



---

## North Coast Regional Water Quality Control Board

June 24, 2020

John Mahony  
5470 Salmon Creek Road  
Miranda, CA 95553  
[jmahony@asis.com](mailto:jmahony@asis.com)

Certified Mail 7016 2710 0000 2635 9872

John and Jacqueline Mahony Trust  
Attn: John Mahony  
PO Box 166  
Redway, CA 95560

Certified Mail 7016 0750 0001 0048 7167

Stephanie Bowler  
Timberland Resource Consultants  
165 Fortuna Blvd South  
Fortuna, CA 95540  
[sbowler@timberlandresource.com](mailto:sbowler@timberlandresource.com)

Certified Mail 7016 2710 0000 2635 9896

Dear Mr. and Mrs. Mahony:

Subject: **Notice of Violation**

File: Cannabis Program Inspections, Humboldt County, May 7, 2019, Mahony Property. CIWQS: Place ID 842913, Cannabis General Order WDID: 1\_12CC415249

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Humboldt County Assessor's Parcel Numbers: 212-051-028-000, 212-051-026-000, 212-061-028-000 and 212-061-030-000 (the Property).

1. State Water Resources Control Board Order WQ 2019-0000-DWQ General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order) requirement for submitting a Site Management Plan,

---

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

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | [www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)

2. California Regional Water Quality Control Board North Coast Region Order No. 2015-0023 Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region (Regional Cannabis Order) various provisions,
3. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1,
4. The Porter-Cologne Water Quality Control Act (Porter-Cologne, or Water Code) sections 13260, and 13264.

### **Background**

During a March 27, 2018, inspection of the subject Property, Regional Water Board staff observed and discussed with the dischargers and their consultants a buried watercourse and culverted stream crossings requiring corrective work. During that inspection, staff advised the dischargers and their consultants that they would need to submit an application for water quality certification, included as Appendix D in the Regional Cannabis Order, before conducting any instream work to address those features. On April 4, 2018, Regional Water Board staff reiterated this requirement in an email to the dischargers' consultants TRC. On August 22, 2018, Regional Water Board staff sent an email to TRC inquiring about the plans to remediate the property. TRC provided a Work Report (Attached to Attachment B) documenting work that had been completed in waters of the state of California, however, at that time, and to date, the Regional Water Board has not received an Appendix D or application for instream work on the Property.

On May 7, 2019, Regional Water Board staff inspected the property. The report of this inspection (Inspection Report, Attachment B) and attached work report (Work Report), identify eleven locations of unauthorized work in waters of the state of California. The Inspection Report also identifies features that are discharging and threaten to discharge sediment to waters of the state of California.

### **Relevant Requirements**

During the inspection, 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.

### Observed Violations

As documented in the Inspection Report, Regional Water Board Staff observed violations of the California Water Code, the Basin Plan and the Regional Cannabis Order<sup>1</sup> as summarized in the below table:

Table 1. Summary of violations documented by Staff during May 7, 2019 Inspection.

Locations <sup>2</sup>	Violation types
6, 7, 8, 10, 11, 12, 13, 14, 15, 23 and 24	Basin Plan Prohibition 1, Porter Cologne 13260, 13264, Regional Cannabis Order section I.B second paragraph
20, 19, and 5	Basin Plan Prohibition 1, Regional Cannabis Order Section I.A Standard Condition 2.
5, Roads between 26 and 20 and between 19 and 16	Basin Plan Prohibition 2, Regional Cannabis Order Section I.A Standard Condition 1
20	Basin Plan Prohibition 2, Regional Cannabis Order, Section IV.B

### Site Management Plan (SMP)

Pursuant to the Cannabis General Order, all enrollees must submit a Site Management Plan within 90 days of enrollment. On June 11, 2019, your consultants submitted your 2017 WRPP in lieu of an SMP. Staff have reviewed the 2017 WRPP and determined that it is out-of-date, it does not accurately reflect site conditions, and it does not fulfill the requirements for SMP. It has been more than 90 days since you enrolled your Property for coverage under the Cannabis General Order; to date, we have not received an acceptable SMP.

### Potential Liabilities

The Regional Water Board reserves the right to take any enforcement action the law allows. Additionally, enrollment in the Cannabis General Order does not relieve you of responsibility to obtain other necessary local, state, or federal permits, nor does the

---

<sup>1</sup> The provisions of the Regional Cannabis Order cited in this notice have comparable provisions and requirements in the Cannabis General Order which are also cited in Attachment A. The Regional Cannabis Order is cited here because the subject violations were initially observed by Staff while the site was enrolled in the Regional Cannabis Order.

<sup>2</sup> Locations are identified on the map located on page 4 of the Inspection Report included as Attachment B.

Cannabis General Order prevent imposition of additional standards, requirements, or conditions by any other agency. In the event of duplicate or conflicting requirements, the most stringent requirement applies.

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 the 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.

An actual discharge to waters of the state, including waste discharges in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued by a regional board may subject a person to an administrative liability up to \$5,000 per day of violation for each violation, or \$10 for each gallon of waste discharged pursuant to Water Code section 13350 or up to \$10 per gallon for each gallon over 1,000 gallons not cleaned up, and up to \$10,000 per day per violation pursuant to Water Code section 13385.

Additionally, pursuant to Water Code sections 13261 and 13265, it is the Regional Water Board's intent for this Notice of Violation to constitute the type of notice that is required as a condition precedent to the potential penalties described therein.

### **Inspection Report Recommendations**

The Inspection Report provides recommendations to correct violations, as well as to address features and conditions that threaten to impact water quality. Any work in waters of the state, including streams or wetlands, requires a water quality certification prior to conducting the work. To obtain such certification requires the applicant to submit a complete application<sup>3</sup> and pay a fee, which are in addition to the fees paid for enrollment in the Cannabis General Order. Failure to obtain such certification may subject the responsible parties to additional civil liabilities. **Within 30 days of the date of this letter**, please advise Brian Fuller of your intentions, plan, and schedule to

---

<sup>3</sup> Requirements for a complete application can be found in the California Code of Regulations Title 23. Waters Division 3 State Water Resources Control Board Chapter 28. Certifications:

[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/401regs.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/401regs.pdf)

implement recommendations in the Inspection Report. Brian Fuller can be reached at (707) 576-2806 or by email at [Brian.Fuller@waterboards.ca.gov](mailto:Brian.Fuller@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 Brian Fuller at the phone number or email above. You may also contact me at [Diana.Henriouille@waterboards.ca.gov](mailto: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, the Inspection Report, or our waste discharge regulatory programs in further detail.

Sincerely,

Diana Henriouille, P.E.  
Enforcement Unit

200624\_BMF\_dp\_Mahony\_NOV

Attachments: Attachment A – Regulatory Citations  
Attachment B – Water Quality Report of May 7, 2019 Inspection

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

**Humboldt County**  
Robert Russell [rrussell@co.humboldt.ca.us](mailto:rrussell@co.humboldt.ca.us)

**North Coast Regional Water Quality Control Board**  
Claudia Villacorta, [Claudia.Villacorta@waterboards.ca.gov](mailto:Claudia.Villacorta@waterboards.ca.gov)  
Kason Grady, [Kason.Grady@waterboards.ca.gov](mailto:Kason.Grady@waterboards.ca.gov)  
Mona Dougherty, [Mona.Dougherty@waterboards.ca.gov](mailto:Mona.Dougherty@waterboards.ca.gov)  
Diana Henriouille, [Diana.Henriouille@waterboards.ca.gov](mailto:Diana.Henriouille@waterboards.ca.gov)  
Brian Fuller, [Brian.Fuller@waterboards.ca.gov](mailto:Brian.Fuller@waterboards.ca.gov)

**Timberland Resource Consultants**  
Jesse Cahill, [jcahill@timberlandresource.com](mailto:jcahill@timberlandresource.com)  
Stephanie Bowler, [sbowler@timberlandresource.com](mailto:sbowler@timberlandresource.com)

## Attachment A – Regulatory Citations

<b>Regulatory Section</b>	<b>Citation</b>
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>

Regulatory Section	Citation
California Water Code Section 13264 (a)	<p data-bbox="583 233 1871 412">"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:</p> <p data-bbox="667 451 1654 521">(1) The issuance of waste discharge requirements pursuant to section 13263.</p> <p data-bbox="667 565 1717 667">(2) The expiration of 140 days after compliance with section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies: ...</p> <p data-bbox="667 711 1465 743">(3) The issuance of a waiver pursuant to section 13269."</p>
California Water Code Section 13265(a)	<p data-bbox="583 786 1850 922">"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."</p>
California Water Code Section 13350	<p data-bbox="583 969 1856 1295">"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)."</p>

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."
Regional Cannabis Order Section I.A Standard Condition 1.	<ul style="list-style-type: none"> <li>a. "Roads shall be maintained as appropriate (with adequate surfacing and drainage features) to avoid developing surface ruts, gullies, or surface erosion that results in sediment delivery to surface waters."</li> <li>b. "Roads, driveways, trails, and other defined corridors for foot or vehicle traffic of any kind shall have adequate ditch relief drains or rolling dips and/or other measures to prevent or minimize erosion along the flow paths and at their respective outlets."</li> <li>d. "Roads, clearings, fill prisms, and terraced areas (cleared/developed areas with the potential for sediment erosion and transport) shall be maintained so that they are hydrologically disconnected, as feasible, from surface waters, including wetlands, ephemeral, intermittent and perennial streams."</li> <li>e. "Ditch relief drains, rolling dip outlets, and road pad or terrace surfaces shall be maintained to promote infiltration/dispersal of outflows and have no apparent erosion or evidence of soil transport to receiving waters."</li> </ul>

Regulatory Section	Citation
Regional Cannabis Order Section I.A Standard Condition 2.	<ul style="list-style-type: none"> <li>a. "Culverts and stream crossings shall be sized to pass the expected 100-year peak streamflow."</li> <li>b. "Culverts and stream crossings shall be designed and maintained to address debris associated with the expected 100-year peak streamflow."</li> <li>d. "Stream crossings shall be maintained so as to prevent or minimize erosion from exposed surfaces adjacent to, and in the channel and on the banks."</li> <li>e. "Culverts shall align with the stream grade and natural stream channel at the inlet and outlet where feasible."</li> <li>f. "Stream crossings shall be maintained so as to prevent stream diversion in the event that the culvert/crossing is plugged, and critical dips."</li> </ul>
Regional Cannabis Order Section I.B second paragraph	<p>"[a]ny proposed work in streams and wetlands, as described in 3-5 below shall be submitted to the Regional Water Board for review and authorization 60 days prior to commencement. (See Appendix D.) In the alternative, dischargers may opt to seek authorization for instream work through other individual or general orders."</p>
Regional Cannabis Order, Section IV.B	<p>"[t]he placing or disposal of earthen materials, soil, silt, plant waste, slash, or other organic, or inorganic refuse, rubbish, and solid waste, water containing elevated temperatures above background conditions, chemicals, bio-stimulatory substances, and/or chemicals such as but not limited to pesticides, fertilizers or other substances in a location where such may discharge into streams or watercourses is prohibited."</p>

Regulatory Section	Citation
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 1, Cannabis General Water Quality Certification—Term 4	“[a] cannabis cultivator seeking water quality certification coverage for activities in surface waters shall notify the Executive Officer of the Regional Water Board or State Water Board Executive Director at least 60 days prior to commencement of the activity and submit information regarding the construction schedule and other relevant information. Work may not commence until the cannabis cultivator is provided authorization by the appropriate Executive Officer of the Regional Water Board or Executive Director of the State Water Board. The Executive Officer of the Regional Water Board or Executive Director of the State Water Board may include specific monitoring requirements for turbidity and other constituents that may be associated with the activity to ensure applicable state water quality standards are met.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2 –Term 3	“[c]annabis cultivators shall not drive or operate vehicles or equipment within the riparian setbacks or within waters of the state unless authorized under 404/401 CWA permits, a CDFW LSA Agreement, coverage under the Cannabis Cultivation General Order water quality certification, or site-specific WDRs issued by the Regional Water Board. This requirement does not prohibit driving on established, maintained access roads that are in compliance with this Policy.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 15,	“[a]ccess roads shall be constructed consistent with the requirements of California Code of Regulations Title 14, Chapter 4. The Road Handbook describes how to implement the regulations and is available at <a href="http://www.pacificwatershed.com/PWA-publications-library">http://www.pacificwatershed.com/PWA-publications-library</a> . Existing access roads shall be upgraded to comply with the Road Handbook.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 17,	“[c]annabis cultivators shall ensure that all access roads are hydrologically disconnected to receiving waters to the extent possible by installing disconnecting drainage features, increasing the frequency of (inside) ditch drain relief as needed, constructing out-sloped roads, constructing energy dissipating structures, avoiding concentrating flows in unstable areas, and performing inspection and maintenance as needed to optimize the access road performance.”

Regulatory Section	Citation
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 19,	“[c]annabis cultivators shall decommission or relocate existing roads away from riparian setbacks whenever possible. Roads that are proposed for decommissioning shall be abandoned and left in a condition that provides for long-term, maintenance-free function of drainage and erosion controls. Abandoned roads shall be blocked to prevent unauthorized vehicle traffic.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 20,	“[i]f site conditions prohibit drainage structures (including rolling dips and ditch-relief culverts) at adequate intervals to avoid erosion, the cannabis cultivator shall use bioengineering techniques as the preferred measure to minimize erosion (e.g., live fascines). If bioengineering cannot be used, then engineering fixes such as armoring (e.g., rock of adequate size and depth to remain in place under traffic and flow conditions) and velocity dissipaters (e.g., gravel-filled “pillows” in an inside ditch to trap sediment) may be used for problem sites. The maximum distance between water breaks shall not exceed those defined in the Road Handbook.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 26,	“[c]annabis cultivators shall ensure that access roads are not allowed to develop or show evidence of significant surface rutting or gulying. Cannabis cultivators shall use water bars and rolling dips as designed by a Qualified Professional to minimize access road surface erosion and dissipate runoff.”
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 31,	“[c]annabis cultivators shall ensure that all permanent watercourse crossings that are constructed or reconstructed are capable of accommodating the estimated 100-year flood flow, including debris and sediment loads. Watercourse crossings shall be designed and sized by a Qualified Professional.”

<b>Regulatory Section</b>	<b>Citation</b>
Cannabis General Order, Attachment A, Cannabis Cultivation Policy, Section 2, Term 89,	"[c]annabis cultivators shall not cause or allow any overflow from off-stream water storage facilities that are closed to the environment (e.g., tanks and bladders) if the off-stream facilities are served by a diversion from surface water or groundwater. Cannabis cultivators shall on a monthly basis, at a minimum, inspect for and repair all leaks of the diversion and storage system. Written records describing the date, time, and nature of such inspections and repairs shall be kept on-site for a period of at least two years. Such written records shall be made available for review by Water Boards or CDFW, and any other authorized representatives of the Water Boards or CDFW."