



North Coast Regional Water Quality Control Board

September 22, 2022

Certified Mail No. 7021 0950 0001 6499 8784

Kyle Harrison and Michael Pogue
PO Box 91
Weott, CA 95571

Dear Kyle Harrison and Michael Pogue:

Subject: Notice of Violation, Transmittal of Report for August 23, 2022 Inspection of Trinity County Assessor's Parcel Number 020-430-002-000

File: Cannabis Program Inspections, Trinity County, 2022, Kyle Harrison and Michael Pogue, CIWQS Place ID 883297

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 Trinity County Assessor's Parcel Number: 020-430-002-000 (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 23, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed cannabis cultivation exceeding a combined 2,000 square feet in size. Accordingly, this letter directs you to address the violations noticed herein. Within 30 days, please contact Regional Water Board 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 Kyle Harrison and Michael Pogue purchased the Property on April 6, 2017. According to review by Staff on September 20, 2022, of aerial imagery available from Google Earth, the cannabis cultivation areas identified in the inspection report at WQ1 and WQ2 were constructed prior to August 12, 2017. Order No. R1-2015-0023 (the Regional Cannabis Order) was in effect from August 2015 through adoption of the Cannabis General Order, and required cannabis cultivators within the North Coast Region to enroll and implement water quality protection measures. The Property was never enrolled under the Regional Cannabis Order.

On August 23, 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, the California Department of Cannabis Control 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 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 23, 2022 inspection, Staff observed: violations of the of the Basin Plan Section 4.2.1 Prohibition 2 at locations WQ4 for threatened discharge of sediment to Bluff Creek associated with the inadequate reservoir overflow outlet; Staff observed 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; the site conditions at WQ3 also 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 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 Policy.

As documented in the inspection report, the feature at WQ3 is a jurisdictional water of the state and work in the area is required to conform with the Cannabis Policy. Any work in a water of the state resulting in temporary or permanent impacts will require a water quality certification prior to conducting work in jurisdictional streams or wetlands.

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 Regional Water Board 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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County Sheriff's Office

Sergeant Nathaniel Trujillo, NTrujillo@trinitycounty.org

Trinity County Environmental Health

Kristy Anderson and Rikki Townzen, environmentalhealth@trinitycounty.org

Department of Cannabis Control

Jaime Masuda, Jaime.Masuda@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>

Regulatory Section	Citation
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: (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.”
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 22, 2022

**Inspection Report for August 23, 2022 Warrant Inspection,
Trinity County
Assessor's Parcel Number (APN) 020-430-002-000 (the "Property")**

File: Cannabis Program Inspections, Trinity County, 2022, Kyle Harrison and Michael Pogue, CIWQS Place ID 883297

Property information:

Watershed: Eel River Hydrologic Unit; North Fork Eel River Hydrologic Area; (HU/HA 111.50; 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 23, 2022 / midday

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 Map:

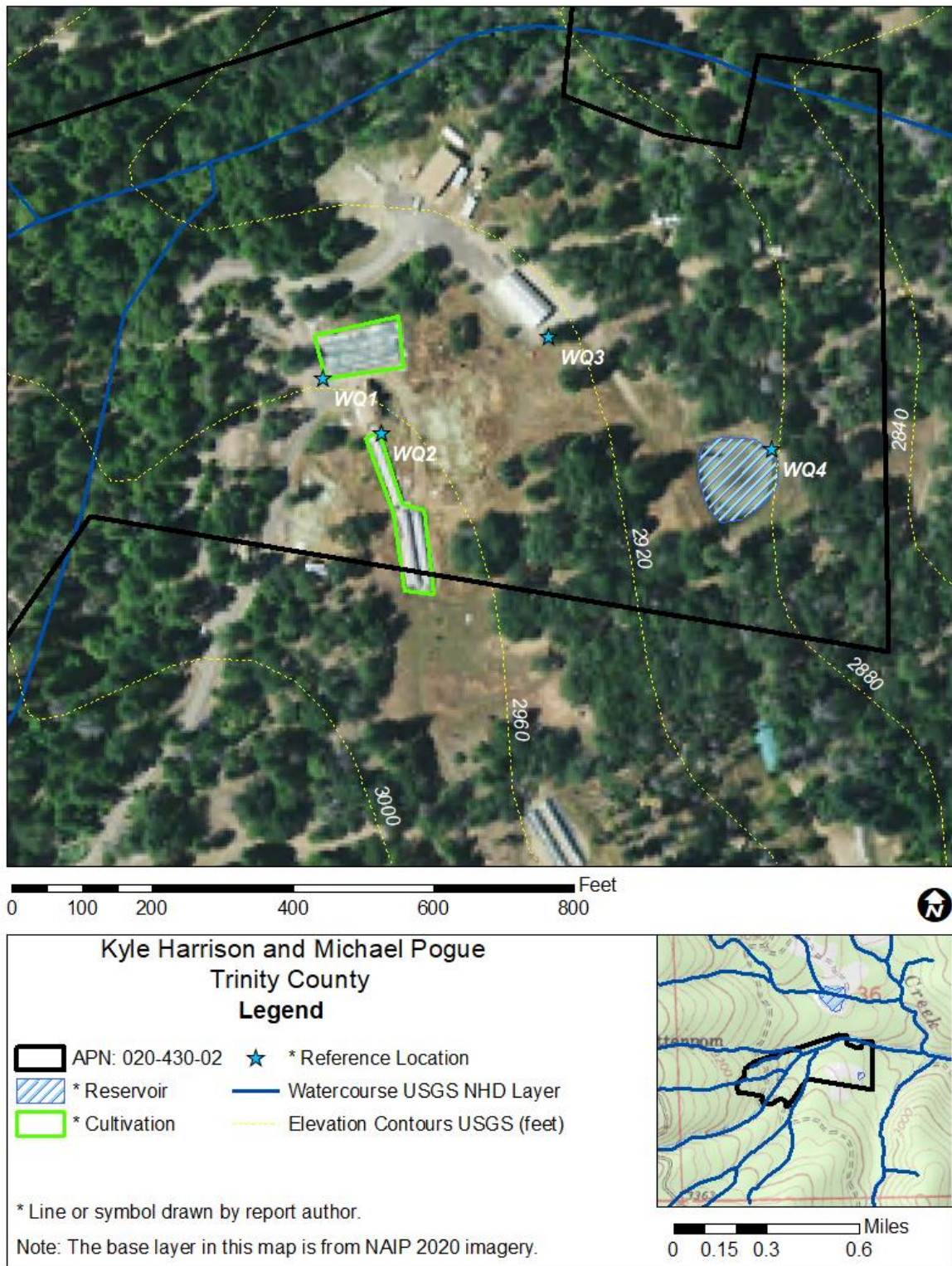


Figure 1: Aerial image/map showing inspection points discussed in this report.

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 south and I observed cannabis plants growing among other plants in raised garden beds covering a combined area of approximately 7,000 square feet at WQ1 and WQ2.

I followed a road to a generator building at WQ3 where I observed spilled oil on a semi-permeable earthen floor. I observed that the east-facing hillslope behind the generator building had been cut into and a trench had been dug enabling the flow of water from the saturated hillside to flow to the east. I observed the plant genus *Juncus* in the cut face and trench suggesting the feature is a wetland that is a water of the state and subject to minimum 100-foot setback under the Cannabis Policy. Additionally, the Cannabis Policy limits the use of fords in Attachment A, Section 2, Term 52.

I proceeded south-east and observed a reservoir with no visible watercourse flowing in or out of the reservoir. I observed the lowest elevation of the berm appeared to be located on the northeastern edge at WQ4 where I observed a hole scoured into the reservoir berm to a depth four feet below the berm crest. The Cannabis Policy, Attachment A, Section 2, Term 85, requires that the reservoir outlet structure be designed such that it is protected and promotes the dispersal and infiltration of flow and prevents channelization.

Recommendations:

1. Retain a licensed professional to investigate the extent of contaminated soil, surface water and groundwater associated with the spilled petroleum products at WQ3 and develop a workplan and schedule for cleaning up the spill.
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, roads and watercourse crossings 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. Retain a licensed professional to design and develop a workplan to correct the reservoir overflow outlet at WQ4 to comply with the Cannabis Cultivation Policy.
4. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.
5. Prior to cultivating cannabis or developing a property for cannabis cultivation, enroll for coverage under the Cannabis General Order.

6. Prior to conducting work in water of the state, 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— Cannabis plants, intermixed with other plants, in raised garden beds at WQ1.



Photo 2— Cannabis plants being grown in raised garden beds at WQ2.



Photo 3— Looking inside structure at WQ3. The floor of the structure appears to be semi-permeable compacted earth. The structure houses two large generators and stains from leaking oil are visible below the generator towards the back of the image.



*Photo 4— Looking west at the southern edge of the generator building located at WQ3. The hillside in the background of the image appears to have been cut into to accommodate the generator building. Plants from the genus *Juncus* are visible in the cut face of the hillslope and a trench leaves the cut-face to the bottom left of the image.*



Photo 5— Looking east where a road fords the trench pictured in the previous image. Pooled water is visible in the trench and the plant genus is growing in the trench.



Photo 6— Looking east at reservoir located at WQ4.



Photo 7— Hole scoured into the reservoir berm at WQ4.