Investigative Strategies

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Developing Environmental Crimes Search Warrant associated with Cannabis

• What raised your concern:
  • Threat to environment?
  • Complaint?
  • Allied Agency investigation?
  • Suspected illegal activity?
    • No state or local license.
    • Grow exceed personal limits and/ or reasonable medical limits pursuant to SB 420 and Proposition 215.
Pre-Investigation

- Private vs. Public Lands
- Identifying Property:
  - Assessors Parcel Number
  - Longitude and Latitude (format)

- Identifying Water Source
  - Private: Well or public utility, water draw from public natural sources (lakes, streams)
  - Public land, identify water sheds and relationship to grow site. (Source can be miles away)

Are we there yet?
If private property

• Significant vetting required due to Proposition 64 and associated trailer bills.
  • Possesses state or local commercial cannabis license but has environmental issues:
    • Reach out to local jurisdiction and CDFA to seek compliance with state or local regulations.
    • Seek inspection with site remediation as primary goal.
    • Develop monitoring strategy to insure compliance.
      • If still not compliant…. Seek revocation of licenses
  • Does not possess state or local commercial cannabis license.
  • Pursue search warrant, if grow is suspected of exceeding legitimate medical nexus pursuant to SB 420 and Proposition 215 (until January 2019).
Agency contacts during vetting:

• CDFW: engaged in LSA process/general order
• CalFire: engaged in less than 3-acre timber conversion process
• County Cultivation: engaged/has current license
• State Cultivation: engaged/has current license
• Water Board: waste discharge waiver
• Local well permitting process

Environmental Crimes Search Warrants

• Items used in the cultivation of Marijuana:
  Fertilizers, pots, watering systems, lights, ballasts, transformers, fans, reflector shields, CO2 tanks, CO2 generators, generators, timers, dehumidifiers, air conditioners, ducting, gloves, air filters and any other growing medium used in the cultivation of marijuana.

• Items used in the extraction of butane honey oil/hash oil:
  Marijuana, precursor chemicals, including without limitation: butane, grain alcohol or other organic solvents, ethanol, ethyl alcohol, isopropyl alcohol, hexane, propane. Pyrex type dishes or other collection type container, butane honey oil/hash oil holding vessels, butane honey oil/hash oil scrappers, butane honey oil/hash oil filters, butane honey oil/hash oil extraction tubes consisting of different materials to include plastic, metal and/or glass. Butane honey oil/hash oil vacuum ovens and vacuum pumps, electronic skillets used in butane honey oil/hash oil manufacturing, electronic hot plates used in butane honey oil/hash oil manufacturing, butane extraction and recovery systems and their components, rotary evaporators and CO2 extraction and recovery systems and their components.
Specific items to include in the affidavit:

• When describing the property to be searched, include the GPS coordinates of the polygon represented in your parcel viewer.
• Verbiage allowing Water Board to enter private property to conduct inspection and collect evidence.
• Verbiage which allow the search for and collection of evidence showing environmental damage and or who is responsible.

THE PREMISES DESCRIBED AS: 26670 Mad River Road, Ruth, Trinity County, California. The parcel is described as a triangle-shaped parcel located on the southeast side of the South Fork of the Mad River. The subject parcel is approximately 15.2 acres, bordered by the South Fork of the Mad River on the northwest side and is identified as Trinity County APN # 021-200-05-00. A large, possibly two-story residence with natural-looking wood siding, a green metal roof and a covered porch with a small deck extending off of the west side of the house is located near the northwest parcel boundary. The approximate corners of this parcel are identified by the following latitudinal-longitudinal coordinates: 40.159115° -123.227060°; 40.162001° -123.226910°; 40.159115° -123.230268.
TO THE STATE WATER RESOURCES CONTROL BOARD, AND THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD ARE COMMANDED TO INSPECT, INVESTIGATE, AND SEARCH.

SAID INVESTIGATION SHALL INCLUDE entering upon and conducting a visual inspection of the entire Property and conducting and documenting such inspection by taking such samples and reviewing such writings and records that are kept and maintained on the Property as is necessary to determine compliance. The inspection may include: 1) entering the Property, observing the physical conditions of the Property, and any equipment located thereon and any operations, processes or other activities being conducted thereon, including, but not limited to, water diversions, graded areas, cultivated areas, road crossings, disposal areas, ponds, surface drainages, watercourses, material stockpiles, storage, and buildings located on the Property; 2) taking photographs and video of the physical conditions of the Property and any equipment located thereon and any operations, processes or other activities being conducted thereon; 3) questioning of or conferring with persons present on the Property privately to obtain information bearing on whether violations of the laws and regulations occurred; 4) the measurement of the pumping rate, if extant; the measurement of each reservoir’s area, dam height, and diversion facilities, if extant; 5) collecting and analyzing samples of water, raw, graded, processed or stored materials, chemical, fuel, waste, and/or other stored or contained materials; 6) testing for water pollutants, including but not limited to sediment, fertilizers and pesticides, from any source whether mechanical, process, or natural; 7) inspection and duplicating any writings and records of spills or emergencies, business plans, contingency plans, or any other information authorized under California Water Code section 13267, subdivision (c).

FOR THE PROPERTY DESCRIBED AS:

HEAVY EQUIPMENT, EARTHWORK AND LAND ALTERATION ACTIVITIES, including but not limited to: grading; earth moving; road construction; water diversions; streambed alterations; culvert installations; stream crossings; land clearing; timber cutting; timber cutting equipment; and heavy equipment usage.

DELETERIOUS MATERIALS PLACED IN OR NEAR STATE WATERWAYS including, but not limited to sediment, potting soil, fertilizers, plant nutrients, gasoline, diesel, butane, propane, oil, paint, rodenticides, insecticides, fungicides, herbicides, poisons, detergents, soaps, sewage, garbage and debris.

UNLAWFULLY TAKEN OR POSSESSED FISH AND WILDLIFE including, but not limited to deer, bear, elk, squirrels, rabbits, salmon, steelhead, dove, grouse, turkey, quail, ducks, geese, and any non-game species and all parts thereof.
OFFICERS SHALL BE ALLOWED TO BRING OTHER GOVERNMENT AGENCIES ONTO THE PROPERTY to be searched, including local, state and federal law enforcement officers, code enforcement officials, experts, and environmental scientists. This includes, but not limited to, the following agencies: the California Department Fish and Wildlife, the State Water Resources Control Board and Regional Water Quality Control Board Staff, California Department of Fire and Forestry (CAL Fire), US Forest Service, the Trinity County Department of Health and Human Services—Division of Environmental Health, Trinity County Code Enforcement and the Air Quality Management District.

I request that representatives from the State Water Resources Control Board, and/or the California Regional Water Quality Control Board (collectively Water Boards) be allowed to inspect the location to be searched pursuant to Water Code sections 1051 and 13267 to determine if there are violations of the California Water Code, the Porter Cologne Water Quality Control Act (Cal. Wat. Code, § 13000 et seq.) and the Federal Clean Water Act (33 U.S.C. § 1251 et seq.). Such violations may include, but are not necessarily limited to: conditions of and/or threatened conditions of pollution or nuisance resulting from discharges of waste (as defined in Water Code § 13050, subdivision (d)) to waters of the State and of the United States in violation of the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); and the diversion, use, and/or storage of water in violation of Water Code §§ 1052, subdivision (a), and 5101. Sources of Water Code § 13050, subdivision (d), waste are likely to include chemicals and/or hazardous wastes from garbage, pesticides, fertilizers, leachate, leaking fuel tanks or other storage containers, construction debris, and earthen materials from timberland conversion, stream dredging, in-stream dams, grading, road construction, and soil disturbance associated with marijuana cultivation.

I request that the scope of the Water Boards’ inspection including entering upon and conducting a visual inspection of the entire Property and conducting and documenting such inspection by taking such samples and reviewing such writings and records that are kept and maintained on the Property as is necessary to determine compliance. The inspection may include: 1) entering the Property, observing the physical conditions of the Property, and any equipment located thereon and any operations, processes or other activities being conducted thereon, including, but not limited to, water diversions, graded areas, cultivated areas, road crossings, disposal areas, ponds, surface drainages, watercourses, material stockpiles, storage, and buildings located on the Property; 2) taking photographs and video of the physical conditions of the Property and any equipment located thereon and any operations, processes or other activities being conducted thereon; 3) questioning of or conferring with persons present on the Property privately to obtain information bearing on whether violations of the laws and regulations occurred; 4) the measurement of the pumping rate, if extant; the measurement of each reservoir’s area, dam height, and diversion facilities, if extant; 5) collecting and analyzing samples of water, raw, graded, processed or stored materials, chemical, fuel, waste, and/or other stored or contained materials; 6) testing for water pollutants, including but not limited to sediment, fertilizers and pesticides, from any source whether mechanical, process, or natural; 7) inspection and duplicating any writings and records of spills or emergencies, business plans, contingency plans, or any other information authorized under California Water Code section 13267, subdivision (c).
Database and Imagery Resources

- BIOS
- Landvision, Parcel Quest and MyDigitalGlob
- County Assessors
- County Clerk and Recorders
- County GIS Mapping
- Google Earth
- NAIP’s
- Water Rights (eWRIMS)
11405 OroQuincy Hwy. APN: 061-440-039
Inspection Warrants:
Code of Civil Procedures Title 13 sections 1822.50-1822.60

- Administrative warrants
- Burden of proof is reasonable cause
- Access can be denied (not the same authority as a search warrant)
- Must be served during reasonable hours 8:00 am-6:00 pm.
- 24 hour notice that the warrant is to be served. (unless exception is authorized by judge based on necessity)
- 14 days to serve

Know your role during the raid/warrant execution!

- Are you part of the entry team?
- What will you do once the site is secure?
  - Photograph and document cultivation activities that are environmental crimes.
  - Find the water source. ***
  - Take samples: Fertilizer, Pesticides, Soils, and Water. Be a team player!!!
  - Help pull plants and do any other tasks that the raid team needs assistance with.
  - Interview suspects: admissions of their roles in the cultivation (using fertilizers, herbicides, pesticides, soil amendments), watering (use of diversion is a F&G 1602)

***Always travel with at least one other person while in the grow or looking for a water source*****
Organophosphates

- Basis of many insecticides, herbicides, and nerve agents.
- Among the most common causes of poisoning worldwide.
Mild
- Small or pinpoint pupils.
- Painful, blurred vision.
- Runny nose and eyes.
- Excess saliva.
- Eyes looking ‘glassy’.
- Headache.
- Nausea.
- Mild muscle weakness.
- Localized muscle twitching.
- Mild agitation.

Moderate
- Pinpoint pupils, conjunctival injection.
- Dizziness, disorientation.
- Coughing, wheezing, sneezing.
- Drooling, excess phlegm, bronchorrhea, bronchospasm.
- Breathing difficulty.
- Marked muscle twitching or tremors.
- Muscle weakness, fatigue.
- Vomiting, diarrhea, urination.

Severe
- Pinpoint pupils.
- Confusion and agitation.
- Convulsions.
- Copious excess secretions.
- Cardiac arrhythmias.
- Collapse, respiratory depression or respiratory arrest.
- Coma.
- Death.
Too test or not to test? That is the question

Simplicity of F&G Code 1602, 5650, and 5652 is testing needed?

Pros
• Prosecutors and jury’s like positive tests.
• Removes some uncertainty to the case.

Cons
• Costs
• Contracts
• Evidence concerns (procedures, storage, shipping)
• Where do the samples go?

Criminal Prosecutions
• H.S. Code 11358 (3)
• (A) Violation of Section 1052 of the Water Code relating to illegal diversion of water;
• (B) Violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;
• (C) Violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and Game Code relating to waters of the state;
• (D) Violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;
• (E) Violation of Section 374.8 of the Penal Code relating to hazardous substances or Section 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;
• (F) Violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or
• (G) Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.
Civil Remedies and Administrative Penalties

- Code Enforcement
- Local ordinances
  - Cultivation
  - Sales
  - Manufacturing
  - Zoning
- Nuisance Abatements
- Licensing
- Fines for violations
- Abatement cost recovery

- Civil Suits for violations of
  - F&G Code 1602
  - F& G Code 5650
  - Water Code 1052