

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

DIVISION OF WATER RIGHTS

ORDER WR 2025-0016-DWR

CEASE AND DESIST ORDER

In the Matter of Diversion or Use of Water for Cannabis Cultivation

Gabriel Alejandro Fernandez

APN: 171-110-03-00

COUNTY: Mendocino County

The State Water Resources Control Board (State Water Board) hereby finds: SUMMARY OF DETERMINATIONS

1. Based on the facts and information contained herein, Gabriel Alejandro Fernandez (hereinafter the Diverter) are violating or threatening to violate requirements set forth in Water Code section 1831, subdivisions (d)(1) and (d)(6)(A) –(B):
 - a. State Water Board, Division of Water Right's (Division) staff observed the Diverter diverting water from a source that is not riparian to the Assessor Parcel Number (APN) 171-110-03-00 (Property). Staff documented that water diverted from unnamed spring, located within APN 171-110-02-00 owned by Ofelia Alejandro Razo Diaz Havoia, was used for cannabis irrigation and domestic use on the Diverter's Property without an appropriative water right issued by the State Water Board, 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 and documented diversions of water for cannabis cultivation in violation of the requirements established by the State Water Board in the *Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) pursuant to Water Code, section 13149.
 - c. Division staff observed the Diverter using surface water to cultivate

approximately 1,706 cannabis plants and approximately 15,026 sq. ft. cannabis cultivation area on May 14, 2024, without a license issued by the Department of Cannabis Control¹ (DCC) as required by Chapter 6 of Division 10 of the Business and Professions Code (Bus. & Prof. Code, section 26060 et. seq.).

2. This Order directs the Diverter 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 violation(s) or threatened violations(s) of the requirements described in section 1831, subdivision (d). Specifically, Water Code section 1831, subdivisions (d)(1) and (d)(6) (A) – (B) 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 this division; and

(6) Any diversion or use of water for cannabis cultivation if any of paragraphs (1) to (5), inclusive, or any of the following applies:

(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.

(B) The diversion is not in compliance with an applicable limitation or requirement established by the board or the Department of Fish and Wildlife under Section 13149.

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.

¹ Three state programs merged to form the Department of Cannabis Control (DCC). Those programs were the Bureau of Cannabis Control in the Department of Consumer Affairs, the Manufactured Cannabis Safety Branch in the Department of Public Health, and CalCannabis Cultivation Licensing in the Department of Food and Agriculture. Effective July 12, 2021, DCC is the state program tasked with licensing, inspecting, and regulating cannabis activities in California.

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 Deputy Director for Water Rights.

STATEMENT OF FACTS AND INFORMATION

6. Diverter:
The Diverter is an individual who operated water diversion(s) diverting to seasonal storage and ten (10) cannabis cultivation areas that were inspected by Division staff on May 14, 2024. The appropriation of water is unlicensed by the State Water Board. The cannabis cultivation sites are located on the Property owned by the Diverter in Mendocino County. The diversions divert surface waters within the permitting authority of the State Water Board.
7. Property:
The violations at issue were observed on Mendocino County APN 171-110-03-00.
8. Property Ownership:
According to Mendocino County Assessor's Office property records, on February 25, 2021, Gabriel Alejandro Fernandez acquired Mendocino County APN 171-110-03-00. At all times relevant here the Diverter has owned the Property.
9. Watershed Information:
The Property is located in the Thomas Creek-Eel River watershed (HUC 12 #180101030503), tributary to the Main-stem Eel River. The Main-stem Eel River is designated as a Wild and Scenic River from 100 yards below Van Arsdale Dam to the Pacific Ocean. As a Wild and Scenic River, the State Water Board is limited to processing or accepting new applications to appropriate water pursuant to California Code of Regulations, Title 23, Division 3, Article 8, section 734. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093 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. Aerial Imagery Review:

On or around May 8, 2024, State Water Board, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. May 7, 2021, Google Earth Pro aerial imagery shows graded areas, greenhouse structures, outdoor cultivation areas, spacing indicative of active cannabis cultivation on APN 171-110-03-00 consistent with place of use (POU) 1-2 observed during the May 14, 2024, inspection.
- b. May 1, 2022, LightBox Vision aerial imagery shows graded areas, seven (7) greenhouse structures and associated infrastructure such as clear visqueen tarps indicative of active cannabis cultivation on APN 171-110-03-00 consistent with the location of POU 1-2 observed during the May 14, 2024, inspection.
- c. June 19, 2023, Google Earth Pro aerial imagery shows graded areas, seven (7) greenhouse structures and associated infrastructure such as clear visqueen tarps indicative of active cannabis cultivation on APN 171-110-03-00 consistent with the location of POU 1-2 observed during the May 14, 2024, inspection.

11. Department of Cannabis Control License Records Review:

On or around May 8, 2024, Division staff reviewed DCC's licensing records for commercial cannabis cultivation to determine if there was a license on file that would legally authorize the commercial cannabis cultivation on the Property. Division staff found no DCC license on record for the Property. On May 29, 2024, and again on November 20, 2024, during following checks of DCC license records, Division staff found no active or pending DCC license for the Property.

12. Water Rights Records Review:

On or around May 13, 2024, prior to the inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS) and found no pending or registered water right to the Diverter.

13. Well Records Review:

On or around May 13, 2024, Division staff reviewed the Department of Water Resources records and did not find any record of a well on the Property.

14. Property Inspection:

On May 14, 2024, Division staff participated in a search warrant investigation of the Property. The Diverter was not onsite during the inspection. At the time inspection, Division staff observed 1,706 cannabis plants actively growing in 15,026 sq. ft of greenhouses on the Property. The cannabis plant count was provided by CDFW law enforcement officers. The two surface water points of diversion (POD) documented during the inspection were observed to be the sole sources of water on the Property.

15. Points of Diversion:

During the May 14, 2024, inspection, Division staff observed two PODs (POD1 and POD2):

- a. POD1 is a diversion located on the Upper Main-Stem Eel River that is tributary to the Pacific Ocean. POD1 has defined bed and banks upstream and downstream from POD1 and water was flowing in the Eel River at the time of the inspection. Water is diverted from POD1 by a 0.5 submersible electric pump that conveys water through a 1-inch polyethylene water line to water storage at point of storage (POS) 1. Division staff observed a water filter connected to the tip of the 1-inch polyethylene waterline. The 1-inch polyethylene water line was used to fill POS1 where water is seasonally stored for cannabis cultivation at POU1.
- b. POD2 is a diversion to off-stream storage located on an unnamed spring that is a tributary to the Upper Main-Stem Eel River. The unnamed spring has defined bed and banks downstream from POD2 and water was flowing off the Property down the channel into the Eel River. POD2 was not actively diverting water during the inspection. Water diverted from POD2 is pumped using an electric 1 hp through a 1-inch polyvinyl chloride water supply line to water storage at POS3. Water diverted from POD2 is used for cannabis cultivation at POU2 and used for domestic use at POU3. POD2 is located within APN 171-110-02-00 owned by Ofelia Alejandro Razo Diaz Havoia and appears to be riparian to the unnamed spring. Water from POD2 was used on APN 171-110-03-00 by the Diverter.

16. Confirmation of the Need for a 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. CDFA began issuing licenses on January 1, 2018. 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. Code § 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. Code § 26037.5, subd. (b).) CDFA's cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060. Based on the review of aerial images and Division staff's observations during the site 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.

17. Confirmation of the Need for an Appropriative Water Right:

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.

- a. On May 14, 2024, Division staff observed the following diversions subject to the State Water Boards permitting authority: water from POD1 is diverted to storage at POS1, and at the time of inspection POS1 was seasonally storing water. Division staff observed that POS3 was seasonally storing water and had an active storage volume of approximately 2,500 gallons. Division staff observed that POD1 diverts surface water to storage in POS1. The diversion of surface water into seasonal storage requires an appropriative water right.

18. Notice of Violation and Inspection Report:

Subsequent to the inspection, Division staff prepared a Notice of Violation and Inspection Report (NOV/IR) and mailed the NOV/IR to the Diverter via United States Postal Service (USPS) certified mail on June 12, 2024. On June 15, 2024, the NOV/IR was received and signed for by Gabriel Fernandez. The NOV/IR describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for the violations.

19. Diverter Response:

- a. Division staff has received no contact from the Diverter after receiving a signed USPS certified mail receipt.
- b. As of the date of this Complaint, no evidence has been provided to the Division regarding any corrective actions taken.

VIOLATIONS AND THREATENED VIOLATIONS

20. Based on the facts and information described above, including observations made during the inspection, the Diverter is violating or threatening to violate the following requirements 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. Violation: POD2 is an unnamed spring diversion that is tributary to the Upper Main-Stem Eel River

and is subject to the State Water Board's permitting authority. During the May 14, 2024, inspection, Division staff observed POS2-3 storing water diverted at POD2 and POS2-3 were plumbed to convey water to POU2 for cannabis cultivation and POU3 for domestic use.

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

- a. Any person engaged in commercial cannabis activity must obtain a state license from DCC. (Bus. & Prof. Code § 26037.5, subd. (a); 4 Cal. Code Regs. §15000.1, subd. (a).) "Commercial cannabis activity" includes cultivation. (Bus. & Prof. Code § 26001, subd. (j); 4 Cal. Code Regs. § 15000, subd. (o).) The only exceptions to the cultivation licensing requirement are for persons cultivating no more than six living cannabis plants, or certain nonprofit entities in limited circumstances not applicable here. (Bus. & Prof. Code § 26037.5, subd. (b).) DCC's cultivation licensing requirements are set forth in Chapter 6 of Division 10 of the Business and Professions Code, commencing at section 26060.
- b. Violation: During the May 14, 2024, inspection, Division staff observed approximately 1,706 cannabis plants growing in greenhouse structures, with an approximate total cultivation area of 15,026 sq. ft., irrigated from surface water diverted from POD1 and POD2. Cannabis cultivation of the scale observed by Division staff 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.
- c. Division staff reviewed DCC license records dated May 8, 2024, and again for November 20, 2024, and verified that the Diverter does not have a cultivation license for the activities observed on the Property. The Diverter has not contacted Division staff.

22. Based on the facts and information described above, including observations made during the inspection, Diverter is violating or threatening to violate a requirement described Water Code section 1831Subdivision (d)(6)(B);

- a. **Cannabis Cultivation Policy, Attachment A, Section 2, Term 66 Violation:** Term 66 requires that all surface water diversions for cannabis cultivation comply with the surface water Numeric and Narrative Instream Flow Requirements found in the Cannabis Cultivation Policy. During the Property inspection on May 14, 2024, Division staff observed POD1 and POD2 installed and plumbed to divert surface waters for the purpose of cannabis cultivation at POU1 and POU2. POD1 and POD2 are the sole sources of water on the Property for cannabis cultivation.

- During the May 14, 2024, inspection, Division staff documented that the Diverter failed to comply with an applicable requirement established by the State Water Board in the Cannabis Cultivation Policy pursuant to Water Code section 13149. Division staff documented surface water diversions from POD1 and POD2 for cannabis cultivation during the forbearance period in violation of the Cannabis Cultivation Policy, Attachment A, Section 2, Term 66, which is used to describe the violation of the Cannabis Cultivation Policy, Attachment A, Section 3, Numeric and Narrative Instream Flow Requirement No. 4. "Surface Water Dry Season Forbearance Period". Numeric and Narrative Instream Flow Requirement No. 4 prohibits surface water diversions for cannabis cultivation activities between April 1 through October 31 of each calendar year.
- b. The diversion is not in compliance with an applicable limitation or requirement established by the board or the Department of Fish and Wildlife under Section 13149. Division staff documented that the Diverter failed to comply with an applicable requirement established by the State Water Board in the *Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy)3 pursuant to Water Code, section 13149
 - c. The Diverter has not contacted Division staff in response to the IR or provided any evidence that the corrective actions detailed in the IR have been taken. In light of the aerial imagery indicating a history of cannabis cultivation activities on the Property, the seasonal nature of cannabis cultivation, and the Diverter's failure to provide Division staff information in response to the IR, it is likely that the Diverter will continue to cultivate cannabis on the Property and divert surface water during the next forbearance period in violation of this requirement.

SECTION 1834 NOTICE REQUIREMENTS

- 23. On August 14, 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 are violating or threatening to violate requirements described in Water Code section 1831, subdivision (d)(6)(A).
- 24. 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 California Water Code, that:

1. The Diverter shall immediately cease and desist any diversion or use of water from the unnamed stream and the Upper Main-Stem Eel River 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 Diverter 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 appropriative 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 Diverter 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 Diverter 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 Diverter 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

ORIGINAL SIGNED BY:

*Robert P. Cervantes, Acting Assistant Deputy Director
Division of Water Rights*

Dated: September 24, 2025