

Excerpts of Cannabis Policy Requirements

The following is an excerpt from the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy): Attachment A, Section 4 Watershed Compliance Gage Assignments.

SECTION 4 – WATERSHED COMPLIANCE GAGE ASSIGNMENTS

Watershed Compliance Gage Assignments

The State Water Board has developed an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. The online mapping tool is available at:

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

The online mapping tool allows cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The online mapping tool identifies existing flow requirements¹ and provides information on whether the existing flow requirement or the Cannabis Policy Numeric Instream Flow Requirement (minimum instream flows) is required to be met prior to diverting. Stakeholders may request the State Water Board update an existing flow requirement in the mapping tool to clarify: an existing flow requirement's conditions, as applicable; clarify the geographic scope of an existing flow requirement; or add an existing flow requirement that is not identified. The State Water Board may update the existing flow requirements in the online mapping tool, as needed. The compliance gage assignments may change as more information becomes available. The current list of active compliance gages and associated minimum instream flows are available at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/numeric_instream_flow_requirements.html.

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 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).

¹ Examples of existing flow requirements are minimum instream flows for Federal Energy Regulatory Commission licensed hydropower projects or minimum instream flows prescribed in Biological Opinions issued by the United States Fish and Wildlife Service or National Marine Fisheries Service.

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The following is an excerpt from the [Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation](#) (Cannabis Policy): Attachment A, Section 3, Requirement 5.

5. **Surface Water Wet Season Diversion Period:** The authorized surface water diversion period is November 1 through March 31. During this diversion period, cannabis cultivators may only divert surface water for cannabis cultivation when water is available for diversion under the cannabis cultivator's priority of right and the applicable Numeric Flow Requirement (Section 4) is met at the assigned compliance gage. This includes direct diversion and diversion to storage.

From November 1 through December 14 of each year, the surface water diversion period shall not begin until after seven consecutive days in which the surface waterbody's real-time daily average flow is greater than the Numeric Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4). The first day of the seven consecutive days must occur on or after October 25. After the seventh consecutive day with average flow greater than the Numeric Flow Requirement, surface water diversions may occur on any subsequent days in which the real-time daily average flow is greater than the Numeric Instream Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4)².

Numeric Instream Flow Requirements (minimum instream flows) are established throughout the State and are calculated for the majority of USGS National Hydrography Dataset Plus Version 2 stream reaches where the USGS flow modeling data are available. Cannabis cultivators that divert water from a waterbody are required to ensure that the prior day's average flow, as published on the State Water Board's online mapping tool (see Section 4. Watershed Compliance Gage Assignments for more information), exceeds the minimum monthly instream flow Requirement at the cannabis cultivator's assigned compliance gage. Cannabis cultivators shall verify and document compliance with the applicable minimum instream flows on a daily basis for each day of surface water diversion.

² For example, if the daily average flows on each day from October 27 through November 2 of a given year are greater than the Numeric Instream Flow Requirement for November (applicable November monthly minimum flow Requirement), diversion may begin on November 3 if the daily average flow on November 3 is also greater than the November Numeric Instream Flow Requirement. From December 15 through March 31 of each surface water diversion period, surface water diversions may occur on any day in which the surface waterbody's real-time daily average flow is greater than the Numeric Instream Flow Requirement (applicable minimum monthly instream flow Requirement).

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The following is an excerpt from the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy): Attachment A, Section 3, Requirement 4.

4. **Surface Water Dry Season Forbearance Period:** Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year, unless the water diverted is delivered from storage in compliance with Narrative Flow Requirement 4.
 - a. From April 1, 2018 through October 31, 2018 cannabis cultivators diverting under a valid water right or claim of right and without authorized storage are not subject to a dry season forbearance period if the following Requirements are met:
 - i. Cannabis cultivators subject to Requirement 4.a. may only divert during this period in a manner consistent with their permit/license or claim of right. All other applicable requirements of the Policy shall remain in force.
 - ii. Prior to diverting water for cannabis cultivation during April 1, 2018 through October 31, 2018 cannabis cultivators subject to Requirement 4.a shall file for a Cannabis SIUR or submit an application for an appropriate water right permit to obtain storage sufficient to support their cannabis cultivation during future forbearance periods.
 - iii. As soon as possible after storage has been authorized, following the conclusion of the winter period, cannabis cultivators subject to Requirement 4.a shall begin installing and diverting to offstream storage to prepare for a potential curtailment during the dry season of 2018 (triggered by the Aquatic Base Flow Numeric Instream Flow Requirement).
 - iv. Requirement 4 shall apply with full force to cannabis cultivators described in Requirement 4.a who fail to comply with Requirement 4.a.ii and/or 4.a.iii.

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The following is an excerpt from the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy): Attachment A, Section 2, Requirement 82.

<p>82.</p>	<p>The cannabis cultivator shall install and maintain a measuring device(s) for surface water or subterranean stream diversions. The measuring device shall be, at a minimum equivalent to the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.7 and Chapter 2.8³. The measuring device(s) shall be located as close to the point of diversion as reasonable. Cannabis cultivators shall maintain daily diversion records for water diverted for cannabis cultivation. Cannabis cultivators shall maintain separate records that document the amount of water used for cannabis cultivation separated out from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water Boards, CDFW, or any other authorized representatives of the Water Boards or CDFW. Daily diversion records shall be retained for a minimum of five years. Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year.</p>
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³ Additional information on measuring devices may be found at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/water_use.shtml#measurement

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The following is an excerpt from the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy): Attachment A, Section 3, Requirements 2 and 9.

2. **Retail Water Suppliers⁴**: The instream flow Requirements and forbearance period listed in this section shall not apply to retail water suppliers, as defined in Section 13575 of the Water Code⁵, whose primary beneficial use is municipal or domestic, unless any of the following circumstances are present:
 - a. the retail water supplier has 10 or fewer customers and delivers water that is used for cannabis cultivation;
 - b. the retail water supplier delivers 10 percent or more of the diverted water to one or more cannabis cultivator(s) or cannabis cultivation site(s), as established by an assessor's parcel number;
 - c. 25 percent or more of the water delivered by the retail water supplier is used for cannabis cultivation; or
 - d. a cannabis cultivator and the retail water supplier are affiliates, as defined in California Code of Regulations, title 23, section 2814.20.

9. **Retail Water Suppliers⁶**: The instream flow Requirements listed in Narrative Flow Requirement 8 (Aquatic Base Flow) shall not apply to retail water suppliers, as defined in Section 13575 of the Water Code⁷, whose primary beneficial use is municipal or domestic, unless any of the following circumstances are present:
 - a. the retail water supplier has 10 or fewer customers and delivers water that is used for cannabis cultivation;
 - b. the retail water supplier delivers 10 percent or more of the diverted water to one or more cannabis cultivator(s) or cannabis cultivation site(s), as established by an assessor's parcel number;
 - c. 25 percent or more of the water delivered by the retail water supplier is used for cannabis cultivation; or
 - d. a cannabis cultivator and the retail water supplier are affiliates, as defined in California Code of Regulations, title 23, section 2814.20.

⁴ Business and Professions Code section 26060.1(a)(1)(B).

⁵ Under Water Code section 13575(b)(5), "Retail water supplier" means any local entity, including a public agency, city, county, or private water company that provides retail water service.

⁶ Business and Professions Code section 26060.1(a)(1)(B).

⁷ Water Code Chapter 7.5. Water Recycling Act of 1991, Section 13575(b)(5) "Retail water supplier" means any local entity, including a public agency, city, county, or private water company that provides retail water service.