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To: State Water Resources Control Board
Email: commentletters@waterboards.ca.gov

From: California Growers Association
Email: policy@cagrowers.org

CGA Comment on Proposed Cannabis Cultivation Policy – November 2018

On behalf of the California Growers Association, representing small and independent cannabis businesses throughout the state, the following comments represent our perspective on the Water Board's proposed regulations published on September 27, 2018.

The bulk of our membership is composed of small, legacy cultivators with farms located in rural, and often remote, areas. Despite the many challenges our members have dealt with in transitioning into the newly regulated framework, this type of small-scale cultivation remains typical for cannabis production in California. According to data from CDEA's licensee database, about 65% of the 1,300 entities holding California cultivation licenses farmed less than 10,000 square feet of mature plant canopy, and 92% of licensees farmed less than one acre of canopy.

This situation poses a unique challenge: integrating a newly-regulated industry into an existing and complex framework for the sustainability of water resources, while at the same time ensuring that permitting remains accessible for small farmers with limited financial and technical resources. We are in agreement with the comments submitted by the Mendocino County attorney Hannah Nelson, which discuss in detail the practical challenges that rural cultivators face in complying with state water regulation in the midst of a major economic transition.

As with those comments, we are not scientists or technical experts on water management – however, we do have a unique view of the situation on the ground, and we share the state's comment to sustainable water management. Our goal is to ensure that compliance with state water requirements is practically possible for the bulk of cultivators in the state, and our comments are developed with that perspective in mind.



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We have several specific comments on the proposed policy:

1. Support – proposed process for allowing on-stream reservoirs.

We strongly support and appreciate the conditional allowance for on-stream reservoirs under Rule 79(c). These rules create a process to ensure water resources are protected, while significantly lowering barriers to entry for cultivators seeking to establish compliant water management practices.

We also feel the Water Board should consider adjustments to these requirements to ensure that they are appropriate for a given watercourse, and to effectively manage the process of granting determinations under Rule 79(c)(i). Specifically:

A. Consider reducing monitoring requirements for Class II and Class III watercourses.

The proposed monitoring requirements are substantial and require a large amount of time and paperwork. While we understand the Water Board's interest in close scrutiny, we feel this level of scrutiny is less appropriate for Class II and especially Class III watercourses. Tiering monitoring and documentation requirements based on the level of risk involved will ensure that limited resources are focused where they are most needed.

B. Allow regional waters boards to grant determination to approve or deny on-stream reservoirs under Rule 79(c)(i).

Rule 79(c)(i) to grants substantial discretion to the state to allow or deny on-stream reservoir permitting. Regional Water Boards, in our experience, will typically be in the best position to make these case-by-case determinations, and to coordinate with local governments and CDFW staff on issues involving multiple stakeholders. Rule 79(c)(i) as written already grants the Deputy Director the ability to assign a designee to make this



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determination. If the text of the rule itself is not changed to assign authority to regional Water Boards, we think that regional board would be the appropriate designee under the Deputy Director's discretion.

C. For Class III watercourses, grant automatic determinations to allow on-stream reservoirs under Rule 79(c)(i).

Given that ephemeral watercourses do not provide wildlife habitat and the transportation of water is their most important function, they are ideal sites for on-stream reservoirs. Enabling Class III watercourses to qualify for an automatic determination would be appropriate and would help alleviate a possible bottleneck in approving determinations.

2. Consider cost and logistical barriers for cultivators seeking to contract with Qualified Professionals to fulfill state requirements.

The proposed policy relies heavily on Qualified Professionals as intermediaries between farmers and the state. While we recognize the importance of technical experts in ensuring effective water management, the Water Board should be aware of the substantial barriers to contracting with Qualified Professionals in practice. From a cost perspective, individual cultivators will be required to spend tens or hundreds of thousands of dollars in consulting fees, resources which are frequently not available to small cultivators already under major financial pressure from state and local cannabis taxes and regulations. More broadly, there is a severe shortage of Qualified Professionals in rural areas, to the point where it is simply not possible to perform all the work that needs to be done in the time available. The Water Board should consider granting extensions based on a finding that there are not sufficient Qualified Professionals to perform the necessary work, and also could also consider alternative methods to promote responsible management without relying on external consultants in all cases.

3. Ensure coordination between the Water Board, CDFW, and local government.



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The Water Board, CDFW, and county governments frequently hold overlapping jurisdiction over water projects. In the past, lack of coordination between regulators has led to contradictory requirements, including cultivators investing substantially in water management practices that were later overruled by a different agency. Effective, continuous coordination is essential to promote sustainable water management and for cultivators to have the ability comply with state rules.

4. Consider revisions to requirements based on data collected over time.

Given the lack of data on cannabis water usage, we understand the Water Board’s rationale for more conservative and restrictive policies in some cases. However, in our view, these restrictive policies are not always necessary or reflective of typical cultivation practices. As more data is collected, the Water Board should review its reporting, monitoring, and logistical requirements to align its policies with the situation on the ground. Cultivators who can demonstrate efficient and sustainable water management practices should be considered for exemptions from certain requirements, and overall requirements should be revisited based on data collected.

5. Reduce SIUR annual renewal fees.

While we understand the rationale for the \$750 SIUR application fee, this fee seems excessive for annual renewals. In our view, a significantly lower fee would be more in line with the resources required to review these renewals.

6. Support – Rule 98, limiting weekly inspection requirements to the “period of use.”

Frequent inspection and documentation requirements will be a significant logistical burden on cultivators, especially those who live off-farm. We appreciate the specification in Rule 98 that these inspection requirements are limited to the “period of use,” and not required during off-season when they would be unnecessary.



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Our organization can be reached at policy@cagrowers.org with any questions regarding our comments, thank you.