

**California Regional Water Quality Control Board
North Coast Region**

**Cleanup and Abatement and 13267 Order No. R1-2020-0028
for
Rodney Baker and Gayle Baker
Assessor's Parcel Number 016-200-17-00
Trinity County**

This Order is issued to Rodney Baker and Gayle Baker (hereafter collectively referred to as the Dischargers) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a Cleanup and Abatement Order and Water Code section 13267, which authorizes the Regional Water Board to require the preparation and submittal of technical and monitoring reports.

Findings

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

- 1. Site Conditions:** Salt Creek is a water of the state, as well as a water of the United States (references hereafter to waters of the United States are also waters of the state).¹ The Dischargers have caused or allowed the discharge and threatened discharge of waste to receiving waters through the use of Trinity County Assessor's Parcel Number 016-200-17-00 (hereafter referred to as the Property) for cannabis cultivation and associated activities without adequate best management practices or measures to ensure water quality protection; as described in an August 28, 2019, Notice of Violation (Attachment 1), a July 19, 2018, Water Quality Report of Inspection (Attachment 2), a California Department of Fish and Wildlife (CDFW) Notice of Violation (Attachment 3), and a May 29, 2019, Water Quality Report of Inspection (Attachment 4). The Dischargers' activities resulting in the waste discharges were conducted without authorization from applicable federal, state, and local agencies, including the Regional Water Board.

¹ The Regional Water Board administers and enforces the federal Clean Water Act (CWA). The CWA regulates what it refers to as "navigable waters" and defines those water as "waters of the United States." Waters of the United States has been interpreted broadly by the agencies responsible for implementing the CWA to include all traditionally navigable waters and their tributaries. (40 C.F.R. 122.2) The Porter-Cologne Water Quality Control Act provides the Regional Water Board additional authority to regulate discharges of waste into "waters of the state." (Wat. Code § 13260.) The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code § 13050 subd. (e).) All waters of the United States that are within the borders of California are also waters of the state for purposes of the Porter-Cologne.

- 2. Purpose of the Order:** This Order requires the Dischargers to clean up and abate the effects of discharging cannabis cultivation waste, including imported potting soils, to surface waters tributary to Salt Creek, and to eliminate the threat of future discharges. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.), the Water Quality Control Plan for the North Coast Region (Basin Plan), State Water Resources Control Board (State Water Board) Resolution 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304 (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.
- 3. Responsible Parties:** The Dischargers, as the Property owners and/or operators and the persons and/or entities responsible for causing the discharge of waste or creating a threat of discharge, with the legal ability to control the activities on the Property that resulted in the discharge and/or threat of discharge, are responsible parties for purposes of this Order. This Order finds that Rodney Baker and Gayle Baker are the responsible parties and are jointly and severally liable:

 - a. Information available from Trinity County accessed by Regional Water Board staff via Digital Map Products' Land Vision service shows that approximately 8.25 acres, identified as Trinity County Assessor's Parcel Number (APN) 016-200-17-00 (hereafter Property) was transferred from David and Marilyn Cox to Rodney Baker and Gayle Baker on July 13, 2007.
 - b. Based on available aerial imagery (see Attachments 4 and 5), patterns consistent with cannabis cultivation were visible on June 16, 2010, in the southern portion of the Property, and on August 12, 2015, patterns consistent with cannabis cultivation were visible in the portion of the Property located in the westerly trending valley that contains the surface waters tributary to Salt Creek.
 - c. The Regional Water Board reserves the right to amend this Order to add additional responsible parties when/if those parties are identified.
- 4. Property Location and Description:** The Property is located on the east side of Highway 3, four miles south of the town of Hayfork in Trinity County. A westerly trending valley, that was the site of cannabis cultivation on the Property, in the vicinity of latitude 38° 48' N and longitude 122° 58' W, contains a watercourse that is tributary to Salt Creek.
- 5. Property History:** The Property has no prior regulatory oversight or history with the Regional Water Board.

6. Factual Basis of Order: The Dischargers' activities and/or the conditions observed at the Property, as documented in the Regional Water Board and CDFW Notices of Violation (Attachments 1 and 3) and Regional Water Board inspection reports (Attachments 2 and 4), and as detailed below, have caused or permitted to cause and threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into unnamed tributaries to Salt Creek, and created and/or threaten to create a condition of pollution by unreasonably impacting water quality and beneficial uses.

a. Receiving Waters: Salt Creek is a tributary to Hayfork Creek, which is in the Hayfork Valley Hydrologic Subarea, and tributary to the Trinity River in the South Fork Trinity River Hydrologic Area, Trinity River Hydrologic Unit. Salt Creek, tributaries thereto, and Hayfork Creek, South Fork Trinity River, Trinity River, and the Klamath River are waters of the state, as well as waters of the United States. The South Fork Trinity River Hydrologic Area is Clean Water Act section 303(d)-listed as impaired due to sediment/siltation and high-water temperature.

b. Observations: On July 19, 2018, staff of the Regional Water Board inspected the Property and identified numerous features or conditions that were impacting or threatening to impact water quality, including a watercourse that had been filled/covered with imported potting soil and other cultivation waste. Regional Water Board staff transmitted their report of inspection on July 31, 2018 (Attachment 2), including a recommendation that the Dischargers retain a licensed professional to develop a workplan that included measures to prevent transport and delivery of wastes to receiving waters. On March 15, 2019, CDFW personnel inspected the Property and reportedly observed that the Property had not been adequately cleaned up, resulting in discharges of cannabis cultivation waste to receiving waters, as described in Attachment 3. On May 29, 2019, Regional Water Board staff inspected the Property and confirmed that the Property had not been adequately cleaned up, resulting in ongoing discharges of cannabis cultivation waste to receiving waters (Attachment 4).

7. Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives:

The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the State Water Board.

a. Beneficial Uses: Existing and potential beneficial uses for the South Fork Trinity River, specifically the Hayfork Valley Hydrologic Subarea include the following: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PRO); Groundwater Recharge (GWR); Freshwater Replenishment (FRSH);

Hydropower Generation (POW); Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Cold Freshwater Habitat (COLD); Wildlife Habitat (WILD); Rare Threatened or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

- b. Basin Plan Prohibitions:** The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan’s Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):
- i. Prohibition 1 – “The 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 are prohibited.”
 - ii. Prohibition 2 – “The 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 is prohibited.”
- c. Basin Plan Objectives:** Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from cannabis cultivation activities include the following:
- i. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - ii. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - iii. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered

in such a manner as to cause nuisance or adversely affect beneficial uses.”

- iv. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”
- v. Dissolved Oxygen: “Dissolved oxygen concentrations for the Klamath River Watershed shall conform to waterbody-specific objectives”. The objectives for the Klamath River, downstream of Hoopa-California to Turwar, which is downstream from where the Trinity River converges with the Klamath River, are 85 percent and 90 percent of dissolved oxygen saturation for June 1 through August 31 and September 1 through May 31 respectively.

8. Regional Water Board Resolutions: As part of Regional Water Board’s efforts to control sediment waste discharges and restore sediment-impaired water bodies, the Regional Water Board adopted the Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

9. State Water Board Resolutions: State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the Statement of Policy with Respect to Maintaining High Quality Waters in California (Resolution 68-16). Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and

abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

10. Failure to Obtain Necessary Permits: Regional Water Board staff have reviewed available records and determined that grading, clearing, road construction, and dredge and/or fill within waters of the state have occurred at the Property without necessary regulatory coverage, including Clean Water Act section 401 Water Quality Certification from the Regional Water Board.

11. Legal Authority to Require Cleanup and Abatement: Water Code section 13304, subdivision (a) states, in relevant part:

A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.... Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

a. Waste: Water Code section 13050, subdivision (d), defines “waste” as sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

i. Both sediment and added nutrients included in imported potting soils, when discharged to waters of the state, are “wastes” as defined in Water Code section 13050. The Dischargers caused or permitted waste to be discharged or deposited where it is, will be, or has the potential to be, discharged to tributaries of Salt Creek, and subsequently Hayfork Creek, South Fork Trinity River, Trinity

River, and the Klamath River, which are considered waters of the state, and waters of the United States.

- b. Pollution:** Water Code section 13050, subdivision (l)(1), defines “pollution” as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either waters of the state for beneficial use or facilities which serve these beneficial uses.
- i. Sediment, imported potting soils, and other waste from cannabis cultivation have discharged, and threaten to discharge into Salt Creek and its tributaries, and these wastes create or threaten to create a condition of pollution subject to this Order in accordance with Water Code section 13304.
 - ii. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water discharges to surface water and the resulting turbidity can also affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).
 - iii. The discharge of sediment to the South Fork Trinity River watershed is especially problematic because, as noted above, the South Fork Trinity River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act for sedimentation/ siltation. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold-water fish such as Chinook salmon, and steelhead trout (Beneficial Uses impacted: SPWN and MIGR).
 - iv. Suspended sediment in surface waters can harm aquatic organisms by abrading surface membranes, and interfering with respiration and sensory perception. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment, which requires that the suspended sediment

load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters.

These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, and salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increased physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature; and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat.

It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with suspended sediment, sediment is also an excellent transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses impacted: REC-1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).

- v. Discharge of excess nutrients, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase in biological oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms which create bioaccumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses impacted: RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (Beneficial Uses impacted: REC-1, REC-2, and MUN).

- c. Nuisance:** Water Code section 13050, subdivision (m), defines “nuisance” as anything that meets all of the following requirements: (1) is injurious to health, indecent or offensive to the senses, or is an obstruction to the free use of property, such that it interferes with the comfortable enjoyment of life or property; (2) affects, at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage may vary between individuals; and (3) occurs during, or as a result of, the treatment or disposal of wastes.
- i. An increase in sedimentation, turbidity, and excess nutrients has the potential to affect a considerable number of persons by impacting the taste and odor of water supplied to the community, by resulting in flooding, and/or by producing toxic algal blooms that can raise costs for water treatment plants and contribute to harmful byproducts when treated. Sediment discharges from the Property are a potential nuisance if the threats to water quality documented on the Property and discussed herein are not addressed.

12. Cleanup and Abatement Action Necessary: Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution is a high priority violation and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board.

13. Technical Reports Required: Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any water of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to waters of the state and to ensure that cleanup complies with Basin Plan requirements and State Water Board Resolution 92-49. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate the Property

from which waste was discharged, and thus are appropriately responsible for providing the reports.

14. California Environmental Quality Act: Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and, as such, is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup, abatement, and restoration activities at the Property. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. To the extent that the Order requires earth-disturbing and re-vegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to implementation of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handing any documents necessary for environmental review. If necessary, the Dischargers and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall submit technical and monitoring reports described below, clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below. The Dischargers shall obtain all necessary permits for the activities required in this Order.

- 1. Submit a Cleanup, Restoration, and Monitoring Plan:** By August 1, 2020, the Dischargers shall submit to the Regional Water Board a proposed Cleanup, Restoration, and Monitoring Plan (CRMP) acceptable to the Regional Water Board or its delegated officer. The CRMP shall include but not be limited to:

- a.** An assessment of any direct and indirect impacts to any waters of the state on the Property, including, but not limited to, rivers, streams, seeps, springs, bogs, and wetlands, caused by the unauthorized activities, including all areas that have been developed or disturbed; and identify controllable sediment sources requiring restoration. The assessment shall be completed by an appropriately qualified professional, and must at a minimum address surface water hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, encroaching reservoirs, active or potential erosion and sedimentation sites, stability of graded and disturbed features, culverts, and other stream crossings, as well as roads and all disturbed areas on the Property. The assessment shall include aerial photographs and/or satellite images, photographs, topographic maps, or drawings, etc., of Property conditions prior to and after conducting the unauthorized activities, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, all waters of the state and waters of the United States, drainages, and stream crossings, instream structures, and the functional status of these features. Assessment findings before and after the unauthorized activities shall serve as the basis for the CRMP.
- b.** A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., re-grading and reengineering, graveling or paving road surface, etc.), as well as a proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted by the unauthorized activities, including Salt Creek's unnamed tributaries.
- c.** A proposal to provide mitigation to compensate for any temporal and/or permanent impacts to waters of the state that resulted from unauthorized activities on the Property. The proposal shall: (1) describe existing site conditions at the proposed mitigation site; (2) describe implementation methods used to provide compensatory mitigation; (3) include monitoring that will be conducted and performance criteria that will be used to evaluate the success of the compensatory mitigation; and (4) include an implementation schedule;
- d.** Best management practices to be applied to all current and planned work associated with construction activities on the Property impacting, or having the potential to impact Salt Creek and its unnamed tributaries. The CRMP shall contain, at a minimum, design specifications for roads, any water crossing, in-stream structure and for riparian and aquatic habitat restoration, surface drainage controls, erosion and sedimentation controls, an implementation schedule, a monitoring and reporting plan, and success criteria for restoration and compensatory mitigation;

- e. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary and, detailed project milestones to fulfill the requirements of this Order once those permits are obtained and a deadline for having fully implemented and completed the CRMP.
- 2. Implement the CRMP:** No more than 30 days after approval of the CRMP by the Regional Water Board or its delegated officer, the Dischargers shall implement the CRMP.
- 3. Modifications to the approved CRMP:** The Dischargers shall notify and provide rationale to the Regional Water Board staff and obtain approval at least 60 days prior to making any modifications to the approved CRMP.
- 4. Monthly Progress Reports:** Submit monthly progress reports beginning the first day of the month following implementation start date of the CRMP, through completion of cleanup, stabilization, restoration, and mitigation work. Include photographs at each photo monitoring point, as depicted on site maps/figures.
- 5. Complete the CRMP:** By October 15, 2020, the Dischargers shall (1) remove materials placed and/or features constructed on/in waters of the state, as approved by the Regional Water Board or its delegated officer and (2) implement all approved measures required to restore the natural hydrology and ecological functions of waters of the state, and the designated beneficial uses of the water bodies where illegal fill and/or development in waters of the state has occurred, with the exception of implementing an approved planting plan; this latter shall be completed by March 31, 2021.
- 6. Completion Report for the CRMP:** No more than **60 days** after fully completing the CRMP, the Dischargers shall submit a Completion Report for the CRMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built designs of all completed restoration construction and/or abatement measures included in the approved CRMP to restore Salt Creek, and its unnamed tributaries to demonstrate the CRMP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.
- 7. Annual Monitoring Reports:** Upon completion of the restoration and mitigation of waters of the state, submit annual monitoring reports by January 31 of each year for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the CRMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, a

description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

- 1. Duty to Use Qualified Professionals:** The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Dischargers shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.
- 2. Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Dischargers shall also state in the cover letter whether they will implement the recommendations/proposals provided in the report. Any person signing a document submitted under this Order shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”
- 3. Notice of Onsite Work:** The Dischargers, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Dischargers may contact the Regional Water Board using the general phone line at (707) 576-2220 or contact Brian Fuller at (707) 576-2806.
- 4. Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Property’s ownership or occupancy. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

- 5. Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted:

By email (preferred) to:

Brian Fuller, Engineering Geologist
Brian.Fuller@waterboards.ca.gov

And to:

northcoast.cannabis@waterboards.ca.gov

Or by mail to: NCRWQCB, Attn: Brian Fuller, 5550 Skylane Blvd, Suite A,
Santa Rosa, CA 95403

- 6. Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, Fish and Game Code (FGC) section 1602 requires a person or entity to notify CDFW before: (1) substantially diverting or obstructing the natural flow of a river, stream, or lake; (2) substantially changing the bed, channel, or bank of a river, stream, or lake; (3) using any material from the bed, channel, or bank of a river, stream, or lake; or (4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
- 7. Delayed Compliance:** If, for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Regional Water Board or its delegated officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.
- 8. Potential Liability:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day, and \$10 per gallon when the violation results in the discharge of waste, pursuant to California Water Code

section 13350 and/or 13385, and up to \$1,000 per day pursuant to California Water Code section 13268. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and condition of this Order.

- 9. No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.
- 10. Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board, including any potential extension requests.
- 11. Requesting Review by the State Water Board:** Any person aggrieved by this or any final action of the Regional Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et al. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Matthias St. John, Executive Officer

20_0028_Baker_CAO

Attachments:

1. August 28, 2019, Regional Water Board Notice of Violation
2. Water Quality Report of July 19, 2018, Inspection
3. March 15, 2019, CDFW Notice of Violation
4. Water Quality Report of May 29, 2019, Inspection
5. Aerial Image Report

North Coast Regional Water Quality Control Board

August 28, 2019

Certified Mail No. 7016 2070 0000 6486 3415

Rodney and Gayle Baker
PO Box 457
Hayfork, CA 96041-0457

Dear Rodney and Gayle Baker

Subject: **Notice of Violation (NOV) for Trinity County Assessor's Parcel Number (APN) 016-200-17-00**

File: Cannabis Program Inspections, Trinity County, 2019, Rodney and Gayle Baker, CIWQS Place ID 849792

This letter is to notify each of you (collectively, you) of observed violations of the requirements listed below associated with unauthorized discharges to waters of the state at Trinity County APN 016-200-17-00 (the Property):

1. California Water Code sections 13260 and 13264

Please contact staff of the North Coast Regional Water Quality Control Board (Regional Water Board) as described below within 15 days of the date of this letter to advise as to your plans and schedule to correct the observed violations.

Background

On July 19, 2018, staff from the Regional Water Board (Staff) participated with staff of the California Department of Fish and Wildlife (CDFW), State Water Board's Office of Enforcement and Division of Water Rights, and personnel from various law enforcement agencies in inspecting the Property. Inspection objectives for 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.

On July 31, 2018, Staff transmitted to you their report for this inspection (Enclosure 1). The inspection report (July 2018 report) documents numerous features or conditions on

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

the Property that are impacting or threatening to impact water quality, including a suspected watercourse that had been filled/covered with imported potting soil and other cultivation waste. The July 2018 report recommends you 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.

CDFW inspected the property on September 12, 2018, and again on March 15, 2019, and documented in a NOV dated May 14, 2019 (Enclosure 2) substantial discharges to receiving waters as a result of inadequate cleanup of the Property. Following receipt of the May 14, 2019, NOV, Regional Water Board staff participated with CDFW in a consent inspection of the property on May 29, 2019. Regional Water Board staff's report of the May 29, 2019 inspection (May 2019 report) is included as Enclosure 3.

Relevant Requirements

Staff have observed conditions at the site during both the July 2018 and May 2019 inspections of the Property that represent violations of water quality requirements and regulations. For your reference, applicable regulatory requirements referred to in this NOV are included as Attachment A - Regulatory Requirements.

Observed Violations

As documented in the July 2018 and May 2019 Inspection Reports, Regional Water Board staff observed violations of Water Code sections 13260 and 13264. Staff observed these violations in the areas identified as the northern valley, the southern cultivation area, and inspection points WQ1-WQ3.

Potential Liabilities

These observed violations create potential liability enforceable by the Regional Water Board. Discharges or threatened discharges of waste, including earthen material, into waters of the state that create a condition of nuisance or pollution may subject a person to a Cleanup and Abatement Order pursuant to Water Code section 13304. An actual discharge to waters of the state, including waste discharges in violation of a 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.

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.

Within 15 days of receiving this letter please contact Regional Water Board staff Brian Fuller, at 707-576-2806 or, by email at Brian.Fuller@waterboards.ca.gov to advise as to your plans and schedule to correct the observed violations on the Property.

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.

You may contact me with any questions at Diana.Henriouille@waterboards.ca.gov or (707) 576-2350. Additionally, we are available to meet with you if you wish to discuss this letter or our waste discharge regulatory program in further detail.

Sincerely,

Diana Henriouille, P.E.
Enforcement Unit

190828_BMF_er_Baker_Insp_NOV

Attachments: Attachment A – Regulatory Requirements

Enclosures: Enclosure 1—July 19, 2018 Inspection Report
Enclosure 2—CDFW May 14, 2019 Notice of Violation
Enclosure 3—May 29, 2019 Inspection Report

Certified Mail – Return Receipt requested

Rodney and Gayle Baker Property
Trinity County APN 016-200-17-00
CIWQS Place ID. 849792
Notice of Violation

August 28, 2019

cc:

Department of Fish and Wildlife

Jacqueline Matthews, Jacqueline.Matthews@Wildlife.ca.gov

Brendan Lynch, Brendan.Lynch@wildlife.ca.gov

North Coast Regional Water Quality Control Board

Brian Fuller, Brian.Fuller@waterboards.ca.gov

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

Claudia Villacorta, Claudia.Villacorta@waterboards.ca.gov

Division of Water Rights

Ryan Babb, Ryan.Babb@waterboards.ca.gov

Stormer Feiler, Stormer.Feiler@waterboards.ca.gov

Trinity County

Ron Hanover, rhanover@trinitycounty.org

Attachment A – Regulatory Citations

Regulatory Section	Citation
Water Code section 13260	(a) All 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.
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:”
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 Henrioulle

FROM: Caila Heintz

DATE: July 31, 2018

SUBJECT: **Inspection Report** for July 19, 2018 Warrant Inspection of Trinity County APN 016-200-17-00.

File: Cannabis Program Inspections, Trinity County, July 2018 WET Inspections, Rodney and Gayle Baker, CIWQS Place ID 849792

Property information

County: Trinity

Physical address: 2790 State Highway 3, Hayfork CA. 96041

APN: 016-200-17-00

Owner: Rodney and Gayle Baker
P.O. Box 457
Hayfork, CA 96041

Size: 8.25 acres

Watershed: Trinity River Hydrologic Unit; South Fork Trinity River Hydrologic Area; Hayfork Valley Hydrologic Subarea (HU/HA/HSA 106.25; see Table 2-1 of the Water Quality Control Plan for the North Coast Region (Basin Plan), for beneficial uses).

Regulatory status with the Regional Water Board

Site Development:

No record of permitting for site development.

Applicable programs: Clean Water Act section 401 Water Quality Certification and/or waste discharge requirements for dredge/fill in a surface water.

Onsite activities/operations:

No record of permitting for onsite activities/operations.
Applicable programs: Regional or statewide cannabis order. Waste discharge requirements for discharge of waste to waters of the state.

Inspection information

Date/time: July 19, 2018

Type: Watershed Enforcement Team Warrant Inspection

Attendance:

Caila Heintz, Environmental Scientist (ES), Region 1
Brian Fuller, Engineering Geologist (EG), Region 1
Ryan Babb, Water Resource Control Engineer (WRCE), State Water Board, Division of Water Rights
Kari Gahan, ES, California Department of Fish and Wildlife (CDFW)
Jacqueline Matthews, Senior ES Specialist, CDFW
California National Guard
Trinity Sheriff's Office
Yuba Sheriff's Office

Background/Objective:

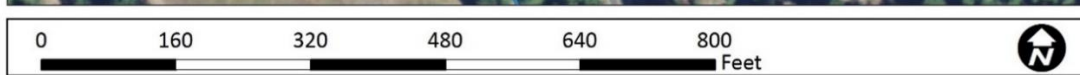
North Coast Regional Water Board (Regional Water Board) staff participated with staff of the California Department of Fish and Wildlife, State Water Board's Office of Enforcement and Division of Water Rights, and personnel from various law enforcement agencies in two days of inspections of multiple cannabis cultivation sites in Trinity County, on July 19 and 20, 2018. 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 Observations

We began our inspection at the southwest portion of the Property at the main access road and observed a well north of the road with PVC pipes in the well. We walked northeast from the well into a valley. Both ridges on either side of the valley were trending east-west. The first cannabis cultivation area we observed (C1) was in the valley. We observed a gasoline container on the ground near C1. To the northeast of C1 was a campsite with processed cannabis, as well as numerous debris piles and food. We observed a defined bed and bank to the northeast of C1 draining into the valley. The valley drains towards the west where it connects to a grated drain that diverts water under Highway 3 and connects to Salt Creek. Any evidence of a watercourse in the valley has been disturbed and/or covered by imported potting soil.

Hiking up the ridge to the south of the cultivation area we came to the main access road where we observed drainage swales on the dirt road. At the end of the road, we observed a second cannabis cultivation area (C2) positioned on the top of the ridge. We observed a pile of cannabis-related wastes, including motor oil, various fertilizers, used plastic plant pots and rope at the southwest corner of the ridge. We observed two sheds near the cultivation area and a third cannabis cultivation area (C3) to the west of the second cultivation area. We observed two mixing tanks, one 275-gallon and one 2,500-gallon. To the south of the mixing tanks, at the southeastern edge of the Property, we observed toilet paper and detected human waste odors.

Inspection Map



CALIFORNIA
Water Boards
STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARD

Site Map of Baker Property Trinity APN 016-200-17-00

7/31/2018

- Well
- Tributary
- Mixing tanks
- Watercourse
- Cultivation_area
- APN 016-200-17-00

Note: The Base Layer in this map is imagery from the Department of Fish and Wildlife, 2016 NAIP Imagery

Points of interest may be drawn in

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China

10 Miles

Table of observed features

Feature	Brief Description	Water Quality concern	Associated Photo(s)
Active cannabis cultivation	Ground disturbance and cannabis cultivation area totaling approximately 25,143 square feet.	More than 20,000 square feet of cannabis cultivation. No enrollment under Water Board cannabis cultivation waste discharge order.	1-3
Main Access Road	Drainage swales observed throughout main access roads.	Discharges and threatened discharges of sediment into surface waters.	4-5
Chemical Storage/Waste	Multiple gasoline containers, fertilizer containers.	Threatened/potential discharges into surface and groundwater.	6-7
Improper disposal of human waste	Human waste odors and toilet paper onsite.	Threatened/potential discharges into surface and groundwater.	

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:** Staff observed discharges and threatened discharges of sediment to surface waters associated with the main access road.
- 2. Stream crossing maintenance and improvement:** Staff observed a number of drainage swales crossing the road; it appears that the road was constructed through watercourses without installation of stable conveyance for the watercourses.

3. **Stream and wetland buffers:** Staff observed a defined bed and bank channel draining into the valley from the northeast where cultivation was occurring (C1).
4. **Spoils management:** Staff observed imported potting soil in the watercourse referenced above.
5. **Water storage and use:** Staff observed no water quality issues associated with water storage and use.
6. **Irrigation runoff:** Given the location of cultivation area C1 either immediately adjacent to or built within a watercourse, there is a high potential for irrigation runoff from this area to enter and carry pollutants into receiving waters.
7. **Fertilizers and soil amendments:** Staff observed fertilizer containers at locations where spills or leaks may enter or be transported into receiving waters.
8. **Pesticides:** Staff observed pesticides at locations where they may enter or be transported in receiving waters.
9. **Petroleum products and other chemicals:** Staff observed fuel containers at locations where spills or leaks may enter or be transported into receiving waters.
10. **Cultivation-related wastes:** Staff observed cannabis related wastes near cultivation area C2.
11. **Refuse and human waste:** Staff observed refuse at locations where it may enter or be transported into receiving waters. Staff did not observe human waste containment/ disposal systems or facilities on the Property, but did observe evidence of uncontained/uncontrolled human waste discharge near the southeastern edge of the Property.

Recommendations

1. 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. As a reference for the goal of this recommendation, review standard conditions 7, 8, and 9 of Regional Water Board Order No. R1-2015-0023 (Regional Cannabis Order) and relevant portions of the CANGO (Cannabis General Order). Links to both orders provided below.
2. 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. As a reference for the goal of this recommendation, review standard conditions 1, 2, 3, and 4 of the regional cannabis order and relevant portions of the CANGO.

The Regional cannabis order can be found at this link:

https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2015/15_0023_Cannabis_Order.pdf

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) can be found at this link:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/finaladoptedcango101717.pdf

3. Comply with directives/recommendations provided by the Division of Water Rights and/or the CDFW regarding use/permitting/abandonment of the onsite well. Ensure that well abandonment meets applicable State/County requirements.
4. Cease uncontained/uncontrolled discharges of human waste, and develop and implement a short term and longer term/permanent plan for human waste containment and disposal that is protective of water quality and complies with applicable Trinity County requirements.
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. For more information about Water Board permits that may apply to proposed site development or land use activities, refer to this link:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/permit/

6. 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.

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

Appendix A – Inspection Photographs 1-8



Photo Taken by: Caila Heintz 19 July 2018

Photo 1 – Facing north looking at the cannabis cultivation area C1, located in a valley on Property.



Photo Taken by: Brian Fuller, 19 July 2018

Photo 2 – Facing northeast looking at a watercourse that drains into the cultivation area shown in photo 1



Photo Taken by: Caila Heintz 19 July 2018

Photo 3 – Facing west looking at second cultivation site, C2



Photo Taken by Brian Fuller, 19 July 2018

Photo 4 – Drainage swales on main access road.



Photo Taken by: Caila Heintz, 19 July 2018

Photo 5 – Drainage swales on main access road.



Photo Taken by: Caila Heintz, 19 July 2018

Photo 6 – Fertilizer/Motor Oil Containers located at southwest corner of ridge near C2



Photo Taken by: Caila Heintz, 19 July 2018

Photo 7 – Trash piles observed near campsite located to the northeast of C1



Photo Taken by Brian Fuller, 19 July 2018

Photo 8- Well located at southwest corner Property.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 - Northern
601 Locust Street
Redding, CA 96001
(530) 225-2300
www.wildlife.ca.gov

GAVIN NEWSON, Governor
CHARLTON H. BONHAM, Director



May 14, 2019

CERTIFIED MAIL:

7018 0040 0000 6499 4266

Rodney and Gayle Baker
PO Box 457
Hayfork, CA 96041

Subject: Updated Notice of Violation of Fish and Game Code Sections 1602, 5650,
and 5652 in Conjunction with Cannabis Cultivation

Dear Mr. and Mrs. Baker:

On March 15, 2019, California Department of Fish and Wildlife (Department) staff conducted a compliance inspection, with your consent, of your property identified by Assessor Parcel Number 016-200-17 located on an unnamed stream tributary to Salt Creek in Trinity County.

The Department previously inspected the subject parcel on July 19, 2018 during the service of a search warrant and a Notice of Violation (NOV) was issued on September 12, 2018 which documented Fish & Game Code (Fish & G. Code) violations observed during the inspection. After receipt of the NOV, you contacted the Department to discuss the alleged violations and the process for remediating the site. Department staff discussed with you that any work in or immediately adjacent to a stream would require a Lake and Streambed Alteration Agreement (LSAA) prior to any such activity. It was also discussed that some work could be performed without a LSAA outside of the stream, such as removal of trash, proper disposal and/or storage of petroleum products and fertilizers, installation of road drainage, and placement of temporary erosion control measures (i.e. straw). On September 28, 2018, with your consent, a second inspection was conducted on the subject parcel; some site remediation had been conducted, such as minimal trash removal and grow box deconstruction. Department staff had multiple phone conversations with you in the fall/winter of 2018 regarding Fish & G. Code violations on the parcel; Department staff reiterated that a LSAA would be required for any work in or adjacent to the stream. On January 29, 2019, you informed the Department that your brother-in-law (Rick Baker) had visited the parcel in the winter of 2018 and had performed clean-up activities.

Conserving California's Wildlife Since 1870

The March 15, 2019 inspection was conducted to assess the extent of remediation activities. During the visit, staff observed the activities described below, which are in violation of Fish & G. Code sections 1602, 5650 and 5652.

Table 1. Summary Fish & G. Code violations observed on March 15, 2019

Site Name	Fish & G. Code Section	Violation Description
In-stream grading	1602(a)	Substantial change or use of material from the bed, channel, or bank of a stream and deposition/disposal of debris/waste without Notification. Recent in-stream grading of unnamed stream, approximately 275 feet of stream was disturbed and filled in with native soil, potting soil, and trash.
	5650(a)(6)	Deleterious materials – discharge of sediment from graded area (native soil and potting soil) into unnamed stream and Salt Creek ¹ .
	5650(a)(6)	Deleterious materials – discharge of nutrients (potting soil with perlite) from graded area into unnamed stream and Salt Creek ¹ .
Petroleum products	5650(a)(1)	Petroleum products – abandoned vehicle in unnamed stream
Refuse	5652(a)	Refuse in and within 150 feet of unnamed stream – bottles, netting, piping, twine, plastic pots/tarps
Access Road	5650(a)(6)	Deleterious material – discharge of sediment from erosion of road surface into unnamed stream
		1602(a) violations=1 5650(a)(1) violations=1 5650(a)(6) violations=3 5652(a) violations=1 Total FGC violations=6

¹Observations along Salt Creek made by Warden Brendan Lynch on March 28, 2019.

See Attachment A for photos taken during the inspection on March 15, 2019.

Fish & G. Code section 1602 requires a person to submit a written notification to the Department before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. Hence, any person who engages in an activity subject to Fish & G. Code section 1602 without first notifying the Department violates Section 1602.

Fish & G. Code sections 5650 and 5652 make it unlawful to pollute waters of the state. Fish & G. Code section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state any substance or material deleterious to fish, plant life, mammals, or bird life, including, but not limited to gasoline and oil, as well as sediment. Fish & G. Code section 5652 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any garbage, refuse, or waste, among other materials.

In the Department's view, notification under Fish & G. Code section 1602 was required because the activity substantially changed or used material from the bed, channel, and bank of and deposited or disposed of debris or waste directly into an unnamed stream tributary to Salt Creek.

A person who violates Fish & G. Code sections 1602, 5650, and 5652 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, the Department may impose civil penalties administratively against any person found by the Department to have violated these Fish & G. Code sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

The Department may request a maximum civil penalty of \$8,000 for each violation of Fish & G. Code section 1602, and \$20,000 for each violation of Fish & G. Code sections 5650 or 5652. Each day the violation occurs or continues to occur constitutes a separate violation. (Fish & G. Code, section 12025, subds. (b)(1)(A) - (b)(1)(C), (2); (e).) Also, the District Attorney or the Attorney General may enforce a violation of Fish & G. Code sections 1602 and 5650 civilly. Specifically, under Fish & G. Code sections 1615 and 5650.1, a person who violates Fish & G. Code sections 1602 or 5650 is subject to a maximum civil penalty of \$25,000 for each violation. The District Attorney or the Attorney General may also enforce a violation of Fish & G. Code sections 1602, 5650, and 5652 criminally. Under Fish & G. Code section 12000, each violation is a misdemeanor.

In order to address these violations, you will need to complete the following:

1. Submit a remediation plan which addresses all Fish & G. Code violations detailed in the Notice of Violation. Preparation of a remediation plan will require consultation with a qualified environmental professional.
2. Submit a Notification of Lake or Streambed Alteration form (DFW 2023 (Rev. 01/01/18)) and applicable Attachments.
3. Submit the appropriate Notification fee based on the estimated project costs of each project by referring to the current fee schedule for Lake and Streambed Alteration Agreements (California Code of Regulations, title 14, section 699.5).
4. Submit the appropriate remediation fee, separate from the Notification fee, in accordance with subdivision (d) of Section 12029 of the Fish and Game Code (California Code of Regulations, title 14, section 699.5(i)).

Mr. and Mrs. Baker
May 14, 2019
Page 4 of 11

All Lake or Streambed Notification information can be found at:
<https://www.wildlife.ca.gov/Conservation/LSA/Notify-CDFW>

If you have questions regarding this letter, please contact Senior Environmental Scientist Specialist Jacqueline Matthews at (530) 225-2551 or jacqueline.matthews@wildlife.ca.gov.

Sincerely,



Donna L. Cobb
Senior Environmental Scientist Supervisor
Watershed Enforcement Team 1

cc: Jeremy Valverde, Jacqueline Matthews, Warden Brendan Lynch
Department of Fish and Wildlife
jeremy.valverde@wildlife.ca.gov, jacqueline.matthews@wildlife.ca.gov,
brendan.lynch@wildlife.ca.gov

Diana Henriouille and Caila Heintz
North Coast Regional Water Quality Control Board
diana.henriouille@waterboards.ca.gov, caila.heintz@waterboards.ca.gov,
northcoast.cannabis@waterboards.ca.gov

Leslie Hubbard and Kristalynne Anderson
Trinity County
lhubbard@trinitycounty.org; kanderson@trinitycounty.org



Figure 1. Unnamed stream tributary to Salt Creek where alteration, sediment and nutrient discharges, and trash were documented. Approximately 275 feet of the stream was graded and altered. Note the algae in the foreground, likely due to elevated nutrient levels from potting soil and fertilizers.

Mr. and Mrs. Baker
May 14, 2019
Attachment A – Inspection Photos from March 15, 2019



Figure 2. Unnamed stream tributary to Salt Creek where alteration, sediment and nutrient discharges, and trash were documented. Approximately 275 feet of the stream was graded and altered.

Mr. and Mrs. Baker
May 14, 2019
Attachment A – Inspection Photos from March 15, 2019



Figure 3. Examples of the stream cutting through placed fill, potting soil, and trash; depth of incision ranged from a few inches to over a foot. Note the layer of potting soil.

Mr. and Mrs. Baker
May 14, 2019
Attachment A – Inspection Photos from March 15, 2019

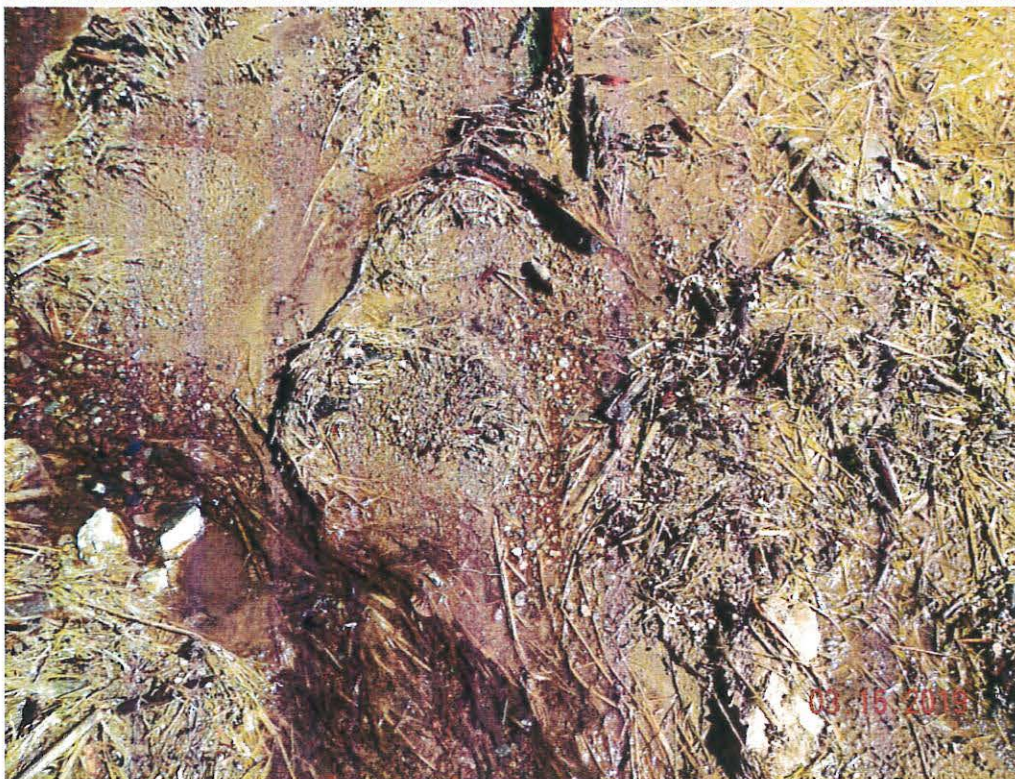


Figure 4. Examples of potting soil and trash located in the stream. Algae growth was observed, likely due to elevated nutrient levels from potting soil and fertilizers.

Mr. and Mrs. Baker
May 14, 2019
Attachment A – Inspection Photos from March 15, 2019

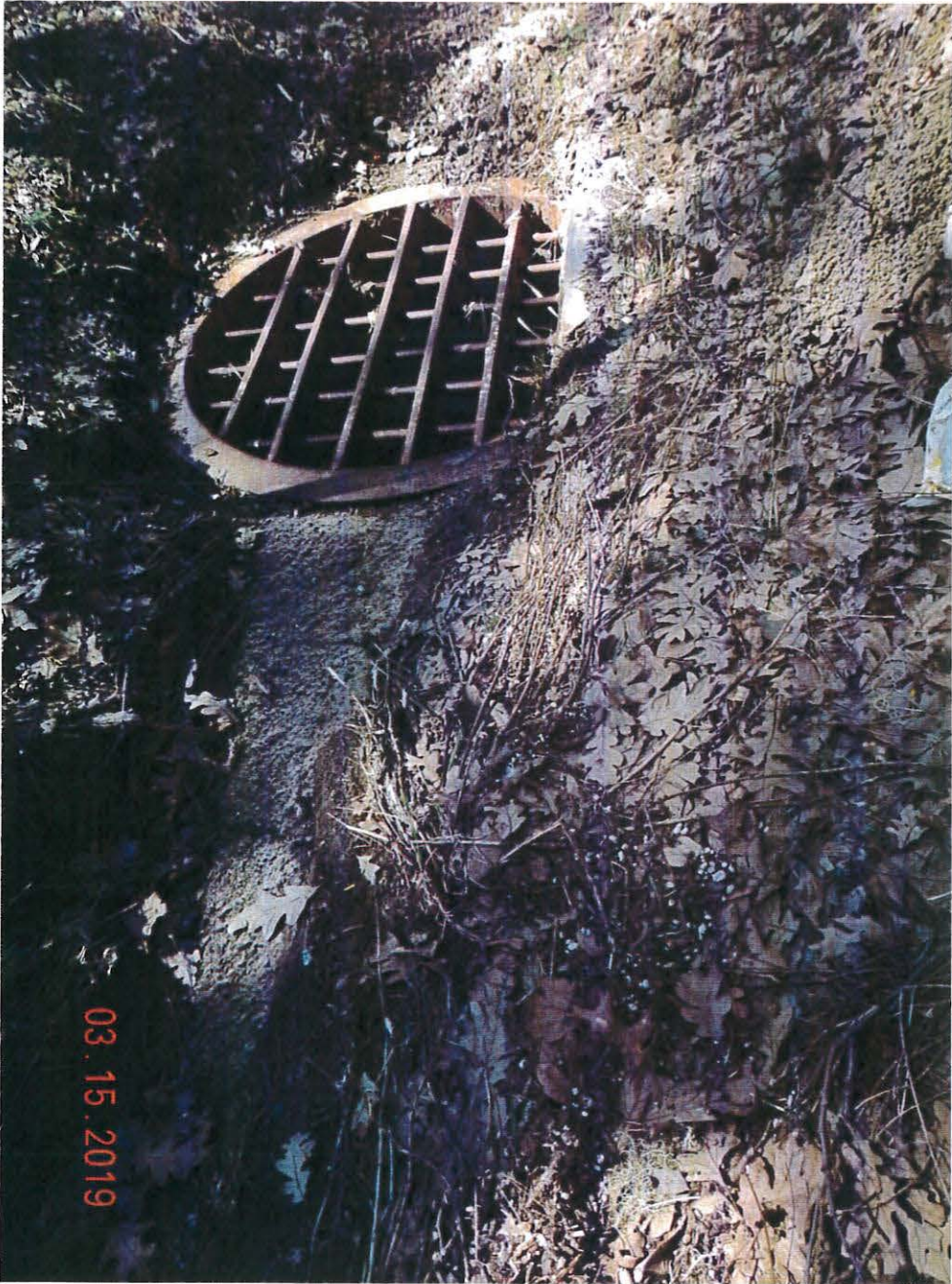


Figure 5. Drop inlet culvert along Highway 3 (north of driveway) that conveys flows to Salt Creek. Imported potting soil was transported by stream flows from the alteration area to this inlet and subsequently to Salt Creek. Note perlite from the imported potting soil in the foreground.

Mr. and Mrs. Baker
May 14, 2019
Attachment A – Inspection Photos from March 15, 2019



Figure 6. Perlite and potting soil at the drop inlet along Hwy 3, which conveys flows to Salt Creek.



Figure 7. Abandoned vehicle located in the stream.



Figure 8. Road erosion - discharges of fine sediment to stream observed at the driveway entrance on Highway 3. The access road is approximately 550 feet long and does not contain any drainage features.



Figure 9. Examples of trash/refuse observed near the stream.

North Coast Regional Water Quality Control Board

Inspection Report for May 29, 2019, Consent Inspection of Trinity County Assessor's parcel number (APN) 016-200-17-00

Property information

County: Trinity

Physical address: No physical address

APN: 016-200-17-00

Ownership: Rodney and Gayle Baker
PO BOX 457,
Hayfork, CA, 96041-0457

Size: 8.25 acres

Watershed: Trinity River Hydrologic Unit; South Fork Trinity River Hydrologic Area;
Hayfork Valley Hydrologic Subarea (HU/HA/HSA 1106.25; Table 2-1,
Water Quality Control Plan for the North Coast Region)

Regulatory status with the Regional Water Board

Site Development:

- No record of permitting for site development

Applicable programs:

- Regional Water Board's Clean Water Act section 401 Water Quality Certification permit for dredge/fill activities in a surface water

Onsite activities/operations:

- No record of enrollment in any State or Regional Water Board regulatory program

Applicable programs:

- Regional or statewide cannabis order.
- Waste discharge requirements for discharge of waste to waters of the state.

Rodney and Gayle Baker Property
Trinity County APN 016-200-17-00
May 29, 2019, Inspection
CIWQS Place ID. 849792

August 12, 2019

[Note: cannabis plants were not being cultivated at the time of the May 29, 2019 inspection.]

Inspection information

Date/time: May 29, 2019/midday

Type: Consent inspection

Attendance:

North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff)
Brian Fuller (report author)

California Department of Fish and Wildlife (CDFW)
Jacqueline Matthews
Cori Hansen

Property Owner
Gayle Baker
Rodney Baker

A potential cultivator invited by the property owners

Background/Objective:

Regional Water Board staff first inspected the Property on July 19, 2018; at that time, staff observed numerous features or conditions that were impacting or that threatened to impact water quality, including a watercourse that had been filled/covered with imported potting soil and other cultivation waste. CDFW inspected the property on September 12, 2018, and again on March 15, 2019, and documented in a May 14, 2019, notice of violation (NOV) (Enclosure 1) substantial discharges to receiving waters as a result of inadequate cleanup of the Property.

Following receipt of the May 14, 2019, NOV, Staff participated with CDFW in a consent inspection of the property on May 29, 2019. Objectives for staff during the inspection were to document current conditions on the site, and to assess whether the Property owners were making adequate progress in addressing impacts to the quality and beneficial uses of receiving waters.

Property History:

- Aerial image 1, shows the property had not yet been developed for cannabis cultivation on May 6, 2007.
- Rodney Baker and Gayle Baker purchased the Property on July 13, 2007.
- Aerial image 2, shows that some time between May 6, 2007, and May 24, 2009, timber clearing and grading had occurred.
- Aerial image 3, shows patterns indicating that cannabis cultivation was occurring on July 12, 2012, in the southern cultivation areas.
- Aerial image 4, shows patterns indicating that cannabis cultivation was occurring in the northern valley on August 12, 2015.

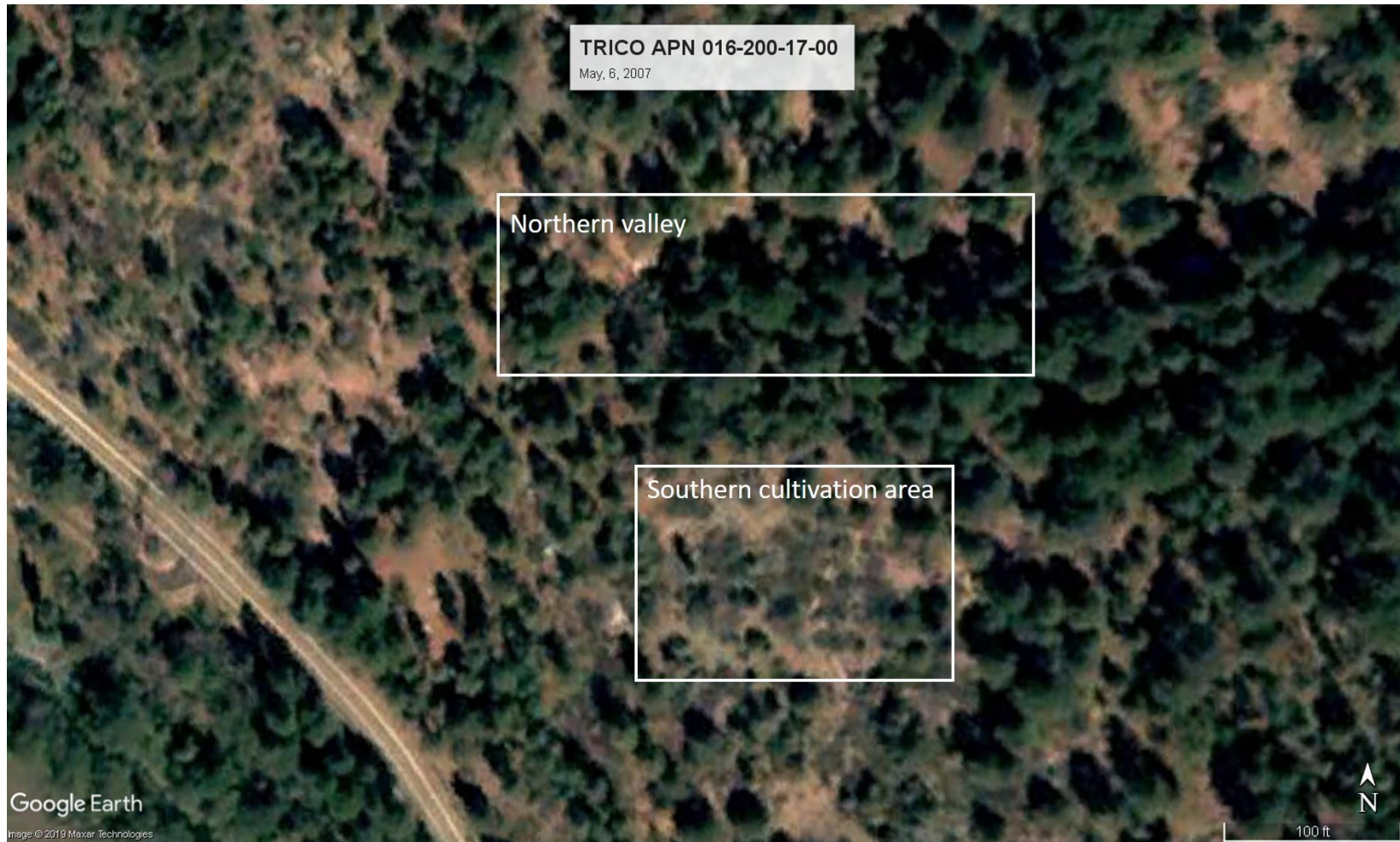


Image © 2019 Maxar Technologies dated May 6, 2007, accessed with Google Earth

aerial image 1 – shows the property prior to being developed for cannabis cultivation.



Image USDA Farm Service Agency, dated May 24, 2009, accessed with Google Earth

aerial image 2 – Same extent as aerial image 1 showing timber clearing and grading had occurred on the property.



Image dated July 10, 2012, accessed with Google Earth

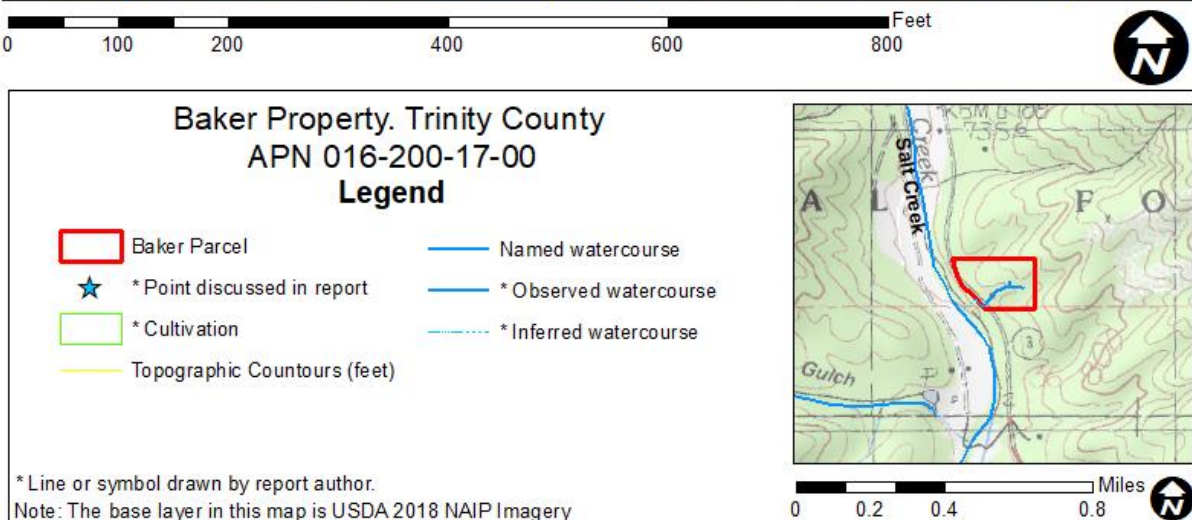
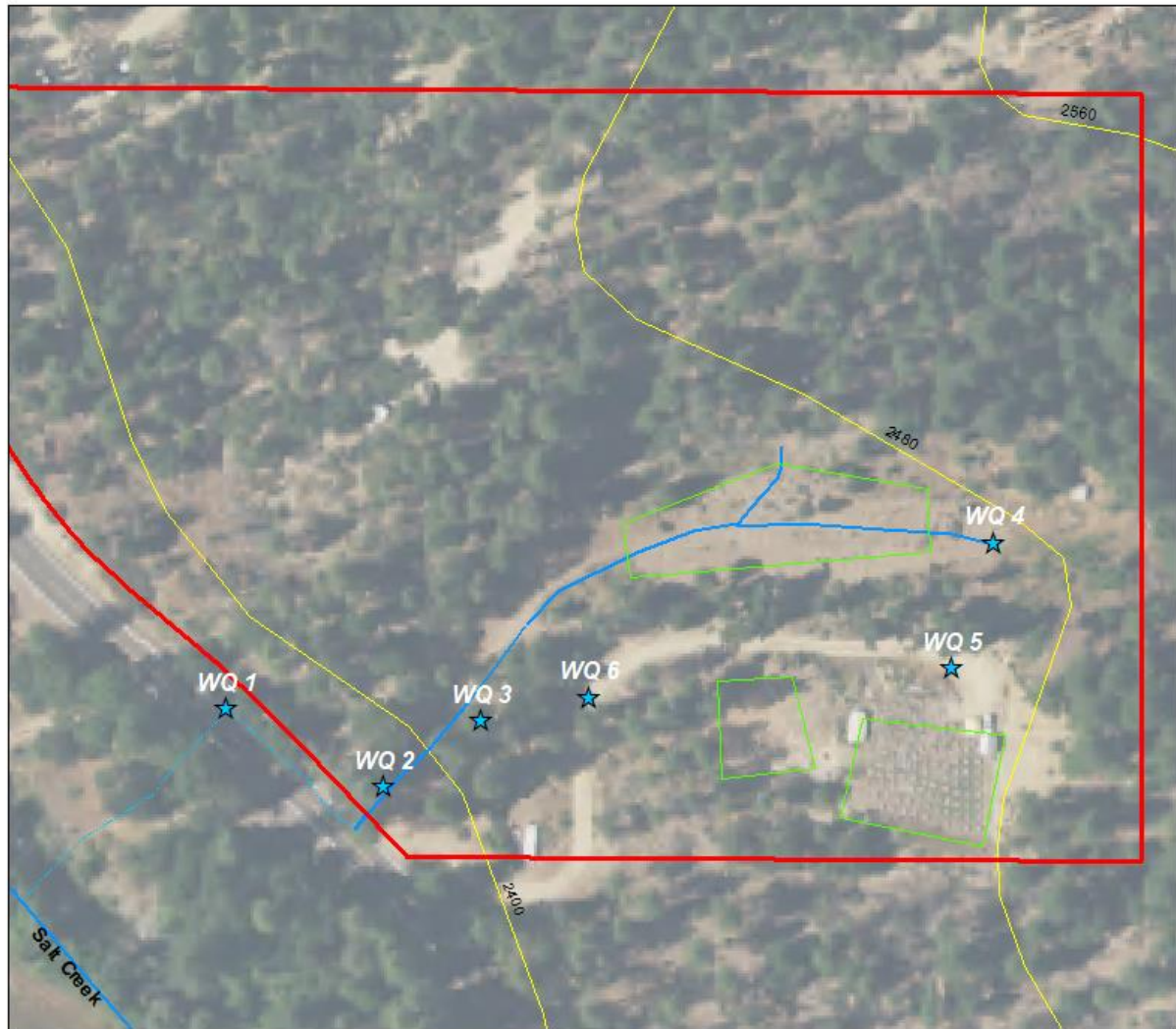
aerial image 3 –Cannabis cultivation at the southern flats had been occurring since at least July 12, 2012.



Image © 2019 Maxar Technologies dated August 12, 2015, accessed with Google Earth

aerial image 4 – Regularly spaced circles apparent in the northern valley suggest cannabis cultivation was occurring in this area.

Inspection Maps



map 1. Includes reference points for features of water quality interest discussed below.

Inspection Observations

Staff met with inspection participants at the property and walked to the drain carrying water below highway 3 located at WQ 1, (photo 1). Much of the evidence of imported potting soils reported in the CDFW May 14, 2019 NOV had faded; however, perlite was still visible in the roadside ditch a short distance upstream (photo 2) and continued onto the property. We proceeded to the well at WQ 2 (photo 3), which still did not have a sanitary seal. In the vicinity of the well, I observed lenticular lobes of fine sediment with perlite on the valley floor (photo 5). We observed a car (WQ 3) (photo 5) which had been in the watercourse since the July 19, 2018, inspection.

A short distance northeast of (WQ 3) the Valley trends more east-west. I observed much of the straw cover and potting soils had migrated from the valley walls towards the valley bottom (photo 6). A channel (photos 7 - 8), eight inches deep and one foot wide had incised along a 300-foot length of the valley thalweg, creating a void of approximately 200 cubic feet. I observed perlite and cannabis cultivation waste in the incised channel walls at a depth of 8 inches (photos 9 -11), suggesting that either the work performed prior to the wet-weather period or subsequent rain events had moved the waste into the valley bottom and later rain events mobilized the waste, transporting it downstream.

Staff walked upstream to a point there were no more visible imported potting soils, WQ4, and observed a sediment mixing tank with high concentration nutrients sitting on the ground nearby (photos 12 - 13). Staff then walked south to the southern cultivation area and observed rilling on the road WQ 5 (photo 14). In response to questioning about how much potting soil had been cleaned up, Rodney Baker directed me to the onsite location where the potting soils had been taken, WQ 6 (photos 15 - 16). I estimate that a pile no larger than ten feet long, five feet wide and two feet deep, with a maximum volume of 100 cubic feet had been collected. 2016 NAIP Aerial imagery presented in Regional Water Board's July 2018 inspection reports shows at least 100 planter boxes, averaging approximately 4 feet square and one foot deep suggests a volume of at least 1,000 cubic feet of imported potting soils in the valley.

We returned to the vehicles and I advised Mr. Baker that the cleanup work in the previous year was inadequate. Furthermore, given the large amount of waste that needed to be removed from the watercourse, the potential to create more discharges of waste to receiving waters and the requirement to obtain a water quality certification from the regional water board and permits from other regulatory agencies, I recommended the Bakers contact a qualified professional that could develop a restoration plan.

On July 3, 2019 I spoke with Gayle Baker on the phone. She told me that she had contacted Down River Consulting, however they had not saved enough money to pay for an initial site visit.

Recommendations

1. Immediately, have a qualified professional install a sanitary seal on the well located at WQ 2 to prevent groundwater from being polluted.
2. Immediately, move the car at WQ3 to a location away from the watercourse.
3. Immediately, remove all plastic waste, and packages of fertilizers from valley or from where they can enter or be transported via wind or runoff to the valley.
4. Immediately, retain a qualified professional to develop a plan for removing the remaining cultivation-related waste, including imported potting soils, from the watercourse between WQ 2 and WQ 4 before October 15, 2019.
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. For more information about Water Board permits that may apply to proposed site development or land use activities, refer to this link:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/permit/

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.

Selected Photos



Photo Taken by: B. Fuller 29 May 2019

photo 1 – Drain carrying water below highway 3. Some deposited fine sediment is apparent at entrance to drain.



Photo Taken by: B. Fuller 29 May 2019

photo 2 – A short distance southeast of the drain pictured in photo 1, perlite is present in the roadside ditch.



Photo Taken by: B. Fuller 29 May 2019

photo 3 – Well covered with wood instead of a proper sanitary seal.



Photo Taken by: B. Fuller 29 May 2019

photo 4 – Potting soils deposited in valley.



Photo Taken by: B. Fuller 29 May 2019

photo 5 – Car being stored in watercourse.



Photo Taken by: B. Fuller 29 May 2019

photo 6 – Looking north across the valley. Note the u-shaped features towards the top of the image showing what is left of some of the cultivation beds. Also note the light-colored straw in the lower part of the image where the waste and ground cover had collected.



Photo Taken by: B. Fuller 29 May 2019

photo 7 – Looking downstream. Note the bottom ten-foot-width of the valley is covered with straw. Bottom one-foot width has an eight-inch deep incised channel.



Photo Taken by: B. Fuller 29 May 2019

photo 8 – Looking upstream. Note the incised channel extending from the center of the image to the lower right corner.



Photo Taken by: B. Fuller 29 May 2019

photo 9 –Watercourse incised into deposited potting soils, cultivation waste and other trash. Note scale that shows the trench is about 20cm deep.



Photo Taken by: B. Fuller 29 May 2019

photo 10 – Watercourse incised into deposited potting soils, cultivation waste and other trash. Note pot labeled with the cannabis plant variety “P cookie.”



Photo Taken by: B. Fuller 29 May 2019

photo 11 – Watercourse incised into deposited potting soils, cultivation waste and other trash.



Photo Taken by: B. Fuller 29 May 2019

photo 12 – Fertilizer mixing tank, located about 50 feet north of WQ 4.



Photo Taken by: B. Fuller 29 May 2019

photo 13 – High-concentration potting soils stored on top of fertilizer mixing tank pictured in photo 12.



Photo Taken by: B. Fuller 29 May 2019

photo 14 – Road out sloped towards valley with rills running along the inside edge.



Photo Taken by: B. Fuller 29 May 2019

photo 15 – Trailer and frame of temporary building where potting soils from the valley were reported to have been placed. Note highway 3 in background of image and absence of cover on the temporary building.



Photo Taken by: B. Fuller 29 May 2019

photo 16 – Pile of potting soils inside of temporary building pictured in photo 15.

Aerial Images of Trinity County Assessor's parcel number (APN) 016-200-17-00



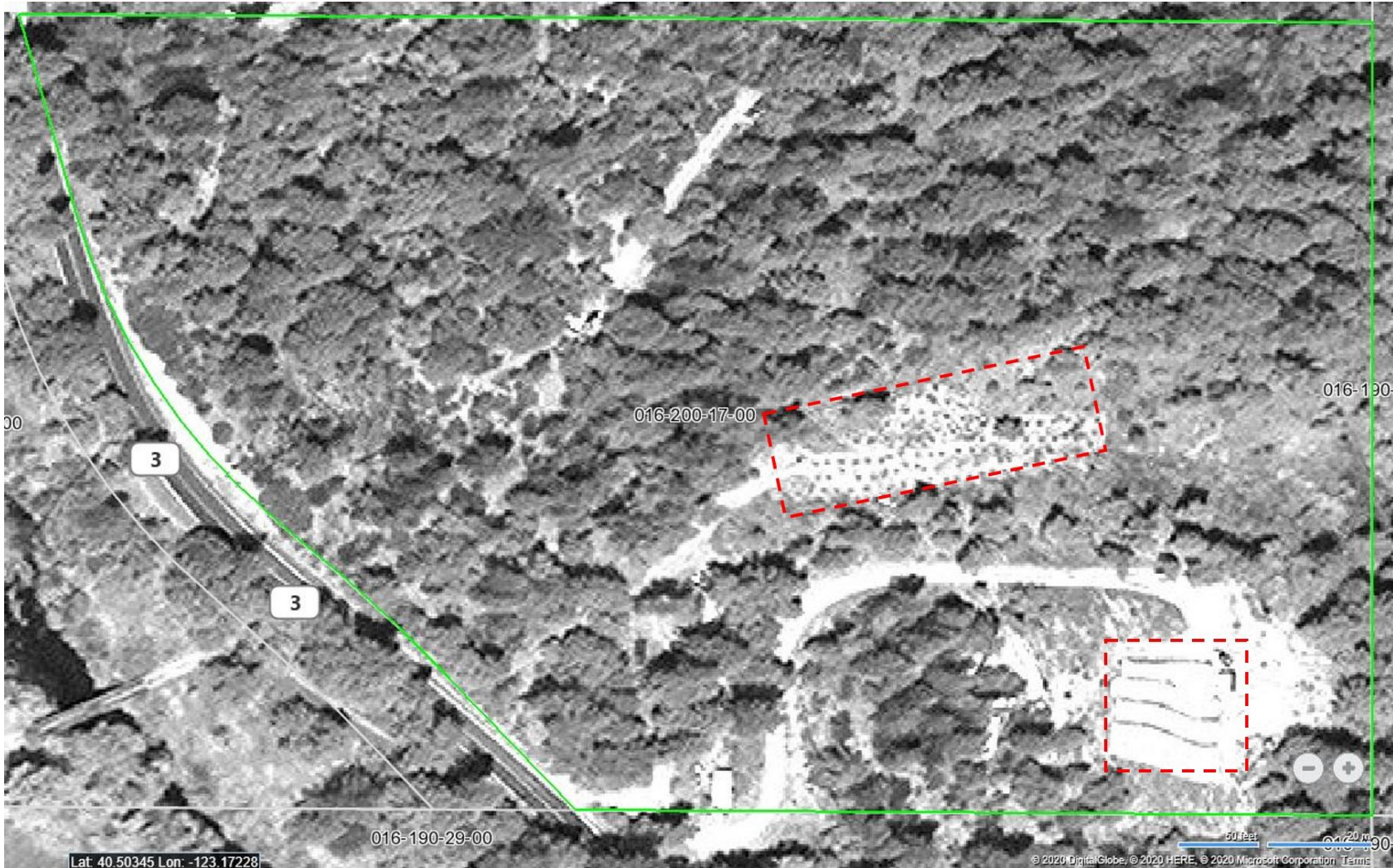
Image dated June 16, 2010, accessed with Digital Map Products' Land Vision service

aerial image 1 – Shows the property, outlined in green, following timber clearing and grading. An area in the southeast of the property, outlined with a red dashed line displays the regular pattern of circles consistent with cannabis cultivation. .



Image dated June 19, 2011, accessed with Digital Map Products' Land Vision service

aerial image 2 – Area outlined with a red dashed line displays the regular pattern of circles consistent with cannabis cultivation.



aerial image 3 – Area outlined with a red dashed line displays the regular pattern of circles consistent with cannabis cultivation.



Image dated October 5, 2017, accessed with Digital Map Products' Land Vision service

aerial image 4 – Area outlined with a red dashed line displays the regular pattern of circles consistent with cannabis cultivation.