

State Water Resources Control Board

**NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT,  
STAFF INFORMATIONAL WORKSHOP, BOARD WORKSHOP,  
AND PUBLIC HEARING**

**TO CONSIDER ADOPTION OF PROPOSED UPDATES TO:  
(1) CANNABIS CULTIVATION POLICY; AND (2) GENERAL WASTE DISCHARGE  
REQUIREMENTS AND WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR  
DISCHARGES OF WASTE ASSOCIATED WITH CANNABIS CULTIVATION  
ACTIVITIES**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Water Board or Board) will accept public comments on the proposed updates to the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy), *Cannabis Cultivation Policy Staff Report* (Staff Report), and *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis Cultivation General Order). Information on the comment period and how to submit written comments are detailed below under “Submission of Written Comments.”

**NOTICE IS ADDITIONALLY HEREBY GIVEN** that the State Water Board will hold one staff informational workshop and one Board workshop as detailed below.

<p><b>Staff Informational Workshop*</b></p>
<p><b>Thursday, November 8, 2018 4:00 P.M. – 6:00 P.M. River Lodge Conference Center 1800 Riverwalk Drive Fortuna, CA 95540</b></p>

\* The purpose of the staff informational workshop is for State Water Board staff to present information and answer questions on the proposed updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order.

<p><b>State Water Board Workshop**</b></p>
<p><b>Tuesday, October 16, 2018 Directly following regularly scheduled State Water Board meeting. Not to start before 1:00 P.M. Joe Serna Jr. CalEPA Headquarters Building Coastal Hearing Room 1001 I Street, Second Floor Sacramento, CA 95814</b></p>

\*\*Oral comments will be accepted and recorded at the Board Workshop and will be entered into the appropriate administrative record.

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

A quorum of the State Water Board may be present at one or more of the workshops, but no State Water Board action will be taken.

**NOTICE IS ADDITIONALLY HEREBY GIVEN** that the State Water Board will hold public hearings to receive oral comments regarding proposed updates to the: (1) Cannabis Policy; and (2) Cannabis Cultivation General Order. The State Water Board may adopt each of these items after their respective hearings. If the updates to the Cannabis Policy are adopted, it will be sent to the Office of Administrative Law (OAL) for approval and would become effective on or about April 1, 2019. The hearings will be conducted as part of the Board's February 5, 2019, State Water Board meeting. The location and start time of the Board meeting are provided below.

**Tuesday, February 5, 2019  
9:30 A.M.  
Joe Serna Jr. CalEPA Headquarters Building  
Coastal Hearing Room  
1001 I Street, Second Floor  
Sacramento, CA 95814**

Additional information on the hearings (Board meeting) is available at:  
[http://www.waterboards.ca.gov/board\\_info/calendar/](http://www.waterboards.ca.gov/board_info/calendar/)

#### **BACKGROUND**

On June 27, 2016, the Governor signed Senate Bill 837<sup>1</sup>, which among other things, codified Water Code section 13149 and authorized the State Water Board to adopt principles and guidelines (requirements) for cannabis cultivation as part of a state policy for water quality control. The State Water Board adopted the Cannabis Policy and Cannabis Cultivation General Order in October 2017 to minimize water quality degradation and low flow impacts associated with cannabis cultivation. The Cannabis Policy became effective upon OAL approval in December 2017.

The Cannabis Policy establishes requirements for cannabis cultivation activities to protect water quality and instream flows. The purpose of the Cannabis Policy is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. The Cannabis Policy requirements are primarily implemented by the State Water Board and Regional Water Quality Control Boards (collectively Water Boards) through the Cannabis Cultivation General Order and Cannabis Small Irrigation Use Registration regulatory programs, in addition to the California Department of Food and Agriculture's CalCannabis Cultivation Licensing Program.

The purpose of the Cannabis Cultivation General Order is to ensure, to the greatest extent possible, that discharges to waters of the State do not adversely affect the quality and beneficial uses of such waters. The Cannabis Cultivation General Order is a simplified Waste Discharge Requirement (WDR) available to cannabis cultivators to regulate discharges of waste associated with cannabis cultivation. Threats of waste discharge may be from irrigation runoff, over fertilization, pond failure, road construction, grading activities, domestic and cultivation related waste, etc. The Cannabis Cultivation General Order implements the Cannabis Policy requirements and addresses activities related to cannabis cultivation and associated land

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<sup>1</sup> Statutes 2016, Chapter 32, Committee on Budget and Fiscal Review.

development. Cannabis cultivation activities may occur indoor or outdoor. All commercial cannabis cultivators must obtain coverage under the Cannabis Cultivation General Order.

The primary updates to the Cannabis Policy and Cannabis Cultivation General Order focus on the three items summarized below.

1. **Tribal Buffers** – Proposed updates to the Cannabis Policy and Cannabis Cultivation General Order to provide options that California Native American tribes may implement for proposed cannabis cultivation activities that are on or within 600 feet of their tribal land. The options include: (1) Water Boards provide notification to tribes upon receipt of a request to cultivate on or within 600 feet of tribal lands and a 45-day period for the tribe to accept, reject, or not act regarding the proposal; (2) tribe may inform the State Water Board's Executive Director in writing that the tribe does not approve cannabis cultivation on or within 600 feet of its tribal lands; and (3) tribe may waive the 45-day notification period for cannabis cultivation on or within 600 feet of its tribal lands, thereby notifying the State Water Board that the tribe does not want to be consulted regarding cannabis cultivation requests that are on or within 600 feet of the tribal land. The update will also provide tribes with the ability to change their decision for new cannabis cultivation proposals within 600 feet of tribal land upon written notification to the State Water Board's Executive Director.

**Please see Cannabis Policy, Attachment A, Section 1, Requirement 19 for the specific proposed language.**

2. **Requirements for Conditionally Exempt Indoor Cultivation Sites** – Proposed updates to the Cannabis Policy and Cannabis Cultivation General Order to clarify which types of indoor cultivation sites propose a lower threat to discharge waste and allow those sites to qualify for an exemption to the riparian setback and 600-foot tribal buffer requirements. The proposed updates would provide indoor cultivation sites with an exemption from the riparian setback and tribal buffer requirements under the following circumstances: (1) have a county, city, or local building permit for the structure and a valid certificate of occupancy or amended certificate of occupancy for indoor cannabis cultivation; and (2) are connected to and discharge industrial wastewater to a permitted waste water treatment collection system and facility that accepts cannabis cultivation wastewater or in certain circumstances, discharges any industrial wastewater directly to an appropriately designed and connected storage tank located outside of the riparian setback, and the discharge is properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater.

The Regional Water Quality Control Board's Executive Officer may require compliance with the riparian setbacks if the Executive Officer determines that exempting the riparian setbacks would not be protective of water quality. All other Cannabis Policy requirements would still apply for indoor cultivation sites with exempted riparian setbacks (e.g., a fertilizer storage area located outside of the permitted structure would need to comply with the riparian setback requirements). Indoor cultivation sites that do not meet the requirements above are subject to all applicable Cannabis Policy requirements, including riparian setbacks.

**Please see Cannabis Policy, Attachment A, Section 1, Requirement 38 for the specific proposed language.**

3. **Onstream Reservoirs** – Proposed updates to the Cannabis Policy that provide a path for cannabis cultivators with certain **pre-existing** onstream reservoirs to obtain a Cannabis Small Irrigation Use Registration (SIUR). As proposed, a cannabis cultivator may qualify for a SIUR if the following conditions are met: 1) the reservoir existed prior to October 1, 2016; and 2) Division of Water Rights Deputy Director (or designee) and California Department of Fish and Wildlife (CDFW) determine that removal of the reservoir or installation of off-stream storage would cause more environmental damage than continuing to use the onstream reservoir for diversion and storage. The proposed updates provide the Deputy Director (or designee) and CDFW with the ability to establish conditions and require modifications to ensure ongoing operation of the onstream reservoir is protective of water quality and aquatic resources. The proposed updates also include monitoring and measurement requirements consistent with similar requirements of the Cannabis Policy for off-stream diversion and storage.

**Please see Cannabis Policy, Attachment A, Section 2 Requirements 79, 80, and 83 for the specific proposed language.**

Updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order, also include minor clean up and clarifications based on feedback received during initial implementation efforts. Proposed updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order are shown in **red bold/underline** for new text and **red bold/strike out** for deleted text.

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Water Code section 13149(b)(1) provides that the requirements for cannabis cultivation (i.e., the Cannabis Policy) are exempt from the California Environmental Quality Act (CEQA). The Cannabis Policy includes updates to requirements specified in Attachment A for cannabis cultivators to minimize the discharge of waste to waters of the state. The Cannabis Policy provides that those water quality requirements shall be implemented through the Cannabis Cultivation General Order, which lays out waste discharge requirements for waste from cannabis cultivation. The Cannabis Cultivation General Order implements this directive by requiring cannabis cultivators to comply with the Cannabis Policy. In that context, the Cannabis Cultivation General Order merely implements aspects of the requirements that the Legislature has already determined are exempt from CEQA. The State Water Board therefore will rely on the following CEQA exemptions:

- Water Code section 13149(b)(1) (exempting the requirements adopted pursuant to section 13149)
- California Code of Regulations, title 14, section 15268 (statutory exemption for “ministerial projects”)
- California Code of Regulations, title 14, section 15061(b)(3) (CEQA does not apply where it can be “seen with certainty” that there will not be significant environmental impacts from the action in question)

#### **DOCUMENT AVAILABILITY**

The draft updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order are available online at: <http://www.waterboards.ca.gov/cannabis/>.

Those without Internet access may request a paper copy of the draft proposed updates to the Cannabis Policy or Cannabis Cultivation General Order by calling Mina Chon at (916) 319-0745.

### SUBMISSION OF WRITTEN COMMENTS

The State Water Board will accept written comments on the proposed updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order. Written comments must be received by **12:00 P.M. (noon) on Tuesday, November 27, 2018**. **The State Water Board will ONLY respond to comments on the proposed updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order**. Written comment letters may be submitted electronically (email), by fax, U.S. Mail, or courier. Electronic submittals must be emailed to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). Written comments may also be submitted by hard copy and be addressed to:

<u>Hand/Courier Delivery</u>	<u>U.S. Mail Delivery</u>
State Water Resources Control Board Attn: Jeanine Townsend 1001 I Street, 24 <sup>th</sup> Floor Sacramento, CA 95814	State Water Resources Control Board Clerk to the Board Attn: Jeanine Townsend P.O. Box 100 Sacramento, CA 95812-0100

**On all comment letters, please indicate clearly the subject of your comments, as follows:**

**“Comment Letter – Updates to Cannabis Policy and Staff Report,” or**

**“Comment Letter – Updates to Cannabis Cultivation General Order”**

Electronic submittals shall be in portable document format (pdf) (less than 15 megabytes in total size). If the file is greater than 15 megabytes in total size, then the comment letter may be submitted by fax at (916) 341-5620. U.S. Mail must be received (not postmarked) at the State Water Board offices by the close of the comment period. Couriers delivering comment letters must check in with lobby security personnel, who can contact Ms. Townsend at (916) 341-5600.

### PROCEDURAL MATTERS

At the hearings there will be no sworn testimony or cross-examination of witnesses. However, the State Water Board and its staff may ask clarifying questions. Participants will be given an opportunity to summarize and/or supplement their written materials with oral presentations. To ensure a productive and efficient hearing in which all participants have an opportunity to participate, oral comments will be limited to three minutes unless otherwise authorized by the Board Chair. For other presentation recommendations, please visit the State Water Board’s web site at: [http://www.waterboards.ca.gov/board\\_info/meetings/board\\_presentations.shtml](http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml).

### EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING ITEMS

This item is subject to the ex parte communication disclosure requirements of Water Code section 13287, as explained at:

[http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

Any communications between interested individuals and State Water Board members (other than at a noticed Board meeting or submitted as a comment letter in compliance with this public notice) must be disclosed by the interested person within seven days of the communication. Sample disclosure forms are available at:

[http://www.waterboards.ca.gov/laws\\_regulations/docs/swrcb\\_godf\\_fillin.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/swrcb_godf_fillin.pdf).

Questions concerning the hearings should be directed to Cannabis Section staff, by telephone at (916) 341-5363 or via email at [CannabisWR@waterboards.ca.gov](mailto:CannabisWR@waterboards.ca.gov).

**PARKING AND ACCESSIBILITY**

For directions to the Joe Serna, Jr. CalEPA Building and public parking information, please refer to the map on the State Water Board web site at:  
<http://www.calepa.ca.gov/headquarters-sacramento/location/>.

The CalEPA Building is accessible to persons with disabilities. Individuals requiring special accommodations are requested to call (916) 341-5254 at least five working days prior to the meeting. Telecommunications device for the deaf (TDD) users may contact the California Relay Service at: (800) 735-2929 or voice line at (800) 735-2922.

**WEBCAST INFORMATION**

Video and audio broadcasts of the October 16, 2018 State Water Board workshop (in Sacramento only) and public hearings will be available via the Internet and can be accessed at:  
<https://video.calepa.ca.gov/>.

All visitors to the CalEPA Building are required to sign in and obtain a badge at the Visitor Services Center located just inside the main entrance (10<sup>th</sup> Street entrance). Valid picture identification may be required. Please allow up to 15 minutes for security clearance.

**FUTURE NOTICE**

The State Water Board staff informational workshop, Board workshop, and public hearings will be at the times and places noted above. Any change in the date, time, and place of the workshops and public hearings will be noticed on the State Water Board's cannabis cultivation webpage: [http://www.waterboards.ca.gov/water\\_issues/programs/cannabis/](http://www.waterboards.ca.gov/water_issues/programs/cannabis/).

**ADDITIONAL INFORMATION AND CONTACT INFORMATION**

Please direct all questions regarding the proposed updates as indicated below:

**Cannabis Policy** – (916) 341-5363 or [CannabisWR@waterboards.ca.gov](mailto:CannabisWR@waterboards.ca.gov)  
**Cannabis Cultivation General Order** – (916) 341-5580 or  
[DWQ.Cannabis@waterboards.ca.gov](mailto:DWQ.Cannabis@waterboards.ca.gov)

September 28, 2018  
Date

  
Jeanine Townsend  
Clerk to the Board