

**STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS**

**RESOLUTION REVISING GENERAL CONDITIONS TO BE APPLIED TO
SMALL IRRIGATION USE REGISTRATIONS FOR CANNABIS CULTIVATION**

WHEREAS:

1. On December 19, 2017, the State Water Resources Control Board (State Water Board) Division of Water Rights Deputy Director (Deputy Director for Water Rights) signed a Resolution Establishing General Conditions to be Applied to Small Irrigation Use Registrations for Cannabis Cultivation, which was superseded by Resolutions Revising General Conditions to be Applied to Small Irrigation Use Registrations for Cannabis Cultivation signed by the Deputy Director for Water Rights on April 10, 2018, and July 17, 2019.
2. Senate Bill 1839 (1988), also known as the Water Rights Permitting Reform Act of 1988, established Water Code sections 1228 through 1229.2, collectively known as the Water Rights Registration Program, which provides for the acquisition of water rights for Small Domestic Use purposes through registration of the use with the State Water Board. Senate Bill 1775 (2000) modified the Water Rights Registration Program to add registrations for Livestock Stockpond Use to the program. Assembly Bill 964 (2011) further modified the Water Rights Registration Program to add registrations for Small Irrigation Use and amended certain Water Code sections to provide additional options for Small Domestic Use registrations.
3. Water Code section 1228.6 requires the State Water Board to establish, and from time to time revise, reasonable general conditions for the Water Rights Registration Program.

Water Code section 1229 does not allow the State Water Board to register water rights for Small Irrigation Use until general conditions are established to protect instream beneficial uses. Water Code section 1229, subdivision (c), nonetheless authorizes the State Water Board to “establish general conditions for some methods of diversion or categories of small irrigation use before establishing general conditions for other methods or categories, in which case a registration for small irrigation use is authorized only for those methods or categories for which the board has established the general conditions for the protection of instream beneficial uses.”

4. On October 22, 2013, the State Water Board adopted Resolution No. 2013-0035, re-adopting *the Policy for Maintaining Instream Flows in Northern California Coastal Streams* (Instream Flows Policy) without any significant changes. The re-adopted Instream Flows Policy became effective on February 4, 2014.

The Instream Flows Policy establishes principles and guidelines for maintaining instream flows for the protection of fishery resources while minimizing water supply

impacts on other beneficial uses of water, such as irrigation, municipal use, and domestic use. The geographic scope of the Instream Flows Policy encompasses coastal streams from the Mattole River to San Francisco and coastal streams entering northern San Pablo Bay, and extends to five counties: Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt. The Instream Flows Policy applies to applications to appropriate water; small domestic use, small irrigation use, and livestock stockpond registrations; and water right petitions. The Instream Flows Policy prohibits water right applications and registrations to be filed for onstream reservoirs on Class I and Class II streams unless the reservoirs were constructed prior to July 19, 2006.

5. On October 17, 2017, the State Water Board adopted the *Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy), which was updated and re-adopted by the State Water Board on February 5, 2019. The Cannabis Policy establishes statewide principles and guidelines (requirements or conditions) for the irrigation of cannabis to protect water quality and beneficial uses, including instream beneficial uses. The Cannabis Policy requires cannabis cultivators to comply with all Cannabis Policy requirements, as well as applicable federal, state, and local laws, regulations, and permitting requirements. In the event of duplicative or conflicting requirements, the most stringent requirements apply. The requirements established by the Cannabis Policy are incorporated into and implemented through five regulatory programs: California Department of Food and Agriculture's CalCannabis Cultivation Licensing Program or its successor; the State Water Board's *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis General Order); the State Water Board's General Water Quality Certification for Cannabis Cultivation Activities (Cannabis General Water Quality Certification); the State Water Board's Cannabis Small Irrigation Use Registration (Cannabis SIUR) Program; and the State Water Board's Water Rights Permitting and Licensing Program.
6. The Cannabis Policy includes a provision that allows cannabis cultivators to enter into an agreement with California Department of Fish and Wildlife (CDFW) to implement a local cooperative solution that provides watershed-wide protection for aquatic species that is comparable to or greater than the instream flow requirements provided by the Cannabis Policy. The Cannabis Policy provides that a cannabis cultivator or cultivators may request approval from the Deputy Director for Water Rights to implement the agreement in place of the conditions or requirements that otherwise would apply to a Cannabis SIUR. Other local cooperative solutions may also be proposed by cannabis cultivators to the Deputy Director for Water Rights as an alternative means of reducing water use to preserve the required instream flows.
7. The delegation of authorities from the State Water Board to the Deputy Director for Water Rights (State Water Board Resolution No. 2012-0029) authorizes the Deputy Director for Water Rights to establish and revise a list of general conditions to be applied to registrations for Small Domestic Use, Livestock Stockpond Use, and Small Irrigation Use.

THEREFORE BE IT RESOLVED THAT:

The Deputy Director for Water Rights hereby revises the July 17, 2019, Resolution Revising General Conditions to be Applied to Small Irrigation Use Registrations for Cannabis Cultivation and revises the general conditions listed below to be applied to the following methods of diversion and specific categories of registrations for Small Irrigation Use:

Diversions to storage for cannabis cultivation not to exceed 20 acre-feet per annum. Water appropriated under this category of Small Irrigation Use may be used for irrigation, frost protection, or heat control of lands cultivated with cannabis as permitted in the Cannabis Policy. Uses may also include incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

GENERAL CONDITIONS

4. Quantity and Season:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **[Amount] acre-feet per year** to be collected from **[Month Day of each year to Month Day of the succeeding year] OR [Month Day to Month Day of each year]** and as permitted in the diversion season specified in the current version of the State Water Board's Cannabis Policy, whichever is more restrictive. The total storage capacity shall not exceed **[Amount] acre-feet**. Together, the rate of direct diversion and the rate of diversion to storage shall not exceed **42,000 gallons per day (gpd) or the diversion rate specified in the current version of the State Water Board's Cannabis Policy, whichever is more restrictive**. For onstream storage reservoirs, the diversion rate and diversion season bypass conditions may be modified by the Deputy Director for Water Rights (or designee) or the California Department of Fish and Wildlife as part of the onstream storage reservoir determinations under the Cannabis Policy.

5. No water shall be diverted or used under this right unless the right holder is in compliance with all applicable conditions and requirements, including the numeric and narrative instream flow requirements, of the current version of the State Water Board's Cannabis Policy, except as follows:

Diversion and use of water under this right may deviate from applicable conditions and requirements of the State Water Board's Cannabis Policy to the extent such diversion and use is in compliance with a local cooperative solution that supersedes specified general conditions of this right and which the Deputy Director for Water Rights has approved. To the extent of any conflict, the local cooperative solution shall supersede the general conditions of the Cannabis Policy as of the date the Deputy Director for Water Rights approves the local cooperative solution, unless the Deputy Director specifies a later effective date. The applicable conditions and requirements of this right shall revert to the general conditions of the Cannabis Policy if the local cooperative solution is withdrawn or canceled. Diversion or uses of water in violation of a local cooperative solution or agreement approved by the Deputy Director for Water Rights is

subject to enforcement as a violation of the Cannabis Policy and the conditions of this right.

A local cooperative solution or agreement [has/has not] been approved by the Deputy Director for Water Rights.

The current version of the State Water Board's *Cannabis Policy* and the approval status of any proposed local cooperative solutions or agreements are available online at: <https://www.waterboards.ca.gov/cannabis>.

6. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
7. Diversion works shall be constructed and water applied to beneficial use with due diligence.
8. No water shall be diverted under this right unless right holder complies with all lawful conditions required by the California Department of Fish and Wildlife. (Wat. Code, § 1228.6, subd. (a)(2).)
9. No water shall be diverted under this right unless it is diverted in accordance with the information set forth in the completed registration form as to source, location of point of diversion, purpose of use, place of use, quantity, and season of diversion. This information is reproduced as Conditions 1 through 5 of this certificate.
10. No water shall be diverted under this right unless right holder complies with all applicable state, city, county, and local laws, regulations, ordinances, permits, and license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building.
11. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.
12. The State Water Board reserves jurisdiction over this registration to change the season of diversion and rate of diversion based on later findings of the State Water Board concerning availability of water and the protection of beneficial uses. Any action to change the authorized season of diversion and rate of diversion will be taken only after notice to interested parties and opportunity for hearing. For changes required by amendments to the Cannabis Policy, the State Water Board may provide notice and the opportunity for a hearing by following the procedures specified in section 13147 of the Water Code.

13. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
 - a. Entry upon property where water is being diverted, stored, or used under a right issued by the State Water Board or where monitoring, samples, or records must be collected under the conditions of this right;
 - b. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by the State Water Board;
 - c. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and
 - d. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by the State Water Board, or as otherwise authorized by the Water Code.
14. Diversion of water under this right is subject to prior rights. Right holder may be required to curtail diversion or release water stored during the most recent collection season should diversion under this right result in injury to holders of legal downstream senior rights. If a reservoir is involved, right holder may be required to bypass or release water through, over, or around the dam. If release of stored water would not effectively satisfy downstream prior storage rights, right holder may be required to otherwise compensate the holders of such rights for injury caused.
15. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.
16. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.
17. If storage or diversion of water under this right is by means of a dam, right holder shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the California Department of Fish and Wildlife, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir. (Fish & G. Code, § 5937.)
18. The facilities for diversion under this right shall include satisfactory means of measuring

and bypassing sufficient water to satisfy downstream prior rights and any requirements of the California Department of Fish and Wildlife and the State Water Board's Cannabis Policy.

19. This right does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code section 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. section 1531 et seq.). If a "take" will result from any act authorized under this water right, the right holder shall obtain authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the state and Federal Endangered Species Acts for the project authorized under this right.
20. This right is subject to: 1) the submittal of an annual report of water use; and 2) satisfactory renewal, on forms prescribed by the State Water Board. This right is also subject to payment of annual fees. (Wat. Code, § 1228.5.)
21. This right shall be totally or partially forfeited for nonuse if the diversion is abandoned or if all or any part of the diversion is not beneficially used for a continuous period of five years.
22. This right is subject to enforcement, including but not limited to revocation, by the State Water Board if: 1) the State Water Board finds that the right holder knowingly made any false statement, or knowingly concealed any material fact, in the right; 2) the right is not renewed as required by the conditions of this certificate; or 3) the State Water Board finds that the right holder is in violation of the conditions of this right. (Wat. Code, § 1228.4 et seq.)
23. The State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting of diversions, withdrawals, releases, and streamflow in a standardized format if and when resources become available. Such real-time reporting will be required upon a showing by the State Water Board that the program and the infrastructure are in place to accept real-time electronic reports. Implementation of the reporting requirements shall not necessitate amendment to this right.

Use this term if the California Department of Fish and Wildlife conditions include a bypass flow requirement that is more restrictive than the Cannabis Policy requirements:

24. No water shall be diverted under this right unless the flow in [Source] is at or above [Amount] cubic feet per second, as determined at [Location].

Use this term if the California Department of Fish and Wildlife conditions include a reservoir mitigation plan requirement, and select the appropriate purpose(s) of the plan based on the California Department of Fish and Wildlife conditions:

25. No water shall be diverted under this right unless right holder is operating in accordance with a mitigation plan satisfactory to the California Department of Fish and Wildlife that addresses **eradication of non-native species, gravel and wood augmentation, and riparian habitat replacement.**

Use this signature block for Registration Certificates that are issued electronically:

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

This certificate was issued automatically as a result of the registrant self-certifying submittal of a water right registration filing in substantial compliance with Water Code §1228.3.

STATE WATER RESOURCES CONTROL BOARD



*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: July 14, 2020