

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2019-0030-DWR**

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**CEASE AND DESIST ORDER**

In the Matter of Violations of the California Water Code by

**JACQUELINE GROFT**

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1. Jacqueline Groft (Groft) is alleged to be diverting or using, or threatening to divert or use, water in violation of applicable limitations or requirements established by the State Water Resources Control Board (State Water Board or Board) under California Water Code section 13149, as set forth in the Cannabis Cultivation Policy.
2. Groft is alleged to be diverting or using, or threatening to divert or use, water for cannabis cultivation where a license is required, but has not been obtained, from the California Department of Food and Agriculture (CDFA) under Chapter 6 (commencing with Section 26060) or Chapter 7 (commencing with Section 26070) of Division 10 of the Business and Professions Code.
3. The State Water Board is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Groft to cease and desist these ongoing or threatened diversions or uses of water for cannabis cultivation.
4. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of CDO, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq.
5. The Deputy Director for Water Rights provided notice of CDO against Groft for the violations described herein in accordance with the provisions of Water Code section 1834.

**LEGAL BACKGROUND**

6. Water Code section 13149 directs the Board to adopt principles and guidelines for the diversion or use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow.
7. The Board adopted the Cannabis Cultivation Policy on October 17, 2017 and amended the Policy on February 5, 2019. The Policy defines cannabis cultivation as:

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

8. The Cannabis Cultivation Policy establishes principles and guidelines (called “Requirements” in the Policy) in accordance with Water Code section 13149.
9. The February 5, 2019, amendments to the Cannabis Cultivation Policy renumbered and revised some of the Requirements. Although Groft’s violations pre-date the February 5 amendments, Groft threatens to violate current Requirements, and this CDO directs Groft to comply with current Requirements. As such, this CDO describes the Requirements currently in effect, and notes any differences from the prior Policy.
10. Cannabis Cultivation Policy, Attachment A, Section 2, Term 69<sup>1</sup>, states:

*Cannabis cultivators shall not divert surface water unless it is diverted in accordance with an existing water right that specifies, as appropriate, the source, location of the point of diversion, purpose of use, place of use, and quantity and season of diversion. Cannabis cultivators shall maintain documentation of the water right at the cannabis cultivation site. Documentation of the water right shall be available for review and inspection by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.*

11. Cannabis Cultivation Policy, Attachment A, Section 2, Term 82<sup>2</sup>, 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 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.*

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<sup>1</sup> Term 69 was not modified by the February 5, 2019, amendments.

<sup>2</sup> Term 82 was renumbered from Term 84 by the February 5, 2019, amendments. The prior version was identical except for the “and Chapter 2.8” at the end of the second sentence.

12. Cannabis Cultivation Policy, Attachment A, Section 2, Term 89<sup>3</sup>, states:

*Cannabis cultivators shall not cause or allow any overflow from off-stream water storage facilities that are closed to the environment (e.g., tanks and bladders) if the off-stream facilities are served by a diversion from surface water or groundwater. Cannabis cultivators shall on a monthly basis, at a minimum, regularly inspect for and repair all leaks of the diversion and storage system. Written records describing the date, time, and nature of such inspections and repairs shall be kept on-site for a period of at least two years. Such written records shall be made available for review by Water Boards or CDFW, and any other authorized representatives of the Water Boards or CDFW.*

13. Cannabis Cultivation Policy, Attachment A, Section 2, Term 92<sup>4</sup>, 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.*

14. Chapter 6 (commencing with Section 26060) and Chapter 7 (commencing with Section 26070) of Division 10 of the Business and Professions Code establish licensing requirements for commercial cannabis cultivation sites.

15. Water Code section 1831 authorizes the Board to issue a Cease and Desist Order when it determines that any person is violating any of these requirements, among others.

### **FACTUAL BASIS**

16. Groft purchased Humboldt County Assessor Parcel Number 220-272-004-000 (Property) on August 27, 2013. Groft has owned the Property at all times relevant here.

17. On or around August 24, 2018, Division staff issued a general notice letter informing Groft of the Cannabis Cultivation Policy requirements, including the need to obtain a water right and/or enroll in the Cannabis General Order.

18. On or around September 21, 2018, Division staff issued a Notice of Violation (NOV) informing Groft that failure to file a water right or enroll in the Cannabis General Order could result in ACL. Included in the NOV was aerial imagery from July 24, 2016 and April 25, 2018 depicting indicia of cannabis cultivation, including graded areas; greenhouse structures; and plant size, color, and spacing. The NOV was returned to Division staff as “unclaimed.”

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<sup>3</sup> Term 89 was renumbered from Term 90 by the February 5, 2019, amendments. The prior version read: “Cannabis cultivators shall not cause or allow any overflow from off-stream water storage facilities that are closed to the environment (e.g., tanks and bladders) if the off-stream facilities are served by a diversion from surface water or groundwater. Cannabis cultivators shall regularly inspect for and repair all leaks of the diversion and storage system.”

<sup>4</sup> Term 92 was renumbered from Term 93 by the February 5 amendments, but was not otherwise modified.

19. Division staff reviewed aerial imagery from the Redwood Creek watershed and identified the Property as being actively engaged in cannabis cultivation based on aerial imagery dated October 9, 2018; a search of the Department of Water Resources Well Completion Report and review of the aerial imagery showed that Groft's property likely had a jurisdictional source of water; a search of Board records showed that the Property did not have a water right on file for the diversion and use of water; a search of the CDFA license database showed that the Property did not have a license to cultivate cannabis; and a search of Humboldt County records showed that the Property did not have a license with the county to cultivate cannabis.
20. On or around December 4, 2018, Division staff contacted Groft by phone and left a message requesting consent to conduct an inspection and provided a phone number to call back. On December 6, 2018, Division staff again contacted Groft by phone to request consent to inspect the Property
21. On December 7, 2018, Division staff received a phone message from Groft stating that cannabis cultivation was not occurring on the property and Division staff did not have consent to access to the Property to conduct an inspection.
22. On January 29, 2019, in response to Groft's denial of consent to access the Property, Division staff obtained an administrative warrant to inspect the Property for evidence of cannabis cultivation activities and water diversions.
23. On January 29, 2019, Division staff posted a copy of the administrative warrant on the Property, informing Groft that staff would conduct an inspection on the Property to evaluate cannabis cultivation activities and water diversions subject to the Board's water right permitting authority.
24. On January 29, 2019, the administrative warrant included exhibits containing the general notice letter informing Groft of the Cannabis Cultivation Policy requirements and the need to obtain a water right and/or enroll in the Cannabis General Order; and NOV informing Groft that failure to file a water right or enroll in the Cannabis General Order could result in ACL on the Property
25. Division staff, accompanied by California Department of Fish and Wildlife staff and Humboldt County Planning and Building Department Code Enforcement staff, conducted an inspection of the Property on January 30, 2019, commencing at 11:05 a.m. Samuel Groft accompanied staff on the inspection.
26. During the January 30, 2019 inspection, Division staff observed and noted the following:
  - a. Cannabis Cultivation: Samuel Groft (Jacqueline Groft's son) stated that water from multiple surface water diversion sites (identified as POD1-3) were the sole water source on the property and used to irrigate cannabis at two cannabis cultivation sites on your property during 2018; Groft spoke to Division staff on a telephone call and stated that Groft intends to cultivate cannabis on the property in 2019; and Division staff observed cannabis root balls and leaves, cannabis plant nursery packaging, irrigation tubing, water pumps, a cannabis drying room,

plant support stakes, wire cages for plants, plastic netting, potting containers, potting soil, fertilizers and pesticides, gas tanks, and graded areas for cannabis cultivation.

- b. Diversion or Use of Water for Cannabis Cultivation: Jurisdictional spring water is conveyed to water storage containers and used to irrigate cannabis on the Property. Division staff observed approximately 35,450 gallons of water storage and three points of diversion located at unnamed jurisdictional springs (POD1-3).
  - c. Failure to Install and Maintain a Measuring Device: Water metering devices were not installed at any of the surface water diversion sites.
  - d. Off-Stream Water Storage Overflow: Water was observed overflowing from a water storage container and spilling onto the ground at a rate of approximately two gallons per minute.
  - e. Failure to Install Measures to Prevent Overflow of Storage Systems: None of the water storage containers were equipped with float valves or equivalent devices capable of shutting off the flow of water to the water storage containers and preventing overflow and run off.
27. Based on a review of aerial images and observations made during the site inspection, the observed scale of cannabis cultivation occurring on the Property requires a CDFA commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the B&P Code. Division staff examined available records and did not find any evidence that a CDFA license has been issued for the activities observed on the Property.

### **FINDINGS OF ACTUAL OR THREATENED VIOLATIONS**

28. Groft diverted or used water for cannabis cultivation on the date of the site inspection without a water right in violation of the Cannabis Cultivation Policy, Attachment A, Section 2, Term 69. Based on the condition of the Property and statements by Groft's representative at the inspection, Groft threatens to divert or use water for cannabis cultivation in violation of Term 69 during 2019.
29. Groft diverted or used water for cannabis cultivation on the date of the site inspection without installing a water measuring device in violation of the Cannabis Cultivation Policy, Attachment A, Term 82 (formerly Term 84). Based on the condition of the Property and statements by Groft's representative at the inspection, Groft threatens to divert or use water for cannabis cultivation in violation of Term 82 during 2019.
30. Groft diverted or used water for cannabis cultivation and caused water to overflow from an off-stream water storage facility on the date of the site inspection in violation of the Cannabis Cultivation Policy, Attachment A, Term 89 (formerly Term 90). Based on the condition of the Property and statements by Groft's representative at the inspection, Groft threatens to divert or use water for cannabis cultivation in violation of Term 89 during 2019.

31. Groft diverted or used water for cannabis cultivation without the use of a float valve or equivalent device to prevent overflow of storage systems on the date of the site inspection, in violation of the Cannabis Cultivation Policy, Attachment A, Term 92 (formerly Term 93). Based on the condition of the Property and statements by Groft's representative at the inspection, Groft threatens to divert or use water for cannabis cultivation in violation of Term 92 during 2019.
32. Groft diverted or used water for cannabis cultivation on the date of the site inspection without the required license with the California Department of Food and Agriculture (CDFA). Based on the condition of the Property, statements by Groft's representative at the inspection, and the current lack of a CDFA license, Groft threatens to divert or use water for cannabis cultivation without the necessary CDFA license during 2019.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, that:

**GROFT SHALL IMMEDIATELY CEASE AND DESIST ANY DIVERSION OR USE OF WATER FROM THE THREE UNNAMED SPRINGS (POD1-3) FOR THE PURPOSE OF CANNABIS CULTIVATION, AND PURSUE ONE OF THE FOLLOWING CORRECTIVE ACTION OPTIONS AND SATISFY THE APPROPRIATE TIME SCHEDULES OUTLINED HEREIN:**

Corrective Action Options for POD1-3

**Option 1:**

- A. If Groft intends to continue the diversion and use of water from POD1-3 for the purpose of cannabis cultivation, Groft shall, within 30 days of the date of this Order, submit a Small Irrigation Use Registration (SIUR) that authorizes Groft's water diversion and use of water for cannabis cultivation the Property. The SIUR form is available from our website at: <https://public2.waterboards.ca.gov/cgo>. Within 30 days of the date of this Order, Groft must provide proof to the Assistant Deputy Director that POD1-3 are no longer diverting water for commercial cannabis cultivation and evidence that a SIUR application has been submitted to the Division. Groft must continue to diligently pursue and provide all necessary information required to fully process and issue the SIUR. Groft shall not divert or use water for the purpose of cannabis cultivation until the SIUR has been approved.

**Option 2:**

- A. If Groft intends to cease the diversion and use of water from POD1-3 for the purpose of cannabis cultivation but intends to continue diversion and use for domestic purposes, Groft shall, within 30 days of the date of this Order, submit a Small Domestic Registration that authorizes Groft's water diversion and seasonal storage for domestic use. The Small Domestic Registration form is available from our website at: [https://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/](https://www.waterboards.ca.gov/waterrights/publications_forms/forms/). Within 30 days of the date of this Order, Groft must provide proof to the Assistant Deputy Director that a Small Domestic Registration has been submitted to the Division. Groft must continue

to diligently pursue and provide all necessary information required to fully process and issue the Small Domestic Use Registration.

**Option 3:**

- A. Within 30 days of the date of this Order, Groft shall submit a proposed compliance plan that demonstrates that POD1-3 can be operated without seasonally storing water subject to the Division's permitting authority to the Assistant Deputy Director. The compliance plan must demonstrate that its implementation is feasible, complies with all state and federal laws, and may be executed within a reasonable period of time. The compliance plan must establish project milestones and dates for accomplishing the milestones. The compliance plan must require Groft to secure all permits or approvals necessary to implement the plan from any local, state, or federal agencies.
- B. If the Assistant Deputy Director rejects the proposed compliance plan, the Assistant Deputy Director will provide written notice of the rejection to Groft. The notice will state the reasons for rejection and will identify staff within the Division with whom Groft shall immediately engage in diligent and good faith consultation to remedy the reasons for rejection. Within 30 days of the date of the written rejection, Groft shall submit an amended compliance plan to the Assistant Deputy Director, which the Assistant Deputy Director will approve or reject in accordance with Option 1.A.
- C. Upon approval by the Assistant Deputy Director, Groft shall diligently and in good faith implement the compliance plan and satisfy all Division requests for information within the designated time frames allowed in the plan, or any extension of time granted by the Assistant Deputy Director, until implementation of the compliance plan is determined by the Assistant Deputy Director to be complete. Groft shall, within 30 days of issuance of any permits, approvals, or waivers for the project, transmit copies to the Assistant Deputy Director. Failure to meet any milestone dates set forth in the compliance plan, Groft shall provide written notice of the failure to the Assistant Deputy Director.
- D. Within 10 days of completing implementation of the compliance plan, Groft shall submit documentation to the Assistant Deputy Director certifying that the compliance plan has been fully implemented and the property does not seasonally store water subject the Divisions permitting authority. The Assistant Deputy Director shall provide a written determination of whether implementation of the compliance plan is complete.

**Consequences of Non-Compliance**

In the event Groft fails to comply with the requirements of this CDO, Groft shall be in violation of this CDO and subject to additional enforcement which may include the imposition of administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(B), in the amount not to exceed \$1,000 for each day in which the violations occurs, or referral to the Attorney General to take further injunctive enforcement actions as described in Water Code, §1845, subdivision (a).

*Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon request of the*

*board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.*

### **Reservation of Enforcement Authority and Discretion**

Nothing in this CDO is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law.

### **Regulatory Changes**

Nothing in this CDO shall excuse you from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

### **Compliance with Other Regulatory Requirements**

Nothing in this CDO shall excuse Groft from meeting any additional regulatory requirement that may be imposed by other local, state or federal regulatory entities for corrective actions taken by Groft to comply with this CDO.

### **Exemption from CEQA**

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 CDO is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 *et seq.*), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: May 17, 2019