



North Coast Regional Water Quality Control Board

August 18, 2023

Brenda Kershenabum
825 N La Jolla Ave
Los Angeles, CA 90046

GLS Tracking No. 559970141

Dear Brenda Kershenbaum:

Subject **Notice of Violation, Transmittal of Inspection Report of July 19, 2023
Inspection of Mendocino County Assessor's Parcel Numbers 056-
060-24-00, 056-060-25-1 and 056-060-28-00**

File: Cannabis Inspections, Mendocino County 2023, CIWQS Place ID 889563

THIS LETTER HAS RECOMMENDATIONS 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 Mendocino County Assessor's Parcel Numbers (APNs) 056-060-24-00, 056-060-25-1 and 056-060-28-00 (the Property):

1. State Water Resources Control Board (State Water Board) Cannabis Cultivation Policy Principals and Guidelines for Cannabis Cultivation (Cannabis Policy).
2. California Water Code (Water Code) sections 13260 and 13264
3. The Water Quality Control Plan for the North Coast Regional (Basin Plan) section 4.2.1

On July 19, 2023, staff of the North Coast Regional Water Quality Control Board (Regional Water Board) inspected the Property and observed cannabis cultivation and associated activities with unauthorized discharges of waste to land and threatened discharges of waste to waters of the state.

According to our records, at the time of the inspection, the cannabis cultivation operation located on this Property was not enrolled for coverage under Order No. WQ

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

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). The Property was previously enrolled under the Cannabis General Order from December 21, 2018 to February 9, 2021 by Jonathan Kelley with WDID No. 1_23CC406716, with Brenda Kershenbaum as the landowner.

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 and implement the recommendations withing the staff inspection report.

Background

The Property is located north of Laytonville in the Spy Rock area. LandVision records show that the Property is owned by Brenda R Kershenbaum and the Brenda R Kershenbaum Trust, with the last transfer on September 23, 2013.

On July 19, 2023, during the execution of a criminal search warrant served by the California Department of Fish and Wildlife (CDFW), staff inspected the Property, accompanied by personnel from CDFW and the Mendocino County Sheriff's Office. The purpose of the inspection was to evaluate site development and conditions on the Property, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state, which include both surface water and groundwater. 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, required 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 – July 19, 2023 Water Quality Inspection Report). Please review the inspection report carefully and completely. The inspection report contains recommendations for correcting observed violations.

Relevant Requirements

During the inspection, 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 July 19, 2023 inspection report, staff observed large-scale cannabis cultivation and associated activities conducted in a manner that has resulted in numerous unauthorized discharges of waste and threats of waste discharge to surface waters, without first obtaining regulatory coverage for associated waste discharges, in violation of Water Code section 13260. These Property conditions also violate the Cannabis Policy.

During the inspection, staff observed Property conditions of concern, which include:

1. Active cannabis cultivation activities, greenhouse infrastructure, and materials.
2. Improper storage, containment and disposal of cultivation related plastic refuse.
3. Disturbed soil areas throughout the Property without adequate stabilization.
4. Steep, poorly maintained roads causing concentration of stormwater runoff, erosion, transport and delivery of sediment to waters of the state.
5. Two onstream ponds, with an earthen berm, invasive bullfrogs
6. A stream crossing that is hydrologically connected to the road surface

These Property conditions of concern lacked measures to prevent discharges and the threat of discharges of waste to waters of the state, in violation of Water Code section 13260 and the Basin Plan section 4.2.1 Prohibition 2.

As document in the inspection report, staff observed evidence of fine sediment delivery to the Class II watercourse at Point Location 6, in violation of the Basin Plan section 4.2.1 Prohibition 1 and posing a threat the quality of waters of the state in violation of Water Code section 13264.

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 areas 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 in 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 Property conditions observed on the Property are do not meet the requirements of the Cannabis Policy. Please provide a written response supporting documentation, including relevant photos, explaining and how the Property will be restored in compliance with the Policy.

As documented in the inspection report, the features at Point Locations 9, 10 and 13 are located instream and must be decommissioned to comply with the Basin Plan, which will require a water quality certification prior to conducting instream work.

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 Policy 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.

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.

Inspection Report Recommendations

As mentioned above, the July 19, 2023 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 our 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 our 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 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,

Original signed by

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Attachments: Attachment A – Regulatory Citations
Attachment B – July 19, 2023 Water Quality Inspection Report

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
Jeremiah Puget, Jeremiah.Puget@waterboards.ca.gov
Adona White, Adona.White@waterboards.ca.gov

State Water Resources Control Board

Jordan Zakaria, Jordan.Zakaria@waterboards.ca.gov
Michael Buckman, Michael.Buckman@waterboards.ca.gov
Taro Murano, Taro.Murano@waterboards.ca.gov
Stormer Feiler, Stormer.Feiler@waterboards.ca.gov
Zachary Gomer, Zachary.Gomer@waterboards.ca.gov
Pete Hollingshead, Pete.Hollingshead@waterboards.ca.gov

California Department of Fish and Wildlife

Brendan Lynch, Brendan.Lynch@wildlife.ca.gov
Justin Rhoades, Justin.Rhoades@wildlife.ca.gov

Kyle Perdue, Kyle.Perdue@wildlife.ca.gov
Paul Garrison, Paul.Garrison@wildlife.ca.gov
Tim Dodson, Tim.Dodson@wildlife.ca.gov
Kari Gahan, Kari.Gahan@wildlife.ca.gov

Department of Cannabis Control

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

Attachment A – Regulatory Citations

Table 1 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>(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)	<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>
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>
Cannabis Policy and General Order No. WQ 2019-0001-DWQ	<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>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</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.”
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. 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).

**North Coast Regional Water Quality Control Board
Attachment B**

**Cannabis Water Quality Inspection Report
Brenda Kershenbaum Property, Mendocino County APNs 056-060-28-00,
056-060-24-00 and 056-060-25-01, WDID No. 1_23MJ000380**

	Inspection Details
Inspection Date & Time	July 19, 2023; 10:45
Address/Location	58750 Registered Guest Road, Laytonville, CA 95454
County	Mendocino
Assessor's Parcel Numbers (APNs)	056-06-28-00, 056-060-24-00, 056-060-25-01
Watershed	Blue Rock Creek watershed, Middle Mainstem Eel Hydrologic Area, Eel River Hydrologic Unit
Property Owner's Legal Name and Company	Brenda Kershenbaum
Mailing Address	825 N La Jolla Ave Los Angeles, CA 90046
Agency Responsible for Warrant	California Department of Fish and Wildlife (CDFW)
Person Responsible for Warrant	Warden Justin Rhoades
Warrant Date	July 19, 2023
Warrant Type	Criminal Search
Lead Inspector Name	Adona White, PE, Water Resources Control Engineer
Office/Regional Board	North Coast Regional Water Quality Control Board
Other Personnel Onsite	Representatives from CDFW and State Water Resources Control Board Division of Water Rights
Author of Report	Adona White
CIWQS WDID and Place ID	WDID No. 1_23MJ000380, CIWQS Place ID 889563
Permit Status/Waiver	Previously enrolled under the Cannabis General Order from December 21, 2018 to February 9, 2021 by Jonathan Kelley with WDID No. 1_23CC406716

Inspection Observations

The inspection map is shown in Figure 2 and includes the locations referenced at the following features of concern to water quality.

The three contiguous parcels comprise 24.66 acres that are accessed via a driveway off Registered Guest Road in a meadowed area. The dirt driveway runs along the western side of the homestead development to arrive at a residence.

Point Features 1 and 2: Water storage tanks near driveway.

Polygon Feature 3: An older onstream, unlined pond with an earthen berm is located at confluence with two Class III watercourses entering and one Class II watercourse exiting the impoundment. The slopes are moderate. I did not observe cracks in the berm.

Point Feature 4: The pond outlet has an erosional void due to a headcut and is a threatened discharge of sediment to the stream.

Polygon Feature 5: Active cultivation in four greenhouses on the west side of the Class II stream described above, and on greenhouse on the east side of the stream.

Point Feature 6: Stream crossing over Class II is undersized, receives runoff from the hydrologically connected roadway, refuse piled nearby.

Polygon Feature 10: An older onstream, unlined pond with an earthen berm has a Class III watercourse channel entering. The outlet is comprised of a corrugated pipe. I did not observe cracks or obvious signs of instability. We observed bullfrogs in the pond.

These features pose threats to the quality of waters of the state with the threatened and actual discharges to surface waters. Waste discharges to land pose threats of contamination to surface and groundwater quality and can become mobilized during precipitation events and at times of increased surface water flow and runoff.

Inspection Recommendations

1. Cease unauthorized cannabis cultivation.
2. Cease land disposal of household and cultivation-related trash and properly dispose all refuse at a legal disposal facility.
3. Cleanup fertilizer containers and prevent discharge of nutrients in a manner that threatens water quality. Properly dispose of pesticides and fertilizers at a legal disposal facility. Maintain storage areas and ensure discharges to lands and waters of the state are prevented.

4. Remove greenhouses within one hundred feet of the watercourse. Remove cultivation materials and properly dispose of waste including but not limited to trash, fertilizer, pesticide and petroleum containers, plastic tarps and sheeting at a legal facility.
5. Cleanup potting soil and properly contain and cover or remove and dispose of at a legal disposal facility.
6. Hire a qualified professional to assess the Property, including but not limited to the features described in this report, to develop a treatment plan to guide that the cleanup and remediation of the assessed features that ensures that will no longer pose a threat of discharge or impacts to the quality of waters of the state. Submit the plan for approval and implement cleanup and restoration work.
7. Work with the Division of Water Rights and California Department of Fish and Wildlife to ensure conformance to their respective surface water diversion, storage, and use requirements. They will contact you separately with inspection follow-up.
8. Contact me at Adona.White@waterboards.ca.gov or 707-576-2672 to discuss your plans to cleanup and remediate the site conditions that threaten water quality.

Enforcement Discretion

The observations in this report will be assessed for violations of the California Water Code. The Regional Water Board and the State Water Board reserve the right to take any enforcement action authorized by law.

Inspection Maps

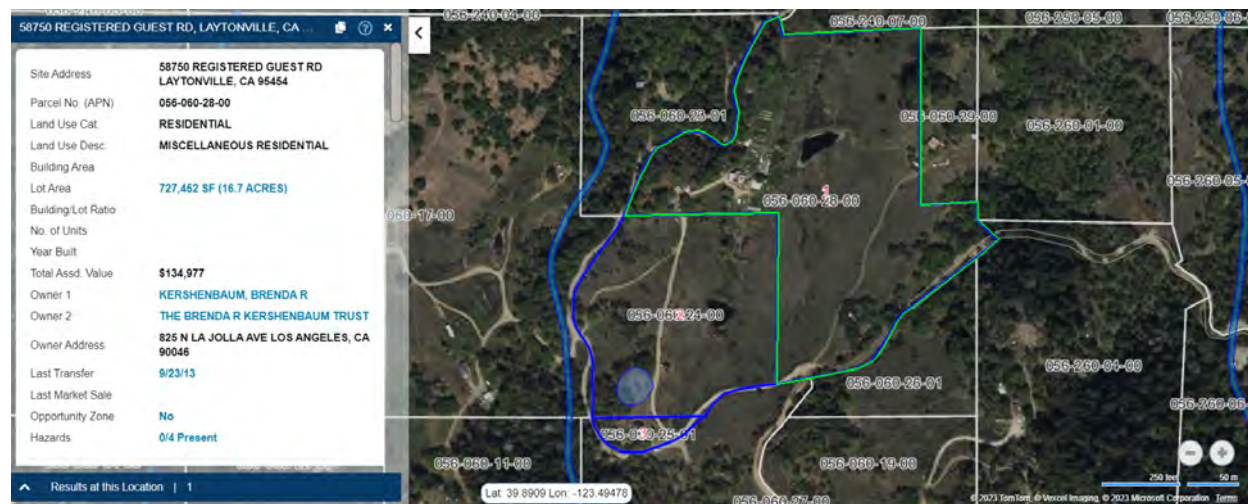


Figure 1. Property map and ownership information.

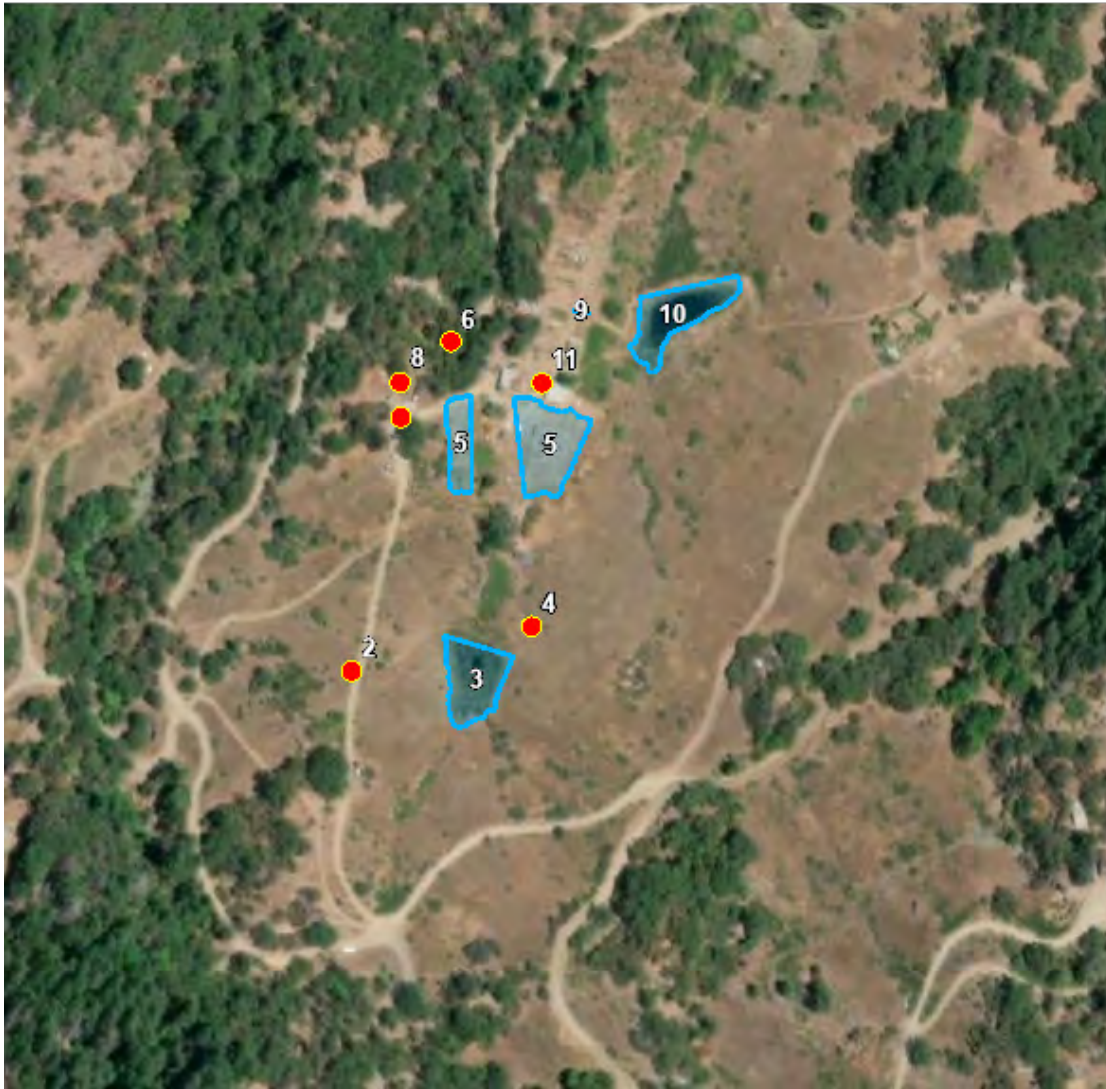


Figure 2. Inspection map with aerial imagery showing the point, line, and polygon feature locations of interest are described in the text.



Figure 3 Inspection map with aerial imagery showing the point, line, and polygon feature locations of interest are described in the text.

Inspection Photographs

All photographs taken by Adona White on July 19, 2023



Figure 4. Polygon Feature 3 – onstream pond, view of upslope area and two channels entering the pond.



Figure 5. Polygon Feature 3 – onstream pond, view of downstream channel.



Figure 6. Point Feature 4 – erosional void associated with an older head-cut of the downstream channel.



Figure 7. Polygon Feature 5 – Greenhouse cultivation areas. Along one stream reach, a greenhouse is located within fifteen feet of the stream bank.



Figure 8. Point Feature 6 – the stream crossing over the Class II watercourse is located on the main access driveway to the residence, just downslope from the cultivation greenhouses. The stream flows left to right in the photo.



Figure 9. Point Feature 6 – refuse is piled on near the outlet of the culvert. Outlet is on left of photo in shadow. The stream flows right to left in the photo. The residence is to the right of the photo.



Figure 10. Point Feature 6 – waterline stockpile located near stream crossing.



Figure 11. Point Feature 6 – the access driveway to the residence slopes down to the stream crossing and approximately three hundred feet of roadway is hydrologically connected to the stream crossing. The road is rilled and has deep dust. The road condition is threatened discharge of sediment to the stream at the crossing. At the top of the grade, plastic refuse is dumped and is not contained and could blow into the watercourse or other areas of the landscape.



Figure 12. Polygon Feature 10 - Channel entering the pond from the right of photo.



Figure 13. Polygon Feature 10 – onstream pond with piped outlet with approximately two feet of free-board at the berm.



Figure 14. Point Feature 11 – shed with storage of fertilizers.



Figure 15. Point Feature 11 – shed with storage of fertilizers.

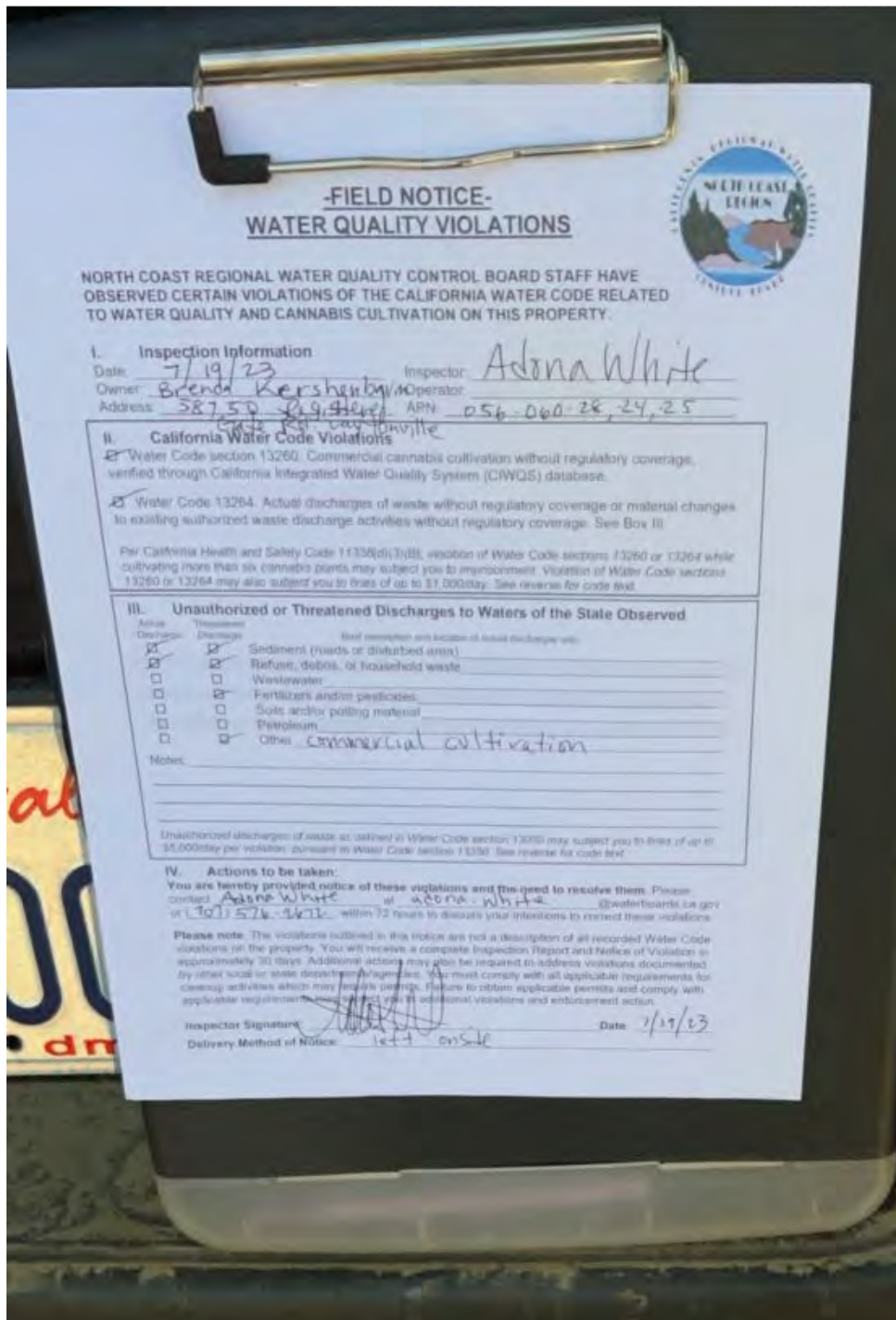


Figure 16. Photo of field notice I left onsite, asking that I be contacted to discuss the inspection. I received phone calls in response, as requested.