

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

**DIVISION OF WATER RIGHTS**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Alleged Water Code Violations

**Jason Anderson**

Assessor Parcel Number: 012-620-610-000

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**COUNTY: MENDOCINO**

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**JASON ANDERSON (HEREINAFTER REFERRED TO AS “DIVERTER”) IS HEREBY  
GIVEN NOTICE THAT:**

1. The State Water Resources Control Board’s (State Water Board’s) Division of Water Rights (Division) alleges that the Diverter committed the violations described below. The violations are related to the diversion or use of water for cannabis cultivation activities on the Diverter’s real property in Mendocino County at Assessor Parcel Number (APN) 012-620-610-000 (Property).
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of nineteen thousand dollars (\$19,000).
3. The State Water Board or the State Water Board’s Administrative Hearings Office may impose civil liability (i.e. monetary fines) for these violations through the administrative process described below.

**The Diverter has the right to request a hearing on these alleged violations but must do so in writing within 20 days from the date the Diverter receives 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: Failure to file a Statement of water diversion or use (Statement) for two points of diversion (POD) as required by Water Code section 5101.

5. Violations 2-9: Eight (8) violations of Term requirements in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy)<sup>1</sup>.
6. Violation 10: Diverting and using water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC) in violation of Water Code section 1847(b)(4).

## **BACKGROUND AND FACTUAL BASIS**

### **7. Property Ownership:**

Mendocino County records indicate that the Diverter acquired the Property on June 27, 2019, and owned the Property at all times relevant to the violations alleged in this Complaint.

On January 9, 2025, the Property was transferred by the Mendocino County Recorder through a foreclosure to Erin Gamble.

### **8. Watershed Information:**

The Property is located in the Rattlesnake Creek watershed (HUC 12 #180101060104), tributary to South Fork Eel River. The South Fork Eel River is designated as a Wild and Scenic River from the mouth of Section Four Creek near Branscomb to the river mouth below Weott. As a Wild and Scenic River, the State Water Board is limited to processing or accepting new applications to appropriate water pursuant to California Code of Regulations, title 23, section 734. In accordance with the Public Resources Code section 5093 et seq. it is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. 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. The Division's Cannabis Enforcement Section, the North Coast Regional Water Quality Control Board, and California Department of Fish and Wildlife (CDFW) have designated the South Fork Eel River a priority watershed based on the density of existing cannabis cultivation, high public trust resource value such as aquatic habitat, listed anadromous and amphibian endangers species, and Clean Water Act section 303(d) listed impaired watershed for sediment and temperature. The South Fork Eel River is also identified as a Water Action Plan watershed by the State Water Board and CDFW to enhance and establish instream flow for anadromous fish species.

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<sup>1</sup> On October 17, 2017, the State Water Board approved Resolution No. 2017-0063 adopting the Cannabis Cultivation Policy. On February 5, 2019, the State Water Board approved resolution 2019-007 updating the Cannabis Cultivation Policy. The office of

9. Investigation Basis:

On or about June 5, 2023, the Division was notified by CDFW of a search warrant investigation of the Property based on illegal cannabis cultivation with possible surface water diversions occurring on the Property. CDFW coordinated with Division staff to participate in the inspection, and the warrant authorized Division staff participation.

10. Aerial Imagery Review:

On June 5, 2023, August 23, 2023, March 14, 2024, and again on March 21, 2024, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. On June 5, 2023, Division staff reviewed Google Earth and LandVision aerial imagery dated April 29, 2019 and June 8, 2020, which shows the initial construction of the frame of the greenhouse at what Division staff designated as place of use two (POU2), multiple graded areas, and cannabis cultivation at POU1-2 and POU4-6. The 2019 and 2020 aerial images of the Property are consistent with the cannabis cultivation activities staff observed during the June 7, 2023 inspection.
- b. On August 23, 2023, Division staff reviewed Google Earth aerial imagery dated May 19, 2023. Aerial imagery shows multiple graded areas throughout the Property indicating infrastructure consistent with cannabis cultivation occurring at POU1-2 and POU4-6, which were observed during the June 7, 2023, inspection.
- c. On March 14, 2024, Division staff reviewed LandVision aerial imagery dated July 10, 2023, which shows multiple graded areas throughout the Property identical to the cannabis cultivation observed during the inspection on June 7, 2023. The aerial imagery shows eradicated cannabis cultivation areas located at POU1-2 and POU4-6, which occurred during the June 7, 2023, inspection.
- d. On March 21, 2024, Division staff reviewed LandVision aerial imagery dated March 26, 2022, June 15, 2022, and August 7, 2022, which shows multiple graded areas throughout the Property and both uncovered and covered greenhouses at POU1-2 and POU4-6 indicating infrastructure consistent with cannabis cultivation and identical to what was observed during the June 7, 2023, inspection.

11. Water Rights Records Review:

- a. On June 5, 2023, Division staff searched for available State Water Board records in the Division's Electronic Water Rights Management System (eWRIMS) and found no existing Statement, water right permit, license, or registration on file for the Property.

- b. On June 27, 2023, subsequent to the inspection, Division staff again reviewed eWRIMS data and did not find any evidence of an existing Statement, water right permit, license, or registration for the diversion and use of water Division staff observed taking place on the Property.
- c. On January 15, 2025, Division staff searched eWRIMS and again found no water right records.

12. Well Records Review:

On June 5, 2023, Division staff searched for available Department of Water Resources' Well Completion Report database and found no existing records of a groundwater well on the Property.

13. Commercial Cannabis Cultivation License Records Review:

On June 5, 2023, Division staff reviewed the California Department of Cannabis Control's (DCC's) commercial cannabis cultivation license records current to August 23, 2023, to determine if there was an active or pending license on file that would authorize the commercial cannabis cultivation observed on the Property. Division staff found no DCC license on record for the Property. On January 7, 2025, Division staff searched DCC's cultivation license records and again found no DCC license.

14. Inspection:

On June 7, 2023, Division staff, accompanied CDFW and the Mendocino County Sheriff's Office, to conduct an inspection of the Property. Neither the Diverter nor a representative of the Diverter were present during the inspection. On June 7, 2023, Division staff observed approximately 2,651 cannabis plants, along with two surface water diversions used for domestic use and cannabis irrigation on the Property.

15. Point of Diversion:

Division staff observed and documented two Points of Diversion (POD) used for cannabis cultivation during the June 7, 2023, inspection.

- a. POD1 was a point of diversion to offstream storage from an unnamed stream tributary to Twin Rocks Creek. Twin Rocks Creek is tributary to Rattlesnake Creek, which is tributary to the South Fork Eel River. The unnamed stream has defined bed and banks upstream and downstream from POD1 and was flowing at the time of the inspection. POD1 was constructed from a plastic container with a square hole and tied to a ¾-inch black polyethylene pipe. Rocks were piled on top of the container to keep POD1 submerged under the unnamed stream flow. POD1's ¾-inch black polyethylene pipe connects to an 8.5 hp Honda gas pump used to convey water to POU1-3 and POU6 for cannabis irrigation and domestic use. POD1 was not actively diverting water during the inspection, but all water diversion infrastructure appeared to be connected and in working order and could divert water whenever the pump was turned on. POD1 is located on the Diverter's Property.

- b. POD2 is a point of diversion to offstream water storage and diverts water from Twin Rocks Creek a tributary to Rattlesnake Creek, which is tributary to South Fork Eel River. Twin Rocks Creek has defined bed and banks upstream and downstream of POD2 and was flowing at the time of the inspection. POD2 is constructed from a plastic container with a square hole and tied to a ¾-inch black polyethylene pipe with rocks piled on top of the plastic container to keep it submerged under the Twin Rocks Creek flow. A 5.5 hp Honda gas pump was connected to the other end of the ¾ -inch black polyethylene pipe used to convey water to POU4-5 for cannabis irrigation. POD2 was not actively diverting water at the time of the inspection, but all water diversion infrastructure was connected and in working order to divert water by turning on the Honda gas pump. Division staff observed the Honda gas pump was left in the on position, but not running at the time of the inspection, because it was out of gas. Based upon GPS evidence collected and observations of water line connections during the inspection, POD2 is operated by the Diverter, but located on APN 056-180-01-00, owned by Arion Luce<sup>1</sup>.

16. Inspection Report and Notice of Violation:

On October 25, 2023, Division staff sent the Diverter an Inspection Report and Notice of Violation (NOV/IR) via certified mail. On October 27, 2023, United States Postal Service Records indicate that the Diverter received the NOV/IR. The NOV/IR described the observations made by Division staff, identified violations and the potential liability of each violation, provided corrective actions for the violations, and provided Division contact information to the Diverter. The NOV/IR provided a 30-day compliance period for the Diverter to file an Initial Statement of Diversion and Use for the diversions on the Property, implement corrective actions for Water Code and Cannabis Cultivation Policy violations, and cease actively diverting water for cannabis cultivation.

17. Landowner/Diverter Response:

On November 27, 2023, the 30-day compliance period ended.

On January 18, 2024, Division staff emailed the North Coast Resource Management (NCRM) consultant representing the Diverter and provided a copy of the NOV/IR. Division staff's email referenced the NOV/IR instructions on how to submit proof of compliance actions taken using the Cannabis Compliance portal to submit information.

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<sup>1</sup> The search warrant obtained for the inspection of the Property by CDFW Wardens authorizes law enforcement and peace officers to search adjacent parcels as needed to follow any water supply or waste discharge lines or trails, in order to identify the source of the water for cannabis cultivation. The affidavit in support of the warrant states that law enforcement officers shall be allowed to bring other agencies (specifically the State Water Board) in order to determine if there are violations of the California Water Code or federal Clean Water Act.

On January 23, 2024, the NCRM consultant responded to Division staff's email indicating they were not aware of NOV/IR and informed Division staff that they were told the cannabis cultivation facilities had been removed but had not yet confirm the status of the Property due to steep access to the Property and weather conditions. On the same day, Division staff replied via email to the NCRM staff and provided another copy of the NOV/IR and reference to the Cannabis Compliance Response Portal where they could upload photos of the corrective actions taken.

On March 13, 2024, Division staff requested an update on the outstanding corrective actions and offered assistance.

On March 22, 2024, a NCRM staff emailed Division staff stating they were not currently working on the project because no additional funds had been provided by the Diverter. Additionally, NCRM staff informed Division staff that the corrective actions taken to date included the hoophouse removal and trash cleanup. Division staff did not receive any photographs showing the cleanup.

**18. Neighbor Landowner Response:**

On January 15, 2025, Division staff contacted Arion Luce by phone and received confirmation that the Diverter did not have written or verbal permission to access the adjacent property to divert water from POD2.

**STATE WATER BOARD AUTHORITY**

19. 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.
20. Water Code 1112 provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055. Pursuant to Water Code section 1114, for matters seeking administrative liability under Water Code section 1847 or 5107, the Hearing Officer adopts a final order. For all other matters, the Hearing Officer adopts a proposed order to be considered by the State Water Board.

## **ALLEGED VIOLATIONS**

### **Statement of Annual Water Diversion and Use**

**21. 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 of their diversion and use with the Board by February 1 of the succeeding year, with certain exceptions that are not relevant here.

**22.** Water Code section 5102 states that a separate statement shall be filed for each point of diversion.

**23.** Water Code section 5107, subdivision (c)(1) provides that the Board may impose liability 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 Board has called the violation to the attention of that person.

- a. POD1 is a diversion located on an unnamed stream that is a tributary to Twin Rocks Creek and is subject to the State Water Board's permitting authority. On June 7, 2023, Division staff observed POD1 was connected to diversion and water conveyance infrastructure that supplied water to POU's 1-3 and POU6 for cannabis irrigation and domestic use at the time of inspection.
- b. POD2 is a diversion located on Twin Rocks Creek that is tributary to Rattlesnake Creek and is subject to the State Water Board's permitting authority. On June 7, 2023, Division staff observed POD2 was connected to diversion and water conveyance infrastructure that supplied water to POU's 4-5 for cannabis irrigation at the time of the inspection.
- c. POD1-2 required an initial Statement to be filed with the State Water Board by February 1, 2024, to report water diverted and used for cannabis irrigation and domestic use observed during the June 7, 2023 inspection. The diversion of water from POD1 and POD2 without filing the necessary Statement constitutes two (2) violations of Water Code section 5101, subject to liability under Water Code section 5107.

### **Cannabis Cultivation Policy Requirements**

**24.** The Cannabis Cultivation Policy originally went into effect on December 18, 2017. The Policy contains principles, guidelines, and requirements (Requirements) adopted pursuant to Water Code section 13149, 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.

25. Cannabis Cultivation Policy, Attachment A, Section 1, Term 9, defines cannabis cultivation as:

*Any activity involving or necessary for the planting, growing, pruning, harvesting, drying, curing, or trimming of cannabis. This term includes but is not limited to: (1) water diversions for cannabis cultivation, and (2) activities that prepare or develop a cannabis cultivation site or otherwise support cannabis cultivation and which discharge or threaten to discharge waste to waters of the state.*

26. 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 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.

27. **Violation 2:** Cannabis Cultivation Policy, Attachment A, Section 1, Term 18:  
*Cannabis cultivators shall not commit trespass. Nothing in this Policy or any program implementing this Policy shall be construed to authorize cannabis cultivation.*

a. During the site inspection on June 7, 2023, Division staff observed POD2 located on an adjacent parcel owned by Arion Luce (APN: 056-180-01-00). Water was conveyed from POD2 to APN: 012-620-610-000, owned by the Diverter, for cannabis cultivation. Division staff contacted Arion Luce by phone and received confirmation that the Diverter did not have written or verbal permission to access the parcel to divert water from POD2.

i. One violation of Term 18 of Section 1 of the Cannabis Cultivation Policy is alleged for the Diverter's trespass to access POD2.

28. **Violation 3:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 66:  
*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). Division staff allege the Diverter is in violation of the Cannabis Cultivation Policy Attachment A, Section 3, Numeric and Narrative Instream Flow Requirement No. 4.*

**Numeric and Narrative Instream Flow Requirements No. 4**

*Surface Water Dry Season Forbearance Period: Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year, unless the water diverted is delivered from storage in compliance with Narrative Instream Flow Requirement 4.*

- a. During the site inspection on June 7, 2023, Division staff observed POD1 and POD2 installed and plumbed to divert surface water for the purpose of cannabis irrigation at POU 1-2 and POU 4-6.
  - i. Two violations of Term 66 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to comply with narrative and numeric instream flow requirements No.4. during the surface water dry season.

29. **Violation 4:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 77:  
*Cannabis cultivators shall plug, block, cap, disconnect, or remove the diversion intake or otherwise bypass flow or render the diversion intake incapable of diverting water for cannabis cultivation activities during the surface water forbearance period, unless the diversion intake is used for other beneficial uses, to ensure no water is diverted during that time.*

- a. On June 7, 2023, during the inspection, Division staff observed POD2 was not plugged, blocked, capped, disconnected, removed, or otherwise bypassed or rendered incapable of diverting water for cannabis activities during the surface water diversion forbearance period. Water diverted at POD2 was used at POU4-5 for cannabis irrigation.
  - i. One violation of Term 77 of Section 2 of the Cannabis Cultivation Policy is alleged for the failure to follow diversion intake condition requirements.

30. **Violation 5:** Cannabis Cultivation Policy, in Attachment A, Section 2, Term 81:  
*Cannabis cultivators are encouraged to install separate storage systems for water diverted for cannabis irrigation and water diverted for any other beneficial uses, or otherwise shall install separate measuring devices to quantify diversion to and from each storage facility, including the quantity of water diverted and the quantity, place, and purpose of use (e.g., cannabis irrigation, other crop irrigation, domestic, etc.) for the stored water.*

- a. During the June 7, 2023, inspection, Division staff observed that the water diverted at POD1 is conveyed into comingled water storage used to supply water for cannabis irrigation and domestic use. POD1 diverts water to POS1, POS2, and POS3, which supply water to POU1-2 and POU6 for cannabis irrigation and POU3 for domestic use at a residence. The Diverter would need to install at least one measuring device to separate out water used for cannabis and/or domestic use.
  - i. One violation of Term 81 of the Cannabis Cultivation Policy is alleged for the failure to install separate measuring devices to quantify water use for cannabis irrigation and domestic use.

**31. Violation 6:** Cannabis Cultivation Policy, in Attachment A, Section 2, Term 82:

*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 June 7, 2023, inspection, Division staff observed no water measuring device nor water diversion records on or near POD1, or POD2, which both divert water by pump for cannabis irrigation.
- i. Two violations of Term 82 of the Cannabis Cultivation Policy are alleged for the failure to install water measuring devices or maintain diversion records.

**32. Violation 7:** Cannabis Policy, in Attachment A, Section 2, Term 92:

*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 June 7, 2023, inspection, Division staff documented POS1 (Tanks 1-5), POS2 (Tanks 15-16), POS3 (Tank 17), POS4 (Tanks 18-19), and POS5 (Tanks 20-21) without float valves or similar devices installed to prevent the overflow and waste of water.
- i. Twelve violations of Term 92 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to equip storage facilities with devices to prevent water overflow.

**33. Violation 8:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 93:

*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 of June 7, 2023, Division staff documented water storage tanks in use at the Property located at POS1 (Tanks 1-8), POS2 (Tank 15), POS3 (Tank 17), POS4 (Tank 19), and POS5 (Tanks 21-22) without tank lids installed to prevent wildlife entrapment.
- i. Thirteen violations of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to secure tank openings to prevent entry and entrapment of wildlife.

34. **Violation 9:** Cannabis Cultivation Policy, in Attachment A, Section 2, Term 98: *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. POU1-2 and POU4-6 are documented cannabis cultivation areas. During the June 7, 2023, inspection, Division staff did not observe any water measuring devices at any POD, POS, or POU. In addition, Division staff did not observe any irrigation records during the inspection, nor have any irrigation records been provided upon request since the IR/NOV was received.
- i. One violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to have daily records of water used for irrigation of cannabis during the June 7, 2023, inspection.

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

35. **Violation 10:** Water Code section 1847 subdivisions (a) and (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.
36. 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. Based on the review of aerial images and Division staff's observations during the inspection, the

cannabis cultivation occurring on the Property is of a scale sufficient to require a commercial cannabis cultivation license under Chapter 6 (commencing with Section 26060) of Division 10 of the California Business and Professions Code as more than six living cannabis cultivation plants were observed.

- a. During the June 7, 2023, inspection, Division staff observed the diversion and use of water for cannabis cultivation of approximately 2,651 cannabis plants on the Property. This scale of cultivation requires a license under Chapter 6 of Division 10 of the Business and Professions Code. Division staff have not found any record of such a license that would have authorized the observed cultivation.
  - 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**

37. The statutory maximum liability for the violations alleged in this Complaint is the sum of each violation's statutory maximum liability multiplied by the number of counts for each violation.
38. The total statutory maximum liability for Violations 1-10 is: 1 (\$2,000) + 2 (\$500) + 3 (\$1,000) + 4 (\$500) + 5 (\$500) + 6 (\$1,000) + 7 (\$6,000) + 8 (\$6,500) + 9 (\$500) + 10 (\$500) = **\$19,000**.

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

39. Water Code section 1055.3 requires that the 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.

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

40. The Property was purchased by the Diverter on June 27, 2019, and aerial imagery shows illegal cannabis cultivation activities likely pre-dated the June 7, 2023, inspection. The Division calculated the proposed administrative civil liability taking into consideration all relevant circumstances including the extent of harm, nature and persistence of the violation, corrective action, and the length of time the violation occurred. The Division recommends that the State Water Board take each opportunity to deter illegal cannabis cultivation activities and demonstrate the need to comply by imposing administrative civil liability sufficient to ensure the cost of noncompliance is an incentive to comply. The Diverters engaged in the unauthorized diversion and use of water for illegal cannabis cultivation activities. The proposed

penalty is adequate to penalize the violations and deter noncompliance by similarly situated parties.

41. On June 7, 2023, Division staff inspected the Diverter's Property. On October 25, 2023, Division staff mailed the NOV/IR to the Diverter. On October 27, 2023, United States Postal Service Records indicate that the Diverter received the NOV/IR. The NOV/IR described the observations made by Division staff, identified violations and the potential liability of each violation, provided corrective actions for the violations, and provided Division staff contact information to the Diverter for questions or correspondence. The NOV/IR provided a 30-day compliance period for the Diverter to file an Initial Statement of Diversion and Use for the diversion on the Property, file for an appropriative water right, and implement corrective actions for Cannabis Cultivation Policy violations, and to cease their diversion and use of water for cannabis cultivation. On November 27, 2023, the 30-day compliance period ended. Neither the Diverter nor a representative of the Diverter responded to the NOV/IR's corrective actions after the 30-day compliance period. The Diverter or representative of the Diverter has not contacted Division staff since March 22, 2024.

**42. Violation 1: Failure to Submit Statements of Water Diversion and Use (Water Code 5101)**

a. Extent of Harm Caused:

The failure to file a Statement impacts the State Water Board's administration of the State's water resources and the priority of right to divert and use water. The State Water Board's Statement Program is a central repository for records that report each point of diversion, diversion amount and use of water by all water diverters that are not required to have an appropriative water right on file. The failure to submit statements of water diversion and use impacts the water rights regulatory program and harms other priority of right diverters, the environment, and public trust resources. The effects of cannabis-related water diversion and use that is not reported to the State Water Board remains unknown and is a concern as the state continues to experience severe drought conditions. The need for timely water diversion and use records is particularly important after three years of critical drought conditions that have led to curtailments of legal users based on reported water use and projected water availability data. Failure to comply with reporting requirements adds an administrative burden to state and local regulators that can alter or reduce water use by legal water users when there is insufficient supply relative to demand. When legal users are curtailed, the water that becomes available unfairly benefits illegal diverters or those who do not report their diversion or use of water. Therefore, by failing to file a Statement to report water diversion and use, the Diverter compromises the State Water Board's orderly and efficient administration of the State's water resources.

b. Nature and Persistence:

POD1 and POD2 are the sole observed water sources on the Property. The need to file a statement was called to the attention of the Diverter after the inspection in the NOV/IR. To date, the State Water Board has not received Statements for POD1 or POD2 from the Diverter to correct the violations.

c. Corrective Action:

As of the date of this complaint, the Diverter has not come into compliance by filing Statements for POD1 and POD2.

d. Length of time:

A Statement has been required to report the annual diversion and use of water from POD1 and POD2 since February 1, 2024. The violations are ongoing.

e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability of \$2,000 for these violations.

**43. Violation 2 and 3: Cannabis Cultivation Policy, Section 1: Term 18; Section 2: Term 66.**

Violations of terms and conditions of the Cannabis Cultivation Policy Terms 18 and 66 are jointly analyzed in accordance with Water Code section 1055.3. Compliance with State Water Board's Cannabis Cultivation Policy terms, conditions, and requirements are necessary to ensure individual or cumulative water diversions associated with cannabis cultivation do not have a negative impact on water availability, aquatic and riparian habitat, public trust resources, or the environment, and incompliance with all state and local laws. The Diverter was cultivating illegally without a state issued cannabis cultivation license issued by the Department of Cannabis Control and was trespassing onto a neighboring parcel to undertake cannabis cultivation activities. These violations of the State Water Board's Cannabis Cultivation Policy contribute to the impacts that the state seeks to deter.

a. Extent of Harm Caused:

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 diverter's ability to use water beneficially and impacts instream and terrestrial public trust resources and habitat. The extent of harm caused by the violation is compounded as these activities occurred within Rattlesnake Creek watershed (HUC 12 #180101060104), tributary to South Fork Eel River, which is designated as a Wild and Scenic River. As such, the Property is located in a priority watershed based on high public trust resource value such as aquatic

habitat, listed anadromous and amphibian endangers species in the stream system. Additionally, Diverter unlawfully trespassed on a neighboring parcel in violation of local laws in order to undertake cannabis cultivation activities harming the neighbor's right to restrict access to and the private enjoyment of their property.

b. Nature and Persistence:

During the inspection, Division staff observed water diversion infrastructure at POD1 and POD2 during the surface water dry season forbearance period (April 1- October 31) for cannabis cultivation. It is likely the Diverter continually trespassed on the neighboring parcel to access POD2. On October 27, 2023, the Diverter signed for receipt of the NOV/IR that provided notice of the Cannabis Cultivation Policy, Attachment A, Section 1 and 2 Term violations observed during the June 7, 2023, inspection.

c. Corrective Action:

As of the date of this Complaint, the Diverter has been non-responsive. The Diverter has not submitted information to demonstrate that the illegal cannabis cultivation and the diversion of water has ceased since law enforcement eradicated and stopped the illegal cannabis cultivation. It is not clear whether the diversion infrastructure (POD2) located on the neighboring property was fully removed.

d. Length of Time:

Although it is likely the Diverter continually diverted water from POD1 and POD2 during the forbearance period based on the consumptive water demands of cannabis, the Division alleges two violations of Term 66 (one for each POD documented) and one violation of Term 18 for Diverter's trespass onto the neighboring parcel to establish POD2.

e. Considering the factors listed in a-d above, the Division proposes the following administrative civil liability for these violations: Violation 2: \$500; and Violation 3: \$1,000.

**44. Violations 5, 6, and 9: Cannabis Cultivation Policy, Section 2, Term 81, 82, and 98.**

Violations of Term 81, 82, and 98 of the State Water Board's Cannabis Cultivation Policy have been analyzed jointly with respect to Water Code, section 1055.3. These violations are analyzed jointly because the requirements of these Cannabis Cultivation Policy terms establish best management practices associated with the diversion and use of water for cannabis cultivation. The Cannabis Cultivation Policy terms and conditions are required to ensure individual or cumulative water diversions and associated cannabis cultivation activities do not have a negative impact on water availability, aquatic and riparian habitat, public trust resources, or the environment. The Diverter was cultivating cannabis without a state issued cannabis cultivation license from the Department of Cannabis Control and all

violations of the Cannabis Cultivation Policy contribute to the negative impacts of the Diverters' cannabis cultivation activities.

a. Extent of Harm:

Accurate data on water diversion and use is required from all users of water in the State so that the Division can plan for drought and effectively manage the State's limited water resources. The failure to install monitoring devices, maintain diversion and use records, and implement best management practices deprives the Division of critical data required for resource planning, forecast water demand, protection of public trust resources, to ensure water diverters are not diverting more water than authorized, to ensure water diverted is put to beneficial use without the waste and unreasonable use of water, and protects the priority of right to divert and use water beneficially.

b. Nature and Persistence:

Division staff observed no water measuring device nor water diversion records on or near POD1, or POD2, which both divert water by pump for cannabis irrigation. On October 27, 2023, the Diverter signed for receipt of the NOV/IR that provided notice of the Cannabis Cultivation Policy, Attachment A, Section 2 Term violations observed during the June 7, 2023 inspection.

c. Corrective Action:

As of the date of this Complaint, the Diverter has been non-responsive.

d. Length of Time:

During the inspection, Division staff documented the Diverter's failure to install water diversion measuring devices and the failure to keep and maintain records of water diversion and consumption for cannabis irrigation and domestic use. Cultivation appears to have ceased after law enforcement eradicated the illegal cannabis cultivation. Although these violations likely persisted prior to the inspection Division staff allege as single violation for each Cannabis Cultivation Policy term requirements.

e. Considering all the relevant circumstances and the factors listed in a-d above, the Division proposes the following administrative civil liability for these violations: Violation 5: \$500; Violation 6: \$1,500; Violation 9: \$500.

**45. Violations 4, 7, and 8: Cannabis Cultivation Policy, Section 2, Terms 77, 92 and 93**

Term 77, 92, and 93 of the State Water Board's Cannabis Cultivation Policy have been analyzed jointly with respect to Water Code, section 1055.3. These violations are analyzed jointly because the requirements of these Cannabis Cultivation Policy terms establish best management practices for the diversion and storage of water for cannabis irrigation that seek to prevent waste of water resources and harm to the surrounding riparian and aquatic habitats.

a. Extent of Harm:

The Cannabis Cultivation Policy Terms associated with these violations are requirements necessary to prevent impacts to water availability and aquatic habitats. Water diversions that do not cap or block intakes harm instream flows during the forbearance period. Inability to render the Diverter's POD intake incapable of diverting water can result in continued water diversion, impacting downstream beneficial uses and depriving downstream priority of right diverters. Moreover, storage facilities without overflow prevention devices and lids have the potential to waste water depleting instream flows. the waste of water and may cause direct harm by entrapping wildlife. The potential for harm to instream flows and wildlife increases significantly when there are multiple water storage tanks that fail to comply with the Cannabis Cultivation Policy requirements.

b. Nature and Persistence:

During the June 7, 2023 inspection, Division staff observed POD2 was not plugged, blocked, capped, disconnected, removed, or otherwise bypassed or rendered incapable of diverting water for cannabis activities during the surface water diversion forbearance period. Additionally, Division staff documented twelve (12) water storage tanks without a device to prevent overflow and thirteen (13) storage tanks without lids installed to prevent wildlife entrapment.

c. Corrective Action:

As of the date of this Complaint, the Diverter has been non-responsive.

d. Length of Time:

During the inspection Division staff documented the Diverters' failure to implement the water diversion and storage facilities best management practices required by the Cannabis Cultivation Policy. It is likely these violations persisted during the duration of cannabis cultivation activities at the Property. Cultivation and potentially the diversion of water for cultivation has ceased after law enforcement eradicated the illegal cannabis cultivation.

- e. Considering all the relevant circumstances and the factors listed in a-d above, the Division proposes the following administrative civil liability for these violations: Violation 4: \$500; Violation 7: \$6,000; Violation 8: \$6,500.

**46. Violation 10: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code 1847)**

a. Extent of Harm Caused:

Operating a commercial cannabis cultivation site without a license causes negative economic impact on the legal cannabis industry and harm to the regulatory program. The degree of illegal cannabis cultivation exceeds legal cultivators by orders of magnitude in all aspects of the cannabis industry

across the state. Illegal cultivation directly harms the legal market by supporting and supplying an unregulated market where illegal cultivators do not incur the compliance costs to cultivate cannabis in a manner that does not have a negative impact on water availability, terrestrial and aquatic habitats, wetlands, and springs. As such, the Diverters' cannabis cultivation activities significantly harm legal cultivators, priority of right diverters, beneficial use of water, and the Cannabis Cultivation Regulatory Program.

b. Nature and Persistence:

Unlicensed cannabis cultivation violates the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. DCC 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 inspection required a commercial cannabis cultivation license. During the site inspection, on June 7, 2023, Division staff observed approximately 2,651 cannabis plants, along with two surface water diversions (POD1 and POD2) operated by pump and plumbed to convey water for domestic use and cannabis irrigation on the property. This scale of cultivation requires a state cultivation license from DCC. On October 27, 2023, Division staff delivered a NOV/IR to the Diverter describing the violation and bringing the violation to the Diverter's attention.

c. Corrective Action:

As of the date of this complaint, the Diverter has been non-responsive and has not submitted information to demonstrate compliance.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the inspection. Liability for one violation of Water Code section 1847, subdivision (b)(4) is alleged. Cultivation and potentially the diversion of water for cultivation ceased after law enforcement eradicated the illegal cannabis cultivation.

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

### **PROPOSED CIVIL LIABILITY**

47. Having taken into consideration the factors described above and the need for deterrence, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of \$19,000: Violations 1+2+3+4+5+6+7+8+9+10 = Statutory Maximum Liability \$2,000 + \$500 + \$1,000 + \$500 + \$500 + \$1,000 + \$6,000 + \$6,500 + \$500 + \$500 = \$19,000.

## **RIGHT TO HEARING**

48. The Diverter 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 you receive this Complaint as required by Water Code section 1055, subdivision (b).
49. If the Diverter does not request a hearing within 20 days, then the right to a hearing on the matter is waived. The 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.
50. If the Diverter requests a hearing, you 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.
51. 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**

### **ORIGINAL SIGNED BY:**

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

Dated: August 15, 2025