



State Water Resources Control Board

Aug 1 2023

CERTIFIED MAIL

In Reply Refer to:
INV ID 15039

Cheukao Thao & Pah Yang
3429 Lexington Ave
Madison, WI 01138

CERTIFIED MAIL NO: 7021 1970 0000 0529 5103

Dear Cheukao Thao & Pah Yang:

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR SISIKIYOU COUNTY ASSESSOR PARCEL NUMBER 102-011-090-000

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received information from 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 102-011-090-0000. 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 | EILEEN SOBECK, 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).

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 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

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. 15039

- 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_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 916-327-8696 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

Ec: **Division of Water Rights**

Taro Murano

Taro.Murano@waterboards.ca.gov

Stormer Feiler

Stormer.Feiler@waterboards.ca.gov

Laura Cunningham

Laura.cunningham@waterboards.ca.gov

Cannabis Registration Unit

DWR-CannabisReg@waterboards.ca.gov

Department of Fish and Wildlife

Lt. Brian Boyd

Brian.Boyd@wildlife.ca.gov

Matthew Jones

Matthew.Jones@wildlife.ca.gov

Region 1 CEP

R1cepreding@wildlife.ca.gov

North Coast Regional Water Quality Control Board

Kason Grady

Kason.Grady@waterboards.ca.gov

Department of Cannabis Control

Jennifer Ostrowski

jennifer.ostrowski@cannabis.ca.gov

investigations@cannabis.ca.gov

Siskiyou County District Attorney

Martha Aker

maker@siskiyouda.org



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE

Region 1 - Northern
601 Locust Street
Redding, CA 96001
(530) 225-2300
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 22, 2023

CERTIFIED MAIL:
7020 3160 0001 9281 0536

Cheukao Thao & Pah Yang
3429 Lexington Ave
Madison, WI 01138

Notice of Violation of Fish and Game Code Sections 1602, 5650, and 5652

Dear Chuekao Thao & Pah Yang:

On May 25, 2023, California Department of Fish and Wildlife (Department) staff visited your property, identified by Assessor's Parcel Number 102-011-090-000, located within the Iron Gate Reservoir – Klamath River watershed in Siskiyou County. During the visit, staff observed activities which are in violation of Fish and Game Code (Fish & G. Code) sections 1602, 5650, and 5652. Staff also observed evidence of past cannabis cultivation in conjunction with these activities.

Fish & G. Code 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 Fish & G. Code section 1602 without first notifying the Department violates section 1602.

In the Department's view, notification under Fish & G. Code section 1602 was required because activities undertaken to install a crossing on an unnamed stream, tributary to Iron Gate Reservoir, have resulted in the substantial obstruction of the natural flow and have substantially changed or used material from the bed bank and channel of the unnamed stream. The Department, however, was unable to locate a notification for these activities.

Fish & G. Code sections 5650 and 5652 make it unlawful to pollute waters of the state. Fish & G. Code 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. Fish & G. Code 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.

Conserving California's Wildlife Since 1870

Chuekao Thao & Pah Yang; APN: 102-011-090-000

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During the inspection, Department staff observed activities that have allowed sediment and cultivation wastes to be placed where they can pass into waters of the state.

The **total number of Fish & G. Code violations documented during the inspection is three (3)** and includes: **one (1) 1602 violation, one (1) 5650 violation, and one (1) 5652 violation.** The approximate location and summary description of each violation is represented in the following table. A site map is enclosed with this letter for reference.

Table 1. Summary of Fish & G. Code Violations

Site ID	Fish & G. Code Section	Approximate GPS Location* (Latitude, Longitude)	Violation Description
Stream Crossing 1 (SC-1)	1602(a)	41.958986°, -122.458877°	Substantial obstruction of the natural flow of, or substantial change or use of materials from the bed, channel, and bank of any river, lake, or stream without notification. Installation of an undersized stream crossing, constructed using a 12-inch plastic pipe culvert, substantially obstructs the natural flow of an unnamed stream tributary to Iron Gate Reservoir and has substantially changed or used materials along the bed, channel, and bank of the stream.
Stream Crossing 1 (SC-1)	5650(a)(6)	41.958986°, -122.458877°	Permitting a deleterious material (sediment) to pass into or be placed where it can pass into waters of the state. The unarmored and undersized stream crossing places sediment directly within or where it can pass into waters of the state during storm events. Undersized crossings are at heightened risk of failure due to reduced flow capacity, causing materials that comprise the stream crossing at direct risk of discharge to waters of the state.
Pollution Point 1 (PP-1) & 150ft Stream Buffer	5652(a)	41.958842°, -122.458685° & Multiple Other Locations	Abandonment, placement, or disposal of waste, trash, or refuse within 150 feet of, or where it can pass into waters of the state. Waste materials including discarded smart pots, wire mesh materials, nutrient and fuel containers, and cannabis strain-labeled Styrofoam cups were observed in and within 150 feet of the unnamed stream, tributary to Iron Gate Reservoir.

*All GPS coordinates are approximate and based on North American Datum 1983 Teale Albers coordinate system.

A person who violates Fish & G. Code sections 1602, 5650, and 5652 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 Fish & G. Code 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 Fish & G. Code section 1602, and \$20,000 for each violation of Fish & G. Code sections 5650 or 5652. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code, § 12025, (b)(1)(A)-(C), (b)(2), (e).) The District Attorney or the Attorney General may enforce a violation of Fish & G. Code section 1602 or 5650 civilly. Specifically, under Fish & G. Code sections 1615 and 5650.1, a person who violates Fish & G. Code section 1602 or 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 Fish & G. Code

Chuekao Thao & Pah Yang; APN: 102-011-090-000

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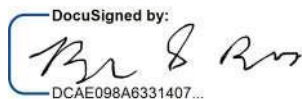
section 1602, 5650, or 5652 criminally. Under Fish & G. Code section 12000, each violation is a misdemeanor.

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 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) Ashley Worth at (530) 356-5975 or R1CEPRedding@wildlife.ca.gov within 14 days of the date of this letter. Do not attempt to remedy or mitigate these violations before contacting the Department, as doing so could constitute additional violations. Ms. Worth 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 the 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 Fish & G. Code sections 1602, 5650, or 5652 we encourage you to respond to this notice so that we may better assess the activities and limit any damage to resources.

The Department appreciates your cooperation.

Sincerely,

DocuSigned by:

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Lieutenant Brian Boyd
Cannabis Enforcement Program

Enclosures: Site Map

cc: Matt Jones, Lt. Brian Boyd, Warden Joseph Mendez Laugesen, Ashley Worth, Tobi Freeny, and Curt Babcock
California Department of Fish and Wildlife

Stormer Feiler and Taro Murano
State Water Resources Control Board, Division of Water Rights
stormer.feiler@waterboards.ca.gov, taro.murano@waterboards.ca.gov

Jeremiah Puget, Kason Grady, Adona White, Mona Dougherty, and the North Coast Cannabis Regulatory Program
North Coast Regional Water Quality Control Board
jeremiah.puget@waterboards.ca.gov, kason.grady@waterboards.ca.gov,
adona.white@waterboards.ca.gov, mona.dougherty@waterboards.ca.gov,
northcoast.cannabis@waterboards.ca.gov

Chuekao Thao & Pah Yang; APN: 102-011-090-000

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Jennifer Ostrowski

California Department of Cannabis Control

Jennifer.Ostrowski@cannabis.ca.gov, investigations@cannabis.ca.gov

John Ottenberg, Jacob Urrutia and Andrea Fox

Siskiyou County Planning Department

jottenberg@co.siskiyou.ca.us, jurrutia@co.siskiyou.ca.us, afox@co.siskiyou.ca.us

