

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

ORDER WR 2026-0001-AHO

**ADMINISTRATIVE HEARINGS OFFICE**

**ADMINISTRATIVE CIVIL LIABILITY ORDER**

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In the Matter of Alleged Water Code Violations against

**Jose M. Alvarez & Vicente Lopez**

APN 108-213-030-000

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COUNTY: MENDOCINO

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## **1.0 INTRODUCTION**

This matter came before the State Water Resources Control Board's (State Water Board or Board) Administrative Hearings Office (AHO) after the Board's Division of Water Rights (Division) issued an administrative civil liability complaint (Complaint) against Jose Alvarez and Vicente Lopez (Respondents) and Respondents timely requested a hearing. The Complaint alleged that Respondents violated various requirements in the Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Cultivation Policy), established by the State Water Board pursuant to Water Code section 13149, and that they diverted and used water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC) under Chapter 6 (commencing with Section 26060) of Division 10 of the California Business and Professions Code.<sup>1</sup> Based on these allegations, the Complaint recommended a civil penalty in the amount of \$18,500.

The AHO held an evidentiary hearing on November 13, 2025, in accordance with the procedures outlined in the September 11, 2025, Amended Notice of Public Hearing and all applicable laws and regulations, and the matter was submitted for decision on December 5, 2025. The AHO issues this order pursuant to Water Code section 1114, subdivision (b), which authorizes the hearing officer to issue a final order in a proceeding for administrative civil liability under Water Code section 1847. Based on the parties' evidence and argument, the AHO finds that Respondents violated the Cannabis Cultivation Policy and diverted and used water for cannabis cultivation without a DCC license. The AHO imposes joint and several civil liability in the amount of \$18,500 against Respondents.

## **2.0 FACTUAL AND PROCEDURAL BACKGROUND**

### **2.1 Factual Findings**

Respondents acquired Mendocino County Assessor Parcel Number 108-213-030-000 (the Property) on October 5, 2020, as joint tenants with 50 percent ownership each, and retained ownership in this capacity at all times relevant to this order. (Exhs. PT-1 – PT-3; PT-62, ¶ 4.) The Property is in the Upper Eel, Tomki Creek, and Lower Tomki Creek watersheds. (Exh. PT-62, ¶ 5.) Respondents have never obtained an appropriative water right to divert surface water to the Property or obtained a cannabis cultivation license associated with the Property. (*Id.* at ¶ 7.)

On June 8, 2023, representatives from the Division, the Mendocino County Sheriff's Office, the DCC, and the California Department of Fish & Wildlife (CDFW) conducted an

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<sup>1</sup> A copy of the Cannabis Cultivation Policy is marked as Exhibit PT-66. Terms referenced in the policy, and discussed in this order, are in Attachment A to the policy, which begins in page 39 of Exhibit PT-66. Unless the context indicates otherwise, references in this order to exhibits are to exhibits introduced during the hearing for this proceeding. These exhibits are filed in a folder titled "Parties' Hearing Exhibits" within the Hearing Documents folder in the administrative record for this proceeding.

inspection of the Property. (Exh. PT-62, ¶ 8.) During this inspection (2023 inspection), Division staff observed approximately 1,645 cannabis plants growing on the Property. (*Id.*) Division staff also observed a point of diversion from Tomki Creek to off-stream storage (POS1). Division staff observed a one-horsepower water pump connected to a ¾-inch polyethylene water supply line that conveys water from the Tomki Creek diversion uphill to POS1. The electric pump was powered by a nearby generator to convey water with the assistance of two additional electric one-horsepower pumps. A second point of diversion in an unnamed spring channel did not appear to be used for cannabis irrigation. (Exh. PT-62, ¶ 8.b.) All water diversion infrastructure appeared to be connected and in working order such that it could divert water whenever the pump was turned on. (Exh. PT-62, ¶ 8.a.) Water stored at POS1 was conveyed by a 3.5-horsepower pump to three additional points of storage, which could then convey water to five locations on the Property for irrigation of cannabis and for domestic use. (Exh. PT-09, p. 7.)<sup>2</sup> A fifth point of storage was also present on the Property but did not appear to be connected to the Tomki Creek diversion. (Exh. PT-62, ¶ 8.d.)

Based on the maximum amount of water that could be stored at each point of storage, the Division concluded that the cannabis grown on the Property at the time of the inspection could not have survived but for the diversion of water from Tomki Creek. (Exh. PT-09, pp. 12–13.) Respondents did not file a statement of diversion and use for the Property until December 14, 2023. (Exh. PT-62, ¶ 24.)

Based on the 2023 inspection, Division staff mailed a Notice of Violation and Inspection Report (2023 NOV/IR) to Mr. Alvarez on September 28, 2023, by certified mail. (Exhs. PT-62, ¶ 10; PT-09.) The 2023 NOV/IR, Exhibit PT-09, identified the following violations:

1. Failure to file an initial statement of water diversion and use (Wat. Code, § 5101);
2. Prohibited diversions of water between April 1 through October 31 (Cannabis Cultivation Policy, Section 2, Term 66);

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<sup>2</sup> Unless otherwise indicated, citations in this order to page numbers of exhibits are to the pages of the pdf files of the exhibits. These page numbers often are different from the text page numbers, or “internal” page numbers in the exhibits.

3. Failure to install separate measuring devices to quantify diversions to and from each storage facility (Cannabis Cultivation Policy, Section 2, Term 81);
4. Failure to install a water measurement device for the Tomki Creek Diversion (Cannabis Cultivation Policy, Section 2, Term 82);
5. Use of storage facilities without devices to prevent overflow (Cannabis Cultivation Policy, Section 2, Term 92);
6. Failure to secure tank openings to prevent entry and entrapment of wildlife (Cannabis Cultivation Policy, Section 2, Term 93);
7. Failure to maintain daily records of water use for cannabis irrigation (Cannabis Cultivation Policy, Section 2, Term 98);
8. Diversion or use of water for cannabis cultivation without a DCC license.

The 2023 NOV/IR also detailed various corrective actions Mr. Alvarez could take to remediate these violations. (See generally Exh. PT-09.)

Mr. Alvarez received the NOV/IR on October 3, 2023. (Exh. PT-62, ¶¶ 10– 11.) After numerous communications with Division staff, Mr. Alvarez submitted an initial statement of diversion and use for the Tomki Creek diversion on December 14, 2023, and informed the Division on December 18 that the Tomki Creek diversion had been disconnected. (Exhs. PT-62, ¶ 17–18; PT-22.) Between December 14, 2023, and May 13, 2024, Mr. Alvarez communicated several times with the Division to discuss his efforts to correct the violations described in the 2023 NOV/IR. (Exh. PT-62, ¶¶ 18–21.)

On August 2, 2024, CDFW notified Division staff that a second search warrant investigation of the Property would occur to investigate suspected unlicensed cannabis cultivation and possible surface water diversion for unlicensed cannabis cultivation. (Exh. PT-62, ¶ 22.) Division staff reviewed aerial images that showed “uncovered hoop houses consistent with the unlicensed cannabis cultivation that was observed . . . during the June 8, 2023, inspection.” (*Id.* at ¶ 23.)

On August 15, 2024, Peter Hollingshead, environmental scientist with the Division’s Cannabis Enforcement Section, attended a second search warrant inspection of the Property (2024 inspection). He observed approximately 173 cannabis plants growing on the Property, which appeared to be irrigated with hauled water. He also observed

multiple uncovered storage facilities. Mr. Hollingshead did not observe any surface water diversions from Tomki Creek. (Exh. PT-62, ¶ 25.)

Approximately one month after the second inspection, Mr. Hollingshead mailed Mr. Alvarez another Notice of Violation and Inspection Report (2024 NOV/IR). (Exhs. PT-62, ¶ 26; PT-31.) The 2024 NOV/IR sent to Mr. Alvarez described Division staff's observations and the alleged violations, described the corrective actions necessary to correct each violation, and provided compliance assistance references and staff contact information. (See generally Exh. PT-35.) Mr. Alvarez received the 2024 NOV/IR on September 17, 2024. (Exhs. PT-35; PT-62, ¶ 26.)

Immediately after receiving the 2024 NOV/IR, Mr. Alvarez informed Mr. Hollingshead that Mr. Lopez managed the Property. (Exh. PT-62, ¶¶ 27–28.) On September 27, 2024, Mr. Hollingshead mailed Mr. Lopez a copy of the 2024 NOV/IR. (*Id.* at ¶ 29.) Mr. Lopez received the 2024 NOV/IR on October 2. (*Ibid.*)

## **2.2 Procedural Background**

On June 5, 2025, the Division issued the Complaint at issue against Respondents Alvarez and Lopez. (Exh. PT-36.) As relevant here, the Complaint alleges:

1. One violation of Cannabis Cultivation Policy, Section 2, Term 66, which prohibits cultivators from diverting surface water between April 1 and October 31. This alleged violation arises from Mr. Hollingshead's determination that surface diversions from Tomki Creek were used for cannabis irrigation based on the consumptive water demand of the cannabis plants observed during the 2023 inspection.
2. One violation of Cannabis Cultivation Policy, Section 2, Term 81, based on Mr. Hollingshead's observation during the 2023 inspection that no measuring devices were installed in the Property's water system that would have allowed Respondents to separately measure water diverted for cannabis irrigation and for domestic use.
3. Ten violations of Cannabis Cultivation Policy, Section 2, Term 92, based on Mr. Hollingshead observation during the 2023 inspection that 10 water storage tanks and pools on the Property had no devices installed to prevent the overflow and waste of water.
4. Twenty violations on the Cannabis Cultivation Policy, Section 2, Term 93, based on Mr. Hollingshead's observation during both the 2023 and 2024 inspections

that 10 water storage tanks and pools did not have lids or covers that would sufficiently prevent wildlife entrapment.

5. One violation of the Cannabis Cultivation Policy, Section 2, Term 94, based on Mr. Hollingshead's determination during the 2024 inspection that hauled water was being used to irrigate cannabis and Respondents' failure to provide any documentation for hauled water after having received the 2024 NOV/IR.
6. Two violations of the Cannabis Cultivation Policy, Section 2, Term 98, based on Respondents' failure to provide daily records of water used for cannabis irrigation after receiving both the 2023 and 2024 NOV/IRs.
7. One violation under Water Code section 1847, subdivision (b)(4), based on the failure to obtain a DCC license to cultivate cannabis on the Property and Mr. Hollingshead's conclusion that the cannabis plants observed on the Property could not have been cultivated without surface water diversions. (Exh. PT-36, ¶¶ 29–40; Exh. PT-62, ¶ 32.)

Each violation alleged in the Complaint is limited to a single day based on the inspection at which it was observed. (Exh. PT-64, ¶ 7.) The Complaint states that the statutory maximum liability for these violations is \$18,500 and seeks to recover liability in that amount. (Exh. PT-36, ¶ 49.)

Respondents timely requested an evidentiary hearing on June 9, 2025. On June 25, 2025, the AHO transmitted a Notice of Public Hearing that informed the parties that a hearing would be held on August 11, 2025, and that a pre-hearing conference would be held on July 31, 2025. The Notice of Public Hearing also contained the procedures that would govern the hearing and important deadlines pertaining to the parties' pre-hearing submittals. In accordance with those deadlines, the Division's Prosecution Team submitted its evidence on July 28, 2025.

On July 31, 2025, Hearing Officer Sam Bivins conducted a pre-hearing conference at which Spanish translation services were provided. The Prosecution Team and Mr. Lopez appeared at the pre-hearing conference. After the July 31 pre-hearing conference, the AHO vacated the August 11 hearing date, and issued an Amended Notice of Public Hearing on September 11, 2025 (Amended Hearing Notice) in both English and Spanish. The Amended Hearing Notice set a second pre-hearing conference for November 6, 2025, and scheduled an evidentiary hearing for November

13, 2025. The Amended Hearing Notice also set a deadline for Respondents to identify rebuttal witnesses and the scope of their testimony no later than October 23, 2025. Respondents declined to identify any rebuttal testimony by the October 23 deadline and failed to appear at the November 6, 2025, pre-hearing conference.

On November 13, 2025, the AHO conducted an evidentiary hearing on the allegations in the Complaint at which Spanish translation services were provided. The Prosecution Team and both Respondents appeared and participated in the hearing. The Prosecution Team presented testimony by Mr. Hollingshead and by Taro Murano, program manager of the Division's Cannabis Enforcement Section, and offered supporting exhibits, all of which are admitted into evidence. Respondents cross-examined both witnesses and provided non-evidentiary policy statements at the hearing. Because Respondents failed to identify rebuttal witnesses by the deadline specified in the Amended Hearing Notice, they did not provide any testimony to rebut the Prosecution Team's evidence in support of the proposed administrative civil liability.

On November 19, 2025, Respondents submitted two joint letters to the AHO. One letter, dated November 1, 2025, consists entirely of factual statements and new evidence that had not previously been submitted into the record; the second letter, dated November 19, 2025, appears to be intended as a closing brief in response to evidence in the record.<sup>3</sup> The Prosecution Team objected to the first letter as untimely rebuttal testimony. The AHO sustains the Prosecution Team's objection to the November 1 letter but will construe the November 19 letter as a timely filed closing brief. On December 5, 2025, the Prosecution Team timely submitted its closing brief and a proposed order.

On March 3, 2026, the AHO circulated a draft ACL Order to the parties and invited comment on the draft order to be submitted by March 20, 2026. The Prosecution Team and the Respondents submitted comments by the deadline, which were considered by the hearing officer (2026-03-18 V. Lopez comments on draft order; 2026-03-19 J.

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<sup>3</sup> These letters are saved in the Correspondence subfolder in the Hearing Documents folder in the administrative record for this proceeding. The first letter is saved as "2025-11-10 J. Alvarez and V. Lopez email Ltr. (2)" and the second is saved as "2025-11-19 J. Alvarez and V. Lopez Ltr."

Alvarez comments on draft order & e-mail attachments & 2016-03-19 PT comments on draft order.)

### **3.0 ANALYSIS**

Under Water Code section 1847, subdivisions (b)(1) and (b)(4), administrative civil liability may be imposed for violation of a principle, guideline, or requirement established by the Cannabis Cultivation Policy, and for the diversion or use of water for cannabis cultivation for which a license is required but has not been obtained under Chapter 6 or 7 of Division 10 of the Business and Professions Code.

The State Water Board's Cannabis Cultivation Policy contains principles, guidelines, and requirements (referred to here as requirements) for the diversion or use of water for cannabis cultivation. The Cannabis Cultivation Policy went into effect on December 18, 2017, and was subsequently amended by the Board on April 16, 2019. (See Exh. PT-66, p. 1.)

Sections 3.1 through 3.8 of this order evaluate whether the Prosecution Team has established by a preponderance of the evidence that Respondents may be held civilly liable for the 37 discrete violations of either the Cannabis Cultivation Policy or Water Code section 1847, subdivision (b)(4), alleged in the Complaint. Section 3.9 of this order evaluates whether the Prosecution Team's recommended civil penalty of \$18,500 is reasonable, fair, and appropriate considering all relevant circumstances.

#### **3.1 Respondents Violated the Cannabis Cultivation Policy by Diverting Water from Tomki Creek between April and June of 2023**

Section 2, Term 66 of the Cannabis Cultivation Policy's Attachment A provides that all diversions of surface water for cannabis cultivation must comply with the surface water Numeric and Narrative Instream Flow Requirements set forth in Section 3 of Attachment A. Narrative Instream Flow Requirement 4 of Section 3 prohibits the diversion of surface water between April 1 through October 31. (Exh. PT-66, p. 106.)

At the time of the 2023 inspection, Division staff observed approximately 1,645 cannabis plants growing on the Property. (Exh. PT-62, ¶ 8.) Using a conservative estimate of irrigation demand of 2.5 gallons per plant per day, Mr. Hollingshead concluded that the cannabis crop located on the Property in June 2023 would have required surface water diversions from Respondents' point of diversion on Tomki Creek. (Exh. PT-09, p. 13; 2025-11-13 Recording (Alvarez-Lopez ACL), 00:55:27 – 57:20.)<sup>4</sup> There is no evidence in the record that controverts Mr. Hollingshead's estimate or the facts on which he relied in making it. Accordingly, the AHO concludes that the Prosecution Team has established that Respondents violated Section 2, Term 66 of the Cannabis Cultivation Policy as alleged in the Complaint.

### **3.2 Respondents Violated the Cannabis Cultivation Policy by Failing to Install Appropriate Separate Measurement Devices for Each Storage Facility**

Section 2, Term 81 of the Cannabis Cultivation Policy's Attachment A requires cannabis cultivators who do not install separate storage systems for water diverted for cannabis irrigation and water diverted for other uses to "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 . . . for the stored water." (Exh. PT-66, p. 92.) Mr. Hollingshead testified that during the 2023 inspection, he observed that Respondents had not installed separate storage systems for cannabis irrigation and domestic use, and that Respondents had not installed separate measuring devices that would have enabled them to quantify the amount of water diverted from storage for each use. (Exh. PT-62, ¶¶ 8.a, 32.b.) This testimony is uncontroverted and satisfies the Prosecution Team's burden to establish by a preponderance of the evidence that Respondents committed at least one violation of Section 2, Term 81 of the Cannabis Cultivation Policy as alleged in the Complaint.

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<sup>4</sup> Hearing recordings, using hours and minutes format, are in the "Recordings and Transcripts" subfolder in the Hearing Documents folder in the administrative record for this proceeding.

### **3.3 Respondents Violated the Cannabis Cultivation Policy by Failing to Install a Measuring Device for their Diversions of Surface Water from Tomki Creek and By Failing to Maintain Diversion Records for Their Surface Water Diversions**

Section 2, Term 82 of the Cannabis Cultivation Policy’s Attachment A requires cannabis cultivators who divert surface water for cannabis irrigation to: (1) install a measuring device equivalent to the requirements for direct diversions greater than 10 acre-feet per year in Division 3, Chapter 2.7 of the State Water Board’s regulations; (2) maintain daily diversion records that separate the amount of water used for cannabis irrigation from water diverted for other purposes; and (3) make such daily records available for review upon the request of Board or CDFW staff. (Exh. PT-66, pp. 92–93.) Mr. Hollingshead provided uncontroverted testimony that the cannabis plants he observed on the Property during the 2023 inspection would have necessarily been irrigated using surface water diverted from Tomki Creek. (Exh. PT-09, pp. 9–10; 2025-11-13 Recording (Alvarez-Lopez ACL), 00:55:28–57:07.) Mr. Hollingshead also provided uncontroverted testimony that there was no measuring device installed at Respondents’ Tomki Creek diversion during the 2023 inspection. Mr. Hollingshead testified that Respondents did not provide him with any daily records of water diverted for cannabis cultivation at his request in connection with the 2023 NOV/IR, and Respondents did not submit any such records in this proceeding. (See Exh. PT-62, ¶ 32.g.) Accordingly, the AHO finds that the Prosecution Team has established that Respondents are liable for at least one violation of Section 2, Term 82, of the Cannabis Cultivation Policy as alleged in the Complaint.

### **3.4 Respondents Committed at Least Ten Violations of the Cannabis Cultivation Policy by Failing to Install Devices to Prevent Overflow of Their Storage Facilities**

Section 2, Term 92, of the Cannabis Cultivation Policy requires cannabis cultivators to use water storage tanks and bladders equipped with a float valve or equivalent device to shut off diversion when storage systems are full and to “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.” (Exh. PT-66, p. 96.) Mr. Hollingshead provided uncontroverted testimony that, during the 2023 and 2024 inspections, the

Property contained six water storage pools and four water storage tanks across multiple locations that did not have any float valves or equivalent devices installed in compliance with Section 2, Term 92. (Exhs. PT-62, ¶¶ 8.c, 25.c-d; PT-09, pp. 7-9; PT-31, p. 2.)

The purpose of Term 92 is to prevent wasteful diversions and the overflow of diverted surface water from water storage facilities. (Exh. PT-66, pp. 76, 96.) Because Mr. Hollingshead testified that Respondents had no ability to divert water from Tomki Creek to the 10 tanks and pools at the time of the August 2024 inspection (Exh. PT-62, ¶ 25.b), Respondents are only liable for violating Section 2, Term 92 in connection with their diversions before the June 2023 Inspection. Accordingly, the Prosecution Team has established Respondents' liability for 10 violations of Section 2, Term 92 of the Cannabis Cultivation Policy as alleged in the Complaint.

### **3.5 Respondents Committed 20 Violations of the Cannabis Cultivation Policy by Failing to Cover their Water Storage Facilities**

Section 2, Term 93 of the Cannabis Cultivation Policy requires cultivators to “ensure that all vents and other openings on water storage tanks are designed to prevent the entry and/or entrapment of wildlife.” Mr. Hollingshead provided uncontroverted testimony that none of the 10 tanks and pools maintained on the Property were covered in compliance with Term 93 during the June 2023 and the August 2024 inspections.

(Exhs. PT-62, ¶¶ 8.c, 25.c-d; PT-09, p. 19; PT-31, pp. 2-3.) Unlike Term 92, the requirements of Term 93 have a broad purpose of preventing “entry and/or entrapment of wildlife,” as opposed to a specific purpose of preventing harm to wildlife associated with surface water diversions. (See Exh. PT-66, p. 96.) Accordingly, the Prosecution Team has established Respondents' liability for 20 violations of Section 2, Term 93 as alleged in the Complaint.

### **3.6 Respondents Violated the Cannabis Cultivation Policy by Failing to Maintain Documentation of Hauled Water Used for Cannabis Cultivation**

Section 2, Term 94 of the Cannabis Cultivation Policy requires cultivators to retain specific documentation for any hauled water used for cannabis irrigation. (Exh. PT-66,

p. 96.) The required documentation must be made available to State Water Board staff upon request. (*Ibid.*)

During the August 2024 inspection, Mr. Hollingshead testified that he determined hauled water was used to irrigate the cannabis observed growing on the Property because: (1) there was no other source of water available for irrigation; and (2) because of the presence of a mobile pump and hose consistent with the use of hauled water. (2025-11-13 Recording (Alvarez-Lopez ACL), 00:47:14-49:03; Exh. PT-68, p. 34.) Respondents do not appear to dispute that hauled water was used for irrigation. (Exhs. PT-31, p. 3; PT-62, ¶ 32.f.) The 2024 NOV/IR specifically requested Respondents' hauled water documentation. Mr. Hollingshead testified that Respondents never provided this documentation. Based on this evidence, the AHO concludes that the Prosecution Team has established that Respondents violated Section 2, Term 94 of the Cannabis Cultivation Policy as alleged in the Complaint.

### **3.7 Respondents Are Liable for at Least Two Violations of the Cannabis Cultivation Policy for Failure to Maintain and Provide Daily Records of Water Used for Cannabis Irrigation**

Section 2, Term 98 of the Cannabis Cultivation Policy requires cannabis cultivators to maintain daily records of all water used for irrigation of cannabis and to make them available for review by Board staff upon request. (Exh. PT-66, p. 97.) Both the 2023 and 2024 NOV/IRs noted the absence of any records observed on site during the 2023 and 2024 inspections and requested that Respondents provide their daily records. (Exhs. PT-09, p. 20; PT-31, p. 3; PT-62, ¶¶ 8.c, 10, 32.g.) Respondents never provided any such records to the Board, nor did they submit daily records as evidence at the hearing. (Exh. PT-62, ¶¶ 8.c, 10, 32.g.) Accordingly, the AHO finds that the Prosecution Team has proven that Respondents are liable for two violations of Section 2, Term 98 of the Cannabis Cultivation Policy as alleged in the Complaint

### **3.8 Respondents Are Liable for Diverting and Using Water for Cannabis Cultivation without a DCC License**

Water Code section 1847, subdivision (b)(4), imposes civil liability for the “[d]iversion or use of water for cannabis cultivation for which a license is required, but has not been

obtained,” from the DCC. As explained above, the preponderance of the evidence shows that the cannabis cultivated on the Property during the 2023 and 2024 inspections was irrigated either using surface water from Tomki Creek (in 2023) or with hauled water (in 2024). The amount of cannabis observed on the Property required licensure by the DCC. (Exh. PT-62, ¶¶ 8, 25; Bus. & Prof Code, § 26061.) Mr. Hollingshead testified that he found no cannabis cultivation licenses registered to either Respondents or the Property. (Exh. PT-62, ¶ 32.h.) Accordingly, the AHO finds that Respondents are liable for at least one violation of Water Code section 1847, subdivision (b)(4), as alleged in the Complaint.

### **3.9 The Requested Penalty of \$18,500 is Fair, Reasonable, and Appropriate**

Under Water Code section 1847, subdivision (a), a person or entity who violates the Cannabis Cultivation Policy or diverts or uses water without a license from the DCC is liable in an amount that does not exceed \$500 per day, plus \$250 for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the Board has called the violation to the person’s attention, plus \$2,500 for each acre-foot of water diverted or used in violation of the applicable requirement. The Complaint alleges, and the Prosecution Team has proven by a preponderance of the evidence, 37 discrete violations of either the Cannabis Cultivation Policy or Water Code section 1847, subdivision (b)(4). Each violation is alleged for only a single day, with a civil liability amount of \$500 per day for each violation. The Prosecution Team did not attempt to quantify the amount of water diverted from Tomki Creek for irrigation. Based on these allegations, the Prosecution Team seeks a civil penalty of \$18,500<sup>5</sup> under Water Code section 1847. (Exh. PT-62, p. 15.)

Under Water Code section 1055.3, the Board must consider “all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.” In support of its proposed liability

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<sup>5</sup> This is based on 37 violations x 1 day x \$500/violation/day= \$18,500.

amount, the Prosecution Team offered the testimony of Mr. Murano. (See PT-64.) Although Respondents did not submit testimony or other evidence relative to the proposed liability amount, they argued in closing briefs that: (1) they lack the ability to pay the proposed penalty; and (2) they have taken corrective action that should result in a reduction or cancellation of the proposed liability. (See 2025-11-19 J. Alvarez and V. Lopez Ltr.) Based on Mr. Murano's testimony and other evidence in this proceeding, the proposed liability of \$18,500 is fair, reasonable, and appropriate in light of all relevant circumstances.

Although the Prosecution Team points to no specific harm to fish, wildlife, other public trust resources, aside from photographic evidence of a "dead rodent floating in Tank 5" (Exh. PT-64, ¶ 4.f), or to other diverters and cultivators in the vicinity of the Property and Tomki Creek from Respondents' violations, there is a systemic harm to the orderly administration of California's water resources and the legal cannabis market resulting from Respondents' violations. As noted in Mr. Murano's testimony, the "regulatory costs associated with commercial cannabis cultivation can be significant, such that unlicensed and unpermitted cultivators obtain an unfair advantage" over cultivators who participate in the regulated market. (Exh. PT-64, ¶ 4.) Similarly, Respondents' failure to maintain appropriate records of their diversions and hauled water use obscures the proper administration of California's water rights system. (*Ibid.*) Although these harms are abstract, the State Water Board's failure to address them would give cultivators who violate legal requirements associated with cannabis irrigation a competitive advantage over cultivators who comply with the law, thereby undermining the legal cannabis market. Such a failure would also increase the risk of future environmental and water right injuries associated with cannabis cultivation and irrigation.

The nature, persistence, and length of time over which Respondents' violations occurred is also significant here. Although the Complaint sought only to impose single days of liability in connection with Respondents' violations, there is ample evidence in the record that violations associated with cannabis cultivation on the Property were ongoing prior to the 2023 and 2024 inspections of the Property. Aerial imagery suggests that illegal cannabis cultivation activities pre-dated the 2023 inspection, and Division

staff found no evidence during the 2023 inspection that Respondents had taken any prior steps to comply with the regulatory requirements applicable to cannabis cultivation. (Exhs. PT-64, ¶ 4.a; PT-08.)

Respondents also did not take swift action to correct their violations. For example, after receiving the 2023 NOV/IR, Mr. Alvarez did not document until May 1, 2024, that he had covered four pools, and failed to document that he had covered any of the other tanks or pools. (Exh. PT-62, ¶ 20.) At the time of the August 2024 inspection, 10 tanks and pools were again uncovered in violation of Section 2, Term 93 of the Cannabis Cultivation Policy (Exhs. PT-28; PT-29; & PT-34, p. 2). Mr. Hollingshead testified that at the time of the 2024 inspection, the “covers depicted in the pictures Mr. Alvarez sent [] on May 1, 2024, had since failed and were no longer in place.” (Exh. PT-62, ¶ 20.) Similarly, there is no evidence that Respondents ever attempted to maintain records of their use of water for irrigation of cannabis. (Exh. PT-64, ¶ 4.h-i.) Finally, although Respondents appear to have dismantled the Tomki Creek diversion after the 2023 NOV/IR, they seem to have waited almost two months after receiving formal notice—and approximately six months after the June 2023 inspection—to do so. (Exh. PT-62, ¶ 20.)

Although Respondents argue that they lack the ability to pay the proposed civil fine of \$18,500 (see 2025-11-19 J. Alvarez and V. Lopez Ltr.), they did not submit any testimony or other evidence to support this argument. Although a violator’s ability to pay a proposed fine is relevant to the AHO’s determination, the AHO cannot assess the ability to pay without at least some evidence of the violator’s financial condition. Because a violator who asserts an inability to pay a proposed civil fine is in the best position to provide evidence of the violator’s own financial condition, a violator asserting inability to pay as a defense to administrative liability has the burden of submitting admissible evidence to support such a defense. Because Respondents failed to submit any such evidence here, we cannot find that Respondents are unable to pay the proposed civil penalty.

Finally, based on the evidence submitted in this proceeding, it appears that the Prosecution Team could have sought a significantly higher penalty. (See 2025-12-05 Prosecution Team Closing Br., pp. 14:17-15:13.) For example, Section 2, Term 98 of the Cannabis Cultivation Policy requires cannabis cultivators to maintain daily records of all water used for irrigation of cannabis and to make the records available for review by Board staff upon request. (Exh. PT-66, p. 97.) The 2023 NOV/IR notified Respondents that they were in violation of this provision and requested daily records of the water used to cultivate cannabis on the Property. (Exh. PT-09, p. 20.) Respondents never provided the requested records. (Exh. PT-62, ¶ 32.g.) It seems that the Prosecution Team could have sought a penalty of \$500 for this violation, plus a penalty of \$250 for each day after October 3, 2023, that Mr. Alvarez failed to provide the requested records through the filing of the Complaint for an additional penalty of approximately \$145,250 against Mr. Alvarez.<sup>6</sup> (See Wat. Code, § 1847 subd. (a)(1); Exh. PT-62, ¶ 32.g.; see generally Complaint.) Similarly, the Prosecution Team could have sought an additional penalty of approximately \$54,000 against Mr. Lopez for the period between his receipt of the 2024 NOV/IR and the filing of the Complaint in connection with the violation of Section 2, Term 98.<sup>7</sup> Thus, compared to the maximum civil penalty supported by law and the evidence in this proceeding, the Prosecution Team's requested penalty appears relatively lenient.

Accordingly, after considering all relevant circumstances, the AHO finds that the proposed administrative civil liability amount of \$18,500 is fair, reasonable, and appropriate.

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<sup>6</sup> Respondents received the 2023 NOV/IR on October 3, 2023. From November 2, 2023, to June 5, 2025, Respondents failed to comply with Term 98 for 581 days. The Prosecution Team could have sought an additional penalty amount of 581 days x \$250 = \$145,250.

<sup>7</sup> Respondents received the 2024 NOV/IR on October 2, 2024. From November 3, 2024, to June 5, 2025, Respondents failed to comply with Term 98 for 216 days. The Prosecution Team could have sought an additional penalty amount of 216 days x \$250 = \$54,000.

## ORDER

**IT IS HEREBY ORDERED**, pursuant to Water Code section 1847, subdivision (a)(1), that the Diverters shall:

1. Within 30 days of the date of this order, submit payment in the amount of \$18,500 made payable to the "State Water Resources Control Board – Water Rights Fund." The payment shall be sent to the following address:

State Water Resources Control Board  
Division of Water Rights  
Attention: Cannabis Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000

2. Nothing in this order is intended to or shall be construed to limit or preclude the State Water Board or other entities from exercising its authority under any statute, regulation, ordinance, or other law.
3. If the Diverters fail to comply with remitting payment of the full liability amount within 30 days of the date of this order, the State Water Board is authorized, pursuant to Water Code section 1055.4, to seek a civil judgment for recovery of the liability imposed.
4. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this order is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.), in accordance with section 15321, subdivision (a)(2), title 14 of the California Code of Regulations.



Date: May 5, 2026

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Nicole L. Kuenzi  
Presiding Hearing Officer  
Administrative Hearings Office  
State Water Resources Control Board