

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Violations of Requirements Adopted Pursuant to Water Code section
13149, Diversion or use of Water for Cannabis Cultivation for which a License is
Required, and Failure to File a Statement of Water Diversion and Use
by

Jacqueline Groft

**JACQUELINE GROFT (HEREINAFTER REFERRED TO AS “YOU”) ARE HEREBY
GIVEN NOTICE THAT:**

1. You are alleged to have committed the violations described below, for which civil liability may be imposed administratively by the State Water Resources Control Board (Board).
2. The violations relate to alleged cannabis cultivation and related water diversion and use activities on Humboldt County Assessor Parcel Number 220-272-004-000 (Property).
3. This Administrative Civil Liability (ACL) Complaint describes Your options regarding seeking a hearing before the Board. Please carefully review this Complaint in its entirety as soon as possible. You have 20 days from the date You receive this Complaint in which to submit a written request for a hearing.

SUMMARY OF ALLEGED VIOLATIONS AND PROPOSED LIABILITY

4. **Violation 1:** You are alleged to have diverted surface water for the cultivation of cannabis without a water right that authorizes surface water diversions for cannabis cultivation during 2018, in violation of the Requirement established by the Board pursuant to Water Code section 13149 and set forth in the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) at Attachment A, Section 2, Term 69. This Complaint recommends that the Board impose liability in an amount of \$500 for this violation pursuant to Water Code section 1847(b)(1).
5. **Violation 2:** You are alleged to have failed to install and maintain a measuring device on the date of the site inspection, in violation of the Requirement established by the Board pursuant to Water Code section 13149 and set forth in the Cannabis Cultivation Policy at Attachment A, Section 2, Term 84. This Complaint recommends that the Board impose liability in an amount of \$500 for this violation pursuant to Water Code section 1847(b)(1).

6. **Violation 3:** You are alleged to have diverted 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 Requirement established by the Board pursuant to Water Code section 13149 and set forth in the Cannabis Cultivation Policy at Attachment A, Section 2, Term 90. This Complaint recommends that the Board impose liability in an amount of \$500 for this violation pursuant to Water Code section 1847(b)(1).
7. **Violation 4:** You are alleged to have failed to install measures to prevent overflow of storage systems on the date of the site inspection, in violation of the Requirement established by the Board pursuant to Water Code section 13149 and set forth in the Cannabis Cultivation Policy at Attachment A, Section 2, Term 93. This Complaint recommends that the Board impose liability in an amount of \$500 for this violation pursuant to Water Code section 1847(b)(1).
8. **Violation 5:** You are alleged to have diverted or used water for cannabis cultivation during 2018 without the necessary license issued by the California Department of Food and Agriculture (CDFA) under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code (B&P Code). This Complaint recommends that the Board impose liability in an amount of \$500 for this violation pursuant to Water Code section 1847(b)(4).
9. **Violation 6:** You are alleged to have failed to submit a Statement of Water Diversion or Use (Statement) of water to the Board for the diversion or use of water during 2016, in violation of Water Code section 5101, which requires each person who diverts water to file a statement of his or her diversion or use with the Board prior to July 1 of the succeeding year. This Complaint recommends that the Board impose liability in an amount of \$1,000 for this violation pursuant to Water Code section 5107.

LEGAL AUTHORITY

10. Water Code section 1055(a) provides that the Executive Director for the Board may issue a Complaint to any person or entity to whom liability may be imposed pursuant to Water Code section 1847 or Water Code section 5107. The Executive Director has delegated this authority to the Deputy Director for Water Rights.

Requirements Adopted Pursuant to Water Code Section 13149

11. Violations 1, 2, 3 and 4 allege violations of Requirements adopted by the Board pursuant to Water Code section 13149 and set forth in the Cannabis Cultivation Policy.
12. 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.
13. The Cannabis Cultivation Policy establishes principles and guidelines (called "Requirements" in the Policy) in accordance with Water Code section 13149.

14. 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.

15. The February 5, 2019, amendments to the Cannabis Cultivation Policy renumbered and revised some of the Requirements. As the violations alleged herein pre-date the February 5, 2019, revisions, this Complaint will describe the Requirements in effect at the time of the alleged violations and note any differences in the current Policy.

16. Violations 1, 2, 3 and 4 allege violations of the following Requirements, respectively:

- a. Violation 1: Cannabis Cultivation Policy, Attachment A, Section 2, Term 69¹: *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, California Department of Fish and Wildlife (CDFW), and any other authorized representatives of the Water Boards or CDFW.*
- b. Violation 2: Attachment A, Section 2, Term 84²: *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. 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*

¹ Term 69 was not modified by the February 5, 2019, amendments.

² Term 84 was renumbered to Term 82 by the February 5, 2019, amendments, which also added "and Chapter 2.8" to the end of the second sentence.

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.

- c. Violation 3: Attachment A, Section 2, Term 90³: *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.*
 - d. Violation 4: Attachment A, Section 2, Term 93⁴: *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.*
17. Water Code section 1847(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. The Board may impose such liability administratively pursuant to Water Code section 1055.
18. In determining the appropriate amount of liability for violations under Water Code section 1847(b)(1), Water Code section 1848(d) requires that the Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

Diversion or Use of Water for Cannabis Cultivation Requires CDFW License

- 19. Violation 5 alleges the diversion or use of water for cannabis cultivation without a necessary license from CDFW.
- 20. CDFW has established a commercial cannabis cultivation licensing program pursuant to Chapter 6 (commencing with section 26060) of Division 10 of the B&P Code. The B&P Code section 26060.1(b)(1), requires that CDFW include conditions

³ Term 90 was renumbered to Term 89 by the February 5, 2019, amendments, and revised as follows: "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."

⁴ Term 93 was renumbered to Term 92 by the February 5, 2019, amendments, but was not otherwise modified.

requested by the Board in any license, including but not limited to the Requirements established under Water Code section 13149. CDFA began issuing licenses on January 1, 2018.

21. Water Code section 1847(a) and (b)(4) provide that any person or entity diverting or using water for cannabis cultivation without the necessary CDFA license 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. The Board may impose such liability administratively pursuant to Water Code section 1055.
22. In determining the appropriate amount of a liability for violations under Water Code section 1847(b)(4), Water Code section 1848(d) requires that the Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

Statement of Annual Diversion or Use

23. Violation 6 alleges the failure to file a Statement with the Board.
24. Water Code section 5101 requires that any person who diverts water shall file a Statement with the Board by July 1 of the succeeding year, with certain exceptions that are not relevant here.
25. Water Code section 5107(c)(1) provides that the Board may impose liability pursuant to Water Code section 1055 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.
26. In determining the appropriate amount of liability for violations under Water Code 5101, Water Code section 5107(e) requires that the Board shall consider all relevant circumstances, including, but not limited to all of the following factors: (1) the extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; and (4) any corrective action undertaken by the violator.

FACTUAL ALLEGATIONS

27. According to Humboldt County property records, You own and have owned the Property since August 27, 2013. You have owned the Property at all times relevant here.

28. On or around August 24, 2018, Division of Water Rights (Division) staff issued a general notice letter informing You of the Cannabis Cultivation Policy requirements, including the need to obtain a water right and/or enroll in the Cannabis General Order.
29. On or around September 21, 2018, Division staff issued a Notice of Violation (NOV) informing You that failure to file a water right or enroll in the Cannabis General Order could result in liability. 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.”
30. Division staff reviewed aerial imagery from the Redwood Creek watershed and identified Your 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 Your property likely had a jurisdictional source of water; a search of Board records showed that Your property did not have a water right on file for the diversion and use of water; a search of the CDFR license database showed that Your property did not have a license to cultivate cannabis; and a search of Humboldt County records showed that Your property did not have a license with the county to cultivate cannabis.
31. On or around December 4, 2018, Division staff contacted You 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 You by phone to request consent to inspect the Property.
32. On or around December 7, 2018, Division staff received a phone message from You 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.
33. On January 29, 2019, in response to Your 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.
34. On January 29, 2019, Division staff posted a copy of the administrative warrant on the Property, informing You that staff would conduct an inspection on the Property to evaluate cannabis cultivation activities and assess Your surface water diversions for compliance with the Board’s water right permitting authority.
35. On January 29, 2019, the administrative warrant included exhibits containing the general notice letter informing You 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 You that failure to file a water right or enroll in the Cannabis General Order could result in liability on the Property
36. 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.

37. During the January 30, 2019 inspection, Division staff observed and noted the following:
- a. Cannabis Cultivation: Samuel Groft (Your 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; You spoke to Division staff on a telephone call and stated that You intend 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. These facts relate to Violations 1, 2, 3, 4 and 5.
 - b. Diversion or Use of Water for Cannabis Cultivation: Jurisdictional spring water is conveyed to water storage containers and used to irrigate cannabis on Your property. Division staff observed approximately 35,450 gallons of water storage and three points of diversion located at unnamed jurisdictional springs. These facts relate to Violations 1, 2, 3, 4 and 5.
 - c. Failure to Install and Maintain a Measuring Device: Water metering devices were not installed at any of the surface water diversion sites. These facts relate to Violation 2.
 - 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. These facts relate to Violation 3.
 - 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. These facts relate to Violation 4.
38. 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 CDFR 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 CDFR license has been issued for the activities observed on the Property. These facts relate to Violation 5.
39. Based on the indications of the diversion and use of water observed during the inspection, the diversion and use of water described above is subject to the jurisdiction of the Board. Division staff examined available Board records and did not find any evidence of an existing water right permit, license, or registration for the Property, nor that a Statement had ever been filed regarding the observed diversions. As shown in aerial imagery, cannabis cultivation has been occurring at

Your property since at least July 24, 2016 and a Statement was required to been filed for surface water diversions during the year 2016 by July 1, 2017. These facts relate to Violation 6.

PROPOSED CIVIL LIABILITY

40. In determining the appropriate proposed liability for each violation, this Complaint first describes the maximum liability for each violation under the applicable Water Code section, then considers the consideration factors.
41. **Violation 1:** Violation 1 alleges one day of violation of a Requirement established by the Board pursuant to Water Code section 13149, based on conditions observed on the day of the site inspection. Water Code section 1847(b)(1) provides a maximum penalty of \$500 for this violation. Specifically, this violation alleges that You diverted surface water for the cultivation of cannabis during the 2018 cultivation season without a water right that authorizes surface water diversions for cannabis cultivation. Based on the facts alleged above, the potentially relevant circumstances that weigh in favor of a liability at or near the statutory maximum include: misleading statements from You regarding cannabis cultivation on the property; the potential impacts to downstream users and public trust resources in the Redwood Creek watershed resulting from the diversions and the cultivation; the need for the Division to obtain an administrative warrant to inspect the property; the likelihood that diversion for cannabis cultivation pre-dated the inspection, and the lack of any indication that You have ceased diversions for cannabis cultivation since the inspection; and the need to impose significant liabilities to serve as a deterrent for You and other potentially similarly-situated diverters. There are no potentially relevant circumstances weighing in favor of reducing the proposed liability. Considering these factors, this Complaint recommends a proposed liability of \$500 for Violation 1.
42. **Violation 2:** Violation 2 alleges one day of violation of a Requirement established by the Board pursuant to Water Code section 13149, based on conditions observed on the day of the site inspection. Water Code section 1847(b)(1) provides a maximum penalty of \$500 for this violation. Specifically, this violation alleges that You failed to install and maintain a measuring device on Your diversion on the date of the inspection. Based on the facts alleged above, the potentially relevant circumstances that weigh in favor of a liability at or near the statutory maximum include: the potential, impacts to downstream users and public trust resources in the Redwood Creek watershed resulting from the unmeasured diversions; the need for the Division to obtain an administrative warrant to inspect the property; the likelihood that unmeasured diversions for cannabis cultivation pre-dated the inspection, and the lack of any indication that You have ceased unmeasured diversions for cannabis cultivation since the inspection; and the need to impose significant liabilities to serve as a deterrent for You and other potentially similarly-situated diverters. There are no potentially relevant circumstances weighing in favor of reducing the proposed liability. Considering these factors, this Complaint recommends a proposed liability of \$500 for Violation 2.

43. **Violation 3:** Violation 3 alleges one day of violation of a Requirement established by the Board pursuant to Water Code section 13149, based on conditions observed on the day of the site inspection. Water Code section 1847(b)(1) provides a maximum penalty of \$500 for this violation. Specifically, this violation alleges that You failed to prevent the overflow of water from off-stream water storage facilities that are closed to the environment on the date of the inspection. Based on the facts alleged above, the potentially relevant circumstances that weigh in favor of a liability at or near the statutory maximum include: the potential, impacts to downstream users and public trust resources in the Redwood Creek watershed resulting from the lack of measures to prevent overflow of Your storage system; the need for the Division to obtain an administrative warrant to inspect the property; the likelihood that Your storage system lacked overflow measures prior to the inspection, and the lack of any indication that You have installed overflow measures since the inspection; and the need to impose significant liabilities to serve as a deterrent for You and other potentially similarly-situated diverters. There are no potentially relevant circumstances weighing in favor of reducing the proposed liability. Considering these factors, this Complaint recommends a proposed liability of \$500 for Violation 3.
44. **Violation 4:** Violation 4 alleges one day of violation of a Requirement established by the Board pursuant to Water Code section 13149, based on conditions observed on the day of the site inspection. Water Code section 1847(b)(1) provides a maximum penalty of \$500 for this violation. Specifically, this violation alleges that You failed to install measures to prevent overflow of storage systems on the date of the inspection. Based on the facts alleged above, the potentially relevant circumstances include: the potential, impacts to downstream users and public trust resources in the Redwood Creek watershed resulting from the lack of measures to prevent overflow of Your storage system; the need for the Division to obtain an administrative warrant to inspect the property; the likelihood that Your storage system lacked overflow measures prior to the inspection, and the lack of any indication that You have installed overflow measures since the inspection; and the need to impose significant liabilities to serve as a deterrent for You and other potentially similarly-situated diverters. There are no potentially relevant circumstances weighing in favor of reducing the proposed liability. Considering these factors, this Complaint recommends a proposed liability of \$500 for Violation 4.
45. **Violation 5:** Violation 5 alleges one day of diversion and use of water for cannabis cultivation for which a CDFA license is required, based on site conditions observed on the day of the inspection, that indicate the diversion and use of water for cannabis cultivation occurred during the 2018 cultivation season. Water Code section 1847(b)(4) provides a maximum penalty of \$500 for this violation. Specifically, this violation alleges that You have diverted or used water for cannabis cultivation without the necessary CDFA license on the date of the inspection. Based on the facts alleged above, the potentially relevant circumstances include: misleading statements from You regarding cannabis cultivation on the property; the potential harm to downstream users and public trust resources in the Redwood Creek watershed resulting from the failure to obtain a CDFA license which would require compliance with the Requirements set forth in the Cannabis Cultivation

Policy; the potential harm to the overall CDFR licensing and regulatory system from Your failure to obtain a license; the need for the Division to obtain an administrative warrant to inspect the property; the lack of any indication that You have ceased diversions for cannabis cultivation since the inspection; and the need to impose significant liabilities to serve as a deterrent for You and other potentially similarly-situated diverters. There are no potentially relevant circumstances weighing in favor of reducing the proposed liability. Considering these factors, this Complaint recommends a proposed liability of \$500 for Violation 5.

46. **Violation 6:** Violation 6 alleges one failure to file a Statement, for which Water Code section 5107(c)(1) provides a maximum penalty of \$1,000. Specifically, this violation alleges that You have failed to submit a Statement to the Board for the year 2016. Based on the facts alleged above, the potentially relevant circumstances include: the potential harm to the Board's orderly and efficient administration of water resources of the state from the failure to report Your diversions; the potential, impacts to downstream users and public trust resources in the Redwood Creek watershed resulting from these diversions; the need for the Division to obtain an administrative warrant to inspect the property; the likelihood that diversions predated the inspection, and the lack of any indication that You have ceased diversions since the inspection; and the need to impose significant liabilities to serve as a deterrent for You and other potentially similarly-situated diverters. There are no potentially relevant circumstances weighing in favor of reducing the proposed liability. Considering these factors, this Complaint recommends a proposed liability of \$1,000 for Violation 6.
47. **Total Proposed Liability:** Adding the proposed fines for Violations 1 through 6 brings the total proposed liability to: \$500 + \$500 + \$500 + \$500 + \$500 + \$1,000 = \$3,500.

RIGHT TO HEARING

48. You may request a hearing on this matter before the Board. Any such request for hearing must be received or postmarked within 20 days of the date that this notice is received as required by Water Code section 1055(b).
49. If You request a hearing, You will have an opportunity to contest the allegations in this Complaint and the imposition of a liability by the Board. The Board will issue a notice setting the specific time and place for the hearing. The hearing notice will be mailed not less than 10 days before the hearing date.
50. At the hearing, the Board will consider whether to impose a liability (a liability is a monetary fine), and if so, whether to adjust the Proposed Liability within the amount authorized by statute. Any Board order imposing liability shall be final and effective upon issuance.
51. If You do not request a hearing within 20 days, then the right to a hearing on the matter is waived.

52. Pursuant to Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue an ACL Order assessing the Proposed Liability when a Complaint has been issued and no hearing has been requested within 20 days of receipt of the Complaint.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: May 17, 2019