



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

May 7, 2015

Mr. Matthias St. John, Executive Director
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

RE: Order No. 2015-0023: Draft Waiver of Waste Discharge Requirements for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities

Dear Mr. St. John:

The Rural County Representatives of California (RCRC) represents thirty-four rural counties across California, eight of which are included in the purview of the North Coast Regional Water Quality Control Board (Regional Board). RCRC member counties take their enforcement role of local water quality objectives very seriously, particularly since RCRC member counties are the stewards of much of the State's water supply. In the last several years, Northern California's rural counties have seen a dramatic proliferation of marijuana cultivation and a continual expansion of the scale and volume of individual grow sites. The immediate threat to water quality posed by marijuana cultivation is of paramount importance to RCRC's member counties, many of which are currently grappling with how to effectively address the resulting environmental impacts.

In light of our environmental concerns, RCRC applauds the Regional Board for the proposed Waste Discharge Requirements (WDR) for marijuana cultivation and associated activities. The WDR is a vital first step in addressing the effects marijuana cultivation has on our State's water quality. While we realize your agency only has authority over quasi-legal grows, we believe the proposed WDR will set the tone for the rest of the State in addressing water quality concerns, and could even serve as a template for other Regional Boards should your program prove successful. We also believe the requirements in the proposal comprise a tenable water quality program for cultivators who want to make sure their operations are not having a negative impact on the State's water, as well as those who have sites in need of environmental cleanup and mitigation.

RCRC also appreciates the proposal's recognition of local governments and their role in environmental crime task forces on marijuana cultivation. The counties under the purview of the Regional Board have been enthusiastic about the work your agency has done on cultivation-related enforcement, and look forward to continuing this collaboration with your staff and other state and federal agencies once the WDR is in place. We encourage you to continue reaching out to county Boards of Supervisors and staff to expand the work already being done on this

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issue, and also to contact RCRC staff if there is any way we can be helpful in your efforts on the WDR.

RCRC supports the proposed imposition of an annual fee as stated under Finding 34 in the draft WDR. As you know, the Waste Discharge Permit Fund (WDPF) is fully supported by discharger fees, many of which have a strong history of compliance with the various permits and WDRs required by the state and regional water boards. It would be unfair for established dischargers to subsidize enforcement and cleanup activities for marijuana cultivation sites, particularly since we anticipate the initial compliance process will require many hours of your staff time and resources to bring dischargers into compliance under this WDR. We appreciate your intent to require a fee and encourage you to include this requirement in the final WDR.

On a final note, we believe that later this year the Legislature and the Governor will enact a statewide medical marijuana licensing scheme – something that is desperately needed. RCRC has been working with the authors of each legislative proposal, and we have stressed the need to construct provisions that address aspects of cultivation. One of the cornerstones of that is the need to have state agencies charged with environmental enforcement activities - including regional water boards - coordinate their efforts with other state agencies and include local governments. We remain hopeful that a licensing scheme will be adequately connected to the WDR and help in the enforcement activities of the Regional Board. As such, we encourage your Regional Board to continue working within the Administration to assist in constructing a viable and workable licensing scheme – particularly for areas of the State where large amounts of cultivation will occur.

For these reasons, RCRC fully supports the proposed WDR for marijuana cultivation activities and would be happy to assist the Regional Board in any way we can. If you should have any questions, please feel free to contact me at (916) 447-4806 or sheaton@rcrcnet.org.

Sincerely,



STACI HEATON
Regulatory Affairs Advocate

cc: The Honorable Mike McGuire, Member of the State Senate
The Honorable Jim Wood, Member of the State Assembly
The Honorable Rob Bonta, Member of the State Assembly
The Honorable Ken Cooley, Member of the State Assembly
Felicia Marcus, Chair, State Water Resources Control Board
Cris Carrigan, Director of Enforcement, State Water Resources Control Board
Charlton Bonham, Director, California Department of Fish and Wildlife
Members of the Board of Supervisors of Del Norte County
Members of the Board of Supervisors of Humboldt County
Members of the Board of Supervisors of Lake County
Members of the Board of Supervisors of Mendocino County
Members of the Board of Supervisors of Trinity County



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NCRWQCB

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Date KG/DH

June 4, 2015

Matthew St. John, Executive Officer
 North Coast Regional Water Quality Control Board
 5550 Skylane Boulevard, Suite A
 Santa Rosa, California 95403

Subject: Comments on Draft Order R1-2015-0023

Dear Mr. St. John,

The California Department of Forestry and Fire Protection (CAL FIRE) appreciates the opportunity to comment on the North Coast Regional Water Quality Control Board's (North Coast Water Board) Draft Order R1-No. 2015-0023 – Draft Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operation with Similar Environmental Effects in the North Coast Region (Marijuana Waiver). Comments will primarily focus on the conceptual and technical basis of the Marijuana Waiver, as well as potential regulatory and administrative issues for properly implementing the Marijuana Waiver.

Conceptual and Technical Basis of the Marijuana Waiver

The conceptual and technical basis for the Marijuana Waiver is sound. The Marijuana Waiver recognizes that the land area under marijuana cultivation has increased rapidly over the past decade, and that the activity has resulted in significant waste discharge and loss of instream flows (DWR 2013, Bauer et al. 2015). The Marijuana Waiver does not permit discharges associated with forestland conversion and site development for the purposes of the marijuana cultivation. Rather, the Marijuana Waiver covers discharges from existing cultivation sites, and includes activities such as:

- Maintenance of developed areas and drainage features;
- Stream crossing maintenance and improvement, including culvert sizing and installation, non-culverted stream crossing installation, culvert cleaning, culvert improvement and repair, and culvert and non-culverted stream crossing replacement;
- Activities within and adjacent to wetlands and riparian zones;
- Spoil storage and disposal;
- Water diversion, storage, and use;
- Irrigation runoff from marijuana cultivation and other similar growing operations;

- Fertilizer, soil amendments, petroleum products, biodiesel, and pesticide/herbicide/rodenticide storage, use, and waste disposal;
- Waste handling and disposal, including empty soil/soil amendment/fertilizer/pesticide bags and containers, empty plant pots or containers, dead or harvested plant waste, spent growth medium, and other cultivation-associate wastes.
- Household refuse, human waste and domestic wastewater; and
- Site remediation/cleanup/restoration activities including, but not limited to removal of fill from watercourses, stream restoration, riparian vegetation plantings and maintenance, soil stabilization, erosion control, upgrading stream crossings, road outcropping and rolling dip installation where safe and suitable, installing or maintaining water bars, ditch relief culverts and overside drains, removing berms, stabilizing unstable areas, reshaping cut banks, and rocking native-surfaced roads.

These particular activities are well-documented sources of water quality impacts. The scale and distribution of these activities, along with the local environmental conditions, control the potential for water quality impacts from marijuana cultivation. To this end, the Marijuana Waiver recognizes three types of marijuana cultivation operations based on relative risk to water quality. These are the following:

- **Tier 1** - Dischargers with low risk to water quality based on certain physical characteristics of the operation such as slope, proximity to surface water, and scale of the operation;
- **Tier 2** - Dischargers with operations that present a higher threat to water quality and water resources, and do not meet the site characteristics of a Tier 1 discharger; and
- **Tier 3** - The third tier is for dischargers with sites requiring cleanup, restoration, and/or remediation based on current or past land development/management activities that have resulted in a discharge or threatened discharge in violation of water quality standards.

Planning, implementation, and reporting (i.e., monitoring) requirements under the Marijuana Waiver increase in rigor and cost from Tier 1 to Tier 3. In general, the Marijuana Waiver relies on the implementation of effective best management practices (BMPs) to achieve the objective of waste discharge elimination or reduction. Many of the BMPs listed in Appendix B of the Order are well recognized for preventing non-point source water pollution.

Regulatory and Administrative Issues

The CAL FIRE Forest Practice Program enforces the laws that regulate timber harvesting on privately owned lands in California. The authority is provided by the Forest Practice Act to ensure timber harvesting is done in a manner to preserve and protect our fish, wildlife, forests, and streams. Additional rules enacted by the Board of Forestry and Fire Protection are also enforced to protect these resources. The Department ensures that private landowners abide by these laws when harvesting trees.

The Department's involvement is required when marijuana cultivation results in the conversion of private timberlands. When a timberland owner makes the decision to convert their timberland to other non-timber growing uses they are required to submit an Application for Timberland Conversion Permit and Plan to the Department, as well as a Timber Harvesting Plan, unless otherwise exempt by the California Code of Regulations Section 1104.1. The Department has the responsibility, as delegated by the Board of Forestry and Fire Protection, for the approval of Timberland Conversion Permits in accordance with Public Resources Code Sections 4621- 4628, the California Code of Regulations Sections 1100 –1110, and the Government Code Sections 51100 – 51155 (Timberland Productivity Act of 1982).

The Department's Forest Practice law enforcement personnel are sometimes responsible for both investigating and eradicating marijuana sites on the State's forestlands. The Department often works with other agency law enforcement as well as local law enforcement depending on the size of the cultivation sites and degree of environmental damage.

In the past five years, there has been enforcement action taken by the Department on 109 illegal conversions related to the cultivation of marijuana. It is estimated that there are currently thousands of illegal conversions related to marijuana cultivation in which no action has been taken to date. Additionally, since 2011 there has been a steady increase in the submission of Notices of Exemption for small conversions, most likely related to marijuana cultivation.

The Department currently considers all illegal conversions of timberland equally, regardless of the intended purpose of the land that has been converted. Actions and investigations are based on the scale of environmental damage, citizen complaints, and other workload considerations.

Additionally, the Department is concerned about the potential impact on employee safety that marijuana cultivation presents, particularly for field staff that may come into contact with illegal cultivators. There have been numerous situations where Department staff have been threatened by illegal marijuana cultivators. While the Department supports the goal of improved water quality regulation for marijuana cultivation, concerns remain regarding employee safety when in the field.

The Marijuana Waiver clearly recognizes the authority of other trustee agencies in findings 6 and 7 of the Waiver, and there appears to be no direct conflicts with the existing regulatory programs of other agencies. For example, there is the potential for the Marijuana Waiver to cover marijuana cultivation operations that are occurring on illegally converted timberlands. It is important that individuals intending to convert timberland are informed they need to contact CAL FIRE prior to any vegetation removal. If it is apparent to Water Board Staff that vegetation has already been removed and there is no indication that a conversion permit has been approved for the operation, then local CAL FIRE staff should be contacted. The issue of illegally converted timberlands is one that should be communicated between North Coast Water Board staff and the local CAL FIRE Unit.

Land use associated with marijuana cultivation has the potential to go through three separate regulatory programs administered by the North Coast Water Board. These programs include:

- Categorical Waiver of Waste Discharge Requirements For Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region (Timber Waiver).
- General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit); and
- Marijuana Waiver

The Category B Timber Waiver would govern tree removal for site conversion; the Construction General Permit would govern construction activities such as clearing, grading, and land disturbance; and the Marijuana Waiver covers only the existing marijuana cultivation operations. The number of programs and staff administering potential cultivation operations can pose a problem for consistency as the project area transitions from one regulatory phase to another. As a result, it will be necessary to integrate these programs to a degree such that conflicting requirements are avoided.

Summary

Thank you for the opportunity to comment on this draft Waiver. As mentioned in the previous comments, the conceptual and technical basis of the Marijuana Waiver is sound. However, complications may arise when implementing a program that is intertwined with many other inter- and intra-agency regulatory requirements. CAL FIRE looks forward to working with the North Coast Water Board to minimize these potential complications.

If you have any questions or comments regarding this letter please, contact Drew Coe (530-224-3274) or Cary Japp (707-464-4969) of my staff.

Sincerely,



DUANE SHINTAKU
Deputy Director
Resource Management