. United States Postal Service (USPS) records show that the NOV/IR mailed to Mr. Alvarez was received at his address on October 3, 2023. The NOV/IR described Division staff's observations, informed Mr. Alvarez of the alleged violations, described the corrective actions necessary to resolve the violations, and provided compliance assistance references and Division staff contact information for compliance assistance. The NOV/IR notified Mr. Alvarez that the alleged violations may be subject to enforcement by the State Water Board.

17. Diverter Response to the 2023 NOV/IR:

- a. On October 3, 2023, Mr. Alvarez called Division staff after receiving the NOV/IR. Division staff spoke with Mr. Alvarez about the corrective actions in the NOV/IR and informed him that compliance must be met by November 2, 2023. Mr. Alvarez claimed the Property was leased to cannabis cultivators, and that the cultivators were purchasing hauled water twice a week to irrigate cannabis. Mr. Alvarez provided no evidence of a lease agreement or receipts showing hauled water was used for cannabis irrigation.
- b. On December 7, 2023 and December 8, 2023, Mr. Alvarez left voicemails and sent an email to Division staff asking for details on corrective actions.

- c. On December 11, 2023, Division staff responded via email and called Mr. Alvarez. During the phone call, Mr. Alvarez again claimed that the cannabis was irrigated with hauled water, and that the contract he had with the cultivators explicitly forbade the use of water from Tomki Creek. Mr. Alvarez claimed that his attorney recommended he not share the lease with Division staff. Mr. Alvarez did not provide Division staff with the name or contact information of this attorney. Division staff directed Mr. Alvarez towards the compliance assistance references and the Division's Cannabis Compliance Response Portal for sending documentation of corrective actions.
- d. On December 12, 2023, Mr. Alvarez submitted information through the Division's Cannabis Compliance Response Portal. Attached to the Portal response were two letters from Mr. Alvarez, dated December 12, 2023, in which he stated that he is the owner of the Property and that he has never cultivated cannabis or diverted water for cannabis cultivation. Mr. Alvarez stated that the Property had been leased but that on June 8, 2023, all cannabis cultivation and possible water diversion had ceased, and that the lease had been terminated.
- e. On December 13, 2023, Mr. Alvarez called and emailed Division staff asking to clarify details about corrective actions.
- f. On December 14, 2023, Mr. Alvarez emailed Division staff two Statements for water diverted and used during the 2023 water reporting year, Statement S029034 for POD1 and Statement S029035 for POD2. Both Statements claim that, for 2023, Mr. Alvarez does not know whether water diverted was used for cannabis or domestic water use because the Property was leased. The Statements identified the purpose of use to be irrigation of 0.49 acres and domestic use for six individuals on the Property. The Statements further stated that no cannabis was irrigated from the diversions at POD1 or POD2. In response to the question whether water was diverted during the previous water year for cultivation of cannabis, Mr. Alvarez selected "no." In response to the quantity of water diverted, Mr. Alvarez provided no measurement in gallons or acre-feet. The Special Use Attachment associated with both Statements states that 35,000 gallons of water was diverted in 2023 to irrigate a cannabis cultivation area of 21,345 sq. ft. The Statements also include letters from Mr. Alvarez stating that he does not know if the information provided is accurate because he claims the Property was leased to a third party.
- g. On December 18, 2023, Mr. Alvarez submitted imagery via email to Division staff showing the dismantling of POD1 and POD2.
- h. On May 1, 2024, Mr. Alvarez called Division staff to inform them that he could not submit imagery documenting the covering of the pools on the Property through the Cannabis Compliance Response Portal. He stated that he was working with Mendocino County Code Enforcement to have the pools

removed. Mr. Alvarez informed Division staff that Vicente Lopez is a co-owner of the Property and stated that he had shown Mr. Lopez the NOV/IR and that Mr. Lopez had been working on obtaining compliance on the Property. Mr. Alvarez emailed Division staff imagery showing pool coverings at POS1 on Pools 1 – 3 and at POS2 on Pool 5.

- i. On May 13, 2024, Mr. Alvarez emailed Division staff to further detail his contact with Mendocino County Code Enforcement to have the pools removed in compliance with the County's requirements.

18. August 15, 2024 Inspection Basis:

On or around August 2, 2024, the Division was notified by CDFW of a second search warrant investigation of the Diverters' Property scheduled for August 15, 2024, based on illegal cannabis cultivation and possible surface water diversion for cannabis cultivation.

19. 2024 Aerial Imagery Review:

On or around August 2, 2024, Division staff reviewed LightBox Vision aerial imagery dated June 27, 2024 that shows uncovered hoop houses consistent with the cannabis cultivation observed at POU1-4 during the June 8, 2023 inspection.

20. 2024 Water Rights Records Review:

On or around August 2, 2024, Division staff examined eWRIMS records and confirmed that Statements S029034 and S029035 had been recorded on December 14, 2023 for the 2023 water year.

21. August 15, 2024 Inspection:

On August 15, 2024, Division staff accompanied CDFW Wardens and scientific staff, Lake County Sheriff's officers, and Department of Justice staff, during a search warrant investigation of the Property. Neither the Diverters, nor a representative of the Diverters, were present during the Division's inspection. During the inspection, Division staff observed approximately 173 cannabis plants at POU1, POU6, and POU7, and one unoccupied and abandoned domestic residence without a water supply. No water diversion was observed by Division staff. However, the pools remained in place, and one was storing water, and the covers were no longer in place. Division staff observed that the corrective actions that had been applied in May of 2024 had already failed. The Diverters' cannabis plants were eradicated by law enforcement officers during the inspection.

22. August 15, 2024 Points of Diversion:

Division staff did not observe any surface water diversions during the August 15, 2024 inspection. Open water lines were observed along the road and are believed to have been used to convey hauled water to storage for cannabis cultivation.

23. 2024 Notice of Violation:

On September 12, 2024, Division staff mailed Mr. Alvarez a Notice of Violation (NOV) for the August 15, 2024 inspection, via certified mail. USPS records show that the NOV mailed to Mr. Alvarez was received on September 17, 2024. The NOV sent to Mr. Alvarez described Division staff's observations and the alleged violations, described the corrective actions necessary to correct each violation, and provided compliance assistance references and staff contact information. The NOV notified the Diverters that the alleged violations may be subject to enforcement by the State Water Board.

24. Diverter Response to the 2024 NOV:

- a. On September 17, 2024, Mr. Alvarez contacted Division staff by phone following receipt of the NOV. Mr. Alvarez informed Division staff that he was not aware of any cultivation occurring on the Property and that he co-owns the Property with Mr. Lopez. Mr. Alvarez stated that Mr. Lopez had been the primary party taking corrective actions in response to the 2023 NOV/IR, and Mr. Alvarez recommended that Division staff mail Mr. Lopez a copy of the 2024 NOV.
- b. Again, on September 17, 2024, Mr. Alvarez contacted staff by phone and stated that Mendocino County Code Enforcement was charging \$1,300 for the removal of each pool and that the cost of compliance with the County was prohibitive and hindered site cleanup.
- c. On September 18, 2024, Mr. Alvarez emailed Division staff and provided a mailing address for Mr. Lopez.

25. Additional Mailout of 2024 NOV:

On September 27, 2024, Division staff mailed Mr. Lopez a copy of the NOV for the August 15, 2024 inspection, via certified mail. USPS records indicate that the NOV mailed to Mr. Lopez was received on October 2, 2024. The NOV described the observations and alleged violations documented by Division staff during the inspection, identified the corrective actions necessary to resolve the violations, and provided compliance assistance references and staff contact information. The NOV also notified Mr. Lopez that the alleged violations may be subject to enforcement by the State Water Board. Mr. Lopez has not contacted Division staff as of the date of this Complaint.

26. On December 18, 2024, Division staff contacted the Mendocino County Assessors Office and confirmed that the Diverters own the Property in a 50/50 capacity according to acquisition document number 2020-13480. The Property deed also reflects a 50/50 joint ownership between the Diverters.

## STATE WATER BOARD AUTHORITY

27. 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.
28. Water Code section 1112 provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055. Pursuant to Water Code section 1114, for matters seeking administrative liability under Water Code section 1847 or 5107, the Hearing Officer adopts a final order. For all other matters, the Hearing Officer adopts a proposed order to be considered by the State Water Board.

## ALLEGED VIOLATIONS

### Cannabis Cultivation Policy Requirements

29. 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.
30. Cannabis Cultivation Policy, Attachment A, Section 1, Definition 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.*
31. 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.



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

*All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g. groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements. This includes lakes, ponds, and springs (unless the spring is deemed exempt by the Deputy Director). See Section 3, Numeric and Narrative Instream Flow Requirements of this Attachment A for more information.*

Division staff allege that the Diverters violated Term 66 by failing to comply with Numeric and Narrative Instream Flow Requirements No. 4, detailed in the Cannabis Cultivation Policy, Attachment A, Section 3, which states the following:

*Surface Water Dry Season Forbearance Period: 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.*

- a. POD1 diverts surface water from Tomki Creek. On June 8, 2023, Division staff observed POD1 plumbed and capable of diverting water for cannabis cultivation and domestic uses. POD1 was observed with a diversion intake in the streamflow of Tomki Creek capable of conveying water by pump to POS1 for use at POU1-2, to POS2 for use at POU3, to POS3 for use at POU4-5, and to POS4 for use at POU4. Staff observed cannabis being cultivated at POU1-4. Division staff performed a cannabis consumptive water demand analysis based on the number of plants and the amount of water storage observed on the Property. Pursuant to data published on the impacts of surface water diversions for cultivation activities,<sup>2</sup> cannabis requires a minimum of 2.5 gallons of water per plant per day. Based on this demand, staff determined that the Property was actively storing a maximum of 16 days of water for cannabis irrigation. Division staff further determined that 16 days of water supply would be insufficient to irrigate the 1,644 cannabis plants observed on the Property during the June 8, 2023 inspection. Staff did not observe any other source of water that was plumbed to be used to irrigate cannabis at POU1-4. Therefore, Division staff allege that the Diverters would have needed to divert surface water from POD1 during the surface water dry season forbearance period (April 1 – October 31) to irrigate the cannabis plants observed at POU1-4 during the inspection.

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<sup>2</sup> Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds - Bauer S. et al. (2015)  
<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0120016>

- i. One (1) violation of Term 66 of Section 2 of the Cannabis Policy is alleged for the diversion of water at POD1 for cannabis cultivation irrigation during the forbearance period.

34. **Violation 2:** The Cannabis Cultivation Policy 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 June 8, 2023, Division staff observed that POD1 was set up to convey water to POS3, where water is stored in a circular pool identified as Pool 6. Water stored in Pool 6 is then pumped to POU4 for cannabis irrigation and to POU5 for domestic use at the residence. Because Pool 6 supplies water for both uses, the Diversifiers were required to install a measuring device to quantify diversion to and from the pool for each use. Division staff did not observe a water measuring device on or near Pool 6 or on the water conveyance lines leading to POU4 or POU5. Division staff determined that there would need to be at least one water measuring device installed to quantify the water used for domestic purposes separately from water used for cannabis irrigation use.
- i. One (1) violation of Term 81 of Section 2 of the Cannabis Cultivation Policy is alleged for failure to install separate storage systems or otherwise install a measuring device to separately quantify water diverted and used from Pool 6 for domestic use.

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

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

*shall be retained for a minimum of five years. Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year.*

- a. During the inspection on June 8, 2023, Division staff observed that POD1 was set up to divert surface water for irrigation of cannabis at POU1-4. Division staff documented that no water measuring device was observed on or near POD1, nor were any records of water diversion for cannabis irrigation found on the Property.
  - i. One (1) violation of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged for the Diverters' failure to have a water measuring device installed at POD1 and for the failure to maintain daily diversion records on the Property, as documented during the inspection.

**36. Violation 4:** 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 June 8, 2023 inspection, Division staff documented ten water storage tanks and pools in use without float valves or similar devices installed to prevent the overflow and waste of water. Specifically, Division staff documented missing devices at Pools 1 and 2 at POS1, Pools 3-5 at POS2, Pool 6 at POS3, and Tanks 1-4 at POS4, which receive water diverted from POD1 and are used in connection with the cannabis cultivation activities on the Property.
  - i. Division staff allege ten (10) violations of Term 92 of the Cannabis Cultivation Policy for the water storage tanks and pools used for cannabis cultivation activities without the required overflow prevention device.

**37. Violation 5:** 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 June 8, 2023 inspection, Division staff documented that the openings of Pools 1 and 2 at POS1, Pools 3-5 at POS2, Pool 6 at POS3, and Tanks 1 – 4 at POS4 were not secured with a tank lid or pool cover. Failure to secure all tank and pool openings with lids or covers presents an entrapment hazard to wildlife and is a violation of this requirement.

- i. Division staff allege ten (10) violations of Term 93 of the Cannabis Cultivation Policy for the tanks and pools observed without lids or covers during the June 8, 2023 inspection.
- b. During the August 15, 2024 inspection, Division staff documented that the openings of Pools 1 and 2 at POS1, Pools 4 and 5 at POS2, Pool– 6 at POS3, Tanks 1 – 2 at POS4, Tank 5 at POS7, Tank 6 at POS8, and Tank 7 at POS9 were not secured with a tank lid or pool cover. Tank 5 was observed with a dead rodent floating in it.
- i. Division staff allege ten (10) violations of Term 93 of the Cannabis Cultivation Policy for the tanks and pools observed without lids or covers during the August 15, 2024 inspection.

**38. Violation 6:** The Cannabis Cultivation Policy Attachment A, Section 2, Term 94 states:

*Cannabis cultivators shall retain, for a minimum of five years, appropriate documentation for any hauled water used for cannabis cultivation. Documentation for hauled water shall include, for each delivery, the following:*

- a) A receipt that shows the date of delivery and the name, address, license plate number, and license plate issuing state for the water hauler,*
- b) A copy of the Water Hauler's License, if applicable (California Health and Safety Code section 111120),*
- c) A copy of proof of the Water Hauler's water right, groundwater well, or other authorization to take water, and the location of the water source, and*
- d) The quantity of water delivered or picked up from a water source, in gallons.*

*Documentation shall be made available, upon request, to Water Boards or CDFW staff and any other authorized representatives of the Water Boards or CDFW.*

- a. During the August 15, 2024 inspection, Division staff did not observe any surface water diversions on the Property, but observed open water lines along the road that staff believed were used to convey hauled water to storage for cannabis cultivation. Division staff did not observe any documentation related to the use of hauled water for cannabis cultivation on the Property, nor have the Diversifiers provided staff documentation for hauled water after having received the NOV/IR for the August 15, 2024 inspection.
- i. One (1) violation of Term 94 of Section 2 of the Cannabis Policy is alleged for the failure to retain documentation for hauled water used for the cannabis cultivation, as documented during the August 15, 2024 inspection.

**39. Violation 7:** The Cannabis Cultivation Policy Attachment A, Section 2, Term 98 states:

*Cannabis cultivators shall maintain daily records of all water used for irrigation of cannabis. Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered (e.g., irrigating for one hour twice per day using 50 half-gallon irrigation emitters equates to 50 gallons per day (1 hour x 2 times per day x 50 irrigation emitters x 0.5 gallons per irrigation emitter per hour) of water used for irrigation). Cannabis cultivators shall retain, for a minimum of five years, irrigation records at the cannabis cultivation site and shall make all irrigation records available for review by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.*

- a. During the June 8, 2023, inspection, Division staff did not locate daily records of water used for cannabis irrigation on the Property, nor did they observe any water measuring devices on the Property that could be used to calculate the daily water use for cannabis irrigation. Additionally, after receiving the NOV/IR, the Diverters have not provided Division staff with any daily records of water used for cannabis irrigation.
  - i. One (1) violation of Term 98 of Section 2 of the Cannabis Policy is alleged for the failure to maintain daily records of water used for irrigation of cannabis that was documented during the June 8, 2023 inspection.
- b. During the August 15, 2024 inspection, Division staff did not locate daily records of water used for cannabis irrigation on the Property, nor did they observe any water measuring devices on the Property that could be used to calculate the daily water use for cannabis irrigation. Additionally, after receiving the NOV/IR, the Diverters have not provided Division staff with any daily records of water used for cannabis irrigation.
  - i. One (1) violation of Term 98 of Section 2 of the Cannabis Policy is alleged for the failure to maintain daily records of water used for irrigation of cannabis that Division staff documented during the August 15, 2024 inspection.

**Diversion or Use of Water for Cannabis Cultivation without a DCC License.**

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

A commercial cannabis cultivation licensing program was established pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code, which began issuing licenses on January 1, 2018.<sup>3</sup> Any person engaged in commercial cannabis activity must obtain a state license from DCC. (Bus. & Prof. Code § 26037.5, subd. (a); 4 Cal. Code Regs. §15000.1, subd. (a).) "Commercial cannabis activity" includes cultivation. (Bus. & Prof. Code § 26001, subd. (j); 4 Cal. Code Regs. § 15000, subd. (o).) The only exceptions to the cultivation licensing requirement are for persons cultivating not more than six living cannabis plants, or certain nonprofit entities in limited circumstances not applicable here. (Bus. & Prof. Code § 26037.5, subd. (b).)

- a. During the June 8, 2023 inspection, Division staff observed approximately 1,645 cannabis plants at POU1 – POU4, with an approximate total cultivation area of 21,345 sq. ft., irrigated from the surface water diversion from POD1. The cannabis cultivation observed by Division staff on the Property was of a scale that 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 available records on June 6, 2023 and did not find any record that DCC issued a cultivation license for the activities observed on the Property.
  - i. One (1) violation is alleged for diverting and using water for cannabis cultivation without having obtained a DCC commercial cannabis license as required.

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<sup>3</sup> 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.

### **Statutory Maximum Liability**

41. The statutory maximum liability for Violations 1-8 is the sum of each Violation's statutory maximum liability (Violations 1+2+3+4+5+6+7+8 = Statutory Maximum Liability). Therefore, the statutory maximum liability for Violations 1-8 is \$18,500 (\$500 + \$500 + \$500 + \$5,000 + \$10,000 + \$500 + \$1,000 + \$500).

### **WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS**

42. 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. The penalty amounts proposed in this Complaint are set per this requirement.

### **Relevant Circumstances Applicable to All Violations**

43. Aerial imagery suggests that illegal cannabis cultivation activities likely pre-dated the initial June 8, 2023 inspection. Division of Water Rights staff found no evidence that the Diverters have taken steps to comply with the regulatory requirements applicable to commercial cannabis cultivation. Permit and licensing fees and other regulatory costs for commercial cannabis cultivation can be significant, such that unlicensed and unpermitted cultivators obtain an unfair advantage over those cultivators who participate in the regulated market.
44. To deter illegal cannabis cultivation activities and support 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 impose the proposed penalties to serve as a deterrent to the Diverters, as well as to illegal cannabis cultivators generally, and to encourage compliance with the state's regulatory program for commercial cannabis cultivation.

### **Violations 1 through 7: Cannabis Cultivation Policy Violations**

45. **Violations 1 and 4: Cannabis Cultivation Policy Section 2, Terms 66 and 92.** Violations 1 and 4 have been analyzed jointly with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Terms associated with these violations are requirements necessary to prevent unauthorized or excessive diversions, which could impact water availability.
- a. Extent of Harm:  
Compliance with Term 66, including the surface water dry season forbearance period, is intended to ensure adequate flows are maintained throughout the dry season to protect aquatic species, aquatic habitat, and water quality. 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 a stream. These reductions to instream flow would impact downstream beneficial uses and deprive downstream priority of right diverters. Additionally, compliance with Term 92 is necessary to prevent waste from water diversions to full storage facilities. By using tanks without the required overflow prevention device, the Diverters further risk impacting beneficial uses and downstream priority of right diverters.

b. Nature and Persistence:

During the June 8, 2023 inspection, Division staff observed that POD1 was the sole source of water for cannabis irrigation occurring at POU1-4. Although staff did not observe POD1 diverting during the inspection, based on the water demand of cannabis, the number of plants being grown, and the storage capacity on the Property, Division staff determined that the Diverters would have needed to divert from POD1 during the surface water dry season forbearance period. Additionally, staff observed eight tanks and pools storing water from POD1 for irrigation of cannabis during the June 8, 2023 inspection that were not equipped with an overflow prevention device.

c. Corrective Action:

Mr. Alvarez received the NOV/IR on October 3, 2023, which directed him to take certain corrective actions within 30 days. Mr. Alvarez subsequently spoke to Division staff on multiple occasions about the corrective actions listed in the NOV/IR. On December 18, 2023, Mr. Alvarez submitted imagery to Division staff showing the dismantling of POD1 and POD2. During the second inspection on August 15, 2024, Division staff observed no points of diversion remaining on the Property, but the water storage pools remained in place without covers, and one was storing water. The Diverters were continuing unlicensed cannabis cultivation in 2024, with what appeared to be hauled water. The nearest source for hauled water is Tomki Creek, which is just down the road. Division staff requested receipts to demonstrate the legal purchase of hauled water and none were provided.

d. Length of Time:

These violations were observed during the June 8, 2023 inspection. Division staff allege a single day of violation for each Policy term violation observed during this inspection.

e. Proposed Administrative Civil Liability:

Considering all the relevant circumstances and factors listed in a-d above, Division staff allege an administrative civil liability amount of \$500 for Violation 1 (Term 66) and \$5,000 for Violation 4 (Term 92), for a total liability amount of \$5,500 for these violations. The liability proposed for Term 66 was not reduced due to the impacts and threatened impacts to public trust resources presented by diversions of surface water to irrigate cannabis during the forbearance period. Additionally, the proposed liability amount for Term 92



was not reduced because storage tanks remained in place for cultivation without overflow prevention devices.

**46. Violations 2, 3, 6, and 7: Cannabis Cultivation Policy Section 2, Terms 81, 82, 94, and 98.**

Violations 2, 3, 6, and 7 have been analyzed jointly with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Terms associated with these violations relate to recordkeeping that is intended to assist the State Water Board in obtaining accurate water diversion and use data.

a. Extent of Harm Caused:

Accurate data on water diversion and use is required from all users of water in the state so that the Division can plan for drought and effectively manage the state's limited water resources. The failure to install measuring devices and maintain diversion and use records, as required under Terms 81, 82, 94, and 98, deprives the Division of critical data required for resource planning, forecast water demand, protect public trust resources, ensure water diverters are not diverting more water than authorized, ensure water diverted is put to beneficial use without the waste and unreasonable use of water, and protects the priority of right to divert and use water beneficially.

b. Nature and Persistence:

During the June 8, 2023 inspection, Division staff documented one violation each of Terms 81, 82, and 98 because of the Diverters failure to install the required measuring devices and retain appropriate records. When staff returned to the Property for the August 15, 2024 inspection, the Diverters were again continuing unlicensed cannabis cultivation, with what appeared to be hauled water. The nearest source for hauled water is Tomki Creek, which is just down the road. During this second inspection, staff again documented a violation of Term 98, as well as a violation of Term 94 for the Diverters failing to retain water hauling records.

c. Corrective Action:

Mr. Alvarez received the NOV/IR for the June 8, 2023 inspection on October 3, 2023, which informed him of the alleged violations of these requirements and identified the corrective actions that he needed to take to resolve the violations. On December 12, 2023, Mr. Alvarez submitted a Portal entry response and on December 18, 2023, he submitted imagery documenting the dismantling of POD1 and its associated infrastructure. On December 14, 2024, Mr. Alvarez filed two statements neither of which provided any records of water diverted at POD1, or of water used for domestic or cannabis irrigation use for at POU1-4 following receipt of the 2023 NOV/IR. After the second inspection, Mr. Alvarez and Mr. Lopez received the NOV on September 17, 2024 and October 2, 2024, respectively. The Diverters again did not provide staff any irrigation records for POU1-4 nor records related to water hauling.

d. Length of Time:

These violations were observed during the inspections on June 8, 2023 and August 15, 2024. The Division alleges a single day of violation for each Policy term violation observed during the inspections.

e. Proposed Administrative Civil Liability:

Considering all the relevant circumstances and factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$500 for Violation 2 (Term 81), \$500 for Violation 3 (Term 82), \$500 for Violation 6 (Term 94), and \$1,000 for Violation 7 (Term 98), for a total liability amount of \$2,500 for these violations. Division staff did not propose a reduction to the liability amounts for these violations due to the Diverters' lack of corrective action and subsequent failure to comply with recordkeeping requirements during the second inspection.

**47. Violation 5: Cannabis Cultivation Policy, Section 2, Term 93.**

a. Extent of Harm:

Cannabis cultivators are required to ensure that tanks openings are closed as open storage tanks may potentially cause direct harm by entrapping wildlife. The potential harm to wildlife increases significantly when there are multiple water storage tanks with accessible openings.

b. Nature and Persistence:

During the June 8, 2023 inspection, Division staff observed ten tanks and pools that lacked lids to cover tank openings, in violation of this requirement. When staff returned to the Property on August 15, 2024, they again documented ten tanks and pools without adequate lids or covers.

c. Corrective Action:

Mr. Alvarez received the NOV/IR for the June 8, 2023 inspection on October 3, 2023. On May 1, 2024, Mr. Alvarez submitted imagery to Division staff documenting the covering of Pools 1 – 5. However, during the August 15, 2024 inspection, staff observed that these coverings were destroyed and ineffective.

d. Length of Time:

These violations were observed during the June 8, 2023 and August 15, 2024 inspections. Division staff allege a single day of violation for each tank that was in violation of Term 93 during each inspection.

e. Proposed Administrative Civil Liability:

Considering the relevant circumstances and factors listed in a-d above, the Division proposes an administrative civil liability amount of \$10,000 for Violation 5. The Division did not propose a reduction to the liability for this violation as a result of the ineffective actions taken to address the violations of Term 93.

**48. Violation 8: Water Code section 1847, subdivision (b)(4) - Diversion or Use of Water for Cannabis Cultivation Without the Requisite License****a. Extent of Harm:**

Unlicensed cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. Applications for commercial cannabis cultivation licenses began on January 1, 2018. 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 state's 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 harm legal cultivators, downstream priority of right Diverters, beneficial uses of water, and the cannabis cultivation regulatory program.

**b. Nature and Persistence:**

On June 8, 2023, Division staff observed 1,645 cannabis plants growing at POU1-4, with an approximate total cultivation area of 21,345 sq. ft., irrigated with surface water diverted from POD1. Staff determined that the scale of cannabis cultivation occurring on the Property during the June 8, 2023 inspection required a commercial cannabis license.

**c. Corrective Action:**

Mr. Alvarez received the NOV/IR for the June 8, 2023 inspection on October 3, 2023, which informed him of this violation. On December 12, 2023, Mr. Alvarez submitted a Portal entry in response to the NOV/IR and claim to have ceased diverting water for cannabis and that he will no longer be cultivating cannabis on the Property. However, during the August 15, 2024 inspection, Division staff observed cannabis cultivation again, which appeared to be irrigated with hauled water.

**d. Length of Time:**

Water diversion and use for commercial cannabis cultivation was documented on the Property during the June 8, 2023 inspection. Although Division staff believe cannabis cultivation, of a scale similar to what staff observed during the inspections, has been occurring prior to the June 8, 2023 inspection, for which the Diverters may have been diverting and using surface water to irrigate, liability for one violation of Water Code section 1847, subdivision (b)(4), is alleged for the 2023 inspection.

e. Proposed Administrative Civil Liability:

Considering the relevant circumstances and factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$500 for this violation.

**PROPOSED CIVIL LIABILITY**

49. 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 amount of \$18,500.

**RIGHT TO HEARING**

50. The Diverters may request a hearing on this matter before the State Water Board Administrative Hearings Office. Any such request for a 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).

51. If the Diverters do 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 amount.

52. If the Diverters request a hearing in a timely manner, 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.

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

**ORIGINAL SIGNED BY:**

*Robert P. Cervantes, Acting Assistant Deputy Director  
Division of Water Rights*

Dated: June 5, 2025