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North Coast Regional Water Quality Control Board

September 21, 2021

Chad Mussey  
Po Box 1932  
Redway, CA 95560  
[mld.inc777@gmail.com](mailto:mld.inc777@gmail.com)

Certified Mail 7016 0750 0001 0048 6344

Dear Chad Mussey:

**Subject: Notice of Violation and Transmittal of Inspection Report for August 13, 2021  
Inspection of Humboldt County Assessor's Parcel Number 033-170-013**

**File: Cannabis Program Inspections, Humboldt County, August 13, 2021, CIWQS Place  
ID No. 826164**

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 033-170-013 (the Property):

1. State Water Resources Control Board Order WQ 2019-0000-DWQ General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order), various provisions
2. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1

According to our records, the cannabis cultivation operation located on this Property is enrolled for coverage under the Cannabis General Order as Tier 1 Moderate Risk to water quality.

On August 13, 2021, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property and observed cannabis cultivation and a pond on constructed flats that are stacked on a hillslope that is greater than 30% natural slope. The disturbed area of the combined flats, road and pond exceed 1 acre. Accordingly, this letter directs you to reassess the Tier designation for this Property, and address the violations noticed herein. Within 30 days, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

## **Background**

On June 21, 2016, the Regional Water Board sent to Steven Landry, a directive to enroll under Order R1-2015-0023 for waste discharges related to cannabis cultivation (Regional Cannabis Order). In response, on July 15, 2016, Chad Mussey enrolled the Property under the Regional Cannabis Order, with WDID 1B16707CHUM. According to Land Vision, Steven Landry sold the Property on April 19, 2018 to the Chad Mussey Revocable Trust.

On May 27, 2020 Chad Mussey submitted information through the State Water Resources Control Board's (State Water Board's) online portal for discharges of waste associated with cannabis cultivation related activities for APN 033-170-013, and listed Chad Mussey as landowner of the Property. Based on the information submitted by Chad Mussey (Attachment C - General Cannabis Order Application Summary), the cannabis cultivation activities are classified as Tier 1 Moderate Risk. Effective May 27, 2020, the Property was enrolled into State Cannabis Order WQ 2019-0001-DWQ, WDID 1\_12CC427572.

On November 30, 2020, the Regional Water Board received an application for water quality certification for work proposed in waters of the state, including the decommissioning of two legacy stream crossings and the installation of a rocked ford for spring flow. On May 24, 2021, the Regional Water Board issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board Cannabis Cultivation Policy Cannabis General Water Quality Certification, and Order No. WQ 2019-0001-DWQ General Waste Discharge Requirements

On August 13, 2021, staff from the Regional Water Board, accompanied by staff of California Department of Fish and Wildlife (CDFW), 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, 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 August 13, 2021 inspection report, Regional Water Board staff observed violations of the Basin Plan Section 4.2.1, Prohibition 2. In addition, staff observed violations of

the State Cannabis Order Attachment A, Section 1 - General Requirements and Prohibitions Nos. 26, 27, 30, 31, and 37 and Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation Nos. 8, 17, 22, 24, 25, 26, 28, 29, 59, 63, and 76. Staff observed these violations at Property locations identified in the inspection report as WQ1, WQ3, and WQ5.

### **Legal requirements and directive to reassess and modify enrollment in the Cannabis General Order**

Chad Mussey, in his application for enrollment under the Cannabis General Order, on May 27, 2021, indicated that the disturbed area was 39,000 ft<sup>2</sup> on slopes greater than 30%, and self-certified the site as a Tier 1 Moderate Risk site.

During the August 13, 2021, inspection, and using Google Earth, staff observed and documented cultivation areas, water storage facilities, and associated land disturbances exceeding two acres. This does not meet requirements to be considered a Tier 1 Moderate Risk site.

For the purposes of Cannabis General Order, land disturbance is defined as including all activities whatsoever associated with developing or modifying land for cannabis cultivation, related activities, or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas, excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. All access roads and water crossings that have not been designed, constructed, and maintained consistent with the Handbook for Forest, Ranch, and Rural Roads and Attachment A of the Cannabis General Order, are considered disturbed areas, as well.

With disturbed areas, as defined within the Cannabis General Order, exceeding one acre, you must revise your enrollment under that order to reflect that the site is Tier 2 site.

Pursuant to Water Code section 13260 and Cannabis General Order Provision C.2.i, the Regional Water Board requires you to modify your application information by doing the following:

**Within 30 days of the date of this letter you must** obtain appropriate coverage under the Cannabis General Order, representative of disturbed area based on tier and risk level.

- a. To modify enrollment, you must handwrite in your selection on pages seven and eight of the enclosed General Cannabis Order Application Summary (Attachment C) and sign and date next to the handwritten change.
- b. Submit a copy of the edited summary to [NorthCoast.Cannabis@waterboards.ca.gov](mailto:NorthCoast.Cannabis@waterboards.ca.gov).

If you fail to take the action described above, the Regional Water Board may impose penalties of up to \$1,000 per day pursuant to Water Code section 13261 for violations of section 13260. In addition, pursuant to Cannabis General Order Provision C.2.h, the Regional Water Board Executive Officer may terminate a Discharger's coverage under the Cannabis General Order for cause including, but not limited to, any of the following:

- i. Violation of any of the terms or conditions contained in the General Order.
- ii. Obtaining the General Order by misrepresentation, or failure to disclose fully all relevant facts.
- iii. A change in any condition that results in either a temporary or permanent need to reduce or eliminate the authorized discharge activities.
- iv. A material change in the activity, character, location, or volume of discharge.
- v. Adoption of a TMDL amendment, new TMDL, or TMDL alternative.

Be aware that termination of coverage under the Cannabis General Order may impact your ability to maintain a cannabis cultivation license with the California Department of Cannabis Control.

### **Site Management Plan (SMP)**

Pursuant to the Cannabis General Order, all enrollees must submit a Site Management Plan within 90 days of enrollment. As of the date of this letter, no SMP has been submitted. Additionally, and the deadline for submitting your SMP has passed.

### **Site Erosion and Sediment Control Plan**

Pursuant to the Cannabis General Order, all enrollees with operations classified as Moderate Risk must submit and implement a Site Erosion and Sediment Control Plan, to be developed under the supervision of a qualified professional. As of the date of this letter, no Sediment Control Plan has been submitted.

### **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 August 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 Ermias Berhe 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, P.E.  
Senior Water Resource Control Engineer

Attachments:      Attachment A – Regulatory Citations  
                         Attachment B – Facilities Inspection Report, Inspection Maps and Photolog  
                         Attachment C – General Cannabis Order Application Summary

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)

Philip Dutton, [Philip.Dutton@waterboards.ca.gov](mailto:Philip.Dutton@waterboards.ca.gov)

**Department of Fish and Wildlife**

Kalyn Bocast, [Kalyn.Bocast@wildlife.ca.gov](mailto:Kalyn.Bocast@wildlife.ca.gov)

David Manthorne, [David.Manthorne@wildlife.ca.gov](mailto:David.Manthorne@wildlife.ca.gov)

Scott Bauer, [Scott.Bauer@wildlife.ca.gov](mailto:Scott.Bauer@wildlife.ca.gov)

**Humboldt County Planning and Building Dept**

Cliff Johnson, [Cliff.Johnson@co.humboldt.ca.us](mailto:Cliff.Johnson@co.humboldt.ca.us)

**Department of Cannabis Control**

Shannon Walkenhauer, [Shannon.Walkenhauer@cannabis.ca.gov](mailto:Shannon.Walkenhauer@cannabis.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.”
Cannabis Policy and General Order No. WQ 2019-0001-DWQ, various provisions	<p>State Water Resources Control Board Cannabis Cultivation Policy and General Waste Discharge Requirements Order No. WQ 2019-0001-DWQ for Discharges of Waste Associated with Cannabis Cultivation Activities</p> <p><a href="https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf">https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf</a></p> <p>and</p> <p><a href="https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf">https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf</a></p>

## FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 438279
Program Type: IRRICANNABIS	WDID: 1_12CC427572	Order Number: 2019-0001-DWQ
Scheduled Insp. Date:	Actual Insp. Date: 08/13/2021	

### Discharger Information

Party ID: 558157	Discharger Organization Name: Mussey, Chad		
Address: Po Box 1932	City, State, Zip: Redway, CA 95560		
Discharger Contact Person:	Discharger Contact Phone:		
Discharger Contact Email Address:			

### Facility Information

Place ID 826164	Facility Name: O Road Benbow		
Address: 321 O Road	City, State, Zip: Garberville, CA 95542		
County: Humboldt	Latitude: 40.03944	Longitude: -123.7443	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: B Type compliance inspection

## VIOLATIONS

Were Violations noted during this inspection?  Yes  No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1093980	Order Conditions	08/13/2021	B	State Water Resources Control Board Order WQ 2019-0000-DWQ General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order), various provisions
1093981	Basin Plan Prohibition	08/13/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1

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

Recommendations:

1. Submit and implement SMP & ECP. Change Tier.
2. Hydrologically disconnect roads from watercourse at WQ1 & WQ3
3. Submit specifics of the pond construction, description of the cisterns installed & their design rationale, and how those cisterns relate to the adjacent spring and the water level therein. Verify the integrity of liner.
4. If pond construction daylighted spring substantially, it should be disclosed along with impact avoidance, minimization & mitigation.

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

See Figure 2. Property stacked terraces, the first has greenhouses, tanks and well, the second terrace has greenhouses, the third grow bags, and the fourth with pond and spring.

Access road is hydrologically connected to Class II watercourse at WQ1, via a road ditch (Way Point 564). Road surface erosion and transport led to accumulated sediment between the ditch outlet and in the watercourse. A slash pile is on the watercourse. A porto-potty is located, adjacent to the roadway, at this location.

WQ2: Crossing 1 is located on the same watercourse (Way Point 566) and proposed for decommissioning. Upstream is low gradient and the downstream is steep, with the outlet eroded and perched. Needs lay back and revegetation.

WQ3: The road segment is steep and adjacent to the Class II watercourse. The road could use shaping to ensure that water goes into the ditch relief culvert (Way Point 567); the outlet should be monitored to ensure no sediment delivery to the watercourse. The road switch-backs across the second terrace. A ditch relief culvert is located at 568, without protection at the outlet, and catches the hillslope runoff and discharges it to the cultivation area. The road appears to be in the Class II setback.

WQ4: Crossing 2 is proposed for decommissioning (Way Point 569) along the same Class II as described in WQ2. It is a relatively small fill and low gradient channel.

WQ5: The road arrives at lower flat & lined pond. I did not see evidence of cracking. The outlet is not inadequately sized or armored.

A spring is located at the base of the slope approximately 70 feet from the pond edge. A hole is excavated in the spring and a cistern is used to drain the area. It appears the spring was present prior to pond construction. It used to go into the pond, and contributed to its overflow; the 401 authorized construction of a rock ford for spring flow to the east over access road and toward the Class II. More info necessary to evaluate pond & spring.

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

Maps

Map 2. Proposed Project Features

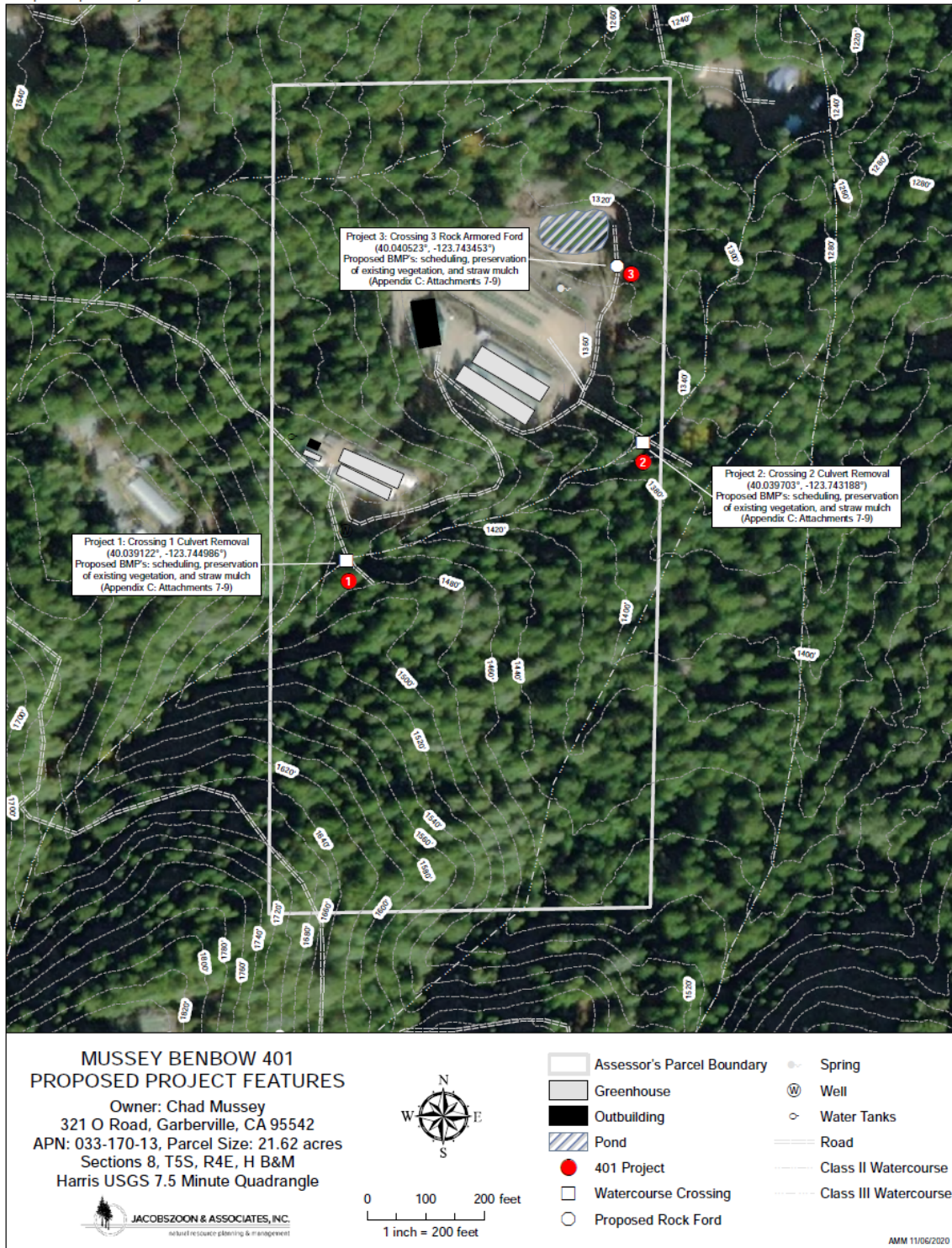


Figure 1. Site map as provided in the 401 application by Jacobzoon & Associates, Inc.



Figure 2. Inspection map for my August 13, 2021 inspection.

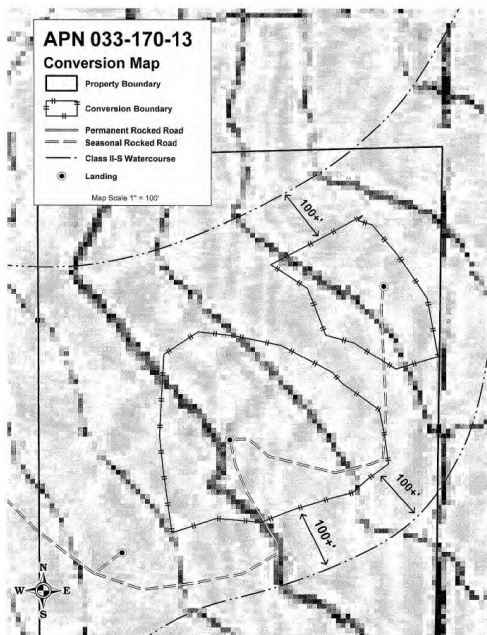


Figure 3. Timber conversion map for Property, as included in the 401 application, does not show spring.

### Inspection Photos

All photos taken by Adona White on August 13, 2021, unless otherwise specified.

WQ1 & WQ2:



*Figure 4. View of flowpath of sediment from access road to watercourse at WQ1. Watercourse runs left-right in photo, just upstream of the crossing. Note on the left, the porto-potty in the flowpath, and slash pile on watercourse, on right.*



*Figure 5. Upstream of crossing at WQ2.*

WQ3:



*Figure 6. WQ3 - The road segment below the first terrace is steep and adjacent to the Class II watercourse, and appears to be within the 100' Class II setback of the watercourse. The road could use shaping to ensure that water goes into the ditch relief culvert.*



*Figure 7. WQ3 - DRC outlet; it should be monitored to ensure no sediment delivery to the watercourse.*



*Figure 8. The road switch-backs across the second terrace.*



*Figure 9. The inlet of DRC 2 is located on the outboard edge of the road, and the outlet discharges into the cultivation area.*



*Figure 10. Outlet of DRC is the middle cultivation area and without outlet protection.*



*Figure 11. View from second flat down to west side of third flat and pond.*



*Figure 12. View of third terrace with grow bags set up.*



*Figure 14. Steep road below third terrace to pond. Note soil pile where it can intercept stormwater runoff.*



*Figure 13. Steep road below second terrace, note pile of sand where stormwater can concentrate.*

WQ4:



*Figure 15. Crossing 2 with pots on top of it to suggest existing past cultivation to county.*

WQ5:



*Figure 16. The road arrives at the lower level and pond. View of Pond from west, road is in distance. The pond is lined. I did not see evidence of cracking. The outlet is inadequate. Note tree on outboard edge indicates natural ground. A spring is located at the base of the slope approximately 70 feet from the pond edge. A hole is excavated in the spring and a cistern is used to drain the area. Reportedly, the overflow the spring went into the pond, filling the pond, and contributing to its overflow. The 401 authorized the construction of a rock ford to take the spring flow to the east over the access road and dump it over the slope toward the Class II, located in the trees in the distance.*

*Their 401 application provides a small domestic registration use application, describing that at no time of year does the stream dry up at any point downstream of the project.*

*The 401 application package includes a letter from Stillwater, who inspected on June 26, 2019. The letter states that the spring could have been daylighted from development of the cutbank but acknowledges the uncertainty in pre-construction conditions. They provide*

*recommendations on spillway stabilization and improvement, including lowering to improve freeboard, shaping, and armoring. Additionally, they recommend retroactive grading plans.*

*The 401 application also includes an undated grading plan by DTN (Nicoletti), that has reportedly not been submitted to the County. The DTN documents includes topographic contours, and one profile of existing graded flats, states that the grading is stable, and the pond has a volume of 318,917 gallons. The DTN documents show the road at WQ3 within a Class II 50' streamside management area. Of note, the Class II requires a 100' setback under the enrollment. During the inspection, Mr. Nicolletti was unaware of the Stillwater Letter. I provided him with a hardcopy.*

*The 401 includes a pond evaluation by Jacobzoon & Associates, dated July 21, 2020, reflecting conditions during a site visit on April 21, 2020. It describes three spring boxes and piping installed under the liner to drain and divert water to the east, discharging toward the Class II associated with WQ1-WQ3. Of note, the Stillwater letter does not mention these cisterns, nor does the Nicoletti document. There are no schematics showing the cistern configuration below the pond.*



*Figure 17. View of cut bank for pond flat. Road comes down on the left of photo, pond liner is in foreground. Spring is located at base of cutbank. Based on all descriptions and evidence, little earth was conducted to construct the flat, that the spring was already there, and known of prior to the pond construction.*



*Figure 18. View of slope above pond. There are stumps in the slope, indicating natural ground.*



*Figure 19. Spring is surrounded by horsetail.*



*Figure 20. Stream channel location downslope, and to the wet and north of pond.*



*Figure 21. Flexipipes associated with cisterns draining pond from beneath liner. They are placed in the fillslope of the lower flat, below the outboard edge of the road, and discharged on to the ground surface, toward the Class II watercourse, downstream of Crossing 2. There is no armoring.*