

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

ORDER WR 2026-0013-EXEC

In the Matter of Petition for Reconsideration of

Jose M. Alvarez and Vincente Lopez

Regarding Imposition of Administrative Civil Liability under State Water Board Order
WR 2006-0001-AHO for Violations on APN 108-213-030-000

SOURCE: Tomki Creek, Unknown Hauled Water Source(s)

COUNTY: Mendocino

ORDER DENYING RECONSIDERATION¹

BY THE EXECUTIVE DIRECTOR:²

1.0 INTRODUCTION

On May 5, 2026, the Administrative Hearings Office (AHO) of the State Water Resources Control Board (State Water Board or Board) issued State Water Board Order WR 2006-0001-AHO (Order 2006-0001-AHO) imposing a fine of \$18,500 for violation of the requirements of the State Water Board's Cannabis Cultivation Policy –

¹ The State Water Resources Control Board (State Water Board or Board) is directed to order or deny reconsideration on a petition within 90 days from the date on which the Board adopts the decision or order. (Wat. Code, § 1222.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the Board is not divested of jurisdiction to act upon the petition simply because it failed to complete its review of the petition on time. (State Water Board Order WR 2009-0061 at p. 2, fn. 1; see *California Correctional Peace Officers Ass'n v. State Personnel Board* (1995) 10 Cal.4th 1133, 1147-1148, 1150-51; State Water Board Order WQ 98-05-UST at pp. 3-4.)

² State Water Board Resolution 2023-0036 delegates to the Executive Director the authority to conduct and supervise the activities of the State Water Board, subject to exceptions not applicable here. This Order falls within the scope of the authority delegated under Resolution 2023-0036.

Principles and Guidelines for Cannabis Cultivation (Cannabis Cultivation Policy), established by the State Water Board pursuant to Water Code section 13149, and for the diversion and of water for cannabis cultivation without the required license from the Department of Cannabis Cultivation pursuant to Business and Professions Code section 26060 et seq. On May 28, 2025, Messrs. Jose M. Alvarez and Vincente Lopez (hereinafter Petitioners) submitted a timely petition for reconsideration of Order 2006-0001-AHO, asserting that they were denied a fair hearing, that there is evidence not considered despite reasonable diligence by the Petitioners, and that these issues may have resulted in an error of law. Their claims, set forth in more detail below, rely in large part on their lack of counsel and on how the violation related to unlicensed diversion was established, when diversion was not directly observed. This order denies reconsideration on all counts.

2.0 GROUNDS FOR RECONSIDERATION

Any person interested in any application, permit or license affected by a State Water Board decision or order may petition for reconsideration of the decision or order. (Cal. Code Regs., tit. 23, § 768.³) The legal bases for reconsideration are: (a) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (b) the decision or order is not supported by substantial evidence; (c) there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; or (d) error in law. (*Ibid.*)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (§ 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board may deny the petition if the State Water Board finds that the decision or order in question was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (Id., subd. (a)(2)(A)-(C).)

³ Unless otherwise stated, all references are to California Code of Regulations, title 23.

3.0 FACTUAL AND PROCEDURAL BACKGROUND⁴

This case arises from alleged violations of the Cannabis Cultivation Policy and of the Department of Cannabis Cultivation's diversion licensing requirements. (See Bus. & Prof. Code, § 26060 et seq). The Division of Water Rights alleged these violations after staff inspected a Mendocino County property belonging to Petitioners on June 8, 2023 and August 15, 2024. After discussions between Division staff and Petitioners in the intervening period, the Division's Acting Assistant Deputy Director of the Permitting and Enforcement Branch issued a draft Administrative Liability Complaint in the amount of \$18,500. Petitioners requested a hearing, which was first noticed on June 25, 2025, with a notice amendment issued on September 11, 2025.

The Division's Prosecution Team submitted evidence and a witness list on July 28, 2025, in accord with the deadline in the original notice.

At a July 31, 2025, pre-hearing conference, the Hearing Officer recommended that petitioners retain counsel for the proceeding, although this was not required. (July 31, 2025 Pre-hearing Conference Recording, at 16:38 – 18:12. ⁵) Upon Mr. Lopez's assertion that he could not afford counsel, the Hearing Officer requested that the Board's list of lawyers who offer pro bono representation be sent. (*Id.* at 31:04 – 32:52.) Mr. Lopez affirmed that he would discuss the issue with Mr. Alvarez. (*Id.* at 18:04-18:07.) Additionally at the pre-hearing conference, the Hearing Officer and Petitioner Lopez discussed the deadline for submitting a list of witnesses, including if the respondents wished to appear as witnesses themselves. (*Id.* at 18:16-22:42.) Mr. Lopez agreed to submit the witness list one day earlier than the noticed date, on the Prosecution Team's request. (*Id.* at 21:48-22:45.)

⁴ Order 2006-0001-AHO, section 2, provides detailed information on the factual and procedural history of this matter. (*Id.* at pp. 2-8.) This order on reconsideration provides an abbreviated summary for context, and adds additional details where these are relevant to the petition for reconsideration.

⁵ Hearing recordings, using hours and minutes format, are in the "Recordings and Transcripts" subfolder in the Hearing Documents folder in the administrative record for this proceeding.

On August 1, 2025, in response to receiving the witness list, Petitioners emailed the AHO requesting that the Board postpone the hearing, as they were seeking counsel and the contacted attorneys would not be available until after September or October.⁶

An amended notice⁷ was issued September 11, 2025, setting forth a second pre-hearing conference, a postponed hearing date, a postponed date for Petitioners to submit a witness list, and a briefing deadline. Neither Petitioner submitted a witness list by the new deadline of October 23, 2026, or attended the second pre-hearing conference, on November 6, 2025.

Both Petitioners attended the November 13, 2025 hearing. Throughout the cross-examination periods at the hearing, the Hearing Office assisted Petitioners in formulating their concerns into questions to the prosecution witnesses, as necessary. (See Hearing Recording, at 54:13-1:20:36, 1:47:33-1:55:13.) Prosecution witnesses and evidence submitted pre-trial address the core issues raised in the instant petition, such as exactly what the Division's inspector observed at his inspection (See e.g. Exhs. PT-9; PT-62, paragraph 8⁸), confirmation that he did not observe water being actively diverted (See e.g. Exh. PT-62, paragraph 8.a), a description of how he determined from the observations that water had been diverted (See e.g. Exh. PT-9), testimony and evidence on the steep grade between the Tomki Creek and the area under cultivation (See e.g. Exh. PT-9; Hearing Recording 1:13:34-1:20:10), how Division determined the water amounts necessary for cannabis cultivation (See e.g. Hearing Recording, 55:06-57:07; Exh. PT-9, pp. 12-13), that the literature from which water application per plant was drawn included consideration of indoor vs. outdoor cultivation (See e.g. Hearing Recording, at 58:35 - 1:04:03), that the lowest amounts in the peer reviewed literature

⁶ These letters are saved in the Correspondence subfolder in the Hearing Documents folder in the administrative record for this proceeding, as "2025-08-01 V. Lopez email to AHO.pdf" and "2025-08-01 J. Alvarez Email to AHO.pdf."

⁷ The notice stated that the postponement was not in response to Petitioners' ex parte request for a later hearing date.

⁸ References in this order to exhibits are to exhibits introduced during the hearing for this proceeding. These exhibits are filed in a folder titled "Parties' Hearing Exhibits" within the Hearing Documents folder in the administrative record for this proceeding.

were used (See e.g. *id.* at 1:01:12 – 1:01:27), how the Division calculated the amount of water stored (See e.g. *id.* at 1:10:17 – 1:12:39), and the manner in which rainwater was considered. (See e.g. *id.* at 1:11:17 – 1:11:54; 1:50:15 – 1:54:27.)

Petitioners submitted a document accepted as a closing brief on November 19, 2026, and the Prosecution Team submitted a closing brief on December 5, 2026. (See Order 2006-0001-AHO, at p. 7.) The Administrative Hearings Office issued Order 2006-0001-AHO on May 5, 2026. Petitioners filed a petition for reconsideration on May 28, 2025.

4.0 DISCUSSION

4.1 Summary of Petition for Reconsideration

The petition requests reconsideration on three grounds. First, the petition contends that there was an “irregularity in the proceedings, ruling or abuse of discretion that prevented a fair hearing” because their lack of legal counsel prevented their meaningful participation. (Petition at pp. 1-2.) It alleges that lack of counsel prevented them from effectively responding to allegations, objections or violations, and prevented them from ensuring the “proper legal verification” of the claims against them. (*Id.* at p. 2.) It further alleges that the legal resource disparity between Petitioners and the prosecution team resulted in such a disadvantage that the hearing was not fair. (*Ibid.*)

Second, the petition asserts that there is evidence that could not have been produced with reasonable diligence. (*Id.* at p. 2.) The petition asserts that Petitioners’ failure to produce evidence was due to financial and procedural limitations beyond their control. (*Ibid.*) It further asserts that this may have resulted in an incomplete record or in relying on information without Petitioners’ input, and that this situation is unfair and prejudicial. (*Ibid.*) Petitioners submitted a file of materials, the contents of which is detailed in section 4.3.

Third, the petition asserts that the order contains errors in law because of the aforementioned allegations result in an order influenced by irregularities and therefore appropriate for reconsideration. (*Id.*, at pp. 2-3.)

Additionally, the petition states that it is not clear if water diversion occurred at all because that assertion was based only on equipment found at the site, and based on a letter from irrigation companies not in evidence that showed different amounts of water needed for cannabis plants. (*Id.*, at p. 1.) It further asserts that stored water from winter rain was not considered in the decision. (*Ibid.*) The petition fails to elaborate on these claims in the points and authorities section of their petition, but this order addresses them under sections 4.3 (Production of Evidence) and 4.4 (Error in Law).

Finally, Petitioners assert that they “acted in good faith to correct alleged violations, but faced obstacles such as county, wildlife, winter conditions, and lack of funds.” (*Id.* at p. 1.)

To the extent the Petitioners intended to raise additional arguments, or intend for the disparate statements in the submittals to be interpreted differently, the petition fails to raise such issues as substantial issues related to the causes for reconsideration, and the claims are hereby dismissed under section 770, subdivision (a)(1).

4.2 Lack of Counsel

Petitioners provide no reference or authority for the assertion that the respondent in an administrative liability hearing requires a lawyer in order to ensure a fair hearing, to provide meaningful participation in a hearing, or that a lack of legal representation results in error in law.⁹ Similarly, the petition provides no reference or authority for the assertion that the respondent to an administrative civil liability hearing not having counsel while the agency does results in an unfair hearing. No such requirements appear in either the Water Code provisions governing the Board’s imposition of administrative civil liability (Wat. Code, §§ 1055-1055.5), the operation of the Administrative Hearings Unit (Wat. Code, §§ 1110-1114), the Board’s hearing authority (Wat. Code, § 183), or the provisions governing adjudicative proceedings (Wat. Code, §

⁹ Petitioners do not articulate a particular error in the decision resulting from lack of counsel. Instead, the petition raises general concerns that counsel may have been able to identify concerns with the case against them. This aspect of the “legal error” analysis is addressed in this section, not under Section 4.4 Error in Law.

1110, subd. (c) [generally adopting the requirements of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code]). The State Water Board regulations governing adjudicative proceedings also contain no such requirements. (§ 648 et seq.) The Administrative Adjudication Bill of Rights, Government Code sections 11425.10 to 11425.60, also contains no such requirement. The State Water Board is not aware of, and the petition does not raise any argument concerning, any state or federal constitutional standard, or of any other applicable statutory or regulatory requirement that counsel be provided in hearings concerning imposition of administrative fines, regardless of whether the agency has legal representation.

At the administrative hearing on November 13, 2025, Petitioners engaged in cross-examination of Prosecution Team witnesses and submitted policy statements. The Hearing Officer assisted Petitioners in formulating their issues into questions for the Prosecution Team witnesses. While Petitioners missed the deadline to submit evidence, the opportunity to identify witnesses and to submit evidence was provided: the hearing notice set forth the requirements and deadlines, and the Hearing Officer reviewed these requirements in the pre-hearing conference on July 31. The Prosecution Team identified witnesses and submitted evidence on July 28, 2026, approximately three months before the extended deadline for the Petitioners to submit their witness lists and evidence.

Petitioners thus had the opportunity to address the evidence against them, to confront witnesses and to provide a defense, which they did. Petitioners elected not to submit timely evidence, to bring witnesses, or to obtain legal representation, despite the opportunity to do so. These decisions on how to participate in the hearing which they requested do not render the hearing unfair or result in de facto legal error. The State Water Board declines to find that the lack of representation resulted in an unfair hearing or legal error in State Water Board Order 2026-0001-AHO.

4.3 Production of Evidence

Petitioners state that they were unable to produce evidence at trial, despite reasonable diligence, because of resource constraints and unarticulated procedural constraints beyond their control, and petition for reconsideration on these grounds.

Petitioners' petition for reconsideration included a pdf attachment with four documents. This order on reconsideration assumes that the evidence the petition states could not be produced at trial is contained the documents in the pdf, which are described below¹⁰:

1. An untitled, undated two page document signed by Mr. Alvarez that:
 - calculates the total growing cycle water use of 1,645 indoor greenhouse cannabis plants using a 34 gallon/plant water duty as 56,000 gallons.
 - asserts that this quantity is less than the storage on the property, and
 - asserts that the storage was from rainwater.
2. A copy of what appears to be an October 9 email to Mr. Alvarez signed by a Dennis O'Grady, Wyatt Irrigation Supply Ukiah, estimating – based on Mr. Alvarez's statements that plant usage is .75 gallons per plant per watering, and that watering occurs every other day for approximately 90 days – that 33.75 gallon per plant use over a 90-day growing season would be the average use under those conditions, with further caveats.
3. An undated document under the presumed letterhead of DripWorks, with the tagline "quality irrigation services since 1991" that estimates usage of 30 gallons per plant for a growing cycle, identifying Jose Alvarez as the customer and Dmitry Klimko as the employee.
4. Two documents that appear to be screenshots or printouts from Amazon.com that show above-ground swimming pools: one for a rectangular pool of size 32 ft x 16 ft x 52 in, with a stated capacity of 14,364 gallons, and one for a round pool of size 264 in x 264 in x 52 in, with a stated capacity of 10,668 gallons. The

¹⁰ To the extent the petition intended to refer to other unmentioned and unsubmitted evidence, any such claims are dismissed for failure to raise a significant issue related to grounds for reconsideration under section 770, subsection (a)(1).

sizes and capacities are circled. While the screenshots are undated, they indicate that delivery of the pools would be possible by November 14-18, and that any returns would be possible until January 31, 2026.

The petition does not articulate why the evidence could not have been produced in accord with the hearing requirements: the explanation provided – the lack of legal counsel issue addressed above, and unnamed “financial and procedural limitations beyond our control” is insufficient as an explanation. (*Id.* at p. 2.) The petition's statements on page one regarding obstacles in addressing the violations, “county, wildlife, winter conditions, and lack of funds” do not appear to be intended as statements regarding an obstacle to producing evidence, and, to the extent they are, fail to raise a substantial argument as to evidence production.

Further, nothing on the face of the evidence itself suggests that it could not have been provided in a timely manner with reasonable diligence. The only dated item, the email described as document number 2 in the list above, is dated two weeks prior to the deadline for submitting witnesses. Gathering product information from amazon, as appears to have been done for document number 4, could easily have been done at any time. Document number 1, which was signed and presumably created by Mr. Alvarez, refers to information from the Prosecution team's evidence, from the October 9 email, and from the amazon swimming pool information. As noted, both these references were available before the submission deadline, and Mr. Alvarez controlled the timing of incorporating them into document number 1. There is nothing that indicates whether the final document number 3, the undated memo from DripWorks, was created before the hearing deadlines, but as it appears to be from a company in existence since 1991, and it was written to Mr. Alvarez, that there is no reason it could not have been obtained prior to the submission deadline.

A letter from Mr. Alvarez dated December 2, 2023, contain assertions by Mr. Alvarez concerning the water needs of cannabis plants under drip irrigation that are similar to those in the attached documents, further indicating that this information was available well before the hearing, and before the proposed ACL was issued (see Exh. PT-22, p. 2

[“Per my investigation the water use on green house for cannabis plants with Drip irrigation system may use about 2 gallons per week per plant based on irrigation system experts...”]), and this topic was addressed on cross-examination. This further undercuts the claims that reasonable diligence could not have produced the evidence attached.

In sum, the evidence attached to the petition could have been produced with reasonable diligence. The State Water Board declines to reconsider its decision based on the assertion that there was evidence that could not have been produced with reasonable diligence.

4.4 Error in Law

While it is not clearly articulated, Petitioners’ statement that “It is unclear if water diversion actually happened; it may have been speculation or based only equipment found at the site,” could be interpreted as an allegation that the evidence was insufficient to sustain a finding of unlawful diversion. As discussed below, there is sufficient evidence to support the determination of unlawful diversion.

For example, the Prosecution Team’s inspector noted the presence of an operable and fueled system of pumps and water lines connected a point of diversion on Tomki Creek to partially full water storage facilities, and testified that it appeared to be sufficient to divert water. (Exh. PT-09; Hearing Recording, at 1:13:34 – 1:19:54.) The inspector further noted the difference in water quality between storage facilities connected to the diversion infrastructure and the storage facility not so connected. (Hearing Recording, at 1:11:00 – 1:11:54.) Additionally, hearing testimony and exhibits provide evidence that even using the low end of the range of cannabis watering from a peer reviewed paper, there was only sufficient water stored to last 16 days, and that therefore use of additional water would be necessary to sustain the 1,645 cannabis plants being grown both in greenhouses and outdoors at the time of the June 8, 2023 inspection. (Hearing Recording, 41:32-41:41; 55:06-57:07, 58:35 - 1:04:03, 1:10:17 – 1:12:39; Exh. PT-9.) The record provides sufficient evidence from which to draw the inference that a diversion occurred.

Additionally, the petition's statement that rainwater was not taken into account is erroneous. Observations of rainwater and an explanation of why the rainwater was not quantified are in the record and were the subject of Petitioner's cross-examination. (Hearing Recording, at 1:11:00 – 1:11:54, 1:50:15 – 1:54:27.)

5.0 CONCLUSION

As described above, Petitioners allegations regarding lack of fair hearing, the availability of additional evidence that could not have been considered with reasonable diligence, and error in law are unpersuasive. State Water Board Order WR 2026-0001-AHO is appropriate and proper, and the Board denies the petition for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

The petition for reconsideration in this matter is denied.

September 18, 2026

Dated



Eric Oppenheimer
Executive Director