



North Coast Regional Water Quality Control Board

August 19, 2021

Janet Kelley
951 8th Street
Fortuna, CA 95540

Certified Mail 7016 2070 0000 6486 2401

Dear Janet Kelley:

Subject: Notice of Violation and Transmittal of Inspection Report for July 20, 2021 Inspection of Humboldt County Assessor's Parcel APN 216-381-005 and Directive to Respond within 30 days

File: Cannabis Program Inspections, Humboldt County, July 21, 2021, CIWQS Place ID 875454

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 216-381-005 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) section 4.2.1, Action Plan for Logging Construction and Related Activities, at locations WQ1 and WQ3
2. 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 WQ2
3. Water Code section 13264 for unauthorized discharge of waste at location WQ1
4. Basin Plan section 4.1.10, On-Site Wastewater System Requirements (OWTS), at location WQ1 and WQ2

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

On July 20, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property and observed cannabis cultivation in greenhouses and outdoors.

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

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 July 11, 2011 by Jose Luis and Cathy Anne Caballero to Janet M Kelley and DR Jan Kelley Revocable Trust.

On July 20, 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 at locations WQ1 and WQ3, respectively, of Water Code section 13264 for unauthorized discharges of waste at location WQ1, of the Basin Plan OWTS Policy associated with human waste management at locations WQ1 and WQ2, and for failure to obtain regulatory coverage under the Cannabis General Order for cultivation of cannabis at location WQ2.

Directive to Respond Within 30 days

During the July 20, 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 13260¹ and 13264², 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

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.

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 July 20, 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, P.E.
Enforcement Unit

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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).”

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 444334
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 07/20/2021	

Discharger Information

Party ID: 626405	Discharger Organization Name: Kelley, Janet		
Address: 951 8th Street	City, State, Zip: Fortuna, CA 95540		
Discharger Contact Person:	Discharger Contact Phone:		
Discharger Contact Email Address:			

Facility Information

Place ID 875454	Facility Name: Janet Kelley		
Address: 230 River Road	City, State, Zip: Alderpoint, CA 95511		
County: Humboldt	Latitude: 40.15013	Longitude: -123.64236	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
1092928	Basin Plan Prohibition	07/20/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ1 and WQ3.
1092929	Unauthorized Discharge	07/20/2021	B	California Water Code Section 13264 for unauthorized discharge of waste at location WQ1.
1092930	Other Codes	07/20/2021	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)
1092931	Basin Plan Prohibition	07/20/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.1.10, On-Site Wastewater System Requirements, at locations WQ1 and WQ2.

Showing the first 4 of 4 violations

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:

1. Clean up, haul away, and properly dispose of refuse, including all refuse from the watercourse at WQ1.
2. Prior to cultivation, obtain required authorizations (WQ2).
3. Hire a professional to evaluate stabilization of the watercourse at WQ1.
4. Work with the neighboring landowner, CDFW, and DIV regarding surface water diversion and use (WQ3).

GENERAL NOTES (OPTIONAL) (2000 character limit)

Inspection of Humboldt County APN 216-381-005. Figure 2 shows locations discussed in text. The property is accessed from a driveway off of River Road in Rancho Sequoia. The driveway arrives at a shed located on the bank of a deeply incised/gullied class III watercourse. Inside and outside of the shed is strewn with refuse, including down into the watercourse, including paint, plastic, irrigation lines, and latrines. The driveway arrives at an outdoor cultivation area identified in the warrant. The cultivation is primarily in grow bags. A dwelling is associated with the area. Refuse is all around, including plastic, cars, bottles, etc. The cultivation area is irrigated by surface water from a diversion at WQ3. A legacy road acts as an impoundment to a wetland and watercourse that has been cleared to capture flow, which is then piped to water tanks and to the cultivation area.

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

Kelly Property Map and Photo Appendix
 July 20, 2021 Inspection
 CIWQS Inspection ID 44859046

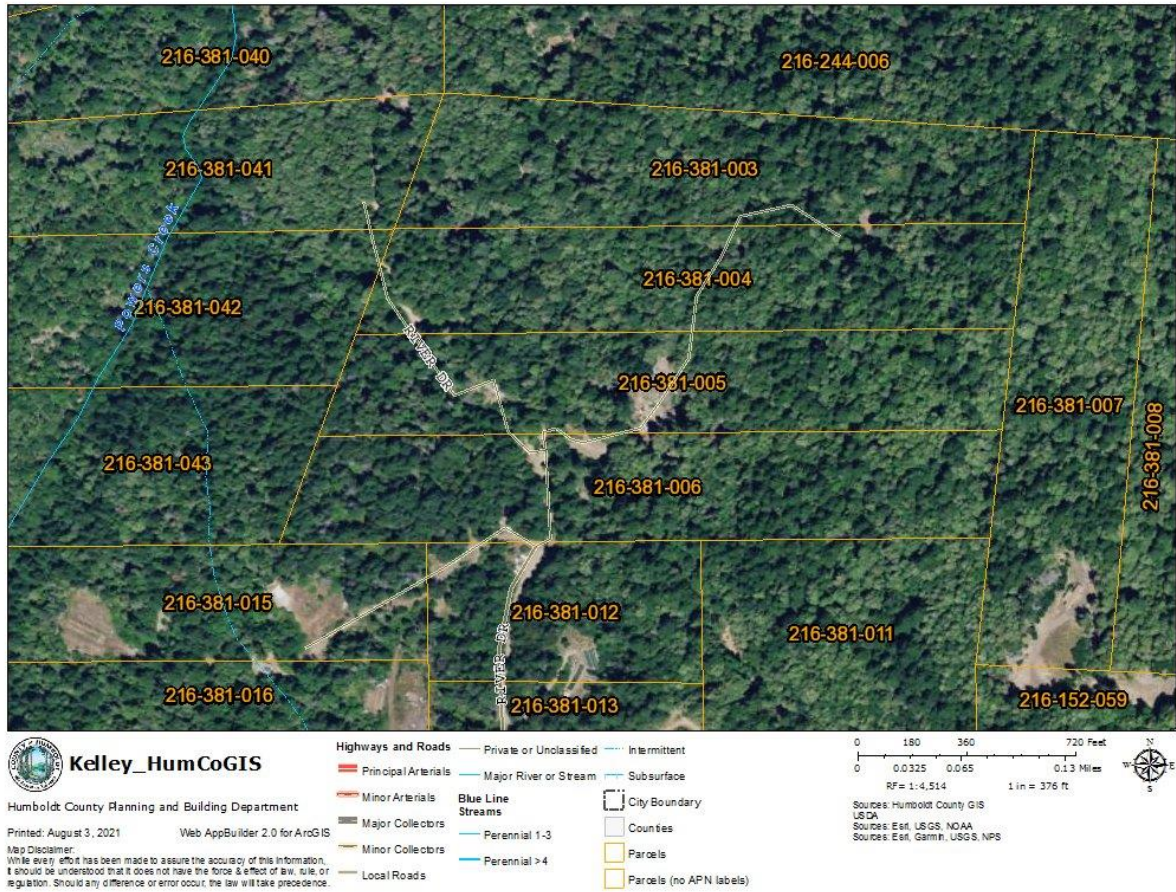


Figure 1. Humboldt County Parcel 216-318-005 and surrounding parcels.

Kelley Property Map and Photo Appendix
July 20, 2021 Inspection
CIWQS Inspection ID 44859046

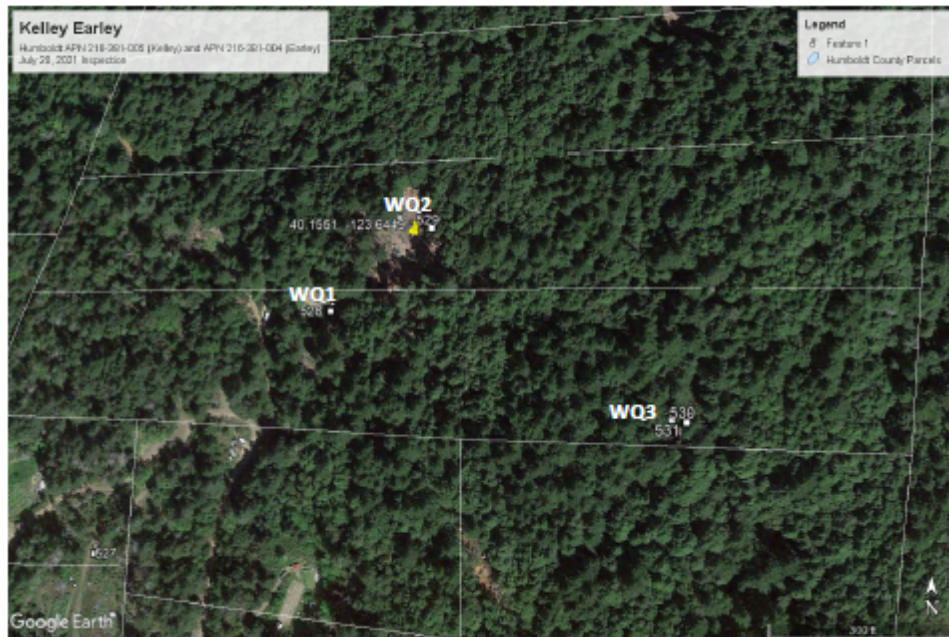


Figure 2. Inspection map.



Figure 3. Refuse on bank and in incised watercourse.



Figure 4. Picture of refuse in watercourse at WQ1.



Figure 5. Picture of shed built on bank of watercourse with paint and refuse inside and outside, WQ1.



Figure 6. Makeshift latrine next to shed on bank of watercourse at WQ1.



Figure 7. Refuse between WQ1 and WQ2.



Figure 8. Cultivation area at WQ2.



Figure 9. Looking down on cultivation area, WQ2. Dwelling is on right. Watercourse is on left, off of photo.



Figure 10. Impoundment of surface water at WQ3.



Figure 13. Surface water impoundment at WQ3.



Figure 11. Cannabis clones planted in wetland at WQ3.



Figure 12. Surface water is concentrated by hand dug channels at WQ3.