

STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2022-0150-DWR

ADMINISTRATIVE CIVIL LIABILITY ORDER

In the Matter of: Administrative Civil Liability for Violations of Division 2 of the California Water Code in Humboldt County Associated with the Diversion and Use of Water for Cannabis Cultivation
By

Fabiola Lopez
Humboldt County
APN No. 216-381-016-000

Assistant Deputy Director Julé Rizzardo, Division of Water Rights (“Division”), through authority delegated by the State Water Resources Control Board (“State Water Board”), hereby issues an Order for Administrative Civil Liability to Fabiola Lopez (“Diverter”).

THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. In 2017, the State Water Board adopted the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. Pursuant to Water Code section 13149, the Cannabis Cultivation Policy established principles and guidelines for the diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows.
2. The Diverter is the owner of record for Humboldt County Assessor Parcel Number (APN) 216-381-016-000 (hereinafter the Property) where Division staff observed and documented commercial cannabis cultivation on July 20, 2021.
3. During the July 20, 2021 inspection, Division staff documented numerous violations of the California Water Code on the Property. The Division informed the Diverter of the alleged violations post-inspection in a Field Notice of Violation. In addition, on November 12, 2021, the Diverter received an Inspection Report from the Division that further detailed the alleged violations observed on the Property and informed the Diverter of the corrective actions needed to remediate the violations.
4. On March 25, 2022, the Assistant Deputy Director of the Division issued an Administrative Civil Liability Complaint (Complaint) to the Diverter. The Complaint alleges the Diverter diverted and used water for cannabis cultivation in violation of the Water Code and Cannabis Cultivation Policy (Water Code, sections 1847, subdivision (b)(1) and (4). Administrative civil liability was assessed as follows:
 - a. Violation 1: Unauthorized diversion and use of water during the surface water dry season forbearance period in violation of Term 66, of Section 2 of the Cannabis Cultivation Policy: Penalty Amount \$500

- b. Violation 2: Failure to render points of diversion incapable of diverting water during the forbearance period by disconnecting or plugging, blocking, or capping water intake structures in violation of Term 77, of Section 2 of the Cannabis Cultivation Policy: Penalty Amount \$500
 - c. Violation 3: Failure to install and maintain a measuring device for all water diversions in violation of Term 82, of Section 2, of the Cannabis Cultivation Policy: Penalty Amount \$500
 - d. Violation 4: Failure to install measures to prevent overflow of surface water storage systems in violation of Term 92, of Section 2 of the Cannabis Cultivation Policy: Penalty Amount \$500
 - e. Violation 5: Failure to ensure that all vents and other openings on water storage tanks are designed to prevent entry and/or entrapment of wildlife in violation of Term 93, of Section 2 of the Cannabis Cultivation Policy: Penalty Amount \$1,000
 - f. Violation 6: Failure to maintain daily records of all water used for irrigation of cannabis in violation of Term 98, of Section 2 of the Cannabis Cultivation Policy: Penalty Amount \$500
 - g. Violation 7: Diversion or use of water for cannabis cultivation without the necessary license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code in violation of Water Code section 1847, subdivision (b)(4): Penalty Amount \$500
5. After consideration of all relevant circumstances including the extent of the harm, the nature and persistence of the violations, the length of time over which the violations occurred, and the corrective actions of the Diverter pursuant to Water Code, section 1055.3, the Complaint proposed an administrative civil liability in the amount of **\$4,000** for the alleged violations.
 6. On April 1, 2022, Humboldt County, Code Compliance Officer personally served the Diverter with a copy of the Complaint. The cover letter to the Complaint provided the Diverter with notice of ability to contest the allegations in the Complaint by requesting a formal hearing not later than 20 days from the date of receipt of the Complaint.
 7. The Diverter did not submit a timely hearing request to contest the allegations in the Complaint, and to date has not submitted any hearing request.
 8. Pursuant to California Water Code section 1055, subdivision (c), the State Water Board, after any necessary hearing, may adopt an order setting administrative civil liability.

9. The State Water Board is authorized to delegate authority to the Deputy Director of Water Rights under Water Code, Division 2, section 7. State Water Resources Control Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing Administrative Civil Liability when a Complaint has been issued and no hearing has been requested in the period provided by California Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights. This authority has been redelegated to the Assistant Deputy Director of Water Rights.
10. California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order to Diverter assessing an administrative civil liability in the amount proposed in the March 25, 2022 Complaint.
11. California Water Code section 1055.3 states that when determining the appropriate amount of civil liability to be imposed, the State Water Board shall take into consideration all relevant circumstances, including but not limited to the extent of the harm caused by the violation, the nature and persistence of violation, the length of time over which the violation occurs, and the corrective actions, if any, taken by the violator.
12. As of the date of this Order, the Diverter has not responded to the November 12, 2021 NOV/IR or the March 22, 2022 Complaint. There is no evidence to suggest any of the corrective actions necessary to remediate the violations have been taken by the Diverter. In consideration of these and all relevant circumstances, the State Water Board has determined that the appropriate proposed penalty is **\$4,000**.

IT IS HEREBY ORDERED THAT:

1. The attached Administrative Civil Liability Complaint is fully incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegee, has considered all relevant circumstances, including but not limited to those specifically identified in the ACL Complaint, as required by California Water Code section 1055.3 in determining that Diverter shall be assessed the civil liability of \$4,000.
3. Diverter shall remit, within 30 days of the date of this Order, a check or money order payment of the full penalty of \$4,000 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

4. Fulfillment of Diverter's obligations under this Order constitutes full and final satisfaction liability for the alleged violations specifically identified in the Complaint. The State Water Board reserves the right to take further enforcement action for any future violations.

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5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or refer this matter to the Office of Attorney General for further enforcement action if Diverter fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink that reads "Juli Rizzardo". The signature is written in a cursive, flowing style.

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

Dated: June 9, 2022