



## Margro Advisors

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### Comments on Draft Cannabis Cultivation Policy by the State Water Resources Control Board

The following comments are based on our experience working directly with farmers in the rural areas of Northern California. Our goal is to encourage environmental improvements through guiding clients into compliance, while preventing the exclusion of these farmers due to general assumptions and unnecessarily broad regulations.

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#### SECTION 2 – REQUIREMENTS RELATED TO WATER DIVERSIONS AND WASTE DISCHARGE FOR CANNABIS CULTIVATION

**Item: 23**

“Cannabis cultivators shall have a qualified professional design the optimal road alignment, surfacing, drainage, maintenance requirements, and spoils handling procedures.”

**Comment:** Is this referring to new and upgraded private road projects? Requiring this of all existing roads would not be a reasonable requirement; and cultivators should not be responsible for County or State maintained roads.

**Recommendation:** Any new private road or road upgrade or replacement project requires that a qualified professional design the optimal road alignment, surfacing, drainage, maintenance requirements, and spoils handling procedures.”

#### Temporary Watercourse Diversion and Dewatering: All Live Watercourses

**Item: 45**

“Flows shall be of sufficient quality and quantity, and of appropriate temperature to support fish and other aquatic life both above and below the diversion.”

**Comment:** Class II and III waterways generally do not support fish. This statement should clarify that it is referring to Class I waterways.

**Recommendation:** “Flows in Class I waterways shall be of sufficient quality and quantity, and of appropriate temperature to support fish and other aquatic life both above and below the diversion. “

#### Water Supply, Diversion, and Storage

**Item: 75**

“Cannabis cultivators shall only use fuel powered (e.g., gas, diesel, etc.) diversion pumps that are located in a stable and secure location outside of the riparian setbacks.”

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**Comment:** This is worded as to sound as if non-fuel powered pumps (e.g. solar) are not allowed.

**Recommendation:** Reword to emphasize this is specific to riparian setbacks.

“Within riparian setbacks, fuel powered (e.g., gas, diesel, etc.) diversion pumps are not allowed. Outside of riparian setbacks they must be placed in a stable and secure location.”

**Item: 82**

“Onstream storage reservoirs are prohibited unless the cannabis cultivator has an existing water right issued prior to January 1, 2017 that authorizes the onstream storage reservoir. ”

**Comment:** The entire permitting process across multiple agencies has been long and challenging for many farmers. The application process for California Fish & Wildlife can take more than six months. Applying a past deadline date prior to the adoption of this policy is unreasonable for those who have been working through the process during this year. In addition, CDFW is very strict on allowing ponds and is a suitable authority on this issue.

**Recommendation:** Remove the deadline and continue to allow the California Department of Fish and Wildlife to make the determinations for allowable onstream reservoirs.

“Onstream storage reservoirs are prohibited unless the cannabis cultivator has an existing CDFW agreement ~~water right issued prior to January 1, 2017~~ that authorizes the onstream storage reservoir. ”

**Item: 89**

“Cannabis cultivators shall implement an invasive species management plan prepared by a Qualified Biologist for any existing or proposed water storage facilities that are open to the environment. The plan shall include, at a minimum, an annual survey for bullfrogs and other invasive aquatic species. If bullfrogs or other invasive aquatic species are identified, eradication measures shall be implemented by a qualified biologist.”

**Comment:** If a qualified biologist creates a proper management plan, the farmers should be allowed to follow it themselves. It is less helpful to require that all the work be done by biologists which is an added expense to farmers and likely to be delayed or avoided as a result. We know that certain bullfrogs are a problem in Northern California. Enabling the farmers to execute defined plans will result in more action than requiring them to contact, schedule, and pay a professional to do the same work.

**Recommendation:** “Cannabis cultivators shall implement an invasive species management plan prepared by a Qualified Biologist for any existing or proposed water storage facilities that are open to the environment. The plan shall include, at a minimum, an annual survey for bullfrogs and other invasive aquatic species. If bullfrogs or other invasive aquatic species are identified, eradication measures shall be implemented ~~by a qualified biologist~~ as prescribed in the plan.”

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**Item: 96**

“Cannabis cultivators shall not use water storage bladders unless the bladder is safely contained within a secondary containment system with sufficient capacity to capture 150 percent of a bladder’s maximum possible contents in the event of bladder failure (i.e., 150 percent of bladder’s capacity). “

**Comment:** The 150% capacity is extreme. In many places even hazardous materials only require 100% containment. Large containment can actually create a risk as any open area around the bladder (consider 15 ft x15 ft that is 1 foot high is the same containment as 10 ft x15 ft that is two feet high), would allow the flow of force to be released, creating a tide which could then wash out a 1 foot barrier. Large containment would also have the possibility of collecting rainwater, resulting in a larger pond of water than the bladder itself.

**Recommendation:** We suggest 50% containment with proper covering or drainage.

“Cannabis cultivators shall not use water storage bladders unless the bladder is safely contained within a secondary containment system with sufficient capacity to capture 50 percent of a bladder’s maximum possible contents in the event of bladder failure and utilize proper covering or drainage to prevent unnecessary water collection.

**Item: 129**

“Cannabis cultivators shall not operate heavy equipment of any kind at the cannabis cultivation site during the winter period (November 16 to March 31), unless authorized for emergency repairs...”

**Comment:** In Northern California many farmers begin their season in March. This requires using proper equipment for tilling their soil beds. Banning all heavy equipment until March 31, is not a reasonable requirement. Instead, consideration should be made for the uses of the equipment, not the equipment itself. Also, sites should be allowed to request exceptions from the regional agency for special projects or when there are earlier, drier weather seasons.

**Recommendation:** “Cannabis cultivators shall not operate heavy equipment for road construction or grading areas during the winter period (November 16 to March 31), unless authorized by the regional enforcement agency.”

**SECTION 3 – NUMERIC AND NARRATIVE INSTREAM FLOW REQUIREMENTS  
(INCLUDING GAGING)**

**Item: 4**

“The authorized surface water diversion period is November 1 through March 31. During this diversion period, cannabis cultivators may only divert surface water for cannabis cultivation when water is available for diversion under the cannabis cultivator’s priority of right and the applicable Numeric Flow Requirement (Section 4) is met at the assigned compliance gage.”

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This requirement is unduly harsh for farms willing to function in a regulated industry. The loss of an additional 45-days of water use, is unfair to those in the Northern Region with significant rainfall to support the current November 1-May 15 availability period. It is more the reduction of large illegal grows that should be the priority to recovering water for the local environment. If a requirement is put forth, we ask that the regional enforcement be allowed to determine the final forbearance period for it's region, as different climates within the state should allow for different usage.

**Recommendation:** “The authorized surface water diversion period is November 1 through May 15. The regional water board will be authorized to adjust the surface water diversion period for its region, when needed, to ensure proper surface water instream flow.”

**Item: 4**

“Cannabis cultivators may only divert surface water for cannabis cultivation when water is available for diversion under the cannabis cultivator’s priority of right and the applicable Numeric Flow Requirement (Section 4) is met at the assigned compliance gage.”

**Comment:** Please note, a variety of information sharing methods must be in place to allow farmers in remote areas to access the required information. Many rural farms in Humboldt do not have internet access. Mobile text messaging (e.g. daily text broadcast) or call-in recording would be needed to make the information available to these farmers. A website alone is not sufficient.

**Item: 4**

“Cannabis cultivators shall verify and document compliance with the applicable Numeric Flow Requirement on a daily basis for each day of surface water diversion.”

**Comment:** A daily log of water compliance is not a realistic requirement. Farmers can be requested to verify eligibility for proper water flows (such as checking a mobile broadcast), when planning to do a diversion, but requesting daily documentation will result in a higher likelihood of false data than actual compliance. The current requirement of monthly water usage logs based on water meters, reported annually should be sufficient to determine impacts.

**Recommendation:** “Cannabis cultivators shall verify ~~and document~~ compliance with the applicable Numeric Flow Requirement on a daily basis for each day of surface water diversion.”

**Item: 6**

“From November 1 through December 14 of each year, the surface water diversion period shall not begin until after seven consecutive days in which the surface waterbody’s real-time daily average flow is greater than the Numeric Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4). The first day of the seven consecutive days must occur on or after November 1.”

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**Comment:** This requirement is unduly harsh for farms willing to function in a regulated industry. The reduction of large illegal grows should be the priority to recovering water for the local environment. The seven day requirement is overly stringent as it increases the already extensive forbearance period by another week at minimum.

**Recommendation:** Remove or make the request voluntary.

“From November 1 through December 14 of each year, farmers should consider the surface waterbody’s real-time daily average over the past week, and when possible wait until the flow is greater than the Numeric Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4) prior to beginning their non-forbearance diversions.”

**Item:** Gage Installation, Maintenance, and Operation Requirements

“The Deputy Director for Water Rights (Deputy Director) may require cannabis cultivators to install and operate a local telemetry gage in ungaged watersheds or localized watershed areas if the Deputy Director determines that use of the assigned compliance gage does not adequately protect instream flows or does not adequately represent the localized water demand.”

**Comment:** The responsibility for gages and monitoring for State tracking should fall on the department, not cultivators themselves. Cultivators already have required water meters and provide monthly tracking data annually, here in Northern California. Additional equipment for state purposes is an unnecessary burden to them that is less likely to be reliable if not installed and maintained by the Department itself.

**Recommendation:** “The Deputy Director for Water Rights (Deputy Director) may require the installation of state-owned local telemetry gages in ungaged watersheds or localized watershed areas if the Deputy Director determines that use of the assigned compliance gage does not adequately protect instream flows or does not adequately represent the localized water demand.”

**Item:** Glossary

**Comment:** There is not a definition for “Disturbed land” in the Glossary, yet the term was used often in the information session in Eureka. The glossary should include this term, even if it is repetitive.

**Recommendation:** Add “Disturbed Land -- see Land Disturbance” or swap the definitions and list the term “Disturbed Land” and reference it in the term “Land Disturbance.”