

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

DIVISION OF WATER RIGHTS

ORDER WR XXXX-XXXX-DWR

CEASE AND DESIST ORDER

**In the Matter of Diversion or Use
of Water for Cannabis Cultivation**

**Darrell Evenson and Jose Rodriguez
Trinity County
APN: 020-520-020-000**

**SOURCE: Unnamed stream
COUNTY: Trinity**

The State Water Resources Control Board (State Water Board) hereby finds:

SUMMARY OF DETERMINATIONS

1. Based on the facts and information contained herein, Darrell Evenson and Jose Rodriguez (hereinafter the Diverters) are violating or threatening to violate requirements set forth in Water Code section 1831, subdivision (d)(6)(A):
 - a. State Water Board, Division of Water Rights (Division) staff observed the Diverters using water to cultivate approximately 4,185 cannabis plants on June 8, 2021, without a license issued by California Department of Food and Agriculture (CDFA) CalCannabis¹ as required by Chapter 6 of Division 10 of the Business and Professions Code (Bus. & Prof. Code, section 26060 et. seq.).
2. This Order directs the Diverters to cease and desist the activities causing the violation or threatened violation and to take the corrective actions described below.

¹ Three state programs merged to form the Department of Cannabis Control (DCC). Those programs were the Bureau of Cannabis Control in the Department of Consumer Affairs, the Manufactured Cannabis Safety Branch in the Department of Public Health, and CalCannabis Cultivation Licensing in the Department of Food and Agriculture. Effective July 12, 2021, DCC is the state program tasked with licensing, inspecting, and regulating cannabis activities in California. However, because the site inspection and records review for this matter occurred prior to July 12, 2021, this Order references CDFA rather than DCC when identifying the licensing agency.

CEASE AND DESIST ORDER AUTHORITY

3. Water Code section 1831, subdivision (a), provides that the State Water Board may issue an order to cease and desist from violation(s) or threatened violations(s) of the requirements described in section 1831, subdivision (d). Specifically, Water Code section 1831, subdivision (d)(6) provides:
 - (6) Any diversion or use of water for cannabis cultivation if any of paragraphs (1) to (5), inclusive, or any of the following applies:
 - (a) A license is required, but has not been obtained, under Chapter 6 (commencing with Section 26060) or Chapter 7 (commencing with Section 26070) of Division 10 of the Business and Professions Code.
 - (b) The diversion is not in compliance with an applicable limitation or requirement established by the board or the Department of Fish and Wildlife under Section 13149.
 - (c) The diversion or use is not in compliance with a requirement imposed under paragraphs (1) and (2) of subdivision (b) of Section 26060.1 of, and paragraph (3) of subdivision (a) of Section 26070 of, the Business and Professions Code.
4. Water Code section 1834, subdivision (a), provides that the State Water Board shall give notice informing the party that he or she may request a hearing not later than 20 days from the date on which the notice is received. If the party does not timely request a hearing, section 1834, subdivision (a) authorizes the State Water Board to adopt a cease and desist order based on the statement of facts and information set forth in the notice without a hearing. The State Water Board delegated this authority to the Deputy Director for Water Rights in Resolution 2012-0029. The Deputy Director has redelegated this authority to the Assistant Deputy Director for Water Rights.

STATEMENT OF FACTS AND INFORMATION

5. Property Ownership:
The violation and threatened violation at issue was observed on Trinity County Assessor Parcel Number (APN) 020-520-020-000 (hereinafter the Property). According to Trinity County property records, the Diverters jointly acquired the Property on or around February 14, 2020 and remain the owners of record.
6. Watershed Information:
The Property is located in the Mad River watershed. The Mad River is a fully appropriated stream system from the mouth of the Mad River at the Pacific Ocean upstream including all tributaries where hydraulic continuity exists, from which there is no water available for new appropriation from June 1 through October 31.
7. Cannabis Cultivation Season:
The average growing season for cannabis can vary depending on the type of cultivation and location. In northern California, the average growing season for outdoor growers is 190 days (Bauer et al., *Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds* (March 18, 2015) PLoS ONE 10(3): e0120016. doi:10.1371/journal, at

p. 15). Cannabis cultivation typically occurs between March and November with water use peaking in the summer and early fall (June-October).

8. Aerial Imagery Review:

On or around June 2, 2021, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. LandVision aerial imagery dated April 11, 2020 shows two graded areas on the Property, consistent with cannabis cultivation activities.
- b. LandVision aerial imagery dated August 15, 2020 shows a newly graded area on the Property with three greenhouses installed, consistent with cannabis cultivation activities.

9. Water Rights Records Review:

On or around June 2, 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 diversion and use that would allow diversion and use of water on the Property. Division staff found no records. Division staff has since verified that, as of December 22, 2021, the Diverters still do not possess any appropriative water rights permits or licenses, or filed any statements of diversion and use, which would allow the diversion of water from the observed PODs.

10. CalCannabis License Records Review:

On or around June 2, 2021, Division staff reviewed 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 such license(s). Division staff has since verified that, as of December 22, 2021, the Diverters still do not possess such licensure.

11. Inspection Basis:

On June 2, 2021, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant inspection of the Property due to illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. Division staff accompanied CDFW and the Trinity County Sheriff's Office, to conduct an inspection of the Property as authorized by the warrant on June 8, 2021. The Diverters were not present during the inspection, but multiple site operators were present on the Property. During the inspection, the Diverters' cannabis plants were eradicated by law enforcement staff.

12. Points of Diversion:

Division staff observed and documented six points of diversion (PODs) during the June 8, 2021 inspection.

- a. POD1 is a cistern located on an unnamed stream that is tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream of POD1. POD1 was actively diverting water to storage for irrigation of cannabis during the inspection. Water was flowing upstream of POD1 but was not observed flowing downstream of POD1.

- b. POD2 is a groundwater well that is pumped for cannabis cultivation. POD2 was not pumping water during the inspection.
- c. POD3 is a groundwater well that was not connected to a place of use during the inspection.
- d. POD4 is an impoundment, created by the placement of rocks and sediment in the stream channel, located on an unnamed stream that is tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream of POD4. POD4 was actively diverting water to storage for irrigation of cannabis during the inspection. Water was flowing upstream of POD4 but was not observed flowing downstream of POD4.
- e. POD5 is a cistern located on an unnamed stream that is tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream of POD5. POD5 was actively diverting water to storage for irrigation of cannabis during the inspection. Water was flowing upstream of POD5 but was not observed flowing downstream of POD5.
- f. POD6 is an off-stream reservoir that appears to collect rainwater and/or sheet flow. There were no pipes connected to POD6 during the inspection.

13. Inspection Findings and Observations:

During the June 8, 2021 inspection, Division staff observed water being diverted from three surface water PODs (POD1, POD4, and POD5) to irrigate cannabis. Division staff observed approximately 4,185 cannabis plants in seven greenhouse structures on the Property.

14. Confirmation of the Need for a CalCannabis License:

CalCannabis established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the Business and Professions Code. CDFA began issuing licenses on January 1, 2018. The type of cultivation license required is dependent on the size of cultivation (measured by total canopy or number of mature plants) and whether the cultivation uses no artificial lighting (i.e., outdoor), exclusively artificial lighting (i.e., indoor), or mixed-lighting (i.e. a combination of natural and artificial lighting). 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.

15. Inspection Report and Notice of Violation:

Subsequent to the June 8, 2021 inspection, Division staff prepared an Inspection Report (IR) dated July 29, 2021. The IR describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for the violations. Division staff sent the IR to the Diverters via certified mail on July 29, 2021. United States Postal Service records indicate that the Diverters picked up the IR from the post office on August 2, 2021.

16. Response to Notice of Violation:

On August 27, 2021, Jose Rodriguez submitted Division of Water Rights – Cannabis Compliance Response Portal Survey 436774. Mr. Rodriguez selected the response from the Cannabis Response Portal that stated, “I have never cultivated cannabis and do not plan to cultivate cannabis in the near future.” Mr. Rodriguez also provided photographic evidence showing POD4 removed, water tanks with secured lids, and two 300-gallon tanks loaded in a trailer for removal. There were also photos of the area around POD5; however, Division staff cannot determine what the photos of POD5 are showing. The images submitted with Survey 436774 do not demonstrate that the cistern observed during the inspection has been removed. No photographs of POD1 were provided in the submittal.

VIOLATIONS AND THREATENED VIOLATIONS

17. Based on the findings described above, including observations made during the inspection, the Diverters are violating or threatening to violate a requirement described in Water Code section 1831, subdivision (d)(6)(A):

- a. Any person engaged in commercial cannabis activity must obtain a state license from CDFA. (Bus. & Prof. Code § 26037.5, subd. (a); 4 Cal. Code Regs. §15000.1, subd. (a).) "Commercial cannabis activity" includes cultivation. (Bus. & Prof. Code § 26001, subd. (j); 4 Cal. Code Regs. § 15000, subd. (o).) The only exceptions to the cultivation licensing requirement are for persons cultivating not more than six living cannabis plants, or certain nonprofit entities in limited circumstances not applicable here. (Bus. & Prof. Code § 26037.5, subd. (b).) CDFA's cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.
- b. During the June 8, 2021 inspection, Division staff observed approximately 4,185 cannabis plants growing in seven greenhouses, with an approximate total area of 11,800 sq. ft., irrigated from surface water diversions at POD1, POD4, and POD5. Cannabis cultivation of the scale observed by Division staff on the Property required a CDFA commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.
- c. Although the Diverters took corrective action to address some violations documented in the IR, the Property still presents a threat of violation. The photographs submitted by Mr. Rodriguez on August 27, 2021 demonstrated that POD4 has been removed and two 300-gallon tanks were loaded in a trailer for removal; however, much of the diversion and cultivation infrastructure remains on the Property. The images of the area surrounding POD5 confirmed that POD5 had not been removed and no photographs were submitted of POD1. Additionally, the photographs demonstrate that several tanks and greenhouses are still present on the Property. The greenhouses were uncovered and empty in the photographs, but the Diverters appear to have a history of cultivation based on review of aerial imagery from 2020. Due to the Diverters' ownership of the Property and the relative ease by which a cannabis cultivation irrigation system can be re-established, there exists a threat that the Diverters will continue to divert or use water for commercial cannabis cultivation on the Property that requires a license under Chapter 6

(commencing with Section 26060) of Division 10 of the Business and Professions Code.

SECTION 1834 NOTICE REQUIREMENTS

18. On December 22, 2021, in accordance with Water Code section 1834, subdivision (a), the State Water Board's Division of Water Rights (Division), provided the Diverters with notice of the State Water Board's intent to issue an order determining that the Diverters are violating or threatening to violate requirements described in Water Code section 1831, subdivision (d)(6)(A).
19. The notice included the facts and information stated above, which describe the basis for the violations and threatened violations, and informed the Diverters that unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the State Water Board within 20 days after receipt of the notice, the State Water Board may adopt a cease and desist order based on the statement of facts and information set forth in the notice, without a hearing.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. The Diverters shall immediately cease and desist any diversion and use of water from the unnamed stream for cannabis cultivation on the Property until a CDFG commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code is obtained. The requirement to obtain a cultivation license also incorporates the requirement to obtain a water right pursuant to Business and Professions Code section 26060.1(a)(2)(A).
2. If the Diverters plan to cultivate in the future, an appropriate water right such as a cannabis Small Irrigation Use Registration must be obtained by the Diverters prior to any diversion or use of water for cannabis cultivation activities occurring on the Property.

ADDITIONAL INFORMATION

Consequences of Non-Compliance

Failure to comply with the requirements of this Order may result in additional enforcement, which may include the imposition of administrative civil liability or referral to the Attorney General to take further injunctive enforcement actions or seek civil liability, pursuant to Water Code section 1845. Civil liability, whether administrative or judicial, may be up to \$1,000 for each day in which the violation occurs, or up to \$10,000 for each day in which the violation occurs during drought.

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law.

Regulatory Changes

Nothing in this Order shall excuse the Diverters from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations, or water right permit requirements.

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse the Diverters from meeting any additional regulatory requirement that may be imposed by other local, state, or federal regulatory entities for corrective actions taken to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307) and an action by a regulatory agency for the protection of the environment (Cal. Code Regs., tit. 14, § 15308).

Effective Date

This Order is effective upon issuance, pursuant to Water Code section 1832.

Petition for Reconsideration

Any interested person or entity may petition the State Water Board for reconsideration of this Order pursuant to Water Code section 1122. Such petition shall be filed not later than 30 days from the date the State Water Board adopts this Order. Additional information regarding the process and procedures for Water Rights petitions may be found at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/petitions/

STATE WATER RESOURCES CONTROL BOARD