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## North Coast Regional Water Quality Control Board

September 24, 2019

Roger A. and Janet E. Brown  
P.O. Box 650  
Knightsen, CA 94548

Certified Mail No. 7016 2710 0000 2635 9223

Dear Mr. and Mrs. Brown:

**Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Cannabis Cultivation, and Transmittal of Inspection Report for August 5, 2019, Inspection of Humboldt County Assessor's Parcel No. 104-112-011**

**File:** Cannabis Inspections, Humboldt County, 2019, 190805 Roger and Janet Brown 104-112-011, CIWQS Place ID No. 860343

This letter is to notify you of observed violations of the requirements listed below for unauthorized discharges to waters of the state from the above-referenced parcel (Property):

California Water Code (Water Code) section 13260

This letter directs you, within 30 days, to take action to comply with Water Code 13260. In addition, this letter directs you, within 30 days, to contact Regional Water Board staff to advise of your plan to implement recommendations in the attached report.

### **A. Background**

On August 5, 2019, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), California Department of Food and Agriculture CalCannabis Bureau, State Water Resources Control Board Division of Water Rights, and various law enforcement personnel, inspected the subject Property. The purpose of the inspection was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state.

Attached is a copy of the water quality inspection report (August 5, 2019 Inspection

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Report). Please review the Inspection Report carefully and completely. The Inspection Report contains recommendations for correcting observed violations and water quality concerns observed on the Property, and advises you of the Regional Water Board permits necessary for instream work and projects/activities that result in discharges of waste to receiving waters.

## **B. Relevant Requirements**

During the inspection, Regional Water Board staff observed features and conditions on the Property that represent violations of water quality requirements and regulations. Attachment A – Regulatory Citations, provides references to these requirements and regulations.

## **C. Observed Violations**

As documented in the August 5, 2019 Inspection Report, Regional Water Board staff observed cannabis cultivation and associated site disturbance of sufficient size and scope to require regulatory coverage under State Water Resources Control Board (State Water Board) Order No. WQ-2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Statewide General Order). The Regional Water Board has no record of this Property's enrollment under the Statewide General Order. Outdoor cannabis cultivation activities in California with land disturbance of 2,000 square feet or more that are not enrolled for coverage under the Statewide General Order or individual waste discharge requirements violate Water Code section 13260.

## **D. Additional Potential Liabilities**

The Regional Water Board is in the process of considering whether the violations of the Water Code and the Basin Plan warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, securing any applicable permits from this and other agencies prior to conducting work. Please note that the existing conditions, as observed and documented in the Inspection Report, may represent continuing violations of the Water Code and Basin Plan.

Please note that correcting the conditions of non-compliance at the Property does not preclude enforcement for the violations alleged in this notice. As noted above, the Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$5,000 for each day the violation occurs or up to \$10 per gallon, but not both pursuant to Water Code section 13350.

**E. Directive to Obtain Regulatory Coverage**

Based on the observations detailed in the attached inspection report, and mentioned above, the Regional Water Board has determined that you are required to comply with Water Code section 13260 by taking one of the following actions within **30 calendar days of this letter**:

Enroll the property under the Statewide General Order by providing the information required in the online application process. The application can be accessed at: [https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/](https://www.waterboards.ca.gov/water_issues/programs/cannabis/)

Submit the application fee within **30 days** of submitting the on-line application. Failure to submit the application fee within 30 days will result in the application being voided and authorization terminated. Payments shall be identified using the Fee Payment Application Number (found on the Notice of Receipt). All checks or money orders shall be made payable to: "State Water Resources Control Board," and shall be delivered to:

(By US Mail):

Accounting Office  
Attn: Water Quality Fees –  
Cannabis General Order  
P.O. Box 1888  
Sacramento, CA 95812-1888

(In person or by courier delivery):

Accounting Office  
Attn: Water Quality Fees –  
Cannabis General Order  
1001 I Street  
Sacramento, CA 95814-2828

File a Report of Waste Discharge in order to obtain individual Waste Discharge Requirements (WDRs) specific to your property.

Please submit the appropriate documents and payments to:

North Coast Water Board  
Attn: Diana Henriouille  
Enforcement Unit  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403

**OR**

If you believe regulatory coverage is not required under either of the options listed above, either because you and/or your tenants elect to not resume or continue cannabis cultivation or associated activities, or because the operations that are occurring are not subject to regulation under the Statewide General Order or individual WDRs, please provide a written response explaining your non-applicability (with all supporting documentation including photos if necessary) to the Regional Water Board at the address provided above. Regional Water Board staff may contact you to verify your response.

Water Code section 13260 states, in relevant part:

(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

- (1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

Failure to comply with Water Code section 13260 may result in an administrative civil liability under Water code section 13261 not to exceed \$1,000 per violation for each day in which each violation occurs.

**F. Inspection Report Recommendations**

As mentioned above, the August 5, 2019, inspection report provides recommendations to correct violations, as well as to address features and conditions that threaten to impact water quality.

Within 30 days of this letter, please advise Connor McIntee of your intentions, plan, and schedule to implement recommendations in the inspection report. Connor can be reached at (707)576-2499 or, by email at [Connor.McIntee@waterboards.ca.gov](mailto:Connor.McIntee@waterboards.ca.gov).

Future correspondence regarding this matter will be sent to you at this address unless an alternative address is provided to the Regional Water Board. Failure to accept mail from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

If you have any questions regarding this matter, please contact Connor McIntee at the telephone number or email above. You may also contact me at [Diana.Henriouille@waterboards.ca.gov](mailto:Diana.Henriouille@waterboards.ca.gov) or by telephone at (707) 576-2350. Additionally, we are available to meet with you if you wish to discuss this letter, in inspection report, or our waste discharge regulatory programs in further detail.

Sincerely,

Diana Henriouille, P.E.  
Enforcement Unit

190924\_CPM\_dp\_Roger and Janet Brown Inspection\_NOV

Attachments: Attachment A – Regulatory Citations  
August 5, 2019, Water Quality Inspection Report

**cc: Humboldt County**  
Meghan Ryan, Humboldt County Building and Planning, Cannabis Division  
[mryan2@co.humboldt.ca.us](mailto:mryan2@co.humboldt.ca.us)

**Department of Fish and Wildlife**  
Ryan Bourque, [Ryan.Bourque@wildlife.ca.gov](mailto:Ryan.Bourque@wildlife.ca.gov)  
David Manthorne, [David.Manthorne@wildlife.ca.gov](mailto:David.Manthorne@wildlife.ca.gov)

**North Coast Regional Water Quality Control Board**  
Kason Grady, [Kason.Grady@waterboards.ca.gov](mailto:Kason.Grady@waterboards.ca.gov)

**California Department of Food and Agriculture, CalCannabis Bureau**  
Tabatha Chavez, [Tabatha.Chavez@cdfa.ca.gov](mailto:Tabatha.Chavez@cdfa.ca.gov)

**State Water Resources Control Board Division of Water Rights**  
Stormer Feiler, [Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov)  
Steven Hall, [Steven.Hall@Waterboards.ca.gov](mailto:Steven.Hall@Waterboards.ca.gov)

Attachment A – Regulatory Citations

Regulatory Section	Citation
California Water Code Section 13260	<p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p>(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.</p> <p>(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p>
California Water Code Section 13261(a)	<p>“A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”</p>

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## North Coast Regional Water Quality Control Board

TO: Diana Henriouille

FROM: Connor McIntee

DATE: September 10, 2019

Subject: **Inspection Report for August 5, 2019, Warrant Inspection  
Humboldt County Assessor's Parcel Number 104-112-011**

File: Cannabis Program Inspections, Humboldt County, August 2019 HCSO CAMP  
Inspections, Roger A. and Janet E. Brown, CIWQS Place ID.860343

### **Property information:**

County: Humboldt

Physical address: Unknown address, approximately 5 miles southeast of Petrolia

APN: **104-112-011**

Owner: Roger A. and Janet E. Brown  
P.O. Box 650  
Knightsen, CA 94548

Transaction History: Last transfer December 31, 1997, per available information from  
LandVision.

Size: 6 acres.

Watershed: Cape Mendocino Hydrologic Unit; Mattole River Hydrologic Area  
(HU/HA/HSA 112.30; Table 2-1, Water Quality Control Plan for the North Coast Region)

Aerial Imagery Notes (Google Earth Pro): Onsite development/structures (clearing with buildings; driveway/access road) visible in earliest available (August 1998) imagery; some variability in apparent disturbance and vegetation in the clearing in subsequent imagery, with patterns suggestive of cannabis cultivation in August 2012, hoop houses visible in May 2014, and a pond visible in April 2019.

**Regulatory status with the Regional Water Board:**

Site Development: The Regional Water Board has no record of receiving any paperwork associated with site development on the Property.

Applicable programs: 401 Water Quality Certification Program for instream work.

Onsite activities/operations: N/A.

Applicable programs: Cannabis cultivation waste discharge regulatory program, State Water Board Order WQ 2017-0023-DWQ.

**Inspection information:**

Date/time: August 05, 2019

Type: Humboldt County Sheriff's Office (HCSO)/Campaign Against Marijuana Planting (CAMP) Warrant Inspection

Attendance:

Ryan Bourque, Environmental Scientist (ES), California Department of Fish and Wildlife (CDFW)

David Manthorne, ES, CDFW

Steven Hall, ES, Division of Water Rights (DIV)

Connor McIntee, ES, North Coast Regional Water Quality Control Board (NCRWQCB) Staff, California Department of Food and Agriculture (CDFA)

Multiple Law Enforcement Officials (LEO), HCSO

Multiple LEOs, CAMP

Multiple LEOs, CDFW

Background/Objective:

North Coast Regional Water Board (Regional Water Board) staff participated with staff of the Humboldt County Sheriff's Office (HCSO), California Department of Fish and Wildlife (CDFW), State Water Board's Division of Water Rights (DIV), California Department of Food and Agriculture (CDFA), and personnel from various law enforcement agencies in four days of inspections of multiple cannabis cultivation sites in Humboldt County, on August 5-8, 2019.



### **Inspection Observations:**

On August 5, 2019, I inspected the subject property. Figure 1, above, is a site map showing the inspection points discussed below. Development on the parcel includes one area that was being used for cannabis cultivation at the time of the inspection (GH1-13), water supply infrastructure used for irrigating cannabis plants, including an offstream impoundment and water storage tanks, as well as a network of connecting roads and related road infrastructure, including four stream crossings.

GH1-13 is located along the southern portion of the property, adjacent to the main residence (photos 1-2). GH1-13 consists of an approximately 40,510-square foot clearing with cannabis cultivation in thirteen greenhouses. In this area I observed refuse, cultivation-related soil amendments and waste, and fertilizer, uncovered and/or uncontained. The cleared area associated with GH1-13 is approximately 25 feet from a class III watercourse, presenting a moderate threat of discharge of waste to waters of the state.

Immediately east of GH1-13, I observed an off-stream impoundment, P1 (Photos 3-7). P1 receives water from a ditch relief channel coming from an access road that extends off of the property to the east. The spillway consists of a cut section of the impoundment with no armoring. The spillway leads towards the access road immediately below the impoundment and flow coming from the spillway appears to dissipate within the cultivation area, GH1-13. Along the berm of P1, I observed significant tension cracking, and sloughing along the fill face. From my observations, it is likely that without significant remediation, the impoundment has a high potential of catastrophic failure, likely creating a significant discharge into the cultivation area, GH1-13, and delivering to the class III watercourse just downslope from the impoundment and cultivation area.

Throughout the parcel, I observed a network of roads, and in several places throughout the road system, I observed signs of poor design, including extended inboard ditches, and signs of erosion, including rilling and rutting. On the main access road, uphill from the main residence, towards the northern extent of the parcel, I observed a watercourse crossing, C1 (Photos 8-9) along a class III watercourse. C1 consists of a class III drainage that has been diverted into a road ditch, where it travels to the next stream crossing along the road.

Farther south along the main access road, I observed a second, culverted, watercourse crossing, labeled C2 on Figure 1 (photo 10-11). The culvert at C2 is an 18" corrugated metal pipe (CMP) with a perched outlet that is unarmored and shows signs of erosion in the fill and channel below the outlet.

Continuing south on the access road, I observed a third, culverted, watercourse crossing, C3, along a class III watercourse (Photos 12-13). C3 consists of a 24" CMP with a perched outlet that is unarmored and shows signs of erosion in the fill and channel below the outlet.

Farther south along the main access road, just north of GH1-13, I observed a fourth, culverted, watercourse crossing (14-18). C4 consists of a CMP that is almost completely buried by sediment that delivered from a landslide upstream of the crossing. At this site, I observed evidence of recent grading within the channel to push delivered material from the landslide back upstream in the watercourse, as well as to the side of the channel, on the edge of the access road just north of the crossing. The overall area associated with the stream crossing and associated grading is approximately 240 square feet and, conservatively, the depth of earthen material placed in the watercourse was approximately 6 inches.

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
GH1-13	Cannabis cultivation area	13 greenhouses with active cannabis cultivation, soils, trash, fertilizer	Cannabis cultivation/discharge of waste without a report of waste discharge and/or coverage under State Water Board regulatory order	1-2
C1	Watercourse Crossing	watercourse crossing inadequately installed and/or maintained	Threatened discharge of waste to waters of the State	8-9
C2	Watercourse Crossing	watercourse crossing inadequately installed and/or maintained	Threatened discharge of waste to waters of the State	10-11
C3	Watercourse Crossing	watercourse crossing inadequately installed and/or maintained	Threatened discharge of waste to waters of the State	12-13

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
C4	Watercourse Crossing	watercourse crossing inadequately installed and/or maintained	Threatened discharge of waste to waters of the State	14-18
P1	Off-stream impoundment	offstream earthen dam impoundment	Threatened discharge of waste to waters of the State.	3-7

**A comparison of conditions observed on the site with categories of activities typically associated with water quality concerns at cannabis cultivation sites:**

1. Site maintenance, erosion control and drainage features: As noted above, I observed inappropriately designed roads, including extended inboard ditches, which exhibited signs of erosions, including rilling and rutting.
2. Stream crossing maintenance and improvement: As mentioned above, I observed 4 stream crossings that were inappropriately sized, installed, and/or maintained and represent a threat to water quality.
3. Riparian and wetland protection and management: I observed one location where cannabis cultivation activities were located within 25 feet of a watercourse, presenting a threat to riparian areas and water quality.
4. Spoils management: I observed no water quality concerns relating to spoils management.
5. Water storage and use: I observed one off-stream impoundment that lacked a stable over/outflow conveyance structure, and whose berm appeared unstable and a potential threat of catastrophic failure.
6. Irrigation runoff: I observed no water quality concerns relating to irrigation runoff.
7. Fertilizers and soil amendments: I observed multiple locations where fertilizers and soil amendments were uncovered and/or uncontained, and in locations where they pose a significant threat to water quality.
8. Pesticides: I observed no water quality concerns relating to storage or use of pesticides.

9. Petroleum products and other chemicals: I observed no water quality concerns relating to storage or use of petroleum products and other chemicals on the property.

10. Cultivation-related wastes: I observed multiple locations where cultivation-related wastes were uncovered and/or uncontained.

11. Refuse and human waste: I observed multiple locations where refuse was uncovered and/or uncontained.

### **Recommendations:**

1. Retain a licensed professional to inventory, assess, and develop a workplan and schedule to implement measures to ensure that all developed features, roads, watercourse crossings, and cultivation areas throughout the Property are corrected, restored, and/or maintained in conditions that prevent or minimize erosion, sediment transport/delivery, and adverse impacts to water quality and beneficial uses. Include measures to ensure that unstable features caused or affected by onsite development and operations are removed or otherwise protected so as to minimize the potential for these features to cause adverse impacts to water quality and beneficial uses. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.
2. In the case that the landowner intends to keep or replace the impoundment observed at location P1, ensure that the assessment described under recommendation 1., above, includes review by an appropriately qualified, licensed professional, certifying that the impoundment meets, or specifying necessary work to ensure that the impoundment will meet the following standards:
  - Interior and exterior embankment slopes are no steeper than a 2:1 ratio
  - 90% compaction of earthen slopes
  - The pond must have a liner. If a geosynthetic membrane liner is deemed unacceptable for biological resources, then a proper dry bentonite application may be proposed, including specifications and oversight on bentonite amount, application, mix with soil, hydration, and compaction.
  - The impoundment must have no discernible cracks in any portion of the berm.
  - The impoundment must be designed, constructed, and maintained to ensure a 2-foot elevational freeboard above the outlet structure.
  - The outlet structure must have a minimum capacity adequate to accommodate the expected 100-year peak inflow plus debris.

- A stability analysis must demonstrate that the factor of safety for the critical slope is at least 1.5 under dynamic conditions and include a description of the method used to calculate the factor of safety and a description of the assumptions used in the stability analysis.
- 3. Work with CDFW and the State Water Resources Control Board's Division of Water Rights (DIV) to determine and secure any applicable permits or licensing required for surface water diversion, storage, and use on the site. If the existing surface water diversions do not meet applicable CDFW or DIV requirements, remove diversion infrastructure from surface waters and ensure that restoration plans developed pursuant to Recommendation 1, above, include provisions for restoring any instream or riparian disturbance associated with this features or removal thereof.
- 4. Prior to conducting any instream work associated with recommendation 1, above, submit to the Regional Water Board an application for Clean Water Act section 401 water quality certification, and secure approval from the Regional Water Board.

The 401 Application may be found at the following hyperlink:

[https://www.waterboards.ca.gov/northcoast/water\\_issues/programs/wqc\\_docs/031616\\_401-Application.pdf](https://www.waterboards.ca.gov/northcoast/water_issues/programs/wqc_docs/031616_401-Application.pdf)

- 5. Collect and dispose of or contain all refuse and cultivation-related wastes in a location and manner so as to minimize potential for these wastes to enter or be transported into receiving waters.
- 6. Store and contain all chemicals, including petroleum, fertilizer and/or pesticides properly to prevent spillage and discharge to receiving waters. Provide secondary containment for all petroleum products.
- 7. If the property owner and/or tenant(s) choose to continue to cultivate cannabis, enroll for coverage under and take steps to comply with the requirements of the CANGO (Order WQ 2017-0023-DWQ, General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities). More information about the CANGO can be found at this hyperlink:

[https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/docs/finaladop tedcango101717.pdf](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/finaladop tedcango101717.pdf)

8. In the event that the property owner and/or tenant(s) propose in the future to develop or use the Property in a manner or method that will or may result in a discharge of waste to waters of the state in the future, staff recommend that the owner(s)/tenant(s) be aware of and comply with relevant regulatory requirements for water quality protection. For example, Water Code section 13260 requires that a person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system shall file with the appropriate regional board a report of the discharge. Further, Water Code section 13264 states, in part: "No person shall initiate any new discharge of waste or make any material changes in any discharge...prior to the filing of the report required by Section 13260." In addition, projects involving the disturbance of an acre or more of land are subject to regulation under the State Water Board's Construction General Stormwater permit, and projects involving dredge or fill in waters of the United States are subject to regulation under Clean Water Act section 401. You may find further information about Water Board permits that may apply to proposed site development or land use activities at this hyperlink:

[https://www.waterboards.ca.gov/northcoast/water\\_issues/programs/permit/](https://www.waterboards.ca.gov/northcoast/water_issues/programs/permit/)

#### **Enforcement Discretion:**

The observations in this report will be assessed for violations of the California Water Code. The Regional Water Board and the State Water Board reserve the rights to take any enforcement action authorized by law.

#### **PHOTO APPENDIX**



Photo 1: GH1-13



Photo 2: Uncontained fertilizer mixing tank on top of uncontained soil amendments within GH1-13 complex



Photo 3: P1



Photo 4: Tension cracking and sloughing on the fill face of P1



Photo 5: Sloughing of fill face material along P1 berm



Photo 6: Spillway of P1



Photo 7: Deep tension cracks along berm of P1



Photo 8: Channel upstream of C1 diversion



Photo 9: Inboard ditch carrying CIII channel conveyance from C1 diversion point



Photo 10: Inlet of C2

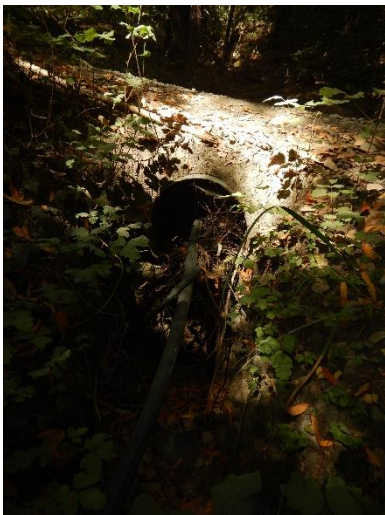


Photo 11: Outlet of C2



Photo 12: Inlet of C3



Photo 13: Outlet of C3



Photo 14: Buried outlet of C4 with recent pushed, loose, fill around the culvert



Photo 15: Buried outlet of C4



Photo 16: Grading upstream of C4 in channel



Photo 17: Picture of native channel upstream of C4 above graded area, with graded area visible below.



Photo 18: Buried inlet of C4