

# State Water Resources Control Board

## Cannabis Cultivation Draft Policy and Draft General Order

August 2, 2017  
Board Workshop  
State Water Resources Control Board



# Timeline

Draft Policy, Staff Report, and General Order released for public comment on July 7, 2017

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Informational Workshops: July 20 – Eureka  
July 27 – Sacramento (webcast)

State Water Board Workshop: August 2 – Sacramento

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Public Comment Deadline:  
12:00 PM (noon) September 6, 2017

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Hearing on Adoption: October 17, 2017 – Sacramento

# Presentation Outline

- Background
- Water Boards' Responsibilities
- Overview of Potential Impacts of Cannabis Cultivation Activities
- Overview of Draft Policy and Staff Report
- Overview of Draft Cannabis General Order
- Small Irrigation Use Registration

# Background

- Three bills adopted in 2015 – Assembly Bills (AB) 243 and 266; Senate Bill (SB) 643 (MMRSA)
- SB 837 adopted in June 2016 – included clean up language for three 2015 bills (MCRSA)
- Proposition 64 passed November 2016, allowing recreational cannabis use for adults (AUMA)
- SB 94 adopted June 2017 – consolidated provisions of MCRSA and AUMA and established the Medicinal and Adult-Use Cannabis Regulations and Safety Act (MAUCRSA)

# State Water Board Responsibilities

“The state board or appropriate regional board shall address discharges of waste resulting from cannabis cultivation under [MAUCRSA] and associated activities, including by adopting a general permit, establishing waste discharge requirements...”

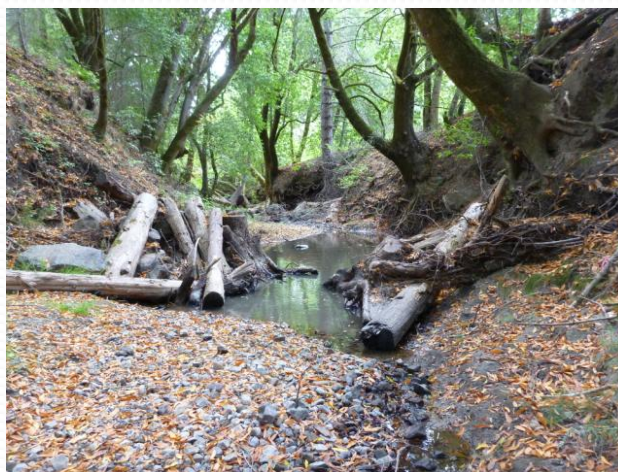
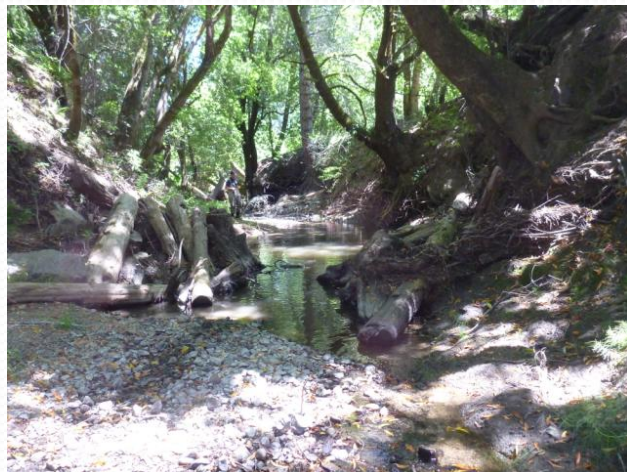
Water Code Section 13276(b)

# State Water Board Responsibilities

## (continued)

Ensure individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and flows needed to maintain natural flow variability

Business and Professions Code Section 26060.1(b)(1)



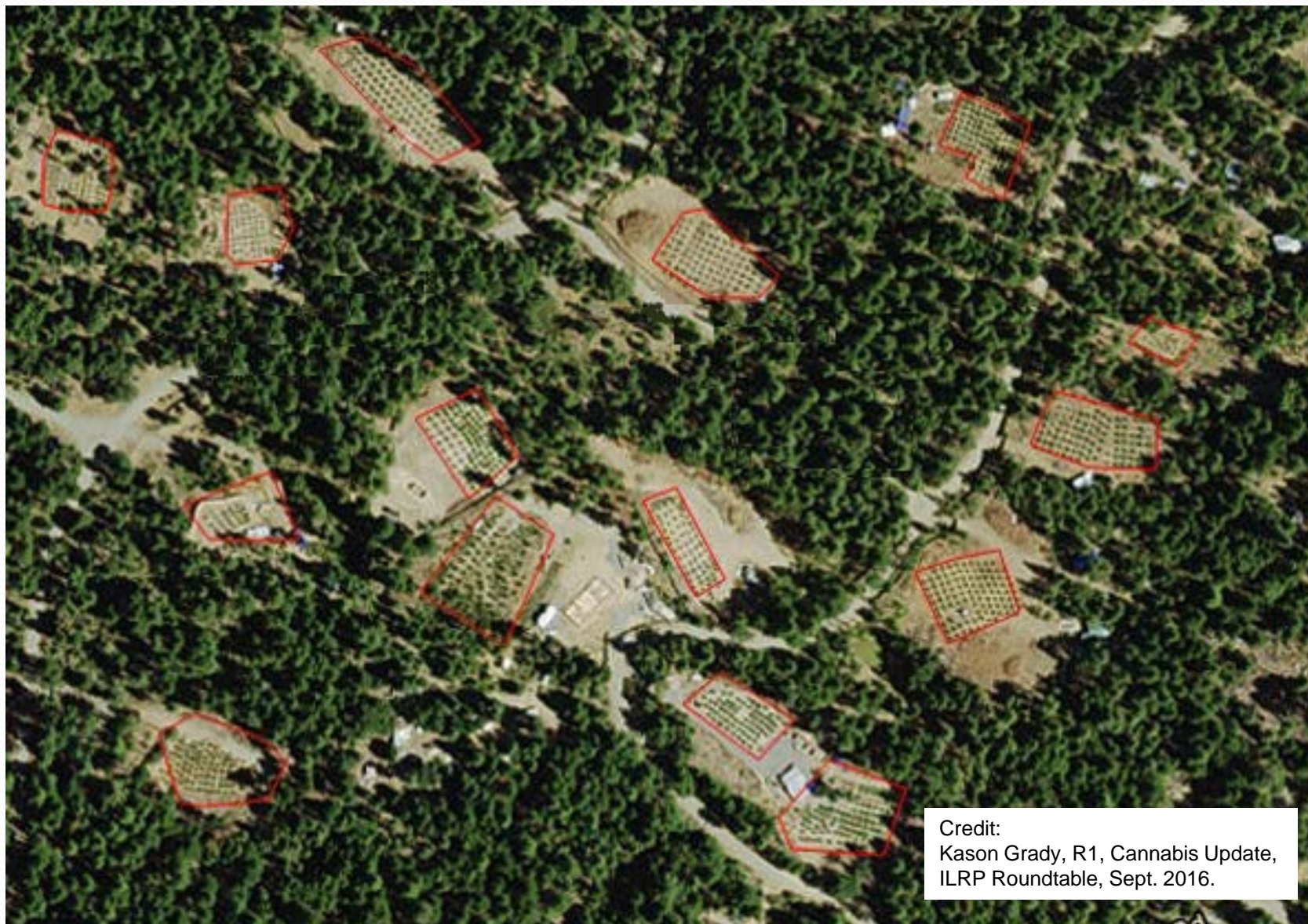
# State Water Board Responsibilities

## (continued)

- Develop policy for water quality control to establish principles and guidelines (requirements) for cannabis cultivation:
  - Shall include measures to protect springs, wetlands, and aquatic habitat from negative impacts of cannabis cultivation
  - May include requirements for groundwater extractions



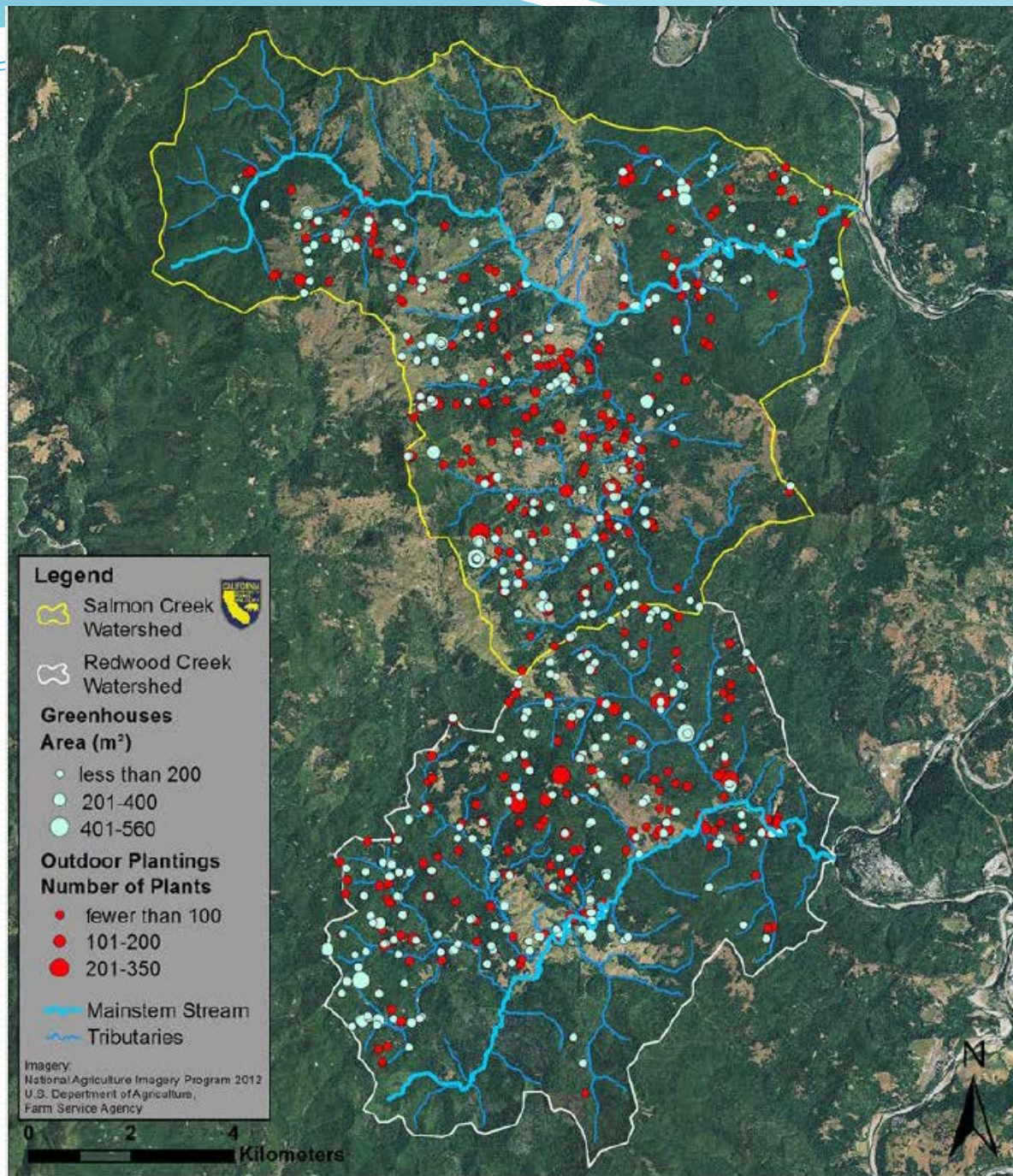
# Cannabis Cultivation Activities



Credit:  
Kason Grady, R1, Cannabis Update,  
ILRP Roundtable, Sept. 2016.



# Cumulative Impacts



Credit:  
Kason Grady, R1, Cannabis  
Update, ILRP Roundtable,  
Sept. 2016.

# Road Building Activities



Credit:  
Kason Grady, R1, Cannabis Update,  
ILRP Roundtable, Sept. 2016.

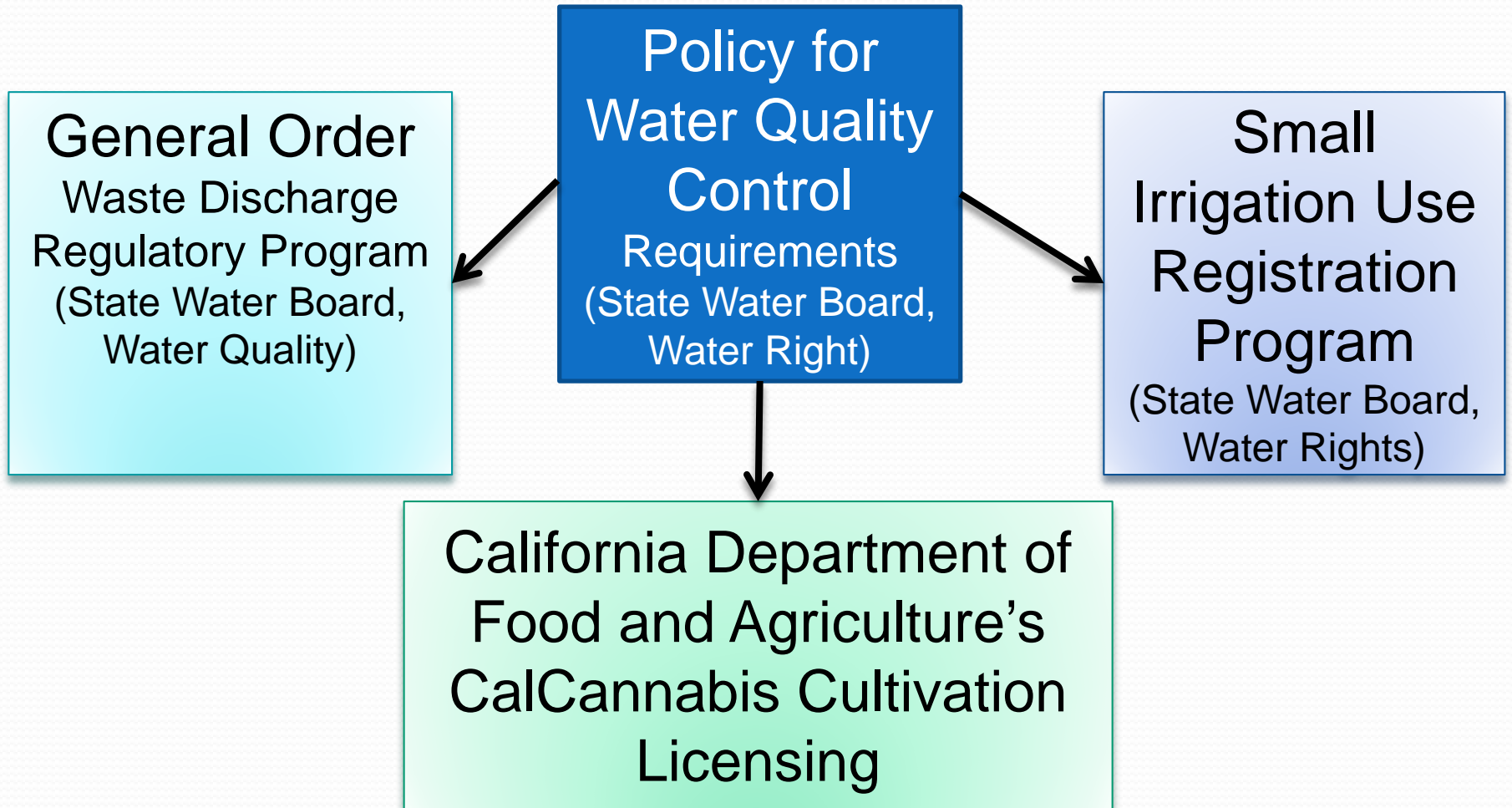
# Sediment Runoff in Fish-bearing Stream



# Water Diversion Impacts



# Cannabis Policy Regulatory Flow



# Draft Cannabis Policy and General Order

Focus of this presentation is documents that are out for public review and comment:

- Draft Cannabis Policy and Staff Report:
  - Policy describes overall structure of Board's proposed cannabis cultivation regulatory program, water quality and instream flow requirements
  - Staff Report provides background information and rationale for requirements in the Policy
- Draft Cannabis General Order – includes tier structure, fee structure, and environmental management plans

# Cannabis Cultivation Policy

(Principles and Guidelines for Cannabis Cultivation)

- Main Document
- Attachment A: Cannabis Cultivation Requirements
  - Section 1 – General Requirements and Prohibitions
  - Section 2 – Water Diversion and Waste Discharge Requirements (10 subsections)
  - Section 3 – Numeric and Narrative Instream Flow Requirements
  - Section 4 - Watershed Compliance Gage Assignments
  - Section 5 – Planning and Reporting
  - Section 6 – Useful Guidance Documents
- Attachment B: Glossary of Terms

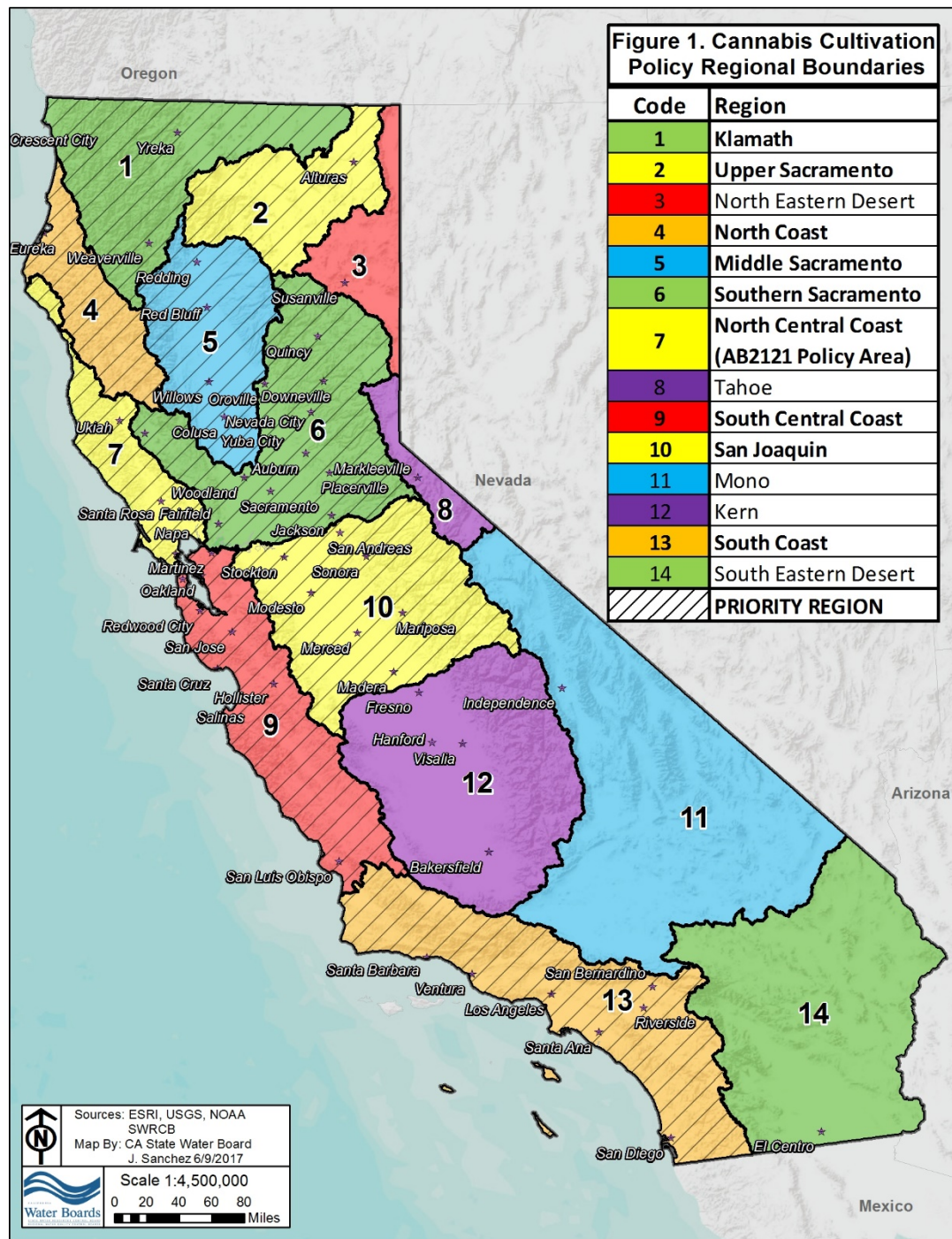
# Cannabis Cultivation Policy

## (Main Document)

- Provides overview of Water Boards' program and context for how it fits in with other cannabis regulatory programs
- Establishes 14 regions throughout state for instream flow requirements
- Continuing authority to amend Policy
- Describes how the Policy will be enforced



# Map of Regional Boundaries



# Cannabis Cultivation Policy (Enforcement)

- Enforcement of Policy requirements will be handled through various Water Boards authorities, including water rights, water quality, and public trust
- Appropriate penalties and other consequences for violations prevent cultivators that do not comply with requirements from obtaining an unfair competitive advantage and help ensure public confidence in regulatory framework
- Existing enforcement efforts such as Watershed Enforcement Team will continue as well

# Cannabis Cultivation Policy

## (General Requirements and Prohibitions)

Rules and authorities applicable to all cultivators, including:

- Right of access by agencies to inspect for compliance
- Laws about tribal lands and cultural resources
- General water quality rules such as riparian setbacks, limitations on slope of land being disturbed
- Cannabis General Water Quality Certification

# Cannabis Cultivation Policy

(Water Diversion and Waste Discharge Requirements)

Specific requirements for cultivation activities, such as:

- General erosion control measures for entire cultivation site
- Stream crossings and installation, culverts, road development
- Management of fertilizers, pesticides, and petroleum
- Cleanup, restoration, and mitigation on existing sites
- Proper soil, cultivation, and human waste disposal
- Control of irrigation runoff
- Appropriate methods of water diversion and storage
  - Maximum diversion rate: 10 gallon per minute (unless otherwise approved in existing water right)
- Winterization

# Cannabis Cultivation Policy

## (Numeric and Narrative Instream Flow Requirements)

### Narrative Instream Flow Requirement:

- 50% of streamflow shall be bypassed past point of diversion
- Surface water forbearance period: April 1 – October 31, possibly later depending on precipitation (initial diversion before December 15 may not commence until after seven consecutive days with flow above numeric instream flow)

### Numeric Instream Flow and Gage Requirements

- Compliance gages are listed in Policy. Diversions can only occur when daily average flow at assigned gage is above the minimum instream flow requirement.
- Diverters shall measure and record daily water diversion and use
- Gage installation requirements for additional gages used for compliance with numeric flow requirement

# Cannabis Cultivation Policy

(Numeric and Narrative Flow Requirements cont.)

## Groundwater Requirements:

- Instream low flow thresholds during the dry season are established at compliance gages as one mechanism to help monitor whether groundwater diverters are having a cumulative negative impact on instream flows
- If it is determined that groundwater diversions have the potential to significantly affect surface water supply, forbearance periods may extend to groundwater diverters

## Fully Contained Springs:

- Springs that do not run off a property in the absence of diversion and do not have surface or subsurface hydrologic connectivity at any time of year during all water year types may request that the 50% bypass requirement be waived (requires substantial evidence)
- Ability to divert based on minimum instream flow at compliance gage applies

# Cannabis Cultivation Policy

## (Watershed Compliance Gage Assignments)

- Policy establishes minimum monthly flows at compliance gages
- Watershed areas without existing gages are assigned a compliance gage for a different location in same watershed or a nearby watershed with similar flow characteristics
- During diversion season, cannabis cultivators are required to check their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at assigned gage
- Compliance gage assignments may change as more information becomes available

# Cannabis Cultivation Policy

## (Planning and Reporting)

- Specifies the plans and reports that are needed, such as:
  - Site management plan
  - Erosion and sediment control plan
  - Nitrogen management plan
  - Site closure plan
- More detail provided in Draft Cannabis General Order



# Cannabis Cultivation Policy

(Useful Guidance Documents and Attachment B)

## Useful Guidance Documents

- Links to helpful water quality facts and documents

## Attachment B

- Glossary of technical terms used in the Policy

# Cannabis Cultivation Policy

## Staff Report

- Overview of Cannabis Policy regions
- Background information on legislation and regulations
- Background and rationale for:
  - Policy requirements
  - Instream flow and gaging requirements
  - Compliance gage assignments (including methodology)
- Water quality antidegradation analysis

# General Waste Discharge Requirements (General Order)

- Developed by State Water Board to implement the requirements of the Principles and Guidelines, mainly for outdoor cultivation activities
- To address discharges from legal cultivation sites for protection of water quality
- Recognizes other permitting requirements that apply, but does not implement those requirements
- If applicable, will require water rights compliance, but a water right will not be provided in the General Order

# Why Prepare a General Order?

- Cannabis cultivation has grown exponentially – often located in sensitive areas
- Prop 215 initiated legal cultivation activities, Prop 64 is expected to greatly increase the activity
  - As many as 50,000 cultivation sites may exist in the state
  - A CDFA survey in August 2016 indicated 16,000 licenses would be sought
- CDFA will begin issuing cultivation licenses on January 1, 2018
  - Will require compliance with Water Boards' requirements
  - Many Regional Boards will need to provide coverage cultivation activities, but no order is in place. Statewide General Order addresses issue.

# General Order Approach

- Generally based on the North Coast RWQCB and Central Valley RWQCB 2015 orders
  - North Coast RWQCB Waiver of WDRs (765 enrollees)
  - Central Valley RWQCB General WDRs (659 enrollees)
- The General Order requires coverage based upon threat to water quality
- Tiered approach based on disturbed area and risk
  - Conditional exemptions may apply for some cultivation activities
- All dischargers must comply with applicable requirements in Attachment A of the Cannabis Cultivation Policy

# General Order Discharger Classifications

## Personal Use Exemption (non-commercial activity)

- Less than 1,000 ft<sup>2</sup> disturbed area
- Comply with setbacks, slope requirements, etc. or enroll as Tier 1

## Conditionally Exempt (commercial activity)

- Less than 2,000 ft<sup>2</sup> disturbed area
- Comply with setbacks, slope requirements, etc. or enroll as Tier 1

## Tier 1 (commercial activity)

- Disturbed area greater than 2,000 ft<sup>2</sup> and less than one acre
- Comply with setbacks, slope requirements, etc.
- Further categorized by risk (slope and setback compliance)

## Tier 2 (commercial activity)

- Disturbed area greater than one acre
- Comply with setbacks, slope requirements, etc.
- Further categorized by risk (slope and setback compliance)

# Personal Use Exemption

- Exempt from CDFA licensing requirements (non-commercial)
  - Recreational: up to six plants per property parcel
  - Medical: up to 100 ft<sup>2</sup> per patient, or if caregiver cultivating for patients, maximum five patients (500 ft<sup>2</sup>)
- Maximum 1,000 ft<sup>2</sup> disturbed area and 20% slope
- Contiguous cultivation area (all in one place)
- Complies with setback requirements
- Implements all applicable requirements in Attachment A of the Cannabis Cultivation Policy
- Coalitions or cooperatives cannot claim this exemption
- No registration or enrollment requirement

# Conditional Exemption

- Cultivators that produce commercial cannabis (medical or recreational) – CDFA license required
- Maximum 2,000 ft<sup>2</sup> disturbed area and 20% slope
- Contiguous cultivation area (all in one place)
- Complies with setback requirements
- Implements all applicable requirements in Attachment A of the Cannabis Cultivation Policy
- Registration under the General Order is required



# Tier 1 or Tier 2 Enrollees

- Cultivators that produce commercial cannabis (medical or recreational) – CDFA license required
- Tier determination is based on disturbed area
  - Tier 1 disturbs more than 2,000 ft<sup>2</sup>, less than one acre (43,560 ft<sup>2</sup>)
  - Tier 2 disturbs more than one acre
- Complies with setback requirements
- Implements all applicable requirements in Attachment A of the Cannabis Cultivation Policy
- Enrollment under the General Order is required

# Tier 1 & Tier 2 Risk Designations (Slope and Setback Compliance)

Low Risk	Moderate Risk	High Risk
<p>No portion of the disturbed area is located on a slope greater than 30 percent</p> <p><b><u>AND</u></b></p> <p>All of the disturbed area complies with the setback requirements</p>	<p>Any portion of the disturbed area is located on a slope greater than 30 percent,</p> <p><b><u>AND</u></b></p> <p>All of the disturbed area complies with the setback requirements</p>	<p>Any portion of the disturbed area is located within the setback requirements</p>

# Registration and Enrollment Process



## APPLICANT

- ✓ Enters information
- ✓ Answers water quality & water rights questions
- ✓ Self-certifies compliance with Attachment A and implementation schedule



## SURVEY WIZARD / CIWQS

- ✓ Generates Notice of Receipt with fee invoice
- ✓ Stores information for upload to CIWQS & eWRIMS



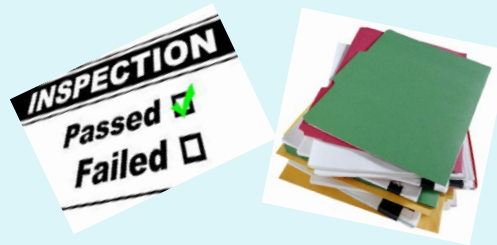
## APPLICANT

- ✓ Pays fees to Regional Water Board within 30 days



## Regional Water Board

- ✓ Sends Notice of Applicability to applicant
- ✓ Adds technical report(s) required to eSMR



## REGIONAL BOARD STAFF

- ✓ Reviews reports for compliance
- ✓ Inspects facilities and answers applicant questions

# Reporting Requirements

- Conditionally Exempt dischargers
  - Site Closure Report – due 90 days prior to ending cultivation
- Tier 1 and Tier 2 dischargers must submit reports based on the threat to water quality – due 90 days after application submittal
  - Low Risk – Site Management Plan and Site Closure Plan
  - Moderate Risk – Site Erosion Sediment Control Plan
  - High Risk – Disturbed Area Stabilization Plan
  - Large area cultivation sites – Nitrogen Management Plan
- Monitoring and Reporting Program (MRP)
  - Tier 1 and Tier 2 dischargers must submit annual monitoring reports (due March 1, each year)
  - Attachment B of the General Order contains the MRP
  - MRP can be revised by a Regional Water Board Executive Officer

# Important Reminders

- All commercial cannabis activities are required to apply for registration or enrollment status under the General Order
- Existing enrollees in the R1 and R5 orders are required to enroll under the statewide General Order
  - Transition to General Order by July 1, 2018
- Previously exempt cultivators under R1 and R5 orders are required to register under General Order
- All applications will be on-line via Internet
- Technical reports are due 90 days after the application is submitted (online application portal)
- Self-monitoring reports are due annually (March 1)

# Small Irrigation Use Registration Program

- Statewide Cannabis Small Irrigation Use Registration will be available after Policy adoption, expected late fall 2017
- Existing water diverters should continue to file appropriate water rights paperwork until cannabis registration is available
  - Only for surface water diverters
  - Cannabis cultivators whose water is sourced from groundwater, municipal systems, and rainwater capture do not need to file with Division of Water Rights

# Outreach and Coordination

## State Agency Outreach

- Regional Water Quality Control Boards, California Department of Fish and Wildlife, California Department of Food and Agriculture, and Department of Pesticide Regulation

## Public Outreach

- 8 public outreach meetings to solicit comments on Policy development – August 31 - October 4, 2016 (throughout CA)
- Calaveras County Water District Meeting – September 28, 2016 (Andreas)
- Siskiyou County Board of Supervisors Meeting – October 4, 2017 (Yreka)
- North Coast Regional Board Meeting – October 20, 2016 (Santa Rosa)
- North Coast Watersheds Science and Management Exchange Program – February 2, 2017 (Douglas City)
- California Water Action Plan Meeting – February 8, 2017 (Briceland)

# Outreach and Coordination (cont.)

- American Fisheries Society Conference – April 7, 2017 (Eureka)
- Mendocino County Permit Meetings – April 19, 2017 (Laytonville and Willits)
- Association of CA Water Agencies, Northern CA Water Association, Farm Bureau, wine stakeholders, water rights stakeholders – May 25, 2017
- CA State Association of Counties, Humboldt County Regional Meeting – June 29, 2017 (Eureka)
- California Department of Food and Agriculture DEIR Public Meetings – July 11-20, 2017 (throughout CA)
- CA Growers Association Meetings – July 29, 2016; January 18, 2017; and July 10, 2017 (Sacramento)
- Two public information meetings for the Draft Policy and Draft General Order – July 20, 2017 (Eureka) and July 27, 2017 (Sacramento)



# Tribal Outreach

- April 4, 2017 – Letters sent to tribes throughout California soliciting input on proposed condition
- 16 comment letters received from tribes, with 5 tribes requesting consultation
- Tribal cultural resource conditions have been modified based on comments
- Consultation will continue through the Policy development

# Contacts

## ***Small Irrigation Use Registration***

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# Questions?

