

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE  
JANUARY 21, 2014**

**ITEM 7**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION TO ALLOCATE FUNDING FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA) TO THE NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD (NORTH COAST WATER BOARD) FOR THE EEL RIVER MONITORING AND WATER QUALITY AWARENESS PILOT PROJECT (PROJECT)

**DISCUSSION**

The North Coast Water Board is requesting \$209,566 from the CAA to fund a public outreach and monitoring program to increase public awareness about individual and cumulative adverse impacts of improperly developed or managed crop cultivation, including marijuana cultivation, on private land and impacts to water quality and beneficial uses within the Eel River watershed. State Water Board Staff has reviewed the Project and has safety and legal concerns. These concerns could be addressed by restricting field visits to grow sites, where invitation by the property owner has been extended to project staff.

The Project consists of outreach to watershed residents, including marijuana growers on private property, regarding water quality impacts resulting from cultivation practices. The Project will include developing best management practices to address water quality impacts, monitoring of instream temperatures and flows in the watershed, developing education and outreach materials and providing technical assistance to local growers and small water districts to address water quality impacts. Community outreach will include public meetings and trainings, technical assistance, and media and website outreach. Monitoring results will be used to produce a global ArcGIS project and statistical analysis of flow, climate, and water temperature in the watershed.

In 2011, the Eel River Recovery Project (ERRP) was formed by concerned citizens in the watershed in response to concerns about diminishing flows, increasing pollution including toxic blue-green algae blooms, and the future of salmon runs. ERRP monitoring in 2012 established that large tributaries of the Eel River, including Tomki, Outlet and Ten Mile Creeks, were dry during the fall when historically they had been perennial streams. Concurrently, private land development and use for marijuana cultivation has increased exponentially throughout the North Coast region and continues to increase. Bare, unstable soil and slopes, filled streams, instream dams, instream pumps and hoses, and litter and refuse are common features seen by enforcement and resource protection agency staff on both trespass and non-trespass private property marijuana grow sites.

Most interaction with marijuana growers has been related to enforcement actions. According to the North Coast Water Board's application, an enforcement-only response to direct site restoration, pollution control, and reduction or prevention of the individual and cumulative downstream effects to water quality and beneficial uses is not as effective in improving water quality impacts as a combined response that includes community outreach and technical assistance.

In May 2013, the North Coast Water Board heard information in a public workshop about the impacts to water quality and beneficial uses associated with marijuana cultivation, including significant tributary flow depletion and substantially increased water pollution in a number of watersheds throughout the North Coast Region, including the Eel River watershed. Water use includes riparian diversions, diverting creeks out of the basin of origin, pond construction, storage tank installation, and extraction of stream underflow, often without State Water Resources Control Board (State Water Board) or county permits. Effective water quality management in the region remains a difficult problem for the State Water Board Division of Water Rights and the North Coast Water Board.

According to the North Coast Water Board application, the ERRP has established a level of trust within the Eel River community and therefore is positioned to reach out to the community about water quality concerns in a constructive manner. The final 2012 ERRP stream monitoring results demonstrated that major tributaries are drying up and the lower main branches of the Eel River are becoming stagnant and potentially toxic. As the public becomes more aware of threats to public health and fisheries, support for speedy water conservation implementation and pollution abatement is growing. The Project is anticipated to help increase water conservation, reduce pollution, and bring more Eel River watershed residents into compliance with water quality laws and regulations. The North Coast Water Board anticipates this will help lessen the need for State and Regional Water Board enforcement action and substantially assist with Total Maximum Daily Load (TMDL) implementation. Increased flows and decreased pollution will meet the latter objective, and improved water use and protection practices among watershed residents will help Water Board staff to focus limited enforcement resources on remaining watershed residents whose activities continue to have significant adverse effects on water quality.

The requested CAA funding would be used for: 1) water conservation and pollution prevention community outreach; 2) citizen assisted monitoring including flow and temperature monitoring; and 3) development of a Best Management Practices (BMP) Guide that addresses water quality impacts of marijuana cultivation. Technical assistance as proposed by the North Coast Water Board would include ERRP contractors visiting local landowners with water conservation questions and offering information on how to implement water conservation and water quality protection practices. Resulting monitoring results will be used to produce a global ArcGIS project and statistical analysis of flow, climate, and water temperature.

The State Water Board established Program Preferences for CAA funds based on statewide priorities and Strategic Goals outlined in the Strategic Plan Update 2008-2012. The Project meets the following CAA program preferences:

- Preference # 2: Projects that address Disadvantaged Communities Environmental Justice infrastructure needs.
- Preference # 3: Cleanup and/or abatement of 2006-listed water bodies that will help to implement a Total Maximum Daily Load (TMDL).
- Preference # 7: Projects that promote habitat restoration through non-profit organizations that collaborate with the Regional Water Boards and encourage public outreach and education.

The requested allocation is consistent with the purposes of Water Code Sections 13440-13443. Section 13443 provides that the State Water Board may order monies to be paid from the account to the North Coast Water Board to assist it in attempting to remedy a significant unforeseen water pollution problem, posing an actual or potential public health threat, or in overseeing and tracking the implementation of a supplemental environmental project required as a condition of an order imposing administrative civil liability.

## **FISCAL IMPACT**

According to the most current data, the uncommitted CAA balance is estimated to be no less than \$10 million.

## **REGIONAL WATER BOARD IMPACT**

Yes. The North Coast Water Board will oversee the project as contract manager; Eel River Recovery Project and the Mendocino County Resource Conservation District will take the lead for their respective parts of the project as project managers, working closely with North Coast Water Board staff.

Given the recent increase in private parcels developed for medical marijuana cultivation, extensive ground disturbance, water use, and environmental damage observed on many of these sites, North Coast Water Board staff anticipates dedicating an increasing percentage of staff resources towards investigation, enforcement, and cleanup oversight on such parcels, but with decreasing overall effectiveness in addressing cumulative watershed impacts over time. However, if successful, this project will lead to voluntary water quality and water conservation improvements among some growers; result in increased awareness, both in and outside of the project watershed, of environmental issues, requirements, and management practices/ measures to mitigate impacts; and serve as a model that can be applied to other communities and watersheds throughout the State facing similar situations.

## **POLICY ISSUE**

Should the State Water Board:

1. Approve the funding with the understanding that project staff and volunteers will conduct site visits on private cultivation sites by invitation only?
2. Approve the funding with the condition that the Project funds will focus on water quality impacts related to medical marijuana cultivation that is in compliance with state law on private land? The Project funding is limited to only addressing water quality impacts and does not in any way authorize, or is intended to facilitate the cultivation, use, sale or any other activities associated with marijuana operations.
3. Approve the funding with the condition that Project staff and volunteers will conduct surface water quality monitoring on any known marijuana cultivation sites by invitation only?
4. Make the funds available until August 31, 2016, any unexpended funds shall revert to the CAA as of October 31, 2016, unless the Deputy Director or Assistant Deputy Director of the Division of Financial Assistance authorizes an extension?

5. Approve the funding with the condition that no funds will be disbursed until a contract that includes specific and enforceable conditions consistent with this Resolution is executed?

#### **STAFF RECOMMENDATION**

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012, to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. It will also assist the Water Boards in reaching Goal 3 of the Strategic Plan Update: 2008-2012, to increase sustainable local water supplies available for meeting existing and future beneficial uses by 1,725,000 acre-feet per year, in excess of 2002 levels, by 2015, and ensure adequate flows for fish and wildlife habitat. It will also assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes. It will also assist the Water Boards in reaching Goal 5 of the Strategic Plan Update: 2008-2012, to improve transparency and accountability by ensuring that Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, by enhancing and improving accessibility of data and information, and by encouraging the creation of organizations or cooperative agreements that advance this goal, such as establishment of a statewide water data institute. Finally, action on this item will assist the Water Boards in reaching Goal 7 of the Strategic Plan Update: 2008-2012, to ensure that the Water Boards have access to information and expertise, including employees with appropriate knowledge and skills, needed to effectively and efficiently carry out the Water Boards' mission.

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

ALLOCATE FUNDING FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA)  
TO THE NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD (NORTH COAST  
WATER BOARD) FOR THE EEL RIVER MONITORING AND WATER QUALITY AWARENESS  
PILOT PROJECT (PROJECT)

### WHEREAS:

1. The North Coast Water Board is requesting \$209,566 from the CAA to fund a public outreach and monitoring program to increase public awareness about individual and cumulative adverse impacts of improperly developed or managed crop cultivation, including marijuana cultivation, on water quality and beneficial uses within the Eel River watershed (watershed);
2. Due to the inherent danger associated with field work in marijuana cultivation areas, State Water Board Staff has safety and legal concerns regarding the proposed Project; in particular, staff and volunteers conducting site visits and water quality monitoring on marijuana cultivation sites;
3. The Project consists of educational outreach to watershed residents, including marijuana growers on private property, regarding water quality impacts associated with cultivation practices as well as development of best management practices to address such impacts, monitoring of instream temperatures and flows, and development of technical assistance and outreach materials to address water quality impacts;
4. Community outreach will include public meetings and trainings, technical assistance, and media and website outreach. Monitoring results will be used to produce a global ArcGIS project and statistical analysis of flow, climate, and water temperature in the watershed;
5. The Eel River Recovery Project (ERRP) was formed by concerned citizens in the watershed in response to concerns about diminishing flows, increasing pollution including toxic blue-green algae blooms, and the future of salmon runs;
6. The final 2012 ERRP stream monitoring results demonstrated that major tributaries are drying up and the lower main branches of the Eel River are becoming stagnant and potentially toxic as marijuana cultivation throughout the North Coast region continues to increase;
7. Water use related to marijuana cultivation including riparian diversions and extraction of stream underflow are mostly done without State Water Resources Control Board (State Water Board) or county permits;

# DRAFT

8. Most interaction with marijuana growers has been related to enforcement actions. According to the North Coast Water Board's application, an enforcement-only response to address the individual and cumulative downstream effects to water quality and beneficial uses is not as effective in improving water quality impacts as a combined response that includes community outreach and technical assistance;
9. The Project will help to increase water conservation, reduce pollution, and is anticipated to bring more Eel River watershed residents who cultivate medical marijuana into compliance with water quality laws and regulations;
10. The requested funding from CAA would be used for: 1) water conservation and pollution prevention community outreach; 2) citizen assisted monitoring including flow and temperature monitoring; and 3) development of a Best Management Practices (BMP) Guide that addresses water quality impacts of marijuana cultivation; and
11. The requested allocation is consistent with the purposes of Water Code Sections 13440-13443. Section 13443 provides that the State Water Board may order monies to be paid from the account to the North Coast Water Board to assist it in attempting to remedy a significant unforeseen water pollution problem, posing an actual or potential public health threat, or is overseeing and tracking the implementation of a supplemental environmental project required as a condition of an order imposing administrative civil liability.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the funding with the understanding that project staff and volunteers will conduct site visits on private cultivation sites by invitation only.
2. Approves the funding with the condition that the Project funds will focus on water quality impacts related to medical marijuana cultivation that is in compliance with state law on private land. The Project funding is limited to only addressing water quality impacts and does not in any way authorize, or is intended to facilitate the cultivation, use, sale or any other activities associated with marijuana operations.
3. Approves the funding with the condition that Project staff and volunteers will conduct surface water quality monitoring on any known marijuana cultivation sites by invitation only.
4. Makes the funds available until August 31, 2016, any unexpended funds shall revert to the CAA as of October 31, 2016, unless the Deputy Director or Assistant Deputy Director of the Division of Financial Assistance authorizes an extension.

# **D R A F T**

5. Approves the funding with the condition that no funds will be disbursed until a contract that includes specific and enforceable conditions consistent with this Resolution is executed.

## **CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on January 21, 2014.

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Jeanine Townsend  
Clerk to the Board