



State Water Resources Control Board

JUL 06 2022

CERTIFIED MAIL

Samuel Hazelip

In Reply Refer to:
INV ID 14371

CERTIFIED MAIL NO: 7021 2720 0000 9897 2169

Dear Samuel Hazelip,

NOTICE OF POTENTIAL UNAUTHORIZED DIVERSION AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR BUTTE COUNTY ASSESSOR PARCEL NUMBER 051-030-027-000 NOTICE OF VIOLATION (NOV)

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received information on April 13, 2022 from the California Department of Fish and Wildlife, citing the presence of diversion infrastructure adjacent to Little Butte Creek on Assessor Parcel Number (APN) 051-030-027-000. The Division is contacting you as part of its investigation to determine whether there is a diversion of surface water and compliance with the Water Code (WC) and the State Water Board's Cannabis Cultivation Policy (Policy) requirements.

The Division is responsible for the administration of appropriative water rights in California initiated after 1914, commonly referred to as "post-1914 appropriative water rights." In most cases a direct diversion of water requires an appropriative water right issued by the State Water Board.

The purpose of this letter is to gather information in order to determine if there is a water diversion that is subject to the State Water Board permitting authority and, if so, inform you of your regulatory compliance options.

You are being contacted because you were identified as the responsible party and/or property owner for Butte County Assessor's Parcel Number (APN) 051-030-027-000 where the diversion infrastructure was observed.

Water Code section 1847 requires cultivators who use surface water for commercial cannabis irrigation to have a valid water right prior to diverting and storing water. Failure to obtain a valid water right or cease diversions within 30 days may lead to an initial monetary liability of \$500 and \$250 each subsequent day until violation is corrected (WC§ 1847).

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

10011 StrMt. Sacramento, CA 95814 | Ma,lng Addraraa PO Box 100 Sacramento, CA 95812-0100 | www.watert>oerda ca 00*



Cultivators who are diverting under existing water rights which do not comply with a water right's terms and conditions may be subject to violation of Water Code section 1846. Failure to comply with terms and conditions of a water right may lead to an initial monetary liability of \$500 for the first day, and \$250 each subsequent day until a violation is corrected (WC § 1846).

The Cannabis Policy now allows the seasonal storage of water on stream through securing a Cannabis Small Irrigation Use Registration (SIUR). The SIUR is a streamlined option to obtain an appropriative water right (less than 6.6 acre-feet per year) that authorizes water to be diverted and stored to irrigate commercial cannabis cultivation. **The SIUR only applies to Counties authorizing legal outdoor cannabis cultivation. If you cultivate cannabis in a county that does not authorize outdoor commercial cannabis cultivation, then an SIUR is not available to your operations.** Although you cannot obtain a SIUR for your Cannabis cultivation operations the Cannabis Cultivation Policy Requirements apply to your activities and you should be familiar with and implement these requirements; additional information is provided at the end of this Notice regarding the Cannabis Cultivation Policy.

If you are in a permissive county, then you can register for a SIUR at the following website below:

<https://public2.waterboards.ca.gov/cgo>

If you do not meet the above criterion, then you have no water right options for cannabis cultivation. However, for your domestic and or stock watering purposes there are several options available to legally divert water for use.

1. Submit for a Small Domestic Use Registration which permits an allotment of up to 10 acre-feet of water for storage for domestic, recreational, aesthetic, fish and wildlife enhancement and fire protection. You can find information about submitting an application for the Small Domestic Use Registration at the following website:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/#smalldomestic

The application for a Small Domestic Use Registration is available at the following link:

https://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/sdu_registration.pdf

2. Submit an appropriative water right application. You can find information about the submitting an application for an appropriative water right at the following website:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/

The application for an appropriative water right is available at the following link:

https://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/app_form.pdf

3. Remove the reservoir or diversion's ability to divert and store surface water through coordinating with CDFW's Lake and Streambed Alteration Agreement, and a 401 water quality permit from the North Coast Regional Water Quality Control Board.
4. Provide justification through the Cannabis Compliance Response Portal with supportive evidence of this reservoir or diversion being outside of the jurisdiction of the Division, or in compliance with Division's authority. Instructions are provided at the end of this letter.

If you are diverting water subject to the State Water Board's permitting authority without a valid basis of right on file with the Division, you may have 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 \$1000 during a critically dry year (drought) for each day that the unauthorized diversion or use of water occurs plus \$2,500 or each acre-foot of water (drought). (WC § 1052, et seq.)

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 have diverted water since 2009, then you are required to report your diversion and use to the State Water Board by filing a Statement unless that diversion falls within one of the limited exceptions provided for in WC section 5101. 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 directly divert from a stream as well as impound water at a dam), a separate Statement is required for each diversion. If you have any questions about how many diversion points your project covers, 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 that have 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 has called the violation to the attention of that person. (WC § 5107, subd. (c)(1)). This letter constitutes your notice of the Statement filing requirements and the fact that, as of the date of this letter, the Division has not received Statement(s) for the diversion identified on your property. If your Statement(s) are not received within 30 days from the date of

this letter, then you are subject to an additional \$500 per day potential liability for each additional day the violation continues, in accordance with WC section 5107(c)(1).

The State Water Board has discretion when considering enforcement action and shall take into consideration any corrective actions taken in response to this notice in determining whether and what civil liability is appropriate for any violations. Therefore, this matter requires your immediate attention.

Within 30 days from the date of this notice letter, please respond and notify the Division of your actions taken to comply and how you intend to comply.

A prompt and complete response is important. The corrective actions taken in response to this letter will be taken into consideration.

You may want to consult with an attorney or consultant familiar with water right laws before selecting a corrective action or providing a response. The State Water Board maintains a list of attorneys and consultants on its website at:

http://www.waterboards.ca.gov/waterrights/board_info/contacts.shtml

Additionally, Statement(s) can be filed using the form available at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/initial_stmt_form.pdf

Information relating to the filing of a Statement, a discussion of the various types of water rights that exist in California, and the associated procedures for either obtaining a water right or documenting that a water right already exists is available on our website at:

www.waterboards.ca.gov/waterrights/

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

Please note that if your diversion is unauthorized or you failed to file a required Statement, the State Water Board can initiate enforcement action at its discretion and without further notice, so timely responses are important.

Your response to the allegations listed in this NOV are required and should be submitted within a timely manner. To facilitate your response, we are providing you with an Investigation Identification Number (Investigation ID No.), which you can use to respond electronically. In the event you prefer to call or email, these alternative means of contacting our staff are also provided. To use your Investigation ID No. follow the steps provided below.

Investigation ID No. 14371

- 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.

Failure to include information may prevent the State Water Board from processing your response and may lead to progressive enforcement.

Need Help? Contact us at 916-341-5362 or email at:

dwr.cannabisenforcement@waterboards.ca.gov

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

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

Attachment: California Department of Fish and Wildlife Notice of Violation

Division of Water Rights

Taro Murano

Taro.Murano@waterboards.ca.gov

Stormer Feiler

Stormer.Feiler@waterboards.ca.gov

Karen Kramer

Karen.Kramer@waterboards.ca.gov

Cannabis Registration Unit
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Central Valley Regional Water Board
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Butte County Code Enforcement
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State of California Natural Resources Agency
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North Central Region
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Rancho Cordova, CA 95670
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



4/13/2022

Certified Mail:
7020 1810 0002 0809 9584

Samuel Hazelip

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

Dear Mr. Hazelip:

On April 1, 2022, Department of Fish and Wildlife (Department) staff visited your properties at Assessor Parcel Number (APN) # 051-030-027-000 in Magalia, CA located on Little Butte Creek in Butte County. During the visit, staff observed activities that are in violation of Fish and Game Code sections 1602, 5650, and 5652. Staff also observed active cannabis cultivation in conjunction with these activities.

Fish and Game Code (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 section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state "materials deleterious to fish, plant life, mammals, or bird life." Materials can include petroleum products, such as fuel used for machinery and more commonly, sediment used to create stream crossings or in road construction that is prone to discharge because of lack of erosion control.

FGC section 5652 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state any trash, refuse, or waste.

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Waters of the state includes: "Any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code§ 13050, subd. (e).)

In the Department's view, notification was required because the activities substantially altered the bed and bank of Little Butte Creek and diverted surface water from Little Butte Creek. However, the Department was unable to locate a notification for these activities. The locations and descriptions of these activities are provided below (Table 1).

Table 1. Fish and Game Code Violations at APN # 051-030-027-000; Butte County					
Site ID	Approximate Location*	Description of Violation	FGC Section	Violation Description	Figure
PL-1	39.782236° -121.636255° To 39.784988° -121.635046°	Grading along existing road to access cultivation processing areas. Sediment, large woody debris and bum piles side cast into steam channel. Large landslides pushed from roadway into stream channel, where the road cut had failed upslope. Trash, cultivation related waste, and rubbish deposited within debris where it may pass into the stream.	5650(a)(6)	Deleterious substance (sediment) placed where it may pass into a stream.	2-4
			5652(a)	Refuse placed within 150 feet of waters of the state.	
HAPt-1	39.784576° -121.635828°	Excavation of stream bank where road provides access to stream. Bank excavated for access to place water diversion pipe and pump for use to irrigate cannabis. Sediment from road and excavation placed in and adjacent to stream where it can discharge to the stream. Trash, oil containers, construction debris, and miscellaneous rubbish placed adjacent to stream where it may pass into.	5650(a)(6)	Deleterious substance (sediment, petroleum) placed where it may pass into a stream.	5-6
			1602(a)	Substantial alteration of a stream.	
			5652(a)	Refuse placed within 150 feet of waters of the state.	
Violation Summary			1602	1	
Violation Summary			5650	2	
Violation Summary			5652	2	
Total			All	5	

*Locations were taken using an Apple iPad mini 4.

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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 5652. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code, § 12025, subs. (b)(1)(A), (2); (e).) Also, the District Attorney or the Attorney General may enforce a violation of FGC sections 1602 or 5650, civilly or criminally. Specifically, under FGC sections 1615 and 5650.1 respectively, a person who violates FGC section 1602 or 5650 is subject to a maximum civil penalty of \$25,000 for each violation, and 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 licensing authority for the state. 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 preclude you from obtaining a state license or license renewal from CDFA. (Bus. & Prof. Code, §§ 26057, 26060.1.)**

As a first step to address this matter, the Department requests you contact Senior Environmental Scientist (Specialist), Kyle Stoner at (916) 767-8178 or Kyle.Stoner@wildlife.ca.gov within 14 days of the date of this letter. Mr. Stoner 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 FGC section 1602, 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.

Sincerely,



DCAE098Ae331407...

Lt. **B. Boyd**

Law Enforcement Division

cc: Brian Boyd, Brian.Boyd@wildlife.ca.gov
Josh Brennan, Josh.Brennan@wildlife.ca.gov

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Kyle Stoner, Kyle.Stoner@wildlife.ca.gov
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Figure 2: Sidecast sediment from road discharged to stream channel below.



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Figure 3: Sidecast sediment and woody debris discharged from road surface.



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Figure 4: Sidecast sediment from road discharged to stream channel below.



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Figure 5: Access road to stream channel, eroding and discharging sediment to the stream. Diversion infrastructure and miscellaneous rubbish laced a/on the stream channel.



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Figure 6: Petroleum containers, construction debris, and other rubbish placed where it may pass into the stream.



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Figure 7: Alteration of the stream bank for access to install a water diversion pipe and pump. Active diversion infrastructure removed prior to inspection.

