
North Coast Regional Water Quality Control Board

July 23, 2020

Certified No. 7016 2710 0000 2653 2596

John Wilhelm
253 Miller Ranch Road
Garberville, CA 95542
admin@kingsviewfarms.com

Dear Mr. Wilhelm,

Subject: Notice of Violation and Transmittal of Inspection Report for January 9, 2020
Inspection of Humboldt County APNs 218-151-009 and 218-151-010

File: Palo Verde Reserve, Cannabis Waste Discharge Regulatory Program,
CIWQS Place ID No. 828468

This letter is to notify you of observed violations of the requirements listed below for unauthorized discharges to waters of the state and/or the United States from Humboldt County Assessor Parcel Numbers (APNs) 218-151-009 and 218-151-010 (Property).

1. The California Water Code (Water Code) section 13264, 13376 and
2. The State Water Resources Control Board Order WQ 2019-0001-DWQ, General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (CANGO).

Please provide us with a plan and schedule to address the recommendations in the enclosed inspection report within 30 days of the date of this letter.

Background

On January 9, 2020, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), inspected the Property. The purpose of the inspection was to evaluate onsite development and conditions associated with cannabis cultivation and associated activities and, for Regional Water Board staff to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state.

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.

Observed Violations

As documented in the enclosed inspection report, Regional Water Board staff observed violations of the California Water Code 13264 (a) and 13376, and of the CANGO, Attachment A, section 1 - General Requirements and Prohibitions Nos. 25-27, and section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation Nos. 7, 15, 17, 22, 31, 49, 50, 52, 56, 76, 119 and 123. Staff observed these violations at Property locations identified in the inspection report as JW4-5, JW7-12, and JW15.

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 the Basin Plan.

Please note that correcting the conditions of non-compliance on 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, or \$10,000 per day per violation plus an additional liability of up to \$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons pursuant to Water Code section 13385.

The Regional Water Board staff is in the process of assessing these violations and retains its full authority and discretion to bring formal enforcement for all violations.

Inspection Report Recommendations

The January 9, 2020, 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 Kate Hawken of your intentions, plan, and schedule to implement recommendations in the inspection report. Ms. Hawken can be reached by email at Katherine.Hawken@waterboards.ca.gov or by phone at (707) 445-6127.

Please note the recommendation in the inspection report to cease use of the wet ford at map point JW11 until it is upgraded to comply with all applicable regulatory requirements, including those of the Cannabis General Order, and is no longer threatening the discharge of waste to waters of the State.

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 Kate Hawken at the phone number or email above. You may also contact me at Mona.Dougherty@waterboards.ca.gov or (707) 445-6129. Additionally, we are available to meet with you if you wish to discuss this letter or our waste discharge regulatory programs in further detail.

Sincerely,

Mona Dougherty, P.E.
Senior Water Resource Control Engineer

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Enclosures: 1) Regulatory Citations
2) Water Quality Inspection Report

Palo Verde Reserve
CIWQS Place ID 828468
APNs 218-151-009 and 218-151-010
January 9, 2020 Inspection

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July 23, 2020

cc: **California Department of Fish and Wildlife**
Andrew Orahoske, Andrew.Orahoske@wildlife.ca.gov
Gregory O'Connell, Gregory.OConnell@wildlife.ca.gov

Humboldt County

Keenan Hilton, KHilton@co.humboldt.ca.us
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North Coast Regional Water Quality Control Board

Kason Grady, Kason.Grady@waterboards.ca.gov
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Division of Water Rights

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Consultants

Shannon Muennink, smuennink11@gmail.com
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Attachment A – Regulatory Citations

Regulatory Section	Citation
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...”
California Water Code section 13376	“A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States...or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States...shall file a report of the discharge in compliance with the procedures set forth in Section 13260.
State Cannabis Order Attachment A, Section 1 - General Requirements and Prohibitions #25	Cannabis cultivators shall not discharge waste in a manner that creates or threatens to create a condition of pollution or nuisance, as defined by Water Code section 13050.
State Cannabis Order Attachment A, Section 1 - General Requirements and Prohibitions #26	<p>Except as allowed and authorized in this Policy, cannabis cultivators shall not discharge:</p> <ul style="list-style-type: none"> • irrigation runoff, tailwater, sediment, plant waste, or chemicals to surface water or via surface runoff; • waste classified as hazardous (California Code of Regulations, title 23, section 2521(a)) or defined as a designated waste (Water Code section 13173); or • waste in violation of, or in a manner inconsistent with, the appropriate Water Quality Control Plan(s).
State Cannabis Order Attachment A, Section 1 - General Requirements and Prohibitions #27	<p>Unless authorized by separate waste discharge requirements, the Cannabis Cultivation General Order, or a CWA section 404/401 permit, the following discharges are prohibited:</p> <ul style="list-style-type: none"> • any waste that could affect the quality of the waters of the state; or • wastewater from cannabis manufacturing activities defined in Business and Professions Code section 26100, indoor grow operations, or other industrial wastewater to an onsite wastewater treatment system (e.g., septic tank and associated disposal facilities), to surface water, or to land.

Attachment A – Regulatory Citations

Regulatory Section	Citation
<p>State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #7</p>	<p>Cannabis cultivators shall stage and store equipment, materials, fuels, lubricants, solvents, or hazardous or toxic materials in locations that minimize the potential for discharge to waters of the state. At a minimum, the following measures shall be implemented:</p> <ul style="list-style-type: none"> a) Designate an area outside the riparian setback for equipment storage, short-term maintenance, and refueling. Cannabis cultivator shall not conduct any maintenance activity or refuel equipment in any location where the petroleum products or other pollutants may enter waters of the state as per Fish and Game Code section 5650 (a)(1). b) Frequently inspect equipment and vehicles for leaks. c) Immediately clean up leaks, drips, and spills. Except for emergency repairs that are necessary for the safe transport of equipment or vehicles to an appropriate repair facility; performing equipment or vehicle repairs, maintenance, and washing onsite is prohibited. d) If emergency repairs generate waste fluids, ensure they are contained and properly disposed or recycled off-site. e) Properly dispose of all construction debris off-site. f) Use dry cleanup methods (e.g., absorbent materials, cat litter, and/or rags) whenever possible. Sweep up, contain, and properly dispose of spilled dry materials.
<p>State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #15</p>	<p>Access 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 http://www.pacificwatershed.com/PWA-publications-library. Existing access roads shall be upgraded to comply with the Road Handbook.</p>
<p>State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #17</p>	<p>Cannabis 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.</p>

Attachment A – Regulatory Citations

Regulatory Section	Citation
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #22	Cannabis cultivators shall ensure that access road surfacing, especially within a segment leading to a waterbody, is sufficient to minimize sediment delivery to the wetland or waterbody and maximize access road integrity. Road surfacing may include pavement, chip-seal, lignin, rock, or other material appropriate for timing and nature of use. All access roads that will be used for winter or wet weather hauling/traffic shall be surfaced. Steeper access road grades require higher quality rock (e.g., crushed angular versus river-run) to remain in place. The use of asphalt grindings is prohibited.
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #31	Cannabis 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.
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #49	Cannabis cultivators shall ensure that all access road watercourse crossing structures allow for the unrestricted passage of water and shall be designed to accommodate the estimated 100-year flood flow and associated debris (based upon an assessment of the streams potential to generate debris during high flow events). Watercourse crossings shall be designed and sized by a Qualified Professional. Consult CAL FIRE 100 year Watercourse Crossings document for examples and design calculations, available at: http://calfire.ca.gov/resource_mgt/downloads/100%20yr%20revised%208-08-17%20(final-a).pdf .
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #50	Cannabis cultivators shall ensure that watercourse crossings allow migration of aquatic life during all life stages supported or potentially supported by that stream reach. Design measures shall be incorporated to ensure water depth and velocity does not inhibit migration of aquatic life. Any access road crossing structure on watercourses that support fish shall be constructed for the unrestricted passage of fish at all life stages, and should use the following design guidelines: <ul style="list-style-type: none"> • CDFW’s Culvert Criteria for Fish Passage; • CDFW’s Salmonid Stream Habitat Restoration Manual, Volume 2, Part IX: Fish Passage Evaluation at Stream Crossings; and • National Marine Fisheries Service, Southwest Region Guidelines for Salmonid Passage at Stream Crossings.

Attachment A – Regulatory Citations

Regulatory Section	Citation
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #52	Cannabis cultivators shall only use rock fords for temporary seasonal crossings on small watercourses where aquatic life passage is not required during the time period of use. Rock fords shall be oriented perpendicular to the flow of the watercourse and designed to maintain the range of surface flows that occur in the watercourse. When constructed, rock shall be sized to withstand the range of flow events that occur at the crossing and rock shall be maintained at the rock ford to completely cover the channel bed and bank surfaces to minimize soil compaction, rutting, and erosion. Rock must extend on either side of the ford up to the break in slope. The use of rock fords as watercourse crossings for all-weather access roads is prohibited.
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #56	Cannabis cultivators shall ensure that culverts used at watercourse crossings are: 1) installed parallel to the watercourse alignment to the extent possible, 2) of sufficient length to extend beyond stabilized fill/sidecast material, and 3) embedded or installed at the same level and gradient of the streambed in which they are being placed to prevent erosion.
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #76	Cannabis cultivators shall not obstruct, alter, dam, or divert any portion of a natural watercourse prior to obtaining all applicable permits and approvals. Permits may include a valid water right, 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.
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #119	Cannabis cultivators shall contain and regularly remove all debris and trash associated with cannabis cultivation activities from the cannabis cultivation site. Cannabis cultivators shall only dispose of debris and trash at an authorized landfill or other disposal site in compliance with state and local laws, ordinances, and regulations. Cannabis cultivators shall not allow litter, plastic, or similar debris to enter the riparian setback or waters of the state. Cannabis plant material may be disposed of onsite in compliance with any applicable CDFA license conditions.

Attachment A – Regulatory Citations

Regulatory Section	Citation
State Cannabis Order Attachment A, Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation #123	Cannabis cultivators shall ensure that debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement and concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to any life stage of fish and wildlife or their habitat (including food sources) does not contaminate soil or enter the riparian setback or waters of the state.

North Coast Regional Water Quality Control Board

TO: Mona Dougherty

FROM: Kate Hawken

DATE: July 22, 2020

Inspection Report for January 9, 2020 Compliance Inspection of Humboldt County Assessor's Parcel Numbers 218-151-009 and 218-151-010 (formerly 218-151-008)

File: Cannabis Program Inspections, Humboldt County, Palo Verde Reserve, CIWQS Place ID 828468

Property Information

County: Humboldt

Physical address: 81 South Face Road, Garberville, CA 95542

APN: 218-151-009 and 218-151-010 (formerly combined as 218-151-008)

Owner: John Wilhelm

Size: 38 acres for each parcel

Watershed: Middle Main Eel River Hydrologic Area; Spy Rock Hydrologic Subarea; Cal Water 1111.420502; HUC-12 180101050401

Clean Water Act Section 303(d) Listings: Sedimentation/ \Siltation

TMDLs: Middle Main Eel River and Tributaries Total Maximum Daily Loads for Temperature and Sediment

Aerial Imagery Notes (Google Earth Pro): Cultivation areas cleared, and access road developed prior to earliest available imagery 6/23/1993; structure on -009 visible starting in 12/31/2004 imagery; aquatic feature northeast of structure visible in earliest available imagery; access road extended through aquatic feature, and cannabis cultivation area developed east of aquatic feature visible in 8/20/2014 imagery; aquatic feature area appears freshly filled/ graded in 12/21/2017 imagery; aquatic feature appears to reemerge in subsequent imagery; cannabis cultivation visible on parcel -010 adjacent to Chamise Creek starting in 6/16/2010 imagery

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

Regulatory status with the Regional Water Board

On September 24, 2019, John Wilhelm submitted application 407482 for coverage of Humboldt county parcel 218-151-008 under the State Water Board Cannabis Order WQ 2019-0001-DWQ. Onsite January 9, 2020, Mr. Wilhelm informed staff that the parcel 218-151-008 had been split into 218-151-009 and 218-151-010 by Humboldt county.

Inspection information:

Date/time: January 9, 2020

Type: Compliance

Attendance:

Kate Hawken, North Coast Regional Water Quality Control Board
Andrew Orahoske, California Department of Fish and Wildlife
Keenan Hilton, Humboldt County Planning and Building Department
Shannon Muennink, Skyler Twohig, and Forrest Hansen, consultants
John Wilhelm, landowner

Background/Objective:

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: Map of John Wilhelm (JW) Property with inspection points of interest

Inspection Observations

On January 9, 2020, I inspected the subject property. Figure 1 is a site map showing inspection points discussed in Table 1. At JW3 I observed an inboard ditch with

standing water in it, and across the road, running perpendicular, a dry, historic channel. Downhill a couple hundred feet I observed at JW4 the discharge point of the inboard ditch, a cross drain with a clearly defined channel downstream. It appears the historic stream path may have been diverted down the ditch. I observed multiple failing and/or undersized culvert stream crossings. I also observed multiple road stretches with ditches hydrologically connected to watercourses, discharging road sediment to surface waters. I observed three stream crossings, JW9, JW10, and JW11 where decommissioning was proposed as a potential solution. If continued year-round vehicular access is need for JW9-11, these crossings should be upgraded to meet the standards of the Cannabis General Order.

Table 1: Map points with descriptions and water quality concerns

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
JW1	Grassland	Proposed cultivation area	N/A	1
JW2	Domestic spring	Spring lacking channel in or out; evidence of pig rooting in spring	N/A	2
JW3	Inboard ditch; historic channel	Inboard ditch with standing water; historic, dry channel on other side of road	N/A	3-4
JW4	Culvert	Inboard ditch discharges to culvert crossing; spring is uphill; defined channel starts at culvert outlet	Discharge of waste to receiving waters.	5
JW5	Stream crossing	Rusted, damaged, misaligned, 30" diameter culvert receives flow from stream and inboard ditch. Outlet is perched 4' above stream.	Discharge of waste to receiving waters.	6

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
JW6	Water storage tanks	Four water storage tanks	N/A	7
JW7	Inactive cultivation area	Fenced area adjacent watercourse and wetland	Threated discharge of waste to receiving waters.	8
JW8	Cultivation related waste	Metal trellises placed/ abandoned near watercourse	Threatened discharge of waste to receiving waters.	9
JW9	Stream crossing	12" diameter culvert stream crossing adjacent vineyard	Threatened discharge of waste to receiving waters.	10
JW10	Stream crossing	Rusted, slightly perched 12" diameter culvert stream crossing adjacent vineyard	Threatened discharge of waste to receiving waters.	11
JW11	Stream crossing	Unimproved Class I stream crossing; tire marks on road approaches and in stream	Discharge of waste to receiving waters.	12
JW12	Stream crossing	22" diameter culvert with bottom rusted out; receives flow from stream and ditch	Discharge of waste to receiving waters.	13
JW13	Culvert	18" functioning ditch relief culvert	N/A	-

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associated Photo(s)</i>
JW14	Spring	Spring feature adjacent road; runoff from spring travels down road	N/A	14
JW15	Stream crossing; sediment discharge point	Culvert stream crossing; road water breached berm adjacent to culvert outlet and discharges to watercourse; plastic black culvert and white pipe in watercourse	Discharge of waste to receiving waters.	15-16

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 multiple stretches of roads hydrologically connected to surface water.
2. Stream crossing maintenance and improvement: I observed multiple failing and/or undeveloped stream crossings.
3. Riparian and wetland protection and management: I observed an inactive cultivation area, mostly decommissioned, in the riparian setbacks. I also observed a black plastic culvert piece and white pipe in a watercourse.
4. Spoils management: I did not observe water quality issues associated with spoils management.
5. Water storage and use: I did not observe water quality issues associated with water storage and use.
6. Irrigation runoff: I did not observe water quality issues associated with irrigation runoff.
7. Fertilizers and soil amendments: I did not observe fertilizers or soil amendments.
8. Pesticides: I did not observe pesticides.

9. Petroleum products and other chemicals: I did not observe water quality issues associated with storage or use of petroleum products or other chemicals.

10. Cultivation-related wastes: I observed fencing and metal trellises left in place/abandoned where they may discharge to receiving waters.

11. Refuse and human waste: I did not review domestic or human waste disposal.

Recommendations

1. Update Site Management Plan (SMP) to include:
 - a. Assessment of stream crossings for capacity to convey the 100-year flood flow and associated debris
 - b. Schedule to upgrade or decommission stream crossings that do not meet the standards of the Cannabis General Order
2. Cease use of wet ford at map point JW11 until it is upgraded to meet the standards of the Cannabis General Order
3. Add water bars, rolling dips, and/or cross drains as needed to disperse concentrated runoff. Manage roads to minimize surface erosion, hydrologic connectivity to surface waters, and sediment discharge. For additional guidance see Handbook for Forest, Ranch, & Rural Roads here:
<http://www.pacificwatershed.com/PWA-publications-library>
4. Remove cultivation related waste adjacent watercourses. Collect and dispose of or contain all refuse in a location and manner so as to minimize potential for these wastes to enter or be transported into receiving waters.
5. Work with CDFW and the State Water Board Division of Water Rights to determine and secure any applicable permits or licensing required for surface water diversion, storage, and use on the site.
6. Prior to work in a stream, including culvert installation or replacement, submit design plans, construction schedule, and other relevant information to the Regional Water Board through the 401 Water Quality Certification. Work may not commence until authorization is received from the Regional Water Board. See 401 Water Quality Certification application here:
www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/190403/180731_031616_401_WQ2017-0023-Application.pdf

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 right to take

any enforcement action authorized by law.

PHOTO APPENDIX

	
<p>Photo 1 – JW1; proposed cultivation area</p>	<p>Photo 2 – JW2; spring used for domestic water supply</p>
	
<p>Photo 3 – JW3; road section with inboard ditch</p>	<p>Photo 4 – JW3; historic dry channel</p>



Photo 5 – JW4; inboard ditch culvert crossing



Photo 6 – JW5; outlet of stream and inboard ditch culvert crossing



Photo 7 – JW6; four water storage tanks



Photo 8 – JW7; decommissioned cultivation area adjacent watercourse



Photo 9 – JW8; cultivation waste adjacent watercourse



Photo 10 – JW9; culvert stream crossing adjacent vineyard



Photo 11 – JW10; culvert stream crossing adjacent vineyard



Photo 12 – JW11; unimproved Class I ford with tire marks on approaches and in the stream



Photo 13 – JW12; rusted out culvert bottom



Photo 14 – JW14; spring feature on left uphill of road, some runoff visible on road



Photo 15 – JW15; culvert stream crossing



Photo 16 – JW15; waste in watercourse