



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 18, 2023

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Evan Kouchalakos
74 Amherst Rd
Merrimack, NH 03054

Certified Mail:

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Borslav Milesevic
700 S Manhattan Place #4
Los Angeles, CA 90005

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

Dear Evan Kouchalakos and Borslav Milesevic:

On September 07, 2023, Department of Fish and Wildlife (Department) staff visited property owned by Mr. Kouchalakos at Assessor's Parcel Number (APN) 107-054-036-000 (Property) within the Upper North Fork Mattole River watershed, County of Humboldt, State of California. During the visit, staff observed activities that are in violation of Fish and Game Code sections 1602, 5650, 5652. Staff also observed active cannabis cultivation in conjunction with most of 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 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 four activities that affected unnamed tributaries to the Upper North Fork Mattole River. 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. Summary of Fish and Game Code (FGC) violations documented during Department staff visit on September 07, 2023, to APN 107-054-036-000, Humboldt County.

Violation #	FGC Section	Latitude*	Longitude*	Violation Description
1	1602	40.260737	-124.11818	Failure to notify for the construction of an on-stream pond and spillway, associated with irrigation of cannabis, resulting in substantial obstruction of natural flow of a stream, substantial change to bed and banks of a stream, and placement of materials into a stream.
2	1602	40.260519	-124.11707	Failure to notify for maintenance to an existing stream crossing, used to access cannabis cultivation, resulting in substantial change to bed and banks of a stream and placement of materials into a stream.
3	5650	40.260519	-124.11707	Water pollution from a hydrologically connected road surface, used to access a cannabis cultivation site, resulting in the placement of sediment (a material deleterious to fish and wildlife) where it can pass into waters of the state and the potential for future delivery.
4	1602	40.259651	-124.11804	Failure to notify for construction of a stream crossing, used to access cannabis cultivation, resulting in substantial change to bed and banks of a stream, diversion of the natural flow, and placement of materials into a stream.
5	5650	40.259651	-124.11804	Water pollution from a hydrologically connected road surface, used to access a cannabis cultivation site, resulting in the placement of sediment (a material deleterious to fish and wildlife) where it can pass into waters of the state and the potential for future delivery.

*Units = decimal degrees. Datum = WGS 84

Table 1. Continued.

Violation #	FGC Section	Latitude*	Longitude*	Violation Description
6	5652	40.259651	-124.11804	Water pollution from the placement and/or abandonment of trash and (e.g., plastic containers and plastic bags), associated with cannabis cultivation, into and within 150 feet of the high-water mark of waters of the state.
7	1602	40.262965	-124.1115	Failure to notify for the diversion of surface water, used to irrigate cannabis, resulting in substantial diversion of natural flow from waters of the state.
8	5652	40.260675	-124.11814	Water pollution from the placement and abandonment of trash and debris (e.g., plastic pipe, plastic pots, plastic sheeting, etc.), associated with cannabis cultivation, into and/or within 150 feet of the high-water mark of waters of the state.
9	5652	40.259592	-124.11851	Water pollution from the placement and abandonment of trash and debris (e.g., plastic pipe, plastic containers, plastic sheeting, etc.), associated with cannabis cultivation, into and/or within 150 feet of the high-water mark of waters of the state.

*Units = decimal degrees. Datum = WGS 84

The Department also observed two activities on the Property that are violations of FGC Section 5650 and three violations of FGC Section 5652 that affected unnamed tributaries to the Upper North Fork Mattole River. The locations and descriptions of these activities are provided above (Table 1).

A person who violates FGC sections 1602, 5650, 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 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 Ryan Bourque at ryan.bourque@wildlife.ca.gov within 14 days of the date of this letter. Mr. Bourque will propose certain actions to protect fish and wildlife resources that have been or could be affected by the activities described above and will 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 sections 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.

Sincerely,



Lt. Brendan Lynch
CDFW Law Enforcement Division

ec: Brendan Lynch, Joshua Zulliger, Scott Bauer, Rebecca Garwood, Matthew Jones, Jaymes Silveira and Ryan Bourque
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