

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2025-XXXX-DWR**

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**[DRAFT] CEASE AND DESIST ORDER**

In the Matter of Unauthorized Diversion, and Use of Water for Cannabis Cultivation

**Agustin Antonio Merodio and Juan Merodio**

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APN: 122-251-010-000

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COUNTY: LAKE COUNTY

The State Water Resources Control Board (State Water Board) hereby finds:

**SUMMARY OF DETERMINATIONS**

1. Based on the facts and information contained herein, Agustin Antonio Merodio and Juan Merodio (hereinafter the Diverters) is violating or threatening to violate requirements set forth in Water Code section 1831, subdivisions (d)(1) and (d)(6)(A)-(B):
  - a. During an inspection on April 29, 2022, State Water Board, Division of Water Rights (Division) staff observed that the Diverters diverted water from an unnamed spring to seasonal storage to use for cannabis irrigation and domestic purposes without an appropriative water right, in violation of the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water subject to Division 2 of the Water Code.
  - b. Division staff observed the Diverters cultivating approximately 300 cannabis plants on April 29, 2022, without a license issued by the Department of Cannabis Control (DCC) as required by Chapter 6 of Division 10 of the Business and Professions Code. (Bus. & Prof. Code, section 26060 et. seq.)
  - c. Division staff also observed and documented diversion of water for cannabis cultivation in violation of an applicable requirement established by the State Water Board in the *Cannabis Cultivation Policy – Principles and Guidelines*

*for Cannabis Cultivation*<sup>1</sup> (Cannabis Cultivation Policy) pursuant to Water Code section 13149.

2. This Order directs the Diverters to cease and desist the activities causing the violations or threatened violations and to take the corrective actions described below.

### **CEASE AND DESIST ORDER AUTHORITY**

3. Water Code section 1831, subdivision (a), provides that the State Water Board may issue an order to cease and desist from violations or threatened violations of the requirements described in section 1831, subdivision (d). Relevant to this matter, Water Code section 1831, subdivision (d) (1) and (6)(A), provides:

(d) The board may issue a cease-and-desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to that division.

(6) Any diversion or use of water for cannabis cultivation if:

(A) A license is required, but has not been obtained, under Chapter 6 (commencing with Section 26060) or Chapter 7 (commencing with Section 26070) of Division 10 of the Business and Professions Code.

4. Water Code section 1831, subdivision (d)(1), authorizes the State Water Board to issue a cease-and-desist order in response to a violation or threatened violation of the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water subject to that division.
5. Water Code section 1834, subdivision (a), provides that the State Water Board shall give notice informing the party that he or she may request a hearing not later than 20 days from the date on which the notice is received. If the party does not timely request a hearing, section 1834, subdivision (a), authorizes the State Water Board to adopt a cease-and-desist order based on the statement of facts and information set forth in the notice without a hearing. The State Water Board delegated this authority to the Deputy Director for Water Rights in Resolution 2012-0029. The Deputy Director has redelegated this authority to the Assistant

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<sup>1</sup> The State Water Board on October 17, 2017, adopted the Cannabis Policy (Order No. WQ-2017-0023-DWQ). This Order became effective December 18, 2017 upon the approval of the Office of Administrative law. On February 5, 2019, the State Water Board adopted Order No. WQ-2019-001-DWQ, amending the Cannabis Policy effective April 16, 2019.

Deputy Director for Water Rights.

### STATEMENT OF FACTS AND INFORMATION

6. Property Ownership:

The violations and threatened violations at issue were observed on Lake County Assessor Parcel Number (APN) 122-251-010-000 (hereinafter the Property). According to records from Lake County Recorder's Office, the Diverters acquired the Property on November 24, 2003, and owned the Property at all times relevant to the violations alleged in this Order.

7. Watershed Information:

The Property is located within the Rocky Creek-Cache Creek Watershed (HUC12 180201160604), which is a tributary of Cache Creek. Cache Creek is a fully appropriated stream system (FASS)<sup>2</sup>. The FASS designation includes the main stem of Cache Creek from the confluence with the Yolo Bypass upstream to the confluence with the Sacramento River, including all of their tributaries. The FASS designation determines that there is no water available for new appropriation from April 15 to October 31. The Division's Cannabis Enforcement Section (CES) and the Central Valley Regional Water Quality Control Board have designated Cache Creek as a priority watershed based on the density of existing cannabis cultivation, high public trust resource value such as aquatic habitat, listed anadromous endangers species, and 303d listed impaired watershed for boron, mercury and unknown toxicity.

8. Water Rights Records Review:

On or around April 27, 2022, prior to the inspection, and subsequent to the inspection on May 27, 2022, August 10, 2023, February 5, 2024, August 19, 2024, December 5, 2024, and March 12, 2025, Division staff reviewed the State Water Board's Electronic Water Rights Information Management System (eWRIMS) database and found the following:

- a) No statements have been submitted for the diversion or use of water on the Property.
- b) Division staff found no evidence of an appropriative water right on file or pending.
- c) As of March 12, 2025, the Property does not have any Statement, water right permit, license, or registration on file with the State Water Board.

9. Well Records Review:

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<sup>2</sup> Water Resources Control Board Order 98-08 (WR Order 98-08: [In the Matter of the Declaration of Fully Appropriated Stream Systems in California](#))

On or around April 27, 2022, Division staff reviewed the Department of Water Resources' database of Well Completion Reports and found no record of a well on the Property. On April 29, 2022, Division staff did not observe any wells on the Property.

10. Aerial Imagery Review:

On April 27, 2022, May 26, 2022, and August 14, 2023, Division staff reviewed aerial imagery and observed the following:

- a) Google Earth aerial imagery dated June 11, 2005, November 22, 2005, May 16, 2006, March 15, 2008, May 24, 2009, March 6, 2010, August 7, 2015, March 17, 2016, August 22, 2016, May 21, 2017, June 26, 2018, February 18, 2023, March 3, 2023, October 3, 2023, July 9, 2024, show POD1/POS2 with water in storage in each aerial image.
- b) Google Earth aerial imagery dated, November 2, 2010, October 11, 2011, February 24, 2012, July 10, 2013, July 7, 2019, August 24, 2019, September 2, 2020, April 18, 2021, shows cannabis cultivation infrastructure and water held in storage in POD1/POS2.
- c) Google Earth aerial imagery dated July 10, 2013, and April 18, 2021, show POU1 with active cannabis cultivation. The amount of cannabis cultivation area appears to expand in size between 2013 and 2021. Water is also visible in POD1/POS2 in each image.
- d) LandVision aerial imagery dated April 18, 2021, shows outdoor cannabis cultivation near POU1 and water storage in POD1/POS2, consistent with Division staff's 2022 Inspection Report. The outdoor cultivation depicts graded areas and separated soil pots, and the seasonal storage of water in POD1/POS2.
- e) LandVision aerial imagery dated February 18, 2023, March 3, 2023, October 3, 2023, July 9, 2024, show POD1/POS2 with onstream water storage.
- f) Google Earth aerial imagery from October 20, 2011, October 10, 2013, September 22, 2015, and September 2, 2020, show the water level in POD1/POS2 as nearly empty with very little water left in the onstream storage.
- g) Google Earth aerial imagery dated March 15, 2008, March 28, 2009, March 6, 2010, July 10, 2013, March 17, 2016, May 21, 2017, July 7, 2019, and April 18, 2021, and LandVision aerial imagery from February 18, 2023, March 3, 2023, and July 9, 2024 consistently shows the water level in POD1/POS2 to be near full or full of water in onstream storage.

- h) Aerial imagery from 2005 through 2024 shows the diversion of water to onstream storage of water in POD1/POS2 at varying levels, with the exception for 2014, during which no aerial imagery was available for assessment.

11. Department of Cannabis Control License Records Review:

On or around April 28, 2022, Division staff reviewed DCC records of commercial cannabis cultivation licenses to determine if there was a license on file that would authorize commercial cannabis cultivation on the Property. Division staff found no record of a license for the Property. Division staff reviewed DCC records again on May 23, 2022, February 5, 2024, July 31, 2024, November 20, 2024, and March 12, 2025, and found no record of a commercial cannabis license on file.

12. April 29, 2022 Inspection:

On April 29, 2022, Division staff, the California Department of Fish and Wildlife (CDFW), led by the Lake County Sheriff's Office, participated in a search warrant investigation of the Property. No one (associated with the Property and/or cannabis cultivation) was present on the Property during the search warrant inspection. Division staff observed and documented an onstream reservoir designated as Point of Diversion (POD) POD1 and a Point of Storage (POS) POS2, referred to as POD1/POS2, on an unnamed stream tributary to Rocky Creek. Division staff observed that POD1/POS2 was the sole water source on the Property.

13. Point of Diversion:

POD1/POS2 is an on-stream reservoir constructed on an unnamed stream with an earthen berm in the stream channel. The upstream slope of the dam is approximately 45 degrees. The unnamed stream has defined bed and banks upstream and downstream from POD1/POS2 and is tributary to Rocky Creek which is a tributary of Cache Creek. No water was flowing into or out of POD1/POS2 at the time of the inspection. Division staff calculated that POD1/POS2 has a total storage capacity of approximately 243,342-gallons, with approximately 188,658-gallons of water stored in POD1/POS2 during the inspection. POD1/POS2 was not actively diverting water during the inspection. The diversion intake for POD1/POS2 was not rendered incapable of diverting water for cannabis cultivation during the inspection. POD1/POS2 is a passive diversion that diverts water when the unnamed stream is flowing. POD1/POS2 did not have a diversion control structure that could prevent water from being diverting during the Cannabis Policy forbearance period and Division staff did not observe a control structure at the dam that could bypass water downstream. The diversion intake for POD1/POS2 was not rendered incapable of diverting water for cannabis cultivation during the inspection. Water diverted from POD1/POS2 is pumped to POS3. Although Division staff did not observe water being conveyed from POD1/POS2 for use during the inspection, POD1/POS2 was the sole source of water for cannabis cultivation and domestic use on the Property. Water diverted

from POD1/POS2 is used to irrigate about 300 cannabis plants located at Place of Use 1 (POU1) and for domestic use at POU2. Water diverted from POD1/POS2 is pumped to POS3.

14. Inspection Report and Notice of Violation:

On August 10, 2022, the first attempt to deliver a Notice of Violation and Inspection Report (NOV/IR) to Agustin Antonio was made. The NOV/IR, which documented inspection observations, violation findings, and the required corrective actions was mailed by certified mail to Agustin Merodio at 2712 Gallop Dr., Santa Rosa, CA 95407. However, the certified mail delivery attempt was unsuccessful and was returned.

On November 9, 2022, a second certified mail attempt was made to deliver the NOV/IR, to Agustin Antonio and Juan Merodio at the same address: 2712 Gallop Dr., Santa Rosa, CA 95407, and to 5655 Staheli Dr., Kelseyville, CA 95451. On November 12, 2022, the NOV/IR was received via certified mail at 2712 Gallop Dr., Santa Rosa, CA 95407 and signed for by Juan Merodio. On November 19, the NOV/IR mailed to the Kelseyville address was forwarded to Santa Rosa address. According to USPS records, it was received on November 30, 2022, at 5:54 PM.

15. Diverters Response

- a) On April 5, 2023, Juan Merodio contacted Division staff via email. In the email correspondence, Juan Merodio wrote he intended to address and correct the violations, and subsequently sell the Property.
- b) On April 24, 2023, Division staff responded to Juan Merodio, and sent the April 29, 2022 NOV/IR via email. Division staff stressed the importance of implementing the corrective actions detailed in the report. Additionally, Division staff requested that Mr. Merodio provide photographic evidence of completed corrective actions via email.
- c) On May 1, 2023, Mr. Merodio responded to Division staff. In his response, Mr. Merodio expressed his commitment to fixing violations and providing evidence of compliance through video and photos.
- d) Although the Diverters have initiated contact with Division staff, they have not yet provided evidence of implementing corrective actions or filed with the Division an appropriative water right for POD1/POS2 as of December 5, 2024. These corrective actions are essential to bring the Property into compliance. The Division is not aware of any corrective actions taken by the Diverters to date March 19, 2025.

16. Confirmation of the Need for DCC License:

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. The only exceptions to the cultivation licensing requirement are for persons cultivating not more than six living cannabis plants, or certain nonprofit entities in limited circumstances not applicable here. (Bus. & Prof. Code § 26037.5, subd. (b).) Based on the review of aerial images and Division staff's observations during the April 29, 2022 inspection, the cannabis cultivation occurring on the Property is of a scale sufficient to require a commercial cannabis cultivation license under Chapter 6 (commencing with Section 26060) of Division 10 of the California Business and Professions Code.

### **VIOLATIONS AND THREATENED VIOLATIONS**

17. Based on the facts and information described above, including observations made during the inspection, the Diverters are violating or threatening to violate a requirement described in Water Code section 1831, subdivision (d)(1):
- a) Water Code section 1052, subdivision (a), provides that any diversion or use of water subject to the State Water Board's authority under Division 2 of the Water Code, without State Water Board authorization, is a trespass. All water flowing in any natural channel is public water of the State and subject to appropriation in accordance with the Water Code, as provided in section 1201 of the Water Code. Pursuant to Water Code section 1225, no right to appropriate or use water subject to appropriation shall be initiated or acquired except in compliance with Division 2 of the Water Code.
  - b) Violation: During the April 29, 2022 inspection, Division staff documented an onstream reservoir at POD1/POS2 that diverts from an unnamed stream that is a tributary to Rocky Creek. Division staff observed water was conveyed by pump from POD1/POS2 to POS3, then water is conveyed by pump and by gravity to POU1 for cannabis irrigation and to POU2 for domestic use. The diversion of surface water into onstream seasonal storage for later use requires an appropriative water right to be issued by the State Water Board. The Diverters purchased the Property in 2003. Google Earth aerial imagery dated November 22, 2005, is the first year the reservoir is visible and appears to be the year of construction. Google Earth aerial imagery dated May 16, 2006; March 15, 2008; May 24, 2009; March 6, 2010; October 11, 2011; February 24, 2012; July 10, 2013; August 7, 2015; March 17, 2016; May 21, 2017; June 26, 2018; July 7, 2019; February 2020; and April 18, 2021, shows water storage and fluctuations in water levels in POD1/POS2. The seasonal storage of water requires an appropriative water right. Seasonal storing water without authorization from the State Water Board is a trespass and a violation of Water Code section 1052. Available aerial imagery from LandVision dated November 2, 2010, shows cannabis cultivation occurring near POU1. Google Earth aerial imagery dated July 10, 2013, shows cannabis cultivation occurring in two separate locations

on the Diverters Property similarly located as POU1 and POU2 observed on May 29, 2022. November 2, 2010, October 11, 2011, February 24, 2012, July 10, 2013, July 7, 2019, August 24, 2019, September 2, 2020, April 18, 2021, aerial imagery shows cannabis cultivation infrastructure. POD1/POS2 diverts water from a surface water source that is subject to the State Water Board's permitting authority. POD1/POS2 serves as the sole source of water for cannabis cultivation and domestic use on the Property. As of March 12, 2025, the State Water Board does not have an application for an appropriative right on file on file for POD1/POS2.

- c) Threatened Violation: Based on the findings described above, there is a threat of continued trespass resulting from the unauthorized diversion and use of water seasonally stored at POD1/POS2. The onstream reservoir is visible in aerial imagery since 2005. Cannabis cultivation infrastructure and the residence are visible in aerial imagery since November 2, 2010. Division staff confirmed on April 29, 2022 that cannabis was being cultivated on the Property. Aerial imagery of the Property, dated March 3, 2023, shows POD1/POS2 is still present and storing water on the Property. Division staff notified the Diverter in the NOV/IR that the diversion and use of water seasonally stored in the reservoir was a violation of the prohibition set forth in Water Code section 1052 and that an appropriative water right was required. The Diverters have contacted Division staff and committed to correct the violation as outlined in the NOV/IR. However, despite this commitment, the Diverters have not provided any evidence to demonstrate that corrective action has been implemented and have not filed an application for an appropriative water right. Due to the continued presence of the onstream reservoir, the Diverter will continue to divert water into the reservoir for seasonal storage for purposes of cannabis irrigation and/or domestic use.

18. Based on the facts and information described above, including observations made during the inspection, the Diverters are violating or threatening to violate a requirement described in Water Code section 1831, subdivision (d)(6)(A):

- a) Any person engaged in commercial cannabis activity must obtain a state license from CDFA. (Bus. & Prof. Code § 26037.5, subd. (a); 4 Cal. Code Regs. §15000.1, subd. (a).) "Commercial cannabis activity" includes cultivation. (Bus. & Prof. § 26001, subd. (j); 4 Cal. Code Regs. § 15000, subd. (o).) The only exceptions to the cultivation licensing requirement are for persons cultivating not more than six living cannabis plants, or certain nonprofit entities in limited circumstances not applicable here. (Bus. & Prof. § 26037.5, subd. (b).) The cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.
- b) Violation: Based on Division staff's observations during the April 29, 2022 inspection, Division staff determined that the observed scale of cannabis



cultivation occurring 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, as more than six plants were being cultivated. Division staff observed approximately 300 cannabis plants growing with an approximate total cultivation area of 7,200 sq. ft., irrigated from surface water diversions at POU1. Division staff examined available DCC licensing records from April 26, 2022 through November 20, 2024 and did not find any record that a cultivation license had been issued for the activities observed on the Property.

### **SECTION 1834 NOTICE REQUIREMENTS**

19. On March 25, 2025, in accordance with Water Code section 1834, subdivision (a), the Division provided the Diverter with notice of the State Water Board's intent to issue an order determining that the Diverter is violating or threatening to violate requirements described in Water Code section 1831, subdivisions (d)(1) and (d)(6)(A)-(B).
20. The notice included the facts and information stated above, which describe the basis for the violations and threatened violations, and informed the Diverter that unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the State Water Board within 20 days after receipt of the notice, the State Water Board may adopt a cease and desist order based on the statement of facts and information set forth in the notice, without a hearing.

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

1. The Diverters shall immediately cease and desist any diversion or use of water from the unnamed stream for cannabis cultivation until a DCC commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code is obtained. The requirement to obtain a cultivation license also incorporates the requirement to obtain a water right pursuant to Business and Professions Code section 26060.1(a)(2)(A).
2. Within 30 days of the date of adoption of this CDO, the Diverters shall submit a draft compliance plan for review and approval by the Division that details what actions will be taken to ensure that the necessary appropriate water rights are applied for and achieved through applications for all diversion(s) described above as threatened and active violations of Water Code section 1052 requiring compliance with Division 2 of the Water Code. To the extent that the Diverters intends to continue cannabis cultivation activities on the Property, irrigated with water diverted from the unnamed stream(s), the draft compliance plan must include DCC license application, State Water Board General Waste Discharge Requirements enrollment, CDFW 1600

compliance, and installation of adequate water storage to enable the Diverters to divert during the non-forbearance period and store water at a capacity sufficient to irrigate through the forbearance period without diverting from the stream.

3. Within 60 days of the final compliance plan approval date, the Diverters must implement the compliance plan.

## **ADDITIONAL INFORMATION**

### **Consequences of Non-Compliance**

Failure to comply with the requirements of this Order may result in additional enforcement, which may include the imposition of administrative civil liability or referral to the Attorney General to take further injunctive enforcement actions or seek civil liability, pursuant to Water Code section 1845. Civil liability, whether administrative or judicial, may be up to \$1,000 for each day in which the violation occurs, or up to \$10,000 for each day in which the violation occurs during drought.

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

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

### **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 Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307) and an action by a regulatory agency for the protection

of the environment (Cal. Code Regs., tit. 14, § 15308).

**Effective Date**

This Order is effective upon issuance, pursuant to Water Code section 1832.

**Petition for Reconsideration**

Any interested person or entity may petition the State Water Board for reconsideration of this Order pursuant to Water Code section 1122. Such petition shall be filed not later than 30 days from the date the State Water Board adopts this Order.

STATE WATER RESOURCES CONTROL BOARD