

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION

Cleanup and Abatement and Investigative Order No. R1-2024-0054

**for
Michael Harding
Assessor Parcel Number**

**031-020-45-01
Mendocino County**

This Cleanup and Abatement and Investigative Order No. R1-2024-0054 (Order) is issued to Michael Harding (hereafter referred to as the Discharger) based on provisions of Water Code section 13304, which authorizes the North Coast Regional Water Quality Control Board (Regional Water Board) to issue a cleanup and abatement order, and Water Code section 13267, which authorizes the Regional Water Board to issue investigative orders requiring the preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

PURPOSE OF THE ORDER

1. This Order requires the Discharger to clean up and abate the effects of inadequately constructed or maintained cultivation pads, roads, stream crossings and reservoirs on Mendocino County Assessor's Parcel Number (APN) 031-020-45-01 (hereafter Property) to clean up discharges of waste and eliminate the threat of future discharges of waste to tributaries of the Middle Main Eel River. Investigation and cleanup actions required under this Order shall be conducted to comply with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.), the Water Quality Control Plan for the North Coast Region (Basin Plan¹), the State Water Resources Control Board's (State Water Board's) Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304 (Resolution 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

Property Location and Description

2. The Property is located northwest of the town of Covelo in Mendocino County, approximately 0.2 miles north of the Middle Main Eel River. The Middle Main Eel River, and the tributaries there-to are waters of the state. The Middle Main Eel River is Clean Water Act section 303(d)-listed as impaired due to elevated sedimentation

¹ The [Basin Plan](https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/) can be found at:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/

and temperature. The U.S. Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) for temperature and sediment for the Middle Main Eel River and its tributaries. The TMDLs indicate that the cold freshwater habitat is the most sensitive of beneficial uses in the watershed. As such, protection of this beneficial use is presumed to protect any of the other beneficial uses that might also be harmed by sedimentation.

Responsible Party

3. This Order finds that the Discharger is a responsible party based on the following:
 - a. Parcel information available from the Mendocino County Assessor's Office, as accessed via Digital Map Products' LightBox Vision online service, indicates that the Discharger purchased APN 031-020-45-01 through a deed of trust with a recording date of August 1, 2017. The Discharger has continued to own the Property since that time, including the dates on which staff inspected the Property and documented discharges and threatened discharges of waste into waters of the state.
 - b. The Discharger owned the Property at the time of discharges and threatened discharges of waste and continues to own the Property where these conditions persist. The Discharger had or should have had knowledge of the activities that resulted in the discharges and threatened discharges of waste and had the legal ability to prevent those activities and resulting impacts from occurring. The Discharger, therefore, has the legal responsibility to clean up and abate the conditions on the Property that have discharged and/or threaten to discharge waste into waters of the state that have created or threaten to create a condition of pollution.
 - c. The Regional Water Board reserves the right to amend this Order, or issue a subsequent Order, to add additional responsible parties when/if those parties are identified.

Factual Basis of Order

4. On June 1, 2017, Regional Water Board staff received a Notice of Intent Form to enroll under Order R1-2015-0023, *Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Regional Cannabis Order) for the Property, naming Leah Baran as the discharger, dated March 20, 2016. On November 15, 2017, Timberland Resource Consultants (TRC) submitted a change of discharger form to change the discharger name to Michael Harding (Discharger). The Regional Water Board issued a Notice of Applicability to the Discharger on March 16, 2018, with an effective date of March 22, 2016. The Regional Cannabis Order was terminated effective on June 30, 2019, with enrollees directed to enroll

under State Water Board Order WQ 2017-0023-DWQ, *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis General Order), subsequently amended by Order Nos. WQ 2019-0001-DWQ and WQ 2023-0102-DWQ. The Discharger did not submit an application to transfer his enrollment to the Cannabis General Order. As a result, the Discharger's enrollment under the Regional Cannabis Order was administratively terminated effective June 30, 2019. Despite regulatory coverage being terminated, cannabis cultivation activities continued on the Property.

5. On September 26, 2022, Regional Water Board staff inspected the Property, in addition to APNs 031-020-54-01 and 031-020-46-012, during the execution of search warrants obtained by California Department of Fish and Wildlife (CDFW) law enforcement. 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.
6. Based on observations made during the inspection, Regional Water Board staff issued a Notice of Violation (incorporated herein as Attachment 1) to the Discharger on October 25, 2022, which included a copy of staff's inspection report. Regional Water Board staff also transmitted a revised Notice of Violation and inspection report to the Discharger on January 5, 2024 (incorporated herein as Attachment 2), which corrected a typographical error in the county name identified in the subject line.
7. The conditions that staff observed at the Property, as further documented in the attached inspection reports and Notices of Violation, included the following:
 - a. Refuse and potting soil discharged to land where it threatens to be transported to receiving waters of the state (as noted in the inspection report at WQ11 and WQ14);

² During the inspection on September 26, 2022, staff inspected the Property along with two other parcels (APNs 031-020-54-01 and 031-020-46-01) that were owned by the Discharger at the time. Shortly after the inspection, the Discharger transferred the deeds to APNs 031-020-54-01 and 031-020-46-01 in lieu of foreclosure. Although staff inspected all three parcels, most of the discharges and threatened discharges that staff observed were located on the Property, which is shown as the northern parcel in the Inspection Map contained in staff's inspection report. Based on the location of the violations and the subsequent transfer of the other parcels, this Order is issued only for the parcel identified as the Property.

- b. Controllable sediment delivery sites³ at the location of a road ford⁴ (WQ18); constructed earthen pads (WQ6 and WQ11); poorly designed roads and culverted stream crossings (WQ8, WQ18, WQ22, WQ27, & WQ28); collapsed roadside fill prism (WQ20);
 - c. Domestic waste pipe entering underground (WQ17) that threatens to discharge waste to groundwater and nearby watercourses;
 - d. Cannabis cultivation waste (WQ6 and WQ11), consisting of improperly stored plastic containers, plastic fencing nets, plastic covers, soil, and plant waste, that threatens to discharge waste into waters of the state;
 - e. Generators and gasoline containers (WQ9, and WQ10) and butane gas cylinders (WQ6 & WQ10) are stored without secondary containment and without cover;
 - f. Unauthorized dredge and fill in watercourses to facilitate the diversion of surface water into onstream ponds for cannabis cultivation (WQ16, WQ21, WQ30).⁵ The onstream pond at WQ30 showed signs of erosion on the inside of its embankment delivering sediment to waters of the state.
8. On November 16, 2022, the Discharger responded to the Regional Water Board's NOV. In his response, the Discharger indicated that he had read the NOV and Inspection Report and was fully prepared to deal with the violations. He also indicated that he would clean up the Property and submit photo documentation of the cleanup by December 15, 2022. He claims that the ponds, culverts, and greenhouses were engineered by TRC in 2015-2016 and "signed off by" CDFW. He also indicated that he tried to obtain a cannabis cultivation license from Mendocino County but was not successful. On the same day on November 16, 2022, Regional Water Board staff responded to the Discharger informing him that he should follow

³ Controllable sediment delivery sites are generally areas that are discharging or have the potential to discharge sediment to waters of the state, that are caused or affected by human activity and may feasibly and reasonably respond to prevention and minimization management measures.

⁴ A ford is a shallow portion of stream used as a crossing by a vehicle. Fords may be unimproved (crossing of the natural streambed) or improved (crossing over material brought in to modify the streambed).

⁵ Google Earth Imagery shows two of the three ponds in the northern parcel and access roads on the Property were constructed between March 2017 and August 2017, and the northern pond was enlarged around that same time. Although it is unclear to what extent the Discharger may have been involved in the creation or enlargement of the onstream ponds, as the current owner, he is responsible for any ongoing discharges or threats of discharge associated with the ponds.

the recommendations in the inspection report and NOV and reiterating that he should hire a qualified professional to assess the conditions of the Property and submit a plan to address them.

9. On June 28, 2023, the Discharger responded to the State Water Board Division of Water Rights staff in response to their Notice of Violation issued on June 22, 2023, for violations observed during the September 26, 2022, inspection. The Discharger reiterated his claim that the ponds and watercourse crossings were “cleared” and engineered by CDFW and the Water Boards in 2015 and 2016.
10. On July 3, 2023, Regional Water Board staff contacted the Discharger and asked him to submit photo documentation of the cleanup that he stated he would submit by December 15, 2022. Staff again recommended that the Discharger work with a qualified professional to address issues associated with the ponds and watercourse crossings on the Property. The Discharger did not respond to this request.

Beneficial Uses, Basin Plan Prohibitions, and Water Quality Objectives

11. The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference the plans and policies adopted by the State and Regional Water Board.
12. Existing and potential beneficial uses for the Spy Rock Hydrologic Subarea within the Eel River Hydrologic Unit include the following: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PRO), Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Navigation (NAV), Hydropower Generation (POW), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial or Sport Fishing (COMM), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Aquaculture (AQUA). Beneficial uses of any specifically identified water body generally apply to all its tributaries. Additionally, Native American Culture (CUL); Flood peak attenuation/Flood Water Storage (FLK); and Wetland habitat (WET) applies to all watersheds where those uses exist and have the potential to exist.
13. The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses listed above. The Basin Plan’s Action Plan for Logging, Construction, and Associated Activities includes two waste discharge prohibitions (See section 4.2.1 of the Basin Plan):
 - a. Prohibition 1 – “The 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 is prohibited.”

- b. Prohibition 2 – “The 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 is prohibited.”
14. Chapter 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development include the following:
 - a. Sediment: “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
 - b. Settleable Material: “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
 - c. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”
 - d. Turbidity: “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”

Regional Water Board and State Water Board Resolutions

15. As part of the Regional Water Board’s efforts to control sediment discharges and restore sediment-impaired water bodies, the Regional Water Board adopted the Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region, which is also known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy directs the Executive Officer to use “all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficaciously pursue compliance with sediment-related standards by all discharger of sediment waste.” The goals of the policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.
16. To address sources of elevated water temperature to reduce impairments to waters of the state and prevent further impairment, the Regional Water Board adopted the Policy for Implementation of the Water Quality Objective for Temperature in the

North Coast Region (Temperature Implementation Policy) through Resolution R1-2014-0006. To attain and maintain the water quality objectives for temperature, the policy directs the Regional Water Board to implement programs and collaborate with others to prevent, minimize, and mitigate temperature alterations associated with certain activities, including, but not limited to, activities that result in either the removal of riparian vegetation that provide shade to a waterbody, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and/or reduction of cold water sources.

17. State Water Board Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board's Statement of Policy with Respect to Maintaining High Quality Waters in California (Resolution 68-16). Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality that is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations and cleanup and abatement proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

Legal Basis of the Order

18. Water Code section 13304, subdivision (a), states, in relevant part, "any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.."
19. "Waste" is defined by Water Code section 13050, subdivision (d), to include, "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purpose of, disposal."

- a. Earthen material, including sediment, when discharged to waters of the state, is a “waste” as defined in Water Code section 13050, subdivision (d). Additionally, the improperly stored potting soil and gasoline containers, cultivation-related debris and trash, and domestic discharge are “waste” as defined in Water Code section 13050, subdivision (d).
20. “Pollution” is defined in Water Code section 13050, subdivision (l)(1), as an alteration of the quality of the waters of the state by waste to a degree that unreasonably affects either the waters for beneficial use or facilities that serve these beneficial uses. As documented during the inspection of the Property, earthen material, improperly stored soil and gasoline containers, cultivation-related waste and trash, and domestic waste from unauthorized cannabis cultivation and associated activities on the Property have discharged, or still have the potential to discharge, into unnamed watercourses tributary to the Middle Main Eel River, in a manner that could unreasonably affect the beneficial uses of waters of the state.
- a. Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the watercourse bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten wildlife habitat and aquatic species (Beneficial Uses impacted: RARE, MIGR, SPWN, COLD, COMM, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (Beneficial Uses impacted: AGR and MUN). Sediment laden storm water can also discharge to surface water and result in increased turbidity that may affect the recreational and aesthetic enjoyment of the surface waters (Beneficial Uses impacted: REC-1 and REC-2).
 - b. The discharge of organic and earthen material in the Eel River watershed is especially problematic because, as noted above, the Middle Main Eel River is listed as an impaired waterbody under Section 303, subdivision (d), of the Clean Water Act due to several pollutants, including sedimentation/siltation and high-water temperatures. Sediment delivery impacts the migration, spawning, reproduction, and early development of cold-water fish.
 - c. Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes and interference with respiration and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic life by limiting the transmittance of light. The Basin Plan contains a water quality objective for sediment, which requires that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause

nuisance or adversely affect beneficial uses. Suspended sediment can result in (1) increased turbidity (loss of clarity) resulting in decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation through burial of bottom dwelling (benthic) organisms, salmonid eggs, and alevin (newly spawned salmon or trout still carrying its yolk). Sediment can also physically damage gills causing fish mortality; increase physiological stress; reduce reproduction; impair normal feeding and predator avoidance behaviors, resulting in impacts to commercial and recreational fishing resources; increase water temperature; and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. These water quality impacts occur both during sediment transport and sediment deposition.

- d. Sediment is also a known transport mechanism for toxics (e.g., metals and synthetic organics), which bind to sediment particles (Beneficial Uses threatened: REC1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).
- e. Petroleum products used for lubricants and fuels, including gasoline, can enter waters through spills, leakage from storage containers, and improper storage and disposal, and can result in contamination of freshwater sources. Spilled oil in freshwater habitats can affect mammals, aquatic birds, insects, fish, microorganisms and sensitive vegetation. Heavier petroleum products can sink and can become trapped in gravel, contributing to long-term exposures, while lighter petroleum products can accumulate on the surface of water and spread downstream where it can collect on stream beds, log jams, and at the water's edge. Petroleum products can also dissolve into the water column where it can be ingested by fish and other freshwater organisms. The actual behaviors of the product in water will depend on the characteristics of the petroleum product and that of the water body amphibian exposure to petroleum products can be particularly detrimental as they breathe through their skin, and coating can be lethal. Oil and fuel exposure to fish can cause impaired functions, physical deformities, and compromised reproduction. In addition, human exposure to petroleum products from ingestion and exposure can have impacts to the central nervous system, eyes, and respiratory tract. (Beneficial Uses that are threatened include: REC 1, REC-2, COLD, SPWN, RARE, MIGR, COMM, MUN, and WILD).
- f. Discharges of excess nutrients from soil amendments, especially nitrates and phosphorus, can lead to eutrophication and algal blooms. Algal blooms can block light, clog fish gills, and cause an increase in biological oxygen demand as they die, severely lowering dissolved oxygen levels available to sustain aquatic ecosystems. Lowered dissolved oxygen concentrations can also provide favorable conditions for proliferation of pathogenic bacteria. In addition, excess nutrients can contribute to toxic algal blooms which create bio

accumulative toxins that can be deleterious to aquatic ecosystems and wildlife that may consume aquatic fauna (Beneficial Uses threatened: RARE, MIGR, WILD, COLD, COMM, and SPWN). Eutrophication and algal blooms can also affect the recreational and aesthetic enjoyment of surface waters. Direct exposure to toxic algae can lead to rashes, respiratory problems, and neurological effects in humans, and can raise costs for water treatment plants and contribute to harmful byproducts when treated (Beneficial Uses that are threatened include: REC-1, REC-2, and MUN).

- g. The dumping and discarding of trash and other miscellaneous debris has the potential to alter the hydrologic regimes of surface waters, threaten wildlife habitat and aquatic species, and impact sediments and soils, which may affect surface and ground water quality. As such, the beneficial uses threatened by the observed dumping and discarding of trash are as follows: municipal and domestic supply, agricultural supply, industrial process supply, freshwater replenishment, contact water recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat.
 - h. Discharges of domestic waste to land have the potential to pollute groundwater, soil, and hydrologically connected surface water and can result in impacts to water quality. Domestic wastewater can contain nitrogen and phosphorus from human waste, food, and certain soaps and detergents. The beneficial uses threatened by discharges of domestic waste to land include Municipal and Domestic Water Supply (MUN), Industrial Water Supply (IND), Industrial Process Water Supply (PRO), Agricultural Water Supply (AGR), and Freshwater Replenishment to Surface Waters (FRSH),
21. Cleanup and abatement is necessary to ensure that any discharge of waste or existing condition of pollution is cleaned up, that the threat of unauthorized discharges to waters of the state from the Property are prevented, background water quality conditions are restored, and that any impacts to beneficial uses are mitigated. Issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with the policies of the Regional Water Board and State Water Board.

Technical Reports Required

22. Water Code section 13267, subdivision (a), provides that the Regional Water Board, “in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division [Division 7], may investigate the quality of any water of the state within its region.” Water Code section 13267, subdivision (b), provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these technical reports shall bear a reasonable

relationship to the need for the reports and the benefits to be obtained from the reports. Staff estimates the total cost of technical reports required by this Order to be between \$12,420 to \$47,440 over an estimated period of seven years (two years for remedial actions and up to five years of monitoring). The costs of the technical or monitoring reports required by this Order bear a reasonable relationship to the need for these reports and the benefit to be gained by these reports, as discussed below:

1. The Cleanup, Restoration, and Monitoring Plan (CRMP) is a technical report that is necessary to: (1) assess impacts to waters of the state resulting from the cannabis cultivation, alteration of the bed and bank of watercourses, and the discharge and threatened discharge of sediment and cannabis cultivation waste; (2) determine the appropriate restoration and abatement work to correct those impacts; and (3) create a plan along with an implementation schedule that will guide the scope of work to clean up and abate the discharges and threat of discharges of waste on the Property. By requiring the Discharger to submit a CRMP, the Regional Water Board or its delegated officer will have the opportunity to review and approve the scope of the proposed restoration and corrective actions to confirm that the proposed work will adequately remediate site conditions and prevent the discharges of sediment and other wastes from further impacting the beneficial uses of sensitive water bodies. As previously mentioned, the Middle Main Eel River and its tributaries are Clean Water Act section 303(d)-listed as impaired due to elevated sedimentation/siltation and elevated temperature, thereby heightening the need for this technical report to reduce further impairment to waters of the state. The CRMP requirements (i.e., field inspection and report preparation) are comparable to that of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and Disturbed Area Stabilization Plan as presented in the 2017 Direct Cost Analysis⁶, which is estimated to cost between \$4,860 and \$14,120. The burden, including costs, of preparing and submitting the CRMP, therefore, bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

⁶ The State Water Board considered the estimated costs associated with various technical reports regarding site characterization, stabilization, and restoration during the adoption and amendment of the State Water Resources Control Board Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation and General Order. Estimated costs for technical reports were presented in the State Water Board's 2017 Direct Cost Analysis For the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis)(waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf). The costs to develop the technical reports required in this Order are anticipated to be comparable to the preparation of reports presented in the 2017 Direct Cost Analysis, as detailed in Paragraph 24, subparagraphs a-d.

2. Separate Completion Reports are necessary to demonstrate that the Discharger has successfully completed Winterization of the Property and implementation of the CRMP in a timely manner in accordance with this Order. The benefit derived from Completion Reports is the Regional Water Board's, or its delegated officer's, ability to verify that remedial activities and best management practices were adequately implemented to ensure that cleanup and abatement activities remedy all water quality threats and impacts. The cost of a Completion Reports (i.e., field inspection and report preparation) is comparable to that of a Site Closure Report as described in the 2017 Direct Cost Analysis described above, which is estimated to cost between \$1,080 and \$4,760 for each report. The burden, including costs, of preparing and submitting Completion Reports therefore bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
3. Annual Monitoring Reports are necessary to allow the Regional Water Board, or its delegated officer, to confirm the long-term stability of restored areas, to identify any areas where restoration is failing or needs improvement, and to demonstrate the effectiveness of erosion control measures in preventing sediment discharges to waters of the state. Given the condition of the Property, observation and maintenance of the completed project for a period of five years is needed to ensure that the anticipated water quality benefits are achieved in the long-term and that CRMP components continue to function and remain effective. The cost to prepare an Annual Monitoring Report (i.e., field inspection and report preparation) are comparable to that of a Site Closure Report as presented in the 2017 Direct Cost Analysis, which is estimated to cost between \$1,080-\$4,760 for each report. Therefore, the cost to prepare five Annual Monitoring Reports is estimated to be between \$5,400 and \$23,800. The burden, including costs, of preparing and submitting the Completion Report, therefore, bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.

The Discharger named in this Order currently owns the Property and owned the Property at the time of Regional Water Board staff's inspections during which the discharges and threatened discharges were observed, and thus is appropriately responsible for providing the reports required under this Order.

California Environmental Quality Act

23. Issuance of this Order is an enforcement action by a regulatory agency to enforce the laws and regulations administered by the Regional Water Board and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307) and an action by a regulatory agency for the

protection of the environment (Cal. Code Regs., tit. 14, § 15308). To the extent that the Order requires earth-disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, such actions are exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. Should additional environmental review be required by the Regional Water Board in connection with the requirements of this Order, the Regional Water Board may recover from the Discharger the costs associated with preparing and submitting documents for environmental review. (Pub. Resources Code, § 21089).

REQUIRED ACTIONS

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that the Discharger shall clean up the wastes and abate the impacts to water quality in accordance with the scope and schedule set forth below and submit the technical and monitoring reports as further described below.

1. **Submit Completion Report of Winterization:** Within 30 days of issuance of this Order, the Discharger shall submit a Completion Report of Winterization of the Property for approval by the Regional Water Board or its delegated officer. The Completion Report of Winterization shall include, at a minimum, a description of actions taken, photo documentation of each project location, and receipts for the disposal of any materials demonstrating that they were disposed of at an appropriately licensed facility that accepts the waste. Winterization measures that shall be implemented and described in the Completion Report of Winterization include the following:
 - a. Installation of erosion and sediment control measures;
 - b. Potting soil disposal, and spoils management;
 - c. Blockage or closure of temporary access roads⁷ to motorized vehicles to ensure that roads are not utilized by vehicles during the rainy season;
 - d. Removal of potting soils, water storages tanks, and other cannabis related materials/infrastructure from the riparian setbacks⁸ of the watercourses;

⁷ Please refer to the limitations on the use of fill or rock ford crossings in the Cannabis Cultivation Policy (Section 2, Term 52).

⁸ Riparian Setback – setbacks from a watercourse or waterbody established to protect water quality and/or aquatic life. For the purposes of this Order, riparian setbacks also apply to wetlands and surface water bodies such as lakes or reservoirs. Please refer to the Minimum Riparian Setback table (Section 1, Requirement 37) of the [Cannabis Cultivation Policy](#).

- e. Maintenance or cleaning of all culverts, such as removal of debris or sediment by hand. Heavy equipment shall not be used to excavate debris or sediment from streams without prior authorization from the Regional Water Board; and
 - f. Proper disposal or storage⁹ of generators, petroleum containers, propane cylinders;
 - g. Submission of receipts documenting proper disposal at a licensed disposal facility that accepts the type of waste being disposed.
2. **Submit a Cleanup, Restoration, and Monitoring Plan:** By April 15, 2025, the Discharger shall submit to the Regional Water Board for approval, a proposed CRMP acceptable to the Regional Water Board or its delegated officer. The CRMP shall include, but not be limited to:
- a. An assessment of any direct and indirect impacts to waters of the state on the Property, including, but not limited to, rivers, streams, seeps, springs, bogs, and wetlands, caused by developed features used for cannabis cultivation and associated activities, such as greenhouse/cultivation areas, roads, reservoirs, and all other disturbed areas on the Property. The assessment shall also identify controllable sediment sources that can be practicably treated/stabilized to prevent future discharges to receiving waters. The assessment shall characterize the location and quality of the watercourses and wetlands on the Property before the impacts occurred and their current conditions. The assessment shall be completed by an appropriately qualified professional and must, at a minimum, address surface water hydrology, bed and bank stability, riparian and aquatic habitat and loss thereof, channel slope stability, active or potential erosion and sedimentation sites, stability of graded and disturbed features, reservoirs, culverts, and other stream crossings, as well as roads and all disturbed areas on the Property. The assessment shall include aerial photographs and/or satellite images, photographs, topographic maps, or drawings, etc., of existing Property conditions, and include a detailed map of features accurately depicting the Property's topography, all graded surfaces, all waters of the state, including a forensic delineation of waters of the state, drainages, stream crossings, instream structures, and the functional status of these features. Assessment findings shall serve as the basis for the CRMP;

⁹ All such storage areas shall comply with the riparian setback Requirements, be in a secured location in compliance with label instructions, outside of areas of known slope instability and be protected from accidental ignition, weather, and wildlife. All storage areas shall have appropriate secondary containment structure, as necessary, to protect water quality and prevent spillage, mixing, discharge, or seepage. Refer: [Cannabis Cultivation Policy](https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf) (https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf)

- b. A plan for Property restoration, including a description of how long-term impacts from erosion and sedimentation sources will be abated (e.g., re-grading and reengineering, graveling or paving road surface, etc.). The CRMP shall include a proposal to restore beneficial uses of any waters of the state on the Property that were adversely impacted or threatened by unauthorized site development/disturbance activities, including the tributaries to the Eel River and any springs, seeps, bogs, or wetlands (e.g. restoration of the stream channels and any adjoining wetlands). The plan shall include replanting and revegetation of disturbed, impacted, and restored areas and their associated riparian areas with native vegetation. The plan shall contain, at a minimum, design specifications for roads, graded areas, any water crossings, in-stream structures, riparian and aquatic habitat restoration, surface drainage controls, and erosion and sediment controls. The CRMP shall comply with the design standards and requirements included in the Cannabis Cultivation Policy¹⁰ and the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State¹¹.
- c. If waters of the state cannot feasibly be restored to its pre-disturbance condition, then the CRMP shall include a proposal to provide mitigation to compensate for any permanent impacts to waters of the state that cannot be restored, which resulted from unauthorized activities on the Property during the Discharger's ownership and/or operation. Compensatory mitigation shall comply with applicable policies and procedures, such as the state's No Net Loss Policy and the State Wetland Definition and Procedures for Discharges of Dredge and Fill Material to Waters of the State. The Compensatory Mitigation Proposal shall (1) describe existing and proposed site conditions at the proposed mitigation sites; (2) describe implementation methods used to provide compensatory mitigation; (3) identify whether a land use covenant, deed restriction, or other legal mechanism will be used to preserve all mitigation sites in place and in perpetuity; (4) include photo point monitoring that will document success of the compensatory mitigation; and (5) propose a schedule for the submittal of progress updates during compensatory mitigation work. Restoration work proposed in the CRMP will require permitting, which may have additional mitigation requirements.

¹⁰ The Cannabis Cultivation Policy can be found at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf

¹¹ State Wetland Definition and Procedures for Discharges of Dredge and Fill Material to Waters of the State can be found online at:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2021/procedures.pdf

- d. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state¹², and federal agencies, detailed project milestones to fulfill the requirements of this Order once those permits are obtained, and a deadline for having fully implemented and completed the CRMP.
3. **Modifications to the approved CRMP:** The Discharger shall notify and obtain approval from the Regional Water Board or its delegated officer prior to making any modifications to the approved CRMP.
4. **Complete the Cleanup and Restoration:** By October 15, 2025, the Discharger shall complete all work to clean up and abate the Property as outlined in the CRMP approved by the Regional Water Board or its delegated officer.
5. **Completion Report for the CRMP:** No more than 60 days after completing implementation of the CRMP, the Discharger shall submit a Completion Report for the CRMP for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built designs of all completed restoration construction and/or abatement measures included in the approved CRMP to demonstrate the CRMP has been fully implemented. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.
6. **Annual Monitoring Reports:** Upon completion of the restoration and mitigation under the CRMP, the Discharger shall submit annual monitoring reports by January 31 of each year, beginning in 2027, for at least five years or until the Regional Water Board or its delegated officer approves a request to discontinue monitoring. Such a request may be submitted when the approved success criteria in the CRMP are met with supporting documentation. Each annual monitoring report shall include, at a minimum, a completed inspection checklist, photos of areas restored, and a description of any locations where restoration is failing and/or needs to be corrected to achieve the success criteria.

GENERAL REQUIREMENTS AND NOTICES

1. **Duty to Use Qualified Professionals:** The Discharger shall provide documentation that identifies plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and

¹² The Discharger shall obtain a Water Quality Certification /Waste Discharge Requirements (WQC/WDR) prior to implementing the instream work associated with the CRMP. [The application for WQC / WDR](https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/pdf/Final20201210_ADA401Application.docx) can be found at: https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/pdf/Final20201210_ADA401Application.docx

geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.

2. **Signatory Requirements:** All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to his/her knowledge, the report is true, complete, and accurate. The Discharger shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

3. **Notice of Onsite Work:** The Discharger, or a duly authorized agent, shall notify Regional Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection. The Discharger shall contact Ermias Berhe at (707) 445-6128 or by email Ermias.Berhe@watercoards.ca.gov.
4. **Notice of Change in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Property's ownership or occupancy. This report shall be submitted to Regional Water Board staff no later than 30 days prior to a planned change and shall reference the number of this Order.
5. **Reasonable Access:** The Discharger shall allow the Regional Water Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to enter at reasonable times to inspect the Property and any records that must be kept under the conditions of this Order for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code.
6. **Submissions:** The CRMP and all monitoring reports, technical reports, or notices required under this Order shall be submitted to Regional Water Board staff at the addresses provided below.

By email (preferred) to:

Ermias Berhe, Engineering Geologist
Ermias.Berhe@waterboards.ca.gov

Or by mail to:

North Coast Regional Water Quality Control Board
Attn: Ermias Berhe
5550 Skylane Boulevard, Suite A,
Santa Rosa, CA 95403

7. **Other Regulatory Requirements:** The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.
8. **Cost Recovery:** Pursuant to Water code section 13304, the Regional Water Board is entitled to all reasonable costs it actually incurs to investigate and abate the effects of unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other restoration action, required by this Order. If requested by the Regional Water Board, the Discharger shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Water Board.
9. **Delayed Compliance:** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Regional Water Board or its delegated officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger and will take all the available relevant facts into consideration when considering whether or not to exercise its enforcement authority.
10. **Modifications:** Any modification to this Order shall be in writing and approved by the Regional Water Board or its delegated officer including any potential extension requests.
11. **Enforcement Authority:** If the Discharger fails to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement or a complaint for administrative civil liability may be issued by the Regional Water Board. Failure to comply with this Order may result in the assessment of an administrative civil liability of up to \$10,000 per violation per day

and/or up to \$10 per gallon when the violation results in the discharge of waste, pursuant to Water Code sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law, including, but not limited to, violation of the terms and conditions of this Order.

12. **No Limitation of Water Board Authority:** This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be modified if additional information becomes available.
13. **Requesting Review by the State Water Board:** Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et seq. The State Water Board must receive the petition no later than 5:00 p.m., 30 days following the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received on the next business day. [Copies of the law and regulations applicable to filing petitions](#) may be found on the Internet at: (https://www.waterboards.ca.gov/public_notices/petitions/water_quality/) or will be provided upon request.

This Order is issued under authority delegated to the Executive Officer by the Regional Water Board pursuant to R1-2012-0062 and is effective upon the date of signature.

Valerie Quinto
Executive Officer

Attachments:

1. NOV and Report of September 26, 2022, Inspection
2. Revised NOV and Report of September 26, 2022, Inspection



North Coast Regional Water Quality Control Board

October 25, 2022

Michael Harding
PO Box 218
Whitethorn, CA 95589

Certified Mail No: 7021-0950-0001-6500-2244

Dear Michael Harding:

Subject: Notice of Violation, Transmittal of Inspection Report for September 26, 2022, Inspection of Humboldt County Assessor's Parcel Nos. 031-020-45-01, 031-020-46-01, and 031-020-54-01, and Requirement to Respond within 30 days

File: Cannabis Program Inspections, Humboldt County, September 26, 2022, CIWQS Place ID 883738

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 Humboldt County Assessor's Parcel Numbers: 031-020-45-01, 031-020-46-01, and 031-020-54-01 (the Property):

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

According to our records, the cannabis cultivation operation located on this Property is not enrolled for coverage under the Cannabis General Order.

On September 26, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property and observed an active outdoor cannabis cultivation and other inactive cannabis cultivation areas with growing soil bags.

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Background

LandVision records show that the Property was sold to Michael Harding by Island Mountain LP, on June 21, 2016.

On September 26, 2022, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), the State Water Board Division of Water Rights, and personnel of 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.

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 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 26, 2022, inspection report, Regional Water Board staff observed violations of the California Water Code sections 13260, 13264 (a) and Basin Plan Prohibition Section 4.2.1. In addition, staff observed violations of the Cannabis General Order Attachment A, Section 1 - General Requirements and Prohibitions Nos. 1, 25-27, 32, and 37 and Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation Nos. 3-4, 7-8, 12, 15-17, 22, 26, 28, 31, 48-56, 59, 70, 73, 76, 79, 90, 105, 113, 117, 119, 120, 124, 126, and 130. Staff observed these violations at Property locations identified in the inspection report as WQ1 through WQ31.

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: [Cannabis Cultivation Waste Discharge Regulatory Program](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/) (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, 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: [North Coast Cannabis Water Quality Certification Application](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf) (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 California Water Code and the Basin Plan 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 California 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 of discharged waste, but not both, pursuant to Water Code section 13350.

Inspection Report Recommendations

As mentioned above, the September 26, 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 Regional Water Board staff Ermias Berhe 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 Ermias Berhe by email at Ermias.Berhe@Waterboards.ca.gov or by phone at 707-445-6128.

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 Mona.Dougherty@Waterboards.ca.gov or by phone at 707-445-6129. 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 Mona Dougherty on 10/25/2022

Mona Dougherty
Senior Water Resources Control Engineer

Filename 220926_Michael Harding_NOV_Report

Attachments: Attachment A - Regulatory Citations
Attachment B - 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

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

Ermias Berhe, Ermias.Berhe@Waterboards.ca.gov

Division of Water Rights

Taro Murano, Taro.Murano@waterboards.ca.gov

Gagan Bhullar, Gagan.Bhullar@Waterboards.ca.gov

Anthony Southwood, Anthony.Southwood@Waterboards.ca.gov

Department of Fish and Wildlife

Cheri Sanville, cheri.sanville@wildlife.ca.gov

Daniel Harrington, Daniel.Harrington@Wildlife.ca.gov

Mendocino County Sheriff's Office

Sergeant Clinton Wyant, WyantC@mendocinocounty.org

Mendocino County Department of Planning and Building

cannabisprogram@mendocinocounty.org

Department of Cannabis Control

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

Attachment A – Regulatory Citations

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.”
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)	“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).”
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.”
Cannabis Policy and	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

Regulatory Section	Citation
General Order No. WQ 2019-0001-DWQ	Cultivation Activities (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)

Attachment B – Inspection Report



North Coast Regional Water Quality Control Board

TO: Mona Dougherty

FROM: Ermias Berhe

DATE: October 25, 2022

Inspection Report for September 26, 2022, Warrant Inspection of Mendocino County Assessor's Parcel Numbers 031-020-45-01, 031-020-46-01, and 031-020-54-01

File: Cannabis Program Inspections, Mendocino County, Michael Harding Property, CIWQS Place ID 883738

Property Information

County: Mendocino

APNs: 031-020-45-01, 031-020-46-01, and 031-020-54-01

Owner: Michael Harding

Size: 308.52

Watershed: Eel River Hydrologic Unit, Middle Main Eel River Hydrologic Area, Spy Rock Hydrologic Subarea; Cal Water 1111.420404; HUC-12 180101050206

Clean Water Act Section 303(d) Listings: The entire Middle Main Eel River Hydrologic Area is listed for Sediment/Siltation pollutant, Category 4a, and Tributaries to the Middle Main Eel River listed for Temperature, Category 4a, 2018 303(d) List approved by United States Environmental Protection Agency on June 9, 2021.

TMDLs: Middle Main Eel River is listed in the North Coast TMDL Projects for Sediment and Temperature Pollutants

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Regulatory status with the Regional Water Board

Parcels (APNs) 031-020-45-01 and 031-020-46-01 were enrolled separately under the historical North Coast Regional Order 2015-0023 with WDIDs 1B16442CMEN and 1B170403CMEN, but never transferred to the statewide Cannabis General Order (CANGO) WQ 2019-0001-DWQ. Currently the property doesn't have coverage under CANGO.

Inspection information:

Date/time: September 26, 2022, 0900-1330

Type: Warrant

Attendance: Ermias Berhe, Engineering Geologist, North Coast Regional Water Board
Daniel Harrington, Environmental Scientist, California Department of Fish and Wildlife
Gagan Bhullar, Water Resources Control Engineer, Division of Water Rights
Anthony Southwood, Environmental Scientist, Division of Water Rights

Background/Objective:

Inspection objectives for Regional Water Board staff includes 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.

From the available Google Earth Pro Imagery, the property has three greenhouses in the north section, four greenhouses in the central section and two ponds (one north of the northern greenhouses and another pond east of the central greenhouses) in August 2017. Vegetation removal to construct a growing pad in the south and a pond to the west of the growing pad first appear in the southern portion of the property in March 2019. The eight greenhouses in the southern section of the property are visible starting July 2021.

Inspection Map

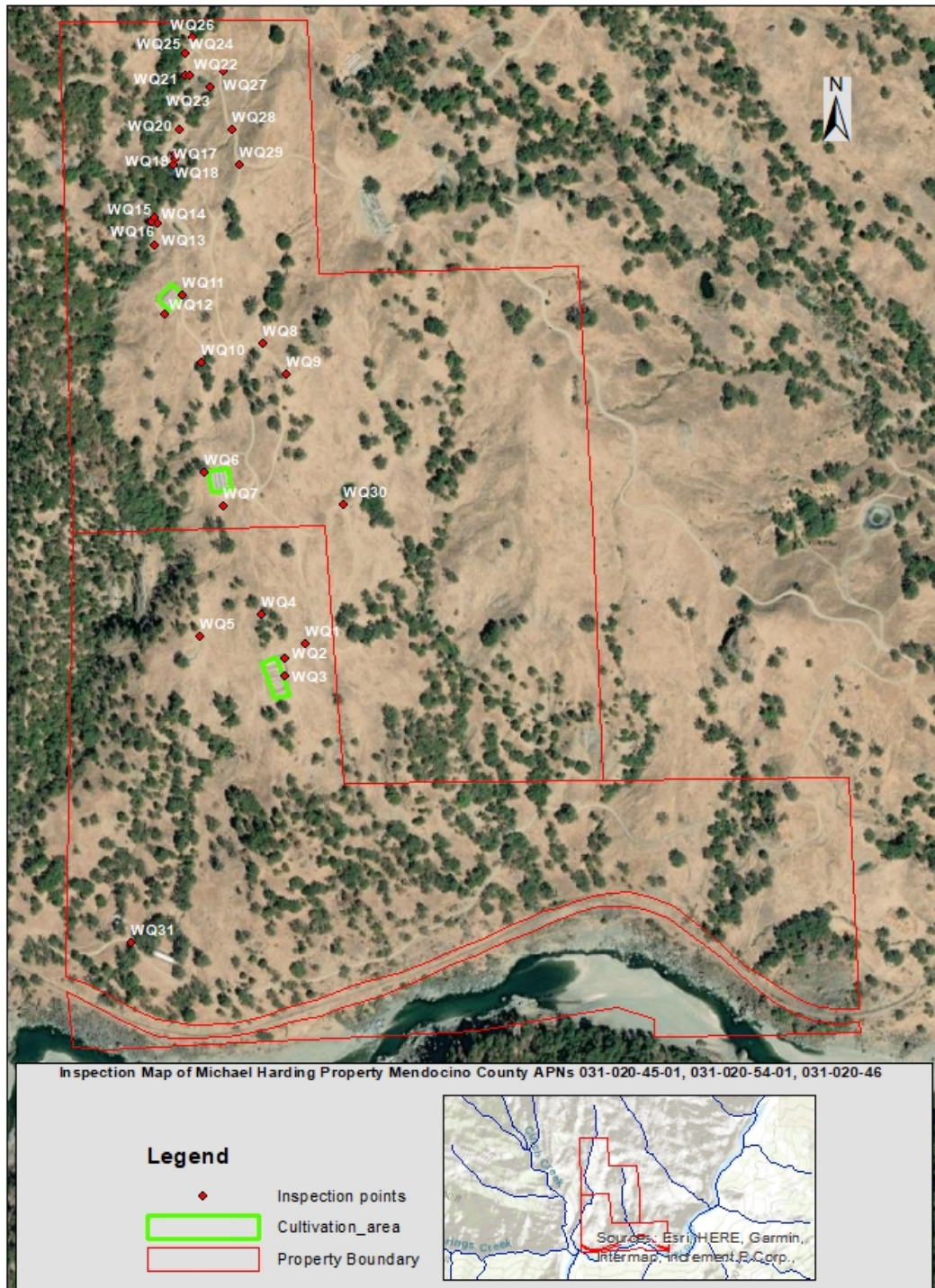


Figure 1: Map of the property, showing inspection points and cannabis cultivation related activities.

Inspection Observations

I inspected the subject property on September 26, 2022. Figure 1 is a site map showing inspection points discussed in Table 1. Below are inspection observations.

Cultivation areas:

I observed three cultivation areas on the property at inspection points WQ3, WQ6, WQ11. The cultivation area at inspection point WQ3 (approximately 17,000,000 square feet) is an outdoor cultivation in eight greenhouses. Cultivation area at WQ6 (approximately 13,000 square feet) is also an outdoor cultivation in four greenhouses, and cultivation area at WQ11 (approximately 85,000 square feet) is in three greenhouses.

Cultivation area at WQ3 is within the riparian setback and is located on steep slopes upstream of a Class III watercourse, threatening waste discharge. I also observed a channel dug on the southwestern portion of this cultivation area threatening waste discharge.

Stream Crossings:

I observed a total of seven watercourse crossings throughout the property at inspection points WQ1, WQ8, WQ18, WQ26, WQ27, WQ28, and WQ31. Stream Crossing at WQ1 is a plastic culvert showing erosion at the outlet and delivering sediment to surface water. Watercourse Crossing at WQ8 is a metal culvert showing erosion and sediment delivery at the outlet. Watercourse crossing at inspection point WQ18 is a fill stream crossing without any conveyance structure delivering sediment and waste to surface water. Watercourse Crossing at WQ22 is a plastic culvert acting as an outlet of an onstream pond and road crossing. Watercourse Crossing at WQ26 is a properly functioning metal culvert. Watercourse Crossing at inspection point WQ27 is a plastic culvert obstructed by rocks at the inlet and threatening road prism erosion. Watercourse Crossing at WQ28 is a metal culvert showing road prism erosion at the inlet and outlet. Watercourse Crossing at WQ31 is a properly functioning plastic culvert.

Water Storage and Use:

I observed water storage tanks at inspection points WQ4, WQ9, WQ10, WQ14, WQ24 and WQ25. The water storage tank at WQ14 is within the required riparian setback.

I observed four ponds throughout the property at inspection points WQ5, WQ16, WQ21, and WQ30. At the time of inspection, onstream ponds at inspection points WQ5, and WQ16 were dry, and their embankment looks stable. The onstream pond at inspection point WQ21 is partially filled with water has a stable and vegetated embankment. I also

September 26, 2022, Inspection Report

Mendocino County APNs 031-020-45-01, 031-020-54-01, 031-020-46-01

observed another onstream pond holding water in the southern portion of the property at inspection point WQ30, showing erosion on the inside of its embankment threatening sediment delivery.

Fertilizers and soil amendments:

I observed uncontained fertilizers in the vicinity of inspection point WQ5. I also observed uncontained/improperly stored potting soil in the vicinity of cultivation area at WQ11 and WQ14.

Petroleum Products:

I observed improperly stored/uncontained generators and gasoline containers at inspection point WQ2, in the vicinity of inspection point WQ4, in the vicinity of inspection point WQ6, at inspection point WQ9, at inspection point WQ10 and in the vicinity of inspection point WQ11. I also observed improperly stored butane gas cylinders at inspection points WQ6 and WQ10.

Cultivation-related wastes:

I observed cannabis cultivation related waste and trash in the vicinity of cultivation areas at inspection points WQ2, WQ6 and WQ11, consisting of improperly stored plastic containers, plastic fencing nets, plastic covers, soil, and plant waste.

Road erosion:

I observed a collapsed road fill prism at inspection point WQ20 delivering sediment to receiving waters.

Refuse and human waste

I observed domestic waste pipe very close to a watercourse threatening waste discharge at inspection point WQ17.

Table 1: Map points with descriptions and water quality concerns

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associate d Photo(s)</i>
WQ2, WQ6, and WQ12	Cultivation areas	Cannabis Cultivation without coverage at WQ2, WQ6 and WQ12, and Cultivation area at WQ12 is within the required riparian setback	Threatened waste discharge to receiving waters	1-3
WQ5, WQ13, WQ22, and WQ30	Onstream ponds	Onstream pond at WQ10 is showing erosion on the inside face of the embankment	Discharge of sediment and waste to receiving waters	4-8
WQ1, WQ8, WQ18, WQ26, WQ27, WQ28, and WQ31	stream crossings	Stream Crossings at inspection points WQ1, WQ8, WQ19 WQ27 and 28 are improperly maintained, installed, or sized stream crossings	Discharge of sediment and waste to receiving waters	9-17
WQ4, WQ9, WQ10, and WQ14	Water Storage	WQ14 is within the required riparian setback of a Class III watercourse	Threatened discharge of waste to receiving waters	24-25,30, and 34
WQ2, WQ4, WQ9 and WQ10	Gasoline/containers, generators, butane cylinders	Uncontained or improperly stored gasoline/containers, generators, and butane cylinders	Threatened discharge of waste to receiving waters	18,22,24,25,26, and 28

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associate d Photo(s)</i>
WQ2, WQ3, WQ10 and WQ11	Trash, soil, plant waste	Uncontained or improperly stored trash, soil, and plant waste	Threatene d discharge of waste to receiving waters	18,19,2 3,27, and 29
WQ4, WQ11, WQ14	Fertilizers and soil amendment s	Uncontained, improperly disposed fertilizers/containers and soil amendments	Threatene d discharge of waste to receiving waters	21,29,3 1
WQ20	Road erosion	Collapsed roadside fill prism	Discharge of sediment	32
WQ19	Human and household waste	Domestic wastewater pipe close to a watercourse	Threatene d discharge of waste to receiving waters	33

Recommendations

1. Retain a licensed professional to inventory, assess, and develop a workplan and schedule to implement measures to ensure that all developed features, roads, watercourse crossings, and cultivation areas 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. Include measures to ensure that unstable features caused or affected by onsite development and operations are removed or otherwise protected to minimize the

potential for these features to cause adverse impacts to water quality and beneficial uses. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.

2. If the property owner and/or tenant(s) choose to continue to cultivate cannabis, enroll for coverage under and take steps to comply with the requirements of the [Cannabis General Order \(CANGO\)](#) (Order WQ 2019-0001-DWQ, General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities). More information about the CANGO can be found at this hyperlink:

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf#cango101717.pdf)

3. Collect and dispose of or contain all refuse and cultivation-related wastes in a location and manner to minimize potential for these wastes to enter or be transported into receiving waters.
4. Properly contain/store petroleum products, generators, water pumps to minimize potential discharge of waste to surface waters during storm event.
5. Work with Mendocino County to ensure that all domestic and human wastes are collected and disposed of consistent with applicable County requirements.
6. Work with CDFW and the State Water Resources Control Board's Division of Water Rights (DIV) to determine and secure any applicable permits or licensing required for surface water diversion, storage, and use on the site. If the existing surface water diversions do not meet applicable CDFW or DIV requirements, remove diversion infrastructure from surface waters and ensure that restoration plans developed pursuant to Recommendation 1, above, include provisions for restoring any instream or riparian disturbance associated with this features or removal thereof.
7. Prior to conducting any instream work associated with recommendation 1, above, submit to the Regional Water Board an application for Clean Water Act section 401 water quality certification, and secure approval from the Regional Water Board.

The 401 Application may be found at the following hyperlink:

(https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/20615/rb1_cannabis_wqc401.pdf)

Enforcement Discretion

The observations in this report will be assessed for violations of the California Water

September 26, 2022, Inspection Report

Mendocino County APNs 031-020-45-01, 031-020-54-01, 031-020-46-01

Code. The Regional Water Board and the State Water Board reserve the right to take any enforcement action authorized by law.

PHOTO APPENDIX - All photos taken by Ermias Berhe unless noted otherwise



Photo 1 – Cultivation area at inspection point WQ2



Photo 2 – Cannabis Cultivation greenhouses at inspection point WQ6



Photo 3 – Cannabis cultivation greenhouses within the required setback of a watercourse at inspection point WQ12



Photo 4 – Dry onstream pond at inspection point WQ5 without any engineered outflow



Photo 5 – Onstream pond at inspection point WQ13



Photo 6 – Onstream pond at inspection point WQ22



Photo 7 - Onstream pond at inspection point WQ30 actively used for cannabis irrigation



Photo 8 - Pond embankment erosion threatening sediment delivery at inspection point WQ30



Photo 9 - Culvert outlet delivering sediment to surface water at inspection



Photo 10 - Culvert outlet showing sediment delivery at the stream


point WQ1	channel at inspection point WQ8
	
<p>Photo 11 – Properly installed culvert outlet of an onstream pond at inspection point WQ16</p>	<p>Photo 12 – A fill stream crossing with some trash wood at inspection point WQ18</p>
	
<p>Photo 13 - A properly functioning culverted stream crossing at inspection point WQ26</p>	<p>Photo 14 – Plastic culverted watercourse crossing inlet obstructed with rocks at inspection point WQ27</p>
	
<p>Photo 15 – Road erosion near the inlet of a metal culverted watercourse at inspection point WQ28</p>	<p>Photo 16 – Road erosion near the outlet at inspection point WQ28</p>



Photo 17 – Properly functioning culvert outlet at inspection point WQ31



Photo 18 –uncontained generator and plastic containers in the vicinity of cultivation area at inspection point WQ2



Photo 19 – Improperly stored/disposed plastic covers in the vicinity of cultivation area inspection point WQ2



Photo 20 – Improperly stored/disposed plant and soil in the vicinity of cultivation area at inspection point WQ3



Photo 21 – Uncontained fertilizers at inspection point WQ4



Photo 22 – uncontained generator and gasoline tank at WQ4



Photo 23 – improperly disposed/uncontained plant waste in the vicinity of cultivation area at inspection point WQ6



Photo 24 – Improperly stored gasoline tanks, water pump and water storage tanks at WQ9



Photo 25 – water storage tanks, improperly stored gasoline tank and pump at inspection point WQ10



Photo 26 – improperly stored gas cylinder in the vicinity of inspection point WQ10



Photo 27 – improperly stored plastic nets, plastic covers, and containers in the vicinity of inspection point WQ10



Photo 28 – improperly stored generator near the vicinity of cultivation area at inspection point WQ11



Photo 29– improperly stored/disposed soil and plastic containers near the vicinity of cultivation area at inspection point WQ11



Photo 30 – Water storage tanks with riparian setback of a watercourse on the right above the tanks at inspection point WQ14



Photo 31 – improperly stored fertilizers or containers within riparian setback at inspection point WQ14



Photo 32 – collapsed roadside fill prism at inspection point WQ20



Photo 33 – Domestic wastewater pipe near a class III watercourse at inspection point WQ19



Photo 34 – water storage tanks at inspection point WQ4



North Coast Regional Water Quality Control Board

January 5, 2024

Michael Harding
PO Box 218
Whitethorn, CA 95589

Certified Mail No: 7021-0950-0001-6500-2244

Dear Michael Harding:

Subject: Revised Notice of Violation, Transmittal of Inspection Report for September 26, 2022, Inspection of Mendocino County Assessor's Parcel Nos. 031-020-45-01, 031-020-46-01, and 031-020-54-01, and Requirement to Respond within 30 days

File: Cannabis Program Inspections, Mendocino County, September 26, 2022, CIWQS Place ID 883738

THIS LETTER REQUIRES THAT YOU ACT WITHIN 30 DAYS

This letter amends the Notice of Violation issued on October 25, 2022, to correct the typographical error of the county name in the subject line.

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: 031-020-45-01, 031-020-46-01, and 031-020-54-01 (the Property):

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

According to our records, the cannabis cultivation operation located on this Property is not enrolled for coverage under the Cannabis General Order.

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

On September 26, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff inspected the Property and observed an active outdoor cannabis cultivation and other inactive cannabis cultivation areas with growing soil bags.

Background

LandVision records show that the Property was sold to Michael Harding by Island Mountain LP, on June 21, 2016.

On September 26, 2022, staff from the Regional Water Board, accompanied by staff of the California Department of Fish and Wildlife (CDFW), the State Water Board Division of Water Rights, and personnel of 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.

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 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 26, 2022, inspection report, Regional Water Board staff observed violations of the California Water Code sections 13260, 13264 (a) and Basin Plan Prohibition Section 4.2.1. In addition, staff observed violations of the Cannabis General Order Attachment A, Section 1 - General Requirements and Prohibitions Nos. 1, 25-27, 32, and 37 and Section 2 - Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation Nos. 3-4, 7-8, 12, 15-17, 22, 26, 28, 31, 48-56, 59, 70, 73, 76, 79, 90, 105, 113, 117, 119, 120, 124, 126, and 130. Staff observed these violations at Property locations identified in the inspection report as WQ1 through WQ31.

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: [Cannabis Cultivation Waste Discharge Regulatory Program](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/) (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, 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: [North Coast Cannabis Water Quality Certification Application](https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/200204/RB1_Cannabis_WQC_401_App.pdf) (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 California Water Code and the Basin Plan 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 California 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 of discharged waste, but not both, pursuant to Water Code section 13350.

Inspection Report Recommendations

As mentioned above, the September 26, 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 Regional Water Board staff Ermias Berhe 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 Ermias Berhe by email at Ermias.Berhe@Waterboards.ca.gov or by phone at 707-445-6128.

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 Mona.Dougherty@Waterboards.ca.gov or by phone at 707-445-6129. 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 Mona Dougherty on January 5, 2024

Mona Dougherty
Senior Water Resources Control Engineer

Filename 220926_Michael Harding_NOV_Report

Attachments: Attachment A - Regulatory Citations
Attachment B - 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

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Gagan Bhullar, Gagan.Bhullar@Waterboards.ca.gov

Anthony Southwood, Anthony.Southwood@Waterboards.ca.gov

Department of Fish and Wildlife

Cheri Sanville, cheri.sanville@wildlife.ca.gov

Daniel Harrington, Daniel.Harrington@Wildlife.ca.gov

Mendocino County Sheriff's Office

Sergeant Clinton Wyant, WyantC@mendocinocounty.org

Mendocino County Department of Planning and Building

cannabisprogram@mendocinocounty.org

Department of Cannabis Control

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

Attachment A – Regulatory Citations

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.”
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)	“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).”
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.”

Regulatory Section	Citation
Cannabis Policy and General Order No. WQ 2019-0001-DWQ	<u>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</u> (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)

Attachment B – Inspection Report



North Coast Regional Water Quality Control Board

TO: Mona Dougherty

FROM: Ermias Berhe

DATE: October 25, 2022

Inspection Report for September 26, 2022, Warrant Inspection of Mendocino County Assessor's Parcel Numbers 031-020-45-01, 031-020-46-01, and 031-020-54-01

File: Cannabis Program Inspections, Mendocino County, Michael Harding Property, CIWQS Place ID 883738

Property Information

County: Mendocino

APNs: 031-020-45-01, 031-020-46-01, and 031-020-54-01

Owner: Michael Harding

Size: 308.52

Watershed: Eel River Hydrologic Unit, Middle Main Eel River Hydrologic Area, Spy Rock Hydrologic Subarea; Cal Water 1111.420404; HUC-12 180101050206

Clean Water Act Section 303(d) Listings: The entire Middle Main Eel River Hydrologic Area is listed for Sediment/Siltation pollutant, Category 4a, and Tributaries to the Middle Main Eel River listed for Temperature, Category 4a, 2018 303(d) List approved by United States Environmental Protection Agency on June 9, 2021.

TMDLs: Middle Main Eel River is listed in the North Coast TMDL Projects for Sediment and Temperature Pollutants

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Regulatory status with the Regional Water Board

Parcels (APNs) 031-020-45-01 and 031-020-46-01 were enrolled separately under the historical North Coast Regional Order 2015-0023 with WDIDs 1B16442CMEN and 1B170403CMEN, but never transferred to the statewide Cannabis General Order (CANGO) WQ 2019-0001-DWQ. Currently the property doesn't have coverage under CANGO.

Inspection information:

Date/time: September 26, 2022, 0900-1330

Type: Warrant

Attendance: Ermias Berhe, Engineering Geologist, North Coast Regional Water Board
Daniel Harrington, Environmental Scientist, California Department of Fish and Wildlife
Gagan Bhullar, Water Resources Control Engineer, Division of Water Rights
Anthony Southwood, Environmental Scientist, Division of Water Rights

Background/Objective:

Inspection objectives for Regional Water Board staff includes 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.

From the available Google Earth Pro Imagery, the property has three greenhouses in the north section, four greenhouses in the central section and two ponds (one north of the northern greenhouses and another pond east of the central greenhouses) in August 2017. Vegetation removal to construct a growing pad in the south and a pond to the west of the growing pad first appear in the southern portion of the property in March 2019. The eight greenhouses in the southern section of the property are visible starting July 2021.

Inspection Map

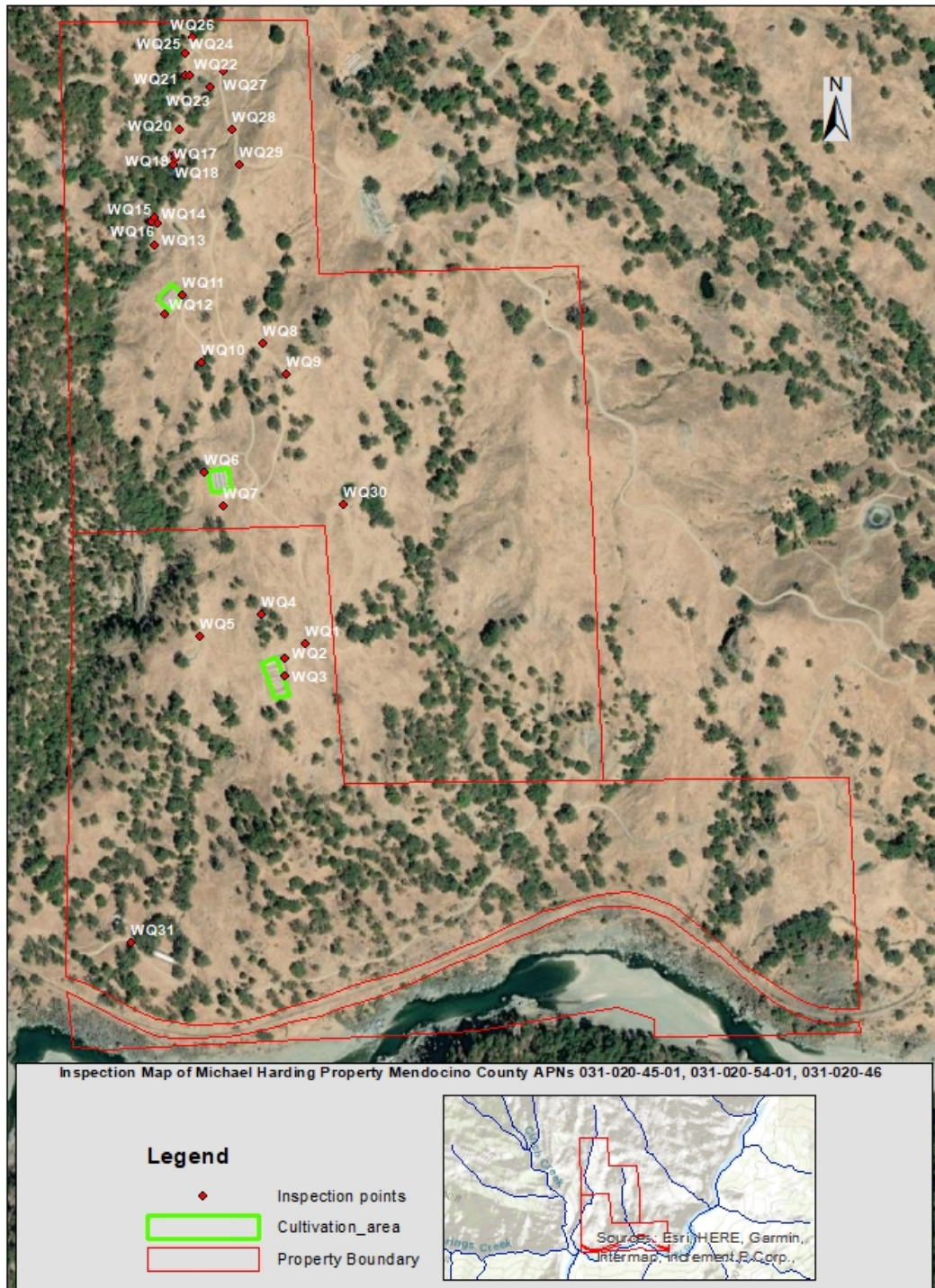


Figure 1: Map of the property, showing inspection points and cannabis cultivation related activities.

Inspection Observations

I inspected the subject property on September 26, 2022. Figure 1 is a site map showing inspection points discussed in Table 1. Below are inspection observations.

Cultivation areas:

I observed three cultivation areas on the property at inspection points WQ3, WQ6, WQ11. The cultivation area at inspection point WQ3 (approximately 17,000,000 square feet) is an outdoor cultivation in eight greenhouses. Cultivation area at WQ6 (approximately 13,000 square feet) is also an outdoor cultivation in four greenhouses, and cultivation area at WQ11 (approximately 85,000 square feet) is in three greenhouses.

Cultivation area at WQ3 is within the riparian setback and is located on steep slopes upstream of a Class III watercourse, threatening waste discharge. I also observed a channel dug on the southwestern portion of this cultivation area threatening waste discharge.

Stream Crossings:

I observed a total of seven watercourse crossings throughout the property at inspection points WQ1, WQ8, WQ18, WQ26, WQ27, WQ28, and WQ31. Stream Crossing at WQ1 is a plastic culvert showing erosion at the outlet and delivering sediment to surface water. Watercourse Crossing at WQ8 is a metal culvert showing erosion and sediment delivery at the outlet. Watercourse crossing at inspection point WQ18 is a fill stream crossing without any conveyance structure delivering sediment and waste to surface water. Watercourse Crossing at WQ22 is a plastic culvert acting as an outlet of an onstream pond and road crossing. Watercourse Crossing at WQ26 is a properly functioning metal culvert. Watercourse Crossing at inspection point WQ27 is a plastic culvert obstructed by rocks at the inlet and threatening road prism erosion. Watercourse Crossing at WQ28 is a metal culvert showing road prism erosion at the inlet and outlet. Watercourse Crossing at WQ31 is a properly functioning plastic culvert.

Water Storage and Use:

I observed water storage tanks at inspection points WQ4, WQ9, WQ10, WQ14, WQ24 and WQ25. The water storage tank at WQ14 is within the required riparian setback.

I observed four ponds throughout the property at inspection points WQ5, WQ16, WQ21, and WQ30. At the time of inspection, onstream ponds at inspection points WQ5, and WQ16 were dry, and their embankment looks stable. The onstream pond at inspection point WQ21 is partially filled with water has a stable and vegetated embankment. I also

September 26, 2022, Inspection Report

Mendocino County APNs 031-020-45-01, 031-020-54-01, 031-020-46-01

observed another onstream pond holding water in the southern portion of the property at inspection point WQ30, showing erosion on the inside of its embankment threatening sediment delivery.

Fertilizers and soil amendments:

I observed uncontained fertilizers in the vicinity of inspection point WQ5. I also observed uncontained/improperly stored potting soil in the vicinity of cultivation area at WQ11 and WQ14.

Petroleum Products:

I observed improperly stored/uncontained generators and gasoline containers at inspection point WQ2, in the vicinity of inspection point WQ4, in the vicinity of inspection point WQ6, at inspection point WQ9, at inspection point WQ10 and in the vicinity of inspection point WQ11. I also observed improperly stored butane gas cylinders at inspection points WQ6 and WQ10.

Cultivation-related wastes:

I observed cannabis cultivation related waste and trash in the vicinity of cultivation areas at inspection points WQ2, WQ6 and WQ11, consisting of improperly stored plastic containers, plastic fencing nets, plastic covers, soil, and plant waste.

Road erosion:

I observed a collapsed road fill prism at inspection point WQ20 delivering sediment to receiving waters.

Refuse and human waste

I observed domestic waste pipe very close to a watercourse threatening waste discharge at inspection point WQ17.

Table 1: Map points with descriptions and water quality concerns

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associate d Photo(s)</i>
WQ2, WQ6, and WQ12	Cultivation areas	Cannabis Cultivation without coverage at WQ2, WQ6 and WQ12, and Cultivation area at WQ12 is within the required riparian setback	Threatened waste discharge to receiving waters	1-3
WQ5, WQ13, WQ22, and WQ30	Onstream ponds	Onstream pond at WQ10 is showing erosion on the inside face of the embankment	Discharge of sediment and waste to receiving waters	4-8
WQ1, WQ8, WQ18, WQ26, WQ27, WQ28, and WQ31	stream crossings	Stream Crossings at inspection points WQ1, WQ8, WQ19 WQ27 and 28 are improperly maintained, installed, or sized stream crossings	Discharge of sediment and waste to receiving waters	9-17
WQ4, WQ9, WQ10, and WQ14	Water Storage	WQ14 is within the required riparian setback of a Class III watercourse	Threatened discharge of waste to receiving waters	24-25,30, and 34
WQ2, WQ4, WQ9 and WQ10	Gasoline/containers, generators, butane cylinders	Uncontained or improperly stored gasoline/containers, generators, and butane cylinders	Threatened discharge of waste to receiving waters	18,22,24,25,26, and 28

<i>Map point</i>	<i>Feature</i>	<i>Brief Description</i>	<i>Water Quality Concern</i>	<i>Associate d Photo(s)</i>
WQ2, WQ3, WQ10 and WQ11	Trash, soil, plant waste	Uncontained or improperly stored trash, soil, and plant waste	Threatene d discharge of waste to receiving waters	18,19,2 3,27, and 29
WQ4, WQ11, WQ14	Fertilizers and soil amendment s	Uncontained, improperly disposed fertilizers/containers and soil amendments	Threatene d discharge of waste to receiving waters	21,29,3 1
WQ20	Road erosion	Collapsed roadside fill prism	Discharge of sediment	32
WQ19	Human and household waste	Domestic wastewater pipe close to a watercourse	Threatene d discharge of waste to receiving waters	33

Recommendations

1. Retain a licensed professional to inventory, assess, and develop a workplan and schedule to implement measures to ensure that all developed features, roads, watercourse crossings, and cultivation areas 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. Include measures to ensure that unstable features caused or affected by onsite development and operations are removed or otherwise protected to minimize the

potential for these features to cause adverse impacts to water quality and beneficial uses. Dispose of all development and restoration-related earthen spoils in a manner to prevent/minimize transport and delivery to receiving waters.

2. If the property owner and/or tenant(s) choose to continue to cultivate cannabis, enroll for coverage under and take steps to comply with the requirements of the [Cannabis General Order \(CANGO\)](#) (Order WQ 2019-0001-DWQ, General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities). More information about the CANGO can be found at this hyperlink:

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wqo2019_0001_dwq.pdf#cango101717.pdf)

3. Collect and dispose of or contain all refuse and cultivation-related wastes in a location and manner to minimize potential for these wastes to enter or be transported into receiving waters.
4. Properly contain/store petroleum products, generators, water pumps to minimize potential discharge of waste to surface waters during storm event.
5. Work with Mendocino County to ensure that all domestic and human wastes are collected and disposed of consistent with applicable County requirements.
6. Work with CDFW and the State Water Resources Control Board's Division of Water Rights (DIV) to determine and secure any applicable permits or licensing required for surface water diversion, storage, and use on the site. If the existing surface water diversions do not meet applicable CDFW or DIV requirements, remove diversion infrastructure from surface waters and ensure that restoration plans developed pursuant to Recommendation 1, above, include provisions for restoring any instream or riparian disturbance associated with this features or removal thereof.
7. Prior to conducting any instream work associated with recommendation 1, above, submit to the Regional Water Board an application for Clean Water Act section 401 water quality certification, and secure approval from the Regional Water Board.

The 401 Application may be found at the following hyperlink:

(https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/pdf/20615/rb1_cannabis_wqc401.pdf)

Enforcement Discretion

The observations in this report will be assessed for violations of the California Water

September 26, 2022, Inspection Report

Mendocino County APNs 031-020-45-01, 031-020-54-01, 031-020-46-01

Code. The Regional Water Board and the State Water Board reserve the right to take any enforcement action authorized by law.

PHOTO APPENDIX - All photos taken by Ermias Berhe unless noted otherwise



Photo 1 – Cultivation area at inspection point WQ2



Photo 2 – Cannabis Cultivation greenhouses at inspection point WQ6



Photo 3 – Cannabis cultivation greenhouses within the required setback of a watercourse at inspection point WQ12



Photo 4 – Dry onstream pond at inspection point WQ5 without any engineered outflow



Photo 5 – Onstream pond at inspection point WQ13



Photo 6 – Onstream pond at inspection point WQ22



Photo 7 - Onstream pond at inspection point WQ30 actively used for cannabis irrigation



Photo 8 - Pond embankment erosion threatening sediment delivery at inspection point WQ30



Photo 9 - Culvert outlet delivering sediment to surface water at inspection



Photo 10 - Culvert outlet showing sediment delivery at the stream


point WQ1	channel at inspection point WQ8
	
<p>Photo 11 – Properly installed culvert outlet of an onstream pond at inspection point WQ16</p>	<p>Photo 12 – A fill stream crossing with some trash wood at inspection point WQ18</p>
	
<p>Photo 13 - A properly functioning culverted stream crossing at inspection point WQ26</p>	<p>Photo 14 – Plastic culverted watercourse crossing inlet obstructed with rocks at inspection point WQ27</p>
	
<p>Photo 15 – Road erosion near the inlet of a metal culverted watercourse at inspection point WQ28</p>	<p>Photo 16 – Road erosion near the outlet at inspection point WQ28</p>



Photo 17 – Properly functioning culvert outlet at inspection point WQ31



Photo 18 –uncontained generator and plastic containers in the vicinity of cultivation area at inspection point WQ2



Photo 19 – Improperly stored/disposed plastic covers in the vicinity of cultivation area inspection point WQ2



Photo 20 – Improperly stored/disposed plant and soil in the vicinity of cultivation area at inspection point WQ3



Photo 21 – Uncontained fertilizers at inspection point WQ4



Photo 22 – uncontained generator and gasoline tank at WQ4



Photo 23 – improperly disposed/uncontained plant waste in the vicinity of cultivation area at inspection point WQ6



Photo 24 – Improperly stored gasoline tanks, water pump and water storage tanks at WQ9



Photo 25 – water storage tanks, improperly stored gasoline tank and pump at inspection point WQ10



Photo 26 – improperly stored gas cylinder in the vicinity of inspection point WQ10



Photo 27 – improperly stored plastic nets, plastic covers, and containers in the vicinity of inspection point WQ10



Photo 28 – improperly stored generator near the vicinity of cultivation area at inspection point WQ11



Photo 29– improperly stored/disposed soil and plastic containers near the vicinity of cultivation area at inspection point WQ11



Photo 30 – Water storage tanks with riparian setback of a watercourse on the right above the tanks at inspection point WQ14



Photo 31 – improperly stored fertilizers or containers within riparian setback at inspection point WQ14



Photo 32 – collapsed roadside fill prism at inspection point WQ20



Photo 33 – Domestic wastewater pipe near a class III watercourse at inspection point WQ19



Photo 34 – water storage tanks at inspection point WQ4