

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

---

In the Matter of Allegations of Violations of the Following: Cannabis Cultivation Policy Requirements Adopted Pursuant to California Water Code Section 13149 and Diversion or use of Water for Cannabis Cultivation for which a License is Required (Water Code section 1847(b)(4)),  
by

**Darrell Evenson & Jose Rodriguez**  
**Trinity County**  
**APN: 020-520-020-000**

---

**DARRELL EVENSON AND JOSE RODRIGUEZ (HEREINAFTER REFERRED TO AS “DIVERTERS”) ARE HEREBY GIVEN NOTICE THAT:**

1. The State Water Resources Control Board’s (State Water Board’s) Division of Water Rights (Division) alleges that the Diverters committed the violations described below, relating to the diversion or use of water for cannabis cultivation activities on the Diverters’ real property in Trinity County during 2021.
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverters imposing liability in the total amount of \$5,000.
3. **The Diverters have the right to request a hearing on these allegations but must do so in writing within 20 days from the date the Diverters receive this Complaint, or else that right is waived.** Please see the specific directions for submitting hearing requests in the “Right to Hearing” Section at the end of this Complaint.

**SUMMARY OF ALLEGED VIOLATIONS**

4. Violations 1-5: The Diverters are alleged to have violated five (5) requirements of the Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Cultivation Policy)<sup>1</sup>, established by the State Water Board pursuant to Water Code Section 13149, by doing the following: diverting water for cannabis cultivation during the surface water forbearance period (Section 2, Term 66); failing to plug, block, disconnect, or remove diversion intakes and otherwise bypass flows or render diversions inoperable during the surface water forbearance period (Section 2, Term 77); failing to install and maintain measuring devices for surface water

---

<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.

diversions and retaining daily diversion records (Section 2, Term 82); failing to ensure that all vents and other openings on water storage tanks are designed to prevent entry and/or entrapment of wildlife (Section 2, Term 93); and failing to maintain daily records of all water used for irrigation of cannabis (Section 2, Term 98).

5. Violation 6: The Diverters are alleged to have diverted and used water for cannabis cultivation for which a license is required, but has not been obtained, under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code during 2021.

## **BACKGROUND AND FACTUAL BASIS**

6. Property Ownership:

The Property is located in the Mad River watershed. The Mad River is a fully appropriated stream system from the mouth of the Mad River at the Pacific Ocean and upstream including all tributaries where hydraulic continuity exists, from which there is no water available for new appropriation from June 1 through October 31.

7. Watershed Information:

The Property is located in the Mad River watershed. The Mad River is a fully appropriated stream system from the mouth of the Mad River at the Pacific Ocean and upstream including all tributaries where hydraulic continuity exists, from which there is no water available for new appropriation from June 1 through October 31.

8. Aerial Imagery Review:

On or around June 2, 2021, State Water Board, Division of Water Rights (Division) staff reviewed aerial imagery of the Property and made the following observations:

- a. LandVision aerial imagery dated April 11, 2020 shows two graded areas on the Property, consistent with cannabis cultivation activities.
- b. LandVision aerial imagery dated August 15, 2020 shows a newly graded area on the Property with three greenhouses installed, consistent with cannabis cultivation activities.

9. Water Rights Records Review:

On or around June 2, 2021, 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 evidence of an existing Statement of Water Diversion and Use, water right permit, license, or registration on file authorizing water diversions on the Property. Division staff searched eWRIMS again on December 22, 2021 and found no evidence of an existing Statement of Water Diversion and Use, water right permit, license, or registration on file authorizing water diversions on the Property.

10. CalCannabis License Records Review:

On or around June 2, 2021, Division staff reviewed California Department of Food and Agriculture (CDFA) CalCannabis<sup>2</sup> records of commercial cannabis cultivation licenses to determine if there was a license on file that would legally authorize commercial cannabis cultivation on the Property. Division staff found no CalCannabis license on record for the Property. Division staff searched CDFA CalCannabis records again on December 22, 2021 and found no CalCannabis license on record for the Property.

11. June 8, 2021 Inspection Basis:

On or around June 2, 2021, the Division was notified by the California Department of Fish and Wildlife (CDFW) of a search warrant inspection of the Property based on illegal cannabis cultivation and possible surface water diversion used for cannabis cultivation. Division staff, accompanied by staff from CDFW and the Trinity County Sheriff's Office, conducted an inspection of the Property on June 8, 2021. The Diverters were not present during the inspection, but multiple site operators were present on the Property. During the inspection, the Diverters' cannabis plants were eradicated by law enforcement staff.

12. Points of Diversion:

Division staff observed and documented six points of diversion (PODs) during the June 8, 2021 inspection.

- a. POD1 is a cistern located on an unnamed stream that is tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream of POD1. POD1 was actively diverting water to storage for irrigation of cannabis during the inspection. Water was flowing upstream of POD1 but was not observed flowing downstream of POD1.
- b. POD2 is a groundwater well that is pumped for cannabis cultivation. POD2 was not pumping water during the inspection.
- c. POD3 is a groundwater well that was not connected to a place of use during the inspection.
- d. POD4 is an impoundment, created by the placement of rocks and sediment in the stream channel, located on an unnamed stream that is tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream of POD4. POD4 was actively diverting water to storage for irrigation of cannabis during the inspection. Water was flowing upstream of POD4 but was not observed flowing downstream of POD4.

---

<sup>2</sup> 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. However, because the site inspection and records review for this matter occurred prior to July 12, 2021, this Complaint references CDFA rather than DCC when identifying the licensing agency.

- e. POD5 is a cistern located on an unnamed stream that is tributary to the Mad River. The unnamed stream has defined bed and banks upstream and downstream of POD5. POD5 was actively diverting water to storage for irrigation of cannabis during the inspection. Water was flowing upstream of POD5 but was not observed flowing downstream of POD5.
- f. POD6 is an off-stream reservoir that appears to collect rainwater and/or sheet flow. There were no pipes connected to POD6 during the inspection.

**13. Inspection Report and Notice of Violation:**

Division staff sent the Diverters an Inspection Report and Notice of Violation (IR) via certified mail on July 29, 2021. United States Postal Service records indicate that the Diverters picked up the IR from the post office on August 2, 2021. The IR described the observations made by Division staff during the inspection, notified the Diverters that the observed violations may subject them to enforcement by the State Water Board, and recommended corrective actions to address the violations. The IR and proof of delivery are included with this Complaint as Attachment 1.

**14. Landowner/Diverter Response:**

On August 27, 2021, Jose Rodriguez submitted Division of Water Rights – Cannabis Compliance Response Portal Survey 436774 (Exhibit 14). Survey 436774 states that he has never cultivated cannabis on the Property and that he has no plan to cultivate cannabis in the near future. Mr. Rodriguez also provided photographic evidence showing POD4 removed, water tanks with secured lids, and two 300-gallon tanks loaded in a trailer for removal. There were also photos of the area around POD5 attached to Survey 436774; however, Division staff cannot determine what the photos of POD5 are showing. The attached images do not demonstrate that the cistern observed during the inspection has been removed.

**STATE WATER BOARD AUTHORITY**

15. Water Code Section 1055, subdivision (a) provides that the Executive Director for the State Water Board may issue a Complaint to any person or entity on which administrative civil liability may be imposed pursuant to Water Code Sections 1052, 1847, and 5107. The Executive Director delegated this authority to the Deputy Director for Water Rights by memorandum dated May 17, 1999. The Deputy Director redelegated this authority to the Assistant Deputy Director for the Permitting and Enforcement Branch by memorandum dated August 27, 2008.

16. Water Code Section 1112 that the Administrative Hearings Office presides over hearings on complaints issued under Water Code Section 1055. Pursuant to Water Code Section 1114, for matters seeking administrative liability under Water Code Section 1847 or 5107, the Hearing Officer adopts a final order. For all other matters, the Hearing Officer adopts a proposed order to be considered by the State Water Board.

## ALLEGED VIOLATIONS

### Cannabis Cultivation Policy Requirements

17. The State Water Board's Cannabis Cultivation Policy went into effect on December 18, 2017, following approval by the Office of Administrative Law. Pursuant to Water Code Section 13149, the Policy contains principles, guidelines and requirements (referred to here as "requirements") for the diversion or use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow. The State Water Board subsequently amended the Cannabis Cultivation Policy, effective April 16, 2019.

18. Cannabis Cultivation Policy, Attachment A, Section 1, Term 9, defines cannabis cultivation as:

*Any activity involving or necessary for the planting, growing, pruning, harvesting, drying, curing, or trimming of cannabis. This term includes but is not limited to:*

- (1) water diversions for cannabis cultivation, and*
- (2) activities that prepare or develop a cannabis cultivation site or otherwise support cannabis cultivation and which discharge or threaten to discharge waste to waters of the state.*

19. Water Code Section 1847, subdivisions (a) and (b)(1) provide that any person or entity violating any Requirement adopted pursuant to Water Code Section 13149 may be liable in an amount not to exceed the sum of five hundred dollars (\$500) per violation, plus two hundred fifty dollars (\$250) for each additional day on which each violation continues if the person fails to correct the violation within 30 days after the State Water 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.

20. **Violation 1:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 66, states:

*All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g., groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements. This includes lakes, ponds, and springs (unless the spring is deemed exempt by the Deputy Director). See Section 3, No. 4. Numeric and Narrative Instream Flow Requirements of the Cannabis Cultivation Policy Attachment A for more information<sup>3</sup>.*

- a. POD1, POD4, and POD5 divert water from surface streams with known and definite channels, subject to the Numeric and Narrative Instream Flow Requirements. Each of these PODs was observed to be actively diverting water on June 8, 2021 for cannabis cultivation. POD1 was conveying

---

<sup>3</sup> The Numeric and Narrative Instream Flow Requirements No. 4. Surface Water Dry Season Forbearance Period requirement stipulates the following: "Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year unless the water diverted is delivered from storage in compliance with Narrative Instream Flow Requirement 4."

water by gravity to places of storage (POSS) 1-3, which convey water to places of use (POUs) 1-3 where cannabis was being cultivated. POD4 was also conveying water by gravity to POSS 1-3 for the irrigation of cannabis at POU 1-3. POD5 was conveying water by gravity to POSS5, which conveys water for cannabis irrigation at POU4. The Diverters were cultivating approximately 4,185 plants across seven separate greenhouses in POU 1-4 at the time of the inspection. The diversions documented during the June 8, 2021 inspection occurred during the surface water dry season forbearance period (April 1 through October 31).

- i. The diversion of water at POD1, POD4, and POD5 for cannabis cultivation irrigation during the forbearance period, documented during the June 8, 2021 inspection, constitutes three violations (one for each POD) of Term 66, of Section 2 of the Cannabis Cultivation Policy.

**21. Violation 2:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 77, states:

*Cannabis cultivators shall plug, block, cap, disconnect, or remove the diversion intake or otherwise bypass flow or render the diversion intake incapable of diverting water for cannabis cultivation activities during the surface water forbearance period, unless the diversion intake is used for other beneficial uses, to ensure no water is diverted during that time.*

- a. Division staff observed that POD1, POD4, and POD5 were actively diverting surface water for cannabis cultivation during the June 8, 2021 inspection, which was conducted during the surface water forbearance period (April 1 – October 31). The diversion structures for POD1, POD4, and POD5 were therefore not plugged, blocked, capped, disconnected, or rendered inoperable to stop the diversion of water during the forbearance period, as required.
  - i. Three violations (one for each POD) of Term 77 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to follow intake requirements during the inspection on June 8, 2021.

**22. Violation 3:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 82, states:

*The cannabis cultivator shall install and maintain a measuring device(s) for surface water or subterranean stream diversions. The measuring device shall be, at a minimum equivalent to the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.7 and Chapter 2.8. The measuring device(s) shall be located as close to the point of diversion as reasonable. Cannabis cultivators shall maintain daily diversion records for water diverted for cannabis cultivation. Cannabis cultivators shall maintain separate records that document the amount of water used for cannabis cultivation separated out from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the*

*records available for review or by request by the Water Boards, CDFW, or any other authorized representatives of the Water Boards or CDFW. Daily diversion records shall be retained for a minimum of five years. Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year.*

- a. During the site inspection on June 8, 2021, no water measuring device was observed on or near POD1, POD4, or POD5, nor were any records of water diversion found on the Property. Division staff determined that, based on the diversion system, there would need to be at least one water measuring device installed per POD to measure water diverted for cannabis cultivation.
  - i. Three violations (one for each POD) of Term 82 of Section 2 of the Cannabis Cultivation Policy are alleged for failure to have water measuring devices installed during the inspection and for the failure to maintain daily diversion records at the site.

**23. Violation 4:** Cannabis Cultivation Policy Attachment A, Section 2, Term 93, states:

*Cannabis cultivators shall ensure that all vents and other openings on water storage tanks are designed to prevent the entry and/or entrapment of wildlife.*

- a. During the June 8, 2021 site inspection, Division staff documented that one tank at POS1 had a lid nearby but that the lid was not being used to secure the tank opening. Additionally, staff documented that another tank at POS1, one tank at POS2, two tanks at POS3, and two tanks at POS5 were being used to store water for cannabis cultivation without tank lids. Failure to secure all tank openings with lids presents an entrapment hazard to wildlife and is a violation of this requirement.
  - i. Seven violations (one for each tank) of Term 93 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to ensure all water storage tanks were covered or designed to prevent the entry and/or entrapment of wildlife during the inspection on June 8, 2021.

**24. Violation 5:** Cannabis Cultivation Policy, Attachment A, Section 2, Term 98, states:

*Cannabis cultivators shall maintain daily records of all water used for irrigation of cannabis. Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered (e.g., irrigating for one hour twice per day using 50 half-gallon irrigation emitters equates to 50 gallons per day (1 hour x 2 times per day x 50 irrigation emitters x 0.5 gallons per irrigation emitter per hour) of water used for irrigation). Cannabis cultivators shall retain, for a minimum of five years, irrigation records at the cannabis cultivation site and shall make all irrigation records available for review by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.*

- a. During the inspection, Division staff did not locate daily records of water used for irrigation of cannabis on the Property. Additionally, Division staff did not observe any water measuring devices at any of the PODs, POSs, or cannabis cultivation areas that could measure and record the water used for irrigation of cannabis.
  - i. One violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged for failing to have daily records of water used for irrigation of cannabis during the June 8, 2021 inspection.

### **Diversion or Use of Water for Cannabis Cultivation Requires CDFA License**

25. **Violation 6:** Water Code Section 1847, subdivisions (a) and (b)(4) provide that any person or entity who diverts or uses water for cannabis cultivation for which a license is required, but which has not been obtained, under Chapter 6 (commencing with 26060) or Chapter 7 (commencing with 26070) of Division 10 of the Business and Professions Code may be liable in an amount not to exceed the sum of five hundred dollars (\$500) per violation, plus two hundred fifty dollars (\$250) for each additional day on which each violation continues if the person fails to correct the violation within 30 days after the State Water 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.

CalCannabis 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.

- a. During the site inspection on June 8, 2021, Division staff observed approximately 4,185 cannabis plants growing in seven greenhouses, with an approximate total area of 11,800 sq. ft., irrigated from surface water diversions from POD1, POD4, and POD5. Cannabis cultivation of the scale observed by Division staff on the Property required a CDFA commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. Division staff examined available records on June 2, 2021 and again on November 8, 2021 and December 22, 2021 and did not find any record that CDFA had issued a cultivation license for the activities observed on the Property.



- i. One violation is alleged for diverting and using water for cannabis cultivation without having obtained a CDFA commercial cannabis license as required.

### **Statutory Maximum Liability**

26. The statutory maximum liability for Violations 1-6 is the sum of each Violation's statutory maximum liability (Violations 1+2+3+4+5+6 = Statutory Maximum Liability). Therefore, the statutory maximum liability for Violations 1-6 is \$9,000 (\$1,500 + \$1,500 + \$1,500 + \$3,500 + \$500 + \$500).

### **WATER CODE SECTION 1055.3 CONSIDERATION OF FACTORS**

27. Water Code Section 1055.3 requires that the Board in determining the amount of civil liability shall take into consideration all relevant circumstances, including, but not limited to, 1) the extent of harm caused by the violation, 2) the nature and persistence of the violation, 3) the length of time over which the violation occurs, and 4) the corrective action, if any taken by the violator. This requirement is applied to all penalty proposals relative to this administrative civil liability complaint.

### **Violations 1 through 5: Cannabis Cultivation Policy Violations**

- 28. Violation 1: Cannabis Cultivation Policy, Section 2, Term 66 – Failure to Comply with the Narrative and Numeric Instream Flow Requirements**

a. Extent of Harm Caused:

Absent restrictions on water diversion, the individual and cumulative effects of water diversions for cannabis cultivation during the dry season are likely to significantly decrease instream flow and, in some instances, reduce hydrologic connectivity, habitat loss, or completely dewater the stream. Minimum flows that provide habitat connectivity are needed to maintain juvenile salmonid passage conditions in late spring and early summer. Instream flows are also needed to maintain habitat conditions necessary for juvenile salmonid viability throughout the dry season, including adequate dissolved oxygen concentrations, low stream temperatures, and high rates of invertebrate production and drift from riffles to pools. Further, many species depend on spring recession flows as migratory or breeding cues. The State Water Board is requiring a surface water diversion forbearance period to ensure adequate flows are maintained throughout the dry season to protect aquatic species, aquatic habitat, and water quality. Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, or springs. Diverting water during the forbearance period impacts downstream priority of water right diverters' ability to use water beneficially and impacts instream and terrestrial public trust resources and habitat.

b. Nature and Persistence:

Division staff observed active water diversion at three separate locations

(POD1, POD4, and POD5) during the surface water dry season forbearance period for cannabis cultivation. On August 2, 2021, the Diverters were notified by the IR that diverting water from POD1, POD4, and POD5 during the surface water dry season forbearance period (April 1 – October 31) was a violation of Cannabis Cultivation Policy, Section 2, Term 66. Based on the consumptive water demand estimates of cannabis (up to 6 gallons per-plant per day during the growing season), as determined by independent studies, the amount of water necessary to irrigate the Diverters' 4,185 cannabis plants is appreciable. This violation did not continue past June 8, 2021 since the cannabis plants were eradicated by law enforcement during the inspection.

c. Corrective Action:

On August 27, 2021, Jose Rodriguez submitted Survey 436774 that states there is no plan to cultivate cannabis in the near future and provided photographic evidence showing POD4 has been removed. There were also photos of the area around POD5; however, Division staff cannot determine what the photos of POD5 are showing. The available images do not demonstrate that the cistern (POD5) observed during the inspection has been removed. No photographs of POD1 were provided. Review of available aerial imagery dated August 16, 2021 indicates that cannabis has not been cultivated since the inspection.

d. Length of Time:

The Division alleges a single day of violation for the surface water diversions observed during the inspection. Therefore, the Division alleges three violations (one for each POD) of Term 66 of Section 2 of the Cannabis Cultivation Policy for the diversion and use of surface water during the forbearance period.

e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 per violation, for a total liability amount of \$750 for these three violations observed on the day of inspection.

**29. Violation 2: Cannabis Cultivation Policy, Section 2, Term 77 - Failure to Follow Diversion Intake Requirements**

a. Extent of Harm Caused:

Compliance with this requirement is mandatory to ensure that the diversion of water associated with cannabis cultivation does not harm instream flows during the forbearance period. Inability to render the Diverters' POD intakes incapable of diverting water can result in continued water diversion; thus, impacting downstream beneficial uses and depriving downstream priority of right diverters. These violations may also injure other water right holders by improperly shifting the burden of offsetting public trust impacts to senior right holders. Impacts are compounded when the violation persists throughout the forbearance period in dry and critically dry years representing potential harm to terrestrial and aquatic species and habitat loss. As this violation occurred during the season in which the Mad River and its tributaries are fully appropriated (June 1 – October 31), the harm to beneficial uses resulting from this violation is likely amplified.

b. Nature and Persistence:

During the June 8, 2021 inspection, Division staff observed POD1, POD4, and POD5 actively diverting for cannabis cultivation. On August 2, 2021, the Diverters were notified by the IR that the equipment used to operate POD1, POD4, and POD5 was in violation of Cannabis Cultivation Policy, Section 2, Term 77, as the diversion intakes remained in the unnamed stream with no intake plug, block, or cap and were capable of diverting water during the forbearance period.

c. Corrective Action:

As stated above, Mr. Rodriguez submitted Survey 436774 on August 27, 2021 and stated there is no plan to cultivate cannabis on the Property in the near future and provided documentation that POD4 had been removed. Based on the photographs submitted, POD5 did not appear to have been removed. No photographs depicting POD1 were submitted. Review of available aerial imagery indicates that cannabis has not been cultivated since the inspection.

d. Length of Time:

Division staff documented a violation of the requirement to plug, block, cap, or render the diversion intakes incapable of diverting at POD1, POD4, and POD5 during the June 8, 2021 inspection. The Division alleges a single day of violation for the failure to render each POD inoperable to stop the diversion of water on June 8, 2021. Therefore, liability for three violations of Term 77 of Section 2 of the Cannabis Cultivation Policy is alleged.

e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 for each of three violations for a total penalty of \$750 for this violation.

**30. Violation 3: Cannabis Cultivation Policy, Section 2, Term 82 – Failure to Install Diversion Measuring Device**

a. Extent of Harm Caused:

Cannabis cultivators are required to maintain measuring devices and daily diversion records for surface water diversions to assist the State Water Board in obtaining accurate data on how much water is being diverted in watersheds. Accurate data on water diversion is needed for all users of water in the state so that the Division can plan for drought and effectively manage limited water resources in impacted watersheds. Moreover, this is vital information for water use planning made even more critical by drought conditions. By failing to maintain measuring devices and daily diversion records the Diverters deprive the Division of this critical data. This directly harms the Division's ability to plan for limited water supply, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources.

b. Nature and Persistence:

On August 2, 2021, the Diverters were notified by the IR that the equipment used to operate POD1, POD4, and POD5 was a violation of Cannabis Cultivation Policy, Section 2, Term 82, as no measuring devices were observed measuring diversions from POD1, POD4, and POD5 nor were any records of water

diversion found. Based on the structure of the irrigation system as observed during the inspection, three measuring devices were required to comply with the requirement.

c. Corrective Action:

On August 27, 2021, Mr. Rodriguez stated that there is no plan to cultivate cannabis on the Property in the near future and that POD4 has been removed. Mr. Rodriguez submitted Survey 436774 on August 27, 2021 and selected the response from the Cannabis Response Portal that stated, "I have never cultivated cannabis and do not plan to cultivate cannabis in the near future" and provided documentation that POD4 had been removed. Based on the photographs submitted, POD5 did not appear to have been removed. No photographs depicting POD1 were submitted. Review of available aerial imagery since the inspection indicates that cannabis has not been cultivated since the inspection.

d. Length of Time:

Division staff documented a violation of the requirement to measure surface water diversions and maintain daily records during the June 8, 2021 inspection. Division staff are alleging a single day of violation. Therefore, liability for three violations (one for each POD) of Term 82 of Section 2 of the Cannabis Cultivation Policy is alleged.

- e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 per violation, for a total liability amount of \$750 for these three violations.

**31. Violation 4: Cannabis Cultivation Policy, Section 2, Term 93 – Failure to Secure Tank Openings to Prevent Entry and Entrapment of Wildlife**

a. Extent of Harm Caused:

Cannabis cultivators are required to ensure that tank openings are closed as open storage tanks may potentially cause direct harm by entrapping wildlife. The potential harm to wildlife increases significantly when there are multiple water storage tanks with accessible openings or vents. This violation poses harm to wildlife that may become entrapped.

b. Nature and Persistence:

On August 2, 2021, the Diverters were notified by the IR that seven of the water storage tanks on the Property were in violation of Cannabis Policy, Section 2, Term 93. During the inspection Division staff determined that two tanks at POS1, one tank at POS2, two tanks at POS3, and two tanks at POS5 were being used to store water for cannabis cultivation without tank lids secured over the openings.

c. Corrective Action:

On August 27, 2021, Mr. Rodriguez provided photographic evidence of tanks with secured lids and two 300-gallon tanks loaded in a trailer for removal. The

300-gallon dark green tanks had not been removed. The photos showed all the tanks except the 300-gallon tank at POS 1.

d. Length of Time:

Division staff documented a violation of the requirement to secure tank openings to prevent entry and entrapment of wildlife during the June 8, 2021 inspection. Division staff are alleging seven violations (one for each tank) of Term 93 of Section 2 of the Cannabis Cultivation Policy.

- e. Considering the factors listed in a-d above, the Division proposes administrative civil liability in the amount of \$250 per violation, for a total liability amount of \$1,750 for these seven violations.

**32. Violation 5: Cannabis Cultivation Policy, Section 2, Term 98 - Failure to Maintain Daily Irrigation Records**

a. Extent of Harm Caused:

Compliance with this term is required to ensure that the diversion and use of water associated with cannabis cultivation does not have a negative impact on aquatic habitat, riparian habitat, and does not indirectly impact downstream water right holders. Accurate data on cannabis cultivation irrigation water demand is necessary so that the Division can determine if standard irrigation practices are applied. This in turn prevents waste from overwatering and prevents runoff of cannabis cultivation wastewater. By failing to maintain daily irrigation records, the Diverters directly harm the Division's ability to plan for limited water supply, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources. The State Water Board has stated the importance of real time accurate data on water demand, especially in dry and critically dry years. As such, the harm caused by the Diverters' failure to maintain irrigation records is notable.

b. Nature and Persistence:

On August 2, 2021, the Diverters were notified by the IR of the daily irrigation records violation of Cannabis Policy, Section 2, Term 98. During the site inspection on June 8, 2021, no water measuring devices were observed on or near the PODs, POSs, or any of the cannabis cultivation areas, nor were any irrigation records for cannabis water demands found.

c. Corrective Action:

The Diverters have not provided Division staff with any irrigation records.

d. Length of Time:

During the site inspection on June 8, 2021, Division staff were unable to locate any cannabis irrigation records, nor did Division staff observe any measuring device that could calculate the water used for irrigation of cannabis. Therefore, liability for one violation of Term 98 of Section 2 of the Cannabis Cultivation Policy is alleged.

- e. The Division proposes administrative civil liability in the amount of \$500 for this violation.

### **33. Violation 6: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code 1847)**

a. Extent of Harm Caused:

Operating a commercial cannabis cultivation site without a license causes negative economic impact on the legal cannabis industry and general harm to the regulatory program. Illegal cultivation directly harms the legal market by supporting and supplying an unregulated market where illegal cultivators do not incur the compliance costs to cultivate cannabis in a manner that does not have a negative impact on water quality, aquatic habitats, riparian habitats, wetlands, and springs. As such, the Diverters' cannabis cultivation activities significantly harm legal cultivators and the Cannabis Cultivation Regulatory Program.

b. Nature and Persistence:

Unlicensed cannabis cultivation is in violation of the laws and regulations enacted pursuant to the Medical and Adult-Use Cannabis Regulation and Safety Act. CDFA began accepting applications for commercial cannabis cultivation licenses on January 1, 2018. It was determined the scale of cannabis cultivation occurring on the Property during the June 8, 2021 inspection required a commercial cannabis license. On August 2, 2021, the Diverters were notified by the IR that commercial cannabis cultivation required a license pursuant to Water Code Section 1847.

c. Corrective Action:

On August 27, 2021, Mr. Rodriguez submitted Survey 436774 that states there is no plan to cultivate cannabis on the Property in the near future. Review of available aerial imagery indicates that cannabis has not been cultivated since the inspection.

d. Length of Time:

Water diversion and use for cannabis cultivation was documented on the Property during the June 8, 2021 inspection. Although it is likely water diversion and use for cannabis cultivation, the scale of which required a license, occurred on the Property prior to the inspection, liability for a single violation under Water Code Section 1847, subdivision (b)(4) is alleged.

- e. The Division proposes administrative civil liability in the amount of \$500 for this violation for cultivating without a license on the day of the inspection.

### **Violations 1-6: All Other Relevant Circumstances**

34. Aerial imagery reviewed by Division staff from April 11, 2020 to August 15, 2020, show use of the Property to cultivate cannabis. The Diverters purchased the Property with cannabis cultivation infrastructure already existing, and further developed the cannabis cultivation site by erecting more greenhouse structures on the Property. Division staff observed that during the inspection, the unnamed

stream sources were the sole water sources being used on the Property, despite the presence of two groundwater wells. As such, it is likely that a combination of PODs 1, 4 and 5 were used as the source of water for cannabis irrigation in 2020. Additionally, evidence at the Property suggests that the failure to implement best management practices occurred throughout the time period the Property was used for cultivation. The potential cumulative impact of these water diversions and multiple Cannabis Cultivation Policy violations across a time period of more than a year is considerable in this case.

35. The Cannabis Cultivation Regulatory Program is in its infancy. To deter illegal cannabis cultivation activities and encourage the legal market and enterprises, it is necessary to impose administrative civil liability in sufficient amounts to make the costs of noncompliance higher than the cost of compliance. Each opportunity to deter illegal activities and demonstrate the need to comply must be taken. The Diverters engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as a deterrent for future noncompliance.

### **PROPOSED CIVIL LIABILITY**

36. Having taken into consideration the factors described above and the need for deterrence the Assistant Deputy Director for Water Rights recommends administrative civil liability for Violations 1 – 6 in the amounts of \$750 + \$750 + \$750 + \$1,750 + \$500 + \$500, for a total proposed liability amount of \$5,000.

### **RIGHT TO HEARING**

37. The Diverters may request a hearing on this matter before the State Water Board Administrative Hearings Office. Any such request for hearing must be delivered to, or received by mail by the Administrative Hearings Office within 20 days after the date the Diverters receive this Complaint as required by Water Code Section 1055, subdivision (b).
38. If the Diverters do not request a hearing within 20 days, then the right to a hearing on the matter is waived. The Assistant Deputy Director for Water Rights, under authority delegated by the State Water Board, may then issue a final Administrative Civil Liability Order assessing the proposed liability.
39. If the Diverters timely request a hearing, the Diverters will have an opportunity to contest the allegations in this Complaint and the imposition of liability before a hearing officer from the Administrative Hearings Office. The Administrative Hearings Office will issue a notice setting the specific time and place for the hearing, and describing the hearing process, not less than 10 days before the hearing date.
40. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that liability shall not be imposed. If the Administrative Hearings Office issues a proposed order, the State Water Board will consider adopting the order at a subsequent public meeting.

STATE WATER RESOURCES CONTROL BOARD

*Jule Rizzardo, Assistant Deputy Director  
Division of Water Rights*

Dated: December 22, 2021