

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

**DIVISION OF WATER RIGHTS**

**WR XXXX-XXXX-DWR**

**[DRAFT] CEASE AND DESIST ORDER**

**In the Matter of Unauthorized Diversion by**

**Maria Lenta and Bruno Lenta**

**in**

**Lake County**

**on**

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

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

**SUMMARY OF DETERMINATIONS**

1. Based on the facts and information contained herein, Maria Lenta and Bruno Lenta (the Diverters) are violating or threatening to violate requirements set forth in Water Code section 1831, subdivision (d)(1) and (d)(6)(A)-(B):
  - a. During inspections on April 19, 2021 and September 1, 2021, State Water Board, Division of Water Rights (Division) staff observed that the Diverters had diverted water from an unnamed stream to seasonal storage without an appropriate water right, in violation of the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water subject to Division 2 of the Water Code.
  - b. State Water Board, Division of Water Rights (Division) staff observed the Diverters cultivating approximately 6,626 cannabis plants on April 19, 2021 and 1,251 cannabis plants on September 1, 2021 without a license issued by the California Department of Food and Agriculture CalCannabis, or the Department of Cannabis Control (DCC),<sup>1</sup> as required by Chapter 6 of

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<sup>1</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. This document references the licensing

Division 10 of the Business and Professions Code (Bus. & Prof. Code, section 26060 et. seq.).

- c. Division staff also observed and documented diversions of water for cannabis cultivation during the inspections on April 19, 2021, and September 1, 2021 in violation of an applicable requirement established by the State Water Board in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*<sup>2</sup> (Cannabis Cultivation Policy), pursuant to Water Code section 13149.
2. This Order directs the Diverters to cease and desist the activities causing the violations or threatened violations and to take the corrective actions described below.

### **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 violations or threatened violations 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 1831, subdivision (d)(1), authorizes the State Water Board to issue a cease and desist order in response to a violation or threatened violation of the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water subject to that division.

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agency in effect at the time of each review and/or inspection.

<sup>2</sup> 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.

5. 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**

6. Property Ownership and Operation:

The violations and threatened violations at issue were observed on Lake County Assessor Parcel Numbers 013-045-090-000 and 013-045-160-000 (collectively referred to as the Property). According to Lake County property records, Maria Lenta acquired the Property on or around October 1, 2014 and has owned the Property at all times relevant to the violations alleged herein. Based on information available to Division staff, Bruno Lenta has represented himself as the site operator and claimed to have performed the work on the Property. Additionally, based on documents submitted to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), Bruno Lenta has been identified as the operator of cannabis cultivation activities on the Property since-December 15, 2017.

7. Watershed Information:

The Property is located in Upper Putah (HUC 8), Upper Putah Creek (HUC 10), Bucksnot Creek (HUC12) watershed. Water for cannabis cultivation was diverted from an unnamed stream that is a tributary of Bucksnot Creek. Bucksnot Creek is a tributary of Putah Creek, which is designated as a Fully Appropriated Stream System from Monticello dam upstream, including all tributaries, from January 1 to December 31 of any year.<sup>3</sup> Putah Creek, below the Monticello Dam and Lake Berryessa, is a tributary of the Yolo bypass and ultimately the Sacramento River. The Sacramento River and its tributaries harbor many threatened and endangered species such as the Dela Smelt, Winter Run Chinook Salmon, Spring Run Chinook Salmon, Green Sturgeon, and Steelhead Trout. For over 20 years restoration work has been ongoing in the Putah Creek Watershed, Yolo Bypass and its tributaries. Non-governmental organizations have spent millions of dollars of state grant funds on restoration efforts that have included increased stream flows to support salmon, stream restoration, fish screening, surface, ground water monitoring and riparian vegetation and habitat enhancement.

8. 2017 State Water Board Cannabis Portal Entry:

On December 15, 2017, a consultant for the Property submitted an entry into

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<sup>3</sup> WR Order 96-002

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

9. 2018 Central Valley Water Board Notice of Applicability:

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

10. 2018 Site Management Plan:

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

11. 2019 Central Valley Water Board Inspection:

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

12. 2020 Central Valley Water Board Inspection Report:

On June 11, 2020, CDFW performed a search warrant inspection of the Property. Central Valley Water Board staff were also present at the time of inspection and provided a report, dated January 12, 2021. The Central Valley Water Board's inspection report identified Maria Lenta as the owner of the Property and Bruno Lenta as the cultivator and discharger of record listed on the NOA. The inspection report also discussed a phone call that Central Valley Water Board staff had on September 10, 2020, where Mr. Lenta stated that his

daughter will be taking over cultivation on the Property. The inspection report also referenced a September 29, 2020 email to Central Valley Water Board staff from Gina Carmella Lenta in which she stated she would work towards establishing a fully compliant cannabis cultivation site, and further indicated she would be taking over the operation from her father.

13. CDFW NOV June 11, 2020 inspection Notice of Violation (NOV):  
On August 12, 2020, Maria Lenta received a CDFW Notice of Violation (NOV), via certified mail that described the violations observed by CDFW on June 11, 2020. The on-stream reservoir, described as Point A in the CDFW NOV is located at 38.7027 -122.5578, which corresponds to the onstream reservoir location of POD5/POS10 documented by Division staff during the September 1, 2021 inspection.
14. 2020 CDFW LSAA Status:  
On October 29, 2020, Gina Lenta entered the CDFW EPIMS online enrollment system and created an account; however, to date, CDFW has not received a complete LSAA application for remediation from Gina Lenta, Bruno Lenta, or Maria Lenta.
15. March 18, 2021 Division Notice:  
On March 18, 2021, Division staff mailed a Notice of Potential Unauthorized Diversion and Failure to File a Statement of Water Diversions and Use to Maria Lenta. The Division's notice was issued based on CDFW's August 12, 2020 NOV that identified potential Water Code and Cannabis Cultivation Policy violations. The notice provided Maria Lenta information that she may be in violation of Water Code sections 5101, 1052, and requirements of the Cannabis Cultivation Policy. The notice also specified corrective actions, potential penalties associated with the observed violations and provided 30-days to contact Division staff with a response.
16. Landowner/Diverter Response to March 18, 2021 Division Notice:  
On March 22, 2021, Bruno Lenta called in response to the Division's notice issued on March 18, 2021. Mr. Lenta acknowledged receipt of the notice and stated that the onstream reservoir, identified as Point A in CDFW's NOV, was constructed on the Property 10-12 years ago and is not used for cannabis but is used for domestic gardens and other purposes. Mr. Lenta stated that Maria Lenta is the Property owner and that she may continue to cultivate cannabis. Mr. Lenta stated no one was on the Property at this time due to fires. Mr. Lenta also provided his contact information to Division staff.
17. Water Rights Record Review:  
On April 16, 2021, prior to the Division's inspection of the Property, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS) and found two existing Statements of Diversion and Use (Statements), S025849 and S025850, and one Small Domestic Use Registration (SDU), D032720, filed in

2016. The geo-referenced locations identified in the Statements (S025849 and S025850) and the SDU registration (D032720) do not correlate with the points of diversion observed by the Division staff during the April 19, 2021 inspection or the subsequent inspection on September 1, 2021. Division staff inspected the locations identified in the Statements and SDU and did not observe any points of diversion.

18. Commercial Cannabis Cultivation License Records Review:

On April 16, 2021, Division staff reviewed available CalCannabis license records for commercial cannabis cultivation, which provided license records on file as of February 11, 2021. Division staff found no licenses registered to the Diverters or the Property.

19. Well Records Review:

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

20. April 19, 2021 Inspection:

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

21. Points of Diversion:

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

- a. POD1 was a diversion sourced from what appeared to be groundwater, comprised of three perforated pipes placed vertically into the ground at a depth of approximately 20 feet about 30-40 feet from Bucksnot Creek, and in the confluence of where an unnamed stream enters the floodplain terrace of Bucksnot Creek. Water from POD1 was stored off-stream at point of storage (POS) 3 and conveyed by pump to be used for cannabis cultivation at place of use (POU) 1-2.
- b. POD2 was a spring box installed in an excavated area on a hillside where a spring naturally daylight and flows down a channel with defined bed and banks and is a tributary to Bucksnot Creek. POD2 was observed diverting water during the inspection. Water was

conveyed by pump to off-stream storage at POS4, which was then conveyed to POS5 and used at POU3 for cannabis irrigation.

- c. POD3 was a groundwater well that was drilled by Weeks Drilling and Pump. The Well Completion Report Number is e0182948S. POD3 conveyed water to POS3 to irrigate cannabis at POU1-2. The location of POD3 correlates to the well identified by Department of Water Resources WCR ID of WCR2016-00935.
- d. POD4 is a point of diversion, to off-stream storage located on an unnamed spring that is a tributary to Bucksnot Creek discovered on September 1, 2021 (Photos 14 - 17). POD4 consists of two holes excavated into springs lined with plastic tarps to catch and hold water in the holes. Both holes had 1-inch PVC pipes buried into the excavated earthen materials and placed into the pooled water to divert the water passively by gravity. The PVC pipes for both holes were manifolded to individual 1-inch black polyethylene water lines that convey water by gravity to storage at POS9. The unnamed spring was located near the stream channel down slope from POD2. The unnamed spring has a defined bed and banks downstream from POD4 (Photo 9 – 12). Water was not flowing in the stream channel at the time of the inspection. The unnamed spring channel continues off Property further downstream. POD4 was actively diverting water to storage at POS9 which was being used to fill storage at POS3. POD4 is located within APN 013-045-090-00 owned by Maria Lenta and appears to be riparian to the unnamed spring. Division staff did not observe a water measuring device at or near POD4.

22. Aerial Imagery Review:

On April 21, 2021, Division staff reviewed Google Earth Aerial Imagery dated January 28, 2015, showing similar greenhouse structures observed by Division staff at POU1-3 during the April 19, 2021 inspection.

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

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

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

On May 4, 2021, Division staff contacted Bruno Lenta to make him aware of the April 19, 2021 inspection and that the Property was not in compliance with the Water Code and Cannabis Cultivation Policy based on the conditions observed.

Division staff inquired about the construction of the cisterns at POD1. Mr. Lenta stated that POD1 was constructed by excavating in an area where he saw water daylighting at a stream bank on the Property.

25. Commercial Cannabis Cultivation License Records Review:

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

26. CDFW Aerial Flyover:

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

27. September 2021 Inspection Basis:

In August of 2021, Division staff were notified by CDFW of a second search warrant inspection of the Property. Prior to the inspection, Division staff conducted another review of eWRIMS records and again found no record of an appropriate water right on file with the State Water Board. On September 1, 2021, Division staff accompanied CDFW staff and the Lake County Sheriff's Office on a second warrant inspection of the Property. Division staff documented 1,251 cannabis plants being cultivated on the Property and additional Water Code and Cannabis Cultivation Policy violations. Neither the Diverters nor representatives of the Diverters were present during the inspection. During the inspection, the Diverters' cannabis plants were eradicated by CDFW Wardens and Lake County Sheriff deputies. At the conclusion of the inspection, Division staff left a Field Notice of Violation (Field NOV) at the Property, along with the NOV/IR from the April 19, 2021 inspection, dated August 5, 2021.

28. Points of Diversion:

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

- a. During the September 1, 2021, inspection, water from POD1 was conveyed to storage at POS3; however, the electric pump connected to the outlet line of POS3 was inactive at the time of the inspection. No water was being conveyed from POS3 to irrigate cannabis.
- b. POD2 was diverting water during the September 1, 2021, inspection. Water from POD2 was conveyed by pump to off-stream storage at POS4 and used at POU3-6 for cannabis cultivation irrigation. Water from POD2 was also used for domestic use at POU7. Division staff determined that POD2 was the main source of water used for cannabis cultivation on the Property at the time of the inspection as it was the only point of diversion conveying water to storage that was connected to a place of use where cannabis was irrigated. PODs 1,



3, and 4 conveyed water to POS3, which was not connected to a POU at the time of the inspection. Additionally, POD5/POS10 did not have water lines connected to a cannabis cultivation area.

- c. POD3 was connected to convey water to POS3.
- d. POD4 was comprised of two excavations into hillside springs, with plastic tarps lining the excavated area to retain water. Water at POD4 was conveyed by gravity to off-stream storage at POS9. POS9 was observed conveying water to POS3 by gravity, but no water line was present or observed by Division staff that would be used to convey water from POS3 to irrigate cannabis.
- e. POD5/POS10 was a crescent-shaped earthen dam constructed in an unnamed stream channel to impound water in an on-stream reservoir. The unnamed stream is tributary to Bucksnot Creek and has defined bed and banks upstream and downstream of POD5/POS10. This observed location of POD5/POS10 corresponds to CDFW's observations documented in the CDFW August 12, 2020 NOV described in Point A. POD5/POS10 was observed to be storing water during the September 1, 2021, inspection. POD5/POS10 was not connected to a water conveyance system on the Property at the time of inspection. Division staff did not observe a direct use of water diverted and stored at POD5/POS10 at the time of inspection.

29. Additional Water Rights Records Review:

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

30. Additional Cannabis License Records Review:

On September 2, 2021, Division staff again reviewed DCC license records for commercial cannabis cultivation to determine if there was a license on file that would authorize commercial cannabis cultivation on the Property and found no record of a license. Division staff checked again on November 16, 2022 and did not find any such licenses.

31. Additional Aerial Imagery Review:

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

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

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

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

Subsequent to the September 1, 2021, inspection, Division staff prepared an NOV/IR that described the observations made by Division staff during the inspection. The NOV/IR identified the violations relating to Division staff's observations, and recommended corrective action for each alleged violation. Division staff mailed the NOV/IR to Maria Lenta via certified mail on October 21, 2021. The NOV/IR was subsequently returned to the Division. On October 22, 2021, Division staff emailed Bruno Lenta both the NOV/IR from the April 19, 2021 inspection and the NOV/IR for the September 1, 2021 inspection. Mr. Lenta did not confirm he received copies of both NOV/IRs.

34. Aerial Imagery Review:

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

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

35. Subsequent Landowner/Diverter Response:

On January 19, 2022, Bruno Lenta called Division staff to discuss compliance

actions so he could sell the Property. During the call, Division staff sent Mr. Lenta the August 5, 2021 and October 21, 2021 NOV/IRs by email and verbally confirmed on the phone that he received them. Division staff instructed Mr. Lenta to contact CDFW and the Central Valley Water Board to determine the appropriate actions for POD5/POS10. Mr. Lenta stated he would be willing to file for a Small Domestic Use Registration for POD5/POS10.

36. On June 30, 2022, a real estate agent representing the Lenta family called Division staff to discuss compliance actions to remediate the Property. Division staff sent the agent both inspection reports from 2021 and explained the compliance options for the alleged violations. The agent stated that the Property would be sold as a homestead property and that no cannabis cultivation would occur on the Property after it is sold. She further stated that Maria Lenta would contact the Division to discuss the alleged violations.
37. On July 8, 2022, Maria Lenta called Division staff and confirmed that she is the owner of the Property. Division staff forwarded the 2021 inspection reports to Ms. Lenta via email and received verbal confirmation that she received the reports. Division staff explained the alleged violations and required compliance actions. Ms. Lenta claimed neither she nor Bruno Lenta had any indication that cannabis was being cultivated on the Property and that she has been in Mexico for the last 10 years. Ms. Lenta confirmed that POD5/POS10 was used for domestic gardening prior to a fire that burned the Property and destroyed the residence/garden. Ms. Lenta stated that she will be contracting workers to remediate the Property but stated that she has no money, and that the Property is her only asset.
38. Confirmation of the Need for a Commercial Cannabis 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 and began issuing licenses on January 1, 2018. The only exceptions to the cultivation licensing requirements 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).) Based on the review of aerial images and Division staff's observations during the April 19, 2021 and September 1, 2021 inspections, 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.

### **VIOLATIONS AND THREATENED VIOLATIONS**

39. Based on the findings described above, including observations made during the inspections, the Diverters are violating or threatening to violate the following requirements described in Water Code section 1831, subdivision (d)(1):
- a. Water Code section 1052, subdivision (a), provides that any diversion

or use of water subject to the State Water Board's authority under Division 2 of the Water Code, without proper State Water Board authorization, is a trespass. All water flowing in any natural channel is public water of the State and subject to appropriation in accordance with the Water Code, as provided in section 1201 of the Water Code. Pursuant to Water Code section 1225, no right to appropriate or use water subject to appropriation shall be initiated or acquired except in compliance with Division 2 of the Water Code.

- b. Violation: During the September 1, 2021 inspection, Division staff documented an onstream reservoir at POD5/POS10. POD5/POS10 diverts from an unnamed stream with defined bed and banks upstream and downstream of the point of diversion. POD5/POS10 was not connected to a water conveyance system on the Property at the time of inspection; however, Bruno Lenta has stated the reservoir is used for domestic gardening and other purposes. No water was flowing in the upstream channel or downstream of POD5/POS10 at the time of the inspection. Accordingly, it is reasonable to conclude the Diverters diverted water from the unnamed stream to fill POD5/POS10 prior to the September 1, 2021 inspection when water was flowing in the upstream channel. Division staff calculated the total water storage capacity of POD5/POS10 to be approximately 170,098 gallons with only approximately 1,705 gallons being stored in POD5/POS10 at the time of the inspection. Diversion of surface water into seasonal storage requires an appropriative water right to be issued by the State Water Board. The Diverters do not have an appropriative water right on file with the State Water Board that would authorize the diversion of water for seasonal storage at POD5/POS10.
- c. Threatened Violation: Based on the findings described above, there is a threat of continued trespass resulting from the unauthorized diversion and use of water seasonally stored at POD5/POS10. The onstream reservoir has been visible in aerial imagery since Maria Lenta purchased the Property in October 2014. Bruno Lenta has acknowledged use of the reservoir for domestic gardening and other purposes. The Diverters were notified about the prohibition in Water Code section 1052 in the March 18, 2021 Notice. Additionally, this violation was noted in the October 21, 2021 NOV/IR that was emailed to Mr. Lenta on October 22, 2021 and January 19, 2022, and that was emailed to Maria Lenta on July 8, 2022. To date, the Diverters have not obtained an appropriative water right or demonstrated corrective action has been taken to eliminate the unauthorized diversion and use of water at POD5/POS10. Due to the continued presence of the onstream reservoir, there exists a threat the Diverters will continue to divert water into the reservoir for seasonal storage.

40. Based on the findings described above, including observations made during the inspections, 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. § 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. § 26037.5, subd. (b).) The cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.
- b. Violation: Based on Division staff’s observations during the April 19, 2021 and September 1, 2021 inspections, staff determined that the observed scale of cannabis cultivation occurring on the Property required a commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code, as more than six plants were being cultivated. Division staff observed approximately 6,626 cannabis plants being irrigated from surface water diversions at POD2 during the April 19, 2021 inspection and 1,251 cannabis plants being irrigated from POD2 during the September 1, 2021 inspection. Division staff examined available CalCannabis and DCC licensing records on April 16, 2021, August 27, 2021, October 25, 2021, and April 28, 2022 and did not find any record that a cultivation license had been issued for the activities observed on the Property.
- c. Threatened Violation: Based on the findings described above, Division staff determined there is a threat of water diversion and use for cannabis cultivation on the Property. Aerial imagery, since Maria Lenta purchased the Property in October 2014, show a consistent use of the Property for cannabis cultivation. Based on filings with the Central Valley Water Board, Bruno Lenta has been identified as the cultivator for cannabis activities occurring on the Property since December 15, 2017. Active cannabis cultivation activities on the Property were confirmed by CDFW in 2020 and by the Division in 2021. During the Division’s inspections on April 19, 2021 and September 1, 2021, POD2 was documented to be a source of water for irrigation of cannabis. Maria Lenta remains the owner of record for the Property. A threat of diversion for commercial cannabis cultivation that requires a license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code exists based on the Diverters’ ownership and operation of the Property, aerial imagery indicating cultivation activities have been occurring for multiple years, and the

relative ease by which a cannabis cultivation irrigation system can be re-established.

41. 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)(B):
- a. Division staff documented that the Diverters failed to comply with an applicable requirement established by the State Water Board in the Cannabis Cultivation Policy pursuant to Water Code section 13149. The Cannabis Cultivation Policy, Attachment A, Section 2, Term 66, requires that all surface water diversions for cannabis cultivation comply with the surface water Numeric and Narrative Instream Flow Requirements found in the Cannabis Cultivation Policy. Numeric and Narrative Instream Flow Requirements No. 4 prohibits surface water diversions for cannabis cultivation activities between April 1 through October 31 of each calendar year.
  - b. Violation: During the April 19, 2021 inspection, Division staff documented surface water diversion from POD2 for cannabis cultivation during the forbearance period in violation of Term 66 of Section 2 of the Cannabis Cultivation Policy. When Division staff returned to inspect the Property on September 1, 2021, they again documented surface water diversion from POD2 for cannabis cultivation during the forbearance period in violation of this requirement.
  - c. Threatened Violation: Aerial imagery from January 2015 through 2019 depict greenhouses on the Property. Additionally, active cannabis cultivation was observed on the Property in 2020 and 2021 with plants being irrigated from surface water diversions during the forbearance period. The confirmed use of the greenhouses for cannabis cultivation in 2020 and 2021 suggests the greenhouses were likely used for cannabis cultivation on the Property in prior years when the greenhouses are visible in aerial imagery. In light of the aerial imagery indicating a history of cannabis cultivation on the Property and documented surface water diversions during the forbearance period on more than one occasion, there exists a threat that the Diverters will continue to cultivate cannabis on the Property and divert surface water during the forbearance period in violation of this requirement.

### **SECTION 1834 NOTICE REQUIREMENTS**

42. On, December 1, 2022, in accordance with Water Code section 1834, subdivision (a), the 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)(1) and (d)(6)(A-B).

43. 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 Water Code, that:

1. The Diverters shall immediately cease and desist any diversions from the unnamed stream to seasonal storage and any use of water seasonally stored in POD5/POS10 until an appropriate water right is obtained that authorizes the Diverters to seasonally store water diverted from the unnamed stream.
2. The Diverters shall immediately cease and desist any diversion and use of water from the unnamed spring for cannabis cultivation until a 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, subdivision (a)(2)(A).
3. If the Diverters intend to seasonally store water or to cultivate cannabis, the Diverters shall submit a draft compliance plan for review and approval by the Division within 30 days of the date of adoption of this Order. If the Diverters intends to cultivate, the compliance plan must detail what actions will be taken to ensure that a commercial cannabis license is obtained prior to any diversion and use of water from the unnamed spring and that water will not be diverted from the unnamed spring during the surface water dry season forbearance period (April 1 - October 31) for irrigation of cannabis. The draft compliance plan must include installation of adequate water storage to enable the Diverters to divert during the non-forbearance period and store water at a capacity sufficient to irrigate through the forbearance period without diverting from surface water. If the Diverters intend to seasonally store water diverted from the unnamed stream or spring, the draft compliance plan must include a timeline for obtaining an appropriate water right, such as a Cannabis Small Irrigation Use Registration. The Diverters must ensure that any actions contained in the draft compliance plan comply with all applicable local, state, and federal requirements. The Diverters should consult the Central Valley Water Board and CDFW regarding plans for POD5/POS10. Within 60 days of the final compliance plan approval date, the Diverters must implement the actions contained in the compliance plan. If the Diverters anticipate

implementation of the compliance plan will require additional time beyond 60 days, then the compliance plan shall propose an alternative date of completion.

## **ADDITIONAL INFORMATION**

### **Consequences of Non-Compliance**

Failure to comply with the requirements of this Order may result 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.

STATE WATER RESOURCES CONTROL BOARD

DRAFT