

Water Boards

State Water Resources Control Board

DEC 22 2022

CERTIFIED MAIL

In Reply Refer to:
INV ID 14682

Jose S. Lopez Jr.
2149 Sol Street
San Leandro, CA 94578

CERTIFIED MAIL NO: 7019 0160 0000 9004 3992

Dear Jose S. Lopez Jr.:

NOTICE OF VIOLATION FOR UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR ALAMEDA AND SAN JUAQUIN COUNTY ASSESSOR PARCEL NUMBERS APN 99A-2620-1, 99A-2620-5-18, AND 263-230-020-000.

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 appropriate water right issued by the State Water Board.

You are identified as the property owner for County Assessor's Parcel Numbers (APN) APN 99A-2620-1, 99A-2620-5-18, AND 263-230-020-000. 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 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.

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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.)

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. When you divert surface water, you are required to report your water diversion and use to the State Water Board 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.

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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. 14682

- 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/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

State Water Resources Control Board

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**
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Stormer Feiler
Stormer.Feiler@waterboards.ca.gov

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State Water Resources Control Board

Cannabis Control

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State of California - The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



FedEx Tracking #

777112340010

July 20, 2022

Jose S. Lopez Jr.
2149 Sol Street
San Leandro, CA 94578

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

To Jose S. Lopez Jr.:

On May 19, 2022, California Department of Fish and Wildlife (Department) staff visited your property associated with Assessor's Parcel Number (APN) 99A-2620-1 and 99A-2620-5-18 in Alameda County and 263-230-020-000 in San Joaquin County; 17800 Mines Road Livermore CA 94550, in the Upper Arroyo Mocho watershed. During that visit, Department staff observed activities that are in violation of California Fish and Game Code. Staff also observed active cannabis cultivation associated with the documented violations.

FGC Section 1602 requires an entity 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 entity engaging in an activity subject to 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, sediment, agricultural chemicals, and other substances. 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 motor vehicle or parts thereof, garbage, refuse, or waste, among other materials.

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In the Department's view, notification under FGC Section 1602 was required for activities that affected Arroyo Macho. The Department was unable to locate a notification or finalized Agreement for these activities. The locations and descriptions of these activities are provided below (Table 1). The Department also observed trash, refuse, and deleterious materials deposited in, and placed where it may pass into, waters of the State.

The location and brief descriptions of identified violation site is shown in Table 1 below.

Table 1
Alleged Fish and Game Code Violations

Site ID*	Approximate Location**	Description	FGC Section	Violation	Photo #
HAPt-1	37.526737, -121.52872	Construction of a dam, grading, placement of fill and obstruction of natural stream flow in an unnamed tributary to Arroyo Mocho. Estimated length of impact to bed, bank and/or channel is 109 linear feet. Placement of fill, grading, and obstruction of natural stream flow with purpose of creating onstream reservoir. Two undersized, poorly aligned, and broken culverts serving as overflow pipes perched above the stream resulting in sediment erosion.	1602(a)(e)	Substantial modification of streambed, bank, and channel to ephemeral stream. Failure to notify.	1&2
			5650(a)(6)	Placement of substances deleterious to fish and wildlife where they may pass into waters of the state (sediment and debris).	
			5652	Placement of debris directly within ephemeral stream (PVC pipe and trash).	
MP-4	37.526816, -121.52874	5 feet of corrugated piping that broke off misaligned overflow pipe. Piping deposited within 50 ft of waters of the state.	5652	Placement of debris directly within ephemeral stream (corrugated piping).	3
PP-6	37.527928, -121.52892	Rusted metal siding, plastic buckets, and miscellaneous trash (i.e., duck decoy, plastic) deposited into onstream reservoir.	5650(a)(6)	Placement of substances deleterious to fish and wildlife where they may pass into waters of the state (sediment and debris).	4, 5, &6
			5652	Placement of debris directly within ephemeral stream (Metal scraps and plastic).	

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Table 1
Alleged Fish and Game Code Violations

Site ID*	Approximate Location**	Description	FGC Section	Violation	Photo #
HAPt-2	37.525611, -121.52905	Approximately 900 linear feet of ephemeral tributary to Arroyo Mocho was graded for the construction of 4269ft ² cultivation pad. Grading and obstruction of natural stream flow occurred to construct a flat surface for cultivation in an unnamed tributary to Arroyo Mocho. In-channel cultivation via use of perlite, fertilizers, nutrients, string, and plastic were placed where it can pass into waters of the state.	1602(a)(e)	Substantial modification of stream bed, bank, and channel to ephemeral stream. Failure to notify.	7&8
			5650(a)(6)	Placement of substances deleterious to fish and wildlife where they may pass into waters of the state (fine sediment) and high potential for ongoing and future delivery.	
			5652	Trash and debris placed where it may pass into waters of the state (plastic bags, potting soil bags, household debris).	
MPG-1	37.525644, -121.52926	Trash and debris including but not limited to degraded foam, rusted fence wire, plastic irrigation line, treated lumber, large amount of slash and cut trees. All placed in the direct path of the ephemeral stream causing sediment delivery and erosion.	5650(a)(6)	Placement of substances deleterious to fish and wildlife where they may pass into waters of the state (fine sediment, degraded foam) and high potential for ongoing and future delivery	9, 10,& 11
			5652	Placement of trash/debris directly within ephemeral stream (foam, PVC irrigation line, treated lumber).	
MP-5	37.524819, -121.52951	Cultivation site less than 50 feet from ephemeral stream. Grading from site causing sediment and nutrient from cultivation entering waterway. No erosion control	5650(a)(6)	Placement of substances deleterious to fish and wildlife where they may pass into waters of the state (cultivation waste, potting soil, unknown debris) and high potential for ongoing and future delivery	12, 13, & 14

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Table 1
Alleged Fish and Game Code Violations

Site ID*	Approximate Location**	Description	FGC Section	Violation	Photo #
PP-1	37.525762, -121.52959	Slash, plastic plant containers, large metal scraps, and other household trash placed in unnamed tributary to Arroyo Macho where sediment and debris may pass into waters of the state.	5650(a)(6)	Placement of substances deleterious to fish and wildlife may pass into waters of the state (cultivation waste, potting soil, unknown debris).	15
			5652	Placement of trash/debris directly within ephemeral stream (plastic, metal scraps).	
PP-2	37.52577, -121.5297	Metal scraps, rusted barrels, other household trash placed in unnamed tributary to Arroyo Macho where sediment and debris may pass into waters of the state.	5650(a)(6)	Placement of substances deleterious to fish and wildlife may pass into waters of the state (sediment and debris).	12
			5652	Placement of trash/debris directly within ephemeral stream (rusted barrels and trash).	
Violation Summary				1602	2
				5650	7
				5652	6
Total				All	15

* Site IDs are listed with corresponding symbols appearing on the attached site map.

**Locations were taken using an Apple iPad Air equipped with internal GPS and utilizing WGS 84.

NOTE: Do not attempt to remediate these violations prior to contacting the Department, as doing so may constitute additional violations. You are advised to contact the Department as soon as possible to remediate these ongoing issues and prevent further environmental impacts and possible imposition of penalties.

An entity that violates FGC section 1602, 5650 and/or 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

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entity 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.

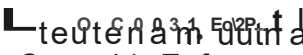
Pursuant to FGC section 12025(b), the Department may request a maximum civil penalty of \$8,000 for each violation of FGC section 1602, and \$20,000 for each violation of FGC section 5650 or 5652 documented on private property in conjunction with cannabis cultivation. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code section 12025, subd. (b)(2).) Note: In the event of trespass onto private or public lands, the liability increases to \$10,000 for each violation of FGC section 1602, and \$40,000 for each violation of FGC section 5650 or 5652. (Fish & G. Code section 12025, subs. (a)(1)-(a)(3).) Additionally, a local District Attorney's Office or the Office of the State Attorney General may enforce a violation of FGC section 1602 and FGC section 5650 civilly. Under FGC sections 1615 and 5650.1 any entity in violation of section 1602 or 5650 is subject to a maximum civil penalty of \$25,000 for each violation. A local prosecutor or State Attorney General may also file a complaint using FGC section 12025. The District Attorney or Attorney General may also enforce a violation of FGC sections 1602 and 5650 criminally. Under FGC section 12000, each violation is a misdemeanor. Those same sections may also be used to prosecute what would otherwise be misdemeanor illegal cultivation, as a felony. (Cal. Health & Saf. Code section 11358, subd. (d).)

As a first step to address this matter, the Department requests you contact Senior Environmental Scientist (Specialist) Kari Gahan via email at Kari.Gahan@wildlife.ca.gov within 21 days of the date of this letter. There may be certain actions proposed to protect fish and wildlife resources that have been affected by the activities described above, and you may be directed 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 and Game Code, you are encouraged 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,

It =


Jose S. Lopez Jr.
Cannabis Enforcement Program

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ec: Alameda County Sheriff's Office
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Alameda County Deputy Agricultural Commissioner
Don Mccoon, Don.McCoon@acgov.org

State Water Board Division of Water Quality
Kevin Porzio, Kevin.Porzio@waterboards.ca.gov

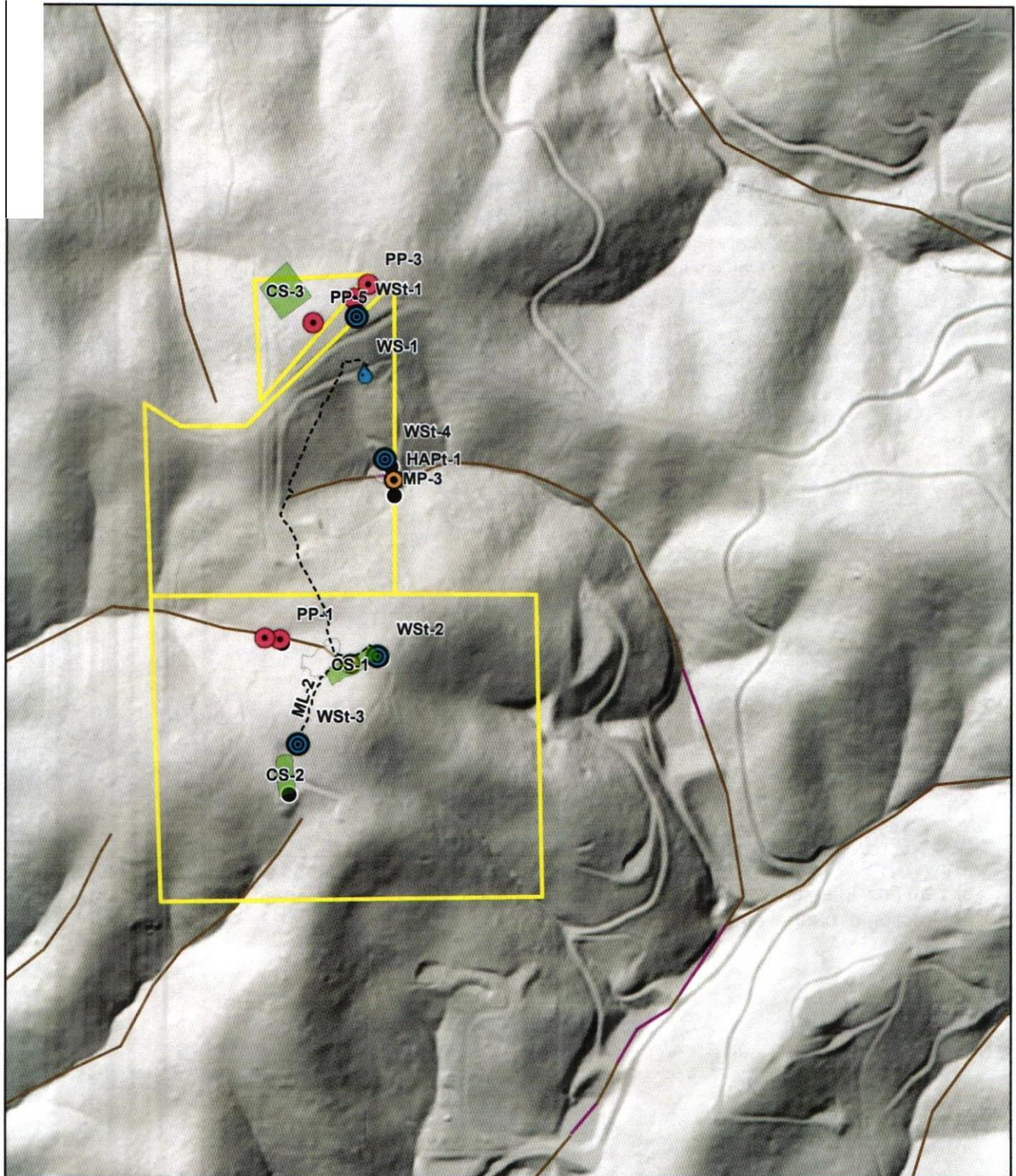
State Water Board Division of Water Rights Enforcement
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Central Coast Regional Water Quality Control Board
Laurie Taul, Laurie.Taul@waterboards.ca.gov

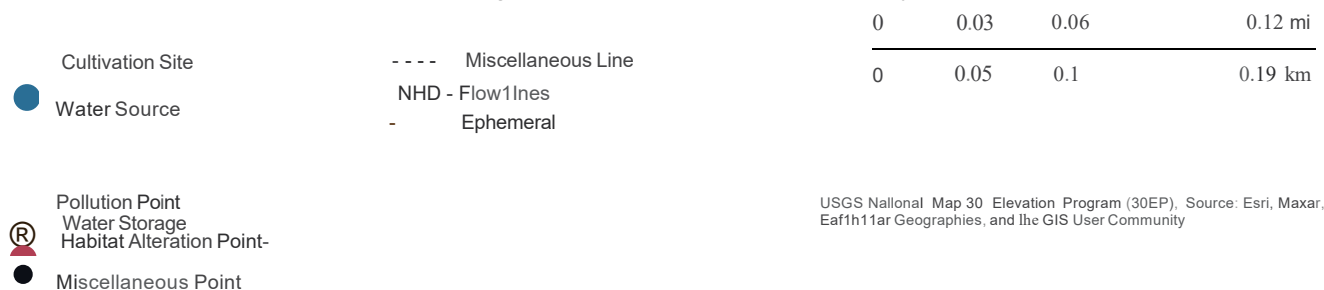
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California Department of Fish and Wildlife
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Craig Weightman, Craig.Weightman@wildlife.ca.gov

Lopez_ 17800 Mines Road_ Alameda.



Location map of violations documented during execution of search warrant 19 May 2022,



USGS National Map 30 Elevation Program (30EP). Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

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Photo #1, Site ID "HAPt-1". Construction of a dam, placement of fill, and obstruction of natural stream flow in an unnamed tributary to Arroyo Mocho. Creation of onstream reservoir due to obstruction of natural stream flow.

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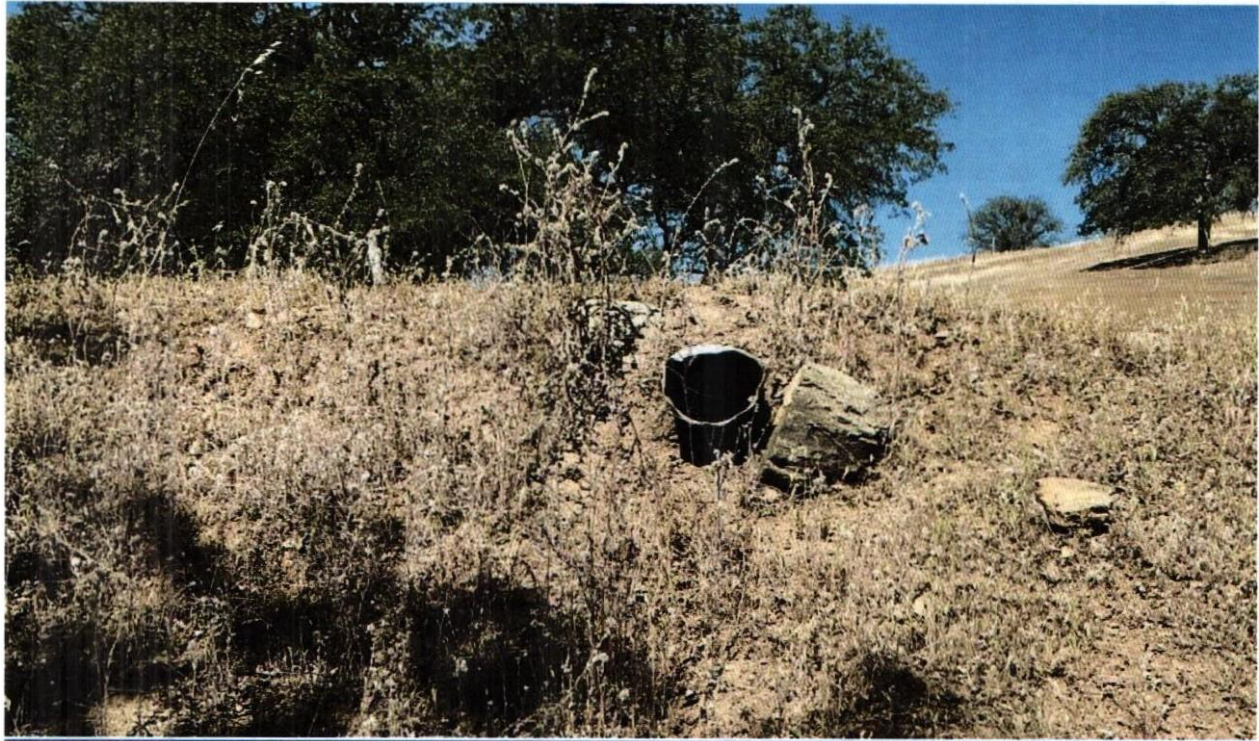


Photo #2, Site ID "HAPt-1". Undersized, poorly aligned, and broken culvert serving as overflow pipes perched above the stream resulting in sediment erosion.

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Photo #3, Site ID "MP-4". Five feet of broken off corrugated piping that is the result of a misaligned overflow pipe that was perched above the stream. Broken off piping deposited within 50 ft of waters of the state.

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Photo #4 & 5, Site ID "PP-6". Placement of tire, metal siding, and miscellaneous debris in stream channel.

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Photo #6, Site ID "PP-6". Placement of tire, metal siding, plastic buckets, other household trash and miscellaneous debris in stream channel and onstream reservoir.

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Photo #7, Site ID "HAPt-2". Approximately 900 linear feet of ephemeral tributary to Arroyo Mocho was graded for the construction of 4269ft² cultivation pad.

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Photo #8, Site ID "HAPt-2". Grading and obstruction of natural stream flow occurred to construct a flat surface for cultivation in an unnamed tributary to Arroyo Mocho.

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Photo #9, 10, & 11, Site ID "MPG-1". Trash and debris such as rusted fence wire, plastic irrigation line, treated lumber, large amounts of slash and cut trees. All placed in the direct path of the ephemeral stream causing sediment delivery and erosion.

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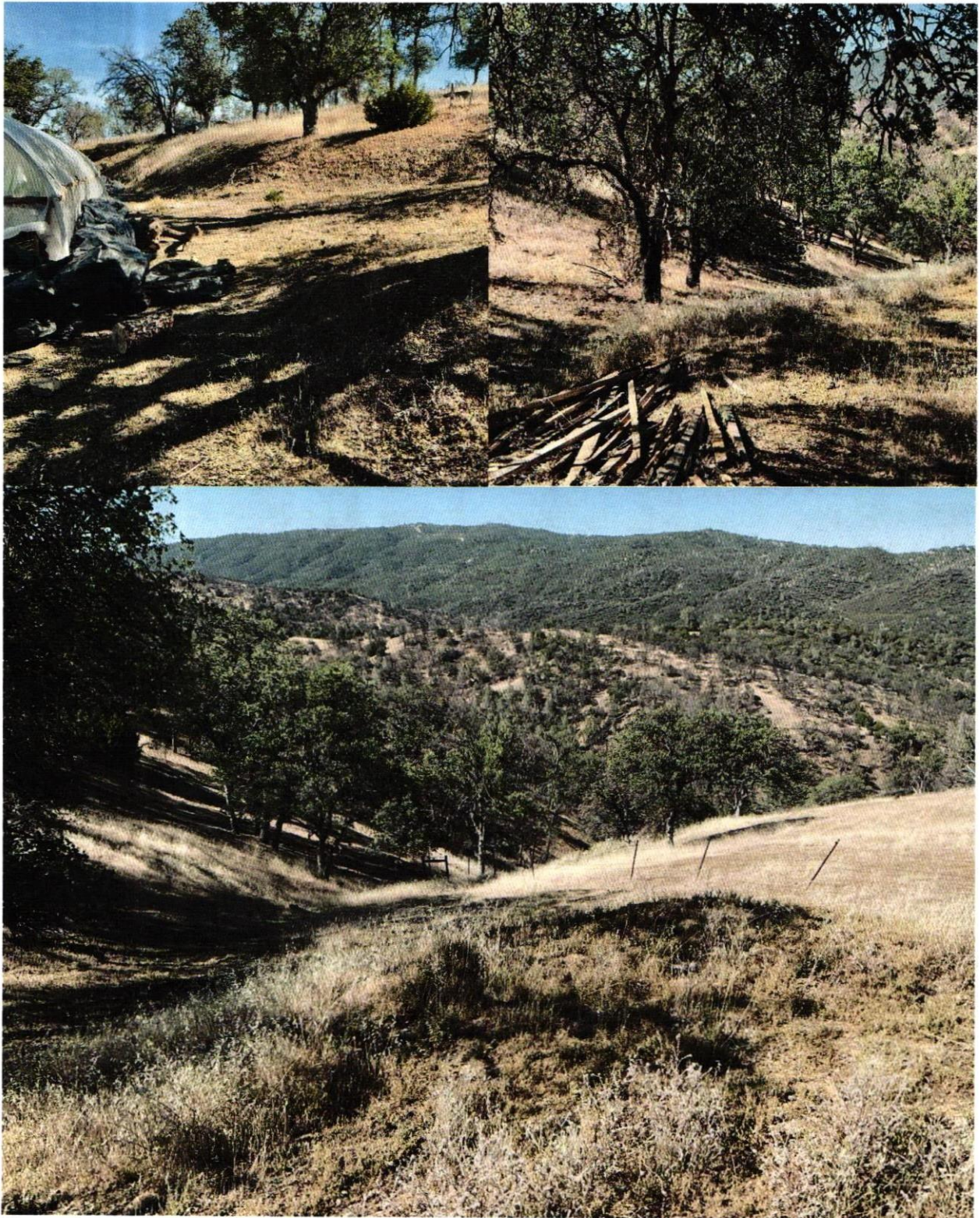


Photo #12, 13, & 14, Site ID "MP-5". Cultivation site less than 50 feet from ephemeral stream. Grading from site causing sediment delivery and erosion.

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Photo #15, Site ID "PP-1". Chicken wire, plastic plant containers, large metal scraps, and other household trash placed in unnamed tributary to Arroyo Macho where sediment and debris may pass into waters of the state.

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Photo #16, Site ID "PP-2". Metal scraps, rusted barrels, other household trash placed in unnamed tributary to Arroyo Mocho.