



State Water Resources Control Board

FEB 01 2023

CERTIFIED MAIL

In Reply Refer to:
INV ID 14719

Douglas Delarge
28210 Oak Run
Oak Run, CA 96069

CERTIFIED MAIL NO: 7021 0950 0000 7129 8250

Dear Douglas Delarge:

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR SHASTA COUNTY ASSESSOR PARCEL NUMBER 098-160-016-000.

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 appropriative water right issued by the State Water Board

You are identified as the property owner for County Assessor's Parcel Number (APN) 098-160-016-000. 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 appropriative 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 \$2,500 for each acre-foot of water (drought). (WC § 1052, et seq.)

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

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 mentioned 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.

Douglas Delarge

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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. 14719

- 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

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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,

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

Enclosure: California Department of Fish and Wildlife Notice of Violation

cc: **Division of Water Rights**

Taro Murano

Taro.Murano@waterboards.ca.gov

Stormer Feiler

Stormer.Feiler@waterboards.ca.gov

Cannabis Registration Unit

DWR-CannabisReg@waterboards.ca.gov

Department of Fish and Wildlife

Lt. Brian Boyd

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Donna Cobb

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Kason Grady

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Shasta County Code Enforcement

Marc Pelote
MPelote@co.shasta.ca.us



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



October 19, 2021

CERTIFIED MAIL:

7019 2280 0001 2991 1350

Douglas Delarge
 28210 Oak Run
 Oak Run, CA 96069

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

Dear Mr. Douglas Delarge:

On September 28, 2021, California Department of Fish and Wildlife (Department) staff visited your property identified by Assessor Parcel Number (APN) 098-160-016-000 located on Oak Run Creek, tributary to Cow Creek within the Cow Creek Watershed in Shasta County. During the visit, staff observed the activities described below, which are in violation of Fish and Game Code (Fish & G. Code) sections 1602, 5650, and 5652, which are summarized in Table 1, Table 2, Table 3, and the enclosed maps. Staff also observed active cannabis cultivation on the property.

Table 1. Delarge Fish & G. Code Violations			
Associated with cannabis cultivation			
Site Name (Map label ¹)	GPS	Fish & G. Code Section	Violation Description
Debris	40.700176°, -122.005062°	1602(a)	Deposit of debris or waste into the bed, channel, or bank of any river, stream, or lake without notification. Substantial obstruction of the natural flow of any river, stream, or lake without notification.
Bridge	40.700271°, -122.004970	1602(a)	Substantial obstruction of the natural flow of any river, stream, or lake without notification.
Cultivation and Road Sediment (PL-1)	40.700116°, -122.005068°	5650(a)(6)	Deleterious material (sediment) deposited in, permitted to pass into, or placed where it can pass into waters of the state.
Nutrients (PL-1)	To 40.700569°, -122.004233°	5650(a)(6)	Deleterious materials (nutrients & soil amendments) deposited in, permitted to pass into, or placed where they can pass into waters of the state.

Conserving California's Wildlife Since 1870

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Table 1. Delarge Fish & G. Code Violations			
Associated with cannabis cultivation			
Site Name (Map label')	GPS	Fish & G_ Code Section	Violation Description
Cultivation Pad Habitat Alteration (HAL-1)	40.700263°, -122.004820° to 40.700475°, -122.004535°	1602(a)	Substantial change or use of any material from the bed, channel, or bank of any river, stream, or lake without notification
Stream Crossing	40.700485°, -122.004533°	1602(a)	Substantial change or use of any material from the bed, channel, or bank or any river, stream, or lake without notification_
		5650(a)(6)	Deleterious materials (sediment) deposited in, permitted to pass into, or placed where they can pass into waters of the state.
Diversion Petroleum	40.700517°, -122.004460°	5650(a)(1)	Petroleum products deposited in, permitted to pass into, or placed where they can pass into waters of the state.
Water Diversion (WS-3)	40.700552°, -122.004445°	1602(a)	Substantial diversion of the natural flow of any river, stream, or lake without notification.
Water Diversion (WS-4)	40.700539°' -122.004430°	1602(a)	Substantial diversion of the natural flow of any river, stream, or lake without notification.
Downstream Pond Dam (HAL-2)	40.700550°, -122.004452°	1602(a)	Deposit of debris or waste into the bed, channel, or bank of any river, stream, or lake without notification. The placement of debris has resulted in the substantial obstruction of the natural flow of the stream.
Upstream Pond Dam (HAL-3)	40.700565°, -122.004324°	1602(a)	Deposit of debris or waste into the bed, channel, or bank of any river, stream, or lake without notification. The placement of debris has resulted in the substantial obstruction of the natural flow of the stream.
Instream Pond	40.700565°, -122.004324°	1602(a)	Substantial change or use of any material from the bed, channel, or bank of any river, stream, or lake without notification.

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Table 1. Delarge Fish & G. Code Violations			
Associated with cannabis cultivation			
Site Name (Map label ¹)	GPS	Fish & G. Code Section	Violation Description
Instream Pond- Sediment	40.700565°, -122.004324°	5650(a)(6)	Deleterious material (sediment) deposited in, permitted to pass into, or placed where it can pass into waters of the state.
Refuse (150 ft refuse buffer)	Throughout cultivation areas and Oak Run Creek	5652(a)	Placement of refuse or debris within or where it can pass into waters of the state or disposal or abandonment of trash/refuse within 150-feet of the high-watermark of the waters of the state.

¹If different than site name.

Table 2. Delarge Fish & G. Code Violations			
Not associated with cannabis cultivation			
Site Name (Map label ¹)	GPS	Fish & G. Code Section	Violation Description
Water Diversion (WS-1)	40.699799°, -122.005270°	1602(a)	Substantial diversion of the natural flow of any river, stream, or lake without notification.
Water Diversion (WS-2)	40.699833°, -122.005278°	1602(a)	Substantial diversion of the natural flow of any river, stream, or lake without notification.
12 Rock. Dams and Vegetation Clearing (Dam)	Throughout Oak Run Creek	1602(a)	Substantial obstruction of the natural flow of any river, stream, or lake without notification. Substantial change or use of any material from the bed, channel, or bank of any river, stream, or lake without notification. Deposit of debris or waste into the bed, channel, or bank of any river, stream, or lake without notification.
Misc. Petroleum	Multiple Locations	5650(a)(1)	Petroleum products deposited in, permitted to pass into, or placed where they can pass into waters of the state.

¹If different than site name.

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The number of Fish & G. Code section violations documented on the property are 19.

Table 3. Violation Totals				
Fish & G. Code Violations	Section 1602	Section 5650	Section 5652	Total
Associate with cannabis cultivation	9	5	1	15
Not associated with cannabis cultivation	3	1	0	4
Total	12	6	1	19

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.

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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.

In the Department's view, notification under Fish & G. Code section 1602 was required because the activities substantially diverted and obstructed the natural flow of Oak Run Creek; substantially changed or used material from the bed, channel, and bank of Oak Run Creek; and deposited or disposed of debris or waste in and where it may pass into Oak Run Creek. However, the Department was unable to locate a notification for these activities.

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

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5650 or 5652. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code, section 12025, subds. (b)(1)(A) - (b)(1)(C), (2); (e).) Also, the District Attorney or the Attorney General may enforce a violation of Fish & G. Code sections 1602 and 5650 civilly. Specifically, under Fish & G. Code sections 1615 and 5650.1, a person who violates Fish & G. Code sections 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 sections 1602, 5650, and 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) Jacqueline Matthews at (530) 356-6413 or jacqueline.matthews@wildlife.ca.gov within 14 days of the date of this letter. Ms. Matthews 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,

 **Lieutenant Brian Boyd**
Cannabis Enforcement Program

Enclosures: Site Maps

cc: Matt Jones, Lt. Brian Boyd, ES Jacqueline Matthews, Tobi Freeny, Warden Travis Jarrett, Donna Cobb, and Curt Babcock
Department of Fish and Wildlife

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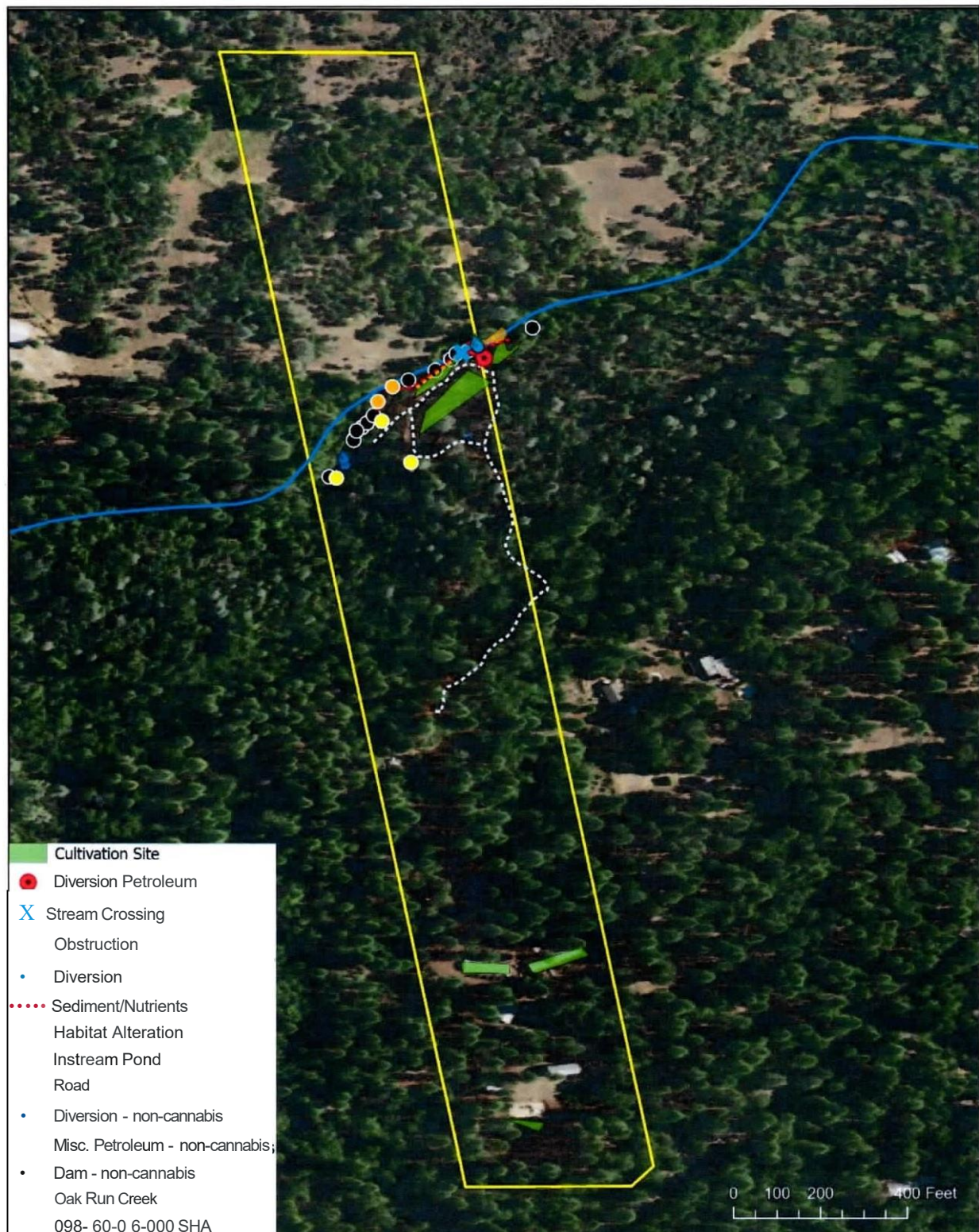
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Marc Pelote
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Map 1 of 2. Overview of site features documented on APN 098-160-016-000 SHA.

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Map 2 of 2. Magnified view of area near Oak Run Creek for APN 098-160-016-000 SHA.