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## North Coast Regional Water Quality Control Board

October 7, 2021

Jose Maciel Garcia  
2612 West Steele Lane  
Santa Rosa, CA 95403

Certified Mail 7016 0750 0001 0048 6498

Dear Jose Maciel Garcia,

**Subject: Notice of Violation and Transmittal of Inspection Report for September 8, 2021 Inspection of Humboldt County Assessor's Parcel APN 128-230-12, and Directive to Respond within 30 days**

**File:** Cannabis Program Inspections, Mendocino County, September 8, 2021, CIWQS Place ID 876708

### **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 Number: APN 128-230-012 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ1, WQ2, WQ3, and WQ4
2. California Water Code (Water Code) section 13260 at location WQ1
3. Water Code section 13260 and 13264 for unauthorized discharge of waste at locations WQ2 and WQ3
4. Federal Clean Water Act section 301(a) at locations WQ2 and WQ3

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

On September 8, 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.

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

## **Background**

LandVision records show that the Property was sold on March 18, 2018 by Erika Maria Vargas Alvarez to Jose Maciel Garcia; the previous sale was in 2014.

Review of aerial imagery available in LandVision and GoogleEarth suggests that cultivation-related development at WQ4, WQ2, and WQ1 initially occurred after August 17, 2013 and prior to June 17, 2017, with additional grading at both WQ2 and WQ1 by September 19, 2017, and construction of a greenhouse at WQ1 between February 27, 2018 and April 17, 2018. A trail to WQ3 is visible in photos from the summer of 2017.

On September 8, 2021, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), State Water Board Division of Water Rights (DIV), 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 Water Code Section 13260 for failure to obtain regulatory coverage for cultivation of cannabis at WQ1, of the Basin Plan for threatened discharges of sediment from developed features at WQ1, WQ4, and WQ3, and of the Federal Clean Water Act section 301, the Basin Plan for actual discharges of sediment, and Water Code section 13260 and 13264 for unauthorized discharges of waste associated with the construction of the stream crossing at WQ2 and instream work at WQ3.

## **Directive to Respond Within 30 days**

During the September 8, 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<sup>1</sup> and 13264<sup>2</sup>, 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/](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:

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<sup>1</sup> 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.

<sup>2</sup> 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.

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 September 8, 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](mailto: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](mailto: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

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](mailto:Northcoast.Cannabis@waterboards.ca.gov)  
Claudia Villacorta, [Claudia.Villacorta@waterboards.ca.gov](mailto:Claudia.Villacorta@waterboards.ca.gov)  
Kason Grady, [Kason.Grady@waterboards.ca.gov](mailto:Kason.Grady@waterboards.ca.gov)  
Adona White, [Adona.White@waterboards.ca.gov](mailto:Adona.White@waterboards.ca.gov)

**Division of Water Rights**

Stormer Feiler, [Stormer.Feiler@waterboards.ca.gov](mailto:Stormer.Feiler@waterboards.ca.gov)  
Taro Murano, [Taro.Murano@waterboards.ca.gov](mailto:Taro.Murano@waterboards.ca.gov)

**Department of Fish and Wildlife**

Timothy Dodson, [Timothy.Dodson@wildlife.ca.gov](mailto:Timothy.Dodson@wildlife.ca.gov)  
Corinne Gray, [Corinne.Gray@wildlife.ca.gov](mailto:Corinne.Gray@wildlife.ca.gov)

## 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”

<b>Regulatory Section</b>	<b>Citation</b>
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: 445204
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 09/08/2021	

### Discharger Information

Party ID: 628051	Discharger Organization Name: Jose Maciel Garcia		
Address: 2612 West Steele Lane	City, State, Zip: Santa Rosa, CA 95403		
Discharger Contact Person:	Discharger Contact Phone:		
Discharger Contact Email Address:			

### Facility Information

Place ID 876731	Facility Name: Jose Maciel Garcia		
Address: 19555 Appaloosa Way	City, State, Zip: Navarro, CA 95463		
County: Mendocino	Latitude: 39.1927	Longitude: -123.59065	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
1094937	Other Codes	09/08/2021	B	California Water Code Section 13260: cannabis cultivation operations of sufficient size and scope to require regulatory coverage under Order No. WQ 2019-0001-DWQ (Cannabis General Order) at WQ1
1094938	Other Codes	09/08/2021	B	California Water Code section 13260 and 13264 for unauthorized discharge of waste and Federal Clean Water Act Section 301 for dredge and fill in a water of the US at locations WQ2 and WQ3
1094941	Basin Plan Prohibition	09/08/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ1-WQ4

### INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:

1. Hire a professional to assess Property, identify impacts associated with hydrologically connected access road (WQ4), fill in watercourse crossing (WQ2), and cultivation (WQ1) in riparian area of watercourse. Submit a treatment plan for threatened discharges of waste and to remove fill and waste encroaching on the watercourse.
2. Obtain regulatory coverage prior to activities involving or resulting in discharges of waste including instream work and cannabis cultivation.

### GENERAL NOTES (OPTIONAL) (2000 character limit)

I inspected Mendocino APN 128-230-12 (the Property) with Ca Dept. of Cannabis Control, along with Ca Dept. of Fish and Wildlife (CDFW) and Division of Water Rights (DIV) on September 8, 2021. Inspection Map shown in Figure 2.

The Property is accessed via paved driveway. A ditch relief culvert (DRC) is located to drain the road ditch into a swale below the paved access road. A watercourse forms in the swale down slope and has been impacted by cultivation and an access road and crossing thereto. The cultivation area (WQ1) is a combination of outdoor and hoophouse cultivation on a cut and fill flat with a quad road constructed across it, until it ultimately terminates on the hillside. The cut bank is near vertical and up to approximately 5' high at the flat and approximately 1-2 feet high along the quad road. I observed an old grow at WP 582, with a flimsy retaining of potting soil, located 157' upslope of the watercourse.

The fill slope of the flat, near the watercourse is loose fill and is likely to erode in winter rains with high potential for delivery to the watercourse at WQ2. Approximately 50' of watercourse between WP 588 and 589 is impacted by instream excavation for the construction of the flat, and by filling of the watercourse with the placement of rock and a culvert, and the threatened discharge of waste by placing, soil, refuse, high concentration water soluble fertilizer, and earthen material near the stream, as well as hydrologically connected road delivering to the watercourse (WQ4). At the outlet of the culvert, the fill face is approximately six feet high.

Downslope, the watercourse is impacted again by an instream excavation (20' W x 13' L x 2-6' D) (WP 584) with spoils placed onstream (18' W x 15' L) as if to impound the stream. This is at the confluence of two watercourses, with the other extending up to WP 587. It receives road runoff (WQ4). Below the excavation, a pad (8' W x 8'L) is constructed on stream bank.

Source is well.

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

Inspection Map and Photo Appendix  
 September 8, 2021 Navarro Inspections, MEN APN 128-230-12  
 CIWQS Inspection 45369892

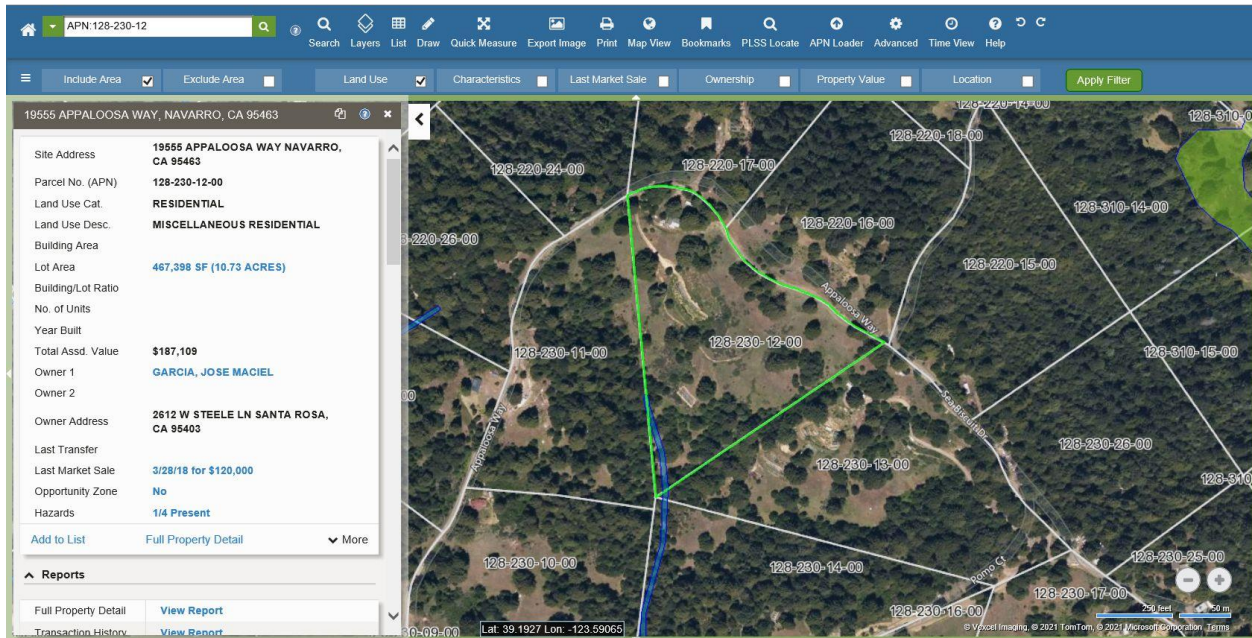


Figure 1. Parcel map and ownership information for MEN APN 128-230-12.



Figure 2. Inspection map of Property. Way Point locations are discussed in text; locations of water quality concerns are described as WQ1-WQ4.

Photo Appendix – All photos taken by Adona White on September 8, 2021



*Figure 3. Swale at access road, with DRC (below black truck).*



*Figure 5. Swale below access road, leading down to cultivation area.*



*Figure 4. DRC outlet as viewed from access road.*



*Figure 6. Road access to cultivation area concentrates stormwater downslope to the watercourse crossing.*



*Figure 7. The road arrives at the crossing and cultivation flat. A pile of potting soil is located within*



*Figure 9. High concentration water soluble fertilizer located next to watercourse at WQ2.*



*Figure 8. Debris on watercourse upstream of crossing at WQ2.*



*Figure 10. Rock placed in watercourse at WQ2.*

Inspection Map and Photo Appendix  
September 8, 2021 Navarro Inspections, MEN APN 128-230-12  
CIWQS Inspection 45369892



*Figure 11. Fill slope associated with WQ1.*



*Figure 13. Cut bank of flat at WQ1.*



*Figure 12. Culvert outlet at watercourse at WQ2.*



*Figure 14. View of WQ1 from below.*



*Figure 15. Picture of fertilizer bottle accumulation*



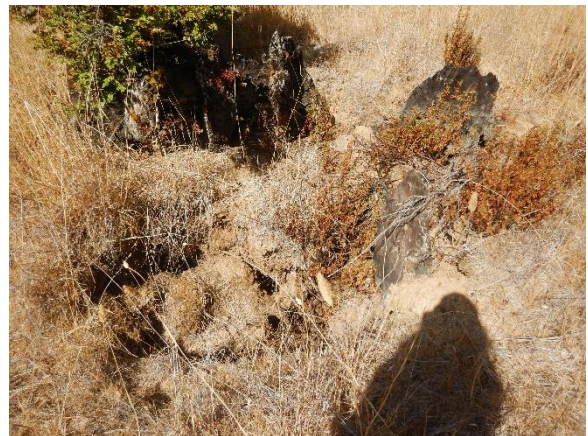
*Figure 16. Access road WQ4*



*Figure 19. Northern watercourse above WQ3.*



*Figure 17. Head of gullied watercourse below road at WQ4.*



*Figure 20. Gullied northern watercourse as it enters excavation at WQ3.*



*Figure 18. Northern watercourse above WQ3*



*Figure 21. Southern watercourse above WQ3.*



*Figure 22. Excavation at WQ3.*



*Figure 25. Picture of well.*



*Figure 23. Berm at WQ3.*



*Figure 24. Attempted impoundment at instream excavation at WQ3.*