



North Coast Regional Water Quality Control Board

September 28, 2022

Certified Mail No. 7021 0950 0001 6499 8821

John Lowery
PO Box 2734
Guerneville, CA 95446

Dear John Lowery:

Subject: Notice of Violation, Transmittal of Report for August 29, 2022 Inspection of Sonoma County Assessor's Parcel Numbers 069-080-007-000

File: Cannabis Program Inspections, Sonoma County, 2022, John Lowery, CIWQS Place ID 883396

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 Sonoma County Assessor's Parcel Numbers: 069-080-007-000 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Prohibition 2;
2. California Water Code (Water Code) Sections 13260;
3. State Water Resources Control Board (State Water Board) Cannabis Cultivation Policy Principals and Guidelines for Cannabis Cultivation (Cannabis Policy).

According to our records, the cannabis cultivation operation located on this Property is not enrolled for coverage under Order No. WQ 2019-0001-DWQ General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order). On August 29, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed cannabis cultivation greenhouses exceeding 10,000 square feet in size. Accordingly, this letter directs you to address the violations noticed herein. Within 30 days, please contact Staff to discuss your plan to correct the observed violations.

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

Background

Land Vision records show that John Lowery purchased the Property on July 5, 2018. According to review by Staff on September 27, 2022, of aerial imagery available from Google Earth, cannabis cultivation has been occurring on the Property since at least September 19, 2018.

On August 29, 2022, during the execution of a criminal search warrant served by the California Department of Fish and Wildlife (CDFW), Staff, accompanied by personnel from CDFW, the State Water Resources Control Board Division of Water Rights, Sonoma County and 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. During the inspection, Staff observed cannabis cultivation operations of sufficient size and scope to require regulatory coverage under the Cannabis General Order. According to CDFW personnel, the requisite state and local authorizations for commercial cannabis cultivation are not associated with the Property.

Attached is a copy of the water quality inspection report (Attachment B – Property Inspection Report). 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 report of the August 29, 2022 inspection, Staff observed: violations of the of the Basin Plan Section 4.2.1 Prohibition 2 at locations WQ1 and WQ2 for threatened discharge of sediment to Hulbert Creek; Staff observed large-scale cannabis cultivation and associated activities that were being conducted without first obtaining regulatory coverage for associated waste discharges, in violation of Water Code section 13260; and site conditions at WQ1 and WQ2 that violate the Cannabis Policy.

Legal Requirements

The State Water Board adopted the Cannabis Policy and the Cannabis General Order on October 17, 2017, and updates on February 5, 2019, which remain in effect today. The purpose of the Cannabis Policy is to ensure that the discharge of waste and diversion of water associated with cannabis cultivation does not have a negative impact

on water quality, aquatic habitat, riparian habitat, wetlands, and springs. The Cannabis Policy applies to cannabis cultivation activities throughout California including, Commercial Recreational, Commercial Medical, and Personal Use Medical. The Policy does not apply to recreational cannabis cultivation for personal use, which is limited to six plants under the Adult Use of Marijuana Act (Proposition 64, approved by California voters in November 2016).

The Cannabis General Order is the statewide water quality permit that implements the Cannabis Policy through the overarching general Waste Discharge Requirements (WDRs) in accordance with the California Water Code and is available for eligible cannabis cultivators to enroll under. The Cannabis General Order regulates waste discharges from cultivation sites including sediment, irrigation runoff, fertilizers, pesticides/herbicides, petroleum, agricultural related chemicals, cultivation related waste, and refuse. Threats of waste discharge may be from irrigation runoff, over fertilization, pond failure, road construction, grading activities, domestic and cultivation related waste, refuse placement, etc. All commercial cannabis cultivators must obtain coverage under the Cannabis General Order, including for both indoor and outdoor cultivation.

Cultivation activities on the Property requires conformance with the Cannabis Policy and enrollment under the Cannabis General Order. For more information, please visit our website at:

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

As documented in the inspection report, the site conditions observed on the Property are in violation of the Basin Plan and do not meet the requirements of the Cannabis Policy. Please provide a written response supporting documentation, including photos if relevant, explaining how the Property will be restored in compliance with the Basin Plan and Cannabis Policy. As part of this work, you are not authorized to use heavy equipment in a water of the state or modify the bed bank or channel of a water of the state without a water quality certification permit from the Regional Water Board.

The application for the water quality certification for cannabis cultivation-related projects is available here:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf

Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Basin Plan, Cannabis Policy and Water Code warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, and secure 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 Basin Plan, Cannabis Policy and Water Code.

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 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 Staff Brian Fuller 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 Brian Fuller by email at Brian.Fuller@waterboards.ca.gov or by phone at 707-576-2806.

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 Jeremiah.Puget@waterboards.ca.gov or by phone at 707-576-2835. 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,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Attachments: Attachment A – Regulatory Citations
Attachment B – Inspection Report

Certified Mail – Return Receipt requested

cc: North Coast Regional Water Quality Control Board

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Department of Cannabis Control

Jon Silva, Jon.Silva@cannabis.ca.gov
Erin Wonder, Erin.Wonder@cannabis.ca.gov

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 2	<p>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.”</p> <p>Available at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/</p>
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: (3) The issuance of waste discharge requirements pursuant to Section 13263. (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:... (3) The issuance of a waiver pursuant to Section 13269.”</p>

Regulatory Section	Citation
California Water Code Section 13265(a)	“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.”
Cannabis Policy and General Order No. WQ 2019-0001-DWQ	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 Available at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf and https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf



North Coast Regional Water Quality Control Board

TO: Jeremiah Puget

FROM: Brian Fuller

DATE: September 27, 2022

**Inspection Report for August 29, 2022 Warrant Inspection,
Sonoma County
Assessor's Parcel Number (APN) 069-080-007-000
(the "Property")**

File: Cannabis Program Inspections, Sonoma County, 2022, John Lowery,
CIWQS Place ID 883396

Property information:

Watershed: Russian River Hydrologic Unit; Lower Russian River Hydrologic Area; Guerneville Hydrologic Subarea; (HU/HA/HSA 114.11; see Table 2-1 of the Water Quality Control Plan for the North Coast Region (Basin Plan), for beneficial uses)

Inspection information:

Date/time: August 29, 2022 / morning

Weather: sunny

Type: Warrant Inspection

Background/Objective:

Objectives for Regional Water Board staff (Staff) included observing site development and activities and identifying and assessing onsite features or conditions that are causing or may cause adverse impacts to the quality and beneficial uses of receiving waters, including surface and ground water.

Inspection Maps:

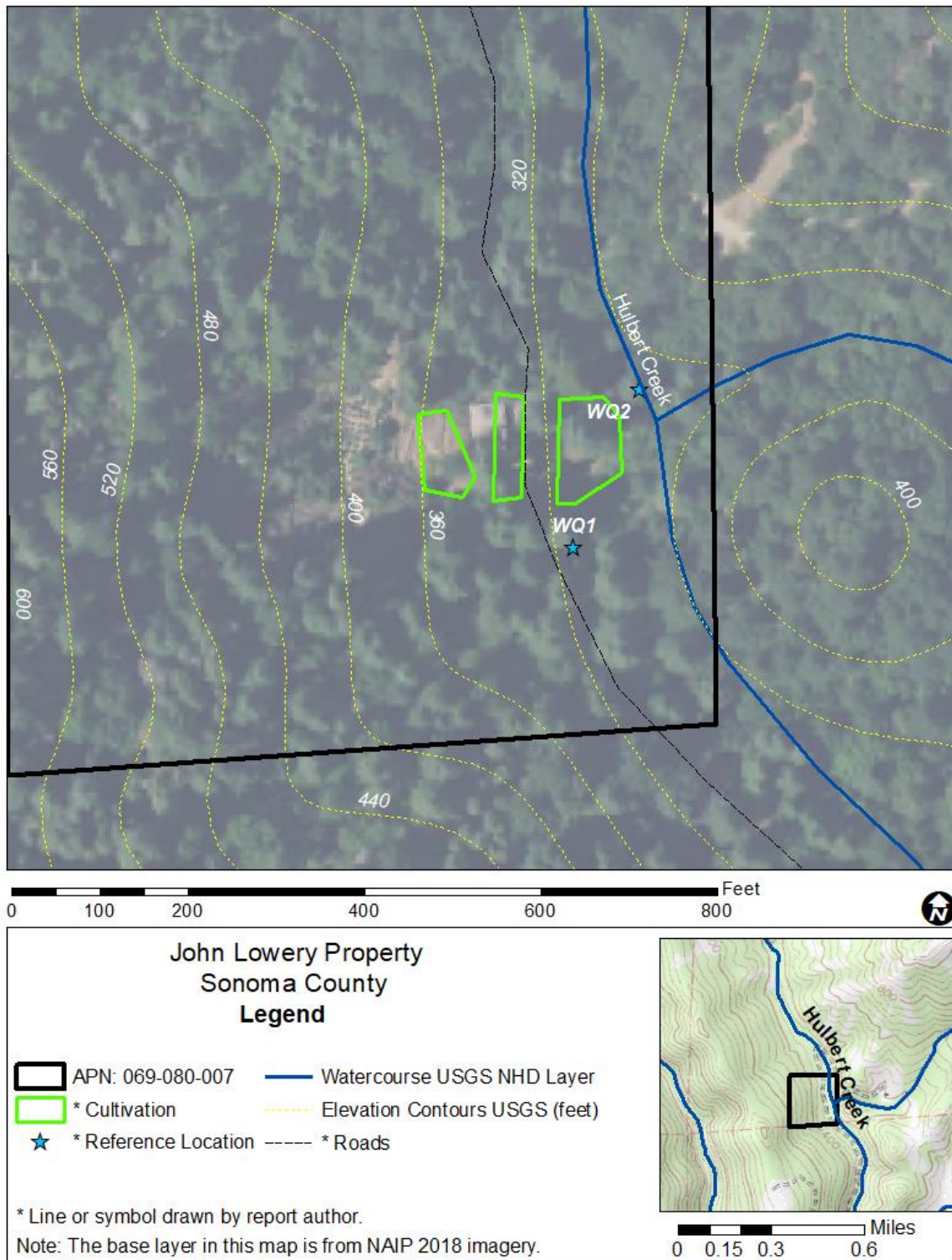


Figure 1: Aerial image/map showing inspection points discussed in this report.

Inspection Narrative:

The inspection was associated with a criminal search warrant, and I viewed only portions of the Property. See the above Inspection Maps and below Photo Appendix for locations and details about features of concern to water quality. I entered the Property from the southeast and observed cannabis plants growing on several tiered pads covering in excess of 10,000 square feet in area west of Hulbert Creek. I observed the cannabis cultivation area extending to within 50 feet of Hulbert Creek in the vicinity of WQ2, and waste associated with cannabis cultivation threatening to discharge to Hulbert Creek as both WQ1 and WQ2.

Recommendations for the Discharger:

1. Immediately collect all refuse and cannabis cultivation wastes on the Property which threaten to discharge to receiving waters and properly dispose of these wastes at a licensed waste collection facility.
2. Retain a licensed professional to delineate all watercourses and wetlands that are waters of the state of California on the Property, and to develop a workplan and schedule to implement measures to ensure that all developed features, including roads cultivation pads throughout the Property are corrected, restored, and/or maintained in conditions that prevent or minimize erosion, sediment transport/delivery, and adverse impacts to water quality and beneficial uses.
3. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.
4. Prior to cultivating cannabis or developing a property for cannabis cultivation, enroll for coverage under the Cannabis General Order.
5. Prior to conducting work in a water of the state of California, submit the below application and pay the required application fee for a Water Quality Certification/Waste Discharge Requirement:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf

Photo Appendix:



Photo 1— Looking north-west from WQ1 toward a pad with cannabis plants growing in the top center of the image. Water from excess irrigation is visible in the middle of the image.



Photo 2— Looking east toward WQ1. A shipping container is visible in the top-middle of the image.



Photo 3—Waste materials and slash located between shipping container at WQ1, pictured in previous image, and Hulbert Creek.



Photo 4—Cannabis cultivation areas adjacent to the road north of WQ1 and west of WQ2.



Photo 5— Cannabis cultivation areas east of WQ2, Hulbert Creek runs from left to right in the top of the image.



Photo 6— Looking south and downstream at Hulbert Creek in the vicinity of WQ2. A crushed fluid storage tank, which is commonly used for mixing agricultural chemicals, is visible in the top right of the image.