



North Coast Regional Water Quality Control Board

December 23, 2019

Black Mountain Spring LLC
44911 Highway 101
Laytonville, CA 95454

Certified Mail No. 7016 0750 0001 0048 6719

Dear Sir/Madam:

Subject: Notice of Violation, Directive to Obtain Regulatory Coverage for Cannabis Cultivation, and Transmittal of Inspection Report for July 16, 2019, Inspection of Mendocino County Assessor's Parcel No. 056-490-27

File: Cannabis Inspections, Mendocino County, 2019, 190716 Black Mountain Spring LLC 056-490-27, CIWQS Place ID No. 859924

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):

1. California Water Code (Water Code) sections 13260 and 13264
2. 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 16, 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,

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

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 (July 16, 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 16, 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-2019-0001-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/or Basin Plan section 4.2.1 Prohibitions 1 and 2 at the Property locations identified as 3, 4, 5, 12, and 13 in the July 16, 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**:

- 1) Enroll the property under the Statewide General Order by providing the information required in the online application process. The application can be accessed at this link: 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

- 2) 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

- 3) 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 16, 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.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, the 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
July 16, 2019, Water Quality Inspection Report

cc: Mendocino County

Trent Taylor, Daniel Knapp, Brian Webb
taylor@mendocinocounty.org, knappdj@mendocinocounty.org,
webbb@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: December 10, 2019

Inspection Report for July 16, 2019, Warrant Inspection Mendocino County Assessor's Parcel Number 056-490-27

File: Cannabis Program Inspections, Mendocino County, July 2019 MCSO
Inspections, Black Mountain Spring LLC, CIWQS Place ID. 859924

Property information:

County: Mendocino

Physical address: 50985 Stivers Road, Laytonville, CA 95454

APN: **056-490-27**

Owner: Black Mountain Spring LLC

Transaction History (per LandVision): Last sale July 6, 2015; seller Emily Neuroth.

Size: 21.56 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 (Google Earth Pro): Roads/tracks, pond, and structures visible in earliest available imagery (August 1998). Roads/tracks and clearing patterns continue in the same areas, with varying definition through September 2010 imagery. Row crops of various sizes and a new cultivation area with patterns indicative of cannabis cultivation visible in July 2012 imagery. Hoop house and additional patterns indicative of cannabis cultivation visible in May 2014 imagery. Additional hoop house in August 2014 imagery.

Regulatory status with the Regional Water Board: N/A

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 16, 2019, 9:30 AM

Type: Mendocino County Sheriff's Office Warrant Inspection

Attendance:

Maurice Washington, 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 (CDFW)

Joseph Kermish-Wells, ES, CDFW

Cal Cannabis Bureau

Mendocino County Sheriff Office

California National Guard

Cal Fire

U.S. Forest Service

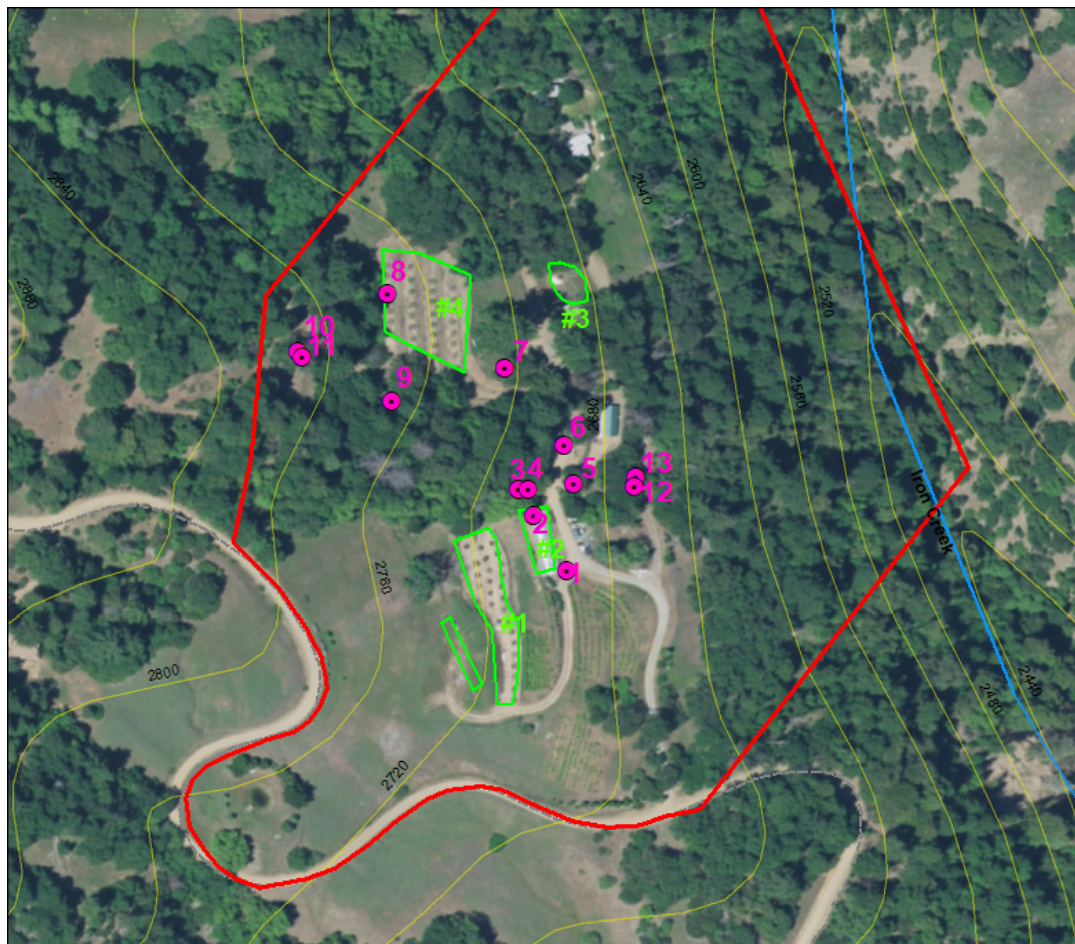
Bureau of Land Management

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), Cal Cannabis 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 16, 2019, I inspected the Black Mountain Springs LLC property. The inspection map above, shows the inspection points identified and discussed below.

Development on the property includes access roads with watercourse crossings; a small vineyard area along the main access road; four cannabis cultivation areas, labeled cultivation area # 1, 2, 3, and 4; a large house at the center of the property; and a smaller house near cultivation area # 3. Each of the four cannabis cultivation areas was larger than 2,000 square feet.

Cannabis cultivation area #1 consisted of a flat grassed upland plateau area with cannabis plants in grow bags. I did not observe any water quality concerns in this area.

At cannabis cultivation area #2, I observed a hoop house full of cannabis plants. I observed a Class III watercourse approximately 40 feet north of the hoop house. Near the southeast corner of the hoop house, at inspection point 1, I observed cultivation waste piled on the outboard edge of the main access road. The waste at this location did not appear to pose a significant threat to receiving waters. At the north end of the hoop house, I observed pesticides sitting on the bare ground (inspection point 2).

Just north of cannabis cultivation area #2, the access road crosses the Class III watercourse with a culverted crossing (inspection points 3/4/5). I observed a diesel generator and a large gas tank at this location (photos 2 and 5). The culvert appeared to be undersized, and I observed sediment and debris accumulated at the culvert inlet and outlet (photos 6 and 7). East of this crossing, a branch of the access road crosses the same Class III watercourse (inspection points 12/13). At this crossing, I observed an undersized culvert with sediment and debris deposits at the inlet, and trash and debris in the watercourse channel downstream of the culvert outlet.

Near the house in the center of the property, at inspection point 6, I observed pesticides, fertilizers, chemicals and other cultivation materials sitting on the bare ground at location where spills/leaks could enter or be transported into receiving waters.

I did not observe any water quality concerns at cultivation areas #3 and #4. On the access road between these two cultivation areas, at inspection point 7, I observed erosional rills in the road surface.

South of cannabis cultivation area #4, I observed two water storage tank areas (inspection point 9 and 10/11). I observed numerous chemical and fertilizer bottles sitting and lying on the ground around the water storage tanks at inspection point 9 stored on the ground (photo 13). The southern edge of flat where inspection point 9 was located was approximately 70 feet from the Class III watercourse moving through the parcel from west to east.

On the hillslopes below the water storage tank area at inspection points 10/11, I observed surface erosion apparently resulting from water overflows/discharges from the water tanks (photos 14 and 15), however I did not observe any water quality concerns.

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
Cannabis cultivation areas #1, 2, 3, and 4	Cannabis cultivation areas	Cannabis cultivation without enrollment in waste discharge regulatory program.	Cannabis cultivation/dischARGE of waste without a report of waste discharge and/or coverage under State Water Board regulatory order	3, 4, 10, 12
2	Pesticides, fertilizers, and chemicals	Pesticides, fertilizers, and gas tank on the ground north of cultivation area #2, approximately 50 feet from Class III watercourse.	Threatened discharge of waste to waters of the state.	8
Cannabis cultivation area #2	Hoop house less than 50 feet of Class III watercourse	Class III watercourse less than 50 feet north of the hoop house.	Threatened discharge of waste to waters of the state.	4
3, 4, 5	Class III watercourse crossing	Undersized culvert with sediment deposits at inlet and outlet. Diesel tank and generator on road just above crossing.	Discharge and threatened discharge of waste to waters of the State. Petroleum products stored at a location where spills/leaks will probably enter or be discharged into waters of the state.	5, 6, 7

6	Pesticides, fertilizers, and chemicals	Pesticide, fertilizers, chemicals and other cultivation materials sitting on bare ground, uncovered/ uncontained.	Threatened discharge of waste to waters of the state.	9
7	Access Road	Rill erosion within the road prism.	Threatened discharge of waste to waters of the state.	11
9, 10, and 11	Water storage areas	Two water storage tank areas. Chemical containers on the ground around the tanks at point 9. Erosional rills on the slope below the tanks at point 10/11.	Threatened discharge of waste to waters of the state.	13 - 15
12 and 13	Watercourse Crossing	Undersized culvert with sediment accumulation in the inlet. Trash and debris in watercourse downstream of culvert outlet.	Discharge threatened discharge of waste to waters of the state.	16 - 18

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 rilling on the access road, with potential for transport/delivery into surface waters.
2. Stream crossing maintenance and improvement: As noted above, I observed two undersized culverted Class III watercourse crossings, with sediment and/or debris deposits in the watercourse channel up- and downstream of each culvert.
3. Stream and wetland buffers: As noted above, cultivation area # 2 is less than 50 feet from a class III watercourse.

4. Spoils management: I observed several piles of used soil media, nutrients, and cultivation debris throughout the site, uncovered and uncontained, though not at locations where they appeared to pose a significant threat to water quality.
5. Water storage and use: I observed a groundwater well, as well as the two above-mentioned water storage tank areas (points 9 and 10/11). I observed rill erosion at the base of the storage tank area at 10/11, resulting from overflows/discharges from the water tanks.
6. Irrigation runoff: I did not observe evidence of irrigation runoff or associated water quality concerns.
7. Fertilizers and soil amendments: I observed fertilizers uncovered/uncontained at a location where they could enter or be transported into receiving waters.
8. Pesticides: As noted above, I observed pesticides uncovered/uncontained and posed a direct water quality concern.
9. Petroleum products and other chemicals: As noted above, I observed a diesel generator and a large gas tank adjacent to the Class III watercourse at the crossing at points 3/4.
10. Cultivation-related wastes: As mentioned above, I observed cultivation-related waste at various locations on the property, but they did not appear to pose a significant threat to water quality.
11. Refuse and human waste: I observed refuse on the ground at various locations throughout the property. Refuse was observed in a class III watercourse at inspection point 13. I did not observe or review human waste containment/disposal features on the property.

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 sediment and debris associated with inspection points 3, 5, 12, and 13, and restore the channel to its natural state. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters. Remove diesel generator from watercourse crossing at inspection point 4.

3. Prior to conducting any instream work associated with recommendations 1 and 2, 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. 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/finaladoptedcango101717.pdf

5. 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/

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.

A. PHOTO APPENDIX



Photo – 1 Cultivation waste (inspection Point 1).



Photo – 2 Diesel generator on a class III watercourse (inspection points 3 & 4).



Photo – 3 Cannabis cultivation area #1.



Photo – 4 Cannabis cultivation area #2.



Photo 5 – Diesel generator above the culvert inlet at inspection point Cannabis cultivation area #2 and fuel tank are visible in this image and are less than 50 feet from the Class III watercourse at this location. (Inspection points 3, 4, and 5)



Photo – 6 Undersized culvert inlet filled with sediment and debris in watercourse. (Inspection points 3,4,5)



Photo – 7 Outlet of undersized culvert at inspection points 3, 4, and 5.



Photo – 8 Pesticide, fertilizer, and sediment, debris, and trash are visible in the netting.



Photo – 9 Storage area with petroleum products, chemicals, cultivation materials.



Photo 10 – Cannabis cultivation area #3.

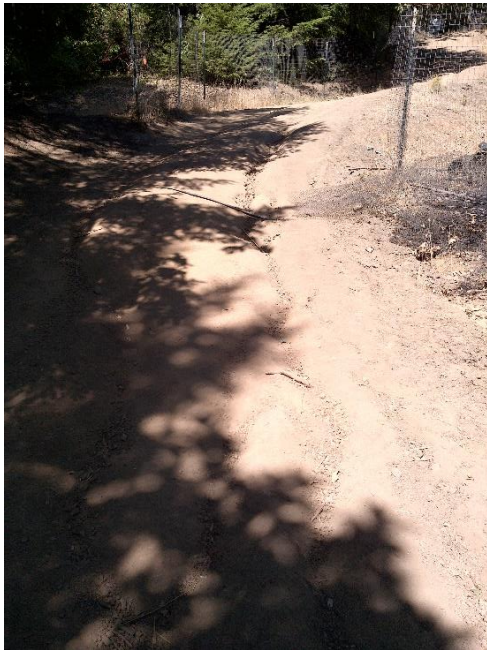


Photo – 11 Rill erosion.



Photo – 12 Cannabis cultivation area #4.



Photo – 13 Secondary tank area with fertilizers and other chemicals on the ground.



Photo – 14 Primary water tank storage area.



Photo – 15 Rill erosion caused by discharge from water storage tanks.



Photo – 16 An undersized culvert with sediment discharge.



Photo – 17 Culvert outlet.



Photo – 18 View of stream channel with trash and debris.