



North Coast Regional Water Quality Control Board

June 25, 2021

Michael Harding
PO Box 218
Whitethorn, CA 95589

Certified Mail 7016 2070 0000 6486 1862

Dear Mr. Harding,

Subject: Notice of Violation and Transmittal of Inspection Report for April 29, 2021 Inspection of Mendocino County Assessor's Parcel Number (APN) 031-020-29-01

File: Cannabis Program Inspections, Mendocino County, April 2021 Inspections, CIWQS Place ID: 874437

This letter is to notify you of observed violations of the requirements listed below for unauthorized discharges to waters of the state from the above-referenced parcel (Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ1, WQ2 and WQ3.
2. California Water Code (Water Code) Section 13260 and 13264

Within 30 days of this letter, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

Background

On April 29, 2021, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), State Water Resources Control Board Division of Water Rights, and various law enforcement personnel, inspected the subject Property. The purpose of the inspection was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state.

Attached is a copy of the water quality inspection report (Attachment B – April 29, 2021 Inspection Report). Please review the Inspection Report carefully and completely.

The Inspection Report contains recommendations for correcting observed violations and advises you of the Regional Water Board permits necessary for instream work and projects/activities that result in discharges of waste to receiving waters.

Relevant Requirements

During the inspection, Regional Water Board staff identified several features and conditions on the Property that represent violations of water quality requirements and regulations. Attachment A – Regulatory Citations, provides references to these, and related, requirements and regulations.

Observed Violations

As documented in the April 29, 2021 Inspection Report, Regional Water Board staff observed violations of the Basin Plan Section 4.2.1 Prohibitions 1 and 2, and Water Code sections 13260 and 13264. Staff observed these violations at Property locations identified in the April 29, 2021, Inspection Report as WQ1, WQ2, WQ3, WQ6 and WQ7.

Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Water Code, and the Basin Plan warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, securing any applicable permits from this and other agencies prior to conducting work. Please note that the existing conditions, as observed and documented in the Inspection Report, may represent continuing violations of the Water Code and Basin Plan.

Please note that correcting the conditions of non-compliance at the Property does not preclude enforcement for the violations alleged in this notice. As noted above, the Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$5,000 for each day the violation occurs or up to \$10 per gallon, but not both pursuant to Water Code section 13350.

Directive to Obtain Regulatory Coverage Prior to Future Activities Involving or Resulting in Discharges of Waste to Waters of the State

During the April 29, 2021, inspection, staff observed cannabis cultivation operations of sufficient size and scope to require regulatory coverage under the State Water Resources Control Board (State Water Board) Order No. WQ-2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Statewide General Order).

Please be aware that, pursuant to Water Code sections 13260 and 13264, if you elect to resume/continue cannabis cultivation on the subject Property, you must either:

- 1) Enroll the property under the Statewide General Order by providing the information required in the online application process. The application can be accessed at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/

Submit the application fee within **30 days** of submitting the on-line application. Failure to submit the application fee within 30 days will result in the application being voided and authorization terminated. Payments shall be identified using the Fee Payment Application Number (found on the Notice of Receipt). All checks or money orders shall be made payable to: "State Water Resources Control Board," and shall be delivered to:

(By US Mail):

Accounting Office
Attn: Water Quality Fees – Cannabis General Order
P.O. Box 1888
Sacramento, CA 95812-1888

(In person or by courier delivery):

Accounting Office
Attn: Water Quality Fees –Cannabis General Order
1001 I Street
Sacramento, CA 95814-2828

OR:

- 2) File a Report of Waste Discharge in order to obtain individual Waste Discharge Requirements (WDRs) specific to your property.

Please submit the appropriate documents and payments to:

North Coast Water Board
Attn: Diana Henriouille
Enforcement Unit
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

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.

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 questions about what is required of you to comply with the requirements outlined above, please contact Regional Water Board staff Brian Fuller at Brian.Fuller@waterboards.ca.gov or by phone at (707) 576-2806 to advise as to your plan and schedule to correct the alleged violations as documented in the inspection report.

You may also contact me at Diana.Henriouille@waterboards.ca.gov. 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,

Diana Henriouille, P.E.
Enforcement Unit

210625_BMF_dp_Harding_NOV

Attachments: Attachment A - Regulatory Citations
Attachment B – April 29, 2021, Inspection Report

Certified Mail – Return Receipt requested

cc: North Coast Regional Water Quality Control Board

Northcoast.Cannabis@waterboards.ca.gov

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

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

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

Department of Fish and Wildlife

Ryan Bourque, Ryan.Bourque@wildlife.ca.gov

Scott Bauer, Scott.Bauer@wildlife.ca.gov

Warden Eric Agoitia, Eric.Agoitia@wildlife.ca.gov

Division of Water Rights

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

Taro Murano, Taro.Murano@waterboards.ca.gov

Chris Baimas, Chris.Baimas@Waterboards.ca.gov

Christopher Van de Wyngard, Christopher.VandeWyngard@waterboards.ca.gov

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	Prohibits “[t]he discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses.”
Basin Plan Section 4.2.1, Prohibition 2	Prohibits “[t]he placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses.”
California Water Code Section 13260	<p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p>(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.</p> <p>(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p>
California Water Code Section 13261(a)	“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

Regulatory Section	Citation
	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).”
Federal Clean Water Act Section 401	Section 401 (a)(1) “Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates”
Federal Clean Water Act Section 404	Section 404(a) provides, in relevant part, “The Secretary may issue permits...for the discharge of dredged or fill material into the navigable waters...” The Code of Federal Regulations defines the term “dredged material” as material that is excavated or dredged from waters of the United States. 33 C.F.R. § 323.2(c). The term “discharge or dredged material” mean any addition of dredge material into the waters of the United States. 33 C.F.R. § 323.2(d)(1). The Code of Federal Regulations defines “fill material” as material placed in waters of the United States that has the effect of replacing any potion of a water of the United States with dry land or changing the bottom elevation of any potion of a water of the United States. 33 C.F.R. § 323.2(e)(1). The term “discharge of fill material” means the additional of fill material into waters of the United States. 33 C.F.R. § 323.2(f).

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 443745
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 04/29/2021	

Discharger Information

Party ID: 556316	Discharger Organization Name: Michael Harding	
Address: Po Box 218	City, State, Zip: Whitethorne, CA 95589	
Discharger Contact Person:	Discharger	Contact Phone:
Discharger Contact Email Address:		

Facility Information

Place ID 874437	Facility Name: Michael Harding (Site #3)		
Address:	City, State, Zip: Covelo, CA 95428		
County: Mendocino	Latitude: 39.96137	Longitude: -123.46569	Method: Map Interpolation (digital)

Lead Inspector Information

Lead Inspector Party ID: 568606	Lead Inspector Name: Brian Fuller		
Inspector Type:	<input checked="" type="checkbox"/> State	<input type="checkbox"/> State Contractor	<input type="checkbox"/> EPA Contractor
	<input type="checkbox"/> EPA and State (EPA Lead)	<input type="checkbox"/> EPA and State (State Lead)	<input type="checkbox"/> EPA (Regional)

INSPECTION TYPE

Inspection Type: Complaint inspection

VIOLATIONSWere Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1091037	Basin Plan Prohibition	04/29/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ 1, WQ 2 and WQ 3.
1091038	Unauthorized Discharge	04/29/2021	B	California Water Code section 13260 and 13264 for unauthorized discharge of waste at locations WQ 2, WQ 3, WQ 6, and WQ 7.

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:

1. Enroll in the Cannabis General Order, address the water quality-related impacts from recent development & ensure future development and uses for cannabis are in conformance with current regulations.
2. Engage a qualified professional to develop and submit a work plan to address the threatened and actual discharges of waste associated with cannabis operations on the property.
3. Submit application for and obtain 401 WQC from Water Board before performing any instream work.

GENERAL NOTES (OPTIONAL) (2000 character limit)

My inspection was associated with a criminal search warrant and I viewed only portions of the Property. Please see the attached Map and Appendices for locations and details about features of concern to water quality.

At WQ1, I observed an undersized and perched culverted watercourse crossing. I followed a steep and rutted road west to a cultivation area and observed a trailer encroaching on a watercourse at WQ2. I observed cultivation waste within the banks of the watercourse at WQ2. I walked north to another cultivation area at WQ3. I observed an intermittent watercourse passing along the southwestern edge of the cultivation area and another watercourse, with more clearly defined banks, passing along the northeastern edge of the cultivation pad. I observed a gully eroding into the fill on the southeastern edge of the cultivation pad and a swale connecting the gully to the watercourse leading to WQ1.

At WQ4 I observed diesel fuel had spilled to the earthen ground below a diesel tank without secondary containment and motor oil had spilled to the earthen ground below a diesel generator. I observed a spring at WQ5, that is hydrologically connected to a watercourse supplying a reservoir. I observed the reservoir outlet pipe discharging to a broad vegetated swale that passes a residence with an outhouse toilet discharging to the ground. The attached map shows the watercourse is tributary to the Eel River.

Northeast of WQ6, I observed a cultivation area at WQ7, with uncontained cannabis cultivation and construction waste. Farther northeast, I observed a well at WQ8.

For Internal Use (Optional)					
Reviewed By:	(1)	(2)	(3)		
CIWQS Entry Date:		Regional Board File Number:		CIWQS Inspection ID:	

Inspection Maps and Photolog for inspection conducted April 29, 2021

Map and photo selection completed by Brian Fuller, PG, Engineering Geologist
Inspection Map

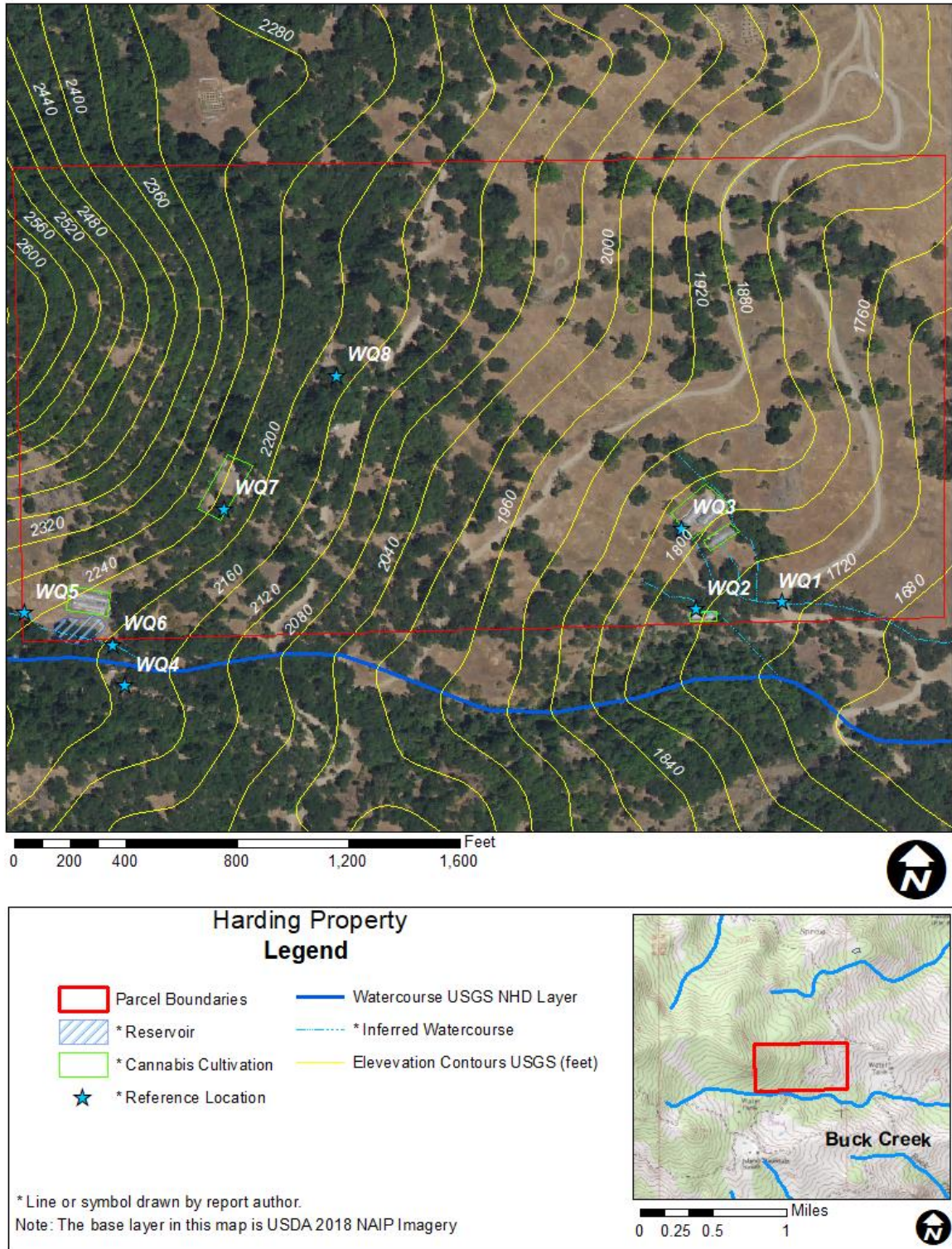


Figure 1: Map of Property, including inspection points of interest.

Aerial Images:



Aerial Image 1—Dated August 23, 2012 and accessed with Google Earth. The image shows the south western corner of the property. An outdoor cultivation area is visible in the left of the image and a house is visible in the bottom of the image.



Aerial Image 2—Dated May 30, 2014 and accessed with Google Earth. The image shows the same area as pictured above. The outdoor cultivation area has been replaced with hoop-type greenhouses and a reservoir has been constructed below the cultivation area.

Photo Appendix:



Photo 1—Looking west at watercourse upstream from culvert crossing at WQ1. Staff estimated that the active channel is four-feet wide. A roadside ditch discharges to the culvert inlet from the road to the north as well.



Photo 2— Looking south at 28-inch diameter culvert outlet located at WQ1.



Photo 3—Looking north at scour marks on the edge of road west of WQ1. The watercourse leading to WQ1 is out of view in the background of the image.



Photo 4—Looking west at trailer parked on top of a watercourse at WQ2.



Photo 5—Looking east and downstream from same photo location as previous image. Cultivation waste including soil bags and pots are visible within the channel banks.



Photo 6—Looking east at pots filled with imported potting soils at WQ2. Watercourse pictured in previous photo is out of view to the right of the image.



Photo 7—Looking west at watercourse upstream from WQ2.



Photo 8—Looking west at watercourse upstream from WQ2. A plant pot is visible within the channel banks in the middle of the image.



Photo 9—Looking south towards a blue-line stream tributary to the Eel River.



Photo 10—Looking south along a rutted road. Trailer at WQ2 is in the back right of the image.



Photo 11—Looking north toward cultivation area at WQ3 from the same photo location as the previous image. The large oak tree in the top middle of the image is pictured in the following photo.



Photo 12—Looking northwest at intermittent watercourse upslope from WQ3.



Photo 13— Looking southeast from the same location as the previous image. An intermittent watercourse is visible next to the tree in the top middle of the image.



Photo 14— Looking southeast and downslope from the previous image. The intermittent watercourse has more clearly defined banks than upstream. The channel continues east to WQ1.



Photo 15—Looking northeast through fence at the northeastern edge of cultivation area located at WQ3. Piles of earth and slash are perched above watercourse obscured by shadows in the background of the image.



Photo 16— Looking northeast through fence, farther downslope from area pictured in previous photo. A dry watercourse, obscured by shadows, follows a line of riparian trees in the middle of the image.



Photo 17—Looking northwest at eroded gully extending into the edge of the cultivation pad.



Photo 18—Looking south along swale/watercourse connecting gully in previous photo to watercourse partly obscured by tree shadows in the background of the image which flows toward WQ1.



Photo 19—Diesel storage tank without secondary containment at WQ4. Patch of dark earth below the tank identifies the location of a fuel spill.



Photo 20—Motor oil leaking out of diesel generator at WQ4. Patch of dark earth below the generator identifies the location of an oil spill.



Photo 21—Looking east from WQ5. A spring, located at stakes in the middle left of the image and pictured in the following photo, is connected by a line of unique vegetation to an intermittent watercourse, marked by a madrone sapling in the middle right. The intermittent watercourse drains towards the reservoir in the background of the image.



Photo 22—Spring located in the vicinity of WQ5.



Photo 23—Looking east toward WQ 6. The reservoir outlet pipe is visible in the upper right of the image.



Photo 24—Looking west at the reservoir outlet pipe. The pipe is resting on a cut and fallen tree.

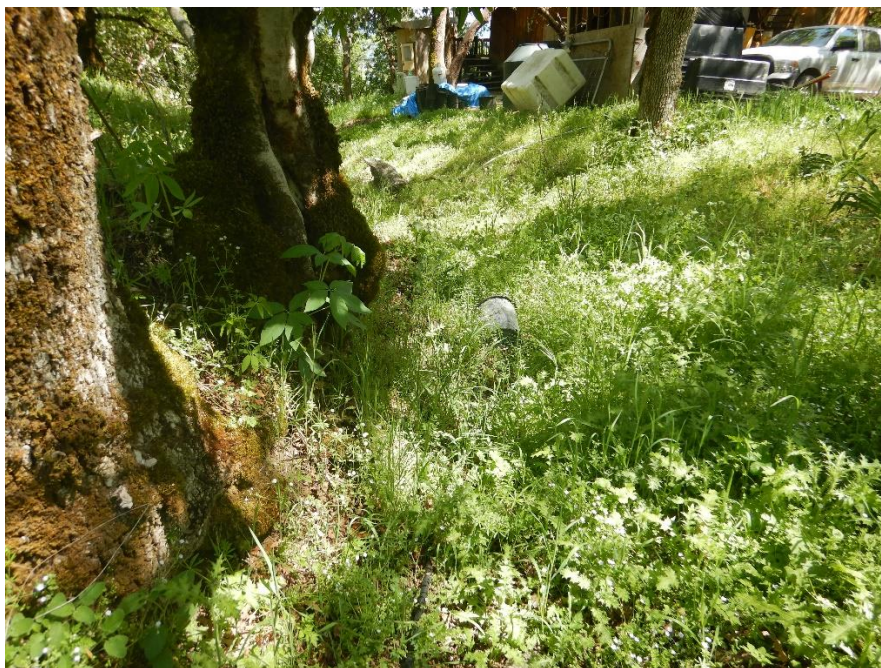


Photo 25—Looking east at watercourse receiving reservoir outlet at WQ6. Outhouse with toilet pictured in following photo is in the top center of the image.



Photo 26—Toilet discharging to ground adjacent to watercourse east of WQ6.



Photo 27—Looking north along cultivation pad located at WQ7.



Photo 28—Waste potting soils and construction debris at WQ7.



Photo 29—Groundwater well located at WQ8.