

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

In the Matter of Allegations of Violations of the Following: Failure to File a Statement of Water Diversion and Use (Water Code section 5101), Cannabis Cultivation Policy Requirements Adopted Pursuant to Water Code section 13149, and Diversion or use of Water for Cannabis Cultivation for which a License is Required (Water Code section 1847 (b)(4)),  
by

**Trisha Starback, aka Spring Starback, as Settlor and Trustee for the Spring Starback Trust, & Matthew Feigel  
Mendocino County  
APN 037-100-06-00**

**TRISHA STARBACK, ALSO KNOWN AS SPRING STARBACK, AS SETTLOR AND TRUSTEE FOR THE SPRING STARBACK TRUST, & MATTHEW FEIGEL (HEREINAFTER REFERRED TO AS “DIVERTERS”) ARE HEREBY GIVEN NOTICE THAT:**

1. The State Water Resources Control Board’s (State Water Board’s) Division of Water Rights (Division) alleges that the Diverters committed the violations described below, relating to the diversion or use of water for cannabis cultivation activities on Mendocino County Assessor Parcel Number 037-100-06-00 (Property) during 2021.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverters imposing liability in the total amount of \$3,250.
3. **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**

4. Violation 1: The Diverters are alleged to have failed to submit a Statement of Water Diversion or Use (Statement) to the State Water Board for the diversion and use of water during 2020, in violation of Water Code section 5101, which requires each person who diverts water to file a statement of his or her diversion or use with the State Water Board prior to July 1 of the succeeding year.
5. Violations 2-7: The Diverters are alleged to have violated six requirements of 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, by doing the following: diverting water for cannabis cultivation during the surface water forbearance period (Section 2, Term 66); failing to install and maintain measuring devices for surface water diversions and retaining daily diversion records (Section 2, Term 82); failing to use water storage tanks equipped with a float valve (Section 2, Term 92); failing to ensure that all vents and other openings on water storage tanks are designed to prevent entry and/or entrapment of wildlife (Section 2, Term 93); failing to maintain daily records of all water used for irrigation of cannabis (Section 2, Term 98); and failure to perform weekly inspections or repairs of irrigation connections (Section 2, Term 99).

6. Violation 8: The Diverters are alleged to have diverted and used water for cannabis cultivation for which a license is required but has not been obtained under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.

### **BACKGROUND AND FACTUAL BASIS**

7. Property Ownership and Operation:

According to Mendocino County property records, Trisha Starback acquired the Property on or around September 12, 2002. On or around May 1, 2019, the Property was transferred to the Spring Starback Trust, with Spring Starback identified as the trustee. According to the Property deed, Trisha Starback is also known as Spring Starback.

Matthew Feigel was present at the time of the August 30, 2021 inspection and was interviewed by Division staff. During the interview, Mr. Feigel told Division staff that he was not the Property owner, and that the Property owner does not live on the Property nor were they present at the time of inspection. During a subsequent phone call with Mr. Feigel on November 29, 2021, Division staff discovered that Mr. Feigel was the tenant and was responsible for the cannabis cultivation activities on the Property. Additionally, on December 17, 2021, Mr. Feigel stated in an email to Division staff that he has been a tenant on the Property since approximately 2009.

8. Watershed Information:

The Property is located in the Ryan Creek watershed (#1111.420402), tributary to Outlet Creek, which is tributary to the upper Main-stem Eel River. The upper Main-stem Eel River is a state and federal designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean. The Wild and Scenic River designation precludes the State Water Board from accepting any application to appropriate water from the Main-stem Eel River from January 1 through December 1 of any year. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093.50 et seq., it is

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<sup>1</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.

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. The 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. Water Rights Records Review:

On August 27, 2021, prior to the inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS) and found no evidence of an existing Statement, water right permit, license, or registration on file.

10. DCC License Records Review:

On August 27, 2021, prior to the inspection, Division staff reviewed Department of Cannabis Control (DCC)<sup>2</sup> records of commercial cannabis cultivation licenses to determine if there was a license on file that would authorize the commercial cannabis cultivation on the Property. Division staff found no DCC license on record for the Property.

11. August 2021 Inspection:

In August of 2021, Division staff was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant inspection of the Property based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. Division staff accompanied CDFW, the Mendocino County Sheriff's Office, and the National Guard on a search warrant inspection of the Property on August 30, 2021, starting at 6:30 a.m. The tenant on the Property, Mr. Feigel, was present during the site inspection and was interviewed by Division staff. Mr. Feigel stated that no water diversion records were maintained or kept on the Property. Mr. Feigel also claimed that the water diversion (POD1) was a groundwater well. Division staff observed approximately 2,050 cannabis plants on the Property covering approximately 18,735 square feet. During the inspection, the Diverters' cannabis plants were eradicated by law enforcement.

12. Point of Diversion:

Division staff observed and documented one point of diversion (POD) on the Property during the August 30, 2021 inspection.

- a. POD1 is a cistern located on Ryan Creek, which is tributary to Outlet Creek, a tributary of the upper Main-stem Eel River. Ryan Creek has defined bed and banks upstream and downstream of POD1. Water was

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<sup>2</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. Therefore, because the site inspections and records review for this matter occurred after to July 12, 2021, this Complaint references DCC as the licensing agency.

flowing into and out of the cistern at the time of inspection. POD1 was actively diverting water by electric pump during the inspection for domestic use and cannabis cultivation.

13. Aerial Imagery Review:

On or around September 9, 2021, Division staff reviewed available aerial imagery of the Property and made the following observations:

- a. Google Earth Pro aerial imagery dated August 15, 2009 shows plants growing outdoors that are consistent with the grading, size, and spacing of outdoor cannabis cultivation. The main residence at POU1 is visible.
- b. LandVision Time View aerial imagery dated June 16, 2010 shows similar outdoor cannabis cultivation to that of 2009. A greenhouse structure is also visible (identified as place of use (POU) 11 during the August 30, 2021 inspection). The main residence (identified as POU1) is visible.
- c. LandVision Time View aerial imagery dated October 31, 2018 shows an expansion of greenhouse structures from one to five (identified as POU4, POU7, and POU11). Two additional outdoor cannabis cultivation areas are also visible (identified as POU5 and POU11). Plants consistent with the size and spacing of cannabis plantings can be seen in the greenhouses. The main residence at POU1 is also visible.
- d. LandVision Time View aerial imagery dated July 7, 2019 shows what appears to be outdoor cannabis cultivation occurring at POU5 and POU11, based on the large plant size, dark coloring, and wide spacing between each plant. Using a LandVision measuring tool, Division staff determined that the area of POU5 was approximately 6,786 sq. ft., an increase of 1,943 sq. ft. since 2018. Division staff determined that the area of POU11 was approximately 19,520 sq. ft., an increase of 1,080 sq. ft. since 2018. Six greenhouse structures at POU4, POU7 and POU11 are also visible. Four of the greenhouse structures are visible without tarps, housing smaller plants. Two of the greenhouse structures are visible with tarps.
- e. LandVision Time View aerial imagery dated September 25, 2020 shows expansion from three to five outdoor cannabis cultivation areas, with plants consistent with cannabis visible in the ground. Using a LandVision measuring tool, Division staff determined that POU11 measured approximately 20,370 sq. ft. in this imagery, an increase of approximately 850 sq. ft. since the 2019 imagery. Staff determined that the area of POU5 was approximately 7,496 sq. ft. in this imagery, an increase of approximately 710 sq. ft. since the 2019 imagery. Five greenhouse structures are also visible at POU4 and POU11 without tarps.

- f. LandVision Time View aerial imagery dated June 15, 2021 shows five greenhouse structures at POU4 and POU11 visible without tarps and two greenhouse structures are visible at POU7 with tarps on. The outdoor grow areas at POU5 and POU11 are also visible. Using a LandVision measuring tool, Division staff determined that the area of POU11 was approximately 22,320 sq. ft. in this imagery, an increase of approximately 1,950 sq. ft. since the 2020 imagery. The main residence at POU1 is also visible. This image appears consistent with the findings of Division staff during the site inspection on August 30, 2021.
14. Inspection Report and Notice of Violation:  
Subsequent to the August 30, 2021 inspection, Division staff prepared an Notice of Violation and Inspection Report (NOV/IR) dated October 28, 2021. Division staff sent the NOV/IR to the Spring Starback Trust via United States Postal Service (USPS) certified mail on October 28, 2021. USPS records indicate that the NOV/IR was received on October 30, 2021. The NOV/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.
15. Diverter Response:  
On November 24, 2021, Mr. Feigel contacted Division staff in response to the NOV/IR received by Spring Starback Trust on October 30, 2021. Division staff has corresponded with Mr. Feigel via email since November 24, 2021 and has continued to be in contact via phone and email through December 22, 2021. Mr. Feigel informed staff he has no plans to cultivate cannabis in the future and that water will only be diverted from POD1 for domestic purposes. Mr. Feigel has submitted photographs demonstrating remediation efforts to address the corrective actions included in the NOV/IR. Photographs of remediation efforts, such as removal of one of the recreational vehicles, emptying and removal of water storage tanks, removal of cannabis cultivation sites, and removal of water lines were submitted to Division staff via email. Additionally, on December 8, 2021, Trisha Starback submitted a Small Domestic Use Registration (D033262) to the Division of Water Rights for the Property, which is currently pending processing as of April 7, 2022.

### **STATE WATER BOARD AUTHORITY**

16. 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.
17. Water Code section 1112 generally 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

### Statement of Annual Diversion or Use

18. **Violation 1:** Failure to file a Statement of Water Diversion or Use:  
Water Code section 5101 requires that any person who diverts water shall file a Statement with the State Water Board by July 1 of the succeeding year, with certain exceptions that are not relevant here.
19. Water Code section 5102 states that a separate Statement shall be filed for each point of diversion.
20. Water Code section 5107, subdivision (c)(1), provides that the State Water Board may impose liability pursuant to Water Code section 1055 for failure to file a statement in an amount not to exceed one thousand dollars (\$1,000), plus five hundred dollars (\$500) per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the State Water Board has called the violation to the attention of that person.
  - a. POD1 is a cistern built into the bank of Ryan Creek. The diversion structure is made of corrugated metal and has a diameter of approximately 14 inches. The exposed portion of the cistern rose 16 inches above the ground. The height from the stream bed gravels to the top of the cistern was about 66 inches. The depth of the cistern from the top of the metal structure was 78 inches or 6.5 feet. A square, wooden lid sat on top of the corrugated metal cistern with an electric cord connecting to an electric water pump inside the cistern and a water conveyance line placed through the center of the lid. The water depth inside the cistern was approximately 12 inches. The water at the bottom of the cistern was flowing in and out of the cistern in the same direction as the adjacent stream flow. Water was observed flowing upstream and downstream from POD1. During the inspection on August 30, 2021, Division staff observed POD1 actively diverting water by electric pump to POU 2-7 and 10-11 for cannabis cultivation and to POU1 and POU 8-9 for domestic use.
  - b. Aerial imagery dated September 25, 2020 shows greenhouses and outdoor cultivation areas on the Property. Although the residence at POU1 that was observed during the August 30, 2021 inspection is not visible in the 2020 imagery due to shadowing, the residence is visible in imagery from prior years. Based on Division staff's observations during the inspection, prior imagery, and Mr. Feigel's statement that he has been a tenant on the Property since 2009, Division staff presume the residence was present on the Property and in use during 2020. Since POD1 was the only source of water documented by Division staff during the August 30, 2021 inspection, the Diverters would have needed to divert water from POD1 in 2020 to irrigate cannabis and supply water to the residence for domestic use. Based on aerial imagery from previous years, which also

depict cannabis cultivation activities and the residence on the Property, POD1 has likely been used as a water source for irrigation and domestic use prior to 2020; however, at a minimum, the Diverters would have needed to file a Statement with the State Water Board by July 1, 2021 for water diverted from POD1 for cannabis irrigation and/or domestic use on the Property in 2020. To date, no Statement has been filed.

- i. One violation of Water Code, section 5101 is alleged for the Diverters' failure to file a Statement for the diversion and use of water from POD1 in 2020.

### **Cannabis Cultivation Policy Requirements**

21. 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.

22. The Cannabis Cultivation Policy 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.*

23. 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.

24. **Violation 2:** 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, No. 4. Numeric and Narrative Instream Flow*

*Requirements of the Cannabis Cultivation Policy Attachment A for more information*<sup>3</sup>.

- a. POD1, documented by Division staff during the August 30, 2021 inspection, is a cistern that diverts surface water from Ryan Creek, which has a known and definite channel and is subject to the Numeric and Narrative Instream Flow Requirements. Water was flowing into and out of the cistern during the inspection. Water diverted at POD1 was being conveyed by an electric pump to place of storage (POS) 1, which conveys water to POU2, where cannabis was cultivated. POD1 was also conveying water via manifolded waterlines directly to POU 3-7 and POU 10-11 for cannabis cultivation. The Diverters were cultivating approximately 2,050 plants over 18,735 sq. ft. (across six separate outdoor grow areas and nine separate greenhouses) at the time of the inspection. The diversion of surface water at POD1 that was observed during the inspection occurred during the surface water dry season forbearance period (April 1 through October 31).
  - i. The diversion of water at POD1 for cannabis cultivation activities during the forbearance period constitutes one day of violation of Term 66, of Section 2 of the Cannabis Cultivation Policy.

25. **Violation 3:** 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 California Code of Regulations, Title 23, Division 3, Chapter 2.7 and Chapter 2.8. 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 site inspection on August 30, 2021, no water measuring device was observed on or near POD1, nor were any records of water diversion

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<sup>3</sup> The Numeric and Narrative Instream Flow Requirements No. 4. Surface Water Dry Season Forbearance Period requirement stipulates the following: “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.”



found on the Property. Division staff determined that, based on the diversion system, there would need to be at least one water measuring device installed at or near POD1 to measure water diverted for cannabis cultivation.

- i. One day of violation of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to have a water measuring device installed during the inspection.

26. **Violation 4:** 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 site inspection on August 30, 2021, Division staff documented an inlet water line connected to one water storage tank that was without a float valve or similar device installed to prevent the overflow and waste of water. POS1 consists of one 500-gallon water storage tank. Division staff observed no overflow prevention system installed on the tank. Division staff determined there would need to be at least one overflow prevention device installed to comply with this requirement.
  - i. One day of violation of Term 92 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to use water storage tanks with a float valve, or equivalent device, to shut off diversions when storage tanks are full.

27. **Violation 5:** 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 site inspection on August 30, 2021, Division staff documented that the tank lid at POS1 was not fully attached to prevent wildlife entrapment. Failure to secure all tank openings with lids presents an entrapment hazard to wildlife and is a violation of this requirement.
  - i. One day of violation of Term 93 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to ensure all water storage tanks were covered or designed to prevent the entry and/or entrapment of wildlife during the inspection on August 30, 2021.

28. **Violation 6:** 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 site inspection on August 30, 2021, Division staff did not observe any water measuring devices at any of POD, POSs, or cannabis cultivation areas. In addition, Division staff did not observe any irrigation records during the inspection.
  - i. One violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to maintain daily records of water used for irrigation of cannabis during the August 30, 2021 inspection.

29. **Violation 7:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 99, states:

*Cannabis cultivators shall on a weekly basis, at a minimum, during period of use inspect for leaks in mainlines, laterals, in irrigation connections, sprinkler heads, irrigation emitters, or at the ends of drip tape and feeder lines and immediately repair any leaks found upon detection.*

- a. During the site inspection on August 30, 2021, Division staff documented a leak in the waterline that conveys water from POS1 to POU2. Failure to perform weekly inspections for leaks in water lines is a violation of the requirement.
  - i. One day of violation of Term 99 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to perform weekly inspections and for failing to immediately repair the leak observed during the August 30, 2021 inspection.

### **Diversion or Use of Water for Cannabis Cultivation Requires CDFA License**

30. **Violation 8:** Water Code section 1847(b)(4) provides 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 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.

31. DCC 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. 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).) DCC's cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.
- a. Based on Division staff's observations during the August 30, 2021 site inspection, staff determined that the scale of cannabis cultivation observed on the Property required a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. During the site inspection, Division staff observed approximately 2,050 cannabis plants growing in nine greenhouses and five outdoor grow areas, with an approximate total surface area of 18,735 sq. ft., irrigated from surface water diverted at POD1. The Diverters' cultivation canopy size exceeds the minimum licensing requirement established under Business and Professions Code section 26061, subdivision (a). Division staff examined available DCC records on August 27, 2021 and September 9, 2021 and did not find any record that DCC had issued a cultivation license for the activities observed on the Property.
    - i. One violation is alleged for diverting and using water for cannabis cultivation without having obtained a DCC commercial cannabis license as required.

### **Statutory Maximum Liability**

32. 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 \$4,500 (\$1,000+\$500+\$500+\$500+\$500+\$500+\$500+\$500).

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

33. 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. This requirement is applied to all penalty proposals relative to this administrative civil liability complaint.

34. **Violation 1: Failure to Submit Statements of Water Diversion and Use (Water Code section 5101)**
- a. Extent of Harm Caused:

The harm caused by this violation can be categorized generally as harm to the orderly and efficient administration of the state's water resources. The main purpose of the State Water Board's Statement Program is to create a central repository for records of diversions and uses of water. The failure to submit statements of water diversion and use impacts the water rights regulatory program harming other water right Diverters, the environment, and the public at large. Information the regulated community includes in Statements is critical for administering water rights and managing water supply. The State Water Board and the public need to understand when, where, how, and why water is used to ensure water is being put to beneficial use. Therefore, by failing to file a Statement to report water diversion and use, the Diverters impaired the Board's orderly and efficient administration of water resources of the state.
  - b. Nature and Persistence:

The nature and persistence of the Diverters' failure to file a Statement is a consistent problem with water diversion for use in illegal cannabis cultivation. The need to file a Statement for POD1 was called to the attention of the Spring Starback Trust in the NOV/IR after the inspection. Nevertheless, to date, Division staff have received no Statement for POD1 from the Diverters.
  - c. Corrective Action:

On December 8, 2021, Trisha Starback submitted a Small Domestic Use Registration (D033262) to the Division of Water Rights, which is pending as of January 3, 2022. This does not meet the requirement to submit a Statement reporting water diversion and use for 2020.
  - d. Length of Time:

Water diversion and use reporting for 2020 was required to be filed with the State Water Board by July 1, 2021. LandVision Time View aerial imagery dated taken on September 25, 2020, shows greenhouse structures on the Property without tarps. Plants consistent with the size, spacing, and color of cannabis are also visible in the ground on the Property. The depiction of the cannabis cultivation activities on the Property in the September 25, 2020 aerial imagery appears to be consistent with the observations of Division staff during the August 30, 2021 inspection. The Diverters were notified in the October 28, 2021 NOV/IR of the need to file Statements for the diversion and use of water that appeared to be occurring on the Property in 2020 based on aerial imagery. The Division alleges one day of violation of Water Code section 5101.
  - e. Considering the factors listed in a-e above, the Division proposes administrative civil liability in the amount of \$1,000 for one day of violation.

## Violations 2 through 8: Cannabis Cultivation Policy Violations

### 35. Violation 2: Cannabis Cultivation Policy Section 2, Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements

a. Extent of Harm Caused:

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 the stream. Minimum flows that provide habitat connectivity are needed to maintain juvenile salmonid passage conditions in late spring and early summer. Instream flows are also needed to maintain habitat conditions necessary for juvenile salmonid viability throughout the dry season, including adequate dissolved oxygen concentrations, low stream temperatures, and high rates of invertebrate production and drift from riffles to pools. Further, many species depend on spring recession flows as migratory or breeding cues. The violation represents potential harm to multiple species through diversion of water from a stream causing habitat loss in a stream length by dewatering or diminished flows extirpating multiple species, as compared to a threat of individual harm to an individual in a species. This potential for harm is likely increased by the effects seen in the watershed from drought. The State Water Board is requiring a surface water diversion forbearance period to ensure adequate flows are maintained throughout the dry season to protect aquatic species, aquatic habitat, and water quality. Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, or springs. Diverting water during the forbearance period impacts downstream priority of water right Diverters' ability to use water beneficially and impacts instream and terrestrial public trust resources and habitat. The extent of harm caused by the violation may be compounded as these activities occurred in the Willow Creek Watershed, a tributary to the upper Main-stem Eel River, which is a State designated Wild and Scenic River from 100 yards below the Van Arsdale Dam to the Pacific Ocean.

b. Nature and Persistence:

Division staff observed active water diversion at one location (POD1) during the surface water dry season forbearance period for cannabis cultivation (April 1 – October 31). The Diverters were notified by the NOV/IR that diverting water from POD1 during the surface water dry season forbearance period was a violation of Cannabis Cultivation Policy, Section 2, Term 66. During the August 30, 2021 inspection, cannabis plants were eradicated by law enforcement. Based on available information, this violation did not continue past August 30, 2021. LandVision Time View aerial imagery dated September 26, 2021 shows no cannabis cultivation or infrastructure on the Property.

- c. Corrective Action:

On November 24, 2021, Mr. Feigel contacted Division staff and indicated he had ceased cannabis cultivation on the Property and did not intend to cultivate in the future. Mr. Feigel submitted pictures to demonstrate the removal of cannabis cultivation infrastructure from the Property. Mr. Feigel stated that, as of November 24, 2021, water diverted at POD1 will solely be used for domestic purposes. On December 8, 2021, Trisha Starback submitted a Small Domestic Use Registration (D033262) to the Division of Water Rights, which is pending as of April 7, 2022. Although potential harm caused by the surface water diversions that occurred during the forbearance period may not have been directly mitigated through the Diverters' subsequent actions, the Diverters' have made efforts to return to compliance and prevent similar violations in the future.
  - d. Length of Time:

For the diversion of surface water from POD1 observed during the August 30, 2021 inspection, which occurred during the surface water dry season forbearance period for cannabis cultivation, the Division alleges one day of violation of Term 66 of Section 2 of the Cannabis Cultivation Policy.
  - e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 for one day of violation.
- 36. Violation 3: Cannabis Cultivation Policy, Section 2, Term 82 – Failure to Install Water Measuring Device or Maintain Diversion Records**
- a. Extent of Harm:

Cannabis cultivators are required to maintain measuring devices and daily diversion records for surface water diversions to assist the State Water Board in obtaining accurate data on how much water is being diverted in watersheds. Accurate data on water diversion is needed for all users of water in the state so that the Division can plan for drought and effectively manage limited water resources in impacted watersheds. Moreover, this is vital information for water use planning made even more critical by drought conditions. By failing to maintain measuring devices and daily diversion records the Diverters deprive the Division of this critical data. This directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources.
  - b. Nature and Persistence:

The Diverters were notified in the October 28, 2021 NOV that the equipment used to operate POD1 was a violation of Cannabis Cultivation Policy, Section 2, Term 82, as no measuring devices were observed measuring diversions from POD1, nor were any records of water diversion found. Based on the structure of the irrigation system observed during the

inspection, one measuring device was required to comply with this requirement.

- c. Corrective Action:  
On November 24, 2021, Mr. Feigel contacted Division staff and stated he had ceased cannabis cultivation on the Property and had emptied and disconnected all water storage infrastructure. Mr. Feigel submitted pictures confirming the removal of cannabis cultivation infrastructure from the Property.
- d. Length of Time:  
Division staff documented a violation of the requirement to measure surface water diversions and maintain daily records during the August 30, 2021 inspection. Liability for one day of violation of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged.
- e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 for one day of violation.

**37. Violation 4: Cannabis Cultivation Policy, Section 2, Term 92 - Water Storage Facility Without Device to Prevent Water Overflow**

- a. Extent of Harm:  
Compliance with this requirement is necessary to prevent waste from water diversions to full storage facilities. Storage facilities without devices to prevent overflow, run off, or ruptured storage containers have the potential to harm instream flows. This in turn impacts downstream beneficial uses and downstream priority of right diverters. The harm caused by this violation is compounded where there are multiple storage facilities without devices to prevent overflow. The harm is further compounded in times of drought when water availability is at its scarcest.
- b. Nature and Persistence:  
During the site inspection on August 30, 2021, Division staff documented one storage tank at POS1, connected to an inlet line to receive water diverted from POD1, without a float valve or similar device installed to prevent overflow or runoff. Division staff called to the Diverters' attention in the NOV/IR the requirement to use water storage tanks with a float valve, or equivalent device, to shut off diversions when storage systems are full.
- c. Corrective Action:  
On November 24, 2021, Mr. Feigel submitted photographs to Division staff to demonstrate remediation efforts. The Diverters have emptied and disconnected the tank at POS1 and removed the tank at POS2 from the Property.
- d. Length of Time:

Division staff documented one storage tank at POS 1 without a float valve or similar device installed to prevent overflow or runoff on August 30, 2021. Liability for one day of violation of Term 92 of Section 2 of the Cannabis Cultivation Policy is alleged.

- e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 for one day of violation.

**38. Violation 5: Cannabis Cultivation Policy, Section 2, Term 93 - Failure to Secure Tank Openings to Prevent Entry and Entrapment of Wildlife**

a. Extent of Harm:

Cannabis cultivators are required to ensure that tank 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 or vents.

b. Nature and Persistence:

During the site inspection on August 30, 2021, Division staff documented one storage tank at POS1 with a lid that was not properly secured to prevent entry and entrapment of wildlife. Division staff called to the Diverters' attention in the NOV/IR the requirement to have lids installed and properly secured on all water storage tanks to prevent entry and entrapment of wildlife.

c. Corrective Action:

On November 24, 2021, Mr. Feigel contacted Division staff to state cannabis cultivation had ceased and that corrective action was taken with regard to the tanks. Mr. Feigel submitted photographs depicting the tank at POS1 emptied and disconnected and the removal of the tank at POS2 from the Property.

d. Length of Time:

Division staff documented one storage tank that was not designed to prevent entry or entrapment of wildlife on August 30, 2021. Liability for one day of violation of Term 93 of Section 2 of the Cannabis Cultivation Policy is alleged.

- e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 for one day of violation.

**39. Violation 6: Cannabis Cultivation Policy, Section 2, Term 98 - Failure to Maintain Daily Irrigation Records**

a. Extent of Harm:

Compliance with this term is required to ensure that the diversion and use of water associated with cannabis cultivation does not have a negative impact on aquatic habitat, riparian habitat, and does not indirectly impact



downstream water right holders. Accurate data on cannabis cultivation irrigation water demand is necessary so that the Division can determine if standard irrigation practices are applied. This in turn prevents waste from overwatering and prevents runoff of cannabis cultivation wastewater. By failing to maintain daily irrigation records, the Diverter directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources. The State Water Board has stated the importance of real time accurate data on water demand, especially in dry and critically dry years. As such, the harm caused by the Diverters' failure to maintain irrigation records is notable.

b. Nature and Persistence:

During the site inspection on August 30, 2021, no water measuring devices were observed on or near the POD, points of storage, or any of the cannabis cultivation areas, nor were any irrigation records for cannabis water demand found. The Diverters were notified by the NOV/IR of the daily irrigation records violation of Cannabis Cultivation Policy, Section 2, Term 98.

c. Corrective Action:

The Diverters have not provided Division staff any records of irrigation as of the date of this Complaint.

d. Length of Time:

During the site inspection on August 30, 2021, Division staff were unable to locate any cannabis irrigation records, nor did Division staff observe any measuring devices that could measure and record the water used for irrigation of cannabis. Liability for one day of violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$500 for one day of violation.

**40. Violation 7: Cannabis Cultivation Policy, Section 2, Term 99 - Failure to Perform Weekly Inspections or Repairs of Irrigation Connections**

a. Extent of Harm:

Failure to perform weekly inspection and repairs of irrigation connections may result in waste of water. Leaks in irrigation infrastructure has the potential to harm instream flows. This in turn may impact water availability for downstream water right holders and designated beneficial uses. The requirement to perform weekly inspections/repairs on irrigation infrastructure is to encourage implementation of water conservation and prevent water waste through standard irrigation practices. Here, the Diverters failed to implement these standard practices. Compliance with this term ensures that the diversion and use of water associated with cannabis cultivation does not have a negative impact on aquatic habitat,

riparian habitat, and does not indirectly impact downstream water right holders.

- b. Nature and Persistence:  
During the site inspection on August 30, 2021, Division staff observed a leak in the water line connected to a timer valve that conveys water from POS1 to POU2 for cannabis cultivation. The Diverters were notified in the October 28, 2021 NOV/IR that the observed leak indicated weekly inspections and immediate repairs were not conducted as required by Term 99 of Section 2 of the Cannabis Cultivation Policy.
  - c. Corrective Action:  
On November 24, 2021, Mr. Feigel submitted photographs to Division staff depicting the cleared location where POS1 and POU2 were observed during the inspection on August 30, 2021. The waterlines that once conveyed water from POS1 to POU2 had been removed and POS1 had been disconnected and emptied. There is no longer water being wasted by the leak that was located at POU2.
  - d. Length of Time:  
During the inspection on August 30, 2021, Division staff observed a leak in the waterline between POS1 and POU2 for cannabis cultivation, indicating a failure to inspect and maintain cannabis irrigation infrastructure as required. Liability for one day of violation of Term 99 of Section 2 of the Cannabis Cultivation Policy is alleged.
  - e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 for one day of violation.
- 41. Violation 8: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code section 1847)**
- a. Extent of Harm:  
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. 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 significantly harm legal cultivators and the Cannabis Cultivation Regulatory Program.
  - b. Nature and Persistence:  
Unlicensed cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. CDFA began accepting applications for commercial cannabis cultivation licenses on January 1, 2018. It was determined the scale of

cannabis cultivation occurring on the Property during the August 30, 2021 inspection required a commercial cannabis license. Division staff called to the Diverters' attention in the NOV/IR that commercial cannabis cultivation required a license pursuant to Water Code section 1847.

c. Corrective Action:

On November 24, 2021, Mr. Feigel contacted Division staff and stated that water diverted at POD1 will solely be used for domestic purposes. Mr. Feigel further provided photographs demonstrating the removal of cannabis cultivation infrastructure from the Property. Additionally, LandVision Time View aerial imagery dated September 26, 2021 shows no cannabis cultivation or infrastructure on the Property.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the August 30, 2021 inspection. Although evidence suggests it is likely water diversion and use for cannabis cultivation, the scale of which required a license, occurred on the Property prior to the inspection, liability for a single violation of Water Code section 1847, subdivision (b)(4), is alleged.

e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$500 for one day of violation.

**Violation 1-8: All Other Relevant Circumstances**

42. Aerial imagery reviewed by Division staff from July 7, 2019 through June 15, 2021, show a consistent use of the Property to cultivate cannabis. During this time, Trisha Starback, also known as Spring Starback, held title to the Property as trustee for the Spring Starback Trust and Mr. Feigel was the tenant. In addition, aerial imagery reviewed by Division staff show a consistent use of the Property to cultivate cannabis from August 15, 2009 through October 31, 2018. During that time, Trisha Starback owned the Property, in her individual capacity, and Mr. Feigel remained the tenant. Throughout the years, the Property was developed and expanded, including the addition of greenhouse structures and outdoor grow areas on the Property. During the August 30, 2021 inspection, Division staff observed that Ryan Creek was the sole source of water on the Property. As such, it is likely that POD1 was used throughout this time period to irrigate cannabis. As cannabis cultivation increases, so too does the water demand, leading to increased impacts to the watershed. The potential cumulative impact of water diversions and multiple Cannabis Cultivation Policy violations across multiple years may be significant.
43. The Cannabis Cultivation Regulatory Program is in its infancy. To deter illegal cannabis cultivation activities and encourage 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. Each opportunity to deter illegal activities and demonstrate the need to comply must be taken. The

Diverters engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as a deterrent for future noncompliance.

### PROPOSED CIVIL LIABILITY

44. Having taken into consideration the factors described above and the need for deterrence, the Assistant Deputy Director for Water Rights recommends administrative civil liability for Violations 1-8 in the amount of **\$3,250** (\$1,000+\$250+\$250+ \$250+\$250+\$500+\$250+\$500).

### RIGHT TO HEARING

45. The Diverters may request a hearing on this matter before the State Water Board Administrative Hearings Office. Any such request for hearing must be delivered to or received by mail by the Administrative Hearings Office within 20 days after the date the Diverters receives this Complaint as required by Water Code section 1055, subdivision (b).
46. 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.
47. If the Diverters requests a hearing, they 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.
48. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that a 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



for

*Jule Rizzardo, Assistant Deputy Director  
Division of Water Rights*

Dated: April 15, 2022