
Lahontan Regional Water Quality Control Board

September 10, 2020

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Lahontan Regional Water Quality Control Board
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Response to Water Board Advisory Team's August 13, 2020 Request for Information Regarding the Proposed Cleanup and Abatement Order for Ramiro Villa Avila, Los Angeles County Assessor Parcel No. 3030-020-043

The Water Board Prosecution Team (Prosecution Team) has reviewed the Water Board Advisory Team's August 13, 2020 request for information regarding the proposed Cleanup and Abatement Order (CAO) for Ramiro Villa Avila, Los Angeles County Assessor Parcel No. 3030-020-043. The Prosecution Team released the proposed CAO for public comment on April 30, 2020 and again on June 30, 2020 with revised compliance dates. The Advisory Team's questions/comments and the Prosecution Team's responses are provided, below.

1. Page 3, Section 7 includes the following statement, "filling the drainage channels with an estimated 229,703 gallons of native soil." As compared to the October 21, 2019 Notice of Violation, Page 2, Violation 2 "The total amount of fill is estimated to be approximately 1.3 million gallons of soil." Please provide an explanation for the discrepancy in estimated fill volume.

Response: The fill estimate cited in the October 21, 2019 Notice of Violation (NOV) was a gross estimate based upon the assumption that the channels were a generic, uniform prism with 45-degree slopes. This assumption was made in order to produce the NOV and notify Ramiro Villa Avila (Discharger) of the violations as soon as possible following the inspection. The fill estimate provided in the proposed CAO is conservative and based upon a more complex analysis including measurements that were taken at the Site (Los Angeles County Assessor Parcel No. 3030-020-043). The field measurements include, but are not limited to, the measured slope of the natural channel banks above the area of disturbance (20 degrees for the western channel and 13 degrees for the eastern channel) and soil stockpiles on the ground surface.

2. Page 8, Time Schedule Order, Section 1.b. please provide an explanation of why channel stabilization is not included as an example of drainage mitigation measures.

Response: Page 8, Time Schedule Order, Section 1.b. states:

“Detail of the methods to be used for Site restoration, including how waste soils will be removed from the drainage channels, and how long-term impacts from Site erosion will be abated (e.g. re-grading, establishing permanent ground cover, etc.). The proposed mitigation shall describe actions necessary to restore beneficial uses designated in the Basin Plan and compensate for current adverse impacts to beneficial uses.”

The example techniques listed in Time Scheduled Requirements Section 1.b. are not exclusive, as denoted by the et cetera (etc.), meaning similar items, of which “channel stabilization” could be included. The method of Site restoration is left open for the Discharger to propose, as the Water Board is not authorized to specify method of compliance. (Water Code § 13360, subd. (a).)

3. Page 8, Time Schedule Order, Section 1.b.i. please provide an explanation of why irrigation is an absolute requirement rather than a conditional requirement (e.g., plan must include a description of irrigation methods as appropriate for the chosen native species, etc.). Is irrigation necessary for the growth of all possible native species in this area?

Response: Yes, all native species will require irrigation to become established and self-sustaining at the Site. If the Discharger chooses to plant nursery stock, those plants have been regularly irrigated and will continue to require irrigation until they establish a root system in the native soil, enabling them to survive in the desert environment. The basis for the irrigation requirement regarding nursery stock is supported by the Antelope Valley Resource Conservation District (RCD)¹ who states on its web page, “Most drought tolerant/resistant plants need to be established first, water them for 3-4 years during their youth.”²

For revegetating with native seed, the proposed CAO’s compliance dates combined with very low and unpredictable precipitation at the Site makes irrigation necessary to ensure that the native seed germinates, establishes roots, and survives through the first and subsequent monitoring periods. Time Scheduled Requirements Section 1.b.i. allows for irrigation to be discontinued once the plants are established and able to survive without irrigation.

¹ The Antelope Valley Resources Conservation District operates a nursery specializing in cultivating plants in the area where the Site is located.

² Antelope Valley Resources Conservation District website, accessed 8/20/2020, <https://www.avrcd.org/plants>

4. The Order does not include a description of the drainage channels. Please provide a scaled site map of the drainage channels showing the areal extent of alleged disturbance, or some other picture or description depicting this information.

Response: Scaled images with directional arrows and Site features are provided in Figures 1 and 2, below. Additional detailed information is provided in Attachment 2 of the proposed CAO, which is an inspection brief containing photos, satellite imagery of the drainages with Feature Identification (FID) numbers denoting important locations, and narrative descriptions associated with the FID numbers that include distances and areas within the filled drainage channels.

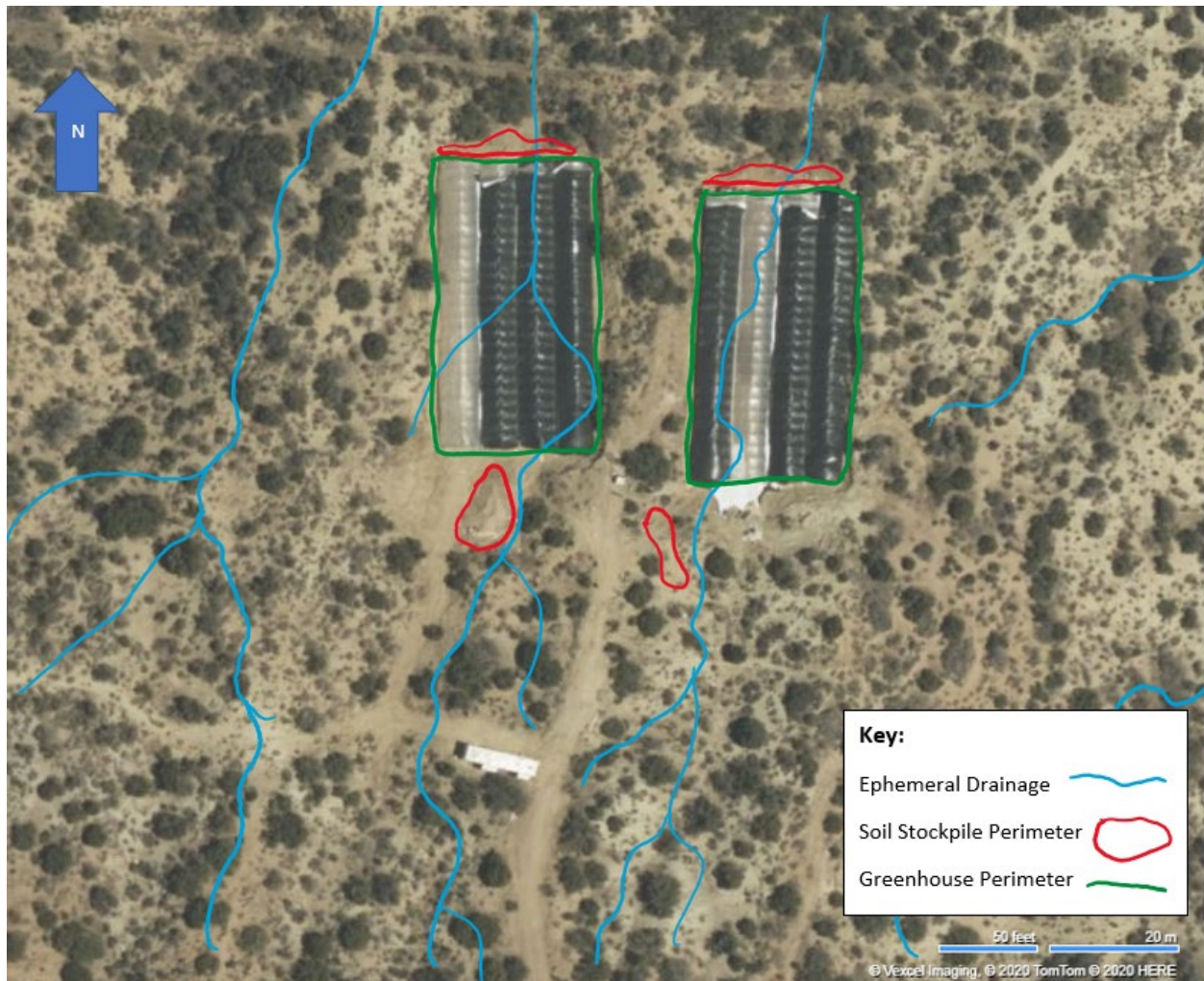


Figure 1: Satellite image showing Site greenhouses, annotated with ephemeral drainages, soil stockpiles, and greenhouse perimeters.

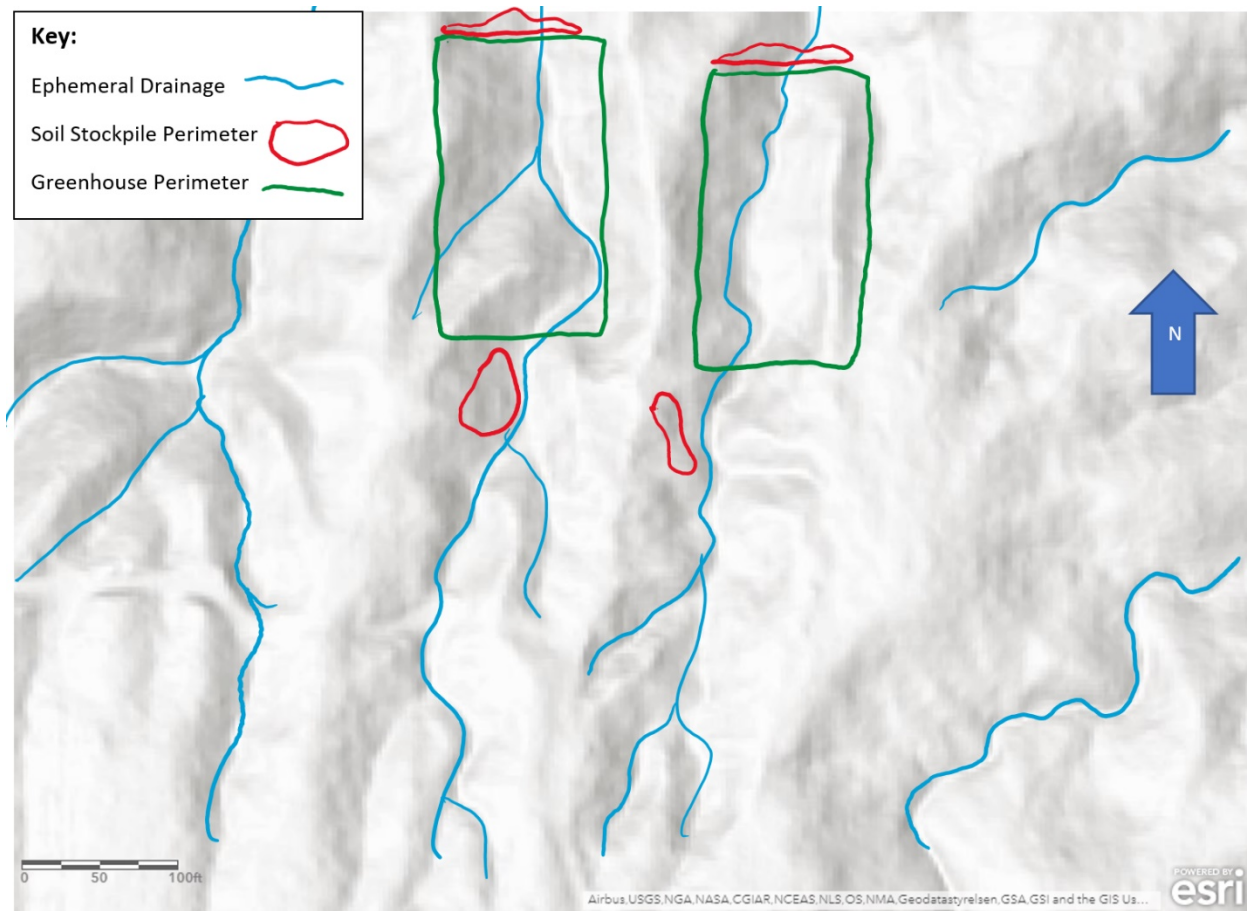


Figure 2: Hillshade image showing relief at the Site, annotated with the same ephemeral drainages, soil stockpiles and greenhouse perimeters as Figure 1.

5. The Order does not contain requirements related to submittal of engineering calculations of storm water volumes and corresponding BMP design to handle the design volumes. Please explain why that is the case.

Response: The Water Board is not authorized to specify the method of compliance, only compliance metrics. The proposed CAO requires submittal of a Mitigation Plan, which cannot be completed without an assessment of the Site by a qualified professional. The Mitigation Plan will contain recommendations for Site restoration and will be reviewed by Water Board staff for completeness. Based on the recommendations in the Mitigation Plan, engineering calculations of stormwater volumes may be needed and will be requested at that time if they are not included in the Mitigation Plan. Any best management practices (BMP) that are recommended will be specific to the recommendations in the Mitigation Plan and must meet California Stormwater Quality Association (CASQA) specifications per Requirement 1.b.ii.

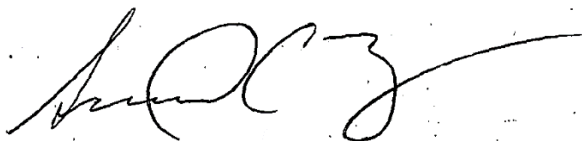
Regarding the Ex Parte Communication

The ex parte communications which occurred on or around June 1, 2020, appear to have been inadvertent and stem from the email chain forwarded from the Executive Officer's Executive Assistant to the Prosecution Team leads on that date. The Advisory Team requested the names of the parties to the proposed order to communicate with them regarding the end of the comment period. That request, by itself, addresses a non-controversial procedural matter and thus does not appear to have been an ex parte communication. The June 1 response from Eric Taxer, a member of the Prosecution Team, similarly addresses a non-controversial procedural matter (i.e. the return of the certified mail containing the draft order). However, the full email chain forwarded by the Executive Assistant also contains discussion between Advisory Team members regarding substantive elements of the proposed order which were not part of the essential query from the Advisory Team to the Prosecution Team. A non-attorney member of the Prosecution Team saw that discussion and provided a substantive response without realizing the ex parte implications. The Prosecution Team will refresh their understanding of the Board's ex parte communications rules in an attempt to prevent such inadvertent communications from happening in the future.

Prosecution Team Recommendation

The Prosecution Team recommends that the compliance dates identified in Requirement Nos. 1 and 2 be extended by a minimum of 30 days prior to issuing the Cleanup and Abatement Order.

Please let the Prosecution Team know if you have any additional questions or comments. Prosecution Team members are available to participate in a conference call.



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cc:

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