

# AGUA CALIENTE BAND OF CAHUILLA INDIANS



November 26, 2018

State Water Resources Control Board  
Attn: Jeanine Townsend, Clerk to the Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



*Re: Comments on State Water Resources Control Board Draft Proposed Updates to the Cannabis Cultivation Policy*

To Whom It May Concern:

I am writing on behalf of the Tribal Council of the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe ("Tribe"). The Tribe has received numerous requests for consent to commercial cannabis cultivation activity in facilities located outside, but within 600 feet of, the Agua Caliente Indian Reservation ("Reservation") or located on fee lands within the Reservation. These requests originate from requirements of the State Water Resources Control Board ("Board") Cannabis Cultivation Policy ("Policy").<sup>1</sup> Board Policy cannot mandate the Tribe to take governmental action and issue a decision on proposed commercial cannabis activity, but the Tribe welcomes the opportunity to comment on such activity if it so chooses.

The Tribe prohibits all commercial cannabis activity on trust lands as a matter of tribal law,<sup>2</sup> and in accordance with federal law.<sup>3</sup> However, tribal law is generally not a barrier to proposed commercial cannabis activity located outside of the Reservation, or on fee land within the Reservation. The Tribe does reserve the authority, under *Montana v. United States*, 450 U.S. 544 (1981), to prohibit commercial cannabis activity on on-reservation fee lands, **on a case by case basis**, where a person has entered into a consensual relationship with the Tribe or its members through commercial dealing, contracts, leases or other arrangements, and/or where a person's conduct threatens or has some direct effect on the political integrity, economic security or health or welfare of the Tribe.

As we have communicated to the Board, the Tribe fully supports a revised Board Policy that allows tribes a specified time period to provide concerns, approval, or denial of commercial cannabis cultivation projects when they occur within 600 feet of, or on, an Indian reservation. However a deemed approval should occur if the tribe chooses not to comment on such a project within the specified time period. We have reviewed the Board's proposed updates to the Cannabis Cultivation Policy ("Proposed Policy"). We offer the following comments and revisions.

<sup>1</sup> "The cannabis cultivator shall not cultivate cannabis on tribal lands or within 600 feet of tribal lands without the express written permission of the governing body of the affected tribe or from a person deputized by the governing body of the affected tribe to authorize cannabis cultivation on tribal lands." State Water Resources Control Board Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation, October 17, 2017, at Attachment A, Number 19.

<sup>2</sup> Agua Caliente Band of Cahuilla Indians Commercial Cannabis Prohibition Ordinance No. 50.

<sup>3</sup> Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq.





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Attachment A, Section 1, No. 19

The following language is suggested to replace the current Attachment A, Section 1, No. 19:

*The Water Boards shall notify any affected California Native American tribe prior to acting on any proposal seeking to cultivate cannabis on or within 600 feet of the tribe's tribal lands.<sup>4</sup> A 45-day review period shall commence upon a tribe's receipt of such notice. During the review period, an affected tribe may accept, reject, or take no action regarding the cannabis cultivation proposal. If the affected tribe rejects the cannabis cultivation proposal the cannabis cultivator is prohibited from cultivating cannabis, as contemplated in the rejected proposal, on or within 600 feet of the affected tribe's tribal lands. If the affected tribe accepts the cannabis cultivation proposal or takes no action during the review period, resulting in a deemed approval, the Water Boards may proceed with a decision on the cannabis cultivation proposal.*

*As an alternative to accepting, rejecting, or taking no action on each cannabis cultivation proposal, California Native American tribes may notify the State Water Board's Executive Director in writing that they 1) reject all cannabis cultivation proposals, or 2) waive the 45-day review period for all cannabis cultivation proposals, on or within 600 feet of their tribal lands. Upon receipt of such notification, the Water Boards will abide by the tribe's decision. California Native American tribes may withdraw a previously issued decision regarding cannabis cultivation on or within 600 feet of their tribal lands by notifying the State Water Board Executive Director in writing. The Water Boards will abide by the withdrawal of the affected tribe's decision for any new cannabis cultivation proposals after receipt of such notice.*

*Nothing in this provision shall be construed to modify or interpret tribal law in any way.*

Attachment A, Section 1, No. 38

As noted above, the Tribe prohibits all commercial cannabis cultivation on trust lands of the Tribe and its members, which are included within the definition of tribal lands in the Proposed Policy. Attachment A, Section 1, No. 38, as proposed, purports to exempt certain indoor cannabis cultivation structures entirely from the tribal buffer described in Attachment A, Section 1, No. 19. This total exemption is unacceptable, as it purports to allow activity which is expressly illegal under tribal and federal law, commercial cannabis cultivation, on trust lands of the Tribe and its members, if the subject indoor cannabis cultivation structure meets certain requirements.

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<sup>4</sup> "Tribal lands" means lands recognized as "Indian country" within the meaning of title 18, United States Code, section 1151.



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Therefore, we suggest qualifying the first sentence in No. 38 by inserting “may be exempt from the” before “tribal buffer” and adding the following sentence to the end of Attachment A, Section 1, No. 38:

*Where an indoor cannabis cultivation structure meets the conditions of a) or b) above, but the cannabis cultivation structure is to be located on tribal lands, the requirements of the tribal buffer described in Attachment A, Section 1, No. 19 continue to apply.*

We thank you for considering these comments and revisions. Please direct any inquiries to my office at (760) 699-6952.

Sincerely,

John T. Plata  
General Counsel  
AGUA CALIENTE BAND OF CAHUILLA INDIANS