

UPDATE ON THE CANNABIS REGULATORY PROGRAM

Information Item presented to
**North Coast Regional Water
Quality Control Board**

December 13, 2017 - Agenda Item 10
North Coast Regional Water Board
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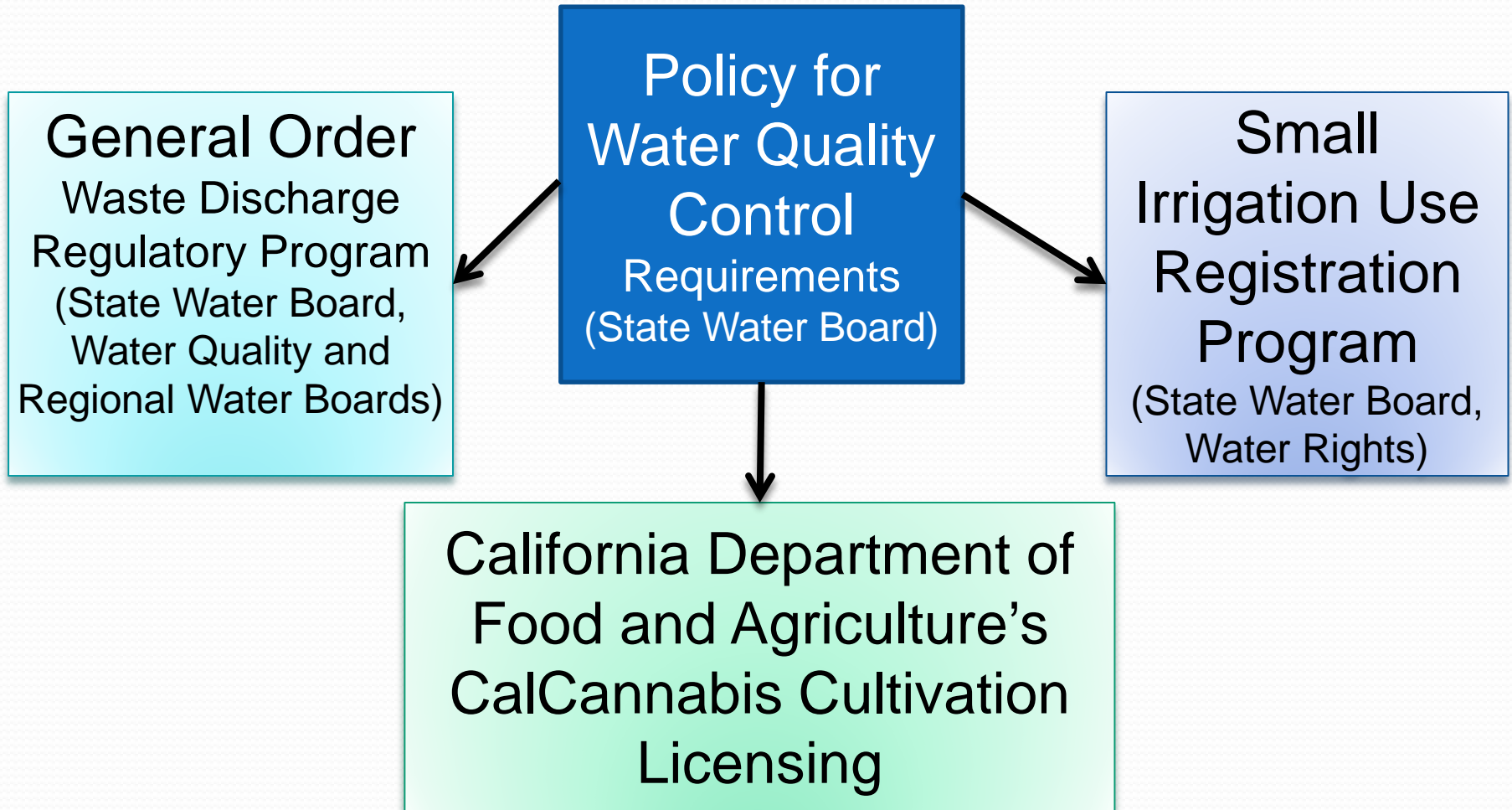


Presentation Outline

- Highlights of Statewide Cannabis Policy
 - Policy
 - General Order
 - Small Irrigation Use Registration
 - Application Portal
- Outreach, Ongoing Coordination, and Contacts
- Comparison of Region 1 and Statewide Orders
- Region 1 Program Update

Cannabis Policy

Cannabis Policy Regulatory Flow



Cannabis Policy - Status

- Adopted by State Water Board: October 17, 2017
- Submitted to Office of Legislative Affairs (OAL): November 2, 2017
- OAL review period concludes: December 19, 2017
- Policy effective upon OAL approval

- Side Note:
 - Recreational cannabis legal effective January 1, 2018

Cannabis Cultivation Policy

- Cannabis Cultivation Policy:
 - Policy describes overall structure of Water Boards proposed cannabis cultivation regulatory program, water quality and instream flow requirements
 - Policy is categorically exempt from California Environmental Quality Act (CEQA), provided it does not relax standards
 - Class 8 action under CEQA – action taken by regulatory agency for protection of environment within regulatory process

Cannabis Cultivation Policy

(Principles and Guidelines for Cannabis Cultivation)

- Main Document
- Attachment A: Cannabis Cultivation Requirements
 - Section 1 – Definitions, General Requirements, and Prohibitions
 - Section 2 – Requirements for Water Diversion and Waste Discharge (10 subsections)
 - Section 3 – Numeric and Narrative Instream Flow Requirements
 - Section 4 - Watershed Compliance Gage Assignments
 - Section 5 – Planning and Reporting
 - Section 6 – Useful Guidance Documents

Minimum Riparian Setbacks

Common Name	Watercourse Class	Distance*
Perennial watercourses, waterbodies (e.g. lakes, ponds), or springs	I	150 ft.
Intermittent watercourses or wetlands	II	100 ft.
Ephemeral watercourses	III	50 ft.
Man-made irrigation canals, water supply reservoirs, or hydroelectric canals that support native aquatic species	IV	Established Riparian Vegetation Zone
All other man-made irrigation canals, water supply reservoirs, or hydroelectric canals	IV	N/A

** Cannabis cultivators enrolled in a Regional Water Board order adopting waste discharge requirements (WDRs) or a waiver of WDRs for cannabis cultivation activities prior to October 17, 2017, may retain reduced setbacks applicable under that Regional Water Board order unless Regional Water Board's Executive Officer determines that reduced setbacks applicable under that order are not protective of water quality*

Water Supply, Diversion, and Storage

- Maximum instantaneous diversion rate of 10 gallons per minute
- Must have a California Department of Fish and Wildlife (CDFW)-approved water-intake screen (e.g. fish screen)
- Fuel powered diversion pumps shall be located outside riparian setbacks
- Must plug, block, disconnect, or remove diversion intake associated with cannabis cultivation activities during forbearance period



Water Supply, Diversion, and Storage (cont.)

- Shall install and maintain measuring device(s) for surface water, including subterranean stream, diversions
 - Measuring device shall be, at a **minimum equivalent to requirements for direct diversions greater than 10 acre-feet per year** in CCR, Title 23, Division 3, Chapter 2.7
- Shall maintain daily diversion records for water diverted for cannabis cultivation
 - Must maintain separate record to document amount of water used for cannabis cultivation separated out from amount used for other beneficial uses
 - Must maintain records at cultivation site and make records available to State Water Board, CDFW, or authorized representative
 - Records shall be maintained for a minimum of five years
- Groundwater diversions may be subject to additional requirements if deemed necessary to implement purposes of Policy

Water Supply, Diversion, and Storage (cont.)



- Onstream storage reservoirs are prohibited unless appropriative water right has been obtained
- Requires that off-stream storage reservoirs and ponds are sited and designed or approved by a qualified professional in compliance with Division of Safety of Dams (DSOD), county, and/or city requirements, as applicable
- Bladders are discouraged and must have secondary containment capable of capturing 110 percent of maximum capacity

Cannabis Cultivation Policy

(Numeric and Narrative Instream Flow Requirements)



Narrative Instream Flow Requirement:

- 50% of streamflow shall be bypassed past point of diversion
- Surface water forbearance period: April 1 – October 31, possibly later depending on precipitation
 - Initial diversion before December 15 may not commence until after seven consecutive days with flow above numeric instream flow

Numeric Instream Flow

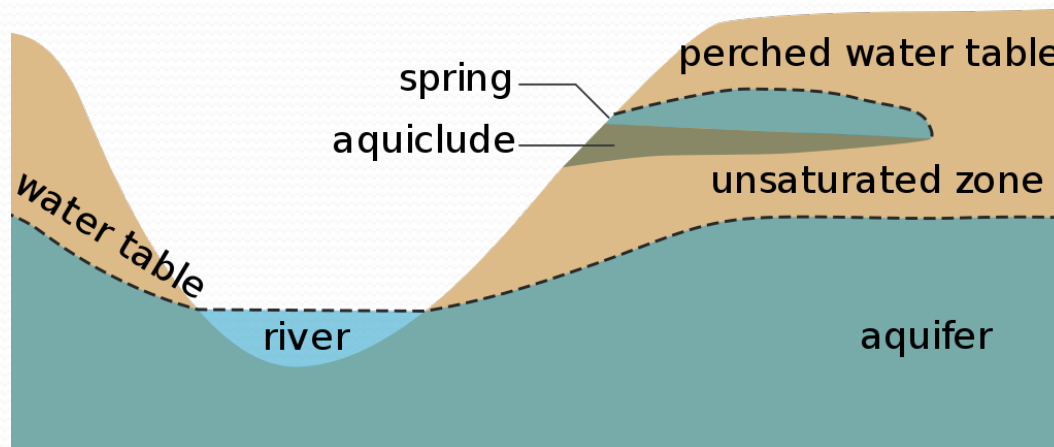
- Diversions can only occur when daily average flow at assigned gage is above minimum instream flow requirement
- Diverters shall measure and record daily water diversion and use

Cannabis Cultivation Policy

(Numeric and Narrative Flow Requirements)

Groundwater Requirements:

- Aquatic base flow thresholds established as one mechanism to help monitor whether groundwater diverters are having a cumulative negative impact on instream flows
- If it is determined that groundwater diversions have potential to significantly affect surface water supply, forbearance periods or other measures may extend to groundwater diverters



Cannabis Cultivation Policy

(Numeric and Narrative Flow Requirements)

Fully Contained Springs:

- Springs that do not run off a property in the absence of diversion and do not have surface or subsurface hydrologic connectivity at any time of year during all water year types may request to be exempt from numeric instream flow and forbearance period (requires substantial evidence)
- Requirements related to submittal of substantial evidence are in addition to any information provided in Form B4
- **Springs deemed exempt are subject to 50% visual bypass and Groundwater Requirements**



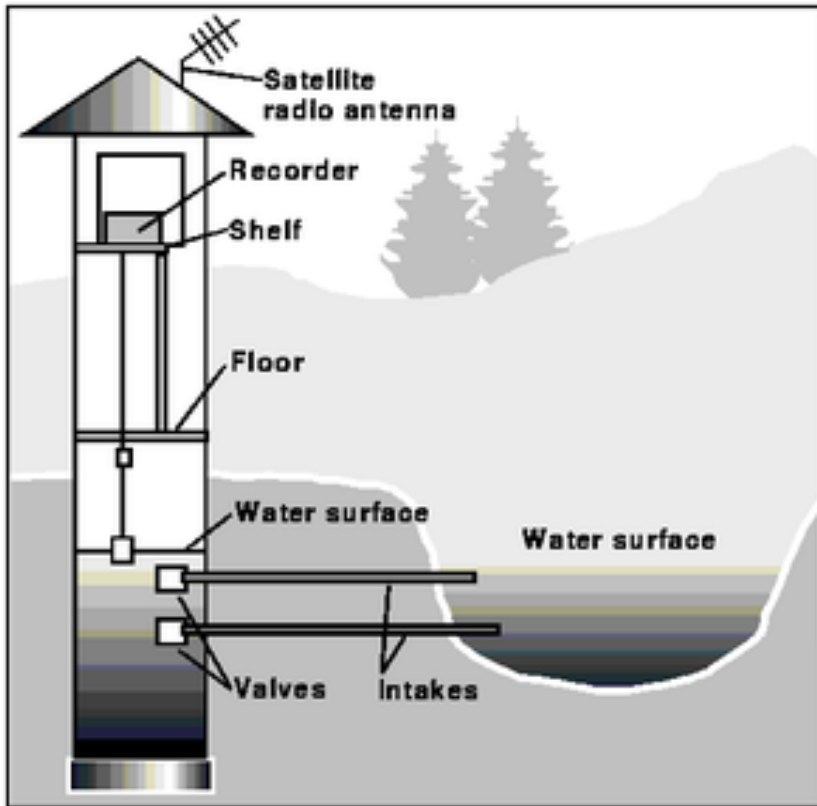
First Year – Flow Requirements for Installation of Storage

- Cannabis cultivators diverting under a valid water right or claim of water right and without storage:
 - First year of the Surface Water Dry Season Forbearance Period (April 1, 2018 through October 31, 2018) is waived; may only divert during this period in a manner consistent with their permit/license or claim of right
 - All other applicable requirements of Policy shall remain in force
 - Shall file for a Cannabis Small Irrigation Use Registration or submit an application for an appropriative water right permit to obtain storage sufficient to support cannabis cultivation during forbearance period prior to diverting water for cannabis cultivation during the 2018 forbearance period (April 1, 2018)
 - As soon as possible after storage has been authorized, following conclusion of winter period and any necessary approvals, cannabis cultivators shall begin installing and diverting to off-stream storage **to prepare for a potential curtailment during the dry season of 2018 (triggered by the Aquatic Base Flow Numeric Instream Flow Requirement)**

Retail Water Suppliers

- Flow requirements shall not apply to retail water suppliers (as defined in Section 13575 of Water Code) unless any of the following apply:
 - Retail water supplier has 10 or fewer customers and delivers water that is used for cannabis cultivation;
 - Retail water supplier delivers 10 percent or more of diverted water to one or more cannabis cultivator(s) or cannabis cultivation site(s), as established by an assessor's parcel number;
 - 25 percent or more of the water delivered by retail water supplier is used for cannabis cultivation; or
 - A cannabis cultivator and the retail water supplier are affiliates, as defined in California Code of Regulations, title 23, section 2814.20.

Cannabis Cultivation Policy (Watershed Compliance Gage Assignments)



- Policy establishes minimum monthly flows at compliance gages
- Watershed areas without existing gages are assigned a compliance gage for a different location in same watershed or a nearby watershed with similar flow characteristics
- During diversion season, cannabis cultivators are required to check their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at assigned gage
- Compliance gage assignments may change as more information becomes available

Cannabis General Order

General WDRs and Waiver of WDRs (General Order)

- Developed by State Water Board to implement the requirements of the Principles and Guidelines, addresses both indoor and outdoor cultivation activities
- Addresses discharges from legal cultivation sites to protect water quality
- Recognizes other permitting requirements that apply, but does not implement those requirements
- If applicable, requires water rights compliance, but a water right is not provided in the General Order

Why Prepare a Statewide General Order?

- Cannabis cultivation has grown exponentially – often located in sensitive areas
- Prop 215 initiated legal cultivation activities, Prop 64 is expected to greatly increase the activity
 - As many as 50,000 cultivation sites may exist in the state
 - An August 2016 CDFA survey indicated 16,000 cannabis cultivation licenses would be sought
- CDFA will begin issuing cultivation licenses on or before January 1, 2018
 - Will require compliance with Water Boards' requirements
 - Many Regional Boards will need to provide coverage for cultivation activities, but lack a general order. Statewide General Order addresses issue.

General Order Approach

- Generally based on the North Coast and Central Valley Regional Water Board orders (2015)
 - North Coast RWQCB Waiver of WDRs
 - Central Valley RWQCB General WDRs
- The General Order requirements are tiered based upon the threat to water quality
- Tier classification is based on disturbed area and risk
 - Conditional exemptions apply for some cultivation activities
- All dischargers must comply with the applicable Best Practicable Treatment or Control (BPTC) requirements in Attachment A

General Order Discharger Classifications

Personal Use Exemption (non-commercial activity)

- Less than 1,000 ft² disturbed area
- Comply with exemption conditions or enroll as Tier 1

Conditionally Exempt (commercial activity)

- Indoor (any size)
- Outdoor
 - Less than 2,000 ft² disturbed area
 - Comply with exemption conditions, or enroll as Tier 1

Tier 1 (commercial activity)

- Disturbed area greater than 2,000 ft² and less than one acre
- Further categorized by risk (slope and setback compliance)

Tier 2 (commercial activity)

- Disturbed area greater than one acre
- Further categorized by risk (slope and setback compliance)

Personal Use Exemption

- Exempt from CDFA licensing requirements (non-commercial)
 - Recreational: up to 6 plants per property parcel
 - Medical: up to 6 mature plants or 12 immature plants per qualified patient
- Maximum 1,000 ft² disturbed area and 20% slope
- Contiguous cultivation area (all in one place)
- Complies with setback requirements
- Implements all applicable requirements in Attachment A of the Cannabis Policy
- Coalitions or cooperatives cannot claim this exemption
- No registration or enrollment requirement

Conditional Exemption (outdoor)

- Cultivators that produce commercial cannabis (medical or recreational) – CDFA license required
- Maximum 2,000 ft² disturbed area and 20% slope
- Contiguous cultivation area (all in one place)
- Complies with setback requirements
- Implements all applicable requirements in Attachment A of the Cannabis Policy
- Must obtain coverage under the General Order Waiver
- Pays an application fee but no annual fee
 - Must re-enroll when waiver is updated (five year interval)

Conditional Exemption (indoor)

- Cultivators that produce commercial cannabis (medical or recreational) – CDFA license required
- Indoor means within a structure with a permanent roof and relatively impermeable floor (concrete or asphalt paved)
- No minimum or maximum cultivation area limit
- Implements all applicable requirements in Attachment A of the Cannabis Policy
- Must obtain coverage under the General Order Waiver
- Pays an application fee but no annual fee
 - Must re-enroll when waiver is updated (five year interval)

Tier 1 or Tier 2 Enrollees

- Cultivators that produce commercial cannabis (medical or recreational) – CDFA license required
- Tier determination is based on disturbed area
 - Tier 1 disturbs more than 2,000 ft² and less than 43,560 ft²
 - Tier 2 disturbs more than one acre (43,560 ft²)
- Complies with setback requirements
- Implements all applicable requirements in Attachment A of the Cannabis Policy
- Enrollment under the General Order is required
- Pays an application fee and annual fees
- Sites are further characterized by risk characteristics

Tier 1 & Tier 2 Risk Designations (Slope and Setback Compliance)

Low Risk	Moderate Risk	High Risk
<p data-bbox="108 596 633 811">No portion of the disturbed area is located on a slope greater than 30 percent</p> <p data-bbox="316 882 425 925"><u>AND</u></p> <p data-bbox="96 996 645 1153">All of the disturbed area complies with the setback requirements</p>	<p data-bbox="703 596 1232 811">Any portion of the disturbed area is located on a slope greater than 30 percent,</p> <p data-bbox="911 882 1020 925"><u>AND</u></p> <p data-bbox="691 996 1244 1153">All of the disturbed area complies with the setback requirements</p>	<p data-bbox="1302 596 1831 811">Any portion of the disturbed area is located within the setback requirements</p>

Reporting Requirements

- Conditionally Exempt dischargers
 - Site Closure Report – due **90 days prior** to ending cultivation
- Tier 1 and Tier 2 dischargers must submit reports based on the threat to water quality
 - Low Risk – Site Management Plan and Site Closure Plan
 - Moderate Risk – add Site Erosion Sediment Control Plan
 - High Risk – add Disturbed Area Stabilization Plan
 - Large area cultivation sites – add Nitrogen Management Plan
- Monitoring and Reporting Program (MRP)
 - Tier 1 and Tier 2 dischargers must submit annual monitoring reports (due March 1, each year)
 - Attachment B of the General Order contains the MRP
 - MRP can be revised by a Regional Water Board Executive Officer

North Coast Region Issues (1)

- Transitioning existing enrollees
 - Enrolled cultivators can continue operating under the existing North Coast Order until July 1, 2019
 - Continue paying existing fee until transitioned
- Setbacks
 - The statewide General Order includes a greater setback for Class I streams than the North Coast Order
 - ✓ Setback was increased from 100 feet to 150 feet
 - Cultivators enrolled in North Coast Order prior to 10/17/17 may retain reduced setback unless Executive Officer determines the reduced setback is not protective

North Coast Region Issues (2)

- Legacy issues
 - Sites of historic activity that may not be related to cannabis activity and discharge sediment or waste
 - North Coast Regional Board adopted items
 - ✓ Restoration Policy resolution
 - ✓ Temperature Implementation Policy
 - ✓ Sediment TMDL Implementation Policy
 - General Order requires legacy issues to be addressed in the Site Management Plan
- Winter period - Due date for winterization activities
 - Normally Nov. 15 through April 1 unless special rules or Basin Plan requirements apply
 - ✓ Marin County has a special rule Oct. 1 through April 15

General Order Summary

- All commercial cannabis activities are required to either be conditionally exempted or enrolled in General Order
 - Previously exempt commercial cultivators under the North Coast Order must apply for General Order coverage
- Existing enrollees in the North Coast Order
 - Transition to the statewide General Order by **July 1, 2019**
 - Existing facilities allowed to continue operating with existing setbacks unless Executive Officer finds not protective
- All applications will be on-line via Internet
- Tier 1 and 2 cultivators have technical and monitoring report requirements

Small Irrigation Use Registration

Water Rights: Small Irrigation Use Registrations

- Cannabis cultivators using surface water for irrigation will need to obtain a storage water right (comply with forbearance period)
- Statewide Cannabis Small Irrigation Use Registration (SIUR) provides a mechanism for cultivators to obtain a water right to store and use water for cannabis cultivation
- SIUR certificates will be issued once Cannabis Policy approved by Office of Administrative Law

SIUR Limitations

- Will not be issued for diversions from:
 - Fully Appropriated Streams
 - Wild and Scenic Rivers
 - CDFW Instream Flow Study Area
 - Public Resource Code section 10002
- Must obtain Tribal approval if within 600 feet of Tribal lands

Cannabis Online Application Portal

<https://public2.waterboards.ca.gov/cgo>

Cannabis Programs Portal Process



APPLICANT

- ✓ Enters information
- ✓ Obtain Cannabis Program Portal Account
- ✓ Answers water quality and water rights questions
- ✓ Self-certifies compliance with General Order, Cannabis Policy, Registration Conditions



CANNABIS PROGRAMS PORTAL

- ✓ Generates Notice of Receipt with fee invoice for General Order & for Water Rights as applicable
- ✓ Stores information for upload to CIWQS & eWRIMS



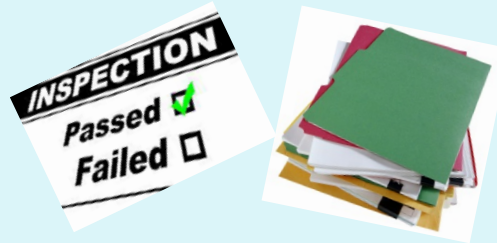
APPLICANT

- ✓ Pays fees to State Water Board within 30 days



WATER BOARDS

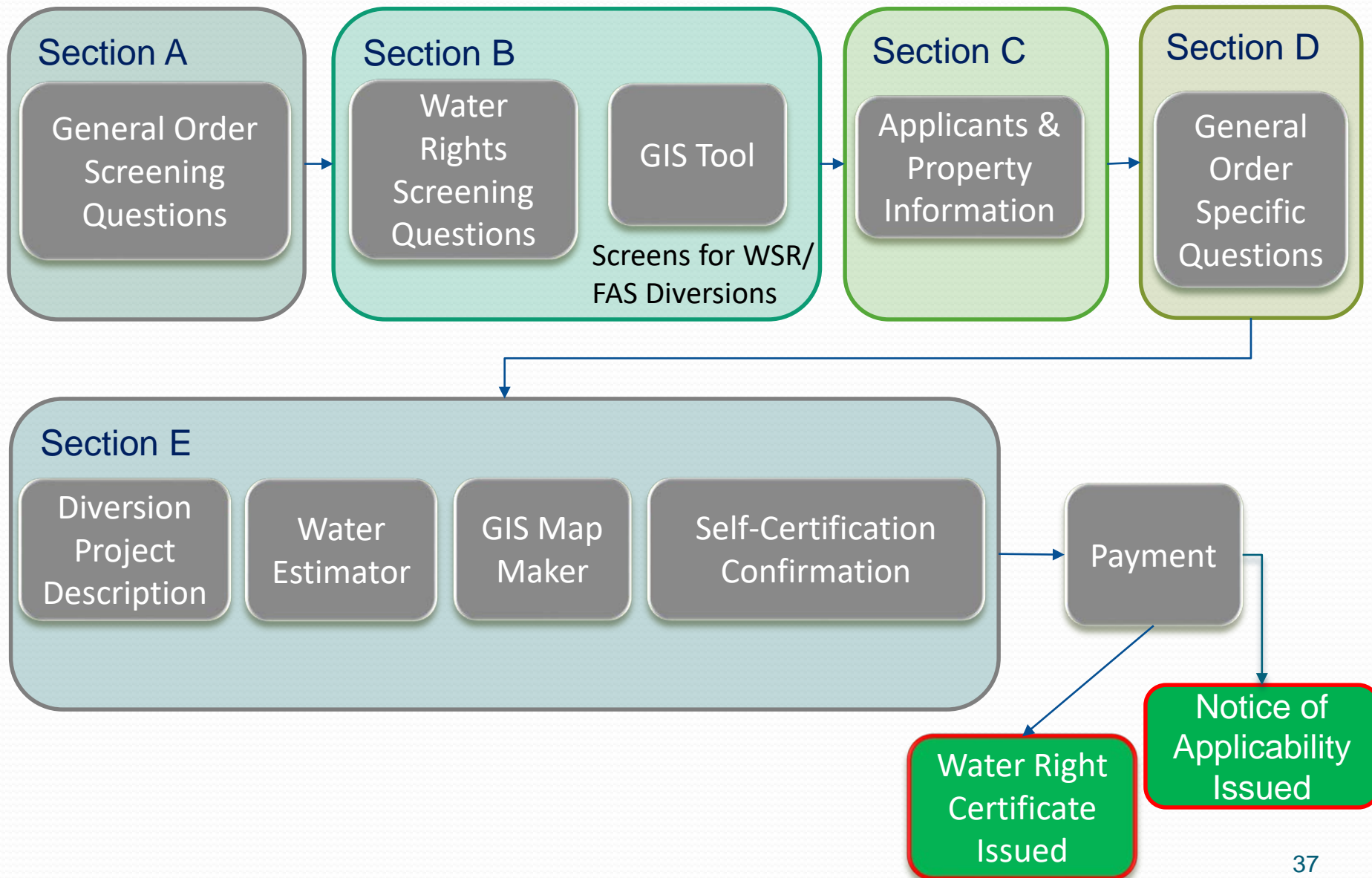
- ✓ Sends Notice of Applicability to applicant
- ✓ Sends Small Irrigation Use certificate to applicants
- ✓ Adds technical report(s) required to eSMR



WATER BOARDS

- ✓ Review reports for compliance
- ✓ Inspects facilities for compliances and answers applicant questions

Cannabis Program Portal Process Flow



Outreach, Coordination, and Contacts

State Water Board Public Workshops

December 1, 2017

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

December 6, 2017

200 South School Street
Ukiah, CA 95482

December 8, 2017*

1001 I Street, 2nd Floor
Sacramento, CA 95814

* The Sacramento meeting will be webcast
at: <https://video.calepa.ca.gov/>

December 13, 2017

364 Knollcrest Drive, #205
Redding, CA 96002

December 15, 2017

1011 Waterfront Drive
Eureka, CA 95501

December 19, 2017

1685 E Street
Fresno, CA 93706

December 21, 2017

2375 Northside Drive, Suite 100
San Diego, CA 92108

All workshops are scheduled to run from **10:00 am to 4:00 pm**. For more information please visit: www.waterboards.ca.gov/cannabis.

Coordination and Outreach

- Previous Presentations to Region 1 Board
- Water Boards Cannabis Training: November 27
- Cannabis Roundtable Established
- Messaging
- CDFA Workshops:
 - Santa Ana (Nov 28)
 - West Sacramento (Nov 28)
 - San Bernardino (Nov 30)
 - Salinas (Nov 30)
 - Fresno (Dec 5)
 - Ukiah (Dec 5)
 - Palm Desert (Dec 7)
 - Oroville (Dec 12)
 - Eureka (Dec 14)

Water Boards Cannabis Website

www.waterboards.ca.gov/cannabis

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Water Boards Cannabis Cultivation Programs

Welcome to the State Water Resources Control Board's (State Water Board) Cannabis Cultivation Regulatory Program webpage. On October 17, 2017, the State Water Board adopted the Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy) and General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General

✉ [Subscribe directly to the Cannabis Cultivators Email List](#)

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File an Environmental Complaint

- [File an Environmental Complaint](#)

State Water Board Contacts

Small Irrigation Use Registration

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Cannabis Cultivation Policy

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Region 1 Program Update

Region 1 Cannabis Program Update

- Enrollment
 - No enrollments in R1 Order after October 17th
 - Over 3,000 Enrollments
 - New applicants must enroll in the statewide General Order
 - Regional Board staff will implement the Statewide Order
 - Staff will be implementing both Orders until 7/1/2019
- Staffing
 - 9 full-time staff
 - 8 additional staff still to be hired
 - 1 scientific aid

Comparison of Statewide and R1 Orders

		Region 1 Order	Statewide Order
Water Quality	Tiered Approach	3 Tiers	2 Tiers & 3 Risk Levels
	-Riparian Setbacks	Yes	Yes
	-Slopes	Yes	Yes
	-Area Measurement	Cultivation	Disturbance
	Compliance Plans	Water Resource Protection Plan	4 Plan Types
	Property Wide Coverage	Yes	Yes (in Region 1)
	Prescriptive Requirements?	Best Management Practices	Best Practicable Treatment and Control Measures
	Instream Work	401 Water Quality Certification	Waste Discharge Requirements
EO preapproval of workplans required	For work in streams/wetlands	For work in streams/wetlands, within the riparian setbacks, and on slopes >30%	
Flow-Related	Required surface water forbearance period?	No	Yes
	Numeric Instream Flow Requirements for Wet Season Surface Water Diversion	No	Yes
	50% Visual Bypass Requirement?	No	Yes

Region 1 Cannabis Program Update

- Inspections
 - Over 50 inspections conducted by staff in 2017
 - Purchase request for 8 tablets submitted to procurement in November
- Enforcement Update
 - Dozens of inspections resulted in staff-identified violations that need further action
 - CDFW has issued dozens of Notices of Violation

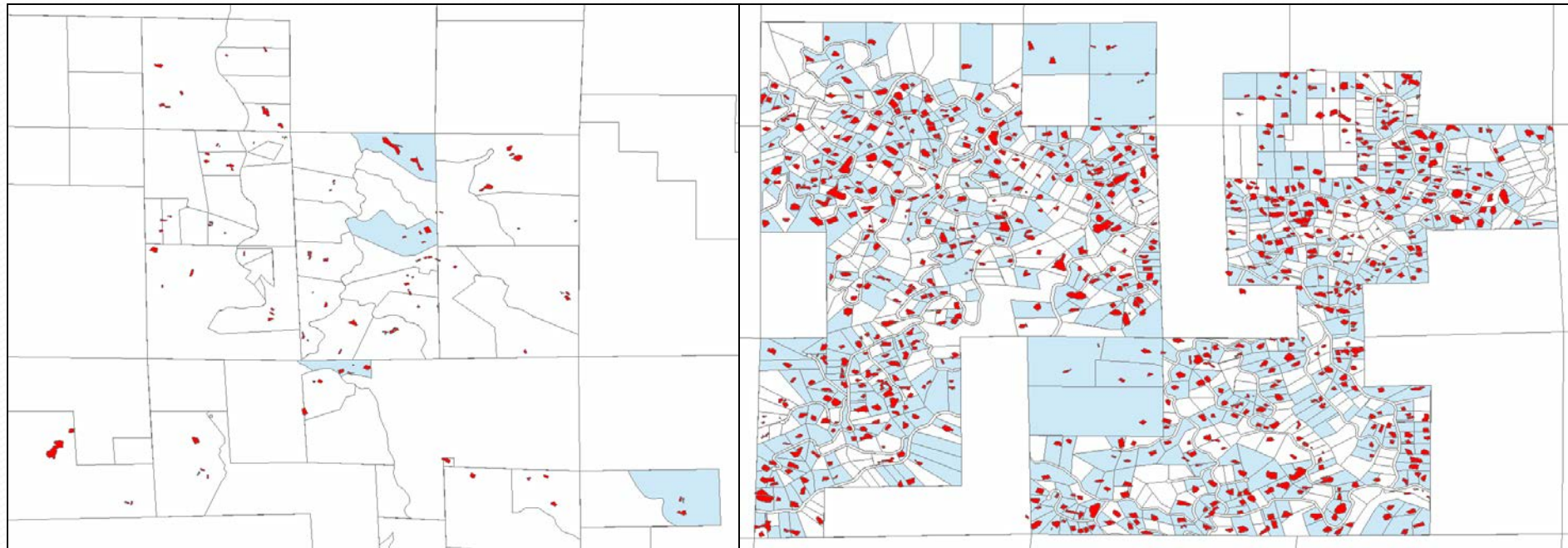
Region 1 Cannabis Program Implementation Strategy

- Aerial Assessment and Enforcement

Enrollment Enforcement Effort	Subwatershed	Letters Sent	Applications Received	Rough % applications received in areas of enrollment enforcement
1	Chamise Creek & Lower East Branch South Fork Eel	203	89	44%
2	Mad River	166	183	110%
3	Rattlesnake Creek	785	569	72%
Total ----->		1154	841	73%

Region 1 Cannabis Program Implementation Strategy

- Aerial Assessment and Enforcement



Region 1 Cannabis Program Implementation Strategy

- Enforcement
 - Compliance assurance/assistance with enrollees under the R1 Order (and take enforcement action where appropriate)
 - Audit performance of third party programs and consulting companies with large portfolios of enrollees under R1 order
 - Streamline Enforcement Program (NOVs, CAOs, ACLCs)
 - Hire/train new staff (build the new units/division)
- Interagency Coordination (CDFW, CDFR, Local Agencies)
 - Enrollment reporting
 - CEQA review
 - Inspections

Region 1 Cannabis Program Implementation Strategy

- Implement both R1 Order and Statewide Order
- Education and Outreach
- Technology
 - Computer Vision Project – Working with OIMA to develop a tool that automatically identifies cultivation sites based on aerial imagery
 - Cannabis Identification and Prioritization System (CIPS)
 - 2017/18 Fiscal Year Funding for CIPS: \$900,000
 - Electronic Field Data Collection (Tablets)

Contact Information

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North Coast Region:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/

State Water Board:

<https://www.waterboards.ca.gov/cannabis>

Questions?

