

# ARREST/INVESTIGATION REPORT

WPD 6a (10-98)

Region # NCD

Page 1

DATE OF INCIDENT / OCCURRANCE 11/14/2013		TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court				
<input checked="" type="checkbox"/> "X" ONE <input type="checkbox"/> Arrest Report <input checked="" type="checkbox"/> Formal Complaint		<input checked="" type="checkbox"/> "X" ONE <input type="checkbox"/> Self Initiated <input checked="" type="checkbox"/> Complaint		TYPE OF REPORT ("X" APPLICABLE) <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Hunting <input checked="" type="checkbox"/> Inland Pollution <input type="checkbox"/> CalTIP <input type="checkbox"/> Recreational Fishing <input type="checkbox"/> Trapping <input type="checkbox"/> Marine Pollution <input type="checkbox"/> Other			

## Suspect Information

Name Suspect #1 ( <i>First, Middle, Last</i> ) Brian Wade Padilla		Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Date of Birth (MM/DD/YY) 05/12/61	Citation Number AD2078015
Suspect Address ( <i>Street, Apt., City, State, Zip Code</i> ) 197 Ryland St., San Jose, CA, 95110				Home Phone (408)234-2141
Business Address ( <i>Street, Apt., City, State, Zip Code</i> ) N/A				Business Phone N/A
Identification Type ("X" Applicable) <input checked="" type="checkbox"/> CDL/CID <input type="checkbox"/> Other State DL/ID <input type="checkbox"/> Other ID: _____ Number: N8896093	Suspect Description ("X" Applicable) <u>General:</u> <u>Hair:</u> <u>Eyes:</u> <u>Ethnicity:</u> Height: 5-07 <input type="checkbox"/> Bln <input checked="" type="checkbox"/> Brn <input type="checkbox"/> Blk <input type="checkbox"/> Blu <input checked="" type="checkbox"/> Brn <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Hispanic Weight: 145 <input type="checkbox"/> Gry <input type="checkbox"/> Red <input type="checkbox"/> None <input type="checkbox"/> Grn <input type="checkbox"/> Hzl <input type="checkbox"/> White <input checked="" type="checkbox"/> Other			
Vehicle Type("X" Applicable) <input type="checkbox"/> Auto <input type="checkbox"/> Vessel <input type="checkbox"/> Other	Description ( <i>Make, Model, Year, Color</i> ) N/A			License Plate Number /VIN N/A

## Offenses and Charges

[X]F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other	Section <b>1602(a)(1)</b>	[X]F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other	Section <b>5901</b>
Description: Unlawful to divert/obstruct natural flow of stream without first notifying the CA Dept. of Fish and Wildlife.		Description Unlawful to construct or maintain any device (i.e. dam) that impedes the passing of any fish up and down stream.	
[X]F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other	Section <b>5650(a)(6)</b>	[X]F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other	Section <b>5937</b>
Description: Unlawful to deposit deleterious substance (sediment) into stream channel.		Description Owner of a dam shall allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may exist below the dam.	
[X]F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other	Section <b>5652(a)</b>	[ ]F&G <input type="checkbox"/> T-14 <input type="checkbox"/> Other	Section
Description: Unlawful to deposit/permit to pass into stream within 150 feet of high water mark any plastic litter and rubbish materials.		Description	

## Evidence Seized

Evidence Description ( <i>Amount, Type, Serial Number, Etc.</i> )    "X" ONE <input type="checkbox"/> Held <input type="checkbox"/> Returned <input type="checkbox"/> Destroyed <input type="checkbox"/> Other					Photographed?	
					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Evidence Description ( <i>Amount, Type, Serial Number, Etc.</i> )    "X" ONE <input type="checkbox"/> Held <input type="checkbox"/> Returned <input type="checkbox"/> Destroyed <input type="checkbox"/> Other					Photographed?	
					<input type="checkbox"/> Yes	<input type="checkbox"/> No
Evidence Description ( <i>Amount, Type, Serial Number, Etc.</i> )    "X" ONE <input type="checkbox"/> Held <input type="checkbox"/> Returned <input type="checkbox"/> Destroyed <input type="checkbox"/> Other					Photographed?	
					<input type="checkbox"/> Yes	<input type="checkbox"/> No

## Case Synopsis

Please See Report

See WPD 6b For Additional Suspect and Witness Information "X" ONE  Yes  No

Preparer's Name and Badge Number <b>M.White #808</b>	Date	Reviewer's Name	Date
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## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 2

DATE OF INCIDENT / OCCURRANCE 11/14/2013	TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court
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Location/Subject/Incident Name Indian Creek Tributary/Water Diversion-Dam/Brian Padilla		Arresting/Case Officer <b>M.White #808</b>
		Citation Number AD2078015

On 09/10/13 I received a call from Albert E. Prather about a tributary to Indian Creek on his property that was dried up and a suspected water diversion that was related to it. On 09/11/13 I was on uniformed patrol when I met with Prather at approximately 1600 hours. Prather and I briefly discussed the water diversion issue and then he proceeded to show me the diversion. Prather pointed out to me the location on Indian Creek Road in Philo where the tributary flows through a culvert under Indian Creek Road. The tributary was completely dry, and Prather noted to me that he did not ever recall any instance that the tributary had ever run dry.

Prather then took me onto his property at 17501 Indian Creek Road and walked me down into the canyon that the same tributary ran through. Upon walking down to the tributary, it was noticeably dry, and I could see a black plastic pipe approximately two inches in diameter lying on the dry stream bed. The black plastic pipe felt heavy and full of water when I picked it up. Prather and I followed the black plastic pipeline up the tributary. The pipeline continued up stream several hundred yards, branching off twice where it was attached to two different spring boxes that looked as though they were built within the past couple of years (N 39° 04' 00.8", W -123° 25' 20.3," and N 39° 04' 01.5", W -123° 25' 23.4," see photo.2). The pipeline ultimately stopped at the first and main point of diversion (N 39° 03' 59.9", W -123° 25' 19.8") where the end of the pipeline was sitting in a large pool of water that was approximately three feet deep and twelve feet in diameter. The flow of water coming into the large pool I estimated to be flowing at approximately five gallons per minute, and the water trickling out of the pool was so insignificant that the stream bed was dried up within approximately 50 yards downstream of the pool.

The end of the pipeline was placed in the deepest portion of the pool of water, and the screen on the end of the pipe was insufficient (see photo.1). The waterline ran approximately a half mile downhill in elevation through the canyon in order to gravity feed the water that was being diverted from the pool into two large water tanks (see photo.3) near the bottom of the canyon. The waterline ran through the bed/channel of the tributary for about the first quarter of a mile, and then started up the side of the channel eventually meeting the first of the two tanks. Following the waterline along the bank of the channel, there was a walking trail that followed the waterline, and much of the waterline was suspended from a wire cable that was attached to several redwood trees, cutting into the trees. You could see that the wire cable had chewed into the base of the trees in some areas, and many of the trees had started to grow around the cable. Prather told me that he believed that this water diversion was the work of his neighbor Brian Padilla whom lives at 17601 Indian Creek Road. Prather advised me that Padilla cultivates marijuana, so I advised Prather that I would return to follow where the waterline went after leaving the water tanks on another date with another Warden if possible due to safety, as many of these water lines end up leading into marijuana grows.

On 09/19/2013 I returned to the water diversion with CA Dept. of Fish and Wildlife Environmental Scientist Wes Stokes. I showed Stokes the water diversion as previously described, and we continued to follow the water diversion from the water tanks westward approximately a half mile on foot to where we could visually see the waterline leave Prather's property and go through a barbed wire fence(see photo.4). After going through the fence, the waterline attached to a water spout a few feet east of the large building structure on the east side of the property of 17601 Indian Creek Road(see photo.5). At the location of the two water tanks, Stokes and I observed the water flowing from the waterline at what we estimated a minimum of five gallons per minute into the largest tank which was housed under a wooden overhang/shed, and then from the larger tank it flowed into a slightly smaller water tank approximately 15 yards to the west before

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
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## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 3

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		Citation Number AD2078015

ultimately leaving the smaller tank and ending up at 17601 Indian Creek Road.

Along with seeing the waterline go to 17601 Indian Creek Road, I also observed approximately 25 large marijuana plants along the north side of the large building structure, several water tanks in the center of the property, and several other small structures on the property (see photo.6). For safety concerns, I advised Stokes that I would come back with another Warden on another day to attempt to make contact with the landowner at 17601 Indian Creek Road.

I confirmed that the property at 17601 Indian Creek Road belonged to a Brian Wade Padilla, by using my GPS and by looking through county records of the APN# 046-080-04. On 09/26/2013 at approximately 1000 hours while in full department uniform, Warden D. White and I attempted to make contact with either Padilla or a property tenant. After knock and notice at every door on every structure we decided that no one was home and we would try another time. I was able to confirm that water was actively flowing into the property at the point of where the waterline enters Padilla's property and attached to his water spout that is plumbed into the property (see photo.5). When turning the check valve in the waterline, water would spray out of the check valve. It appeared to me and Warden D. White that the water that was diverted from the tributary was ultimately being used for the property's entire water system. I also took a look at the marijuana garden, which had obviously been water earlier that morning as there was water all over the ground around every plant. I noticed that there was a marijuana recommendation prescribed to Brian Wade Padilla on the entrance to the garden (see photo.7).

After confirming that the water diversion belonged to the property on 17601 Indian Creek Road, I asked Environmental Scientist Wes Stokes who issues 1602 agreements (CA Department of Fish and Wildlife's water diversion agreement/permit that allows for a landowner or entity to divert water from a stream) to look up in our data base if the property did have a current 1602 agreement. Wes Stokes confirmed to me that the property of 17601 Indian Creek Road belonging to Padilla did not have a 1602 agreement with the Department of Fish and Wildlife, which deems the drafting of water from the tributary of Indian Creek unlawful according the Fish and Game Code section 1602 (a)(1).

Prather had been concerned about returning the water back to the tributary, and cleaning out the plastic waterline that was strung throughout his property. Prather was concerned for the safety of his livestock being that his sheep could trip over the plastic piping or ropes that were tied in places along the canyon wall and stumble down to the bottom. Prather asked me if he could remove the water diversion debris that was on his property. I advised Prather that it was his property and it was an illegal diversion, so if he would like to remove it he could. He asked for assistance in restoring the tributary back to original form, so on 11/14/2013 I met Prather on his property at 17501 Indian Creek Road to assist him with restoring the water back to the tributary. Upon arriving at the large pool of water at the main point of diversion, it was apparent that someone had recently built a dam (see photo.8).

The dam had been built out of dirt, rock, and wood debris, with the two inch diameter waterline going through the dam (see attached Environmental Impact Report for dimensions, and negative environmental impact caused by dam). The upstream side of the dam contained a large pool of water, but the downstream side of the dam was essentially completely dried up stream bed. Prather removed the plastic waterline that was in the bed of the creek, going up to the two spring boxes, and up to the two primary water tanks. I attempted to open up the dam to allow passage of water downstream, but

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
---	--------------------	-----------------	------

## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 4

DATE OF INCIDENT / OCCURRANCE 11/14/2013	TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court
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		Citation Number AD2078015

without the appropriate tools I was somewhat unsuccessful.

On 11/18/2013 at approximately 1300 hours Brian Padilla contacted me via phone to discuss with me how he and two other properties who were getting water from him had ran out of water. I explained to Padilla that his diverting of water from the unnamed tributary to Indian Creek was an illegal water diversion, and that he had violated several Fish and Game codes. Padilla stated to me that he had a water right when he bought the property that was deeded to him, but he did not know that he would also need a lake or streambed alteration agreement (LSA) through the Department of Fish and Wildlife, nor did he know that it was illegal to dam off a stream. When asked about the dam, he stated to me that he and several of his workers had placed the dam in a week prior to me discovering it, and that he has put that dam in every year in the fall when the water in the creek gets lower. I researched the water right deeded to Padilla, and had several maps made by GIS specialist that show that Padilla's main point of diversion was outside of the easement in his water right's deed.

On 11/19/2013 Environmental Scientist Wes Stokes, Lt. Steve White and I revisited the site to assess the environmental impact. In just that five day period since Prather had removed the waterline, the stream had already started to replenish itself moving downstream, and by 11/27/2013 the stream down at where it goes under Indian Creek Road had a small amount of water where it had been previously dry. On our 11/19/2013 site visit we found what appeared to be an old spring box set in the stream approximately 100 yards downstream of the main point of diversion. Upon looking into the deeded water rights to the property, it appears to me that this was the furthest point up the tributary that Padilla's water right would allow him to divert from. Also in the water right it stated that he could divert from a pipe one inch in diameter. It appears that the deeded water right belonging to Padilla was also violated, as he was drafting water from three separate points, instead of one. Two of the points of diversion were later found to be what appears to be outside of the water right's easement.

**Recommendation:** I recommend that the Mendocino County District Attorney's Office charge Brian Wade Padilla for Fish and Game Code sections 1602 (a), 5650 (a)(6), 5652 (a), 5901, and 5937. Below is a list of each Fish and Game Code section, and please see attached Environmental Impact Report prepared by Environmental Scientist Wes Stokes, as it also outlines how each Fish and Game Code section was violated, and the negative environmental impacts due to each statute violation.

### FGC Section 1602 states:

(a) An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material....where it may pass into any river, stream, or lake, unless all of the following occur, (summarized):

(1) Department receives written notification regarding the activity in the manner prescribed by Department.

The water diversion in its entirety as well as the dam would have required notification to the CA Department of Fish and Wildlife as well as an LSA.

### FGC Section 5650 states:

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
---	--------------------	-----------------	------

## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 5

DATE OF INCIDENT / OCCURRANCE 11/14/2013	TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court
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Location/Subject/Incident Name Indian Creek Tributary/Water Diversion-Dam/Brian Padilla		Arresting/Case Officer <b>M.White #808</b>
		Citation Number AD2078015

(a) ...it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following:

(6) Any substance or material deleterious to fish, plant life, or bird life.

Sediment and fill materials are found to be deleterious to fish life, and the placement of the dam, placed substantial amounts of sediment into the wetted creek bed (see attached Environmental Impact Report). In several reaches of the tributary downstream of the dam, it was evident to Environmental Scientist Wes Stokes and I that due to several years of the dam being built, and washed away each year with high flows, you could see where the tributary had channelized, and the silt and sediment from the dam had settled over the years downstream. This sediment can be deleterious to fish and amphibian life.

### **FGC Section 5652 states:**

(a) It is unlawful to deposit, permit to pass into, or place where it can pass into the 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 cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.

During the site visits it was observed that there was plastic pipe, plastic debris, empty soda cans, etc. that were littered through the creek bed/channel (also see attached Environmental Impact Report).

### **FGC Section 5901 states:**

...it is unlawful to construct or maintain in any stream in Districts 1, 1 3/8, 1 1/2, 1 7/8, 2, 2 1/4, 2 1/2, 2 3/4, 3, 3 1/2, 4, 4 1/8, 4 1/2, 4 3/4, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and downstream. Pursuant to FGC Section 45, "Fish" means wild fish, mollusks, crustaceans, invertebrates or amphibians, including any part, spawn, or ova thereof.

The placement of fill materials creating an on stream dam, would prevent the passage of any fish up or down stream of the dam (see attached Environmental Impact Report). It is likely that with spring flows, juvenile steelhead or coho salmon could migrate up stream into this tributary using this reach of stream as rearing habitat due to the redwood tree canopy keeping the stream cool, as well as the woody debris in the steam making the stream ideal rearing habitat for juvenile salmonids. Several frogs were found during our site inspections. Part of the life history cycle of a frog is the tadpole stage, where a tadpole needs water to survive. As flows get lower during the late summer, it is possible that tadpoles could also be blocked by the dam from moving upstream into the natural pool of water, or also moving downstream to get to Indian Creek. It is possible that fish of the family cyprinidae (commonly known as "minnows") as well as three-spined sticklebacks could inhabit small streams such as this tributary to Indian Creek as well. The dam could very well block passage of these fish species from moving from one pool of the stream to a more desirable area.

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
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## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 6

DATE OF INCIDENT / OCCURRANCE 11/14/2013	TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court
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		Citation Number AD2078015

### FGC Section 5937 states:

The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.

The placement of fill materials creating an on stream dam did not allow for any sufficient amount of water to pass over, around, or by the dam to keep in good condition any fish below the dam (see attached Environmental Impact Report).

### Photos:



Photo 1



Photo 2

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
---	--------------------	-----------------	------

## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 7

DATE OF INCIDENT / OCCURRANCE 11/14/2013	TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court
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		Citation Number AD2078015

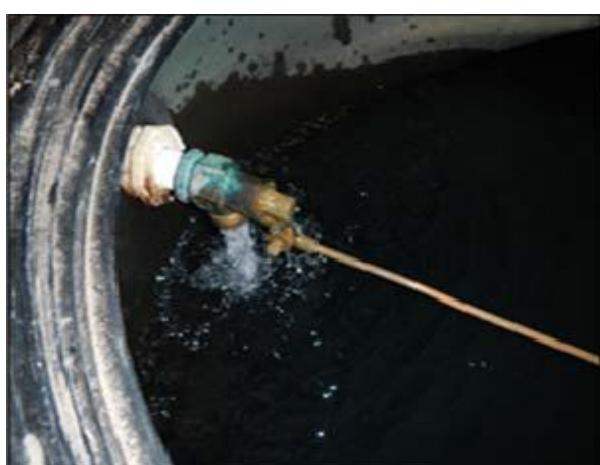


Photo 3



Photo 4



Photo 5



Photo 6

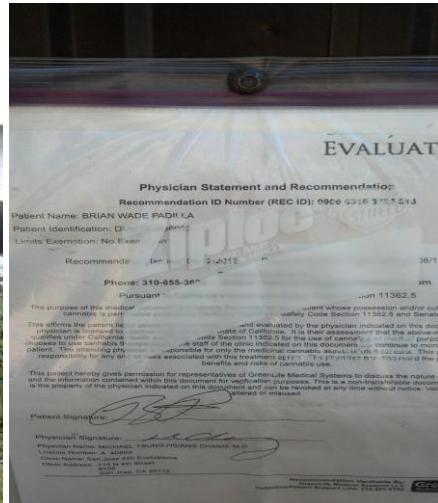


Photo 7

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
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## NARRATIVE/SUPPLEMENTAL

WPD 6a (10-98)

Region # NCD

Page 8

DATE OF INCIDENT / OCCURRANCE 11/14/2013	TIME (2400) 0900	CITY/COUNTY/JUDICIAL DISTRICT Philo/Mendocino/Mendocino County Superior Court
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Photo 8  
(Over Head view of Dam)



(Looking Downstream at the Dam)

Preparer's Name and Badge Number <b>M.White #808</b>	Date 01/01/2014	Reviewer's Name	Date
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