



State Water Resources Control Board

January 19, 2024

CERTIFIED MAIL

Louis S Frankel

In Reply Refer to:
INV ID 15449

CERTIFIED MAIL NO: 7022 1670 0001 3767 4724

Dear Louis S Frankel:

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR SANTA CLARA COUNTY ASSESSOR PARCEL NUMBER 595-09-001

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received information from the California Department of Fish and Wildlife alleging that you are diverting surface water for cannabis cultivation. You cannot divert water during the Cannabis Cultivation Policy's forbearance period of April 1 – October 31, nor can you divert water to storage without an appropriate water right issued by the State Water Board

You are identified as the property owner for County Assessor's Parcel Number (APN) APN 595-09-001. The Division is contacting you to provide you notice that you are in violation of the California Water Code (WC) and the State Water Board's Cannabis Cultivation Policy (Policy) requirements. The purpose of this letter is to gather information, provide you notice that your diversion of water is subject to the State Water Board's permitting authority, and to inform you of your regulatory compliance options, or you risk administrative civil liability. This letter is your notice that you are in violation of the WC and Policy. You must take immediate action to come into compliance or risk civil liability on a per day, per violation.

The information obtained by the State Water Board identifies that you are diverting water subject to the State Water Board's permitting authority for cannabis cultivation without an appropriate water right that authorizes your water diversion and use. A diversion of water subject to the State Water Board's permitting authority without a basis of right is an unauthorized diversion or use of water. An unauthorized diversion or use of water constitutes a trespass against the State, and the State Water Board may impose a civil liability in an amount not to exceed \$500 or \$1,000 during a critically dry year (drought), for each day that the unauthorized diversion or use of water occurs, plus

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

\$2,500 for each acre-foot of water (drought). If an unauthorized diversion or use of water occurs for unlicensed cannabis cultivation, the State Water Board may impose a civil liability in an amount not to exceed \$3,500 for each day that the unauthorized diversion or use of water occurs. (WC § 1052, et seq.) (WC § 1052, et seq.)

The Policy requires cannabis cultivators who divert and use surface water for cannabis cultivation must obtain an appropriative water right (ex: Cannabis Small Irrigation Use Registration) prior to diverting and storing water for use. Failure to obtain an appropriative water right and failure to cease your water diversion constitute ongoing violations. The State Water Board can impose civil liability in the amount of \$500 for each Policy violation and \$250 for each day the violation continues after notice of the violation is provided by the State Water Board. (WC § 1847).

If you have multiple diversion locations (i.e., you divert water from a stream from multiple locations or divert water by use of a dam), a separate Statement is required to be filed for each diversion location. If you have any questions about how many diversion points your water infrastructure uses, please contact the Division at the phone number or email provided below.

This letter constitutes your notice of the above mention WC and Policy requirements. Your response to the allegations listed in this notice is required and should be submitted within a timely manner. The State Water Board has discretion when considering an enforcement action and shall consider your corrective actions taken in response to this notice in determining whether and what civil liability is appropriate for violations. Therefore, this matter requires your immediate attention.

Within 30 days from the date of this notice letter you should take the following corrective actions:

1. You must cease your diversion of water and use for cannabis cultivation until you obtain an appropriative water right like a SIUR; and
2. You must obtain an appropriative water right like a SIUR or file an application to appropriate water by permit; and

You must also submit photographic proof and/or other documentation that supports your corrective actions taken whether you choose compliance option 1, 2 and 3. You can submit your documents through the State Water Board's Cannabis Compliance Response Portal referenced below.

To facilitate your response, we are providing you with an Investigation Identification Number (Investigation ID No. listed below), which you can use to respond electronically. You can also contact Division staff by phone or by email provided at the bottom of this notice letter. To use your Investigation ID No. follow the steps provided below.

Investigation ID No. 15449

- Step one:** Go to the State Water Board's Cannabis Cultivation Programs Portal at:
<https://public2.waterboards.ca.gov/CGO/>
- Step two:** Register or login to your account
- Step three:** Under survey Click "New" for the "Division of Water Rights Cannabis Compliance Response Portal"
- Step four:** When you fill out your response to this NOV use the Assessor Parcel Number listed in this NOV in Part I.
- Step five:** Additionally, in your response use the Investigation ID listed above.

You can submit an appropriate water right SIUR application at:
<https://public2.waterboards.ca.gov/cgo> Need Help? Contact us at 916-341-5362 or email at dwr.cannabisenforcement@waterboards.ca.gov

If you would like to file an application to appropriate water by permit you can find information and file your application at the weblink listed at:

Application: <https://public2.waterboards.ca.gov/mt/Home/Index>
Appropriate water by permit information:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/

Information relating to the filing of a Statement can be found at:
[http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/ntl_stmtnt_form.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/intl_stmtnt_form.pdf).

Information on the Cannabis SIUR and Cannabis Policy is available here:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_water_rights.html#siur

If you have any questions regarding this matter, please contact Laura Cunningham at 916- 327-8696 or via e-mail at laura.cunningham@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Laura Cunningham, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

ORIGINAL SIGNED BY:

Laura Cunningham, Analyst
Cannabis Enforcement Unit 2
Division of Water Rights

Enclosure: California Department of Fish and Wildlife Notice of Violation

ec: Division of Water Rights

Taro Murano

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Stormer Feiler

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Laura Cunningham

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Cannabis Registration Unit

DWR-CannabisReg@waterboards.ca.gov

Santa Clara County Code Sheriff's Office

Detective Edward Shanks

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Santa Clara County Watershed Protection Division (CEPA)

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Santa Clara County Code Enforcement

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Cannabis Control

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