



State Water Resources Control Board

May 10, 2023

CERTIFIED MAIL

In Reply Refer to:
INV ID 14768

William Rector

CERTIFIED MAIL NO: 9414 8149 0334 0656 0026 25

Dear William Rector:

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR HUMBOLDT COUNTY ASSESSOR PARCEL NUMBER APN 211-383-071.

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) 211-383-071. 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

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

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 \$2,500 for each acre-foot of water (drought). (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).

In addition, WC section 5101 requires, with minor exceptions, that a person who diverts water from a stream in the absence of a permit, license, or registration must file a Statement with the State Water Board. If you divert water, then you are required to report your water diversion and use to the State Water Board for October 1 – September 30 prior to February 1 of the succeeding year by filing a Statement pursuant to WC section 5101.

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.

The State Water Board may administratively impose a civil liability in the amount of \$1,000 for the failure to file a Statement for each point of diversion, plus \$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. (WC § 5107, subd. (c)(1)).

This letter constitutes your notice of the abovementioned 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

3. You must file a Statement for each diversion location on your property whether you use water diverted for cannabis or other uses.

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. 14768

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:

<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/intl_stmnt_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)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
Division of Water Rights
Cannabis Enforcement Unit 2

Enclosure: California Department of Fish and Wildlife Notice of Violation

ec: **Division of Water Rights**

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Humboldt County Cannabis Program

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State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 12, 2023

Certified Mail:

7020 0640 0001 2672 6827

Subject: Notice of Violation of Fish and Game Code Section 1602 in Conjunction with Cannabis Cultivation

Dear William Rector:

On March 28, 2023 and April 7, 2023, Department of Fish and Wildlife (Department) staff visited your property at Assessor's Parcel Number (APN) 211-383-017 (Property) within the Elk Creek watershed, County of Humboldt, State of California. During these visits, staff observed activities that are in violation of Fish and Game Code Section 1602. Staff also observed cannabis cultivation in conjunction with all but one of these activities.

Fish and Game Code (FGC) Section 1602 requires a person to submit a written notification to the Department before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. Hence, any person who engages in an activity subject to FGC Section 1602 without first notifying the Department violates Section 1602.

On February 3, 2016, the Department issued Lake or Streambed Alteration Agreement No. 1600-2015-0433-R1 (Agreement) to divert surface water from an unnamed tributary to Elk Creek, for domestic use. However, the term of the Agreement was five years from the effective date and the Agreement expired on February 3, 2021. Since the Permittee failed to submit a request to extend the Agreement prior to its expiration, the Permittee must submit a new notification and notification fee before beginning or continuing the project (e.g., Table 1, Violation #3) the Agreement covered (FGC section 1605(f)).

In the Department’s view, notification under FGC Section 1602 was required for four activities that affected Elk Creek and unnamed tributaries. However, the Department was unable to locate a notification or an agreement for these activities. The locations and descriptions of these activities are provided below (Table 1).

Table 1. Summary of Fish and Game Code (FGC) violations documented during Department staff visit on April 7, 2023 to APN 211-383-017, Humboldt County.

Violation #	FGC Section	Latitude*	Longitude*	Violation Description	Activity Type
1	1602	40.281147	-123.81689	Failure to notify for installation of a culvert at a stream crossing, used to access water storage facilities, resulting in substantial alteration of to bed and banks of a stream and placement of materials into a stream.	Non-cannabis
2	1602	40.277947	-123.81836	Failure to notify for the diversion of surface water, used to irrigate cannabis, resulting in substantial diversion of the natural flow from waters of the state.	Cannabis
3	1602	40.277333	-123.81788	Failure to notify for the diversion of surface water, used to irrigate cannabis, resulting in substantial diversion and obstruction of natural flow from waters of the state.	Cannabis
4	1602	40.278052	-123.81854	Failure to notify for grading and placement of fill on the bank of a stream, associated with construction of a cannabis cultivation site, resulting in substantial alteration to the bank of a stream.	Cannabis

*Units = decimal degrees. Datum = WGS 84

A person who violates FGC Section 1602 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, the Department may impose civil penalties administratively against any person found by the Department to have violated these FGC sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

The Department may request a maximum civil penalty of \$8,000 for each violation of FGC Section 1602. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code, § 12025, subds. (b)(1)(A), (2); (e)). Also, the District Attorney or the Attorney General may enforce a violation of FGC Section 1602 civilly.

Specifically, under FGC sections 1615, a person who violates FGC Section 1602 is subject to a maximum civil penalty of \$25,000 for each violation. The District Attorney or the Attorney General may also enforce a violation of FGC Section 1602 criminally. Under FGC Section 12000, each violation is a misdemeanor.

Be advised that absent provisions intended to protect patients and qualified caregivers, commercial cannabis cultivation without a state license is illegal. (Bus. & Prof. Code, § 26032.) The California Department of Cannabis Control (DCC) is the state licensing authority for commercial cannabis cultivation. DCC and the Department are members of a multi-agency task force created to protect the state's resources from the adverse impact of cannabis cultivation. (Fish & G. Code, § 12029.) **Pursuant to state law, failure to address these violations may affect your ability to obtain a commercial cannabis cultivation license or license renewal from DCC. (Bus. & Prof. Code, §§ 26057, 26060.1.)**

As a first step to address this matter, the Department requests you contact Senior Environmental Scientist Specialist Ryan Bourque at ryan.bourque@wildlife.ca.gov within 14 days of the date of this letter. Mr. Bourque may propose certain actions to protect fish and wildlife resources that have been or could be affected by the activities described above and may ask you to submit a written notification and fee for these activities. While the Department, District Attorney, or Attorney General may still decide to initiate an enforcement action against you if they determine these activities are in violation of FGC Section 1602, we encourage you to respond to this notice so that we may better assess the activity and limit any damage to resources.

The Department appreciates your cooperation.

Sincerely,



Lt. Brendan Lynch

CDFW Law Enforcement Division

ec: Brendan Lynch, Joshua Zulliger, Scott Bauer, Rebecca Garwood, Jaymes Silveira, Nicholas Simpson and Ryan Bourque
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