
North Coast Regional Water Quality Control Board

November 16, 2021

Certified Mail 7021 0950 0001 6499 5332

Thomas Bero
PO BOX 243
Garberville, CA 95542

Dear Thomas Bero,

Subject: **Notice of Violation and Transmittal of Inspection Report for October 13, 2021 Inspection of Humboldt County Assessor's Parcel APN 223-241-002-500, and Directive to Respond within 30 days**

File: Cannabis Program Inspections, Humboldt County, October 13, 2021, CIWQS Place ID 877447

THIS LETTER REQUIRES THAT YOU ACT WITHIN 30 DAYS

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Humboldt County Assessor's Parcel Numbers: APN 223-241-002-500 (the Property):

1. California Water Code (Water Code) section 13260 for cannabis cultivation operations of sufficient size and scope to require regulatory coverage under Order No. WQ 2019-0001-DWQ (Cannabis General Order) at location CA1
2. Water Code section 13264 for unauthorized discharge of waste to waters of the state associated with erosion at a pond outlet at location WQ1 and refuse in watercourses at WQ2 and WQ3
3. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1, Action Plan for Logging Construction and Related Activities for threatened discharge of sediment to a watercourse associated with erosion at a pond outlet at location WQ1

On October 13, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property and observed cannabis cultivation outdoors. According to our records, the cannabis cultivation operation located on this Property is not enrolled for coverage under the Cannabis General Order.

Accordingly, this letter directs you to respond within 30 days by either enrolling in the Cannabis General Order, submitting a Report of Waste Discharge, or demonstrating

why regulatory coverage is not needed, see below. Within 30 days, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

Background

LandVision records show that the Property is owned by Thomas Bero.

On October 13, 2021, staff from the Regional Water Board, accompanied by staff of CDFW, State Water Board Division of Water Rights, and personnel of various law enforcement agencies, inspected the 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 –Facilities Inspection Report and Inspection Map and Photolog). 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 inspection report, Regional Water Board staff observed violations of the California Water Code for unauthorized discharge of waste associated with gully erosion at WQ1 and refuse in watercourses at WQ2 and WQ3, failure to obtain regulatory coverage under the Cannabis General Order for cultivation of cannabis on the Property at CA1, and for violation of the Basin Plan for threatened discharge of sediment to a watercourse at WQ1.

Directive to Respond Within 30 days

During the October 13, 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-2010-0001-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis General Order).

Based on the observations detailed in the attached inspection report, the Regional Water Board has determined that, pursuant to Water Code sections 13260 and 13264, you are required to respond to this NOV within 30 days by **either**:

- 1) Enrolling the Property under the Cannabis 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/
- 2) Filing a Report of Waste Discharge in order to obtain individual Waste Discharge Requirements (WDRs) specific to your property, or
- 3) Providing information demonstrating why regulatory coverage is not needed for the Property identified above. If you have received a Notice to Abate Nuisance from the County, will no longer be cultivating cannabis, and will restore the Property in compliance with the Water Boards' Cannabis Cultivation Policy (Policy), please provide a written response, including a copy of the County's notice and any other supporting documentation, including photos if relevant, explaining why you are not seeking regulatory coverage for the parcel identified above and how the Property will be restored in compliance with the Policy.

For Option 1 or 2, above, you must also submit an application fee to the State Water Board within 30 days of submitting the online application. Failure to submit the application fee within 30 days will result in the application being voided and failure to comply with the Water Code sections 13260 and 13264 directives in this Notice of Violation. For Option 1, 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."

Please submit the appropriate documents and payments to:

North Coast Water Board
Attn: Cannabis Permitting
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Failure to comply with the requirements of this Notice of Violation, pursuant to 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.

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.

Inspection Report Recommendations

As mentioned above, the October 13, 2021 Inspection Report provides recommendations to correct the alleged violations, as well as to address features and conditions that threaten to impact water quality. **Within 30 days of this letter**, please advise Regional Water Board staff Adona White of your intentions, plan, and schedule to implement recommendations in the inspection report. If you have questions about what is required of you to comply with the requirements outlined above, and to advise as to your plan and schedule to correct the alleged violations, please contact Regional Water Board staff Adona White by email at Adona.White@waterboards.ca.gov or by phone at 707-576-2672.

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.

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
Enforcement Unit

Attachments: Attachment A – Regulatory Citations
 Attachment B – Facilities Inspection Report and Map and Photo
 Appendix

Certified Mail – Return Receipt requested

cc: North Coast Regional Water Quality Control Board

Northcoast.Cannabis@waterboards.ca.gov

Adona White, Adona.White@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

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

Department of Fish and Wildlife

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

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

Humboldt County Sheriff's Office

Deputy Shane Steele, ssteele@co.humboldt.ca.us

Sergeant Conan Moore, cmoore@co.humboldt.ca.us

Attachment A – Regulatory Citations

Regulatory Section	Citation
California Water Code Section 13260	<p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p style="padding-left: 40px;">(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.</p> <p style="padding-left: 40px;">(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p>
California Water Code Section 13261(a)	<p>“A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”</p>
California Water Code Section 13264 (a)	<p>“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:</p> <p style="padding-left: 40px;">(3) The issuance of waste discharge requirements pursuant to Section 13263.</p> <p style="padding-left: 40px;">(2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:...</p> <p style="padding-left: 40px;">(3) The issuance of a waiver pursuant to Section 13269.”</p>
California Water Code Section 13265(a)	<p>“Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.”</p>

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 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 €.”

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 445639
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 10/13/2021	

Discharger Information

Party ID: 628959	Discharger Organization Name: Thomas Bero		
Address: Po Box 243	City, State, Zip: Garberville, CA 95542		
Discharger Contact Person:	Discharger Contact Phone:		
Discharger Contact Email Address:			

Facility Information

Place ID 877447	Facility Name: Thomas Bero		
Address: Unknown Charleys Way	City, State, Zip: Garberville, CA 95560		
County: Humboldt	Latitude: 40.11719	Longitude: -123.74443	Method: Map Interpolation (digital)

Lead Inspector Information

Lead Inspector Party ID: 526285	Lead Inspector Name: Adona White		
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

VIOLATIONS

Were Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1096377	Other Codes	10/13/2021	B	California Water Code (Water Code) section 13260 for cannabis cultivation operations of sufficient size and scope to require regulatory coverage under Order No. WQ 2019-0001-DWQ (Cannabis General Order) at location CA1
1096378	Basin Plan Prohibition	10/13/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 for threatened discharge of sediment to a watercourse at location WQ1
1096379	Unauthorized Discharge	10/13/2021	B	California Water Code section 13264 for unauthorized discharge of sediment waste to waters of the State at location WQ1, WQ2, and WQ3

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations

1. Hire a professional to assess Property, identify impacts to the watercourse at WQ1 associated with the gully erosion, & evaluate stream crossings and ponds on Property. Submit treatment plan to prevent threatened discharges of waste.

2. Obtain regulatory coverage prior to activities involving or resulting in discharges of waste including instream work and cannabis cultivation activities.

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

GENERAL NOTES (OPTIONAL) (2000 character limit)

My inspection was associated with a criminal search warrant and I viewed only portions of the subject parcel APN 223-241-002-500 (Property). See attached map and photos for features of concern to water quality. Ownership is shared; inspected Bero portion.

Inspection began near southern parcel boundary, where a watercourse runs east west. A stream crossing of the watercourse by the access road is located at WP618 and consists of a 32" corrugated plastic pipe (CPP) within a 48" channel, the inlet is rock armored. From upslope, a ditch relief culvert (DRC) drains toward the watercourse.

Materials and machinery, vehicles, and tires are stored on a flat area upslope of the watercourse, adjacent to a cultivation area, CA1, which exceeds 2000 square feet. Cultivation is in the ground in rows, on flat ground, and outside of riparian setbacks as defined the Cannabis General Order.

Pond 1 is located upslope and ultimately drains to the aforementioned watercourse. The unlined pond and earthen berm appear stable with no discernable cracking, the berm is 12' at the top. The exterior slope is vegetated with grass. A 12" vertical CPP is located in the middle of the pond, and two parallel 24" CPP outlet toward the watercourse to the south of the pond. Between WP620 and WP621, a gully has formed at the outlet of the overflow pipes with sediment discharge to the watercourse. The middle portion of the gully appears active with oversteepened and undercut banks and signs of more recent erosion. The void dimensions associated with past gully erosion are: 4'-6'D x 10-20' W x 30' L.

WQ2: Nearby at WP622 I observed refuse in the watercourse, including plastic sheeting in the bed. A ravine is located to the north of the pond.

WQ3: WP623 is ravine bank with old grow pots and metal sheeting.

WP624 - another watercourse crossing is located on the ravine, with a perched outlet.

I did not inspect north of the residence, where CDFW identified additional crossings.

For Internal Use (Optional)

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

Bero Map and Photo Appendix
CIWQS Inspection 45739451

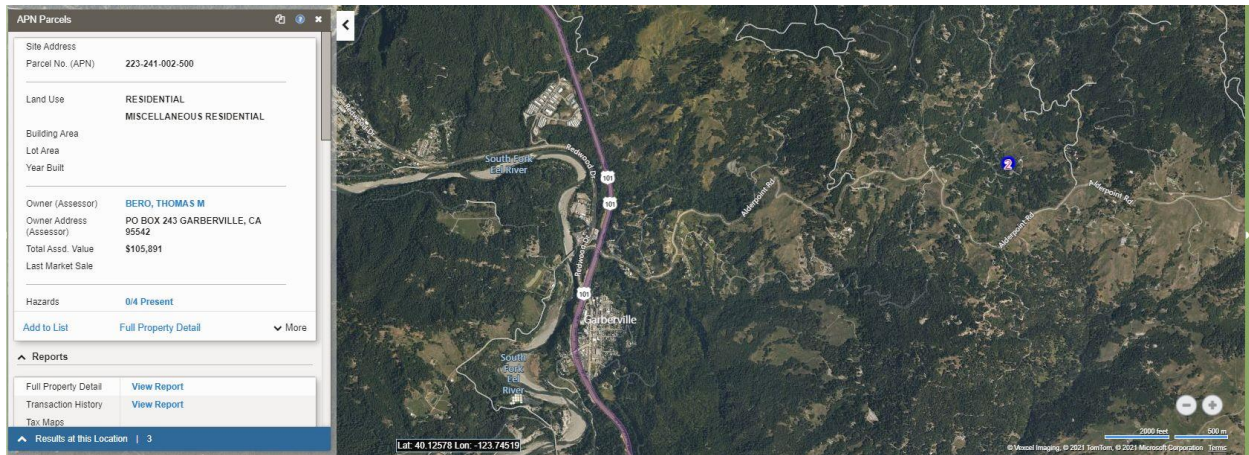


Figure 1. Location map of Property, located uphill from the town of Garberville, off of Alderpoint Road.



Figure 2. Inspection Map of Property, showing GPS way points (WP) and locations of concern to water quality discussed in the inspection report (WQ1-WQ3 & CA1).

All photographs taken by Adona White
on October 13, 2021.

Bero Map and Photo Appendix
CIWQS Inspection 45739451



Figure 3. View of driveway to house.



Figure 6. Plastic materials placed just above break-in-slope to watercourse between CA1 and WP618.

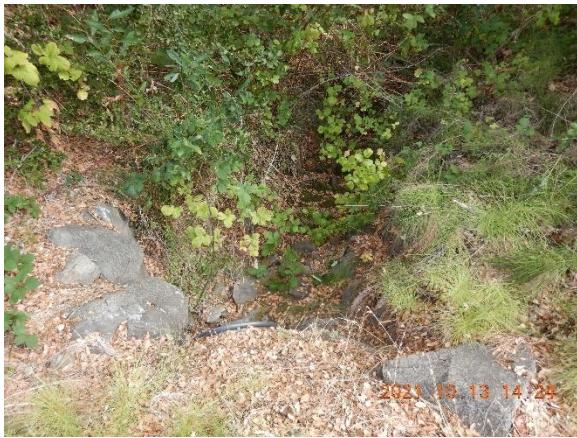


Figure 4. Culvert inlet of watercourse located at WP 618, just downslope of CA1.



Figure 7. Materials stored between CA1 and the watercourse include machinery and at least one generator.



Figure 5. View of watercourse channel downstream of crossing at WP618, as viewed from bank.



Figure 8. Materials stored between CA1 and the watercourse include vehicles and tires.

Bero Map and Photo Appendix
CIWQS Inspection 45739451



Figure 9. CA1 is an outdoor cultivation area, planted in the ground, and outside of riparian area setbacks.

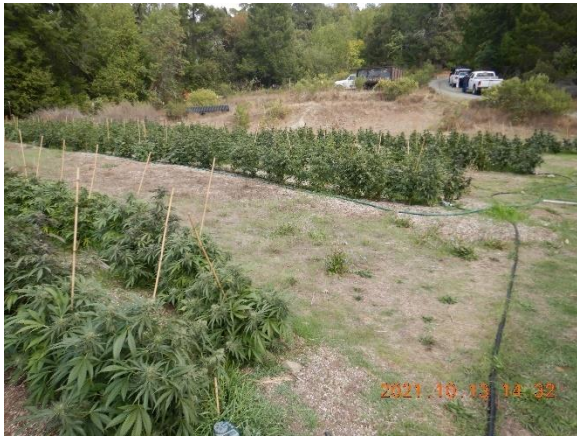


Figure 10. CA1.



Figure 11. Pond 1 is an unlined pond with earthen berm.



Figure 12. Earthen berm associated with Pond 1 is approximately 12' wide at the top; I did not observe cracks or other indicators of instability.



Figure 13. The exterior slope of earthen berm associated with Pond 1 is vegetated.



Figure 14. Picture of a gas pump for water transfer from pond to tank.

Bero Map and Photo Appendix
CIWQS Inspection 45739451



Figure 15. Dock located in Pond 1.



Figure 18. Outlets of Pond 1 discharge pipes onto hillslope.



Figure 16. Pond side of two parallel 24" outlet pipes, located high on slope.



Figure 19. Tio of gully formed at outlet pipes.



Figure 17. Exterior berm with outlet pipes.



Figure 20. Active middle portion of gully associated with pond overflow pipes.

Bero Map and Photo Appendix
CIWQS Inspection 45739451



Figure 21. Lower portion of gully associated with pond overflow pipes.



Figure 24. At WQ2 (WP 622) I observed plastic sheeting and lumber refuse in the watercourse.



Figure 22. Location of pond overflow gully at confluence with watercourse.



Figure 23. Old waterlines observed in watercourse just upstream of confluence with Pond 1 outlet gully.