



GAVIN NEWSOM
GOVERNOR



YANA GARCIA
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

October 9, 2024

CERTIFIED MAIL

Brer Benton

CERTIFIED MAIL NO: 9589 0710 5270 1738 1303 56

Ronald and Mindy

CERTIFIED MAIL NO: 9589 0710 5270 1738 1303 63

NOTICE OF VIOLATION

Investigation ID: 16379

DIVISION OF WATER RIGHTS INVESTIGATION OF MENDOCINO COUNTY ASSESSOR PARCEL NUMBER (APN) 173-310-03-00, 173-310-02-00, 173-300-12-00

Brer Benton and Ronald and Mindy Bruggeman,

On August 21, 2024, staff from the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), in coordination with state and local partner agencies conducted an investigation of your property referenced above (Property). The purpose of the investigation was to observe the diversion and use of water occurring on the Property and to evaluate potential impacts to the watershed. At the time of investigation, Division staff identified that you were using ground water for cannabis cultivation and are required to comply with the Cannabis Cultivation Policy (Cannabis Policy) terms and conditions as identified below. At the time of the investigation, you (Brer Benton) were present on the Property.

Related to the Property is the Small Irrigation Use Registration (SIUR) H500832, which pertains to water conveyance and cannabis cultivation on APNs 173-310-03-00 (owned by Bruggeman), 173-310-02-00, and 173-300-12-00. Division records indicate that H500832 is still in the previous owner's name who owned APNs 173-310-02-00 and 173-300-12-00, which you now own. This water right was originally submitted for the diversion of surface water from a spring located on APN 173-300-12-00, with supplemental water supplied by the well, for the irrigation of cannabis within the three properties listed above. During the investigation, you stated that the spring permitted by

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

the SIUR was not being used and has been abandoned. Currently, the annual reporting and fees for H500832 are past due. If there is no plan to divert from the spring, a request to revoke the SIUR can be submitted but can only be done by you, the current property owner. The water right will need to be transferred into your name, as the owner of the parcel with the spring in order to do so. The following links will aid you in taking care of this:

- 1) https://www.waterboards.ca.gov/water_issues/programs/ewrims/ownership/
- 2) https://www.waterboards.ca.gov/waterrights/water_issues/programs/enforcement/revocations/

One last point of discussion is the small dam located on the Property (APN 173-310-02-00). LandVision aerial imagery suggests that surface water is seasonally stored from an unnamed stream and would necessitate obtaining an appropriative water right. The dam is listed on a Lake and Stream Alteration Agreement (LSAA) for removal. Please confirm that you are planning to remove this dam. If the dam is not going to be removed, an appropriative water right will need to be obtained. Links regarding appropriative water rights can be found at the end of this letter in the "Instructions for Demonstrating and Achieving Compliance" section.

LandVision records for Mendocino County Assessor's Office parcel ownership indicate that you purchased APN 173-310-02-00, where the small reservoir is located, on September 1, 2023. You will need to submit an Initial Statement of Diversion and Use by February 1, 2025, to report water diversion amounts in the months they occurred for the water year starting on October 1, 2023, through September 30, 2024. This Statement will be temporary until you either remove the dam or file an appropriative water right if you keep it. The link for filing a Statement can also be found at the end of this letter in the "Instructions for Demonstrating and Achieving Compliance" section.

Regarding the cannabis cultivation activities observed on the Property, you must take immediate action to come into compliance or risk civil liability.

Cannabis Policy Violations and Corrective Actions

WC Section 13149: Violations of a Principle, Guideline, or Requirement established in the State Water Board's Cannabis Policy, Attachment A., pursuant to WC section 13149:

WC section 1847, subdivision (a), provides that any person or entity committing a violation of the above referenced requirement may be liable in an amount not to exceed the sum of five hundred dollars (\$500), plus two hundred fifty dollars (\$250) for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person, plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in violation of the applicable requirement.

This letter constitutes your notice of the above-mentioned WC and Policy requirements and violations identified below. Your response to the allegations listed in this notice is required and should be submitted in 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.

Cannabis Cultivation Policy, Section 2, Term 92 - Water Storage Facility Without Device to Prevent Water Overflow.

Violation Description:

The Owner is alleged to have violated Term 92 of Section 2 of the Cannabis Policy, which states: To prevent rupture or overflow and runoff, cannabis cultivators shall only use water storage tanks and bladders equipped with a float valve, or equivalent device, to shut off diversion when storage systems are full. Cannabis cultivators shall install any other measures necessary to prevent overflow of storage systems to prevent runoff and the diversion of more water than can be used and/or stored.

At the time of the August 21, 2024 inspection, Division staff documented tanks without a float valve or similar device installed to prevent the overflow and waste of water. The failure to have float valves or similar device installed on the water storage tanks constitutes a violation of Term 92 of Section 2 of the Cannabis Policy.

Corrective Action:

You should immediately take either corrective actions 1 or 2 to comply with the Cannabis Policy's storage overflow requirements:

- 1) You must install float valves or other equivalent device to shut off a diversion when the storage system is full; **or**
- 2) You must cease diverting water to storage tanks for cannabis cultivation.

You must also submit photographic proof and/or other documentation that supports your corrective actions taken whether you choose compliance option 1 or 2. You can submit your documents through the State Water Board's Cannabis Compliance Response Portal referenced at the end of this report.

Cannabis Cultivation Policy Section 2, Term 98 – Failure to Maintain Daily Records of Water Use for Cannabis Irrigation.

Violation Description:

At the time of inspection, Division staff did not observe any cannabis irrigation records nor any water measuring devices at the greenhouses. This is your notice that the State Water Board is requesting your daily records of water use for cannabis irrigation. The failure to measure water use for cannabis irrigation and make cannabis irrigation records available constitutes a violation of Term 98 of Section 2 the Cannabis Policy.

Corrective Action:

As of the date of this inspection report, this alleged violation continues to be ongoing. You should within 30 days from the date of this report take either corrective actions 1 or 2 to comply with the Cannabis Policy's cannabis irrigation record requirements to quantify all water use on the Property:

- 1) You must send the Division all records required to support that you are in compliance with Term 98, **or**
- 2) You must cease your water diversions for cannabis cultivation.

You must also submit photographic proof and/or other documentation that supports your corrective actions taken whether you choose compliance option 1 or 2. You can submit your documents through the State Water Board's Cannabis Compliance

Violation: Diversion or Use of Water for Cannabis Cultivation without a Department of Cannabis Control License.**Violations Description:**

The Owner is alleged to have diverted and used water for cannabis cultivation without the necessary license required pursuant to Chapter 6 (commencing with Section 26060) of Division 10 of the Business and Professions Code, and therefore can be subject to administrative civil liability for violations pursuant to Water Code section 1847(b)(4).

At the time of the August 21, 2024 inspection, Division staff observed and documented the diversion of water from a ground water well used for the cultivation of approximately 1,159 cannabis plants. The cultivation activities on the Property require a Department of Cannabis Control Annual (DCC) License (License) pursuant to with Section 26060. On August 13, 2024, Division staff searched DCC license database and found no DCC License for the Property.

Corrective Action:

As of the date of this inspection report, this alleged violation continues to be ongoing. You should immediately take either corrective action 1 or 2 to comply with the Cannabis Policy requirement:

- 1) You must obtain a DCC annual license that legally authorizes your cannabis cultivation; **or**
- 2) You must cease cannabis cultivation.

You must also submit photographic proof and/or other documentation that supports your corrective actions taken whether you choose compliance option 1 or 2 or choose corrective action 3. You can submit your documents through the State Water Board's Cannabis Compliance Response Portal referenced at the end of this report.

Instructions for Demonstrating and Achieving Compliance

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. 16379

- 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/

Registrations:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/index.html

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_stmtnt_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

Requirements of Operating a Surface Water Diversion

At the time of inspection, Division staff identified an onstream reservoir on your property and is putting you on notice regarding the requirements of operating a surface water diversion without the proper water rights.

Water Code section 1052:

A diversion of water subject to the State Water Board's permitting authority, such as the reservoir located on your property, 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), and up to \$3500 per day for each day that the unauthorized diversion or use of water occurs when used for cannabis irrigation, plus \$2,500 for each acre-foot of water (drought). (WC § 1052, et seq.)

Water Code section 5101:

Water Code sections 5101 requires each person who diverts water to file with the State Water Board a statement of his or her diversion and use (Statement) according to the following deadlines:

Where the diversion of water takes place after September 30, 2021, the Statement shall include records of diversions during the period from October 1 of each year through September 30, inclusive of the following year. Statements of diversion and use shall be filed before February 1 of the year after the one-year period (Oct. 1 – Sept. 30).

If you divert water from any stream, such as is occurring at the onstream reservoir on your property without an appropriative water right, a Statement must be filed prior to February 1 of the succeeding year. 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 that has occurred since 2009, 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 calls the violation to the attention of that person pursuant to Water Code section 5107(c)(1).

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. If your water diversion has a water right on file with the Division for the diversion, a Statement is not needed. Should you obtain a water right for the diversion subsequent to filing a Statement, the Statement is no longer required.

If you have any questions regarding this matter, please contact Ryan Babb at (916) 341-5410 or via e-mail at Ryan.Babb@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Ryan Babb, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

ORIGINAL SIGNED BY:

Ryan Babb, Water Resource Control Engineer
Cannabis Enforcement Unit
Division of Water Rights

Attachment: SIUR H500832

ec: Division of Water Rights - Cannabis Enforcement

Taro Murano

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Oxcar Macias

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Cannabis Registration Unit

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Department of Fish and Wildlife

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**North Coast Regional Water Quality
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Mendocino County Code Enforcement
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Mendocino Agricultural Commissioner
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Property Owners
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