



North Coast Regional Water Quality Control Board

October 11, 2019

David Phillips
Triple K Family Trust
P.O. Box 1242
Laytonville, CA 95454

Certified Mail No. 7016 2710 0000 2635 9384

Dear Mr. Phillips:

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Cannabis Cultivation, and Transmittal of Inspection Report for July 15, 2019, Inspection of Mendocino County Assessor's Parcel No. 032-230-32

File: Cannabis Inspections, Mendocino County, 2019, 190715 David Phillips and Triple K Family Trust 032-230-32, CIWQS Place ID No. 859868

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) sections 13260 and 13264

Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1 Prohibitions 1 and 2

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 July 15, 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

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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 (July 15, 2019 Inspection 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 July 15, 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. Staff also observed violations of Water Code sections 13260, 13264, and Basin Plan section 4.2.1 Prohibitions 1 and 2 at the Property locations identified as inspection points 1, 2, 3, 5, 6, and 11-14 in the July 15, 2019, inspection report.

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/

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.

Water Code section 13264 states, in relevant part:

(a) 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 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

- (1) The issuance of waste discharge requirements pursuant to Section 13263.

Failure to comply with Water Code sections 13260 and 13264 may result in an administrative civil liability under Water code sections 13261 and 13265 not to exceed \$1,000 per violation for each day in which each violation occurs.

F. Inspection Report Recommendations

As mentioned above, the July 15, 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 Maurice Washington of your intentions, plan, and schedule to implement recommendations in the inspection report. Maurice can be reached at (707)576-2831 or, by email at Maurice.Washington@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 Maurice Washington at the telephone number or email above. You may also contact me at Diana.Henrioulle@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 Henrioulle, P.E.
Enforcement Unit

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Attachments: Attachment A – Regulatory Citations
July 15, 2019, Water Quality Inspection Report

cc: Mendocino County

Trent Taylor, Daniel Knapp, Brian Webb
taylor@mendocinocounty.org, knappdj@mendocinocounty.org,
webbbb@mendocinocounty.org

Department of Fish and Wildlife

Angela Liebenberg, Angela.Liebenberg@wildlife.ca.gov

North Coast Regional Water Quality Control Board

Kason Grady, Kason.Grady@waterboards.ca.gov

California Department of Food and Agriculture, CalCannabis Bureau

Tabatha Chavez, Tabatha.Chavez@cdfa.ca.gov

State Water Resources Control Board Division of Water Rights

Stormer Feiler, Stormer.Feiler@waterboards.ca.gov
Renee Avila, Renee.Avila@Waterboards.ca.gov
Cann Doan, Cann.Doan@waterboards.ca.gov

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	Prohibits “[t]he discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses.”
Basin Plan Section 4.2.1, Prohibition 2	Prohibits “[t]he placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses.”
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 style="padding-left: 40px;">(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 style="padding-left: 40px;">(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)	“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).”
California Water Code Section 13264 (a)	“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:”

Regulatory Section	Citation
California Water Code Section 13265(a)	“Any person discharging waste in violation of Section 13264 , after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.”
California Water Code Section 13350	“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”



North Coast Regional Water Quality Control Board

TO: Diana Henriouille

FROM: Maurice Washington

DATE: September 27, 2019

Inspection Report for July 15, 2019 Warrant Inspection Mendocino County Assessor's Parcel Number 032-230-32

File: Cannabis Program Inspections, Mendocino County, July 2019 MCSO
Inspections, David Phillips and Triple K Family Trust, CIWQS Place ID. 859868

Property information:

County: Mendocino

Physical address: 15000 Simmerly Road

APN: **032-230-32**

Owner: David Phillips/
Triple K Family Trust
P.O. Box 1242
Laytonville, CA 95454

Transaction History: Last sale April 15, 2011; seller Debphi Inc.

Size: 101.88 acres

Watershed: Eel River Hydrologic Unit; Middle Eel River Hydrologic Area; Spy Rock Hydrologic Subarea (HU/HA/HSA 111.42; Table 2-1, Water Quality Control Plan for the North Coast Region).

Aerial Imagery Notes: Roads and a structure visible from 1993 to present. Additional cleared areas visible in June 2009. Patterns indicating possible cannabis cultivation at three locations visible in September 2010. Additional clearing in the three cultivation areas and adjacent roads, and a fourth cultivation area visible in July 2012. Pond (scraped hole) and hoop house visible in May 2014.

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Regulatory status with the Regional Water Board:

Site Development: N/A

Applicable programs: 401 Water Quality Certification

Onsite activities/operations: N/A

Applicable programs: Cannabis Cultivation General Order No. WQ 2019-0001-DWQ

Inspection information:

Date/time: July 15, 2019, 8:50 am

Type: Mendocino County Sheriff's Office Warrant Inspection

Attendance:

Maurice Washington, Water Resource Control Engineer (WRCE), North Coast Regional Water Quality Control Board

Renee Avila, Environmental Scientist (ES), State Water Board Division of Water Rights (DIV)

Cann Doan, ES, DIV

Angela Liebenberg, Senior ES, California Department of Fish & Wildlife

CalCannabis Bureau

Mendocino County Sheriff's Office

California National Guard

Cal Fire

U.S. Forest Service

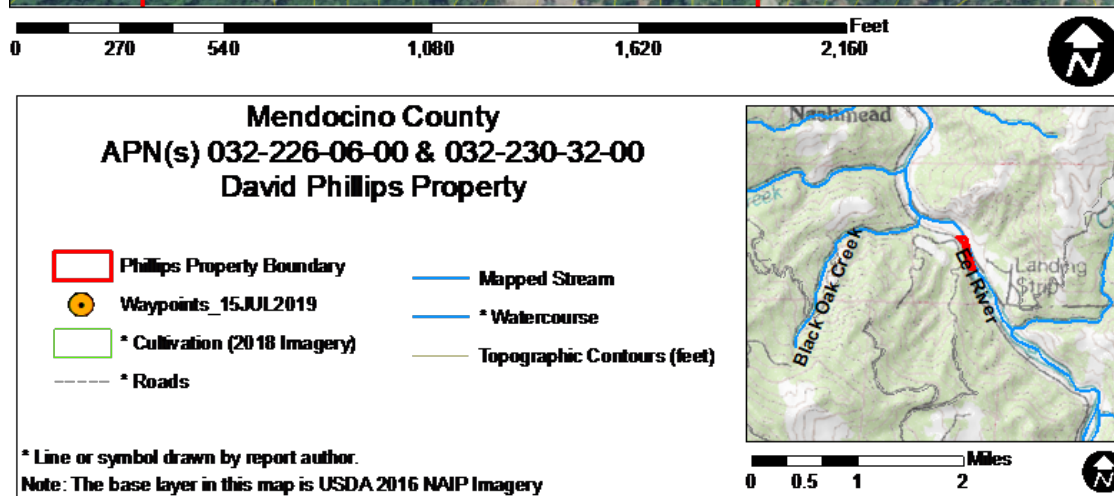
Bureau of Land Management

Background/Objective:

North Coast Regional Water Board (Regional Water Board) staff participated with staff of the Mendocino County Sheriff's Office (MCSO), California Department of Fish and Wildlife (CDFW), CalCannabis Bureau, State Water Board's Division of Water Rights (DIV), and personnel from various law enforcement agencies in four days of inspections of multiple cannabis cultivation sites in Mendocino County, on July 15-18, 2019.

Inspection objectives for Regional Water Board staff included observing site development and activities and identifying and assessing onsite features or conditions that are causing or may cause adverse impacts to the quality and beneficial uses of receiving waters, including surface and ground water.

Inspection Map



Inspection Observations:

On July 15, 2019, I inspected the subject property. The inspection map, above, shows the inspection points identified and discussed below.

Development on the property includes several clearings and a road network. I observed four clearings with cannabis cultivation (outlined on the inspection map and identified for purposes of this report as cultivation areas #1 through #4, from east to west across the parcel). Disturbance associated with each cannabis cultivation area was more than 2,000 square feet.

At inspection points 1 and 2, along the access road, I observed rilling. I observed no water quality concerns at cultivation area #1. At cultivation area #2, I observed an uncovered/uncontained pile of used potting soil (photo 11); delivery potential from this location appeared to be low. I observed no water quality concerns at cultivation area #3. At inspection points 5 and 6 along the access road between cultivation areas #3 and #4, I observed a dry ford crossing on a Class III watercourse with evidence of sediment discharge from the road into the watercourse (photo 3). At inspection point 7, south of cultivation area #4, I observed an off-stream water catchment pond and a large water storage tank (photos 4 and 5). A nearby surface water diversion (photo 14) appeared to be the main water source for the Property, feeding water to a rubber spillway that drained into the pond.

On the access road northwest of the pond, I observed two culverted watercourse crossings (inspection points 12 and 14) that appeared to be undersized, incorrectly installed and/or maintained, and causing or resulting in sediment discharges to receiving waters. At these crossings, I also observed evidence of significant sediment discharges from the road and from the fill prisms surrounding the culverts (photos 8 and 9).

Throughout the Property, I observed cultivation waste (i.e., used irrigation lines, fertilizer bottles, netting) and other waste materials. At cultivation area #4, I observed an uncovered/uncontained pile of used potting soil, but delivery potential from this area appeared to be low. Near cultivation area #4, at inspection point 8, I observed petroleum products, chemical containers, and trash, uncovered/uncontained, on the ground. At inspection points 9 and 10, behind a farm shed, I observed a generator and a trash pit, on the ground, uncovered and uncontained.

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
1	Access Road	Rill erosion on the outboard edge of the access road.	Discharges and/or threatened discharges of waste into waters of the State	1
2	Access Road	Rill erosion	Discharges and/or threatened discharges of waste into waters of the State	
3	Active cannabis cultivation	Cannabis cultivation area #2, approximately 5,954 ft ² of cultivation area. Cultivation areas #1, 3, & 4 were all over 2,000 ft ² .	Cannabis cultivation/discharge of waste without a report of waste discharge and/or coverage under State Water Board regulatory order	2
4	Spoils pile	Used soil pile in Cultivation area #2	N/A	11
5 - 6	Watercourse Crossing	Unmaintained ford crossing on a Class III watercourse.	Earthen material placed into and where it can enter surface waters. Discharge of waste to waters of the State.	3
7	Catchment pond	Off stream catchment pond with water sourced from an unpermitted POD.	N/A	5

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
8	Petroleum products and other chemicals	Fertilizers, insecticides, other chemicals, and trash on the ground, uncovered/uncontained.	Threatened discharge of waste to waters of the State.	12
9	Generator	Generator located at the back of the farm shed, on the ground, without secondary containment.	Threatened discharge of waste to waters of the State.	6
10	Trash Pit	Trash pit located at the back of the farm shed, consisting of empty fertilizer bottles and other trash.	Threatened discharge of waste to waters of the State.	7
11, 13	Watercourse Crossing	Erosion from the road prism directly discharging into watercourse	Discharges of waste into waters of the State	9
12	Watercourse Crossing	Undersized, unpermitted, misaligned, 12-inch shot gunned culvert with road fill discharged into channel of watercourse	Discharges and/or threatened discharges of waste into waters of the State	8
14	Watercourse Crossing	Buried inlet of an undersized, unpermitted, and misaligned 12-inch culvert	Discharges of waste into waters of the State	13

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 observe two locations along the access road where erosion from the road surface and/or watercourse crossing fill prisms was resulting in sediment discharges to receiving waters.

2. Stream crossing maintenance and improvement: As noted above, I observed two stream crossing areas which produced sediment discharge into two watercourses on the parcel.
3. Stream and wetland buffers: I did not observe water quality issues associated with stream and wetland buffers.
4. Spoils management: As mentioned above, I observed several soil piles throughout the parcel which were not covered/contained.
5. Water storage and use: As mentioned above, I observed a point of diversion that appeared to be the main water source for this parcel. This diversion also fed a water catchment pond, discharging onto a rubber spillway into the pond. In addition, I observed a large water storage tank at the catchment pond.
6. Irrigation runoff: I did not observe evidence of irrigation runoff during the inspection.
7. Fertilizers and soil amendments: I did not observe a designated fertilizers and soil amendments storage area. I observed fertilizers, soil amendments, and empty fertilizer bottles on the ground.
8. Pesticides: I observed pesticides on the ground, without cover/containment, but I observed no direct water quality concerns associated with these materials.
9. Petroleum products and other chemicals: I observed gasoline and motor oil canisters throughout the parcel, many sitting on the bare ground.
10. Cultivation-related wastes: I observed cultivation waste throughout the parcel, including netting, irrigation line, and fertilizer bottles.
11. Refuse and human waste: As noted above, I observed a trash pit behind the farm shed. I did not identify water quality issues associated with storage or disposal of human waste.

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. Retain a qualified professional to develop a workplan and schedule to remove the sediment and road fill associated with Map Points: 5, 6, 11 - 14 and restore affected watercourse channels to their natural state. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.
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 diversion does 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 these features or removal thereof.
4. Prior to conducting any instream work associated with the above recommendations 1, 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

5. 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 2019-0001-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/finaladopedcango101717.pdf

6. 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/

7. 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.
8. 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.
9. 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:
 - a. Interior and exterior embankment slopes are no steeper than a 2:1 ratio
 - b. 90% compaction of earthen slopes
 - c. 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.
 - d. The impoundment must have no discernible cracks in any portion of the berm.
 - e. The impoundment must be designed, constructed, and maintained to ensure a 2-foot elevational freeboard above the outlet structure.
 - f. The outlet structure must have a minimum capacity adequate to accommodate the expected 100-year peak inflow plus debris.
 - g. 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.

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 – Rill erosion on access road to property.



Photo 2 – View of active cannabis cultivation area #2.



Photo 3 – View of sediment discharged into watercourse.



Photo 4 – Water storage tank and view of water catchment pond.



Photo 5 – Water catchment pond.



Photo 6 – View of generator.



Photo 7 – View of garbage pit with fertilizer eroding bottles, and other cultivation waste.



Photo 8 – Watercourse crossing and discharging sediment into the watercourse.



Photo 9 – Undersized shotgun culvert with road fill discharged into the watercourse.

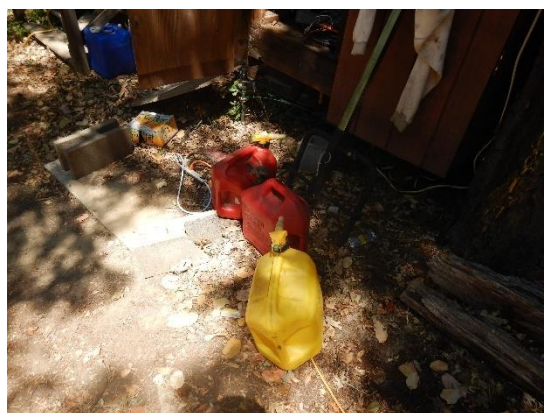


Photo 10 – Petroleum products stored on the bare ground.



Photo 11 – Soil and growth media spoils piles.



Photo 12 – Petroleum products, chemicals, and trash at the cultivation site.



Photo 13 – Buried culvert inlet.



Photo 14 – Point of diversion from a watercourse providing water for cultivation on the parcel.