



GAVIN NEWSOM
GOVERNOR

YAHA GARCIA
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JUL 21 2023

CERTIFIED MAIL

In Reply Refer to:
INV ID: 15041

Kurt Moffitt

CERTIFIED MAIL NO: 7020 2450 0001 1888 2381

Dear Kurt Moffitt,

NOTICE OF FAILURE TO FILE ANNUAL WATER USE REPORTS ON HUMBOLDT COUNTY ASSESSOR PARCEL NUMBER 210-072-009.

The State Water Resources Control Board (State Water Board), Division of Water Rights Cannabis Enforcement (Division) has obtained information that you are diverting surface water for cannabis cultivation. The Division is contacting you as part of its investigation to determine whether your diversion is in compliance with the Water Code (WC).

You are being contacted because you were identified as the property owner for the Humboldt County Assessor Parcel Number (APN) 210-072-009 identified above, where you are allegedly diverting surface water for the purpose of cannabis cultivation. The purpose of this letter is to gather information in order to determine whether your surface water diversion is subject to the Division's permitting authority and, if so, inform you of your regulatory compliance options.

The State Water Board is responsible for the administration of appropriative water rights in California initiated after 1914, commonly referred to as "post-1914 appropriative water rights." The State Water Board's Cannabis Cultivation Policy (Policy) establishes requirements pursuant to Water Code section 13149 for the diversion and use of water, land disturbances, and other activities related to cannabis cultivation to protect water quantity and quality. The requirements help to minimize the effects of cannabis cultivation on fisheries, wildlife, and water quality, to maintain healthy riparian corridors, and to protect springs, wetlands, and aquatic habitat.

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

If you are cultivating cannabis and diverting surface water subject to the Division's permitting authority, you must comply with the State Water Board's Policy, which includes among other requirements to obtain a Small Irrigation Use Registration (SIUR) or submit an application to appropriate water by a Permit. The SIUR is a streamlined option for obtaining an appropriative water right (less than 6.6 acre-feet per year) to divert and store surface water for cannabis cultivation.

Water Code section 1847 provides that a person who violates any cannabis cultivation related requirement or who diverts or uses water for cannabis cultivation without a necessary CDFA CalCannabis license, may be subject to a fine of \$500 plus \$250 for each ongoing day of violation if the person fails to correct the violation within 30 days after the Board has called the violation to the attention of that person. This Directive Notice constitutes notice that you appear to be in violation of one or more cannabis cultivation requirements and/or that you appear to be diverting water for cannabis cultivation without a CDFA CalCannabis license, and thus may be subject to liability under Water Code section 1847

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 of Water Diversion and Use (Statement) with the State Water Board. If you have diverted water since 2009, then you are required to report your diversion and use to the State Water Board by filing a Statement unless that diversion falls within one of the limited exceptions provided for in WC section 5101.

If you have multiple diversion locations (i.e., you directly divert from a stream as well as impound water at a dam), a separate Statement is required for each diversion. If you have any questions about how many diversion points your project covers, 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 operated, 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 Statement filing requirements from the date of this letter. The Division does not have a Statement on file for your property.

If you are diverting water subject to the State Water Board's permitting authority without a valid basis of right on file with the State Water Board, you may have an unauthorized diversion and/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 for each day that the unauthorized diversion or use of water occurs. (WC § 1052, et seq.)

California Water Code (WC) section 1052 provides that the diversion or use of water subject to the Division's permitting authority other than as authorized, is a trespass and

the State Water Board may impose \$500 for each day in which the unauthorized diversion or use of water occurs.

You can register for a SIUR and the Cannabis Policy at the following website by identifying your water sources and entering the required information:

<https://public2.waterboards.ca.gov/cgo>

Information on the Cannabis SIUR and Cannabis Policy is available at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_water_rights.html#siur

You can choose to submit an application to appropriate water by permit instead of a SIUR. You can find information about submitting an application for an appropriate water right permit at the following

website:https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/

The application to appropriate water by permit is available at the following link:

https://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/app_form.pdf

To File a Statement(s) can be filed using the form available at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/intl_stmnt_form.pdf.

The State Water Board has discretion when considering enforcement action and shall take into consideration any corrective actions taken in response to this notice in determining whether and what civil liability is appropriate for any violations. Therefore, this matter requires your immediate attention.

Your response is required and should be submitted your response or apply for a SIUR within 30 days from the date of this Notice. If you would like to submit a response prior to applying for a SIUR, please follow the instructions before for submitting your response through the State Water Board's Cannabis Compliance Response Portal

Instructions for providing a response below:

Your Investigation ID No. 15041

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.

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Step five: Additionally, in your response use the Investigation ID listed above.

Need Help? Contact us at 916-341-5362 or email at dwr.cannabisenforcement@waterboards.ca.gov

If you have any questions regarding this matter, please contact Ms. 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,

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**

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Stormer Feiler
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Laura Cunningham
Laura.cunningham@waterboards.ca.gov

Cannabis Registration Unit
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North Coast Regional Water Quality Control Board

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Kason.Grady@waterboards.ca.gov
northcoast.cannabis@waterboards.ca.gov

Humboldt County Sheriff Office

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ssopoaga@co.humboldt.ca.us

Sgt. Conan Moore
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Humboldt County Cannabis Program

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Department of Cannabis Control

Jennifer Ostrowski
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investigations@cannabis.ca.gov



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 - Northern
619 2nd Street
Eureka, California 95501
(707) 445-6493
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 23, 2023

Certified Mail:

#702204100001711066007

Kurt Moffitt
Cali's Finest Gardens, LLC

SUBJECT: NOTICE OF NON-COMPLIANCE WITH LAKE OR STREAMBED ALTERATION AGREEMENT NO. 1600-2019-0662-R1, AND NOTICE OF VIOLATION OF FISH AND GAME CODE SECTIONS 1602, 5650 AND 5652, IN CONJUNCTION WITH CANNABIS CULTIVATION

Dear Kurt Moffitt:

On April 25, 2023, California Department of Fish and Wildlife (CDFW) staff visited your property at Assessor's Parcel Number (APN) 210-072-009 (Property) within the Butte Creek watershed, County of Humboldt, State of California. During the visit, staff observed activities that are in violation of Fish and Game Code (FGC) sections 1602, 5650, and 5652. Staff also observed cannabis and associated cannabis cultivation activities in conjunction with these observations.

On May 15, 2020, CDFW issued you a Lake or Streambed Alteration (LSA) Agreement No. 1600-2019-0662 -R1 (Agreement) associated with your LSA Notification (Notification) to upgrade seven stream crossings (Crossing -1, Crossing-2, Crossing-3, Crossing-4, Crossing-5, Crossing-6, and Crossing-?).

During the April 25, 2023, site visit, CDFW observed activities that were out of compliance with measures in your Agreement. The specific measures of the Agreement that were non-compliant and descriptions of these measures are provided below (Table 1).

Table 1. Summary of non-compliance with Agreement (1600-2019-0662-R1) measures .

Agreement Measure**	Description of Non-Compliance
2.4/3.1 Work Completion	Failure to complete project work. Failure to submit reporting requirements.
2.11/3.2 Invasive Species Management for Reservoirs	Failure to submit reporting requirements.
2.21/3.3 Project Inspection	Failure to submit reporting requirements. J
2.30/3.4 Stream Restoration Plan	Failure to submit reporting requirements.

** See Agreement for measure details.

Failure to correct the non-compliance with measures described in Table 1 of this notice may result in suspension or revocation of Agreement No. 1600-2019-0662 - R1. FGC Section 1612 states CDFW may suspend or revoke an agreement at any time if it determines the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the terms of the agreement or fails to provide timely status reports as required by subdivision (g) of FGC Section 1605. FGC Section 1612 further states the entity has an opportunity to correct any deficiency before CDFW suspends or revokes the agreement.

In addition to the observations of Agreement non-compliance, CDFW staff observed activities not disclosed in your Notification that are in violation of FGC, resulting in negative impacts to fish and wildlife resources and Waters of the State. The locations and descriptions of these activities are provided below (Table 2).

FGC Section 1602 requires a person to submit a written notification to CDFW 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 CDFW violates Section 1602.

Notification pursuant to FGC Section 1602 was required for three (3) activities that affected unnamed tributaries to Mule Creek. However, CDFW was unable to locate a notification for these activities. The locations and descriptions of these activities are provided below (Table 2).

FGC sections 5650 and 5652 make it unlawful to pollute Waters of the State. FGC

Section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into Waters of the State any substance or material deleterious to fish, plant life, mammals, or bird life, including, but not limited to gasoline and oil, as well as sediment. FGC Section 5652 makes it unlawful to deposit in, permit to pass into, or place where it can pass into Waters of the State, or to abandon, dispose of, or throw away, within 150 feet of the high-water mark of the Waters of the State, any garbage, refuse, or waste, among other materials.

CDFW observed eight (8) activities on the Property that are violations of FGC Section 5650 and six (6) violations of FGC Section 5652 that affected unnamed tributaries to Mule Creek. The locations and descriptions of these activities are provided below (Table 2).

Table 2. Summary of FGC violations documented on the property during the CDFW staff visit on April 25, 2023.

Violation No.	FGC Section	Latitude*	Longitude*	Violation Description	Feature Label
1	5650	40.4302	-123.6823	Water pollution from sediment (material deleterious to aquatic life) permitted to pass into Waters of the State.	SC-1
2	5650	40.4311	-123.6806	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-2
3	5652	40.4311	-123.6806	Water pollution from the abandonment of trash (plastic trash, 1 etc.), associated with cannabis cultivation, into Waters of the State.	SC-2
4	5650	40.4327	-123.6781	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-3
5	5650	40.4341	-123.6762	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-4

Violation No.	FGC Section	Latitude*	Longitude*	Violation Description	Feature Label
6	5650	40.4351	-123.6788	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-5
7	5650	40.4347	-123.6762	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	SC-7
8	1602	40.4324	-123.6844	Failure to notify for the diversion of surface water resulting in substantial stream alteration and diversion of natural flow from Waters of the State.	WS-2
9	5652	40.4324	-123.6844	Placement of trash (plastic trash, etc.) Into, and within 150 feet of a stream.	WS-2
10	1602	40.4325	-123.6844	Failure to notify for the diversion of surface water resulting in substantial stream alteration and diversion of natural flow from Waters of the State.	WS-3
11	5652	40.4325	-123.6844	Placement of trash (plastic trash, etc.) into, and within 150 feet of a stream.	WS-3
12	1602	40.4325	-123.6845	Failure to notify for the diversion of surface water resulting in substantial stream alteration and diversion of natural flow from Waters of the State.	WS-4
13	5652	40.4325	-123.6845	Placement of trash (plastic trash, etc.) into, and within 150 feet of a stream.	WS-4
14	5652	40.429	-123.6800	Placement of trash, associated with cannabis cultivation, Into, and within 150 feet of a stream.	MP-7
15	5650	40.4349	-123.6786	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	PP-1

Violation No.	FGC Section	Latitude*	Longitude*	Violation Description	Feature Label
16	5652	40.4324	-123.6841	Water pollution from the abandonment of trash (plastic water bladder, polyline, Inoperable barbed wire fencing, other plastic trash), a portion of which is associated with cannabis cultivation, into Waters of the State.	PP-2
17	5650	40.4302	-123.6822	Water pollution from a hydrologically connected road surface, used to access cannabis cultivation, resulting in the deposition of sediment (material deleterious to aquatic life) into Waters of the State and potential for future delivery.	PL-1

*Units = decimal degrees. Datum = WGS 84

A person who violates FGC sections 1602, 5650, and 5652 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, CDFW may impose civil penalties administratively against any person found by CDFW to have violated these FGC sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

CDFW may request a maximum civil penalty of \$8,000 for each violation of FGC Section 1602, and \$20,000 for each violation of FGC Section 5650 or Section 5652. 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 and FGC Section 5650 civilly. Specifically, under FGC sections 1615 and 5650.1, a person who violates FGC Section 1602 or Section 5650 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 sections 1602, 5650, or 5652 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 CDFW 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.).

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As a first step to address this matter, CDFW requests you contact Senior Environmental Scientist Specialist Kalyn Bocast at kalyn.bocast@wildlife.ca.gov within 14 days to acknowledge receipt of this letter. Ms. Bocast may propose certain actions to protect fish and wildlife resources that have been or could be impacted by the activities described above and may ask you to submit a written notification and fee for these activities. While CDFW, the 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, 5650, or 5652, we encourage you to respond to this notice so that we may better assess these activities and limit any damage to resources.

CDFW appreciates your cooperation.

Sincerely,

r-;;;DocuSigned by:

A blue L-shaped graphic used for DocuSign verification, consisting of a vertical line on the left and a horizontal line at the bottom.

Tina Bartlett, Regional Manager
Northern Region

cc: Scott Bauer, Rebecca Garwood, David Manthorne, Joshua Zulliger, Jaymes Silveira, and Kalyn Bocast
Department of Fish and Wildlife

Cliff Johnson, Megan Acevedo, and Karen Meynell
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