



Water Boards



State Water Resources Control Board

AUG 10 2022

CERTIFIED MAIL

In Reply Refer to:
INV ID 14412

John Schwarz
PO Box 711
Redway, CA 95560

CERTIFIED MAIL NO: 7021 2720 0000 9897 3463

Dear John Schwarz

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR HUMBOLDT COUNTY ASSESSOR PARCEL NUMBER (APN) 033-140-007.

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) 033-140-007. 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

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

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 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. 14412

- 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/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,

Laura Cunningham
Associate Governmental Program 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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Department of Fish and Wildlife

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State of California - Natural Resources Agency

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www.wildlife.ca.gov

GAVIN NEWSOM, Governor



July 1, 2022

Certified Mail:

7020 0640 0001 2673 8820

John Schwarz
P.O. Box 711
Redway, CA 95560

Subject: Notice of Violation of Fish and Game Code Sections 1602, 5650, and 5652 in
Conjunction with Cannabis Cultivation

Dear John Schwarz:

On June 6, 2022, Department of Fish and Wildlife (Department) staff visited your property at Assessor's Parcel Number (APN) 033-140-007 (Property) within the Fish 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 active cannabis cultivation in conjunction with these activities.

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.

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.

In the Department's view, notification under FGC Section 1602 was required for 12 activities that affected unnamed tributaries to Fish Creek. However, the Department was

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unable to locate a notification for these activities. The locations and descriptions of these activities are provided below (Table 1).

The Department also observed nine (9) activities on the Property that are violations of FGC Section 5650 and three (3) violations of FGC Section 5652 that affected unnamed tributaries to Fish Creek. The locations and descriptions of these activities are provided below (Table 1).

Table 1. Summary of Fish and Game Code (FGC) violations documented during CDFW staff visit on June 6, 2022.

Violation No.	FGC	Latitude	Longitude	Violation Description
1	1602	40.0549	-123.7769	Failure to notify for placement of a stream crossing, used to access cannabis cultivation, resulting in substantial obstruction to the natural flow of a stream and substantial change to the bed and banks of a stream.
2	1602	40.0548	-123.7769	Failure to notify for placement of a stream crossing, used to access cannabis cultivation, resulting in substantial obstruction to the natural flow of a stream and substantial change to the bed and banks of a stream.
3	1602	40.0546	-123.7771	Failure to notify for placement of a stream crossing, used to access cannabis cultivation, resulting in substantial obstruction to the natural flow of a stream and substantial change to the bed and banks of a stream.
4	1602	40.0537	-123.7755	Failure to notify for placement of a stream crossing, used to access cannabis cultivation, resulting in substantial obstruction to the natural flow of a stream and substantial change to the bed and banks of a stream.
5	5650	40.0537	-123.7755	Water pollution from placement of a deleterious substance (sediment), associated with cannabis cultivation, into, and where it may pass into, waters of the State.
6	1602	40.0542	-123.7767	Failure to notify for placement of a stream crossing, used to access cannabis

				cultivation, resulting in substantial obstruction to the natural flow of a stream and substantial change to the bed and banks of a stream.
7	1602	40.0544	-123.7773	Failure to notify for the diversion of surface water, used to irrigate cannabis, resulting in substantial obstruction and diversion of natural flow from waters of the State.
8	5652"	40.0544	-123.7773	Water pollution from the abandonment of trash (e.g., plastic tarp, plastic irrigation pipe, roofing sheets, refuse), associated with cannabis cultivation, into waters of the State.
9	1602	40.0543	-123.7778	Failure to notify for the diversion of surface water, used to irrigate cannabis, resulting in substantial obstruction and diversion of natural flow from waters of the State.
10	5652"	40.0543	-123.7778	Water pollution from the abandonment of trash (e.g., plastic tarp, concrete, plastic irrigation pipe), associated with cannabis cultivation, into waters of the State.
11	1602	40.0553	-123.7772	Diversion of streamflow into the inboard road ditch and burial of approximately 70 linear feet of stream to create access to cannabis cultivation facilities, resulting in obstruction of the natural flow and substantial change to the bed and banks of a stream.
12	5650"	40.0553	-123.7772	Water pollution from placement of a deleterious substance (sediment), associated with cannabis cultivation, into, and where it may pass into, waters of the State.
13	5652"	40.0553	-123.7772	Water pollution from the abandonment of trash (e.g., concrete, brick, rebar, etc.), associated with cannabis cultivation, into waters of the State.
14	1602	40.0541	-123.7753	Failure to notify for the construction of an onstream impoundment, used to store water for irrigating cannabis, resulting in obstruction of the natural flow and

				substantial change to bed and banks of a stream.
15	5650	40.0541	-123.7753	Failure of an onstream pond impoundment resulting in deposition of a deleterious substance (sediment) into waters of the State.
16	1602	40.0548	-123.7769	Placement of approximately 33 linear feet of poured concrete into the stream, resulting in substantial change to the bed of a stream.
17	5650 ¹¹	40.0548	-123.7769	Water pollution from placement of a deleterious substance (concrete) into waters of the State.
18	1602	40.0542	-123.7767	Diversion of streamflow into the inboard road ditch and burial of approximately 300 linear feet of stream to create access to cannabis cultivation facilities, resulting in obstruction of the natural flow and substantial change to the bed and banks of a stream.
19	5650 ¹¹	40.0542	-123.7767	Water pollution from placement of a deleterious substance (sediment), associated with cannabis cultivation, into, and where it may pass into, waters of the State.
20	5650	40.0554	-123.7771	Water pollution from placement of a deleterious substance (sediment), where it can deliver or pass into a stream
21	5650	40.0549	-123.7772	Water pollution from placement of a deleterious substance (sediment), associated with cannabis cultivation, where it can deliver or pass into a stream
22	5650	40.0547	-123.7756	Water pollution from placement of a deleterious substance (sediment), where it can deliver or pass into a stream
23	1602	40.0545	-123.7774	Failure to notify for construction of a dirt ford stream crossing used to access cannabis irrigation facilities, resulting in alteration of the bed and banks of a stream.
24	5650"	40.0545	-123.7774	Water pollution from placement of a deleterious substance (sediment), associated with cannabis cultivation, into,

				and where it may pass into, waters of the State.
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*Units= decimal degrees. Datum= WGS 84. "Location is same as above violation

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, 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, 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 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 Kalyn Bocast at kalyn.bocast@wildlife.ca.gov within 14 days of the date of this letter. Ms. Bocast 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, 5650, or 5652, 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.

John Schwarz
July 1, 2022
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Sincerely,

A handwritten signature in blue ink, appearing to read "Brendan Lynch", with the number "1810" written to the right.

Lieutenant Brendan Lynch

ec: Brendan Lynch, Scott Bauer, Rebecca Garwood, Matthew Jones, and Kalyn Bocast
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