



North Coast Regional Water Quality Control Board

June 8, 2021

Kenneth and Donna Bowman
PO Box 757
Miranda, CA 95553

Certified Mail 7016 0750 0001 0048 7365

Dear Mr. and Mrs. Bowman,

Subject: Notice of Violation and Transmittal of Inspection Report for April 29, 2021 Inspection of Mendocino County Assessor's Parcel Number (APN) 011-530-08-01 and Trinity County APNs 022-200-33-00 and 022-200-31-00

File: Cannabis Program Inspections, Mendocino and Trinity County, April 2021 Inspections, CIWQS Place IDs: 874180 and 874435

This letter is to notify you of observed violations of the requirements listed below for unauthorized discharges to waters of the state from the above-referenced parcel (Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ 1, WQ 3, WQ 4, WQ 5, WQ 6; seven locations between WQ 9 and WQ 10; and four locations between WQ 8 and WQ 11 where the road fords watercourses.
2. California Water Code (Water Code) sections 13260 and 13264
3. Federal Clean Water Act section 301 (a), 401 and 404 at WQ 7.

Within 30 days of this letter, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

Background

On April 29, 2021, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), State Water Resources Control Board Division of Water Rights, and various law enforcement personnel, inspected the subject 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 – April 29, 2021 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 April 29, 2021 Inspection Report, Regional Water Board staff observed violations of the Basin Plan Section 4.2.1 Prohibitions 1 and 2, and Water Code sections 13260 and 13264, and federal Clean Water Act section 301. Staff observed these violations at Property locations identified in the April 29, 2021, Inspection Report as WQ 1, WQ 3, WQ 4, WQ 5, WQ 6, WQ 7, WQ 9, WQ 10, seven locations between WQ 9 and WQ 10, and four locations between WQ 8 and WQ 11 where the road fords watercourses.

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.

Directive to Obtain Regulatory Coverage Prior to Future Activities Involving or Resulting in Discharges of Waste to Waters of the State

During the April 29, 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-2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Statewide General Order).

Please be aware that, pursuant to Water Code sections 13260 and 13264, if you elect to resume/continue cannabis cultivation on the subject Property, you must either:

- 1) **Enroll 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/

Submit the application fee within **30 days** of submitting the on-line application. Failure to submit the application fee within 30 days will result in the application being voided and authorization terminated. 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," and shall be delivered to:

(By US Mail):

Accounting Office
Attn: Water Quality Fees – Cannabis General Order
P.O. Box 1888
Sacramento, CA 95812-1888

(In person or by courier delivery):

Accounting Office
Attn: Water Quality Fees –Cannabis General Order
1001 I Street
Sacramento, CA 95814-2828

OR:

- 2) **File a Report of Waste Discharge** in order to obtain individual Waste Discharge Requirements (WDRs) specific to your property.

Please submit the appropriate documents and payments to:

North Coast Water Board
Attn: Diana Henriouille
Enforcement Unit
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Water Code section 13260 states, in relevant part:

(a) Each 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.

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 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.

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.

If you have questions about what is required of you to comply with the requirements outlined above, please contact Regional Water Board staff Brian Fuller at Brian.Fuller@waterboards.ca.gov or by phone at (707) 576-2806 to advise as to your plan and schedule to correct the alleged violations as documented in the inspection report.

You may also contact me at Diana.Henrioulle@waterboards.ca.gov or by phone at (707) 576-2350. 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,

Original signed on June 8, 2021

Diana Henrioulle, P.E.
Enforcement Unit

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Attachments: Attachment A - Regulatory Citations
Attachment B – April 29, 2021, Inspection Report

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

Brian Fuller, Brian.Fuller@waterboards.ca.gov

Department of Fish and Wildlife

Ryan Bourque, Ryan.Bourque@wildlife.ca.gov

Scott Bauer, Scott.Bauer@wildlife.ca.gov

Warden Eric Agoitia, Eric.Agoitia@wildlife.ca.gov

Division of Water Rights

Stormer Feiler, Stormer.Feiler@waterboards.ca.gov

Taro Murano, Taro.Murano@waterboards.ca.gov

Chris Baimas, Chris.Baimas@Waterboards.ca.gov

Christopher Van de Wyngard, Christopher.VandeWyngard@waterboards.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.”
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>(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>(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)	“A person who fails to furnish a report or pay a fee under <u>Section 13260</u> when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
California Water Code Section 13264 (a)	“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:”

Regulatory Section	Citation
California Water Code Section 13265(a)	"Any person discharging waste in violation of <u>Section 13264</u> , 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."
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"
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.

Regulatory Section	Citation
	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: 443390
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 04/29/2021	

Discharger Information

Party ID: 555514	Discharger Organization Name: Bowman, Kenneth	
Address: Po Box 757	City, State, Zip: Miranda, CA 95553	
Discharger Contact Person:	Discharger Contact Phone:	
Discharger Contact Email Address:		

Facility Information

Place ID 874180	Facility Name: Kenneth Bowman Site #3		
Address:	City, State, Zip: Laytonville, CA 95454		
County: Mendocino	Latitude: 39.962	Longitude: -123.466	Method: Map Interpolation (digital)

Lead Inspector Information

Lead Inspector Party ID: 568606	Lead Inspector Name: Brian Fuller		
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

VIOLATIONSWere Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1090884	Unauthorized Discharge	04/29/2021	B	Federal Clean Water Act Section 301 at WQ7
1090885	Unauthorized Discharge	04/29/2021	B	California Water Code section 13260 and 13264 for unauthorized discharge of waste at locations WQ 4, WQ 6, WQ 7, WQ 9 and WQ 10
1090886	Basin Plan Prohibition	04/29/2021	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1 at locations WQ 1, WQ 3, WQ 4, WQ 5, WQ 6; Seven locations between WQ 9 and WQ 10; and four locations between WQ 8 and WQ 11 where the road fords watercourses.

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Recommendations:

1. Enroll in the Cannabis General Order, address the water quality-related impacts from recent development & ensure future development and uses for cannabis are in conformance with current regulations.
2. Engage a qualified professional to develop and submit a work plan to address the threatened and actual discharges of waste associated with cannabis operations on the property.
3. Submit application for and obtain 401 WQC from Water Board before performing any instream work.

GENERAL NOTES (OPTIONAL) (2000 character limit)

My inspection was associated with a criminal search warrant and I viewed only portions of the Property. Please see the attached Map and Appendices for locations and details about features of concern to water quality.

At WQ1, I observed a graded pad with water bladders bordering a watercourse, slash where it threatens to discharge to the watercourse and human within the banks of the watercourse. I walked southwest and observed an undersized, perched and failed culvert at WQ3, and a water tank placed in the watercourse. I observed petroleum stored without secondary containment near WQ 1. South of WQ4 I observed a cultivation pad cut into a hillslope. I observed shallow groundwater from upslope flowed over the pad and into a watercourse to the south. At WQ 4 I observed motor oil, slash and other waste upslope from a watercourse.

I observed the road fording a watercourse at WQ5. I observed that the road between WQ5 and WQ 6 had ruts and rills. I observed slash in the vicinity of the northern corner of the cultivation pad at WQ6, perched above a watercourse. I observed irrigation runoff passing through waste potting soils and away from the cultivation area.

I drove to the cultivation pad at WQ7. Aerial imagery shows it was constructed during the summer of 2020 on top of a headwater stream. I observed saturated ground at the downslope extent of the graded area where it connects to a watercourse that is Tributary to the Eel River. On the upslope edge of the graded pad I observed vegetation from the genus juncus, suggesting wetlands were/are present at the site. I observed suspected wetlands at WQ8 and a row of greenhouses at WQ9. I drove west of WQ9, then north and east to WQ10 and observed seven location where the road fords watercourses. I observed a watercourse bordering the eastern edge of the cultivation pad at WQ10.

Between WQ 8 and WQ 11, I observed four location where the road fords watercourses. At WQ11 I observed a surface water diversion.

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

Inspection Maps and Photolog for inspection conducted April 29, 2021

Map and photo selection completed by Brian Fuller, PG, Engineering Geologist

Inspection Map

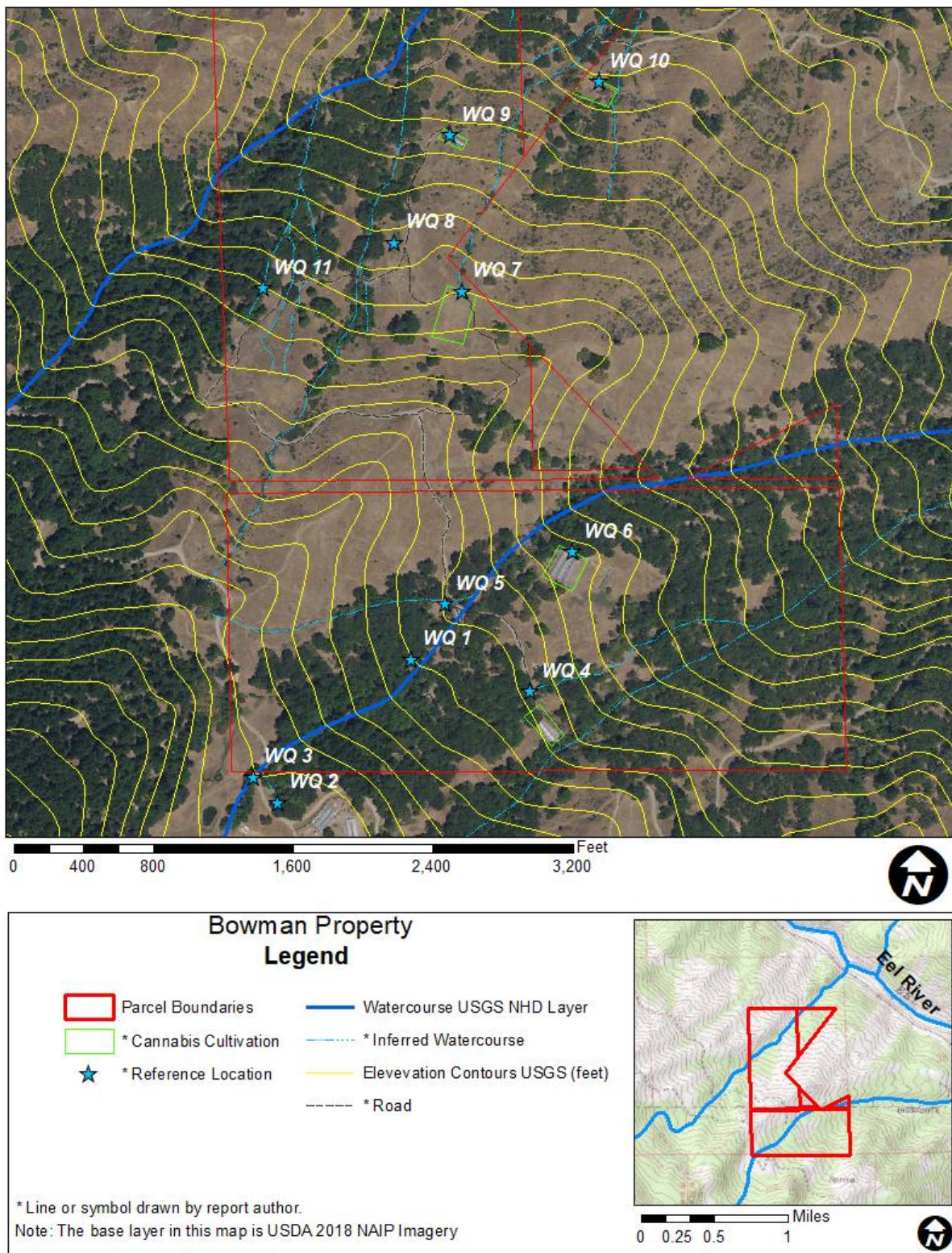
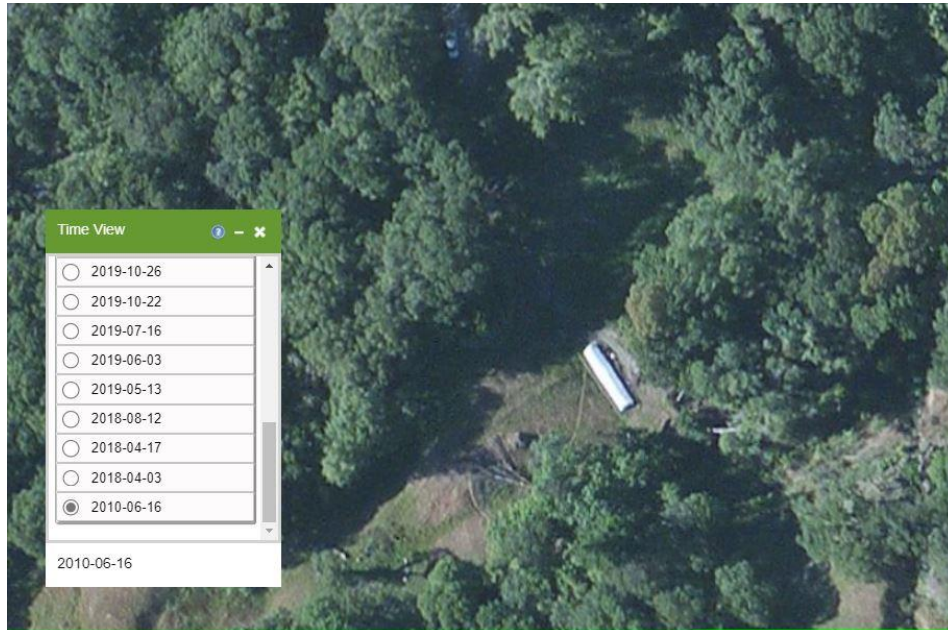


Figure 1: Map of Property, including inspection points of interest.

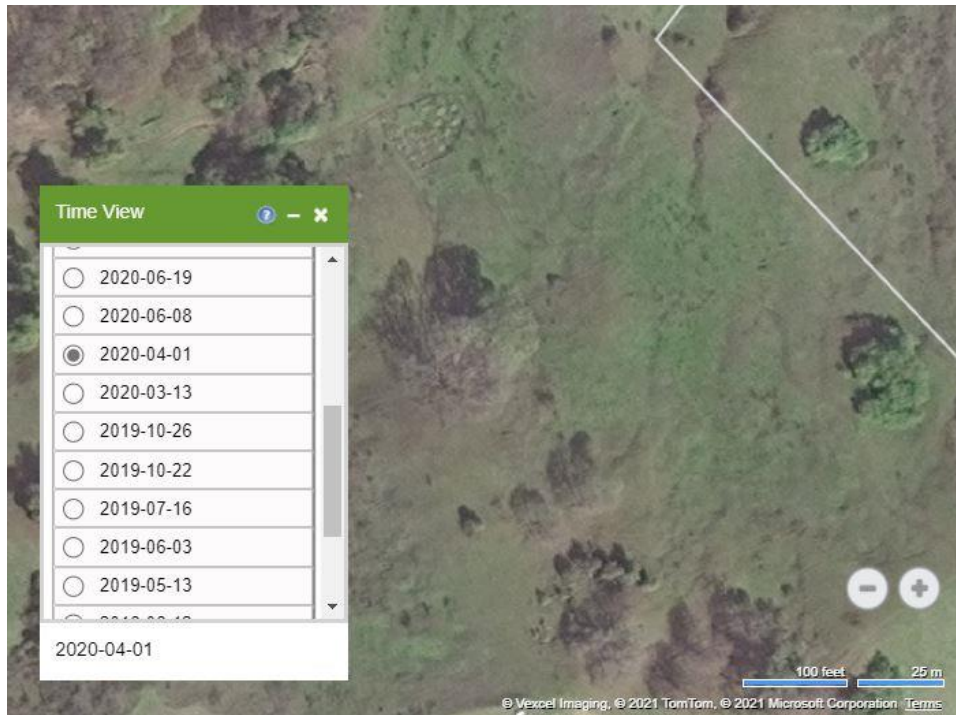
Aerial Images:



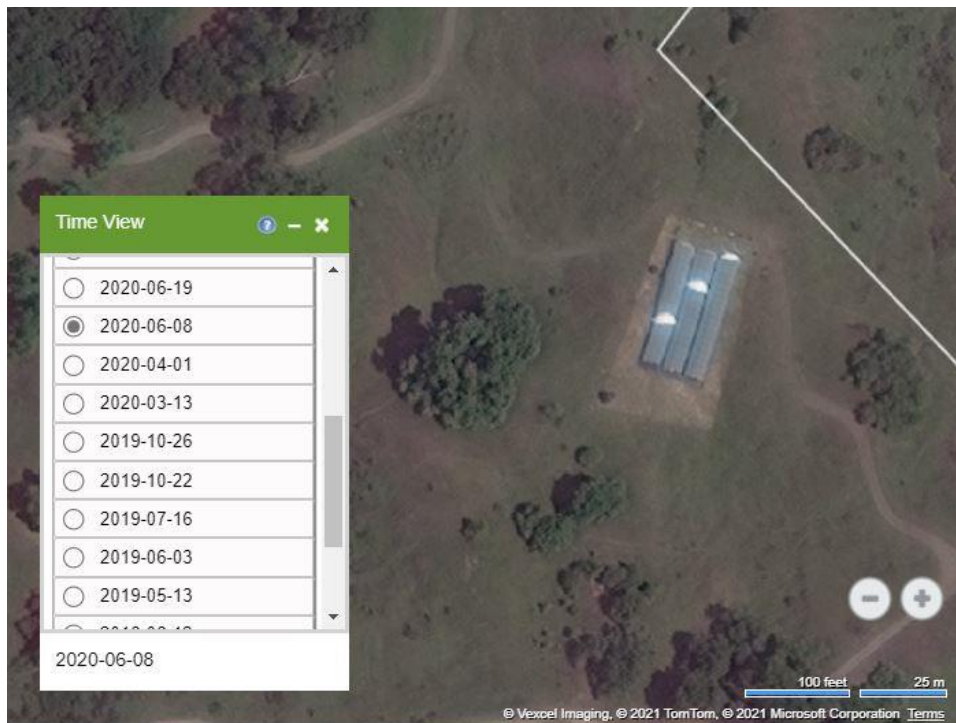
Aerial Image 1—Dated June 16, 2010, accessed with Digital Map Products' Land Vision service. Image shows a narrow greenhouse on a road south of WQ 4.



Aerial Image 2—Dated April 3, 2018, accessed with Digital Map Products' Land Vision service. Image shows the greenhouse and road south of WQ 4 had been significantly widened compared to the previous image of the same scale.



Aerial Image 3—Dated April 1, 2020, accessed with Digital Map Products' Land Vision service. Image shows no greenhouse in the vicinity of WQ 7.



Aerial Image 4—Dated June 8, 2020, accessed with Digital Map Products' Land Vision service. Image shows graded pad and greenhouse in the vicinity of WQ 7.

Photo Appendix:



Photo 1—Pad with water bladders in the vicinity of WQ 1. Slash from clearing pad is visible, in the right of the image, perched above a watercourse.

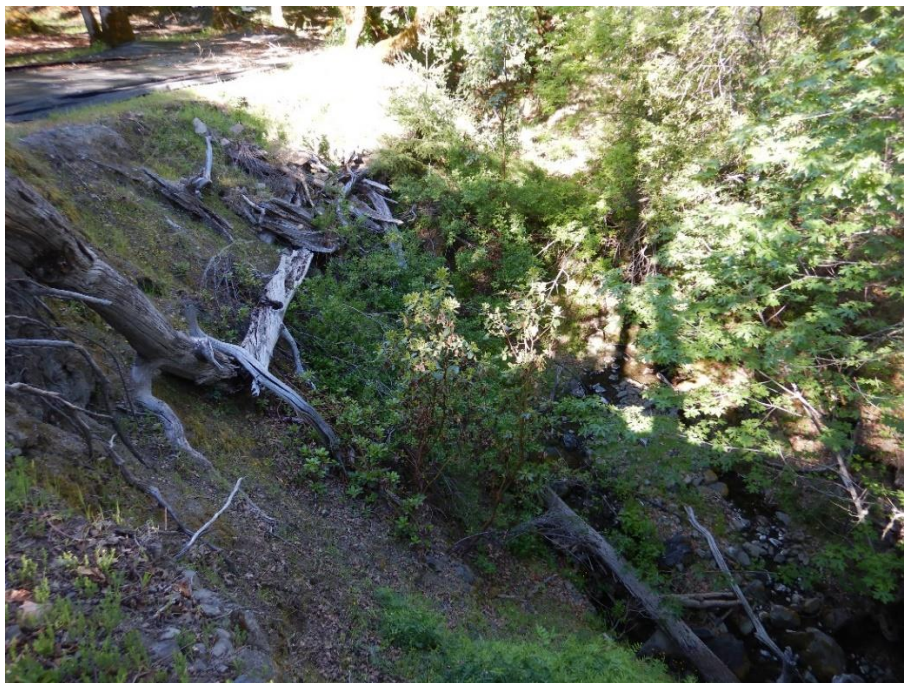


Photo 2—Slash from pad clearing pictured in previous image, is perched above watercourse to right of image.



Photo 3—Watercourse downslope from bladder pad, in the vicinity of WQ 1 and pictured in previous image



Photo 4—Location where human waste, marked by clumps of white sanitary paper, is disposed at the end of the foot path leading to watercourse in the vicinity of WQ1. The watercourse is located within 10 feet of the waste piles to the right of the image and to the back of the photographer.



Photo 5—Spring located at WQ2.



Photo 6—A watercourse, originating at the spring at WQ2, discharging to a larger incised channel in the vicinity of WQ3. A water tank is visible in the top left of the image.



Photo 7—Water tank in the vicinity of WQ3, and pictured in previous image, is within the banks of the watercourse.



Photo 8—Looking upstream at a 36-inch diameter corrugated metal pipe upstream from the tank in the previous image, in the vicinity of WQ3. The culvert inlet is misaligned with the watercourse.



Photo 9— Looking upstream at outlet of culvert pictured in previous image at WQ3. The culvert outlet is perched 5 feet above the stream bed and has rusted through the bottom.



Photo 10—Fuel storage in the vicinity of WQ1.



Photo 11— Waste oil in the vicinity of WQ1.

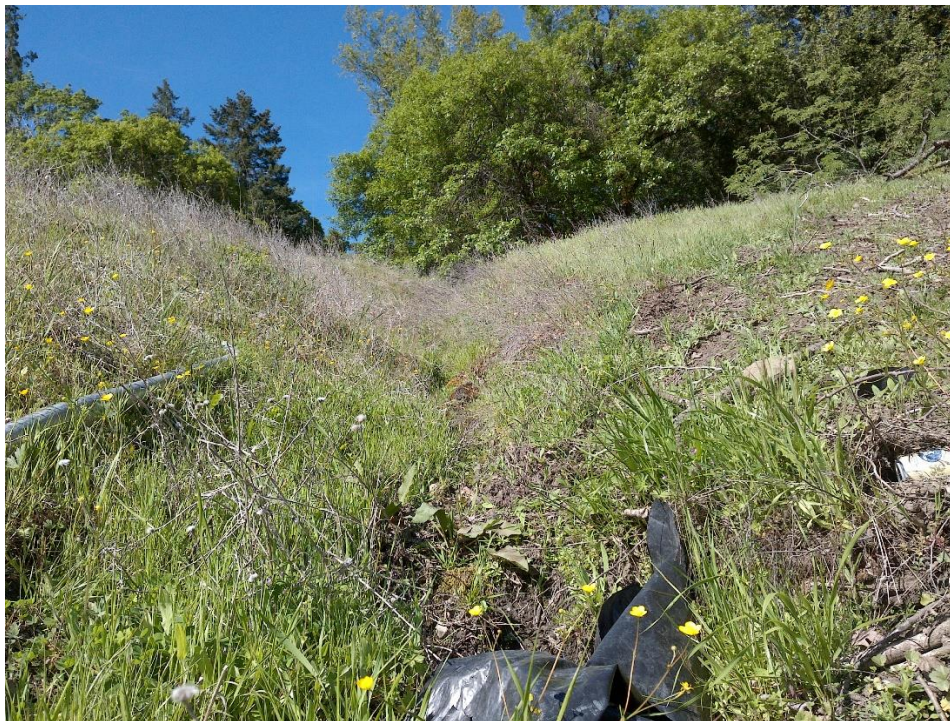


Photo 12— Looking southwest and upslope at ephemeral watercourse upslope from graded pad south of WQ4.



Photo 13— Looking northeast at graded pad south of WQ4. The photographer is standing at the same location as the previous image.



Photo 14— Looking southeast along graded pad south of WQ4. The photographer is standing at the same location as the previous two images. Water emanates from cut-face and flows over cultivation pad to receiving water in the background of the image.



Photo 15— Looking southeast, from the southeast edge of the graded pad pictured in the previous image, toward a watercourse with defined bed and banks.



Photo 16— Looking northeast from northeast edge of graded pad south of WQ4. The photographer is standing on opposite side of greenhouse pictured in Photo 13 above. A shallow valley extends downhill from the edge of the pad and a watercourse channelizes at the tree line in the top of the image.



Photo 17—Waste motor oil container located at WQ4.



Photo 18— Looking east from WQ4. The topographic form of a watercourse is visible in the middle back of the image. A pile of slash is visible in the foreground of the image.



Photo 19—Culvert crossing on watercourse immediately south of WQ5. The road fords a tributary to the watercourse (not pictured) in the vicinity of WQ5.



Photo 20—Looking west along road leading to WQ6 from WQ5. Ruts are visible on the road surface.



Photo 21— Looking east along road leading to WQ6. Road ruts connect to rills exiting the road in the middle back of the image, enabling stormwater to transport road pollution to a watercourse to the left of the image.



Photo 22—Watercourse bordering pad in the vicinity of WQ6. Slash is perched above the watercourse.



Photo 23—Slash encroaching on watercourse north of WQ6.



Photo 24—High-concentration, water soluble nutrients on bare ground on the northern edge of the cultivation pad located at WQ6.

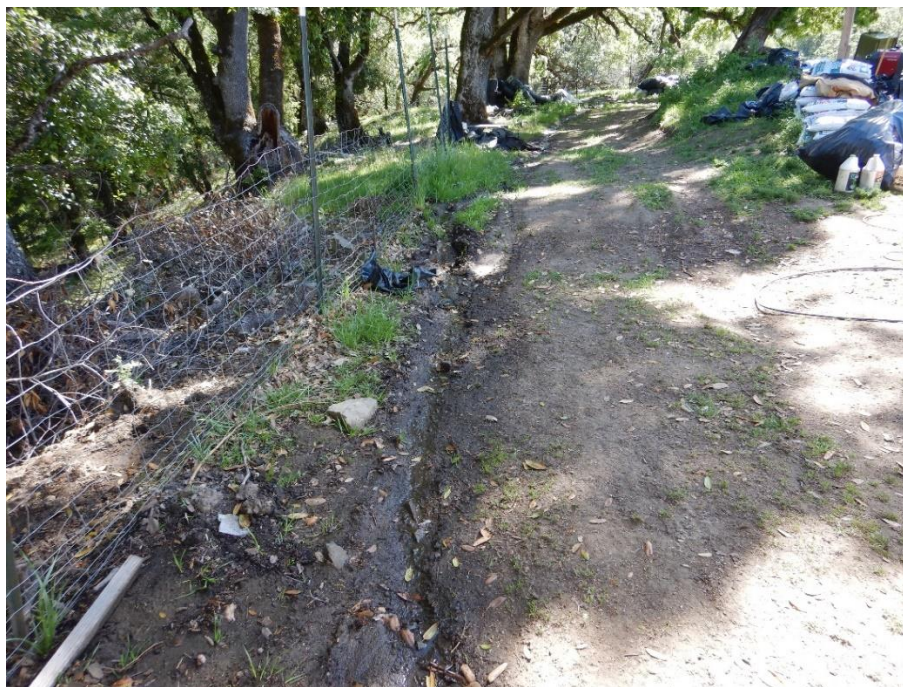


Photo 25—Suspected irrigation runoff exiting cultivation areas and flowing east along edge of cultivation pad.



Photo 26—Suspected irrigation runoff from previous image flowing over waste potting soils before dispersing near the northeastern corner of the cultivation pad located at WQ6.



Photo 27— Looking north towards greenhouse at WQ7. The Eel River is visible in the middle of the image.



Photo 28— Saturated ground on the road passing the northern edge of the graded pad at WQ7.



Photo 29—Looking north where saturated ground pictured in previous image connects to a watercourse tributary to the Eel River.



Photo 30—Looking south towards greenhouses at WQ7.



Photo 31—Plants of the genus juncus, at the south eastern edge of the graded pad suggesting wetlands may have been present in the areas upslope from the watercourse pictured in Photo 29.



Photo 32—At WQ8, a water storage bladder overlying area occupied by plants from the genus juncus, suggesting wetlands conditions are present.



Photo 33—Watercourse downslope from suspected wetlands at WQ8.



Photo 34—Rutting and rilling on road north of WQ8.



Photo 35—Greenhouse at WQ9



Photo 36—Hydrologically connected road fording a watercourse west of WQ9. The road leads to the cultivation area at WQ10.



Photo 37— Hydrologically connected road fording a watercourse northwest of WQ9 and west of WQ10.



Photo 38— Hydrologically connected road fording a watercourse west of WQ10.



Photo 39— Hydrologically connected road fording a watercourse west of WQ10.



Photo 40—Hydrologically connected road fording a watercourse north of WQ10.



Photo 41—Greenhouse pad located at WQ10.



Photo 42—Irrigation water from cultivation area at WQ10, flows over pile of shredded plant material at northern edge of cultivation area. A tributary to the Eel River is in the background of the image.



Photo 43—Looking upstream from road fording watercourse between WQ8 and WQ11.



Photo 44—Looking downstream from road fording watercourse between WQ8 and WQ11.



Photo 45—Looking upstream from road fording watercourse between WQ8 and WQ11.



Photo 46—Looking downstream from road fording watercourse between WQ8 and WQ11.



Photo 47—Watercourse diversion observed at WQ11.