

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Allegations of Water Code Violations

Ryan Miller

APN: 069-070-001-000, 106-220-007-000, & 069-080-005-000

COUNTY: SONOMA

**Ryan Miller (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, relating to the diversion or use of water for cannabis cultivation activities on the Diverter’s real property in Sonoma County during 2023.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of Forty-nine Thousand Dollars (\$14,000).
3. **The Diverter has the right to request a hearing on these allegations 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 2-7: Six (6) violations of Term requirements in the Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Cultivation Policy)¹
6. Violation 8: 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:
Sonoma County records indicate that the Diverter and Rick Jones jointly acquired Sonoma County Assessor's Parcel Numbers (APNs) 069-070-001-000, 106-220-007-000, & 069-080-005-000 (the Property) on May 19, 2016, and have owned the Property at all times relevant here.
8. Watershed Information:
The Property is in the Russian River Watershed, specifically in the Hydrologic Unit Code 12 (HUC 12: 180101100903) watershed designated as Dutch Bill Creek-Russian River. Cannabis Cultivation activities occurred in the Hulbert Creek Watershed, which is a tributary of the HUC 12 Dutch Bill Creek-Russian River watershed. Water for cannabis cultivation was diverted from an unnamed stream that is tributary to Hulbert Creek. Hulbert Creek is a tributary of the Russian River.
9. Inspection Basis:
On August 17, 2023, California State Parks invited Division staff to a search warrant investigation of the Property based on the suspected surface water diversion used for illegal cannabis cultivation on the Property.
10. Water Rights Records Review:
On August 23, 2023, on January 11, 2024, on March 21, 2024, and again on January 24, 2025, Division staff searched for available State Water Board records in the Division of Water Rights Electronic Water Rights Management System (eWRIMS) and found no existing Statement, water right permit, license, or registration on file for the Property.
11. Well Records Review:
On August 23, 2023, on January 11, 2024, and again on March 21, 2024, Division staff searched the available Department of Water Resource records in the online

¹ 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 Administrative Law approved both versions of the Cannabis Cultivation Policy on December 18, 2017, and April 16, 2019 respectively.

Well Completion Report database and found no existing records of a groundwater well on the Property.

12. Commercial Cannabis Cultivation License Records Review:

On August 23, 2023, Division staff reviewed the California Department of Cannabis Control's (DCC's) August 16, 2023, commercial cannabis cultivation license records 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 11, 2024, Division staff searched DCC's cultivation license records, current to December 27, 2023, and again found no such license on record.²

13. Inspection:

On August 29, 2023, Division staff inspected the Property to assess compliance with the California Water Code and the State Water Board's Cannabis Cultivation Policy. California State Parks, California Department of Fish and Wildlife (CDFW) Game Wardens, CDFW scientific staff, and Mendocino County Sheriff's Office Law Enforcement were also conducting inspections of the Property. The Diverter was present during the inspection and was interviewed by both California State Parks law enforcement officers and by Division staff. Division staff observed approximately 1,389 cannabis plants, two surface water diversions, and related irrigation infrastructure on the Property.

14. Field Notice of Violation:

On August 29, 2023, Division staff, at the conclusion of the inspection left a field Notice of Violation (NOV) at the Property with the search warrant. The Field NOV described violations observed, corrective actions necessary, potential liabilities, and provided a staff contact for compliance assistance.

15. Points of Diversion:

On the August 29, 2023 inspection, Division staff observed and documented two points of diversion (POD) on the Property that have been used for cannabis cultivation since 2021 according to statements made by the Diverter.

- a. POD1 is a point of diversion to off-stream storage located on an unnamed stream that is a tributary to Hulbert Creek. The unnamed stream has defined bed and banks upstream and downstream from POD1. Water was flowing in the unnamed stream, however, POD1 was not actively diverting water during the inspection. POD1 is a 1.5 horsepower electric well pump plumbed to a 1-inch diversion line that supplies water for cannabis cultivation at place of use (POU) two (POU2). If the pump was on, water could be diverted from the unnamed stream. POD1 is located within APN

² The DCC records reviewed by Division staff on October 13, 2021, include CDFA and DCC licenses issued prior to October 11, 2021.

069-070-001-000 owned by the Diverter and is riparian to the unnamed stream.

- b. POD2 is a point of diversion to off-stream storage located on an unnamed stream that is a tributary to Hulbert Creek. The unnamed stream has defined bed and banks upstream and downstream from POD2. Water was flowing in the unnamed stream, however, POD2 was not actively diverting water during the inspection. Water diverted from POD2 is diverted using a 1.5 horsepower well pump (powered by a 9.7 horsepower Predator gasoline generator) through a 1-inch polyethylene water supply line to place of storage (POS) six (POS6). Water diverted from POD2 is used for cannabis cultivation at POU1. POD2 is located within APN 069-090-001-000 owned by the Diverter and is riparian to the unnamed stream.

16. Aerial Imagery Review:

On August 23, 2023, and again on January 11, 2024, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. On August 23, 2023, Division staff reviewed LandVision aerial imagery dated February 22, 2022, showing a similar outdoor cultivation area observed by Division staff at POU1 consistent with the August 29, 2023 inspection. This is the earliest aerial image with evidence of cannabis cultivation occurring on the Property.
- b. On January 11, 2024, Division staff reviewed Google Earth aerial imagery dated May 11, 2023, and confirmed graded areas throughout the Property indicating potential commercial cannabis cultivation. The image shows outdoor cultivation present at POU1, consistent with observations during the August 29, 2023, inspection.

17. Inspection Report and Notice of Violation:

On October 25, 2023, and again on November 13, 2023, Division staff mailed the Diverter a Notice of Violation and Inspection Report (NOV/IR) via certified mail. United States Postal Service Records indicate that Diverter received the NOV/IR on November 15, 2023. Rick Jones received the NOV/IR on January 19, 2024. The NOV/IR describes the observations made by Division staff and notifies the Diverter that the diversion and use of water for cannabis cultivation activities without the necessary appropriative water right and not complying with the Cannabis Cultivation Policy are violations subject to enforcement by the State Water Board. The NOV/IR recommends that the Diverter file a Statement for the diversion and use of water on the Property, implement corrective actions for each alleged Cannabis Cultivation Policy violation, and cease actively diverting water for cannabis cultivation until an appropriative water right has been issued by the State Water Board.

18. Landowner and Diverter Response:

- a. On September 6, 2023, the Diverter, contacted Division staff by phone. He stated that compliance is his goal and he wanted to discuss the field NOV. He was advised to take photos of the deconstruction of the pools, removal of the PODs, show that the POU's have been retired, as well as install lids on all tanks. He was advised that a formal report would follow.
- b. On September 11, 2023, the Diverter sent by email photos of both PODs removed and all three of the pools used to store water (POS3 -5) were removed.
- c. On January 10, 2024, Division staff emailed the Diverter to discuss the outstanding corrective actions which include filing statements for POD1 and POD2 and to verify that all three pools (POS 3-5) were removed. He has not responded to date.
- d. On January 19, 2024, Rick Jones wrote a letter to the State Water Board stating he was not involved in the cannabis cultivation activities on the Property, nor could he have been capable due to a skiing accident the year prior. Enclosed with the letter from Rick Jones was a signed statement from the Diverter stating that he was solely responsible for the cannabis cultivation on the Property.
- e. On January 24, 2024, Rick Jones contacted Division staff via phone. Mr. Jones stated he has nothing to do with the cannabis cultivation due to his health. Mr. Jones said he had osteoporosis, a broken back, and over the past two years has broken multiple other bones. Mr. Jones said he has not been to the Property for over two years.
- f. On February 28, 2024, Division staff reached out to Mr. Jones via phone to follow up on outstanding corrective action, specifically filing the Initial Statement for POD1 and POD2. He did not answer and a voicemail was left. The Diverter was also emailed about corrective action and no response has been received to date.
- g. On March 1, 2024, Mr. Jones called about the outstanding corrective action. Mr. Jones said he could not file an Initial Statement for POD1 and POD2 because he was not there and did not know the water usage.
- h. On March 4, 2024, Mr. Jones called Division staff to say he asked the Diverter to call Division staff. Mr. Jones said that the Diverter removed all three pools (POS 3-5). On the same day, Division staff called the Diverter and left a voicemail to confirm that all three pools were removed and to request information regarding compliance with remaining requirements.
- i. On March 8, 2024, Rick Jones called to ask if Ryan Miller had contacted Division staff. Division staff told him Ryan Miller was nonresponsive to inquiries.

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

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 with the State Water Board. The deadline depends on the date of the diversion; the deadline applicable here for the diversions observed during the inspection was February 1, 2024.³
22. Water Code section 5102 states that a separate statement shall be filed for each point of diversion.
23. Water Code section 5107(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. During the August 29, 2023, inspection, Division staff observed POD1 and POD2 were used for irrigation of cannabis. POD1 and POD2 are surface water diversions subject to the State Water Board's permitting authority and were the sole sources of water observed on the Property. Division staff have reviewed eWRIMS multiple times and found no record of a Statement on file for POD1 or POD2. At the time of inspection, POD1 was supplying water for cannabis cultivation at POU2, and POD2 was supplying water for cannabis cultivation at POU1. The Diverter stated to Division staff during the inspection that PODs 1 and 2 have been used for cannabis cultivation since 2021.

³ For diversions after September 30, 2021, statements are due before February 1 of the succeeding year. (Water Code § 5101, subd. (b)(3).)

- b. Following the inspection, Division staff reviewed Google Earth February 22, 2022, aerial imagery of the Property, which shows that the outdoor grow infrastructure at POU1 was present during 2022. This imagery, coupled with the Diverter's statement regarding diversions for cultivation, indicates that a statement for water diversion and use should have been filed for the 2022 cultivation season.
- c. A Statement for the diversion and use of water during the 2022 cultivation season should have been filed by February 1, 2023. On November 15, 2023, the Diverter received the NOV/IR providing notice of the Water Code section 5101-5107 Statement reporting requirements and recommended the Diverter file a Statement for Water Diversion and Use for 2022 within 30 days. From December 15, 2023, until January 30, 2025, represents 413 days of non-compliance following 30 days of Notice for this requirement.
 - i. Division staff allege that the diversion and use of water from for cannabis cultivation occurring in 2022, without a Statement, constitutes two (2) \$1,000 violations of Water Code section 5101.
 - ii. The Division asserts 90 days of continuing day violations for each POD at \$500 per day, totaling 180 days.

Cannabis Cultivation Policy Requirements

- 24. The Cannabis Cultivation Policy went into effect on December 18, 2017. The Cannabis Cultivation Policy contains principles, guidelines, and requirements (requirements) adopted pursuant to Water Code section 13149, for the diversion or use of water for cannabis irrigation in areas where cannabis cultivation may have the potential to substantially affect instream flow. The State Water Board later 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 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).*

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. POD1 is a point of diversion to off-stream storage located on an unnamed stream that is a tributary to Hulbert Creek. Water diverted from POD1 was used for cannabis cultivation at Place of use (POU) 2. The 1.5 horsepower well pump electric water pump (pump) and 1-inch diversion line were installed (plumbed) but the pump was not on at the time of inspection. If the pump was on, water could be diverted from the unnamed stream. Division staff observed that the conveyance lines and pump were all intact and ready for use by turning on the pump. POD1 is subject to the Numeric and Narrative Instream Flow Requirements. The diversion documented during the August 29, 2023 inspection occurred during the surface water dry season forbearance period (April 1 through October 31).
- b. POD2 is a point of diversion to off-stream storage located on an unnamed stream that is a tributary to Hulbert Creek. Water diverted from POD2 is diverted using a 1.5 horsepower well pump (powered by a 9.7 horsepower Predator gasoline generator) through a 1-inch polyethylene water supply line to POS6. Water diverted from POD2 is used for cannabis cultivation at POU 1. Division staff observed that the conveyance lines and pump were all intact and ready for use by turning on the pump. POD2 is subject to the Numeric and Narrative Instream Flow Requirements. The diversion documented during the August 29, 2023, inspection, occurred during the surface water dry season forbearance period (April 1 through October 31).
- c. The consumptive water use analysis from the NOV/IR details how much water would be needed for the 1,389 cannabis plants found on the Property. There was a total of 9,943 gallons (0.0305 acre-ft) of storage available with 7,114 gallons (0.218 acre-ft) of active storage available. The analysis ranges from a plant needing 2.5 gallons per day to 6 gallons per day. Even at a very conservative estimate of 2.5 gallons per day per plant,

the Division believes the Diverters would need to divert 3,473 gallons of water every 2.8 days during the forbearance period.

- i. Two violations of Term 66 are alleged for the diversion of water for cannabis cultivation at POD1 and POD2 observed by Division staff on August 29, 2023.

28. Violation 3: Cannabis Cultivation Policy, Attachment A, Section 2, Term 77 states:

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. Division staff observed that POD1 and POD2 were plumbed to divert surface water to irrigate cannabis during the August 29, 2023, inspection. The inspection was conducted during the surface water forbearance period (April 1 – October 31). Division staff observed that the diversion structure for POD1 and POD2 were not plugged, blocked, capped, disconnected, removed, or rendered incapable of diverting water for cannabis cultivation during the forbearance period. Water could be diverted at POD1 and POD2 anytime the pumps were turned on.
- i. Two violations of Term 77 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to follow the diversion intake requirements for POD1 and POD2 as observed on August 29, 2023, during the forbearance period.

29. Violation 4: Cannabis Cultivation Policy, in 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 Property inspection on August 29, 2023, no water measuring device was observed installed on or near POD1 nor on or near POD2, nor were any records of water diversion found on the Property. Division staff determined, based on the diversion system, there would need to be at least two water measuring devices installed one each for POD1 and POD2 to measure water diverted for cannabis cultivation.
 - i. Two violations of Term 82 of Section 2 of the Cannabis Cultivation Policy are alleged for failure to have a water measuring devices installed during the inspection to measure diversions at POD 1 and POD2 and for the failure to maintain daily diversion records on the Property.

30. **Violation 5:** Cannabis Cultivation Policy, in 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 August 29, 2023, inspection, Division staff observed POS3, POS4, and POS5 without float valves or similar devices installed to prevent the overflow and waste of water. Division staff determined there would need to be a total of three (3) overflow prevention devices.
 - i. Three violations of Term 92 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to use water storage tanks without a float valve, or equivalent device, during the inspection on August 29, 2023.

31. **Violation 6:** Cannabis Cultivation Policy, in 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 August 29, 2023, inspection, Division staff documented a total of three (3) pools constructed of timber and tarps were in use without lids or other mechanisms to prevent the entry and/or entrapment of wildlife for POS3 (pool 1), POS4 (pool 2), and POS5 (pool 3).

- i. Three violations of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to have a lid installed to prevent the entry and/or entrapment of wildlife during the inspection on August 29, 2023.

32. **Violation 7:** Cannabis Cultivation Policy, in 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 Property inspection on August 29, 2023, Division staff did not locate daily records of water used for cannabis cultivation. Additionally, Division staff did not observe any water measuring devices at POD1 or POD2, or at any POS, or at POU 1 and 2. Division staff requested daily irrigation records from the Diverter in the NOV/IR received on November 15, 2023. No information has been received in response to the required corrective actions.
 - i. One violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to measure cannabis cultivation water use and to maintain daily records of water used for cannabis cultivation during the inspection on August 29, 2023.

Diversion or Use of Water for Cannabis Cultivation Requires DCC License

33. **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.

34. 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. While the Division is not responsible for determining the specific type of state cultivator license type that DCC would have required here, based on the review of aerial images and Division staff's observations during the Property 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 August 29, 2023 inspection, Division staff observed the diversion and use of water for cannabis cultivation of approximately 1,389 cannabis plants on 21,294 sq. ft. of the Property located at POU 1 and 2. The scale of cannabis cultivation requires a license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. Division staff examined available records on August 23, 2023 and have not found any record that DCC issued 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

35. The statutory maximum liability for the violations alleged in this Complaint 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 through 8 = 1 (\$92,000) + 2 (\$1,000) + 3 (\$1,000) + 4 (\$1,000) + 5 (\$1,500) + 6 (\$1,500) + 7 (\$500) + 8 (\$500) = \$99,000.

CONSIDERATION OF WATER CODE SECTION 1055.3 FACTORS

36. 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

37. Although aerial imagery and the Property conditions observed during the inspection suggests that illegal cannabis cultivation activities and the failure to implement the Cannabis Cultivation Policy's best management practices pre-dates August 29, 2023, the Division has taken a conservative approach to calculating the

proposed administrative civil liability amount, focusing on the violations observed during the inspection.

38. The Division recommends that the State Water Board take each opportunity to deter illegal activities and demonstrate the need to comply by imposing administrative civil liabilities for cannabis cultivation violations. The Diverter engaged in illegal cannabis cultivation activities. As such, the proposed penalties must be adequate to serve as a deterrent to ensure voluntary compliance in the regulated cannabis cultivation industry.
39. Division of Water Rights staff found no evidence that the Diversifiers have obtained any of the regulatory approvals necessary for commercial cannabis cultivation, such as permits, licensing fees and other regulatory costs. The cost of compliance for commercial cannabis cultivation can be significant, and unlicensed and unpermitted cannabis cultivators obtain an unfair advantage over those cultivators who participate in the regulated market. Liabilities should consider the need for deterrence to similarly situated cultivators who operate without State or local authorization.

40. Violation 1: Failure to Submit a Statement 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 diversifiers that are not required to have an appropriative water right on file with the State Water Board. The failure to submit Statements of water diversion and use impacts the water rights regulatory program and harms other priority of right diversifiers, the environment, and public trust resources. 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 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 diversifiers or those who do not report their diversion or use of water. Therefore, by failing to file a Statement, the Diversifiers compromise the State Water Board's orderly and efficient administration of the State's water resources.
- b. Nature and Persistence: The Diverter stated he has diverted surface water for cannabis cultivation since 2021. The need to file a Statement was called to the attention of the Diverter when receiving the NOV/IR on November 15, 2023. The NOV/IR corrective action for the documented violation provided 30

days to comply. In addition, Division staff notified the Diverter four more times via telephone that Statements were still required for POD1 and POD2.

- c. Corrective Action: The Diverter has not filed the necessary Statements for POD1 and POD2 as of the date of this Complaint.
- d. Length of Time:
A Statement has been required to report the annual diversion and use of water from POD1 and POD2 since February 22, 2022. As of the date of this Complaint, a search of eWRIMS shows no Statements on file for POD1 or POD2. The violation time period assessed is from December 15, 2023, to January 30, 2025, when this matter was prioritized for formal enforcement. The violations are ongoing.
- e. Taking into consideration relevant circumstances and the factors listed in a-d above, the Division proposes administrative liability in the amount of \$5,000 for POD1 and POD2 each, totaling \$10,000.

41. Violation 2: Cannabis Cultivation Policy, Section 2, Term 66

- 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.
- 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) being used for cannabis cultivation.
- c. Corrective Action: The Diverter removed the diversion infrastructure at both POD1 and POD2 and has no plans to divert water or cultivate cannabis in the future.
- 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).
- e. Considering the factors listed in a-d above, the Division proposes half of the statutory maximum administrative civil liability (\$250) for per violation in the amount of \$500 (250x2).

42. Violations 3, 5-6: 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 August 29, 2023 inspection, Division staff observed POD1 and POD2 were 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 that POS3, POS4, and POS5 were without a device to prevent overflow nor were the constructed water storage pools with lids installed to prevent wildlife entrapment.
- c. Corrective Action: The Diverter removed the diversion infrastructure at both POD1 and POD2 and have no plans to divert water or cultivate cannabis in the future. Additionally, photos were submitted showing all three pools (POS3 – pool 1, POS4 – pool 2, POS5 – pool 3) were deconstructed and removed.
- 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 half of the statutory maximum administrative civil liability (\$250) for each of these violations: Violation 3: \$500 (250 x 2); Violation 5: \$750 (250x3); and Violation 6: \$750 (250x3).

43. Violation 4 and 7: Cannabis Cultivation Policy, Section 2, Term 82 and 98

Violations of Term 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 Diverter's 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 November 15, 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 August 29, 2023 inspection.
- c. Corrective Action: The Diverter removed the diversion infrastructure at both POD1 and POD2 and have no plans to divert water or cultivate cannabis in the future.
- 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 a 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 4: \$1,000 (500x2); and Violation 7: \$500.

44. Violation 8: Diversion or Use of Water for Cannabis Cultivation Without a Department of Cannabis Control License

a. Extent of Harm Caused:

Operating a commercial cannabis cultivation site without a license causes negative economic impact on the legal cannabis industry and general harm to the administration of the regulatory program. The illegal cultivation industry continues to be a focus of enforcement efforts for the Water Board's Cannabis Cultivation 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, springs, and health and safety of users. As such, the Diverter's 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. DCC began accepting applications for commercial cannabis cultivation licenses on January 1, 2018. During the site inspection, Division staff observed approximately 1,389 cannabis plants growing in two outdoor grows irrigated by a gasoline water pump from a surface water diversion (POD1&2). This scale of cultivation requires a state cultivation license from DCC. Division staff called to the Diverter's attention in the IR/NOV that commercial cannabis cultivation required a license pursuant to Water Code, section 1847.

c. Corrective Actions:

The Diversers both stated that they will no longer cultivate cannabis on the Property. To date, no DCC license has been acquired by the Diverter.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the inspection. Division staff observations and evidence collected suggest the water diversion and use for cannabis cultivation was at a commercial cultivation scale that requires a DCC license. Although Division staff believe the scale of cultivation similar to the amount of cultivation observed during the inspection of the Property has been occurring prior to the inspection, liability for a single violation of Water Code section 1847, subdivision (b)(4) is alleged.

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

PROPOSED CIVIL LIABILITY

45. The Assistant Deputy Director for Water Rights recommends administrative civil liability in the amount of Violations 1 through 8 = 1 (\$10,000) + 2 (\$500) + 3 (\$500) + 4 (\$500) + 5 (\$750) + 6 (\$750) + 7 (\$500) + 8 (\$500) = \$14,000.

RIGHT TO HEARING

46. 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 the Diverter receives this Complaint as required by Water Code section 1055, subdivision (b).

47. If the Diverter does 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.

48. If the Diverter timely requests a hearing, the Diverter 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.
49. 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: October 8, 2025