



North Coast Regional Water Quality Control Board

December 4, 2023

Certified Mail No. 7021 0950 0001 6500 2091

Flat Garden and Top Nursery
Attention: Ricardo de Mello
38507 Cherry Valley Boulevard
Cherry Valley CA 92223
ricardohoplandfarm@yahoo.com

Certified Mail No. 7021 0950 0001 6500 2107

Flat Garden and Top Nursery
Attention: Ricardo de Mello
12950 Eagle Rock Road
Hopland CA 95449

Subject: **Notice of Violation and Transmittal of Report for July 18, 2023
Inspection of Mendocino County Assessor's Parcel Numbers 047-060-24-00**

File: Cannabis Program Inspections, Mendocino County, 2023, Flat Garden and Top Nursery, CIWQS Place ID 852950

THIS LETTER REQUESTS THAT YOU ACT WITHIN 30 DAYS

Dear Ricardo de Mello,

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 Number 047-060-24-00 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Prohibition 2
2. State Water Resources Control Board (State Water Board) Cannabis Cultivation Policy Principals and Guidelines for Cannabis Cultivation (Cannabis Policy) - various provisions.
3. California Water Code (Water Code) Sections 13264

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

On July 18, 2023, during the execution of a criminal search warrant served by the California Department of Fish and Wildlife (CDFW), North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected 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 documents site conditions inconsistent with a Low Risk enrollment in 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) and contains recommendations for correcting observed violations and advises you of Regional Water Board permits necessary for instream work and projects/activities that result in discharges of waste to receiving waters.

The site conditions documented in the Inspection Report violate provisions of the Basin Plan, Cannabis Cultivation Policy and Water Code as described below. I advise that you address the violations noticed herein as soon as possible. Within 30 days, please contact Staff to discuss your plan to correct the observed violations.

Background

The Property is enrolled under the Cannabis General Order effective December 21, 2018. On August 20, 2020, Western Groundwater Surveyors submitted a Site Management Plan (SMP) to the Regional Water Board on behalf of the enrollees.

Relevant Requirements

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 Property Inspection Report:

Staff observed violations of the Basin Plan Section 4.2.1 Prohibition 2 at locations WQ1, WQ2, WQ3 and WQ7 for threatened discharge of earthen material north to unnamed tributaries to Feliz Creek

Staff observed violations of the Cannabis Cultivation Policy from Attachment A:

Section 1, General Requirements and Prohibitions, terms: 1, 3, 12, 25, 26, 27, 32, and 37; and

Section 2, Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation, terms: 10, 30, 31, 49, 51, 54, 108, 117, 119, 120,

Additionally, as provided in Water Code section 13264, no person shall initiate a new discharge of waste or make any material changes to any discharge prior to filing the

report required by Water Code section 13260. At the time of inspection, Staff observed a greenhouse pad you constructed southwest of WQ3, after you had enrolled in the Cannabis General Order. Staff observed a concave-up erosional feature hydrologically connected to an ephemeral tributary to Feliz Creek and extending to within 14 feet of the greenhouse. The lack of an effective buffer between the greenhouse and the ephemeral watercourse introduces the threat of discharge to receiving waters and represents a material change to your coverage under the Cannabis General Order.

Staff observed these violations at the Site during the July 18, 2023 inspection and they must be remedied through cleanup, stabilization, and restoration because they pose a threat to water quality and violate applicable regulations. Any work in waters of the state, including streams or wetlands, requires a water quality certification prior to conducting the work. Pursuant to Water Code section 13260, the Regional Water Board requires you to submit a report of waste discharge associated with the need for remedial work.

That report of waste discharge can be provided through the submission of a complete application¹ for water quality certification and waste discharge requirements and payment of the appropriate fee, which is in addition to (separate from) the fees paid for enrollment in the Cannabis General Order because the scope of work associated with the instream work is beyond the scope of your enrollment in the Cannabis General Order. Additionally, since the current Low Risk enrollment designation in the Cannabis General Order does not reflect site conditions, modification of the enrollment Risk Level is necessary. I, hereby, recommend that the Regional Water Board Executive Officer utilize her authority pursuant to Cannabis General Order Provision C.2.i, to require you to modify your application information from Low to High Risk. You can accomplish this recommended enrollment modification by submitting an Annual Monitoring Report

Additional Potential Liabilities

The Regional Water Board is considering whether the observed violations of the 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

¹ Requirements for a complete application can be found in the California Code of Regulations Title 23. Waters Division 3 State Water Resources Control Board Chapter 28. Certifications, and are summarized in the following [Application Form](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/220615/rb1_cannabis_wqc401.pdf):
https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/220615/rb1_cannabis_wqc401.pdf

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.

Recommended Actions

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 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

Northcoast.Cannabis@waterboards.ca.gov

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Division of Water Rights

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Department of Fish and Wildlife

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Nicholas Bennett, Nicholas.Bennett@Wildlife.ca.gov

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Captain Douglas Willson, Douglas.Willson@wildlife.ca.gov

Mendocino County Sheriff's Office

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Megan Dukett, dukettm@mendocinocounty.org

Department of Cannabis Control

Jaime Masuda, Jaime.Masuda@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)	<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: (1) 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>



North Coast Regional Water Quality Control Board

TO: Jeremiah Puget

FROM: Brian Fuller

DATE: December 4, 2023

**Report of July 18, 2023 Warrant Inspection,
Mendocino County
Assessor's Parcel Number (APN) 047-060-24-00 (the "Property")**

File: Cannabis Program Inspections, Mendocino County, 2023, Flat Garden and Top Nursery, CIWQS Place ID 852950

Property information:

Watershed: Russian River Hydrologic Unit; Upper Russian River Hydrologic Area; Ukiah Hydrologic Subarea (HU/HA/HSA 114.31; see Table 2-1 of the Water Quality Control Plan for the North Coast Region (Basin Plan), for beneficial uses)

Regulatory Status with the Regional Water Board:

Ricardo de Mello enrolled the Property under State Water Resources Control Board 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) effective December 21, 2018.

On August 20, 2020, Western Groundwater Surveyors submitted a Site Management Plan (2020 SMP) to the Regional Water Board on behalf of the enrollees.

Inspection information:

Date/time: Jul 18, 2023 / midday

Type: Warrant Inspection

Background/Objective:

Objectives for Regional Water Board 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 groundwater.

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Inspection Map:

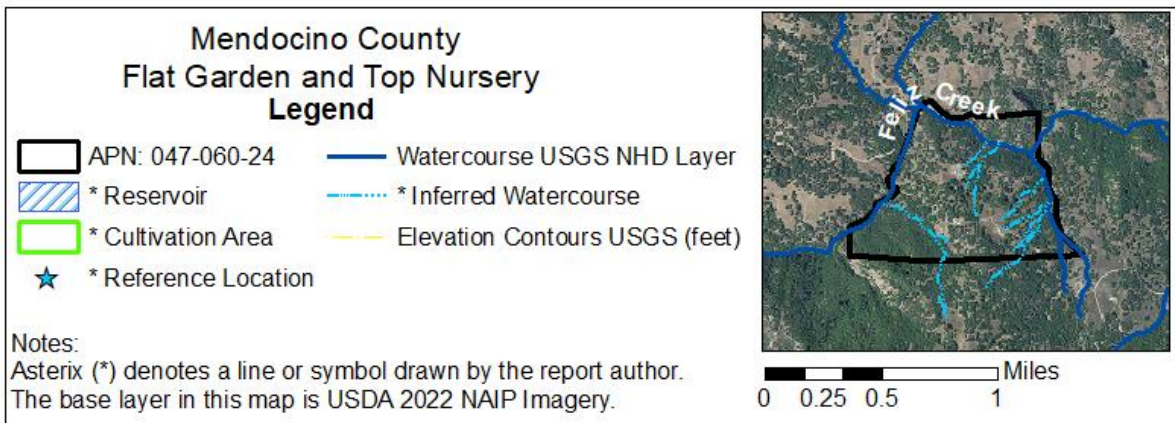
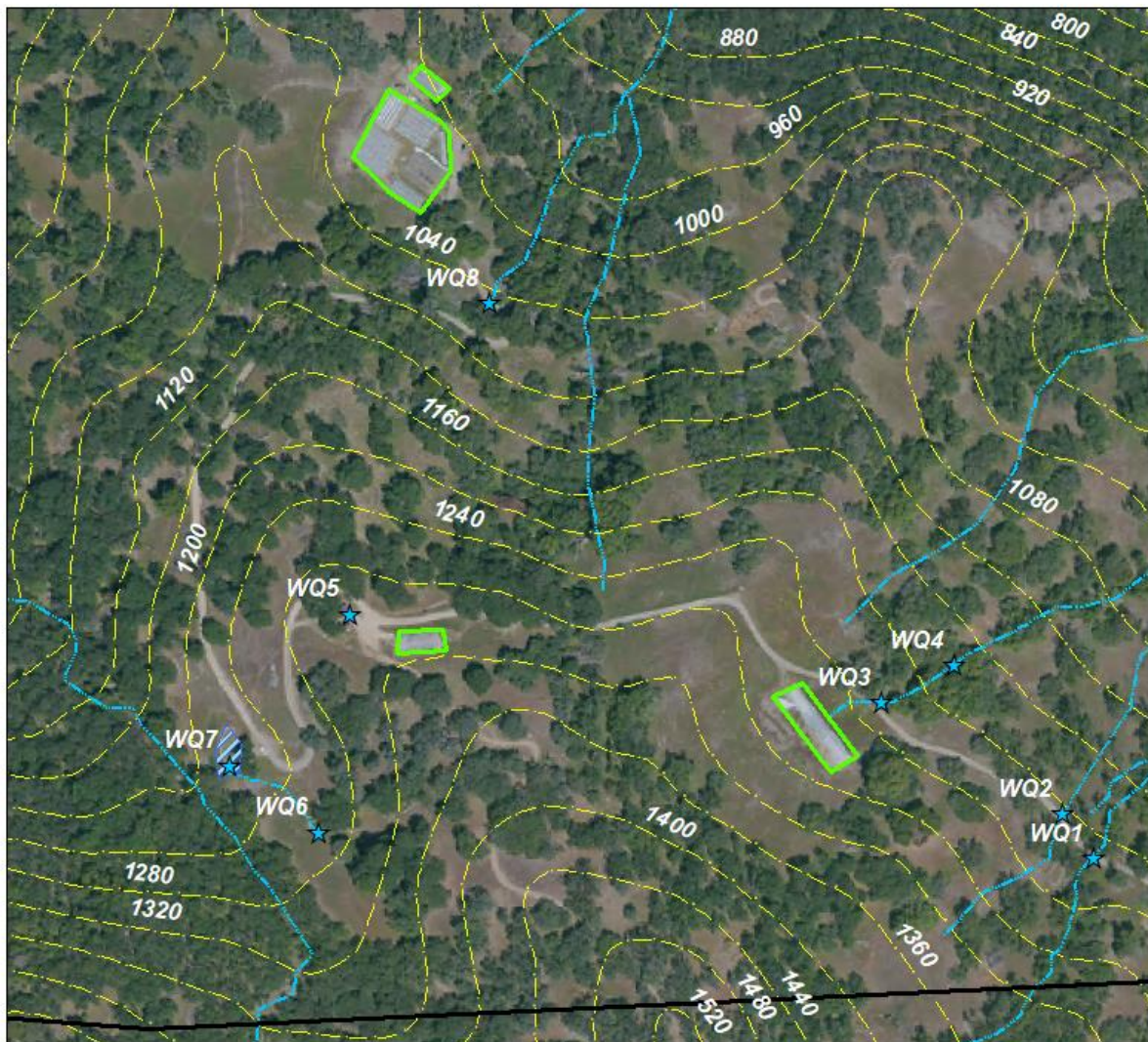


Figure 1—Aerial image/map showing inspection points discussed in this report.

Inspection narrative with references to the 2020 SMP:

The inspection was associated with a criminal search warrant, and I viewed only portions of the Property. See the above Inspection Map and below Photo Appendix for locations and details about features of concern to water quality. I entered the Property from the southeast and observed a watercourse crossing at WQ1 culverted with a 24-inch diameter pipe. This watercourse crossing is identified as SC1 in the 2020 SMP, which describes the 24-inch diameter culvert as undersized and proposes upgrading to a larger culvert by the summer of 2022. I observed another culverted watercourse crossing at WQ2. I observed that this culvert inlet was partially obstructed by vegetation and debris. The 2020 SMP identifies this crossing as SC2 and explains that the culvert is adequately sized but requires annual maintenance and riprap armor at the outlet, which it proposes by the 2022 summer.

I observed another culverted watercourse crossing downslope from a cultivation area in the vicinity of WQ3. I observed a concave-up erosional feature, the top of which I measured with a tape measure to be 14 feet from the northern edge of the greenhouse. I observed the scarp connecting to the channel upstream from the culvert and I observed sediment from the scarp deposited into the channel. I observed that the watercourse downslope from the road has a well-defined bed and bank, and I followed the watercourse down to WQ4 where I observed waste cannabis plant material in the watercourse. The 2020 SMP identifies the WQ3 crossing as a ditch relief culvert, RS2, and the location of the cultivation pad upslope as a potential nursery suggesting that the cultivation pad had not yet been developed when the 2020 SMP was drafted. The 2020 SMP states that erosional control measures are needed on the hillside above the culvert to minimize sediment discharge downhill.

At WQ5, I observed a generator and fuels storage area without secondary containment. I observed that the earthen ground in the vicinity of the petroleum product storage area was darker than surrounding areas and I detected the odor of motor oil emitting from the ground. The 2020 SMP notes that petroleum products were stored improperly, directly on the ground, without secondary containment. The 2020 SMP proposed relocating all petroleum products to an appropriate storage facility by the Summer of 2021.

At WQ6, I observed a spring that had been excavated and lined with plastic sheeting. I measured the depth of excavation to be four feet with a tape measure and estimated that water filled the bottom foot of the excavation. I followed the preferential path that surface water would flow from the spring at WQ6 to a reservoir at WQ7 and observed intermittent scour marks along the way. I observed a 15-inch diameter outfall pipe exiting the reservoir to the southwest. The area below the reservoir outfall was partially armored with woody debris. The 2020 SMP notes that if the pond is kept, the outlet culvert would need to be upgraded.

At WQ8 I observed a cannabis plant trimming area located within required setbacks to a headwater stream. The 2022 SMP identifies a storage shed near this location.

Recommendations for the Discharger:

1. Immediately collect all petroleum products that threaten to spill, including those in the vicinity of WQ5, and haul away to a licensed waste disposal facility or store in accordance with the Cannabis Cultivation Policy¹.
2. Retain a qualified professional to investigate the extent of contaminated soil associated with spilled petroleum products at WQ5 and develop a workplan and schedule for cleaning up the spill.
3. Reclassify the Property's enrollment under the Cannabis General Order from Low Risk to High Risk to reflect that the cannabis cultivation facilities at WQ3 and WQ8 are within required setbacks.
4. Retain a qualified professional to develop a Disturbed Area Stabilization Plan and required permit applications to move all cannabis cultivation activities outside of required setbacks and restore any disturbed areas within setbacks to comply with the Cannabis Cultivation Policy¹.
5. Prior to conducting work in a Water of the State, including any work in streams, ponds, or wetlands such as that at WQ1, WQ2, WQ3, WQ4, WQ6, WQ7 and north of WQ8, submit an application and pay the required application fee for a Water Quality Certification/Waste Discharge Requirement²:
6. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.

¹ The [Cannabis Cultivation Policy](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf) can be found at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

² The [application for instream work](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf) can be found at:
https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf

Photo Appendix³:



Figure 2—Photo showing the inlet to a 24-inch diameter culverted stream crossing at WQ1.



Figure 3—Photo showing inlet to 18-inch diameter culvert at WQ2. The inlet is partially blocked by woody debris and dry vegetation.

³ All photos taken by report author on July 18, 2023 between 7:00am and 11:00am.



Figure 4—Photo looking southwest in the vicinity of WQ3. Hoop-type greenhouses are visible in the top of the image and an erosional scarp is visible downslope from the cultivation area, between the greenhouses and the photographer.



Figure 5—Photo looking east and downslope towards WQ3 from the same location as the previous image. Lobes of sediment are visible between the photographer and a culvert inlet marked by an arrow in the top middle of the image.



Figure 6—Photo showing the outlet of the 18-inch diameter culvert at WQ3, the inlet of which is pictured in the previous image. A receiving watercourse, tributary to Feliz Creek, is visible in the top of the image.



Figure 7—Photo looking northeast at watercourse downstream from WQ3.



Figure 8—Photo, looking upstream, showing waste cannabis plants, marked by an arrow, in watercourse at WQ4. The report author measured the local channel width of 4.5 feet with the tape measure visible in the top of the image.



Figure 9—Generator and motor oil stored at WQ5 without secondary containment. The earth in the vicinity of the petroleum product storage area is darker than surrounding areas.



Figure 10—Photo showing a developed spring at WQ6. The spring has a four-foot-deep hole lined with plastic sheeting and one foot of standing water in the bottom.



Figure 11—Photo showing section of intermittent channel between WQ6 and WQ7



Figure 12—Photo looking north at eastern edge of pond located at WQ7.



Figure 13—Photo looking west at pond outlet at WQ7. The Pipe drains onto a pile of woody debris.



Figure 14—Photo of waste cannabis stalks at cannabis trimming area located at WQ8.



Figure 15—Photo looking north at the head of a watercourse, visible in the top of the image, located at WQ8.