

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Alleged Water Code Violations

Waldo Calvillo

Trinity County

Assessor Parcel Number 011-220-041-000

WALDO CALVILLO (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 Trinity County in 2023 and 2024.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of \$26,500.
3. The State Water Resources Control Board (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.
4. **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

5. 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.
6. Violations 2-8: The Diverter is alleged to have violated seven (7) requirements of the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy).
7. Violation 9: Diverting and using water for cannabis cultivation without the necessary license issued by the Department of Cannabis Control (DCC).

BACKGROUND AND FACTUAL BASIS

8. Property Ownership:

Trinity County records indicate that the Diverter acquired Trinity County Assessor Parcel Number (APN) 011-220-041-000 (the Property) on December 17, 2020, and owned the Property until January 17, 2025. According to the Grant Deed, the Diverter sold the property to 438 Owl Ranch LLC on January 17, 2025.

9. Watershed Information:

The Property is in the Hydrologic Unit Code 12 (HUC12: 180102120305) watershed designated as Olsen Creek-Hayfork Creek. Cannabis cultivation activities occurred in the Hayfork Creek Watershed, which is a tributary to the HUC 12 Olsen Creek-Hayfork Creek sub watershed, which is tributary to the South Fork Trinity River. The South Fork Trinity River is a state designated Wild and Scenic River from the junction of the river with State Highway Route 36 to the river mouth in Salyer. As a Wild and Scenic River, the State Water Board is limited from processing or accepting new applications to appropriate water unless the diversion and use of water fall within two limited exceptions approved by the Secretary of the Resources Agency pursuant to California Code of Regulation, Title 23, section 734. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093.50 et seq., it is 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.

10. Inspection Basis:

On July 27, 2023, the Division was notified and invited by the Trinity County Sheriff's Office on a search warrant investigation of the Property based on the suspected surface water diversion used for illegal cannabis cultivation on the Property.

11. Water Rights Records Review:

Prior to the inspection and as of the date of this Complaint, the Division has no record of a water right or Statement for the Property.

12. Well Records Review:

There are no records of a groundwater well on the Property, according to the Department of Water Resources online Well Completion Report database.

13. Commercial Cannabis Cultivation License Records Review:

According to DCC's license records, the Property has never had a DCC license for commercial cannabis cultivation.

14. July 31, 2023 Inspection:

On July 31, 2023, Division staff accompanied Trinity County Sheriff's Office personnel and conducted an inspection of the Property. Neither the Diverter, nor a representative of the Diverter were present during the inspection. Division staff observed approximately 4,362 cannabis plants, two surface water diversions, and related cannabis irrigation infrastructure on the Property. Law enforcement officers

eradicated the Diverter's cannabis plants during the inspection. At the conclusion of the inspection, Division staff left a field Notice of Violation on the Property with a copy of Trinity County Sheriff's search warrant.

15. NOV/IR Delivery Confirmation for the July 31, 2023 Inspection:

On September 28, 2023, Division staff mailed the Diverter a Notice of Violation and an Inspection Report (NOV/IR) via certified mail. United States Postal Service certified mail return receipt was signed by the Diverter on October 11, 2023. The NOV/IR notifies the Diverter that the diversion and use of water for cannabis cultivation activities without the necessary appropriate water right and not complying with the requirements in the Cannabis Cultivation Policy are violations subject to enforcement by the State Water Board. The NOV/IR provides options for correcting the violations, as well as Division staff's contact information for compliance assistance.

16. August 15, 2024 Inspection:

On or around August 2, 2024, the Division was notified by California Department of Fish and Wildlife (CDFW) of a Trinity County Sheriff's Office search warrant inspection of the Property based on continued illegal cannabis cultivation and surface water diversion used for cannabis cultivation. On August 15, 2024, Division staff accompanied Trinity County Sheriff's Office personnel and CDFW staff to conduct an inspection of the Property. Division staff observed approximately 753 cannabis plants and documented the same two PODs in use and related cannabis irrigation infrastructure on the Property similar to the July 31, 2023 inspection. At the conclusion of the inspection, Division staff left a field Notice of Violation on the Property with a copy of the California Department of Fish and Wildlife's search warrant. Law enforcement officers eradicated the Diverter's cannabis plants during the inspection.

17. NOV/IR Delivery Confirmation for the August 15, 2024 Inspection:

After the August 15, 2024 inspection, Division staff prepared an NOV/IR. Division staff mailed the NOV/IR to the Diverter via certified mail on October 15, 2024. United States Postal Service records show that Waldo Calvillo signed for the NOV/IR on October 21, 2024. The NOV/IR provides options for correcting the violations, as well as Division staff's contact information for compliance assistance.

18. Points of Diversion:

During the July 31, 2023, and August 15, 2024 inspections, Division staff observed and documented two Points of Diversions (PODs) on the Property. No other water sources other than POD1 and POD2 were observed by Division staff on the Property.

- a. POD1 is a passive diversion by gravity located on an unnamed stream that is a tributary to Hayfork Creek. The unnamed stream has defined bed and banks upstream and downstream from POD1. POD1 was actively diverting water during both the 2023 and 2024 inspections. The diversion intake for POD1 was not rendered incapable of diverting water or completely removed from the unnamed stream. Water diverted at POD1

during the July 31, 2023 inspection was conveyed to Point of Storage (POS) POS3 and was not directly connected to supply water to any Place of Use (POU) but was located within 200 feet of an active cannabis cultivation located at POU2. POS2 and POS3 are approximately 25 feet apart from one another. Division staff alleges water diverted at POD1 was for cannabis irrigation during the July 31, 2023 inspection, because POD1 was actively diverting water to fill POS3. Storage tanks from the 2023 inspection changed locations or were not in use during the 2024 inspection. Water diverted at POD1 during the August 15, 2024 inspection was conveyed to POS2 and then went to POU7 for cannabis irrigation.

- b. POD2 is a gravity diversion from an unnamed spring to off-stream storage. Water from the unnamed spring flows down to an unnamed stream with a defined channel with bed and banks. The unnamed spring becomes an unnamed stream that flows off the Property and is tributary to Hayfork Creek. POD2 was actively diverting water during both inspections. Water diverted from POD2 during the July 31, 2023 inspection was conveyed to POS1, POS2 & POS4 and then went to POU1-5 for cannabis irrigation and POU6 for domestic use. Water diverted at POD2 during the August 15, 2024 inspection was conveyed to POS1 and POS3 and then went to POU1 for domestic use and to POU2-6 and POS8 for cannabis irrigation. The POSs had changed locations or were not in use from the 2023 inspection to the 2024 inspection.

19. Aerial Imagery Review:

On July 27, 2023, and again on December 20, 2023, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. Division staff reviewed LandVision aerial imagery dated May 16, 2021, showing a similar cannabis cultivation greenhouse observed by Division staff at POU2-4 during the July 31, 2023 inspection.
- b. Division staff reviewed LandVision aerial imagery dated June 2, 2022 and confirmed multiple graded areas throughout the Property indicating potential commercial cannabis cultivation. The image shows cannabis cultivation greenhouse infrastructure present at both POU2 and POU4, as well as an outdoor cannabis grow area at POU3, consistent with Division staff observations during the July 31, 2023, inspection. Based on Division staff observations made during the inspection and the presence of POU2-4 in aerial imagery, Division staff allege that commercial cannabis cultivation has more likely than not been occurring since 2021 at POU2-4.
- c. Division staff reviewed LandVision aerial imagery dated June 10, 2023, and confirmed multiple graded areas throughout the Property indicating potential commercial cannabis cultivation.

The image shows cannabis cultivation greenhouse infrastructure present at both POU2 and POU4, as well as an outdoor grow at POU3, consistent with Division staff observations during the July 31, 2023, inspection. Based on Division staff observations made during the inspection and the presence of POU2-4 in aerial imagery, Division staff allege that commercial cannabis cultivation has more likely than not been occurring within the greenhouse structures at POU2-4 without the required appropriate water right or DCC license.

- d. Division staff reviewed Planet Imagery aerial imagery dated June 6, 2024, and Hexagon aerial imagery dated July 16, 2024, showing a similar outdoor cultivation area observed by Division staff during the August 15, 2024 inspection.

20. Landowner/Diverter Response:

On March 30, 2024, Denell Patton from North State Realty called Division staff about the potential sale of Waldo Calvillo's property. As of the date of this complaint, the Diverter has not responded to the field NOV or NOV/IR. Division staff have no knowledge or evidence to support that any of the recommended corrective actions have been taken by the Diverter.

STATE WATER BOARD AUTHORITY

21. 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.
22. 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

23. **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.
24. 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 July 31, 2023, inspection, Division staff observed POD1 and POD2 actively diverting water to storage for cannabis cultivation and domestic use.
- b. On October 11, 2023, the Diverter received the NOV/IR, which provided notice of the Water Code section 5101-5107 Statement reporting requirements and recommended the Diverter file a Statement for water diverted and used in 2021 within 30 days of receipt of the notice.
- c. During the August 15, 2024 inspection, POD1 and POD2 were again actively diverting water to storage for cannabis irrigation and domestic use. Again, in the 2024 NOV/IR the Division called to the Diverter's attention the need to file a Statement for water diversion and use at the Property.
- d. The Diverter was required to file a Statement for surface water diverted and used from POD1 and POD2. The Diverter did not submit the requisite Statement by the filing date. On October 11, 2023 and again on October 21, 2024, the Diverter received the NOV/IR for the two inspections, notifying the Diverter of the violation and continued violation for failing to file a Statement for water diverted from POD1 and POD2.
- e. As of the date of this Complaint, the Diverter has not filed Statements for POD1 or POD2. Failure to comply with Water Code section 5101 for POD1 and POD2 constitute two violations with a \$1,000 penalty for each POD. In addition, continuing days of violation are alleged from 30-days after Diverter's receipt of the October 11, 2023 NOV/IR; representing over two years' worth of continuing days of violation.
- f. The Division alleges \$1,000 initial penalties for each POD1 and POD2 and 865 continuing days of violation for each POD1 and POD2 at \$500 per day after November 10, 2023. In total, the statutory maximum penalty equals $2 \times (\$1,000 + \$500 \times 865 \text{ days}) = \$867,000$

Cannabis Cultivation Policy Requirements

25. The Cannabis Cultivation Policy originally went into effect on December 18, 2017, and was amended effective April 16, 2019. 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 cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow.
26. 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.

27. 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.

28. **Violation 2:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 66, states:

All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g., groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements. This includes lakes, ponds, and springs (unless the spring is deemed exempt by the Deputy Director). See Section 3, Numeric and Narrative Instream Flow Requirements of this Attachment A for more information.

- c. During the July 31, 2023 and August 15, 2024 inspections, POD1 and POD2 were both observed actively diverting water from an unnamed stream and an unnamed spring, respectively, subject to the permitting authority of the State Water Board. POD1 and POD2 are both subject to the Numeric and Narrative Instream Flow Requirements as the water was diverted and used for cannabis cultivation.
- d. During the July 31, 2023 inspection, the Division documented active diversion occurring at POD1 to POS3 and at POD2 to POS1, POS2, POS4, and POS5 during the surface water dry season forbearance period (April 1 through October 31). Notice was provided to the Diverter that no diversion of surface water is allowed for cannabis cultivation between the State Water Board's forbearance period. Notice was received by the Diverter on October 11, 2023.
- e. Aerial imagery dated June 6, 2024 and July 16, 2024 indicate outdoor cannabis cultivation was likely occurring at the same places of use identified in the and August 15, 2024 inspection.
- f. During the August 15, 2024 inspection, Division staff again observed POD1 and POD2 actively diverting water for cannabis cultivation during the State Water Board's forbearance period. Surface water was actively diverting at POD1 to POS3 and at POD2 to POS1 and POS3, after notice was received by the Diverter that no surface water diversions for cannabis

can occur during the forbearance period. Even if POD1 and POD2 had not been active during the inspections, the lack of sufficient seasonal water storage for the cultivation use on the Property makes it more likely than not that the Diverter had diverted throughout the forbearance period prior to both the inspections

- i. The Division alleges four [4] violations (one for each POD during each inspection) of the Cannabis Cultivation Policy, Term 66 for the failure to comply with the narrative and numeric instream flow requirements No. 4, during the surface forbearance period.

29. Violation 3: Cannabis Cultivation Policy, in 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. The surface water forbearance period extends from April 1 through October 31 of each calendar year. During the July 31, 2023 and August 15, 2024 inspections Division staff observed that POD1 was plumbed to divert surface water to irrigate cannabis. Division staff observed that the diversion structure for POD1 was not plugged, blocked, capped, disconnected, removed, or rendered incapable of diverting water for cannabis cultivation during the forbearance period. Notice was provided to the Diverter, via the 2024 NOV/IR, that surface water diversions solely used for cannabis irrigation must be removed and incapable of diverting water during the surface water forbearance period.
- b. Two violations of Term 77 of section 2 of the Cannabis Cultivation Policy are alleged for the failure to follow diversion intake requirements on POD1 during the surface water forbearance period.

30. Violation 4: Cannabis Cultivation Policy, in Attachment A, Section 2, Term 81 states:

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 July 31, 2023 inspection, POD2 was supplying water to POS1, POS2, and POS4 which was used for cannabis cultivation at POU1-5 and domestic use at POU6. Division staff did not observe any water measuring

device installed on or near POS1 to quantify the amount of water diverted to and from POS1 for cannabis cultivation and domestic use. Based on the water diversion and conveyance system, one water measuring device is required to measure water used from POS1 for domestic use. Notice was provided to the Diverter that surface water diversions solely used for cannabis irrigation must be removed and incapable of diverting water during the surface water forbearance period.

- b. During the August 15, 2024, inspection POD2 diverted surface water to POS1, which supplied water for domestic use at POU1 and POU4 while supplying water for cannabis cultivation at POU2-3 and POU5-6. Based on the water diversion and conveyance system, two water measuring devices were required to measure water from POS1 for domestic use. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that these violations were occurring since June 6, 2024.
 - i. The Division alleges three [3] violations of Term 81 of the Cannabis Cultivation Policy for the failure to install separate measuring devices to quantify water use for cannabis irrigation and domestic use.

31. Violation 5: 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 site inspection on July 31, 2023, Division staff observed POD1 and POD2 actively diverting water for cannabis irrigation. Division staff did not observe a water measuring device on or near POD1 or POD2, nor were any records of water diversion found on the Property. Two measuring devices, one for each POD, were needed to comply with the

requirement. Division staff notified the Diverter that each surface water diversion used for cannabis must have a measuring device to record the amount of water diverted for cannabis irrigation and they must maintain daily diversion records. The Diverter received notice on October 11, 2023.

- b. During the August 15, 2024 inspection, Division staff observed POD1 and POD2 actively diverting water for cannabis irrigation. Division staff did not observe a water measuring device on or near POD1 or POD2, nor were any records of water diversion found on the Property. Two measuring devices, one for each POD, were needed to comply with the requirement. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that these violations were occurring since June 6, 2024.
 - i. The Division alleges four [4] violations of Term 82 of the Cannabis Cultivation Policy for the failure to install measuring devices to quantify water diversion and use for cannabis irrigation.

32. Violation 6: 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 July 31, 2023, inspection, Division staff observed POS1 (Tank 1), POS2 (Tank 9), and POS4 (Tank 12) 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 installed. Notice was provided to the Diverter that identified all water storage used for cannabis cultivation must have an overflow prevention device installed to prevent the waste of water. The Diverter received notice on October 11, 2023.
- b. During the August 15, 2024 inspection, Division staff observed POS1 (Tank 1), POS2 (Tank 2), and POS3 (Tank 3) 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 installed. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that these violations were occurring since June 6, 2024.
 - i. Six [6] violations of Term 92 of the Cannabis Cultivation Policy are alleged for the failure to equip storage facilities with devices to prevent water overflow.

33. Violation 7: 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.

- g. During the July 31, 2023, inspection, Division staff documented a total of eight (8) water storage tanks in use for cannabis cultivation without tank lids or other mechanisms to prevent the entry and/or entrapment of wildlife at POS1 (Tanks 1-3), POS2 (Tank 9), POS3 (Tanks 10-11), POS4 (Tank 14), and POS5 (Tank 17). Division staff provided notice to the Diverter that tanks used for cannabis cultivation must be maintained closed to the environment. The Diverter received the notice on October 11, 2023.
- h. During the August 15, 2024 inspection, Division staff documented a total of two (2) water storage tanks in use for cannabis cultivation without tank lids or other mechanisms to prevent the entry and/or entrapment of wildlife at POS2 (Tank 2) and POS3 (Tank 3). Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that these violations were occurring since June 6, 2024.
 - i. Ten [10] 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 8: 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 site inspections on July 31, 2023 and August 15, 2024, Division staff did not find any daily records of water used for cannabis irrigation on the Property. Additionally, Division staff did not observe any water measuring devices at any of the PODs, POSs, or POU's during either inspection. Additionally, staff documented cannabis cultivation during both inspections. Division staff requested daily irrigation records from the Diverter in the NOV/IR received by the Diverter on October 11, 2023. No additional information has been received in response to the corrective

actions required. Therefore, this violation has been ongoing since November 10, 2023, thirty days after receiving notice of this violation.

- i. Two violations (one per inspection) of Term 98 of Section 2 of the Cannabis Cultivation Policy are alleged for failing to have daily records of water used for irrigation of cannabis during the July 31, 2023 inspection, and August 15, 2024 inspection.

Diversion or Use of Water for Cannabis Cultivation Requires DCC License

35. **Violation 9:** Water Code section 1847, subdivisions (a) and (b)(4) provide 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. While the Division is not responsible for determining the specific type of state cultivator license that would have been required, based on the review of aerial images and Division staff's observations during the site inspections, the extent of cannabis cultivation occurring on the Property was 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 July 31, 2023, inspection, Division staff observed that the extent of cannabis cultivation on the Property surpassed the legal limit of personal use (6 cannabis plants) and the extent of cannabis cultivation on the Property required a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. Division staff observed the diversion and use of water for cultivation of approximately 4,362 cannabis plants on 26,190 sq. ft., irrigated by the surface water diversions from POD1 and POD2. The Diverter was provided and received notice on October 11, 2023, that he must obtain a DCC license to legally cultivate cannabis.
 - b. During the August 15, 2024 inspection, Division staff observed and documented approximately 753 cannabis plants, with an approximate total cultivation area of 37,780 square ft., irrigated from the surface water diversions POD1 and POD2. This scale of cultivation requires a license under Chapter 6 (commencing with Section 26060) of Division 10 of the

Business and Professions Code. DCC records indicate the Diverter never had a DCC license for commercial cannabis cultivation. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that this violation was occurring since June 6, 2024.

- i. Two violations (one per inspection) are 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 (Violations 1+2+3+4+5 +6+7+8+9 = Statutory Maximum Liability). Therefore, the statutory maximum liability for all violations is \$883,500. Below is a list of the liabilities for each violation. Violation 1 (\$867,000) + Violation 2 (\$2,000) + Violation 3 (\$1,000) + Violation 4 (\$1,500) + Violation 5 (\$2,000) + Violation 6 (\$3,000) + Violation 7 (\$5,000) + Violation 8 (\$1,000) + Violation 9 (\$1,000) = \$883,500

CONSIDERATION OF WATER CODE SECTION 1055.3 FACTORS

38. 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

39. Aerial imagery and site 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 July 31, 2023, perhaps by years. Division of Water Rights staff found no evidence that the Diverters have taken steps to comply with the regulatory requirements applicable to commercial cannabis cultivation. Permit and licensing fees and other regulatory costs for commercial cannabis cultivation can be significant, such that unlicensed and unpermitted cultivators obtain an unfair advantage over those cultivators who participate in the regulated market. To deter illegal cannabis cultivation activities and support the legal market and enterprises, it is necessary to impose administrative civil liability in sufficient amounts to make the costs of noncompliance higher than the cost of compliance. The Division recommends that the State Water Board impose the proposed penalties to serve as a deterrent to the Diverters, as well as to illegal cannabis cultivators generally, and to encourage compliance with the state's regulatory program for commercial cannabis cultivation. The Diverter diverted and used water for cannabis cultivation activities in violation of the Cannabis Cultivation Policy and without the necessary approvals from the State Water Board and the

Department of Cannabis Control, among other applicable requirements. The proposed penalty is adequate to penalize the violations and deter noncompliance by similarly situated parties.

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 diverters 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 harming other priority of right diverters, the environment, and public trust resources. The effects of cannabis-related water diversion and use that are not reported to the State Water Board remain unknown and are 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 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 Diverters compromise the Board's orderly and efficient administration of water resources of the state.

b. Nature and Persistence:

The Diverter was informed of the need to file a Statement two times in 2023 and two more times in 2024. The Diverter received a field NOV on July 31, 2023 and the NOV/IR on October 11, 2023. Additionally, the Diverter received a field NOV on August 15, 2024 and the NOV/IR on October 24, 2024. As of the date of this Complaint, no Statement has been filed. The October 11, 2023 NOV/IR mailed to the Diverter provided 30 days to comply and provided Division staff contact information for compliance assistance.

c. Corrective Action:

As of the date of this complaint, the Diverter has not filed a Statement.

d. Length of Time:

No Statement has been filed by the Diverter as of the date of this Complaint. Failure to comply with Water Code section 5101 for POD1 and POD2 constitute two violations. In addition, continuing days of violation are alleged from November 10, 2023 (30 days from notice of violation) to March 24, 2026 for a total of eight hundred sixty-five days for the failure to file a Statement

within 30 days after the Division provided notice of the violation. The violations are ongoing

e. Proposed Administrative Civil Liability:

Having considered all relevant factors identified in a-d above, including the need to impose significant liability as a deterrent to similarly situated parties, the Division proposes an administrative civil liability under Water Code section 5107 in the amount of \$5,000 for POD1 and POD2 each, totaling \$10,000.

41. Violation 2 and 6: Cannabis Cultivation Policy, Section 2, Term 66 and Term 92.

92.

Violations 2 and 6 have been analyzed jointly with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Terms associated with these violations are requirements necessary to prevent unauthorized or excessive diversions, which could impact water availability

a. Extent of Harm Caused:

The State Water Board requires 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 these requirements 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. Additionally, compliance with Term 92 is necessary to prevent waste from water diversions to full storage facilities. By using tanks without the required overflow prevention device, the Diverters further risk impacting beneficial uses and downstream priority of right diverters.

b. Nature and Persistence:

During the first 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. The Diverter was notified of this violation and the dry season forbearance period in October 2023. Nevertheless, during the second inspection Division staff documented the same PODs diverting surface water during the forbearance period for cannabis cultivation. Additionally, staff observed during the first inspection POS1, POS2, and POS4 without float valves or similar devices installed to prevent the overflow and waste of water. During the second inspection, Division staff observed POS1 (Tank 1), POS2 (Tank 2), and POS3 (Tank 3) without float valves or similar devices installed to prevent the overflow and waste of water

c. Corrective Action:

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

d. Length of Time:

Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that Term 66 and 92 violations were occurring since June 6, 2024. 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 four violations of Term 66 (one for each POD documented during the two inspections). The Diverter also failed to equip the water storage tanks with the required float valves or similar devices installed to prevent the overflow and waste of water during both inspections. The Division alleges six violations of Term 92 as observed during the two inspections.

e. Proposed Administrative Civil Liability:

Considering the factors listed in a-d above, the Division staff allege an administrative civil liability amount of \$500 per violation of Term 66 for a total liability amount of \$2,000 (\$500 x 4). Division staff allege an administrative civil liability amount of \$500 per violation of Term 92 for a total liability amount of \$3,000 (\$500 x 6). The liability proposed for Term 66 was not reduced due to the impacts and threatened impacts to public trust resources presented by diversions of surface water to irrigate cannabis during the forbearance period. Additionally, the proposed liability amount for Term 92 was not reduced because storage tanks remained in place for cultivation without overflow prevention devices

42. Violations 3 and 7: Cannabis Cultivation Policy, Section 2, Term 77 and Term 93.

93.

Violations 3 and 7 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 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 both inspections, Division staff observed that POD1 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, during the first inspection Division staff observed that POS1 (Tanks 1-3), POS2 (Tank 9), POS3 (Tanks 10-11), POS4 (Tank 14), and POS5 (Tank 17) did not have lids to prevent wildlife entrapment. During the second inspection Division staff observed that POS2 (Tank 2) and POS3 (Tank 3) did not have lids to prevent wildlife entrapment.
- c. Corrective Actions: As of the date of this Complaint, the Diverter has been non-responsive.
 - d. Length of Time: These violations were observed during the inspections on July 31, 2023 and August 15, 2024. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that Term 93 violations were occurring since June 6, 2024. The Division alleges two violations of Term 77 for failure to render the diversion intake at POD1 incapable of diverting water during the surface water diversion forbearance period and ten violations of Term 93 are alleged for both inspections for the failure to secure tank openings to prevent entry and entrapment of wildlife. Cultivation and potentially the diversion of water for cultivation has ceased after law enforcement eradicated the illegal cannabis cultivation after each inspection.
 - e. Proposed Administrative Civil Liability: Considering all the relevant circumstances and the factors listed in a-d above, the Division proposes the statutory maximum administrative civil liability (\$500) for each of these violations: Violation 3 (Term 77): \$1,000 (\$500 x2) and Violation 7 (Term 93): \$5,000 (\$500 x 10). Division staff did not propose a reduction to the liability amounts for these violations due to the Diverter's lack of corrective action.

43. Violations 4, 5, and 8: Cannabis Cultivation Policy Section 2, Terms 81, 82, and

98

Violations 4, 5, and 8 are analyzed jointly with respect to Water Code section 1055.3. The Cannabis Cultivation Policy Terms associated with these violations relate to recordkeeping that is intended to assist the State Water Board in obtaining accurate water diversion and use data.

- a. Extent of Harm Caused: 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 measuring devices and maintain diversion and use records, as required under Terms 81, 82, and 98, deprives the Division of critical data required for resource planning, forecast water demand, protect public trust resources, ensure water diverters are not diverting more water than authorized, 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:

During July 31, 2023 inspection, Division staff documented multiple violations of Terms 81, 82, and 98. Based on the Diverter's irrigation infrastructure configuration for domestic use and cannabis cultivation multiple measuring devices would be needed to maintain and retain appropriate records of water diversion and use. When staff returned to the Property of the for the August 15, 2024 inspection, the Diverter had reconfigured the irrigation infrastructure. However, staff documented multiple violations of Terms 81, 82, and 98, as the necessary measuring devices were not installed to maintain water diversion and use records.

c. Corrective Action:

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

d. Length of Time:

These violations were observed during the inspections on July 31, 2023 and August 15, 2024. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that Terms 81, 82, and 98 violations were occurring since June 6, 2024.

The Division alleges three violations of Term 81 for failure to install separate measuring devices to quantify diversions for domestic use and cannabis cultivation; four violations of Term 82 for the failure to install a measuring device on POD1 and POD2 during each inspection; and two violations of Term 98 as no water use records were documented during each inspection.

e. Proposed Administrative Civil Liability:

Considering all the relevant circumstances and factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$1,500 (\$500 x 3) for Violation 4 (Term 81), \$2,000 (\$500 x 4) for Violation 5 (Term 82), and \$1,000 (\$500 X 2) for Violation 8 (Term 98), for a total liability amount of \$4,500 for these violations. Division staff did not propose a reduction to the liability amounts for these violations due to the Diverter's lack of corrective action and subsequent failure to comply with recordkeeping requirements during the second inspection.

44. Violation 9: Water Code Section 1847(b)(4) - 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 State's cannabis cultivation regulatory program is in its infancy and 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 Diverter's 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 is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. CDFA, began accepting applications for commercial cannabis cultivation licenses on January 1, 2018. During the site inspection, Division staff observed approximately 4,362 cannabis plants growing irrigated by surface water diversions. This scale of cultivation requires a state cultivation license from DCC. It was determined the scale of cannabis cultivation occurring on the Property during the July 31, 2023 and August 15, 2024 inspections required a commercial cannabis license. Division staff called to the Diverter's attention in the NOV/IR that commercial cannabis cultivation required a license pursuant to Water Code, section 1847.

c. Corrective Action:

The Diverter has not contacted the Division after receiving both July 31, 2023 and August 15, 2024 IR/NOVs. Division staff are not aware of corrective actions taken to correct this violation and no DCC license has been filed according to DCC licensing records as of March 26, 2025.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property on July 31, 2023 and again on August 15, 2024. Aerial imagery dated June 6, 2024 and July 16, 2024, indicate outdoor cultivation was occurring at the same places of use identified in the August 15, 2024 inspection. Therefore, it is more likely than not that this violation was occurring since June 6, 2024. Division staff observations and evidence collected substantiates that 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 two Property inspections has been occurring prior to the inspection, liability for two violations (one day for each inspection) of Water Code section 1847, subdivision (b)(4) is alleged.

e. Proposed Administrative Civil Liability:

Considering the factors listed in a-d above, the Division proposes an administrative civil liability in the amount of \$1,000 (\$500 x 2) for these violations.

PROPOSED CIVIL LIABILITY

45. After careful consideration of the aforementioned factors and recognizing the importance of deterrence, the Assistant Deputy Director for Water Rights recommends an administrative civil liability amount of \$26,500 for Violations 1-9.

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, Assistant Deputy
Director Division of Water Rights*

Dated: April 9, 2026