

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Thursday, October 20, 2016
Regional Water Board Office
Santa Rosa, California

ITEM: 5

SUBJECT: Update on the State Water Resources Control Board's Cannabis Cultivation and Water Rights Effort (*Dan Schultz, State Water Resources Control Board*)

BOARD ACTION: This is an informational item only. No action will be taken by the Regional Water Board.

BACKGROUND: In October 2015, the Legislature adopted three bills (Assembly Bills 243 and 266, and Senate Bill 643) that created a licensing and regulatory framework for medical marijuana. On June 27, 2016, Governor Brown signed Senate Bill (SB) 837 that amended the Medical Marijuana Regulation and Safety Act which was created by the three bills in 2015. As a result of the amendments, the Medical Marijuana Regulation and Safety Act was renamed to the Medical Cannabis Regulation and Safety Act (MCRSA).

DISCUSSION: Per SB 837, the State Water Resources Control Board (State Water Board), in consultation with California Department of Fish and Wildlife (CDFW) and California Department of Food and Agriculture, shall ensure that individual and cumulative effects of water diversion and discharge associated with medical commercial cannabis cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and flows needed to maintain natural flow variability.

SB 837 directs the State Water Board, in consultation with CDFW, to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cultivation may have the potential to substantially affect instream flows. The principles and guidelines shall include measures to protect springs, wetlands, and aquatic habitat from negative impacts of cannabis cultivation. Additional requirements may be applied to groundwater extractions where the State Water Board determines those requirements are reasonably necessary. The State Water Board may update interim principles and guidelines as reasonably necessary (pending development of long-term principles and guidelines).

To meet and support SB 837 directives, the State Water Board intends to develop:

- Policies for water quality control to establish principles and guidelines (e.g., flow requirements, fish screening of diversions, groundwater extractions, etc.) for commercial cannabis cultivation¹
 - Interim principles and guidelines
 - Long-term principles and guidelines
- Statewide Small Irrigation Use Registration Program
- Implementation and Enforcement Programs

¹Per SB 837, the principles and guidelines qualify as a Class 8 action under the California Environmental Quality Act (Actions by Regulatory Agencies for Protection of the Environment), provided the actions do not involve relaxation of existing streamflow standards (Water Code, §13149 (b))

The State Water Board is currently in the process of developing the interim principles and guidelines using the following approach:

- Public outreach
- Establish regional boundaries, including defining the geographic scope with priority given to areas expected to have dense cannabis cultivation and high water demand
- Review and select an instream flow desktop methodology and develop flow requirements at compliance gages
- Identify additional (non-flow) principles and guidelines
- Develop final draft policy with flow requirements and other principles and guidelines
- Adopt final policy

Staff has developed a framework for the interim principles and guidelines which includes:

- Surface water diversion forbearance period during the dry season
- Flow requirements for the wet season diversion period
- Additional principles and guidelines, for example:
 - Dry season flow requirements for hydrologically connected groundwater diversions
 - Fish screens for diversions
 - Riparian buffers
 - Removal of fish passage barriers
 - Off-stream storage requirements
 - Conservation measures (e.g., drip or micro-spray)

The projected timeline for the development of the interim principles and guidelines is as follows:

- Conduct initial outreach meetings in key regions: August 31 – October 7, 2016 - Completed
- Release policy for public review (60 days): March – May 2017
- State Water Board meeting for consideration of proposed principles and guidelines: August 2017

RECOMMENDATION: This is an informational item. No action will be taken.

SUPPORTING
DOCUMENTS:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/cannabis_enforcement.shtml