

**STRATEGY REGULATION AND ENFORCEMENT OF
UNAUTHORIZED DIVERSIONS; DISCHARGES OF WASTE
TO SURFACE AND GROUNDWATER CAUSED BY
MARIJUANA CULTIVATION**

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE



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1.0 BACKGROUND

On 7 May 2013, Bill Connelly, Butte County Board of Supervisors Chair, sent a letter to Karl Longley, Central Valley Water Board Chair expressing his concerns about the environmental damage caused by marijuana cultivation in Butte County and requested the Central Valley Water Board's assistance in addressing these matters. Since then, Butte County's concerns regarding marijuana cultivation have caught the attention of Shasta and Tehama Counties as well as Assemblymen Logue, Chesbro, and Ammiano, Senator Nielson, and the Governor's office.

Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff has since partnered with the State Water Resources Control Board (State Water Board) and North Coast Regional Water Quality Control Board (North Coast Water Board) staff and is working closely with the California Department of Fish and Wildlife (CDFW), California Department of Forestry and Fire Protection (CalFire), and local law enforcement officials to develop protocols to safely participate in the coordinated regulation and enforcement of discharges of waste to surface and groundwater, and illegal diversions of surface water associated with marijuana cultivation.

CDFW recognizes marijuana cultivation operations on private and public lands cause enormous adverse effects to wildlife and their habitat. Marijuana cultivation site preparation activities can cause erosion and stream habitat degradation. Unlawful water diversions by those cultivating marijuana can severely limit the amount of water available to the public and wildlife. Fertilizers and pesticides used in these sites are often mixed directly in the water source thus contaminating streams. In January 2013, CDFW's Law Enforcement Division (LED) started a pilot program of wildlife officers focused primarily on marijuana enforcement. Based on the success of the pilot program and need for future development in this area, CDFW's LED created a Marijuana Enforcement Team.

This document describes the multi-agency strategy for regulation and enforcement of marijuana cultivators.

2.0 DEVELOPMENT SUMMARY

On 7 May 2013, Chairman Bill Connelly of the Butte County Board of Supervisors wrote the Central Valley Water Board requesting assistance to "enforce the Clean Water Act" and requested an explanation of "the Central Valley Water Board's position to not fully regulate the State Construction Storm Water Permit regulations on construction sites that disturb over an acre of soil or the State Industrial Storm Water Permit regulations for ongoing marijuana operations [in Butte County]".

On 28 May 2013, Water Board staff responded to Mr. Connelly in writing. Staff cited the difficulty in determining a legal Proposition 215 grow vs. an illegal one, the inherent dangers associated with grow operations, and the fact that our staff are not trained peace officers and as such do not have the requisite training to deal with the myriad of potential issues associated with these operations. Staff did, however, offer in-house technical expertise to those inspecting such facilities.

On 19 July 2013, Central Valley Water Board Executive Officer Ms. Pamela Creedon received a letter from Assemblyman Dan Logue on behalf of the Butte County Board of Supervisors. Mr. Logue represents District 3; Tehama, Butte, Colusa, Sutter, and Yuba Counties. Mr. Logue reiterated the importance of Water Board involvement in regulating marijuana operations and likened these facilities to those of farming and timber industries.

On 6 August 2013, Water Board staff and Jennifer Lester Moffitt, Central Valley Water Board's Vice Chair, met in Butte County with Assemblyman Logue, Senator Nielsen, and Butte County representatives. The meeting was arranged by Assemblyman Logue to discuss the Central Valley Water Board's position regarding staff's active participation in marijuana enforcement activities.

The following day, Water Board staff met at the State Capitol with Assemblyman Dan Logue, Butte County representatives, and the Governor's office. The purpose of this meeting was to elevate the

County's concerns regarding the Central Valley Water Board's position. It was determined through this meeting that while Butte County does have legitimate concerns, further discussion was warranted before Central Valley Water Board staff would actively participate in marijuana enforcement.

On 22 August 2013, Water Board staff developed a *Strategic Plan Outline for the Regulation and Enforcement of Marijuana Cultivators*. The Outline discussed the Water Board's goals and objectives of the Statewide Task Force, and other immediate and long term needs.

On 23 August, State Water Board's Executive Officer Tom Howard sent a memorandum, *State Water Board Taking Active Role in Marijuana Task Force*, to Water Board Executive Officers. The memorandum provides an overview of the issues associated with marijuana and assigns Cris Carrigan, Director of the State Water Board's Office of Enforcement as the "lead in coordinating on behalf of the Water Boards with other local, state, and federal government officials".

On 27 August 2013, Karl Longley received a letter from Shasta County Board of Supervisors. This letter echoed Butte County's concerns. Staff responded to Shasta County on behalf of Chair Longley in a letter dated August 27.

On 4 September 2013, State Water Board and Central Valley Water Board staff met at the State Capitol for the first formal Statewide Task Force meeting. Those present included the Governor's office, Assemblyman Dan Logue, Assemblyman Wesley Chesbro, CalFire, CDFW, and local law enforcement officials. The purpose of the meeting was to reiterate the goals of the Statewide Task Force and further develop a list of key participants. The Statewide Task Force has not reconvened since.

On 23 September 2013, the Water Boards held the first Multi-Agency Marijuana Working Group meeting.

On 4 October 2013, staff provided an Informational Item on the development of a marijuana program to the Central Valley Water Board during a regularly scheduled Board meeting.

Also in October 2013 Water Board and CDFW staff began working with Formation Environmental and VESTRA Resources, Inc. to explore technology options to identify, assess, and target key watersheds impacted by marijuana cultivation.

On 1 November 2013, Water Board and CDFW staff held the second Multi-Agency Marijuana Working Group meeting. The meeting was well attended by multiple County and State agencies and law enforcement personnel.

On 25 November 2013, Water Board and CDFW submitted a joint Budget Change Proposal (BCP), "Reducing Environmental Damage Caused by Marijuana Cultivation." Details of the BCP are described in Section 3, Resource Discussion below.

By the end of November 2013, Formation Environmental and VESTRA Resources had developed a prototype Cannabis Identification and Prioritization System (CIPS). CIPS uses a GIS platform and remote sensing technology to identify, assess, and target key watersheds impacted by marijuana cultivation. The system was demonstrated on three watersheds in the North Coast Region and one watershed in the Central Valley Region.

On 20 December 2013, CDFW's LED created the Marijuana Enforcement Team (MET). The purpose of MET is to provide specially trained law enforcement personnel who are able to coordinate eradication and reclamation efforts primarily targeting trespass marijuana grows causing damage to environmentally sensitive areas. MET was also created to assist with site and civilian staff security of private property marijuana grows.

On 30 January 2014, Water Board and CDFW staff held the third Multi-Agency Marijuana Working Group meeting. The meeting was well attended by multiple County and State agencies, law enforcement personnel, and legislative representatives from Asm. Logue's office, Senator Nielsen's office, Congressman Doug LaMalfa's office, and other interested parties. The purpose of the meeting was to vet the general framework of the overarching strategic plan.

On 14 March 2014, Water Board and CDFW staff held a meeting with the Nature Conservancy, CalTrout, and Trout Unlimited at Cal EPA headquarters in Sacramento. The meeting was requested by the third parties to inform them of our work on the subject and for them to express their concerns regarding the environmental damage associated with marijuana cultivation.

On 15 and 16 May 2014, the Central Valley Water Board held a Workshop in Redding on Mining, Marijuana, and Timber. As part of the Workshop, Water Board and CDFW staff provided an aerial tour of marijuana cultivation sites via helicopter to Board Members and Cal EPA officials. The following day on 16 May, staff provided a formal discussion of the problems associated with marijuana cultivation, options to regulate discharges associated with cultivation sites, enforcement options, and an overview of this strategy. Board Members were pleased with the approach Water Board and CDFW staffs proposed.

As the timeline above suggests, this Plan primarily represents the result of efforts by staff of the Central Valley Regional Water Board over the past year to add regulatory oversight of discharges of waste associated with marijuana cultivation to their overall regional water quality protection program, as well as efforts by the State Water Board and CDFW to develop a formal strategy to ensure statewide consistency. This Plan incorporates and, where applicable, discusses differences in, the approach being taken by the North Coast Water Board and CDFW Northern Region, whose regional regulatory and enforcement effort associated with waste discharges from marijuana cultivation sites, has been underway and evolving over several years. This document is not intended to be a comprehensive summary of all of the elements of North Coast's approach to addressing the water resource and water quality impacts from marijuana cultivation activities in the North Coast.

3 RESOURCE DISCUSSION

On 25 November 2013, the State Water Board and CDFW submitted a BCP, *Reducing Environmental Damage Caused by Marijuana Cultivation*. As outlined in BCP's Proposal Summary, "the Department requested 18 positions and Water Board requested 11 positions to implement a task force and priority driven approach to address the natural resources damages from marijuana cultivation, primarily on private lands in northern California, but also in targeted partnerships on high conservation value state public lands. There are four elements to the proposed program: permitting, enforcement, education and outreach, and coordination with other agencies. The lessons learned through this task force can also be incorporated into the administration's efforts to design, build, and implement a larger, more comprehensive program to address the environmental harm from marijuana. This initial effort will be focused in the geographic area where the two agencies see the greatest need..." BCP was modified to reduce the number of CDFW positions to 7, and then became part of the Governor's proposed budget, which was approved by the Legislature on June 20, 2014. The Budget allocates \$1.8 million from the Waste Discharge Permit Fund to fund the 11 Water Board positions with direction "to improve the prevention of illegal stream diversions, discharges of pollutants into waterways, and other water quality impacts associated with marijuana production." Fish and Wildlife is given direction "to investigate and enforce violations of illegal streambed alterations and the Endangered Species Act associated with marijuana production." The Budget further provides that it is intended that the Water Boards and CDFW will coordinate these efforts.

4 AUTHORITY

4.1 Water Board

Any person who discharges wastes in the State of California that could affect the quality of waters of the state has the legal obligation to file a report of that discharge with a Regional Water Board, unless the Board specifically waives that requirement.¹ "Waters of the state" include both surface waters and groundwater. Upon receiving the report of the discharge, the Board has a non-delegable duty to

¹ Wat. Code, § 13260.

prescribe requirements that will ensure that the discharge will comply with the applicable water quality control plan and will not result in pollution or nuisance.² These requirements make it impossible for the Water Boards to turn a blind eye towards discharges from marijuana cultivation sites, because they have extensive evidence demonstrating that these discharges can and do affect the quality of waters of the state.

Legal ambiguities related to the cultivation and possession of marijuana have little bearing on the Water Boards' regulatory authority; the Boards have the authority to enforce water quality laws despite the discontinuity between California law, which legalizes the medical use of marijuana,³ and the federal Controlled Substances Act, which prohibits the possession of marijuana even for medical uses.⁴ The Water Boards' authority remains intact because although federal law criminalizes the cultivation and possession of marijuana, federal law does not preempt the Boards' regulatory authority with respect to the water quality-related aspects of marijuana cultivation.⁵ However, in order to avoid any conflict with federal law, when the Water Boards exercises their regulatory authority over marijuana cultivators, it will explicitly state that it does not in any way authorize, endorse, sanction, permit, or approve the cultivation, use, or sale of marijuana or any other illegal activity.

On 19 August 2013, the *State Water Board's Office of Chief Counsel* prepared a memorandum, *Regulation of Waste Discharges from Marijuana Cultivation*. This memorandum is included as Attachment A.

In addition to its authority to regulate discharges of wastes, Water Boards have enforcement authority over unauthorized discharges of waste, and discharges of waste that violate water quality control plans. Water Boards may issue cleanup and abatement orders under Water Code section 13304 for discharges or threatened discharges, and impose administrative civil liabilities under Water Code section 13350 and 13375, or refer matters to the Office of Attorney General for prosecution. This list is not intended to be comprehensive.

4.2 Department of Fish and Wildlife

As the trustee agency for the public's fish and wildlife, CDFW has jurisdiction over the conservation, protection, and management of California's fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species.⁶ This includes authority over water quality protection as it relates to fish and wildlife. CDFW's management functions are implemented through the administration and enforcement of the Fish and Game Code.⁷ With respect to enforcement against unauthorized water diversions and discharges from marijuana cultivation sites, relevant sections of the Fish and Game Code include, but are not limited to, section 1602, which requires an entity to notify CDFW of any proposed activity that may substantially modify a river, stream, or lake, section 5650, which prohibits the unlawful deposit of any substance or material deleterious to fish, plant life, mammals, or bird life into waters of the state, section 5652, which prohibits the disposal of trash into waters of the state, and section 2080, which prohibits the unlawful take of state-listed endangered and threatened species.

Upon investigation by CDFW, a criminal or civil action can be brought by the Attorney General or district attorney for violation of the Fish and Game Code. Pursuant to Fish and Game Code section 1615, a person found to have violated section 1602 is subject to a civil penalty of not more than \$ 25,000. Fish and Game Code section 12025(a) provides that, in addition to any penalties provided by any other law, a person found to have violated section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance (i.e., marijuana) in lands under management of specified state or federal

² Wat. Code, § 13263.

³ The Compassionate Use Act of 1996, codified at Health & Saf. Code, § 11362.5.

⁴ See 21 U.S.C. §§ 812, 844(a); *Gonzales v. Raich* (2005) 545 U.S. 1, 26–29; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 491–495.

⁵ See *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, in which the Court found that Congress did not intend to preempt of state laws concerning controlled substances.

⁶ Fish & G. Code, § 1802.

⁷ Fish & G. Code, § 702.

government agencies⁸ is subject to a civil penalty in the following amounts: up to \$10,000 for violation of section 1602, up to \$40,000 for violation of section 5650, and up to \$40,000 for violation of section 5652.

On June 20, 2014, the Governor signed AB 861, a trailer bill to the Governor's proposed budget, which amends Fish and Game Code section 12025 as follows. First, AB 861 amends section 12025(a) to also impose civil penalties on a person found to have violated section 1602, 5650, or 5652 "while trespassing on other public or private land in connection with the production or cultivation of a controlled substance."

Second, AB 861 amends Fish and Game Code section 12025 to impose civil penalties on a person found to have violated section 1602, 5650, or 5652 when the production or cultivation of a controlled substance does not involve trespass on public or private land. Specifically, AB 861 adds section 12025(b)(1) which states that, "[i]n addition to any penalties provided by any other law, a person found to have violated section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance on land that the persons owns, leases, or otherwise uses or occupies with consent of the landowner may be liable for a civil penalty in the following amounts:" up to \$8,000 for violation of section 1602, up to \$20,000 for violation of section 5650, and up to \$20,000 for violation of section 5652. Furthermore, AB 861 adds section 12025(b)(2) which provides that "[e]ach day that a violation of section 1602, 5650, or 5652 described in this subdivision occurs or continues to occur shall constitute a separate violation."

Last, AB 861 amends Fish and Game Code section 12025 to grant CDFW authority to administratively impose penalties on a person found to have violated section 1602, 5650, or 5652. Specifically, AB 861 adds section 12025(e) which provides administrative authority to CDFW's chief deputy director or law enforcement division assistant chief in charge of marijuana enforcement to serve a complaint on any person or entity on which an administrative penalty may be imposed and requires that the Director hold a hearing if requested.

5 LIMITATIONS

Enforcement and prosecution efforts will focus on grows that purport to be legal under the Compassionate Use Act (Proposition 215), and trespass grows on state-owned or managed public lands. Staff will not inspect or otherwise participate in the regulation of grows located on federally owned lands unless specifically requested by a Federal agency. When requested, Water Board and CDFW staffs would provide a supporting role in the form of professional consultation or expert testimony.

Staff safety is one of the Water Boards' and CDFW's highest priorities. Water Board staff will not participate in inspections or enforcement actions associated with known cartels or gangs engaged in illegal trespass grows, and will rely on CDFW's Law Enforcement Division (LED) and County and State Law Enforcement to secure sites and make sure they are safe before entry is made at any marijuana grow site.

6.0 ROLES AND RESPONSIBILITIES

Proposed roles and responsibilities for the development and implementation of this Program are summarized below.

⁸ These agencies include the Department of Parks and Recreation, CDFW, the Department of Forestry and Fire Protection, the State Lands Commission, regional park districts, the United States Forest Service, and the Bureau of Land Management.

6.1 Lead Assignments

State Water Board Lead

Cris Carrigan	Director	State Water Board, Office of Enforcement
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Central Valley Water Board Leads

Clint Snyder	Assistant Executive Officer	Central Valley Water Board
Patrick Pulupa	Senior Staff Counsel	State Water Board, Office of Chief Counsel

North Coast Water Board Leads

Matt St. John	Executive Officer	North Coast Water Board
David Leland	Assistant Executive Officer	North Coast Water Board
Diana Henriouille	Enforcement Coordinator	North Coast Water Board
Samantha Olson	Senior Staff Counsel	State Water Board, Office of Chief Counsel

California Department of Fish and Wildlife, Law Enforcement Division Leads

Brian Naslund	Assistant Chief - MET	Department of Fish and Wildlife
Nathaniel Arnold	Captain - MET	Department of Fish and Wildlife
Linda Barrera	Staff Counsel	Department of Fish and Wildlife

Cris Carrigan serves as the State Water Board's lead on the regulation and enforcement of marijuana. Clint Snyder and Patrick Pulupa work closely with Mr. Carrigan to facilitate these efforts for the Central Valley Water Board. Matt St. John, David Leland, Diana Henriouille and Samantha Olson work closely with Mr. Carrigan to facilitate these efforts for the North Coast Water Board.

Clint Snyder is the Central Valley Water Board's lead on marijuana program development and Matt St. John is the North Coast Water Board's lead on marijuana program development. Patrick Pulupa and Samantha Olson, Senior Staff Counsels with the Office of Chief Counsel, serve as assigned legal counsel working closely with Mr. Snyder and Mr. St. John to develop the program. Mr. Snyder and Mr. Pulupa coordinate efforts with the Central Valley Water Board's Executive Oversight Committee, and Ms. Olson and Mr. St. John do so in the North Coast.

Assistant Chief Brian Naslund and Captain Nathaniel Arnold serve as CDFW, Law Enforcement Division, Marijuana Enforcement Team leads on the regulation and coordinated enforcement effort concerning marijuana. Linda Barrera serves as CDFW's legal representative on investigations and efforts to administratively impose penalties associated to marijuana cultivation, and coordinates efforts with local, state, and federal agencies to prosecute cases related to marijuana cultivation in state and federal courts.

6.3 Executive Oversight Committee

Matt St. John	Executive Officer	North Coast Water Board
Samantha Olson	Senior Staff Counsel	North Coast Water Board
Pamela Creedon	Executive Officer	Central Valley Water Board
Patrick Pulupa	Senior Staff Counsel	State Water Board, Office of Chief Counsel
Clint Snyder	Assistant Executive Officer	Central Valley Water board
Cris Carrigan	Director	State Water Board, Office of Enforcement
Rob Egel	Director	State Water Board, Office of Legislation
George Kostyrko	Director	State Water Board, Office of Public Affairs
Susan LaGrande	Deputy Director, Legislation	Department of Fish and Wildlife
Neil Manji	Northern Regional Manager (Reg. 1)	Department of Fish and Wildlife
Tina Bartlett	North Central Reg. Manager (Reg. 2)	Department of Fish and Wildlife
Brian Naslund	Assistant Chief - MET	Department of Fish and Wildlife
Linda Barrera	Staff Counsel	Department of Fish and Wildlife

The purpose of the Executive Oversight Committee is to relay pertinent information and provide updates to appropriate Executive Managers and Board Members within the Water Boards and CDFW and to provide feedback and/or guidance to staff on any of the following:

- Discussions or interactions involving the Governor's office, legislators, CalEPA, Natural Resources Agency, or other high profile interests,
- Policy development,
- Implementation plans,
- Communication Plan,
- Consistency in permitting actions or proposals,
- Consistency in enforcement approaches,
- Resource proposals, and
- Any other considerations that may impact the Central Valley, North Coast, or State Water Boards.

6.4 Interagency Coordination Committee

Coordinated By:	Clint Snyder	Central Valley Water Board
	Lt. DeWayne Little	CA Dept. of Fish and Wildlife
Pamela Creedon	Executive Officer	Central Valley Water Board
Patrick Pulupa	Staff Counsel	State Water Board, Office of Chief Counsel
Cris Carrigan	Director	State Water Board, Office of Enforcement
Robert Egel	Director	State Water Board, Office of Legislation
George Kostyrko	Director	State Water Board, Office of Public Affairs
Matt St. John	Executive Officer	North Coast Water Board
Diana Henriouille	Senior Enforcement	North Coast Water Board
Stormer Feiler	ES, Enforcement	North Coast Water Board
Neil Manji	Northern Regional Manager (Region 1)	Department of Fish and Wildlife
Tina Bartlett	North Central Regional Manager (Region 2)	Department of Fish and Wildlife
Brian Naslund	Assistant Chief - MET	Department of Fish and Wildlife
Nathaniel Arnold	Captain - MET	Department of Fish and Wildlife
Linda Barrera	Staff Counsel	Department of Fish and Wildlife

The Interagency Coordination Committee (ICC) is made up of Water Board and CDFW staff from each of the key areas thought to be the subject of the Pilot Project as described in the BCP; mainly State Water Board, Central Valley Water Board, North Coast Water Board, CDFW's LED, and CDFW's Regions 1 and 2.

The primary purpose of the ICC is to assure regular coordination and communication among Water Board and CDFW as provided in the BCP and Governor's Proposed Budget. Members of the ICC are responsible for:

1. Developing proposed coordinated implementation strategy consistent with respective agency principals and/or Executive Management direction,
2. Regular communication and participation in ICC regarding progress of the ramp up and implementation strategy,
3. Developing a Working Group of stakeholders consisting of legislative representatives, state and local regulatory agencies, members of the regulated community, and other interested parties,
4. Facilitating Working Group meetings in such a manner as to relay consistent coordinated messages to members of the Working Group, external parties, and media,
5. Quarterly communication regarding the appropriateness and effectiveness of the final strategy in achieving the goals and objectives of Program, and finally
6. In the event any conflict should arise between Water Board and CDFW staff, the ICC will serve to address those conflicts and provide timely direction to front line management and staff assigned to the Program.

6.5 Working Group

Due to the potential adversarial nature of the parties involved, staff proposes a Working Group be developed in two phases. Phase 1 will bring together legislators, resource agencies, local agencies, and likeminded stakeholders (the regulating community). Phase 2 will incorporate proponents of the marijuana industry (the regulated community). The Working Group forum serves the following purposes:

1. Allows a venue for members of the ICC to inform interested parties of Water Boards and CDFW progress in developing the coordinated effort as outlined in the BCP and the Governor' Budget,
2. Provides confidence to the public through members of the Working Group that the State shares the public's concerns and that we are moving forward to address their concerns,
3. Allows members of the ICC an opportunity to incorporate member comments into any long term regulatory strategy and public outreach programs,
4. Provides a regular forum for Water Boards and CDFW staff to deliver a consolidated voice regarding policy, approaches, and direction.

Thus far, Working Group meetings have been held in the Central Valley Water Board's Redding office, the North Coast Water Board's Santa Rosa Office and the State Water Board's Sacramento office, with participants largely representing interested parties within these and CDFW's Northern and North Central Regions. Current and proposed working group participants are outlined in Table 1.

Table 1 – Current and Proposed Working Group Participants

Coordinated By:	Clint Snyder	Central Valley Water Board
	Diana Henriouille	North Coast Water Board
	Cris Carrigan	State Water Board Office of Enforcement
	Lt. DeWayne Little	California Dept. of Fish & Wildlife
Current Participants:	Office of Congressman Doug LaMalfa (1 st District) ¹	
	Office of Senator Nielsen (4 th District) ²	
	Office of Assemblyman Dan Logue (District3) ³	
	Office of Assemblyman Wesley Chesbro (District 2) ⁴	
	Office of Assemblyman Tom Ammiano (District 17) ⁵	
	CalEPA	
	State Water Resources Control Board	
	Office of Enforcement	
	Office of Chief Counsel	
	Central Valley Regional Water Quality Control Board	
	North Coast Regional Water Quality Control Board	
	California Department of Fish and Wildlife	
	California Department of Forestry and Fire Protection	
	California Department of Pesticide Regulation	
	California Department of Water Resources	
	California Department of Justice	
	California District Attorneys Association	
	Butte County	
	Shasta County	
	Tehama County	
	Mendocino County	
	Humboldt County	
	Rural County Representatives of California	
The Nature Conservancy		
CalTrout		
Trout Unlimited		
California League of Cities		

Future Participants

U.S. Fish and Wildlife Service
U.S. Department of Food and Agriculture
The Department Toxic Substances Control
CalRecycle
The California Department of Pesticide Regulation
Construction Industry Representatives (Builders Exchanges, Earthwork Contractors, etc.)
Resource Conservation Districts
Bureau of Land Management
U.S. Forest Service
U.S. EPA
*Western Plant Science Association
*Small Farmers Association
*California NORML (National Organization for the Reform of Marijuana Laws)
*California Cannabis Industry Association
*Americans for Safe Access
*Emerald Growers Association (Formerly Humboldt Growers Association)
California Forestry Association
California Cattlemen’s Association
California Farm Bureau
Other counties within the Pilot area
Other Interested Parties

¹ Cong. LaMalfa: Northeastern California, roughly from Auburn east to Interstate 5 with portions in Water Board Regions 1 and 6.

² Sen. Nielsen: North Central California, roughly from Roseville to the Oregon Border with portions in Water Board Regions 1 and 6.

³ Asm. Logue: Butte, Colusa, Glenn, Sutter, Tehama, and Yuba County

⁴ Asm. Chesbro: Del Norte, Humboldt, Mendocino, Sonoma, and Trinity County

⁵ Asm. Ammiano: San Francisco

*Cannabis industry representatives

7.0 PROPOSED IMPLEMENTATION PLAN

The Proposed Implementation Plan outlines staffs’ proposal, which addresses the requirements outlined in the BCP and other pertinent considerations. These include:

- Permitting and Long Term Funding (*BCP Requirement*)
- Inspections
- Enforcement (*BCP Requirement*)
- Education and Outreach (*BCP Requirement*)
- Coordination with Other Agencies (*BCP Requirement*)
- Cleanup Options
- Health and Safety Plan
- Communication Plan
- Challenges
- Legislative Assistance
- Implementation Schedule

7.1 Permitting and Long Term Funding (*BCP Requirement*)

The two Regional Boards are working to develop permit structures that will provide terms and conditions applicable to marijuana cultivation operations with the objective of developing a self-sustaining, fee-based regulatory program within a reasonable time. The North Coast Water Board expects to have a draft permit prepared for consideration by its Board by early 2015. While still under development, the North Coast Board is considering a general waiver of waste discharge with a tiered structure based on risk to

water quality. Staff intends to coordinate the highest risk structure of the waiver with the inspection element described below to the extent possible. The permit will help streamline enforcement for the worst offenders and provide meaningful guidance for dischargers willing to comply with water quality rules.

The Central Valley Water Board is considering an interim approach modeled after the Washington Department of Fish and Wildlife's "Gold and Fish, Rules for Mineral Prospecting and Placer Mining," to be implemented while it develops a more permanent regulatory mechanism. The Washington Department of Fish and Wildlife document serves as a permit and contains applicable laws, policies, BMPs, restrictions, and penalties pertaining to mineral prospecting and placer mining. The Gold and Fish document is included as Attachment B.

CDFW has existing permitting authority under Fish and Game Code section 1602 for activities that substantially modify a river, stream, or lake.⁹ Marijuana cultivation activities often cause substantial diversions and changes to the bed, channel, and banks of streams; therefore cultivators engaged in these activities must comply with the existing permitting process. CDFW will continue to use this existing permitting framework to minimize impacts associated with these activities for cultivators who want to comply with existing laws.

7.2 Inspections

Water Board and CDFW staffs have developed the following proposed methodology for conducting coordinated inspections. Please note that this approach assumes that each County would be conducting regular inspections to determine compliance with local ordinances or investigating citizen complaints. Once per month, all agencies within a designated Inspection Unit would meet to prioritize the most egregious complaints using the following proposed procedures. In those counties where the approach discussed here does not replace existing task force case review and joint response¹⁰, or where other circumstances or factors cause a site to represent a significant threat to water quality or beneficial uses, the North Coast Regional Water Board will continue to use its discretion to inspect and take appropriate action on a case by case basis, in parallel with the inspection strategy described here.

7.2.1 Geographic Approach

The Pilot Area has not yet been defined, however based on conversations leading up to and including the BCP, the Pilot Area is assumed to be northern California. Staff has further defined this area as being from the southern Colusa County line east to the Central Valley Water Board boundary, west to the California coast line and north to the Oregon border (hereafter referred to as "Pilot Area"); this was for planning purposes only and would be modified based on further direction.

⁹ Specifically, pursuant to Fish and Game section 1602, an entity may not (1a) substantially divert the natural flow of, or (1b) obstruct the natural flow of, or (1c) substantially change the bed, channel, or bank of, or (1d) use any material from the bed, channel, or bank of, (2) any river, stream, or lake, (3) without first notifying CDFW in the manner prescribed in Fish and Game Code section 1602(a)(1). In addition, an entity may not (1) deposit or dispose of (2) debris, waste, or other material containing crumbled, flaked, or ground pavement (3) where it may pass into the river, stream, or lake, (4) without first notifying CDFW in the manner prescribed in Fish and Game Code section 1602(a)(1). After CDFW receives complete notification, if CDFW determines that the activities may substantially adversely affect an existing fish and wildlife resource, CDFW shall provide a draft lake or streambed alteration agreement (LSA Agreement) to the entity, which includes measures necessary to protect the resources. Fish & G. Code, § 1603. Only after the LSA Agreement is finalized and executed may the entity undertake the agreed upon activities.

¹⁰ Several of the counties in the North Coast Region have existing environmental crimes task forces comprised of representatives from local, State, and/or federal resource protection agencies, which meet regularly or convene periodically to discuss environmental complaints, share cases, identify and organize joint inspections and enforcement response for marijuana and/or non-marijuana-related matters.

Given Water Board and CDFW boundaries within the assumed Pilot Area, staff proposes a geographic approach to organizing/facilitating inspections. Given this, the Pilot Area is broken into four main areas, each covered by a designated Inspection Unit; a northern and southern unit within the Central Valley Region and a northern and southern unit with the North Coast Region. Inspection Units are shown on Figure 1.

7.2.2 Identifying Watersheds and Inspection Targets

It is assumed that given the limited resources proposed in the Governor’s Budget, the number of interested parties and the number of marijuana grows within the Pilot Area, that simply responding to complaints as they develop will not be an effective manner in which to utilize agency resources. Staff instead proposes a proactive, systematic approach to identifying inspection targets. Staffs have identified three potential approaches to facilitate this process;

1. Rapid Watershed Assessment for Marijuana Cultivation (Currently under CDFW development),
2. Site Specific Threat Matrix
3. Cannabis Identification and Prioritization System

These three approaches are summarized below.

7.2.2.1 Rapid Watershed Assessment for Marijuana Cultivation

The Rapid Watershed Assessment for Marijuana Cultivation (RWAMC) was developed by CDFW staff and is currently in pilot form waiting formal approval. CDFW staff has however begun using the approach to identify high priority targets for potential enforcement efforts. The process begins by screening for high priority watersheds by talking with district fishery biologists about which streams contain the most important fish populations (stable and diverse populations of listed fish species). CDFW’s Biogeographic Information and Observation System (BIOS database) is then used to screen for other sensitive species. Finally, staffs screen CDFW’s high priority list for watersheds that have marijuana grow sites, but that aren’t completely overwhelmed by this activity. In essence, focus on watersheds where staff could reasonably undertake enforcement action with limited staff resources and with a relatively high likelihood of success. A draft *Rapid Watershed Assessment for Marijuana Cultivation* document is included as Attachment C.

7.2.2.2 Site Specific Threat Matrix

Another approach is to identify site specific targets using a manual calculated approach based on mutually agreed upon prioritization criteria as provided in Table 2 below.

Once confirmed each factor would be assigned a value or relative weight. A simple algorithm considering all factors would then be used to calculate a single value representing overall threat of a grow site to human health and the environment. That value would then be used to rank the site against others to identify monthly inspection targets.

Each Inspection Unit will need to consider economics such as grouping inspections to minimize travel and/or LE Recon efforts; in this case lower priority targets may be lumped in with higher priority targets, particularly if located in remote areas.

Table 2 - Preliminary/Proposed Prioritization Criteria

Threatened Drinking Water Supply	Non-natal Streams
Acres Disturbed	Existing Riparian Corridor
Priority Watershed	Presence of Anadromous Species (listed, etc.)
Chemicals Present/ Release	Current or Recent Site Development
Water Diversions	Wetland Impacts

This list developed by Water Board and CDFW staff. Order of importance has not yet been established.

7.2.2.3 Cannabis Identification and Prioritization System

Watershed by watershed approaches using GIS and available (free) imagery are time-consuming exercises but can be effective with appropriate staff resources. As an alternative, staff has worked with two private consultants to develop a fully functional Cannabis Identification and Prioritization System (CIPS) that significantly reduces staff time. CIPS uses a GIS platform, high resolution photography, and remote sensing technologies to identify marijuana grow sites in oak woodland, riparian, and conifer environments. CIPS identifies all of the grow sites within a watershed, estimates the number of plants at each site, the slope of each grow site, the distance to the nearest watercourse, and the class of the watercourse, and uses this information to calculate overall threat to water quality.

The total number of plants, along with industry fertilizer application rates is used to estimate total nitrogen load to the watershed and the estimated amount of water diverted from surface waters. The system also incorporates change analyses using year 2000 as a baseline to determine total graded area in a watershed and changes to the watershed every two years following. This allows the user to quantify impacts, evaluate trends (e.g., magnitude of development within a watershed, increasing or decreasing grows, etc.) and allows Water Board and CDFW staff the ability to quantify our efforts in reducing threat in a watershed through this joint effort. Rough cost estimates for the CIPS are provided in Table 3 below.

Table 3 – Preliminary Cost Estimates, Cannabis Identification and Prioritization System

Regional Board	Size (Sq Km)	Identification / Baseline Classification (2012 NAIP) ¹	Prioritized / Focus Hotspot 2014 ²	GIS Results Comm. & Web Viewer ³	Total
North Coast	50,357	\$248,000	\$200,000	\$64,000	\$512,000
San Francisco Bay	11,707	\$56,000	\$48,000	\$16,000	\$120,000
Central Coast	29,768	\$152,000	\$120,000	\$32,000	\$304,000
Central Valley (Minus 5R region)	153,701	\$432,000	\$346,500	\$103,500	\$882,000
Lahontan	84,931	\$318,000	\$252,000	\$78,000	\$648,000
Colorado River	51,445	\$192,000	\$156,000	\$48,000	\$396,000
San Diego	10,054	\$60,000	\$50,000	\$20,000	\$130,000
Total	391,963	\$1,458,000	\$1,172,500	\$361,500	\$2,992,000

¹ Assumes the use of freely available NAIP imagery (2005 through 2012) for the baseline classification

² Assumes collection of new high resolution imagery during the 2014 growing season for hotspot area (25% of the total area)

³ Assumes the use of existing software, infrastructure, and licensing of ESRI products

7.2.4 Inspection Unit Team Member Assignments

Each Inspection Unit will be made up of, at minimum, CDFW and Water Board staff. County Law Enforcement and other County Department staff (Environmental Health, Code Enforcement, Air Quality, etc.) will participate based on resource availability and interest. Prior to conducting any inspection each Unit will identify and assign specific roles for each person conducting the inspection. Such roles might include de confliction of grow site, obtaining photographs, surface and groundwater sampling teams, chemical identification/documentation, water diversion and rates, wildlife assessment (biologist using standard methods to assess wildlife impacts, anadromy, fish kill, ESA, poaching, wetlands, etc.), interviews, illicit grading or other.

It is expected that those conducting inspections will have training and a general knowledge of all potential violations associated with marijuana grows and are expected to be confident in the laws, regulations, policies, and BMPs regarding their Unit assignment as it pertains to the inspection. It is expected that each team member will prepare for and complete their assignment by obtaining required equipment and assuring any such equipment is operational prior to the inspection. The goal of this approach is to minimize the burden on CDFW LED and local LE Units by minimizing the time spent at any inspection target. The California District Attorneys Association has prepared a 2012 summary document; *Environmental Crimes Associated with Cultivation of Cannabis*. This document provides an overview of all crimes associated with the cultivation of cannabis and is included as Attachment D.

7.2.5 Proposed Inspection Structure

Please note that the process outlined below has been developed specifically to address marijuana cultivation inspections and the potential risks associated with grow sites. However, in 2011 the State Water Board and CDFW developed a *Field Guide for Coordinated Enforcement Response*. Staff participating in this coordinated effort should be familiar with its contents. This Field Guide is included as Attachment E.

Staff's proposed methodology for conducting marijuana cultivation inspections is based on a monthly cycle as follows:

Week 1, Meet and Confer

Interested parties (Water Board, CDFW, and County Departments including LE) within the designated Inspection Unit will meet the first Tuesday of every month. All parties participating in the meeting will bring complaints or cases of interest to the table. The group will discuss the cases, rank each of them using one of the approaches discussed above, identify current months inspection targets, develop preliminary inspection plans, identify leads (CDFW wildlife officers) and inspection team members.

Week 2, Preparation

CDFW LED and County LE will conduct recon of identified inspection targets. Water Board staff may be required to obtain independent inspection warrants as they cannot enter grow site without consent unless specific circumstances exist (emergency, etc.) and cannot "piggyback" on LE warrants or authority. Staff shall work with their designated attorneys to make these determinations.

Week 3, Inspection Team Briefing

Meeting is facilitated by CDFW LED. CDFW LED will review results of the recon efforts, relay any modifications to the inspection plans, confirm inspection targets and dates of inspection(s), describe any special circumstances, dangers, threats, or other safety or entry concerns. Inspections may be conducted end of week three and during week four. Per the BCP, CDFW LED will carry out the following tasks:

- Perform complex investigations dealing with environmental and health and safety violations,
- Conduct tactical entry operations into marijuana cultivation sites and provide security to civilian staff during sampling and evidence collecting,
- Perform eradication and reclamation of these sites when necessary,
- Ensure data collection is being completed, de-confliction with allied law enforcement agencies, interview witnesses and informants and take custody of physical evidence,
- Secure and serve search warrants, complete crime reports, testify in court and coordinate cases with the district attorney, attorney general and circuit prosecutors,
- Take the lead in the investigation and coordination of the eradication and reclamation efforts for marijuana cultivation sites discovered on state-owned lands,
- CDFW Wildlife Officers may serve as resources for allied state agencies such as the Department of Forestry and Fire Protection and State Parks.

Week 4, Inspections

Inspections will be conducted during week four of each month. The morning of the inspection, the inspection team will meet at an established location and be briefed by CDFW LED. Law enforcement officials, either the Sheriff's office or CDFW wildlife officers, will serve as the inspection lead and coordinate travel to and from the inspections.

Once the inspection team is in the target area, inspectors will stage at a pre-determined location and wait for law enforcement officials to secure the inspection target. Law enforcement officials will notify the inspectors once the target is secure; all inspectors will enter the property, conduct

the inspection, gather evidence, etc., leave the target, and stage at a designated post-inspection location. There, staff will wait until CDFW LED directs them to the next inspection target. It is estimated that an inspection team could conduct between 2 and 5 inspections per day pending travel time between targets. Over time it is expected that the Inspection Unit will identify ways to become more efficient allowing for inspections during different time frames of the month. The above strategy defining week 1 through 4 duties will be used as an initial methodology. Enforcement effort will change as needed not to set any particular enforcement pattern for team safety concerns.

While the proposed inspection methodology provides for one to 1.5 weeks of inspections per month it is anticipated that the bulk of staff time will be spent reviewing laboratory data, drafting investigative and inspection reports and enforcement orders, overseeing corrective action, assisting legal counsel in developing prosecutorial records, permitting and public outreach exercises, logging and documenting evidence and samples taken, preparing search warrants, follow up with court subpoenas and preparing site safety operational plans.

Prior to any formal inspection, CDFW LED would facilitate mock raid/ inspection exercise for both CDFW Wildlife and Water Board staff participating in the effort.

7.3 Enforcement (BCP Requirement)

Enforcement actions will be determined based on evidence obtained during an inspection. The agencies will evaluate the evidence and work with Water Board and CDFW attorneys to develop a recommended enforcement and/or prosecution strategy. Further work with the District Attorneys and County Counsels may be required to determine where to venue a case and what type of relief to seek. By the end of the fifth week, we expect to be positioned to make decisions on which cases to venue before the Water Boards for Cleanup and Abatement Orders and/or Administrative Civil Liability actions, which cases to venue before CDFW to impose administrative penalties for streambed alteration, pollution, and litter, which cases for the County Counsel to venue judicially in civil court for code abatement actions and seeking injunctive relief, and which cases should be prosecuted criminally by the relevant District Attorneys and/or the Attorney General's Office. The Water Boards expect that two independent teams will engage in this 5-week protocol on a staggered basis.

Two important considerations:

1. Executive Management will establish a Joint Prosecution Agreement between the CDFW and Water Boards,
2. Executive Management will establish a Memorandum of Understanding between the CDFW and Water Boards. This MOU should describe the procedures for determining lead agency for prosecution purposes.

7.3.1 Proposed Administrative Process

CDFW has begun developing an administrative enforcement strategy in response to the passage of AB 861. AB 861 amends Fish and Game Code section 12025 to grant CDFW authority to administratively impose penalties on a person found to have violated Fish and Game Code section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance. Specifically, AB 861 adds section 12025(e) which provides administrative authority to CDFW's chief deputy director or law enforcement division assistant chief in charge of marijuana enforcement to serve a complaint on any person or entity on which an administrative penalty may be imposed and requires that the Director hold a hearing if requested. CDFW staff will be able to use this enforcement tool to combat violations of Fish and Game Code sections 1602, 5650, and 5652 in connection with the production or cultivation of marijuana in public and private lands.

For those cases being presented before the Water Board, staff will follow guidelines set forth in the *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy). Generally speaking staff will

determine whether violations at a site fall under Class I, II, or III, and proceed accordingly based on the nature of the violation and threat to water quality. Staff will also be enforcing any waiver that is adopted by the North Coast Water Board, which may contain streamlined procedures for cleanups and site management.

Staff will work with the State Water Board's Office of Enforcement and CDFW's LED and Staff Counsel to develop Cleanup and Abatement Order (CAO) and Administrative Civil Liability Complaint (ACLC) templates specific to marijuana grow sites. Each CAO and/or ACLC will identify the landowner as responsible party by default but name a renter, lessee, grower, or earthwork contractor where appropriate. This approach has been identified as a critical step in the deterrence of irresponsible site preparation and operations moving forward. Further, staff will work with the State Water Board's Office of Public Affairs and CDFW's Office of Communication, Education and Outreach to draft press releases of ACLs adopted against irresponsible land owners and marijuana cultivators.

Each CAO will require a licensed QSD/QSP, PG, or PE develop a Site Restoration Plan that includes a Time Schedule for emergency work to stabilize a site prior an upcoming rainy season and a long term restoration plan to be implemented during the following construction season. Water Code section 13304, grants the Water Boards authority to issue CAOs and allows the Water Boards to recover costs to oversee cleanup work. As such, all CAOs will require the discharger to pay for oversight of any cleanup efforts.

7.3.2 Prosecution

Not all marijuana inspections would result in the Water Board as the lead for administrative penalties. It is anticipated that in many cases, staff would serve to support the relevant County Counsel or District Attorney's office, or Attorney General's office in prosecution. In this role, County Counsel, the DA or AG might use staff inspection reports, written professional opinion, or expert testimony. The Water Board Office of Enforcement and CDFW's LED and Staff Counsel will assist staff in the event assistance is requested by a local prosecutor or the AG.

7.4 Education and Outreach (*BCP Requirement*)

Public outreach and education has been identified as a key component of the overall strategy to address illicit discharges at cultivation sites. BCP specifically provides that, "Because the growers operate in a gray legal area, are not organized as an industry, fear prosecution, and have never been regulated, CDFW, State Water Board, and the Regional Water Boards anticipate that enrollment in the respective permits and adherence to existing permitting requirements and compliance with the permit terms will require more effort, resources, and time than other regulatory programs. Staff intends to reach out to landowners and grow operators and provide materials on best management practices and prohibitions."

While there is likely a multitude of options that would work, staff generally proposes a four pronged statewide outreach and education approach as follows:

1. Establish working relationships with marijuana industry groups,
2. Disseminate information to construction industry groups,
3. Develop a reference guide, post and distribute,
4. Work with the Office of Public Affairs to publicize enforcement actions against responsible parties.

The North Coast Regional Water Board and CDFW proposes to continue and expand education and outreach efforts already underway on the North Coast in parallel to the four pronged approach, as discussed in section 7.4.5 below.

7.4.1 Marijuana Industry Groups

Staff should establish a cooperative working relationship with marijuana industry groups. These groups have invested significant resources in networking and cultivation infrastructure. The industry has a vested interest in making sure that movements to legalize marijuana continue to develop. That being

said, they also have a vested interest in projecting the most positive image on the industry to gain public support, one that requires sequestration of negative public perception, such as the environmental damage caused by growers.

Staff has identified various groups including, but not limited to the following, to work together with the outreach process:

- Western Plant Science Association
- California NORML (National Organization for the Reform of Marijuana Laws)
- California Cannabis Industry Association (CCIA)
- Americans for Safe Access

Staff has initiated conversation and is in the process of setting meetings with the CCIA and Western Plant Science. Staff will work to determine the most effective means of educating their members. In some cases education may be conducted via the groups themselves or through Water Board and CDFW initiated seminars. Long term continuing education would likely be facilitated through the established regulatory program, much like the coalition approach in the Irrigated Ag Program in the Central Valley Region.

7.4.2 Construction Industry Groups

Sediment discharges from grading activity pose a significant threat to water quality. Because marijuana cultivation often occurs in remote areas away from the general public's view, near pristine headwaters, in sensitive watersheds, on steep ground, and on cheap land, heavy earthwork is often required to gain access to the site and prepare the site by clearing vegetation, terracing slopes, etc. Earthwork contractors are often but not always hired to do this work and assume some liability if the work is done without proper permits and BMPs.

The Water Boards and CDFW will work to educate construction groups about potential liabilities and how to avoid them and the water quality and supply impacts associated with grading and site development. In doing so, staff would explore educational opportunities and liabilities associated with the following groups:

- Contractor Licensing Board,
- Builders Exchanges,
- QSP/QSD courses, BMP discussions,
- Heavy equipment rental yards

7.4.3 Reference Guide

As mentioned above the Washington Department of Fish and Wildlife has developed a pamphlet, *Gold and Fish; Rules for Mineral Prospecting & Placer Mining*. The Pamphlet contains all of the necessary rules a miner must be aware of and comply with when mining in or along the banks of watercourse. Here, staff will develop a similar document outlining all of the Water Board and CDFW laws and regulations, and BMPs applicable to marijuana cultivation. The pamphlet would also be used as a reference explaining the process on how to obtain the needed CDFW and Water Board permits. The pamphlet could be posted on the Water Boards' and CDFW's web pages and be made available to the public through industry groups or hand delivery during inspections, etc. The Pamphlet is included as Attachment B.

7.4.4 Publicize Enforcement Actions

While it is understood publicizing enforcement actions alone will not likely have a significant effect in achieving the goals and objectives of this Program, publicizing enforcement actions can result in information about the consequences of reckless cultivation practices filtering down to the regulated public and landowners who rent or lease property to cultivators.

Therefore, staff proposes working with State Water Board's Office of Public Affairs and CDFW's, Office of Communication, Education and Outreach to develop a template for press releases publicizing marijuana enforcement cases and publicizing pertinent enforcement actions.

7.4.5 North Coast Regional Water Board Existing and Continuing Efforts

As discussed above, staff of the North Coast Regional Water Board, in coordination with CDFW Northern Region, has long been involved in various activities associated with addressing water resource impacts resulting from marijuana cultivation. With respect to education and outreach, staff is active on several fronts.

a) Grower groups and programs

Staff have made contact with marijuana grower organizations in Humboldt County (Emerald Growers' Association) and in Mendocino County (Mendocino Small Farmers), and have identified both as important cooperators/stakeholder representatives to participate both in regulatory program development and implementation, as well as education, outreach, and technical support for growers. Staff will work to identify other similar organizations as applicable to include in and assist with these efforts.

b) Resource Conservation Districts (RCDs)

Staff of the North Coast Regional Water Board work closely with a number of RCDs throughout the Region in developing and implementing water quality protection policies, programs and projects. The RCDs have proven to be invaluable partners in providing education, outreach, and technical support to landowners and facility operators subject to requirements imposed by the Regional Water Board. Staff anticipates working with applicable RCDs in regulatory program development, implementation, and associated education and outreach. In 2014, the State Water Board approved Cleanup and Abatement Account funding to contract with the Mendocino County RCD to develop and distribute a sustainable growers' guide of BMPs for medical marijuana growers. Initial guide presentation and distribution will focus on the Eel River watershed, but the guide will be applicable to similar operations throughout and beyond Mendocino County and the North Coast Region.

c) Watershed Groups

The North Coast Region is home to the Emerald Triangle, where marijuana has been cultivated for many years, since well before the adoption of Proposition 215 and AB 420. While the Region has seen a recent explosive increase in marijuana cultivation, including a substantial influx of growers from outside the area, many people growing marijuana in the Region are also long-term established residents, who are active members of their communities, and who are interested in protecting their watersheds. Staff of the North Coast Region believes that there is significant potential to effect improvements in land management and water use practices among this sector of the grower population, and that the people most ideally positioned to assist in such an effort are watershed protection groups comprised of residents within the watersheds themselves. To this end, North Coast Regional Water Board staff has obtained Cleanup and Abatement Account funding and are close to executing a contract with the Trees Foundation, sponsoring the Eel River Recovery Project in a citizen-based watershed monitoring, education, and outreach effort. Deliverables from this effort will include a number of informational and educational brochures, videos, articles, and other products in a number of media forms related to water quality protection and conservation, focusing on the Eel River watershed, but likely applicable in other watersheds.

d) Non-profits

Staff has worked cooperatively with non-profit agencies within the Region on various water resource protection efforts, including activities related to TMDL implementation and education and outreach related to water conservation. Under the most recent round of 319(h) grant funding, the Water Boards have awarded funding to two non-profit groups, California Trout, Inc. and the Salmonid Restoration Federation for two projects in sub watersheds of the South Fork Eel River watershed addressing instream flows and stream temperatures. Both watersheds are experiencing adverse impacts to stream flows and temperatures, in part due to the cumulative impacts of marijuana cultivation. Both projects will include watershed resident/stakeholder

outreach and education related to water conservation measures and practices. Where possible, North Coast Water Board staff will identify additional opportunities both with these groups and other non-profits active in the North Coast Region to assist in developing and disseminating information geared towards improving water quality protection and use practices associated with marijuana cultivation.

e) Media Contact

Staff has participated in numerous interviews and talk shows both with local and regional media, as well as national media (including print, radio, and television) to discuss the environmental and water resource impacts associated with marijuana cultivation. The North Coast Regional Water Board maintains a Fact Sheet on this topic on its website. Staff will continue to look for and participate in opportunities to educate the public, including marijuana cultivators and users, as to these impacts, and programs and projects underway to address these impacts.

f) Workshops, seminars, conferences, interest group gatherings

Staff have attended and participated in many workshops and seminars, sometimes appearing on joint agency panels with representatives from DFW, Cal Fire, BLM, and other partner agencies to educate attendees about environmental resource impacts associated with marijuana cultivation. Staff will continue to look for and participate in these opportunities where it appears that staff participation will educate stakeholders, partners, or other interested parties.

g) Informational materials

Staff has developed fact sheets providing information about marijuana site development and cultivation related activities that may require water quality permitting, review, or oversight. As noted above, staff will be contracting with the Trees Foundation and the Mendocino County RCD to develop a number of informational materials that can be posted on the Water Boards' website, distributed, presented, or shared with others, displayed at public gatherings, etc. Based on input from cooperators, partners, stakeholders, and others, staff will continue to look for opportunities to share education and outreach materials, and, where appropriate, to develop or work with others to develop appropriate materials in appropriate media to reach a wider audience or to effect further change.

7.5 Coordination with Other Agencies (BCP Requirement)

Water Board and CDFW staffs have already initiated coordination with other state and local agencies. This work primarily has been through small group meetings and the larger Working Group meetings. Staff will continue to work with our existing partners and work to engage those agencies not yet participating in this effort as identified in Table 4 below. Through this process staff hopes to develop a well-coordinated effort, clearly outlining each agency's roles, responsibilities, and available resources and identifying points of contact. Over time, it is anticipated that agencies involved in this effort may need to establish a separate meeting forum to discuss more sensitive or strategic topics before presenting them to the Working Group.

Table 4 - Coordinated Agency Summary

Current Participants:	CalEPA State Water Resources Control Board Office of Enforcement Office of Chief Counsel Central Valley Regional Water Quality Control Board North Coast Regional Water Quality Control Board California Department of Fish and Wildlife California Department of Forestry and Fire Protection California Department of Water Resources California Department of Pesticide Regulation California Department of Justice Butte County Shasta County Tehama County
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	Mendocino County Humboldt County
Future Participants	U.S. Fish and Wildlife Service U.S. Department of Food and Agriculture The Department Toxic Substances Control CalRecycle Bureau of Land Management U.S. Forest Service U.S. EPA Other Counties within the Pilot Area

7.6 Cleanup Options

The BCP specifically charges that CDFW LED will, "...take the lead in the investigation and coordination of the eradication and reclamation efforts for marijuana cultivation sites discovered on state-owned lands." It is however unclear as to which agency would coordinate the cleanup on privately owned lands in instances where the landowner does not have the funds to do so. This is important as the primary focus of this cooperative effort is private lands. Staff has thus far identified the following potential funding sources:

- **CalRecycle** has funds available to remove and dispose of solid waste at abandoned and orphaned sites. CalRecycle also has a separate pot of money to assist ranchers and farmers with disposal of solid wastes that have been illegally dumped on their lands.
- **The Department of Toxic Substances Control** has funds to remove and dispose of hazardous materials at abandoned and orphaned sites.
- **The California National Guard, Joint Task Force Domestic Support - Counterdrug** has also taken an active role in site eradication and reclamation. In recent years the California National Guard has teamed up with the California Department of Fish and Wildlife, California Department of Justice and the USFS to remediate illegal marijuana sites. There are some caveats; their assistance must be requested by law enforcement and they must be accompanied by law enforcement. The National Guard typically does not assist with prop 215 marijuana enforcement operations on private property. The National Guard will assist on all state owned or public property marijuana cultivation sites. The National Guard generally does this work in winter months but has followed behind eradication teams in summer months.
- **AB 2184 (Chesbro), Timber and engineered wood products assessment: forest restoration grants.** This bill would amend language passed through AB1492, which established the Timber Regulation and Forest Restoration Fund (TRFRF). The TRFRF established a processed timber sales tax, which in part, "supports the activities and costs of the department, the Department of Conservation, the Department of Fish and Game, the State Water Resources Control Board, and regional water quality control boards associated with the review of projects or permits necessary to conduct timber operations." AB1284 additionally authorizes money from the TRFRF to be used by the **Department of Forestry and Fire Protection** to provide grants to remediate former marijuana growing operations (no designation for private or public lands). AB2184 was unanimously approved by the Assembly's Natural Resources Committee.

Staff working in the Program would develop working relationships with CalRecycle, the Department of Toxic Substances Control, the California National Guard, and the Department of Forestry and Fire Protection to better identify uses and limitations of these funds and work to develop streamlined process to obtain those funds and administer cleanup of marijuana cultivation sites in a timely manner.

7.7 Health and Safety Plan

Health and safety of Water Board and CDFW staff conducting inspections is of utmost importance. Staff must be well versed in the dangers associated with the myriad of manufactured chemicals, domestic wastes, and physical hazards associated with marijuana cultivation. These include but are not limited to fertilizers, pesticides, herbicides, rodenticides, and physical hazards such as booby traps and explosions

associated with the manufacture of honey oil. While CDFW LED is highly trained in these dangers and would accompany Water Board staff on all inspections, staff would work with State Water Board Industrial Hygienists and Bob Ford, Senior Industrial Hygienist with CDFW's OSPR Unit to develop a Health and Safety Plan specifically addressing marijuana cultivation inspections. All CDFW and Water Board staff engaged in duties specified by the OSHA's HAZWOPER standard (<http://www.osha.gov/html/faq-hazwoper.html>) will receive HAZWOPER certification.

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7.8 Communication Plan

The Water Board's and CDFW efforts to regulate marijuana cultivation sites are complex for many reasons. *Politically*, state legislators are forced to respond to a polarized constituency of those who want to grow responsibly and those who are adamantly opposed to it for a number of reasons that range from environmental damage, to water diversion, to property values, and safety concerns. *Legally*, law enforcement officials find themselves caught between federal laws that outright ban the use or cultivation of cannabis, federal agencies (DOJ), which provide vague guidance seemingly in favor of state law, and state laws that are vague and difficult to enforce (Prop 215). These factors are compounded by the migratory nature of many growers, and the blurred lines between those growers that simply lack knowledge of environmental regulation and those in it simply for profit.

Due to the complexities and attention the subject is receiving it is imperative that the Water Boards and CDFW provide a clear, consistent message to all parties throughout the development and implementation phases of the marijuana program. The State Water Board has developed a Communication Plan and Fact Sheet to initiate this need; both of which are included as Attachment F. Executive Management will review the Communication Plan regularly throughout the development of this program and make necessary changes as needed. This effort will be coordinated through the Executive Oversight Committee.

7.9 Challenges

Staff has identified a number of challenges the Water Board and CDFW faces in regulating discharges associated with marijuana cultivation. Staff is identifying these challenges, not because they are unique to marijuana cultivation, but because we expect these challenges to impact the overall effectiveness of the program. A few of these challenges are discussed here:

- Hazardous Waste/Chemical Removal and Disposal Costs, Liability
- Enforcement of Illegal Water Diversions (Regulatory tools, Staffing, Statute, Penalties insufficient)
- Migratory Nature of Growers
- Program sustainability – fee mechanisms

7.10 Legislative Considerations

Staff has identified the following legislative considerations to better facilitate Water Board and CDFW involvement in regulating and prosecuting marijuana cases.

7.10.1 Water Board

AB 2442 (Gordon) Porter-Cologne Water Quality Control Act: remedial action: liability. Water Board Sponsored Bill. This bill would provide the State Water Board and Regional Water Boards with explicit protection from civil liability related to investigating and cleaning up water pollution.

Water Code section 1052– *The diversion or use of water subject to State Water Resources Control Board (State Water Board), authority other than as authorized by the Division of Water Rights (Division) is a trespass. The State Water Board may impose civil liability of up to \$500 per day that a trespass occurs, or \$1,000 per day and \$2,500 per acre-foot of water diverted in excess of that diverter’s water right during a drought year.*

Water Code sections 5100-5107 – *Requires any person who diverts water to file with the State Water Board a Statement of Water Diversion and Use (Statement). The State Water Board may impose a civil liability of \$1,000 for failure to file a Statement and \$500 per day for each additional day the violation continues after receiving notice.*

Water Code 1846 – *The State Water Board, during a drought year, may impose civil liability in the amount of \$500 per day for violation of a term or condition of a permit, license, certificate or registration issued by the Division and a regulation adopted by the board pursuant to WC 1058.5.*

Above are the most applicable sections in the Water Code to enforce against Marijuana diverters. Civil liability may be imposed on each, but there is no mechanism for traditional law enforcement to deal with the problem on a criminal basis in the field. The process to go after the violator is very tedious and frequently a resolution will not be had before there is substantial impact on aquatic resources.

Staff’s Proposal:

Provide a mechanism to prosecute entities, without a water-right, from drafting or diverting water.

7.11 Implementation Schedule

The proposed schedule for development and implementation of the marijuana program is included on the next page. Important steps include the following:

- Administrative Tasks (CDFW and Water Board Strategic Plan approval, MOU, and JPA development, Health and Safety Plan)
- Resources (Additional staff approval, allocation, hiring process)
- Organize and Form Joint Inspection Units/Training
- Permitting mechanism (Waiver or other)
- Identify lab resources

Proposed Timeline

Marijuana Program Development/Implementation Plan

WATER BOARD/FISH AND WILDLIFE

Marijuana

Proposed Timeline, Program Development/Implementation

TASK	DELIVERABLE	DUE DATE	2014												2015												2016					
			APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN			
ADMINISTRATIVE																																
Submit Draft Strategic Plan	Draft Plan	30-Apr-2014	█	█	█																											
Comment Period		15-May-2014		█	█																											
Final Approval, Strategic Plan	Final Plan, Signed Off	1-Jun-2014		█	█																											
Memorandum of Understanding, CDFW and Water Boards	Final MOU	1-Jun-2014		█	█																											
Joint Prosecution Agreement	Final JPA	1-Jun-2014		█	█																											
Health and Safety Plan	Final HSP	1-Jun-2014		█	█																											
RESOURCES																																
Legislative Hearing, Resources for Marijuana Program		24-Apr-2014	█																													
Governor's May Revise		15-May-2014		█																												
Governor's Passage of the Final Budget		1-Jul-2014			█	█																										
Water Board's Allocation of Approved Resources	Howard Approval	15-Aug-2014					█																									
Duty Statements/Vacancy Announcements		15-Aug-2014					█																									
Fly Positions		1-Sep-2014					█	█																								
Fill Positions		1-Sep-2014					█	█																								
Training Needs (HazWopper, etc)		1-Oct-2014						█																								
JOINT IN SPECTION S																																
Inspection Units, Organize/Identify Personnel	Complete Training	1-Sep-2014						█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█				
Mock Raid/Inspection Training (CDFW LED)		15-Sep-2014						█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█				
PERMIT DEVELOPMENT																																
Stakeholder Meetings					█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█				
Board Workshops				█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█				
Draft Permit/Waiver	Draft Permit/Waiver			█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█				
Public Comment, Admin Process, Etc.																																
Final Permit/Waiver	Final Permit/Waiver	1-Oct-2015																														
LAB BUDGET \$																																
Identify Available Resources (Bauer/Bacarrion)		1-Jun-2014		█	█																											

ATTACHMENT A

State Water Resources Control Board

TO: North Coast Regional Water Quality Control Board



FROM: Samantha Olson
Senior Staff Counsel
OFFICE OF CHIEF COUNSEL

DATE: August 19, 2013

SUBJECT: REGULATION OF WASTE DISCHARGES FROM MARIJUANA CULTIVATION

Issue Presented and Overview

The North Coast Regional Water Quality Control Board (Regional Water Board) requested a legal opinion on what options the agency has for regulating water quality impacts from marijuana growing operations in the North Coast Region. Substantial evidence shows egregious environmental impacts from marijuana cultivation, and a seemingly weak criminal enforcement structure to address the environmental problems associated with this activity. (See Felicity Barringer, *Marijuana Crops in California Threaten Forests and Wildlife*, N.Y. TIMES, (June 20, 2013).) Specifically, the Regional Water Board expressed concern about its ability to issue permits for an activity that may be legal under state law, but prohibited under federal law. This memo concludes that the regulation of waste discharges on private land¹ under the Porter-Cologne Water Quality Control Act, regardless of the activity/crop generating the discharge, would not meet the conflict or obstacle tests for federal preemption and therefore would not run afoul of the Supremacy Clause of the United States Constitution. Further, such regulation would not conflict with state law if applied evenly for all marijuana cultivation, not just medical marijuana.

Any waste discharge requirement or other order from the Regional Water Board should explicitly state that it does not in any way authorize, endorse, sanction, permit or approve the cultivation, use, sale or other activities associated with marijuana. Individuals engaging in marijuana cultivation and other activities risk prosecution under federal law, which will present procedural barriers for the administration of any water quality permits.

¹ Discharges of waste from site development and growing activities on United States Forest Service (USFS) and other public land are prohibited and subject to immediate enforcement actions under the California Water Code. That said, Water Code violations are not likely to deter large criminal operations because operators are trespassers and generally pose a flight risk and/or are judgment proof. The threat of fines or penalties carries little weight against trespassers who are transient occupants of federal land, who may not reside in California, and who may have few, if any assets. These cases are referred to county DA, Office of Attorney General, or US Attorney Office.

cultivation and other activities risk prosecution under federal law, which will present procedural barriers for the administration of any water quality permits.

Staff safety is a paramount concern in regulating marijuana cultivation. Staff should never attempt to enter or inspect any property or take any enforcement action if their safety or security is at risk. Security procedures for regulating marijuana cultivation need to be developed, but are beyond the scope of this memorandum.

Background

Challenges arise from the contradiction between state and federal law related to marijuana. In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA)², which allows a qualified patient and primary caregiver to possess and cultivate marijuana for the patient's personal use. The stated intent of the CUA is to 1) ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes (where use is deemed appropriate and recommended by a physician); 2) ensure that patients and their primary caregivers are not subject to criminal prosecution or sanction; and 3) encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. (Health & Saf. Code, §11362.5.) In 2003, the California Legislature enacted the Medical Marijuana Program (MMP), to 1) clarify the scope and application of the CUA and facilitate the prompt identification of qualified patients and caregivers through a voluntary identification card program; 2) promote consistent application among counties; and 3) enhance access through collective, cooperative cultivation projects. (Stats.2003 ch. 875, § 1; Health & Saf. Code, § 11362.7 *et.seq.*)

Enacted in 1970, the federal Controlled Substances Act (CSA) was part of President Nixon's "war on drugs." The CSA makes it a federal crime for the unauthorized manufacture, distribution, dispensing, and possession of substances (21 U.S.C. § 841; 844), with the objective of combating recreational drug abuse and to control the legitimate and illegitimate traffic in controlled substances. (*Gonzales v. Raich* (2005) 545 U.S. 1 at 10 [holding that federal regulation of homegrown marijuana is within the scope of the Commerce Clause].) It classifies substances into five schedules based on capacity for abuse, dependence, and medical use. Marijuana is listed as a Schedule 1 drug subject to the most restrictions. (21 U.S.C. § 812.) Medicinal use is not recognized for Schedule 1 drugs.

Federal Preemption

Under the Supremacy Clause of the United States Constitution, Congress has the power to preempt state law; however, there is a presumption against preemption in areas traditionally regulated by the states such as exercising police powers, regulating medical practices and establishing health and safety laws. Accordingly, a federal law must show a "clear and manifest purpose" of Congressional intent to preempt state law. (*Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949 [citing *Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516].) There are four types of federal preemption – Express, Conflict, Obstacle and Occupying the Field. (*Viva! Intern. Voice For Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935.) "Express" preemption arises when Congress explicitly defines the extent to which its

² See the List of Acronyms on the back page for reference.

enactments preempt state law. “Conflict” preemption occurs when simultaneous compliance with state and federal law is impossible. “Obstacle” preemption occurs when the state law creates an obstacle to accomplishing the full purposes and objectives of Congress. “Field” preemption applies where the federal regulatory scheme is so comprehensive that it leaves no room for supplementary state regulation. (*Id.* at 935-936.)

To analyze whether California’s CUA and MMP (and other laws that relate to marijuana) are preempted by the federal CSA, one must first determine to what extent, if any, Congress intended the federal law to preempt state law. The federal CSA provides:

“[n]o provision of this subchapter shall be construed as indicating an intent on the part of the Congress *to occupy the field* in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.” (21 U.S.C. § 903 [emphasis added].)

This clause eliminates express and field preemption because it clearly states that field preemption does not apply and the provision contains no express preemption language except for “positive conflicts.” As discussed below, California courts have analyzed the CUA and MMP for conflict and obstacle preemption and determined that the state medical marijuana laws are not preempted by the CSA.

The CUA and MMP are not preempted by CSA

In *County of San Diego v. San Diego NORML* (2008)165 Cal.App.4th 798 (*San Diego NORML*), San Diego and San Bernardino Counties (Counties) brought action against the State of California and the former Director of the California Department of Health Services for declaratory judgment that the MMP requirement that counties issue identification cards was preempted by the CSA. The Fourth District Court of Appeal upheld the trial court’s ruling that that the CUA and MMP were not preempted by the CSA. Relying on the CSA’s “positive conflict” language, and because medical practices and criminal drug penalties are areas traditionally regulated by states, the Court construed the preemption clause in the CSA narrowly, finding preemption only if simultaneous compliance with both sets of laws is impossible. (*Id.* at 822-824.)

The Court found that the Counties did not identify any provision of the CSA that they would necessarily violate when a complying with its obligations under the MMP. Issuing identification cards is not an activity banned under the CSA. (*Id.* at 825-826.) The Counties argued that while not expressly barred, issuing identification cards would encourage activity banned under the CSA. The Court dismissed the claim, citing *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355, 389–392 (2007) [governmental entities do not incur aider and abettor liability by complying with their obligations under the MMP]. Alternatively, the Counties argued that a positive conflict existed because the identification card issued by the county “confirmed” that the card holder could violate federal laws. The Court also rejected this argument because the application for the card expressly stated that the card would not insulate the card holder from federal laws. (*Id.*)

To the extent obstacle preemption applied, the Court concluded that the MMP identification cards laws did not pose a significant impediment to the federal objectives embodied in the CSA

because the purpose of the CSA is to combat recreational drug use, not to regulate state medical practices. “The identification card laws merely provide a mechanism allowing qualified California citizens, if they so elect, to obtain a form of identification that informs state law enforcement officers and others that they are medically exempted from the state’s criminal sanctions for marijuana possession and use.” (*Id.* at 827.)

In *Qualified Patients Association v. City of Anaheim* (2010) 187 Cal.App.4th 734 (*City of Anaheim*), the Court overturned the superior court’s holding that the federal regulation of marijuana under the CSA preempted California’s CUA and MMP. (*Id.* at 741.) The City of Anaheim adopted an ordinance prohibiting and making it a misdemeanor for a person or entity to own or operate a medical marijuana dispensary. The City asserted that the CUA and MMP was an improper attempt to override federal law by making the sale of marijuana through dispensaries legal. In conducting the preemption analysis, the Court found that

“because the CUA and MMPA do not mandate conduct that federal law prohibits, nor pose an obstacle to federal enforcement of federal law, the enactments’ decriminalization provisions are not preempted by federal law.” (*Id.* at 756.)

Under conflict preemption, “nothing in either state enactment purports to make it impossible to comply simultaneously with both federal and state law.” (*Id.* at 759.) “The federal CSA does not direct local governments to exercise their regulatory, licensing, zoning, or other power in any particular way. Consequently, a city’s compliance with state law in the exercise of its regulatory, licensing, zoning, or other power with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law.” To be preempted, the state action must prevent or make compliance with the federal law impossible. “The fact that some individuals might choose to act in the absence of state criminal law in a way that violates federal law does not implicate the city in any such violation.” (*Id.* at 759-760 [citing *Garden Grove*].)

Under obstacle preemption, the City argued that an MMP provision posed a significant impediment to the CSA’s purpose of combatting recreational drug use because the provision was being abused by people opening store front dispensaries for profit. The Court explained that obstacle preemption would not abrogate a state law just because that state law was being broken; this would be a matter for law enforcement, not preemption. The Court also explained that Congress cannot compel states to direct law enforcement personnel to enforce a federal regulatory program, and therefore the city, as a creature of the state, could not rely on federal law to sanction an action subject to qualified immunity under state law. (*Id.* at 761.) “The city may not justify its ordinance solely under federal law, nor in doing so invoke federal preemption of state law that may invalidate the city’s ordinance. The city’s obstacle preemption argument therefore fails.” (*Id.*)

The *San Diego NORML* and *Qualified Patients Association* cases establish certain principles for avoiding federal preemption of state and local laws associated with marijuana. In sum, laws decriminalizing activities under state law do not conflict with federal law because it is possible to comply with both by simply not engaging in conduct prohibited by the federal law. Further, laws that impose restrictions/requirements on the decriminalized activity will also escape preemption because again, it is possible to comply with both state and federal laws by not participating in the activity. State and local governments can expect preemption challenges if they enact laws that go further, however, especially laws that can be construed to attempt to “authorize” or “commercialize” the activity prohibited by the CSA. (See e.g., Dana Kelly, *Bringing the Green to*

Green: Would the Legalization of Marijuana in California Prevent the Environmental Destruction Caused By Illegal Farms, 18 HASTINGS W.-N.W.J. ENVTL. LAW & POL'Y (2012).).

Laws that Authorize or Commercialize Marijuana v. General Police Power

As described below, another court viewed preemption differently when reviewing a local medical marijuana ordinance. The case is discussed because the analyses are illustrative of the concepts at issue. However, the decision is not in force and effect and cannot be cited because review was granted and the opinion superseded by the California Supreme Court. (268 P.3d 1063, Cal. (Jan. 18, 2012). That review was dismissed on August 22, 2012. (283 P.3d 1159, Cal. (Aug. 22, 2012).).

In *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070 [132 Cal.Rptr.3d 633], the City of Long Beach passed an ordinance that regulated the operation of medical marijuana collectives by means of a permit system. The regulation included a fee and application, and a lottery for a limited amount of permits. Under the permit, a collective must demonstrate compliance with certain requirements, including sound insulation, fire and burglar alarms, and have samples analyzed by an independent lab to ensure that the product is free of pesticide and contaminants. Plaintiffs challenged the ordinance on the grounds that it went beyond decriminalization and instead permitted conduct prohibited by the federal CSA. The Court agreed, finding that certain provisions of the ordinance were nullified by conflict and obstacle preemption.

Specifically, the provision requiring testing by an independent lab actually required the collective to violate the CSA (a person must have and move marijuana to comply with lab testing requirement), thereby creating a positive conflict with the CSA barring the possession and transport of cannabis. The Court separately analyzed whether Long Beach City's laws constituted an impediment under its obstacle preemption analysis, explicitly disagreeing with the *City of Anaheim* and *San Diego NORML* decisions. (*Pack v. Superior Court*, 132 Cal.Rpt.3d at 651.) It found that the City's permitting scheme for medical marijuana collectives stood as an obstacle to the accomplishment of combatting recreational drug use of marijuana under the CSA, which does not recognize the medicinal aspect of marijuana.

"There is a distinction, in law, between not making an activity unlawful and making an activity lawful. An activity may be prohibited, neither prohibited or authorized, or authorized." (*Id.*) "The CUA simply decriminalizes (under state law) the possession and cultivation of medical marijuana; it does not attempt to authorize the possession and cultivation of the drug." (*Id.* at 652 [citations omitted].) "The City's ordinance, however, goes beyond decriminalization into authorization. Upon payment of a fee, and successful participation in a lottery, it provides permits to operate medical marijuana collectives. ***In other words, the City determines which collectives are permissible and which collectives are not, and collects fees as a condition of continued operation by the permitted collectives." (*Id.*)

The analysis changes dramatically when reviewing general health and safety rules pursuant to the police powers of state and local governments. For example, if a dispensary needed a building permit, the issuance of a building permit could not be challenged under a preemption theory because any building must receive a permit, regardless of what the building is for. So in *Pack*, other provisions that imposed further limitations beyond the MMP "did not, in any way,

permit or authorize activity prohibited by the federal CSA. As such, they cannot be federally preempted....” (*Pack v. Superior Court*, 132 Cal.Rpt.3d at 654.) These further constraints included hour restrictions, age limits and prohibition of alcohol on the premises. Activities associated with medical marijuana cannot bypass and escape all other general laws because the activity is illegal under federal law. Such a result would be absurd because it would reward the illegal activity by not imposing rules and regulations that apply to all other citizens.

The California Attorney General issued Guidelines in August, 2008 addressing taxation, federal preemption and arrest under federal law. (Dept of Justice, *Guidelines for the Security and Non-Diversion of Marijuana Grown For Medical Use*, (August, 2008) at http://www.ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.) The Guidelines emphasize that under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (*Id.* at 8 [citing Health & Saf. Code, § 11362.775.]) Statutory cooperatives file articles of incorporation with the state to conduct business under the Corporations Code. (*Id.*) Indeed, the State Board of Equalization (BOE) taxes medical marijuana transactions and requires that businesses engaging in such transactions hold a Seller’s Permit. (See <http://www.boe.ca.gov/news/marijuana.htm>.) All citizens of the state must pay taxes. As noted in *Pack*, “[t]his does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due.” (*Pack* at fn 11 [citing Attorney General Guidelines at 2].)

Water Quality Jurisdiction and Federal Preemption Analysis

The State Water Board and the nine Regional Water Quality Control Boards have primary responsibility for the protection and enhancement of water quality in California. The Regional Water Boards adopt and implement water quality control plans (Basin Plans), that 1) designate beneficial uses for surface and ground waters; 2) set narrative and numerical objectives that must be attained or maintained to protect beneficial uses; and 3) define implementation programs that include specific prohibitions, action plans, and policies to achieve the water quality objectives.

In California, under the Porter-Cologne Water Quality Control Act (Porter-Cologne), discharges of waste that are not NPDES “discharges of pollutants” require the issuance of waste discharge requirements (WDR) unless otherwise waived. (Wat. Code, §§ 13000 *et. seq.*) Discharges of waste that are not subject to NPDES permits typically include runoff from nonpoint sources such as agricultural activities and waste discharges to land or to groundwater. WDRs prescribe requirements, such as limitations on temperature, toxicity, or pollutant levels, as to the nature of any discharge (Wat. Code, § 13260, subd. (a)). WDRs may specify conditions where no discharge will be permitted, (*Id.*, § 13241), and may include monitoring and reporting requirements (*Id.* § 13267, Cal. Code Regs., tit. 23, § 2230). The general regulatory scheme provides flexibility to dischargers in choosing the methods they will implement to meet the requirements of the Porter-Cologne Act. (See, e.g., Wat. Code, § 13360 [preventing the water boards from specifying the manner of compliance].)

Other existing regulatory tools include general WDRs or waivers of waste discharge requirements (covering a category of discharges from same or similar operations that generate the same or similar types of waste and require similar treatments), basin plan prohibitions, and enforcement actions. Under Water Code section 13301, the Regional Water Board may issue a cease and desist order (CDO) if it finds a discharge or threatened discharge of waste in violation

of waste discharge requirements or prohibitions. Under Water Code section 13304, the Regional Water Board may issue a cleanup and abatement order (CAO) to any person who has discharged or discharges waste into waters of the state, or who has caused or permitted, or threatens to cause or permit waste to be discharged or deposited where it will be discharged, or threatens to create a condition of pollution or nuisance. Civil monetary remedies may be pursued for violations of WDRs, waivers, prohibitions, CDOs, CAOs, and other orders. (See e.g. Wat. Code, §13350.)³

A water quality order addressing discharges of waste from marijuana cultivation, whether it be a waiver, WDR, CDO or CAO, can be distinguished from the comprehensive regulatory scheme contemplated by the permit system at issue in *Pack*. In *Pack*, the City's permits determined who could actually operate a marijuana dispensary. A water quality order would not purport to authorize marijuana activity; rather, it would impose requirements on waste discharges caused by the activity. No conflict preemption exists because a person may comply with both the water quality order and the CSA by not engaging in marijuana activities. Nor would a water quality order require or authorize possession, manufacture or distribution of marijuana which is prohibited under the CSA. Again, the order would simply regulate or restrict the discharges resulting from cultivation if someone chose to engage in that activity.

To make this point patently clear, any water quality order should include a provision expressly stating that the order does not authorize any illegal activity and does not authorize marijuana cultivation. The application for identification cards at issue in the *San Diego NORML* case contained an express condition that the card would not insulate the card holder from federal laws. An example provision to include in any water quality order covering discharges of waste for medical marijuana cultivation and associated activities is as follows: "Nothing in this Order shall be construed to mean that the Regional Water Board is authorizing, permitting, endorsing, or approving the cultivation of marijuana. This Order only places restrictions on waste discharges from the activity to the extent that the activity is occurring."

The Regional Board is contemplating whether to create a general permit or waiver under its Irrigated Lands Regulatory Program that would include requirements for discharges of waste from cultivation of medical marijuana. Agricultural discharges of water can affect water quality by transporting pollutants (i.e. pesticides, sediment, nutrients, salts, and heavy metals) from cultivated fields into surface and ground waters. While the scope of the program has not been finalized, the program will likely call for implementation of best practices and timelines, monitoring, and reporting related to all nonpoint source discharges associated with the cultivation activity. Dischargers not in compliance with the program requirements will be subject to enforcement under the Water Code. Enforcement of water quality orders would have no effect on other enforcement actions, be it state or federal.

Water Quality Jurisdiction and State Preemption/Conflict Analysis

Another issue that remains to be decided is whether the Regional Board's WDR or agricultural waiver would apply to only cultivation of medicinal marijuana or to the cultivation of all marijuana

³ The Regional Water Board has issued several CAOs for unpermitted grading, conversion, and pond construction. CAOs require pond removal and instream restoration; stream restoration, re-vegetation; interim and long term erosion control plans; restoration of natural slope drainage and contours; and inspection, monitoring and reporting during and following the necessary activities to ensure restorations are successful.

on private lands. The reason for considering regulating all marijuana is that if only medicinal marijuana is covered by the waiver or WDR, then discharges from non-medicinal marijuana cultivation on private lands would remain unregulated. Further, the CUA and MMP are complex and outside the jurisdiction of the Water Boards. The Water Boards are not the appropriate agency to determine whether a given operation is in compliance with state medical marijuana law, and will therefore largely rely on growers' representations about the nature of their activities. As discussed below and similar to the conclusion on federal preemption analysis, a water quality order regulating discharges from cultivation that is criminal under state law is not in conflict because a person may comply with both simultaneously, and the water quality order would not affect any additional state criminal law enforcement.

California courts have already ruled that the CUA and MMP do not preempt local ordinances that further restrict or ban medical marijuana activity entirely.⁴ It follows that additional state environmental regulation of medicinal marijuana is not precluded by the CUA and MMP. But to answer the question whether Porter-Cologne may regulate discharges of waste from marijuana cultivation that remains illegal under state law, we must look to the text and purpose of the California Uniform Substances Control Act (CUSCA). (Health & Saf. Code, §11000 *et seq.*) The CUSCA details which substances are subject to control and regulation in the state of California, as well as the penalties for breaching the laws and regulations that govern various types of controlled substances. Except as authorized by law, the possession, cultivation, harvesting, or processing, possession for sale, and transportation, administration or furnishing of marijuana are state criminal violations. (Health & Saf. Code, §§ 11357-11360.)

Case law on state preemption of local rules is informative. To determine whether a law would run afoul of the CUSCA, a preemption analysis is conducted similar to that for federal law. Absent explicit language in a state statute, a court will presume that a local regulation is not preempted when the local government regulates in an area where it has traditionally exercised control. (See *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [finding local ordinance specifying zones where timber harvesting can occur is not preempted by state Forest Practices Act].) California Constitution, article XI, section 7 provides: A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. Local legislation in conflict with general law is void.

A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by the state general law, either expressly or by legislative implication. Local legislation is "duplicative" of general law when it is coextensive therewith and "contradictory" to general law when it is inimical or cannot be reconciled with state law. Local legislation enters an area "fully occupied" by general law when the Legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent. (*Id.* at 1150 [internal citations omitted].).

⁴ See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 754-755 [finding no express or implied preemption of ordinance banning dispensaries. The two schemes are coextensive and no "inimical" conflict between the state and local laws exists so that it is impossible to comply with both. "[T]he statutory terms [of the CUA and MMP] describe no comprehensive scheme or system for authorizing, controlling, or regulating the processing and distribution of marijuana for medical purposes, such that no room remains for local action"].

In determining whether the Legislature has preempted by implication to the exclusion of local regulation a court will look to the whole purpose and scope of the legislative scheme. Implied preemption occurs when: (1) general law so completely covers the subject as to clearly indicate the matter is exclusively one of state concern; (2) general law partially covers the subject in terms clearly indicating a paramount state concern that will not tolerate further local action; or (3) general law partially covers the subject and the adverse effect of a local ordinance on transient citizens of the state outweighs the possible municipal benefit. (*Id.* at 1157-58.)

In *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, the City of Stockton adopted an ordinance permitting vehicle forfeiture of any vehicle used to solicit prostitution or acquire a controlled substance. In contrast, the CUCSA authorizes forfeiture of vehicles used only in serious drug crimes. To determine whether the City's ordinance was preempted by the CUCSA, the California Supreme Court considered the comprehensive scheme of the CUCSA in defining and setting the penalties for crimes involving controlled substances. The CUCSA regulates the lawful use and distribution of controlled substances, defines criminal offenses for the unlawful possession and distribution of specified controlled substances, and sets penalties for criminal violations of its provisions. (*Id.* at 1069.) One penalty provided by the CUCSA is vehicle forfeiture, subject to certain constraints such as proof "beyond a reasonable doubt" and only for serious drug crimes. The City's ordinance allowed vehicle forfeiture by "preponderance of the evidence" standard, and for much less serious drug crimes. (*Id.* at 1061 [City's ordinance allowed forfeiture for possession of less than 28.5 grams of marijuana, which is a low-grade misdemeanor warranting only a \$100 fine and no jail time under the CUCSA].)

The California Supreme Court ruled that "[t]he comprehensive nature of the [C]UCSA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation. The [C]UCSA accordingly occupies the field of penalizing crimes involving controlled substances, thus impliedly preempting the City's forfeiture ordinance to the extent it calls for the forfeiture of vehicles...." (*Id.* at 1071.)

While preemption would not apply to two competing state laws, the *City of Stockton* case is helpful in defining the area occupied by the CUCSA, as it relates the area occupied by the Porter-Cologne Water Quality Act to determine whether there is a conflict. General principles of statutory interpretation favor construction of state laws so as to not displace either one. "A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions. This rule applies although one of the statutes involved deals generally with a subject and another relates specifically to particular aspects of the subject." (See *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805 [internal citations omitted].) "Absent an express declaration of legislative intent, we will find an implied repeal only when there is no rational basis for harmonizing two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation." (*Id.* [internal citations omitted].)

The CUCSA and Porter-Cologne can be easily harmonized. As discussed in *City of Stockton*, the CUCSA occupies the field that defines drug crimes and assigns penalties for violations. The statute is silent on water quality and other environmental impacts associated with the discharge of waste from manufacturing and/or cultivation of controlled substances. The Porter-Cologne Act does not define drug crimes or assign penalties for violations of drug crimes. The statute requires that discharges of waste meet water quality standards set forth in the Basin Plan, and

is silent on whether the activity generating the waste must be legal under state law. In fact, the Regional Water Board's jurisdiction over waste discharges often extends to illegal activities such as illegal dumping of toxic waste, filling wetlands without a permit, and other activities. Simply put, compliance with a water quality order does not equal authorization of an activity. Without the water quality order, the activity is likely violating both criminal and environmental statutes (which in some instances also carry criminal penalties). A water quality order for discharges of waste from the illegal activity makes the water quality law easier to enforce, but would not interfere with any criminal law enforcement under the CUCSA.

Conclusion

Waste discharge requirements generally address best management practices to mitigate water quality impacts from wastes, including irrigation runoff, erosion, and pesticide application. Subject to the caveat on direct violations below, a water quality order addressing discharges of waste from marijuana cultivation does not present a conflict with federal law because a person may comply with both the water quality order and the CSA by not engaging in marijuana activities. A water quality order simply regulates or restricts the discharges of waste resulting from cultivation, just like any other person conducting any other activity that generates waste. Nor would a water quality order conflict with state law prohibitions on marijuana activity because a water quality order does not authorize marijuana activities and does not interfere with any criminal law enforcement that would be in addition to state environmental laws. Any water quality order should include a provision expressly stating that the order does not authorize any illegal activity and does not authorize, permit, approve or endorse marijuana cultivation.

WDRs rarely, if ever, contain provisions relating to the crop or commodity; however, the Regional Water Board should be mindful of the prohibitions in the CSA and CUCSA when developing any water quality order. (21 U.S.C. § 841; Health & Saf. Code §§ 11360, 11357 [transportation, possession and distribution of marijuana are illegal under federal law and illegal under state law without a valid medical need].) Water quality regulation may not include provisions that require a discharger to directly violate the federal and state marijuana laws. Equally important, the regulation must avoid any need for a Water Board officer to do anything that would constitute a violation of either the CSA or the CUCSA. A regulation that requires a person to take an action that directly violates the CSA or CUCSA would be in conflict and void.

List of Acronyms

- CUA: 1996 Compassionate Use Act (California)
- MMP: 2003 Medical Marijuana Program (California)
- CSA: 1970 Controlled Substances Act (federal)
- CUCSA: California Uniform Substances Control Act
- WDR: waste discharge requirements
- CAO: cleanup and abatement order
- CDO: cease and desist order

ATTACHMENT B

Washington Department of Fish and Wildlife

Gold and Fish

Rules for Mineral Prospecting
and Placer Mining



April 2009
2nd Edition



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Mineral Prospecting and Placer Mining Rules

The 2009 Gold and Fish pamphlet replaces all previous editions and will remain valid until the Washington Department of Fish and Wildlife (WDFW) publishes a new edition. The rules contained in it were developed to protect fish and their habitats. This pamphlet serves as your Hydraulic Project Approval (HPA) for the types of mineral prospecting and mining activities described in it. You must follow the rules in the pamphlet¹ when you conduct those projects in Washington. These rules do not relieve you from obtaining landowner permission and any other necessary permits before conducting any mineral prospecting activity. You must also follow the rules and regulations of tribal, local, federal, and other Washington state agencies. You may print out the Gold and Fish pamphlet from <http://wdfw.wa.gov/habitat/goldfish/> or request one from a WDFW office.

If you want to conduct mineral prospecting or mining activities at different times or locations, or with different equipment than allowed in this pamphlet, you must apply for a separate, written HPA. You will receive an HPA if WDFW can determine that your proposed activity does not harm fish life.

You may request a written HPA by submitting a complete application to WDFW. The application form is titled "Joint Aquatic Resources Permit Application" (JARPA). The JARPA and instructions are available online at www.epermitting.org. You can also call the Office of Regulatory Assistance at (800) 917-0043 or (360) 407-7037, or email help@ora.wa.gov

Agencies with an Interest in Mineral Prospecting

This pamphlet gives authority to conduct mineral prospecting or placer mining operations from the WDFW only. Several other federal, state, tribal, and local government agencies have their own requirements that must be met before you can legally prospect or mine in areas under their jurisdiction. Below is a brief explanation of the interest these agencies have in mineral prospecting or placer mining. Contact them for more information and permit applications.

Federal

U.S. Army Corps of Engineers (Corps)

Seattle District
Attn: Regulatory Branch
PO Box 3755
Seattle, WA 98124-3755
(206) 764-3495 phone
(206) 764-6602 fax
www.nws.usace.army.mil

The Corps is responsible for many beneficial uses of water, including transportation, navigation, recreation, and power production. Under the Federal Clean Water Act of 1977, the Corps may require suction dredge operators to obtain a Section 404 permit.

U.S. Bureau of Land Management (BLM)

Conducting placer operations and recordation of mining claims:

Spokane District Office
1103 N Fancher Rd
Spokane Valley, WA 99212-1275
(509) 536-1200 phone
(509) 536-1275 fax
www.blm.gov/or/districts/spokane

Conducting placer operations only:

Wenatchee Resource Area Office
915 Walla Walla St
Wenatchee, WA 98801-1521
(509) 665-2100 phone
(509) 665-2121 fax

Mining is authorized by several laws that apply to federal lands managed by BLM. The Mining Law of 1872, as amended (public lands), and the Mineral Leasing Act of 1947, as amended (acquired lands), are the main laws authorizing placer gold prospecting on federal mineral, fee, or split estate.

1. This pamphlet includes the mineral prospecting rules under the Washington Administrative Code (WAC) available online at <http://apps.leg.wa.gov/wac/> under WACs 220-110-020, -030, -031, -200, -201, -202, and -206. The rules were adopted by the Washington Fish and Wildlife Commission on November 8, 2008 and are effective April 3, 2009. The rules will remain in effect until modified or rescinded by the Commission.



BLM manages the surface and mineral (fee) estate on some federal lands, and the mineral (split) estate on other lands where the surface is managed by other agencies or is privately owned. The entry provisions for prospecting and the degree of BLM involvement vary depending on the land ownership status and applicable laws.

Under the Mining Law, it is your responsibility to determine if there are prior existing mining claims in your area of interest. Information on existing mining claims, rules, regulations, mineral status maps, survey plats, and filing fees is available at the Spokane District Office, Wenatchee Field Office, and in Portland, Oregon, at the Oregon/Washington State Office. If you locate a mining claim, Section 314 of the Federal Land Policy and Management Act of 1976 (43 USC 1344) requires you to file a copy of the official notice or certificate of location and a map of the location boundaries with the BLM State Office within 90 days of locating the claim.

Exploration and mining activities on BLM-managed lands are also subject to BLM regulations that vary depending on the authorizing laws and land ownership. On most public lands, the regulations depend on the amount and intensity of disturbance and require you to submit either a Notice of Intent (five acres or less and greater than casual use) or a Plan of Operations (more than five acres or mechanized equipment). Plans of Operations generally take a minimum of 60 to 90 days to obtain due to required National Environmental Policy Act clearances. "Casual Use" activities causing only negligible disturbance (such as hand sample collection) are allowed on most public lands without advance notifications. Occupying public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site requires authorization from BLM.

The state generally owns the stream channel below the mean high water mark. Instream activities authorized by the Gold and Fish pamphlet are not generally regulated by BLM. However, if WDFW requires a written HPA for mining activity or if you want to conduct highbanking operations above the ordinary high water line, BLM requires a Notice of Intent or Plan of Operations. BLM requires reclamation for all surface disturbance. Abandoning a claim does not relieve you of that responsibility.

On acquired lands, you must contact BLM and any surface management agency with jurisdiction over those lands to determine if you need a permit or if other conditions are required before you enter the lands for hobby or non-commercial collecting. Under the Mineral Leasing Act, commercial activities require you to file exploration plans and obtain a permit for prospecting. If a commercial deposit is found, a lease and a BLM-approved mining and reclamation plan are required to mine.

U.S. Forest Service (Forest Service)

Region 6 Regional Office
333 SW 1st Ave
PO Box 3623
Portland, OR 97208-3623
(503) 808-2468 phone
(503) 808-2210 fax
www.fs.fed.us/r6/

Olympic National Forest
1835 Black Lake Blvd SW
Olympia, WA 98512-5623
(360) 956-2402 phone
(360) 956-2330 fax
www.fs.fed.us/r6/olympic/

Gifford Pinchot National Forest
10600 NE 51st Circle
Vancouver, WA 98682
(360) 891-5000 phone
(360) 891-5045 fax
www.fs.fed.us/gpnf/

Mt. Baker-Snoqualmie National Forest
2930 Wetmore Ave, Suite 3A
Everett, Washington 98201
(425) 783-6000 or (800) 627-0062 phone
(425) 783-0212 fax
www.fs.fed.us/r6/mbs/

Colville National Forest
765 S Main
Colville, WA 99114
(509) 684-7000 phone
(509) 684-7280 fax
www.fs.fed.us/r6/colville/

Okanogan-Wenatchee National Forest
215 Melody Lane
Wenatchee, WA 98801-5933
(509) 664-9200 phone
(509) 664-9280 fax
www.fs.fed.us/r6/wenatchee/

National Forest System (NFS) lands are classified as either public domain (PD) or acquired. Most NFS lands in the western United States, including most NFS lands in Washington, are PD lands and therefore are open to entry and mining claim location under the authority of the General Mining Law of 1872, as amended. Acquired lands are not subject to the General Mining Law, but are instead subject to the Mineral Leasing Act of 1920. Prospecting is not allowed on acquired lands except by permit.

Some PD lands have been congressionally or administratively withdrawn from mineral entry and location. For example, Wildernesses, designated by the U.S. Congress and making up about 29 percent of NFS lands in Washington, are withdrawn



and closed to prospecting. With few exceptions, prospecting is prohibited in administrative withdrawals as well. The rest of PD lands are open to mineral prospecting and development. These lands may be prospected whether or not you have located a mining claim. However, you should ask for permission to prospect on someone else's properly located and maintained mining claim. You may address questions about the status of NFS lands to the Forest Service or Bureau of Land Management.

The Forest Service regulates mineral-related impacts to surface resources under the authority of 36 CFR 228, Subpart A. If your planned mineral activities might cause a significant impact to surface resources, submit a Notice of Intent to the local Forest Service District Ranger. Within 15 days, the District Ranger will either tell you that you may begin activities or require you to submit a more detailed Plan of Operations. In some cases, the District Ranger will require additional information prior to making a determination. You can help the District Ranger make a significance determination if you state in your Notice of Intent that your operations will be conducted in compliance with the Gold and Fish pamphlet or a separate, written Hydraulic Project Approval (HPA).

If activities will likely cause a significant impact, submit a Plan of Operations. In this case, Forest Service approval is required before starting mining activities and approval may depend on you agreeing to adopt any required mitigation measures or changes to the plan, submitting a reclamation performance bond if required, and providing a Clean Water Act Section 401 certification or waiver, if applicable. If you have any questions, contact the District Ranger having jurisdiction over the area where you plan to work.

Generally, activities that are limited to using vehicles on existing and open NFS roads, metal detecting, gold panning, non-motorized hand sluicing, battery-operated dry washing, collecting small mineral samples using only hand tools, and marking and monumenting mining claims, do not require a Notice of Intent before starting work. Other activities, including cutting trees or using any mechanized earthmoving equipment, including equipment such as a suction dredge or high-banker, require at least a Notice of Intent.

National Oceanic and Atmospheric Administration (NOAA) Fisheries (National Marine Fisheries Service (NMFS))

Habitat Conservation Division
Washington State Habitat Office
510 Desmond Dr SE, Suite 103
Lacey, WA 98503
(360) 753-9530 phone
(360) 753-9517 fax

Northwest Regional Office
7600 Sand Point Way NE
BIN CI5700, Building 1
Seattle, WA 98115-0070
(206) 526-6150 phone
www.nwr.noaa.gov

U.S. Fish and Wildlife Service (USFWS)

For areas west of the Cascade crest:
Washington Fish and Wildlife Office
510 Desmond Dr SE
Lacey, WA 98503
(360) 753-9440 phone

For areas east of the Cascade crest:
Upper Columbia River Basin Field Office
11103 E Montgomery Dr, Suite 2
Spokane, WA 99206
(509) 891-6839 phone
www.fws.gov/easternwashington/

NMFS has regulatory authority for anadromous fish issues and USFWS regulates issues involving resident fish and other animals and plants. Together these agencies administer the Endangered Species Act (ESA). This law requires government agencies to conserve plants and animals that are listed as threatened or endangered with extinction, and their critical habitats. In many areas of Washington, Chinook, sockeye, chum, and coho salmon, steelhead, and bull trout are listed or are proposed for listing under the ESA.

Activities may be restricted or limited in streams or sections of streams containing listed fish or their critical habitat in order to fully protect those species. Both NMFS and USFWS have the responsibility to ensure that no activity will jeopardize the continued existence of a listed species, or destroy or adversely modify its critical habitat.

**National Parks Service (NPS)**

Pacific West Region Office (206) 220-4000 phone
 909 First Ave (206) 220-4159 fax
 Seattle, WA 98104-1060 www.nps.gov

Mineral development including exploration, extraction, production, storage, and transportation of minerals may be allowed in National Parks only where there are existing valid mining claims, federal mineral leases, or non-federally owned minerals. In some parks, all or certain types of mineral development are specifically prohibited by law.

Everyone who conducts mineral development within National Parks must comply with applicable laws, regulations, and NPS policies. You may not use or occupy surface lands in a park to remove minerals outside the park unless provided for in law.

All National Parks are closed to locating new mining claims on federal lands under the General Mining Law of 1872. NPS may permit mineral development only on existing valid mining claims in conformance with the park's enabling legislation and the regulations for mining claims. NPS will perform a validity examination of a claim before approving a Plan of Operations. All mineral development and use of resources in connection with a claim will be confined to the boundaries of the claim itself, except for access and transport that are permitted under existing regulations.

All National Parks are closed to new federal mineral leasing except for five national recreation areas including Lake Chelan and Ross Lake, where Congress explicitly authorized federal mineral leasing in each area's enabling legislation. Portions of four of these units and all of Lake Chelan National Recreation Area have been closed to federal mineral leasing by the Secretary of the Interior. You may not explore for federal minerals in any of these areas except under an oil and gas lease, or in the case of solid materials, under a prospecting permit issued under regulations in 43 CFR 3500. Before consenting to a federal mineral lease or subsequent permit in any of these areas, the responsible regional director will determine that leasing, and the subsequent mineral development in connection with leasing, will result in no significant adverse affect on park resources or administration.

Some park areas contain leases that existed at the time the park was created or expanded. These leases are valid existing rights and will continue to exist until they expire under the regulations that govern federal mineral leasing. When such a lease expires, the minerals and lands containing such minerals cannot be leased again.

State of Washington**Washington Department of Ecology (Ecology)**

300 Desmond Drive Ave SE
 PO Box 47600
 Olympia, WA 98504-7600
 (360) 407-6000 phone
 (360) 407-6989 fax

www.ecy.wa.gov

For water quality issues, ask for the Water Quality Program. For water right questions, ask for the Water Resources Program.

Northwest Regional Office

3190 160th Ave SE
 Bellevue, WA 98008-5452
 (425) 649-7000 phone
 (425) 649-7098 fax

Central Regional Office

15 W Yakima Ave, Suite 200
 Yakima, WA 98902-3452
 (509) 575-2490 phone
 (509) 575-2809 fax

Eastern Regional Office

N 4601 Monroe
 Spokane, WA 99205-1295
 (509) 329-3400 phone
 (509) 329-3529 fax

Southwest Regional Office

300 Desmond Drive Ave SE
 PO Box 47775
 Lacey, WA 98504-7775
 (360) 407-6300 phone
 (360) 407-6305 fax

Ecology oversees the Shoreline Management Act which sets goals and guidelines for protection of shorelines as valuable natural resources. Ecology also administers water quality standards to prevent interference with or harm to beneficial uses of state waters in lakes, streams, rivers, and marine areas. No degradation of water quality is allowed in waters within national parks, recreation areas, wildlife refuges, scenic rivers, or areas of ecological importance. Ecology checks complaints of water quality violations and can prosecute offenders.

Ecology also administers water rights. A valid water right is required to remove any surface water from waters of the state. Because highbanking removes water from a stream, you may need a water right for this activity. Contact Ecology if you intend to remove water from any waters of the state.



Washington Department of Fish and Wildlife (WDFW)

Habitat Program

600 Capitol Way N
Olympia, WA 98501-1091
(360) 902-2534 phone
(360) 902-2946 fax
<http://wdfw.wa.gov>

Eastern (Region 1)

2315 N Discovery Pl
Spokane, WA 99216-1566
(509) 892-1001 phone
(509) 921-2440 fax

North Central (Region 2)

1550 Alder St NW
Ephrata, WA 98823-9651
(509) 754-4624 phone
(509) 754-5257 fax

South Central (Region 3)

1701 S 24th Ave
Yakima, WA 98902-5720
(509) 575-2740 phone
(509) 575-2474 fax

North Puget Sound (Region 4)

16018 Mill Creek Blvd
Mill Creek, WA 98012-1296
(425) 775-1311 phone
(425) 338-1066 fax

Southwest (Region 5)

2108 SE Grand Blvd
Vancouver, WA 98661
(360) 906-6700 phone
(360) 906-6776 fax

Coastal (Region 6)

48 Devonshire Rd
Montesano, WA 98563-9618
(360) 249-4628 phone
(360) 664-0689 fax

WDFW administers Chapter 77.55 RCW (Construction projects in state waters) and is therefore the lead state agency in regulating instream mining and prospecting. Chapter 77.55 RCW requires anyone wishing to use, divert, obstruct, or change the natural flow or bed of any river or stream to first obtain a Hydraulic Project Approval (HPA) so that potential harm to fish and fish habitat can be avoided or corrected.

WDFW owns and manages various lands throughout the state. You must obtain permission and a land use permit (WAC 232-12-251) from WDFW before you enter. Furthermore, a WDFW Vehicle Use Permit is required on all recreation sites owned by WDFW. Hunters, fishers, and trappers get a Vehicle Use Permit without additional cost when purchasing a hunting, fishing, or trapping license. Vehicle Use Permits may also be purchased separately for \$10.

Washington Department of Natural Resources (WDNR)

Aquatic Resources Division

PO Box 47027
Olympia, WA 98504-7027
(360) 902-1100 phone
(360) 902-1786 fax
www.dnr.wa.gov

WDNR manages about 3 million acres of state-owned uplands and 2.6 million acres of state-owned aquatic lands throughout Washington. State-owned uplands managed by WDNR are identified on the map titled "Washington State Major Public Lands" that you can obtain from one of WDNR's seven regional offices or the Olympia office.

State-owned aquatic lands managed by WDNR include the shores and beds of navigable freshwater lakes and rivers lying below the ordinary high water line. WDNR also manages the beds of marine waters and state-owned tidelands, which are shores of navigable tidal waters lying between the ordinary high tide line and the extreme low tide line, and Harbor Areas established by the Harbor Line Commission. WDNR may not have legal access to all lands under its management and may limit access to or the use of an area for panning at any time. You may obtain information on WDNR requirements and land that is open for panning by visiting or sending a self-addressed stamped envelope to the regional office managing the area where you will pan.

Prospecting, mining, and metal detecting on state-owned aquatic land must comply with all existing local, state, and federal environmental regulations. The resource management concerns posed by prospecting, mining and metal detecting on state-owned aquatic lands are primarily related to protecting habitat for fish and other aquatic life, degrading water quality, and interfering with navigation and other recreational opportunities.

The requirement for anyone wishing to conduct any type of prospecting, mining and metal detecting on state-owned

aquatic lands to obtain a use authorization prior to commencing operations will be determined on a case-by-case basis after considering all proprietary interests of the state. Proponents wishing to conduct any type of prospecting, mining and metal detecting on state-owned aquatic lands must file an application with the aquatic district office responsible for the proposed location of the operations to begin the determination process. Some uses may be allowed with no restrictions, while others may be allowed only with certain conditions that ensure WDNR is fulfilling the statutory management guidelines listed in RCW 79.105.030.

Washington State Department of Archaeology and Historic Preservation

PO Box 48343
Olympia, WA 98504-8343
(360) 586-3065 phone
(360) 586-3067 fax
www.dahp.wa.gov

The preservation of Washington's rich cultural heritage is a responsibility that we all share. On federal and Indian lands, the Archaeological Resources Protection Act (16 USC 470) and the Native American Graves Protection and Repatriation Act (25 USC 3001) protect historical and Native American archaeological sites, artifacts, burial sites, and traditional cultural places that are important to contemporary tribes. On private and non-federal public lands, state laws, including the Indian Graves and Records Act (RCW 27.44) and the Archaeological Sites and Resources Act (RCW 27.53), protect these types of locations from excavation, removal, or alteration without a permit from the Department of Archaeology and Historic Preservation. Strong civil and criminal penalties apply if these laws are violated.

Washington State Parks and Recreation Commission (State Parks)

Parks Development Service Center
PO Box 42650
Olympia, WA 98504-2650
(360) 902-8500 phone
www.parks.wa.gov

Panning, sluicing, or dredging for gold or other minerals is not allowed within streams or other waterways in any state park. Such activity is also prohibited in the state Seashore Conservation Area, which lies between the line of extreme low tide and the line of ordinary high water, extending from Cape Disappointment to the south boundary of the Makah Indian Reservation on the outer Washington coast (RCW 79A.05.605), except for the areas established under the placer mining pilot study authorized by Section 1, Chapter 83, Laws of 2008. Contact WDFW for maps of the study areas.

Local Government – Cities, Counties, and Other Municipalities

Cities and counties locally administer the Shoreline Management Act through master plans for shoreline protection. The plans identify areas where activities can or cannot be conducted. City and county planning offices require permits for any shoreline use or activity valued at \$2500 or more, or that materially interferes with normal public use of a waterway or shoreline area. Contact the local government planning department where you plan to prospect for information about permits they may require.

Tribal Governments

Streams and waterways on treaty Indian tribal lands or reservations are closed to all mineral mining or prospecting unless specific written permission is granted by the tribal government. The tribes are also interested in protecting treaty and other tribal fish habitat from environmental degradation and restoring damaged habitat to its full productive potential. Technical staff of individual tribes can provide background fisheries information for streams and may also provide assistance for fish habitat improvement projects.

If you find any archaeological materials or remains, do not disturb, alter, remove, or excavate them. Contact the responsible federal agency if on federal land or the Department of Archaeology and Historic Preservation if on non-federal land. If you believe you have discovered human remains, contact local law enforcement officials immediately.



Definitions of Terms

The following definitions apply to mineral prospecting activities that you conduct under authorization of the mineral prospecting rules and this pamphlet. Terms in this pamphlet that are in **bold** font are defined here.

Abandoning an excavation site – Not working an **excavation site** for 48 hours or longer.

Aggregate – A mixture of minerals separable by mechanical or physical means.

Artificial materials – Clean, inert materials that you use to construct diversion structures for **mineral prospecting**.

Bank – Any land surface above the **ordinary high water line** that adjoins a body of water and contains it except during floods. Bank also includes all land surfaces of islands above the ordinary high water line that adjoin a body of water and that are below the flood elevation of their surrounding body of water.

Bed – The land below the **ordinary high water lines of state waters**. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial **watercourses** except where they exist in a natural watercourse that has been altered by man.

Boulder – A **stream** substrate particle larger than ten inches in diameter.

Classify – To sort **aggregate** by hand or through a screen, grizzly, or similar device to remove the larger material and concentrate the remaining aggregate.

Concentrator – A device used to physically or mechanically separate the valuable mineral content from **aggregate**.

Crevice – Removing **aggregate** from cracks and crevices using **hand-held mineral prospecting tools** or water pressure.

Dredging – Removal of **bed material** using other than **hand-held tools**.

Equipment – Any device powered by internal combustion; hydraulics; electricity, except less than one horse power; or livestock used as draft animals, except saddle horses; and the lines, cables, arms, or extensions associated with the device.

Excavation site – The pit, furrow, or hole from which you remove **aggregate** to process and recover minerals or into which wastewater is discharged to settle out sediments.

Fish life – All fish species, including but not limited to **food fish**, **shellfish**, **game fish**, and other nonclassified fish species and all stages of development of those species.

Fishway – Any facility or device that is designed to enable fish to effectively pass around or through an obstruction without undue stress or delay.

Food fish – Those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director of WDFW.

Frequent scour zone – The area between the **wetted perimeter** and the **toe of the slope**, comprised of **aggregate**, **boulders**, or bedrock. Organic soils are not present in the frequent scour zone.

Game fish – Those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the Washington Fish and Wildlife Commission.

Ganged equipment – Two or more pieces of **mineral prospecting equipment** coupled together to increase efficiency. An example is adding a second **sluice** to a **high-banker**.

Gold and Fish pamphlet (“pamphlet”) – A document that details the rules for conducting small-scale and other **prospecting** and **mining** activities, and which serves as the **hydraulic project approval** for certain **mineral prospecting** and mining activities in Washington state.

Habitat improvement structures or stream channel improvements – Natural or human-made materials placed in or next to bodies of water to make existing conditions better for fish life. Rock flow deflectors, engineered logjams, and artificial riffles are examples.

Hand-held mineral prospecting tools – Tools that you hold by hand and are not powered by internal combustion, hydraulics, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to **prospecting**; and **vac-pacs**.

Hand-held tools – Tools that are held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Some examples of hand-held tools are shovels, rakes, hammers, pry bars, and cable winches. This definition does not apply to hand-held tools used for **mineral prospecting**. See “**hand-held mineral prospecting tools**”.

Hatchery – Any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and **shellfish**.

High-banker – A stationary **concentrator** that you can operate outside the **wetted perimeter** of the body of water from which the water is removed, using water supplied by hand or by pumping. A high-banker consists of a **sluice** box, hopper, and water supply. You supply **aggregate** to the high-banker by means other than **suction dredging**. This



definition excludes **rocker boxes**. See Figure 1.

High-banking – Using a **high-banker** to recover minerals.

Hydraulic project –

Construction or performance of other work that will use, divert, obstruct, or change the natural flow or **bed** of any of the salt or fresh **waters of the state**.

Hydraulic Project Approval (HPA) –

- A written approval for a **hydraulic project** signed by the director of WDFW or the director's designates; or
- A printed **Gold and Fish pamphlet** issued by WDFW which identifies and authorizes specific minor hydraulic project activities for **mineral prospecting** and **placer mining**.

Job site – The space of ground including and immediately adjacent to the area where work is conducted under the authority of an **HPA**. For **mineral prospecting** and **placer mining** projects, the job site includes the **excavation site**.

Joint Aquatic Resources Permit Application (JARPA)

– A form provided by WDFW and other agencies which an applicant submits when requesting a written **HPA** for a **hydraulic project**.

Lake – Any natural or impounded body of standing freshwater, except impoundments of the Columbia and Snake rivers.

Large woody material – Trees or tree parts larger than four inches in diameter and longer than six feet, and rootwads, wholly or partially waterward of the **ordinary high water line**.

Mean higher high water (MHHW) – The tidal elevation obtained by averaging each day's highest tide at a particular location over a period of 19 years. It is measured from the **mean lower low water** = 0.0 tidal elevation.

Mean lower low water (MLLW) – The 0.0 tidal elevation. It is determined by averaging each day's lowest tide at a particular location over a period of 19 years. It is the tidal datum for vertical tidal references in the **saltwater area**.

Mineral prospect(-ing) – To excavate, **process**, or **classify aggregate** using **hand-held mineral prospecting tools** and **mineral prospecting equipment**.

Mineral prospecting equipment – Any natural or manufactured device, implement, or animal (other than the human body) that you use in any aspect of **prospecting** for or recovering minerals.



Figure 1. High-banker

Mini high-banker

– A **high-banker** with a **riffle** area of three square feet or less. See Figure 2.

Mini rocker box – A **rocker box** with a **riffle** area of three square feet or less. See Figure 3.

Mining – The production activity that follows **mineral prospecting**.



Figure 2. Mini high-banker

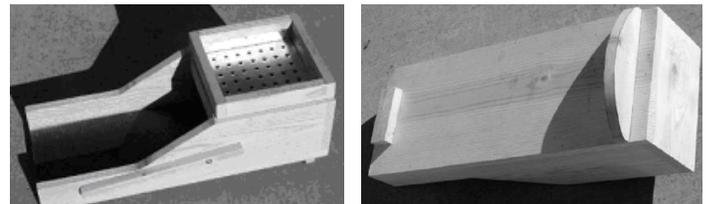


Figure 3. Mini rocker box (top view and bottom view)

Ordinary high water line (OHWL) – The mark on the shores of all waters that will be found by examining the **bed** and **banks** and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of **mean higher high water**, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood.

Pan – An open metal or plastic dish that you operate by hand to separate gold or other minerals from **aggregate** by washing the aggregate. See Figure 4.



Figure 4. Pan

Panning – Using a **pan** to wash **aggregate**.

Person – An individual or a public or private entity or organization. The term “person” includes local, state, and federal government agencies and all business organizations.

Placer – A glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

Power sluice – High-banker

Power sluice/suction dredge combination – A machine that can be used as a **power sluice**, or with minor modifications, as a **suction dredge**. See Figure 5.

Process(-ing) aggregate – The physical or mechanical separation of the valuable mineral content within **aggregate**.

Prospect(-ing) – The exploration for minerals and mineral deposits.

Redd – A nest made in gravel, consisting of a depression dug by a fish for egg deposition, and associated gravel mounds. See Figure 6.

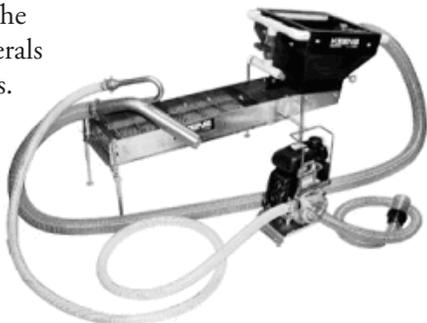


Figure 5. Power sluice/suction dredge combination

also includes land surfaces of islands above the frequent scour zone that adjoin a body of water; or a stretch of ground forming a natural or artificial incline.

Sluice – A trough equipped with **riffles** across its bottom which you use to recover gold and other minerals with the use of flowing water. See Figure 8.

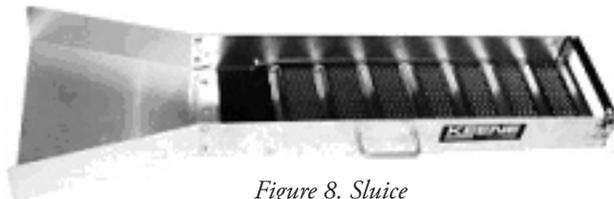


Figure 8. Sluice

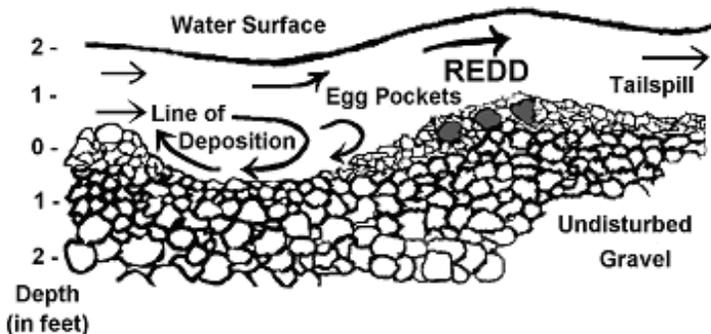


Figure 6. Cross section of a typical redd

Riffle – The bottom of a **concentrator** containing a series of interstices or grooves to catch and retain a mineral such as gold.

River or stream – See **Watercourse**.

Rocker box – A nonmotorized **concentrator** consisting of a hopper attached to a cradle and a **sluice** box that you operate with a rocking motion. See Figure 7.

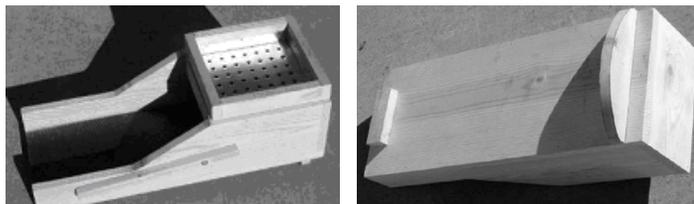


Figure 7. Rocker box (top view and bottom view)

Saltwater area – Those **state waters** and associated beds below the **ordinary high water line** and downstream of river mouths.

Shellfish – Those species of saltwater and freshwater invertebrates that shall not be taken except as authorized by rule of the director of WDFW. The term “shellfish” includes all stages of development and the bodily parts of shellfish species.

Slope – Any land surface above the **frequent scour zone** and **wetted perimeter** that adjoins a body of water. Slope

Spiral wheel – A hand-operated or battery-powered rotating **pan** that you use to recover gold and minerals with the use of water. See Figure 9.

Stable slope – A **slope** without visible evidence of slumping, sloughing, or other movement. Stable slopes will not show evidence of landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment.

Woody vegetation is typically present on stable slopes.



Figure 9. Spiral wheel

Suction dredge – A machine that you use to move submerged **aggregate** via hydraulic suction. You process the aggregate through an attached **sluice** box for the recovery of gold and other minerals. See Figure 10.

Suction dredging – Using a **suction dredge** for the recovery of gold and other minerals.

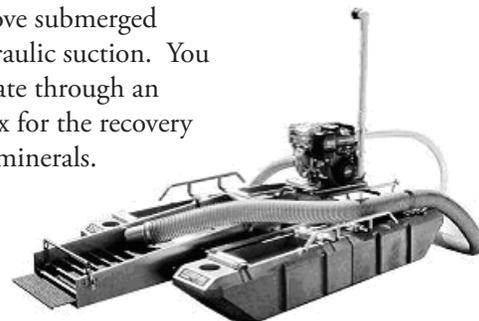


Figure 10. Suction dredge

Tailings – The waste material that remains after you process **aggregate** for minerals.

Toe of the bank – The distinct break in **slope** between the stream **bank** or shoreline and the stream bottom or marine beach or **bed**, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the **ordinary high water line**. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the stream bed or marine beach or bed.



Toe of the slope – The base or bottom of a **slope** at the point where the ground surface abruptly changes to a significantly flatter grade.

Unstable slope – A **slope** with visible evidence of slumping, sloughing, or other movement. Evidence of unstable slopes includes landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. **Woody vegetation** is typically not present on unstable slopes.

Vac-pac – A motorized, portable vacuum used for **prospecting**. See Figure 11.



Figure 11. Vac-pac

Watercourse and River or stream – Any portion of a channel, **bed**, **bank**, or bottom waterward of the **ordinary high water line** of **waters of the**

state, including areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year, and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

Waters of the state or **State waters** – All salt waters and fresh waters waterward of **ordinary high water lines** and within the territorial boundaries of the state.

Wetted perimeter – The areas of a **watercourse** covered with flowing or nonflowing water.

Woody vegetation – Perennial trees and shrubs having stiff stems and bark. Woody vegetation does not include grasses, forbs, or annual plants.

Mineral Prospecting Without Timing Restrictions

You may **mineral prospect** year-round in all **waters of the state**, except **lakes** or salt waters. You must follow the rules listed below, but you do not need to have the rules with you or on the **job site**.

1. You may use only **hand-held mineral prospecting tools** and the following **mineral prospecting equipment** when **mineral prospecting** without timing restrictions:
 - (a) **Pans**;
 - (b) **Spiral wheels**;
 - (c) **Sluices, concentrators, mini rocker boxes, and mini high-bankers** with **riffle** areas totaling three square feet or less, including **ganged equipment**.
2. You may not use vehicle-mounted winches. You may use one hand-operated winch to move **boulders** or **large woody material** that is not embedded. You may use additional cables, chains, or ropes to stabilize boulders or large woody material that is not embedded.
3. You may work within the **wetted perimeter** only from one half hour before official sunrise to one half hour after official sunset.
4. You may not disturb **fish life** or **redds** within the **bed**. If you observe or encounter fish life or redds within the bed, or actively spawning fish when collecting or **processing aggregate**, you must relocate your operations. You must avoid areas containing live freshwater mussels. If you encounter live mussels during excavation, you must relocate your operations.
5. Rules for excavating:
 - (a) You may excavate only by hand or with **hand-held mineral prospecting tools**.
 - (b) You may not excavate, collect, or remove **aggregate** from within the **wetted perimeter**. See Figures 12 and 13.
 - (c) Only one **excavation site** per individual is allowed. However, you may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.
 - (d) You may not stand within, or allow aggregate to enter, the wetted perimeter when collecting or excavating aggregate.

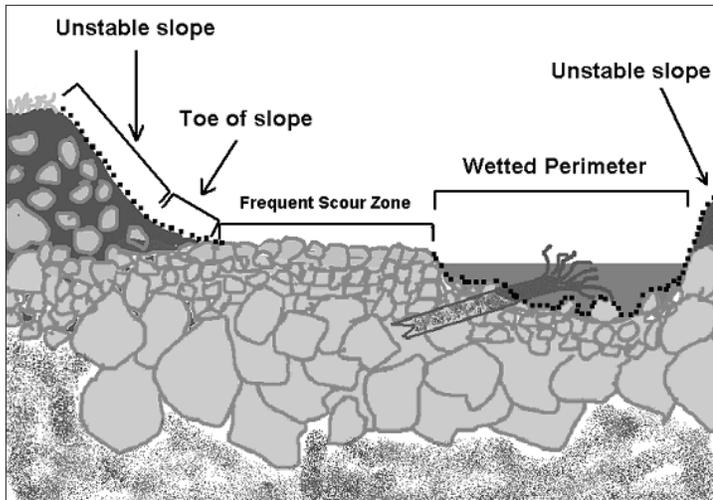


Figure 12. Cross section of a typical body of water, showing areas where excavation is not permitted under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

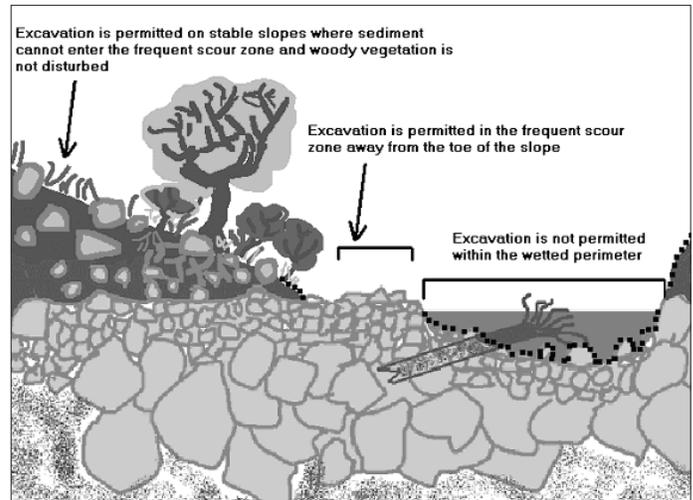


Figure 13. Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

- (e) You must fill all excavation sites and level all **tailing** piles prior to moving to another excavation site or **abandoning an excavation site**. If you move **boulders**, you must return them, as best as you can, to their approximate, original location.
 - (f) You may not undermine, move, or disturb **large woody material** embedded in the **slopes** or located wholly or partially within the wetted perimeter. You may move large woody material and boulders located entirely within the **frequent scour zone**, but you must keep them within the frequent scour zone. You may not cut large woody material. See Figure 13.
 - (g) You may not undermine, cut, or disturb live, rooted **woody vegetation** of any kind.
 - (h) You may not excavate, collect, or remove aggregate from the **toe of the slope**. You also may not excavate, collect, or remove aggregate from an **unstable slope** or any slope that delivers, or has the potential to deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 14 and 15.
6. Rules for **processing aggregate**:
- (a) You may stand within the **wetted perimeter** when processing aggregate with **pans, spiral wheels, and sluices**.
 - (b) You may not stand on or process directly on **redds** or disturb incubating **fish life**. You may not allow **tailings**, or visible sediment plumes (visibly muddy water), to enter redds or areas where fish life are located within the **bed**.
 - (c) You may not level or disturb tailing piles that remain within the wetted perimeter after processing aggregate.
 - (d) You must **classify aggregate** at the collection or **excavation site** prior to processing, if you collected or excavated it outside the **frequent scour zone**.
 - (e) You may process only classified aggregate within the wetted perimeter when using a sluice.
 - (f) The maximum width of a sluice, measured at its widest point, including attachments, shall not exceed 25 percent of the width of the wetted perimeter at the point of placement.
 - (g) You may process with a sluice only in areas within the wetted perimeter that are composed primarily of **boulders** and bedrock. You must separate sluice locations by at least 50 feet. You may not place structures within the wetted perimeter to check or divert the water flow.



- (h) You may operate **mini high-bankers** or other **concentrators** only outside the wetted perimeter. You may only supply water to this **equipment** by hand or by a battery-operated pump with a screened intake. You may not allow visible sediment or muddy water to enter the wetted perimeter. A second excavation site may be used as a settling pond.
- (i) Under RCW 77.57.010 and 77.57.070, any device you use for pumping water from fish-bearing waters must be equipped with a fish guard to prevent passage of fish into the pump intake. You must screen the pump intake with material that has openings no larger than 5/64 inch for square openings, measured side to side, or 3/32 inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a 100 gpm-rated pump would require at least a 100 square inch screen.
- (j) You may not excavate, collect, remove, or process aggregate within 400 feet of any **fishway**, dam, or **hatchery** water intake.
- (k) You may not disturb existing **habitat improvement structures or stream channel improvements**.
- (l) If at any time, as a result of project activities, you observe a fish kill or fish life in distress, you must immediately cease operations and notify WDFW and the Washington Military Department Emergency Management Division (1-800-258-5990) of the problem. You may not resume work until WDFW gives approval. WDFW may require additional measures to mitigate the prospecting impacts.

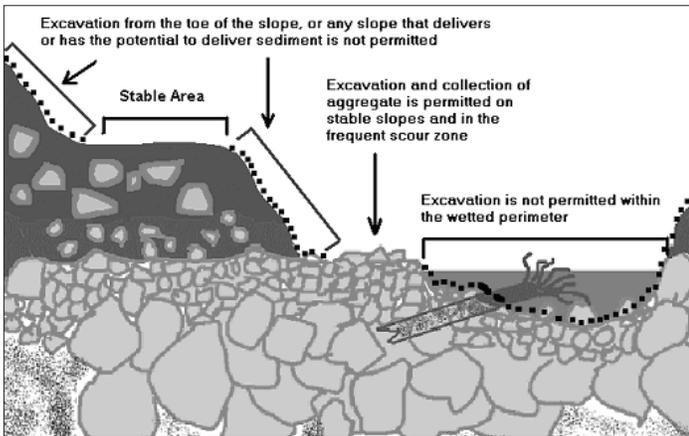


Figure 14. Cross section of a typical body of water, showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting without timing restrictions. Dashed line indicates areas where excavation is not permitted.

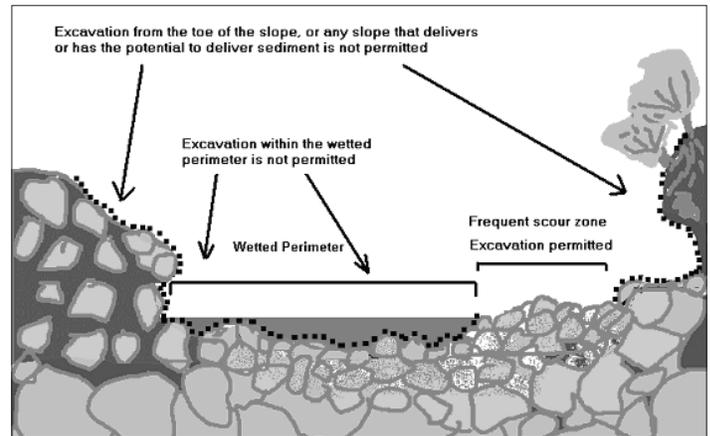


Figure 15. Cross section of a typical body of water showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting without timing restrictions. Dashed line indicates areas where excavation is not permitted.



Mineral Prospecting With Timing Restrictions

You may **mineral prospect** only in the waters, during the times, and with the **mineral prospecting equipment** limitations identified in the table of authorized work times beginning on page 17 of this pamphlet. You must follow the rules listed below, and you must have the rules with you or on the **job site**.

1. You may use only **hand-held mineral prospecting tools** and the following **mineral prospecting equipment** when **mineral prospecting** with timing restrictions:
 - (a) **Pans;**
 - (b) **Spiral wheels;**
 - (c) **Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;**
 - (d) **Suction dredges** should have suction intake nozzles with inside diameters of five inches or less, but shall be no greater than 5¼ inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the suction intake nozzle size. See Figure 16.
 - (e) **Power sluice/suction dredge combinations** that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than 5¼ inches to account for manufacturing tolerances and possible deformation of the nozzle, and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the suction intake nozzle size. See Figure 16.
 - (f) High-bankers and **power sluices** that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.
2. The widest point of a **sluice**, including attachments, shall not exceed 25 percent of the **wetted perimeter** at the point of placement.
3. The suction intake nozzle and hose of **suction dredges** and **power sluice/suction dredge combinations** must not exceed the diameters allowed in the listing for the stream or stream reach where you are operating, as identified in the table of authorized work times beginning on page 17 of this pamphlet.
4. You may not use vehicle-mounted winches. You may use one motorized winch and one hand-operated winch to move **boulders** and **large woody material** that is not embedded, and additional cables, chains, or ropes to stabilize them.
5. Equipment separation:
 - (a) You may use **hand-held mineral prospecting tools; pans; spiral wheels; or sluices, mini rocker boxes, or mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment, as close to other mineral prospecting equipment as desired.**
 - (b) When operating any sluice or **rocker box** with a riffle area exceeding three square feet (including ganged equipment), **suction dredge, power sluice/suction dredge combination, high-banker, or power sluice** within the **wetted perimeter**, you must be at least 200 feet from all others also operating this type of equipment. This separation is measured as a radius from the equipment you are operating. You may locate this equipment closer than 200 feet if only one piece of equipment is operating within that 200 foot radius. See Figure 17.
 - (c) When operating any sluice or rocker box with a riffle area



Figure 16. Dredge intake nozzle

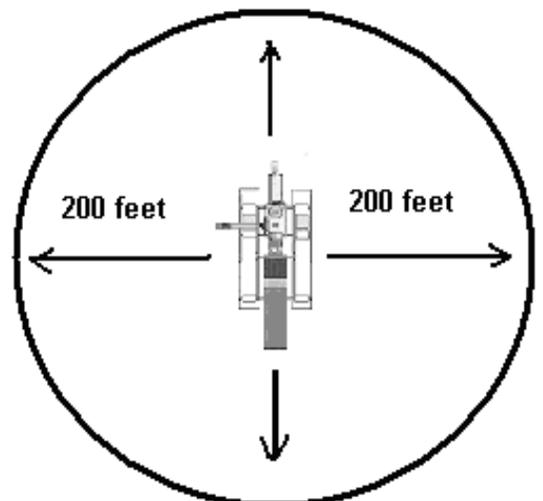


Figure 17. Equipment separation requirement



exceeding three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combinations, high-banker, or power sluice outside of the wetted perimeter that discharges **tailings** or wastewater to the wetted perimeter, you must be at least 200 feet from all others also operating this type of equipment. This separation is measured as a radius from the equipment you are operating. You may locate this equipment closer than 200 feet if only one piece of equipment is operating within that 200 foot radius. See Figure 17.

6. Under RCW 77.57.010 and 77.57.070, any device you use for pumping water from fish-bearing waters must be equipped with a fish guard to prevent passage of fish into the pump intake. You must screen the pump intake with material that has openings no larger than 5/64 inch for square openings, measured side to side, or 3/32 inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a 100 gpm-rated pump would require at least a 100 square inch screen.
7. All **equipment** fueling and servicing must be done so that petroleum products do not get into the body of water or frequent scour zone. If a petroleum sheen or spill is observed, you must contact the Washington Military Department Emergency Management Division (1-800-258-5990). You must immediately stop your activities, remove your equipment from the body of water, and correct the source of the petroleum leak. You may not return your equipment to the water until the problem is corrected. You must store fuel and lubricants outside the **frequent scour zone**, and in the shade when possible.
8. You may work within the **wetted perimeter** or **frequent scour zone** only from one half hour before official sunrise to one half hour after official sunset. If your **mineral prospecting equipment** exceeds one half the width of the wetted perimeter of the stream, you must remove the equipment from the wetted perimeter or move it so that a minimum of 50 percent of the wetted perimeter is free of equipment between one half hour after official sunset to one half hour prior to official sunrise.
9. You may not excavate, collect, remove, or process **aggregate** within 400 feet of any **fishway**, dam, or **hatchery** water intake.
10. You must not disturb existing **habitat improvement structures or stream channel improvements**.
11. You may not undermine, move, or disturb **large woody material** embedded in the **slopes** or located wholly or partially within the **wetted perimeter**. You may move large woody material and **boulders** located entirely within the **frequent scour zone**, but you must keep them within the frequent scour zone. You may not cut large woody material.
12. You may not undermine, cut, or disturb live, rooted **woody vegetation** of any kind.
13. Only one **excavation site** per individual is permitted. However, you may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.
14. You must fill all **excavation sites** and level all **tailing** piles prior to working another excavation site or **abandoning the excavation site**.
15. You may not excavate, collect, or remove **aggregate** from the **toe of the slope**. You also may not excavate, collect, or remove aggregate from an **unstable slope** or any **slope** that delivers, or has the potential to deliver, sediment to the **wetted perimeter** or **frequent scour zone**. See Figures 18 and 19.
16. You may partially divert a body of water into **mineral prospecting equipment**. However, at no time may the diversion structure be greater than 50 percent of the width of the **wetted perimeter**, including the width of the equipment. You may not divert the body of water outside of the wetted perimeter.
17. You may use materials only from within the **wetted perimeter**, or **artificial materials** from outside the wetted perimeter, to construct the diversion structure by hand. You must remove artificial materials used in the construction of a diversion structure and restore the site to its approximate original condition prior to abandoning the site.
18. You may **process aggregate** collected from the **frequent scour zone**:
 - (a) At any location if you use **pans; spiral wheels; mini rocker boxes; mini high-bankers; or sluices** or other **concentrators** with **rifle** areas totaling three square feet or less, including **ganged equipment**.
 - (b) Only in the frequent scour zone or upland areas landward of the frequent scour zone if you use **power sluice/**

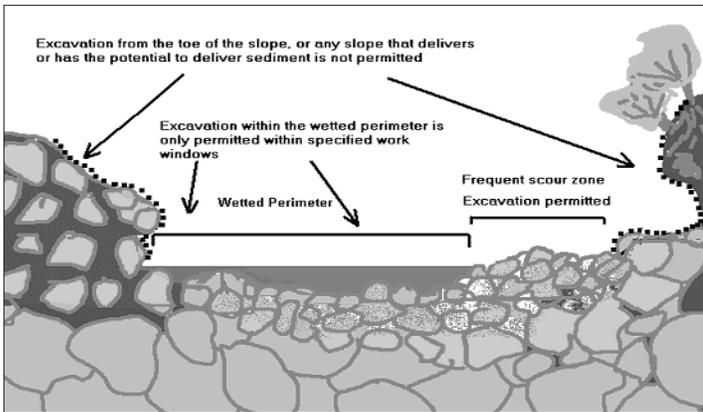


Figure 18. Cross section of a typical body of water showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

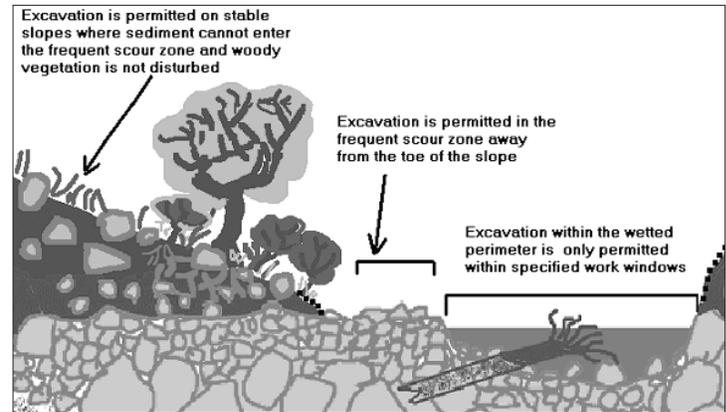


Figure 19. Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting with timing restrictions. Dashed lines indicate areas where excavation is not permitted.

suction dredge combinations, high-bankers, or power sluices with riffle areas totaling ten square feet or less, including ganged equipment; or sluices or **rocker boxes** that have riffle areas totaling more than three but less than ten square feet, including ganged equipment. You may not discharge **tailings** to the **wetted perimeter** when using this equipment. However, you may discharge wastewater to the wetted perimeter provided its entry point into the wetted perimeter is at least 200 feet from any other wastewater discharge entry point.

19. You may **process aggregate** collected from the upland areas landward of the **frequent scour zone**:
 - (a) At any location if you use **pans; spiral wheels; or sluices, concentrators, mini rocker boxes, and mini high-bankers** with **riffle** areas totaling three square feet or less, including **ganged equipment**. You must **classify** the **aggregate** at the **excavation site** prior to processing with this equipment within the **wetted perimeter** or frequent scour zone.
 - (b) Only at an upland location landward of the frequent scour zone if you use **power sluice/suction dredge combinations, high-bankers, power sluices, or rocker boxes**. You may not allow **tailings** or wastewater to enter the wetted perimeter or frequent scour zone.
 - (c) Within the wetted perimeter or frequent scour zone with a sluice with a riffle area greater than three square feet. You must classify the aggregate at the excavation site prior to processing with a sluice with a riffle area exceeding three square feet.
20. You may use pressurized water only for **crevicing** or for redistributing dredge **tailings** within the **wetted perimeter**. No other pressurized water use is permitted.
21. You may conduct **crevicing** in the **wetted perimeter**, in the **frequent scour zone**, or landward of the frequent scour zone. The hose connecting fittings of pressurized water tools used for crevicing may not have an inside diameter larger than $\frac{3}{4}$ inch. If you crevice landward of the frequent scour zone, you may not discharge sediment or wastewater to the wetted perimeter or the frequent scour zone.
22. You must avoid areas containing live freshwater mussels. If you encounter live mussels during excavation, you must relocate your operations.
23. You may not disturb **redds**. If you observe or encounter redds or actively spawning fish when collecting or **processing aggregate**, you must relocate your operations.
24. If at any time, as a result of project activities, you observe a fish kill or **fish life** in distress, you must immediately cease operations and notify WDFW and the Washington Military Department Emergency Management Division (1-800-258-5990) of the problem. You may not resume work until WDFW gives approval. WDFW may require additional measures to mitigate the prospecting impacts.



Authorized Work Times

You may conduct **mineral prospecting** and **placer mining** only in the **state waters**, with the **equipment** restrictions, and during the times specified in the following table.

1. The general work time for a county applies to all **state waters** within that county, unless otherwise indicated in the table.
2. The work time for a listed **state water** applies to all its tributaries, unless otherwise indicated. Some state waters occur in multiple counties. Check the listing for the county in which **mineral prospecting** or **placer mining** is to be conducted to determine the work time for that state water.
3. Where a tributary is listed as a boundary, that boundary shall be the line perpendicular to the receiving stream that is projected from the most upstream point of the tributary mouth to the opposite **bank** of the receiving stream. See Figure 20.
4. **Mineral prospecting** and **placer mining** within **state waters** listed as "Submit Application" are not authorized under the **Gold and Fish pamphlet**. A separate, written **HPA** is required for these state waters.
5. **Mineral prospecting** using **mineral prospecting equipment** that has suction intake nozzles with inside diameters that should be four inches or less, but shall be no greater than $4\frac{1}{4}$ inches to account for manufacturing tolerances and possible deformation of the nozzle is authorized only in the listed **state waters**, and any tributaries to them, unless otherwise indicated in the table. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.
6. **Mineral prospecting** using **mineral prospecting equipment** that has suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than $5\frac{1}{4}$ inches to account for manufacturing tolerances and possible deformation of the nozzle is authorized only in the listed **state waters** in the following table. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size. You may use only mineral prospecting equipment with suction intake nozzle inside diameters of $4\frac{1}{4}$ inches or less in tributaries of these state waters. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

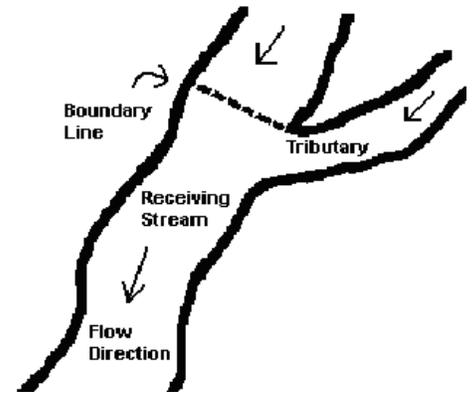


Figure 20. Stream boundary line

Authorized Work Times and Mineral Prospecting Equipment Restrictions by Specific State Waters for Mineral Prospecting and Placer Mining Projects

Washington Counties and State Waters Water Resource Inventory Area (WRIA) in parentheses	Mineral Prospecting Is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (not including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Adams County	July 1 - October 31	X	-
Crab Creek (41.0002)	July 16 - February 28	X	X
Esquatel Creek (36.MISC)	June 1 - February 28	X	X
Palouse River (34.0003)	July 16 - February 28	X	X
Asotin County	July 16 - September 15	X	-
Snake River (35.0002)	See below	-	-
Alpowa Creek (35.1440)	July 16 - December 15	X	-
Asotin Creek (35.1716)	July 16 - August 15	X	-
Couse Creek (35.2147)	July 16 - December 15	X	-
Grande Ronde River (35.2192)	July 16 - September 15	X	X
Tennile Creek (35.2100)	July 16 - December 15	X	-
Benton County	June 1 - September 30	X	-
Columbia River	See below	-	-
Glade Creek (31.0851)	August 1 - September 30	X	-
Yakima River (37.0002)	June 1 - September 15	X	X
Amon Creek (37.0009)	June 1 - September 30	X	-
Corral Creek (37.0002)	June 1 - September 30	X	-
Spring Creek (37.0205)	June 1 - September 30	X	-
Chelan County	July 16 - August 15	X	-
Columbia River	See below	-	-
Antoine Creek (49.0294) - Mouth to falls at river mile 1.0	July 1 - February 28	X	-
Antoine Creek (49.0294) - Upstream of falls at river mile 1.0	July 1 - March 31	X	-
Chelan River (47.0052) - Mouth to Chelan Dam	July 16 - September 30	X	X
Colockum Creek (40.0760)	July 1 - October 31	X	-
Entiat River (46.0042) - Mouth to Entiat Falls	July 16 - July 31	X	X
Entiat River (46.0042) - Upstream of Entiat Falls	July 16 - March 31	X	-
Crum Canyon (46.0107)	July 16 - March 31	X	-
Mad River (46.0125)	July 16 - July 31	X	-
Indian Creek (46.0128)	July 16 - February 28	X	-
Lake Chelan (47.0052)	Submit Application	-	-
Railroad Creek (47.0410)	July 16 - September 30	X	-
Stehkin River (47.0508)	Submit Application	-	-
Twenty-five Mile Creek (47.0195)	July 16 - September 30	X	-
Other Lake Chelan tributaries outside of North Cascades National Park	July 1 - August 15	X	-
Other Lake Chelan tributaries within North Cascades National Park	Submit Application	-	-
Number 1 Canyon (45.0011)	July 1 - February 28	X	-
Number 2 Canyon (45.0012)	July 1 - February 28	X	-
Squilchuck Creek (40.0836) - Mouth to South Wenatchee Avenue	July 1 - September 30	X	-
Squilchuck Creek (40.0836) - Upstream of South Wenatchee Avenue	July 1 - February 28	X	-
Stemilt Creek (40.0808) - Mouth to falls	July 1 - September 30	X	-

Washington Counties and State Waters Water Resource Inventory Area (WRIA) in parentheses	Mineral Prospecting Is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (not including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Stemilt Creek (40.0808) - Upstream of falls	July 1 - February 28	X	-
Wenatchee River (45.0030) - Mouth to Lake Wenatchee	July 1 - July 31	X	X
Beaver Creek (45.0751)	July 1 - September 30	X	-
Chiwaukum Creek (45.0700)	July 1 - July 31	X	-
Chiwawa River (45.0759) - Mouth to Phelps Creek	July 1 - July 31	X	X
Chiwawa River (45.0759) - Upstream of Phelps Creek	July 1 - July 31	X	-
Deep Creek (45.0764)	July 1 - February 28	X	-
Phelps Creek (45.0875)	July 16 - August 15	X	-
Icicle Creek (45.0474) - Mouth to Johnny Creek	July 1 - July 31	X	X
Icicle Creek (45.0474) - Upstream of Johnny Creek	July 1 - July 31	X	-
Fourth of July Creek (45.0525)	July 1 - February 28	X	-
Lake Wenatchee (45.0030)	Submit Application	-	-
Little Wenatchee (45.0985) - Mouth to Wilderness Boundary	July 1 - July 31	X	X
Little Wenatchee (45.0985) - Upstream of Wilderness Boundary	Submit Application	-	-
White River (45.1116) - Mouth to White River Falls	July 1 - July 31	X	X
White River (45.1116) - Upstream of White River Falls	July 1 - February 28	X	-
Nason Creek (45.0888)	July 1 - July 31	X	-
Peshastin Creek (45.0232) - Mouth to Negro Creek	July 16 - August 15	X	-
Ingalls Creek (45.0273) - Mouth to Cascade Creek	Submit Application	-	-
Ingalls Creek (45.0273) - Upstream of Cascade Creek	July 16 - February 28	X	-
Negro Creek (45.0323) - Mouth to falls at stream mile 2.9	Submit Application	-	-
Negro Creek (45.0323) - Upstream of falls at stream mile 2.9	July 16 - February 28	X	-
Ruby Creek (45.0318)	July 16 - February 28	X	-
Peshastin Creek (45.0232) - Upstream of Negro Creek	August 1 - February 28	X	-
Tronson Creek (45.0346)	August 1 - February 28	X	-
Scotty Creek (45.0376)	August 1 - February 28	X	-
Shaser Creek (45.0365)	August 1 - February 28	X	-
Clallam County	July 16 - September 15	X	-
Clallam River (19.0129)	August 1 - August 15	X	-
Dungeness River (18.0018)	Submit Application	-	-
Independent Creek (18.MISC)	August 1 - August 31	X	-
Elwha River (18.0272)	August 1 - August 15	X	X
Hoko River (19.0148)	August 1 - September 15	X	-
Jimmycomelately Creek (17.0285)	August 1 - August 31	X	-
Lake Ozette (20.0046)	Submit Application	-	-
Little Quilcene River (17.0076)	July 16 - August 31	X	-
Lake Ozette tributaries	July 16 - September 15	X	-
Lyre River (19.0031)	August 1 - September 15	X	-
McDonald Creek (18.0160)	August 1 - September 15	X	-
Morse Creek (18.0185)	August 1 - August 15	X	-
Ozette River (20.0046)	July 16 - September 15	X	-
Pysht River (19.0113)	August 1 - September 15	X	-

Washington Counties and State Waters Water Resource Inventory Area (WRIA) in parentheses	Mineral Prospecting Is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (not including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Quillayute River (20.0096, 20.0162, 20.0175)	August 1 - August 15	X	X
Bogachiel River (20.0162)	Submit Application	-	-
Calawah River (20.0175)	August 1 - August 15	X	X
Salmon Creek (17.0245)	July 16 - August 31	X	-
Sekiu River (19.0203)	August 1 - September 15	X	-
Snow Creek (17.0219)	July 16 - August 31	X	-
Sol Duc River (20.0096)	Submit Application	-	-
Lake Pleasant (20.0313)	Submit Application	-	-
Lake Pleasant tributaries	July 16 - September 15	X	-
Sooes River (20.0015)	July 16 - September 15	X	-
Clark County	July 16 - September 30	-	-
Columbia River	See below	-	-
Lacamas Creek (28.0160) - Mouth to dam	August 1 - August 31	X	-
Lacamas Creek (28.0160) - Upstream of dam	August 1 - September 30	X	-
Lewis River (27.0168)	August 1 - August 15	X	X
East Fork Lewis River (27.0173) - Mouth to Lucia Falls	August 1 - August 15	X	X
East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls	August 1 - February 28	X	X
East Fork Lewis River (27.0173) - Upstream of Sunset Falls	August 1 - February 28	X	-
Lake River (28.0020)	January 1 - December 31	X	X
Burnt Bridge Creek (28.0143)	August 1 - August 31	X	-
Salmon Creek (28.0059)	August 1 - August 31	X	-
Whipple Creek (28.0038)	August 1 - September 30	X	-
North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam	August 1 - August 15	X	X
Cedar Creek (27.0339)	August 1 - September 15	X	-
North Fork Lewis River (27.0334) - Merwin Dam to lower falls	July 16 - August 15	X	X
Canyon Creek (27.0442)	July 16 - February 28	X	-
North Fork Lewis River (27.0168) - Upstream of lower falls	July 16 - August 15	X	X
Washougal River (28.0159) - Mouth to headwaters	August 1 - August 31	X	X
Columbia County	July 16 - September 30	X	-
Touhet River (32.0097)	August 1 - August 15	X	X
Grande Ronde River tributaries (35.2192)	July 16 - August 15	X	-
North Fork Touhet/Wolf Fork (32.0761)	Submit Application	-	-
South Fork Touhet (32.0708)	Submit Application	-	-
Tucannon River (35.0009)	July 16 - August 15	X	X
Walla Walla River (32.0008) - Mouth to Oregon state line	July 16 - September 15	X	X
Mill Creek (32.1436) - Mouth to Oregon state line	August 1 - August 15	X	-
Cowlitz County	July 16 - September 30	X	-
Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Mouth to Fisk Falls	August 1 - August 31	X	X
Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Upstream of Fisk Falls	August 1 - August 31	X	-
Columbia River	See below	-	-
Abernathy Creek (25.0297)	July 16 - September 15	X	-
Burke Creek (27.0148)	August 1 - August 31	X	-

Washington Counties and State Waters Water Resource Inventory Area (WRIA) in parentheses	Mineral Prospecting Is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (not including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Burriss Creek (27.0151)	August 1 - August 31	X	-
Bybee Creek (27.0142)	August 1 - August 31	X	-
Canyon Creek (27.0147)	August 1 - August 31	X	-
Coal Creek (25.0340)	July 16 - September 15	X	-
Clark Creek (25.0371)	August 1 - August 31	X	-
Cowlitz River (26.0002) - Mouth to barrier dam at river mile 49.5	July 16 - August 15	X	X
Cowweman River (26.0003) - Mouth to Baird Creek	August 1 - August 31	X	X
Cowweman River (26.0003) - Upstream of Baird Creek	August 1 - August 31	X	-
Cowlitz River (26.0002) - Tributaries below barrier dam to mouth	July 16 - September 30	X	-
Owl Creek (26.1441)	July 16 - September 15	X	-
Toutle River (26.0227)	July 16 - August 15	X	X
North Fork Toutle River (26.0314) - Mouth to debris dam	July 16 - August 15	X	X
North Fork Toutle River (26.0314) - Upstream of debris dam	July 16 - August 15	X	-
Green River (26.0323) - Mouth to Shultz Creek	July 16 - September 30	X	X
Green River (26.0323) - Upstream of Shultz Creek	July 16 - September 30	X	-
South Fork Toutle (26.0248) - Mouth to Bear Creek	July 16 - September 15	X	X
South Fork Toutle (26.0248) - Upstream of Bear Creek	July 16 - September 15	X	-
Tributaries to Silver Lake	July 16 - September 30	X	-
Germany Creek (25.0313)	July 16 - September 15	X	-
Kalama River (27.0002) - Mouth to Kalama Falls	August 1 - August 15	X	X
Kalama River (27.0002) - Upstream of Kalama Falls	August 1 - August 15	X	-
Lewis River (27.0168) - Mouth to East Fork Lewis River	August 1 - August 15	X	X
North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam	August 1 - August 15	X	X
North Fork Lewis River (27.0334) - Merwin Dam to lower falls	July 16 - August 15	X	X
Mill Creek (25.0284)	July 16 - September 15	X	-
Schoolhouse Creek (27.0139)	August 1 - August 31	X	-
Douglas County	July 1 - September 30	X	-
Columbia River *	See below	-	-
Douglas Creek Canyon (44.0146)	May 16 - January 31	X	-
Foster Creek (50.0065)	August 1 - April 15	X	-
McCartney Creek (44.0002)	July 1 - February 28	X	-
Pine/Corbaley Canyon Creek (44.0779)	September 16 - April 15	X	-
Rock Island Creek (44.0630)	July 1 - September 30	X	-
Ferry County	July 1 - August 31	X	-
Columbia River *	See below	-	-
Kettle River (60.0002)	June 16 - August 31	X	X
Boulder Creek (60.0130) - Mouth to Hodgson Road Bridge	Submit Application	-	-
Boulder Creek (60.0130) - Upstream of Hodgson Road Bridge	June 16 - February 28	X	-
Deadman Creek (60.0008) - Mouth to SR395 crossing	Submit Application	-	-
Deadman Creek (60.0008) - Upstream of SR395 crossing	June 16 - February 28	X	-
Goosmus Creek (60.0254)	June 16 - February 28	X	-
Toroda Creek (60.0410)	July 1 - September 30	X	-

Washington Counties and State Waters Water Resource Inventory Area (WRIA) in parentheses	Mineral Prospecting Is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (not including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
San Poil River (52.0004) *	June 16 - September 30	X	X
Granite Creek (52.0099) - Mouth to Powerhouse Dam	June 16 - September 30	X	-
Granite Creek (52.0099) - Upstream of Powerhouse Dam	June 16 - February 28	X	-
West Fork San Poil River (52.0192) - Mouth to Deep Creek *	June 16 - September 30	X	X
West Fork San Poil River (52.0192) - Upstream of Deep Creek	June 16 - September 30	X	-
Gold Creek (52.0197) *	June 16 - February 28	X	-
Franklin County	June 1 - September 30	X	-
Columbia River	See below	-	-
Snake River	See below	-	-
Palouse River (34.0003)	July 16 - February 28	X	X
North bank tributaries of the lower Snake River between Palouse River and the mouth of the Snake River	June 16 - October 31	X	-
Garfield County	July 16 - September 30	X	-
Snake River (35.0003)	See below	-	-
Alpowa Creek (35.1440)	July 16 - December 15	X	-
Asotin Creek (35.1716)	July 16 - August 15	X	-
Deadman Creek (35.0688)	July 16 - December 15	X	-
Grande Ronde River tributaries (35.2192)	July 16 - August 15	X	-
Meadow Creek (35.0689)	July 16 - December 15	X	-
Tucannon River (35.0009) - Mouth to Panjab Creek	July 16 - August 15	X	X
Tucannon River (35.0009) - Upstream of Panjab Creek	July 16 - August 15	X	-
Pataha Creek (35.0123) - Mouth to Pataha	January 1 - December 31	X	-
Pataha Creek (35.0123) - Upstream of Pataha	July 16 - December 31	X	-
Grant County	July 1 - October 31	X	-
Columbia River *	See below	-	-
Crab Creek (41.0002)	July 16 - September 15	X	X
Grays Harbor County	July 16 - October 15	X	-
Chehalis River (22.0190/23.0190) - Mouth to Porter Creek	August 1 - August 31	X	X
Chehalis River (22.0190/23.0190) - Porter Creek to Fisk Falls	August 1 - August 15	X	X
Chehalis River (22.0190/23.0190) - Upstream of Fisk Falls	August 1 - August 15	X	-
Cedar Creek (23.0570)	August 1 - September 30	X	-
Cloquallum Creek (22.0501)	August 1 - September 30	X	-
Porter Creek (23.0543)	August 1 - September 30	X	-
Satsop River (22.0360)	August 1 - August 31	X	X
Wishkah River (22.0191)	August 1 - October 15	X	X
Wynoochee River (22.0260)	August 1 - September 30	X	X
Copalis River (21.0767)	August 1 - October 15	X	X
Elk River (22.1333)	July 1 - October 31	X	X
Hoquiam River (22.0137)	August 1 - October 15	X	X
Humtulsips River (22.0004) - Mouth to forks	August 1 - September 30	X	X
Humtulsips River (22.0004) - Upstream of forks	August 1 - September 30	X	-
Johns River (22.1270)	August 1 - September 30	X	X
Moclips River (21.0731)	August 1 - October 15	X	X

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North River (24.0034)	August 1 - September 30	X	X
Queets River (21.0001)	August 1 - August 15	X	X
Quinalt River (21.0398)	August 1 - August 15	X	X
Raft River (21.0337)	August 1 - October 15	X	X
Island County	June 16 - October 15	X	-
Cavalero Creek (06.0065)	June 16 - December 15	X	-
Chapman Creek (06.0070)	June 16 - December 15	X	-
Crescent Creek (06.0002)	June 16 - December 15	X	-
Cultus Creek (06.0026)	June 16 - March 15	X	-
Deer Creek (06.0024)	June 16 - March 15	X	-
Duguala Creek (06.0001)	June 16 - March 15	X	-
Glendale Creek (06.0025)	June 16 - December 15	X	-
Kristoferson Creek (06.0062-06.0063)	May 1 - December 15	X	-
Maxwelton Creek (06.0029)	June 16 - December 15	X	-
North Bluff Creek (06.0006)	June 16 - March 15	X	-
Old Clinton Creek (06.0023)	June 16 - March 15	X	-
Jefferson County	July 16 - October 31	X	-
Big Quilcene River (17.0012) - Mouth to falls	July 16 - August 31	X	X
Big Quilcene River (17.0012) - Falls to forks	August 1 - February 28	X	X
Big Quilcene River (17.0012) - Upstream of forks	August 1 - February 28	X	-
Bogachiel River (20.0162)	Submit Application	-	-
Chimacum Creek (17.0203)	July 16 - September 15	X	-
Donovan Creek (17.0115)	July 1 - October 15	X	-
Dosewallips River (16.0442)	July 16 - August 15	X	-
Duckbush River (16.0351)	July 16 - August 15	X	-
Dungeness River (18.0018)	August 1 - August 15	X	-
Elwha River (18.0272)	August 1 - August 15	X	X
Goodman Creek (20.0406)	August 1 - September 15	X	-
Hoh River (20.0422)	August 1 - August 15	X	X
Little Quilcene River (17.0076)	July 16 - August 31	X	-
Queets River (21.0001)	August 1 - August 15	X	X
Matheny Creek (21.0165)	August 1 - August 15	X	-
Sams River (21.0205)	August 1 - August 15	X	X
Quinalt River (21.0398)	August 1 - August 15	X	X
Salmon Creek (17.0245)	July 16 - August 31	X	-
Skokomish River (16.0001)	August 1 - August 31	X	X
Snow Creek (17.0219)	July 16 - August 31	X	-
Tarboo Creek (17.0129)	August 1 - September 30	X	-
Thorndyke Creek (17.0170)	August 1 - October 15	X	-
King County	July 16 - September 30	X	-
Cedar River (08.0299) - Mouth to forks	August 1 - August 31	X	X
Cedar River (08.0299) - Upstream of forks	August 1 - August 31	X	-

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Issaquah Creek (08.0178)	August 1 - August 31	X	-
Sammamish River (08.0057)	August 1 - August 31	X	-
Steele Creek (08.0379)	July 16 - February 28	X	-
Green River (Duwamish River) (09.0001) - Mouth to Sawmill Creek	August 1 - August 31	X	X
Green River (Duwamish River) (09.0001) - Upstream of Sawmill Creek	August 1 - August 31	X	-
Lake Washington tributaries (08.LKWA)	August 1 - August 31	X	-
Snoqualmie River (07.0219) - Mouth to Snoqualmie Falls	August 1 - August 15	X	X
Snoqualmie River (07.0219) - Mouth to Snoqualmie Falls	July 16 - February 28	X	X
Patterson Creek (07.0376)	July 16 - September 30	X	-
Middle Fork Snoqualmie River (07.0219) - Mouth to Taylor Creek	July 16 - February 28	X	X
Middle Fork Snoqualmie River (07.0219) - Upstream of Taylor Creek	July 16 - February 28	X	-
Goat Creek (07.0754)	July 16 - February 28	X	-
North Fork Snoqualmie River (07.0527) - Mouth to Lennox Creek	July 16 - February 28	X	X
North Fork Snoqualmie River (07.0527) - Upstream of Lennox Creek	July 16 - February 28	X	-
Deep Creek (07.0562)	July 16 - February 28	X	-
Illinois Creek (07.0624)	July 16 - February 28	X	-
Lennox Creek (07.0596)	July 16 - February 28	X	-
Bear Creek (07.0606)	July 16 - February 28	X	-
Raging River (07.0384)	August 1 - September 15	X	X
South Fork Skykomish River (07.0012) - Mouth to Sunset Falls	August 1 - August 15	X	X
South Fork Skykomish River (07.0012) - Upstream of Sunset Falls	August 1 - August 15	X	-
Beckler River (07.1413) - Mouth to Boulder Creek	August 1 - August 15	X	X
Beckler River (07.1413) - Upstream of Boulder Creek	July 16 - February 28	X	-
Rapid River (07.1461) - Mouth to Meadow Creek	August 1 - August 31	X	X
Rapid River (07.1461) - Upstream of Meadow Creek	August 1 - February 28	X	-
Index Creek (07.1264) - Mouth to Mud Lake Creek	August 1 - August 31	X	-
Index Creek (07.1264) - Upstream of Mud Lake Creek including Salmon Creek	July 16 - February 28	X	-
Miller River (07.1329) - Mouth to forks	August 1 - August 15	X	X
Miller River (07.1329) - Upstream of forks	August 1 - August 15	X	-
Coney Creek (07.1347)	July 16 - February 28	X	-
East Fork Miller River (07.1329) - Mouth to Great Falls Creek	July 16 - August 15	X	-
East Fork Miller River (07.1329) - Upstream of Great Falls Creek	July 16 - February 28	X	-
West Fork Miller River (07.1335)	July 16 - February 28	X	X
Foss River (07.1562) - Mouth to forks	July 16 - August 31	X	X
East Fork Foss River (07.1562) - Mouth to Burn Creek	July 16 - August 15	X	X
East Fork Foss River (07.1562) - Upstream of Burn Creek	July 16 - February 28	X	-
West Fork Foss River (07.1573) - Mouth to falls at river mile 2.0	July 16 - August 31	X	-
West Fork Foss River (07.1573) - Upstream of falls at river mile 2.0	July 16 - February 28	X	-
Money Creek (07.1300) - Mouth to 0.5 mile upstream of Kimball Creek	August 1 - August 31	X	-
Money Creek (07.1300) - Upstream of 0.5 mile upstream of Kimball Creek	August 1 - February 28	X	-
Kimball Creek (07.1301)	August 1 - August 31	X	-
Tye River (07.0012) - Mouth to Alpine Falls	August 1 - August 31	X	X

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Tye River (07.0012) - Upstream of Alpine Falls	July 16 - February 28	X	-
South Fork Snoqualmie River (07.0467)	July 16 - February 28	X	X
Denny Creek (07.0517)	July 16 - February 28	X	-
Tolt River (07.0291) - Mouth to forks	August 1 - August 31	X	X
North Fork Tolt River (07.0291) - Mouth to Yellow Creek	July 16 - September 15	X	X
North Fork Tolt River (07.0291) - Upstream of Yellow Creek	July 16 - February 28	X	-
South Fork Tolt River (07.0302) - Mouth to dam	July 16 - September 15	X	X
South Fork Tolt River (07.0302) - Upstream of Tolt Reservoir	July 16 - February 28	X	-
Yellow Creek (07.0337)	July 16 - February 28	X	-
White River (10.0031)	July 16 - August 15	X	X
Greenwater River (10.0122)	July 16 - August 15	X	X
Kititas County	July 1 - September 30	X	-
Brushy Creek (40.0612)	July 1 - February 28	X	-
Colockum Creek (40.0760)	July 1 - October 31	X	-
Quitomene Creek (40.0613)	July 1 - October 31	X	-
Stemilt Creek (40.0808) - Upstream of falls	July 1 - February 28	X	-
Tarpiscan Creek (40.0723)	July 1 - February 28	X	-
Tekiason Creek (40.0686)	July 1 - February 28	X	-
Whisky Dick Creek (40.0591)	July 1 - February 28	X	-
Yakima River (39.0002) - Roza Dam to Teanaway River	August 1 - August 31	X	X
Naches River (38.0003) - Teton River to Bumping River	July 1 - August 15	X	X
Little Naches River (38.0852) - Mouth to Matthew Creek	July 16 - August 15	X	X
Little Naches River (38.0852) - Upstream of Matthew Creek	July 16 - August 15	X	-
Pileup Creek (38.0932)	July 16 - August 31	X	-
Gold Creek (38.MISC)	July 16 - February 28	X	-
Swauk Creek (39.1157)	July 16 - September 30	X	-
Baker Creek (39.1157)	July 16 - September 30	X	-
First Creek (39.1157)	July 16 - September 30	X	-
Iron Creek (39.1157)	July 16 - September 30	X	-
Williams Creek (39.1157)	July 16 - September 30	X	-
Boulder Creek (39.1157)	July 16 - February 28	X	-
Cougar Gulch (39.1157)	July 16 - February 28	X	-
Lion Gulch (39.1157)	July 16 - February 28	X	-
Yakima River (39.0002) - Teanaway River to Easton Dam	August 1 - August 31	X	X
Yakima River (39.0002) - Upstream of Easton Dam	August 1 - August 31	X	X
Cle Elum River (39.1434) - Mouth to Dam	July 16 - August 31	X	X
Cle Elum River (39.1434) - Upstream of Cle Elum Dam	Submit Application	-	-
Big Boulder Creek (39.1434MISC)	August 1 - February 28	X	-
Camp Creek (39.1434MISC)	August 1 - February 28	X	-
Fortune Creek (39.1434MISC)	August 1 - August 15	X	-
South Fork Fortune Creek (39.1434MISC)	August 1 - February 28	X	-
Howson Creek (39.1434)	July 16 - February 28	X	-

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Little Salmon Le Sac Creek (39.1482)	August 1 - August 15	X	-
Paris Creek (39.1434MISC)	August 1 - February 28	X	-
Salmon Le Sac Creek (39.1520)	August 1 - February 28	X	-
Kachess River (39.1739) - Upstream of Lake Kachess	Submit Application	-	-
Kachess River (39.1739) - Below dam	July 16 - August 15	X	X
Box Canyon Creek (39.1765)	Submit Application	-	-
Mineral Creek (39.1792)	August 1 - August 15	X	-
Lake Keechelus (39.1842) tributaries	July 16 - August 15	X	-
Gold Creek (Lake Keechelus) (39.1842)	Submit Application	-	-
Manastash Creek (39.0988)	July 16 - September 30	X	-
Naneum Creek (39.0821)	July 16 - September 30	X	-
Taneum Creek (39.1081) - Mouth to I-90	July 16 - August 31	X	-
Taneum Creek (39.1157) - Upstream of I-90	July 16 - September 30	X	-
Teanaway River (39.1236)	July 16 - August 31	X	X
NF Teanaway River (39.1260)	Submit Application	-	-
Umtanum Creek (39.0553)	July 16 - September 30	X	-
Wenas Creek (39.0032) - Below dam	July 16 - October 15	X	-
Wenas Creek (39.0032) - Upstream of Wenas Lake	July 16 - February 28	X	-
Other Yakima River tributaries not listed	July 16 - August 31	X	-
Kitsap County	July 16 - October 15	X	-
Anderson Creek (15.0211)	August 1 - November 15	X	-
Barker Creek (15.0255)	August 1 - September 30	X	-
Big Beef Creek (15.0389)	August 1 - August 15	X	-
Big Scandia Creek (15.0280)	August 1 - September 30	X	-
Blackjack Creek (15.0203)	August 1 - September 30	X	-
Burley Creek (15.0056)	August 1 - September 30	X	-
Chico Creek (15.0229)	August 1 - October 15	X	-
Clear Creek (15.0249)	August 1 - September 30	X	-
Curley Creek (15.0185)	August 1 - September 30	X	-
Dewatto River (15.0420)	August 1 - August 15	X	-
Dogfish Creek (15.0285)	August 1 - September 30	X	-
Gorst Creek (15.0216)	August 1 - August 31	X	-
Groves Creek (15.0299)	August 1 - September 30	X	-
Johnson Creek (15.0387)	August 1 - October 31	X	-
Ollala Creek (15.0107)	August 1 - September 30	X	-
Ross Creek (15.0209)	August 1 - November 15	X	-
Salmonberry Creek (15.0188)	August 1 - November 30	X	-
Seabeck Creek (15.0400)	August 1 - August 15	X	-
Steele Creek (15.0273)	August 1 - September 30	X	-
Tahuya River (15.0446)	August 1 - August 31	X	X
Union River (15.0503)	August 1 - August 31	X	X
Klickitat County	July 15 - September 30	X	-

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Alder Creek (31.0459)	August 1 - September 30	X	-
Chapman Creek (31.0192)	August 1 - September 30	X	-
Glade Creek (31.0851)	August 1 - September 30	X	-
Juniper Canyon Creek (31.0378)	August 1 - September 30	X	-
Klickitat River (30.0002) - Mouth to Klickitat Hatchery	Submit Application	-	-
Klickitat River (30.0002) - Upstream of Klickitat Hatchery	Submit Application	-	-
Little White Salmon River (29.0131) - Mouth to Cabbage Creek	July 16 - January 31	X	X
Little White Salmon River (29.0131) - Upstream of Cabbage Creek	July 16 - January 31	X	-
Pine Creek (31.0354)	August 1 - September 30	X	-
Rock Creek (31.0014)	August 1 - September 30	X	-
Six Prong Creek (31.0465)	August 1 - September 30	X	-
White Salmon River (29.0160) - Mouth to Cascade Creek	July 16 - August 15	X	X
White Salmon River (29.0160) - Upstream of Cascade Creek	July 16 - August 15	X	-
Wood Gulch Creek (31.0263)	August 1 - September 30	X	-
Lewis County	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190) - Mouth to South Fork Chehalis River	August 1 - August 15	X	X
Chehalis River (22.0190/23.0190) - Upstream of South Fork Chehalis River	August 1 - August 31	X	X
Newaukum River (23.0882) - Mouth to South Fork	August 1 - August 31	X	X
Newaukum River (23.0882) - Upstream of South Fork	August 1 - August 31	X	-
Skookumchuck River (23.0761)	August 1 - August 31	X	X
Cowlitz River (26.0002)	August 1 - August 15	X	X
Cispus River (26.0668) - Mouth to Squaw Creek (26.1010)	August 1 - August 15	X	X
Cispus River (26.0668) - Squaw Creek to Chambers Creek	July 16 - February 28	X	X
Cispus River (26.0668) - Upstream of Chambers Creek	July 16 - February 28	X	-
Yellowjacket Creek (26.0757)	August 1 - August 15	X	-
McCoy Creek (26.0766) - Mouth to lower falls	August 1 - August 15	X	-
McCoy Creek (26.0766) - Upstream of lower falls	July 16 - February 28	X	-
Walupt Creek (26.1010)	Submit Application	-	-
Packwood Lake tributaries	August 16 - September 15	X	-
Tilton River (26.0560) - Mouth to North Fork	August 1 - September 30	X	X
Tilton River (26.0560) - Upstream of North Fork	August 1 - September 30	X	-
Toutle River (26.0227)	August 1 - August 31	X	X
North Fork Toutle River (26.0314)	July 16 - August 15	X	X
Green River (26.0323)	July 16 - September 30	X	X
Deschutes River (13.0028)	July 16 - August 31	X	X
Little Deschutes River (13.0110)	July 16 - February 28	X	-
Nisqually River (11.0008) - Upstream of Alder Lake	July 16 - September 30	X	X
Lincoln County	June 16 - February 28	X	-
Columbia River *	See below	-	-
Hawk Creek (53.0101) - Mouth to falls	June 16 - August 31	X	-
Hawk Creek (53.0101) - Upstream of falls	June 16 - February 28	X	-
Upper Crab Creek (42.0001)	June 16 - February 28	X	-

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Wilson Creek (43.0020)	June 16 - February 28	X	-
Mason County	August 1 - October 15	X	-
Cloquallum Creek (22.0501)	August 1 - September 30	X	-
Coulter Creek (15.0002)	August 1 - August 31	X	-
Dewatto River (15.0420)	August 1 - August 31	X	-
Goldsborough Creek (14.0035)	August 1 - October 15	X	-
John Creek (16.0253)	August 1 - August 31	X	-
Hamma Hamma River (16.0251) - Mouth to falls	August 1 - August 31	X	-
Johns Creek (14.0049)	August 1 - August 15	X	-
Lilliwaup River (16.0230) - Mouth to falls	August 1 - August 31	X	X
Lilliwaup River (16.0230) - Upstream of falls	August 1 - February 28	X	-
Mill Creek (14.0029)	August 1 - August 15	X	-
Satsop River (22.0360)	August 1 - August 31	X	-
Schaerer Creek (16.0326)	August 1 - August 31	X	-
Sherwood Creek (14.0094)	August 1 - August 15	X	-
Skokomish River (16.0001) - Mouth to forks	August 1 - August 31	X	X
Skokomish River (16.0001) - Upstream of forks	August 1 - August 31	X	-
Tahuva River (15.0446)	August 1 - August 31	X	-
Twanoh Creek (14.0134)	August 1 - October 31	X	-
Union River (15.0503)	August 1 - August 31	X	X
Okanogan County	July 1 - August 15	X	-
Ancas Creek (49.0243) - Mouth to falls	July 16 - August 31	X	-
Ancas Creek (49.0243) - Upstream of falls	July 1 - March 31	X	-
Chewiliken Creek (49.0232) - Mouth to falls	July 16 - August 31	X	-
Chewiliken Creek (49.0232) - Upstream of falls	July 1 - March 31	X	-
Chilwist Creek (49.0034) - Mouth to falls	July 16 - August 31	X	-
Chilwist Creek (49.0034) - Upstream of falls	July 1 - March 31	X	-
Foster Creek (50.0065)	July 1 - February 28	X	-
Methow River (48.0007) - Columbia confluence to Twisp River	July 1 - July 31	X	X
Methow River tributaries between Black Canyon Creek and Gold Creek	July 1 - February 28	X	-
Black Canyon Creek (48.0015) - Mouth to Left Fork	Submit Application	-	-
Black Canyon Creek (48.0015) - Upstream of Left Fork	July 1 - February 28	X	-
Gold Creek (48.0104) - Mouth to Foggy Dew Creek	Submit Application	-	-
Foggy Dew Creek (48.0153) - Mouth to Foggy Dew Falls	Submit Application	-	-
Foggy Dew Creek (48.0153) - Upstream of Foggy Dew Falls	July 1 - February 28	X	-
Middle Fork Gold Creek (48.0139)	July 1 - February 28	X	-
North Fork Gold Creek (48.0104)	Submit Application	-	-
Crater Creek (48.0177) - Mouth to Martin Creek	Submit Application	-	-
Crater Creek (48.0177) - Upstream of Martin Creek	July 1 - February 28	X	-
Martin Creek (48.0177)	July 1 - February 28	X	-
South Fork Gold Creek (48.0105) - Mouth to Rainy Creek	Submit Application	-	-
South Fork Gold Creek (48.0105) - Upstream of Rainy Creek	July 1 - February 28	X	-

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Rainy Creek (48.0105)	July 1 - February 28	X	-
McFarland Creek (48.0090) - Mouth to Vinegar Gulch	Submit Application	-	-
McFarland Creek (48.0090) - Upstream of Vinegar Gulch	July 1 - February 28	X	-
Methow River tributaries between Libby Creek and Beaver Creek	July 1 - February 28	X	-
Beaver Creek (48.0307)	Submit Application	-	-
Frazer Creek (48.0309)	July 1 - February 28	X	-
Lightning Creek (48.0361)	July 1 - February 28	X	-
Middle Fork Beaver Creek (48.0307)	July 1 - February 28	X	-
South Fork Beaver Creek (48.0342)	July 1 - February 28	X	-
Libby Creek (48.0203) - Mouth to Hornet Draw Creek	Submit Application	-	-
Libby Creek (48.0203) - Upstream of Hornet Draw Creek	July 1 - February 28	X	-
Methow River (48.0007) - Twisp River to Goat Creek	July 1 - July 31	X	X
Methow River (48.0007) - Upstream of Goat Creek	July 1 - July 31	X	-
Chewuch River (48.0728) - Mouth to Meadow Creek	July 1 - July 31	X	X
Chewuch River (48.0728) - Upstream of Meadow Creek	July 1 - February 28	X	-
Early Winters Creek (48.1408) - Mouth to Silver Star Creek	Submit Application	-	-
Early Winters Creek (48.1408) - Upstream of Silver Star Creek	July 1 - February 28	X	-
Goat Creek (48.1364) - Mouth to 500' upstream of Montana Creek	Submit Application	-	-
Goat Creek (48.1364) - 500' upstream of Montana Creek to Roundup Creek	July 1 - February 28	X	-
Goat Creek (48.1364) - Upstream of Roundup Creek	Submit Application	-	-
Lost River (48.0592)	July 16 - August 15	X	X
Twisp River (48.0374)	July 1 - July 31	X	X
Buttermilk Creek (48.0466)	Submit Application	-	-
North Creek (48.0674)	Submit Application	-	-
North Fork Twisp River (48.0691)	July 1 - February 28	X	-
South Creek (48.0641) - Upstream of Louis Creek	July 1 - February 28	X	-
South Creek (48.0641) - Mouth to Louis Creek	Submit Application	-	-
South Fork Twisp River (48.0698)	July 1 - February 28	X	-
Wolf Creek (48.1300)	Submit Application	-	-
Myers Creek (60.0517)	July 1 - February 28	X	-
Bolster Creek (60.0517)	July 1 - February 28	X	-
Ethel Creek (60.0517)	July 1 - February 28	X	-
Gold Creek (60.0517)	July 1 - February 28	X	-
Mary Ann Creek (60.0517)	July 1 - February 28	X	-
North Fork Mary Ann Creek (60.0517)	July 1 - February 28	X	-
Okanogan River (49.0019) - Mouth to Zosel Dam *	July 1 - August 31	X	X
Antoine Creek (49.0294) - Mouth to velocity gradient at river mile 1.0	July 1 - February 28	X	-
Antoine Creek (49.0294) - Upstream of falls	July 1 - March 31	X	-
Bonaparte Creek (49.0246) - Upstream of falls	July 1 - March 31	X	-
Bonaparte Creek (49.0246) - Mouth to Bonaparte Falls at river mile 1.0	July 1 - February 28	X	-
Loup Loup Creek (49.0048) - Mouth to Loup Loup Falls at river mile 2.4	July 1 - February 28	X	-
Loup Loup Creek (49.0048) - Upstream of Loup Loup Falls at river mile 2.4	July 1 - March 31	X	-

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Mosquito Creek (49.0321) - Mouth to falls	July 1 - August 31	X	-
Mosquito Creek (49.0321) - Upstream of falls	July 1 - March 31	X	-
Nine Mile Creek (49.0516)	July 1 - February 28	X	-
Omak Creek (49.0138) - Mouth to Mission Falls at river mile 5.4 *	July 1 - February 28	X	-
Omak Creek (49.0138) - Upstream of falls *	July 1 - March 31	X	-
Salmon Creek (49.0079) - Mouth to diversion	July 1 - August 31	X	-
Salmon Creek (49.0079) - Upstream of diversion	July 1 - February 28	X	-
Similkameen River (49.0325) - Mouth to Enloe Dam	July 1 - August 31	X	X
Similkameen River (49.0325) - Upstream of Enloe Dam	July 1 - October 31	X	X
Simlahekin Creek (49.0349) - Mouth to barrier dam at Connors Lake	July 1 - August 31	X	-
Cecilie Creek (49.0447)	July 1 - February 28	X	-
Chopaka Creek (49.0357)	July 1 - February 28	X	-
Toats Coulee Creek (49.0368)	July 1 - February 28	X	-
Cougar Creek (49.0368)	July 1 - February 28	X	-
Siwash Creek (49.0284) - Falls to headwaters	July 1 - March 31	X	-
Siwash Creek (49.0284) - Mouth to falls at river mile 1.4	July 1 - February 28	X	-
Tonasket Creek (49.0501) - Mouth to Tonasket Falls at river mile 1.8	July 1 - February 28	X	-
Tonasket Creek (49.0501) - Upstream of Tonasket Falls at river mile 1.8	July 1 - March 31	X	-
Tunk Creek (49.0211) - Mouth to falls	July 1 - February 28	X	-
Tunk Creek (49.0211) - Upstream of falls	July 1 - March 31	X	-
San Poil River (52.0004) *	June 16 - September 30	X	X
West Fork San Poil River (52.0192) *	June 16 - September 30	X	X
Gold Creek (52.0197) *	June 16 - February 28	X	-
Toroda Creek (60.0410)	July 1 - September 30	X	-
Pacific County	August 1 - September 30	X	-
Bear River (24.0689)	August 1 - September 30	X	X
Bone River (24.0405)	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190)	August 1 - August 15	X	X
Columbia River	See below	-	-
Chinook River (24.MISC)	August 1 - September 30	X	X
Grays River (25.0093)	July 16 - September 15	X	X
Naselle River (24.0543)	August 1 - September 15	X	X
Nemah River (24.0460)	August 1 - September 30	X	X
Niawiakum River (24.0417)	August 1 - September 30	X	-
North River (24.0034)	August 1 - September 30	X	X
Palix River (24.0426)	August 1 - September 30	X	-
Willapa River (24.0251)	August 1 - September 30	X	X
Pend Oreille County	July 1 - August 31	X	-
Little Spokane River (55.0003)	August 1 - March 15	X	-
West Branch Little Spokane River (55.0439)	August 1 - March 15	X	-
Harvey Creek (62.0310) - Mouth to Rocky Fork of Harvey Creek	August 1 - August 31	X	-
Harvey Creek (62.0310) - Upstream of Rocky Fork of Harvey Creek	July 16 - February 28	X	-

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Pend Oreille River (62.0002)	Submit Application	-	-
Big Muddy Creek (62.0279)	August 1 - March 15	X	-
Bracket Creek (62.0815)	August 1 - March 15	X	-
Calispel Creek (62.0628)	August 1 - August 31	X	-
Exposure Creek (62.0261)	August 1 - August 31	X	-
Kent Creek (62.0819)	August 1 - March 15	X	-
Le Clerc Creek (62.0415)	August 1 - August 31	X	-
Lime Creek (62.0014)	August 1 - March 15	X	-
Lodge Creek (62.0859)	August 1 - August 31	X	-
Lost Creek (62.0322)	August 1 - March 15	X	-
Marshall Creek (62.0842)	August 1 - March 15	X	-
Pee Wee Creek (62.0007) - Mouth to falls	August 1 - August 31	X	-
Pee Wee Creek (62.0007) - Upstream of falls	August 1 - March 15	X	-
Renshaw Creek (62.0310)	August 1 - March 15	X	-
Sullivan (O'Sullivan) Creek (62.0074)	August 1 - August 31	X	-
North Fork Sullivan Creek (62.0075)	August 1 - August 31	X	-
Tributaries of Deep Creek in Pend Oreille County (61.0195)	July 16 - August 15	X	-
Current Creek (61.0249)	July 16 - August 15	X	-
Meadow Creek (61.0351)	July 16 - August 15	X	-
Rocky Creek (61.0364)	July 16 - August 15	X	-
Silver Creek (61.0195)	July 16 - August 15	X	-
Smackout Creek (61.0226)	July 16 - August 15	X	-
Pierce County	July 16 - August 31	X	-
Chambers/Clover Creek Watershed (12.MISC)	July 16 - September 30	X	-
Flett Creek (12.0009)	July 16 - October 31	X	-
Leach Creek (12.0008)	July 16 - September 30	X	-
Nisqually River (11.0008) - Mouth to Alder Lake	July 16 - August 31	X	X
Nisqually River (11.0008) - Upstream of Alder Lake	July 16 - September 30	X	X
Mashel River (11.0101) - Mouth to Busy Wild Creek	July 16 - September 30	X	X
Mashel River (11.0101) - Upstream of Busy Wild Creek	July 16 - September 30	X	-
Puyallup River (10.0021) - Mouth to PSE Electron Powerhouse outfall	July 16 - August 31	X	X
Puyallup River (10.0021) - Upstream of PSE Electron Powerhouse outfall	July 16 - August 15	X	X
Carbon River (10.0413)	July 16 - August 15	X	X
Cayada Creek (10.0525) - Mouth to falls about 800 feet upstream	July 16 - August 31	X	-
Cayada Creek (10.0525) - Upstream of the falls	January 1 - December 31	X	-
South Prairie Creek (10.0429)	July 16 - August 15	X	-
Voight Creek (10.0414) - Mouth to falls at river mile 4.0	July 16 - August 31	X	-
Voight Creek (10.0414) - Upstream of falls at river mile 4.0	July 16 - February 28	X	-
White River (10.0031)	July 16 - August 15	X	X
Clearwater River (10.0080)	July 16 - August 15	X	X
Greenwater River (10.0122)	July 16 - August 15	X	X
Huckleberry Creek (10.0253)	July 16 - August 15	X	-

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West Fork White River (10.0186)	July 16 - August 15	X	X
Sequalitchew Creek (12.0019)	July 16 - September 30	X	-
San Juan County	July 1 - August 31	X	-
Cascade Creek (02.0057), Orcas Island - Upstream of lower falls	July 1 - February 28	X	-
Cascade Creek (02.0057), Orcas Island - Buck Bay to falls located approximately 300 feet above mouth	July 1 - October 31	X	-
Doe Creek (02.MISC), San Juan Island - Westcott Bay to falls (approximately 250 feet from mouth)	June 16 - October 15	X	-
False Bay Creek (02.MISC), San Juan Island - Mouth to lake	July 1 - October 31	X	-
Glenwood Springs, Orcas Island - Direct tributary to Eastsound Bay	July 1 - October 15	X	-
Moran Creek (02.MISC), Orcas Island - From Cascade Lake delta upstream 1/4 mile	July 1 - October 15	X	-
Unnamed Creek (02.0041), San Juan Island - Mouth to lake	July 1 - October 15	X	-
Skagit County	August 1 - September 15	X	-
Granite Creek (04.2313) - Upstream of East Creek	July 16 - February 28	X	-
North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek	August 1 - August 15	X	X
North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek	August 1 - August 15	X	-
North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek	July 16 - February 28	X	-
Samish River (03.0005)	August 1 - September 15	X	-
Skagit River (03.0176/04.0176)	Submit Application	-	-
Baker River (04.0435) - Mouth to Baker Dam	Submit Application	-	-
Cascade River (04.1411)	Submit Application	-	-
Lookout Creek (04.1447)	July 16 - February 28	X	-
Sibley Creek (04.1481)	July 16 - February 28	X	-
Day Creek (03.1435)	July 16 - February 28	X	-
Day Creek (03.0299) - Mouth to Rocky Creek	Submit Application	-	-
Day Creek (03.0299) - Upstream of Rocky Creek	August 1 - February 28	X	-
Finney Creek (04.0392) - Mouth to Big Fir Creek	Submit Application	-	-
Finney Creek (04.0392) - Upstream of Big Fir Creek	July 16 - February 28	X	-
Illabot Creek (04.1346)	Submit Application	-	-
Sauk River (04.0673) - Mouth to forks	Submit Application	-	-
Sauk River (04.0673) - Upstream of forks	August 1 - August 15	X	-
Suittale River (04.0710)	August 1 - August 15	X	X
Wiseman Creek (03.0280) - Mouth to SR20	Submit Application	-	-
Wiseman Creek (03.0280) - Upstream of SR20	July 16 - February 28	X	-
South Fork Nooksack River (01.0246) - Mouth to falls at river mile 30	August 1 - August 15	X	X
South Fork Nooksack River (01.0246) - Falls at river mile 30 to Wanlick Creek	July 16 - August 15	X	X
South Fork Nooksack River (01.0246) - Upstream of Wanlick Creek	July 16 - August 15	X	-
Skamania County	July 15 - September 15	X	-
Columbia River	See below	-	-
Cispus River (26.0668)	August 1 - August 15	X	X
Cispus River (26.0668) tributaries located in Skamania County	August 1 - October 31	X	-
East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls	August 1 - February 28	X	X
East Fork Lewis River (27.0173) - Upstream of Sunset Falls	August 1 - February 28	X	-

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Green River (26.0323) (Tributary of North Fork Toutle River)	July 16 - September 30	X	X
Hamilton Creek (28.0303)	August 1 - August 31	X	-
Hardy Creek (28.0303)	August 1 - August 31	X	-
Little White Salmon River (29.0131) - Mouth to hatchery	July 16 - August 15	X	X
Little White Salmon River (29.0131) - Hatchery to Cabbage Creek	July 16 - January 31	X	X
Little White Salmon River (29.0131) - Upstream of Cabbage Creek	July 16 - January 31	X	-
North Fork Lewis River (27.0168) - Merwin Dam to lower falls	July 16 - August 15	X	X
Canyon Creek (27.0442)	July 16 - February 28	X	-
North Fork Lewis River (27.0168) - Upstream of lower falls	July 16 - February 28	X	X
Washougal River (28.0159) - Mouth to Stebbins Creek	August 1 - August 31	X	X
Washougal River (28.0159) - Upstream of Stebbins Creek	August 1 - August 31	X	-
White Salmon River (29.0160) - Mouth to Cascade Creek	July 16 - August 15	X	X
White Salmon River (29.0160) - Upstream of Cascade Creek	July 16 - August 15	X	-
Wind River (29.0023)	August 1 - August 15	X	X
Woodward Creek (28.0298)	August 1 - August 31	X	-
Snohomish County	July 16 - September 15	X	-
Lake Washington tributaries	August 1 - August 15	X	-
Sauk River (04.0673) - Mouth to forks	August 1 - August 15	X	X
Sauk River (04.0673) - Upstream of forks	August 1 - August 15	X	-
Suittale River (04.0710)	August 1 - August 15	X	X
Snohomish River (07.0012) - Mouth to Highway 9	August 1 - October 31	X	X
Snohomish River (07.0012) - Upstream of Highway 9	August 1 - August 15	X	X
Pilchuck River (07.0125) - Mouth to City of Snohomish diversion dam	August 1 - August 31	X	X
Pilchuck River (07.0125) - City of Snohomish diversion dam to Boulder Creek	August 1 - September 15	X	X
Pilchuck River (07.0125) - Upstream of Boulder Creek	August 1 - September 15	X	-
Skykomish River (07.0012) - Mouth to forks	August 1 - August 15	X	X
Deer Creek (05.0173) - Mouth to stream mile 0.5	August 1 - August 31	X	-
Deer Creek (05.0173) - Upstream of stream mile 0.5	August 1 - February 28	X	-
North Fork Skykomish River (07.0982) - Mouth to Bear Creek Falls	August 1 - August 31	X	X
North Fork Skykomish River (07.0982) - Bear Creek Falls to Deer Falls	August 1 - August 31	X	X
North Fork Skykomish River (07.0982) - Deer Falls to West Cady Creek	August 1 - February 28	X	X
North Fork Skykomish River (07.0982) - Upstream of West Cady Creek	August 1 - February 28	X	-
Howard Creek (07.1042)	July 16 - February 28	X	-
Silver Creek (07.1053) - Mouth to Lake Gulch	August 1 - August 31	X	-
Silver Creek (07.1053) - Upstream of Lake Gulch	August 1 - February 28	X	-
Troublesome Creek (07.1085)	August 1 - February 28	X	-
West Fork Troublesome Creek (07.1092)	August 1 - August 31	X	-
South Fork Skykomish River (07.0012) - Mouth to Sunset Falls	August 1 - August 15	X	X
Beckler River (07.1413) - Mouth to Boulder Creek	August 1 - August 15	X	X
Beckler River (07.1413) - Upstream of Boulder Creek	July 16 - February 28	X	-
Rapid River (07.1461) - Mouth to Meadow Creek	August 1 - August 31	X	X
Rapid River (07.1461) - Upstream of Meadow Creek	August 1 - February 28	X	X

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Sultan River (07.0881) - Mouth to diversion dam at river mile 9.4	August 1 - August 15	X	X
Sultan River (07.0881) - Diversion dam to Elk Creek	July 16 - February 28	X	X
Sultan River (07.0881) - Upstream of Elk Creek	July 16 - February 28	X	-
Wallace River (07.0940) - Mouth to Wallace Falls	August 1 - August 31	X	X
Wallace River (07.0940) - Upstream of Wallace Falls	August 1 - February 28	X	-
Olney Creek (07.0946) - Mouth to Olney Falls	August 1 - August 31	X	-
Olney Creek (07.0946) - Upstream of Olney Falls	August 1 - February 28	X	-
Snoqualmie River (07.0219) - Mouth to falls	August 1 - August 15	X	X
All other Snohomish River tributaries	August 1 - August 31	X	-
Stillaguamish River (05.0001) - Mouth to forks	August 1 - August 31	X	X
North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek	August 1 - August 15	X	X
North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek	August 1 - August 15	X	-
North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek	July 16 - February 28	X	-
South Fork Stillaguamish River (05.0001) - Mouth to Deer Creek	August 1 - August 15	X	X
South Fork Stillaguamish River (05.0001) - Upstream of Deer Creek	August 1 - August 15	X	-
Spokane County	June 16 - August 31	X	-
Latah Creek (56.0003)	June 16 - August 31	X	-
Little Spokane River (55.0600) - Mouth to Deer Creek	June 16 - August 31	X	X
Little Spokane River (55.0600) - Upstream of Deer Creek	June 16 - August 31	X	-
Spokane River (57.0001)	June 16 - August 31	X	X
Stevens County	July 16 - August 31	X	-
Columbia River	See below	-	-
Big Sheep Creek (61.0150)	July 16 - August 15	X	-
Colville River (59.0002) - Mouth to the falls	July 16 - September 30	X	X
Colville River (59.0002) - Upstream of the falls	July 16 - September 30	X	X
Deep Creek (61.0195)	July 16 - August 15	X	-
Ontion Creek (61.0098)	July 16 - August 15	X	-
Sheep Creek (59.0861)	July 16 - September 30	X	-
Lake Roosevelt tributaries from the mouth of the Spokane River to mouth of the Colville River	July 16 - February 28	X	-
Lake Roosevelt tributaries from the mouth of the Colville River north to the B.C. Border	July 16 - February 28	X	-
Tributaries of Little Spokane River (55.0600)	June 16 - August 31	X	-
Calispel Creek (62.0628)	August 1 - August 31	X	-
Other tributaries to the Pend Oreille River in Stevens County	July 1 - August 31	X	-
Thurston County	July 16 - September 15	X	-
Cedar Creek (23.0570)	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190) - Upstream of Porter Creek	August 1 - August 15	X	X
Skookumchuck River (23.0761) - Mouth to Skookumchuck Reservoir	August 1 - August 31	X	X
Skookumchuck River (23.0761) - Upstream of Skookumchuck Reservoir	August 1 - August 31	X	-
Deschutes River (13.0028) - Mouth to Deschutes Falls	July 16 - August 31	X	X
Deschutes River (13.0028) - Upstream of Deschutes Falls	July 16 - August 31	X	-
Ellis Creek (13.0022)	May 16 - September 30	X	-
Little Deschutes River (13.0110)	July 16 - February 28	X	-

Washington Counties and State Waters Water Resource Inventory Area (WRIA) in parentheses	Mineral Prospecting Is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which You May Use Mineral Prospecting Equipment with a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (not including tributaries) in Which You May Use Mineral Prospecting Equipment with a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
McLane Creek (13.0138)	August 1 - October 31	X	-
Percival Creek (13.0029)	July 16 - August 31	X	-
Nisqually River (11.0008)	July 16 - August 31	X	X
Tributaries of Nisqually River (11.0008)	July 16 - August 31	X	-
Porter Creek (23.0543)	August 1 - September 30	X	-
Schneider Creek (14.0009)	August 1 - October 31	X	-
Waddell Creek (23.0677)	August 1 - September 30	X	-
Woodard Creek (13.0012)	July 16 - August 31	X	-
Woodland Creek (13.0006)	July 16 - September 30	X	-
Wahkiakum County	July 16 - September 15	X	-
Columbia River	See below	-	-
Abernathy Creek (25.0297)	July 16 - September 15	X	-
Deep River (25.0011)	July 16 - September 15	X	X
Elochoman River (25.0236)	July 16 - September 15	X	X
Grays River (25.0093)	July 16 - September 15	X	X
Mill Creek (25.0284)	July 16 - September 15	X	-
Naselle River (24.0543)	July 16 - September 15	X	X
Skamokawa Creek (25.0194)	July 16 - September 15	X	-
Walla Walla County	July 16 - September 30	X	-
Walla Walla River (32.0008) - Mouth to Oregon state line	July 16 - September 15	X	X
Mill Creek (32.1436) - Mouth to Oregon state line	August 1 - August 15	X	-
Touchet River (32.0097) - Mouth to forks	August 1 - August 15	X	X
North Fork Touchet/Wolf Fork (32.0761)	Submit Application	-	-
South Fork Touchet (32.0708)	Submit Application	-	-
Whatcom County	July 16 - August 15	X	-
Damfino Creek (00.0032)	July 16 - August 31	X	-
Nooksack River (01.0120)	July 16 - August 15	X	X
Cascade Creek (02.0057) - Mouth to FR 37	Submit Application	-	-
Cascade Creek (02.0057) - Upstream of FR 37	July 16 - February 28	X	-
Middle Fork Nooksack River (01.0339) - Mouth to City of Bellingham diversion dam	July 16 - August 15	X	X
Middle Fork Nooksack River (01.0339) - Upstream of City of Bellingham diversion dam	Submit Application	-	-
North Fork Nooksack River (01.0120) - Mouth to Nooksack Falls	July 16 - August 15	X	X
North Fork Nooksack River (01.0120) - Upstream of Nooksack Falls	Submit Application	-	-
Barometer Creek (01.0513)	July 16 - February 28	X	-
Ruth Creek (01.0531)	July 16 - February 28	X	-
Swamp Creek (01.0518)	July 16 - February 28	X	-
Wells Creek (02.0057)	Submit Application	-	-
Bar Creek (01.0500)	July 16 - February 28	X	-
South Fork Nooksack (01.0246) - Mouth to Wanlick Creek	August 1 - August 15	X	X
South Fork Nooksack (01.0246) - Upstream of Wanlick Creek	August 1 - August 15	X	-
Samish River (03.0005)	July 16 - August 15	X	-
Skagit River (03.0176/04.0176)	Submit Application	-	-

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Baker River (04.0435) - Mouth to Baker Lake Dam	Submit Application	-	-
Baker River (04.0435) - Baker Lake to national park boundary	Submit Application	-	-
Boulder Creek (04.0499)	July 16 - February 28	X	-
Park Creek (04.0506) - Mouth to fish passage barrier at river mile 1.6	Submit Application	-	-
Park Creek (04.0506) - Upstream of river mile 1.6	July 16 - February 28	X	-
Swift Creek (04.0509) - Mouth to Rainbow Creek	Submit Application	-	-
Swift Creek (04.0509) - Upstream of Rainbow Creek	July 16 - February 28	X	-
Ross Lake (03.0176/04.0176) tributaries	Submit Application	-	-
Ruby Creek (04.2199)	Submit Application	-	-
Canyon Creek (04.2458) - Mouth to Barron Creek	Submit Application	-	-
Canyon Creek (04.2458) - Upstream of Barron Creek and tributaries	October 1 - February 28	X	-
Barron Creek (04.2591)	October 1 - February 28	X	-
Boulder Creek (04.2478) - Mouth to 300 feet upstream	Submit Application	-	-
Boulder Creek (04.2478) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Friday Creek (04.2549) - Mouth to 300 feet upstream	Submit Application	-	-
Friday Creek (04.2549) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Holmes Creek (04.2473) - Mouth to 300 feet upstream	Submit Application	-	-
Holmes Creek (04.2473) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Mill Creek (04.2504) - Mouth to 300 feet upstream	Submit Application	-	-
Mill Creek (04.2504) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Nickol Creek (04.2476) - Mouth to 300 feet upstream	Submit Application	-	-
Nickol Creek (04.2476) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
North Fork Canyon Creek (04.2583) - Mouth to Elk Creek	Submit Application	-	-
Cascade Creek (04.2584)	October 1 - February 28	X	-
North Fork Canyon Creek (04.2583) - Upstream of Elk Creek	October 1 - February 28	X	-
Slate Creek (04.2557) - Mouth to falls at river mile 0.6	Submit Application	-	-
Slate Creek (04.2557) - Upstream of falls at river mile 0.6	October 1 - February 28	X	-
Granite Creek (04.2313) - Mouth to East Creek	Submit Application	-	-
Granite Creek (04.2313) - Upstream of East Creek and tributaries	October 1 - February 28	X	-
Saar Creek (00.0003)	August 1 - September 30	X	-
Silesia Creek (00.0042) - Canadian Border to Middle Fork	July 16 - August 15	X	-
Silesia Creek (00.0042) - Middle Fork to national park boundary	July 16 - February 28	X	-
Rapid Creek (00.0048)	July 16 - February 28	X	-
West Fork Silesia Creek (00.0044)	July 16 - February 28	X	-
Winchester Creek (00.0045)	July 16 - February 28	X	-
Whitman County	July 16 - December 15	X	-
Snake River (35.0002)	See below	-	-
Alkali Flats Creek (35.0570)	July 16 - December 15	X	-
Almota Creek (35.1017)	July 16 - December 15	X	-
Little Almota Creek (35.1018)	July 16 - December 15	X	-
Palouse River (34.0003) - Mouth to Palouse Falls	July 16 - September 30	X	X
Palouse River (34.0003) - Upstream of Palouse Falls	July 16 - February 28	X	X

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Penevawa Creek (35.0916)	July 16 - December 15	X	-
Wawawi Canyon Creek (35.1165)	July 16 - December 15	X	-
Yakima County	June 1 - September 15	X	-
Glade Creek (31.0851)	August 1 - September 30	X	-
Klickitat River (30.0002)	Submit Application	-	-
Yakima River (37.0002/38.0002/39.0002) - Mouth to Roza Dam	June 1 - September 15	X	X
Ahtanum Creek (37.1382)	June 16 - September 30	X	-
North Fork Ahtanum Creek (37.1382)	Submit Application	-	-
South Fork Ahtanum Creek (37.1382)	Submit Application	-	-
Naches River (38.0003) - Mouth to Tieton River	July 1 - October 15	X	X
Naches River (38.0003) - Upstream of mouth of Tieton River to Bumping River	July 1 - August 15	X	X
Bumping River (38.0998)	July 16 - August 15	X	X
American River (38.1000)	Submit Application	-	-
Gold Creek (38.MISC)	July 16 - February 28	X	-
Kettle Creek (38.1033)	Submit Application	-	-
Miner Creek (38.1027)	July 16 - February 28	X	-
Morse Creek (38.1072) - Mouth to SR410 crossing	August 1 - August 15	X	-
Morse Creek (38.1072) - Upstream of SR410 crossing	August 1 - February 28	X	-
Rock Creek (38.MISC)	July 16 - February 28	X	-
Timber Creek (38.1062)	August 1 - August 15	X	-
Union Creek (38.1045) - Upstream of 500 feet above falls	August 1 - February 28	X	-
Union Creek (38.1045) - Mouth to 500 feet above falls	Submit Application	-	-
Other American River tributaries not listed	August 1 - February 28	X	-
Deep Creek (38.MISC)	Submit Application	-	-
Copper Creek (38.MISC)	August 1 - August 15	X	-
Cowiche Creek (38.0005) - Mouth to South Fork Cowiche Creek	July 1 - September 30	X	-
North Fork Cowiche Creek (38.0008)	July 1 - February 28	X	-
South Fork Cowiche Creek (38.0031) - Mouth to Reynolds Creek	July 1 - September 30	X	-
South Fork Cowiche Creek (38.0031) - Upstream of Reynolds Creek	July 16 - October 31	X	-
Granite Creek (38.MISC)	August 1 - August 15	X	-
Little Naches River (38.0852) - Mouth to Matthews Creek	July 16 - August 15	X	X
Little Naches River (38.0852) - Upstream of Matthews Creek	July 16 - August 15	X	-
Crow Creek (38.0858)	July 16 - August 15	X	-
Nile Creek (38.0692)	July 16 - October 15	X	-
Rattlesnake Creek (38.0518)	July 16 - August 15	X	-
Tieton River (38.0166) - Mouth to Rimrock Dam	July 1 - August 31	X	X
North Fork Tieton River (38.0291) - Below Clear Lake Dam	Submit Application	-	-
North Fork Tieton River (38.0291) - Upstream of Clear Lake	July 1 - August 15	X	-
Clear Creek (38.0317)	July 16 - February 28	X	-
South Fork Tieton River (38.0374) - Below South Fork Falls	Submit Application	-	-
South Fork Tieton River (38.0374) - Upstream of South Fork Falls	July 16 - February 28	X	-
Indian Creek (38.0302)	Submit Application	-	-

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Tributaries of Tieton River below Rimrock Dam	July 16 - February 28	X	-
Umtanum Creek (39.0553)	July 16 - September 30	X	-
Wenas Creek (39.0032)	July 16 - October 15	X	-
Other Yakima River tributaries	July 16 - August 31	X	-
Columbia River	-	-	-
Mouth to the I-205 Bridge	August 1 - March 31	X	X
I-205 Bridge to Bonneville Dam	July 16 - September 15	X	X
Bonneville Dam to Snake River	July 16 - February 28	X	X
SNAKE RIVER to Priest Rapids Dam	July 16 - September 30	X	X
Priest Rapids Dam to mouth of Crab Creek	July 16 - February 28	X	X
Mouth of Crab Creek to Wanapum Dam	July 16 - September 30	X	X
Wanapum Dam to the SR 285 bridge in South Wenatchee	July 16 - February 28	X	X
SR 285 bridge in South Wenatchee to the SR 2 bridge	July 16 - September 30	X	X
SR 2 bridge to one mile downstream of the Chelan River	July 16 - February 28	X	X
From one mile downstream of the Chelan River to the SR 97 bridge	July 16 - September 30	X	X
From SR 97 bridge to Chief Joseph Dam	July 16 - February 28	X	X
Chief Joseph Dam to Grand Coulee Dam	June 16 - March 31	X	X
Grand Coulee Dam to Canadian border	Submit Application	-	-
All Columbia River tributaries	See county listings	-	-
Snake River	-	X	-
Mouth to Ice Harbor Dam	July 16 - September 30	X	X
Ice Harbor Dam to mouth of Clearwater River	July 16 - March 31	X	X
Mouth of Clearwater River to State Line	August 1 - August 31	X	X
All Snake River tributaries	See county listings	-	-
Lakes	Submit Application	-	-
Salt water	Submit Application	-	-
All waters within Indian tribal reservation, national park, state park, or wilderness boundaries	Submit Application	-	-

* Waters partially or entirely within the Colville Tribal Reservation Lands require written authorization from the Colville Tribe.



Penalties

Under Washington state law (RCW 77.15.300), it is a gross misdemeanor to conduct mineral prospecting activities when a Hydraulic Project Approval (HPA) is required without first having obtained one from the Washington Department of Fish and Wildlife (WDFW). It is also a gross misdemeanor to violate any requirements or conditions of the HPA. The maximum penalty for a gross misdemeanor is imprisonment for one year in jail and a \$5,000 fine.

Under RCW 77.55.291, failure to comply with the provisions of the Gold and Fish pamphlet or the rules it contains could result in a civil penalty of up to an additional \$100 per day. WDFW will impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice will describe the violation, identify the amount of the penalty and how to pay the penalty, and identify informal and formal appeal rights for the person penalized. If the violation is an ongoing violation, the penalty shall accrue for each additional day of violation. For ongoing violations, the civil penalty may continue to accrue during any appeal process unless the accrual is stayed in writing by WDFW.

The civil penalty order will be final and unappealable unless it is appealed in a timely manner as described in WAC 220-110-340 or 220-110-350. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable. If the civil penalty is not paid within thirty days after it becomes due and payable, WDFW may seek enforcement of the order under RCW 77.55.291 and 34.05.578.



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ATTACHMENT C



Rapid Assessment and Remediation of Watershed Impacts Associated with Marijuana Cultivation

California Department of Fish and Wildlife

Summary

The proliferation of marijuana (MJ) cultivation on private lands is putting undue stress on California's natural resources. The California Department of Fish and Wildlife (CDFW) has documented substantial negative effects from MJ cultivation including excessive withdrawal of water from streams under low flow conditions, sediment, nutrient, petroleum, and other pollution of Waters of the State, and illegal conversion of forested lands resulting in habitat fragmentation. With an estimated 4,000 marijuana cultivation sites (MCSs) in Humboldt County alone, it is next to impossible to address these impacts at the landscape level.

A triage assessment and remediation approach is necessary in order to prevent extirpation of local subwatershed populations of fish and wildlife, in particular State and federally-listed salmonid species and amphibians. A rapid assessment of critical watersheds can help DFW and other state agencies focus limited staff resources with the intent of maintaining healthy populations of fish and wildlife across broad areas of the State. The intent is to protect important populations, in essence provide refugia for sensitive species, until agency resources can be enhanced and/or regulatory efforts provide relief from the growing issue of marijuana cultivation. The rapid assessment, outreach, and remediation process is described below.

Assessment

1. **Develop Areas of Emphasis:** Speak with local experts, such as CDFW environmental scientists and others, to determine "high-priority" watersheds. Selection of these watersheds will be based on observed species abundance data for species of interest and/or field encounters.
2. **Validate assumptions about high priority watersheds** using available species databases (such as CDFW's Biogeographical Information and Observation System [BIOS] and the California Natural Diversity Database [CNDDDB]). Create maps using geospatial software (e.g., ArcMap™) which display both the species names and the areas of occurrence of fish, wildlife, and plant resources (as well as sensitive habitats) which are found within the high priority watersheds.
3. **Verify presence and extent of marijuana cultivation** in high priority watersheds with aerial imagery interpretation using the most recent available imagery.

4. Create additional maps to mark locations of MCSs. Include information such as Assessor's Parcel Number (APN) and owner name and address (Land Vision™).
5. Further verify presence of marijuana with fixed wing aircraft or field visits.

Outreach

1. Contact the owners of parcels in high priority watersheds containing MCSs (as identified in steps 1-5 above) via a joint CDFW/North Coast Regional Water Quality Control Board (NCRWQCB) letter. The letter will inform landowners of existing laws related to water diversion and pollution, and would outline the steps necessary for the landowners to come into compliance with state laws and regulations. The letters will provide a 30-day window for landowners to initiate contact with CDFW/NCRWQCB about obtaining necessary permits or performing other actions related to compliance with applicable State laws and regulations.
2. During the initial 30-day timeframe, CDFW/NCRWQCB staff will hold community meetings in high priority watersheds to inform landowners about the steps they must take to become compliant with state laws and regulations.
3. Work with landowners who express interest in coming into compliance by providing information, consultation, and guidance from CDFW/NCRWQCB staff about appropriate permits and pertinent laws and regulations.

Remediation

1. After the 30 day window has passed, a second joint-agency letter will inform non-compliant landowners of potential immediate enforcement action. CDFW Law Enforcement Division (LED) and Habitat Conservation Branch (HABCON) staff, in coordination with NCRWQCB personnel will begin prioritization of enforcement actions for non-complaint landowners through the following process:
 - a. Evaluate responses from the letters described in step one of "Outreach" and compare results to the initial assessment maps (i.e. evaluating which landowners replied to the letters and how compliance of those sites will impact the high priority watershed as a whole).
 - b. Select enforcement targets from the remaining sites, beginning with sites which have the highest potential for environmental damage (most MJ plants and/or largest area of land disturbance).
 - c. A site will be considered to have high potential for environmental damage if it includes large MCSs or MCSs in areas with higher concentrations of sensitive species and/or habitats (relative to other sites within the high priority watersheds).
2. CDFW LED and HABCON, NCRWQCB personnel, and other local law enforcement agencies will conduct joint enforcement actions. During these operations, CDFW/NCRWQCB staff will assess and document the scope and extent of Fish & Game and Water Code violations. Law enforcement agents will remove any marijuana plants which are associated with environmental violations in order to make sure that violations involving illegal water withdrawals or pollution associated with MCS's do not continue after the enforcement action.
3. CDFW will pursue environmental cases through local District Attorney's office, while NCRWQCB will pursue administrative action via a Cleanup and Abatement Order (CAO).

ATTACHMENT D

2012

Environmental Crimes Associated with Cultivation of Cannabis

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Circuit Prosecutor Project
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CalEMA (California Emergency Management Agency) –
<http://www.calema.ca.gov/Pages/default.aspx>
 Law Enforcement Division – To request mutual aid, call the 24-hour
 Warning Center – (916) 845-8911
 HazMat Spill Notification – (800) 852-7550

CalFire – <http://www.fire.ca.gov/index.php>
 Gerald Ahlstrom, Deputy Chief, Forest Practices Law Enforcement
 (916) 653-5296 – Use for non-emergency questions.

Department of Fish and Game, Dispatch
 Northern California – (916) 445-0380
 Central California – (831) 649-2801
 Southern California – (951) 782-4353

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Contacts

Department of Pesticide Regulation - <http://www.cdpr.ca.gov/>
 Enforcement Branch – (916) 324-4100
 (DPR will refer caller to County Ag Commissioner’s Office)

Department of Toxic Substances Control
 Duty Officers/Emergency Response (M-F 8:00 a.m. - 5:00 p.m.) –
 (916) 255-6504 or (800) 260-3972
 Duty Officers/Emergency Response – After Hours: (800) 852-7550

State Air Resources Board – (800) 852-7550
 US EPA Region 9 Duty Officer – (800) 300-2193

State Water Board – Matthew Buffleben (916) 341-5891
 (Use for non-emergency questions; or call local regional board)

Environmental Crimes Associated with Cultivation of Cannabis

Caveats:

1. All crimes listed are misdemeanors unless otherwise stated.
2. Some statutes have been modified to make this document easier to use; this document should thus not be used for charging purposes.
3. The crimes listed below apply to most agricultural enterprises, but cannabis cultivation is the focus of this document given the severity of environmental harms often caused by it.

Notice an error or something that can be improved? Please send all comments and suggestions to Matt Carr at mcarr@cdaa.org.

Water Pollution, Stream Alteration, and Unlawful Diversion of Water	
<p>F&G § 1602 <i>Obstruct flow, change, or use material from stream; Substantial diversion of Waters of the State (WOS)</i></p>	<p>An entity may not [1a] obstruct the natural flow of, or [1b] <i>substantially</i> divert the flow of, or [1c] <i>substantially</i> change, or [1d] <i>substantially</i> use any material from the bed, channel, or bank of [2] any river, <i>stream</i>, or lake, [3] without first notifying the Department of Fish and Game pursuant to Fish and Game Code section 1602(a)(1).</p> <p>[1] <i>Substantially</i> is not defined, but is more than a little. Would a jury in the jurisdiction call it “substantial?” Evidence of substantiality may include ecological effects of action. For diversion, aggregate water taken is not considered; rather, it is what portion of the flow during the act of diversion is taken: 5% is clearly not substantial; 10% is a maybe; 90% is a sure-win. Consider whether a jury would likely agree with your contention of substantiality before proceeding with this section.</p> <p>[2] A <i>stream</i> is a “body of water that flows at least periodically or intermittently through a bed or a channel having banks and supports fish or other aquatic life.” (14 Cal. Code Regs. § 1.72.) “A continuous flow of water is not necessary to constitute a stream.” (<i>Mogle v. Moore</i> (1940) 16 Cal.2d 1, 9.)</p> <p>In addition, an entity may not [1] deposit or dispose of [2] debris, waste, or other material containing crumbled, flaked, or ground pavement [3] where it may pass into any river, stream, or lake, [4] without first notifying the Department of Fish and Game pursuant to Fish and Game Code section 1602(a)(1).</p>
<p>F&G § 5650(a)(1) <i>Petroleum in WOS</i></p>	<p>It is unlawful to [1a] deposit in, [1b] permit to pass into, or [1c] place where it can pass into the [2] <i>waters of the state</i> [3] any petroleum, acid, ... tar, ... asphalt, ... carbonaceous ... substance, or residuary product of petroleum.</p> <p>[2] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)</p>
<p>F&G § 5650(a)(6) <i>Substance or material deleterious to fish, plant life, mammals, or bird life in WOS</i></p>	<p>It is unlawful to [1a] deposit in, [1b] permit to pass into, or [1c] place where it can pass into the [2] <i>waters of the state</i> [3] any substance or material [4] <i>deleterious to fish, plant life, mammals, or bird life</i>.</p> <p>[2] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)</p> <p>[4] <i>Deleterious to fish, plant life, mammals, or bird life</i>: can the substance harm fish, birds, mammals, and aquatic bugs?</p> <p><u>Note</u>: Can include soil placed into a stream, or soil spoils piled where they could pass into a stream during a storm event. Loose soil can cause turbid (cloudy) water that harms fish, kills their prey, and decreases successful reproduction.</p> <p><u>Note</u>: Authorities on-site should contact DFG to have wardens and/or biologists conduct a site visit and collect evidence.</p>

<p>F&G § 5652(a) <i>Disposal of trash within 150 ft. of high water mark of WOS</i></p>	<p>It is unlawful to [1a] deposit in, [1b] permit to pass into, or [1c] place where it can pass into the [2] <i>waters of this state</i> OR to [3a] abandon, [3b] dispose of, or [3c] throw away, [4] <i>within 150 feet of the high water mark of waters of the state</i>, [5] any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.</p> <p>[2] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)</p> <p>[4] <i>Within 150 feet of the high water mark of the waters of the state</i> usually means from the stream bank or high tide mark.</p> <p>Note: Must prove either [1]+[2]+[5] or [3]+[4]+[5], or both.</p>
<p>Pen. C. § 374.7 <i>Littering or dumping into or within 150 ft. of a stream</i></p>	<p>It is unlawful to [1a] <i>litter</i> or dump or cause to be littered or dumped, [2] <i>waste matter</i> [3] into a bay, lagoon, channel, river, creek, slough, canal, lake, or reservoir, or other stream or body of water, or upon a bank, beach, or shore within 150 feet of the high water mark of a stream or body of water.</p> <p>[1a] <i>Littering</i> means the willful or negligent throwing, dropping, placing, depositing, or sweeping, or causing any such acts, of any waste matter on land or water in other than appropriate storage containers or designated areas. (Pen. C. § 374(a).)</p> <p>[2] <i>Waste matter</i> means discarded, used, or leftover substances including, but not limited to, a lighted or non-lighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard. (Pen. C. § 374(b).)</p>
<p>Pen. C. § 374.8(b) <i>Knowingly causing deposit of a hazardous substance on the land of another or in a WOS</i></p> <p><i>This is a WOBBLER</i></p>	<p>It is unlawful to [1] knowingly cause [2] any <i>hazardous substance</i> [3] to be deposited into or upon [4a] any road, street, highway, alley, or railroad right-of-way, [4b] or upon the land of another, without the permission of the owner, [4c] or into the <i>waters of this state</i>.</p> <p>[2] <i>A hazardous substance</i> is any material that:</p> <ul style="list-style-type: none"> • poses significant present/potential hazard to human health/safety or to environment if released to environment; OR • the manufacturer or producer is required to prepare a MSDS (Material Safety Data Sheet—required for many industrial chemicals. Contact County Environmental Health Officer to determine MSDS status.); OR • is listed in the “Hazardous Substances List” at http://www.dir.ca.gov/title8/339.html See Labor Code §§ 6382 and 6360 and California Code of Regulations title 8, section 339; OR • the administering agency or a handler has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment; OR • is described as a radioactive material. <p>[4] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)</p> <p>Note: Does not apply if deposit occurred as a result of an emergency that the person promptly reported to the appropriate regulatory authority. Prosecutors might also consider charging WC § 13261(c) for a violation of section 13260, which is set forth below. If theory of hazardous substance is the first-listed one, will require expert testimony. If MSDS req'd or on Haz. Substances list, it's much easier.</p>
<p>Water C. § 13260(a)(1) <i>Discharge of waste without a permit where it could affect</i></p>	<p>It is unlawful to [1] discharge or propose to discharge <i>waste</i> [2] that <i>could affect the quality</i> of [3] <i>waters of the state</i>, [4] without a Waste Discharge Permit from the applicable Regional Water Quality Control Board.</p> <p>[1] <i>Waste</i> includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including</p>

<p>WOS</p> <p>Note: DA should ensure that discharge type not waived by Water Board per section 13269</p>	<p>waste placed within containers of whatever nature prior to, and for purposes of, disposal. (Water C. § 13050(d).)</p> <p>[3] <i>Could affect the water quality:</i> Will depend on the waste being discharged, and the receiving water of the state. Contact Regional Board staff to determine what is restricted; it may depend on Clean Water Act section 303(d) lists for the water body. Accordingly, minor episodes of pollution may not be a good fit for this statute; chronic harmful pollution is likely a good fit.</p> <p>[4] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)</p>
<p>Water C. § 13272</p> <p>Discharge of ≥ barrel* of oil or petroleum into WOS without notifying CalEMA</p> <p>\$500-5,000/1 yr. max.</p>	<p>It is unlawful to [1a] cause or [1b] permit [2] more than 42 gallons* of any oil or petroleum product [3a] to be discharged into any <i>waters of the state</i>, or [3b] to be discharged or deposited where it is, or probably will be, discharged into any <i>waters of the state</i>, [4] without notifying the California Emergency Management Agency (CalEMA) OR the appropriate regional water board per WC 13267 or 13383 [5] as soon as is possible, once the person has knowledge of the discharge and such notification can be provided without substantially impeding cleanup or other emergency measures.</p> <p>[3] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e).)</p> <p>Note: Does not apply to discharges to land unless pollutant would have gone into water but-for cleanup by government.</p> <p>Note: May be less than 42 gallons if regional board adopts a more stringent standard for that water body. (Water C. § 13272(f).)</p>
<p>Water C. § 13387</p> <p>Discharge of pollutants into navigable waters without filing a report with the Regional Board; Violates a Regional State Board Order; Discharge of pollutants to Navigable Waters without a permit</p> <p>WOBBLER depending on intent of violator: Knowing is a felony, and Negligent is a misdemeanor, unless there is a prior.</p>	<p>It is unlawful to [1a] <i>knowingly</i> or [1b] <i>negligently</i> [2a] violate <i>Water Code section 13376</i> (Report of Waste Discharges), [2b] violate any <i>Water Board order</i>, or [2c] violate any requirement of <i>section 301 of the Clean Water Act</i>. Note: other violations are not set forth here.</p> <p>[1a] <i>Knowingly</i> does not require knowledge that the pollutant they are discharging is listed, only knowledge that they are making a discharge to a <i>navigable water</i> (no mistake of law defense based on lack of knowledge of the listed pollutants).</p> <p>[1b] <i>Negligently</i> means a failure to take due and reasonable care to prevent discharge of pollutants.</p> <p>[2a] <i>Section 13376</i> prohibits discharges of [2a1] <i>pollutants</i> into [2a2] <i>navigable waters</i> [2a3] without filing a <i>report of waste discharge</i> in compliance with <i>Water Code section 13260</i>. Common pollutants associated with agriculture are in bold below:</p> <p>[2a1] <i>Pollutants:</i> dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. (33 U.S.C. § 1362(6).)</p> <p>[2a2] <i>Navigable waters:</i> generally, this includes navigable-in-fact rivers and streams (can a kayak go down it?), their tributaries and wetlands that are connected to them above-ground, and wetlands that alone or as a group have a significant effect on the physical, chemical, and biological properties of the water bodies such wetlands flow into. (See, e.g., <i>Rapanos v. U.S.</i>, 547 U.S. 715 (2006) and <i>Northern Calif. River Watch v. City of Healdsburg</i>, 496 F.3d 993 (9th Cir 2007).)</p> <p>[2a3] <i>Report:</i> report by the polluter to Regional Board, in compliance with <i>Water Code section 13260</i>.</p> <p>[2b] <i>Order:</i> an order issued by a regional board, including a Basin Plan establishing Total Maximum Daily Loads (TMDLs) for certain pollutants. Prohibition can include non-point source discharges of certain pollutants if TMDL in place. Contact regional board staff to determine if Order exists for the affected navigable water, and how such an order applies to the facts at hand.</p> <p>[2c] <i>Sec. 301 of CWA (33 U.S.C. § 1311):</i> prohibits [2c1] <i>discharge of pollutants to navigable waters</i> from a [2c2] <i>point source</i>.</p> <p>[2c1] <i>Discharge of pollutants:</i> addition of any <i>pollutant to navigable waters from any point source</i>. See list of <i>pollutants</i> in section [2a1] above, as well as definition of <i>navigable waters</i> that fall under ambit of this law. (33 U.S.C. § 1362(12).)</p> <p>[2c2] <i>Point source:</i> any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, etc. The term does <i>not</i> include return flows from irrigated agriculture. (33 U.S.C. § 1362(14).) Discharges from heavy equipment such as excavators and tractors are, however, considered discharges from point sources pursuant to case law.</p>

Illegal Use of Pesticides or Fertilizers **Consider calling local Agricultural Commissioner, Dept. of Pesticide Regulations, and/or CalEMA**	
Division 6: Container Violations: Misdemeanor and civil penalties prescribed by Food and Agriculture Code sections 11891 and 11893 respectively.	
3 Cal. Code Regs. § 6670 <i>Storage of pesticides where they cause a hazard to people, wildlife, or property</i>	<p>[1] Pesticides, emptied containers or parts thereof, or equipment that holds or has held a pesticide, shall not be [2]stored, handled, emptied, disposed of, or left unattended [3] in such a manner or at any place where they may present a hazard to persons, animals (including bees), food, feed, crops or property.</p> <p>Note: Agricultural Commissioner can take possession of offending pesticides and containers to abate a hazard (as defined above).</p>
3 Cal. Code Regs. § 6672(b) <i>Pesticides must be stored in a locked area</i>	<p>It is unlawful for [1] containers that hold or have held a pesticide [2] that are not under the personal control of the person who controls the use of the property on which the container is found [3] to be stored other than in a locked enclosure.</p> <p><u>Note:</u> If the container is 55 gallons or more, it is sufficient if the container itself is locked; it need not be put into an enclosure.</p>
3 Cal. Code Regs. § 6674 <i>Warning signs for storage area</i>	<p>If a [1] storage area [2] contains containers that hold or have held <i>pesticides that must be labeled with the signal words “warning” or “danger,”</i> [3] a sign visible for 25 feet therefrom must be posted [4] which reads: “DANGER. POISON STORAGE AREA. ALL UNAUTHORIZED PERSONS KEEP OUT. KEEP DOOR LOCKED WHEN NOT IN USE.”</p> <p>[2] Read pesticide container or see Appendix B for list of pesticides that must be labeled with the words “warning” or “danger.”</p>
3 Code Cal. Regs. § 6680 <i>Pesticides in a food or household product container forbidden</i>	<p>In no case shall a pesticide be placed or kept in any container of a type commonly used for food, drink, or household products.</p>
Division 7: Pesticide Use Violations: Misdemeanor and civil penalties prescribed by Food and Agriculture Code sections 12996 and 12998 respectively.	
**See Appendix B for Matrix of Certain Pesticides and Laws Implicated **	
3 Cal. Code Regs. § 6416 <i>Permit needed for application of RUP in Groundwater Protection Area</i>	<p>It is unlawful to [1a] possess OR [1b] use [2] without a permit [3] a pesticide containing a chemical in California Code of Regulations, title 3, section 6800 when the pesticide is [4] applied in agricultural, outdoor institutional, or outdoor industrial use [5] within a <i>runoff ground water protection area or ground water leaching protection area.</i></p> <p>[2] Section 6800 contains most restricted use products (RUP) as well as Malathion and Carbaryl. See Appendix A for list.</p> <p>[5] <i>Ground water protection area/ground water leaching protection area:</i> Consult local regional board to determine status.</p> <p>Note: Must prove elements [2]-[5] and either [1a] or [1b]. Mere possession without evidence of use would make for a weak case.</p>
3 Cal. Code Regs. § 6609 <i>Mixing, loading, storage of pesticides w/in 100 ft. of well</i>	<p>It is unlawful to, within 100 feet of a well: mix, load, or store pesticides, rinse spraying equipment, and maintain spraying equipment.</p> <p>Note: If well is situated and/or engineered such that irrigation and rain water will not contact or collect around the wellhead or any part of its foundation, this provision does not apply.</p>

<p>3 Cal. Code Regs. § 6614 <i>Protection of persons, animals, and property from pesticides</i></p>	<p>It is unlawful to [1] apply pesticide when: [2a] there is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process; [2b] there is a reasonable possibility of damage to non-target crops, animals or other public or private property; or [2c] there is a reasonable possibility of contamination of non-target public or private property, including the creation of a <i>health hazard</i>, preventing normal use of such property. [2c] In determining a <i>health hazard</i>, consider amount and toxicity of the pesticide, type and uses of the property, etc.</p>
<p>3 Cal. Code Regs. § 6616 <i>Apply Pesticide to Property w/o Permission.</i></p>	<p>It is unlawful to [1] directly discharge [2] a pesticide [3] onto a property [4] without the consent of the owner or operator of the property.</p>
<p>Food & Ag. § 12972 <i>Use of pesticide must prevent drift</i></p>	<p>It is unlawful to [1] use pesticides in such a manner [2] that allows <i>substantial drift</i> to non-target areas. [2] <i>Substantial drift</i> means the quantity of pesticide outside of the area treated is greater than that which would have resulted had the applicator used due care. (3 Cal. Code Regs. § 6000.)</p>
<p>Food & Ag. § 12973 <i>Use of pesticide in conflict with label</i></p>	<p>The use of any pesticide [1] shall not conflict with [2a] labeling registered pursuant to this chapter which is delivered with the pesticide or [2b] with any additional limitations applicable to the conditions of any permit issued by the director or commissioner. [2a] Registration status can be retrieved at http://www.cdpr.ca.gov/docs/label/prodnam.htm. Read labels for allowable uses.</p>
<p>Food & Ag. § 12995 <i>Possession of unregistered pesticide</i></p>	<p>It is unlawful for [1] any person, acting alone or through another, [2] to possess or use any pesticide [3] that is either not registered pursuant to this chapter, or for which registration has been suspended. [3] All pesticides are registered by the Department of Pesticide Regulations. Registration status can be retrieved at http://www.cdpr.ca.gov/docs/label/prodnam.htm. Note: Contact Agricultural Commissioner to see if an exception by regulation or notice of suspension or cancelation applies to pesticide.</p>
<p>Food & Ag. § 14011 <i>Catch-all provision</i></p>	<p>It is unlawful for [1] any person [2] to apply [3] any restricted material for which regulations have been adopted [4] except as provided in the regulations which are adopted by the director.</p>
<p>Food & Ag. § 14015 <i>Possession of restricted pesticide only by certified private applicator or commercial applicator</i></p>	<p>It is unlawful to [1a] use or [1b] possess [2] a <i>restricted material</i> unless it is [3a] under the direct supervision of a <i>certified private applicator</i>, or a [3b] <i>certified commercial applicator</i>. [1a] Use means pre-application activities, application of pesticide, and post-application activities such as transportation, cleaning, and control and management of the application area. (3 Code Cal. Regs. § 6000.) [2] <i>Restricted material</i>: See Appendix A and http://www.epa.gov/opprd001/rup/rupdec02.htm. (3 Code Cal. Regs. § 6400.) [3a] <i>Certified private applicator</i> means a private applicator holding a valid private applicator certificate issued by the Agricultural Commissioner (or the state director in any county where there is no commissioner). (3 Code Cal. Regs. § 6000.) [3b] <i>Certified commercial applicator</i>: Person holding a valid license, pest control aircraft pilot’s certificate, or applicator certificate issued by state Department of Pesticide Regulation director; technical certificate issued by vector control; or structural pest control operator/field representative license issued by Structural Pest Control Board. (3 Cal. Code Regs. § 6000.) Note: Contact county Agriculture Commissioner to determine if state regulation excepts the pesticide at issue.</p>

	Note: Food and Agriculture Code sections 14006.5 and 14090 are similar to section 14015, but the latter is likely the better statute to use. It is not recommended to charge additional statutes based on the same act, as it is likely to engender confusion and will not likely result in more punishment due to Penal Code section 654's likely application.
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Poaching For penalties, see Fish and Game Code sections 12000 et. seq.	
F&G § 2000 <i>Take of any bird, mammal, fish, or reptile except in accordance with law</i>	It is unlawful to [1] <i>take</i> [2] any bird, mammal, fish, reptile, or amphibian [3] except as provided by law. [1] <i>Take</i> means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) Note: Possession of a bird, mammal, fish, or reptile or parts thereof in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment is prima facie evidence the possessor took the bird, mammal, fish or reptile. Note: This statute is appropriately charged as a companion to more specific game violations, similar to Fish and Game Code section 2002, set forth below.
F&G § 2001(a) <i>Take outside of season</i>	It is unlawful to [1] <i>take</i> [2] mammals, birds, fish, reptiles, and amphibians [3] outside of established seasons. [1] <i>Take</i> means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [3] Seasons vary by species. For example, <i>see</i> California Code of Regulations, title 14, section 360 for deer (a portion of August-December, depending on location), and section 365 for bear (similar season to deer). Contact Game Warden for more info.
F&G § 2001(a) <i>Exceeding bag limits; exceeding possession limits</i>	It is unlawful to [1] exceed any [2] <i>bag limit</i> . [2] <i>Bag limits</i> means the maximum limit, in number or amount, of birds, mammals, fish, reptiles, or amphibians that may be lawfully <i>taken</i> during a specific period of time. (F&G § 18.) Bag limits vary by county and species; document in field if unable to ascertain limit while in field. <i>See</i> California Code of Regulations title 14, section 360 for deer; a person may only take one bear per year. (14 Cal. Code Regs. § 365(c).) It is unlawful to [1] exceed any [2] <i>possession limit</i> established in this code or by regulations. [2] <i>Possession limits</i> : the maximum number or amount of birds, mammals, fish, reptiles, or amphibians that may be lawfully possessed by one person. (F&G § 19.) Thus, possession limit will always equal or exceed the bag limit for a particular species. Note: F&G § 2001 states that either this section “or” a more animal-specific bag/possession limit statute may be charged.
F&G § 2002 <i>Possession of birds, mammals, etc. in violation of law</i> <i>See also F&G § 3801.6</i>	It is unlawful to [1] <i>possess</i> [2a] any bird, mammal, fish, reptile, or amphibian, or [2b] parts thereof, [3] <i>taken</i> in violation of any of the provisions of this code, or of any regulation made under it. [1] Possession can be constructive. Analogize to a group of guys sitting around a pile of cocaine. [3] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) Note: As with F&G § 2000, this statute is likely to be charged along with a violation regarding manner/timing of take of animal.
F&G § 2007 <i>Trap guns prohibited</i>	It is unlawful to [1a] set, [1b] cause to be set, or [1c] place [2] any <i>trap gun</i> . [2] <i>Trap gun</i> : a firearm loaded with other than blank cartridges and connected with a string or other contrivance contact with which will cause the firearm to be discharged. (F&G § 2007.)

<p>F&G § 2080 <i>Violation of California Endangered Species Act (ESA)</i></p>	<p>No person shall [1a] import into this state, [1b] export out of this state, or [1c] <i>take</i>, [1d] possess, [1e] purchase, or [1f] sell within this state, [2a] any endangered or threatened species, or [2b] any part or product thereof. [1c] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [2] Endangered plants and animals are listed in California Code of Regulations title 14, sections 670.2 and § 670.5, respectively. Federal and State classified endangered and threatened animals can also be found at http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf Note: Exceptions are detailed in the Native Plant Protection Act (NPPA) (F&G §§ 1900 et seq.) and the California Desert Native Plants Act (CDNPA) (F&A §§ 80001 et seq.). In addition, takes with federal Incidental Take Permits do not fall within ambit of this law. Note: Act may also be a violation of federal ESA. (See 16 U.S.C. § 1538(a).) That crime must be prosecuted in federal court.</p>
<p>F&G § 3513 <i>Taking birds specially protected under Migratory Bird Treaty Act</i></p>	<p>It is unlawful to [1a] <i>take</i> or [1b] possess [2a] any migratory <i>non-game bird</i> as designated in the <i>Migratory Bird Treaty Act</i> or [2b] any part of such migratory <i>non-game bird</i> [3] except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the <i>Migratory Bird Treaty Act</i> (MBTA). [1a] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [2] <i>Non-game bird</i>. Fish and Game Code section 3500 lists all game birds; if a species is on the list it does not fall under the ambit of this statute and is regulated elsewhere in the Fish and Game Code as a game bird. Common game birds include quail, pheasants, grouse, turkeys, ducks, coots, pigeons, and doves. See Appendix D for a list of game birds. [2] Migratory Birds under the MBTA are listed at http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtandx.html [3] Exceptions to MBTA include European starlings, common pigeon (rock dove), and other non-native species.</p>
<p>F&G § 3800 <i>Take of non-game bird</i></p>	<p>It is unlawful to [1] take [2] any non-game bird [3] unless excepted by the Fish and Game Code or regulations promulgated thereto. [1] & [2]: see above. [3] Exceptions include English sparrows, starlings, and if crops or property is injured. F&G §§ 3800-3806.</p>
<p>FGC § 4304 <i>Waste of Game Animal</i></p>	<p>It is unlawful to [1] leave to go needlessly to waste [2] any <i>game mammal</i> or <i>game bird</i>, or any portion of the flesh usually eaten by humans. [2] Game birds are listed in F&G § 3500; game mammals are listed in F&G § 3950. See Appendix D for a list of these species. Note: This law does not apply to takes of black-tailed jackrabbits, muskrats, non-native red foxes, and red fox squirrels that are found injuring crops or other personal property.</p>
<p>F&G § 4330 <i>Taking deer w/o tag</i></p> <p>F&G § 4336(a) <i>Proper use of deer tag; reporting of take</i></p>	<p>It is unlawful to [1] <i>take</i> [2] any deer [3] without <i>first procuring a deer tag or permit</i> authorizing the <i>taking</i> of that deer. [1] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.) [3] See Code of California Regulations title 14, section 360 for deer tag regulations. Varies depending on location. Upon the killing of any deer, the hunter must immediately do all of the following to be in compliance with law:</p> <ul style="list-style-type: none"> • Legibly fill out tag completely in permanent ink; • Cut out or punch out notches for month/date of kill; • Attach tag to antlers of antlered deer or ear if not antlered; • Keep tag on deer until 15 days after season closes; • Get the tag countersigned by a valid party as soon as possible before further transport (F&G § 4341); and

<p>F&G § 4336(b) <i>Possession of untagged deer</i></p>	<ul style="list-style-type: none"> • Notify Department of Fish and Game of take. <p>Note: See Appendix D for Deer Zone Map.</p> <p>It is unlawful to [1] possess [2] any untagged deer.</p> <p>Note: Section 4336 can be charged through section 12000(a), which makes all violations of the code/regulations a misdemeanor.</p>
<p>F&G § 4750 <i>Unlawful to use jaw trap on bears</i></p>	<p>It is unlawful to [1] <i>take</i> [2] a bear [3] by using iron or steel-jawed or other types of metal-jawed traps.</p> <p>[1] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.)</p>
<p>F&G § 4750 <i>Taking bear w/o tag</i></p> <p>F&G § 4753 <i>Proper use of bear tag; reporting of take</i></p> <p>F&G § 4753 <i>Possession of untagged bear</i></p>	<p>It is unlawful to [1] <i>take</i> [2] any bear with [3] firearm, trap, or bow and arrow [4] without first procuring a tag authorizing the <i>taking</i> of that bear in accordance with this chapter.</p> <p>[1] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.)</p> <p>[4] See California Code of Regulations title 14, section 365 for bear-tag and other bear hunting restrictions.</p> <p>Upon the killing of any bear, the hunter must immediately do <u>all</u> of the following to be in compliance with law:</p> <ul style="list-style-type: none"> • Legibly fill out tag completely in permanent ink; • Cut out or punch out notches for month/date of kill; • Attach tag to ear of bear; • Keep tag on bear until 15 days after season closes; • Get the tag countersigned by a valid party as soon as possible before further transport (F&G § 4755); and • Notify Department of Fish and Game of take. <p>Note: Section 4753 can be charged through section 12000(a), which makes all violations of the code/regulations a misdemeanor.</p> <p>It is unlawful to [1] possess [2] any untagged bear.</p>
<p>F&G § 4800(b) <i>Taking mountain lion w/o depredation permit or direct threat to person or livestock</i></p>	<p>It is unlawful to [1a] <i>take</i>, [1b] injure, [1c] possess, [1d] <i>transport</i>, [1e] import, or [1f] sell [2a] any mountain lion or [2b] any part or product thereof, [3] except as specifically provided in this chapter.</p> <p>[1a] <i>Take</i> means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. (F&G § 86.)</p> <p>[1d] <i>Transport</i> includes offer or receive for transportation.</p> <p>[3] Self-defense, defense of livestock being attacked, or take with depredation permit are common exceptions to the law.</p>

Air Quality Violations	
<p>H&S § 41800 <i>Prohibited outdoor fires</i></p>	<p>No person shall [1] use [2] open outdoor fires [3a] for the purpose of disposal or burning of petroleum wastes, demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste, [3b] or for metal salvage or burning of motor vehicles. Note: Health and Safety Code sections 41802 and 41804 exempt certain activities in a residential context, including residential brush burning. Consult local air board staff to determine if a specific outdoor disposal fire is permitted, as rules are air-basin specific.</p>
<p>H&S § 42400(a) <i>Unlawful acts regarding air pollution – general prohibition statute</i></p>	<p>It is unlawful for [1] a person [2a] to violate a rule, [2b] to violate a regulation, [2c] to violate a permit, or [2d] to violate an order [3] issued by the local or state air board pursuant to Health and Safety Code sections 39000-42708, inclusive. [3] Includes nearly all air-pollution-related laws/rules/regulations that do not concern vehicles. Note: Civil and criminal proceedings are mutually exclusive per Health and Safety Code section 42400.7. Note: Penalties are increased for more culpable conduct and state of mind and can get very high. (See H&S § 42400-42410.) Note: Each day of violation is a separate offense. (H&S § 42400(e).)</p>

Forestry Violations	
<p>Pub. Res. C. § 4571(a) <i>Timber operations for commercial purposes [land conversion] without a permit</i></p>	<p>No person shall [1] engage in <i>timber operations</i> [2] until that person has obtained a license from CalFIRE. [1] <i>Timber operations</i> means the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from [a] <i>timberlands</i> for [b] a <i>commercial purpose</i>. Such operations include “incidental work” such as road building, stream crossings, etc. (Pub. Res. C. § 4527(a).) [a] <i>Timberlands</i> are lands which are available for and capable of growing a crop of trees of a commercial species used to produce lumber and other forest products. (Pub. Res. C. § 4526.) Oak woodlands do not usually qualify as such, nor do federal lands and state experimental forests. Consider Pen. Code sections 384a and 594, below, if not a “timberland.” [b] <i>Commercial purpose</i> is not only the selling and bartering of trees, but converting timberland to another use, such as a marijuana garden. (Pub. Res. C. § 4527(a)(2).) Note: Certain activities are exempted under Public Resources Code section 4584, which are unlikely to apply at a marijuana garden. Contact CalFIRE. A commonly-used 3-acre exemption does not apply unless the landowner applied for and got the exemption. Note: Violation is a misdemeanor per Public Resources Code section 4601; civil penalties are available through section 4601.1(a).</p>
<p>Pub. Res. C. § 4581 <i>Timber operations require timber harvest plan</i></p>	<p>[1] No person shall conduct <i>timber operations</i> [2] unless a <i>timber harvesting plan</i> (THP) <i>prepared by a registered professional forester</i> [3] has been submitted for such operations to CalFIRE. [1] <i>Timber operations</i> is defined above. It is nuanced. [2] <i>Timber harvesting plan prepared by a registered professional forester</i> means a plan in conformance with Pub. Res. C. § 4582. Note: The harvesting plan requirement is separate from and in addition to the license required by Public Resources Code section 4571. Contact local CalFIRE office to see if a Timber Harvesting Plan has been submitted for a given parcel.</p>

<p>Pub. Res. C. § 4601 <i>Violations of statutes, rules, or regulations are unlawful</i></p>	<p>It is unlawful to violate any provision of the Forest Practices Act (Pub. Res. C. §§ 4511-4628) or related CalFIRE rules and regulations. Regulations likely applicable include, but are not limited to:</p> <ul style="list-style-type: none"> • 14 Cal. Code Regs. § 916.3(c)—construction of wet-ford logging roads in Class I, II, III, or IV watercourses (14 Cal. Code Regs. § 936.9), wetland protection zone (WLPZ), marshes, wet meadows, and other wet areas are forbidden, unless explained in the Timber Harvesting Plan (THP) by the Registered Professional Forester (RFP) (14 Cal. Code Regs. § 895) and permitted by the Director of CalFIRE (14 Cal. Code Regs. § 895.1); • 14 Cal. Code Regs. § 916.3(b)—Accidental depositions of soil or other debris in lakes or below the watercourse or lake transition line in waters classed I, II, and IV (14 Cal. Code Regs. § 936.9) shall be removed immediately after the deposition or as approved by the Director. • 14 Cal. Code Regs. § 916.11.1—failure to implement protection measures in Coho salmon watersheds; • 14 Cal. Code Regs. § 923.2(d)—failure to stabilize slopes of a logging road near a watercourse; and • 14 Cal. Code Regs. § 923.4(c)—failure to maintain a logging road with water breaks maintained as specified in section 914.6. <p>Note: If there is evidence of a violation of one or more of the above regulations, consider calling CalFIRE for investigation expertise.</p>
<p>Pen. Code § 384a <i>Remove/Mutilate Tree, Plant, etc. w/o Written Permission</i></p>	<p>It is unlawful to [1] willfully or negligently [2] cut, destroy, mutilate, remove, sell, or offer for sale [3] most types of <i>plant life</i> [4] growing on public or private property that's not his/her own [5] without a specific <i>written permit</i>.</p> <p>[3] <i>Plant life</i> includes: trees, shrubs, ferns, herbs, bulbs, cactuses, flowers, huckleberry greens, redwood greens, & leaf molds. [5] The <i>written permit</i> must be notarized and signed by the landowner, and must state the nature of the requested cutting/removal and a legal description of the property on which it will occur.</p> <p>Note: Statute is best used when large trees, such as oaks, are cut down and are not included as “timberland” in the above statutes. Otherwise, the ambit of this statute is almost absurdly broad, and can include many routine, everyday occurrences.</p>
<p>Pen. Code § 594 <i>Vandalism</i></p> <p><i>WOBBLER if damage exceeds \$400</i></p>	<p>It is unlawful to [1] <i>maliciously</i> [2] damage or destroy [3] real or personal property not owned by the person.</p> <p>[1] Maliciously means only that the person intend to do a wrongful act.</p> <p>Note: Consider using this statute when trees are felled for garden but it is not “timberland” under Forest Practices Act, e.g., oak trees. Note: Court may require repair or replanting as a condition of probation or as restitution to victim.</p>

Littering/Illegal Disposal	
<p>Pen. Code § 374.3(a) <i>Illegal dumping</i></p> <p>INFRACTION</p>	<p>It is unlawful to [1a] dump or [1b] cause to be dumped [2] <i>waste matter</i> [3a] in or upon a public or private highway or road, including any portion of the right-of-way thereof, or [3b] in or upon private property into or upon which the public is admitted by easement or license, or [3c] upon private property without the consent of the owner, or [3d] in or upon a public park or other public property other than <i>property designated or set aside for that purpose</i> by the governing board or body having charge of that property.</p> <p>[2] <i>Waste matter</i> means discarded, used, or leftover substances, including, but not limited to, a lighted or non-lighted cigarette, cigar, match, or any flaming or glowing material; or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard (Pen. Code § 374(b)). Boldfaced forms of solid waste are most likely found on cannabis grow sites.</p> <p>[3c] For example, a city or county dump.</p> <p>Note: Each day the waste remains placed, deposited, or dumped is a separate violation. (Pen. Code § 374.3(c).) Note: The court may require the defendant to clean the site or pay for such cleanup as a probation condition. (Pen. Code § 374.3(f).)</p>
<p>Pen. Code § 374.3(h)(1) <i>Disposal of waste matter in commercial quantities (>1 yd³)</i></p>	<p>It is unlawful for [1] a person to [2a] place, deposit, or dump, or [2b] cause to be placed, deposited, or dumped, [3] <i>waste matter</i> [4] <i>in violation of this section</i> [5] <i>in commercial quantities</i>.</p> <p>[1] <i>Person</i> means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation. (Pen. Code § 374(i).)</p> <p>[3] <i>Waste matter</i> is defined above, under Pen. Code section § 374.3(a).</p> <p>[4] The prohibited act must occur on certain property, as set forth in Elements [3a-3d] of Penal Code section 374.3(a), above.</p> <p>[5] <i>Commercial quantities</i> means an amount equal to or in excess of one cubic yard (27 cubic feet), OR an amount of waste matter generated in the course of a trade, business, profession, or occupation. (Pen. Code § 374(h)(2).)</p> <p>Note: This subdivision does not apply to the dumping of household waste at a person’s residence.</p>
<p>Pen. Code § 374.8(b) <i>Knowingly causing deposit of a hazardous substance on the land of another or in a WOS</i></p> <p><i>This is a WOBBLER</i></p>	<p>It is unlawful to [1] knowingly cause [2] any <i>hazardous substance</i> [3] to be deposited into or upon [4a] any road, street, highway, alley, or railroad right-of-way, [4b] or upon the land of another, without the permission of the owner, [4c] or into the <i>waters of this state</i>.</p> <p>[2] A <i>hazardous substance</i> is any material that:</p> <ul style="list-style-type: none"> • poses significant present/potential hazard to human health/safety or to environment if released to environment; OR • the manufacturer or producer is required to prepare a MSDS (Material Safety Data Sheet—required for many industrial chemicals. Contact County Environmental Health Officer to determine MSDS status.); OR • is listed in the “Hazardous Substances List” at http://www.dir.ca.gov/title8/339.html See Labor Code §§ 6382 and 6360 and California Code of Regulations title 8, section 339; OR • the administering agency or a handler has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment; OR • is described as a radioactive material. <p>[4] <i>Waters of the state</i> means any surface water or groundwater, including saline waters, w/in California. (Water C. § 13050(e))</p> <p>Note: Does not apply if deposit occurred as a result of an emergency that the person promptly reported to the appropriate regulatory authority. Prosecutors might also consider charging WC § 13261(c) for a violation of section 13260, which is set forth below. If theory of hazardous substance is the first-listed one, will require expert testimony. If MSDS req’d or on Haz. Substances list, it’s much easier.</p>

<p>H&S § 117555 <i>Depositing sewage/ septic tank effluent/ solid waste</i></p>	<p>It is unlawful to [1a] place, deposit, or dump, or cause to be placed, deposited, or dumped, or [1b] cause or allow to overflow, [2] sewage, sludge, cesspool or septic tank effluent, accumulation of human excreta, or solid waste, [3a] in or upon a street, alley, public highway, or road in common use or [3b] upon a public park or other public property other than property designated or set aside for that purpose, or upon private property without the owner's consent.</p> <p>Note: Depositions on private property with permission are allowed under the statute so long as it does not create a public health, safety, or fire hazard, or a nuisance as determined by the local enforcement agency.</p>
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Nuisance (See <i>People v. McDonald</i> (2006) 137 Cal.App.4th 521.)	
<p>Pen. C. §§ 370, 372 <i>Public Nuisance</i></p>	<p>Anything which is [1a] injurious to health, or [1b] is indecent, or [1c] offensive to the senses, [2] so as to interfere with the comfortable enjoyment of life or property by [3] an entire community or neighborhood, or by any considerable number of persons, is a public nuisance. In addition, an obstruction to the free use of or passage through lakes, rivers, bays, streams, canals, basins, public parks, public squares, or highways may be considered a nuisance as defined in Penal Code section 370.</p> <p>[2] Result of the act must interfere with comfortable enjoyment of life/property, but interference need not be substantial; and [3] A “considerable amount of persons” must be affected, but they need not be affected directly.</p>

Hazardous Waste Disposal	
<p>H&S § 25189.5(b) <i>Unlawful disposal of hazardous waste</i></p> <p><i>This is a WOBBLER</i></p>	<p>It is unlawful to [1a] <i>knowingly dispose</i> of or [1b] <i>knowingly cause the disposal</i> of or [1c] <i>dispose</i> or cause <i>disposal</i> when one should have reasonably known they were <i>disposing</i> or causing <i>disposal</i> of [2] any <i>hazardous waste</i> at [3] an unauthorized point or a facility which does not have a permit.</p> <p>[1] <i>Knowingly</i> only requires that the actor had knowledge of the facts, not the law. Circumstantial evidence of knowledge may exist when, for example, a labeled pesticide container is abandoned and left in the open: the actor knows both that he abandoned it, and he knows what the substance is. (See <i>People v. Taylor</i> (1992) 7 Cal.App.4th 677.)</p> <p>[1] <i>Disposal</i> means discharge, deposit, injection, dumping, spilling, leaking, or placing hazardous waste onto land or water so it may enter the environment, such as air or water; or abandonment of hazardous waste. (22 Cal. Code Regs. § 66260.10.)</p> <p>[2] <i>Hazardous waste</i> must both be (a) waste, and (b) hazardous.</p> <p>(a) <i>Waste</i> is any material which has been discarded. (H&S § 25124 and 22 Cal. Code Regs § 66261.2.) This means, among other things, that the waste was relinquished, disposed of, or burned/incinerated.</p> <p>(b) <i>Hazardous</i> means that the waste exhibits the properties of toxicity, carcinogenicity, ignitibility, or reactivity. A list of such substances is attached as Appendix C and can be found at California Code of Regulations title 22, section 66261.126, Appendix X. Weed killer, un-rinsed pesticide containers, pesticides, and insecticide are among those substances listed as “hazardous.”</p>

<p>H&S § 25190 <i>Misdemeanor Provision</i></p>	<p>It is unlawful to violate any provision of the Hazardous Waste Control Law (H&S §§ 25100-25258.2) or any regulations or rules promulgated under that law.</p> <p><u>Note</u> for Prosecutors: Defendant must use a plea form; offense is priorable.</p>
<p>Pen. C. § 374.8(b) <i>Knowingly causing deposit of a hazardous substance on the land of another or in a WOS</i></p>	<p>Discussion of this crime is set forth in the Water Pollution section of this document, page 2.</p> <p><i>This is a WOBBLER</i></p>

Possible County Code Violations Please contact local agencies for details regarding the respective county ordinances they enforce.	
<i>Illegal grading</i>	<p>Often an infraction, but may be a misdemeanor or include civil penalties in some jurisdictions. Usually only triggered when grading is in excess of one acre, or past a certain depth. Can include grow sites or roads to them.</p>
<i>Illegal sewage disposal</i>	<p>Dwellings must provide for proper sewage disposal. Camps associated with grow-ops likely violate these provisions. See also Health and Safety Code section 117555, as set forth in the littering section above.</p>
<i>Must inhabit only proper structures</i>	<p>Long-term camps, live-in travel-trailers, and other similar structures may violate county codes. Dwellings must be up to county building, fire, and other codes.</p>
<i>Illegal wells</i>	<p>Wells must be permitted by the local county Department of Environmental Health.</p>
<i>Erosion controls</i>	<p>Some counties require installation of erosion control devices such as straw wattles and grass seedling when grading is done. <u>Note</u> that Regional Water Quality Control Boards' respective Basin Plans may also have restrictions of this sort having to do with required erosion control measures, and violations thereof may constitute violations of Water Code section 13387(a)(3), which is set forth above.</p>
<i>Storage of garbage</i>	<p>County codes usually prohibit the "storage" of garbage and other materials out in the open, on the ground. The landowner, rather than the person storing the items, may be liable.</p>

APPENDIX A

RESTRICTED PESTICIDES

Boldfaced chemicals are most likely to be found at a cannabis garden.

See also Appendix B for a matrix that lists restricted pesticides commonly found on grow operations.

This list is not fully-inclusive; see 3 Cal. Code Regs. § 6400 for the full authority.

1. First, the U.S. E.P.A. has developed the following extensive list of Restricted Pesticides: <http://www.epa.gov/opprd001/rup/rupdec02.htm>

2. Second, in California, pesticides with the following chemicals are also considered Restricted Pesticides:

Note: When an asterisk (*) appears after a chemical, there are exceptions that must be reviewed. See 3 Cal. Code Regs. § 6400(e).

Acrolein*	Endosulfan (Thiodan)*	Parathion-methyl
Aldicarb (Temik)	Ethoprop (Mocap)*	Phorate (Thimet)
Aluminum phosphide (Phostoxin)	Fenamiphos (Nemacur)	Phosphine Gas
4-Amino pyridine (Avitrol)	Lindane*	Potassium N-methyldithiocarbamate (metam-potassium)*
Azinphos-methyl (Guthion)	Magnesium Phosphide	Propanil (3,4-dichloropropionanilide)
Calcium cyanide	Metam sodium*	Sodium cyanide
Carbaryl (Sevin)*	Methamidophos (Monitor)	Sodium fluoroacetate (compound 1080)
Carbofuran (Furadan)	Methidathion (Supracide)	Sodium tetrathiocarbonate (Enzone)
Chloropicrin	Methomyl (Lannate)*	Strychnine*
3-Chloro-p-toluidine hydrochloride (Starlicide)	Methyl bromide	Sulfotepp
Dazomet (Basamid)*	2-methyl-4-chlorophenoxyacetic acid (MCPA)*	Sulfuryl Fluoride
Dicamba (Banvel)*	Methyl Iodide	Thiobencarb (Bolero)
2,4-dichlorophenoxyacetic acid (2,4-D)	Methyl isothiocyanate (MITC)*	Tribufos (DEF, Folex)
2,4-dichlorophenoxybutyric acid (2,4-DB)*	Mevinphos (Phosdrin)	Tributyltin, organotin*
2,4-dichlorophenoxypropionic acid (2,4-DP)*	Molinate (Ordram) -- unregistered	Zinc phosphide*
1,3-Dichloropropene (Telone II)	Oxydemeton-methyl (Metasystox-R)	
Disulfoton (Di-Syston)*	Paraquat (Gramoxone)	

3. Third, pesticides with the following chemicals are deemed Restricted Pesticides under 3 Cal. Code Regs. §§ 6400(d) and 6800(a):

Atrazine	Diuron, except for products with less	Prometon
Simazine	than 7% diuron that are applied to	Bentazon (Basagran)
Bromacil	foliage	Norflurazon

APPENDIX B

Matrix of Common Pesticides Found at Cannabis Gardens and Laws Thereby Implicated

Note: Prosecutors should not rely on this chart, and should independently verify each violation.

	Chemicals	California Regulatory Status	F&A 12996 Vio of F&A Div. 7 (wobbler, Fel. For intent/neg)	F&A 12998 Civil Liability Div. 7 vios	F&A 14090 Poss. restricted material, no Ap. Cert. Permit	F&A 14006.5 Unpermitted use of restricted pesticide for agricultural purpose	F&A 14015 Poss. Restricted material (listed in 3 CCR § 6400, 6800)	F&A 14011 Use restricted material in accd. w/ regs.	F&A 12973 Use conflict with label	F&A 12995 Possession Unreg. Pesticide	Environmental Hazards listed by DPR**
Substance with foreign label	"Tres Pasitos"/ (aldicarb; carbamate insecticide); EPA banned in 2010	Not Registered	x	x						x	
	"Furadan" (carbofuran);	Not Registered	x	x						x	
	"Agro-Fum 57 " (aluminum phosphide)	Not Registered	x	x							
	"Metafos", "REICO" (methamidophos)	Not Registered	x	x						x	
	"Tamaron"(methamidophos)	Not Registered	x	x						x	
	"Fosfuro de Zinc" (zinc phosphide)	Not Registered	x	x						x	
	"Bratton" (methyl parathion)	Not Registered	x	x						x	
Expired Pesticides	Methamidophos; EPA regis. cancelled by m'fer	POISON/DANGER Inactive in CA	x	x	x	x	x	x	x	x	FO, EO, DO, BO, IO, AO
	"gopher gone"	CAUTION Inactive in CA	x	x					x		HO, EO, BO, KO, AO, GO
	"M-parathion" methyl parathion (insecticide);	POISON/DANGER Inactive in CA	x	x	x	x	x	x	x	x	FO, HO, DO, BO, IO, AO, GO
Legal in US,CA Restricted Use Pesticide	"Temix" aldicarb (use still allowable for short time)	POISON/DANGER Federally Restricted, CA Restricted	x	x	x	x	x	x	x		HO, EO, DO, LO, BO, MO, AO
	Zinc Phosphide: AKA "Ratone", "Arrex", "Denkarin Grains", "Gopha-rid", "Phosuín," "Pollux, "Ridall," "Ratol," "Rodenticide AG," "Surestop gopher killer"	POISON/DANGER, CA restricted depending on product	x	x	x	x	x	x	x		HO, DO, BO, GO
	Aluminum phosphide: "Drex PH3"	POISON/DANGER CA restricted	x	x	x	x	x	x	x		FO, HO, EO, BO, IO, AO, GO

	"Sevin" insecticide granules (carbaryl)	CAUTION, CA restricted (lower [K] of carbaryl may not be restricted use)	x	x	maybe	maybe	maybe	maybe	x		FO, HO, LO, IO, AO
Legal in US, but not labeled for use on MJ cultivation*	"Bifenthrin" (pyrethroid insecticide); prohibited on nursery plants, use in irrigation systems	CAUTION	x	x					x		HO, EO, LO, IO, AO, GO
	"d-Con mice and rats" (warfarin); AKA d-Con, RAX (69); Cov-R-Tox, Kypfarin, Rodex, Tox-Hid (56) (restricted use in [K]>3%	CAUTION; may be restricted in higher concentrations	x	x	maybe, depends on [K] of pesticide	x		HO, BO, GO			
	"Spectricide: Triazicide" (gamma cyhalothrin)	CAUTION	x	x	x	x	x	x	x		FO, EO, LO, IO
	"Avid" (abamectin); legal for use on ornamental plants only	WARNING	x	x					x		FO, HO, EO, BO, IO, AO, GO
	"Floramite" (bifenazate); prohibited in irrigation systems, only labeled for use on ornamentals	CAUTION	x	x					x		FO, HO, EO, AO
	"Malathion" (malathion); organophosphate insecticide, legal and common	WARNING	x	x					x		
	"ortho volck oil spray"; common insecticide for fruit trees	CAUTION	x	x					x		HO, EO, IO, AO, GO
	"ratone"/"rotenone"; rat poison		x	x					x		
	"Ortho MAX" (various products)	CAUTION	x	x					x		
	"Bayer" multi-insect or ant	CAUTION	x	x					x		FO, EO, LO, AO
	"Orthenex"; (triforine/triforine, acephate, & Resmethrin)	DANGER	x	x					x		FO, LO, IO, AO
	"Havaheart critter ridder"	CAUTION	x	x					x		AO
	"Ortho fungicide"	CAUTION	x	x					x		HO, LO, BO, IO, MO, AO, GO

*Pesticides registered for use on hemp include Syner Pro PBO (Piperonyl Butoxide) and aluminum phosphide [RUP].

ENVIRONMENTAL HAZARD : **HO--CHILDREN/HUMANS; **EO** --FISH; **GO**--DOMESTIC ANIMALS AND/OR LIVESTOCK; **FO** --BEES; **IO**--DRIFT (AVOID); **DO**--BIRDS; **LO**--AQUATIC ORGANISMS; **BO**--WILDLIFE; **MO**--GROUND WATER; **AO**--WATER (DO NOT APPLY DIRECTLY TO WATER)

APPENDIX C

Statutory Hazardous Wastes – Listed by Common Name

Boldfaced chemicals are most likely to be found at a cannabis garden.

22 Cal. Code Regs. § 66261.126, Appendix X(b) (2012)

§ 66261.126. Management of Special Wastes

(b) This subdivision sets forth a list of common names of wastes which are presumed to be hazardous wastes unless it is determined that the waste is not a hazardous waste pursuant to the procedures set forth in section 66262.11. The hazardous characteristics which serve as a basis for listing the common names of wastes are indicated in the list as follows:

(X) toxic, (C) corrosive, (I) ignitable and (R) reactive.

Acetylene sludge (C)	Caustic wastewater (C)	Obsolete explosives (R)	Spent (or waste) cyanide solutions (X,C)
Acid and water (C)	Cleaning solvents (I)	Oil and water (X)	Spent mixed acid (C)
Acid sludge (C)	Corrosion inhibitor (X,C)	Oil Ash (X,C)	Spent plating solution (X,C)
AFU Floc (X)	Data processing fluid (I)	Paint (or varnish) remover or stripper (I)	Spent sulfuric acid (C)
Alkaline caustic liquids (C)	Drilling fluids (X,C)	Paint thinner (X,I)	Stripping solution (X,I)
Alkaline cleaner (C)	Drilling mud (X)	Paint waste (or slops) (X,I)	Sulfonation oil (I)
Alkaline corrosive battery fluid (C)	Dyes (X)	Pickling liquor (C)	Tank bottom sediment (X)
Alkaline corrosive liquids (C)	Etching acid liquid or solvent (C,I)	Pigments (X)	Tanning sludges (X)
Asbestos waste (X)	Fly ash (X,C)	Plating waste (X,C)	Toxic chemical toilet wastes (X)
Ashes (X,C)	Fuel waste (X,I)	Printing Ink (X)	Unrinsed pesticide containers (X)
Bag house wastes (X)	Insecticides (X)	Retrograde explosives (R)	Unwanted or waste pesticides --an unusable portion of active ingredient or undiluted formulation (X)
Battery acid (C)	Laboratory waste (X,C,R,I)	Sludge acid (C)	Waste epoxides (X,I)
Beryllium waste (X)	Lime and sulfur sludge (C)	Soda ash (C)	Waste (or slop) oil (X)
Bilge water (X)	Lime and water (C)	Solvents (I)	Weed Killer (X)
Boiler cleaning waste (X,C)	Lime sludge (C)	Spent acid (C)	
Bunker Oil (X,I)	Lime wastewater (C)	Spent caustic (C)	
Catalyst (X,I,C)	Liquid cement (I)		
Caustic sludge (C)	Mine tailings (X,R)		

APPENDIX D

Deer Zone Map, Game Birds, Game Mammals

<http://www.dfg.ca.gov/wildlife/hunting/deer/cazonemap.html>



Fish and Game Code § 3500 - Game Birds

(a) Resident **game** birds are as follows:

- (1) Doves of the genus *Streptopelia*, including, but not limited to, spotted doves, ringed turtledoves, and Eurasian collared-doves.
- (2) California quail and varieties thereof.
- (3) Gambel's or desert quail.
- (4) Mountain quail and varieties thereof.
- (5) Sooty or blue grouse and varieties thereof.
- (6) Ruffed grouse.
- (7) Sage hens or sage grouse.
- (8) Hungarian partridges.
- (9) Red-legged partridges including the chukar and other varieties.
- (10) Ring-necked pheasants and varieties thereof.
- (11) Wild turkeys of the order Galliformes.

(b) Migratory **game** birds are as follows:

- (1) Ducks and geese.
- (2) Coots and gallinules.
- (3) Jacksnipe.
- (4) Western mourning doves.
- (5) White-winged doves.
- (6) Band-tailed pigeons.

Fish and Game Code § 3950 - Game Mammals

(a) **Game** mammals are: deer, elk, prong-horned antelope, wild pigs, including feral pigs and European wild boars, black and brown or cinnamon bears, mountain lions, jackrabbits and varying hares, cottontails, brush rabbits, pigmy rabbits, and tree squirrels.

(b) Nelson bighorn sheep are **game** mammals only for the purposes of sport hunting described in subdivision (b) of Section 4902.

ATTACHMENT E



THE WATER BOARD & FISH AND GAME FIELD GUIDE FOR COORDINATED ENFORCEMENT RESPONSE



State Water Resources Control Board Mission Statement

The State Board's mission is to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

State Water Board Office of Enforcement Mission Statement:

Our role is to ensure that violations of orders and permits result in firm, fair, and consistent enforcement through direct actions, the development of policies and guidance, and the identification of metrics for decision-making on enforcement issues.

Department of Fish and Game Mission Statement

The Mission of the Department of Fish and Game is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

Office of Spill Prevention and Response (OSPR) Mission Statement: *To provide best achievable protection of California's natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources.*

OSPR Law Enforcement Division Mission Statement: *To protect California's natural resources and provide public safety through effective and responsive law enforcement.*

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1. INTRODUCTION

A. PURPOSE

The Field Guide for Coordinated Water Board and Department of Fish and Game (DFG) Enforcement Response is intended to be a resource for field staff of both agencies. It is meant to generally inform and guide interagency cooperation, but is by no means a comprehensive procedures manual. The guide will be stored on the Water Board's Office of Enforcement intranet page at <http://waternet/oe> and updates will be made as needed, or at a minimum, triennially.

B. BACKGROUND

This guide was created as a result of a recommendation by participants in the Water Board/DFG pilot project conducted in Los Angeles, which consisted of joint inspections and workshops undertaken by both agencies.

C. THE WATER BOARDS

The Water Boards are comprised of both the State Water Resources Control Board (State Water Board) and nine Regional Water Quality Control Boards (Regional Water Boards). The State Water Board protects water quality by setting statewide policy, reviewing petitions that contest Regional Board actions, and assists with and oversees Regional Water Board endeavors. The State Water Board's Office of Enforcement has a team of attorneys who bring administrative liability actions before all the Water Boards and who prepare cases for referral to outside agencies and prosecutors.

The Regional Water Boards have geographic boundaries based on the nine major watersheds of the state. Each Regional Water Board makes critical water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and initiating appropriate enforcement actions.

Each of the nine Regional Water Boards has a dedicated Enforcement Coordinator who serves as central point of contact for Enforcement matters (refer to page 12 of the "Contacts" section).

D. DEPARTMENT OF FISH AND GAME

The Department of Fish and Game (DFG) is the trustee for fish and wildlife resources. DFG is responsible for conserving and protecting native fish, wildlife, plant species, and natural communities for their intrinsic and ecological value and their benefits to people. This includes habitat protection and maintenance in a sufficient amount and quality to ensure the survival of all species and natural communities.

Within DFG, the Office of Spill Prevention and Response (DFG/OSPR) enforces the laws designed to prevent marine and inland oil / hazardous material spills, and

dispatches units to respond to and investigate spills. DFG wardens are peace officers charged with enforcing the laws of the State, including those within the California Fish and Game Code, Penal Code and Government Code¹. Wardens conduct spill investigations, and gather and prepare evidence for court cases.

DFG/OSPR's primary focus is to respond to "pollution" incidents. OSPR has two components; a marine program implemented pursuant to the Lempert-Keene Seastrand Oil Spill Prevention and Response Act, and an inland pollution program which operates pursuant to the California Fish and Game Code and limited authority within the Government Code. The Inland Program has six regions throughout the state, with a dedicated Lieutenant Specialists assigned to each (refer to page 11 of the "Contacts" section). They coordinate response and enforcement efforts to pollution incidents throughout the state.

¹ All further statutory references are to California code unless otherwise indicated.

2. WATER BOARD AND DEPARTMENT OF FISH AND GAME ENFORCEMENT OVERVIEW

A. WATER BOARD ENFORCEMENT OVERVIEW

California Water Code §13000 et. seq. grants the Water Boards the authority to implement and enforce the water quality laws, regulations, policies and plans to protect the groundwater and surface waters of the state. The means by which the Water Boards implement their charge is through protection of the “beneficial uses” of waters of the state and achievement of “water quality objectives” (defined below). Taken together, beneficial uses and water quality objectives define California’s water quality standards. Violations of these water quality standards are enforced through various formal and informal actions.

Water Boards are predominately a regulatory agency, and their primary means of protecting water quality is through adopting water quality control plans (basin plans) and permits designed to protect beneficial uses of the waters of California, and enforcing to ensure compliance with these basin plans and permits.

1. Beneficial Uses

Each of the nine Regional Water Boards has a “Basin Plan” which sets out the designated beneficial uses of regional waterbodies and lists all water quality objectives. Beneficial uses define the uses, services and values of waters of the state that must be protected against degradation.

**TABLE 1
EXAMPLES OF BENEFICIAL USES THE WATER BOARDS PROTECT**

AGR – Agricultural supply	MUN – Municipal and domestic supply
ASBS – Areas of Special Biological Significance	NAV – Navigation
COLD – Cold freshwater habitat	PRO – Industrial process supply
COMM – Ocean commercial and sport fishing	RARE – Preservation of rare and endangered species
EST – Estuarine habitat	REC-1 – Water contact recreation
FLD – Flood peak attenuation/flood water storage	REC-2 – non-contact water recreation
FRSH – Freshwater replenishment	SHELL – shellfish harvesting
GWR – Groundwater recharge	SPAWN – fish spawning
IND – Industrial service supply	WARM – warm freshwater habitat
MAR – Marine habitat	WILD – wildlife habitat
MIGR – Fish migration	WQE – water quality enhancement

2. Water Quality Objectives

To protect beneficial uses, the Water Boards set water quality objectives to both define appropriate levels of environmental quality and to control activities that can adversely affect aquatic systems. Water quality objectives are either narrative or numeric. Narrative objectives generally describe water quality that must be attained or prohibit a condition that would impair one or more beneficial uses (e.g. a narrative objective for settleable material might be: Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses). Numeric objectives typically prescribe limiting pollutant concentrations, physical/chemical conditions of the water itself, or the toxicity of the water to aquatic organisms (e.g. a numeric objective for pH might be: >6.5 and <8.5)

The Water Boards regulate discharges of waste via issuance of permits/orders/Basin Plan requirements, etc. The Water Boards enforce against violations of these water quality standards as well as any activity which results in impaired water quality in violation of the Water Code.

3. Administrative Enforcement Tools Available to the Water Boards

The Water Boards have extensive administrative authority. Examples of the kinds of administrative tools the Water Boards have available to them are:

- 13267 Order - Authority to Conduct Administrative / Regulatory Investigations and Require Technical or Monitoring Reports
- Notice of Violation – Informal tool to put an entity on notice that they are in violation
- Notice to Comply – Similar to a fix-it ticket for minor violations; requires correction within 30 days
- Time Schedule Order – Requires discharger action/compliance by a time certain
- Cleanup and Abatement Order – Requires cleanup or abatement of activity, usually by a time certain
- Cease and Desist Order – Order to cease and desist from activity/discharge immediately or by a time certain
- Administrative Civil Liability – Monetary penalties
- Referral to Outside Prosecutor – Civil or criminal enforcement

The Water Boards typically only refer cases to prosecutors if the matter is beyond our regulatory authority (eg. potential criminal cases, when facilities have violations in multiple programs, etc.).

B. DEPARTMENT OF FISH AND GAME ENFORCEMENT OVERVIEW

The Department of Fish and Game has a variety of areas of jurisdiction that extend beyond water quality protection (e.g. protection of endangered species, hunting & fishing regulation, etc). For purposes of this field guide regarding areas of enforcement jurisdiction overlap, the relevant sections of the Fish and Game Code are §5650, which concerns “pollution”, and §1600, which concerns lake and streambed protection, fish

and wildlife protection and habitat conservation. In addition, Government Code §8670.1 *et. seq.* dictates all aspects of oil spill prevention and response.

With respect to water pollution, the DFG is primarily a law enforcement agency that ensures protection against impacts to fish and wildlife through civil and criminal enforcement.

1. Department of Fish and Game Enforcement Overview: For Areas of Parallel Jurisdiction with the Water Boards

a. Fish and Game Code §5650

Fish and Game Code §5650 essentially states that it is unlawful to allow any material that is deleterious to fish, plant life, mammals, or bird life to pass into waters of the state. There are specific provisions in 5650 which prohibit the discharge of petroleum, refuse, sawdust, factory refuse, in addition to the provision which prohibits any substance or material which is deleterious.

Elements of a §5650 Violation

- 1) Defendants deposited in, permitted to pass into, or placed where it can pass into;
- 2) The waters of the state, as defined by the Water Code
- 3) Petroleum, refuse, sawdust, factory refuse, or any substance or material deleterious to fish, plant or bird life.

b. Fish and Game Code §1600

Fish and Game Code §1600 essentially states that an entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit debris or waste, where it may pass into any river, stream, or lake, unless they apply for and receive a "Lake or Streambed Alteration Agreement".

Elements of a §1602 violation

- 1) Defendants diverted or obstructed the natural flow (or changed the bed, bank or channel)
- 2) The diversion, obstruction or change was substantial
- 3) within the bed, banks or channel of the waters of the state
- 4) without prior notification to the Department of Fish and Game

c. Government Code §8670.1

In addition, the Lempert Keene Seastrand Oil Spill Prevention and Response Act (Govt. Code §§8670.1 – 8670.73) is the enabling act for the Office of Spill Prevention and Response (OSPR) and dictates that the OSPR Administrator shall direct all aspects of prevention, removal, abatement, response, containment, and clean-up efforts for any oil spill of 42 gallons or more in marine waters of the state. Under this act, Marine Waters are defined as any state waters which are subject to tidal influence.

2. Department of Fish and Game Enforcement Tools

DFG wardens are sworn peace officers and most DFG cases are pursued through the City Attorney (in large cities), District Attorney and/or Attorney General's office as a criminal case. DFG has administrative enforcement authority for oil spills pursuant to the Government Code.

- Wardens have authority to enter private land without either the consent of the owner or a search or inspection warrant if necessary for law enforcement purposes pursuant to authority in the Fish and Game Code.
- The Administrator of OSPR (a Chief Deputy Director within DFG)² has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in or threatening waters of the state.
- The Administrator of OSPR has the primary authority to serve as the State On-Scene Coordinator with overall authority for managing and conducting incident operations during the response to an oil spill.
- The Administrator of OSPR has authority to issue cleanup and abatement orders to any person who discharges oil into inland or marine waters.
- DFG has the authority to issue a Cleanup and Abatement Order per Fish and Game Code §5655 to require petroleum or a petroleum product to be cleaned up or abated when deposited or discharged into waters of the state or a location where it is likely to enter waters of the state.

C. COORDINATING ENFORCEMENT RESPONSES

The Water Boards and DFG should coordinate in all cases where there is a significant discharge or pollution incident on which both the agencies can enforce. This coordination includes, at a minimum, communication regarding the planned response to the incident, identifying and agreeing upon specific roles and responsibilities for each agency (e.g., sampling, technical support, need for on-site presence, evidence collection), and identification of primary contacts for a specific incident..

1. Examples of Incidents Where DFG and the Water Boards Should Consider Coordinated Enforcement Response

- Spills and discharge of pollutants (including sediment discharges) that enter or threaten to enter waters of the state
- Violations of 401 Water Quality Certifications or Lake and Streambed Alteration Notification and Agreement, unpermitted/unauthorized discharges of dredge and

² The Administrator typically delegates this authority to the State On-Scene Coordinator, which is typically a Fish and Game Warden

fill materials to waters of the state, and unauthorized grading activities within waters of the state

- Where there's incident response activity that continues for several days (operational periods)
- Anything that can be deleterious to aquatic biota, which includes anything with potential to impact their habitat

2. Recommendations for Coordinated Enforcement Response

- Where the Water Board and DFG have both responded to an incident concerning discharges or threatened discharges to waters of the state, they should consult each other regarding any planned enforcement action. While knowledge of the other agency's participation may not be known, contact information provided in Section 3 may be used to obtain the needed information.
- In emergency spill response situations, the Water Boards should coordinate with DFG prior to initiating an enforcement action. The primary goal of this coordination is to ensure any enforcement action is complementary to, and consistent with, active emergency response and cleanup activities. Unless circumstances require immediate Water Board oversight, such as a soil and/or groundwater cleanup, waiting to take enforcement until after DFG completes its emergency response action has multiple advantages, including:; c) investigation costs may be shared, d) DFG prepares Natural Resource Damages reports, and e) see below.

3. Specific Examples of Instances Where the Water Board and DFG May Benefit from Coordinated Enforcement Response:

- In cases that involve a state or public entity: If DFG has a case against a public entity, DFG must seek approval from the Governor's Office (through the Governor's Office Approval Request (GOAR) process) to refer the case to the Attorney General for prosecution. DFG has enjoyed working with the Water Board in these cases since the Water Board is exempt from the GOAR process when a public entity is involved.³
- Working with DFG can provide the following benefits: (1) a preliminary assessment of the condition of a site and any environmental impacts the discharge and/or threatened discharge had on the site; (2) access to Natural Resource Damages reports; (3) DFG generally interviews responsible parties; and (4) DFG has authority to enter places the Water Board cannot, as well as the authority to obtain criminal search warrants.
- Because DFG's Inland Pollution Program (which encompasses everything except marine pollution cases) is 100% funded by successful cost recovery and penalties collected, it is critical that DFG is able to get a prosecutor to pursue their cases. When DFG is unable to recover costs for their efforts on a case, it's as if they worked on it at no cost. In cases where the agencies have worked

³ It should be noted, however, that Governor's office notification is still required.

together, there may be an opportunity for DFG to recover their costs through the Water Boards Cleanup and Abatement Account. However, such funding is not guaranteed and would be contingent on funds being available in the Account and the State Water Board finding that the action led to the “cleanup or abatement” of a waste.

- The Water Boards typically do not recover natural resource damages due, in large part, to their inability to perform such valuations. DFG has resource economists who prepare Natural Resource Damages Reports that provide such valuations. Coordination between the two agencies may allow the Water Boards to incorporate natural resource damages and resource recovery estimates into their administrative civil liability analysis, providing stronger technical/evidentiary support for administrative civil liabilities. To the extent that DFG cannot recover natural resource damages on a public entity case, DFG would like to coordinate with the Water Board on any Water Board Administrative actions to obtain damages. DFG would like to obtain damages through the Supplemental Environmental Project process whereby the Water Board requires, as a SEP, that the responsible party pay for damages with such payment directed to the National Fish and Wildlife Foundation (NFWF) Environmental Fund for Incident Specific and Habitat Restoration Projects pursuant to a Memorandum of Understanding between NFWF and DFG. DFG uses the funds within the NFWF for restoration projects to restore or rehabilitate the injured resource.

3. CONTACTS

A. DEPARTMENT OF FISH AND GAME CONTACTS

1. DFG/OSPR Wardens and DFG District Wardens

The various DFG/OSPR wardens and their regions are included on page 11. If assistance with a particular case/incident is needed, and it is not an emergency situation, the warden assigned to the region in which the incident took place should be contacted.

The DFG district wardens are not assigned to the DFG/OSPR unit, yet are frequently the first responders and investigators to pollution events. These wardens are located throughout the state and are assigned specific patrol areas. Within these patrol areas, wardens investigate crimes against wildlife and habitat. Oftentimes, these wardens will request the assistance of the DFG/OSPR wardens to assist on the more complicated pollution investigations.

2. DFG Immediate Assistance or After-Hours Contacts

If immediate assistance is needed, or if it is after-hours or a weekend, contact DFG's **Allied Agency Dispatch at (916) 358-1300**. Note: This number is not to be given out to the public, it is for agency use ONLY. This Dispatch has the most up-to-date information on the location of wardens throughout the state and is the number that California Emergency Management Agency (Cal-EMA) uses to locate available responders for spills or other emergencies. Cal-EMA is responsible for coordinating and monitoring California's overall statewide integration of emergency response and operates the California State Warning Center on a 24-hour basis for centralized notification and reporting.

B. STATE AND REGIONAL WATER BOARD CONTACTS

1. Regional Water Board Enforcement Coordinators

The nine Regional Water Board Enforcement Coordinators and their regions are depicted on page 12. If assistance with a particular case/incident is needed, and it is not an emergency situation, the Enforcement Coordinator working in the region in which the incident took place should be contacted.

2. Regional Water Board After-Hours and Alternate Contacts

If immediate assistance is needed during normal working hours, first attempt to contact the appropriate Enforcement Coordinator for the region.

For after-hours assistance or in the event the Enforcement Coordinator cannot be reached, see the listing of contacts on pages 13-14; "**Regional Water Boards After-Hours and Alternate Contacts**."

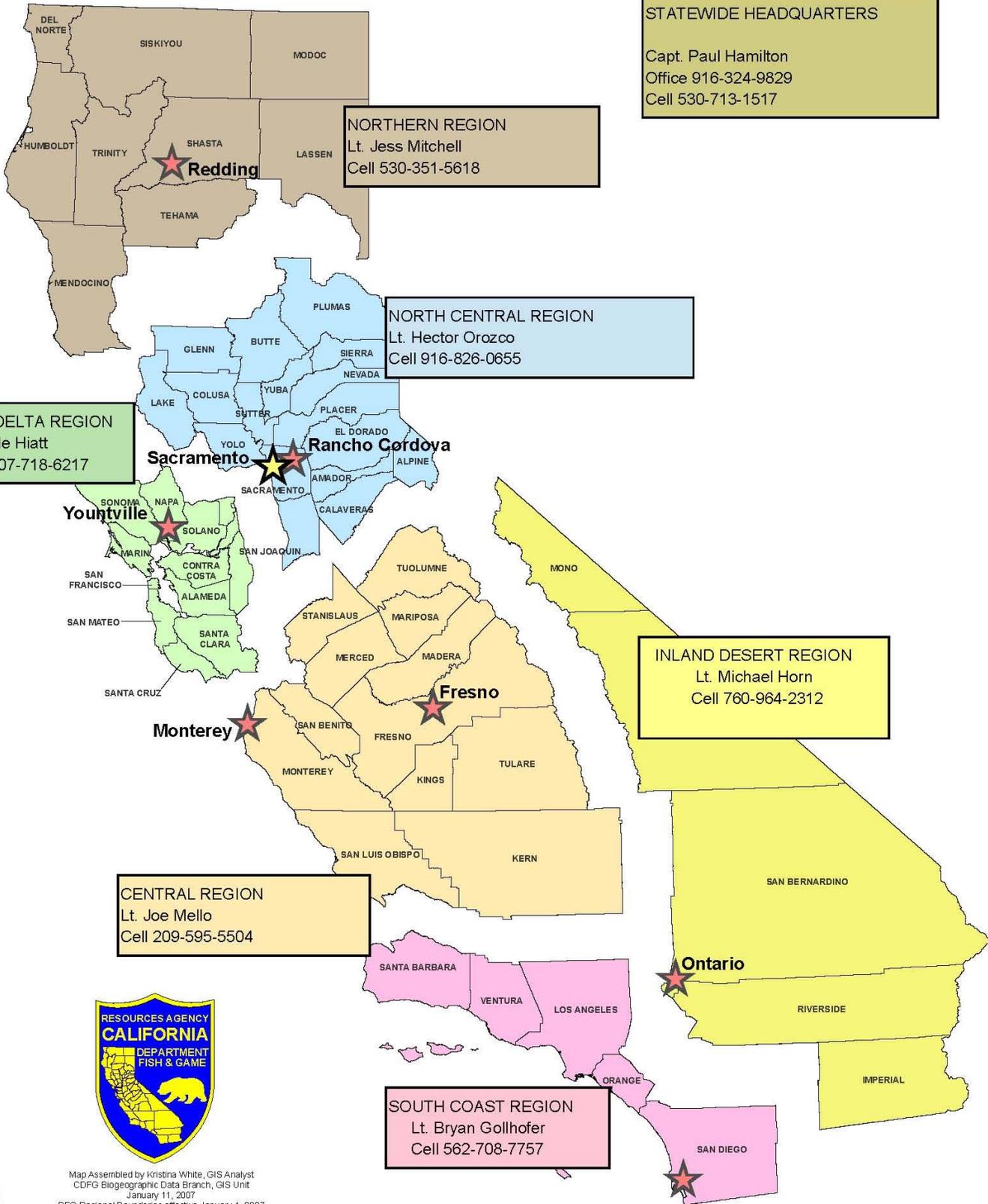
3. State Water Board Office of Enforcement (OE)

The State Water Board Office of Enforcement has a team of attorneys and investigative staff. The main contact number for this office is (916) 341-5272

C. OTHER STATE AGENCY CONTACTS TO CONSIDER

Although this manual is meant to guide DFG and Water Board interaction, staff will inevitably run across situations which concern other agencies. Please be aware of the agency contacts listed in Appendix A, should you encounter issues within their jurisdiction.

California Department of Fish and Game Regions



Map Assembled by Kristina White, GIS Analyst
 CDFG Biogeographic Data Branch, GIS Unit
 January 11, 2007
 DFG Regional Boundaries effective January 1, 2007



Water Boards

STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

ENFORCEMENT COORDINATORS

North Coast Region (1)
www.waterboards.ca.gov/northcoast
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Diana Henriouille (707) 576-2350
dhenriouille@waterboards.ca.gov

San Francisco Bay Region (2)
www.waterboards.ca.gov/sanfranciscobay
1515 Clay Street, Suite 1400
Oakland, CA 94612
Brian Thompson (510) 622-2422
BRThompson@waterboards.ca.gov

Central Coast Region (3)
www.waterboards.ca.gov/centralcoast
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Harvey Packard (805) 542-4639
hpackard@waterboards.ca.gov

Los Angeles Region (4)
www.waterboards.ca.gov/losangeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Hugh Marley (213) 620-6375
hmarley@waterboards.ca.gov

Central Valley Region (5)
www.waterboards.ca.gov/centralvalley
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Dan Radulescu (916) 464-4736
dradulescu@waterboards.ca.gov

Fresno branch office
1685 E Street, Suite 200
Fresno, CA 93706

Redding branch office
415 Knollcrest Drive, Suite 100
Redding, CA 96002

Lahontan Region (6)
www.waterboards.ca.gov/lahontan
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150
Scott Ferguson (530) 542-5432
sferguson@waterboards.ca.gov

Victorville branch office
14440 Civic Drive, Suite 200
Victorville, CA 92392-2383

Colorado River Basin Region (7)
www.waterboards.ca.gov/coloradoriver
73-720 Fred Waring Dr., Suite 100
Palm Desert, CA 92260
Doug Wylie (760) 346-6585
dwylie@waterboards.ca.gov

Santa Ana Region (8)
www.waterboards.ca.gov/santaana
California Tower
3737 Main Street, Suite 500
Riverside, CA 92501-3339
Steve Mayville (951) 782-4992
smayville@waterboards.ca.gov

San Diego Region (9)
www.waterboards.ca.gov/sandiego
9174 Sky Park Court, Suite 100
San Diego, CA 92123
Jeremy Haas (858) 467-2735
jhaas@waterboards.ca.gov

Division of Water Rights
State Water Board Enforcement Section
1001 I Street
Sacramento, CA 95814
John O'Hagan (916) 341-5368
johagan@waterboards.ca.gov

★ **State Water Resources Control Board (Headquarters)**
1001 I Street, Sacramento, CA 95814
www.waterboards.ca.gov

Director of Office of Enforcement
Reed Sato

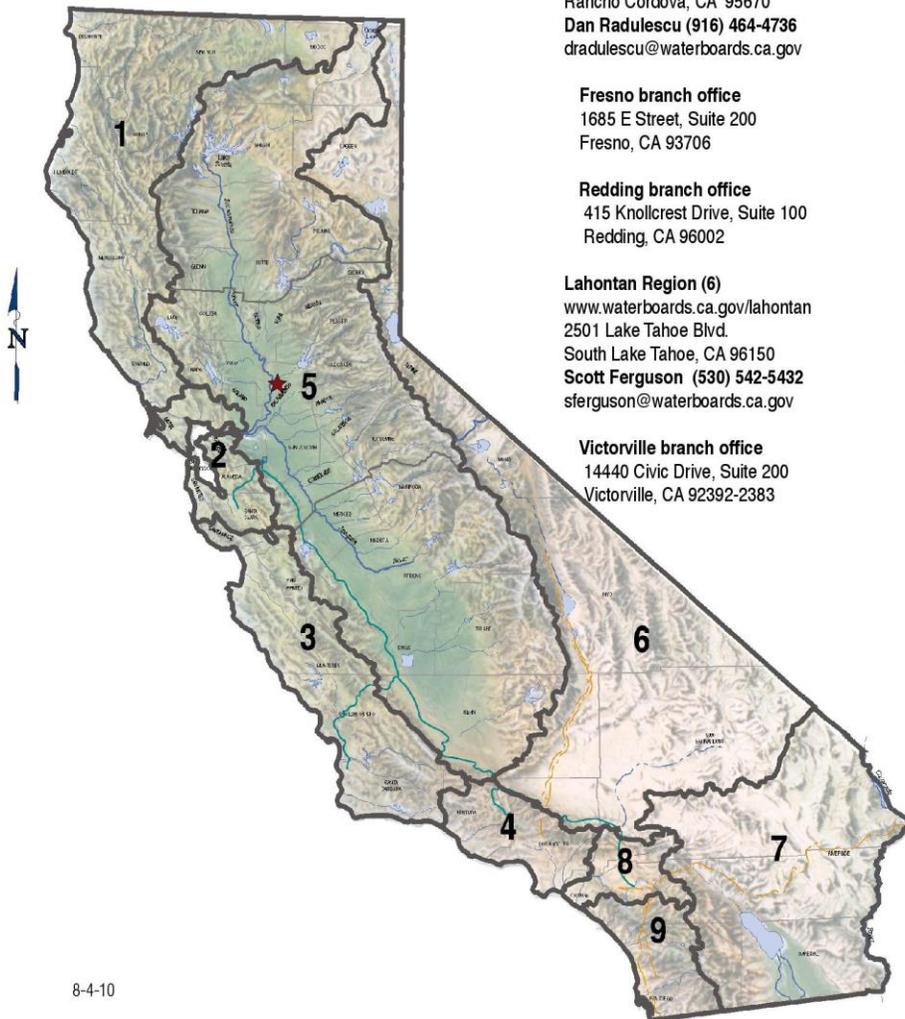
Underground Storage Tanks Enforcement Unit
Kim Sellards (916) 341-5869
ksellards@waterboards.ca.gov

All other Enforcement
Mark Bradley (916) 341-5891
mbradley@waterboards.ca.gov

State of California
Arnold Schwarzenegger, Governor

California Environmental Protection Agency
Linda S. Adams, Secretary

State Water Resources Control Board
Charles R. Hoppin, Chair
Tom Howard, Executive Director



**REGIONAL WATER BOARDS
AFTER-HOURS AND ALTERNATE CONTACTS**

North Coast Region 1

After-Hours: 707-696-7179

San Francisco Bay Region 2)

Spill Duty Officer - After-Hours: 510-421-7770

**Spill and Complaint Line (to leave a message or report a spill): 510-622-2369

** Messages from the spill and complaint lines are monitored at least four times each day, from 8am- 8pm.
A message left after 8pm will be retrieved the next morning.

Central Coast Region 3

Harvey Packard

During Work hours: 805-542-4639

After-Hours: 805-235-8435

Los Angeles Region 4

Spill Duty Officers – After-Hours:

Augustine Anijelo

After-Hours: 213-305-2284

Arthur Heath

After-Hours: 213 305-2253

Central Valley Region 5

Sacramento Office

Victor Vasquez

During Work Hours: 916-464-4623

After-Hours (for sewage spills only): 619-865-3719

Duncan Austin

During Work Hours: 916-464-4712

After-Hours (for non-sewage incidents): 916-337-5149

Charlene Herbst

During Work Hours: 916-464-4724

After-Hours (spills at dairies): 916-539-2688

Redding Office

George Day

During Work Hours: 530-224-4859

After-Hours: 530-356-4863

Dale Stultz

During Work Hours: 530-224-4786

After-Hours: 530-244-7327

Scott Zaitz

During Work Hours: 530-224-4784

After-Hours: 530-229-3701

Fresno Office

Lonnie Wass

During Work Hours: 559-445-6051
After-Hours: 559-978-6654

Douglas Patteson

During Work Hours: 559-445-5156
After-Hours: 559-681-6654

Lahonton Region 6

Regionwide Contact

Scott Ferguson:

During Work Hours: 530-542-5432
After-Hours: 530-721-0634

Chuck Curtis:

During Work hours: 530-542-5460
After-Hours: 530-721-2192

Colorado River Basin Region 7

Doug Wylie

During Work Hours: 760-346-6585
After-Hours: 760-485-5020

Santa Ana Region 8

Steve Mayville

During Work Hours: 951-782-4992
After-Hours: 951-906-1899

Chuck Griffin

During Work Hours: 951-782-4996
After-Hours: 951-906-1897

Kirk Larkin

During Work Hours: 951-320-2182
After-Hours: 951-906-1898

San Diego Region 9

Front Desk (when Enforcement Coordinator is not available): 858-467-2952
After-Hours: 858-822-8344

4. ADMINISTRATIVE INSPECTION WARRANTS

A. BACKGROUND

When a person has a reasonable expectation of privacy and has refused to consent to an inspection, a warrant is necessary to inspect the property. There are also instances when a Water Board inspector may choose to obtain a warrant before an inspection, such as when he prefers to have a surprise inspection. All DFG wardens have the authority to obtain and serve “search” warrants along with administrative “inspection” warrants. Water Board inspectors only have the authority to obtain “inspection” warrants under Water Code §13267 (c).

An inspection warrant is “an order, in writing, in the name of the people, signed by a judge of a court of record, directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning” (Code Civ. Proc., § 1822.50). An inspection warrant is issued by a judge upon demonstration of cause, which is defined to exist “if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place. . . or there is reason to believe that a condition of nonconformity exists with respect to the particular place. . .” (Code Civ. Proc., §1822.52). In summary, inspection warrants may be obtained either for routine inspections or when there is cause to believe that a violation exists.

An inspection warrant allows the agency identified in the warrant to perform an inspection of operations within the jurisdiction of that agency. Only activities and conduct described in the warrant are permissible during the inspection unless other exceptions apply, such as consent and plain view. Commonplace inspection activity, such as photocopying records, taking photographs, questioning employees (no person, employee, bystander, etc., is obligated to answer any questions)⁴, collecting samples, etc. are typically included in the inspection warrant.

B. INSPECTION VS. SEARCH WARRANT

The main differences between when to seek search warrants and inspection warrants often lie behind the purpose for the types of warrant. Typically with an inspection warrant, a Water Board inspector is taking samples, looking at documents, photocopying documents and taking photos as he/she would during a regular site inspection, whereas a DFG warden is searching and seizing evidence of criminal activity with a search warrant. A warden’s authority to seize evidence of a crime extends far beyond looking and sampling when he/she is executing a search warrant. A warden may seize stolen property, weapons, poached animals, vehicles, etc. Also of importance is that a warden may enter a site using reasonable force, which is prohibited in an inspection warrant unless expressly authorized by a judge (if a forcible entry is

⁴ Individuals must consent to speak with an inspector regardless of the warrant. Their Fifth Amendment right to remain silent is intact.

needed, it is best to have a law enforcement search warrant instead of an inspection warrant, at a minimum for safety reasons).

If a search warrant is necessary for a given case, the Water Boards must refer the matter out of their jurisdiction to a law enforcement agency, District Attorney, Attorney General, and/or United States Attorney to proceed. The Department of Fish and Game is capable of handling their own search warrants since they are a law enforcement agency. For all inspection warrants, Water Board inspectors should notify local law enforcement prior to service, and have a peace officer (identified in the warrant or affidavit) assist with serving the inspection warrant.

C. WHEN TO OBTAIN AN INSPECTION WARRANT

Inspections are typically made with the consent of the facility owner/operator or through observation under the open field doctrine (discussed below). If consent is withheld, however, an inspection warrant may be obtained pursuant to the procedure set forth in the Code of Civil Procedure § 1822.50 et seq.

To obtain an inspection warrant, an affidavit and the warrant must be taken to a judge (in the county where the inspection will occur) for signature. The affidavit must demonstrate cause for the warrant, a description of the place to be inspected and for what, and contain a statement that either consent to inspect was sought and refused, or that there are reasonable facts or circumstances that justify why consent was not sought. Where consent was sought and refused, the inspection warrant may be executed only after 24 hour notice to the discharger, unless the judge finds that immediate execution is reasonably necessary. (Code Civ. Proc. § 1822.56)

Cause for the inspection warrant may be demonstrated in one of three ways;

- when a violation exists;
- when property owners or operators cannot be found or refuse to allow certain inspection actions; for example, when they refuse photography or sample collection; or,
- when one wants to seek a preemptive inspection warrant; for example, when there is a history of prior refusals and a current refusal to inspect is anticipated. Similarly, a preemptive inspection warrant may be sought prior to initiating a scheduled inspection when there is a documented corporate policy mandating refusal in a particular area (such as photography, sample collection, or copying of records), or there is good reason to believe that required information will be refused and that information will then be destroyed before an inspection warrant can be obtained. The affidavit will need to explain how these facts rise to the level of cause for the inspection warrant.

For further information about how to obtain and serve inspection warrants see Code Civ. Proc. §§ 1822.50-1822.60. For assistance with obtaining an inspection warrant, Water Board staff should contact Laura Drabandt at (916) 341-5180, or by email at LDrabandt@waterboards.ca.gov, or any of the attorneys at the State Water Board's Office of Enforcement at (916) 341-5272.

D. OBTAINING AN INSPECTION WARRANT

1. What to Include in the Affidavit

Code Civ. Proc. § 1822.51 requires that an inspection warrant be supported by an affidavit . . . “particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.” The affidavit may be by oral examination in front of the judge; likewise a written affidavit may also be supplemented by oral testimony. If oral testimony is used, be sure to have it recorded by a court reporter.

In an affidavit for an inspection warrant:

- Identify the affiant and describe his or her position, qualifications and experience.
- Inspection warrants are issued based upon a showing that there is “cause” to believe that violations may exist or that an area-wide or routine inspection is occurring. Make a statement as to the purpose of your inspection and include a summary of, and basis for, any special endorsements or waivers that are requested. Examples of such special endorsements/waivers include:
 - Service without requesting prior consent
 - Service in the absence of owner
 - Service without 24-hour notice
 - Authorization for use of force to gain entry
 - Service at night
- Identify the location where the inspection is to take place. You must also establish that the location is within the jurisdiction of the court.
- Identify the owner of the property and the supporting evidence that indicates that person is the owner (unless a waiver or endorsement is sought in the owner’s absence).
- Identify any other agencies that are to be included in execution of the warrant including the peace officer assisting with serving the inspection warrant.
- Describe any reason there is to believe that violations may exist. Include specific statutory code sections here. Also, if more than one agency has violations, set them out so that they may be included in the warrant. Chronological narratives are usually the easiest way to lay out the facts.
- If affiant is relying on any information received from others, be sure to include specific references for how the affiant came to know the information. The judge will want to know the reliability of the information gathered from other people.
- Describe any attempts to obtain consent. You are not required to request consent to inspect and be denied prior to requesting a warrant; you may get this precondition waived if you state facts in the affidavit justifying your failure to do

so. Examples include: safety concerns based on information from other agencies, prior problems with the person involved, inability to contact the owner or the nature of the violation involves wastes or other evidence easily disposed of so that prior notice negates the purpose of the inspection.

- Include any facts necessary to justify executing the inspection warrant in the absence of the owner (e.g. inability to contact owner).
- Identify any factors that may endanger the public, the inspecting persons, or others, (for example, weapons, guard dogs, or hazardous chemicals).
- The affidavit must be signed by the affiant AFTER the judge administers the oath to the affiant. The judge must also sign the affidavit.

Though not required, consider filing a return of warrant after you have executed the inspection warrant. A return of warrant is a short signed statement that the inspection occurred pursuant to the warrant.

2. What to Include in the Inspection Warrant

- Cite statutory authorization starting with Water Code § 13267, and applicable Code of Civil Procedure §§ 1822.50 et seq.
- The location of the property.
- List every agency that will partake in the inspection. It is best if you can include the names of the people that will participate in serving the warrant. If it is a large warrant, at least include the supervisors attending.
- Describe the purpose of the warrant and the limits of your inspection authority. If you have not listed with specificity what you are inspecting, you cannot inspect it. If you have your own copying equipment, list what records you plan on copying.
- Describe what violations or anticipated violations you expect to find.
- Describe the manner in which the inspection will be conducted (e.g. photography, sampling, interviews, copying of records. . .).
- A description of any items that will be inspected, including samples and/or documents for photocopying. If you plan on sampling, describe with particularity what you plan on sampling, why you are taking the samples, and explain your statutory authority to take samples during an inspection.
- Any pertinent supporting documentation or background information.
- Expiration date of the warrant (inspection warrants are only good for 14 days after they are signed unless they are extended by the judge) and date by which a “return of warrant” will be filed. A return of warrant is not required, but suggested. There is no statutory limit for the return of the warrant, but a recommended timeframe is 10 days after the execution limit expires.
- Signature of the judge. It is also advisable to obtain full contact information for the judge issuing the warrant.

- Note: any special endorsements or waivers should be signed separately by the judge. This is not a legal requirement, but is best practice.

E. DUTIES WITH REGARD TO EXECUTION OF AN INSPECTION WARRANT

The following is a list of duties the inspector should consider in preparing for and executing an inspection warrant:

- Acting as liaison between any included agencies to ensure there will be the necessary numbers of participants with the needed expertise at the inspection.
- Arranging for or conducting a pre-execution briefing of all involved personnel to review team member responsibilities during the execution of the warrant.
- Performing any necessary reconnaissance of the location to be searched to ensure the success of the warrant.
- Contacting other law enforcement agencies, if necessary.
- Ensuring that appropriate equipment is available at inspection location; including communications equipment, photocopying equipment, lights, sampling equipment, chain of custody forms, personal protective equipment, cameras, etc.
- Identify who is to collect any seized evidence and to establish chain of custody. Identify where the seized evidence will be housed and who will be responsible for its safe keeping.
- Bringing to the search additional blank inspection warrant applications and forms, and a list with names and telephone numbers of judicial officers available for supplemental inspection warrant application.
- Coordinating or conducting a post-execution inspection warrant briefing after the execution of the warrant. This briefing will be designed to inventory and review inspection details, discuss any additional investigations that may be indicated, and assign any additional responsibilities for the team members.
- Ensuring that prosecutors or other appropriate legal staff are available by telephone during the execution of the warrant to assist with legal questions that arise during execution of the warrant. Upon execution of the warrant, the investigator should notify their supervisor of the status of the situation by telephone as soon as it is practical after securing the site.
- Ensuring that at least one member of the inspection team remains on site until the full inspection is completed.

F. ACCESSING PROPERTY WITH A FISH AND GAME WARDEN

Fish and Game peace officers have broader authority to enter private land for law enforcement purposes than Water Board staff authority to enter (see Fish and Game Code, § 857 and Penal Code, § 830.2). There is no legal support for the proposition that the presence of a DFG warden can legitimize an otherwise unauthorized inspection by Water Board inspectors. A Water Board regulator must have his or her own

reasonable basis for entering the property and cannot “piggy-back” or “tag-along” on the peace officer’s authority to enter.

Each person who enters property without consent must have his or her own authorized grounds for entry. For example, the person and/or his agency is listed in the warrant providing entry. That is, a Water Board inspector may not enter onto a property without consent based on a DFG search warrant, unless the person and/or agency have been identified in the DFG search warrant.

Water Board staff bringing an enforcement action against a discharger may rely on evidence gathered by DFG wardens regardless of whether Water Board staff attended the inspection. However, Water Board staff cannot have wardens conduct searches and seizures on their behalf, circumventing staff’s lack of access authority.

G. THE OPEN FIELD DOCTRINE

In very brief terms, under the open field doctrine, a peace officer does not need consent or a warrant to enter “open fields” because there is generally no expectation of privacy in that space, as compared to the expectation of privacy in residences or buildings. Whether a Water Board regulator may enter an open field without consent or warrant is a very fact specific determination. A Water Board inspector may stand on adjacent property (with the adjacent property owner’s consent) or public property without requiring a warrant and observe and take photos of the suspect’s property. Prior to entering open fields that may constitute part of a discharger’s facility, Water Board inspectors should contact the Office of Enforcement for legal guidance. Water Board inspectors’ authority to enter open fields is more limited than other regulatory state inspectors’ authority because of the Water Code’s statutory language (see Water Code, § 13267(c)).

H. EMERGENCY EXCEPTION TO REQUIREMENT FOR CONSENT OR WARRANT

In the event that there is an emergency that affects the public health or safety, neither consent nor an inspection warrant is required. The emergency exception to the requirement in Water Code § 13267(c) to obtain consent or an inspection provides that “in the event of an emergency affecting the public health or safety,” Water Board staff may perform an inspection without consent or a warrant. What would constitute such an emergency has not been tested in the courts and there is accordingly little guidance on how to interpret this exception. It is a very narrow exception that in other State agencies is limited to the time of the active emergency response after a 911 call, and does NOT extend into the next day.

Typically, staff should only consider the emergency exception to Water Code § 13267(c) in circumstances where there is an active discharge and any delay necessary to secure consent or a warrant will cause severe or irreversible injury to public health or safety. The exception does not apply to a risk that the evidence may be destroyed; it only applies to a substantial threat to public health or safety.

I. REFERENCES

Cal/EPA Training, 2009. Basic Inspector Academy.

California District Attorneys Association, 2004. Environmental Crimes Prosecution Manual.

5. SURFACE WATER SAMPLING AND ANALYSIS

A. OVERVIEW

Collection of samples during investigations of suspected pollution and other unauthorized discharges is crucial to conducting a professional inspection, documenting your work and helping to assure appropriate enforcement or other outcome. Samples can be of significant assistance to successful enforcement actions. If sampling is improperly done, it can lead to dismissal of an otherwise solid case. All procedural aspects of sampling, including sample collection, preservation, storage, shipping, and chain of custody are important.

The safety of field staff is of primary concern. Do not do anything that you feel may jeopardize your health or safety. Proper personal protective equipment (PPE) should be used for all sampling. A good reference on materials hazardous to human health is the current *Emergency Response Guidebook*, published by the U.S. Department of Transportation.

This section is a basic guide primarily for Regional Water Board staff for sampling some of the most commonly encountered spills/discharges. DFG has similar sampling guidance that may be obtained from their Water Pollution Control Lab (see contact information below). This guide is not by any means an exhaustive compilation of sampling methods/analyses; it is simply a starting point from which to consider sample collection for enforcement purposes.

B. LABORATORY ANALYSIS

Table 2 lists some anthropogenic activities and their commonly associated pollutants. These particular activities are listed because they are: a) of interest to both DFG and the Water Boards, and b) have pollutants for which samples are relatively easily collected and analyzed. Table 3 lists analytes which are commonly run by both agencies and includes useful information about the proper collection containers, preservatives and holding times for analysis. When possible, it is good practice to contact the laboratory you will be using prior to collecting samples, or at least prior to delivering them for analysis.

DFG has three laboratories in Rancho Cordova available for analysis of various types of samples. Detailed information regarding DFG's sampling and analysis procedures is located in their Sampling Manual. The Sampling Manual and Pollution Action Kits (which include basic items necessary to collect information and samples during a pollution incident) are available to DFG staff and may be obtained from the Water Pollution Control Lab in Rancho Cordova by calling 916-358-2858.

Each Regional Water Board has its own laboratory contract and meters available for sample analysis. Regional Water Board staff should check with their management to obtain detailed information regarding availability of resources for sample collection and analysis.

TABLE 2
HUMAN PRACTICES AND COMMONLY ASSOCIATED POLLUTANTS

Source	Common Associated Chemical Pollutants
Cropland	Turbidity, phosphorus, nitrates, temperature, total solids, pesticides, herbicides, petroleum products
Forestry harvest	Turbidity, temperature, total solids, petroleum products
Grazing land	Fecal bacteria, turbidity, nitrates, ammonia, total dissolved solids, temperature
Industrial discharge	Temperature, petroleum products, conductivity, total solids, metals, pH, volatile and semi-volatile compounds
Septic systems	Fecal bacteria (i.e., Escherichia coli, enterococcus), nitrates, phosphorus, dissolved oxygen/biochemical oxygen demand, conductivity, temperature
Sewage treatment plants	Dissolved oxygen and biochemical oxygen demand, turbidity, conductivity, nitrates, fecal bacteria, temperature, total solids, pH, ammonia, pharmaceuticals
Construction	Turbidity, temperature, dissolved oxygen and biochemical oxygen demand, total solids, pH, petroleum products
Urban runoff	Turbidity, nitrates, temperature, conductivity, dissolved oxygen, metals, and biochemical oxygen demand, petroleum products

**TABLE 3
SAMPLE CONTAINERS, PRESERVATION, AND HOLDING TIME**

Substance	Lab/ Field Analysis	Container ¹			Holding Times
		Type of Container	Volume of Sample	Number of Containers	
Oil	Lab	Amber glass	1L (for O&G – preserve with H ₂ SO ₄ and 28 day holding time)	1	7/40 days ²
Gasoline	Lab	VOA ³	40 mL ⁴ (preserve with HCL)	3	14 days
pH ⁵	Field	Glass/HDPE	NA	NA	Analyze Immediately
Metals (Total)	Lab	Glass/HDPE	500 mL (preserve with HNO ₃)	1	180 days
Temperature ⁵	Field	Glass/HDPE	NA	NA	Analyze Immediately
BOD	Lab	Glass/HDPE	1L	1	2 days
Turbidity	Field/Lab	Glass/HDPE	100 ml	1	2 days
Settleable Solids	Field/Lab	Glass/HDPE	1L	1	7 days
Total Dissolved Solids	Lab	Glass/HDPE	100mL	1	7 days
Chlorine ⁵	Field	Glass/HDPE	200 ml	1	Analyze immediately
Dissolved Oxygen (via probe) ⁵	Field	Glass	300 mL	1	Analyze immediately
Electrical Conductivity	Field/Lab	Glass/HDPE		1	Analyze Immediately If sent to lab - 28 days
Nitrate	Lab	Glass/HDPE	100 mL	1	2 days
Fecal Coliform	Lab	Sterile Glass/HDPE	100 mL ⁶	1	6 hrs
Ammonia ⁷	Lab	Glass/HDPE	100 ml (preserve with H ₂ SO ₄)	1	1 day

1. The best way to obtain your sample bottles is to request them directly from the laboratory to which you will be sending them for analysis.
2. 7/40 = 7 days to extract sample, 40 days hold time on the extract
3. VOA = Volatile Organic Analysis
4. Make sure there is no headspace in container and that sample is preserved with HCL to ensure pH is <2
5. Perform analysis in the field – holding time is only 15 minutes. Allow pH, chlorine, and dissolved oxygen readings to stabilize before recording results.
6. Sample must be dechlorinated; most labs provide bacti-bottles with a dechlorination compound, such as granular sodium thiosulfate.
7. When ammonia is suspected, the sample needs to be analyzed within 24 hours of collection and the pH and water temperature must be measured in the field when the sample is collected. If possible, also take conductivity measurements in the field when ammonia is suspected. Although U.S. EPA hold time is 28 days, analysis within 24 hours is recommended for a more accurate reading.

Sampling and Laboratory Analysis Notes

- All samples collected for laboratory analysis should be chilled / stored on ice from the time they are collected until the time they are analyzed (though this is not required for metals samples, it is permissible to store them on ice with other samples).
- When collecting a sample, if you are unable to fill the sample bottle directly, use clean, decontaminated intermediate equipment and rinse equipment with sample water prior to sampling. Remove the lid from the container, being careful not to contaminate the cap, neck, or the inside of the bottle. Gently mix the water in the intermediate container by swirling before pouring it into the sample container.
- Any necessary sample preservation should be performed immediately upon sample collection. If sample preservation is not possible, refrigerate them and send them to the laboratory as soon as possible.
- For every ten samples collected, also collect at least one duplicate sample for laboratory confirmation. If you collect less than ten samples, also collect a duplicate.
- Samples should be analyzed as soon as possible after collection. The times listed above are the maximum times that samples may be held before analysis and still considered valid.

C. SAMPLING PROTOCOLS

Proper sampling is useful to determine the extent of the affected area and will facilitate recovery of adequate reimbursement for damages. This section presents guidance on how to collect various types of surface water samples, but case-specific circumstances may warrant consideration of alternative sampling protocols. Where further guidance is needed, DFG staff may consult their regional water quality biologist or call the Water Pollution Control Lab at 916-358-2858 for assistance, and Water Board staff may contact the Surface Water Ambient Monitoring Program Coordinator at (916) 341-5556.

The following sampling protocols are differentiated by the type of surface water being sampled: streams/rivers, lakes/reservoirs, or site runoff.

1. Streams or Rivers

With the exception of samples collected for dissolved oxygen analysis⁵, samples should be taken at the water surface. All Samples should, if possible, be collected from mid-stream. For sampling streams or rivers, a minimum of four samples should be taken. Sampling locations should include:

- a) The SOURCE (in case of suspected point source pollution) if possible.
- b) UPSTREAM (control sample) far enough to be out of the zone of influence of the point of entry and other possible points of entry.
- c) At the POINT OF ENTRY to the stream or river.
- d) DOWNSTREAM. Additionally, CONTINUE DOWNSTREAM until no effect is apparent (eg. no plume is visible), if necessary.

2. Lakes or Reservoirs

The number of samples necessary for sampling lakes or reservoirs is variable. The sampling locations should include:

- a) The SOURCE, when possible.
- b) OTHER SOURCES of water flow into the lake.
- c) The suspected POINT OF ENTRY of the pollutant into the lake.
- d) As many samples as is necessary to determine the EXTENT of pollution.

3. Site Runoff

Proper selection of the sampling location(s) is critical to assure collection of representative samples. The sampling location(s) should include:

- a) The most downstream location that incorporates all of the targeted drainage/discharge.
- b) Just prior to the point that the discharge enters water of the State.
- c) Then follow the guidelines for streams/rivers/lakes/reservoirs (as applicable), presented above.

Other points to remember:

- a) Determine the most representative site(s) to safely collect samples
- b) Sampling sites should be free-flowing and not affected by standing water.
- c) Sampling in the middle of the runoff flow is a good way to ensure collection of a representative sample. If low flow conditions exist, it may not be possible to collect mid-stream samples. For low flow conditions, collect the entire sample stream.

⁵ Dissolved oxygen samples taken at the surface result in readings that higher than what's actually available in the water column. For dissolved oxygen analysis, the probe needs to be below the turbulent surface of the water, but not down in the sediment

- d) If sampling location is in a ditch or open conveyance and entry is required, determine a safe point of access and enter just downstream of sample site. Avoid disturbing any sediment or causing water turbidity.

D. LABELING

Each sample container should be labeled on the exterior with your name, the exact sampling location, time of day, date of collection, and any preservatives used. Be sure to write in pencil or indelible ink since other inks tend to run when wet. Seal all containers with the evidence tape. Be sure to properly fill out chain of custody documentation at time of collection.

E. PHOTOGRAPHIC DOCUMENTATION AND MAPPING

Take photographs of sample locations and label them in accordance with your sample labels. Create a sample location map as well and be sure to include permanent site features that are unlikely to move over time.

F. SAMPLE STORAGE

All samples should be kept refrigerated. Samples for prosecution should be kept secure under lock and key or in staff's possession at all times.

G. CHAIN OF CUSTODY

To maintain sample integrity, a proper chain of custody or possession must be maintained. A chain of custody (COC) form must be properly and completely filled out, signed, and dated by each person receiving the item, and kept with the samples at all times. All samples must be labeled and custody tape placed on them. The fewer the persons are in the chain the better. Samples will not ordinarily be analyzed without proper paperwork and chain of custody. COC forms used by both the Water Boards and DFG are included as Appendix B, but most commercial laboratories will provide COC forms with requested sample bottles.

H. TRANSPORTATION TO LABORATORY

Water Board samples will be analyzed by the Region's contract laboratory and DFGs samples will be analyzed by the appropriate Water Pollution Control Laboratory in Rancho Cordova.

The best method of sample transportation is personal delivery or delivery by other Fish and Game or Water Board staff. If you will be hand delivering the samples, call ahead to ensure that an analyst will be at the laboratory to accept the samples. When necessary, laboratory personnel will make special arrangements for delivery of samples after normal working hours. Samples must be handed to an analyst or designated employee so that chain of custody will be maintained. For any other method of delivery, please arrange delivery during laboratory hours.

I. CONCLUSION

We believe these guidelines will assist your investigation of cases and, if followed, will enable us to give you the best possible assistance in their prosecution. For further questions and/or training please contact Ann Marie Ore of the State Water Board Office of Enforcement at (916) 327-8195 amore@waterboards.ca.gov

J. REFERENCES

American Public Health Association. 1981. Standard Methods for the Examination of Water and Wastewater, 15th Edition.

California Department of Fish and Game Sampling Manual and Matrix, undated.

Castle, William T. July 1984, Revised Sept. 1984. Procedures for Collection of Samples Submitted to WPCL for Analysis.

U.S. Department of Transportation. 1980. Hazardous Materials Emergency Response Guidebook.

U.S. Environmental Protection Agency. 1982. Methods for Chemical Analysis of Water and Wastes.

U.S. Environmental Protection Agency Monitoring and Assessment Website.
<http://www.epa.gov/owow/monitoring/>

U.S. Environmental Protection Agency NPDES Stormwater Sampling Guidance. July 1992 <http://www.epa.gov/npdes/pubs/owm0093.pdf>

U.S. EPA Volunteer Monitoring Website:
<http://www.epa.gov/volunteer/stream/vms50.html>

Washington State Department of Ecology. October 2004. Environmental Assessment Program, *Standard Operating Procedure for Manually Obtaining Surface Water Samples*
http://www.ecy.wa.gov/programs/eap/ga/Agency/ECY_SOP_GrabSampling_v1_0.pdf

Washington State Department of Ecology. November 2007. *How to do Stormwater Monitoring: A guide for construction sites, Publication # 06-10-020.*

6. CASE REFERRAL FOR PROSECUTION INVESTIGATIVE REPORT TEMPLATE

Below is an investigative report template that provides specific instruction for Water Board staff regarding information to include when referring cases for outside prosecution by the district attorney, attorney general, or even the United States attorney.

It is important to note that once a case is referred outside the Water Board for criminal prosecution, the Water Board should expect to provide support for and coordinate with the outside prosecutor. Once a criminal case is referred out, it is no longer controlled by the Water Board.

Investigative Report Template

Date:

Staff name:

Title:

Agency:

Address:

Phone:

Introduction:

Present a short (one or two paragraphs) summary of the case briefly describing the essence of the case, how you became aware of the incident, who are the alleged violators, what occurred, how it occurred, when it happened, the harm caused, and the violation. The purpose of this is to present an overview and give the prosecutor a quick sense of what the case is about.

Examples:

1. I received a phone call in early February from a neighbor of a property that is being converted from an apple orchard to a vineyard complaining that a large amount of mud, dirt and debris was going into a nearby creek. I determined that the property owner is Joseph Landowner and that ABC Ranch Management, Inc is doing the vineyard work. After a site inspection, I confirmed that sediment was being discharged from the property located at 1234 Sonoma View Way into an unnamed tributary to Wet Creek. This appears to be an unauthorized discharge of a pollutant into waters of the state in violation of Water Code 13887(a) (4), which makes it a misdemeanor to violate § 301 of the Federal Clean Water Act.

2. On May 1, 2000 I responded to a report of a hazardous materials incident at Some Large Company, a manufacturer of metal widgets located at 5678 Industrial Ave. Upon my arrival, I met with the incident commander, Sgt. Frank Friday and was advised there had been a leak of what was believed to be a highly corrosive liquid which had entered a nearby storm drain leading to Raging River. Sgt. Friday advised me that a worker who was filling a water vat had left his post and allowed the water to overflow into a pile of powder lye and the runoff then ran into the storm drain.

I conducted an investigation and determined that the discharged material had a pH of 12.7. I traced the storm drain to its point of discharge approximately 800 yards from the subject property where it entered Raging River. I observed several dead fish as well as dead insects. I conducted further sampling downstream at various points up to a distance of 1 mile from the junction of the storm drain and the river.

Location of the Incident:

Give the address, if available, or best description of the location you can. Example: In the vicinity of Cross Creek approximately 1/4 mile south from where it intersects with Other Creek. GPS coordinates or parcel number is also useful for documenting location of the incident.

Date of the Incident:

Provide the date of the incident, which is not necessarily the date of the inspection. If the violation is ongoing, note that as well.

Witnesses:

Provide names, addresses and phone numbers of each witness. Include those who collect and test any samples.

Alleged Violations:

In this section, identify the **criminal** sections of the Water Code you believe were violated. It is not enough to cite to a section of the Water Code, which may require or prohibit the subject from doing something. Such a violation may be the basis for an administrative or civil action but it does not necessarily mean it is a **criminal** violation, which can be prosecuted by the district attorney or attorney general.

Example:

Negligently violating §301 of the Federal Water Pollution Control Act by discharging into waters of the state a pollutant in violation of §13387(a)(4) of the Water Code, a misdemeanor.

Read the code section and determine whether there are sufficient facts in your case such that you believe the relevant law has been violated. If you are unsure of the meaning or application of a law, whether you have enough facts to establish a violation or other similar questions, discuss your concerns with your assigned OE attorney.

The primary section in the Water Code setting forth criminal violations is §13387. This section provides for criminal penalties for any person who *intentionally* or *negligently* does any of the following:

- (1) Violates Water Code §13375 or §13376.
- (2) Violates any waste discharge requirements or dredged or fill material permit.
- (3) Violates any order or prohibition issued pursuant to §13243 or §13301, if the activity subject to the order or prohibition is subject to regulation under Chapter 5.5 of the Water Code.
- (4) Violates any requirement of §301, §302, §306, §307, §308, §318, or §405 of the Federal Water Pollution Control Act, as amended.
- (5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances which the person knew or reasonably should have known could cause personal injury or property damage.
- (6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which causes the treatment works to violate waste discharge requirements.

Suspects:

In this section it is important to accurately identify any and all suspects who may have violated the law. The appropriate protocol is to include all possible suspects and present your opinions about who should or should not be charged informally, either in person or by telephone. In this section, include all potential suspects and avoid making charging decisions by failing to identify a person you know was in violation but who you do not want to see charged. For instance, you may not want a laborer who was told to do illegal work or be fired charged with a crime. The same may hold true for a person who accidentally violated the law and was cooperative with respect to clean up measures. List the laborer as a suspect and include in your report the information that the laborer acted under duress. The decision as to who will be charged rests with, and is the duty of, the prosecutor.

When you identify a suspect, note whether that suspect is an individual or a corporation. If the suspect is an individual, use their full name and, if possible, include a California driver's license number or date of birth.

As to a business, if it is a corporation, accurately identify the corporate name and note who the agent for process of service is. A corporation is a "person" for purposes of the Water Code. The Secretary of State's website has a business search function that may assist you with identifying the agent for process of service, <http://kepler.sos.ca.gov/>.

If a business is not a corporation, e.g. Joe's Gas and Stop, find out who the owner of the business is and identify them as a suspect. Example: Joe Gasman, doing business as Joe's Gas and Stop.

Examples:

Joseph James Landowner
1234 Home Street
Sebastopol, CA 95472
(707) 555-1212
California Drivers License # B0123455676
Date of Birth: 6-6-50

Some Large Company, Inc., a California Corporation
1234 Corporate Way
San Somewhere, CA 95123
Agent for service: Joe Lawyer
3456 Legal Ave.
Santa Rosa, CA 95401
(707) 555-1212

Larry Lazy
Laborer
1212 Any Ave.
Santa Rosa, Ca
(707) 555-1212

Narrative:

This is the meat of the investigative report where you note what you have learned about the case relative to the violation. Always keep the violations in mind and use that as the context for the information you decide to include in the report. An investigative report can be organized in chronological order, by a listing of the witnesses and what relevant information you have learned from each, or by setting out the elements of the crime and then stating the evidence you have to prove the violation.

In your report remember that you are doing precisely that; "reporting" the evidence and information you have gathered. Avoid conclusions or third party passive statements. Instead of writing in a conclusory fashion, "A violation has occurred", provide the facts that would lead one to logically conclude a violation took place. Rather than writing "Work was done at the site", state what work was done, where it was done, by whom and the source of the information.

Your opinions are sometimes appropriate in a report when your expertise is used to establish a point. Example: "I smelled an odor I believed to be gasoline, saw a colorful sheen on the water and from my experience and training, I concluded it was a petroleum product in the creek." Laypersons are deemed qualified to make opinions about everyday occurrences (the car was going over the speed limit, the sheen in the water ran for about 200 yards, etc.) but for other opinions involving specialized training

or expertise, clearly state who is making the opinion and what qualifications they have to form such an opinion.

Physical Evidence:

The purpose of this section is to identify any physical evidence you have gathered or which is otherwise available to prove the case. Physical evidence includes samples, photos, copies of permits, etc.

Examples:

- Thirty six photographs taken on 1/5/2000.
- Fifteen jars containing soil and water samples collected on 1/5/2000.
- NPDES permit for Some Large Company
- Articles of Incorporation Documents

Attachments/Chronology

Attachments should be referred to in the body of the narrative and tabbed for ready identification with an Index of Attachments if there are more than five attachments. A chronology of relevant contacts, incidents, etc. may be helpful as an attachment but does not substitute for a thorough narrative. If you refer to a particular document in your narrative as proof of an element of the crime, attach it and reference the attachment number in the body of your report.

7. ENVIRONMENTAL TASK FORCES AND PROSECUTORS

Local and regional environmental enforcement task forces are dedicated to the deterrence, detection, investigation and prosecution of environmental violations. The task force approach of combining federal, state, and local regulatory and law enforcement resources has proved to be a particularly effective tool because of the multi-media and multi-program nature of environmental enforcement (i.e., an integrated approach that encompasses a combined examination of water, air, and other environmental concerns simultaneously).

Environmental enforcement task forces are comprised of voluntarily participating federal, state, and local agencies with enforcement authority. The members of these task forces generally include local, state or federal prosecutors, local, state, and federal law enforcement agencies (e.g., sheriff, Fish and Game wardens, California Highway Patrol, Federal Bureau of Investigation (FBI), US EPA CID etc.), investigators and technical experts from Cal/EPA's boards, departments and offices, and local environmental agencies (e.g., local hazardous material control programs, air pollution control districts, sanitation departments, etc.). Task forces can be especially effective in that they facilitate the pooling and exchange of resources and intelligence between different law enforcement and regulatory entities. These cooperative partnerships allow the task force members to pursue investigations which no single entity has the resources and information gathering capability to complete individually.

Cal/EPA maintains a list of Environmental Enforcement Task Forces throughout the state and keeps it posted on their website at:

<http://www.calepa.ca.gov/enforcement/TaskForce/DTSCContacts.htm>.

Appendix C includes this list of task forces (last updated January 2010) and contact information for staff from the Department of Toxic Substances Control (DTSC) who participate in the various task forces and can give you further details.

A listing of Environmental Prosecutors and their contact information is also included for your reference as Appendix D. This list was last updated in August 2010 but is not available online.

APPENDIX A

OTHER STATE AGENCY CONTACTS TO CONSIDER

OTHER STATE AGENCY CONTACTS TO CONSIDER

Although this manual is meant to guide DFG and Water Board interaction, staff may encounter situations which concern other agencies. What follows is a listing of other state agencies with brief information regarding their area of jurisdiction.

Air Resources Board (ARB)

Monitors ambient air quality through local and regional air pollution authorities.

Via the California State Warning Center: (800) 852-7550

Bay Conservation & Development Commission - San Francisco (BCDC)

Oversees development within San Francisco, San Pablo, & Suisun bays and the bay shoreline.

Via the California State Warning Center: (800) 852-7550

California Coastal Commission (CCC)

Oversees development of California's coastline, except where BCDC has jurisdiction.

Via the California State Warning Center: (800) 852-7550

California Highway Patrol (CHP)

Lead agency for spills on highways, and certain other roads.

Via the California State Warning Center: (800) 852-7550

Certified Unified Program Agency (CUPA)

Local agencies which oversee administration of the following 6 environmental programs: Haz. Mat. Business Plans, Accidental Release Prevention Program, UST/AST Program, Haz. Waste Generator/Treatment Programs, and Fire Code Haz. Material Mgmt. Plans and Inventory Statements.

A complete listing of all statewide CUPAs and contact information may be found at:

<http://www.calepa.ca.gov/CUPA/Directory/default.asp>

Department of Public Health (CDPH)

Oversees public water supplies and emergency water, food, and medical supplies.

Via the California State Warning Center: (800) 852-7550

Department of Toxic Substances Control (DTSC)

Regulatory authority for emergency removal of hazardous waste.

24-Hour Toxics Hotline: (916) 255-6504 and (800) 698-6942

Via the California State Warning Center: (800) 852-7550

Occupational Safety and Health Administration (Cal/OSHA)

Sets and enforces protective workplace safety and health standards. (800) 963-9424

Office of Environmental Health Hazard Assessment (OEHHA)

Evaluates risks posed by hazardous substances; issues health advisories.

Via the California State Warning Center: (800) 852-7550

State Lands Commission (SLC)

Manages state land and oversees marine oil terminal operations.

Via the California State Warning Center: (800) 852-7550

State Lands Commission Office: (562) 497-0859

During non-business hours an answering service will contact the duty officer.

APPENDIX B
Chain of Custody Forms

APPENDIX C
Environmental Task Force Contact Information

ENVIRONMENTAL TASK FORCE CONTACT INFORMATION

(Last Updated 1/12/2010)

Task Force	Primary Contact
Alameda County	Essam Eissa (510) 540-3888 eeissa@dtsc.ca.gov
Asbestos Task Force	Antonia Becker (510) 540-3889 abecker@dtsc.ca.gov
Calaveras County	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
California Border Environmental	Roger Vintze (760) 768-7104 rvintze@dtsc.ca.gov
Central Calif. Dairy	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
Central Valley Regional (2)	Dan Lynch (559) 297-3955 plynch@dtsc.ca.gov
Contra Costa County	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
Del Norte Country	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
Desert Managers	Allison Saldana (818) 717-6583 asaldana@dtsc.ca.gov Fereshteh Ebnesharashoob (714) 484-5373 febnesha@dtsc.ca.gov
Federal Environmental (6)	Allison Saldana (818) 717-6583 asaldana@dtsc.ca.gov
Hazardous Material Transporter Task Force	Antonia Becker (510) 540-3889 abecker@dtsc.ca.gov
Humboldt County	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
Kings County	Dan Lynch (559) 297-3955 plynch@dtsc.ca.gov
Lake County	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov

ENVIRONMENTAL TASK FORCE CONTACT INFORMATION (CONT.)

Task Force	Primary Contact
Los Angeles City	Allison Saldana (818) 717-6583 asaldana@dtsc.ca.gov
Los Angeles County	Allison Saldana (818) 717-6583 asaldana@dtsc.ca.gov
Marin Environment	Allison Saldana (818) 717-6583 asaldana@dtsc.ca.gov Fereshteh Ebnesharashoob (714) 484-5373 febnesha@dtsc.ca.gov
Mendocino County	Essam Eissa (510) 540-3888 eeissa@dtsc.ca.gov
Nevada County	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
Northern Cal Dairy Same as North Central Federal	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
Northern California Regional (4)	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
North Central Valley Regional (5) Federal	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
Orange County	Shohreh Shahriary (714) 484-5394 sshahria@dtsc.ca.gov
Riverside County	Shohreh Shahriary (714) 484-5394 sshahria@dtsc.ca.gov
Sacramento County	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
Sacramento Valley Regional (5)	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
San Bernardino County	Fereshteh Ebnesharashoob (714) 484-5373 febnesha@dtsc.ca.gov
San Diego County	Fereshteh Ebnesharashoob (714) 484-5373 febnesha@dtsc.ca.gov
San Francisco County DA Environmental Justice Task Force	Diana Peebler (510) 540-3866 dpeebler@dtsc.ca.gov

ENVIRONMENTAL TASK FORCE CONTACT INFORMATION (CONT.)

Task Force	Primary Contact
San Joaquin County	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
San Luis Obispo County/Santa Barbara Regional Federal Task Force	Dan Lynch (559) 297-3955 plynch@dtsc.ca.gov
San Mateo County	Essam Eissa (510) 540-3888 eeissa@dtsc.ca.gov
Santa Barbara Environmental Task Force	Larry Stuck (818) 717-6584 lstuck@dtsc.ca.gov
Santa Clara Environmental Task Force	Antonia Becker (510) 540-3889 ABecker@dtsc.ca.gov
Sierra Nevada Environmental (5)	Gil Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
Siskiyou County Environmental Task Force	Gilbert Whipple (916) 255-3607 gwhipple@dtsc.ca.gov
Solano County	Antonia Becker (510) 540-3889 abecker@dtsc.ca.gov
Sonoma County	Diana Peebler (510) 540-3866 dpeebler@dtsc.ca.gov
Sonoma Environmental Quality Assurance Committee	Diana Peebler (510) 540-3866 dpeebler@dtsc.ca.gov
Southern Central Valley Regional (3)	Dan Lynch (559) 297-3955 plynch@dtsc.ca.gov
Tri-County (Monterey, Santa Cruz, San Benito)	Antonia Becker (510) 540-3889 abecker@dtsc.ca.gov
Ventura County	Larry Stuck (818) 551-2930 lstuck@dtsc.ca.gov
Yolo County	Dylan Clark (916) 255-4909 dclark@dtsc.ca.gov
Rural Crimes Prevention Task Force	Essam Eissa (510) 540-3888 eeissa@dtsc.ca.gov
8 County Rural Crime Prevention Task Force	Dan Lynch (559) 297-3955 plynch@dtsc.ca.gov

APPENDIX D
Environmental Prosecutor Contact Information

ENVIRONMENTAL PROSECUTOR CONTACT INFORMATION

(Last updated August 2010)

County/City	Last Name	First Name	Phone Number	Email Address	Title
District Attorneys					
ALAMEDA COUNTY	Blazer	Larry	510-569-9281	larry.blazer@acgov.org	Senior DDA
	Mifsud	Ken	510-670-5985	ken.mifsud@acgov.org	DDA
	Roemer	Mike	510-569-5774	mike.roemer@acgov.org	DDA
	Poncini	Cheryl	510-667-7456	cheryl.poncini@acgov.org	DDA
ALPINE COUNTY	Richmond	Will	510-694-2971	bohatch@aol.com	DDA
AMADOR COUNTY	Richmond	Will	510-694-2971	bohatch@aol.com	DDA
BUTTE COUNTY	Thomas	Hal	510-538-3816	HThomas@ButteCounty.net	DDA
CALAVERAS COUNTY	Carr	Matthew	916-443-2017	mcarr@cdaa.org	CDAA CP
COLUSA COUNTY	Carr	Matthew	916-443-2017	mcarr@cdaa.org	CDAA CP
CONTRA COSTA COUNTY	Wixson	Lon	925-646-4532	lwixson@contracostada.org	DDA
	Grassini	Stacey	925-646-4532	sgrassini@contracostada.org	DDA
DEL NORTE COUNTY	Riese	Michael	707-464-7210	Riese2@netscape.net	DDA
EL DORADO COUNTY	Mas	Gloria	530-621-6472	gloria.mas@edcgov.us	DDA
	Pizzuti	Michael	530-643-4815	michael.pizzuti@edcgov.us	DDA
	Clinchard	James	530-621-6472	james.clinchard@edcgov.us	DDA
FRESNO COUNTY	Brummel	Michael	559-488-3889	mbrummel@co.fresno.ca.us	DDA
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KINGS COUNTY	Richmond	Will	530-694-2971	bohatch@aol.com	DDA
LAKE COUNTY	Carr	Matthew	916-443-2017	mcarr@cdaa.org	CDAA CP
LASSEN COUNTY	Richmond	Will	530-694-2971	bohatch@aol.com	DDA
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ENVIRONMENTAL PROSECUTOR CONTACT INFORMATION

(Last updated August 2010)

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ENVIRONMENTAL PROSECUTOR CONTACT INFORMATION

(Last updated August 2010)

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SUTTER COUNTY					
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TRINITY COUNTY					
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(Last updated August 2010)

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LOS ANGELES OFFICE					
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Northern District of California					
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	Shine	Katherine	415-972-3910	shine.katherine@epa.gov	
	Yocom	Danita	415-972-3885	yocom.danita@epa.gov	
	Baker	Alison		Baker.Alison-D@epamail.epa.gov	
PASADENA	Martin	Erica	626-583-6746	martin.eric@epa.gov	

Abbreviations

CDAA CP = California District Attorneys Association Circuit Prosecutor

CDAA SCP = CDAA Statewide Circuit Prosecutor

DAG = Deputy Attorney General

DCA = Deputy City Attorney

DDA = Deputy District Attorney

Green highlighted county names mean that county only has a circuit prosecutor

ATTACHMENT F

Water Board - Marijuana Grows Workshop Messaging

High Level Messaging

- The state and regional water boards in California (State Water Boards) are concerned about the environmental impacts of legally permitted marijuana cultivation operations on private lands. Public lands are under federal jurisdiction – not the water boards.
- The environmental impacts of improperly planned cultivation operations creates erosion issues through improper grading, irresponsible forest clearings, illegal stream diversions, and careless or indiscriminate pesticide and fertilizer use that has polluted water waterways and killed wildlife.
- Addressing this complicated issue requires an integrated multi-agency, and multiple governance approach to ensure that those responsible can be easily identified and held responsible for the environmental damage created when common sense and existing environmental regulations are not followed.
- The State Water Boards are not equipped to be first responders if environmental damage is reported in an existing cultivation operation. Within this multi-agency approach, the State Water Boards can be second responders and participate in a long term effort to enforce existing environmental regulations within the water code that apply to unregulated cultivation practices.
- The goal of this integrated effort is to hold those responsible for existing environmental damage to fix the problem, while providing a pathway of compliance, regulation and monitoring for those operations that want to cultivate plants in a sensible, environmental sensitive manner. In some cases enforcement actions will occur as a deterrent effect.

Specifics

- Marijuana cultivation is having a devastating effect on water quality and supply, and on fish and wildlife and their habitats. Impacts of marijuana cultivation effect the public's enjoyment of the lands and waters of the state and the wildlife that inhabit them. Improperly planned marijuana cultivation operations create severe environmental impacts, including erosion through improper grading, irresponsible forest clearing, illegal stream diversions, and careless or indiscriminate pesticide and fertilizer use that pollutes waterways and kills wildlife.

- If the impacts of marijuana cultivation continue unabated, entire species may become extinct, important riparian areas may dry up and fill with sediments and water quality may be dramatically affected by the introduction of harmful pesticides, rodenticides and fertilizers.
- A pilot study employing aerial surveys of four small watersheds in Humboldt and Mendocino counties found the acreage in cultivation doubled from 2009 to 2012, with an estimated 500 individual operations and approximately 30,000 plants in each watershed.
- The State and Regional Water Boards have observed significant land clearing activities resulting in sediment discharges to many high value surface waters in the north state, nutrient loading from fertilizers, and stream diversions that result in dangerously low water levels.
- The proposal is for a priority-driven approach to address the natural resources damages from marijuana cultivation, primarily on private lands in northern California, but also on high conservation value **state** public lands. The Water Boards are not equipped to address illegal “trespass” grows on federal public lands and this joint agency effort does not do so.
- There are four elements to the proposal: permitting, enforcement, education and outreach, and coordination with other agencies.
- The proposal also contemplated the need for considerable outreach and education to the regulated public.
- The goals of this integrated effort are to educate those engaged in marijuana cultivation about the severe adverse environmental impacts it causes and how to avoid and minimize those impacts, and to compel those responsible for existing environmental damage to fix the problems they have created, while providing a pathway towards compliance.

ATTACHMENT G

Marijuana Cultivation in the Central Valley Threatens Water Quality and Wildlife

Cultivation of marijuana in the Central Valley Region has grown exponentially in recent years, both in the number of grows and the size of grow operations. The growing operations are appearing on both private and public land.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) is not interested in entering the debate over the legality of growing marijuana in California, other than to note that any growing operation on public land is illegal regardless of the crop. The Central Valley Water Board has jurisdiction over discharges of waste that could affect waters of the State, regardless of what activity is generating the waste. The Central Valley Water Board does not in any way authorize, endorse, sanction, permit or approve the cultivation, use, or sale of marijuana or any other illegal activity.

The Central Valley Water Board has serious concerns about the water quality impacts from the dramatic increase in growing activity on both public and private land.

The Problem

Growers have engaged in a variety of activities that can threaten or damage riparian and aquatic habitat and groundwater, including:

- grading, terracing, dam, and road construction without permits, leading to the filling of streams through erosion and sediment deposition;
- deforestation and habitat fragmentation;
- illegal use of rodenticides, fungicides, herbicides and insecticides;
- use of soil amendments and fertilizers in situations where run off to surface waters may occur;
- discarding of trash and haphazard management of human waste;
- substandard storage of hazardous materials such as diesel and gasoline; and
- unauthorized diversion of water from streams.

These activities impair beneficial uses of waters of the state, from municipal drinking water to swimming, and from agriculture to preserving habitat for endangered fish and wildlife.

Isn't Marijuana Cultivation a Big Economic Boost to the Region?

That may be true, but marijuana growers cannot be allowed to circumvent environmental regulations that other industries must follow. Water quality, fish, and wildlife are public trust assets that shouldn't be sacrificed for private economic gain.

How Big is The Problem?

No one knows the true scope of the increased growing activity and the related quantity of water being diverted from local streams, because most growers do not register or apply for permits from the various agencies involved in protecting water quality, existing water rights, and wildlife.

A Department of Fish and Wildlife study of two small watersheds in Humboldt County that used aerial imagery indicated that the number of acres devoted to marijuana growing almost doubled from 2009 to 2012, with an estimated 550 individual growing operations and 19,000 plants in each watershed. Similar numbers have been reported in watersheds throughout the Central Valley Region.

What's Being Done About It?

Just like any other person who develops their property, marijuana cultivators must first obtain all the appropriate permits to ensure that their site development activities are done in a manner that is consistent with federal, state, and local laws and regulations. The attached information sheet identifies several types of permits that marijuana cultivators may need to obtain before developing their property, and explains some of the steps that marijuana cultivators must take to comply with site development requirements and the state regulations that apply to reporting diversions of water. These permits and requirements apply to *any* site preparation work, regardless of crop.

In addition to these existing laws and regulations, the Central Valley Water Board is also developing a regulatory program designed to ensure that marijuana cultivation activities do not result in adverse water quality impacts. Medicinal marijuana cultivation may eventually become part of the Board's existing Irrigated Lands Regulatory Program, or the Board may develop a different regulatory approach for dealing with marijuana cultivation activities.

The Central Valley Water Board is also increasing the resources that it will devote to investigating and prosecuting marijuana cultivation activities that threaten to impact water quality, aquatic life, or wildlife habitat. Furthermore, it is also worth noting that the Board's regulatory activities can only provide permit coverage for growing operations on private lands; marijuana cultivation on public lands will not be authorized.

The State and Regional Boards, including the North Coast Water Board and the Central Valley Water Board, are committed to helping educate both the public and the cultivators about proper permitting and growing practices in their respective water board regions. Additionally, local, state and federal agencies, including the State and Regional Boards, are working together in task forces to find illegal growing operations and enforce applicable laws.

What Can the Public Do to Help?

The public can help in two ways: making friends and neighbors aware of the issues; and reporting water quality violations they see to the Central Valley Regional Water Quality Control Board.

To file an environmental complaint, contact the Central Valley Water Board at the appropriate office listed below:

Sacramento Office

11020 Sun Center Drive, Suite 200

Rancho Cordova, CA 95670-6114

Phone: (916)464-3291

Fax: (916) 464-4645

Fresno Office

1685 "E" Street

Fresno, CA 93706-2007

Phone: (559) 445-5116

Fax: (559) 445-5910

Redding Office

364 Knollcrest Drive, Suite 205

Redding, CA 96002

Phone: (530) 224-4845

Fax: (530) 224-4857

Or, you can submit an environmental complaint to Cal/EPA via the following web link:

http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm (This site can also be used for [water right complaints](#))

Following is an informational sheet on how to comply with necessary permitting requirements:

To: Interested parties and agencies

SUBJECT: 215 Grow-Related Activities Which May Need a Regional Water Board Permit or Special Planning for Water Quality Protection

The cultivation of marijuana can harm our State's waters if it is not carried out in a responsible manner. If you are planning to develop land to grow marijuana in compliance with State law and local ordinances, there are several agencies you should contact BEFORE you get started. The Central Valley Regional Water Quality Control Board (Central Valley Water Board) is one of the agencies that may need to review and permit the activities associated with your project. The State Water Resources Control Board's Division of Water Rights is another. Before you start developing your property to conduct your growing project, here is a series of questions you should ask yourself to see whether your activities may need a permit from the Central Valley Water Board.

- 1) Will I be doing any work that involves digging or heavy equipment work in a watercourse/wetland or in a location where rain could wash dirt into a year-round or seasonal creek, river, wetland, or wet feature?
- 2) Will I be placing any type of material or structure in a stream, either year-round or seasonal (e.g., stream crossing, culvert, water intake, dam, etc.)?
- 3) Will I be diverting water from a stream?
- 4) Will I be building any roads, landings, terraces or other features that involve placement of earthen fill material on my land?
- 5) Will I be grading, excavating, or otherwise moving earth on my property?
- 6) Will I be using and/or storing pesticides, herbicides, fertilizers, fuel, or other chemicals on my property?
- 7) Will I be generating and/or storing solid waste (e.g., amendment bags, boxes, containers, dead plant material, waste soil, etc.) on my property?

If you have answered yes to questions 1, 2, or 3, you will probably need a permit from the State or Regional Water Board, and we suggest that you contact us at one of the three offices listed above to get further information about how to apply for the appropriate permits. Note that any person who discharges waste to waters of the State without a permit may be subject to enforcement and possible penalties. Information about California water rights is available on the State Water Resources Control Board's Division of Water Rights website at: <http://www.waterboards.ca.gov/waterrights/>. Any diversion and use of water without a water right, and a failure to report the diversion and use of water are also subject to enforcement and penalties.

If you have answered yes to questions 4 or 5, you may need a permit from the Water Board, and your project may harm water quality if not constructed carefully, subjecting you to enforcement and possible penalties. It would be advisable to hire a qualified professional with experience in erosion control to help you design and construct your project in a way that will avoid allowing sediment to get into waterways. We recommend that you contact the Central Valley Water Board to review your project and identify whether your project will need a water quality permit.

Finally, a yes answer to question 6 or 7 will not necessarily require that you get a permit from the Water Board if you manage these materials in such a way that they will not threaten to impact surface waters or groundwater in any way. If impacts do occur, you are subject to liability for the water quality impacts associated with these activities. We recommend that as you design your project, you consider and identify suitable location(s) on your property, possibly within a container or structure, where you can safely contain such materials away from surface and/or ground waters in a manner that eliminates the possibility of discharge.

Dumping or allowing sediment or other wastes to enter surface water, including streams or groundwater is illegal, as is discharging any of the materials noted above to surface water or groundwater. If you have any questions or would like assistance in reviewing your compliance with water quality laws and requirements and/or need for permits, please contact the Central Valley Water Board at (530) 224-4845. Information about the Central Valley Water Board can be found at our website: <http://www.waterboards.ca.gov/centralvalley/>.