



North Coast Regional Water Quality Control Board

August 19, 2021

Jeremy David Burns
3541 I Street
Eureka, CA 95503

Certified Mail 7016 0750 0001 0048 6061

Nicole Turner
3660 J Street
Eureka, CA 95503

Certified Mail 7016 0750 0001 0048 6054

Dear Jeremy David Burns,

Subject: Notice of Violation and Transmittal of Inspection Report for July 21, 2021 Inspection of Humboldt County Assessor's Parcel APN 212-013-012, and Directive to Respond within 30 days

File: Cannabis Program Inspections, Humboldt County, July 21, 2021, CIWQS Place ID 875452

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 212-013-012 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ1, WQ2, WQ3, WQ5
2. California Water Code (Water Code) section 13260 at location WQ4
3. Water Code section 13264 for unauthorized discharge of waste at locations WQ1, WQ2, WQ3, WQ5
4. Federal Clean Water Act section 301 (a), 401 and 404 at locations and WQ3
5. Basin Plan section 4.1.10, On-Site Wastewater System Requirements (OWTS), at location WQ1

According to our records, the cannabis cultivation operation located on this Property is not enrolled for coverage under the Cannabis General Order.

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

On July 21, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed cannabis cultivation in greenhouses and outdoors. 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 was sold on June 14, 2011 by Steven Espey to Jeremy David Burns and Nicole Profant Turner.

Effective October 7, 2016, the Property was enrolled under Regional Cannabis Order R1-2015-0023, with Discharger Nicole Turner, WDID 1B1616565CHUM. The enrollment was terminated June 30, 2018.

On July 21, 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 Basin Plan for threatened and actual discharges of sediment from roads and crossings and the Water Code section 13264 for unauthorized discharges of waste at WQ1, WQ2, WQ3, and WQ5, of the Basin Plan OWTS policy associated with a discharge pipe to a watercourse at WQ1, of the Federal Clean Water Act for installation of a stream crossing at WQ3, and for failure to obtain regulatory coverage for cultivation of cannabis at WQ4.

Directive to Respond Within 30 days

During the July 21, 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* (Statewide General Order).

Based on the observations detailed in the attached inspection report, the Regional Water Board has determined that, pursuant to Water Code sections 13260¹ and 13264², you are required to respond to this NOV within 30 days by either:

- 1) Enrolling 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/
- 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.

¹ Water Code section 13260 states, in relevant part: (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.

² 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.

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. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$10,000 for each day the violation occurs and \$10/gallon beyond the first 1,000 gallons not cleaned up for actual discharges to waters of the United States without a permit pursuant to Water Code section 13385.

Inspection Report Recommendations

As mentioned above, the July 21, 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.Henrioulle@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 Henrioulle
Enforcement Unit

210819_ACW_dp_Burns_NOV

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

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

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

Adona White, Adona.White@waterboards.ca.gov

Division of Water Rights

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

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: 20px;">(1) The issuance of waste discharge requirements pursuant to Section 13263.</p> <p style="padding-left: 20px;">(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: 20px;">(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 (e).”
Federal Clean Water Act Section 301 (a):	Section 301(a) provides that subject to certain exceptions, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). One of the exceptions allowed for under the Clean Water Act is the discharge from a dredge and fill activity under the auspices of § 404 and 401 of the Clean Water Act. 33 U.S.C. § 1342. The Clean Water Act prohibits the discharge of any pollutant from a point source into waters of the United States without a section 404 dredge and fill permit and a section 401 state water quality certification.
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”

Regulatory Section	Citation
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 portion of a water of the United States with dry land or changing the bottom elevation of any portion 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: 444342
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 07/21/2021	

Discharger Information

Party ID: 626401	Discharger Organization Name: Burns, Jeremy David		
Address: 3541 I Street	City, State, Zip: Eureka, CA 95503		
Discharger Contact Person:	Discharger Contact Phone:		
Discharger Contact Email Address:			

Facility Information

Place ID 875452	Facility Name: Jeremy David Burns		
Address:	City, State, Zip: Miranda, CA 95553		
County: Humboldt	Latitude: 40.179226	Longitude: -123.890864	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
1093124	Basin Plan Prohibition	07/21/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 for actual and threatened discharge of sediment to a watercourse at locations WQ1, WQ2, WQ3, WQ5
1093125	Other Codes	07/21/2021	B	California Water Code Section 13260: cannabis cultivation operations of sufficient size and scope at WQ4 to require regulatory coverage under Order No. WQ-2017-0023-DWQ
1093126	Unauthorized Discharge	07/21/2021	B	Federal Clean Water Act Section 301 at location WQ3 and California Water Code Section 13264 at locations WQ1, WQ2, WQ3, WQ5
1093127	Basin Plan Prohibition	07/21/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.1.10, On-Site Wastewater System Requirements, at location WQ1

Showing the first 4 of 4 violations

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:

1. Hire a professional to assess Property and develop a treatment plan
2. Identify impacts associated with houses in riparian areas at WQ1
3. Remove fill encroaching on the watercourse at WQ1
4. Hydrologically disconnect roads from watercourses WQ2 & WQ5
5. Obtain regulatory coverage prior to activities involving or resulting in discharges of waste (WQ2, WQ3, WQ4)
6. Identify conformance with OWTS Policy esp. at WQ1

GENERAL NOTES (OPTIONAL) (2000 character limit)

Figure 2 shows the inspection locations described.

Thomas Road traverses through the Property with the cultivation area and pond above the road, and the houses below the road. The pond drains toward South Fork Salmon Creek and the cultivation area and houses draining to Tosten Creek.

WQ4: The cultivation area is accessed via steep, rilled and dusty roads. Cultivation is a combination of hoop house and outdoor methods.

WQ6: The pond is located on a planar slope above South Fork Salmon Creek. It is off-stream, with no channel observed entering the impounded area, and is lined. The outlet of the pond is minimal, allowing for approximately 6" of freeboard, with drainage to a road ditch associated with a road located off-parcel. The ditch drains via a 24-inch culvert, onto a pile of concrete and lumber rubble and to the bank of South Fork Salmon Creek. We observed disconnected pools with salmonid fry and a rough-skinned newt.

WQ5: Along Thomas Road, upslope of 557, a culvert is located along Thomas road, draining via a metal downspout downslope to Tosten Creek; road runoff delivers to the culvert inlet. A large gully has formed along the steep section of stream below the road (GPS 557).

WQ3: At GPS 558, the watercourse is routed under an access road a 24" corrugated plastic pipe.

WQ2: the access road traverses to Tosten Creek where it merges with the dry stream channel at GPS 559.

WQ1: Located along the watercourse, near the upper house, fill is pushed into the watercourse. The lower house is built on the streambank with what appears to be a greywater discharge pipe draining into the watercourse. The channel is rocked.

For Internal Use (Optional)

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

Burns Map and Photo Appendix
 July 21, 2021 Salmon Creek Inspection
 CIWQS Inspection ID 44894238



Figure 1. Parcel map of 212-013-012, located near the confluence of Tostin Creek, Hacker Creek, and South Fork Salmon Creek.

Burns Map and Photo Appendix
July 21, 2021 Salmon Creek Inspection
CIWQS Inspection ID 44894238

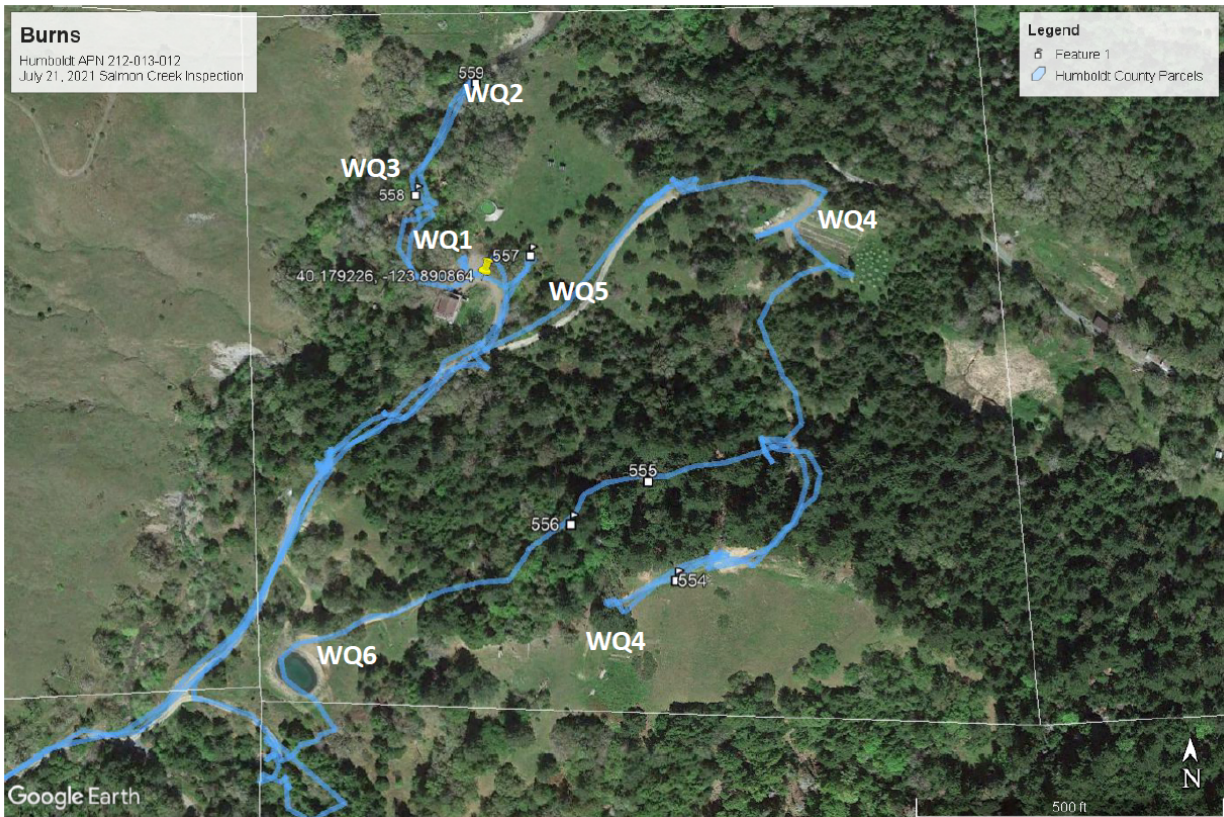


Figure 2. Inspection map of July 21, 2021 showing locations of features of concern to water quality.

Photo Appendix

All photos taken by Adona White, unless otherwise specified.

WQ5: Stream crossing



Figure 3. Culvert outlet at WQ5 above gully near house (Photo by Ermias Behr).



Figure 4. Road runoff delivers to culvert at WQ5 (Photo by Ermias Behr).

WQ1: Residences.



Figure 5. Below road watercourse becomes gullied above the houses at WQ1.



Figure 6. Watercourse above upper house at WQ1.



Figure 7. Watercourse near upper house at WQ1.



Figure 8. Fill for upper house is pushed to encroach on watercourse.



Figure 9. Looking upstream at lower house from crossing at WQ3. Note

rocked channel, proximity of structures to watercourse, and show next to watercourse.



Figure 10. Looking upstream at WQ1 lower house, discharge pipe, and rocked watercourse channel.



Figure 11. Looking downstream at WQ1 lower house, discharge pipe, and rocked watercourse channel. WQ3 crossing is in distance.

WQ3: Crossing, Road to watercourse,
hydrologically connected road



Figure 12. WQ3 crossing below lower house.



Figure 13. Road to Tosten Creek merges with channel bed at WQ2.



Figure 14. Road to Tosten Creek is hydrologically connected and merges with channel bed at WQ2.

WQ4: Cultivation



Figure 15. Hoop house cultivation



Figure 16. Outdoor cultivation



Figure 17. Shed near cultivation is built on steep slopes.

WQ6 Pond:



Figure 18. Road to pond is steep and dusty.



Figure 19. WQ6 Pond.



Figure 20. Pond is lined, full of water, and with minimal freeboard



Figure 21. WQ6 Pond outlet overflows to native ground and through woods downslope.



Figure 22. WQ6 Pond overflow travels through woods to road ditch.



Figure 23. Road ditch on shared road at culvert inlet to South Fork Salmon Creek.



Figure 25. Outlet flows through lumber.



Figure 24. Culvert outlet with concrete rubble.



Figure 26. South Fork Salmon Creek with steelhead and rough-skinned newt, pools are disconnecting in low flows.