



North Coast Regional Water Quality Control Board

February 13, 2023

Viktor Ushagelov and Angela Morcada Certified Mail No: 7021 0950 0001 6500 0585
4626 Green Trail Dr
Houston, TX 77084

Dear Viktor Ushagelov and Angela Morcada:

Subject Notice of Violation, Transmittal of Inspection Report for September 9, 2022 Inspection of Trinity County Assessor's Parcel Number 018-230-020

File: Cannabis Program Inspections, Trinity County 2022, CIWQS Place ID 854514

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 (APN) 018-230-020 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Prohibition 1 and Prohibition 2;
2. California Water Code (Water Code) Sections 13260 and 13264;
3. Federal Clean Water Act Section 301; and
4. 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 September 9, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed indoor cannabis cultivation with surface water diversion and storage. This letter directs you to address

GREGORY A. GIUSTI, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

the violations noticed herein. Within 30 days, please contact our Staff to discuss your plan to correct the observed violations.

Background

The Property is located along the Mad River, near Hale Creek, immediately downstream of the Humboldt Bay Municipal Water District's Ruth Lake Reservoir dam.

LandVision records show that the Property is owned by Viktor Ushagelov and Angela Morada. The last market sale information indicates that Equity Trust Company & Larry Rodgers sold the Property to the current owners on December 28, 2020 for \$140,000. Prior to that Joshua St. Clair sold the Property on January 12, 2016.

According to Regional Water Board records, Staff previously inspected the Property on September 25, 2018 and July 2, 2019, while under the ownership of White Lightning 2.5 LLC.

On September 9, 2022, 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 personnel from various law enforcement agencies. 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, 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 – September 9, 2022 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, 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 September 9 inspection report, Staff observed violations of the of the Basin Plan Section 4.2.1 Prohibition 1, Water Code 13264 and Clean Water Act Section 301 for the unauthorized discharge of sediment associated with the use and

maintenance of the wet ford over the Mad River, which is used to access the Property. Additionally, the inspection report documents cannabis cultivation and associated activities without first obtaining requisite regulatory coverage for associated waste discharges, in violation of Water Code section 13260. Site conditions associated with roads and developed features pose a threatened discharge of sediment to watercourses, in violation of Basin Plan Section 4.2.1 Prohibition 2. These site conditions 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 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 site conditions observed on the Property are do not meet the requirements of the Cannabis Policy. Please provide a written response supporting documentation, including photos if relevant, explaining and how the Property will be restored in compliance with the Policy.

As documented in the inspection report, there are numerous existing stream crossings that must be upgraded or 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 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. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$10,000 for each day the violation occurs and \$10/gallon beyond the first 1,000 gallons not cleaned up for actual discharges to waters of the United States without a permit pursuant to Water Code section 13385.

Inspection Report Recommendations

As mentioned above, the September 9, 2022 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,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Attachments: Attachment A – Regulatory Citations
Attachment B – September 9, 2022 Property 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

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

California Department of Fish and Wildlife

Lieutenant Brendan Lynch, Brendan.Lynch@wildlife.ca.gov

Warden Joshua Zulliger, Joshua.Zulliger@wildlife.ca.gov

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

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

Erica Winner, Erica.Winner@wildlife.ca.gov

Trinity County Sheriff's Office

Sergeant Nathaniel Trujillo, NTrujillo@trinitycounty.org

Trinity County Environmental Health

Kristy Anderson and Rikki Townzen, environmentalhealth@trinitycounty.org

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	<p>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.”</p> <p>Available at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/</p>
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>
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>

Regulatory Section	Citation
California Water Code Section 13265(a)	"Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense."
F230-025ederal 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).
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

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 427857
Program Type: IRRICANNABIS	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 09/09/2022	

Discharger Information

Party ID: Multiple	Discharger Organization Name: Multiple Dischargers
Address: Multiple Addresses	City, State, Zip: Multiple Addresses
Discharger Contact Person:	Discharger Contact Phone:
Discharger Contact Email Address:	

Facility Information

Place ID 854514	Facility Name: White Lightning 2.5 LLC.
Address:	City, State, Zip: CA
County: Trinity	Latitude: 40.378419 Longitude: -123.448358 Method: Map Interpolation (digital)

Lead Inspector Information

Lead Inspector Party ID: 526285	Lead Inspector Name: Adona White
Inspector Type:	<input checked="" type="checkbox"/> State <input type="checkbox"/> State Contractor <input type="checkbox"/> EPA Contractor <input type="checkbox"/> EPA (Regional) <input type="checkbox"/> EPA and State (EPA Lead) <input type="checkbox"/> EPA and State (State Lead)

INSPECTION TYPE

Inspection Type: Complaint inspection

VIOLATIONSWere Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1113080	Basin Plan Prohibition	09/09/2022	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Prohibitions 1 and 2
1113081	Other Codes	09/09/2022	B	California Water Code (Water Code) Section 13264 for unauthorized discharge of waste
1113093	Other Codes	09/09/2022	B	California Water Code Section 13260 for unauthorized land disturbances associated with cannabis cultivation

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Warrant inspection of Trinity County APN 018-230-020 owned by Viktor Ushagelov and Angela Morcada. Inspected with CDFW environmental and law enforcement personnel. See Appendix.

Access to Property is via a wet ford over the Mad River. Use and maintenance of the ford has altered the channel form and results in sediment discharges.

Cultivation area CA1 is located at WP 943 (40.378419°, -123.448358°).

Pond 1 is located at WP 944 (40.377796°, -123.448741°). A channel enters the pond from upslope.

GENERAL NOTES (OPTIONAL) (2000 character limit)

Recommendations:

1. The use and maintenance of a wet ford stream crossing, for the purpose of accessing cannabis cultivation sites, has resulted in the threat of discharge to the Mad River of sediment and petroleum products and the alteration of the stream form and actual sediment discharge. Continual use of the access road across the Mad River will require installation of a bridge to avoid impacts to water quality and aquatic species. Construction and installation of a bridge will also need to be accompanied and supported by a California Environmental Quality Act (CEQA) document.
2. Roads shall be maintained (with adequate surfacing and drainage features) to avoid developing surface ruts, gullies, or surface erosion that results in sediment delivery to surface waters. Roads and other features shall be maintained so that surface runoff drains away from surface waters, potentially unstable slopes or earthen fills.
3. Refuse and garbage shall be stored in a location and manner that prevents its discharge to receiving waters and prevents any leachate or contact water from entering or percolating to receiving waters. Garbage and refuse shall be disposed of at an appropriate waste disposal location.
4. Chemicals, including but not limited to petroleum products, fertilizers, pesticides, cleaning products, etc. shall be stored so as to prevent their spillage, discharge, or seepage into receiving waters.
5. Water storage features, such as ponds, tanks, and other vessels shall be selected, sited, designed, and maintained to ensure integrity and to prevent release into waters of the state in the event of a containment failure.
6. Riparian and wetland areas shall be protected in a manner that maintains their essential functions, including temperature and microclimate control, filtration of sediment and other pollutants, nutrient cycling, woody debris recruitment, groundwater recharge, streambank stabilization, and flood peak attenuation and flood water storage.

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

Viktor Ushagelov and Angela Morcada
Map and Photo Appendix
September 9, 2022 Warrant Inspection
CIWQS Inspection ID 50579167

Maps

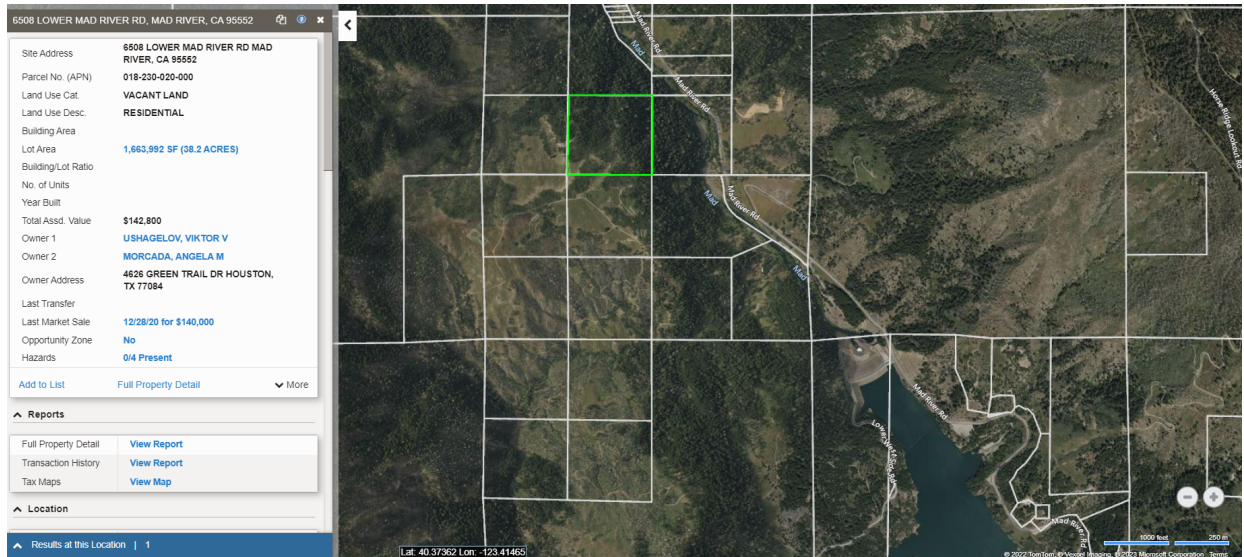


Figure 1. Property map of Trinity County APN 018-230-020 (the Property). The Property is accessed via a wet ford over the Mad River, located approximately 2000 feet downstream of the Ruth Lake Reservoir.

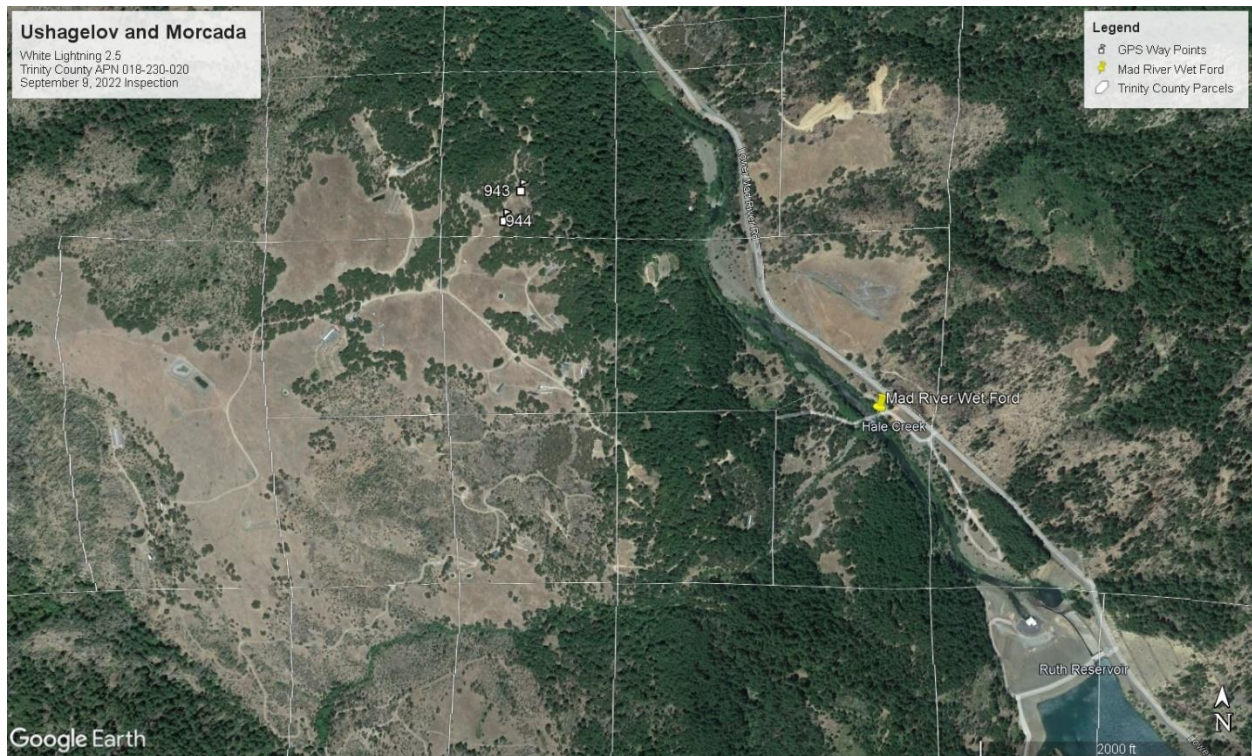


Figure 2. Inspection map.

Inspection Photographs

All photos taken by Adona White on September 9, 2022, unless otherwise noted.



Figure 3. Wet ford over Mad River located at 40.373966°, -123.438870° has resulted in altered channel form.



Figure 5. On the west side of the wet ford is a steep road segment that is hydrologically connected to the Mad River. The roads lack drainage structures and are unsurfaced. Road ruts are evident.



Figure 4. Use of wet ford over Mad River located at 40.373966°, -123.438870° causes turbid plumes of water to be discharged into the Mad River.



Figure 6. Cultivation area CA1 located at WP 943 (40.378419°, -123.448358°).



Figure 7. CA1 is next to a Class III watercourse, as indicated by metal culvert beyond plastic tarp.



Figure 10. Channel upslope of Pond 1.



Figure 8. Pond 1 is located at WP 944 (40.377796°, -123.448741°).



Figure 11. Pond 1 outlets to rock.



Figure 9. A channel enters Pond 1 from upslope.



Figure 12. Pond 1 rocked spillway.