

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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In the Matter of Allegations of Violations of the Following: Failure to File a Statement of Water Diversion and Use (Water Code section 5101), Unauthorized Diversion or Use of Water (Water Code section 1052), 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

**Napaville Ranch LLC  
Humboldt County  
APN No. 317-054-006-000**

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**NAPAVILLE RANCH LLC (HEREINAFTER REFERRED TO AS "THE DIVERTER") IS HEREBY GIVEN NOTICE THAT:**

1. The State Water Resources Control Board (State Water Board) Division of Water Rights (Division) alleges that the Diverter committed the violations described below, which relate to the diversion or use of water for cannabis cultivation activities on Humboldt County Assessor Parcel Number 317-054-006-000 (Property).
2. Based on these allegations, the Division seeks an Administrative Civil Liability Order against the Diverter imposing liability in the total amount of \$52,500.
3. **The Diverter has the right to request a hearing on these allegations but must do so in writing within 20 days from the date the Diverter receives 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. Violation 1: The Diverter is alleged to have failed to submit a Statement of Water Diversion or Use (Statement) to the State Water Board for the diversion and use of water during 2019 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 State Water Board prior to July 1 of the succeeding year.
5. Violation 2: The Diverter is alleged to have diverted or used water for cannabis cultivation in violation of Water Code section 1052, subdivision (a), which provides that any diversion or use of water subject to the State Water Board's authority under Division 2 of the Water Code, without proper State Water Board authorization, is a trespass.

6. Violations 3-9: The Diverter is alleged to have violated seven 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 or using water for the cultivation of cannabis on land not owned by it without the express written permission of the landowner (Section 1, Term 18); failing to bypass flow or render the diversion intake incapable of diverting water for cannabis cultivation during the surface water forbearance period (Section 2, Term 77); failing to install a water measuring device or maintain diversion records (Section 2, Term 82); failing to inspect for and repair all leaks of the diversion and storage system and failure to prevent overflow from off-stream water storage facilities (Section 2, Term 89); failing to equip water storage facilities with a device to prevent water overflow (Section 2, Term 92); 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 irrigation records (Section 2, Term 98).
7. Violation 10: The Diverter is alleged to have diverted or used water for cannabis cultivation during 2019 and 2020 without the necessary license issued by the California Department of Food and Agriculture (CDFA)<sup>2</sup> under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code.

### **BACKGROUND AND FACTUAL BASIS**

#### 8. Property Ownership:

According to Humboldt County property records, the Diverter acquired the Property on July 30, 2015, and owned the Property at all times relevant to the violations alleged in this Complaint. The Property was subsequently sold on March 16, 2021.

#### 9. Watershed Information:

The Property is located in South Fork Trinity (HUC 8), Lower South Fork Trinity River (HUC10), Pelletreau Creek- South Fork Trinity River (HUC12). Cannabis cultivation activities occurred in the Pelletreau Creek Watershed. Water for cannabis cultivation was diverted from an unnamed stream that is a tributary of Big Creek. Big Creek is a tributary of South Fork Trinity River, which is designated as a Wild and Scenic River from its confluence with the Trinity River to the California State Highway 36 Bridge crossing. As a Wild and Scenic River, the State Water Board is limited to processing or accepting new applications to appropriate water unless the diversion and use of water fall within two limited exceptions approved by the

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

<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 inspections and records review for this matter occurred prior to July 12, 2021, this Complaint references CDFA rather than DCC when identifying the licensing agency.

Secretary of the Resources Agency pursuant to California Code of Regulation, Title 23, section 734. In accordance with the Public Resources Code, Division 5 Chapter 1.4, California Wild and Scenic Rivers Act, section 5093.50 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. July 2019 Inspection:

In July 2019, Division staff were 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. Prior to the July 24, 2019 inspection, Division staff examined available State Water Board water rights records in the electronic Water Rights Information Management System (eWRIMS), the Department of Water Resources database of Well Completion Reports, CalCannabis Cultivation Licensing records, and Humboldt County Cannabis Cultivation license records. Division staff found no records of an existing Statement or an appropriative water right, no record of a well, and no record of a Humboldt County or CalCannabis license that would authorize cannabis cultivation on the Property. Division staff reviewed the hydrology and satellite aerial imagery of the Property from 2016, 2018, and 2019 and determined that there were possible surface water sources available for diversion and use. Furthermore, the satellite aerial imagery from 2016, 2018 and 2019 also showed greenhouse structures, graded areas, and outdoor cannabis cultivation on the Property. On July 24, 2019, Division staff and North Coast Regional Water Quality Control Board (Regional Water Board) staff accompanied CDFW and the Humboldt County Sheriff's Office on the execution of their search warrant to inspect the Property. A representative for the Diverter was not present at the time of inspection. During the inspection, Humboldt County Sheriff's Office and CDFW law enforcement staff eradicated all cannabis plants on the Property. Division staff left a Field Notice of Violation (Field NOV) at the Property at the end of the inspection. The Field NOV alleged violations and described how the Diverter could correct the violations within 30-days of the Field NOV date.

11. September 2019 Inspection:

In September 2019, Division staff were notified by CDFW of a second search warrant inspection of the Property as the Diverter continued to cultivate cannabis on the Property. Prior to the second inspection, which took place on September 4, 2019, Division staff again examined available State Water Board water rights records in eWRIMS, the Department of Water Resources database of Well Completion Reports, and Humboldt County Cannabis Cultivation license records. Division staff found no records of an existing Statement or appropriative water right, no record of a well, and no record of a Humboldt County license that would locally authorize cannabis cultivation on the Property. On September 4, 2019, Division staff and Regional Water Board staff accompanied CDFW on their search warrant to inspect the Property. A representative for the Diverter was not present at the time of inspection. Subsequent to the inspection, Division staff prepared an inspection

report and Notice of Violation (NOV/IR) that describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for each alleged violation. Division staff mailed the NOV/IR to the Diverter via certified mail on December 3, 2020. USPS records could not confirm receipt of this NOV/IR.

12. August 2020 CDFW Inspection:

On August 10, 2020, CDFW staff conducted a third warrant inspection of the Property. Division staff did not participate in this inspection but subsequently received information about the inspection from CDFW. During the visit, CDFW staff observed an active surface water diversion and unpermitted cannabis cultivation activities. A representative for the Diverter was not present at the time of inspection.

13. First Mailing of Inspection Reports and Notice of Violation:

Subsequent to the July 24, 2019 inspection, Division staff prepared an Inspection Report and Notice of Violation (NOV/IR) that describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for each alleged violation. Division staff mailed the NOV/IR to the Diverter via certified mail on November 23, 2020. United States Postal Service (USPS) records indicate that the NOV/IR was delivered to the manager/member of Napaville Ranch LLC, Ms. Griselle Quinones, at her Streamwood, Illinois address on December 3, 2020. Subsequent to the September 4, 2019 inspection, Division staff prepared an inspection report and Notice of Violation (NOV/IR) that describes the observations made by Division staff during the inspection, the violations relating to those observations, and the recommended corrective actions for each alleged violation. Division staff mailed the NOV/IR to the Diverter via certified mail on December 3, 2020. USPS records could not confirm receipt of this NOV/IR.

14. Point of Diversion:

Division staff observed and documented one unauthorized point of diversion (POD) from an unnamed stream with defined bed and banks upstream and downstream from the location of the POD. The POD consisted of two polyurethane lines with screen-wrapped cones around the intake diversion lines, which were submerged in the stream. The unnamed stream is a tributary to Big Creek, which is a tributary to the South Fork Trinity River. Water diverted from the POD was conveyed by gravity to storage. The POD was located on an adjacent property, APN 317-063-009-000, which is owned by Trinity Pacific LP. Division staff documented the POD at the same location on both July 24, 2019 and September 4, 2019. Additionally, CDFW staff documented the POD at the same location during the August 10, 2020 inspection.

15. Points of Storage:

Division staff observed and documented seven points of storage (POS) locations on the Property that were used for cannabis cultivation. The same POSs were observed in use during both the July 24, 2019 and September 4, 2019 inspections. Although staff observed the same storage locations, the naming protocols varied between inspections. POS4 from the July 2019 inspection was labeled as POSS in the September 2019 inspection and POSS from the July 2019 inspection was labeled as POS4 in the September 2019 inspection.

16. Aerial Imagery Review:

On March 9, 2021 and again on May 19, 2022, State Water Board, Division staff reviewed aerial imagery of the Property and made the following observations:

- a. Google Earth Pro aerial imagery dated June 2, 2016 shows nine of the ten greenhouses observed during the July 2019 inspection, constructed and covered with white opaque plastic consistent in size, shape, and construction associated with commercial cannabis cultivation.
- b. National Agriculture Imagery (NAIP) aerial imagery dated July 13, 2018, shows ten greenhouses covered with white opaque plastic consistent with cannabis cultivation. Division staff also observed outdoor plants with uniform size, spacing, and color consistent with cannabis cultivation south of the southernmost greenhouse.
- c. Landvision aerial imagery dated November 7, 2018 shows ten greenhouse structures with the opaque plastic and blackout tarps removed and stored for the winter.
- d. Google Earth Pro aerial imagery dated April 30, 2019 shows nine of the ten greenhouse structures covered with white opaque plastic, consistent with use for cannabis cultivation. Several outdoor, large round, above ground soil bags uniformly spaced can also be seen, which are also consistent with outdoor cannabis cultivation.
- e. Landvision aerial imagery dated June 3, 2019 shows the tenth greenhouse also covered, consistent with use for cannabis cultivation. Imagery from this date is consistent with Division staff's observations during the July 2019 inspection.
- f. Landvision aerial imagery dated April 11, 2020 shows the ten greenhouses no longer covered with opaque white plastic and blackout tarps.
- g. Landvision aerial imagery dated August 2, 2020 shows the ten greenhouse structures, three of which appear to again be covered with black tarps, consistent with use for cannabis cultivation.

17. Second Mailing of Inspection Reports and Notice of Violation:

On March 11, 2021, Division staff mailed the NOV/IR from the July 24, 2019 inspection and the NOV/IR from the September 4, 2019 inspection to the Diverter again as a combined package via certified mail. USPS records could not confirm receipt of the package.

18. Landowner/Diverter Response:

On May 3, 2021, Division staff contacted Ms. Quinones, the manager/member of Napaville Ranch LLC, regarding her receipt of the NOV/IRs. Ms. Quinones indicated that she had received the report; however, she provided no indication that corrective actions had been taken. As of the date of this Complaint the Diverter has not provided evidence that would suggest any of the recommended corrective actions have been taken.

19. Third Mailing of Inspection Reports and Notice of Violation:

On April 14, 2022, Division staff mailed the NOV/IR from the July 24, 2019 inspection and the NOV/IR from the September 4, 2019 inspection to two past persons associated with Napaville Ranch, identified in the California Business Portal, as a combined package via certified mail. USPS records confirm delivery of the package on April 18 and 19, 2022. To date the Division has no record of contact from either of these two persons.

### STATE WATER BOARD AUTHORITY

20. 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.
21. Water Code section 1848, subdivision (c), provides that liability cannot be imposed under section 1847 for a violation for which liability is imposed under Water Code section 1052.
22. Water Code section 1112 generally provides that the Administrative Hearings Office presides over hearings on complaints issued under Water Code section 1055, among other specified matters. Pursuant to Water Code section 1114, for matters before the Administrative Hearings Office seeking administrative civil 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

#### Statement of Annual Diversion or Use

23. **Violation 1** Failure to file a Statement:  
Water Code section 5101 requires that any person who diverts water shall file a Statement with the State Water Board by July 1 of the succeeding year, with certain exceptions that are not relevant here.
24. Water Code section 5107, subdivision (c)(1), provides that the State Water 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 State Water Board has called the violation to the attention of that person. Failure to file an Initial Statement for the POD observed by Division staff constitutes a violation of Water Code section 5101 for which the State Water Board may impose administrative civil liability.

- a. Division staff documented the POD diverting from an unnamed stream with defined bed and banks during the July 24, 2019 inspection for irrigation of cannabis. The POD was identified as the sole source of water for cannabis irrigation during the inspection. The POD was observed to be located in the same unnamed stream and in the same location during the September 4, 2019 inspection and was again identified as the sole source of water for cannabis irrigation. Division staff conducted a water right review prior to the inspections and found no record of a Statement or an appropriative water right on file with the State Water Board. Based on the diversion and use of water observed during the July 24, 2019 and September 4, 2019 inspections, the Diverter was required to file a Statement by July 1, 2020.
- b. The Diverter was notified in the July 24, 2019 Field NOV of the need to file a Statement pursuant to Water Code section 5101 for the observed diversion and use of water. Water diversion and use reporting for 2019 was required to be filed with the State Water Board by July 1, 2020. The Diverter was later notified of the failure to file the requisite Statement in the NOV/IR for the July 24, 2019, inspection mailed via certified mail on November 23, 2020 (November 23, 2020 NOV/IR) that was received by a representative of the Diverter on December 3, 2020. The NOV/IR for the second inspection conducted on September 4, 2019, was mailed out on December 3, 2020 (December 3, 2020 NOV/IR) via certified mail. USPS records could not confirm receipt of this NOV/IR. The State Water Board has not received a Statement for the observed water diversions from the POD in 2019.
  - i. One violation is alleged for failure to file a Statement by July 1, 2020 for the water diversion and use observed during the July 24, 2019 and September 4, 2019 inspections. In addition, continuing days of violation are alleged from January 3, 2021 to March 16, 2021, the date the divertor sold the Property (73 days), for the failure to file a Statement within 30 days after the Division called to the Diverter's attention the violation on December 3, 2020.

### **Diversion or Use of Water Requires Authorization by Division of Water Rights**

25. **Violation 2:** Unauthorized Diversion or Use of Water: 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 proper State Water Board authorization, is a trespass.
26. 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. Division staff observed that the POD's water supply lines were conveying water by gravity to the Property for cannabis irrigation on July 24, 2019 and September 4, 2019. The POD is a documented diversion from an unnamed stream with defined bed and bank upstream and downstream of the point of diversion. Division staff reviewed the Bureau of Land Management - General Land Office Records for the earliest known land patents from April 24, 1820 and determined that the diversion of water is occurring on land patent certificate 9833 (APN 317-063-009-000) and the use of water is occurring on land patent certificate 9834 (APN: 317-054-006-000). The land patent analysis indicates that the Diverter's Property, APN 317-063-009-000, is not riparian to the unnamed stream. Additionally, the Diverter does not have an appropriative water right on file with the State Water Board that would authorize the diversion and use of water from the unnamed stream on its Property.
27. Water Code section 1052, subdivision (c)(2), provides that persons or entities committing a trespass under section 1052, subdivision (a), may be liable in an amount not to exceed five hundred dollars (\$500) per day for each day in which the unauthorized diversion or use occurs.
- a. Aerial imagery from November 11, 2018, shows ten greenhouses that had been decommissioned for the winter. Only the structures were in place and the opaque plastic coverings and blackout tarps had been removed. Aerial imagery from April 30, 2019, shows nine of the ten greenhouse structures re-covered for cultivation. Aerial imagery from June 3, 2019, shows the tenth greenhouse (POU6) also covered for cultivation. Division staff assert that the infrastructure observed in aerial imagery from April 30, 2019 indicates that the cannabis cultivation season had already started on the Property by this date.
  - b. During the July 24, 2019 inspection, Division staff observed mature cannabis plants that were flowering at five greenhouses (POU6 and POU 8-11) and three outdoor grow areas. These plants were eradicated by CDFW during the inspection. During the July 24, 2019 inspection, Division staff also observed juvenile plants in five greenhouses located at POU 2-4 and POU12. Additionally, law enforcement recovered over 500 pounds of cannabis flower. Based on these facts, Division staff assert that the Diverter harvested the plants at POU 2-4 and POU12 and had replanted just prior to the July 24, 2019 inspection.
  - i. Since the POD was the sole source of water observed during the inspection, the diversion system conveys water by gravity, and the unnamed tributary is a perennial watercourse, it is likely that unauthorized diversion and use occurred daily between April 30, 2019 and July 24, 2019. However, Division staff have conservatively calculated days of diversion and use based on the water demand per plant per day and the days of water storage that were available as observed during the July 24, 2019 inspection. During the July 24, 2019 inspection, Division staff observed approximately 4,199 cannabis



plants. The per-gallon per-plant water demand for the 4,199 cannabis plants is identified in Table 1 - Cannabis Consumptive Water Demand, below. Table 1 identifies the days of water storage supply that would be available based on the number of cannabis plants, the water demand per plant per day, and the days of water storage capacity observed by Division staff on the July 24, 2019 inspection. Table 1 shows that the maximum amount of water storage supply would be 1.23 days, demonstrating that, at a minimum, water would need to be diverted every other day to satisfy the water demand of cannabis observed during the July 24, 2019 inspection.

For the purposes of this analysis, Division staff also evaluated the water demand using the total number of plants estimated to have been growing at POU 2-4 and POU 8-12 in the covered greenhouses and outdoor grow areas visible in the April 30, 2019 aerial imagery. Division staff estimated that there were approximately 3,754 plants growing based in the covered greenhouses from the April 30, 2019 aerial image and the number of plants observed in those covered greenhouses during the July 24, 2019 inspection. The per gallon per plant water demand for the 3,754 cannabis plants is identified in Table 2 - Cannabis Consumptive Water Demand, below. Table 2 shows that the maximum amount of water storage supply would be 1.37 days for 3,754 plants.

Using the most conservative demand estimates in Tables 1 and 2, the Diverter would need to have diverted every other day to satisfy the water demand of the cannabis crops. Accordingly, Division staff allege that, between April 30, 2019 and July 24, 2019, forty-two (42) days of unauthorized diversion occurred.

**Table 1: July 24, 2019 Daily Cannabis Consumptive Water Demand (Total cannabis plants observed):**

<b>Gallons per day per plant</b>	<b>Required Daily Water Volume (in gallons, based on 4,199 plants)</b>	<b>Days of water Storage supply available (12,925 gallons)</b>
6	23,034	0.56
5.5	23,095	0.56
5.1	21,415	0.60
2.8	11,757	1.10
2.5	10,498	1.23

**Table 2: Daily Cannabis Consumptive Water Demand (POU 2-4 and POU 8-12 in use per April 30, 2019 aerial imagery):**

Gallons per day per plant	Required Daily water Volume (in gallons, based on 3,764 plants)	Days of water Storage supply available (12,925 gallons)
6	22,584	0.57
5.5	20,702	0.62
5.1	19,196	0.67
2.8	10,539	1.23
2.5	9,410	1.37

- c. Tables 1-2 show a range of cannabis consumptive water use based on published studies conducted by the University of California, Berkeley, and the UC California Agriculture and Natural Resources Department. Researchers found in northern California the average consumptive water demand to cultivate cannabis is 22.7 liters or 6 gallons per plant per day during the growing season. (Bauer et al., *Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds* (March 18, 2015) at p. 15, PLoS ONE 10(3): e0120016. doi:10.1371/journal.) Additional scientific journals found that outdoor growers use on average 5.5 gallons of water per day per plant in August and 5.1 gallons of water per day per plant in September. The research article further identifies that greenhouse growers use on average 2.5 gallons of water per day per plant in August and 2.8 gallons of water per day per plant in September. (Wilson et al., *First Known Survey of Cannabis Production Practices in California*, California Agriculture Volume 73, Number 3-4 (December 2019) at p. 122.)
- d. A second inspection was conducted on September 4, 2019, where Division staff confirmed cannabis cultivation on the Property and documented an active diversion from the POD for irrigation of cannabis. Accordingly, Division staff allege an additional day of violation for the diversion and use of surface water observed on September 4, 2019.
- e. CDFW staff observed active diversion for cannabis cultivation activities during its August 10, 2020 inspection of the Property. Accordingly, Division staff allege an additional day of violation for the diversion observed by CDFW on August 10, 2020.

28. Therefore, Division staff allege a total of forty-four (**44**) days of unauthorized diversion or use of water from the POD.

## Cannabis Cultivation Policy Requirements

29. 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 Cannabis Cultivation 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. This Complaint refers to the Cannabis Cultivation Policy requirements in effect and as numbered at the time of the alleged violations.

30. The Cannabis Cultivation 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.*

31. 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), 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.

32. Although Division staff inspected the Property on July 24, 2019 and September 4, 2019, and several Cannabis Cultivation Policy violations were documented during both inspections, continuing days of violation between the July 24 and September 4, 2019 inspections are not alleged in this Complaint. Rather, this Complaint alleges separate violations for each day of inspection.

33. **Violation 3:** The Cannabis Cultivation Policy, in Attachment A, Section 1, Term 18, states:

*Cannabis cultivators shall not commit trespass. Nothing in this Policy or any program implementing this Policy shall be construed to authorize cannabis cultivation: (a) on land not owned by the cannabis cultivator without the express written permission of the landowner; or (b) inconsistent with a conservation easement, open space easement, or greenway easement. This includes, but is not limited to, land owned by the United States or any department thereof, the State of California or any department thereof, any local agency, or any other person who is not the cannabis cultivator. This includes, but is not limited to, any land owned by a California Native American tribe, as defined in section 21073 of the Public Resources Code, whether or not the land meets the definition of tribal lands and includes lands owned for the purposes of preserving or protecting Native American cultural resources of the kinds*

*listed in Public Resources Code section 5097.9 and 5097.993. This includes, but is not limited to, conservation easements held by a qualifying California Native American tribe pursuant to Civil Code section 815.3 and greenway easements held by a qualifying California Native American tribe pursuant to Civil Code section 816.56.*

- a. The term "cannabis cultivation," as defined in the Cannabis Cultivation Policy Overview, Definition 9, encompasses water diversions for cannabis cultivation. Accordingly, any cultivator who trespasses to divert water for cannabis cultivation is in violation of Term 18. The POD that diverts water to the Property for cannabis cultivation is located on APN 317-063-009-000, which is owned by Trinity Pacific LP. Diverting water from the POD for cannabis cultivation is a trespass on Trinity Pacific LP's land without express written consent. Division staff contacted the owner of Trinity Pacific LP and Dan Cohoon, an environmental consultant representing Trinity Pacific LP. The consultant stated that Trinity Pacific LP did not engage in a lease, nor did he provide permission to the Diverter to access APN 317-063-009-000 to divert water to grow cannabis on the Property. Therefore, diverting water from the POD located on Trinity Pacific LP's property constitutes a trespass and is a violation of this requirement.
  - i. The POD was observed on Trinity Pacific LP's parcel with a polyurethane line running to the Property to irrigate for cannabis cultivation during Division staffs inspections on July 24, 2019 and September 4, 2019, and during CDFW staffs inspection on August 10, 2020. Therefore, Division staff allege three violations of Term 18 of Section 1 of the Cannabis Cultivation Policy.

34. **Violation 4:** The Cannabis Cultivation Policy, in 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. The surface water forbearance period extends from April 1 through October 31 of each calendar year. During the inspections on July 24, 2019 and September 4, 2019, Division staff observed the POD actively diverting water for cannabis cultivation during the forbearance period. During these inspections, Division staff observed that the diversion structure for the POD was not rendered incapable of diverting water and was not plugged, blocked, capped, or disconnected to stop the diversion of water, in violation of this requirement. Additionally, during the August 10, 2020 inspection, CDFW staff documented active diversions from the POD for cannabis cultivation during the forbearance period. The POD had therefore not been plugged, blocked, capped, disconnected, or rendered incapable of diverting water.

- i. Three violations of Term 77 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to follow intake requirements observed during the site inspections conducted by Division staff on July 24, 2019 and September 4, 2019, and by CDFW staff on August 10, 2020.

35. **Violation 5:** The Cannabis Cultivation Policy, in 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 inspections on July 24, 2019 and September 4, 2019, no water measuring device was observed on or near the POD nor were any records of water diversion found. Therefore, the failure to install a device to measure surface water diversions from the POD is a violation of this requirement. On August 10, 2020, CDFW staff documented water being diverted from the same POD with no measuring device.

- i. Three violations of Term 82 of Section 2 of the Cannabis Cultivation Policy are alleged for failure to have a water measuring device installed during the inspections conducted by Division staff on July 24, 2019 and September 4, 2019, and during the inspection conducted by CDFW on August 10, 2020.

36. **Violation 6:** The Cannabis Cultivation Policy, in Attachment A, Section 2, Term 89, states:

*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, inspect for and repair all leaks of the diversion and storage system. Written records describing the df3te,*

*time, and nature of such inspections and repairs shall be kept on-site for a period of at least two years.*

- a. Division staff observed three leaks in the water supply line between the POD and POS1 during the site inspection on July 24, 2019. In all three occurrences, the polyethylene line was compromised and leaking water. For one of the leaks, the hole was observed to be improperly plugged with a stick inserted into the polyurethane line, from which water was leaking. During the July 24, 2019 inspection, POS4 was also observed to be leaking from the connection of the polyethylene line to the outlet of the tank. When Division staff returned to inspect the Property on September 4, 2019, the tanks at POS2 and POSS were observed to be actively overflowing. Both POS2 and POSS received surface water diverted from the POD. POSS was also observed leaking from the connection of the polyethylene line to the outlet of the tank. Division staff also documented six leaks in the water supply line originating from the POD during the inspection on September 4, 2019. Additionally, no written records of inspections or repairs were found on site during either inspection. The failure to prevent the overflow of water from POS2 and POSS, the leaking of water from the outlet connections of POS4 and POSS, and the failure to detect and properly repair the three leaks observed during the July 24, 2019, and six leaks observed during the September 4, 2019 inspection each constitute a violation of this requirement.
  - i. A total of thirteen (13) violations of Term 89 of Section 2 of the Cannabis Cultivation Policy are alleged for the overflowing tanks and leaks that were observed on July 24, 2019, and September 4, 2019.

**37. Violation 7:** The Cannabis Cultivation Policy, in Attachment A, Section 2, Term 92, states:

*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.*

- b. During the site inspections on July 24, 2019 and September 24, 2019, Division staff documented points of storage without float valves or similar devices installed to prevent the overflow and waste of water. During the July 24, 2019 inspection, Division staff documented that POS1, POS4, and POSS were connected to an inlet line to receive water diverted from the POD and were not equipped with a float valve or similar device to prevent overflow. A second inlet fill line was observed on the ground next to POS2 and POS3. The fill line for POS6 was also observed set on the ground. All of these POSs had polyethylene lines attached to the outlets of the tanks and supplied water to POU's for cannabis cultivation. POS 1-6 each have the potential to overflow and require a device to automatically

shut-off the water supply once the tank has reached storage capacity. During the September 4, 2019 inspection, Division staff documented the same six tanks (POS 1-6) were configured with fill lines to receive water diverted from the POD and were not equipped with a float valve or similar device to prevent overflow. All six tanks had polyethylene lines connected to the outlets of the tanks and supplied water to POUs for cannabis cultivation. Based on staff's observations of the diversion and storage systems in place during each inspection, at least six overflow prevention devices were needed to prevent the overflow of water from the POSs during both inspections. The use of water storage tanks without an overflow prevention device is a violation of this requirement.

- i. A total of twelve (12) violations of Term 92 of Section 2 of the Cannabis Cultivation Policy are alleged for the failure to use storage tanks equipped with a water shut-off device during the inspections on July 24, 2019 and September 4, 2019.

38. **Violation 8:** The Cannabis Cultivation Policy, in 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 site inspection on July 24, 2019, Division staff documented that POS2, POS3, POS6, and POS? were in use at the Property without tank lids or coverings to prevent entry and/or entrapment of wildlife. During the site inspection on September 4, 2019, Division staff documented that POS2, POS3, POS4, POS6, and POS7 were in use at the Property without tank lids or properly secured coverings. POS? had a hole cut in the top of the tank to accommodate a sump-pump. Failure to secure all tank openings with lids or coverings presents an entrapment hazard to wildlife and is a violation of this requirement.
  - i. A total of nine violations 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 inspections on July 24, 2019 and September 4, 2019.

39. **Violation 9:** The Cannabis Cultivation Policy, in 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 site inspections on July 24, 2019 and September 4, 2019, Division staff did not observe any water measuring devices at the POD, POSs, or cannabis cultivation areas, nor were any records of water used for irrigation of cannabis found on site. Failure to maintain daily irrigation records constitutes a violation of this requirement.
  - i. Two violations of Term 98 of Section 2 of the Cannabis Cultivation Policy are alleged for failing to have daily records of water used for irrigation of cannabis during the inspections on July 24, 2019 and September 4, 2019.

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

40. **Violation 10:** Water Code section 1847, subdivision (b)(4), provides 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.
41. 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. While the Division is not responsible for determining the specific type of state cultivator license type that CalCannabis would require here, based on the review of the aerial images and Division staff's observations during the inspections, 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 Business and Professions Code as more than six living cannabis plants were observed.
  - a. During the July 24, 2019, inspection, Division staff observed and documented approximately 4,199 cannabis plants, with an approximate total cultivation area of 45,568 square ft., irrigated from surface water diversions from the POD. During the September 4, 2019 inspection, Division staff observed and documented approximately 1,906 cannabis plants, with an approximate total cultivation area of 34,400 square ft., irrigated from surface water diversions from the POD. The scale of cannabis cultivation observed by staff on the Property during these inspections required a CDFA commercial cannabis license under Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code. As previously mentioned, Division staff reviewed CDFA



licensing records prior to the July 2019 and September 2019 inspections, as well as on March 17, 2021 and February 2, 2022, and did not find a CDFA issued license to legally authorize the cannabis cultivation 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**

42. The statutory maximum liability for Violations 1-10 is the sum of each Violation's statutory maximum liability (Violations 1+2+3+4+5+6+7+8+9+10). The Statutory Maximum Liability is therefore calculated by adding \$37,500 + \$22,000 + \$1,500 + \$1,500 + \$1,500 + \$6,500 + \$6,000 + \$4,500 + \$1,000 + \$500, for a total of \$82,500.

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

43. Water Code section 1055.3 requires that the State Water 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 violations, 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.

#### **44. Violation 1: Failure to Submit Statements of Water Diversion and Use (Water Code section 5101)**

- a. Extent of Harm Caused:

The harm caused by this violation can be categorized generally as harm to the orderly and efficient administration of the state's water resources. The State Water Board's Statement Program is a central repository for records of diversion and use of water reported by all diverters that do not have, or are not required to have, an appropriative water right on file with the State Water Board. The failure to submit statements of water diversion and use impacts the water rights regulatory program, thereby harming other priority of right diverters, the environment, and public trust resources. The effects of cannabis-related water diversion and use that are not reported to the State Water Board remain unknown and are a concern as the state continues to experience severe drought conditions. The need for timely water diversion and use records is particularly important after three years of critical drought conditions that have led to curtailments of legal users based on reported water use and projected water availability data. Failure to comply with reporting requirements adds administrative burden to state and local regulators that can alter or reduce water use by legal water users when there is insufficient supply relative to demand. Information the regulated community includes in Statements is critical for the administration of water rights and managing water supply in the state. The State Water Board and the public need to understand when, where, how,

and why water is used to ensure water is being put to beneficial use. The effect of cannabis related water diversion and use that is not reported to the State Water Board remains unknown and is a focus of rising concern as the state continues to experience severe drought conditions.

Therefore, by failing to file a Statement to report water diversion and use, the Diverter compromises the State Water Board's orderly and efficient administration of water resources in the state.

b. Nature and Persistence:

The nature and persistence of the Diverter's failure to file a statement of water diversion and use is significant. The need to file a statement was called to the attention of the Diverter after the first inspection in the Field NOV. The Diverter failed to file the requisite report by the July 1, 2020, deadline. The Division called to the Diverter's attention the failure to file the report in the November 23, 2020, NOV/IR. Nevertheless, to date, Division staff have received no statement of water diversion and use, while evidence indicates water diversions continued on the Property up to August 2020.

c. Corrective Action:

To date, the Diverter has not contacted Division staff to dispute any of the findings of the investigation, provided any additional information, or attempted to achieve compliance by filing a Statement for the POD.

d. Length of Time:

Water diversion and use reporting for 2019 was required to be filed with the State Water Board by July 1, 2020. The Diverter was observed diverting water for cannabis cultivation on July 24, 2019, and September 4, 2019. As such, a Statement was required by July 1, 2020, for this water diversion and use. The Diverter was notified in the November 23, 2020, NOV/IR of the failure to file a Statement and the need to take corrective action. A representative of the Diverter received the November 23, 2020 NOV/IR on December 3, 2020. No action was taken by the Diverter, despite these notices. This violation continues as a Statement has yet to be filed for the POD; however, for purposes of the proposed liability amount, Division staff have calculated the continuing days of violation beginning from 30 days after notice of the violation was received by a representative of the Diverter on December 3, 2020, up to March 16, 2021, the date the Diverter sold the Property. From January 3, 2021, through March 16, 2021, represents 73 days of continuing violation for a maximum liability of  $\$36,500 + \$1,000 = \$37,500$ .

e. Taking into consideration the factors listed in a-d above, the Division proposes administrative liability in the amount of \$7,500 for this violation to deter non-compliance and encourage future voluntary compliance.

**45. Violation 2: Unauthorized Diversion or Use of Water for Cannabis Cultivation  
(Water Code section 1052)**

a. Extent of Harm Caused:

This violation has the potential to impact downstream beneficial uses and downstream water right holders that are operating in compliance with the law. A reduction in stream flow may result in a loss of available riparian habitat and a loss of aquatic habitat and the availability of water to priority of right diverters. Harm may be both cumulative and direct in nature and much of the harm associated with the illegal diversion goes undocumented, as the State Water Board cannot anticipate the day and time or location that the loss of a stream's flow occurs, potentially resulting in the loss of aquatic life and/or habitat. Moreover, these activities occurred in the Pelletreau Creek Watershed, a tributary to the South Trinity River, which is designated as National Wild and Scenic River and critical habitat to both state and federal listed endangered species. The Diverter's unauthorized surface water diversions have the potential to significantly harm instream flows in the watershed in dry and critically dry years.

b. Nature and Persistence:

The nature and the persistence of the Diverter's unauthorized diversion and use of water for cannabis cultivation is significant. The illegal diversion of water from the POD for cannabis cultivation appears to have been occurring since April 30, 2019. Furthermore, the POD was not located on the Property and the diversion of water required frequent trespass on a neighboring parcel, APN 317-063-009-000, owned by Trinity Pacific LP. Based on the consumptive water demand estimates of cannabis (6 gallons per-plant per day during the growing season), as determined by independent studies, the amount of water necessary to irrigate the Diverter's cannabis plants is appreciable over a period of several months.

Prior to the additional violations documented during the September 4, 2019 inspection, noticed in the December 3, 2020, NOV/IR, and CDFW's August 10, 2020 inspection, the July 24, 2019 Field NOV called to the Diverter's attention that the diversion and use of water at the POD was unauthorized. In disregard of this notice, the Diverter knowingly continued to illegally divert from the POD during 2019 and 2020. These acts and the evidence indicate a persistent violation of requirements of Division 2 of the Water Code.

c. Corrective Action:

Division staff have not been made aware of any steps taken by the Diverter to implement corrective actions to address the unauthorized diversion and use of water on the Property. The State Water Board expects a diverter, once aware of the violation, to promptly implement corrective actions to come into compliance. The Diverter did not attempt to achieve compliance by ceasing the unauthorized diversion and use of

water after the violation was called to the Diverter's attention in the Field NOV dated July 24, 2019.

d. Length of Time:

Aerial imagery dated April 30, 2019, depicts greenhouses and an outdoor cultivation area on the Property. During the July 24, 2019 inspection, Division staff documented the POD actively diverting water for cannabis cultivation within the greenhouses and outdoor cultivation areas. Although it is likely that unauthorized diversion or use occurred daily between April 30, 2019 and July 24, 2019. Division staff have conservatively calculated days of diversion or use based on the water demand per plant per day and the days of water storage that was available as observed by Division staff on July 24, 2019. Division staff therefore allege 42 days of violation for the unauthorized diversion of water that occurred between April 30, 2019 and July 24, 2019. The Diverter proceeded to replant cannabis on the Property as observed during the September 4, 2019 inspection, where Division staff confirmed the diversion of surface water from the POD for cannabis cultivation on the Property. Division staff believe it is likely that water was diverted and used for cultivation, prior to the September 4, 2019 inspection, but conservatively allege 1 day of violation for the unauthorized diversion and use of water that occurred on September 4, 2019. Despite notice of the unauthorized diversion and use of water, the Diverter continued diverting water for cannabis cultivation, as further documented by CDFW during its August 10, 2020 inspection. Division staff believe it is likely that water was diverted and used for cultivation prior to CDFW's inspection, but conservatively allege 1 day of violation for the unauthorized diversion and use of water that occurred on August 10, 2020. Pursuant to Water Code section 1052, subdivision (a), the Division alleges a total of **44** days of unauthorized diversion and use of water for cannabis cultivation at the Property.

- e. Considering the factors listed in a-d above, the Division proposes an administrative civil liability amount of \$22,000 for this violation.

### **Violations 3 through 9: Cannabis Cultivation Policy Violations**

#### **46. Violation 3: Cannabis Cultivation Policy Section 1, Term 18 - Property Trespass**

a. Extent of Harm Caused:

A purpose of the Cannabis Policy is to ensure the diversion of water and discharge of waste associated with cannabis cultivation is in compliance with all applicable state and local laws, regulations, and permitting requirements. Accordingly, trespass on land not owned by the Diverter without the express written permission of the landowner is prohibited. The Diverter's cannabis cultivation activities on the Property resulted in the physical trespass of persons onto APN 317-063-009-000 owned by Trinity Pacific LP to install and maintain irrigation infrastructure. The placement and continued presence of irrigation infrastructure, and the likely frequent

physical trespass of individuals to maintain the POD and lines harms the property owner's right to exclude others from their land and allows potential direct harm to their legally protected interest.

- b. Nature and Persistence: The Diverter's POD was located on APN 317-063-009-000, which is owned by Trinity Pacific LP. After contacting the owner of Trinity Pacific LP and an environmental consultant representing Trinity Pacific LP, Division staff learned that Trinity Pacific LP did not engage in a lease, nor did they provide permission for the Diverter to access APN 317-063-009-000 to divert water from their property. This trespass continued throughout 2019 and 2020, by using the POD and maintaining irrigation infrastructure on Trinity Pacific LP's property.
- c. Corrective Action:  
Division staff have not received any records of corrective action taken to either cease the trespass on APN 317-063-009-000 nor any evidence demonstrating the Diverter sought permission from Trinity Pacific LP to access/maintain the POD.
- d. Length of Time:  
Division staff documented a violation during both the July 24, 2019 and September 4, 2019 inspections. This violation was also documented by CDFW during its August 10, 2020 inspection. Therefore, liability for three separate violations of Cannabis Policy, Section 1, Term 18 is alleged.
- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$1,500.

**47. Violation 4: 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 Diverter's POD intake 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 rights. Impacts are compounded when the violation persists throughout the forbearance period in dry and critically dry years. As this violation occurred within an unnamed stream tributary to a National Wild and Scenic River (South Fork Trinity River), the harm to beneficial uses due to the violation may be acute.
- b. Nature and Persistence:  
On July 24, 2019, the Diverter was notified by the Field NOV that the equipment used to operate the POD was a violation of Cannabis Policy, Section 2, Term 77, as the diversion intake remained in the unnamed

stream with no intake plug, block, or cap and was capable of diverting water during the forbearance period (April 1 - October 31). Despite the Field NOV documenting that use of the POD was prohibited as constructed, the Diverter continued to cultivate cannabis using the POD and maintained the same water diversion infrastructure throughout 2019 and 2020.

- c. Corrective Action:  
Division staff have not received evidence that any corrective action to plug, block or cap, disconnect, or remove the diversion intake has been taken by the Diverter.
- d. Length of Time:  
Division staff documented a violation during both the July 24, 2019 and September 4, 2019 inspections. It is likely these violations occurred prior to and continued during the time between Division staffs inspections (July to September 2019). Evidence indicates these violations also likely continued throughout the 2020 cultivation season. On August 10, 2020, CDFW documented water being diverted from the POD during the forbearance period, using the same water diversion infrastructure as was documented in the Division's previous inspections. However, the Division conservatively alleges liability for three separate violations of Cannabis Policy, Section 2, Term 77 based on the days of inspection.
- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$1,500.

**48. Violation 5: Cannabis Cultivation Policy, Section 2, Term 82 - Failure to Install Water Measuring Device or Maintain Diversion Records**

- 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 evaluate how far water resources in a watershed can be expected to stretch. This is vital information for water use planning and even more critical in drought periods. By failing to maintain measuring devices and daily diversion records, the Diverter deprives the Division of this critical data. This directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources.
- b. Nature and Persistence:  
Each POD used for cannabis cultivation in a system requires a measuring device to be installed to measure the amount of water diverted and used for cannabis cultivation. During the site inspection on July 24, 2019, no water measuring device was observed on or near the POD nor were any records of water diversion found. Based on the structure of the irrigation

system as observed during the inspection, a single measuring device was required to comply with Cannabis Policy, Section 2, Term 82. Division staff called to the Diverter's attention the requirement to have a water measuring device and maintain daily diversion records in the Field NOV. When Division staff inspected the Property again on September 4, 2019, no water measuring device was observed on or near the POD nor were any records of water diversion found. Despite of the Field NOV documenting the requirement to install water measuring devices and maintain daily diversion records, the Diverter continued to divert water in violation of the requirement.

- c. Corrective Action:  
The Division has no evidence that the Diverter took any corrective action to install a device to measure the amount of water diverted from the POD and used for cannabis cultivation
- d. Length of Time:  
This violation was documented on both the July 24, 2019 and September 4, 2019 inspections. It is likely these violations occurred prior to and continued during the time between Division staffs inspections (July to September 2019). Additionally, on August 10, 2020, CDFW staff documented water being diverted from the same POD with no measuring device. However, the Division conservatively seeks liability for three separate violations of Cannabis Policy, Section 2, Term 82 based on the days of inspection.
- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$1,500.

**49. Violation 6: Cannabis Cultivation Policy, Section 2, Term 89 - Failure to Prevent Overflow from Off-Stream Storage and Failure to Inspect for and Repair Leaks**

- a. Extent of Harm Caused:  
Compliance with this requirement is necessary to prevent waste from leaks in the diversion and storage system and from water diversions to full storage facilities. Storage facilities that are not maintained to prevent overflow, run off, or ruptured storage containers have the potential to harm instream flows. This in turn impacts downstream beneficial uses and downstream priority of right diverters. Additionally, the Diverter's multiple leaks in the water supply line from the POD may have the potential to harm instream flows. The harm caused by these violations may be compounded where there are multiple leaks and overflow from multiple storage facilities.
- b. Nature and Persistence:  
During the July 24, 2019 inspection, Division staff documented three leaks in the water supply line originating from the POD in violation of this requirement. During this inspection, the connection of the polyethylene

line to the outlet of POS4 was also observed to be leaking. Subsequently, during the September 4, 2019 inspection, Division staff documented water to be actively overflowing from POS2 and POSS. Due to the nature of the gravity diversion system and the lack of automatic shut off valves, these tanks would overflow on a continuous basis, thereby, wasting water. POSS was also leaking from the connection of the polyethylene line to the outlet of the tank, and six leaks in the water supply line originating from the POD were observed in violation of this requirement. Division staff called to the Diverter's attention the requirement to prevent leaks and overflow in the July 24, 2019 Field NOV.

- c. Corrective Action:  
Division staff have no evidence that the Diverter took any corrective actions to achieve compliance by properly repairing the identified leaks or preventing overflow from the storage tanks.
- d. Length of Time:  
These violations were observed during the July 24, 2019 and September 4, 2019 inspections and likely was occurring prior to and after each Division inspection. The Division conservatively seeks liability for thirteen (13) separate violations (one for each overflowing tank and leak observed in the system) of Cannabis Cultivation Policy, Section 2, Term 89.
- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$6,500.

**50. Violation 7: Cannabis Cultivation Policy, Section 2, Term 92 - Water Storage Facility Without Device to Prevent Water Overflow**

- a. Extent of Harm Caused:  
Compliance with this requirement is necessary to prevent waste from water diversions to full storage facilities. Storage facilities without devices to prevent overflow, run off, or ruptured storage containers has the potential to harm instream flows. This in turn impacts downstream beneficial uses and downstream priority of right diverters. The harm caused by these violations is compounded where there are multiple storage facilities without devices to prevent overflow.
- b. Nature and Persistence:  
On July 24, 2019, Division staff documented six water storage tanks that were configured to receive water from the POD without float valves or similar devices installed to prevent overflow or runoff, in violation of Cannabis Cultivation Policy, Section 2, Term 92. Division staff called to the Diverter's attention in the Field NOV the requirement to use water storage tanks with a float valve, or equivalent device, to shut off diversions when storage systems are full. When Division staff inspected the Property again on September 4, 2019, Division staff documented that POS 1-6 were still configured to receive water from the POD without float valves, or equivalent devices installed to prevent overflow. Division staff determined



that, based on the reconfigured water storage system, six devices were required to comply with Cannabis Policy, Section 2, Term 92. Despite notice in the Field NOV of the requirement to install float valves or an equivalent device on the POSs, the Diverter continued to operate water storage tanks in violation of this requirement.

- c. Corrective Action:  
The Division has not received evidence that the Diverter took any corrective actions to achieve compliance by installing or using water storage tanks equipped with a float valve, or equivalent device, to shut off diversions when storage systems are full.
- d. Length of Time:  
These violations were documented at both the July 24, 2019 and September 4, 2019 inspections. It is likely these violations occurred prior to and continued during the time between Division staff's inspections. However, the Division conservatively alleges liability for twelve (12) separate violations (one for each storage tank receiving water without an overflow prevention device documented at the inspections) of Cannabis Policy, Section 2, Term 92 observed on the days of inspection.
- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$6,000.

**51. Violation 8: 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.
- b. Nature and Persistence:  
On July 24, 2019, the Diverter was notified in the Field NOV that four of the water storage tanks (POSs) were in violation of Cannabis Policy, Section 2, Term 93. During the inspection Division staff determined that POS2, POS3, POS6, and POS7 were in use at the Property without tank lids. Although the Field NOV identified the requirement to ensure there were no accessible openings on water storage tanks, when Division staff returned on September 4, 2019, they again documented five violations of this requirement. Storage tanks at POS2, POS3, POS4, POS6, and POS7 were in use at the Property on September 4, 2019 without tank lids or coverings. POS7 also had a compromised tank shell presenting a further entrapment hazard to wildlife.
- c. Corrective Action:  
The Division has not received evidence that the Diverter took any corrective actions to achieve compliance by ensuring that all vents and

other openings on water storage tanks are designed to prevent the entry and/or entrapment of wildlife.

d. Length of Time:

These violations were documented at both the July 24, 2019 and September 4, 2019 inspections. It is likely these violations occurred prior to and continued during the time between Division staffs inspections. While the Division can seek additional liability for each day the violation continues if the Diverter fails to correct the violation within 30 days after the violation is called to its attention, liability for nine separate violations (one for each open storage tank documented at the inspections) of Cannabis Cultivation Policy, Section 2, Term 93 is alleged.

- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$4,500.

**52. Violation 9: Cannabis Cultivation Policy, Section 2, 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 Diverter directly harms the Division's ability to plan for limited supplies, forecast water demand, assure compliance with water rights, and provide efficient management of the state's water resources. The State Water Board 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 Diverter's failure to maintain irrigation records is notable.

b. Nature and Persistence:

During the site inspection on July 24, 2019, no water measuring devices were observed on or near the POD or POSs, nor were any irrigation records for cannabis water demands found. When Division staff inspected the Property during the September 4, 2019 inspection, Division staff again observed no water measuring devices capable of recording water demand for the Diverter's cannabis cultivation. Additionally, no irrigation records were found or provided to the Division documenting water use for cultivation.

c. Corrective Action:

The Diverter has not contacted the Division to provide any additional information or copies of daily irrigation records.

- d. Length of Time:  
The Diverter's failure to maintain daily irrigation records likely occurred prior to and during the Division's inspections documented on both the July 24, 2019 and September 4, 2019 inspections. Liability for two separate violations (one for each day the violation was documented) of Cannabis Cultivation Policy, Section 2, Term 98 is alleged.
- e. The Division proposes administrative civil liability in the amount of \$500 per violation, for a total liability amount of \$1,000.

**53. Violation 10: Diversion or Use of Water for Cannabis Cultivation Without the Requisite License (Water Code section 1847(b)(4))**

- 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 Diverter's 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 July 24, 2019 inspection required a commercial cannabis license. Division staff called to the Diverter's attention in the July 24, 2019 Field NOV that commercial cannabis cultivation required a license pursuant the Water Code section 1847. On September 4, 2019, Division staff returned to the Property and observed new cannabis cultivation, the scale of which required a license. Despite notice of the need for a license, the violation continued throughout the 2020 cannabis cultivation season, as documented by CDFW during its August 10, 2020 inspection.
- c. Corrective Action:  
The Division has not received evidence that the Diverter took any corrective actions to achieve compliance by ceasing the diversion and use of water for cannabis cultivation until obtaining a commercial cannabis license. Division staff examined CalCannabis records of commercial cannabis cultivation licenses prior to the July and September 2019 inspections, and again on March 17, 2021 and February 2, 2022, and found no record that a cultivation license has been issued for the activities observed on the Property.

- d. Length of Time:  
Water diversion and use for cannabis cultivation was documented on the Property during three separate inspections: July 24, 2019; September 4, 2019; and August 10, 2020. It is likely water diversion and use for cannabis cultivation, the scale of which required a license, occurred on the Property on additional days leading up to those inspections, even after the violation was called to the Diverter's attention in the July 24, 2019 Field NOV. However, the Division conservatively alleges liability for a single violation of Water Code section 1847, subdivision (b)(4).
- e. The Division proposes administrative civil liability in the amount of \$500 for this violation.

#### **Violations 1-10: All Other Relevant Circumstances**

54. Landvision Aerial imagery reviewed by Division staff from July 13, 2016 to August 2, 2020 depict a similar cannabis cultivation operation to the operations observed during the July 24, 2019 and September 4, 2019 inspections. It is likely that the POD was used starting in 2016, and was used until at least August 10, 2020, to irrigate cannabis cultivation. Moreover, evidence at the Property suggests that the general neglect of water irrigation infrastructure and failure to implement best management practices occurred throughout the time period the Property was used for cultivation. The potential cumulative impact of multiple violations across a period of approximately 4 years is significant in this case.
55. The Division has taken a conservative approach to calculating the proposed administrative civil liability amount. However, 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. Due to the significant differences in the legal versus illegal markets, the Division recommends that that State Water Board take each opportunity to deter illegal activities and demonstrate the need to comply, including by imposing significant administrative civil liabilities for cannabis cultivation violations. The Diverter engaged in illegal cannabis cultivation activities, as such the proposed penalties must be adequate to serve as both punishment for the violations and as a deterrent for future noncompliance by similarly situated parties.

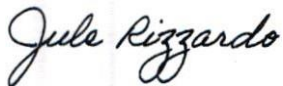
#### **PROPOSED CIVIL LIABILITY**

56. 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 - 10 in the amounts of \$7,500 + \$22,000 + \$1,500 + \$1,500 + \$1,500 + \$6,500 + \$6,000 + \$4,500 + \$1,000 + \$500, for a total proposed liability amount of \$52,500.

## RIGHT TO HEARING

57. The Diverter 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 Diverter receives this Complaint, as required by Water Code section 1055, subdivision (b).
58. If the Diverter does 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.
59. If the Diverter timely requests a hearing, the Diverter 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, no less than 10 days before the hearing date.
60. After any hearing, the Administrative Hearings Office will issue a proposed order or final order setting administrative civil liability or determining that a 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 RESOI:JRCES CONTROL BOARD



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

Dated: **OCT 31 2022**