



North Coast Regional Water Quality Control Board

October 14, 2019

Certified Mail No. 7016 2710 0000 2635 9407

Courtney Fleming
Tyler Meenan
P.O. Box 464
Arcata, CA 95518

Dear Mr. Meenan and Ms. Fleming:

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Cannabis Cultivation, and Transmittal of Inspection Report for August 6, 2019, Inspection of Humboldt County Assessor's Parcel No. 208-221-009

File: Cannabis Inspections, Humboldt County, 2019, 190806 Courtney Fleming and Tyler Meenan 208-221-009, CIWQS Place ID No. 825152

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 August 6, 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.

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5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | www.waterboards.ca.gov/northcoast

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 6, 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 August 6, 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 and 13264 at the Property locations identified as Crossings C1- C5, in the August 6, 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 August 6, 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 Ermias Berhe of your intentions, plan, and schedule to implement recommendations in the inspection report. Ermias can be reached at (707) 445 6128 or by email at Ermias.Berhe@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 Ermias Berhe at the phone number or email above. You may also contact me at Diana.Henriouille@waterboards.ca.gov or by phone 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

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Attachments: Attachment A – Regulatory Citations
August 6, 2019, Water Quality Inspection Report

cc: Department of Fish and Wildlife
Kalyn Bocast, Kalyn.Bocast@wildlife.ca.gov
David Manthorne, David.Manthorne@wildlife.ca.gov

North Coast Regional Water Quality Control Board
Kason Grady, Kason.Grady@waterboards.ca.gov

State Water Resources Control Board Division of Water Rights
Steven Hall, Steven.Hall@waterboards.ca.gov
Stormer Feiler, Stormer.Feiler@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: Ermias Berhe

DATE: August 28, 2019

Inspection Report for August 6, 2019, Warrant Inspection Humboldt County Assessor's Parcel Number 208-221-009-000

File: Cannabis Program Inspections, Humboldt County, August 2019 HCSO
Inspections, Courtney Fleming, CIWQS Place ID. 825152

Property information:

County: Humboldt

Physical address: Unknown address, Approximately 2.7 miles north of Dinsmore and
3300 ft north east of the intersection of Anderson Ford Road and Mad River trail

APN: **208-221-009-000**

Owner: Courtney Fleming, Tyler Meenan

Transaction History: Last sale September 30, 2015; seller Brandon W Marcel, Kara C
Rogina

Size: 40 acres.

Watershed: Mad River Hydrologic Unit; Butler Valley Hydrologic Area; Eightmile Ridge
Hydrologic Subarea (HU/HA/HSA 109.30; Table 2-1, Water Quality Control Plan for the
North Coast Region).

Aerial Imagery Notes (Google Earth Pro): Visible signs of site development activities
related to cannabis cultivation are visible over the period between June 2009 and July
2015, including clearing on the eastern portion of the parcel and development of access

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roads from west to east. Signs suggestive of outdoor cannabis grow are visible in May 2014 imagery, and hoop houses are visible in August 2015 imagery. A bare clearing is visible in May 2016 imagery, with no signs suggesting active cannabis cultivation activity.

Regulatory status with the Regional Water Board:

Site Development: N/A

Applicable programs: Water Quality Certification

Onsite activities/operations: N/A.

Applicable programs: Cannabis cultivation waste discharge regulatory program.

Inspection information:

Date/time: August 06, 2019

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

Attendance:

Kalyn Bocast, 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)

Ermias Berhe, Engineering Geologist, 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 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

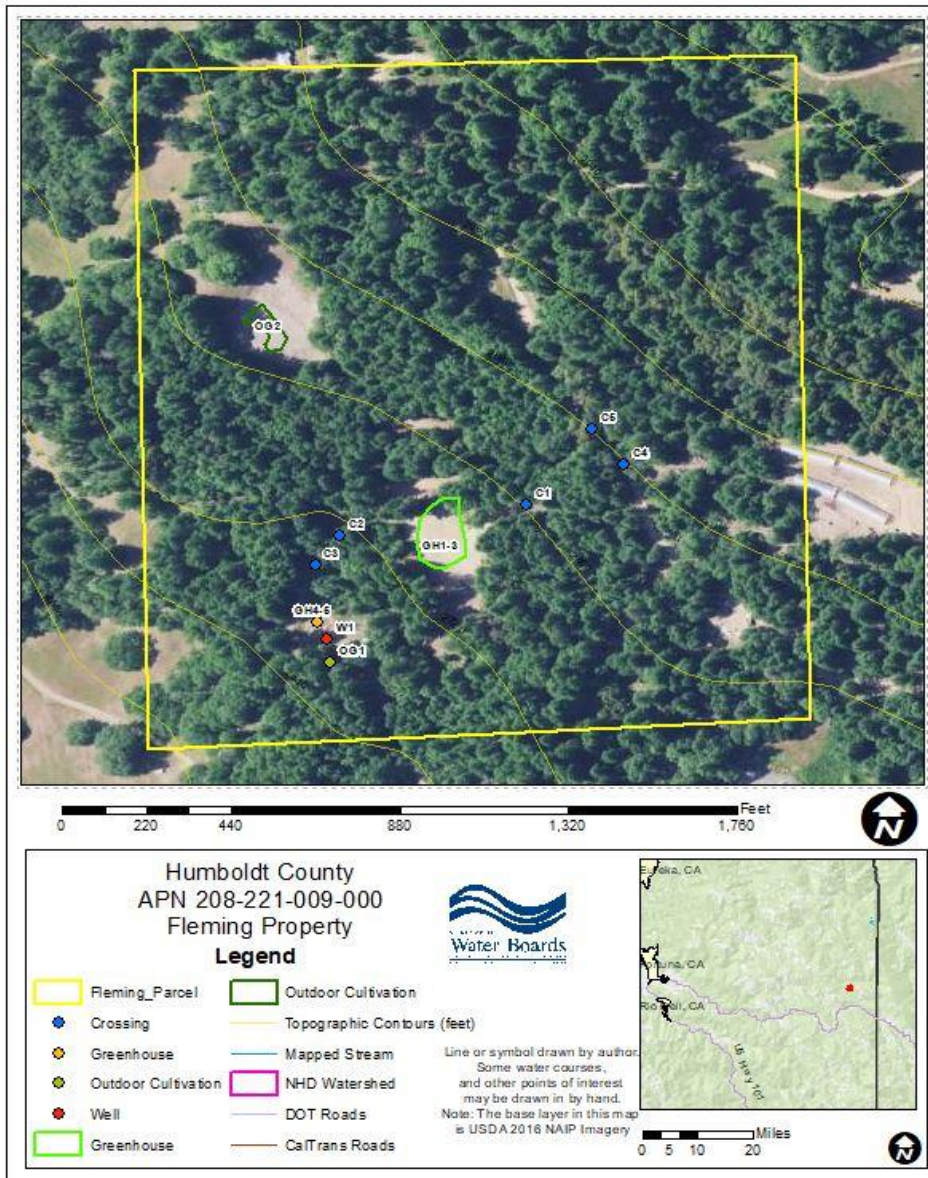


Figure 1: Property Map with inspection points

Inspection Observations:

On August 6, 2019, I inspected the subject property. Figure 1, above, shows the inspection points discussed below, including inspection points C1, C2, C3, C4, C5, OG1, OG2, GH1-3, GH4-5 and W1. In addition to those features marked on the

inspection map, we observed and photo-documented green houses, human waste, soil amendment spoils, and other issues of water quality concern.

GH1-3 (photo 1), the first cultivation area we inspected, is located about 500 feet north from the southern property line, accessed via the southeastern access road. This area has a flat topography covering an approximate area of 10,700 square feet, with three hoop houses. In this area, I observed uncontained trash, plastic containers, soil amendment spoils, plastic fencing nets, and other irrigation-related products and wastes (photos 2,3).

OG1 (photo 4) is located approximately 200 feet southwest of GH1-3(photo 4) with an area of approximately 350 square feet. Approximately 100 feet north of OG1 I observed GH4-5 (Photo 6), two greenhouses with an area of approximately 525 square feet. OG1 appeared to be mostly used for a nursery. I also observed plastic irrigation pipes, a battery, toilets, plastic containers, a generator, and human waste in the vicinity of the cultivation area (photos 5,7,13).

I observed another outdoor cultivation area OG2 (photo 8) on the northwestern part of the property, with an area of approximately 4,200 square feet. In the vicinity of this cultivation area I observed plastic net fencing, soil amendment spoils, and irrigation-related features, including storage tanks and plastic pipes (photo 17).

In addition to the cannabis cultivation areas, I observed stream crossings C1, C2, C3, C4, C5. Crossing C1 (photo 9) is about 500 feet from the southeastern access road to the property. The road is built through a Class III watercourse at this location, with no constructed feature to provide stable conveyance for stream flows. I observed evidence of sediment delivery into the watercourse at this crossing. C2 (Photo 10) is a Class III stream crossing on the western access road, approximately 200 feet to the west of GH1-3, with no visible water conveyance structure. I observed evidence of sediment discharge into the watercourse. C3 is approximately 100 ft southwest of C2 (photo 11), another stream crossing without any stream conveyance structure, delivering sediment to the class III watercourse. On the eastern part of the property access road, I observed two Class III crossings, C4 (Photo 15) and C5 (photo 16), within 100 feet of each other. I observed evidence of sediment delivery at both crossings, and there was no indication of a stable stream conveyance feature at either crossing.

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
GH1-3	Cannabis cultivation area	3 greenhouses with active cannabis cultivation, uncontained trashes, plastic containers, spoils of soil amendments, plastic fencing nets and other irrigation related activities.	Cannabis cultivation without report of waste discharge and/or enrollment in Water Boards cannabis program. Threatened discharge of waste to water of the state	Photos 1,2,3
OG1	Cannabis cultivation area	Outdoor cultivation area with active cannabis cultivation, uncontained irrigation plastic pipes, battery, toilets, plastic containers, generator and human waste	Cannabis cultivation without report of waste discharge and/or enrollment in Water Boards cannabis program Threatened discharge of waste to water of the state	Photo 4, 5
GH4-5	Cannabis cultivation area	2 green houses with active cannabis cultivation	Cannabis cultivation without report of waste discharge and/or enrollment in Water Boards cannabis program	Photo 6
OG2	Cannabis cultivation area	Outdoor cultivation area with active cannabis cultivation	Cannabis cultivation without report of waste discharge and/or enrollment in Water Boards cannabis program	Photo 8

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
C1	Stream crossing	Road built through Class III water course; evidence of sediment delivery.	<p>Construction- related earthen material placed in or where it can enter surface water.</p> <p>Dredge/fill in waters of the State.</p> <p>Discharge and threatened discharge of waste to receiving waters.</p>	Photo 9
C2	Stream crossing	Road built through Class III water course; evidence of sediment delivery.	<p>Construction-related earthen material placed in or where it can enter surface water.</p> <p>Dredge/fill in waters of the State.</p> <p>Discharge and threatened discharge of waste to receiving waters.</p>	Photo 10
C3	Stream crossing	Road built through Class III water course; evidence of sediment delivery.	<p>Construction-related earthen material placed in or where it can enter surface water.</p> <p>Dredge/fill in waters of the State.</p> <p>Discharge and threatened discharge of waste to receiving waters.</p>	Photo 11

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
C4	Stream crossing	Road built through Class III water course; evidence of sediment delivery.	Construction-related earthen material placed in or where it can enter surface water. Dredge/fill in waters of the State. Discharge and threatened discharge of waste to receiving waters.	Photo 15
C5	Stream crossing	Road built through Class III water course; evidence of sediment delivery.	Construction-related earthen material placed in or where it can enter surface water. Dredge/fill in waters of the State. Discharge and threatened discharge of waste to receiving waters.	Photo 16
W1	Well	Ungauged ground water well	NA	Photo 14

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: I observed a poorly designed access road with a potential of delivering sediment to the waters of the state.
2. Stream crossing maintenance and improvement: I observed 5 stream crossings (C1, C2, C3, C4, C5) on the access road to the property; as discussed above, all were constructed without any structure or design to protect water quality. All five crossings are causing or resulting in active discharge of sediment to class III watercourses.

3. Stream and wetland buffers: I observed no evidence of water quality concerns associated with proximity of cultivation areas to streams or wetlands.
4. Spoils management: I observed no evidence of water quality issues associated with spoils management.
5. Water storage and use: I observed no evidence of water quality issues associated with water storage and use.
6. Irrigation runoff: I observed no evidence of water quality issues associated with crop irrigation practices.
7. Fertilizers and soil amendments: As mentioned above, I observed uncovered and/or uncontained soil amendment spoils and plastic containers near cultivation areas OG1, OG2, and GH1-3.
8. Pesticides: I observed no evidence of water quality concerns associated with storage and use of pesticides.
9. Petroleum products and other chemicals: I observed no evidence of water quality concerns associated with storage and use of petroleum and other chemicals.
10. Cultivation-related wastes: I observed cultivation-related wastes, uncovered and/or uncontained, on OG1, OG2, and GH1-3.
11. Refuse and human waste: I observed cultivation-related refuse and human waste, uncovered and/or uncontained, on OG1, OG2, and GH1-3.

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 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. 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.
3. 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

4. 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/

5. Discontinue use of and dismantle any outhouse/pit toilet features and work with Mendocino County to ensure that all domestic and human wastes are collected and disposed of consistent with applicable County requirements.
6. 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.

7. 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.

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: Greenhouse at inspection point GH1-3



Photo 2: Soil amendment spoils at inspection point GH1-3



Photo 3: Irrigation plastic pipes and uncontained plastic container and fence netting at inspection point GH1-3



Photo 4: Open grows at inspection point OG1



Photo 5: uncontained waste at inspection point OG1



Photo 6: Greenhouses at inspection point GH4-5



Photo 7: Outhouse toilet at inspection point OG1



Photo 8: Open grow at inspection point OG2



Photo 9: Stream crossing at inspection point C1



Photo 10: Stream crossing at inspection point C2

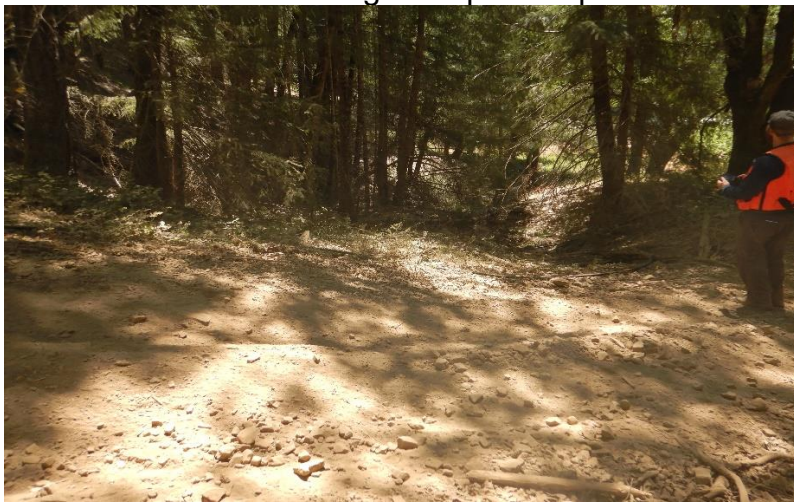


Photo 11: Stream crossing at inspection point C3



Photo 12: Uncovered or uncontained generator at inspection point GH4-5



Photo 13: uncontained human waste at inspection point OG1



Photo 14: Groundwater well at inspection point W1

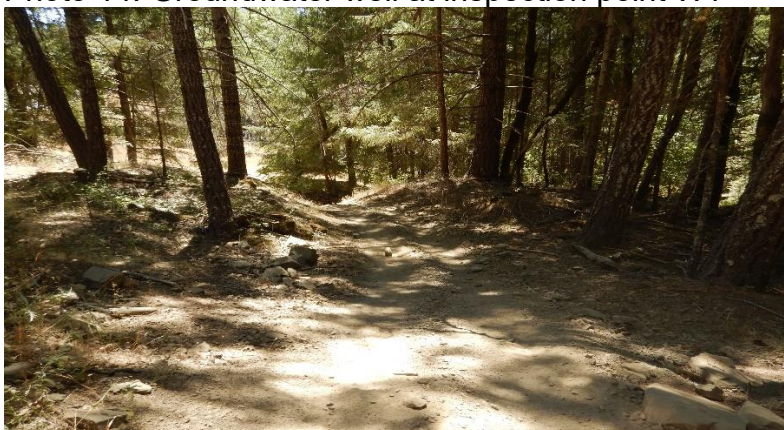


Photo 15: stream crossing at inspection point C4



Photo 16: stream crossing at inspection point C5



Photo 17: water storage tank near to inspection point C4