

State Water Resources Control Board

**Responses to Comments on Proposed
Updates to the Cannabis Policy,
Cannabis Policy Staff Report, and
Cannabis Cultivation General Order**

February 2019

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LIST OF COMMENTERS

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COMMENTS ON PROPOSED UPDATES TO THE CANNABIS POLICY AND CANNABIS CULTIVATION GENERAL ORDER

CONDITIONALLY EXEMPT INDOOR CULTIVATION

INDOOR CUTLIVATION

YOCHE DEHE WINTUN NATION, ANTHONY ROBERTS, TRIBAL CHAIRMAN

“Both options presented in proposed Attachment A, Section 1, Requirement 38, allow indoor cannabis cultivators to avoid compliance with regulatory requirements. Indoor cannabis cultivation projects can impact tribal cultural resources just as surely as those conducted outdoors. Therefore, a buffer remains appropriate. Again we request that this element of the proposed update be withdrawn.”

AGUA CALIENTE BAND OF CAHUILLA INDIANS, JOHN PLATA, GENERAL COUNSEL

“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.

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.”

ROUND VALLEY INDIAN TRIBES, ERICA MCMILIN, ATTORNEY

“Indoor Cannabis Cultivation Structures Should Not be Exempt from the Tribal Buffer Requirement. The proposed exemption for certain indoor cultivation is not acceptable to the Tribes. The exemption as proposed appears to apply only to cultivators that discharge their wastewater to a wastewater treatment system that accepts cannabis wastewater or discharge their wastewater directly to a storage tank (which must be outside of the Riparian Setback) and then properly dispose of it at a treatment facility. However, even with these protocols in place, there is still some risk of improper wastewater discharge. Moreover, the Tribes may have other reasons for wishing to prohibit cannabis cultivation -- indoor or outdoor -- on their lands. The Tribes suggest that Indoor Cannabis Cultivation Structures should not be exempt from the Cannabis Policy’s requirement for tribal authorization on or within 600 feet of the “Tribal Buffer.”

There Should be a Parallel Exception to the Riparian Setback Exemption if the Tribe determines an Exemption Would Not Protect Water Quality. The proposed updates include an exception to the riparian setback exemption if the Regional Water Board's Executive Officer determines an exemption would not protect water quality. The SWCRB should add the following exception to the Tribal Buffer Exemption for indoor cultivators: "The tribal buffer exemption shall not apply if the Tribe's Tribal Council or other Authorized Representative determines that an exemption from the tribal buffers is not sufficiently protective of water quality."

At Minimum, Tribes Should Receive Notice of All Existing and Proposed Indoor Cannabis Cultivation Structures That Would Qualify Under the Exemption. At a minimum, the SWCRB should notify the Tribes of all cannabis cultivation, whether indoor or outdoor, on and within 600 feet of tribal land in order for the Tribe to effectively protect its water supply and natural resources. The Tribes are a sovereign government that are responsible for the safety and well-being of its people and must be informed of what is happening on tribal land. Finally, cannabis is still illegal under federal law. Therefore, the Tribes must be aware of all cannabis cultivation -- indoor or outdoor -- occurring on tribal land."

RESPONSE

The indoor riparian setback and tribal buffer exemption only applies to indoor cultivation sites located within the 600-foot buffer to tribal lands and does not apply to any sites located on tribal lands. In addition, the Cannabis Policy specifies that it does not amend or interpret tribal law or tribal jurisdiction in any way.

The Water Boards have a responsibility to protect current and future beneficial uses of surface water and groundwater resources. The facilities described in this condition are completely enclosed facilities with a permanent roof, and relatively impermeable floor. All waste discharge occurs into an accepting sewer or is transported offsite to an accepting wastewater treatment facility.

The State Water Board has determined the exemptions for certain indoor cultivation sites that meet the conditions in Attachment A, Requirement 19 of the Cannabis Policy are protective of water quality and tribal resources for the following reasons:

1. It limits the exemptions to urban sites. The indoor exemptions are generally designed for sites in developed areas, with established infrastructure, where the threat to water quality is low despite their proximity to urban streams.
2. It maintains protection of water quality against the impacts of cannabis cultivation. Discharging wastewater to a treatment collection system eliminates the inherent risk of spills and leaks associated with storing wastewater onsite and transferring it regularly from the tank to a truck.

INDOOR CULTIVATION - DEFINITION AND SETBACK REQUIREMENTS

IVAN VAN WINGERDEN, FLORA COAST

"We are strongly opposed to the Water Board's determination that we are a "Tier 2, High Risk" operation. The CGO [Cannabis Cultivation General Order] requires that grow operations in greenhouses with dirt floors are considered "outdoor" and is therefore required to be enrolled under Waste Discharge Requirements, not the Waiver of Waste Discharge Requirements. This designation as "outdoor" is not only inconsistent with MAUCRSA (Medical and Adult Use

Cannabis Regulatory Safety Act) which classifies us as “mixed light,” but is also inaccurate and punitive to highly efficient and sophisticated cannabis cultivation greenhouse operations.

It is not possible for us to qualify for an indoor conditional exemption because we cannot meet the criteria for indoor sites. It is not feasible to lay down plastic liner or an impermeable floor, or lay concrete, in our existing greenhouses. This would be cost prohibitive and disruptive to our entire operation, and bad for the environment.”

CARP GROWERS, WINFRED VAN WINGERDEN, PRESIDENT

“Categorization as an “outdoor” operation, which requires us to enroll under Waste Discharge Requirements, not the Waiver of Waste Discharge Requirements. Classifying our members’ operations as “outdoor” is problematic because it is inaccurate and inconsistent with the State cannabis regulations (MAUCRSA). The State considers us “mixed light,” since our operation is unique, as it takes place in greenhouses - not “indoor” or “outdoor.” It is not feasible for us to install impermeable floors and qualify for an indoor exemption.”

DANIEL GRACE, DARK HEART NURSERY

“The proposed rules do not create enough clarity as to which structures can qualify as “indoor.” As a result, we are already seeing that regional waterboards are interpreting the rules differently creating tremendous uncertainty for operators throughout the state. In order to clarify and reduce this uncertainty, we request that the Board provide additional definition and/or examples for the terms “permanent roof” and “permanent relatively impermeable floor.”

The term “permanent roof” has especially come under scrutiny as some regional boards have interpreted polyethylene film roofs as not qualifying as permanent. Single or double polyethylene roofs are commonly used throughout the state as a cost-effective component in permanent greenhouse construction. Properly maintained and affixed to a permanent greenhouse structure, these roofs commonly last 5 to 10 years, or more. We request that the Board clarify that these roofs qualify as permanent, Either by providing a list of example roofing materials (such as: polyethylene film, polycarbonate panel, fiber glass, glass, etc) or by stating an engineering criteria (for example: permanent roofs are those which have been engineered with an expected life exceeding 4 years). Should the Board be concerned with good upkeep of these structures, we think it is reasonable that permit approval is conditioned on faithful maintenance of the roofing system, just as it might be conditioned on the upkeep of other building systems.

Regarding the term “permanent relatively impermeable flooring,” we ask that the Board expand its list of example flooring materials. Such a list might include engineered earthen systems (such as clay barrier), impermeable membrane systems, or any other systems certified by a qualified engineer as being likely to prevent groundwater intrusion.”

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Attachment A, Item 38, Page 28: Please clarify that Mixed Light cultivation is included in the in the conditional exemption for Indoor so long as the structure meets the same criteria. Many cultivators are attempting to reduce their carbon footprint and are using indoor type structures with skylights and light tubes.”

HANNAH NELSON (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Attachment A, Page 28, Item 38, exemption policy...if it could be reworded to include mixed light in exactly the same kind of structure as indoor and same circumstances could be considered for an exemption. Encourage people to use less energy.”

JEREMY POPE

“..., in regard to the potential exemption from the 600’ tribal buffer; the cultivation style (Mixed Light vs. Indoor) should not have such a varying degree of policy. For instance, a Mixed Light operation with a commercial greenhouse would have impermeable floors and walls. Therefore, producing an equivalent threat to both water quality and environmental impact as an Indoor operation. Moreover, an operation with hoop houses built with impermeable floors and siding would also produce an equivalent impact. The main difference being the amount of electricity utilized in which case an Indoor operation provides an increased environmental impact. There is no reason that these cultivation styles should have such disparate policies. As long as there is siding and impermeable flooring the threat to water quality remains consistent across cultivation styles.”

WINFRED VAN WINGERDEN, PRESIDENT, CARP GROWERS

“Opposed to determination as “high risk, Tier 2” operations due to location within creek setbacks and classification as “outdoor”. Many of our members have infrastructure within the 150 foot setback requirements for Arroyo Paredon Creek, which requires them to enroll the site as Tier 2 High Risk. While we understand the importance of the setback, due to the scale and number of operators this impacts, we are hopeful for an opportunity to work with your Board on a better solution to address operators within the setback, who cannot move their infrastructure. Requiring a large number of cultivators to enroll as Tier 2 High Risk is unreasonable and unsustainable.”

IVAN VAN WINGERDEN

“Secondly, because portions of our greenhouse are within the 150 foot setback from a creek , we are required to enroll as Tier 2 High Risk... It is impossible to move our pre-existing greenhouse out of the setback, which requires us to develop an individual Waste Discharge Requirement. We encourage you to consider exceptions for responsible growers who are utilizing pre-existing infrastructure. It is unreasonable to institute a policy that is punitive to farmers who are simply using infrastructure that was developed years ago.”

RESPONSE

The Water Boards have a responsibility to protect current and future beneficial uses of surface water and groundwater resources. Water Code section 13276(b) provides that each Regional Water Board or the State Water Board shall address discharges of waste resulting from cannabis cultivation by addressing a list of waste discharges that may result from cannabis cultivation. Required protections include: site development and maintenance, erosion control, and drainage; stream crossing installation and maintenance; and among other things riparian and wetland protection and management. The Cannabis Policy and Cannabis Cultivation General Order are not intended to be consistent with the definition of indoor or mixed light defined by the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA defines indoor and mixed light facilities based on light wattage used, while the

Cannabis Policy and Cannabis Cultivation General Order define indoor versus outdoor based on the potential of the site to impact water quality (both surface water and groundwater).

The Cannabis Policy defines indoor cultivation as “*Commercial cannabis cultivation activities that occur within a structure with a permanent roof, a permanent relatively impermeable floor (e.g., concrete or asphalt paved) ..., are classified as conditionally exempt.*” A permanent roof or relatively impermeable floor can be composed of a variety of materials that meet the requirements. The Cannabis Policy and Cannabis Cultivation Order provide guidance and performance standards to define what is considered impermeable, but does not limit new and emerging materials that are shown to meet the indoor requirements. Cultivators can also request that the applicable Regional Water Board review manufacturer specifications and site-specific engineering design reports to determine if a facility qualifies for the conditional indoor waiver.

In addition to the permanent roof and relatively impermeable floor, indoor facilities are required to discharge all irrigation tail water, hydroponic wastewater, or other industrial wastewater from indoor cannabis cultivation activities to: 1) a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater, 2) an onsite wastewater treatment system under separate regulatory authorization (e.g., waste discharge requirements [WDRs], conditional waiver of WDRs, or other permit mechanism), or 3) as provided in the proposed updates to the Cannabis Policy and Cannabis Cultivation General Order, if adopted by the State Water Board, to an appropriate storage container to be properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater.

Greenhouses that do not meet the indoor requirements and are located in the riparian setbacks pose a higher threat to groundwater and surface water quality. Due to the variability in greenhouse construction, floor material, cannabis cultivation techniques, cannabis cultivation wastewater discharge or collection infrastructure, and other site-specific practices the State Water Board cannot grandfather in all existing greenhouses under the Cannabis Policy indoor cultivation definition or exempt them from the riparian setback requirements. As noted in the comments, the Cannabis Policy, does however, allow the applicable Regional Water Board to adopt site-specific WDRs or an enforcement order for a cannabis cultivator with requirements that are inconsistent with the setbacks in the Cannabis Policy if the Regional Water Board Executive Officer determines that the site-specific WDRs or enforcement order contains sufficient requirements to be protective of water quality. This is an appropriate and flexible approach to manage the risk of potential impacts to water quality from discharges of waste from greenhouses located in the riparian setbacks. In addition, if the proposed Cannabis Policy updates are adopted by the State Water Board, facilities that are classified as indoor and meet the riparian and tribal setback exemptions may qualify to operate within the riparian setback.

PROHIBITION OF DISCHARGE OF WASTEWATER

WINFRED VAN WINGERDEN, PRESIDENT, CARP GROWERS

“We encourage your Board to amend the CGO which prohibits operators from discharging water on conventional crops. We believe this is an efficient and responsible discharge method, which reduces the amount of new water and nutrients that would need to be applied to conventional crops. (Currently the CGO requires that wastewater be hauled, sent to a treatment facility or treated onsite.) If this is not amended, we will have to develop an individual WDR for the entire operation, which is overly onerous and unreasonable.”

IVAN VAN WINGERDEN, FLORA COAST

“Lastly, we are opposed to the provision of the CGO which states that wastewater must be sent to a treatment facility, treated onsite (not including septic) or hauled. We strongly believe that discharging water to conventional crops is an appropriate, sustainable and safe method of disposal which should be permitted without needing an individual WDR. We currently discharge irrigation tailwater to avocado trees, which is an environmentally friendly use of water and reduces the amount of new water and nutrients that would need to be applied to the non-cannabis crop regardless.”

IVAN VAN WINGERDEN, FLORA COAST

“For operations such as our greenhouse, I urge you to consider revising the CGO to conditionally waive impermeable permanent greenhouses that recapture all of their hydroponic tail water and can demonstrate their over-drain tail-water is 100% reused. Any water that is used on site, stays on site, and does not leach into the soil, septic system, or run off site. This revision would support greenhouse growers who do not discharge any wastewater that adversely affects creeks and groundwater.”

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Also, please consider a modification to the wastewater tank and licensed hauling provisions to the extent that recycled or rehabilitated water should be able to be used in the cultivation without the need to demonstrate waste water collection and licensed hauling. For small cultivators (Mendocino County Indoor cultivators are either less than 500 square feet or up to 2500 square feet) cannot afford the hauling fees. The licensed wastewater haulers require a minimum charge even if the amount of wastewater is minimal. So far, no permitted wastewater treatment facility that provides wastewater treatment in Mendocino County is willing to accept cannabis wastewater.”

RESPONSE

The Cannabis Policy classifies commercial cannabis cultivation activities as conditionally exempt if they occur within a structure with a permanent roof and a permanent relatively impermeable floor (e.g., concrete or asphalt paved). In addition to the permanent roof and relatively impermeable floor, indoor facilities are required to discharge all irrigation tail water, hydroponic wastewater, or other industrial wastewater from indoor cannabis cultivation activities to: 1) a community sewer system consistent with the sewer systems requirements, 2) an onsite wastewater treatment system under separate regulatory authorization, or 3) as provided in the Cannabis Policy and Cannabis Cultivation General Order updates, if adopted by the State Water Board, an appropriate storage container to be properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility.

The definition of cannabis cultivation wastewater includes all wastewater associated with indoor cannabis cultivation operations and activities and is not limited to only water used for irrigation. Cannabis cultivation wastewater from indoor cultivation may not only contain residual minerals and nutrients, it can contain pesticides, fungicides, algacides, various cleaning solvents, etc. Discharge volume and constituent concentrations change with time, facility size, and site-specific cultivation techniques. The State Water Board is not aware of any current indoor cannabis cultivation operations that can demonstrate that their cannabis wastewater can be fully treated, recycled, and reused for cannabis cultivation with zero waste over long periods of time, without any discharges or risk of discharges.

Currently, any discharges of irrigation tail water, hydroponic wastewater, or other miscellaneous industrial wastewaters from indoor cannabis cultivation activities to an on-site wastewater treatment system (e.g., septic tank and leach field), to land, or to surface water must obtain separate regulatory authorization (e.g., waste discharge requirement [WDRs], conditional waiver of WDRs, or other permit mechanism) to discharge the wastewater. As more indoor cannabis cultivation wastewater discharge data become available, the State Water Board will evaluate whether statewide general requirements can be developed for onsite wastewater treatment systems and whether applying cannabis cultivation wastewater to avocado trees and other vegetation is protective of water quality. If such requirements can be developed and be protective of water quality, the Cannabis Policy can be updated accordingly. Additionally, if cannabis cultivators can demonstrate that they have the technological capabilities to fully treat, recycle, and reuse cannabis cultivation wastewater (for ongoing indoor cannabis cultivation irrigation) with zero waste over long periods of time, without any discharges or risk of discharges, the Cannabis Policy can be updated accordingly.

The Cannabis Policy outlines the type of indoor cultivation sites that are considered conditionally exempt from the Cannabis Cultivation General Order. Any greenhouse that meets these requirements is considered conditionally exempt. If a cannabis cultivator's operation does not meet the conditionally exempt requirements, the cultivator must enroll in the appropriate Tier and Risk classification, as outlined in the Cannabis Cultivation General Order.

ONSTREAM RESERVOIRS

ONSTREAM RESERVOIRS – CLASS III STREAM AUTOMATIC APPROVAL

NEVADA COUNTY CANNABIS ALLIANCE - DIANA GAMZON, EXECUTIVE DIRECTOR, CALIFORNIA GROWERS ASSOCIATION

“For Class III watercourses, grant automatic determinations to allow on-stream reservoirs under Rule 79(c)(i). Given that ephemeral watercourses do not provide wildlife habitat and the transportation of water is their most important function, they are ideal sites for on-stream reservoirs. Enabling Class III watercourses to qualify for an automatic determination would be appropriate and would help alleviate a possible bottleneck in approving determinations.”

RESPONSE

Onstream reservoirs on Class III streams, as well as Class I and Class II streams, have the potential to have significant environmental impacts. In general, onstream reservoirs on Class III streams can dampen or eliminate hydrograph peaks and flow variability, most notably during the initial fall storms when reservoirs are relatively empty. They also prohibit the transport of sediment to downstream stream reaches where it is needed to help provide spawning gravels and habitat for fish and other aquatic organisms. Existing onstream reservoirs will need to be inspected to ensure they are constructed, maintained, and operated in a safe manner that is protective of downstream priority water right holders and the environment. The process established by the proposed updates to the Cannabis Policy already provides for a streamlined path forward for existing onstream reservoirs. Cannabis cultivators will be issued a Cannabis SIUR upon State Water Board receipt of a complete application and payment. The State Water Board and the California Department of Fish and Wildlife (CDFW) will evaluate the onstream reservoir and make a determination regarding whether modifications to the onstream reservoir are needed to protect water quality and aquatic resources, and may impose additional conditions or determine the onstream reservoir needs to be removed or otherwise modified such that reservoir is incapable of storing water. Within six months of the determination that facility modifications are needed, the cannabis cultivator must submit a draft compliance plan that identifies the scope of work and schedule for completion of the required modifications.

At this time, the State Water Board does not have scientific justification to support that automatic approvals of existing onstream reservoirs on Class III streams would not have negative environmental impacts. To meet the legislative directives of Water Code section 13149 and ensure that the diversion of water for cannabis cultivation does not have a negative impact on instream flows and aquatic habitat, the Cannabis Policy appropriately requires that the Deputy Director for Water Rights (Deputy Director) (or designee) and CDFW make a determination that removing the existing onstream reservoir or installing off-stream storage will cause a greater environmental impact than modifying the onstream reservoir to operate in compliance with Cannabis Policy requirements.

ONSTREAM RESERVOIRS – MONITORING REQUIREMENTS

Nevada County Cannabis Alliance - Diana Gamzon, Executive Director, California Growers Association

Regarding Attachment A, Section 2, Requirement 83 (E)

“Consider reducing monitoring requirements for Class II and Class III watercourses. The proposed monitoring requirements are substantial and require a large amount of time and paperwork. While we understand the Water Board’s interest in close scrutiny, we feel this level of scrutiny is less appropriate for Class II and especially Class III watercourses. Tiering monitoring and documentation requirements based on the level of risk involved will ensure that limited resources are focused where they are most needed.”

JOSEPH TULLGREN

“Hourly records? What else can I possibly do in a day if I am constantly recording information for you? Maybe if the said measuring device has a memory and can record this info automatically, then fine. Otherwise this is an unattainable requirement.”

RESPONSE

It is unclear what monitoring requirements the commenters are referring to in their comments. State Water Board staff assume that the comments are referring to the proposed updates to Cannabis Policy Attachment A, Requirement 83, which requires the installation and maintenance of a measuring device to monitor diversions to onstream reservoirs. As noted in the Cannabis Policy Staff Report, it is anticipated that most onstream reservoirs requesting Cannabis Small Irrigation Use Registrations will be primarily small capacity reservoirs located on small ephemeral (Class III) streams. Additionally, as noted in the Staff Report, diversion measurement and reporting information will be used to monitor compliance with the flow requirements and forbearance period and account for water diverted and used for cannabis cultivation versus other beneficial uses. Requirements to use measurement devices and report water diverted for cannabis cultivation will improve Cannabis Policy administration, allowing the State Water Board and water users to more efficiently manage use of available water supplies while also protecting public trust resources. Accurate water diversion measurements are necessary to monitor and evaluate instream flows in localized areas and reduce localized impacts to sensitive species and habitat, impacts to headwater streams, and to prevent injury to downstream senior water right holders. In addition, the onstream reservoir diversion measurement requirements are equivalent to the offstream storage diversion monitoring requirements and promote parity between the two methods of diversion to storage. All requirements associated with the approval and operation of onstream reservoirs under the Cannabis Policy are necessary to minimize the effects of cannabis cultivation on fisheries, wildlife, and water quality, maintain healthy riparian corridors, and protect springs, wetlands, and aquatic habitat.

Cannabis cultivators can use water level sensors that automate data collection on a given timestep (e.g., data loggers). The information collected and stored on a data logger can be downloaded on a desired timescale (e.g., weekly, monthly, etc.). It is anticipated that most, if not all, cannabis cultivators with onstream reservoirs will choose to use a water level sensor to measure and record hourly depth measurements that would then be used to calculate reservoir volume.

Below is a link to the State Water Board – Water Measurement Guidelines. The guidelines provide helpful information on acceptable measuring devices and procedures.

State Water Board – Water Measurement Guidelines are available online at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/water_measurement.html#wdm

If cannabis cultivators have additional questions about measuring devices they can contact Division of Water Right Cannabis Small Irrigation Use Registration staff by email at: CannabisReg@waterboards.ca.gov or by phone at: (916) 319-9427.

ONSTREAM RESERVOIRS – REGIONAL WATER BOARD DETERMINATION

NEVADA COUNTY CANNABIS ALLIANCE - DIANA GAMZON, EXECUTIVE DIRECTOR, CALIFORNIA GROWERS ASSOCIATION

“Allow regional waters boards to grant determination to approve or deny on-stream reservoirs under Rule 79(c)(i). Rule 79(c)(i) to grants substantial discretion to the state to allow or deny on-stream reservoir permitting. Regional Water Boards, in our experience, will typically be in the best position to make these case-by-case determinations, and to coordinate with local governments and CDFW staff on issues involving multiple stakeholders. Rule 79(c)(i) as written already grants the Deputy Director the ability to assign a designee to make this determination. If the text of the rule itself is not changed to assign authority to regional Water Boards, we think that regional board would be the appropriate designee under the Deputy Director’s discretion.”

RESPONSE

The Water Commission Act of 1914 (Act) established today’s water right permit process. The Act also created the Water Commission to administer water rights and licenses. The Water Commission evolved to become the State Water Resources Control Board. The Act was the predecessor to today’s California Water Code provisions governing appropriation of water. As a result, the State Water Board Division of Water Rights, is the only agency authorized to administer water rights in California. While the Regional Water Boards are very knowledgeable about the individual cannabis cultivation sites, the State Water Board, Division of Water Rights is the only agency with the authority to issue and administer water rights. The Regional Water Boards may provide information and recommendations regarding the approval of on-stream reservoirs for cannabis cultivation, but the ultimate decision cannot be delegated a Regional Water Board and must be made under the State Water Board.

TRIBAL BUFFERS

45-DAY REVIEW PERIOD

YOCHE DEHE WINTUN NATION, ANTHONY ROBERTS, TRIBAL CHAIRMAN

“Many tribal governments have limited resources, and 45 days may not always be enough time to allow them to review and consider complex cultivation proposals. We respectfully submit that a 60-day review period would be more appropriate. Alternatively, it may be worth considering an arrangement by which each potentially affected tribe shall be granted a 15-day extension of the 45-day period upon request.”

ROUND VALLEY INDIAN TRIBES, ERICA MCMILIN, ATTORNEY

“Consultation Should Begin Within 14 Days of Receipt of the Application. *The SWRCB should be required to initiate consultation with the Tribes within a set number of days after receiving an application for cultivation on or within the “Tribal Buffer.” This would ensure the Tribes’ voice is heard early in the application review process. For example, in the case of Assembly Bill 52, the permitting agency is required to begin consulting with tribes within fourteen (14) days of determination that a project application is complete. The Board should require a similar fourteen (14) day timeframe to begin consultation with the Tribes once an application for cultivation on or within the “Tribal Buffer” is received.*

The 45-Day Review Period Should be Increased to 60 or 90 Days. *Forty-five (45) days will not provide the Tribes with a sufficient amount of time to review a cannabis cultivator’s application materials and make an informed decision. The SWRCB should instead require 60 or 90 days as a more appropriate review period.”*

RESPONSE

The State Water Board and the Regional Water Boards (Water Boards) selected the review period length to balance the needs of the tribes with the needs of the cannabis cultivators. The Water Boards believe that a 45-day review period will best achieve this balance in most circumstances. The Water Boards have not modified the base review time of 45 days in the requirements but did amend the proposed requirement to allow for time extensions on a case by case basis if requested by a tribe. The requirement has been updated accordingly.

The proposed policy amendment authorizes, but does not require, the Water Boards to proceed with a decision on a cannabis cultivation proposal if the affected tribe does not act within 45 days. If a tribe remains silent or has not acted within the 45-day period, prior to acting on the cannabis cultivation application, Water Boards staff will follow up with the tribe to ensure the tribe received the request and the Water Boards do not inadvertently grant a permit due to lack of receipt or consideration of the request.

The Water Boards believe that the proposed requirement sets an appropriate timeframe for consultation with affected tribes. The Water Boards will promptly notify affected tribes after receiving a complete application and before making a decision. An application received under the Cannabis Policy cannot be acted on until the tribal approval request process is completed. It is in all parties’ interest, including the Water Boards’, to act in a timely manner.

ATTACHMENT A, SECTION 1, REQUIREMENT 19

AGUA CALIENTE BAND OF CAHUILLA INDIANS, JOHN PLATA, GENERAL COUNSEL

“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.⁷ 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.”

RESPONSE

Based upon the input provided by the Agua Caliente Band of Cahuilla Indians, the State Water Board has updated Attachment A, Section 1, Requirement 19 of the Cannabis Policy as follows:

“Prior to acting on a cannabis cultivator's request to cultivate cannabis on tribal lands⁷ or within 600 feet of tribal lands, the Water Boards will notify the governing body of any affected California Native American tribe or the governing body's authorized representative, as applicable. A 45-day review period will commence upon receipt of the notice by the affected tribe.

During the 45-day review period, the affected tribe may, at its discretion, accept, reject, or not act regarding the cannabis cultivation proposal. If the tribe rejects the proposed cultivation, the cannabis cultivator is prohibited from cultivating cannabis on or within 600 feet of the affected tribe's tribal lands. If the affected tribe accepts the cannabis cultivation proposal or does not act during the 45-day review period, the Water Boards may proceed with a decision on the cannabis cultivation request as though the affected tribe accepted the cannabis cultivation proposal. The Water Boards will consider requests to extend the 45-day review period on a case by case basis.

⁷ “Tribal lands” means lands recognized as “Indian country” within the meaning of title 18, United States Code, section 1151.

The governing bodies of California Native American tribes may, at their discretion, notify the State Water Board's Executive Director in writing that they: a) reject all proposed cannabis cultivation; or b) waive the 45-day review period for all current and future proposed cannabis cultivation on their tribal lands, on portions of their tribal lands, or within 600 feet of their tribal lands. Upon the Executive Director's receipt of written notice, the Water Boards will, based on the nature of the request, either:

- a) Not approve cannabis cultivation proposals on or within 600 feet of the affected tribe's tribal lands, as applicable; or
- b) Abide by the waiver and, at the Water Boards discretion, act on cannabis cultivation requests on or within 600 feet of tribal lands, as applicable, as though the affected tribe accepted the proposal.

The governing bodies of California Native American tribes may, at their discretion, withdraw a previously issued decision regarding cannabis cultivation on or within 600 feet of their tribal lands. In such instances, the governing body of the affected tribe should notify the State Water Board's Executive Director in writing. The Water Boards will abide by the withdrawal of the affected tribe's decision for any new cannabis cultivation proposals received after the date the State Water Board Executive Director has notified the governing body of the affected tribe that its decision was received. The Water Boards will coordinate with the affected tribe to address existing permitted cannabis cultivation sites on the affected tribe's lands, as necessary.

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

ATTACHMENT A, SECTION 1, REQUIREMENT 21

SAN MANUEL BAND OF MISSION INDIANS, JESSICA MAUCK, CULTURAL RESOURCES ANALYST

"The proposed updates are not of concern to SMBMI and, as such, the Tribe has no comments to provide. However, should there ever be a chance to work with the state on the entirety of the language within Requirement 21, please do let me know, as I have noted a few things. For 2 examples:

1. *Not all sensitive spaces for Tribes are within the Sacred Lands Inventory, and many Tribes have elected not to use that system due to confidentiality concerns.*
2. *Tribes care a great deal about Native American resources from the contact period to the present, and not solely precontact resources, as is stated in the language."*

RESPONSE

The State Water Board appreciates the importance of both pre-contact and post-contact tribal resources. Attachment A, Section 1, Requirement 20, provides for protection of post-contact tribal resources that are formally identified as a tribal cultural resource.

ATTACHMENT A, SECTION 1, REQUIREMENTS 21 AND 38

ELK VALLEY RANCHERIA, CALIFORNIA, DALE A. MILLER, CHAIRMAN

“Attachment A, Section 1, Requirement 21

The Tribe supports the proposed provision that: “Nothing in this provision shall be construed to modify or interpret tribal law in any way.” However, the Tribe would add the following language: “Nothing in this provision shall be construed to modify or interpret tribal law or modify tribal jurisdiction in any way.

Attachment A, Section 1, Requirement 38

The Tribe proposes the following changes to the proposed alternative sets of language:

a) The indoor cannabis cultivation structure:

- 1. Has a building permit (or other similar authorization) on file with the county, city, or local jurisdiction (including a federally recognized Indian tribe) and started construction prior to October 1, 2018; ...*

OR

b) The indoor cannabis cultivation structure:

- 1. Has a building permit (or other similar authorization) on file with the county, city, or local jurisdiction (including a federally recognized Indian tribe) and construction started on or after October 1, 2018”*

RESPONSE

The State Water Board has included similar language changes in the final draft proposed updates to the Cannabis Policy.

EXPANSION OF TRIBAL BUFFER

ROUND VALLEY INDIAN TRIBES, ERICA MCMILIN, ATTORNEY

“The 600-Foot Buffer Zone Should be Expanded. The Board should expand the “Tribal Buffer” zone to encompass a larger area, such as the Tribes’ ancestral territories. Alternatively, the SWCRB should consider expanding the “Tribal Buffer” zone upstream of tribal lands. Upstream cannabis cultivation and water diversions pose a serious threat of contaminating water that flows to the RVIT Reservation. To address this, the “Tribal Buffer” zone should be expanded to include those cannabis cultivation sites within 600 feet of a water body that flows downstream to Tribal lands.”

RESPONSE

The 600 foot “tribal buffer” zone is part of the existing Cannabis Policy and the State Water Board did not propose to amend it as part of the proposed updates to the Cannabis Policy. The State Water Board does not intend to expand the tribal buffer at this time. Cannabis cultivators, including those upstream of tribal lands, are already required to comply with comprehensive

diversion restrictions and water quality rules and regulations as part of the Cannabis Policy. The Water Boards take water quality and water rights violations seriously. If tribes are aware of violations or have any concerns regarding cannabis cultivation activities occurring upstream of their tribal land, they can notify the State Water Board through the Tribal Liaison or through water rights or water quality complaint processes, as applicable.

TRIBAL BUFFER – APPROVAL

HANNAH NELSON (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Attachment A, Page 20, Item 19, tribal lands issue. Still have some refinements to be made...essentially, one can permission from a tribe, then without notice, get revoked even though one has went through compliance. Vague reference that Water Board will work with tribe in regards to withdrawn permission. Most tribes have a written agreement adhering to certain conditions, if conditions aren’t met, then should be revoked...should have a due process with revoked permission if taken away with purpose or reason/without notice.”

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“3. Attachment A, Item 19, Page 20: As stated in my testimony, while I appreciate the revision after having put tribes in an untenable position in the prior version, I am concerned that as currently proposed, (p.21, 2nd to last paragraph), a cultivator could go through enormous effort and expense to comply with all of the requirements and rules and that without warning they could have the permission revoked without due process and without having violated any term or condition of the initial grant. During the Workshop on 10/16, Staff addressed this and stated that would not happen and that was not what was intended. I would greatly appreciate it if the language can clarify that the reference to the right of the tribe to withdraw consent, referred to the withdrawal on the silence to the request and that any withdrawal of permission already granted to an applicant must provide due process before revocation would be affected.”

RESPONSE

If a tribe withdraws a previously issued decision allowing for cannabis cultivation on non-tribal land within 600-feet of its tribal lands, the prohibition would only apply to new cannabis cultivation proposals within 600-feet of tribal lands and would not repeal existing Water Boards permits. Cannabis cultivation occurring on tribal lands would be treated similar to counties or cities that switch from permissive to banned and the Water Boards will coordinate with the affected tribe to address any existing permitted cannabis cultivation sites on the affected tribe’s lands, if requested by the tribe to do so.

TRIBAL BUFFER – GRANDFATHER IN EXISTING PERMITTED GROWS

JEREMY POPE

“We have been permitted and enrolled with the Water Board since the beginning of our operation which predates any Tribal Setback policies that came into place in November of 2017. There needs to be consideration that these ever-changing policies are gravely affecting small family farms. Is it not reasonable to grandfather in the good actors that invested in remediating legacy issues and have invested in land coupled with a complaint business prior to these rules existing?”

RESPONSE

The Cannabis Policy does not provide a grandfather clause that would exempt cultivation sites from complying with the 600-foot tribal setbacks for pre-existing enrollees under the *California Regional Water Quality Control Board North Coast Region Order No. 2015-0023* (North Coast Order) and *California Regional Water Quality Control Board Central Valley Region Order R5-2015-0113* (Central Valley Order). However, the proposed updates to the Cannabis Policy provide for an exemption from the tribal setbacks for indoor cultivation sites if they meet certain conditions (see Attachment A, Requirement 38). A grandfather clause for cannabis cultivators enrolled under the North Coast Order and Central Valley Order is not included in the Cannabis Policy because the affected tribe has not had an opportunity to evaluate and consider the potential impact of these sites on their tribal cultural resources and tribal land.

The purpose of the 600-foot setback for identified tribal cultural resource sites and tribal lands is to prevent cannabis cultivation from causing a substantial adverse change in the significance of a tribal cultural resource. (See Pub. Resources Code, § 21084.2.) The State Water Board solicited comments from all California Native American tribes and performed numerous consultations with tribes in developing tribal cultural resource protection terms for the Cannabis Policy. Cannabis cultivation near tribal cultural resource sites and tribal lands is highly controversial based on the comments received. The general view was that setbacks were necessary to prevent a substantial adverse change in the significance of tribal cultural resources. Some California Native American tribes requested a minimum buffer of 1,000 feet or more. The State Water Board has determined, based on evidence in the record, that a 600-foot setback is sufficient to prevent substantial adverse changes, is reasonable, and is an appropriate “floor” of protection for a rule of statewide application. The 600-foot setback is also consistent with Humboldt County’s cannabis cultivation ordinance, (see Humboldt County Code, § 314-55.2.7.2.3).

If a cannabis cultivation site is within 600-feet of tribal lands, the appropriate Regional Water Board will work with the cannabis cultivator to determine if the cultivation site can be relocated on the property outside of the 600-foot boundary. If the cultivator declines to relocate the site or if the site cannot be relocated due to the size of parcel, cost of relocation, or environmental impacts, then the Regional Water Board will contact the appropriate Tribal Liaison and provide them with the Site Management Plan and associated information of the cannabis site to help the tribe make an informed decision on the potential impacts of the particular cultivation site.

TRIBAL CONSULTATION TRIGGER

YOCHE DEHE WINTUN NATION, ANTHONY ROBERTS, TRIBAL CHAIRMAN

“The proposed update would replace “prior to any ground disturbing activities” with “prior to conducting any land disturbance activities.” One of the (perhaps unintentional) consequences of this change would be to restrict the consultation requirement to disturbances created by the cultivator. Consultation should be required before any ground (or land) disturbances takes place, whether that disturbance is created by the cultivator, the cultivator’s employees, the cultivator’s agents, or some other party or parties participating in or related to the cultivation operation.”

RESPONSE

The change of language from “ground” to “land” does not and is not intended to exclude any party related to the cannabis cultivation activities from the requirement to conduct or request the required archeological or cultural resources searches. The term “land” is meant to be more inclusive and avoid semantic arguments that the term “ground” may imply only resources literally on the ground. “Land” implies both the ground and any resources above the ground. The Cannabis Policy definitions for land disturbance is:

Land Disturbance – *Land areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located.*

Access roads that are designed, constructed, and maintained, or are reconstructed consistent with the Handbook for Forest, Ranch, and Rural Roads (Road Handbook), and that implement the interim and long-term erosion prevention and soil stabilization measures contained in Attachment A, are not considered disturbed areas for the purpose of tier determination under the Cannabis Cultivation General Order.

WITHDRAWAL OF TRIBAL PERMISSION

YOCHE DEHE WINTUN NATION, ANTHONY ROBERTS, TRIBAL CHAIRMAN

“The proposed update purports to increase options and flexibility for tribes, but, as a practical matter, it would severely restrict tribal authority over ongoing cannabis cultivation on or within 600 feet of tribal lands. Whereas the existing Cannabis Cultivation Policy... allows tribes to withdraw their permission if ongoing cannabis cultivation proves to have unanticipated or excessive impacts, the proposed update would only apply such a withdrawal to “any new cannabis cultivation proposals received after” the withdrawal, effectively allowing significant impacts to tribal resources to continue unabated.”

RESPONSE

As amended, Requirement 19 is intended to protect tribal cultural resources and facilitate consultation and coordination with tribal governments and provide for cannabis cultivators’ desire to have certainty as they develop businesses on private property. If a tribe withdraws a previously issued decision allowing for cannabis cultivation within 600-feet of its tribal lands, the prohibition would only apply to new cannabis cultivation proposals within 600-feet of tribal lands. Cannabis cultivators are required to comply with comprehensive diversion restrictions and water quality rules and regulations as part of the Cannabis Policy. The Cannabis Policy and Cannabis Cultivation General Order do not allow discharges of waste from cannabis cultivation sites and the Water Boards have the authority to require corrective actions to enforce those requirements. Negative impacts or violations can be reported through the Tribal Liaison or through water rights or water quality complaint processes, as applicable.

A different requirement applies for cannabis cultivation on tribal lands, as opposed to those within 600 feet of tribal lands. Similar to the approach in banned counties, the State Water Board will work with tribes to address existing approved cannabis sites on tribal land if the tribe requests the State Water Board do so.

WINTERIZATION

WINTERIZATION

MATT ALLEN

“For flat farming ground that has been historically farmed, there is simply no basis to require that heavy equipment not be allowed into the fields during the winter period. In fact, much of the work to remove the plastic from the hoop houses, till the soil and plant a cover crop or other protective measures are done with heavy equipment. While the regulations state that the heavy equipment can’t be used during the winter period, the letter to the farmers seeks to define the winter period for Santa Barbara County from 11/15 to 4/1. In fact, Santa Barbara has a very small winter period and really no period where farmers are not active in their fields. Cannabis farmers in Santa Barbara are just now completing harvest clean up, and crops will be ready to go back into the ground in February and March. Prior to planting, the soil will need to be prepared, the plastic will need to go back onto the hoops and lots of other work will need to be done. It is simply unrealistic and unnecessary to require that no heavy equipment be used for almost five months per year.

There is no way to farm a crop in Santa Barbara County on valuable farming land and take nearly five months off from farming. The regulations as written would be a massive taking of land value and prohibit a strong second crop of Cannabis. It would be doing this without any basis or support for control of runoff, as these lands have been and will continue to be farmed by other crops. These fields are reasonably flat, so that the majority of rain is able to percolate. In storms, the water is controlled by berms located along the edges of the fields. These methods have been used for decades and protect the farms from losing their valuable top soil.

The restrictions for winterization need to be adjusted so that land that has been consistently farmed for decades and has slopes of less than 5% do not have the same sort of restrictions as newly developed land or land that has greater slopes. In this manner, properties that will have little or no impact with regard to runoff are not prohibited from growing a second Cannabis crop during the shoulders of the winter period. The failure to distinguish between the different types of farming lands is a dramatic failure of these regulations.”

SAM RODRIGUEZ

“As we discussed, there’s an acknowledgement and recognition that the Agency is responsible to protect farmland and the overall environment from ‘Bad Actors’ - especially in the “Emerald Triangle” in far north California. Unfortunately, some of the provisions in the winterization regulations are unworkable and actually do harm to ‘Good Actors’ - especially Central Coast Agriculture and others in Santa Barbara County who are compliant with all local and state mandates and regulations. Specifically, we are recommending a technical language modification in Section 127 - Cannabis cultivators shall not operate heavy equipment of any kind at the cannabis cultivation site during the winter period, unless authorized for emergency repairs contained in an enforcement order issued by the State Water Board, Regional Water Board, or other agency having jurisdiction or if related to soil preparation or planting activities as set out in a cultivator’s approved site management plan. (Cannabis Cultivation Policy: Attachment A – October 17, 2017)

Moreover we strongly believe that your office can provide additional guidelines to the regional and local offices affording them flexibility to consider on a case by case basis utilizing the

approval process of the Cannabis Farmer Site Management Plan and still meet your statutory and regulatory goals.”

RESPONSE

The State Water Board revised Attachment A, Requirements 127 and 128, to clarify the winterization requirements and address the commenters concerns and recommendations. The proposed revisions address the use of heavy equipment (e.g., agricultural equipment) for routine cannabis cultivation soil preparation or planting. The proposed revisions allow the Regional Water Board Executive Officer (or designee) to authorize use of heavy equipment for routine cannabis cultivation soil preparation or planting through approval of a site management plan. Such authorization may only be granted if all soil preparation and planting activities occur outside of the riparian setbacks and on slopes less than five percent (e.g., valley floor). Additionally, the slope stabilization requirement was revised to allow the Regional Water Board Executive Officer (or designee) to authorize alternative methods and spacing for linear sediment controls (e.g., silt fences, wattles, etc.) through approval of the site management plan. On January 10, 2019, the State Water Board released a [Notice of Opportunity for Public Comment Concerning Winterization Revisions to Proposed Updates to the Cannabis Policy and Staff Report](#). The comment period closed on January 25, 2019. No comments were received on the proposed winterization revisions.

COMMENTS IN SUPPORT OF PROPOSED UPDATES

SUPPORT OF ATTACHMENT A, SECTION 2, REQUIREMENT 98 UPDATES

DIANA GAMZON, EXECUTIVE DIRECTOR - NEVADA COUNTY CANNABIS ALLIANCE, CALIFORNIA GROWERS ASSOCIATION

“Frequent inspection and documentation requirements will be a significant logistical burden on cultivators, especially those who live off-farm. We appreciate the specification in Rule 98 that these inspection requirements are limited to the “period of use,” and not required during off-season when they would be unnecessary.”

Support of update to Attachment A, Section 2, Requirement 79

RESPONSE

Thank you for your comment.

DIEDRE BROWER (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Really excited to see onstream ponds included as a possibility, because a lot of people bought property with permitted ponds and were told they needed storage tanks.”

RESPONSE

Thank you for your comment.

COMMENTS NOT RELATED TO PROPOSED UPDATES TO CANNABIS POLICY AND CANNABIS CULTIVATION GENERAL ORDER

APPEAL PROCESS

CHARLES KATHERMAN

“At this time I have been unable to locate any clause(s) in the proposed Cannabis Policy that specifically addresses the ability of an applicant to appeal a denial of the application for a permit to their project. In addition there appears to be nothing addressing the ability to obtain a variance or exemption from a given regulation(s) being applied to a proposed project, such as with the 10 gpm limitation.”

RESPONSE

If cannabis cultivators cannot meet or bring their cannabis cultivation activities into compliance with the requirements of the Cannabis Policy and therefore cannot obtain coverage under the Cannabis Cultivation General Order, they can request site-specific waste discharge requirements (WDRs) from the Regional Water Boards. The Cannabis Policy allows for the Regional Water Boards to develop site-specific WDRs if certain requirements (i.e., riparian setbacks, slope limitations, and winter period requirements) cannot be met if the Executive Officer of the Regional Water Board determines that the site-specific WDR contains sufficient requirements to be protective of water quality.

The Cannabis Small Irrigation Use Registration (SIUR) Program was established as a streamlined option for cannabis cultivators to obtain a small appropriative water right (less than 6.6 acre-feet per year) to divert and store surface water to irrigate commercial cannabis crops. If cannabis cultivators cannot meet the general terms and conditions of the Cannabis SIUR Program, cultivators can pursue an appropriative water right.

Additionally, the Cannabis Policy further allows for the development of local cooperative solutions and modification to the Cannabis Policy interim instream flow requirements (i.e., numeric flow requirements, forbearance period, diversion rate, etc.) if cannabis cultivators enter into an agreement with the California Department of Fish and Wildlife and the agreement provides watershed-wide protection that is comparable to or greater than the Cannabis Policy.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW)

CHARLES KATHERMAN

“the insertion of CADWF into the Cannabis process with an additional application and set of regulations is simply a duplication of application oversight and application fees. CADFW appears to be intent on issuing nothing but incomplete notices (after payment of fees) on all application but yet applying the same rules as the Water Board. The State Water Board and CADFW should jointly administer and review one application per project, just as a County Land

Use application and supporting documents is reviewed and commented on by multiple affected departments.”

RESPONSE

The State Water Board and nine Regional Water Boards (collectively Water Boards) and California Department of Fish and Wildlife (CDFW) are separate agencies with distinct regulatory, including permitting, authorities. CDFW has existing authority under Fish and Game Code sections 1600-1607 to regulate, through a Lake and Streambed Alteration Agreement, any action that substantially diverts or obstructs the natural flow or changes the bed, channel, or bank of any river, stream, or lake. In addition, the Medicinal and Adult-Use Cannabis Regulatory and Safety Act requires cannabis cultivators to demonstrate compliance with section 1602 of the Fish and Game Code in order to obtain an annual CalCannabis commercial cannabis cultivation license (Business and Professions Code section 26060.1(b)(3)). Concerns regarding CDFW processes or fees should be directed to CDFW.

For additional information on coordination between the Water Boards and CDFW, please see the response to comments under *Coordination Between Agencies*.

COMPLIANCE WITH FEDERAL LAWS

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

Attachment A, Item 1, Page 16: Please edit this provision to remove the compulsion to adhere to all federal laws and regulations, since there is no way for a cannabis cultivator to do so. Please also consider altering the language to account for the fact that most cultivators are existing and cannot comply with the applicable laws, regulations and permitting “[p]rior to commencing any cannabis cultivation activities...”

HANNAH NELSON (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Attachment A, Page 16, Item 1, there’s two things. Concept of compliance with all laws prior to cultivation doesn’t acknowledge preexisting cultivation...Also, adherence to Federal laws.”

RESPONSE

Compliance with applicable laws, regulations, and permitting requirements is an appropriate and common term in regulatory programs and policies. While cannabis remains illegal under federal law, there are federal permits that are appropriate to protect water quality and aquatic habitat (e.g., Section 404 of the Clean Water Act).

Because cannabis remains illegal under federal law a cultivator may not be able to obtain a Section 404 permit from the United States Army Corps of Engineers. In cases where cannabis cultivators cannot obtain a Section 404 permit, cultivators are required to obtain coverage for discharges of dredge and fill materials from the applicable Regional Water Board. The Regional Water Board may determine that the activities are covered under the Cannabis Cultivation General Order or elect to prepare site-specific waste discharge requirements, if appropriate.

COORDINATION BETWEEN AGENCIES

NEVADA COUNTY CANNABIS ALLIANCE - DIANA GAMZON, EXECUTIVE DIRECTOR, CALIFORNIA GROWERS ASSOCIATION

“Ensure coordination between the Water Board, CDFW, and local government. The Water Board, CDFW, and county governments frequently hold overlapping jurisdiction over water projects. In the past, lack of coordination between regulators has led to contradictory requirements, including cultivators investing substantially in water management practices that were later overruled by a different agency. Effective, continuous coordination is essential to promote sustainable water management and for cultivators to have the ability comply with state rules.”

ANITA SCHINDLER

“Cannabis Policy on water issues needs to be coordinated between several State Agencies, most importantly between The Water Resources Control Board and CDFW. ... I urge and ask you to sit down, together, and reach consensus on what is fair, equitable, and consistent regarding water use and regulations for a small cannabis farmer”

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Better coordination between different departments and outside agencies is imperative. Within the Water Board, a reduction of redundancy of information, inconsistencies, and varying formats to provide the exact same information should be effectuated. I applaud the streamlined portal to combine the issues of water rights and water quality, but there remains a massive disconnect between the information needed for different purposes and the number of different applications and reporting forms. The coordination with outside agencies should include CDFW, CalFire, and CDFA. I realize that the Water Board does not have control over any of those other agencies, but additional communication and request from the legislature to create a Task Force or Committee with representatives of each agency, would be a start.”

RESPONSE

The State Water Board recognizes the fiscal and logistical challenges of obtaining multiple permits for commercial cannabis cultivation operations in California and is working with the other agencies involved to streamline the process. The Cannabis Policy and Cannabis Cultivation General Order were developed in close consultation with the California Department of Fish and Wildlife (CDFW) and California Department of Food and Agriculture (CDFA). Water Boards staff continue to work closely with CDFW and CDFA staff to promote consistency across programs. The Water Boards, CDFW, and CDFA have regular quarterly management coordination meetings and associated sub-group meetings for specific coordination on licensing, enforcement, and legal topics that are held monthly or bi-monthly depending on the subgroup. The focus of these meetings is to establish consistency in implementing cannabis cultivation regulatory requirements and licenses across agencies to the fullest extent possible; develop procedures for data sharing; and coordinate on licensing, inspection, and enforcement efforts. Water Boards staff also coordinate regularly with local agencies regarding permitting issues, inspections, and interpretation of each program’s requirements.

The Water Boards will continue to coordinate and consult with CDFW, CDFA, and local agencies in the implementation of the Cannabis Policy and Cannabis Cultivation General Order and during the development of future updates to the Water Boards Cannabis Cultivation Program. It should be noted, however, that each agency has its own mission, data needs, and review processes that will continue to create some differences between agencies programs.

CULTIVATION SITE – DEFINITION

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“1. Attachment A, Item 11, Page 4: Please redefine “cultivation site” to only include drying, curing, grading, and trimming IF there is an impact to water quality or availability as a result of those activities (such as a NEW land disturbance). Many small cultivators are not creating any new land disturbance when conducting those activities and are utilizing existing structures. The impact of inclusion of those activities, regardless of whether they are having any actual impact on water quality or availability severely and negatively impacts the small operator. “

HANNAH NELSON (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Attachment A, Page 4, Item 11 defines cultivation to include other activities like drying, curing, sorting, etc. If it has implications for policy...other activities such as planting should be considered if they have a water quality impact or a new land disturbance.”

RESPONSE

These activities are included in the Cannabis Policy and Cannabis Cultivation General Order as part of the “cannabis cultivation site” to ensure that impacts to water quality are avoided. There is potential for these regular, ongoing cultivation activities to result in impacts to water quality; therefore, such activities must be included as part of the cultivation site. Land disturbance activities include, but are not limited to, construction of roads, buildings, and water storage areas, as well as excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. Per the Cannabis Policy, once the site is stabilized this previously disturbed area is not included in the disturbed area calculation.

DETERMINATION OF NEED FOR WATER RIGHT

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“The separate requirements of each agency, without careful coordination or thoughtful integration so that inconsistencies and confusion are reduced, create exponential burdens on the small rural cultivator. An example would be the fact that CDFW and the Water Board Division of Water Rights do not always agree about whether a well is a groundwater source or a surface water source. I personally think that the Water Board has a much more sensible approach to the analysis and has even come up with a separate method of dealing with surface water that does not flow off the property, but the reality for a cultivator is that if the Water Board told them their well is not jurisdictional, but later CDFW says it is (during the review of the required LSA application), then all of a sudden, an applicant would have to go back and apply for a water right and perhaps storage rights. Of course, many of the deadlines for doing so

gain priority have passed. It is only recently that through the portal there may be some eluding to the fact that the well might require a water right, but even then, it is not clear what that means as a practical matter for the applicant (that they should apply right away and not wait, or that they missed the opportunity to apply, or whatever the situation is). I have clients who were under the Pilot Program of the NCRWQCB and who were told that their well or ephemeral spring were non-jurisdictional, only to find out two years later through CDFW that it was considered to be surface water and would require a water right. In the mean time, they missed all of the different water right registration deadlines that the Water Board issued over the past year and few months.”

RESPONSE

Cannabis cultivators have not missed water right deadlines that would prevent a cultivator from obtaining a water right to qualify for a California Department of Food and Agriculture (CDFA) cannabis cultivation license (pursuant to Business and Professions Code section 26060.1). Cannabis cultivators can obtain a Cannabis Small Irrigation Use Registration (SIUR) or other valid appropriative water right at any time and meet the water right requirements needed to obtain a CDFA cannabis cultivation license.

Any cannabis cultivator that has a question regarding whether they need a water right should contact the State Water Board, Division of Water Rights by telephone at (916) 319-9427 or by email at CannabisReg@waterboards.ca.gov.

With respect to groundwater diversions, the State Water Board and California Department of Fish and Wildlife (CDFW) have different permitting authorities. Generally, the State Water Board's Water Right permitting and reporting authority applies to groundwater diversions that divert water from a subterranean stream flowing through a known and definite channel (Water Code section 1200 and section 5100). CDFW requires a Lake and Streambed Alteration (LSA) Agreement when it determines that the activity (including taking water from a river, stream, or lake by any method), as described in a complete LSA Notification, may substantially adversely affect existing fish or wildlife resources. In general, CDFW's LSA permitting authority, in certain situations, may be different than the water right permitting authority of the State Water Board. Therefore, in such situations, cannabis cultivators may need to acquire a LSA Agreement from CDFW, but would not need to acquire a water right permit or file a Statement of Diversion and Use with the State Water Board. Cannabis cultivators should contact CDFW to determine if their cannabis cultivation activities require a LSA Agreement.

The Cannabis Policy applies to diversions of water from both surface water and groundwater sources. The Cannabis Policy includes a provision that allows the State Water Board to require a forbearance period or other measures for cannabis groundwater diversions in areas where such restrictions are necessary to protect instream flows; however, additional conditions for groundwater diversions have not been implemented at this time. If the State Water Board determines additional conditions are needed for groundwater diversions, cannabis cultivators would still not be required to get a water right unless the groundwater diversion was from a subterranean stream or diverting underflow of the surface water source (e.g., shallow well that is pulling surface water directly from the alluvial gravels in streambed).

For background, under the Porter-Cologne Water Quality Control Act, the State Water Board's planning authority over waters of the state is not limited to the scope of its water right permitting authority. Senate Bill 837 (codified as Water Code section 13149) directs the State Water Board to adopt this Policy in the form of a state policy for water quality control. (See Wat. Code, § 13142, et seq.) The Water Code defines "water quality control" broadly to mean "the regulation

of any activity or factor which may affect the quality of the water of the state” (Id. § 13050, subd. (i) [emphasis added].) “Water of the state” is defined as “any surface water or groundwater, including saline waters, within the boundaries of the state.” (Id. subd. (e).) The Water Code further defines “water quality” broadly to include biological or physical characteristics. (Id. subd. (g)). Under these authorities, a policy for water quality control can apply to diversions that otherwise would not be subject to the State Water Board’s water right permitting authority.

The Water Commission Act of 1914 (Act) established today’s water right permit process. The Act also created the Water Commission to administer water rights and licenses, an agency that evolved to become the State Water Resources Control Board. The Act was the predecessor to today’s California Water Code provisions governing appropriation. As a result, the State Water Board Division of Water Rights, is the only agency that may administer water rights in California. While the Regional Water Boards are very knowledgeable about the individual cannabis cultivation sites, the State Water Board, Division of Water Rights is the only agency with the authority to issue and administer water rights.

DIVERSION AND STORAGE SYSTEM INSPECTION

MONIQUE RAMIREZ – COVELO CANNABIS ADVOCACY GROUP

“Cannabis cultivators shall not cause or allow any overflow from off-stream water storage facilities that are closed to the environment (e.g., tanks and bladders) if the off-stream facilities are served by a diversion from surface water or groundwater. Cannabis cultivators shall on a monthly basis, at a minimum, regularly inspect for and repair all leaks of the diversion and storage system. Written records describing the date, time, and nature of such inspections and repairs shall be kept on-site for a period of at least two years. Such written records shall be made available for review by Water Boards or CDFW, and any other authorized representatives of the Water Boards or CDFW.”

Comment: Written Records only describing when a repair has been performed should be required. It seems overly burdensome to require record keeping of inspections that do not indicate problems. “

JOSEPH TULLGREN

“Also, written records of monthly inspections is another example of over burdening a small cultivator with excess red tape. Written records of when repairs are made to the system is a fine requirement. However, records reporting no problems are a waste of my time and is a pointless requirement.”

RESPONSE

Documenting when inspections occur is a common practice in any preventive maintenance protocol. For many small operations, entries in a logbook or similar documentation will be sufficient to comply with the requirement.

For background, the Cannabis Policy requires cannabis cultivators on a monthly basis, at a minimum, to regularly inspect for and repair all leaks of the diversion and storage system. It is important for cannabis cultivators to document their inspections to demonstrate their due diligence in maintaining their water diversion systems. The inspection records should have the date, time, and nature of such inspections and repairs, if needed, and shall be kept on-site for a

period of at least two years. If maintenance and repairs are not needed the cannabis cultivator is only required to document the date, time the inspection occurred, and indicate that no repairs were necessary. State Water Board staff anticipate such documentation would take less than five minutes per month and it is therefore unclear why such a requirement would be considered difficult or overly burdensome. Such written records shall be made available for review by Water Boards or the California Department of Fish and Wildlife (CDFW), and any other authorized representatives of the Water Boards or CDFW.

DIVERSION RATE

CHARLES KATHERMAN

“what was the scientific basis or data that was used in order to justify a maximum extraction of 10 gpm for cannabis cultivation? Likewise, what was the scientific rationale for the blanket policy of a Dry Season Forbearance Period; particularly in light of the above mentioned variables in climate conditions from one end of the State to the other?”

RESPONSE

The State Water Board developed a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state’s water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. Please refer to the Cannabis Policy Staff Report for more detailed information related to the forbearance period established in the Cannabis Policy.

As stated in the Cannabis Policy Staff Report, maintaining variability of natural stream hydrographs is extremely important for preserving both the form and function of water sources and the aquatic and riparian communities they support. Storm events and the associated peak flows are important for sediment distribution and riparian recruitment along streams. A maximum diversion rate of 10 gallons per minute was developed in consultation with the California Department of Fish and Wildlife because it is not anticipated that this rate will adversely affect the natural high flows needed for forming and maintaining adequate channel structure and habitat for fish. Lower volume diversion rates can also reduce cumulative impacts that may occur when multiple water users are diverting at the same time. The maximum diversion rate in the Cannabis Policy will reduce the potential cumulative impacts of diversions and protect aquatic habitat and designated beneficial uses.

The diversion rate and dry season forbearance period, along with instream flow requirements, ensure that water diversions for cannabis cultivation do not affect the: instream flows needed for fish spawning, migration, and rearing; natural flow variability; or flows needed to maintain aquatic habitat and support aquatic resources. As the State Water Board begins to develop regional policies or makes updates to the interim Cannabis Policy, forbearance periods and

diversion rates may be adjusted based on available information, to protect water quality and designated beneficial uses.

Water Code section 13149 directs the State Water Board to develop interim requirements pending the development of long-term requirements. As noted in the response for *Statewide Policy versus Regional Policy*, the original Cannabis Policy (including the proposed updates) establishes interim requirements pending the establishment of long-term requirements that will be developed for the regional areas established in the Cannabis Policy.

ENFORCEMENT AND SITE REHABILITATION

DIEDRE BROWER (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

Commenter is wondering as sites are getting enforced upon, how much of the seized assets are going toward rehabbing the site? People are getting in more trouble because they haven't rehabbed the site, but all their assets were taken, and their ability that way of earning income was removed. Wondering if there was a way to get more money being seized to go toward troubled sites.

RESPONSE

The Water Boards have an established cannabis cultivation enforcement program that will continue to work with the California Department of Fish and Wildlife and California Department of Food and Agriculture to address violations of the Cannabis Policy, Cannabis Cultivation General Order, and Cannabis Small Irrigation Use Registration (SIUR). The Water Boards do not seize assets as part of enforcement efforts and have no control over how the seized assets are used.

Cannabis cultivators who do not obtain required permits or are not working with the Water Boards to bring their site into compliance with the Cannabis Policy requirements and programs implementing the Cannabis Policy (e.g., Cannabis Cultivation General Order, Cannabis SIUR, etc.) will be subject to enforcement activities. Those enforcement activities may include orders for technical reports, revised and/or additional monitoring requirements, cleanup and abatement orders, cease and desist orders, administrative civil liabilities (fines), and a number of other enforcement alternatives, including terminating authorization to cultivate.

FEES

WINFRED VAN WINGERDEN, PRESIDENT, CARP GROWERS

"Opposed to \$8,000 annual fee, which is cost prohibitive especially for our members who are already burdened by new costs of compliance."

IVAN VAN WINGERDEN, FLORA COAST

"... we are required to enroll as Tier 2 High Risk, which has an \$8,000 annual fee. This fee is unreasonable and onerous on a burgeoning industry. We are already burdened with extraordinary costs of compliance with regulations from the County, State, CDFW and State Water Board."

Unreasonable regulations and fees perpetuate the black market and negatively impact licensed cannabis operators who are on the pathway to compliance and legal operations.”

NEVADA COUNTY CANNABIS ALLIANCE - DIANA GAMZON, EXECUTIVE DIRECTOR, CALIFORNIA GROWERS ASSOCIATION

“Reduce SIUR annual renewal fees. While we understand the rationale for the \$750 SIUR application fee, this fee seems excessive for annual renewals. In our view, a significantly lower fee would be more in line with the resources required to review these renewals.”

RESPONSE

The \$8,000 annual fee applies to the highest risk designation, outdoor commercial cultivation sites that disturb one acre or more and are located within the riparian setback. As stated in the Cannabis Policy, sites that pose a higher threat to water quality (e.g., disturb a larger area, located on a steeper slope, or located close to a surface waterbody) require a greater level of regulatory oversight, which translates to higher costs to achieve water quality protection. High risk sites (any portion of the disturbed area is located within the riparian setback requirements), will be assessed the high-risk fee until cannabis cultivation activities are in compliance with Cannabis Policy and no longer located in the riparian setbacks.

More generally, fees are based on staff costs to administer the Water Boards Cannabis Cultivation Program and are evaluated on an annual basis. The Water Code authorizes the State Water Board to adopt, and periodically adjust, water quality and water rights fees and requires the State Water Board to revise the corresponding fee schedules each fiscal year as necessary to conform to the revenue levels set forth in the annual Budget Act.

After the estimated required revenue amount for each program is determined, the State Water Boards Fee Branch works with respective water quality and water rights program staff to determine if any fee methodology changes or a new fee are needed. If no methodology changes are required, the Fee Branch reviews the expenditure and revenue information to determine if an increase is required and if so, how much. If methodology changes or a new fee is required, the Fee Branch will work with program staff to make the necessary changes.

Throughout the year, stakeholder meetings for each program are held to keep interested parties informed about possible upcoming fee-related changes. Stakeholders are encouraged to engage in the stakeholder process and provide feedback about potential changes to the fee schedules. The first stakeholder meetings are generally held in February/March, after the Governor’s proposed budget is released, followed by a meeting in June after the Governor’s May revised budget is released. If necessary, a third stakeholder meeting for each program is held in August.

Taking into consideration feedback from both the stakeholder community and program staff, the Fee Branch will then take a proposal for the fee schedules to the State Water Board annually in September for their consideration and adoption.

GAGE ASSIGNMENTS

DIEDRE BROWER (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

Commenter states they don't have a lot of gages in their region, and would be interested in speaking outside afterward about how we can about finding out if it's a good time to divert, and something that came up is that they have people who don't have internet access, and they are working on ways to help people with that.

RESPONSE

The State Water Board has developed an online mapping tool to provide cannabis cultivators that divert from surface water with a tool to check whether they may divert for cannabis cultivation on a given day. The online mapping tool is available at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html. The online mapping tool allows cannabis cultivators to enter their address or otherwise locate their point of diversion and click the mouse or tap the screen on their device at that location to view a gage pop-up box which will inform the cannabis cultivator whether or not they can divert on a given day. It is important to note that the compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the online mapping tool website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the prior day's average flow is greater than the numeric instream flow requirement [minimum instream flow] at the assigned compliance gage).

As stated in the Cannabis Policy, compliance gages are assigned using existing gages. The flow requirements are applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows. The Cannabis Policy also allows cannabis cultivators to request approval from the State Water Board to install a local instream flow gage and obtain an updated interim instream flow requirement for the local gage if the cultivators believe the assigned gage does not accurately represent the local conditions.

It is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Cannabis Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives.

GROUNDWATER

CHARLES KATHERMAN

“it makes no sense to apply specific surface water regulations, such as a restriction of 10 gallons per minute (gpm) for surface water extraction and a Dry Season Forbearance Period, to the regulation of subsurface extraction. The diversion of subsurface water should have it's own specific regulations/rules independent of that for surface water diversion; particularly when subsurface diversion can be proven to have minimal impacts to water quality, aquatic habitat, riparian habitat, wetlands, surface flow and springs.”

CHARLES KATHERMAN

*“Conditions where streambed or alluvial aquifers are in subsurface communication with and are being recharged by typical groundwater aquifers is not addressed and appears to be regulated under the same surface diversion restrictions/regulations mentioned above in item #3.” (Item #3 states: “There currently appears to be no specific regulations addressing impacts to water availability in river/alluvial aquifers where water flow and recharge are directly affected by monthly/annual releases from dams, reservoirs, lakes, and other water storage features...” This comment is responded to under *Water Availability*.)*

RESPONSE

The diversion rate of 10 gallons per minute and dry season forbearance period only apply to surface water diversions, including subterranean streams that flow through a known and definite channel that are treated as surface water within California's water rights system (Water Code section 1200 and section 5100). Water Code section 13149 enacted by the California Legislature directs the State Water Board to establish principles and guidelines (requirements) for cannabis cultivation and provides the State Water Board with the authority to include requirements that apply to groundwater diversions for cannabis cultivation where the State Water Board determines those requirements are reasonably necessary.

The Cannabis Policy's surface water requirements (e.g., 10 gallon per minute maximum diversion rate, forbearance period, etc.) do not universally apply to groundwater diversions. At this time, the Cannabis Policy does not include specific numeric flow requirements or a forbearance period that groundwater diversions are required to meet. Rather, the Cannabis Policy recognizes the State Water Board may impose requirements for groundwater diversions and includes a surface water aquatic base flow to help inform whether additional requirements are needed in certain areas to help ensure the individual and cumulative impacts of cannabis cultivation groundwater diversions do not have a negative impact on the surface water flows needed to support aquatic habitat.

The Cannabis Policy is structured to allow for the State Water Board to evaluate whether, in certain locations, there are a significant number of groundwater diversions or locations where significant numbers of surface water diverters are switching to groundwater diversions and those groundwater diversions have the potential to have negative localized impact on surface flows. The Cannabis Policy discusses this structure along with monitoring of whether the aquatic base flow is being met. The State Water Board will evaluate whether localized impacts are occurring from the density and demand of cannabis groundwater diversions and/or whether a significant number of surface water diverters are switching to groundwater diversions. If the State Water Board determines groundwater diversions are potentially having a negative impact

on surface flows, the State Water Board will notify cannabis groundwater diverters in that area of the need to develop alternative measures to reduce water demand during the dry season (e.g., storage, water conservation) or secure alternative water supplies. Any forbearance period required by the Deputy Director of Water Rights would consider the temporal effects of groundwater diversions such that a forbearance period may occur at a different time period than the surface water forbearance period to reflect the delayed impacts of groundwater diversions on surface flow. For example, a groundwater forbearance period that starts earlier and ends earlier than the surface water forbearance period may allow for some groundwater recharge from precipitation in the late winter and early spring and not impact low flows during the dry season.

GROUNDWATER REQUIREMENTS

MONIQUE RAMIREZ, COVELO CANNABIS ADVOCACY GROUP

“The State Water Board will notify cannabis cultivators of the possibility that a groundwater forbearance period or other measures may be imposed so that the cultivators can install storage, coordinate diversions, take measures to secure alternate water supplies, or identify other measures to address the low flow condition.”

Comment: Please indicate a time frame for when cultivators would be notified.”

RESPONSE

The State Water Board anticipates that additional groundwater requirements will be established on a case by case basis when they are needed due to the unique nature of groundwater in different localities. In areas where potential impacts of groundwater diversions on surface flows are identified, the State Water Board will reach out to the groundwater diverters to inform them that they are having a potential impact and need to implement measures to address the low flow conditions. In the event the groundwater diverters do not implement appropriate measures, or the measures do not adequately address the impacts to surface water, the State Water Board will inform the diverters of additional requirements (e.g., forbearance period, limitations on pumping rates, etc.) and provide the diverters with a timeline for implementation.

INCENTIVES FOR GOOD ACTORS

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Please create incentives for good actors. In addition to reviewing policies to remove inadvertent negative incentives, please consider creating two types of incentives for those that are trying to do the right thing: Policy reward/incentive and monetary incentives. Policy incentives might take the form of allowing longer time periods to comply with certain requirements if all requirements are in fact being addressed; or lessening some requirements, even for a short time, if the applicant is otherwise in compliance or implementing best practices. Water conservation could also be a basis for a policy incentive. Monetary incentives can take the form of either a discount in fees (application or annual reporting) or a credit toward a future fee (annual report or additional project, etc.). Incentives should especially be given to good actors who are trying to address the ills of actors that came before them.”

RESPONSE

The Cannabis Policy and Cannabis Cultivation General Order provide lower fees based on the potential risk to water quality (e.g., waiver and tiers). The Water Boards generally work with cannabis cultivators to establish compliance plans that prioritize site improvements and layout a timeline for compliance based on the complexity of improvements needed and cost.

Some local Resource Conservation Districts have developed cannabis cultivation programs and best management guidance for cannabis cultivators. The Mendocino County Resource Conservation District in June of 2018 released its second edition *Watershed Best Management Practices for Cannabis Growers and other Rural Gardeners*. While the State Water Board does not have specific monetary incentives for cannabis cultivators, the cannabis cultivation community may want to explore marketing incentives that could be achieved through implementation of environmental stewardship agricultural programs such as the Fish Friendly Farming certification program created for agricultural properties managed to restore fish and wildlife habitat and improve water quality.

For additional information on how the Water Boards establish fees please see the response to comments under *Fees*.

INSTREAM FLOW REQUIREMENTS

CHARLES KATHERMAN

“As a groundwater geologist, I have serious reservations concerning the blanket application of the proposed regulations specific to water extraction from all forms of waterbodies, i.e. rivers, streams, lakes, creeks, drainages, etc. throughout the entire State. Each of these features vary widely depending on which region they are located in. Each is unique with respect to its water characteristics, including the size and geographic shape of the area watershed, annual rainfall amounts and the average duration of active rainfall, estimated annual recharge of the waterbody/aquifer, area specific surface and subsurface geology, actual surface/subsurface flow durations and volumes, and periodic/annual releases of stored or controlled water resources from dam containments, reservoirs, lakes, etc. into stream and subsurface aquifers.

There are too many variables to consider which directly affect the amount of water available for agricultural/cannabis cultivation and consumption.”

RESPONSE

The State Water Board, in consultation with the California Department of Fish and Wildlife (CDFW), evaluated established instream flow methods to develop interim instream flow requirements for the wet season that protect aquatic resources and balance other beneficial uses of water, which includes cannabis cultivation. Methods evaluated needed to meet the timeline, scale, and purpose of this Cannabis Policy and use the best available information. To ensure the interim instream flow requirements were flexible and adaptable, the instream flow methodology and flow dataset had to have sufficient spatial coverage to allow for a compliance point to be moved, as needed, so the interim instream flow requirements could be re-calculated at new locations. The State Water Board determined that the best available flow dataset for statewide instream flow development was the predicted historical flow data sourced from a flow modeling effort conducted by United States Geological Survey (USGS) in cooperation with The Nature Conservancy (TNC) and Trout Unlimited. The USGS flow modeling effort developed

empirical flow models that predicted the natural (unaffected by land use or water management) monthly streamflows from 1950 to 2012 for the majority of the USGS National Hydrologic Database stream reaches in California (Carlisle, et. al. 2016).

The Tessmann Method is a standard setting or desktop instream flow assessment technique that establishes monthly bypass flows. The State Water Board, in consultation with CDFW, reviewed established standard setting techniques that could be used with the natural monthly streamflow dataset and determined the Tessmann Method was the best method available to meet the timeline, scale, and purpose of this Cannabis Policy. The Tessmann Method is an approach that limits cumulative diversions based on a percentage of the average natural flow on a monthly time step which allows for setting variable flow requirements that represent the variability in flows between months. As noted in the Cannabis Policy, the State Water Board will monitor other flow events that occur at a shorter time step, such as high flow events that occur throughout the wet season to evaluate whether additional requirements are needed to maintain high flow variability during other periods of the wet season.

In accordance with Health and Safety Code section 57004, in August 2017, the State Water Board submitted the Draft Cannabis Policy for peer review. The peer review included, among other components of the Cannabis Policy, a review of the use of the Tessmann Method and the Aquatic Base Flow Standard. The peer review supported the State Water Board's approach to establish statewide flows, recognizing the interim nature and timeframe of the State Water Board's policy. The State Water Board did not have the resources or time to do water availability analyses statewide before meeting statutory and regulatory deadlines associated with the rollout of California's multi-agency regulation of cannabis. Regional or locally specific flow requirements and implementation plans, which will include an analysis of water availability, will be developed and included in future updates to the Cannabis Policy, as available.

The amount and timing of water diversions for cannabis cultivation and other beneficial uses varies by watershed. The Cannabis Policy only applies to diversions of water for cannabis cultivation and does not apply to diversions for other beneficial uses of water. The State Water Board determined with the limited information available on cannabis crop demand, location, and number of other beneficial uses in watersheds throughout California, the most protective approach would be to shift a portion of the water demand, in this case water for cannabis cultivation, to a time period when more water is available. Shifting water diversions from times of scarcity (dry season) when it is needed to support aquatic species to periods of time when water is more available (wet season) is a reasonable and appropriate approach to address water availability concerns. Instituting such a shift in water demand does increase the footprint of land disturbance for cannabis cultivation, however the Cannabis Policy includes requirements to mitigate the potential impacts of land disturbance for cannabis cultivation. The State Water Board recognizes there may be some watersheds with low water demand in which year-round diversions with limited storage may be equally successful in protecting threatened and endangered species and aquatic habitat compared to a forbearance period. In such instances, the Cannabis Policy allows for cannabis cultivators in these watersheds to enter into agreements with CDFW (local cooperative solutions) that allow for a modified forbearance period and/or flow requirement that provide watershed-wide protection that is comparable or greater than the Cannabis Policy, once approved by the Deputy Director for Water Rights.

California's intra-annual and inter-annual flow variability will result in situations where the interim instream flow requirements are, by wet season diversion month, potentially over-protective in some locations of the state and under-protective in other locations. The State Water Board also

recognizes that there may be localized impacts to instream flow in areas with a significant number of diversions for cannabis cultivation.

The Cannabis Policy allows for the State Water Board to adaptively manage and implement the interim instream flow requirements by requiring cannabis cultivators to install a local instream flow gage and establish an interim instream flow requirement for those cannabis cultivators at that gage. Over time, this approach will help to ensure the monthly interim instream flow requirements are achieved in localized areas and also provide information to inform whether additional requirements are needed to protect instream flows (e.g., requirements to protect high flow events). The Cannabis Policy also allows that cannabis cultivators may request approval from the State Water Board to install a local instream flow gage and an updated interim instream flow requirement for the local gage if the cultivators believe the assigned gage does not accurately represent the local conditions.

INSTREAM FLOW REQUIREMENTS (NARRATIVE) – SURFACE WATER DRY SEASON FORBEARANCE SEASON WAIVER

JOSEPH TULLGREN

“Should the dates all be changed to 2019? 2018 is pretty much over at this point.”

RESPONSE

The Cannabis Policy provided a one-time waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions. For cultivators that met certain conditions, the 2018 surface water dry season forbearance period was triggered by the Aquatic Base Flow Numeric Instream Flow Requirement, rather than the April 1, 2018 surface water dry season forbearance period date. The purpose of the one-time waiver was to provide cannabis cultivators with existing water rights, that did not include storage, more time to install offstream storage prior to full implementation of the forbearance period. In order to qualify for the waiver, cannabis cultivators were required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit, and install storage as soon as possible after storage has been authorized following the conclusion of the winter period.

LEGACY ISSUES

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“We cannot require the good actors to bear the burden of fixing all past ills regardless of whether the actions of that actor resulted in the ill or not. Often small cultivators obtained property that had already been logged or otherwise improved without regard to current resource protection standards. Many of the policies of all of the resource protection agencies in the State, create a negative incentive for folks who want to do the right thing to come forward so they can be regulated. Penalties for acts of others, remediation and maintenance requirements that are extremely expensive, require expensive professional assistance, and do not give enough time for implementation are replete throughout the regulations and policies that apply to cannabis cultivators. Please remember that the SWRCB Cannabis Cultivation Policy is only one of many that the cultivator must adhere to. Again, resource protection is an important and necessary goal. However, where possible, regulations and policy must be reviewed to see if unintentionally

the policy is discouraging folks from doing the right thing. More time, more technical assistance (throughout the process, not just for enrollment), and positive incentive programs should be adopted and implemented. The failure to provide more time and adequate technical assistance, grant funding for professional support, and positive incentives, result in some of the very best actors, true stewards of the earth, being pushed out because they just cannot handle the financial and technical burdens without more help. As these good actors are forced to abandon their endeavors, we are left with fewer regulated properties and only the wealthiest cultivators left.”

MARIE MYERS

“The properties were logged, ranched and cultivated prior to our purchases. Our desire is to bring the land into compliance. We can only move forward if it is financially feasible. Focus on the roads that involve the cultivation area, and not the whole property. (It is my understanding that allowances were made in regards to easement roads and they are not required to be up to standards, as well as there is no expectation placed on the properties that surround me and are not part of the compliance program.) If the water board could focus on the private road/driveways used for cultivation instead of the entire property, we would have a better chance at making this work.”

DIEDRE BROWER (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Commenter noticed that in discussion of the site management plan, the North Coast region is called out specifically to address entire property and legacy conditions. Commenter believes that is reasonable but wonders why they are singled out in that. Do other regions have similar requirements? It’s a lot of expense, area has problem getting professionals there. If someone falls out of the program for economic reasons or whatever their reasons may be, now they are on the hook for fixing all these legacy issues when they pull out. Concerned about how they will be able to do that when they pull out of the program.”

RESPONSE

Water Boards staff understand the challenges associated with fixing legacy issues parcel wide. Property improvements and corrective actions necessary for a given site may range from small, simple fixes that can be implemented by a landowner with hand tools, to large projects, requiring professional design and oversight and use of heavy equipment. Where a given site has more areas requiring work and/or more costly improvements or corrective actions, Water Boards staff expect that the improvements and corrective actions may extend over several years. Generally, the Water Boards expect compliance with standard conditions in the shortest time possible. However, in recognizing the challenges associated with the cleanup of legacy conditions (e.g., available resources, studies, additional permitting, etc.), on large parcels with significant legacy issues, Water Boards staff anticipate working with landowners and cannabis cultivators to develop site management plans and compliance schedules to help identify issues that must be resolved in the near term and those that can be remediated over a longer time.

The North Coast Regional Water Quality Control Board (North Coast Regional Water Board) has adopted policies and water quality control plan (basin plan) amendments to support restoration efforts and to attain or maintain water quality objectives. In particular, the North Coast Regional Water Board Resolution No. R1-2004-0087 (Resolution), *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region* (Sediment TMDL Implementation Policy) finds that approximately 95 percent of

the area of the North Coast Region is “listed” as impaired due to sediment; that the implementation of existing programs used for the control of anthropogenic sediment waste discharges has not been adequate to protect, remediate, restore, and enhance sediment-impaired water bodies and to control the cumulative impacts of sediment waste discharges; and that there is an immediate need for the prevention and control of sediment waste discharges with a greater dedication of staff time to outreach, education, prevention, permitting, and enforcement of existing rules. Accordingly, the Resolution directed North Coast Regional Water Board staff, in part, to rely on the use of all available authorities, including existing regulatory standards and permitting and enforcement tools, to more effectively and efficiently pursue compliance with sediment-related standards by all dischargers of sediment waste. These existing permitting and enforcement tools include, but are not limited to watershed-wide waste discharge requirements, individual or project-specific waste discharge requirements, general waste discharge requirements, waivers of waste discharge requirements, the identification and assessment of sediment waste discharge sources under the authority of Section 13267 of the California Water Code, and the control of sediment waste discharges under the authority of Sections 13304 and 13260 of the California Water Code.

California Water Code Section 13263(a) requires waste discharge requirements to implement any relevant basin plan. The Cannabis Cultivation General Order is consistent with the *Water Quality Control Plan for the North Coast Region*, the *Policy for the Implementation of the Water Quality Objectives for Temperature in the North Coast Region*, and the Sediment TMDL Implementation Policy by requiring all dischargers that are landowners of a cultivation site in the North Coast Region to develop site management plans that identify compliance with best practicable treatment or control measures property-wide, including discharges from legacy activities (e.g., former timber harvest, road building, mining, etc.) at the site.

For additional information on providing more technical assistance, please see the response to comments under *Post Enrollment Assistance* and *Incentives for Good Actors*.

MEASURING DEVICES AND REQUIREMENTS

JOSEPH TULLGREN

REGARDING ATTACHMENT A, SECTION 2, REQUIREMENT 81

“Examples of appropriate and commercially functional measuring devices is not only helpful, but necessary. Local area stores do not carry such devices or not a wide enough selection of them with proper flow or dependability. I have personally bought several water meters from Pace in Ukiah (the only water meters I've seen for sale locally).

These are not sufficient. They have repeatedly failed due to environmental conditions. Educate us as to the proper meters to use and where they might be purchased.”

JOSEPH TULLGREN

REGARDING ATTACHMENT A, SECTION 2, REQUIREMENT 82

“This requirement is a little out of control and not feasible in some cases. Some points of diversion are far away and not conveniently accessible on a daily basis, as it would take too much time in a day to monitor. Sure, garden usage can be calculated via emitter flow. However, if there is a water meter at your diversion site, I argue monthly recording to be sufficient, as an average can easily be calculated. Having proper measuring devices installed at the outtake of the cannabis garden tank and/or domestic water tanks, as you are requiring in item 81, would allow for proper records to be easily recorded more regularly. Does this not also give you the

information regarding your point of diversion? Is it not redundant to have the meters at the point of diversion AND at all of your tanks?

Also, a list of reasonable water measuring devices should be made available. I have personally bought several water meters from Pace in Ukiah (the only water meters I've seen for sale locally). These are not sufficient. They have repeatedly failed due to environmental conditions. Educate us as to the proper measuring devices to use and where they might be purchased.”

RESPONSE

As noted in the Cannabis Policy Staff Report, diversion measurement and reporting information will be used to monitor compliance with the flow requirements and forbearance period and account for water diverted and used for cannabis cultivation versus other beneficial uses. Requirements to use measurement devices and report water diverted for cannabis cultivation will improve Cannabis Policy administration allowing the State Water Board and water users to more efficiently manage use of available water supplies while also protecting public trust resources. Accurate water diversion measurements are necessary to monitor and evaluate instream flows in localized areas and reduce localized impacts to sensitive species and habitat, impacts to headwater streams, and to prevent injury to downstream senior water right holders.

To ensure diversions are conducted in accordance with the provisions of the Cannabis Policy, cannabis cultivators who divert surface water are required to install and maintain a measuring device as close to the point of diversion as reasonable and are required to verify and document compliance with the applicable minimum instream flows on a daily basis for each day of surface water diversion. This does not mean that the cannabis cultivator needs to physically inspect the point of diversion daily; however, the cannabis cultivator does need to check that minimum instream flows are sufficient for water diversion. Cannabis cultivators are required to on a monthly basis, at a minimum, inspect for and repair all leaks of the diversion and storage system. Additionally, CDFW may require cannabis cultivators to inspect, maintain, and clean any water intake screens and bypass appurtenances. The State Water Board has developed an online mapping tool to assist cannabis cultivators with determining whether they may divert water on any given day. The online mapping tool is available at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html

Cannabis cultivators only need to install measurement devices to measure water used from storage facilities if they are using the same storage facility for cannabis irrigation and other beneficial uses of water (e.g., domestic, irrigation of other crops, etc.) in order to account for water used for cannabis irrigation versus other beneficial uses.

The State Water Board will consider any device or method that provides accurate measurements within an acceptable range of error as specified in the Cannabis Policy. Below is a link to the State Water Board – Water Measurement Guidelines. The guidelines provide helpful information on acceptable measuring devices and procedures.

State Water Board Water Measurement Guidelines are available online at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/water_measurement.html#wdm

If cannabis cultivators have additional questions about measuring devices they can contact Division of Water Right Cannabis Small Irrigation Use Registration staff by phone at: 916-319-9427 or by email at: CannabisReg@waterboards.ca.gov.

NITROGEN REPORTING WORKSHEET EXAMPLE ERROR

CITY OF LOS ANGELES, ENRIQUE C. ZALDIVAR, LA SANITATION AND ENVIRONMENT

“Attachment D, Technical Report Guidance, Page D-8: Nitrogen Reporting Worksheet Example Calculation for Potassium (K) in the N – P – K diagram, “Potassium 10% K in a 100 lbs. bag = 1 lbs.” The correct resultant pounds of Potassium (K) should be 10 lbs. not 1 lbs.”

RESPONSE

Thank you for your comment. Attachment D of the Cannabis Cultivation General Order has been updated to reflect that the correct resultant pounds of Potassium (K) is 10 lbs.

OVERFLOW (ATTACHMENT A, SECTION 2, REQUIREMENT 89)

JOSEPH TULLGREN

REGARDING

“What if the over- flow diverts the water back to the point of origin diversion site? Some sites might not be able to logistically stop all flow of water via float valve. This excess pressure built up in the water lines might cause these very passive gravity systems to blow causing more problems and sedimentary discharge than your regulations are designed to avoid. I understand you are trying to avoid people diverting too much water that they might not need and therefore might be wasting said water. However, if the overflow is diverting the water right back to the same stream path, where it would have naturally flowed, I don't see a problem.”

RESPONSE

Cannabis cultivators are required to ensure that their diversion facilities are properly installed and maintained to prevent failure. Once storage facilities are full, cannabis cultivators should remove their diversion intake facilities from the stream, render the facilities incapable of diverting water (e.g., block, plug, cap, etc.), or take other measures to avoid a buildup of pressure that may result in failure of the water lines.

Continuing to divert water after storage facilities are full is a waste and unreasonable use of water. This practice can cause impacts to the instream flows needed for fish and other aquatic organisms in the stretch of stream between the diversion and where the water returns to the stream. In addition, the water that returns to the stream is warmer and has the potential to carry constituents that may be harmful to water quality. Water stored, in a tank or offstream pond, that overflows back into a stream is generally warmer than the natural flowing water in the stream and can have a negative impact on temperature and dissolved oxygen levels downstream of the point where it flows back into the stream. Overflow can also negatively impact surface water quality through the transport of sediment, pesticides, fertilizers, and other harmful constituents to the stream, and create channelization (and mobilization of sediment) in the area between the storage facilities and the stream channel.

POST ENROLLMENT ASSISTANCE

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Provide technical assistance after enrollment...Except for the website and some email blasts that occasionally warn of deadlines, there really is not much help for someone to navigate the entire process long the way. Even when staff is being extremely helpful on the phone or by email, understandably, there is just no way to address the site specific information that might be relevant and there is no attempt to address cross-jurisdictional issues like conflicts in definition or process between CDFW and the Water Board. Please fund hands-on workshops (not just for enrollment but post-enrollment activity) as well as issue technical assistance grants for applicants that might need on-site assistance.”

RESPONSE

State Water Board staff have made themselves available to assist cannabis cultivators throughout the development and implementation of the Cannabis Policy. Much of the focus over the past year has been on assisting cultivators with the Cannabis SIUR application process and enrollment under the Cannabis Cultivation General Order. As those numbers increase, State Water Board staff anticipate that outreach efforts will transition to post enrollment technical assistance workshops and some hands-on workshops at cannabis cultivation sites with willing landowners. The Water Boards do not have any technical assistance grants available for cannabis cultivators.

If cannabis cultivators have questions or need technical assistance, they are encouraged to direct questions as follows:

Cannabis Cultivation General Order

Phone: 916-341-5580

Email: DWQ.Cannabis@waterboards.ca.gov

Cannabis Small Irrigation Use Registrations

Phone: 916-319-9427

Email: CannabisReg@waterboards.ca.gov

Cannabis Policy

Email: CannabisWR@waterboards.ca.gov

Additionally, Useful Guidance Documents that may assist cannabis cultivators with best management practices and implementation of the Cannabis Policy and Cannabis Cultivation General Order provisions can be found in Attachment A, Section 6 of the Cannabis Policy.

For additional information on Water Boards and California Department of Fish and Wildlife permitting authorities, please see the response to comments under *Determination of Need for Water Right*.

QUALIFIED BIOLOGISTS (ATTACHMENT A, SECTION 2, REQUIREMENT 86)

JOSEPH TULLGREN

“Here's a perfect example of added expense and over regulation at every step! Not only do we need an engineer to properly design the pond, all earth moving permits and LSA requirements, we now need a biologist to create an invasive species management plan, and then a fishing permit or permit to destroy the invasive species? Really? Permits to fish in my own pond to rid it of the bullfrogs you want me to get rid of? This is a ridiculous amount of red tape!!! You are all out of control with your permits.”

RESPONSE

The Cannabis Policy does not require cannabis cultivators to hire qualified biologists to do unnecessary work. In many cases, cannabis cultivators can implement measures or complete work without the assistance of biologists or other qualified professionals and meet the performance standards established by Cannabis Policy requirements (e.g., site management plans, erosion control measures, spoils management, etc.).

Invasive species management is a standard and common water right requirement and California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration (LSA) Agreement condition for water storage reservoirs and is not specific to cannabis cultivation activities. Cannabis cultivators will need to work with a qualified biologist to develop an invasive species control plan. If bullfrogs or other invasive species are identified, cannabis cultivators are required to work with a qualified biologist and CDFW to determine appropriate eradication measures. Eradication methods can be direct or indirect and, in many instances may be implemented by the cannabis cultivator. Direct methods may include handheld dip net, hook and line, lights, spears, gigs, or fish tackle under a fishing license (pursuant to Fish and Game Code section 6855). An indirect method may involve seasonally timed complete dewatering and a drying period of the off-stream storage facility under a Permit to Destroy Harmful Species (pursuant to Fish and Game Code section 5501) issued by CDFW.

QUALIFIED PROFESSIONALS

NEVADA COUNTY CANNABIS ALLIANCE - DIANA GAMZON, EXECUTIVE DIRECTOR, CALIFORNIA GROWERS ASSOCIATION

“Consider cost and logistical barriers for cultivators seeking to contract with Qualified Professionals to fulfill state requirements. ... The Water Board should consider granting extensions based on a finding that there are not sufficient Qualified Professionals to perform the necessary work, and could also consider alternative methods to promote responsible management without relying on external consultants in all cases.

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Please acknowledge the practical limitations of small rural farmers to access qualified professionals in a timely and affordable manner. ..., either because a particular project mandates using a qualified professional, or because the process is overwhelming, small rural farmers must hire outside consultants and technical advisors. This is in addition to any engineers or design professionals they might have to hire.”

HANNAH NELSON (VERBAL COMMENT AT STATE WATER BOARD WORKSHOP)

“Concerns are driving good actors out. Particularly small rural farmers, that have been long stewards of the land, protective of natural resources...inherited land from bad actors...massive amounts of regulations...unrealistic timeframes...unrealistic expenses and fees...lack of access to qualified professionals...incentivize people to stay in the game...Many people don’t have daily online access...System is hard to navigate...Cooperation between Water Board divisions is good, other agency cooperation is not so good.”

RESPONSE

Use of qualified professionals ensures that work is performed by individuals that are qualified to complete the work. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1.

State Water Board staff recognize that, in certain situations, cannabis cultivators may have limited access to qualified professionals. The Cannabis Cultivation General Order recognizes that bringing the cannabis cultivation site into compliance with Cannabis Policy requirements may not be achievable prior to the onset of the Winter Period due to the complexity, cost, or lack of qualified professionals needed to complete the work. In these situations, the cannabis cultivator (referred to as Discharger in the Cannabis Cultivator General Order) shall notify Regional Water Board staff by telephone so that a site-specific compliance schedule can be developed. Telephone notification shall occur as soon as the cannabis cultivator or its agents have knowledge of such noncompliance or potential for noncompliance. The cannabis cultivator shall also submit written notification including the date, time, nature, cause of noncompliance, immediate response action, and a schedule for corrective actions.

It is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Cannabis Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives.

For additional information please see the response to comments under *Legacy Issues* and *Fees*.

RECORDS OF HAULED WATER

JOSEPH TULLGREN

REGARDING ATTACHMENT A, SECTION 2, REQUIREMENT 93

“What is the point of keeping these records for 5 years? Just to collect more red tape? Is this information not recorded when we report our water usages to the division of water rights? If so, you already have the information.”

RESPONSE

Proper documentation for hauled water is necessary to ensure that all water associated with cannabis cultivation activities was diverted under a valid basis of right. Cannabis cultivators do not need to submit information on the quantity of hauled water purchased and used for cannabis cultivation unless requested by the Water Boards or California Department of Fish and Wildlife staff, and are therefore required to keep such records for five years.

REVIEW PROCESS

CHARLES KATHERMAN

“There are too many variables to consider which directly affect the amount of water available for agricultural/cannabis cultivation and consumption. Consequently each Lake or Streambed Alteration (LSA) and /or each Small Irrigation Use Registration (SIUR) application should be reviewed by each Regional Board and analyzed on a case by case basis. For example the State Board currently doesn't apply a blanket set of regulations to each and every groundwater basin in California, nor should it in this situation”

RESPONSE

The original Cannabis Policy (including proposed updates) establishes interim requirements pending the establishment of long-term requirements that will be developed at the regional areas established in the Cannabis Policy. The State Water Board determined that it is more protective to use the best available information to establish statewide, interim water diversion and instream flow requirements that may be over or under protective in regional or localized areas than risk the ongoing significant impacts to threatened and endangered species while developing regionally or locally specific diversion and instream flow requirements. Regional or locally specific requirements will be developed and included in future updates to the Cannabis Policy, as available.

The requirements established by the Cannabis Policy are incorporated into a water quality permit and water right issued by the Water Boards. The State Water Board Division of Water Rights, not individual Regional Water Boards, is the only agency with the authority to manage and administer water rights in California. The Cannabis Policy establishes statewide cannabis cultivation requirements, which among other requirements, requires cannabis cultivators to forbear (or cease) from diverting surface water during the dry season. Cannabis cultivators that divert surface water therefore need to get a Cannabis Small Irrigation Use Registration (SIUR) or other appropriative water right that allows for storage of water for irrigation. The Cannabis SIUR is available statewide as a streamlined option to obtain a small appropriative water right (less than 6.6 acre-feet per year) to divert and store surface water to irrigate commercial cannabis crops. The Cannabis SIUR requires compliance with the Cannabis Policy as well as additional general terms and conditions. Division of Water Rights staff review each application to ensure the application is complete and appropriate for the Cannabis SIUR Program.

The California Department of Fish and Wildlife (CDFW) administers the Lake and Streambed Alteration Program. Proponents of any project in California which has the potential to alter a lake or streambed must consult with CDFW. The Regional Water Boards do not have authority to review or administer LSA Agreements.

For additional information on the development of regionally specific requirements please see the response to comments under *Statewide Policy Versus Regional Policy*.

RIPARIAN WATER RIGHTS

ANITA SCHINDLER

“The Riparian rights on my land, long established by your Department of Water Resources, have now been taken away specifically and solely because I grow cannabis.”

RESPONSE

Water Code Section 13149 directs the State Water Board to “adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section.” Additionally, Water Code Section 13149 states “The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation.” The State Water Board must abide by the Water Code.

To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions for cannabis cultivation are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources and aquatic habitat will be minimized.

The Cannabis Policy does not take away riparian water rights. Riparian water rights do not allow for water storage, so riparian water right holders who intend to divert surface water for cannabis cultivation are required to obtain an appropriative (storage) water right (most likely a Cannabis Small Irrigation Use Registration) in order to comply with the Cannabis Policy. The riparian water right can still be used for beneficial uses other than cannabis cultivation (e.g., domestic, irrigation of other crops, etc.).

SOILS DISPOSAL AND MANAGEMENT (ATTACHMENT A, SECTION 2 REQUIREMENT 58)

COVELO CANNABIS ADVOCACY GROUP, MONIQUE RAMIREZ

“The State Water Board should encourage the composting of root balls, and stalks of cannabis plants and therefore, remove this provision that roots etc be separated from soil materials. Many cultivators use this rich plant material to compost back into the soil for future plantings, which helps to encourage a closed-loop system and a healthy ecosystem.”

JOSEPH TULLGREN

“What is the point of this? Most farmers/cultivators practice composting in some form or another. Some even employ wood chippers to return that large debris back into the soil or compost pile. You are overregulating for no reason.”

RESPONSE

Large organic material is typically associated with site development and site expansion and does not include cannabis plant material. Cannabis cultivators are allowed to compost large organic material (e.g., roots, woody debris, etc.) in a stable upland site (i.e., outside of the riparian zone), as approved in their site management plan. Cannabis plant material may be disposed of onsite in compliance with any applicable California Department of Food and Agriculture CalCannabis license conditions and any other applicable requirements.

STATEWIDE POLICY VERSUS REGIONAL POLICY

HANNAH NELSON (WRITTEN SUPPORT BY MARIE MYERS, JED DAVIS, CAL GROWERS ASSOCIATION)

“Please critically assess the presumptions upon which these policies have been promulgated. Do not use statewide presumptions when looking at small rural farmers. For example, the quantity of water used by a cannabis cultivator varies dramatically depending on an enormous host of factors. Basing policy on presumptions of use applicable to inefficient and wasteful actors rather than those that are conscientious creates a disincentive for water conservation. Likewise, basing policy on water use presumptions that are more in line with drier more barren land rather than considering the climate zones and the cultivation style (outdoor vs., mixed light vs. indoor) and the type of irrigation techniques employed, disproportionately negatively impacts those that are using growing techniques and irrigation methods that are appropriate for their climate. The current statewide presumptions are based on the worst-case scenario regardless of the good acts of the cultivator to conserve or to utilize methods more appropriate for their climate.”

HANNAH NELSON (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Critically assess some of the assumptions that is the basis for the policy...for example, using data collected from law enforcement action and bad actor, or even a statewide system. Gear some policy towards what is actually happening with this particular diverter/discharger...treat farmer according to actual practices rather than statewide presumptions based on worse case scenarios...provide technical assistance all the way through...incentives for good behavior. Information regarding differences between what the different agencies need.”

NEVADA COUNTY CANNABIS ALLIANCE - DIANA GAMZON, EXECUTIVE DIRECTOR, CALIFORNIA GROWERS ASSOCIATION

“Consider revisions to requirements based on data collected overtime. Given the lack of data on cannabis water usage, we understand the Water Board’s rationale for more conservative and restrictive policies in some cases. However, in our view, these restrictive policies are not always necessary or reflective of typical cultivation practices. As more data is collected, the Water Board should review its reporting, monitoring, and logistical requirements to align its policies with the situation on the ground. Cultivators who can demonstrate efficient and sustainable water management practices should be considered for exemptions from certain requirements, and overall requirements should be revisited based on data collected.”

RESPONSE

The Cannabis Policy was developed as a statewide Policy in order to meet the timeline, scale, and goals of the Legislature as enacted in the Medical and Adult-Use Cannabis Regulatory and Safety Act and associated establishment of Water Code section 13149. The Cannabis Policy requirements do not make assumptions of water use or conservation techniques. The requirements establish performance standards for water conservation and require more accurate collection of water use information. Water Code section 13149 directs the State Water Board to develop interim requirements pending the development of long-term requirements. The original Cannabis Policy (including proposed updates) establishes interim requirements pending the establishment of long-term requirements that will be developed for the regional areas established in the Cannabis Policy.

The Cannabis Policy further allows for the development of local cooperative solutions and modification to the Cannabis Policy interim instream flow requirements (i.e. numeric flow requirements, forbearance period) if cannabis cultivators enter into an agreement with the California Department of Fish and Wildlife (CDFW) and the agreement provides watershed-wide protection that is comparable or greater than the Cannabis Policy. Recognizing the immediate and ongoing significant impacts to threatened and endangered species, the State Water Board used best available information to establish statewide, interim instream flow requirements that may be over or under protective in regional or localized areas. Regional or locally specific flow requirements will be developed and included in future updates to the Cannabis Policy, as available. Future updates to the Cannabis Policy and the development of long-term requirements will be informed by the applications and data submittals that the State Water Board, CDFW, and California Department of Food and Agriculture receive, as well as by additional analysis of regional data and ecology.

For additional information on providing more technical assistance, please see the response to comments under *Post Enrollment Assistance* and *Incentives for Good Actors*.

STORAGE TANKS – MANUFACTURER’S SPECIFICATIONS (ATTACHMENT A, SECTION 2, REQUIREMENT 91)

COVELO CANNABIS ADVOCACY GROUP, MONIQUE RAMIREZ

“Please remove this requirement. What is the intention for having it? Many cultivators do not have their original manufacturer’s specifications.”

JOSEPH TULLGREN

“What storage tank comes with written manufacturer’s spec’s when purchased and delivered to your location? I’ve never received any such documentation with any tank I’ve ever bought. This is a stupid and unnecessary requirement. Please remove it, as no one will comply with it anyway.”

DIEDRE BROWER (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“On the water storage tanks, proposed requirement to keep specs for tanks on site for 1 year after use. Why is this required? Was there a problem? Believes its more appropriate for

bladders as opposed to rigid tanks. Commenter believes it seems like almost just one more thing to get somebody on when it might not be a water quality or water right issue.

Policy also contains guidelines for tanks over 8,000 gallons but in Trinity County, and commenter thinks it's statewide building code, if it's over 5,000 it's got to have engineered plans, and a permit for having that water source."

RESPONSE

Tanks that are not properly sited or installed correctly have the potential to spill or fail, resulting in unauthorized discharges and potential negative impacts to water quality. Keeping the manufacturer specifications, if available, onsite provides Water Boards staff with the ability to check that tanks used for cannabis cultivation are installed properly. State Water Board staff recognize that manufacturer specifications for certain existing tanks may not exist. In addition, it is not the intent of this condition to replace or supersede other applicable state, county, or local requirements for the installation of water storage tanks. As with the rest of the Cannabis Policy, it is the intent for the more stringent of the requirements to apply. As a result, the referenced sections of Cannabis Policy, Attachment A, Section 2, Requirement 91 of is proposed to be revised as follows:

*Cannabis Cultivators shall maintain a written **or electronic** copy of the manufacturer's specifications for each storage tank **installed and used for cannabis cultivation activities, if available from the manufacturer in hardcopy or on the internet for a period of 12 months beyond the last day the storage tank is used.***

Nothing in this Requirement supersedes other applicable state, county, or local requirements for the installation of water storage tanks, whichever is more stringent shall apply.

TRIBAL AUTHORIZATION REQUEST LETTER

EELK VALLEY RANCHERIA, CALIFORNIA, DALE A. MILLER, CHAIRMAN

"The draft template request letter and the draft tribal response letter could potentially be at odds and inconsistent with tribal jurisdiction.

Therefore, the Tribe suggests the following clarifications to the request letter:

The attached SMP describes how the ~~cultivation site~~ cultivator will comply with the requirements of the Cannabis Policy and the Cannabis Cultivation General Order, and how compliance measures will be implemented by the cultivator at the cultivation site, subject to tribal jurisdiction. Nothing herein is intended to and shall not be construed to grant the [State Water Board or Regional Board] jurisdiction over the [Tribal Authority] or tribal land.

RESPONSE

The State Water Board appreciates the suggested language for the draft template letters. The draft template letters are not part of the proposed updates to the Cannabis Policy. The template letters were provided to the tribes as an example of what the letters may contain. However, the State Water Board updated Attachment A, Section 1, Requirement 19 of the Cannabis Policy to state: **"Nothing in this provision shall be construed to modify or interpret tribal law or tribal jurisdiction in any way.**

TRIBAL NOTIFICATION

ROUND VALLEY INDIAN TRIBES, ERICA MCMILIN, ATTORNEY

“Tribes Should Receive a Copy of the Permit Application. *The Tribes should receive a copy of every permit application that could affect tribal lands to enable the Tribal Council to make an informed decision whether to approve or reject a request for authorization. Providing the Tribes copies of these permit application would allow the Tribes to assess the proposed cultivation operation, including its proposed location; its physical and ecological footprint; what other types of cannabis licenses, if any, its owners possess; and where the cannabis cultivator proposes to take and discharge water. All of this information is necessary for the RVIT to make an informed decision as to whether or not to authorize cultivation on or within the “Tribal Buffer.”*

Tribes Should Always be Notified Unless They Have Explicitly Requested Not to Receive Notice. *The Tribes should always be notified when SWCRB receives a completed application for cultivation of cannabis on or within 600 feet of tribal lands. Under the proposed rule, after a tribe notifies SWCRB that it will prohibit all cannabis cultivation on or within 600 feet of its lands, SWCRB will automatically reject future applications to cultivate on these spaces. However, even if the Tribes decide to ban cultivation within the Tribal Buffer, the Tribes still wish to receive notice that an application has been filed for cultivation on these lands. Such notice would enable the Tribes to make an informed decision at the time an application is filed as to whether it wishes to withdraw or modify its blanket rejection.*

The SWCRB Should Coordinate with THPOs or other Tribal Representatives Regarding Potential Impacts on Tribal Cultural & Natural Resources. *The Tribes are deeply concerned with protecting tribal cultural and natural resources, both within and outside the RVIT Reservation boundaries. The proposed updates should be revised to require the Board to coordinate with the Tribes’ Tribal Historic Preservation Officer (THPO) or other appropriate Tribal Representative regarding how the proposed cultivation might impact the Tribes’ cultural and natural resources.”*

RESPONSE

Each tribal authorization request letter will include the proposed cannabis cultivation site management plan. There is nothing in the requirement that prevents the State Water Board from sending notices to a tribe that has issued a blanket prohibition on cannabis cultivation and tribes should, if desired, notify the State Water Board of this request as part of the blanket prohibition request. The tribes may also initiate coordination between the cannabis cultivator and a tribal representative regarding potential impacts when the authorization letter is received.

The Cannabis Policy includes requirements relating to a cannabis cultivator’s obligations when archeological resources are inadvertently discovered and a cannabis cultivator’s obligation to search available databases for information on tribal cultural resources and archeological resources prior to land disturbance activities for new or expanded cannabis cultivation activities. Both requirements explicitly require cannabis cultivators to provide final proposed mitigation and conservation measures to culturally affiliated tribes identified by the Native American Heritage Commission. The Cannabis Policy also explicitly states that culturally affiliated tribes may submit mitigation measure recommendations with their comments on a given cannabis cultivator’s final proposal. The Cannabis Policy requires a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission prior to land disturbance for new or expanded cannabis cultivation activities. This approach creates a process for cannabis cultivators to develop appropriate protective measures with California

Native American tribes for the specific Native American cultural resources that may be affected by a given cannabis cultivation proposal.

In the event of a Sacred Lands Inventory positive result, the cannabis cultivator is required to consult with culturally affiliated California Native American tribes, develop appropriate mitigation and conservation measures, submit proposed mitigation and conservation measures to the appropriate person(s) (Deputy Director for the Division of Water Rights or Executive Officer for the appropriate Regional Water Board, as applicable) for written approval. The Deputy Director or Executive Officer, as applicable, has the authority to require all appropriate measures necessary to conserve archeological resources and tribal cultural resources listed on the Sacred Lands Inventory, including but not limited to Native American monitoring, preservation in place, and archeological data recovery. The cannabis cultivator is also required to provide a copy of the final proposed mitigation and conservation measures to any culturally affiliated California Native American tribes identified by the Native American Heritage Commission. The Deputy Director or Executive Officer, as applicable, will carefully consider any comments or mitigation measure recommendations submitted by culturally affiliated California Native American tribes with the goal of conserving tribal cultural resources and prehistoric archeological resources with appropriate dignity.

WATER AVAILABILITY

CHARLES KATHERMAN

“There currently appears to be no specific regulations addressing impacts to water availability in river/alluvial aquifers where water flow and recharge are directly affected by monthly/annual releases from dams, reservoirs, lakes, and other water storage features. These releases are obviously mandated to support water reserves for agricultural activities and are often timed during the dry season in order to recharge the surface and subsurface water supplies. In some cases this scenario may preclude the need for a Dry Season Forbearance Period, or at least one that doesn't last as long as from November 1 to April 1.”

RESPONSE

Many rivers in California have existing instream flow requirements through licenses issued by the Federal Energy Regulatory Commission (FERC) for hydropower projects, Biological Opinions issued by the National Marine Fisheries Service or the United States Fish and Wildlife Service, or water right orders and decisions issued by the State Water Board. Per the Cannabis Policy, cannabis cultivators shall comply with either: (a) existing instream flow requirements (e.g., Biological Opinion or FERC flow requirements); or (b) the Cannabis Policy Tessmann instream flow requirements, whichever is greater. Cannabis cultivators who divert surface water are required to verify that water is available at their point of diversion by using the Online Cannabis Compliance Gage Mapping Tool, which is available online at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html.

This tool identifies whether the cannabis cultivator is required to comply with the Tessmann flow requirement or existing flow requirements. In areas with complex existing flow requirements, that are more restrictive than the Tessmann flow requirement, the cannabis cultivator may need to work with a facility operator to identify when instream flows exceed the existing flow requirement and water is available for diversion.

The Cannabis Policy further allows for the development of local cooperative solutions and modification to the Cannabis Policy interim instream flow requirements (i.e., numeric flow requirements, forbearance period) if cannabis cultivators enter into an agreement with the

California Department of Fish and Wildlife and the agreement provides watershed-wide protection that is comparable to or greater than the Cannabis Policy. Cannabis cultivators can also enter into agreements with water storage facility operators to have the facility store the water during the diversion season and deliver it to the cannabis cultivator during the dry season (forbearance period). It should be noted, however, that the federal government considers it illegal to use water stored and delivered by federal facilities for cannabis cultivation.

WATER CONSERVATION AND USE

MONIQUE RAMIREZ, COVELO CANNABIS ADVOCACY GROUP

*“Cannabis cultivators shall maintain daily records of all water used for irrigation of cannabis. Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered (e.g., irrigating for one hour twice per day using 50 half-gallon drips equates to 50 gallons per day (1 hour x 2 times per day x 50 drips x 0.5 gallons per drip) (1*2*50*0.5) of water used for irrigation). Cannabis cultivators shall retain, for a minimum of 5 five years, irrigation records at the cannabis cultivation site and shall make all irrigation records available for review by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.”*

Comment: This requirement creates an undue hardship on cultivators that are faced with reporting requirements from other agencies. For small operators, this will be a hard requirement to meet. Especially because some days, a cultivator will have to go out of town for supplies etc and will not be able to record this daily data. This seems overboard to require daily records.”

RESPONSE

As stated in Requirement 97, “Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered.” The Cannabis Policy requires cannabis cultivators to use water conserving irrigation methods (e.g., drip or trickle irrigation, micro-spray, or hydroponics). These types of irrigation methods typically identify the rate of irrigation for the individual emitter, such as a half-gallon of water per hour. The Cannabis Policy allows cultivators to calculate their daily water use based on the number of emitters, irrigation system rate (e.g., half-gallon per hour), and time operated. If the irrigation system allows for this calculation, cannabis cultivators can simply calculate daily water use based on time irrigated and record when irrigation times change. If a cannabis cultivator’s irrigation system is not set up to calculate daily water use, measuring devices, such as a totalizer, can be used to calculate water use. Records of daily water use will help the State Water Board better understand the water needs of cannabis plants and how those needs might vary depending upon climate, plant strain, watering methods, and cultivation methods (e.g., outdoor in ground, outdoor in pots, mixed light, etc.). More accurate information on cannabis cultivation water use will help inform future updates to the Cannabis Policy.

In cases where the cultivator can obtain the Section 404 permit, they are required to and must also obtain a Section 401 water quality certification. If a Section 404 permit can be obtained, the cannabis cultivator may qualify for coverage under the Cannabis General Water Quality Certification. If the Cannabis General Water Quality Certification is used, the applicant must submit an application at least 60 days prior to starting work and obtain written authorization from the applicable Regional Water Board Executive Officer.

WILD AND SCENIC RIVERS

DIEDRE BROWER (VERBAL COMMENTS AT STATE WATER BOARD WORKSHOP)

“Policy states SIUR might not be available on a wild and scenic rivers. Are there guidelines as to when a SIUR would be included on Wild and Scenic rivers. There are a lot of people on the mainstem Trinity.”

RESPONSE

Cannabis Small Irrigation Use Registrations (SIUR), like other appropriative water rights, cannot be issued if the point of diversion (POD) is proposed to be on the main stem of a California or federal designated Wild and Scenic River (Public Law 90-542; 16 U.S.C. 1271 et seq. and California Public Resource Code section 5093.54). However, cannabis cultivators may be eligible for a Cannabis SIUR if their POD is on a tributary to the Wild and Scenic River. If it is not possible to move the POD from the mainstem of a Wild and Scenic River, then cannabis cultivators will need to assess whether an alternative water source is feasible.

VARIOUS OTHER COMMENTS

LINDA CASSERA (CASSARA)

“What recourse does the community have to voice concerns about local problems or disagree with decisions by officials, or staff, who occupy positions without any accountability or responsibility?”

Please provide certified copies of your Oath of Office and the Bonds that are filed into public record, PRIOR to planned acts paid for by your employers, We, the People!”

RESPONSE

This comment is beyond the scope of the proposed updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order.

Community members may voice concerns at regularly scheduled meetings of the State Water Board and the Regional Water Boards. Additionally, the proposed updates to the Cannabis Policy, Staff Report, and Cannabis Cultivation General Order were released for a 60-day public comment period on September 28, 2018, as required under Water Code Section 13147 and 13149. During the comment period, staff held two public workshops: a State Water Board workshop in Sacramento on October 16, 2018; and a staff workshop in Fortuna on November 8, 2018. The State Water Board workshop was webcast and oral public comments were accepted and recorded. The public comment period, as well as the workshops and State Water Board meeting were noticed at the same time. The notice was published in newspapers statewide, posted on the State Water Board’s website and social media accounts, and sent to applicable State Water Board email subscription lists. Water Boards programs also maintain email addresses and phone numbers specifically for the public to ask questions or request help on program specific issues.

Article XX, section 3 of the California Constitution and section 18150 to 18158 of the Government Code describe the oath of office administered to public officers and employees.

Persons interested in obtaining copies of records may contact Lana Marin, with the State Water Board, Division of Financial Assistance, at Lana.Marin@WaterBoards.ca.gov.

**ATTACHMENT A:
COMPLETE COMMENT
LETTERS**

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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



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").¹ 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,² and in accordance with federal law.³ 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.

¹ "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.

² Agua Caliente Band of Cahuilla Indians Commercial Cannabis Prohibition Ordinance No. 50.

³ Federal Controlled Substances Act, 21 U.S.C. Sections 801 et seq.



State Water Resources Control Board
Attn: Jeanine Townsend, Clerk to the Board
November 26, 2018
Page 2

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.⁴ 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.

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



State Water Resources Control Board
Attn: Jeanine Townsend, Clerk to the Board
November 26, 2018
Page 3

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



AUGUSTINE BAND OF CAHUILLA INDIANS

PO Box 846 84-481 Avenue 54 Coachella CA 92236

Telephone: (760) 398-4722

Fax (760) 369-7161

Tribal Chairperson: Amanda Vance

Tribal Vice-Chairperson: William Vance

Tribal Secretary: Victoria Martin



October 19, 2018

Jeanine Townsend
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: **Comment Opportunity: Tribal Cultural Resources Protection Conditions Related To Cannabis Cultivation Policy Update**

Dear Ms. Townsend–

Thank you for the opportunity to offer input concerning the development of the above-identified project. We appreciate your sensitivity to the cultural resources that may be impacted by your project, and the importance of these cultural resources to the Native American peoples that have occupied the land surrounding the area of your project for thousands of years. Unfortunately, increased development and lack of sensitivity to cultural resources has resulted in many significant cultural resources being destroyed or substantially altered and impacted. Your invitation to consult on this project is greatly appreciated.

At this time we are unaware of specific cultural resources that may be affected by the proposed project. We encourage you to contact other Native American Tribes and individuals within the immediate vicinity of the project site that may have specific information concerning cultural resources that may be located in the area. We also encourage you to contract with a monitor who is qualified in Native American cultural resources identification and who is able to be present on-site full-time during the pre-construction and construction phase of the project. Please notify us immediately should you discover any cultural resources during the development of this project.

Very truly yours,

A handwritten signature in blue ink that reads "Victoria Martin".

Victoria Martin
Tribal Secretary



To: State Water Resources Control Board
Email: commentletters@waterboards.ca.gov

From: California Growers Association
Email: policy@cagrowers.org

CGA Comment on Proposed Cannabis Cultivation Policy – November 2018

On behalf of the California Growers Association, representing small and independent cannabis businesses throughout the state, the following comments represent our perspective on the Water Board’s proposed regulations published on September 27, 2018.

The bulk of our membership is composed of small, legacy cultivators with farms located in rural, and often remote, areas. Despite the many challenges our members have dealt with in transitioning into the newly regulated framework, this type of small-scale cultivation remains typical for cannabis production in California. According to data from CDEFA’s licensee database, about 65% of the 1,300 entities holding California cultivation licenses farmed less than 10,000 square feet of mature plant canopy, and 92% of licensees farmed less than one acre of canopy.

This situation poses a unique challenge: integrating a newly-regulated industry into an existing and complex framework for the sustainability of water resources, while at the same time ensuring that permitting remains accessible for small farmers with limited financial and technical resources. We are in agreement with the comments submitted by the Mendocino County attorney Hannah Nelson, which discuss in detail the practical challenges that rural cultivators face in complying with state water regulation in the midst of a major economic transition.

As with those comments, we are not scientists or technical experts on water management – however, we do have a unique view of the situation on the ground, and we share the state’s comment to sustainable water management. Our goal is to ensure that compliance with state water requirements is practically possible for the bulk of cultivators in the state, and our comments are developed with that perspective in mind.

We have several specific comments on the proposed policy:

1. Support – proposed process for allowing on-stream reservoirs.

We strongly support and appreciate the conditional allowance for on-stream reservoirs under Rule 79(c). These rules create a process to ensure water resources are protected, while significantly lowering barriers to entry for cultivators seeking to establish compliant water management practices.

We also feel the Water Board should consider adjustments to these requirements to ensure that they are appropriate for a given watercourse, and to effectively manage the process of granting determinations under Rule 79(c)(i). Specifically:

A. Consider reducing monitoring requirements for Class II and Class III watercourses.

The proposed monitoring requirements are substantial and require a large amount of time and paperwork. While we understand the Water Board's interest in close scrutiny, we feel this level of scrutiny is less appropriate for Class II and especially Class III watercourses. Tiering monitoring and documentation requirements based on the level of risk involved will ensure that limited resources are focused where they are most needed.

B. Allow regional waters boards to grant determination to approve or deny on-stream reservoirs under Rule 79(c)(i).

Rule 79(c)(i) to grants substantial discretion to the state to allow or deny on-stream reservoir permitting. Regional Water Boards, in our experience, will typically be in the best position to make these case-by-case determinations, and to coordinate with local governments and CDFW staff on issues involving multiple stakeholders. Rule 79(c)(i) as written already grants the Deputy Director the ability to assign a designee to make this

determination. If the text of the rule itself is not changed to assign authority to regional Water Boards, we think that regional board would be the appropriate designee under the Deputy Director's discretion.

C. For Class III watercourses, grant automatic determinations to allow on-stream reservoirs under Rule 79(c)(i).

Given that ephemeral watercourses do not provide wildlife habitat and the transportation of water is their most important function, they are ideal sites for on-stream reservoirs. Enabling Class III watercourses to qualify for an automatic determination would be appropriate and would help alleviate a possible bottleneck in approving determinations.

2. Consider cost and logistical barriers for cultivators seeking to contract with Qualified Professionals to fulfill state requirements.

The proposed policy relies heavily on Qualified Professionals as intermediaries between farmers and the state. While we recognize the importance of technical experts in ensuring effective water management, the Water Board should be aware of the substantial barriers to contracting with Qualified Professionals in practice. From a cost perspective, individual cultivators will be required to spend tens or hundreds of thousands of dollars in consulting fees, resources which are frequently not available to small cultivators already under major financial pressure from state and local cannabis taxes and regulations. More broadly, there is a severe shortage of Qualified Professionals in rural areas, to the point where it is simply not possible to perform all the work that needs to be done in the time available. The Water Board should consider granting extensions based on a finding that there are not sufficient Qualified Professionals to perform the necessary work, and also could also consider alternative methods to promote responsible management without relying on external consultants in all cases.

3. Ensure coordination between the Water Board, CDFW, and local government.

The Water Board, CDFW, and county governments frequently hold overlapping jurisdiction over water projects. In the past, lack of coordination between regulators has led to contradictory requirements, including cultivators investing substantially in water management practices that were later overruled by a different agency. Effective, continuous coordination is essential to promote sustainable water management and for cultivators to have the ability comply with state rules.

4. Consider revisions to requirements based on data collected over time.

Given the lack of data on cannabis water usage, we understand the Water Board’s rationale for more conservative and restrictive policies in some cases. However, in our view, these restrictive policies are not always necessary or reflective of typical cultivation practices. As more data is collected, the Water Board should review its reporting, monitoring, and logistical requirements to align its policies with the situation on the ground. Cultivators who can demonstrate efficient and sustainable water management practices should be considered for exemptions from certain requirements, and overall requirements should be revisited based on data collected.

5. Reduce SIUR annual renewal fees.

While we understand the rationale for the \$750 SIUR application fee, this fee seems excessive for annual renewals. In our view, a significantly lower fee would be more in line with the resources required to review these renewals.

6. Support – Rule 98, limiting weekly inspection requirements to the “period of use.”

Frequent inspection and documentation requirements will be a significant logistical burden on cultivators, especially those who live off-farm. We appreciate the specification in Rule 98 that these inspection requirements are limited to the “period of use,” and not required during off-season when they would be unnecessary.

Our organization can be reached at policy@cagrowers.org with any questions regarding our comments, thank you.

CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

BOARD OF PUBLIC WORKS MEMBERS

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CHIEF FINANCIAL OFFICER

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November 20, 2018

ELECTRONIC MAIL

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Townsend:

COMMENT LETTER – UPDATES TO CANNABIS CULTIVATION GENERAL ORDER

The City of Los Angeles Bureau of Sanitation (LASAN) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) proposed updates to the *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*. LASAN supports the State Water Board's efforts to continually review and update the Cannabis Policy and Cannabis Cultivation General Order, which was adopted in October 2017. The General Order will 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.

LASAN submits the following comment for State Water Board's consideration:

1. Attachment D, Technical Report Guidance, Page D-8: Nitrogen Reporting Worksheet Example Calculation for Potassium (K) in the N – P – K diagram, "Potassium 10% K in a 100 lbs. bag = 1 lbs." The correct resultant pounds of Potassium (K) should be 10 lbs., not 1 lbs.

zero waste • one water

AN EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION EMPLOYER



Ms. Townsend
November 20, 2018
2 of 2

If you have any questions, please contact Hassan Rad, Regulatory Affairs Division Manager, at (213) 847-5186 or by email at hassan.rad@lacity.org.

Sincerely,



ENRIQUE C. ZALDIVAR, P.E.
Director and General Manager
LA Sanitation and Environment

ECZ/HR:km

c: Traci Minamide, LASAN
Mas Dojiri, LASAN
Tim Dafeta, LASAN
Roshanak Aflaki, LASAN
Fernando Gonzales, LASAN
Hi-Sang Kim, LASAN
Farhana Mohamed, LASAN
Michael Simpson, LASAN
Hassan Rad, LASAN



Covelo Cannabis Advocacy Group



Date: November 24, 2018

To: State Water Board
commentletters@waterboards.ca.gov

Thank you for taking the time to review our comments on the proposed language for the Cannabis Cultivation General Order.

We are grateful to see new language clarifying tribal land authorization that does not put tribal communities in jeopardy with Federal Agencies regarding cannabis cultivation.

The following comments to each section are noted in red italics. Please consider these recommendations when finalizing the requirements.

Sincerely,

Monique Ramirez
Covelo Cannabis Advocacy Group

Groundwater Requirements¹⁰

The State Water Board will notify cannabis cultivators of the possibility that a groundwater forbearance period or other measures may be imposed so that the cultivators can install storage, coordinate diversions, take measures to secure alternate water supplies, or identify other measures to address the low flow condition. *Please indicate a time frame for when cultivators would be notified.*

Soil Disposal and Spoils Management

Cannabis cultivators shall separate large organic material (e.g., roots, woody debris, etc.) from soil materials. Cannabis cultivators shall either place the large organic material in long-term, upland storage sites, or properly dispose of these materials offsite.

The State Water Board should encourage the composting of root balls, and stalks of cannabis plants and therefore, remove this provision that roots etc be separated from soil materials. Many cultivators use this rich plant material to compost back into the soil for future plantings, which helps to encourage a closed-loop system and a healthy ecosystem.

89.

Cannabis cultivators shall not cause or allow any overflow from off-stream water storage facilities that are closed to the environment (e.g., tanks and bladders) if the off-stream facilities are served by a diversion from surface water or groundwater. Cannabis cultivators shall on a monthly basis, at a minimum, regularly inspect for and repair all leaks of the diversion and storage system. Written records describing the date, time, and nature of such inspections and repairs shall be kept on-site for a period of at least two years. Such written records shall be made available for review by Water Boards or CDFW, and any other authorized representatives of the Water Boards or CDFW.

Written Records only describing when a repair has been performed should be required. It seems overly burdensome to require record keeping of inspections that do not indicate problems.

91.

Cannabis cultivators shall maintain a written copy of the manufacturer's specifications for each storage tank used for a period of 12 months beyond the last day the storage tank is used.

Please remove this requirement. What is the intention for having it? Many cultivators do not have their original manufacturer's specifications.

Water Conservation and Use

97. Cannabis cultivators shall maintain daily records of all water used for irrigation of cannabis. Daily records may be calculated by the use of a measuring device or, if known, by calculating the irrigation system rates and duration of time watered (e.g., irrigating for one hour twice per day using 50 half-gallon drips equates to 50 gallons per day (1 hour x 2 times per day x 50 drips x 0.5 gallons per drip) (1*2*50*0.5) of water used for irrigation). Cannabis cultivators shall retain, for a minimum of 5 five years, irrigation records at the cannabis cultivation site and shall make all irrigation records available for review by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.

This requirement creates an undue hardship on cultivators that are faced with reporting requirements from other agencies. For small operators, this will be a hard requirement to meet. Especially because some days, a

cultivator will have to go out of town for supplies etc and will not be able to record this daily data. This seems overboard to require daily records.

November 27, 2018

Daniel Grace
Dark Heart Nursery
717 Kevin Ct
Oakland, CA 94621
Dan@DarkHeartNursery.Com



State Water Resources Control Board
Clerk to the Board
PO Box 100
Sacramento CA, 95812-0100

Dear Sir or Madam,

Regarding the upcoming proposed rules for cannabis cultivation. We submit the following comments.

The Board is seeking to exempt indoor cultivation operations from riparian setbacks and other regulations. We believe this proposal is reasonable as it creates a pathway to licensure for many sites throughout the state which could not otherwise meet the riparian setback requirements. This includes a great many greenhouse facilities which are actively in productive use for other agricultural commodities.

However, the proposed rules do not create enough clarity as to which structures can qualify as “indoor.” As a result, we are already seeing that regional waterboards are interpreting the rules differently creating tremendous uncertainty for operators throughout the state. In order to clarify and reduce this uncertainty, we request that the Board provide additional definition and/or examples for the terms “permanent roof” and “permanent relatively impermeable floor.”

The term “permanent roof” has especially come under scrutiny as some regional boards have interpreted polyethylene film roofs as not qualifying as permanent. Single or double polyethylene roofs are commonly used throughout the state as a cost-effective component in permanent greenhouse construction. Properly maintained and affixed to a permanent greenhouse structure, these roofs commonly last 5 to 10 years, or more. We request that the Board clarify that these roofs qualify as permanent, Either by providing a list of example roofing materials (such as: polyethylene film, polycarbonate panel, fiber glass, glass, etc) or by stating an engineering criteria (for example: permanent roofs are those which have been engineered with an expected life exceeding 4 years). Should the Board be concerned with good upkeep of these structures, we think it is reasonable that permit approval is conditioned on faithful maintenance of the roofing system, just as it might be conditioned on the upkeep of other building systems.

www.DarkHeartNursery.com

888-627-3275 • 717 Kevin Ct Oakland, CA • Info@Dark-Heart.net

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Regarding the term “permanent relatively impermeable flooring,” we ask that the Board expand its list of example flooring materials. Such a list might include engineered earthen systems (such as clay barrier), impermeable membrane systems, or any other systems certified by a qualified engineer as being likely to prevent groundwater intrusion.

Sincerely,



Daniel Grace

Daniel Grace, President

Elk Valley Rancheria, California



2332 Howland Hill Road
Crescent City, CA 95531

Phone: 707.464.4680

Fax: 707.465.2638

www.elk-valley.com



November 6, 2018

VIA POSTAL SERVICE

Gita Kapahi
Director of the Office of Public Participation; Tribal Liaison
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Re: Proposed Update to Cannabis Cultivation Policy; Tribal Cultural Resource Protection

Dear Ms. Kapahi:

Thank you for your October 12, 2018 letter describing the State Water Board's notice of opportunity for public comment regarding cannabis cultivation, including tribal participation in determining the appropriate location for cannabis cultivation activities on tribal land. The Elk Valley Rancheria, California, a federally recognized Indian tribe (the "Tribe"), understands that the State Water Board's existing Cannabis Policy seeks to protect water quality and instream flows, including diversion of water and discharge of waste associated with cannabis cultivation, in order to ensure that such activities do not adversely affect the quality and beneficial use of such waters. Further, the Tribe understands that commercial cultivators must obtain coverage under the Cannabis Cultivation General Order as a condition of licensure.

The Tribe shares many of the State Water Board's concerns. The Tribe understands that the State Water Board now seeks to protect tribal cultural resources, archeological resources, and human remains and require tribal approval for cannabis cultivation on or within 600 feet of tribal lands. The proposed changes outline potential responses a federally recognized Indian tribe could provide in response to a proposed cannabis cultivation activity on or within 600 feet of tribal land.

The Tribe has some questions about the State Water Board's proposed activities on tribal land.

- **Tribal Update – Attachment A, Section 1, Requirement 19**

The Tribe supports the proposed provision that: “Nothing in this provision shall be construed to modify or interpret tribal law in any way.” However, the Tribe would add the following language: Nothing in this provision shall be construed to modify or interpret tribal law or modify tribal jurisdiction in any way.

- **Indoor Cultivation Clarification – Attachment A, Section 1, Requirement 38**

The Tribe proposes the following changes to the proposed alternative sets of language:

a) The indoor cannabis cultivation structure:

- i. Has a building permit (or other similar authorization) on file with the county, city, or local jurisdiction (including a federally recognized Indian tribe) and started construction prior to October 1, 2018; ...

OR


b) The indoor cannabis cultivation structure:

- i. Has a building permit (or other similar authorization) on file with the county, city, or local jurisdiction (including a federally recognized Indian tribe) and construction started on or after October 1, 2018

- **Attachment 2**

The draft template letter and tribal authorization request form provides: “By this letter the [...] is requesting authorization from [...] for the proposed cannabis cultivation site pursuant to Requirement 19 in Section 1 of the Cannabis Policy’s Attachment A.” The tribal authorization of the cannabis activities on or within 600 feet of tribal lands would then allow the cultivator to complete enrollment with the State Water Board. Further, the request letter provides: “The attached SMP describes how the cultivation site will comply with the requirements of the Cannabis Policy and the Cannabis Cultivation General Order, and how compliance measures will be implemented at the cultivation site.”

The Tribe understands that Requirement 19 addresses coverage under the Construction Storm Water Program and requires compliance with applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building, among other requirements.



Gita Kapahi
Re: Update to Cannabis Policy
November 6, 2018
Page 3

To be clear, the draft form of the tribal authorization merely provides written evidence of a tribe's decision to allow or not allow the cannabis activities on or within 600 feet of tribal lands. The draft template request letter and the draft tribal response letter could potentially be at odds and inconsistent with tribal jurisdiction.

Therefore, the Tribe suggests the following clarifications to the request letter:

- The attached SMP describes how the ~~cultivation site~~ cultivator will comply with the requirements of the Cannabis Policy and the Cannabis Cultivation General Order, and how compliance measures will be implemented by the cultivator at the cultivation site, subject to tribal jurisdiction. Nothing herein is intended to and shall not be construed to grant the [State Water Board or Regional Board] jurisdiction over the [Tribal Authority] or tribal land.

The changes suggested above are consistent with the State Water Board's Notice of Opportunity for Public Comment indicating that the Cannabis Cultivation General Order imposes requirements on cannabis cultivators, not on sovereign, federally recognized Indian tribes or tribal lands. The proposed changes reflect the current balance of jurisdiction as well as the state of federal Indian law.

Finally, to the extent that a cultivator's compliance with the Cannabis Cultivation General Order to ensure that such activities do not adversely affect the quality and beneficial use of state waters requires the consent of a tribe or the exercise of tribal jurisdiction, the Tribe requests that: 1) the State Water Board not decline to approve a cultivator's application for that reason alone; and 2) the State Water Board and the cultivator work cooperatively with the Tribe (i.e., tribal authority) to consult and determine a mutually beneficial outcome consistent with tribal jurisdiction and socio-economic needs as well as protection of tribal cultural resources.

Thank you in advance for your thoughtful consideration of the Elk Valley Rancheria, California's comments. Should you have any questions, please contact the Tribe's General Counsel, Bradley Bledsoe Downes, at 707.465.2610.

Sincerely,



Dale A. Miller
Chairman

cc: Elk Valley Tribal Council

From: lkatherman@aol.com
To: [commentletters](#)
Subject: Attn: Jeanine Townsend
Date: Monday, November 26, 2018 11:03:24 AM



To whom It May Concern:

My written comments to the State Water Resources Board concerning the Cannabis Cultivation Policy/General Order are as follows:

1. As a groundwater geologist, I have serious reservations concerning the blanket application of the proposed regulations specific to water extraction from all forms of waterbodies, i.e. rivers, streams, lakes, creeks, drainages, etc. throughout the entire State. Each of these features vary widely depending on which region they are located in. Each is unique with respect to its water characteristics, including the size and geographic shape of the area watershed, annual rainfall amounts and the average duration of active rainfall, estimated annual recharge of the waterbody/aquifer, area specific surface and subsurface geology, actual surface/subsurface flow durations and volumes, and periodic/annual releases of stored or controlled water resources from dam containments, reservoirs, lakes, etc. into stream and subsurface aquifers.

There are too many variables to consider which directly affect the amount of water available for agricultural/cannabis cultivation and consumption. Consequently each Lake or Streambed Alteration (LSA) and /or each Small Irrigation Use Registration (SIUR) application should be reviewed by each Regional Board and analyzed on a case by case basis. For example the State Board currently doesn't apply a blanket set of regulations to each and every groundwater basin in California, nor should it in this situation.

2. Likewise, it makes no sense to apply specific surface water regulations, such as a restriction of 10 gallons per minute (gpm) for surface water extraction and a Dry Season Forbearance Period, to the regulation of subsurface extraction. The diversion of subsurface water should have it's own specific regulations/rules independent of that for surface water diversion; particularly when subsurface diversion can be proven to have minimal impacts to water quality, aquatic habitat, riparian habitat, wetlands, surface flow and springs.

3. There currently appears to be no specific regulations addressing impacts to water availability in river/alluvial aquifers where water flow and recharge are directly affected by monthly/annual releases from dams, reservoirs, lakes, and other water storage features. These releases are obviously mandated to support water reserves for agricultural activities and are often timed during the dry season in order to recharge the surface and subsurface water supplies. In some cases this scenario may preclude the need for a Dry Season Forbearance Period, or at least one that doesn't last as long as from November 1 to April 1.

4. Conditions where streambed or alluvial aquifers are in subsurface communication with and are being recharged by typical groundwater aquifers is not addressed and appears to be regulated under the same surface diversion restrictions/regulations mentioned above in item #3.

5. In that light what was the scientific basis or data that was used in order to justify a maximum extraction of 10 gpm for cannabis cultivation? Likewise, what was the scientific rational for the blanket policy of a Dry Season Forbearance Period; particularly in light of the above mentioned variables in climate conditions from one end of the State to the other?

6. At this time I have been unable to locate any clause(s) in the proposed Cannabis Policy that specifically addresses the ability of an applicant to appeal a denial of the application for a permit to their project. In addition there appears to be nothing addressing the ability to obtain a variance or exemption from a given regulation(s) being applied to a proposed project, such as with the 10 gpm limitation.

7. It appears as though the insertion of CADWF into the Cannabis process with an additional application and set of regulations is simply a duplication of application oversight and application fees. CADFW appears to be intent on issuing nothing but incomplete notices (after payment of fees) on all application but yet applying the same rules as the Water Board. The State Water Board and CADFW should jointly administer and review one application per project, just as a County Land Use application and supporting documents is reviewed and commented on by multiple affected departments.

Thank you for your consideration of the above comments/questions regarding the proposed Cannabis regulations.

Respectfully submitted,

Charles E. Katherman
California Professional Geologist #4069



INDOCTRINATION by WATER BOARDS' Staff

Fortuna River Lodge, on the land in the geographical Republic California state
November 8, 2018 @ 4:00

Business today consists in persuading cowards. -T.S. Eliot

Everything revolves on proof of claim, which is a right to compel performance. If you can't provide your claim then what you are doing is wrong and its all for profit and gain, imposing your will on someone else when you have no right to do it. That's all there is to it.

An argument drawn from authority is the strongest in the law. "The book cases are the best proof of what the law is." Co. Litt. 254a.

Power can never be delegated which the authority said to delegate never possessed itself. N.J. Steam Co. v. Merch Bank, 6 How. (47U.S.) 344, 407.

A person to fill a term of office is not permitted to assume the duties of the office until he files a bond and oath of office, which must be done before the commencement of the term, or the office shall be deemed vacant. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

An amendment [to the original instrument] is not a repeal. [Fundamental principles are not annulled by amendment.]. *Mass. Bond & Ins. Co. v. U.S.*, 352 U.S. 128, 139.

Fraud is gaining at the loss of another using trickery and deception.

Maxims of Law:

An agreement induced by fraud cannot stand. --Those who join in the fraud are as guilty as those perpetuating it.

Nothing can be offered by an agreement that there shall be no accountability for fraud.

Those things which are impossible to be given, or which are not in the nature of things, are regarded as no part of an agreement.

What recourse does the community have to voice concerns about local problems or disagree with decisions by officials, or staff, who occupy positions without any accountability or responsibility?

"There's an old saying in Tennessee — I know it's in Texas, probably in Tennessee — that says, fool me once, shame on — shame on you. Fool me — you can't get fooled again" -Bush jr.

Please provide certified copies of your Oath of Office and the Bonds that are filed into the public record, PRIOR to planned acts paid for by your employers, We, the People! No Bond means the actors have no more authority than the ice cream man.

Linda Cassara

From: [marie myers](#)
To: [commentletters](#)
Subject: Cannabis enrollment
Date: Sunday, November 25, 2018 5:10:46 PM



Honorable Water Resource Control Board Members, I concur with the comments shared by Hannah Nelson on 11/25/2018. We are 10,000 square foot farmers. The properties were logged, ranched and cultivated prior to our purchases. Our desire is to bring the land into compliance. We can only move forward if it is financially feasible. Every day we consider not submitting the next form, and stepping out of the program. The cost of County and State fees and requirements is not in balance with market prices.

North Coast Regional Water Board has been very helpful on the phone, however, at a Ukiah meeting earlier in the year a staff member warned an attendee that he would be covering every inch of their property when he came for his visit. I personally have over 200 acres! So, in addition to Ms. Nelson's solutions, I would ask that the water boards focus be on the roads that involve the cultivation area. (It is my understanding that allowances were made in regards to easement roads and they are not required to be up to standards, as well as there is no expectation placed on the properties that surround me and are not part of the compliance program.) If the water board could focus on the private road/driveways used for cultivation instead of the entire property, we would have a better chance at making this work.

With appreciation
Sent from my iPhone



State Water Resources Control Board
Attention: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95814
Comments sent via email to:
commentletters@waterboards.ca.gov

November 25, 2018

RE: Proposed Updates to the Cannabis Cultivation^[LSEP] Policy

Honorable Water Resources Control Board Members:

I had the pleasure of providing in-person comments at the State Water Board workshop in Sacramento on October 16, 2018. I drove 4 ½ hours to be present at the Workshop. At the time, Board members requested that I also submit written comments. I am doing so here. Unfortunately, in the time since the hearing, CDFA issued a statement that the cutoff deadline for new temporary state cultivation licenses was being moved up by a full month from December 31, 2018 to December 1, 2018! The resulting crush of work to fit in all new temporary license applicants has been horrendous. As a result, the more detailed comments that I had intended to write were just not possible for me to pull off given the absolute CDFA deadline and its ramifications for scores of applicants.

On the positive side, your request to have Staff coordinate with me certainly resulted in a very positive initial impact when this new deadline was announced: Immediately after my public comments, numerous Water Board staff approached me and shared contact information with me. In addition, a few days later, Mr. Kevin Porzio had left me a voicemail. The following week, when the announcement was made, I immediately contacted Mr. Porzio about my concern that applicants' enrollment in the Water Quality program were not being processed quickly enough in our region. Not only did Mr. Porzio look up the information specific to my region and recognize that there had been more of a backlog than he had been specifically aware of, but he immediately reached out to the regional Staff to not only trouble shoot the existing backlog, but also to try to come up with a plan for the crush of applications that were about to come in and that would need processing and issuance of the NOAs in sufficient time for the applicant to apply for the temporary cultivation license with CDFA before 12/1.

Another positive piece of feedback (before going onto my comments on the Proposed Updates to the Cannabis Cultivation Policy), is that numerous members of the Regional office (Santa Rosa) staff have been incredibly responsive and helpful regarding the processing of the NOAs and also with respect to trying to answer more Tribal Land buffer questions that have arisen. Specifically, Ms. Tonya Weiper has been doing a heroic job of processing the NOAs as soon as she can humanly do so. Mr. Wes Stokes and Conner McIntee, have been also doing their best to field questions and assist in getting accurate information to me and to applicants. I am giving shout-outs specifically to these staff members because I recognize how everyone is under tremendous pressure with the massive amount of work that is generated by all of the new laws and regulations and I appreciate their efforts to help us navigate these challenging times. With that said, some of my comments below, as indicated in my testimony on 10/16, have to do with the need for more

technical assistance for applicants AFTER they have registered. I try to spread the information that I gather as far and wide as I can so that more than just my clients benefit. However, there really needs to be additional resources for applicants directly along the way since not everyone can afford to hire a lawyer or a scientific consultant. As stated in my public comments, I mostly advocate for small, rural farmers who are being squeezed at every level and are hanging on by a thread, if they have not already thrown in the towel. As a result, my entire goal of the advocacy I perform is to improve on-the-ground conditions as a result of the implementation of policy and regulations, which most often negatively and disproportionately impact the small rural operator.

As stated in my public comments on 10/16, I am NOT a scientist and do not purport to have the kind of technical background that would help inform specific details of the policies being proposed (both those existing and those that are changing). However, I do have nearly 30 years of experience dealing with cannabis cultivation, land use, regulations and statutes. I also assist upwards of 150 cultivators directly and through my policy advocacy (that I do not charge anyone for), many hundreds more. I am on numerous Mendocino County Working Groups related to cannabis permitting and licensing. I am active in State licensing issues and give regular legal seminars on cannabis related laws and regulations. Despite my disclaimer about not being a scientist, over the past few years, I have had to learn a lot about water discharge, water flow, and even about what factors go into determining whether a well is going to be considered a groundwater source or surface water (a very different determination by CDFW than the Water Board Division of water Rights). As such, my comments are not entirely uninformed on the technical components. However, they do focus on the PRACTICAL IMPACT that these policies have on the ability for cannabis cultivators to apply and maintain compliance with all of the rules. Specifically, I am gravely concerned that we have accidentally created a negative incentive for good actors to come into the light and to hang in throughout these tumultuous times while regulations and policies are still being changed and every agency in the universe seem to want to take a pound of flesh from every cultivator. Please bear in mind that my comments and suggestions are specifically born out of my experience with small, rural cultivators that are trying to do the right thing.

1. While resource protection is an extremely important goal, we must understand whether the policies or implementation of the policies actually achieves that goal and whether it is at the expense of disenfranchising good actors.
 - a. We cannot require the good actors to bear the burden of fixing all past ills regardless of whether the actions of that actor resulted in the ill or not. Often small cultivators obtained property that had already been logged or otherwise improved without regard to current resource protection standards. Many of the policies of all of the resource protection agencies in the State, create a negative incentive for folks who want to do the right thing to come forward so they can be regulated. Penalties for acts of others, remediation and maintenance requirements that are extremely expensive, require expensive professional assistance, and do not give enough time for implementation are replete throughout the regulations and policies that apply to cannabis cultivators. Please remember that the SWRCB Cannabis Cultivation Policy is only one of many that the cultivator must adhere to. Again, resource protection is an important and necessary goal. However, where possible, regulations and policy must be reviewed to see if unintentionally the policy is discouraging folks from doing

the right thing. More time, more technical assistance (throughout the process, not just for enrollment), and positive incentive programs should be adopted and implemented. The failure to provide more time and adequate technical assistance, grant funding for professional support, and positive incentives, result in some of the very best actors, true stewards of the earth, being pushed out because they just cannot handle the financial and technical burdens without more help. As these good actors are forced to abandon their endeavors, we are left with fewer regulated properties and only the wealthiest cultivators left. Often in rural counties like Mendocino County, that means economic as cultural devastation for communities. The impact is even more devastating when one factors in the reality that Mendocino County only has SMALL cultivators. The Small designation for a state license is 10,000 square feet of cultivation and currently, Mendocino County allows for a maximum cultivation of 10,000 square feet of flowering cannabis and 12,000 sq. ft. for Nursery cultivation of seed or immature plants..

- b. The separate requirements of each agency, without careful coordination or thoughtful integration so that inconsistencies and confusion are reduced, create exponential burdens on the small rural cultivator. An example would be the fact that CDFW and the Water Board Division of Water Rights do not always agree about whether a well is a groundwater source or a surface water source. I personally think that the Water Board has a much more sensible approach to the analysis and has even come up with a separate method of dealing with surface water that does not flow off the property, but the reality for a cultivator is that if the Water Board told them their well is not jurisdictional, but later CDFW says it is (during the review of the required LSA application), then all of a sudden, an applicant would have to go back and apply for a water right and perhaps storage rights. Of course, many of the deadlines for doing so to gain priority have passed. It is only recently that through the portal there may be some eluding to the fact that the well might require a water right, but even then, it is not clear what that means as a practical matter for the applicant (that they should apply right away and not wait, or that they missed the opportunity to apply, or whatever the situation is). I have clients who were under the Pilot Program of the NCRWQCB and who were told that their well or ephemeral spring were non-jurisdictional, only to find out two years later through CDFW that it was considered to be surface water and would require a water right. In the mean time, they missed all of the different water right registration deadlines that the Water Board issued over the past year and few months.
2. Review Policies For Disparate Impact Throughout The State: I implore you to review the policies in a manner that actively seeks to protect and incentivize small, rural farmers who have no history of bad acts.
 - a. Please critically assess the presumptions upon which these policies have been promulgated. Do not use statewide presumptions when looking at small rural farmers. For example, the quantity of water used by a cannabis cultivator varies dramatically depending on an enormous host of factors. Basing policy on presumptions of use applicable to inefficient and wasteful actors rather than those that are conscientious creates a disincentive for water conservation. Likewise, basing policy on water use presumptions that are more in line with drier more barren land rather than considering the climate zones and the cultivation style (outdoor vs.,

mixed light vs. indoor) and the type of irrigation techniques employed, disproportionately negatively impacts those that are using growing techniques and irrigation methods that are appropriate for their climate. The current statewide presumptions are based on the worst-case scenario regardless of the good acts of the cultivator to conserve or to utilize methods more appropriate for their climate.

- b. Please acknowledge the practical limitations of small rural farmers to access qualified professionals in a timely and affordable manner. While it makes sense that only qualified professionals should design certain features such as ponds or slide remediation, many of the applications, registrations, reporting forms, and compliance documents are not possible for a small rural farmer to complete without professional assistance. I know it is hard to step outside of the terminology and programs that you all are so familiar with, but trust me, as an outsider, without a science background, it is a lot more complicated and confusing than you might think. Also, please remember that many small farmers are farming, complying with computer Track and Trace programs required by the licensing agencies, marketing, possibly transporting, and bookkeeping for their small farm. Often they are also chief bottle washer. As a result, either because a particular project mandates using a qualified professional, or because the process is overwhelming, small rural farmers must hire outside consultants and technical advisors. This is in addition to any engineers or design professionals they might have to hire.
 - i. Provide technical assistance after enrollment. I think the water Board has been doing a pretty good job of assisting folks with enrollment, especially in the Water Rights Division, but even more recently in the Portal registration. There has been a lot more outreach and technical support to come out of the dark. However, unfortunately, once they register, often, that is it. Except for the website and some email blasts that occasionally warn of deadlines, there really is not much help for someone to navigate the entire process long the way. Even when staff is being extremely helpful on the phone or by email, understandably, there is just no way to address the site specific information that might be relevant and there is no attempt to address cross-jurisdictional issues like conflicts in definition or process between CDFW and the Water Board. Please fund hands-on workshops (not just for enrollment but post-enrollment activity) as well as issue technical assistance grants for applicants that might need on-site assistance.
 - ii. Please create incentives for good actors. In addition to reviewing policies to remove inadvertent negative incentives, please consider creating two types of incentives for those that are trying to do the right thing: Policy reward/incentive and monetary incentives. Policy incentives might take the form of allowing longer time periods to comply with certain requirements if all requirements are in fact being addressed; or lessening some requirements, even for a short time, if the applicant is otherwise in compliance or implementing best practices. Water conservation could also be a basis for a policy incentive. Monetary incentives can take the form of either a discount in fees (application or annual reporting) or a credit toward a future fee (annual report or additional project, etc.). Incentives should especially be given to good actors who are trying to address the ills of actors that came before them.

3. Better coordination between different departments and outside agencies is imperative. Within the Water Board, a reduction of redundancy of information, inconsistencies, and varying formats to provide the exact same information should be effectuated. I applaud the streamlined portal to combine the issues of water rights and water quality, but there remains a massive disconnect between the information needed for different purposes and the number of different applications and reporting forms. The coordination with outside agencies should include CDFW, CalFire, and CDFA. I realize that the Water Board does not have control over any of those other agencies, but additional communication and request from the legislature to create a Task Force or Committee with representatives of each agency, would be a start.

Some specific technical comments are:

1. Attachment A, Item 11, Page 4: Please redefine “cultivation site” to only include drying, curing, grading, and trimming IF there is an impact to water quality or availability as a result of those activities (such as a NEW land disturbance). Many small cultivators are not creating any new land disturbance when conducting those activities and are utilizing existing structures. The impact of inclusion of those activities, regardless of whether they are having any actual impact on water quality or availability severely and negatively impacts the small operator.
2. Attachment A, Item 1, Page 16: Please edit this provision to remove the compulsion to adhere to all federal laws and regulations, since there is no way for a cannabis cultivator to do so. Please also consider altering the language to account for the fact that most cultivators are existing and cannot comply with the applicable laws, regulations and permitting “[p]rior to commencing any cannabis cultivation activities...”
3. Attachment A, Item 19, Page 20: As stated in my testimony, while I appreciate the revision after having put tribes in an untenable position in the prior version, I am concerned that as currently proposed, (p.21, 2nd to last paragraph), a cultivator could go through enormous effort and expense to comply with all of the requirements and rules and that without warning they could have the permission revoked without due process and without having violated any term or condition of the initial grant. During the Workshop on 10/16, Staff addressed this and stated that would not happen and that was not what was intended. I would greatly appreciate it if the language can clarify that the reference to the right of the tribe to withdraw consent, referred to the withdrawal on the silence to the request and that any withdrawal of permission already granted to an applicant must provide due process before revocation would be affected.
4. Attachment A, Item 38, Page 28: Please clarify that Mixed Light cultivation is included in the in the conditional exemption for Indoor so long as the structure meets the same criteria. Many cultivators are attempting to reduce their carbon footprint and are using indoor type structures with skylights and light tubes. Also, please consider a modification to the wastewater tank and licensed hauling provisions to the extent that recycled or rehabilitated water should be able to be used in the cultivation without the need to demonstrate waste water collection and licensed hauling. For small cultivators (Mendocino County Indoor cultivators are either less than 500 square feet or up to 2500 square feet) cannot afford the hauling fees. The licensed wastewater haulers require a minimum charge even if the

amount of wastewater is minimal. So far, no permitted wastewater treatment facility that provides wastewater treatment in Mendocino County is willing to accept cannabis wastewater.

The next few years will be an especially turbulent time for small rural cultivators. Most that have not already thrown in the towel will be fighting for continued survival. The lower price they currently receive for their product, the compliance expenses of the regulations imposed by more than a dozen separate agencies, the cultivation taxes at the local (mandatory minimums regardless of whether they make a single sale) and state levels, the inability to sell directly to retailers or consumers, and the market uncertainty, especially for small, craft farmers, create very dramatically negative results for even tiny policy requirements that are unnecessary or overly burdensome. Please understand that in many cases, not reviewing the policies for inadvertent disparate impact and not actively removing impediments for small rural farmers to be able to do the right thing and continue to be responsible stewards of the land, can constitute the preverbal last straw that broke the camel's back.

Thank-you for your careful consideration of these issues and for the opportunity to work with you and staff in ensuring resource protection without helping to put the nail in the coffin of small rural cannabis farmers. I am happy to work on these issues with any one of you or your staff. In addition to being an attorney, I have been a Director of a large nonprofit that received federal, state and local funding in the amounts of \$12 million/year and was responsible for all oversight and compliance for that agency. In that work, I oversaw the dispersing of funding to 20 community-based agencies. I developed many processes and procedures to more efficiently implement the program goals in conjunction with the regulatory requirements. As a result, I am well suited to help an agency such as yours evaluate policies that balance the need for strict resource control with practical implementation standards that do not accidentally turn good actors away.

Respectfully,

Hannah L. Nelson
Attorney At Law

From: matt@mtallenlaw.com
To: [commentletters](#)
Cc: "[John De Friel](#)"; "[Sam Rodriguez](#)"
Subject: Comments for Waste Discharge and Cannabis Cultivation Policy
Date: Monday, November 26, 2018 8:32:49 PM



Dear Board and Staff: These comments are in regard to the Cannabis Cultivation Policy. I presently work with a group of clients in Santa Barbara County, and I wanted to address some real concerns that my clients have regarding the policy. These comments can be broken down into two areas. First, the regulations make assumptions about how this farming is being done. Second, the regulations impose restrictions that are supposedly designed to protect water quality, do little to provide any sort of protection and would prohibit or dramatically curtail the ability to farm a second crop in Santa Barbara County.

The background to the Waste Discharge Requirements state as follows:

Cannabis cultivation in California has grown exponentially in recent years and is often located in sensitive environmental areas where the activities create significant impacts to water quality. Waste discharges from cultivation sites include sediment, irrigation runoff, fertilizers, pesticides/herbicides, petroleum, agricultural related chemicals, cultivation related waste, refuse, and human waste. Construction of access roads has resulted in significant erosion and sediment discharges to water bodies.

In fact, much of the growth in Cannabis farming in Santa Barbara County is in areas that are flat, have been historically farmed and are not considered sensitive. There is no reason to believe that like other farming, Cannabis will not move towards larger flat parcels where it can be grown like most other commercial crops. Removing the concerns about denuded hillsides, diverted virgin streams and whatever other parade of horrors the drafters of these regulations conjured up in their minds when drafting these regulations.

For flat farming ground that has been historically farmed, there is simply no basis to require that heavy equipment not be allowed into the fields during the winter period. In fact, much of the work to remove the plastic from the hoop houses, till the soil and plant a cover crop or other protective measures are done with heavy equipment. While the regulations state that the heavy equipment can't be used during the winter period, the letter to the farmers seeks to define the winter period for Santa Barbara County from 11/15 to 4/1. In fact, Santa Barbara has a very small winter period and really no period where farmers are not active in their fields. Cannabis farmers in Santa Barbara are just now completing harvest clean up, and crops will be ready to go back into the ground in February and March. Prior to planting, the soil will need to be prepared, the plastic will need to go back onto the hoops and lots of other work will need to be done. It is simply unrealistic and unnecessary to require that no heavy equipment be used for almost five months per year.

There is no way to farm a crop in Santa Barbara County on valuable farming land and take nearly five months off from farming. The regulations as written would be a massive taking of land value and prohibit a strong second crop of Cannabis. It would be doing this without any basis or support for control of runoff, as these lands have been and will continue to be farmed by other crops. These fields are reasonably flat, so that the majority of rain is able to percolate. In storms, the water is

controlled by berms located along the edges of the fields. These methods have been used for decades and protect the farms from losing their valuable top soil.

The restrictions for winterization need to be adjusted so that land that has been consistently farmed for decades and has slopes of less than 5% do not have the same sort of restrictions as newly developed land or land that has greater slopes. In this manner, properties that will have little or no impact with regard to runoff are not prohibited from growing a second Cannabis crop during the shoulders of the winter period. The failure to distinguish between the different types of farming lands is a dramatic failure of these regulations.

Thanks

Matt

Law Office of Matthew T. Allen
P.O. Box 339
2948 San Marcos Ave., Suite B
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From: [Jed Davis](#)
To: [commentletters](#)
Subject: Water Board Cannabis Cultivation Policy Public Comment
Date: Monday, November 26, 2018 5:59:02 AM



I concur with the comments submitted buy Hannah Nelson on 11/25/18.

As a small, rural cultivator who is running a business, farming, and attempting to navigate through the labyrinth of new/changing regulations through many different agencies, I particularly support her comments on making the process easier and more understandable for the lay person.

Thank you for your open mindedness and consideration.

Jed Davis
Mendocino Clone Company

Mendocino HQ, Inc.
801 Quarry Road
Willits, CA 95490



November 26, 2018

State Water Resources Control Board
Attention: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95814
Comments sent via email to:
commentletters@waterboards.ca.gov

RE: Proposed Updates to the Cannabis Cultivation Policy

To Whom It May Concern:

We are a small family farm here in Mendocino County. I am writing to express my deep concern regarding the ramifications of cannabis cultivation policies.

First, in regard to the potential exemption from the 600' tribal buffer; the cultivation style (Mixed Light vs. Indoor) should not have such a varying degree of policy. For instance, a Mixed Light operation with a commercial greenhouse would have impermeable floors and walls. Therefore, producing an equivalent threat to both water quality and environmental impact as an Indoor operation. Moreover, an operation with hoop houses built with impermeable floors and siding would also produce an equivalent impact. The main difference being the amount of electricity utilized in which case an Indoor operation provides an increased environmental impact. There is no reason that these cultivation styles should have such disparate policies. As long as there is siding and impermeable flooring the threat to water quality remains consistent across cultivation styles. Please take this important point under consideration when evaluating policies.

Furthermore, our farm has worked hard to remain compliant among several agencies each with differing policies in place. We have exhausted a tremendous amount of both time and financial resources to become Water Board compliant – For example, putting in well over \$20,000.00 worth of new culverts. We have been permitted and enrolled with the Water Board since the beginning of our operation which predates any Tribal Setback policies that came into place in November of 2017. There needs to be consideration that these ever-changing policies are gravely affecting small family farms. Is it not reasonable to grandfather in the good actors that invested in remediating legacy issues and have invested in land coupled with a complaint business prior to these rules existing? We have gone through enormous efforts and

expenditures to comply with all rules and regulations and without warning now have the possibility of our entire life savings, businesses, and permissions being revoked.

Thank you for your time, consideration, and attention to these matters.

Best,

Jeremy Pope
Steward of the Land



Public Comment
Updates to Cannabis Policy and Staff Report
Deadline: 11/27/18 by 12 noon

November 27, 2018

To: State Water Resources Control Board
Email: commentletters@waterboards.ca.gov

From: Nevada County Cannabis Alliance
Email: info@nccannabisalliance.org



Alliance Comment on Proposed Cannabis Cultivation Policy – November 2018

Dear Water Board,

I am writing on behalf of the **Nevada County Cannabis Alliance**, a member-based advocacy association. Our mission is to Advocate, Educate and Connect. We are advocating for reasonable local policy while empowering community members through education, and connecting stakeholders with opportunities to participate and collaborate in the county and state. We represent over 500 Nevada County based cannabis farmers, businesses and patients.

The bulk of our membership is composed of small, legacy cultivators with farms located in rural, and at times remote, areas. Despite the many challenges our members have dealt with in transitioning into the newly regulated framework, this type of small-scale cultivation remains typical for cannabis production in California. According to data from CDFA's licensee database, about 65% of the 1,300 entities holding California cultivation licenses farmed less than 10,000 square feet of mature plant canopy, and 92% of licensees farmed less than one acre of canopy.

This situation poses a unique challenge: integrating a newly-regulated industry into an existing and complex framework for the sustainability of water resources, while at the same time ensuring that permitting remains accessible for small farmers with limited financial and technical resources.

With these comments we do know that we are not scientists or technical experts on water management – however, we do have a unique view of the situation on the ground, and we share the state's comment to sustainable water management. Our goal is to ensure that compliance with state water requirements is practically possible for the bulk of cultivators in the state, and our comments are developed with that perspective in mind.

We feel the Water Board should consider adjustments to these requirements to ensure that they are

appropriate for a given watercourse, and to effectively manage the process of granting determinations under Rule 79(c)(i). Specifically:

A. Consider reducing monitoring requirements for Class II and Class III watercourses.

The proposed monitoring requirements are substantial and require a large amount of time and paperwork. While we understand the Water Board's interest in close scrutiny, we feel this level of scrutiny is less appropriate for Class II and especially Class III watercourses. Tiering monitoring and documentation requirements based on the level of risk involved will ensure that limited resources are focused where they are most needed.

B. Allow regional waters boards to grant determination to approve or deny on-stream reservoirs under Rule 79(c)(i).

Rule 79(c)(i) grants substantial discretion to the state to allow or deny on-stream reservoir permitting. Regional Water Boards, in our experience, will typically be in the best position to make these case-by-case determinations, and to coordinate with local governments and CDFW staff on issues involving multiple stakeholders. Rule 79(c)(i) as written already grants the Deputy Director the ability to assign a designee to make this determination. If the text of the rule itself is not changed to assign authority to regional Water Boards, we think that regional board would be the appropriate designee under the Deputy Director's discretion.

C. For Class III watercourses, grant automatic determinations to allow on-stream reservoirs under Rule 79(c)(i).

Given that ephemeral watercourses do not provide wildlife habitat and the transportation of water is their most important function, they are ideal sites for on-stream reservoirs. Enabling Class III watercourses to qualify for an automatic determination would be appropriate and would help alleviate a possible bottleneck in approving determinations.

2. Consider cost and logistical barriers for cultivators seeking to contract with Qualified Professionals to fulfill state requirements.

The proposed policy relies heavily on Qualified Professionals as intermediaries between farmers and the state. While we recognize the importance of technical experts in ensuring effective water management, the Water Board should be aware of the substantial barriers to contracting with Qualified Professionals in practice. From a cost perspective, individual cultivators will be required to spend tens or hundreds of thousands of dollars in consulting fees, resources which are frequently not available to small cultivators already under major financial pressure from state and local cannabis taxes and regulations. More broadly, there is a severe shortage of Qualified Professionals in rural areas, to the point where it is simply not possible to perform all the work that needs to be done in the time available. The Water Board should consider granting extensions based on a finding that there are not sufficient Qualified Professionals to perform the necessary work, and could also consider alternative methods to promote responsible management without relying on external consultants in all cases.

It would be especially helpful to have a more user friendly interface on the WB website to help farmers navigate the rules and regulations.

3. Ensure coordination between the Water Board, CDFW, and local government.

The Water Board, CDFW, and county governments frequently hold overlapping jurisdiction over water projects. In the past, lack of coordination between regulators has led to contradictory requirements, including cultivators investing substantially in water management practices that were later overruled by a different agency. Effective, continuous coordination is essential to promote sustainable water management and for cultivators to have the ability comply with state rules.

4. Consider revisions to requirements based on data collected over time.

Given the lack of data on cannabis water usage, we understand the Water Board’s rationale for more conservative and restrictive policies in some cases. However, in our view, these restrictive policies are not always necessary or reflective of typical cultivation practices. As more data is collected, the Water Board should review its reporting, monitoring, and logistical requirements to align its policies with the situation on the ground. Cultivators who can demonstrate efficient and sustainable water management practices should be considered for exemptions from certain requirements, and overall requirements should be revisited based on data collected.

5. Reduce SIUR annual renewal fees.

While we understand the rationale for the \$750 SIUR application fee, this fee seems excessive for annual renewals. In our view, a significantly lower fee would be more in line with the resources required to review these renewals.

6. Support – Rule 98, limiting weekly inspection requirements to the “period of use.”

Frequent inspection and documentation requirements will be a significant logistical burden on cultivators, especially those who live off-farm. We appreciate the specification in Rule 98 that these inspection requirements are limited to the “period of use,” and not required during off-season when they would be unnecessary.

We greatly appreciate you taking the time to consider these items.

Sincerely,

Diana Gamzon
Executive Director
Nevada County Cannabis Alliance

From: Sam Rodriguez
To: Schultz, Daniel@Waterboards; erik.ekdahl@waterboards.ca.gov; Aquino, Nancy@Waterboards
Cc: John De Friel; Matthew Allen; Sam Rodriguez; Sam Rodriguez
Subject: Mandate RE: Water Board Winterization Requirements for Cannabis Growers
Date: Monday, November 26, 2018 9:02:00 AM



Attention: Dan, Erik and Nancy

Hope your Thanksgiving was relaxing and enjoyable with family and friends.

As you are aware, many cannabis operators are racing to be 100% compliant with all the local, county, regional and state governmental agencies that are issuing new regulations and rules. This is has NOT been an easy task for many in the industry, as you know some have failed and no longer are operating or worse pursuing activities in the black market, Central Coast Agriculture (CCA), from the beginning worked in close partnership with Santa Barbara County in developing a robust cannabis cultivation program and is a role model of compliance.

We greatly appreciate our initial meet and greet meeting a couple of months ago in Sacramento and now we would like to follow up with an "**urgent request**" to meet again or have alternative conference call to better understand "the water board winterization requirements for cannabis farmers dated October 8th" of this year (see below).

As we shared with you all when we last met, our most serious concerns stem from oversight agencies developing new rules impacting farmers who for years always followed existing farming guidelines for non-cannabis agricultural crops.

There's a natural order for planting, toiling and nurturing cannabis farming and we are afraid that these new rules will have unintentional negative impacts on current procedures and hurt our bottom-line operations to compete in the marketplace.

We look forward to discuss this issue and given that John De Friel, also has a leadership role with the County, we would facilitate a larger venue with like-minded growers as well, if needed.

Thanks in advance for your attention to this urgent matter.

Best always,

Sam

From: "Cannabis, CentralCoast" <centralcoast.cannabis@Waterboards.ca.gov>
Date: October 8, 2018 at 11:01:12 AM PDT
Subject: Water Board Winterization requirements for Tier 1 and Tier 2 cannabis growers

Attention Cannabis Cultivator,

The Central Coast Water Board's [Cannabis Cultivation Regulatory Program](#) is sending a reminder that the winterization requirements will soon be in effect for all Tier 1 and Tier 2 cannabis growers. Winterization requirements for Monterey, Santa Clara, and Santa Cruz Counties are in effect from October 15th – April 15th. Winterization for all other counties in the Central Coast Region are from November 15th to April 1st.

Water Board staff will be conducting inspections throughout the region to assess compliance with the winterization requirements.

What is Winterization?

Winterization involves implementing practices on the cultivation site that minimize the potential for the discharge of sediment or contaminants during winter rain events. The requirements for winterization are outlined starting on page 47 in Attachment A of the [Cannabis General Order](#).

Requirements for all Tier 1 and Tier 2 Cultivators (Low, Medium, and High Risk)

1. Treatment of all applicable Existing, Constructed and Self-Disposal and Storm Management Requirements

Sam Rodriguez
Consultant/Lobbyist and Media Advisor
Rodriguez Strategic Partners LLC

www.rodriuezstrategicpartners.com
916.849.4300 (cell/text)

"Science and everyday life cannot and should not be separated" - Rosalind Franklin, Scientist and Chemist - discovery of the structure of DNA, pioneering use of X-Ray diffraction.



From: [Sam Rodriguez](#)
To: [Schultz, Daniel@Waterboards](mailto:Schultz.Daniel@Waterboards)
Cc: [John De Friel](#); [Matthew Allen](#); [Sam Rodriguez](#); [Sam Rodriguez](#)
Subject: Topics for Discussion (9AM Conf call)
Date: Tuesday, November 27, 2018 7:08:16 AM

Hi Dan:

In preparation for our call this morning, here are some of the issues for discussion.

- restriction of operating heavy equipment during the winter period
- restrictive winter dates for Santa Barbara County Nov thru April
- impedes a second crop of cannabis for planting
- slope designations too cumbersome
- (Northern Santa Barbara County is fairly unique where relative flat farms prosper side by side with a variety of crops - including Cannabis, Vegetables, Citrus and Grapes. Farmers have always had flexibility to apply sustainable water run-off protections. Humboldt, Trinity and Mendocino farming landscape vastly different in every way.)

We are also fairly confident that more than 50 cannabis farmers in the region have similar concerns and worries.

Appreciate your time and we look forward to our continued engagement.

Best

Sam

[Sam Rodriguez](#)
Consultant/Lobbyist and Media Advisor
Rodriguez Strategic Partners LLC

www.rodriquezstrategicpartners.com
916.849.4300 (cell/text)

"Science and everyday life cannot and should not be separated" - Rosalind Franklin, Scientist and Chemist - discovery of the structure of DNA, pioneering use of X-Ray diffraction.

From: Kapahi.Gita@Waterboards
To: Rabe.Angela@Waterboards; Ragazzi.Erin@Waterboards; Couch.Scott@Waterboards; Schultz.Daniel@Waterboards; [Weaver.Lily@Waterboards](mailto>Weaver.Lily@Waterboards)
Subject: Fwd: TCR Protection Conditions Related to Cannabis Cultivation Policy Update
Date: Tuesday, November 13, 2018 6:23:23 PM
Attachments: [imaged5c097.PNG](#)



FYI

Sent from my iPhone

Begin forwarded message:

From: Jessica Mauck <JMauck@sanmanuel-nsn.gov>
Date: November 13, 2018 at 5:20:58 PM PST
To: "Kapahi, Gita@Waterboards" <Gita.Kapahi@waterboards.ca.gov>
Subject: TCR Protection Conditions Related to Cannabis Cultivation Policy Update

Hi Gita,

Thank you for contacting the San Manuel Band of Mission Indians (SMBMI) regarding the above referenced project. SMBMI appreciates the opportunity to review the project documentation, which was received by our Cultural Resources Management Department on 15 Oct 2018. The proposed updates are not of concern to SMBMI and, as such, the Tribe has no comments to provide. However, should there ever be a chance to work with the state on the entirety of the language within Requirement 21, please do let me know, as I have noted a few things. For 2 examples:

- <!--[if !supportLists]--> <!--[endif]-->Not all sensitive spaces for Tribes are within the Sacred Lands Inventory, and many Tribes have elected not to use that system due to confidentiality concerns.
- <!--[if !supportLists]--> <!--[endif]-->Tribes care a great deal about Native American resources from the contact period to the present, and not solely pre-contact resources, as is stated in the language.

Once again, should the opportunity ever arise for Tribes to review and comment upon the entirety of the language, SMBMI would be most interested in working with the state on that endeavor.

Regards,

Jessica Mauck

CULTURAL RESOURCES ANALYST

O: (909) 864-8933 x3249

M: (909) 725-9054

26569 Community Center Drive Highland California 92346

SAN MANUEL
BAND OF  MISSION INDIANS

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please delete it from your system without copying it and notify the sender by reply e-mail so that the email address record can be corrected. Thank You



November 26, 2018



Tribal Council

Anthony Roberts
Chairman

James Kinter
Secretary

Matthew Lowell, Jr.
Treasurer

Mia Durham
Member

Burnam R. Lowell, Sr.
Member

State Water Resources Control Board
Attention: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95812

Comment Letter - Updates to Cannabis Cultivation Policy
Submitted electronically to commentletters@waterboards.ca.gov

The Yocha Dehe Wintun Nation ("Yocha Dehe" or "Tribe"), a federally recognized tribal government, very much appreciates this opportunity to comment on the State Water Resources Control Board's proposed updates to its Cannabis Cultivation Policy.

The stated basis for the proposed updates is to "expand options that California Native American tribes may implement to approve, reject, or not act regarding proposed cannabis cultivation activities that are on or within 600 feet of their tribal lands." As a general matter, Yocha Dehe supports the concepts of (i) requiring tribal consent for cannabis cultivation on and near tribal lands; and (ii) maximizing the options and regulatory flexibility available to tribal governments. However, we have three significant concerns about the specific language of the proposed updates:

1. The proposed updates would establish a 45-day review period during which potentially affected tribes may accept, reject, or take no action on a proposed cannabis cultivation project. If a potentially affected tribe takes no action during the 45-day period, the Water Boards will proceed with a decision on the project as if the tribe has granted its acceptance. The issue is that many tribal governments have limited resources, and 45 days may not always be enough time to allow them to review and consider complex cultivation proposals. We respectfully submit that a 60-day review period would be more appropriate. Alternatively, it may be worth considering an arrangement by which each potentially affected tribe shall be granted a 15-day extension of the 45-day period upon request.

2. Currently, Attachment A, Section 1, Requirement 19 reads as follows:

"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."

Yocha Dehe Wintun Nation

PO Box 18 Brooks, California 95606 p) 530.796.3400 f) 530.796.2143 www.yochadehe.org

This straightforward mandate gives tribes broad power to refuse, allow, condition, or withdraw permission for any proposed cannabis cultivation (as, for example, where the impacts of proposed cannabis cultivation) *as well as* any ongoing cannabis cultivation (as, for example, where the impacts of active operations prove to be far more significant than any of the parties initially anticipate).

The proposed update purports to increase options and flexibility for tribes, but, as a practical matter, it would severely restrict tribal authority over ongoing cannabis cultivation on or within 600 feet of tribal lands. Whereas the existing Cannabis Cultivation Policy (cited above) allows tribes to withdraw their permission if ongoing cannabis cultivation proves to have unanticipated or excessive impacts, the proposed update would only apply such a withdrawal to “any new cannabis cultivation proposals received after” the withdrawal, effectively allowing significant impacts to tribal resources to continue unabated. This element of the proposed update is entirely inappropriate and should be immediately withdrawn.

3. Currently, the second sentence of the second paragraph of Attachment A, Section 1, Requirement 21 requires the cannabis cultivator to consultation with culturally affiliated tribes “prior to any ground disturbing activities” for any new or expanded cannabis cultivation for which a Sacred Lands Inventory search reveals the presence or potential presence of Native American places of special or social significance. The proposed updates would replace “prior to any ground disturbing activities” with “prior to conducting any land disturbance activities.” One of the (perhaps unintentional) consequences of this change would be to restrict the consultation requirement to disturbances created by the cultivator. Such a limitation is neither desirable nor appropriate. Consultation should be required before any ground (or land) disturbance takes place, whether that disturbance is created by the cultivator, the cultivator’s employees, the cultivator’s agents, or some other party or parties participating in or related to the cultivation operation.

4. Both options presented in proposed Attachment A, Section 1, Requirement 38, allow indoor cannabis cultivators to avoid compliance with regulatory requirements. Indoor cannabis cultivation projects can impact tribal cultural resources just as surely as those conducted outdoors. Therefore, a buffer remains appropriate. Again, we request that this element of the proposed update be withdrawn

Thank you for your continued support for the protection of tribal cultural resources from the impacts of cannabis cultivation. Should you have any questions about these comments, please contact Omar Carrillo, Director of Public Affairs, or Marilyn Delgado, Director of Cultural Resources, at 530.796.3400.

Wile bo,



Anthony Roberts
Tribal Chairman

LATE COMMENT



CARP
GROWERS

November 27, 2018

State Water Resources Control Board
Attn: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento CA 95814



Transmitted via email to commentletters@waterboards.ca.gov

COMMENT LETTER – UPDATES TO CANNABIS CULTIVATION GENERAL ORDER

Thank you for the opportunity to comment on the Cannabis General Order (CGO). The Carpinteria Association for Responsible Producers (“CARP”) is comprised of local cannabis farmers and industry leaders who are utilizing best practices and investing in the local community through philanthropic initiatives and partnerships. Collectively we represent over 150 State licenses and employ over 600 local residents at our farms. All of our members are State licensed cultivators who operate at the highest standards including best available odor control technology, sustainable growing techniques such as water reuse and recapture, track and trace technology and competitive wage and benefit packages for employees. We are committed to setting a new standard for the cannabis industry.

The majority of our members cultivate in pre-existing greenhouses, which were previously used to grow other agricultural crops. We are multi-generational farmers, who have changed crops to cannabis.

We are strongly opposed to the following provisions of the CGO, which impact many of our members who are seeking local and State licenses and permits:

1. Determination as “high risk, Tier 2” operations due to location within creek setbacks and classification as “outdoor”;
2. Categorization as an “outdoor” operation, which requires us to enroll under Waste Discharge Requirements, not the Waiver of Waste Discharge Requirements;
3. \$8,000 annual fee, which is cost prohibitive especially for our members who are already burdened by new costs of compliance; and
4. Prohibition of discharging water on conventional crops.

Our cultivation of cannabis in pre-existing greenhouse infrastructure is extraordinarily environmentally friendly and efficient. Growing cannabis is less impactful than our previous flower operations. We recapture and reuse all of our water. We do not add any fertilizers, pesticides, salts or nitrates to our plants, that could leach into the groundwater. We utilize a closed loop system and do not discharge any hydroponic water. Our operation does not discharge any wastewater that negatively impacts groundwater or creeks.

Classifying our members’ operations as “outdoor” is problematic because it is inaccurate and inconsistent with the State cannabis regulations (MAUCRSA). The State considers us “mixed light,” since our operation is unique, as it takes place in greenhouses - not “indoor” or



“outdoor.” It is not feasible for us to install impermeable floors and qualify for an indoor exemption.

We encourage your Board to amend the CGO which prohibits operators from discharging water on conventional crops. We believe this is an efficient and responsible discharge method, which reduces the amount of new water and nutrients that would need to be applied to conventional crops. (Currently the CGO requires that wastewater be hauled, sent to a treatment facility or treated onsite.) If this is not amended, we will have to develop an individual WDR for the entire operation, which is overly onerous and unreasonable.

Many of our members have infrastructure within the 150 foot setback requirements for Arroyo Paredon Creek, which requires them to enroll the site as Tier 2 High Risk. While we understand the importance of the setback, due to the scale and number of operators this impacts, we are hopeful for an opportunity to work with your Board on a better solution to address operators within the setback, who cannot move their infrastructure. Requiring a large number of cultivators to enroll as Tier 2 High Risk is unreasonable and unsustainable.

Our membership recognizes the importance of responsible cultivation operations, and compliance with all Water Board policies. However, we are burdened by the numerous new standards for compliance for the cannabis industry, including costs. If the new legal industry is to be successful and sustainable, we are hopeful for ongoing cooperation and partnership with the Water board to facilitate resolution of regulatory challenges, that are unique to our area in Santa Barbara County.

Thank you for your consideration,

Winfred Van Wingerden
President of CARP Growers
1072 Casitas Pass Road,
#301
Carpinteria, CA 93013

LATE COMMENT

From: [Sam Rodriguez](#)
To: [Schultz, Daniel@Waterboards](mailto:Schultz.Daniel@Waterboards)
Cc: [John De Friel](#); [Matthew Allen](#); [Sam Rodriguez](#)
Subject: Per our conversation - Memo
Date: Wednesday, November 28, 2018 9:45:45 AM
Attachments: [Dan Shultz at Water Board.docx](#)



Hi Dan:

Thanks for all of your time and insights.

As promised - attached is our Memo underscoring our collective concerns regarding the Winterization Bulletin for Cannabis Farmers.

We look forward in our continued discussions and offer to assist in where ever we can in the region.

Best,

Sam

[Sam Rodriguez](#)
Consultant/Lobbyist and Media Advisor
Rodriguez Strategic Partners LLC

www.rodriquezstrategicpartners.com

916.849.4300 (cell/text)

"Science and everyday life cannot and should not be separated" - Rosalind Franklin, Scientist and Chemist - discovery of the structure of DNA, pioneering use of X-Ray diffraction.

RODRIGUEZ

STRATEGIC PARTNERS LLC

TO: Daniel Shultz
California Water Board Agency

FR: Sam Rodriguez
Principal, Rodriguez Strategic Partners
916-849-4300

CC: John De Friel, Co-Founder, Central Coast Agriculture LLC
Matt Allen, General Counsel

RE: Winterization Regulatory Bulletin for Cannabis Farmers

DT: November 28, 2018

Hi Dan:

We appreciate you taking the time yesterday morning to address our concerns about the “Winterization Regulatory Bulletin for Cannabis Farmers” released in October of this year.

As we discussed, there’s an acknowledgement and recognition that the Agency is responsible to protect farmland and the overall environment from ‘Bad Actors’ - especially in the “Emerald Triangle” in far north California. Unfortunately, some of the provisions in the winterization regulations are unworkable and actually do harm to ‘Good Actors’ - especially Central Coast Agriculture and others in Santa Barbara County who are compliant with all local and state mandates and regulations.

Specifically, we are recommending a technical language modification in Section 127 - Cannabis cultivators shall not operate heavy equipment of any kind at the cannabis cultivation site during the winter period, unless authorized for emergency repairs contained in an enforcement order issued by the State Water Board, Regional Water Board, or other agency having jurisdiction [or if related to soil preparation or planting](#)

[activities as set out in a cultivator's approved site management plan.](#) (Cannabis Cultivation Policy: Attachment A – October 17, 2017)

Moreover we strongly believe that your office can provide additional guidelines to the regional and local offices affording them flexibility to consider on a case by case basis utilizing the approval process of the Cannabis Farmer Site Management Plan and still meet your statutory and regulatory goals.

Once again we appreciate this opportunity to engage and provide an objective perspective on the real impacts of well-intentioned policies to address serious problems but have unintentional dire consequences on traditional cannabis farmers in Santa Barbara County.

We look forward to our continued conversations and would gladly participate and/or host a meeting with other stakeholders from the region.

Please don't hesitate to contact Matt Allen or me, if you need additional information.

Best always,

Sam

LATE COMMENT

November 26, 2018

State Water Resources Control Board
Attn: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento CA 95814



Sent via email to commentletters@waterboards.ca.gov

Comment Letter – Updates to Cannabis Cultivation General Order

As a licensed cultivator of cannabis in Santa Barbara County, I appreciate the Water Boards consideration on a few comments regarding the current Cannabis General Order (CGO). As it is written, the mold does not fit with our practices of greenhouse cultivation. Opportunely, our practices are very much in line with the priorities of the Water Board to manage irrigation water responsibly, protect ground water, and not to harm sensitive riparian corridors. Our greenhouses, built in the 1970's, were originally growing potted nursery plants and later chrysanthemums in the soil. The next owner started cultivating gerbera daisies in the 1990's which included much of the efficient Dutch water recapture. Since we have taken over the operations, we have improved this water recapture system with new steel gutters, new drain manifolds, and on-site water sterilization. This enables us to recapture all of the over-drain water from our hydroponic system. Contrary to the older style of growing such as chrysanthemums in the soil, we do not add any nitrates, salts, or fertilizers to the soil that can then leach into the ground water. Our system is closed loop, so whatever fertilizer is added will be recirculated. We do not discharge any hydroponic water, and we certainly do not dump any into our septic system. 100% of irrigation tail-water is reused. This saves us both water and fertilizer costs; and more importantly, is much better for the environment and the nearby seasonal creek. This is the most economic, environmentally sound, and efficient way to cultivate any crop. Our greenhouse roof is glazed with polycarbonate, so we are an impermeable indoor structure with a permanent roof. There isn't any rain water or storm water passing through our indoor growing areas.

For operations such as our greenhouse, I urge you to consider revising the CGO to conditionally waive impermeable permanent greenhouses that recapture all of their hydroponic tail water and can demonstrate their over-drain tail-water is 100% reused. Any water that is used on site, stays on site, and does not leach into the soil, septic system, or run off site. This revision would support greenhouse growers who do not discharge any wastewater that adversely affects creeks and groundwater.

We are strongly opposed to the Water Board's determination that we are a "Tier 2, High Risk" operation. The CGO requires that grow operations in greenhouses with dirt floors are considered "outdoor" and is therefore required to be enrolled under Waste Discharge Requirements, not the Waiver of Waste Discharge Requirements. This designation as "outdoor" is not only inconsistent with MAUCRSA (Medical and Adult Use Cannabis Regulatory Safety Act) which classifies us as "mixed light," but is also inaccurate

and punitive to highly efficient and sophisticated cannabis cultivation greenhouse operations.

It is not possible for us to qualify for an indoor conditional exemption because we cannot meet the criteria for indoor sites. It is not feasible to lay down plastic liner or an impermeable floor, or lay concrete, in our existing greenhouses. This would be cost prohibitive and disruptive to our entire operation, and bad for the environment.

Secondly, because portions of our greenhouse are within the 150 foot setback from a creek, we are required to enroll as Tier 2 High Risk, which has an \$8,000 annual fee. This fee is unreasonable and onerous on a burgeoning industry. We are already burdened with extraordinary costs of compliance with regulations from the County, State, CDFW and State Water Board. Unreasonable regulations and fees perpetuate the black market and negatively impact licensed cannabis operators who are on the pathway to compliance and legal operations.

It is impossible to move our pre-existing greenhouse out of the setback, which requires us to develop an individual Waste Discharge Requirement. We encourage you to consider exceptions for responsible growers who are utilizing pre-existing infrastructure. It is unreasonable to institute a policy that is punitive to farmers who are simply using infrastructure that was developed years ago.

Lastly, we are opposed to the provision of the CGO which states that wastewater must be sent to a treatment facility, treated onsite (not including septic) or hauled. We strongly believe that discharging water to conventional crops is an appropriate, sustainable and safe method of disposal which should be permitted without needing an individual WDR. We currently discharge irrigation tailwater to avocado trees, which is a environmentally friendly use of water and reduces the amount of new water and nutrients that would need to be applied to the non-cannabis crop regardless.

Sincerely,

Ivan Van Wingerden
Flora Coast
Carpinteria, California

LATE COMMENT



422 E Street
Davis, CA 95616
Tel: (530)231-7208
www.berkeywilliams.com



November 27, 2018

Via Electronic Submittal

State Water Resources Control Board
Attn: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95814
Email: commentletters@waterboards.ca.gov

RE: Round Valley Indian Tribes' Comment Letter on Proposed Updates to Cannabis Policy, Staff Report, and Cannabis Cultivation General Order

Dear Ms. Townsend:

On behalf of the Round Valley Indian Tribes (RVIT or Tribes), we submit these comments on the State Water Resources Control Board's (SWRCB or Board) 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 Wavier of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis Cultivation General Order).

The RVIT Reservation is located in Mendocino County, within the Upper Eel River Basin. The Tribes have relied upon the water and fish of the Eel River to sustain their people and way of life since time immemorial. Moreover, the Tribes are a sovereign government that are responsible for the safety and well-being of their people. Cannabis cultivation poses a serious potential threat to the Eel River. These comments are limited to the sections of the proposed updates which would most directly affect the Tribes' water quality and supply. The Tribes' comments address the revised Cannabis Policy's Term 19 and 38 regarding the "Tribal Buffer." These comments also apply to the Staff Report and Cannabis Cultivation General Order to the extent those proposed updates are the same. The Tribes' specific comments on the proposed updates are set forth below.

1. Cannabis Policy: Attachment A, Section 1, Term 19 (“Tribal Buffer”)

Consultation Should Begin Within 14 Days of Receipt of the Application

The SWRCB should be required to initiate consultation with the Tribes within a set number of days after receiving an application for cultivation on or within the “Tribal Buffer.” This would ensure the Tribes’ voice is heard early in the application review process. For example, in the case of Assembly Bill 52, the permitting agency is required to begin consulting with tribes within fourteen (14) days of determination that a project application is complete. The Board should require a similar fourteen (14) day timeframe to begin consultation with the Tribes once an application for cultivation on or within the “Tribal Buffer” is received.

The 45-Day Review Period Should be Increased to 60 or 90 Days

Forty-five (45) days will not provide the Tribes with a sufficient amount of time to review a cannabis cultivator’s application materials and make an informed decision. The SWRCB should instead require 60 or 90 days as a more appropriate review period.

The 600-Foot Buffer Zone Should be Expanded

The Board should expand the “Tribal Buffer” zone to encompass a larger area, such as the Tribes’ ancestral territories. Alternatively, the SWCRB should consider expanding the “Tribal Buffer” zone upstream of tribal lands. Upstream cannabis cultivation and water diversions pose a serious threat of contaminating water that flows to the RVIT Reservation. To address this, the “Tribal Buffer” zone should be expanded to include those cannabis cultivation sites within 600 feet of a water body that flows downstream to Tribal lands.

Tribes Should Receive a Copy of the Permit Application

The Tribes should receive a copy of every permit application that could affect tribal lands to enable the Tribal Council to make an informed decision whether to approve or reject a request for authorization. Providing the Tribes copies of these permit application would allow the Tribes to assess the proposed cultivation operation, including its proposed location; its physical and ecological footprint; what other types of cannabis licenses, if any, its owners possess; and where the cannabis cultivator proposes to take and discharge water. All of this information is necessary for the RVIT to make an informed decision as to whether or not to authorize cultivation on or within the “Tribal Buffer.”

Tribes Should Always be Notified Unless They Have Explicitly Requested Not to Receive Notice

The Tribes should always be notified when SWCRB receives a completed application for cultivation of cannabis on or within 600 feet of tribal lands. Under the proposed rule, after a tribe notifies SWCRB that it will prohibit all cannabis cultivation on or within 600 feet of its lands, SWCRB will automatically reject future applications to cultivate on these spaces. However, even if the Tribes decide to ban cultivation within the Tribal Buffer, the Tribes still wish to receive notice that an application has been filed for cultivation on these lands. Such notice would enable the Tribes to make an informed decision at the time an application is filed as to whether it wishes to withdraw or modify its blanket rejection.

The SWRCB Should Coordinate with THPOs or other Tribal Representatives Regarding Potential Impacts on Tribal Cultural & Natural Resources

The Tribes are deeply concerned with protecting tribal cultural and natural resources, both within and outside the RVIT Reservation boundaries. The proposed updates should be revised to require the Board to coordinate with the Tribes' Tribal Historic Preservation Officer (THPO) or other appropriate Tribal Representative regarding how the proposed cultivation might impact the Tribes' cultural and natural resources.

2. Cannabis Policy: Attachment A, Section 1, Term 38 (“Tribal Buffer Exemption for Indoor”)

Indoor Cannabis Cultivation Structures Should Not be Exempt from the Tribal Buffer Requirement

The proposed exemption for certain indoor cultivation is not acceptable to the Tribes. The exemption as proposed appears to apply only to cultivators that discharge their wastewater to a wastewater treatment system that accepts cannabis wastewater or discharge their wastewater directly to a storage tank (which must be outside of the Riparian Setback) and then properly dispose of it at a treatment facility. However, even with these protocols in place, there is still some risk of improper wastewater discharge. Moreover, the Tribes may have other reasons for wishing to prohibit cannabis cultivation -- indoor or outdoor -- on their lands. The Tribes suggest that Indoor Cannabis Cultivation Structures should not be exempt from the Cannabis Policy's requirement for tribal authorization on or within 600 feet of the “Tribal Buffer.”

There Should be a Parallel Exception to the Riparian Setback Exemption if the Tribe Determines an Exemption Would Not Protect Water Quality

The proposed updates include an exception to the riparian setback exemption if the Regional Water Board's Executive Officer determines an exemption would not protect water quality. The SWCRB should add the following exception to the Tribal Buffer Exemption for indoor cultivators: “The tribal buffer exemption shall not apply if the Tribe's Tribal Council or other Authorized Representative determines that an exemption from the tribal buffers is not sufficiently protective of water quality.”

At Minimum, Tribes Should Receive Notice of All Existing and Proposed Indoor Cannabis Cultivation Structures That Would Qualify Under the Exemption

At a minimum, the SWCRB should notify the Tribes of all cannabis cultivation, whether indoor or outdoor, on and within 600 feet of tribal land in order for the Tribe to effectively protect its water supply and natural resources. The Tribes are a sovereign government that are responsible for the safety and well-being of its people and must be informed of what is happening on tribal land. Finally, cannabis is still illegal under federal law. Therefore, the Tribes must be aware of all cannabis cultivation -- indoor or outdoor -- occurring on tribal land.

3. Cannabis Cultivation General Order, Attachment A, Section 1, Term 19 (“Tribal Buffer:”) and Term 38 (“Tribal Buffer Exemption for Indoor”)

See comments above on Cannabis Cultivation Policy.

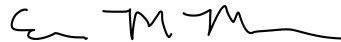
4. Staff Report (“Riparian Setback and Tribal Buffer Exemptions” at pg. 37-38)

See comments above on Cannabis Cultivation Policy.

The Round Valley Indian Tribes appreciate the opportunity to comment on the Board’s proposed updates to the Cannabis Policy, Staff Report, Cannabis Cultivation General Order, and look forward to discussing these issues in the future with the Board.

Very truly yours,

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